

1 **LONDONDERRY, NH PLANNING BOARD**  
2 **MINUTES OF THE MEETING OF NOVEMBER 9, 2011 AT THE MOOSE HILL**  
3 **COUNCIL CHAMBERS**  
4

5 Members Present: Art Rugg; Mary Soares; Lynn Wiles; Chris Davies; Rick  
6 Brideau, CNHA, Ex-Officio; Dana Coons, Scott Benson, alternate member; Leitha  
7 Reilly, alternate member; Maria Newman, alternate member  
8

9 Also Present: André Garron, AICP; Cynthia May, ASLA; John Trottier, P.E.; Libby  
10 Canuel, Community Development Secretary  
11

12 A. Rugg called the meeting to order at 7 PM and appointed S. Benson to vote for  
13 Laura El-Azem.  
14

15  
16 **Administrative Board Work**  
17

18 A. Regional Impact Determinations - Stonyfield Farm, Inc. Map 14, Lot 44-13  
19

20 C. May stated that said that staff recommends this project is not a  
21 development of regional impact, as it does not meet any of the regional  
22 impact guidelines suggested by Southern NH Planning Commission  
23 (SNHPC).  
24

25 **D. Coons made a motion to accept staff recommendations that this**  
26 **project is determined not to be of regional impact under RSA 36:56.**  
27 **R. Brideau seconded the motion. No discussion. Vote on the motion:**  
28 **7-0-0.**  
29

30 B. Plans to Re-Sign  
31

32 A. Rugg stated that plans for the Clark Farm Industrial subdivision (Tax  
33 Map 17, Lot 45) needed to be re-signed. C. May explained that the Registry  
34 of Deeds had some concerns with minor details on two of the Mylar  
35 sheets and they have been reprinted to meet the standards required. A.  
36 Rugg said the plans will be signed at the conclusion of the meeting.  
37

38 C. Discussions with Town Staff  
39

- 40 • Master Plan RFP & Survey  
41

42 A. Garron stated that 11 proposals were received from potential  
43 consultants concerning the preparation of the Master Plan. The RFP  
44 subcommittee will review them and make a recommendation to the  
45 Master Plan Steering Committee (MPSC).  
46

47 At the last MPSC meeting, the UNH Survey Center was chosen for the  
48 Master Plan survey. It was decided to postpone developing the  
49 survey until a consultant is chosen to assist with that preparation.

- Manchester Airport Access Road

A. Garron noted that the ribbon cutting ceremony for the Manchester Airport Road will take place on November 10 at 10 AM, eight months ahead of schedule. Bikers and pedestrians will be allowed on the road at that time and vehicles will be allowed starting November 11. The next project will be the upgrade to Pettengill Road. The plans have been developed and an at-grade intersection at the Airport Access Road has built by the State. A. Garron commended the voters and the Department of Transportation for their support of that project.

### Continued Plans

- A. Tammy M. Verani 2004 Revocable Trust, Map 17, Lot 34 – Continued Public Hearing for a 5 lot subdivision and Conditional Use Permit.

A. Rugg announced that a request has been made to continue this public hearing to the December 14, 2011 meeting. J. Trottier referenced a letter from project engineer George Chadwick on behalf of the owner requesting the continuance to allow the project team and staff to continue discussing improvements to Page Road. The letter included a request to extend the 65 day time frame under RSA 676:4 as discussed at the October 12 meeting. J. Trottier said staff recommends that the 65 day clock be extended to December 14.

**D. Coons made a motion to extend the 65-day clock to December 14, 2011. R. Brideau seconded the motion.** No discussion. **Vote on the motion: 7-0-0.** The 65-day window was extended at the request of the applicant to December 14, 2011.

**D. Coons made a motion to continue the public hearing to December 14, 2011 at 7PM. R. Brideau seconded the motion.** M. Soares asked if Board members have visited the site and A. Rugg replied that all members have seen Page Road. No further discussion. **Vote on the motion: 7-0-0.** The public hearing is continued to December 14, 2011 at 7PM. A. Rugg said this would be the only public notice.

### New Plans

- A. Stonyfield Farm, Inc. Map 14, Lot 44-13 - Application Acceptance and Public Hearing to amend a previously approved Site Plan for facility additions proposed to be constructed in two phases, including additions for maintenance, battery charging, and packaging, and to convert office space to manufacturing. 10 Burton Drive, Zoned IND-II.

C. May explained that the amendment to the site plan previously signed in February of 2011 involves a restructuring of the project phases and reducing the scope of the first phase. She said that there were no checklist

1 items and staff recommended the application be accepted as complete.  
2

3 **D. Coons made a motion to accept the application as complete. R.**  
4 **Brideau seconded the motion.** No discussion. **Vote on the motion:**  
5 **7-0-0.** The application was accepted as complete.  
6

7 A. Rugg mentioned that this starts the 65 day time frame under RSA 676:4.  
8

9 Chris Rice of TFMoran and Jeff Clark of Stonyfield Farm, Inc. were present  
10 to provide details about the amendment. C. Rice stated that the full  
11 buildout of the site is still approximately the same, however the total square  
12 footage related to phase one has been reduced from 16,000 square feet to  
13 10,000 sf. This includes the addition of roughly 2,100 sf associated with an  
14 additional second floor. The other difference from the plan signed earlier in  
15 the year is that existing office space will be renovated to become  
16 manufacturing space. All State and FAA approvals are still valid. The one  
17 waiver requested concerns the fee calculation (see below). The applicant  
18 will go before the Heritage Commission on November 17.  
19

20 J. Trottier summarized the Staff Recommendation memo. He read the  
21 waiver into the record from the Staff Recommendation memo:  
22

23 *1. The applicant is requesting a waiver to Exhibit 3. The applicant has*  
24 *not provided the application fee based on the area of the entire parcel.*  
25 *Staff recommends **granting** the waiver, as it is consistent with past*  
26 *Board practice of allowing a reduced fee based on the area of*  
27 *disturbance for projects located on large parcels.*  
28

29 A. Rugg asked for input from the Board. There was none.  
30

31 A. Rugg asked for public comment. There was no public comment.  
32

33 J. Trottier stated that staff does recommend conditional approval of the site  
34 plan amendment.  
35

36 **D. Coons made a motion to grant the one waiver based on the**  
37 **applicant's letter and staff recommendation. R. Brideau seconded the**  
38 **motion.** No discussion. **Vote on the motion: 7-0-0.** The waiver was  
39 granted.  
40

41 **D. Coons made a motion to conditionally approve the amendment to**  
42 **the approved site plan with the following conditions:**  
43

44 "Applicant", herein, refers to the property owner, business owner, or  
45 organization submitting this application and to his/its agents, successors, and  
46 assigns.  
47

48 **PRECEDENT CONDITIONS**  
49

1 All of the precedent conditions below must be met by the applicant, at the  
 2 expense of the applicant, prior to certification of the plans by the Planning  
 3 Board. Certification of the plans is required prior to commencement of any  
 4 site work, any construction on the site or issuance of a building permit.  
 5

- 6 1. The Applicant shall provide the Owner signature and the professional  
 7 engineer endorsement (stamp and signature) on all applicable plans.  
 8
- 9 2. The Applicant has provided a letter relative to drainage analysis with the  
 10 application. The Applicant shall update the letter to include these  
 11 proposed changes, include a NH professional engineer endorsement  
 12 (stamp and signature) and be provided to the Town for the project file.  
 13
- 14 3. The Applicant shall clarify the listed square footage of the proposed  
 15 building addition uses and use alteration on all applicable sheets.  
 16 Additionally, the applicant shall clarify the reference to "incubator" made  
 17 throughout the plan set.  
 18
- 19 4. The Applicant shall clarify the following related to the Phase 1 addition –  
 20 island treatment, provide bituminous concrete detail, painted island  
 21 detail, provide spot shots at corners of the addition, and CB K should be  
 22 cored and booted to accept the roof drain and proposed invert noted.  
 23 The applicant shall also clarify the intent of the ramp and how the  
 24 intended vehicle will access the ramp.  
 25
- 26 5. The Applicant shall provide a bollard detail as noted on Sheet 15 in the  
 27 bollard & rope fence detail.  
 28
- 29 6. The Applicant shall ensure that the print quality of the final plans be  
 30 clear and legible.  
 31
- 32 7. Note all waivers granted on the plan.  
 33
- 34 8. The Applicant shall provide a digital (electronic) copy of the complete  
 35 final plan sent to the Town at the time of signature by the Board in  
 36 accordance with Section 2.05.n of the regulations.  
 37
- 38 9. Financial guaranty if necessary.  
 39
- 40 10. Final engineering review  
 41

42 **PLEASE NOTE -** Once these precedent conditions are met and the plans are  
 43 certified the approval is considered final. If these conditions are not met  
 44 within **120 days** to the day of the meeting at which the Planning Board  
 45 grants conditional approval the board's approval will be considered to have  
 46 lapsed and re-submission of the application will be required. See RSA 674:39  
 47 on vesting.  
 48

49 **GENERAL AND SUBSEQUENT CONDITIONS**  
 50

1 All of the conditions below are attached to this approval.  
2

3 **1. No construction or site work for the amended site plan may be**  
4 **undertaken until the pre-construction meeting with Town staff has**  
5 **taken place, filing of an NPDES-EPA Permit and the site restoration**  
6 **financial guaranty is in place with the Town.** Contact the Department  
7 of Public Works to arrange for this meeting.  
8

9 2. The project must be built and executed exactly as specified in the  
10 approved application package unless modifications are approved by the  
11 Planning Division & Department of Public Works, or if staff deems  
12 applicable, the Planning Board.  
13

14 3. All of the documentation submitted in the application package by the  
15 applicant and any requirements imposed by other agencies are part of this  
16 approval unless otherwise updated, revised, clarified in some manner, or  
17 superseded in full or in part. In the case of conflicting information between  
18 documents, the most recent documentation and this notice herein shall  
19 generally be determining.  
20

21 4. All site improvements must be completed prior to the issuance of a  
22 certificate of occupancy. In accordance with Section 6.01.d of the Site Plan  
23 Regulations, in circumstances that prevent landscaping to be completed  
24 (due to weather conditions or other unique circumstance), the Building  
25 Division may issue a certificate of occupancy prior to the completion of  
26 landscaping improvements, if agreed upon by the Planning Division & Public  
27 Works Department, when a financial guaranty (see forms available from the  
28 Public Works Department) and agreement to complete improvements are  
29 placed with the Town. The landscaping shall be completed within 6 months  
30 from the issuance of the certificate of occupancy, or the Town shall utilize  
31 the financial guaranty to contract out the work to complete the  
32 improvements as stipulated in the agreement to complete landscaping  
33 improvements. **No other improvements shall be permitted to use a**  
34 **financial guaranty for their completion for purposes of receiving a**  
35 **certificate of occupancy.**  
36

37 As built site plans must to be submitted to the Public Works Department  
38 prior to the release of the applicant's financial guaranty.  
39

40 All required Traffic, Police, and Fire impact fees must be paid prior to the  
41 issuance of a Certificate of Occupancy.  
42

43 5. It is the responsibility of the applicant to obtain all other local, state, and  
44 federal permits, licenses, and approvals which may be required as part of  
45 this project (that were not received prior to certification of the plans).  
46 Contact the Building Division at extension 115 regarding building permits.  
47

48 **R. Brideau seconded the motion.** No discussion. **Vote on the motion:**  
49 **7-0-0.** The site plan amendment was conditionally approved.  
50

1 J. Trottier added that assuming the project obtains approval by the Heritage  
 2 Commission, the applicant is requesting a special meeting of the Board to  
 3 sign the plans prior to the December 7 meeting. A. Rugg stated that staff will  
 4 be in contact to arrange that meeting with a quorum of the Board.  
 5

6 **Other Business**

7  
 8 A. Demolition Delay Ordinance Amendment - Public Hearing

9  
 10 M. Soares read the proposed change (highlighted here) to Section 5.3.2:

11  
 12 *5.3.2.1 The proposed demolition is greater than 500 square feet of*  
 13 *gross floor area; and*

14 *5.3.2.2 The building was constructed more than **75 years** before the*  
 15 *date of application for demolition permit;*  
 16

17 A. Garron said staff is in agreement with the Demolition Delay Committee's  
 18 proposed change.  
 19

20 A. Rugg asked for Board input. C. Davies confirmed with A. Garron that the  
 21 amendment from 50 years to 75 years is the only change. D. Coons stated  
 22 his overall opposition to the Demolition Delay ordinance.  
 23

24 A. Rugg asked for public input. There was no public comment.  
 25

26 **M. Soares made a motion that the Planning Board recommend to the**  
 27 **Town Council that they accept the changes in the Demolition Delay**  
 28 **Ordinance. L. Wiles seconded the motion.** No discussion. **Vote on the**  
 29 **motion: 7-0-0.** This recommendation will be sent to the Town Council.  
 30

31 B. Stonehenge/Litchfield/ Rt. 128 Intersection Impact Fee discussion  
 32

33 A. Garron explained the Stonehenge/Litchfield/ Rt. 128 Intersection Impact  
 34 Fee Program was created on December 29, 1997 by the previous Town  
 35 Planning Director and the Planning Board in anticipation of improvements  
 36 needed at the intersection. When the Victory Baptist Church site plan on  
 37 Litchfield Road was proposed in the late 1990's, the anticipated traffic impact,  
 38 in combination with other lots in the area, was calculated to be 395 new  
 39 additional trips by the private sector. It was then realized that improvements  
 40 to the intersection, (including a traffic signal), would be required. The impact  
 41 fee program was created to offset those costs. Eighty six percent of the then  
 42 estimated \$900,000 cost would be paid for by the Town based on a growth  
 43 factor and the fact that 86% of the traffic was existing, while the remainder  
 44 was to be paid by the private sector. At a realized cost of \$2,094,000, the  
 45 Town's share came to \$1.8 million, 1.4 of which was paid for by a grant  
 46 through the Department of Transportation. In the end, the Town should have  
 47 paid \$404,840 but actually appropriated an additional \$236,019 due to  
 48 increased costs. The private sector's share came to \$293, 160, \$56,941 of  
 49 which has been collected since 1997, making the balance nearly the exact  
 50 amount the Town had to additionally appropriate (i.e. \$236,219). The

1 question for the Board is whether to keep the impact fee program in place in  
2 order to reimburse the Town for the amount beyond its share of the project  
3 (\$236, 219) or whether to consider the project complete and terminate the  
4 impact fee program.  
5

6 A. Rugg asked for Board input. D. Coons asked how long the Town could  
7 expect for the private sector's balance to be paid off, based on the fact that  
8 only \$56,941 has been collected since 1997. While it may take a while, A.  
9 Garron replied that one factor that will most likely increase would be the  
10 number of trips since zoning has changed with the addition of workforce  
11 housing, which allows a greater density of units on several of the catchment  
12 area parcels. D. Coons suggested enlarging the catchment area so as to  
13 include the Stonehenge/High Range/Harvey Road intersection, which will  
14 most likely need improvements with the opening of the Airport Access Road.  
15 A. Rugg replied that that should be a separate program. C. Davies indicated  
16 that it would be unfair to those who have paid into the program if future  
17 developers are essentially excused from paying the impact fee. M. Soares  
18 asked if staff could provide a revised estimate of how many trips would be  
19 generated based on the new zoning in the area.  
20

21 A. Rugg asked for public input. John Michels, 11 Nutfield Drive, asked for  
22 several issues to be addressed. First, he said it should be determined when  
23 the \$56,941 was raised, whether it was used within the six year limit  
24 imposed by the Town regulation, and whether the Town matched those funds  
25 within six years. He then noted that Mammoth Road is a state road, whereas  
26 the RSA and local ordinance governing impact fees restricts their collection to  
27 those things maintained and operated by the Town. Impact fees, he  
28 continued, cannot be raised unless they are included in the Capital  
29 Improvement Plan. Additionally, the report associated with this particular  
30 impact fee is not included in the zoning ordinance under Section 1.2.6.1. A.  
31 Garron replied that Planning Boards have the ability under State statute to  
32 require impact fees on projects before them without those reports having to  
33 be included in the zoning regulations. J. Michels expressed that even if the  
34 aforementioned standards are met, the fees have to be spent by an order of  
35 the Town Council. Finally, he said the method of calculating the private  
36 contribution is flawed because the State's contribution should not be a factor.  
37 A. Garron remarked that that is not the case under RSA 674:21. The  
38 resulting question for the Board, J. Michels argued, is not whether to continue  
39 the program in question, but whether the Town legally can do so. A. Garron  
40 assured the Board that since the inception of impact fees in Londonderry in  
41 1994, all programs have been created with consultation from Town's Legal  
42 Counsel. J. Michels asked if the Town Attorney is aware of all the points he  
43 raised. A. Garron said the Town Attorney is well versed in the impact fee  
44 RSA, but that his input will be sought on these issues.  
45

46 There was no further public input.  
47

- 48 C. Patricia Panciocco (Trustee), Map 7, Lots 7 through 10 - Appeal by PMP  
49 Revocable Trust of an Impact Fee Assessment per section 1.2.8.1 of the  
50 Zoning Ordinance.

1  
2 P. Panciocco, owner/developer of and legal counsel for the property, began  
3 by providing a history of the Meadow Drive right of way that leads to these  
4 lots. In 1964, the Planning Board approved the four lot subdivision in  
5 question, although that section of Meadow Drive had been discontinued by  
6 the Town in 1928. While Kendallwood condominiums was built in the 1970's,  
7 followed by Fox Run Estates in the 1980's, the Meadow Drive right of way  
8 remained undeveloped and was never laid out. In fact, when Granite Street  
9 was built as part of the Kendallwood development, it abruptly ended at the  
10 edge of the former Meadow Drive right of way. Since the right of way is only  
11 33 feet wide and no proper sight distances can be met where it connects with  
12 Mohawk Drive, Granite Street is the only available access to the four lots.  
13 Variances for all four were obtained in July of this year to provide frontage for  
14 the lots. Shortly thereafter when applications for building permits were  
15 submitted, the Department of Public works said a regulation cul de sac would  
16 have to be created at the end of Granite Street to accommodate the Town's  
17 plowing needs. The applicant found this to be cost prohibitive to the project  
18 and has worked with the Town to arrive at a compromise; an easement will  
19 be granted to the Town at no cost to create the necessary snow storage area  
20 and the applicant will build a modified hammer head. Because she will be  
21 expending the amount needed for that improvement, P. Panciocco is  
22 appealing the requirement of paying the impact fee with regard to road  
23 improvements.

24  
25 Beyond this specific case, P. Panciocco made the following comments related  
26 to impact fees in general:

27  
28 PAT PANCIOCCO: Now as to the impact fees themselves. And this will pick up on  
29 the earlier discussion. I chose not to address the Board on those. I can tell from  
30 listening to the conversation and I can tell you for a fact that when I saw the list  
31 that Libby sent me of the impact fees, I asked "what am I paying for and how  
32 were these numbers established?" And when I asked that question, I was told  
33 about all the studies in the ordinance. I asked for those studies. I've been  
34 reading them for weeks. Now, I'm a lawyer. I do this for a living and I can't  
35 make head nor tail out of them. And I can tell you one thing, though; they are  
36 completely and totally inconsistent. Even the population estimates and the  
37 housing units, they don't match from one to the other, so I will tell you that out of  
38 the gate. But I think more importantly, it behooves me at this moment to really  
39 just go through this statute with the Board, because I think it's a very valuable  
40 investment at this point.

- 41  
42
- 43 • 674:21 V...an impact fee is a fee or assessment imposed on  
44 development, including subdivisions, building permits. But an impact  
45 fee is a tax. And because it's a tax, it has to be read in the context  
46 of the constitution of the State as well as this country. Equal  
47 protection definitely does have a gloss on this particular statute.
  - 48 • This fee is authorized to meet the needs occasioned by development  
49 and construction imposed on capital facilities owned or operated by  
50 the municipality. As Attorney Michels pointed out, the Town has to



1 own it or operate it for the Town to have authority to impose an  
2 impact fee.

- 3  
4 • Roads came up a moment ago. My practice area focuses a great deal  
5 on roads, oddly enough. And I will tell you, from all the cases that  
6 I've tried, the way the road system in this State works is the  
7 Department of Transportation is in charge of the whole thing and  
8 they basically delegate to the towns the care of the local roads. They  
9 take care of the State roads, you take care of the local roads. That's  
10 the way it works. It's an assignment that you get from your State  
11 that you have to [A. Rugg explains how DOT defines the hierarchy of  
12 roads from Class I to Class VI]. And to John's point again, if the  
13 Federal Government were to come along and tell the Town or even  
14 the State of New Hampshire that we had to pay for I-93, would we be  
15 willing to do that? That's a Federal highway. They take care...it's an  
16 interstate. So, to John's point, you can't collect an impact fee on a  
17 State road and I think the Board understands that.
- 18  
19 • So the statute goes on quite a bit and it articulates all kinds of  
20 municipal facilities. But then it says no later than July 1 of 1993,  
21 now that's before the ordinance in Londonderry was adopted, the  
22 amount of any impact fee shall be a proportional share of the  
23 municipal capital improvement costs reasonably related to the needs  
24 created by the development. Now, that is a very difficult thing to  
25 reduce to numbers. There's no question about that. And the  
26 reasoning for that is because the new development, the new seat on  
27 the school, the new space in the Library that makes it large enough  
28 to accommodate that new population benefits from those facilities.  
29 And sure, they should pay for that additional space. It's like a ticket  
30 to the theater; you get to come in and join the crowd. You cannot  
31 use an impact fee to improve an existing facility or replace it. That is  
32 key because that is the taxpayer's burden, the people who already  
33 live in the town.
- 34  
35 • But to adopt an impact fee ordinance, you must have enacted a  
36 Capital Improvement Plan. The Town of Londonderry has done that  
37 and it dates way back, it actually predates your ordinance quite a bit,  
38 but there is very little in your Capital Improvement Plans and I will  
39 tell you that the numbers that are in those plans are way off from  
40 what's in the reports that were prepared to dream up some of these  
41 impact fees.
- 42  
43 • The Capital Improvement Plan is a document that is developed under  
44 the guidance of the Planning Board, though. The Planning Board  
45 oversees that committee that creates the budget for the Capital  
46 Improvements Plan. It is defined as a six year plan for a reason,  
47 present or future nonrecurring municipal expenses, basically the  
48 definition of a capital improvement, and prepared by the Board or the  
49 committee to aid the voters at Town Meeting in understanding the  
50 budget, to aid the governing body in developing the budget

1 presented to the voters on an annual basis. The voters look to Town  
2 officials and all these reports that are created to make decisions on  
3 how they vote. I think we all know that.  
4

- 5 • Your ordinance refines the capital improvements as facilities and  
6 equipment owned, maintained, and operated by the Town of  
7 Londonderry and it says here, as defined in the Capital Improvement  
8 Program and which are listed in the adopted impact fee schedule. I  
9 don't know if "equipment" qualifies, I'll be real honest with you. It's  
10 not in the statute but it's really not the subject of my appeal, it's just  
11 something for you to think about.  
12
- 13 • In fact, fees should be accounted for separately and segregated.  
14 They surely are. I've met with Sue Hickey, I have reams...I spent  
15 \$350 trying to get to the bottom of this and I still am not at the  
16 bottom of this. She's got all the little columns for all the fees that  
17 have been collected. They date back to 1994 but they mysteriously  
18 fell off the reports sometime in 2001, I believe. The older fees that  
19 had been listed up until that point, dating back to 1994. I could only  
20 get reports from her back to 2000, I think, when she came to work at  
21 the Town or a short time after. Her reports did not go back any  
22 further than that but your ordinance only requires them to be kept  
23 for ten years, so she does have them and she has each one under a  
24 separate heading. They're very well organized. There is nothing up  
25 there for Litchfield and Mammoth Road, though. There is no category  
26 for that at all in her summary. And as to that particular  
27 conversation, I question, were those fees collected off-site  
28 improvement fees or were they impact fees? Because they are  
29 different, there's no question. [M. Soares noted that those summaries  
30 may simply be older than the ten years the Town is required to keep  
31 them]; I'm sure it's somewhere. The people who paid them probably  
32 remember them and they're probably in the old Planning Board files.  
33 If they were off-site exactions as John Michels referred to, they would  
34 have been assessed on a particular development because of its  
35 geography and its impact in the town within that particular  
36 environment. It's much more narrowly tailored.  
37
- 38 • The one other thing that I found troubling, though, is I met with Sue  
39 to ask her, "I'm trying to figure out all these impact fee accounts,  
40 where is the money going?" Because there were lists and lists and  
41 lists of people and lot numbers and their payment of impact fees but  
42 there was almost little or no detail of them going out, except in big,  
43 big chunks to School District, which I understand is their own set of  
44 books and other places that she didn't have information because of  
45 off-site storage. But when I brought to her attention that this is  
46 supposed to be audited on an annual basis by the terms of your own  
47 ordinance from 1994, and I actually did get a copy of the '94  
48 ordinance, it's in there, too, all the way back to the very beginning.  
49 She knew nothing about it. So, I still ask...I see where the money  
50 came in, but where did it go?

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- That raises a curious question. [J. Farrell asks what exactly she is appealing]. If you let me finish, I'll explain it to you. I'd like to go through this because I can tell from sitting here tonight that there's a little mystery going on here and a little misunderstanding of how impact fees are to be handled. [J. Farrell apologizes for the clarifying question]. Oh, I'm appealing the whole thing. Every impact fee that I'm being assessed, I'm appealing. Is that clear?
- So as to these chunks of money that are going out of the impact fee accounts, I understand that impact fees, by statute say you're not subject to the Municipal Budgeting Act, but that's limitation in expenditure of funds only.
- Impact fees belong to the fee payers who paid them until the legislative body appropriates their share of the capital cost. It is not Town money until that time. It doesn't vest until the Town puts their share of the cost on the table as a matching to complete the project. So those funds are not available for traffic studies, lights on ball fields and all the other incidentals that I've found in different Town documents as, you know, to be applied maybe to rec or maybe to traffic, but have nothing at all to do with a capital facility or with a improvement for the Town for which an appropriation has been made. So I'd like to bring that to your attention because that looks like a misappropriation of funds under the Municipal Budgeting Act and that's really a concern for the Town [A. Rugg states that the Board is concerned as well]. I could tell and you've asked an awful lot of questions, Mr. Chairman, and I really appreciate, you know, the fact that somebody's paying attention to this finally, because there is something seriously wrong here. So, that is all they're to be used to for is those capital improvements and they need to be listed in your Capital Improvements Plan. There's no Litchfield/Mammoth Road intersection in there.
- Now to move forward, it says clearly paragraph E, whenever the calculation of an impact fee has been predicated upon some portion of the Capital Improvement costs being borne by the municipality, a refund shall be made upon the failure of the legislative body to appropriate the municipality's share of the Capital Improvement cost within a reasonable time. The maximum time shall be considered reasonable hereunder...six years. Many of the fees that were listed in your Town reports were more than six years old and still on your books and the improvements weren't made. Or certain buildings weren't constructed. I have not been able to get to the bottom of all that because I still haven't gotten the information, or complete information, for all the inquiries that I've made. So I can't tell you which ones are valid, which ones aren't. And what I would like to suggest to you is that some of the fees that are shown in your annual reports as impact fees may, in fact, be off-site improvement fees, which are a little bit different.

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- Another point that I'd just like to mention, and this is not part of my appeal, the adoption of a growth management limitation or moratorium by a municipality, the sustainable growth thing that you see posted in the hall, shall not affect any development with respect to which an impact fee has been paid. So if a developer's paying impact fees, you can't hold their feet to the fire on a growth management ordinance. The statutes clear. You can't have both and exercise both.
  - So to impost an impact fee, you have to have it in your Master Plan, it has to be a number assigned to it in your Capital Improvement Plan and the Town must appropriate their share of the cost within six years or the money has to go back to the fee payer.
  - Your ordinance is very clear and it says right in here that the Town Council has an affirmative duty under 1.2.10.2 to annually provide owners of record who are due a refund written notice of the amount due, including accrued interest. I've built a lot of homes in Londonderry and I've lived here for a very long time. I work with developers every day. I have never heard of anyone getting a letter that they were due to get a refund, despite what's in those annual reports.
  - Also in your ordinance, the Town Treasurer is to have custody of the fees. That's how they're handled. Pay out only upon written orders of the Town Council. There's an awful lot of missing orders.
  - All the information must be kept for ten years and at the end of each fiscal year, the Town Treasurer is supposed to make a report to the Town Council, giving a particular account of all public capital facility impact fee transactions during the year. This appears to not have been done. That was the first thing I asked for. Where did the money go? It should have been in there and looked at on an annual basis. And as André had suggested earlier, perhaps it needs to be recalibrated on a annual, maybe a biannual basis.
  - Funds withdrawn from public capital facility impact fee accounts shall be used solely for the purpose of acquiring, constructing, expanding, or equipping public capital facilities, but they have to be related to new growth. Only the portion attributable to new growth can be paid for with impact fees.
  - Now, you ordinance says, 1.2.9.6, in the event a bond or a similar debt instrument is issued for the facilities, and I know that's a typical mechanism to finance capital improvements, those can work, but the impact fees, although you can use the cash to pay the debt service, it can't be used to support an impact fee because the fee payers pay in cash. It's the Town share that accrues the interest. So to the extent impact fees have been applied to debt service, they should be

1 counted against the principal, although the cash may have been  
2 applied to meet that obligation.

- 3
- 4 • Now, to go into this impact fee/off-site improvement distinction a  
5 little bit, and I won't take too long on this, an off-site improvement is  
6 very specific to a project. It could happen anywhere. If the road's in  
7 poor condition, if the intersection can't sustain additional traffic, it's  
8 imposed in relation to the impact that development has on that  
9 particular geographic area. That's not a tax like an impact fee is. An  
10 impact fee is applied evenly across all permits, as opposed to off-site,  
11 which is project specific.
- 12
- 13 • Towns have been imposing these since 1977 and they've had a  
14 tortuous history in New Hampshire because they've been around for  
15 so long, but the Supreme Court has been clear about that. There  
16 must be a rational nexus between the improvements and the extent  
17 of the developer's share. And to the extent they exceed that Federal  
18 law, Nolan v. California Coastal says they are illegal. So a developer  
19 cannot be forced to pay for improvements for which there's no direct  
20 relationship. And the developer can't pay more than their share or  
21 that's illegal. Of course, a lot of times, developers will pay more just  
22 to get on with the project and put the issue to rest.
- 23
- 24 • Our court has said that the nexus is the first element and the  
25 demand is the second and the fractional share is the third element to  
26 be met by the Town and the Town has the burden to demonstrate  
27 that.
- 28
- 29 • In 1991, you could no longer impose off-site improvement fees and  
30 that was because RSA 674:21 was adopted, which said you had to  
31 have an ordinance to assess them. So between 2000 and 2004, they  
32 were unauthorized unless you had your zoning ordinance, within that  
33 an impact fee ordinance. Nonetheless, they came back in 2004,  
34 amended the statute, and now the six year requirement also applies  
35 to off-site improvement fees, which wasn't the case before that,  
36 before the statute was adopted. So although they sunset with the  
37 same timing, they are different and arise from different  
38 circumstances and that's important when you do go to review your  
39 records to see what those fees were because I did notice in reviewing  
40 your reports, they tended to be put together and used synonymously  
41 when they're really very different.
- 42
- 43 • So back to my appeal. I've talked to you about why I don't feel we  
44 should be assessed any fees for roads because of the investment  
45 we're making in that particular transportation network. But more  
46 importantly, Route 102 Central Corridor Traffic Impact fee, that's the  
47 first one, it's not anywhere in your Capital Improvement Plan at all,  
48 unless it's being put in the new one. It's not there. I have every  
49 single one of them. It's never been there and for that reason, by

1 virtue of your own ordinance and the statute, I don't think you have  
2 the authority to assess that.

- 3  
4 • The School Impact Fee. I do think there probably is a school impact  
5 fee due at some level. But what I'd like to just point out, and I don't  
6 know, because I've asked Peter Curro for records from the School  
7 District about a week and a half ago and he told me he couldn't get  
8 to me until the end of this week, so I will have to continue to come  
9 back next month I hope and we maybe have more information, but  
10 what I'd like to point out to you is between 2000 and 2010, although  
11 the population in Londonderry went up about 3.8 percent, the School  
12 District population went down by 3.3 percent. The reports on the  
13 New Hampshire Department of Education website show that the seats  
14 are about 88, 89 percent full. So when I'm being assessed for one  
15 building, I think it is, \$12,000 in school impact fees, I'm wondering  
16 why. When we built homes in this town in the '90's, we were paying  
17 an impact fee to the school, I think it was about \$4,000 and it was  
18 fairly new, it was pretty well grounded and I had kids in the school, I  
19 knew that things were a little tight. But schools have been built.  
20 Why has the fee gone up? That's a question I have for the Board and  
21 for Mr. Curro. I don't know if the Board has the answer for that. So  
22 that's why that's the subject of my appeal

- 23  
24 • The Library Impact Fee. Well, that one, it really isn't that much  
25 money but when I went and I looked at it, I wondered why a 5,800  
26 square foot Library was expanded by 14,000 square feet and when I  
27 asked "can I see what the Library cost?" nobody could tell me what  
28 the Library cost. And when I looked in the Town reports, I saw a  
29 summary in there from the Building Committee for the library saying  
30 a 1.6 million dollar contract was awarded to construct the Library.  
31 The bond was 2.3 million dollars. So what I'm asking is has anyone  
32 taken the time to connect the original report done for the Library  
33 impact fees, has anybody put it all on the table and said 'okay, based  
34 upon what it cost, what we assessed the impact fees at, does  
35 everything fit together reasonably?' I know it's not an exact science.  
36 I don't even know what the Library cost, though, and I asked the  
37 question and was sent, told to go talk to the Librarian. So that's a  
38 question on that one.

39  
40 M. Soares asked A. Garron that if a developer invests \$20,000 to improve a  
41 road related to their project, whether that amount would be credited against  
42 the impact fee. A. Garron replied that it would be if it was consistent with the  
43 plan developed for that road but not if it is an improvement for an area that  
44 has not been studied and is not part of the plan. In the case of the  
45 improvements proposed to Granite Street, he said he would not recommend  
46 crediting the impact fee because it is not associated with the studied corridor.  
47 M. Soares said that the Board has the option to waive impact fees, but A.  
48 Garron added that it must be with good reason.

49  
50 *[M. Soares left the meeting at 8:51 PM]*

1  
2 A. Garron asked for a copy of P. Panciocco's points. C. May noted that staff  
3 was not aware ahead of time what P. Panciocco's arguments were and  
4 suggested she write them out for staff to review.  
5

6 PAT PANCIOCCO: I understand that, Cynthia, but I cannot tell you how many  
7 communications I have had with this Town and as I said, I paid \$350 for a lot  
8 of paper that really doesn't say a whole lot or answer my questions. Had I  
9 been able to frame these a little bit more narrowly for the Board, and I know  
10 how important that is, I would have done that but I still am in the dark about  
11 a lot of things. I think as a citizen and a taxpayer in the town, I'm entitled to  
12 understand and know what I'm paying for and I'm not getting a straight  
13 answer. And I apologize for going on and on, but I have to tell you, I think  
14 there's a great deal of misunderstanding here and I don't wanna hurt the  
15 town, but this needs to be addressed right away.  
16

17 A. Rugg reiterated that a specific appeal needs to be submitted.  
18

19 PAT PANCIOCCO: Well, and I've just point out to you why I am questioning  
20 the school fee. Why did it go up when the population has gone down? It's  
21 that simple. That's public information that anyone can access on the Office of  
22 Energy and Planning.  
23

24 A. Garron noted that when the last update was done in 2007, the school  
25 population was stable. He said that if another update was done, the impact  
26 fee may or may not change;  
27

28 PAT PANCIOCCO: Well where did that data come from, André?  
29

30 ANDRÉ GARRON: That's the data that was pulled our consultant based on  
31 school population, interviews with the School, School department, all the  
32 relevant data that our consultant needed in order to make a determination on  
33 what that fee was.  
34

35 PAT PANCIOCCO: And if I understand it correctly, when a report is done, an  
36 update report such as you described, it builds on the prior report, right?  
37

38 ANDRÉ GARRON: It depends because in 2002, we did a comprehensive  
39 review of the School impact fee. In 2007, we built upon that report, but also  
40 he did interview the School Department to make sure they had the most  
41 accurate data at the time.  
42

43 PAT PANCIOCCO: And like I said just a moment ago, I haven't gotten a  
44 response from the School District yet, so I leave that open. There may very  
45 well be justification, but common sense at this point says otherwise. So I  
46 guess we'll find out.  
47

48 ANDRE GARRON: Well, I just wanted to get to your point. You said why is  
49 the School impact fee what it is based on the fact that the school population

1 has gone down. Again, we relied on the data that we had at the time we did  
2 the impact fee.

3  
4 PAT PANCIOTTO: Well, just the last two, I'll say something briefly and then  
5 we can adjourn if you'd like.

- 6  
7  
8 • The Police. We got a 6,000,000 dollar bond but...or 6,000,000 dollars  
9 was in the report, but that's what the impact fees were assessed on.  
10 That's how they were figured out. The bond was 4.6 million. So it  
11 was substantially less.  
12  
13 • But the one that really blew my hair back, to be casual about it, was  
14 the West Fire Station. That's been on your books since 1994 and  
15 when I looked at that and learned that the majority of that West Fire  
16 Station was paid for by a grant, a similar set of circumstances to  
17 what André's described happened up here in Litchfield Road, as far as  
18 the numbers are concerned, I was shocked because that was just  
19 done in 2010 and those fees started collecting in 1994. But yet I  
20 asked Sue directly "were any of those returned?" And she told me  
21 she's never returned fees. So I would like to leave this open and  
22 continue to a date certain, unless the Board has questions for me.  
23

24 L. Reilly recommended that when P. Panciocco returns, she clearly separate  
25 her arguments regarding the impact fee related to her specific project on  
26 Meadow Drive and her overall appeal of the impact fee system. P. Panciocco  
27 replied that most of the general information she provided was for the benefit  
28 of the Board and will not be repeated unless she is asked to do so. L. Reilly  
29 also invited P. Panciocco and J. Michels to attend Master Plan Steering  
30 Committee meetings to assist them with regard to impact fees. A. Garron  
31 asked that P. Panciocco provide a more detailed appeal in writing for staff to  
32 review, but P. Panciocco said she is still waiting for more information she has  
33 requested. She summarized that she is appealing the legality of the impact  
34 fees as a whole as well as the amount specifically pertaining to her project.  
35

36 P. Panciocco stated that she has tried to contact the Town Manager about  
37 attending an upcoming Town Council meeting in order to make them aware  
38 of these issues. J. Farrell stated that as a member of the Council, he will  
39 have the Town Manager contact her about an upcoming agenda and providing  
40 contact information for the Town Attorney.  
41

42 **D. Coons made a motion to continue the public hearing to December**  
43 **14, 2011 at 7PM. R. Brideau seconded the motion. No discussion.**  
44 **Vote on the motion, 6-0-0.**  
45

46 *[The Board took a five minute break at 9:04 PM].*  
47

48 Art Rugg called the meeting back to order at 9:11 pm  
49

50 D. Benton Family Realty Trust, Map 28, Lot 10C-1, Conceptual Review of a



1 proposed expansion at the Executive Health & Sports Center, 1 Highlander  
2 Way, Zoned C-II.

3  
4 Chris Rice and Robert Duvall of TFMoran were joined by Mike Benton, owner  
5 of the Executive Health and Sports Center, to present this two phase  
6 conceptual Master Plan. M. Benton identified the two phases (see  
7 Attachment #1) and said that the main intent is to develop a regional sports  
8 complex in conjunction with surrounding towns. The new Airport Access  
9 Road has made it possible to build the infrastructure needed to be  
10 competitive with the two sites in Massachusetts that act as regional sport  
11 complexes.

12  
13 Phase I would add an aquatic center to the current facility along with six  
14 compact tennis courts. Interior changes would include relocating the café  
15 and kitchen area to provide both inside and outside dining, moving the  
16 weight room to allow for a children and family locker room, remodeling the  
17 women's and men's locker rooms, and adding a spa. Medical offices would be  
18 added to the second floor with the intention of expanding beyond a fitness  
19 facility to become a community wellness facility. Phase II would add playing  
20 surfaces, a skating pond, and a concession area. From June to September,  
21 competitions for soccer, lacrosse, baseball, football, tennis, basketball, and  
22 swimming could all be held on the site. Financing is in place and the  
23 applicant hopes to have the aforementioned remodeling on the first floor  
24 done and the courts and pool open by June of 2012.

25  
26 A. Rugg asked for staff input. A. Garron stated that from an economic  
27 development standpoint, it is encouraging to see an existing facility expand.  
28 The only issues he could foresee with the first phase would be to ensure there  
29 is sufficient parking to accommodate the additional 7,000 sq. ft in the main  
30 building, and that an existing swale in that area be taken into consideration.  
31 C. Rice stated that based on his calculations, 239 spaces would be required  
32 and the existing lot associated with the building has 305 spaces. He added  
33 that a culvert runs underneath the building and since the pool will go over a  
34 portion of the swale, the culvert will simply be extended to avoid any  
35 drainage impact. Two waivers may be sought with the formal application,  
36 asking that topography and application fees be related solely to the areas to  
37 be developed and not the entire site. A. Garron said this overall complex  
38 would be like no other in the area and would benefit the area economically.  
39 C. May relayed her enthusiasm for the project and the applicant's ability to  
40 reuse the area. She noted the one issue she envisioned regarding pedestrian  
41 interaction with vehicles. C. Rice said that Phase I will include a sidewalk  
42 connection from the parking in front of the building to the new tennis courts.

43  
44 A. Rugg asked for Board input. L. Wiles asked how the Executive remained in  
45 business while the Highlander Inn is to be taken down. M. Benton said that  
46 the Executive is grandfathered with only a small portion of it being in the  
47 runway protection area. The Highlander put themselves up for sale, creating  
48 the opportunity for the Airport to buy it and raze it. Approval from the  
49 Airport is still needed for the proposed project, although they have been  
50 supportive of the concept. L. Wiles asked if a nearby lot owned by the Airport

1 could be used rather than having to create any additional parking. M. Benton  
2 said that the Airport would have to approve it, but that it will be a possibility.  
3 L. Wiles asked how long Phase II is expected to take. M. Benton said they  
4 are projecting it would take 18 to 20 months. L. Reilly thanked the owner for  
5 remaining in Londonderry and expanding their current facility. M. Newman  
6 asked if there will be sufficient parking for the kind of attendance that the  
7 complex could generate. M. Benton replied that when tournaments are held,  
8 club members would be redirected to one of the Airport lots, making space  
9 for visitors. C. Rice added that overall, over 839 spaces would be available.  
10 A. Rugg noted a historical aspect, suggesting it could be preserved in some  
11 way. He also asked if walking trails would be incorporated into the plan. M.  
12 Benton said a jogging path is being considered for the perimeter of the  
13 project and added that if a connection is made to the new Airport Access  
14 Road, one could walk or bike from the complex, over the bridge to the  
15 Heritage Trail and onto the NH Sportsplex in Manchester.

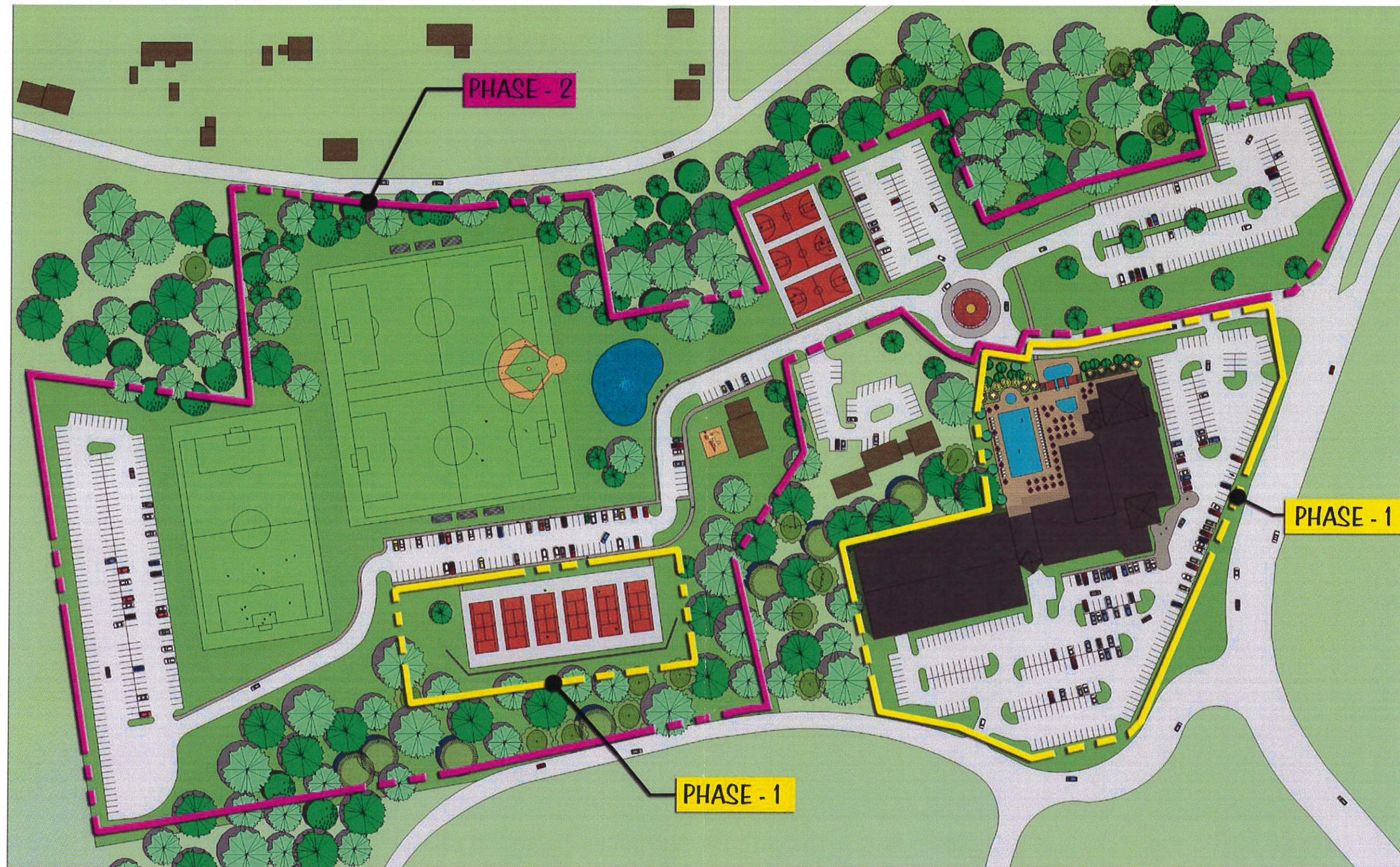
16  
17 **Adjournment:**

18  
19 **D. Coons made a motion to adjourn the meeting. R. Brideau**  
20 **seconded the motion. Vote on the motion: 6-0-0.** The meeting  
21 adjourned at 9:41 PM.  
22

23 These minutes prepared by Jaye Trottier and Libby Canuel, Community  
24 Development Department Secretaries.  
25

26  
27 Respectfully Submitted,  
28

29  
30  
31 Lynn Wiles, Secretary



## PROPOSED NEW EXTERIOR SPORTING ACTIVITIES

