

February 9, 2022

Dear Members of the Durham Planning Board,

Thank you for your dedicated public service to the Town of Durham. I have followed this application closely for several years, and I write to ask you to reject the Colonial Durham (CDA) proposal, which would be disastrous for Durham.

I write now with disappointment to suggest that the extensive record of the handling of this application has been characterized by consistent bias in favor of the developer and against citizens. You may be too deep into this demanding process to recognize this pattern. Thus, I offer a summary of what I and many other citizens consider to be key troubling moments in this lengthy application history. The list below is by no means comprehensive, but I think it illustrates a pattern of tampering with what should be a fair process, as well as significant errors in judgment.

In particular, the actions of six influential actors stand out. Durham's town administrator, his legal counsel, his chosen "contract planner", the most-recent economic development director, the Planning Board Chair, and the Town Council Representative to the Planning Board have repeatedly gone out of their way (since the December 2015 Settlement) to favor the developer and push this ill-advised project through. A seventh individual, the Town Assessor, who also reports to the town administrator, has also intervened, "as needed," to shut down critical inquiry, such as stopping the Board's intention to commission an independent "appraisal." Four out of these seven individuals are paid to advocate for the CDA proposal. Unpaid observers, of course, have overwhelmingly rejected the plan, as anyone can see from reading the more than 350 [Citizen Comments](#) submitted to you and from expert analyses solicited by Durham residents.

Durham's "[Other Planning Info](#)" includes anti-resident documents, such as by a consultant for developers on why a room full of residents opposing a plan should be ignored, and other documents on how on how NOT to challenge applicants' attorneys. The author, [Patrick Fox](#), whose advice is featured by the Planning Board on its website section, boasts on his LinkedIn page of: Spending the last 30-years achieving extraordinarily controversial, complicated and competitive strategic objectives...winning highly competitive licensing and regulatory fights, securing land use approvals...

[Ten Things You Should Know About Project Applicants](#)

[Ten Things you should know about Project Opponents](#)

Unfortunately, the advice given by Mr. Fox -- to recognize the needs of applicants and ignore opponents -- appears to have been followed all too faithfully during this application process.

In deliberating on this application of many years, I ask you to take a fresh look at the many inflection points where what should have been a fair process was hijacked by biased advocates of the proposed project. In reviewing these unfortunate events, most of which date back to 2017,

I believe you will have to acknowledge that the Durham Planning Board's usual fair process was interfered with, and corrupted, and important public input was largely ignored. We can only hope that this biased planning review process will not culminate in a catastrophic decision to approve the CDA plan, with all its negative implications for the downtown core for at least 50 years.

### **Durham's Recipe for Disaster**

- 1) **The findings of the Mill Plaza Study Group (MPSG), which met on a volunteer basis for more than a year to develop a conceptual plan for Mill Plaza that benefits the community, are cast aside by developer CDA and the Durham Planning Board.** This treatment of MPSG findings begins a long record of pseudo-participation of Durham citizens before the Planning Board. Public input is invited and then ignored, often to the detriment of community. <https://www.ci.durham.nh.us/planning/mill-plaza-study-2008>
- 2) **Feb to June 2017. Following overwhelming public opposition to the then new CDA plan (as well as to the prior ones), Town Administrator Todd Selig pulled CDA site plan #6 away from the Planning Board, disrupting and subverting the customary public Planning Board review process.** Once the public planning process was interrupted, Mr. Selig negotiated with the developer privately and outside of public view, for months. Then, *prior to allowing any public input*, Selig endorsed the plan to the Town Council via email as “a good plan to move forward” and took the unusual step of hijacking the process further, by coming to the start of the re-opened Public Hearing, introducing the CDA plan and publicly endorsing it, urging closing the design review, which the Planning Board dutifully complied with. During those months of private negotiations, no member of the public was involved or consulted. Selig acknowledged publicly the irregular nature of the intervention, saying to the Planning Board on June 14, 2017: **“I am leading off this presentation, which is very abnormal, but we’ve been over the last six months embarking on a somewhat abnormal process. And so, I wanted to just reintroduce this project to the Planning Board.”** Abnormal indeed.
- 3) **November 2017. Durham's Planning Board considered allowing CDA to violate NH State law and the Settlement Agreement.** The Planning Board was so deferential to the interests of developer CDA that it was seriously considering allowing CDA to violate the 2015 Settlement Agreement regarding “normal review” – and New Hampshire State law – by granting CDA a requested extension beyond the requirement to submit a final plan within 12 months of closing the Design Review. Incredibly, Durham citizens had to go to the trouble and expense of hiring a land-use attorney to instruct the Planning Board that *“the 1-year or 12-month timeframe of RSA 676:12, VI may not be extended at the discretion of the Planning Board. The language of RSA 676:12, VI is clear: it does not give the Planning Board the authority to waive the 12-month timeframe.”* This Attorney letter and the likely exchanges behind the scenes about the issue were never revealed publicly by the Planning Board, and when a resident inquired in early 2022 about where to find the Attorney letter, the Planning Department at first denied ever having received it. Only

when a copy forwarded by the law firm was shown to them, did they suddenly “remember” its existence. Still, they refused to post it publicly for citizens to view.

- 4) **November 2017. Removal of Town Planner Michael Behrendt for expressing a professional opinion that was highly critical of the CDA proposal.** Town Administrator Todd Selig immediately removed Behrendt from oversight of the Mill Plaza application for being “biased,” in his professional judgment that Site Plan #8 was much worse than earlier plans. Removal of Mr. Behrendt deprived this process of an objective, salaried planner who was familiar with town regulations and who understood the dynamics of a university town, including the inherent incompatibility of student dormitories and family neighborhoods. It also deprived residents of a town employee who was accountable for the planning of a major project in the heart of the Durham downtown. Behrendt’s “misdeed”? Providing professional advice: *“You pay me to be your professional planner, and I’d be remiss if I didn’t tell you this: If this ever got built, that would be a terrible thing. I’m telling you that frankly.... If this ever got built, I would be embarrassed. And I would be ashamed that it happened on my watch.”*
  
- 5) **December 2017. Appointment of "contract planner", Rick Taintor, to "ride herd" over the project and "move the project forward".** The biased statements of Todd Selig when introducing Massachusetts resident, Rick Taintor, illustrate quite clearly the pro-development bias of the Town Administration that Mr. Taintor dutifully adopted at a generous pay rate of \$125/hr., including travel time from Newburyport, Massachusetts. In contrast to the objective evaluation of the project provided by permanent Town Planner Behrendt handling the project, pro-development bias has characterized Mr. Taintor's performance, with his immediate attempt in March 2018 to initiate a possible zoning change that would give CDA more flexibility in its designs. Mr. Taintor also pressed the PB to accept CDA’s incomplete application (and with no typical presentation) as “complete” on June 13, 2018, over the objections of Board members Lorne Parnell and Carden Welsh. On numerous occasions, Mr. Taintor has held back information intended for the Planning Board, including key opinions from the town attorney (such as [Email from Town Attorney 2-7-20](#), in which she offered a further written response on a key issue, a letter which was “accidentally” read into the record by CDA’s Attorney Ari Pollack, when members of the PB had never seen it. As just documented today, February 9<sup>th</sup>, in a Citizen Comment, Mr. Taintor also saw but did not post a June 2021 Email from Board Chair Paul Rasmussen regarding Conditional Use Criteria (June 27, 2021), which led to a wildly off-base discussion at the August 25, 2021, public hearing that could have been prevented if the public had seen the misguided letter.  
[https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning\\_board/page/54487/joshua\\_meyrowitz\\_2-9-22.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54487/joshua_meyrowitz_2-9-22.pdf)
  
- 6) **Over many years, the Planning Board has taken an extremely passive, highly deferential approach to the CDA application, rather than trying to suggest improvements to the CDA proposal that would mitigate the series of negative project impacts described in**

**hundreds of community letters and comments.** This coddling approach, which contrasts sharply with the discretion and negotiation commonly employed by New Hampshire town planning boards, was summarized by Planning Board member Lorne Parnell on June 17, 2020:

*“We have a site plan in front of us. This is what has been presented to us for our consideration, and I don’t think that until we get all the information in about this, this project, and review all of it, which includes the landscaping, where the buildings are located, and everything else. It’s all one... This is what has been presented to us, and this is what we are to analyze. And it’s not really our position to say, ‘Why don’t you move this?’, ‘Or do that?’, until we get to the end and say, this is good or not good.”*

This exaggerated sense of deference to CDA's proposals, which allows for ill-advised plans to go unchallenged until the very end of the process kept the Planning Board from properly scrutinizing the proposal and, at times, resulted in a negligent, non-review of project plans. For example, the applicant repeatedly included images in its presentations that were obviously inaccurate, misleading, and wildly out of scale. Some “architectural” renderings resembled a fantasy wonderland straight out of Willy Wonka. Even after members of the public brought the repeated inaccuracies to the Planning Board’s attention, board members showed no interest in having the applicant correct even the most egregious errors. The following is an example of an image that was featured in the applicant’s presentation, yet it somehow went unquestioned by the Planning Board:



As one resident posted on the “Durham Residents for Responsible Plaza Development” Facebook page: “Don't we all need a laugh these days? Well, here is one. From the developer's presentation at the 11/18/20 Planning Board meeting, this is their depiction of what they say will be the view of the plaza from Chesley Drive. Really?? Not a building in sight! – just an ethereal, endless fantasy garden. This would be funny, if it weren't so insulting.”

- 7) **Neither Durham's Town Administration nor the Durham Planning Board have held applicant CDA accountable for obvious, longstanding violations of town regulations, and neither has provided an explanation for this preferential treatment of the developer.** Durham's Town Administrator has not forced CDA to restore the unauthorized bulldozing of the eastern hillside in 2002, he has not enforced the no-parking order for the illegally bulldozed area at rear of Plaza, and has not adhered to a 2009 opinion by then Durham's town lawyer, Walter Mitchell, that new plans cannot be considered by the Planning Board when site is out of compliance with the unlicensed side business of parking-spot rental, which has only increased since the attorney's "must cease" 2009 ruling, and is reportedly now up to more than 100 spots. Nor has CDA been held responsible for severe environmental degradation of College Brook and its bank.
- 8) **Planning Board members *selectively* applied Settlement Agreement terms to the proposed development, per the instructions of the Town Attorney and Rick Taintor, who made the unusual argument that the Town Administration / Town Council can sign a Settlement Agreement that takes away the Planning Board's quasi-judicial authority. They advised that the Town Administration is able to skirt the Planning Board's authority via a Settlement that the Town signed with the developer.** The Durham Town Attorney and contract planner argued that the Settlement terms are beyond the Planning Board's jurisdiction and to be ignored, while simultaneously making the curious claim that Planning Board members are to cherry pick from the Settlement Agreement, applying the Settlement's favorable density requirement to CDA, as clearly required, but encouraging the Board to approve a plan that ignores other clearly required provisions of the Settlement (such a restored 75 foot wetland buffer). Providing professional guidance to the Planning Board, Mr. Taintor encouraged Planning Board members to ignore the contractual terms that the developer CDA must meet. This argument was not persuasive to all Planning Board members. Mr. James Bubar questions how one can forget the Settlement Terms, saying, "You can't un-ring a bell," though he later appeared to adopt the "ignore-the-Settlement position. Mr. Richard Kelley suggested that the CDA proposal has failed 1(d) of the Legal Settlement and that it made no sense to ignore that. Nonetheless, the Settlement terms have been largely ignored by the Planning Board as a whole, even after Todd Selig was forced by former Town Councilor Firoze Katrak to tell the truth about the intended role of the Settlement in Planning Board deliberations. See **"Settling the 'Planning Board Role' Regarding the 2015 Legal Settlement,"** [Joshua Meyrowitz 3-19-21](#), for more details.
- 9) **After the Mill Plaza anchor tenant, Hannaford, rejects the CDA proposal largely on the basis of inadequate parking), Durham's Town Attorney and Planning Board accepted the fiction put forth by CDA that its new application and a new Toomerfs application, which provides additional parking on an adjacent parcel, were independent.** Hannaford deemed this additional parking "essential" for it to approve the CDA plan. This arrangement – one project masquerading as two -- allows the developer to claim that its very new project proposal is not new, and allows the consideration of crucial issues

(runoff, flooding, pollution, deforestation, traffic, etc.) to be divided and considered separately, in isolation from one another, by two different town planners, thus benefiting CDA. Durham’s Attorney and Planning Board accept the fiction despite much evidence to the contrary:

- a. Hannaford rejects CDA plan on the basis of inadequate parking.
  - i. *“Please note that Hannaford does not approve or support this proposed project based on impacts to its business, including but not limited to inadequate parking and a lack of convenient and safe access and circulation.”*
- b. Hannaford’s representative referred to the additional, Toomerfs parking lot as “essential” to make the Mill Plaza plan viable.
- c. CDA’s application included leased parking spaces on the Toomerfs lot.
- d. The Toomerfs plan and new CDA plan were presented to Durham town bodies in lockstep, on the same days, and during the same sessions.
  - i. The plans were introduced in unison to the TRG Committee.
  - ii. The plans were introduced in unison to the Planning Board.
- e. CDA’s attorney referred to the projects as “linked” before the Planning Board
- f. Rick Taintor acknowledges in his Planner’s Review that they are connected
- g. CDA’s lead attorney, Ari Pollack, was present at Toomerfs’ presentation to the Planning Board on January 8, 2020. (See photo below) – as was Hannaford’s Mary Gamage.



Considering the projects as independent favored CDA in an unfair and important way, as it allowed the applicant to claim an “essential” benefit from the Toomerfs site – additional parking – while insulating itself from the negative impacts of the Toomerfs site, such as reduced natural buffer, increased impervious surface, increased runoff, and the significant traffic congestion that would surely result in the vicinity of 19-21 Main Street. August 25, 2021, perhaps marked the high-water mark in terms of allowing CDA to have its cake and eat it too, when CDA’s Ari Pollack mentioned how the woods to the east of the site (those he hopes to see destroyed for parking) were natural noise buffers for the massive student housing complex proposed. This off-balance sheet accounting was extremely beneficial to CDA in other ways too. When members of the public criticized aspects of the plan related to Toomerfs site, they were told that their comments were off topic, not appropriate at that time, and not permitted. Meanwhile, the developer was

allowed by the Planning Board to rely on, and refer to, the benefits of the Toomerfs site. This double standard was typical of pro-development bias at the expense of the public. With Durham's Town Attorney and the Planning Board going along with this "two, not one" fiction, the Toomerfs site became a life preserver thrown to a flailing Mill Plaza developer.

Please refer to my letter on this topic, dated April 28, 2021.

[https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning\\_board/page/54487/matt\\_komonchak\\_4-28-21.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54487/matt_komonchak_4-28-21.pdf)

**10) When questionable or unsubstantiated legal advice was provided by Durham's Town Attorney on pivotal legal issues, the Planning Board refrained from soliciting more information from her or a second opinion.** While there were multiple instances of this, one shining example took place on February 12, 2020, when Planning Board member Richard Kelley expressed an interest in hearing more from the Town Attorney in her response to points made by Attorney Mark Puffer in a letter dated February 5th. Mr. Kelley astutely noted that her opinion was *"an e-mail that was a couple of paragraphs long at best, that we haven't seen, that was in response to a letter that runs five or six pages"*. According to the public process and public records for this application, a serious rebuttal was never solicited by, or provided to, the Planning Board:

Attorney Mark Puffer Letter 2/5/20 -

[https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning\\_board/page/54468/letter\\_from\\_attorney\\_mark\\_puffer.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54468/letter_from_attorney_mark_puffer.pdf)

Attorney Laura Spector Morgan response 2/7/20 -

[https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning\\_board/page/54468/email\\_from\\_town\\_attorney\\_2-7-20.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54468/email_from_town_attorney_2-7-20.pdf)

**11) Feb 2020. Former Durham Town Councilor, who helped negotiate Settlement Agreement, Weighed In, Commenting on the coordinated Mill Plaza and Church Hill proposals.** Firoze Katrak wrote: "It is obvious to me that the current Plaza proposal, which needs the Toomerfs parking to overcome the veto power of Hannaford, is not conforming at least to the spirit of the settlement agreement. This Plaza proposal is diametrically opposing the spirit of the settlement agreement because it does not even try to contain the impacts on site, but rather spreads the impacts far beyond the Plaza into even more family, residential neighborhoods. This is an affront to the spirit of the settlement agreement. Whether it is legal or not, is up for the lawyers to help you decide." Despite Mr. Katrak's credible words, the Planning Board continues to put blinders on where the Settlement is concerned.

**12) March 2020. Mr. Selig took the unusual step of intervening to interpret the Settlement Agreement for the Planning Board. Selig's interpretation was, not surprisingly, a**

**demonstration of “selective memory” that benefited the developer. Former Councilor Firoze Katrak writes that Administrator Selig is misleading the Planning Board and is “deceptive”.** A highly unusual intervention by the Town Administrator in this process was allowed so that he could share his insight that, in the Settlement, “North” does not actually mean North, but rather the top of the piece of paper used by Colonial Durham, adding that the actual *intent* of the Council, in contrast to the written agreement, was that “north” did not mean north. He made this intervention while at the same time contorting himself and arguing that one cannot possibly remember the Town Council’s intent on other questions so many years later, and that in those cases, one has to rely solely on the plain language of the Settlement. This kind of argument was part of a consistent pattern of interpreting the Settlement Agreement in a way that benefits the developer. Selig’s interpretation contrasted sharply with the common understanding in Town and among some Councilors that “North” meant North and that the student housing would be located where Hannaford now sits -- the actual Northern portion of the site.)

On March 10, 2020, Todd Selig sent an email to Chair Paul Rasmussen and Contract Planner Rick Taintor, **“Subject: Planning Board role relative to Colonial Durham application | 12/14/15 settlement agreement.”** Selig wrote, “The Planning Board has no jurisdiction over the settlement agreement. Similarly, the Town Council has no jurisdiction over the Planning Board’s review of the application. Other than the narrow points contained in the settlement agreement, the Council and the Town Administrator intended the applicant to have to go through the normal Planning Board process. I will note definitively that the northern half of the property referenced in the settlement agreement in section 1 b was intended to reflect the half of the property that generally parallels Main Street, not magnetic north.” [See full email as sent, in “Settling the ‘Planning Board Role’ Regarding the 2015 Legal Settlement, [Joshua Meyrowitz 3-19-21.](#)]

The strong Firoze Katrak response to Mr. Selig is worth revisiting: “My point is that you need to acknowledge what the then TC [Town Council] was told at the time it passed the SA [Settlement Agreement]. We were told the PB [Planning Board] would use the SA in its normal review process. You continue to ignore that matter. Why? Is it because you now want to encourage the PB to ignore the SA? If so, that would be an unethical bait and switch tactic on your part. I hope that is not the case. The reason why this is important is that the SA has many elements beyond density and positioning (North side) issues. As you know the SA also includes issues for wetlands buffer, WCOD, privacy barrier for adjoining neighbors, onsite security, etc. Unless the PB considers all such relevant factors from the SA, it will not be doing what the then TC assumed PB would be doing in its review process. There should be plenty of historic records to either prove me wrong, or to confirm what I have said. By avoiding my request, you continue to dodge the heart of the issue and you continue to mislead the PB.”

Todd Selig finally concedes the following in an email to Rick Taintor and Paul Rasmussen and others at 1:35pm pm on March 11, 2020: “[W]hat the Council/Town Administrator



overtly envisioned was that other than the narrow points in the settlement, we wanted the applicant to have to go through the normal Planning Board process. Does this mean that the settlement agreement is not an extremely important tool for the Planning Board to review and carefully consider? Absolutely not. There are numerous elements that the applicant and the Planning Board (in the course of its review) should endeavor to ensure are in place such that the application is in conformance with the settlement agreement. Determination of compliance with the settlement agreement ultimately lies with the Council/Town Administrator, however, as described above. Does this mean that there are aspects of the settlement agreement that directly call out the Planning Board's review? It absolutely does. Some of the provisions in Paragraph 1 do just that."

**13) March 2020. Despite the above concession by Mr. Selig regarding the Planning Board's role in interpreting the Settlement terms, no one on the Planning Board that evening acknowledges receipt of Selig's email or gives any indication of having read it. Rick Taintor disregards or reinterprets Selig's email when advising the Board.** This leads to the following letter from former Councilor Katrak to the Planning Board: "It was disappointing and very concerning to see last night's (March 11) PB meeting because Mr. Taintor continued to mislead the Board in regard to the SA. He continued to harp on his false opinion (encouraging the Board to almost ignore the SA), and he presented a myopic view of Todd's email to me by disregarding Todd's main overarching message.... I hope the PB now understands that it should not ignore the SA; and that it will use its provisions as one tool during its review of the MP [Mill Plaza] application. It might be worthwhile to ask if Mr. Taintor should be removed/replaced from the ongoing MP review process because he is biased against the residents of the town. I will leave that for the 'Town' to decide. I have hope that the PB will protect the Town's residents, in spite of Mr. Taintor's unwarranted and biased aggression." See [Firoze Katrak letter of 3-12-20](#).

**14) Remarkably, despite Selig's admissions, members of the Planning Board, under the guidance of contract planner, Rick Taintor, continue to state the Planning Board has no role in the Settlement up through the Jan 12, 2022, Planning Board meeting.**

**15) May 2020. Discussion about the lobbying of the Planning Board by Town Council Representative to the Planning Board, Sally Tobias, and then-Economic Development officer, Christine Soutter, at a meeting of the Economic Development Committee.** The idea of writing a letter to the Planning Board was discussed on May 19, 2020. Christine Soutter: "So Mill Plaza is still trying to get their development through, and they are not going to give up. They have invested a lot. I was speaking to Sean McCauley [of CDA] yesterday, and he asked if the EDC, or someone from the EDC, or the EDC as a whole be willing to speak in favor of development for the Town and why development is good for the Town. And why we need it. So, I said I would certainly bring that up and ask if anybody would be willing to stand up and say we need development in Durham, and this is why." Then there is discussion of how it would be "awkward" for EDC member Sally Tobias (also the Town Council Representative to the Planning Board) to sign a letter about issues pending before the Planning Board, such as Mill Plaza. Thus, the letter idea evolved

to a letter advocating for development in general that would be written by another individual, who offered to write a letter encouraging “good development”. In reporting on the EDC meeting at the next Planning Board meeting, Sally Tobias made no mention of this discussion.

**16) June 10, 2020. Suddenly, after months of allowing a double standard where CDA can reference the Toomerfs parcel whenever it benefits them, but members of the public are not permitted to comment on the Toomerfs lot, the Planning Board does a 180-degree turn and holds that the Toomerfs parcel should no longer be a feature of the CDA plans. No explanation for this sudden change is provided by the Board.**

**17) At the June 17, 2020, with the basic elements of the plan still in flux, the Chair seeks to grant CDA narrow waivers in a future project, rather than awaiting revised plans that had been solicited by fellow Board member Richard Kelley just one week prior, on June 10th.** This approach is questioned by the public as non-sensical, and also by Planning Board’s Jim Lawson at 1:17:00 of the meeting. Lawson also suggests consultation of the Town Attorney regarding “the idea of noncompliance with the original site plan.” The Chair resists this suggestion, explaining his interest in the waivers by saying, “the applicant had asked us to make a decision on that...”

**18) The Planning Board repeatedly allows Durham’s Town Administrator and CDA to interfere with its deliberations and the application before the Planning Board.** A few key examples:

June 2017 -- Selig is allowed to intervene, subvert an ongoing public process and introduce the new plan to the Planning Board with his stamp of approval. This introduction follows behind-the-scenes negotiation for months, outside the public view and introduction of the plan to the Planning Board with his stamp of approval.

March 2020 – Selig is allowed to intervene and make false claims about the intent of the Town Council that agreed to the Settlement Agreement.

November 2020 – Selig and Rasmussen Conspire to Demote the Architectural Design Committee. Responding to concerns about the potential right-to-know violations entailed in the non-public decision to demote the “Architectural Design Committee” voted for by the Planning Board into the “*Minor* Architectural Design Committee” that would not grapple with the issues of scale of the project, Selig writes “It’s important to clarify that Paul Rasmussen and I were the ones who selected the name of the subcommittee as discussed in our subcommittee proceedings. The name added the appropriate direction and boundaries to the role Paul and I believed the Planning Board had intended for the group – the composition of which I would ultimately organize in conjunction with Paul.”

May 13, 2020 – The Planning Board allowed the applicant and the CDA’s consultant to

TWICE interrupt its deliberations on a motion related to hire of an independent fiscal or economic impact expert. The consultant argued successfully against this prudent measure and dissuaded the Planning Board from requiring the independent expert. Meanwhile, on this same night, Durham's public was infamously prevented from speaking at all. The result is a so-called "public hearing" where the public goes unheard from. Finally, when a resident attempted to ask the Planning Board to adhere more closely to procedure, in order to prevent the applicant from interfering with Board deliberations again, the resident was told that it was not an "on topic" comment at that time and that the topic was more appropriate for a future meeting (June 17, 2020).

**19) January 2021 – Durham Residents Learn that the Board's Weekend Packets No Longer Contain Citizen Input, Violating the Board's Written Policy.** An e-mail from Karen Edwards to Durham resident Joshua Meyrowitz on Jan 8, 2021: "Due to the large amount of letters we are receiving, I am not copying them for the packets. They will be emailed to the Board and posted on the website." Residents learn that this violation of the written policy on every agenda has been going on since at least December 2020. This leads to a heated email exchange between resident Joshua Meyrowitz and Michael Behrendt, with Behrendt claiming Todd Selig's backing on the new policy. (See that full email exchange now posted here: [Joshua Meyrowitz 2-8-22](#).)

**20) Chair Paul Rasmussen shows himself to be biased in favor of the developer and hostile to the concept of public participation in Town government on multiple occasions.**

- a. Actively restricts public comment to narrowly defined topics so as to avoid broader questioning of the development project by the public.
- b. Nonsensically prioritizes trivial topics such as narrow waivers on plaza plantings over more fundamental topics such as building size and scale in order to discourage discussion of the latter. (See June 17, 2020).
- c. On multiple occasions, Planning Board members do not have the applicant's most recent plans in hand to evaluate. The meeting on June 17, 2020, is just one example of this. On that night, the Planning Board discovered this "oversight" 2 hours and 14 minutes into its discussion with the developer.
- d. The Chair refuses to seek answers to important questions from the public or to even acknowledge their comments. Durham residents have to print yard signs to express dismay with plan because Planning Chair is often hostile to them.
  - i. See the following letter from a Durham resident:  
[https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning\\_board/page/54487/deborah\\_hirsch\\_mayer\\_2-3-22.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54487/deborah_hirsch_mayer_2-3-22.pdf)
- e. Promises made in one meeting are not kept at the next, leaving residents to wonder what transpired privately, in between meetings. Proceedings have no continuity.
  - i. Example: Planning Board member Richard Kelley asks to see plans from the applicant that show a smaller building footprint on 6/10/20. On

- 6/17/20 there is no mention of these plans by either the applicant or the members of the Planning Board, as though the request was never made.
- f. The Chair incorrectly states that public input and the Master Plan are not valid parts of Planning Board deliberation on April 28, 2021, which is also misleading to the other members of the Planning Board given his leadership position.
- i. *"I feel there's a big disconnect between what the public thinks we can do versus what we're allowed to do. So I wonder if a little education is in order. So, we have an application in front of us. At this point, all that matters is the zoning. **Um, public opinion, past studies, the Master Plan are not on the table. None of that's on the table.** We just look at the zoning and the application, the Conditional-Use requirements, that's all we're looking at now. And requests for us to go outside of that are going to fall on deaf ears, because we have to ignore that."* – Paul Rasmussen
  - ii. *Rasmussen's statement is incorrect as it pertains to the public's role in the application process, as well as the role of the Master Plan, according to the Conditional Use ordinance:*
    1. The Planning Board shall make findings of fact, based on the evidence presented by the applicant, Town staff, **and the public,**" with respect to such things as whether a project has "a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town."  
[https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning\\_and\\_zoning/page/21491/article\\_vii.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/21491/article_vii.pdf)
    2. D. *Conditions of Approval.* Conditional Use Permit approvals shall be subject to appropriate conditions where such conditions are shown to be necessary **to further the objectives of this ordinance and the Master Plan,** or which would otherwise allow the general conditions of this article to be satisfied. Conditions of approval shall be stated in writing in the issuance of a permit.
  - iii. *Rasmussen's statement is also contrary to Durham Town Planner Michael Behrendt's opinion stated via email on the subject on May 17, 2021:*
    1. *"The Master Plan is a policy and planning document and is not legally binding, but **it can be a useful reference for issues where broader town goals and policies can provide context – such as for conditional uses, zoning amendments, special exceptions, and variances, provided the Board is discerning in considering its applicability.**"*
    - 2.
- g. The Chair hires the lead engineer for the Toomerfs applicants to do some work on the Chair's private home, creating a potential conflict of interest. The situation could easily have been avoided by hiring another engineer.
- h. The Chair appropriately recuses himself from the Toomerfs application, but then is caught on April 13, 2021, violating his recusal when emails are leaked following a Zoning Board of Adjustment (ZBA) ruling against Toomerfs. The email was written by the Chair within 90 minutes of the adverse decision. (RECUSAL VIOLATION #1)

- i. On April 14<sup>th</sup>, in reaction to the ZBA ruling, the Chair offers to form a subcommittee of one (!) to study the matter (See 1:24 of the Planning Board meeting). Thankfully, he is rebuffed by the Durham's Planner and others.
- j. On September 8<sup>th</sup>, 2021, presides over the Toomerfs application process after having recused himself. (RECUSAL VIOLATION #2)
- k. Recuses himself yet again from the Toomerfs application December 15<sup>th</sup>, 2021.

Please see my letter addressing the first recusal violation, dated April 28, 2021.

[https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning\\_board/page/54487/matt\\_komonchak\\_4-28-21.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54487/matt_komonchak_4-28-21.pdf)

**21) Planning Board refuses to address the Chair / Conflict of Interest matter in spite of multiple recusal violations and despite prior awareness of the violation as of April 28, 2021. Additional comments on the Chair's violations of his recusal were made to the Planning Board in December 2021, following a second recusal violation by the Chair, yet no corrective action was taken by the Board or Town Administration.**