

*These minutes were approved at the January 26, 2011 meeting.*

**DURHAM PLANNING BOARD  
WEDNESDAY, JANUARY 12, 2011  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 P.M.**

**MEMBERS PRESENT:** Chair Lorne Parnell; Vice Chair Peter Wolfe; Richard Kelley; Bill McGowan; Town Council representative Julian Smith; alternate Wayne Lewis; alternate Andrew Corrow; Town Council representative Bill Cote

**MEMBERS ABSENT:** Secretary Susan Fuller; Richard Ozenich

**I. Call to Order**

Chair Parnell called the meeting to order at 7:03 pm.

**II. Approval of Agenda**

Mr. Campbell said Beth Della Valle wouldn't be there for Agenda Item VIII, and suggested that the Board could discuss that item briefly and set another date to discuss it further. He also said the Energy Committee had requested that Item IX be put on a future Agenda.

*Councilor Smith MOVED to Amend the Agenda by removing Item IX, the Discussion on energy efficient building standards. Peter Wolfe SECONDED the motion, and it PASSED unanimously 5-0.*

*Richard Kelley MOVED to approve the Agenda as amended. Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.*

**III. Report of the Planner**

Mr. Campbell noted two memos he had provided, one which was on the Capstone application and the other which was on the issue of the possible regional impact of the development. He said the Board would need to be making a decision on this issue that evening.

He noted copies provided to the Board of letters signed by Administrator Selig in support of the Oyster River nomination to the NH Rivers Management and Protection Program. He also said Board members had been provided with the 2010 economic review for the State that was put out by PSNH, along with the new RSA books.

Mr. Campbell said he had met with University planner Doug Bencks for their monthly meeting, and said a memo summarizing their discussion was provided to the Board. He said the Economic Development Committee would not discuss the recently completed market analysis at its January 31<sup>st</sup> meeting because of other agenda items, including a presentation he would be making on TIF districts and the idea of creating a TIF district for the downtown. He noted that the area for such a district had not been precisely defined yet.

Mr. Campbell updated the Board on the work of the Master Plan Advisory Committee, as well as the work of the Forum subcommittee and the Survey subcommittee. He said the visioning forum would be held on Friday, January 28, 2011. He said the Survey subcommittee was in the process of soliciting feedback from the various boards and committees in Town to assist in developing the questions for the survey. He said the deadline for providing feedback on the survey was January 21<sup>st</sup>, and said the Advisory Committee would soon after send the final draft of the survey to the Planning Board for its approval at the January 26<sup>th</sup> Planning Board meeting.

Mr. Campbell said he and Conservation Commission Chair Jamie Houle had met, and said an educational piece was being put together for Commission members so they would know their roles and responsibilities. He said it would be the beginning of an orientation package for new members.

He said the Inclusionary Zoning Implementation Program (IZIP) committee was in the process of finalizing language that would then come to the Planning Board for discussion in February or March, on how to implement some inclusionary zoning provisions for the Zoning Ordinance that would help the Town fall in line with the workforce housing provisions in State statutes.

Mr. Campbell said there had been another meeting with transportation planner Rick Chellman about the development of a parking plan for the downtown. He said a draft of this plan would hopefully be available very soon.

**IV. Public Hearing on an Application for Amendment to a Previously Approved Conditional Use Permit** submitted by Steven F. Kimball, Pine Ledge Holdings, Auburn, New Hampshire to create a parking area. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District.

Chair Parnell asked if the applicant would like to provide any information before the public hearing was opened.

Chris Chickering of Pine Ledge Holdings provided a brief introduction regarding the application. She said its purpose was to document the parking on the site for 5 vehicles at 20 Strafford Ave, and 5 vehicles at 20R Strafford Ave, which was how the property had been used.

***Councilor Smith MOVED to open the Public Hearing on an Application for Amendment to a Previously Approved Conditional Use Permit submitted by Steven F. Kimball, Pine Ledge Holdings, Auburn, New Hampshire to create a parking area. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District. Richard Kelley SECONDED the motion, and it PASSED unanimously 5-0.***

Chair Parnell asked those members of the public who were in favor of the application to come forward to speak.

Ms. Chickering said Pine Ledge Holdings had received and reviewed the draft Conditions of Approval, and found them acceptable. She said they looked forward to being able to accommodate the widest possible array of tenants, including families. She said they appreciated the difficulty of not getting caught up in semantics, such as front vs. back, and appreciated that a plan that clearly delineated the parking spaces would make monitoring of the property easier for everyone.

Chair Parnell asked if there were any members of the public who wished to speak in opposition to the application, or who had concerns about it.

**Marty Gooze, 9 Meadow Road,** said she believed that nothing had changed since the June Planning Board meeting. She noted that she hadn't been at the last site walk in December because she was out of town. She said she hoped the Planning Board wouldn't allow more than the 7 parking spaces that were allowed by the Zoning Ordinance.

She said the driveway area in front of the garage, and the driveway to the back cabin had not been used by more than 2 cars for every day parking until Mr. Kimball inherited the property. She said her family had lived on Meadow Road for over 30 years, and used to walk through the property with the owner's permission. She said they rarely saw more than 2 cars parked at either the main house or the cabin in back.

Ms. Gooze said if the parking ordinance was changed to allow more leased parking in Town, she would advocate that no more parking should be allowed than the number of parking spaces allowed by the Ordinance, on any property that abutted residential zones.

She said the relevant criterion under the Conditional Use process was that "the intensity of the use shall not have an adverse effect on the surrounding neighborhoods, and that the natural, cultural, historical and scenic resources would be preserved". She said for 6-7 months out of the year, there was very little foliage, which allowed the noise to come through. She also said there were wetlands impacted on this property.

Ms. Gooze said according to the Master Plan, the Professional Office district was intended to be a pedestrian area, and she said increasing the number of parking spaces would increase the number of cars, which contradicted what the Town intended for this district. She said the project allowed for six tenants who most likely would be students, and said she they would not need more than one car each. She said the Zoning Ordinance

allowed 7 spaces, which was the 6 plus another 10%.

She said when Mr. Kimball came before the ZBA, the Board had rejected his application for more parking. She said she felt strongly that allowing the parking the applicant was requesting, when there was a desire but not a need, was therefore not warranted. She said the entrance to the property had always been used as a driveway, and there were no more than 2 cars for each structure. She said while this front area was large, it shouldn't be used as a parking lot.

Ms. Gooze said allowing more spaces than what the Ordinance allowed would be detrimental to the abutting residential neighborhood, and the intentions of the Master Plan and land use regulations. She said she hoped the Planning Board could address her concerns.

Ms. Chickering said that regarding the complaint about noise and lights, there was a natural rise to the lot, creating a berm that was also heavily wooded and blocked noise and lights coming from a lower elevation. She also said the nearest parking space was over 240 ft from the Gooze lot line, which was well beyond normal buffer requirements.

She also said UNH lots at the New England Center property shared a much larger lot line with the Goozes, had a much greater number of cars, and were most likely at a higher elevation than the Kimball property, so noise and lights could result from this, not from 20 Strafford Ave.

Ms. Chickering said the potential new library lot would have many more cars and would be much closer to the Gooze property. She said when standing at 20 Strafford Ave, one could barely see the Gooze rooftop, and at headlight level, their house was completely blocked. She also said the front parking area had existed for a long time. In addition, she said the rear parking area had one space remaining in the wetland buffer and was where two sheds used to be, and also said the gravel was an improvement in terms of the degree of imperviousness.

She noted that the Planning Board had required that they move the previous residential building 4 ft out of the wetland buffer. But she said most of the Library development concepts showed many parking spaces being built in the same wetland buffer, and said although this wasn't final, if it was allowed for the Library, it should therefore be allowed for Pine Ledge Holdings as well.

Ms. Chickering noted that the Town would need to use the driveway at 20 Strafford Ave. over the next 6 weeks in order to access the sewer line in that area so maintenance could be performed.

She said each house on the property needed 5 spaces; 3 spaces for the tenants plus 2 more. She said the Zoning Ordinance didn't make any allowance for short term, temporary spaces so anywhere a vehicle was to be left had to be a designated parking space. She said the other 2 spaces were needed for instances where tenants had more than

one vehicle, parents were visiting, or property maintenance and security were being provided.

Ms. Chickering said there were many single family homes in Durham that went way over the 2 car maximum plus an additional 10%. She showed pictures of a property on Madbury Road that had had 8 cars in December, and asked why this was allowed when the Zoning Ordinance didn't support that. She said they were asking for 10 spaces for 2 houses, and said let's be reasonable.

Ms. Gooze said some of the houses noted by Ms. Chickering might be grandfathered for the parking, and therefore didn't come under the Zoning Ordinance.

Chair Parnell said the Board would address this if it was relevant.

Ms. Gooze said when people had company, this was not meant to be on an every day basis. She also said she was disturbed by the noise and light from the New England Center property, but said it was the noise that did in fact come through from the 20 Strafford Ave property. In addition, she said her request had to do with the general idea of a property being used as residential, and abutting residential properties having to abide by the existing Zoning regulations. She said visitors and management could be allowed at the property without needing extra parking spaces.

***Councilor Smith MOVED to close the public hearing. Richard Kelley SECONDED the motion, and it PASSED unanimously 5-0.***

Chair Parnell noted that he had asked that Code Officer Tom Johnson be present for the meeting because of this application, but said he was not there. He said in the correspondence, there was a situation where Mr. Johnson had said only one space was allowed for the front, which implied that 4-5 spaces were allowed for the back. He asked if that was correct.

Mr. Campbell said yes, but said a caveat was that it would be allowed as part of a conditional use permit, which hadn't been done yet because the parking in the back was not part of the original Conditional Use application the Board had approved. He said Mr. Johnson had said there could be 6 spaces, and one of them could be in the front. He said the letter from Mr. Johnson said he agreed that there could be 5 spaces in the back. Mr. Campbell noted that each house was required to have 3 spaces.

There was discussion.

Chair Parnell said Mr. Lewis would sit in for Mr. Ozenich, and Mr. Corrow would sit in for Ms. Fuller.

Mr. Kelley noted the ZBA decision that was related to this application.

Mr. Campbell explained that it was an Administrative Appeal of Mr. Johnson's decision

allowing one parking space for the front, and wasn't involved with getting any variances. He noted that the ZBA had upheld Mr. Johnson's decision.

Mr. Kelley said for those fairly new to the Board, what made this application difficult was that the applicant had been before the Board on several occasions, and had revised applications as part of this. He said in 2009, Mr. Kimball had submitted a Conditional Use application to reconstruct the rear building, make modifications to the front, and re-orient the parking to better define it and push it a bit further away from the wetlands, although it was still in the buffer.

Mr. Campbell explained that the original application included these things, but said at the time Mr. Kimball needed to go to the Conservation Commission regarding the wetland buffer issue, and didn't want to do that, so decided he would leave the driveway as gravel instead of paving it and would get the buildings approved. He said that was what the Planning Board had then approved.

Mr. Kelley said by pulling the parking out of the application, the Planning Board had approved a site plan without any parking. He said he would like to ask Mr. Kimball what he was thinking when he then submitted his building permit and revised the site plan to show this parking, when he knew he needed to go before the Conservation Commission in order to get their advice on the matter. He said if Ms. Chickering could offer any insight on this, it would be appreciated. He provided additional description of the original application and how the process had unfolded.

Mr. Campbell noted that there were hand drawn parking spaces on the plan provided to the Planning Board, but when Mr. Kimball applied for the building permit, the parking area was shown on the plans.

Mr. Kelley repeated his question, and Ms. Chickering said she believed Mr. Kimball did go in front of the Conservation Commission.

Mr. Wolfe said he thought the driveway was moved further north out of the wetland area because of the Conservation Commission suggestion.

Mr. Campbell said that occurred after the first application before the Planning Board and during the second application before the Planning Board. He described the second application.

Ms. Chickering said Mr. Kimball withdrew that application because he felt the Planning Board didn't understand what was being asked.

Mr. Wolfe said he remembered Mr. Kimball coming to ask the Planning Board how to proceed because he was confused.

Mr. Campbell said Mr. Kimball was confused because he thought he was documenting the spaces he already had, which to the Town weren't there already, and needed to be

approved. He said the Planning Board had discussed the idea of allowing 7 spaces, with 4 in the back and 3 in the front. He said Mr. Kimball then withdrew the application because he wanted to go back to the original Conditional Use application to renovate the front building, and said he would come back again regarding the parking.

Ms. Chickering said there was no change of use to the property so it should still be grandfathered, like any other house in Town.

Mr. Kelley asked when the building permit was pulled and the new building was constructed, and Ms. Chickering said this was between September and December of 2009.

There was further discussion about how the process had gone. Mr. Kelley said that was why he had previously said he would like to have seen the building permit that was filed.

There was discussion about the parking regulations that applied for the Pine Ledge Holdings property.

Mr. Campbell said the requirement was 2 spaces per dwelling unit for single-family, duplex or multi-unit dwellings, or 1 space per resident for dwelling units permitted to be occupied by 3 or more unrelated individuals. He said when this provision was written, those doing so probably had the 3 unrelated provision in mind. He said for zones that permitted more than 3 unrelated, 2 spaces per dwelling unit were allowed, and said for zones that only allowed 3 unrelated, a house was allowed 1 space per resident.

He explained that “dwelling units permitted to be occupied by 3 or more unrelated individuals” could occur in districts that allowed more than 3 unrelated as well as those that allowed only up to 3 unrelated. He said Mr. Johnson had recognized that, and said for this property, which was in the Professional Office zone, there were 2 single family houses, and could have 3 unrelated, which therefore meant 3 spaces were allowed for each house, which was one per resident. He said this came to 6 spaces for the property.

Mr. McGowan asked what happened if there were related people living there, and as an example, Mr. Campbell said there could be a family of 7 as well as 2 renters in a building.

Mr. McGowan asked what happened if in the family of 7, 4 of the people drove.

Mr. Campbell said the Ordinance didn't really cover that unless there was a Conditional Use permit application, in which case an applicant could apply for more than the 10% additional that was allowed. He said the Board could do that this evening if it wanted to. He said 10% wouldn't do the applicants much good in that only one more parking spot would be allowed. He said the applicants had said they would like to have one additional parking space per house for a guest, one for someone checking on the property, and one for themselves as owners when they came to Town. He said the Planning Board had to decide if this was reasonable or not, and could say how many spaces were allowed, which

was anywhere from 7 to 10 spaces.

Councilor Smith reviewed two parts of a motion that had been made by the Conservation Commission in July of 2010, where the Commission had recommended 7 parking spaces:

*“With respect to the rear parking area, recommend an alternative configuration of the driveway and approach to minimize the infringement on the wetland conservation overlay area (such as slanted parking and a narrower approach) and the permitting of three spaces, plus an additional space under the car port – all of which are outside of the WCO” and “recommend the permitting of three parking spaces in the lower parking area as permitted in the zoning while leaving the site as nearly as possible in the “existing” or natural condition within the WCO.”*

Mr. Campbell noted that the applicant had been before the Conservation Commission previously, spoke to the confusion going on at the time, and the Commission had then requested more guidance from the Planning Board. He said at that time, the Board was discussing allowing the same parking configuration, and said he believed that was what the Commission had based its comments on.

Chair Parnell noted that the Planning Board was looking at the idea of 4 and 3 parking spaces in July of 2010.

Mr. Campbell said if there was an approval now, there would be documented parking for the rear and front.

Chair Parnell said the issue was whether they were talking about 7 or 10 parking spaces.

Mr. Campbell noted that in July, Pine Ledge Holdings was asking for 11 spaces.

Mr. McGowan asked if there was sufficient area for 10 spaces there now, without modifying the site.

Chair Parnell said probably yes, based on the site visit. He said the bottom area had been expanded somewhat, and the rear area was newly built. He said there was probably room for 5 spaces, including the garage, and there was probably room for 5 spaces on the bottom.

Mr. Campbell said the difference between the application in July and the application now was that he didn't recall that the applicants had laid out then, as they now had, why they wanted the parking spaces. He said that was what had made the difference for him now, in reading their material. He said his memo recommended approval of the application.

Mr. Kelley asked what had become of the existing gravel to the north of the proposed improvement, noting that there had been discussion about re-vegetating it.

Mr. Campbell said it was still gravel, and said if the Board were to approve the application, an addition to the Conditions of Approval would be that this area, which was



in the wetland buffer, would be re-vegetated. He said both the Planning Board and the Conservation Commission had discussed this.

Councilor Cote said he appreciated the applicant's position, but remained unconvinced that the additional parking spaces were for maintenance, security and visitors. He said they were facing the issue of leasing of parking spaces. He said the Council had never really addressed this issue, and it wasn't in the Zoning Ordinance. He said he didn't know if the Board had standing to only grant 7 spaces, but said if they approved the 10 spaces, and the applicant then leased 3 or 4 of them, the Board wouldn't have any way to regulate that.

Mr. Campbell said if it was determined by Mr. Johnson that these spaces were being leased, this would be considered a violation, as a surface parking use and not simply accessory parking on the site. He said he didn't believe that use was allowed in the Professional Office District.

Councilor Cote said if the Planning Board approved 10 spaces, it would then have to rely on the integrity of the applicant, and Mr. Campbell said the Planning Board did that with every application it approved.

Mr. Wolfe noted the photos provided by the applicant of other units in Town that had more parking than was permitted. He said what concerned him was that it was either uneven enforcement of the regulations, or the Town was being arbitrary and capricious as to how the regulations were being enforced, and might therefore be subjecting itself to legal challenge because of this.

Mr. Campbell said it was the appearance of being arbitrary, but said Mr. Johnson was fair, and was hard on everybody. He also noted that someone had been hired in 2010 to look for violations, and had gone after everybody. He explained that this was done in an attempt to get at the 3 unrelated issue, because Mr. Johnson couldn't get into the buildings to verify their occupancy. He provided details on this, and also noted that Mr. Johnson got complaints all the time about parking, and would then follow up on them.

Ms. Chickering said she had made complaints, and they were ignored.

Chair Parnell said if the Board didn't approve this application, there would be 6-7 parking spaces, but Mr. Campbell disagreed, stating that the Board needed to approve a certain amount of parking at this point, whatever it was. He said it wasn't documented yet, and said when this was done, it would be clear to Mr. Johnson and the applicant.

There was discussion about how to proceed. Councilor Smith suggested going through the Conditional Use checklist.

Chair Parnell said he wasn't ready to do that yet. He said he wasn't sure about the 10 parking spaces, and said if the Board approved this, it would set a precedent that he didn't think was the proper way to go. He asked what other Board members were thinking.

Mr. Kelley said in the spring and early summer of 2010, he was in favor of allowing 7 parking spaces, and said that was how he felt now. He said 10 or 11 spaces were far too many.

Mr. Corrow said he agreed, and said if they went up to 10 spaces, they would be setting a precedent. He said he didn't see why they shouldn't go with the Conservation Commission recommendation for 4 in the back and three in the front, which was 10% above the 6 spaces that were allowed by the Ordinance.

Mr. McGowan said he didn't see that 10 spaces was unreasonable, stating that the application had been before the Board before, and that the spaces were kind of existing but not documented.

Mr. Lewis said he could see the pros and cons each way, but said he was leaning toward going with the 7 spaces the Zoning Ordinance allowed.

Councilor Smith said he agreed with Mr. Lewis and Mr. Corrow.

Mr. Wolfe said he could go either way. He said the neighborhood had the New England Center property, which had a much bigger parking lot, and also said there was the apartment building next door. He said the two houses at 20 Strafford Ave. were an anomaly for where they were, and said he therefore didn't see that 10 spaces was unreasonable. But he also said it was important to uphold the integrity of the Zoning Ordinance. He said he was leaning toward thinking the Zoning didn't make sense for this property because it was an anomaly.

Councilor Smith noted that there was also the possibility that there would be a large parking lot for the new Town Library that would be built, which would be located on a property that abutted the Kimball property.

Mr. Wolfe said this was an area of heavy parking. He said if this property was someplace else in the district, he would feel completely different about allowing 10 spaces.

Chair Parnell noted that said there had to be 5 votes in favor of a Conditional Use application in order for it to pass. He said he wasn't sure there were 5 votes, given the Findings of Fact and Conditions of Approval as presently stated, which allowed 5 spaces in front and 5 spaces in back.

Mr. Campbell provided clarification that in approving more than 7 spaces, the Board would not be going against the Ordinance, because they could decide to do this as part of a Conditional Use application.

Chair Parnell asked whether, if 3 parking spaces were allowed to be used, and someone visited the property for the day and used a 4<sup>th</sup> space, this would be a violation.

Mr. Campbell said not necessarily, and explained that every residential dwelling was allowed to park 3 cars within the front setback, in the driveway. But he said for this property, if someone did that in front, someone in back then might not be able to get out. He said what the applicant was proposing was to provide parking in front that was off of the driveway.

Chair Parnell asked if in the Town's parking regulations, there was no difference between a car parked overnight and a car parked occasionally during the daytime.

Mr. Campbell said that was correct, and said it would otherwise be hard to regulate.

Chair Parnell determined by a show of hands that he, Mr. Kelley, Mr. Corrow and Councilor Smith thought that 7 spaces should be allowed, and that Mr. McGowan, Mr. Wolfe and Mr. Lewis thought 10 spaces should be allowed. He then noted that there wasn't a super majority in either case.

Councilor Smith said he would go with what Mr. Campbell had said, and also said what Mr. Wolfe had said was persuasive. He said saying there could be only 7 parking spaces didn't mean there would only be 7 cars parked there.

Chair Parnell noted that there would still be a 4-3 vote.

Mr. Kelley reviewed the process the Planning Board had gone through in 2010 concerning the Pine Ledge Holdings application, and said when they got to the deliberations, the idea of 6-7 spaces was being discussed. He said the applicant pulled the application at that point because he saw where things were going. He asked if the applicant might want to pull the application now and have the status quo out there. He said the Board could modify the Conditions of Approval now and then approve them, and asked what happened if the applicant then wouldn't sign.

Mr. Campbell said if the applicant didn't sign, the approval would then go away.

Mr. Wolfe said it sounded like Mr. Kelley's objection was how the applicant had proceeded with the process, and not the substance of what the 7 or 10 spaces represented.

Mr. Kelley said it was a nonconforming use in this district. He noted that in the past, the Board had allowed an expansion of the existing use by 50%. But he said he felt there were limits to that, and said he felt the parking was one of them. He said in 2009, it was pretty clear that the applicant built as he saw fit at that time.

He said the Minutes of the June 23, 2010 meeting indicated that Mr. Kimball had stated that he had prepared a plan and submitted it to the Town as part of the building permit application, the building permit was received, and he therefore believed he had permission to construct the parking as shown. But he said in 2009, Mr. Kimball knew he had to go before the Conservation Commission.

Mr. Kelley said he therefore did take issue with the process of getting there, and also took issue with the nonconforming use issue. He said the Board had allowed an expansion of 50%, but said there needed to be limits on this. He noted that prior to looking to expand in that way, Mr. Kimball had submitted an application for a mixed use project, and at that time, was entertaining many more parking spaces. He said that application was approved. He said right now, he was averse to the expansion of the nonconforming use.

***Peter Wolfe MOVED to approve 10 parking spaces. Bill McGowan SECONDED the motion, and it FAILED 4-3, with Chair Parnell, Richard Kelley and Andrew Corrow voting against it.***

The Board reviewed the draft Findings of Fact and Conditions of Approval. There was discussion about developing a condition #5 concerning re-vegetation: The applicant shall remove part of the old driveway by the rear building within the wetland buffer and re-vegetate it.

Councilor Cote noted that at the site walk, there was some concern about runoff and erosion behind the berm in the area of the driveway. He said there was significant washout there, and asked if perhaps there should be a culvert under the driveway, etc. to provide better drainage for the area. There was discussion.

Chair Parnell asked if the gravel ditch was part of the original site plan or the building permit, and there was discussion.

Councilor Cote said even a small culvert would be a good idea, which would outlet water to the wetland.

There was discussion about a possible Condition of Approval #6: The applicant shall ensure adequate drainage via a culvert under the constructed driveway.

The Board next went through the Conditional Use checklist. There was discussion about #6 c - Site suitability/Absence of environmental constraints. Mr. Kelley said there was not an absence of environmental constraints.

Mr. Wolfe said there were wetlands on a lot of properties in Durham, and noted that the driveway was actually moved away from the wetlands at the request of the Conservation Commission, which had no problem with the moved driveway. He also said a culvert under the driveway was proposed as a Condition of Approval, and said he was therefore curious about what Mr. Kelley had said.

Mr. Kelley said this was all after the fact. He said the Board couldn't address Councilor Cote's concern by engineering a solution to protect the wetlands, and said the proper process should have been that the applicant did that, with a level spreader or some kind of catchment device on the west side of the driveway, to trap sediment there.

Mr. Wolfe said the Conservation Commission didn't address that, and said it sounded

like Mr. Kelley was concerned with the process, and not the merits.

Mr. Kelley said he was concerned with both. He said he felt there were environmental constraints on the site.

Mr. Wolfe said he disagreed.

After discussion about # 8 b, Character of the site development/Screen of off street parking, it was agreed that what was there was compatible with the neighborhood.

***Bill McGowan MOVED to approve the Findings of Fact and Conditions of Approval for an Application for Amendment to a Previously Approved Conditional Use Permit submitted by Steven F. Kimball, Pine Ledge Holdings, Auburn, New Hampshire to create a parking area. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue and is in the Professional Office Zoning District. Peter Wolfe SECONDED the motion, and it FAILED 4-3, with Bill McGowan, Peter Wolfe, Councilor Smith and Wayne Lewis voting in favor of it.***

***Richard Kelley MOVED to amend Finding of Fact #7 to approve a total of 7 parking spaces, with 4 spaces associated with the rear and 3 spaces associated with the front.***

Chair Parnell asked if the Board could say it would be up to the applicant as to where those 7 spaces would be.

Mr. McGowan suggested allowing 4 spaces in the front, and 4 spaces in the back.

***Councilor Smith SECONDED the motion.***

Mr. Lewis received clarification that one of the 4 spaces allowed in the rear could be the carport.

***The motion FAILED 4-3, with Chair Parnell, Richard Kelley, Andrew Corrow and Councilor Smith voting in favor of it.***

***Bill McGowan MOVED to amend Finding of Fact #7 to approve a total of 8 parking spaces, with 4 spaces associated with the rear and 4 spaces associated with the front. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

There was further discussion on the proposed Condition of Approval #5 "The applicant shall remove part of the old driveway by the rear building within the wetland buffer and re-vegetate it."

Mr. Kelley noted that right now, there were 4 surface parking spaces for the rear building and another space in the car port. He said what was approved now was to allow 4 spaces in the back, so one of the spaces in the buffer could be re-vegetated.

Mr. Campbell revised #5 to read "The applicant shall remove part of the old driveway by

the rear building that is within the wetland buffer and re-vegetate the area. In addition, the southeast parking space at the rear of the property shall be removed and re-vegetated.”

Mr. Kelley asked about the previously recommended Condition of Approval #6 regarding putting in a culvert.

Chair Parnell questioned whether the Board could put in that kind of condition at this stage, and Mr. Campbell said perhaps the applicant could work with the Town engineer to find the best solution.

Mr. Kelley said he was fine with that. He noted the plans originally submitted, and said the gravel parking lot back there was graded very flat. He said what the Board didn't know was how it was constructed.

Councilor Cote said behind the level parking area was quite a gully, which crossed the driveway. He said there was a little swale, but said one could see where it had eroded progressively.

Chair Parnell suggested that the Town Engineer could work with the applicant on this.

Ms. Chickering questioned whether the area to be re-vegetated was the area the DPW was planning to use to access the sewer manhole.

### **Findings of Fact**

1. The applicant submitted a letter of intent on November 15, 2010.
2. The applicant submitted an Application for an Amendment to a Previously Approved Conditional Use Permit on November 22, 2010.
3. The applicant submitted an amended site plan entitled “Kimball Property, 20 Strafford Avenue, Durham, NH” on November 22, 2010.
4. The applicant submitted a document of current and past parking configuration on December 2, 2010.
5. A Site Walk of the property was performed on December 18, 2010.
6. A Public Hearing was held on January 12, 2011 and testimony was received.
7. As part of the approval of this Conditional Use Application, the Planning Board approved a total of eight (8) parking spaces. Four (4) spaces are associated with the rear building (includes the carport) and four (4) spaces are associated with the front building.

### **Conditions of Approval**

1. All previous Conditions of Approval from the May 13, 2009 Conditional Use Permit approval by the Planning Board shall be incorporated into these Conditions of Approval by reference.
2. These Findings of Fact and Conditions of Approval shall be recorded with the

- Strafford County Registry of Deeds, at the applicant's expense.
3. A building permit shall be submitted to and approved by the Code Enforcement Officer for any new construction. All appropriate building codes shall be met.
  4. A Conditional Use Permit shall be issued by the Zoning Administrator.
  5. The applicant shall remove part of the old driveway by the rear building that is within the wetland buffer and re-vegetate the area. In addition, the southeast parking space at the rear of the property shall be removed and re-vegetated.

***Richard Kelley MOVED to approve as just amended, the Findings of Fact and Conditions of Approval for an Amendment to a Previously Approved Conditional Use Permit submitted by Steven F. Kimball, Pine Ledge Holdings, Auburn, New Hampshire, to create a parking area. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

- V. Review of Development of Regional Impact** – The Durham Planning Board will be making a determination of whether or not the Capstone Development Corporation's proposed development on Main Street/Technology Drive, if approved, has the potential for a regional impact according to the NH State Statutes, RSA 36:54 – 36:58. The property involved is shown on Tax Map 9, Lot 10-3, is located on Technology Drive, and is in the Office Research/Light Industry Zoning District.

Mr. Campbell provided details to the Board on RSA 36:54-58, regarding developments of regional impact. He said the definition for a development of regional impact was any proposal before a local land use board which in the determination of that board could reasonably be expected to impact on a neighboring municipality, because of factors such as, but not limited to, the following:

- I. Relative size or number of dwelling units as compared with existing stock.
- II. Proximity to the borders of a neighboring community.
- III. Transportation networks.
- IV. Anticipated emissions such as light, noise, smoke, odors, or particles.
- V. Proximity to aquifers or surface waters which transcend municipal boundaries.
- VI. Shared facilities such as schools and solid waste disposal facilities

Mr. Campbell noted that the Statute was silent as to whether or not one or all criteria had to be met to be a development of regional impact. He said if there was any doubt as to whether a development would have a of regional impact, the statute said it was automatically to be considered a development of regional impact. He said if the decision was made that there would be such an impact, the abutting municipalities and the regional planning commission were then treated as abutters. He said in this case, the property involved bordered on the Town of Lee, and was in the jurisdiction of the Strafford Regional Planning Commission.

He said in accordance with the RSA, if the Board determined that this was a development of regional impact, notices and sets of plans would need to be provided to Lee as well as

the Strafford Regional Planning Commission. He also said that within 5 business days, the Town would need to send these entities Minutes of the meeting, by certified mail. He noted that he had already sent them the first two items, regardless of whether the Planning Board decided to treat the Capstone application as a development of regional impact.

Mr. Campbell recommended that the Board treat the proposed Capstone development as having a regional impact. He said if the Board made a motion to that effect, the reasons why it fit this definition would need to be included.

Mr. McGowan asked how many beds this project had compared to Rivers Edge and the Bryant project, and Mr. Campbell said they had 96 and 124 beds respectively, and the Capstone project had 697 beds. He also noted that the property bordered on the Oyster River, which also mattered to the Town of Lee.

Mr. Wolfe said he didn't see any downsides to considering this a development of regional impact, and said in doing this, the Board could get further input that it might otherwise miss.

Chair Parnell asked if there were any Board members who didn't think this was a development of regional impact, and there was no response.

***Richard Kelley MOVED that if approved, this development reasonably could be construed as having the potential for regional impact due to its relative size and the number of dwelling units, its proximity to the border of a neighboring community, and its proximity to aquifers or surface waters that transcend municipal boundaries. Councilor Smith SECONDED the motion.***

Chair Parnell noted that residents of Lee had been interested in the Rivers Edge project, which involved a much smaller development than this one. He said there was no question that this would be a good thing to do.

***The motion PASSED unanimously 7-0.***

Break from 8:40 to 8:47 pm.

- VI. Acceptance Consideration of an Application for Site Plan Review** submitted by Capstone Development Corporation, c/o Appledore Engineering Inc., Portsmouth, New Hampshire on behalf of William & Edna Woodward Rev Trust, Durham, New Hampshire, New Hampshire to construct approximately 100 residential units consisting of single-family and duplex residences with a total of 619 beds and 650 parking spaces. The property involved is shown on Tax Map 9, Lot 10-3, is located on Technology Drive, and is in the Office Research/Light Industry Zoning District.
- VII. Acceptance Consideration of an Application for Conditional Use Permit** submitted by Capstone Development Corporation, c/o Appledore Engineering Inc., Portsmouth,



New Hampshire on behalf of William & Edna Woodward Rev Trust, Durham, New Hampshire, New Hampshire to construct approximately 100 residential units consisting of single-family and duplex residences with a total of 619 beds and 650 parking spaces. The property involved is shown on Tax Map 9, Lot 10-3, is located on Technology Drive, and is in the Office Research/Light Industry Zoning District.

John Acken, Capstone Senior Vice President, spoke before the Board. He said some highlights of the project would be provided that evening, and said there would then be a full presentation before the public hearing was held in two weeks. He noted that there had been some changes to the plan since the conceptual consultation, as a result of discussion with the Conservation Commission.

He said one main change was in regard to the Commission's concern about the number of buildings that had been proposed within the wetland setback, in the northwest portion of the development. He said all of the buildings there had been pulled off of the setback, and said they were able to do this by shrinking the median in the parking lot. He explained that the purpose of the median was to screen sections of the parking area from each other so the amount of parking wouldn't seem as large. He said Capstone thought they could still accomplish this screening with a smaller median by building up a berm and putting plantings on top of it.

Mr. Acken said another area of concern for the Conservation Commission was proposed buildings within the wetland setback in the north central portion of the development. He said a number of these buildings had therefore been shifted over to the northeast to get them out of the wetland setback. He noted that the Conservation Commission was very complimentary about the stormwater management plan for the project.

He said another change that had been made was in regard to the size and shape of the clubhouse. He said the clubhouse was still in design, and now included larger gym facilities and other indoor spaces for active recreation. He said they were also looking at ways to make the clubhouse building more efficient with a smaller footprint, while keeping those uses.

Mr. Acken said Capstone had been in discussions with the transit department at UNH, and were close to a deal with Wildcat Transit. He said the goal was to have all of those details worked out before the public hearing.

He said they were also putting together a property management plan, and were working with Mr. Campbell on this. He said the sample lease, floor plans for the units, and the floor plan for the clubhouse would also be provided by the next Planning Board meeting. He said they were also working with the Town on the traffic plan.

Mr. Kelley asked if the timeline was still to start construction in the spring of 2011, and to have occupancy by the fall of 2012, and Mr. Acken said yes.

Mr. Kelley asked if contact had been made with the Town/UNH traffic modeler, and Mr.

Campbell said yes.

Mr. Lewis asked if property management staff would have their own separate house on the property.

Mr. Acken said managers were given the option to live on the site, and said maintenance staff sometimes lived on site was well.

Mr. Kelley noted that one of the concerns raised during the pre-conceptual consultation was the proximity of the proposed development to the cemetery. He said it looked like a fence was proposed there, but said it didn't look like any units had been removed from that area.

Mr. Acken said they had looked at the idea of moving units away from the cemetery, and also explained that there had been a productive meeting with the Trustees of the Cemetery the previous day on this issue. He said Capstone felt that a fence would do more, in terms of preventing students from entering into the cemetery, than pulling units 10-20 ft away from it would accomplish. He said they would work closely with the Trustees in terms of the landscaping and fencing that would be put up along that area.

Mr. Kelley asked if there had been discussion about the idea of constructing a berm and putting a fence on top of it.

Mr. Acken said his understanding was that if this was done, technically the fence would be higher than what was allowed by the Zoning Ordinance without a variance. He said there had been discussion about the idea of building the berm behind the fence, with trees on top of it, so the berm and the trees together would be higher than the fence. He said Capstone would work with the Trustees to make sure they were pleased with the buffer.

Mr. Campbell explained that the fence couldn't be higher than 6 ft or it was considered a structure, which would then have to meet the setbacks and would defeat the purpose of putting the fence there.

Councilor Cote received confirmation from Mr. Acken that the plans reflected some of the buildings being moved based on discussion with the Conservation Commission.

Mr. Kelley asked how the discussion with UNH about bus service was going.

Mr. Acken said UNH had been very responsive, and said they were all looking at the idea of adding a second bus in order to double capacity to the site. He said there were only a few minor details to be worked out at this point, and said Capstone was confident this could be done.

Mr. Kelley asked if the application was complete.

Mr. Campbell said yes, and said he recommend acceptance of the site plan application,

and scheduling of the public hearing for January 26<sup>th</sup>. He noted that Capstone needed two variances, and said the variance application had been continued to the January 25<sup>th</sup> ZBA meeting because there weren't enough ZBA members at the meeting on Tuesday.

He said one of the variances was needed because several residential buildings were in the wetland buffer. He explained that nonresidential buildings could be in the buffer in this district, but residential buildings could not.

Mr. Campbell said a second variance was needed because Capstone wanted to fill 6349 sf of wetland area. He noted that they had applied to DES for a dredge and fill permit. He explained that the variance would still be needed if that permit was received, because of Section 175-61 of the Zoning Ordinance.

***Richard Kelley MOVED to accept the Application for Site Plan Review submitted by Capstone Development Corporation, c/o Appledore Engineering Inc., Portsmouth, New Hampshire on behalf of William & Edna Woodward Rev Trust, Durham, New Hampshire, New Hampshire to construct approximately 100 residential units consisting of single-family and duplex residences with a total of 619 beds and 650 parking spaces, and to schedule a public hearing for January 26, 2011. The property involved is shown on Tax Map 9, Lot 10-3, is located on Technology Drive, and is in the Office Research/Light Industry Zoning District, . Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Campbell noted that this was a Conditional Use application for two reasons. He said the first reason was that a conditional use was proposed for the ORLI zone. He said the second reason was the existence of portions of the wetland and shoreland overlay districts on the property. He said the Conditional Use application was complete, and recommended that it be accepted by the Board that evening. He said the two public hearings could be run concurrently.

***Councilor Smith MOVED to accept the Application for Conditional Use Permit submitted by Capstone Development Corporation, c/o Appledore Engineering Inc., Portsmouth, New Hampshire on behalf of William & Edna Woodward Rev Trust, Durham, New Hampshire, New Hampshire to construct approximately 100 residential units consisting of single-family and duplex residences with a total of 619 beds and 650 parking spaces, and schedules a Public Hearing on January 26, 2011. The property involved is shown on Tax Map 9, Lot 10-3, is located on Technology Drive, and is in the Office Research/Light Industry Zoning District. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

The Board agreed to do a site walk on January 22<sup>nd</sup> at 1:00 pm, which was the Saturday before the next Planning Board meeting.

**VIII. Continued Discussion on possible Zoning Amendments** – Continued discussions with Elizabeth A. Della Valle, AICP regarding the review of issues and draft language for the

first group of possible Zoning Ordinance amendments to implement the Durham Commercial Core Strategic Plan that was the result of the Charrette held in November 2009.

Councilor Cote asked if there was an intent by Ms. Della Valle to create more permitted uses and fewer conditional uses in the Table of Uses.

Mr. Campbell said yes, and said the majority of what the Board had spent time on at the December 15<sup>th</sup> meeting was going through the Table of Uses and changing conditional uses to permitted uses with site plan review.

Councilor Cote noted that traditionally, Durham had been a conditional use advocate, for many reasons.

Mr. Campbell agreed, and said the breadth of the use of conditional use always surprised people coming to Durham. He said Ms. Della Valle had also revised some of the definitions, for educational facilities, farmers' markets, and mixed use buildings. He said she had also included some performance standards for clubs, community centers, educational facilities, mixed use, structural parking, and restaurants, as well as revisions to her proposed standards for farmers' markets based on the Board's discussion in December.

He said Ms. Della Valle had also listed in her memo to the Board a number of other things she was still working on. He said he hoped the Board had looked this material over, and could say she wasn't way off base from the discussion on December 15<sup>th</sup>. He said from what he had read, it didn't seem that way.

Mr. Campbell said he would like the Board to decide whether Ms. Della Valle should be at the meeting on January 26<sup>th</sup>, noting that this would be the date when the Capstone public hearing was held, which could take awhile. He said they would have to pay Ms. Della Valle by the hour to sit there, and said he didn't want to do that.

Councilor Cote asked if there could perhaps be an off week meeting, and Mr. Campbell said yes. There was discussion that there should be an extra meeting in February, and that in the mean time the Board could get better prepared to provide comments on the proposed Zoning changes. Chair Parnell suggested that Ms. Della Valle could also provide the Board with more material before that meeting. It was agreed that the Board would have a special meeting on February 2<sup>nd</sup>.

Mr. Kelley said it would be good if the Board could get an electronic, colored version of the proposed Zoning changes in order to see better the strikeouts and additions, and Mr. Campbell said he would try to get this to them.

**IX. Discussion on energy efficient building standards** – The Durham Energy Committee (DEC) would like to have a discussion with the Planning Board regarding a variety of

energy efficiency measures. The DEC has provided the Board with a checklist to start the discussions and members of the DEC will be in attendance at the meeting.

Postponed.

## **X. Other Business**

### **A. Old Business:**

Chair Parnell noted that he was on the Master Plan Survey subcommittee, and said he and other subcommittee members were supposed to bring back comments from their respective boards or committees that addressed particular issues they had to deal with.

He said he had a couple of general ideas of what he would like to get some input on from residents, and said a first question was whether the Zoning Ordinance encouraged a resident's preferred type of town development, with the possible answer ranging from strongly agreed to strongly disagreed. He said a second question was whether the Planning Board encouraged the resident's preferred type of town development. He asked what Board members thought about these questions.

Councilor Smith questioned how many people had a preferred type of Town development, and Chair Parnell said this could be anything from no development at all to commercial operations. Councilor Smith asked if there would be a list to choose from, and Chair Parnell said no.

Mr. Wolfe said the problem with this was that they wouldn't know from the answers what the preferences were.

Chair Parnell said he was trying to get at whether the Zoning Ordinance or Planning Board procedures got in the way or didn't get in the way with what people wanted.

Mr. Wolfe said a question could be whether someone found the Zoning Ordinance restrictive to new development, and Chair Parnell said most residents weren't involved with new development, and didn't come before the Planning Board. Mr. Wolfe said a question could be whether someone found the Zoning Ordinance too restrictive or not restrictive enough regarding the use of his/her property.

Councilor Smith suggested that the question Chair Parnell had proposed should be preceded with a few questions as to how familiar people were with the Zoning Ordinance and the procedures of the Planning Board. He said only then would the answers to the other questions Chair Parnell had posed, by those who said they were well acquainted with the Zoning Ordinance and Planning Board procedures, be meaningful.

Chair Parnell said this was a good suggestion. He said one of the major purposes of revising the Master Plan was to then be able to revise the Zoning Ordinance. He said residents therefore should first have some idea what was in the Zoning Ordinance now,

but said they often didn't.

He asked if there were any other issues Board members thought should be addressed in the survey.

Mr. Wolfe noted some possible questions a Board member had previously proposed for the survey concerning UNH, which was the 800 pound gorilla in the room.

Chair Parnell said it would be good to know what residents thought about the way the Town and UNH related to each other, but he said it was difficult to come up with a question.

Mr. Campbell said Board members had discussed this at the December 8<sup>th</sup> meeting, including whether University relations needed to be a heading by itself.

Mr. Kelley said when the Board had recently looked at a list of possible survey questions, there was also discussion that what the Board was looking at then wasn't the actual draft survey itself. He asked if the Board would get another chance to look at the actual draft survey, and Chair Parnell said the Board would be seeing it as a proposed document.

Mr. Campbell and Chair Parnell explained that the Board would get to comment further on the survey at that time, and that the Planning Board had to approve the survey before it was sent out to residents.

Chair Parnell asked what issues concerning the University should be addressed in the survey.

Mr. Wolfe suggested that there should be a question such as "Do you feel that UNH is a positive attribute of living in Durham?"

Councilor Smith suggested the words "Do you think" rather than "Do you feel".

Councilor Cote suggested that they could build on that question. He asked if there was any room in the survey for narrative/open ended questions.

Mr. Campbell said yes. He also noted that the survey shouldn't be so long and shouldn't take so long to complete that no one would do it. He said the idea was to create a survey that someone could complete in about 15 minutes. He said there would be a web based version of the survey available, and said open ended questions could be answered as part of this.

Councilor Cote noted the importance of having some questions on parking, which had always been a contentious issue in Town.

Chair Parnell said this would probably come from the EDC in their recommended questions for the survey.

Mr. Kelley said he assumed that most of the people taking the survey weren't familiar with the Northern Connector. There was discussion about the idea that residents could perhaps be familiarized about it, but that this would require showing them a map. Mr. Kelley suggested the following question: "Would you support a Northern Connector in the attempt to alleviate traffic to UNH events at the Whittemore Center?"

Councilor Cote asked if there was any way to tie in the B. Dennis strategic plan vision in the survey, concerning how the downtown might be reconstructed. There was discussion as to whether this would be something that was more for the visioning forum than for the survey. Councilor Cote suggested that providing a visual would be important in order to elicit comments from residents.

Councilor Smith suggested the question: "Would you like to see Main Street restored to two way traffic?"

Mr. Campbell noted that a traffic model was being run on this, but said it was a good question.

Chair Parnell said if Board members had any more comments to provide on the survey, they should get them to him by January 21<sup>st</sup>.

Mr. Campbell said there was another item he wanted to discuss under Old Business. He said at the Council meeting on Monday night, there had been discussion again on the ORLI/MUDOR conservation subdivision Zoning change proposal. He noted that since this was now a Council initiated change, the Council could adopt it on its own. But he said they had chosen not to do that, and wanted to take another look at it and see if there was anything the Planning Board could do to change the language without changing the intent of what the Council had been trying to accomplish in suggesting that the Zoning change be made to allow single family homes and duplexes in the ORLI and MUDOR districts.

Mr. Campbell said the proposal was that Section 175-107 B says "All residential subdivisions in the Residence A District, Residence B District, Residence Coastal District, Rural District, and those consisting of detached, single family and duplex dwellings on individual lots in the Office Research Light Industrial District and Multiunit Dwelling Office Research District shall be developed as Conservation Subdivisions..."

Councilor Smith noted that the conservation subdivision provisions only applied to residential development anyway.

Mr. Campbell said one of the ideas with this proposed change was that if there was one big lot and a developer wanted to put residential condominiums on it in the ORLI or MUDOR district, the conservation subdivision provisions would not apply. He said he thought this was a substantive change to what was originally proposed, so the Planning

Board would need to take another look at it, hold a public hearing, and then make recommendations to the Council.

There was discussion between Mr. Campbell and Councilor Smith as to whether the specific language that had just been read was what the Council wanted the Planning Board to look at. Mr. Campbell said if the Planning Board at least wanted to hear from the public on this, a public hearing would need to be scheduled. He noted that there would be turnover on the Council as a result of the March elections, and asked Board members if this language was something they would like to take care of now with the Council, rather than waiting until after the elections.

He said he thought it was something that should be moved on sooner rather than later, but also noted that the Planning Board needed to do a more comprehensive review of the conservation subdivision provisions. He said part of that review pertained to the recently proposed changes to them, and what the ripple effects of these changes could be to the entire set of conservation subdivision regulations. He also said the Board needed to consider whether it wanted to make other changes to those regulations, but said this could wait until after the Master Plan update was done.

Councilor Smith said he thought there was a subtext to the Council discussion on Monday, which was that Council members didn't want to ram the conservation subdivision Zoning change through, after the Planning Board had twice not recommended it. He said he thought they were asking for help in figuring out what would be appropriate, and said he personally would like to get some help from the Planning Board on this.

He said the Council had changed the Table of Uses to allow single family homes and duplexes in ORLI and MUDOR, when it really meant commercial housing for rental, which was the Zoning change he thought they should have made to accommodate that use. He said the Council had rushed into something without thinking it through, and would now like to think through the consequences of the compromise that resulted in the vote to change the Table of Uses.

Chair Parnell asked if the Planning Board would be provided with something for it to vote on.

Councilor Smith asked Councilor Robin Mower to explain what was going on.

Councilor Mower echoed Councilor Smith's comments that the Council was concerned that this not be one of those seemingly simple changes, and to that end respected the Planning Board's consideration of what some of the ripple effects could be. She said her impression was that if the Planning Board didn't wish to take this up, there might be a Council initiated change without them. But she said she believed it was the Council's preference for the Planning Board to look at this matter because of its expertise, and prior to the election in March. She said her impression was that the language Mr. Campbell had read was the language the Council wanted the Planning Board to take a look at.



Mr. Wolfe asked what kind of residential development the Council wanted to encourage in these districts.

Councilor Mower said the Council acknowledged that there needed to be some flexibility to allow some styles of housing in these districts, and that the conservation subdivision regulations should apply to only residential subdivisions there, for detached single family houses and duplexes.

Mr. Campbell said there was a fear that by allowing single family homes and duplexes in these zones, there would be cookie cutter subdivisions, and one way to avoid that was to require conservation subdivision. But he said what the Council was trying to do now was to revise the wording so conservation subdivision would only apply to certain things in these districts. But he said he didn't think that meant the Council was saying it wanted multi-unit development there.

Councilor Cote said that was a fair assessment of what the Council wanted, and said no one wanted the kind of cookie cutter development that could occur there now without the conservation subdivision Zoning change.

He also noted Councilor Mower's concerns about possible ripple effects on things such as lot sizes in the Dimensional Standards table, which were things the Planning Board needed to take a look at. He said that was what he believed the Council wanted, in asking the Planning Board to look at the wording changes discussed at the Council meeting on Monday.

Mr. Kelley asked whether the Council was officially asking the Planning Board to review and comment on this language, or if was an informal request.

Councilor Cote said he believed the Council had asked Mr. Campbell to carry this to the Planning Board.

Councilor Smith said the Council would meet on January 24<sup>th</sup>, and the Planning Board would meet on the 26<sup>th</sup>. He suggested that the Planning Board get something more definite from the Council as to what it wanted.

Mr. Campbell said he would put this issue on the Board's January 26<sup>th</sup> Agenda.

Mr. Kelley said the Lamprey River Advisory Committee had met the previous evening, and said Town Engineer Dave Cedarholm and Paul Currier of DES were there. He noted that one of the charges of the Committee was to review and comment on any permits dealing with the regulated segment of the river.

He said some changes had been made to the rate and amount of water that could be extracted at the Wiswall impoundment, and said the Committee felt it should have been consulted on this. He explained that DES didn't see this as a modification of the 401

certificate, and had described it as an interim situation.

Mr. Kelley said the Town had also shared its current Water Management plan with the Committee at that meeting.

**B. New Business: Site walk request for the Gottsacker Family Trust subdivision**

Mr. Campbell noted that the applicant's representative, Dave Garvey, had requested that there be a site walk sooner rather than later concerning the proposed minor two lot subdivision on Madbury Road. He said the application had been submitted.

Chair Parnell said it would be good for the Board to have the plans before going on the site walk.

There was discussion that the applicant had missed the deadline for submitting the application for the present meeting, and said it would therefore be heard on January 26<sup>th</sup>. It was agreed that the site walk would be held on January 22<sup>nd</sup> at 12:30 pm.

Mr. Campbell said Board members would be provided with information on the proposed subdivision plans ahead of time.

There was discussion as to whether the acceptance and public hearing could be done on the same evening, or if the acceptance could take place on January 26<sup>th</sup> and the public hearing could be held on February 2<sup>nd</sup>. It was agreed that the acceptance would take place on January 26<sup>th</sup>, and would be heard before the Capstone public hearing, and that the public hearing for the subdivision application would be held at the February 9<sup>th</sup> meeting.

**C. Next meeting of the Board: January 26, 2011**

**XI. Approval of Minutes –**

November 10, 2010

Page 3, line 42, should read "Mr. Sievert said yes, and said ..."

Page 9, line 2, should read "He noted that since it..."

Line 13, should read "...members who voted to recommend..."

Line 35, should read "Mr. Campbell suggested that..."

Page 10, line 7, should read "He said it was hard to think about a..."

Line 34, should read "...said why not include the..."

Page 11, line 29, should read "...encouraged the uses they all..."

Line 46, should read "...was enough protection against this..."

Page 13, line 12, should read "...would discourage residential subdivisions..."

Line 37, should read "Mr. Campbell noted that Beth Della Valle would meet with the Board next week."

Page 14, line 14, should read "... and it PASSED 5-0-1, with..."

Line 42, should read "...and it PASSED 3-0-3, with

Line 46, should read “..had been chosen as the location.”

***Councilor Smith MOVED to approve the November 10, 2010 Minutes as amended. Chair Parnell SECONDED the motion, and it PASSED 4-0-3, with Peter Wolfe, Richard Kelley and Bill McGowan abstaining because of their absence from the meeting.***

November 17, 2010

Page 5, line 46, should read “..there would be no place to park.”

Page 6, line 24, should read “...were interested in paring down...”

Line 29, should read “...conditional use. He said...”

Page 8, line 2, should read “..list she came up with.”

Page 12, line 2, should read “..she might come back with a...”

Page 14, line 3, should read “...had been a 0 ft setback in...”

Page 16, line 36, should read “...and he provided details on...”

Page 19, line 1, should read “..they should forward the to Mr. Campbell.”

Line 30, should read “...there was the risk that some tenants might cook in the bedroom...”

Page 20, line 31, should read “...on-site managers to...”

***Councilor Smith MOVED to approve the November 17, 2010 Minutes as amended. Chair Parnell SECONDED the motion, and it PASSED 4-0-3, with Peter Wolfe, Richard Kelley and Bill McGowan abstaining because of their absence from the meeting.***

December 8, 2010

Page 1, line 22, should read “...PASSED unanimously 5-0.”

Page 2, line 12, should read “ the Innovative Zoning Implementation Program (IZIP) committee

Page 3, line 33-34, should read “...and that Capstone would be revising...”

Page 4, line 4, should read “...toward the Kimballs.”

Page 5, line 8, should read “...made the property unattractive. She said...”

Line 19, should read “...only being able to park one car...”

Page 6, line 17, should read “She said the site was...”

Page 7, line 31, should read “Ms. Chickering...”

Page 9, line 15, should read “...2010, he looked at those parking spaces...”

Page 12, line 2, should read “...Durham, It’s Where U Live...”

Page 16, line 2, should read “...had added this to its agenda, and...”

Page 17, line 8, should read “..PASSED 5-0-1.”

Line 32, should read “...PASSED 5-0-1.”

***Councilor Smith MOVED to approve the December 8, 2010 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED 5-0-2, with Bill McGowan and Wayne Lewis abstaining because of their absence from the meeting.***

## **XII. Adjournment**

***Councilor Smith MOVED to adjourn the meeting. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.***

Adjournment at 10:06 pm.

Victoria Parmele, Minutes taker

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Susan Fuller, Secretary