

**BOARD OF SELECTMEN**  
**Minutes of October 5, 2004 Workshop with Planning Board**

The following members of the Selectmen met in a workshop session with the Planning Board: Chairman Alan Carpenter, Bruce Breton, Roger Hohenberger, and Christopher Doyle. Town Administrator Dave Sullivan and Planning Director Al Turner were also present. Present from the Planning Board were: Chairman Eileen Maloney, Nancy Prendergast, Ross McLeod, Walter Kolodziej, and Philip Lochiatto. The workshop commenced at 9:30 PM.

Mr. Carpenter clarified that the purpose of the workshop was to discuss the collection of impact fees/donations by the Planning Department, and noted that the Board of Selectmen had previously requested that the Planning Board reconsider their decisions pertaining to five subdivisions.

Ms. Maloney noted that the members of the Planning Board had met previously with Town Counsel regarding this issue, who had advised them that the Planning Board's actions had been within their authority to collect impact fees as outlined in the regulations, and they need only codify the fee calculation. Ms. Maloney indicated that the majority of the members felt what the Planning Board had and was doing was appropriate and should continue.

Mr. Turner explained the process of impact fee collection for the schools, and that the Town also collects exactions, which are negotiated fees, in addition. Mr. Turner felt that what the Planning Board was accepting were voluntary donations from developers, with no negotiation involved. Mr. Kolodziej discussed the differences between impact fees, donations, and exactions.

Mr. McLeod inquired if any developer(s) had approached or filed suit against the Town for the return of fees paid. Mr. Sullivan indicated none had, to date. Mr. McLeod then clarified that the statute of limitations for them to have done so expired 30 days after the approval of the plan, and that all developers in question had passed this time period.

Mr. Carpenter noted that three legal opinions had been received regarding this issue each of which indicated that, although technically within their legal authority to collect the fees, the Planning Board did not follow appropriate procedure to develop a "rational nexus" of the fees.

Mr. McLeod clarified that it was not within the Board of Selectmen's authority to direct the Planning Board's actions in considering future subdivisions, although their opinion could be provided.

The Selectmen indicated that, as a Board, they did have the option to seek a declaratory judgment to determine if the Planning Board acted appropriately. Ms. Prendergast questioned how such a decision will help the Town move forward, feeling the Planning Board recognized the need to fix the procedures. Mr. McLeod concurred with Ms. Prendergast.

Mr. Carpenter inquired whether the Planning Board would be voting to decide on whether the previous development decisions would be re-opened for consideration. Ms. Maloney polled those Planning Board members present whether they wished the Planning Board to re-open the cases in questions and refund the fees collected: Ms. Prendergast, no; Mr. McLeod, no; herself, no; and Mr. Kolodziej, yes. Mr. Kolodziej explained his response was based upon the lack of statutory basis for collection of the fees initially.

The workshop concluded at 10:30 PM. The Board of Selectmen may conduct a future meeting amongst itself to discuss this issue further.

Respectfully submitted,

David Sullivan, Town Administrator

*Note: These minutes are in draft form and have not been submitted to the Board for approval.*