

These minutes were approved at the February 9, 2011 meeting.

**DURHAM PLANNING BOARD
JANUARY 26, 2011
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Chair Lorne Parnell; Secretary Susan Fuller; Richard Ozenich; Richard Kelley (arrived at 7:28 pm); Bill McGowan (arrived at 7:09 pm); Town Council representative Julian Smith; alternate Wayne Lewis; alternate Andrew Corrow

MEMBERS ABSENT: Vice Chair Peter Wolfe; alternate Town Council representative Bill Cote

I. Call to Order

Chair Parnell called the meeting to Order at 7:06 pm. He appointed Mr. Corrow in place of Mr. Wolfe, and Mr. Lewis in place of Mr. Kelley.

II. Approval of Agenda

Councilor Smith MOVED to amend the Agenda to move Item VI, the subdivision application submitted by Garvey and Co., ahead of Items IV and V, the Capstone Development Corp. applications. Wayne Lewis SECONDED the motion, and it PASSED unanimously 6-0.

III. Report of the Planner

Mr. Campbell reviewed information that had been provided to the Board at the table, including:

- the updated subdivision plan for the Gottsacker application
- a letter from UNH on the transportation issues involved with the Capstone application
- two documents from the Town Engineer on the Capstone application, one which was on the review of the application, and the other which was a letter regarding his review of Capstone's appeal of the aquifer boundary associated with the application.
- an updated stormwater checklist for the Capstone application
- the management plan, lease application and floor plans for the Capstone application
- a letter from Chris Chickering of Pine Ledge Holdings requesting reconsideration of the Planning Board's decision on the conditional use application at the previous meeting. Also, the building permit regarding the Pine Ledge Holdings property

Mr. McGowan arrived at 7:09 pm.

Mr. Campbell said the Master Plan Visioning forum would be held at the Middle School

on Friday night, and he provided details on this. He said the forum subcommittee had been very busy putting this event together. He also said the survey subcommittee had met the previous day, and was working on the web based survey, which would follow the visioning forum. He said reports from both the forum and survey would be developed with help from UNH Cooperative Extension.

He said the Inclusionary Zoning Implementation Program (IZIP) committee met on January 14th, and provided additional feedback to the consultant working with the committee on possible Zoning amendments relative to the provision of workforce housing in Durham. He said the final changes on this would be made soon, and said he would then review them and send them on to the Planning Board for its review.

Mr. Campbell said the draft for the Town wide market analysis was complete. He said the Economic Development Committee (EDC) subcommittee had met to review it, and was assembling comments that would come back to the full EDC for discussion in February. He also said the EDC would meet on Monday, and would probably be discussing the Murphy proposal to redevelop the Grange Hall.

Mr. Campbell said he would be making a presentation to the EDC on TIF districts at that same meeting. He noted that the Town would be looking at the possibility of creating a TIF district for the downtown, but said the exact area for this hadn't been defined yet. He said there was a draft development plan that would go along with this.

He said there would be a discussion by the EDC on its organizational structure, noting that there currently wasn't a Vice Chair of the committee. He said there would also be a discussion on Dover's economic development organizational structure, explaining that the economic director there worked for a development corporation and not the city.

Mr. Campbell noted that at a special Planning Board meeting on February 2nd, the Board would continue its discussion on the first set of recommendations planning consultant Beth Della Valle had provided.

He said the Traffic Safety Committee had met on January 20th, and discussed the following issues:

- what to do with Pettee Brook Lane in terms of possible time limits and metering for the parking spaces there;
- a possible parking kiosk for the downtown area
- the speed table on Edgewood Road, and possible other areas. He noted that some people had said the speed table on Edgewood Road wasn't big enough, and some people and cars had gotten used to it. He noted that there was money in the CIP for the DPW to put some other speed tables in around Town
- possible blue light safety structures expansion beyond the University, in the downtown. He said there were some conflicting views at UNH as to whether this would be effective
- two way traffic model runs for the downtown. He said there was a scope of work from the consultant on this. He noted that the Strategic Plan had called for this, and

said hopefully the model runs that were planned would indicate what would need to be done to make two way traffic happen, if such a thing were possible.

- He said UNH transportation planner Steve Pesci had discussed with the TSC a traffic and air quality analysis for South Drive, a road that would come out at the Main Street roundabout with McDaniel Drive and would be used as a transit corridor for the University. He said the University would provide the Planning Board with a presentation on this in the near future.

IV. Acceptance Consideration of an Application for Subdivision submitted by Garvey & Co. Ltd, Durham, New Hampshire on behalf of the Gottsacker Family Trust, Durham, New Hampshire to subdivide one lot into two lots. The property involved is shown on Tax Map 1, Lot 7-3, is located at 111 Madbury Road, and is in the Residence A Zoning District.

Dave Garvey spoke before the Board. He said a two lot subdivision was proposed, and said it met all the requirements of the Zoning Ordinance. He said there was a 100 ft of frontage on each lot, and noted that on the most recent plan that had been provided, all of the correct setbacks had been included. He said access to the new lot would be on the southerly end of the lot, towards where the right of way was.

Councilor Smith asked if the application was complete.

Mr. Campbell said yes, although noting that there would be a few minor changes made to it. He also said the applicant had provided a waiver request from having to do the conceptual consultation and design review phases. He said for subdivisions of two lots or less, the Board exempted them from having to be a conservation subdivision, and always granted the waiver from having to do the first two phases.

Councilor Smith MOVED to accept an Application for Subdivision submitted by Garvey & Co. Ltd, Durham, New Hampshire on behalf of the Gottsacker Family Trust, Durham, New Hampshire to subdivide one lot into two lots, and schedules a public hearing on February 9, 2011. The property involved is shown on Tax Map 1, Lot 7-3, is located at 111 Madbury Road, and is in the Residence A Zoning District. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

V. Public Hearing on 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.

VI. Public Hearing 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.

Attorney Peter Loughlin represented Capstone Development Corp. before the Board, and said Mr. Acken would first provide an update to the Board.

Mr. Acken said there had been continued dialogue on the cemetery plan. He said a proposal had been provided to the Town's Cemetery Committee on how to address the buffer between the properties, and said once feedback on it was received and agreement had been reached, this would be provided to the Planning Board.

Mr. Acken said the Management Plan and Lease had been provided to the Board. He also said a copy of the building plans had been provided. He noted that these plans were still in development, and explained that Capstone's College Station building plans had been provided because they were the most similar to the plans that would be used for the development in Durham. He said there would be some minor modifications to these plans to fit Durham, such as 6 inch rather than 4 inch studs in order to accommodate thicker insulation. He said the full set of plans specifically for Durham would be provided to the Planning Board.

Mr. Acken noted that Tom Johnson had just sent out an email on the 2009 IECC Climate Zone 6 change that had come out in January. He said Capstone had known about this change for some time, and had designed the cottages to comply with it. He said the initial tests run using the new standard indicated that the cottages were between 1.5 and 4% above the standard, depending on the orientation of the building. He explained that the new standard took into account the type of insulation of floors, walls and ceilings; the internal volume of the rooms; ceiling height; windows used; etc. He said Capstone felt very good about the energy efficiency of the cottages based on the findings of these tests.

Mr. Acken next spoke about the issue of handicap accessibility, which he noted had come up during the conceptual consultation phase. He said given the nature of the cottage design, the code didn't require that the buildings were handicap accessible, but he noted that the clubhouse did have to be accessible. He said Capstone's corporate policy was to ensure that if there was someone with a need for accessibility, a unit would be retrofitted to accommodate this. He said this had been done at the Creekside at Auburn development.

Mr. Kelley arrived at the meeting at 7:28 pm.

Mr. Acken noted the memo provided by UNH on issues surrounding the idea of bus service to the development. He said the issue right now was the hours of a potential third bus, and said UNH would be looking at the peak hours based on the current runs in order to determine what hours a third bus would be required to cover. He said Capstone was as concerned about providing adequate transit to the site as the Planning Board and UNH

were, and would assure that this happened.

Mr. Acken spoke next about the revised design for the clubhouse. He noted that Capstone had wanted a building design that allowed it to fit in more along the wetland side. He showed the front and side elevations for the building as well as the floor plan, and provided details on them. He said the quietest functions would be upfront, and the more active functions would be in the back. He noted a multipurpose room upfront, which he said had been a great success at the Baton Rouge development. He described a server/social gathering area in the central portion of the building, and also noted a conference room and some private study rooms within that central area.

He said the fitness area in the back had been expanded in the revised design, noting that students had said a gym was one of the principal things they would like to see in the clubhouse. He described briefly the locker rooms, pool, tanning beds, steam room and sauna that would be located toward the back as well.

Mr. Acken noted a letter from the City of Auburn Planning Director Forrest Cotten regarding the Creekside cottage development there, and read it into the public record. The letter stated and provided details that Capstone's Creekside of Auburn development had proven to be a welcome addition to the City and the students of Auburn University.

Mr. Cotten's letter said Capstone had unequivocally delivered the product that had been promised, and said the development was now a very aesthetically pleasing, active and thriving neighborhood. He said he had been equally impressed with the management of Creekside, and provided details on this.

Attorney Loughlin said he had planned to go through the checklist for the Conditional Use application, and include site plan application details as part of this. But he said he could proceed however the Board proposed.

Chair Parnell said the Board would be dealing with the two applications concurrently, so what Attorney Loughlin had proposed was acceptable.

Attorney Loughlin said he would review the Conditional Use criteria as they pertained to the project.

Site Suitability

Regarding the issue of adequate vehicular and pedestrian access for the intended use, Attorney Loughlin noted the traffic report from transportation consultant Steven Pernaw. He asked if the Town had heard back from its traffic consultant about the model that was supposed to be run, and Mr. Campbell said it was still being worked on.

In regard to the issue of adequate public services to serve the intended use, Attorney Loughlin noted a meeting with Town staff on this, and also said Chief Kurz had provided two memos. He also said Fire Chief Landry had raised a number of issues, one of which

was that the buildings should be sprinklered. He said there had been discussion as to whether this was actually required by any codes, but said Capstone had agreed that all of the occupied buildings would be sprinklered.

Attorney Loughlin said it was not anticipated that there would be an impact to schools from the development. He said Appledore engineer Joe Persechino would speak to the Board on water, sewer and solid waste issues.

Regarding the issue of environmental constraints that would impede development at the site, Attorney Loughlin said the floodplain location was being determined. He said his understanding that it would not be in any area of the site that would be developed or disturbed. He said steep slopes would not be affected by the development.

He noted a letter just received from the Town Engineer that agreed with the assessment from R. W. Gillespie & Associates that the aquifer on a portion of the site didn't meet the requirements under the Zoning Ordinance. He said Capstone would ask that the aquifer designation be changed.

Attorney Loughlin said engineer Mr. Persechino would discuss the issue of appropriate utilities being available for the development.

External Impacts

Attorney Loughlin provided an aerial photo, and said the external impacts of the Cottages at Durham on abutting properties and the neighborhood would be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. He said the neighborhood was a mixed use area, and he described surrounding properties. He said the use would not be inconsistent with surrounding uses.

Character of the Site Development

Attorney Loughlin said the Zoning Ordinance called for the development to be compatible with the established character of the neighborhood, and that any external impacts on the neighborhood would be mitigated. He said the design would be consistent with most residential neighborhoods in the Town, and said it was a permitted use in the ORLI district.

Character of the Buildings and Structures

Attorney Loughlin said the Board had seen that the cottages were designed to be at a scale, height and massing of a traditional residential neighborhood .

Preservation of Natural, Cultural, Historic and Scenic Resources

Attorney Loughlin said it was a wooded site, and would look different after the development. But he said 17.9 acres would be preserved forever with a conservation easement. He said the open nature of that land would be preserved forever, and said it

wasn't felt that the development would damage the various resources there. He noted the cemetery next door, and said there were ongoing discussions on this.

Impact on Property Values

Attorney Loughlin said the proposed use would not cause or contribute to a decline in the property values of adjacent properties. He said the Fiscal Impact Analysis addressed this, and said Mr. Thibeault, the author of the report, was available to answer questions the Board might have.

Availability of Public Services and Facilities

Mr. Persechino said there had been several meetings with Town staff on water and sewer availability on Technology Drive. He said Capstone had been assured that there was adequate capacity, and he noted the 18 inch sewer line on Technology Drive, as well as the 12 inch high pressure water main there. He noted that the site was being designed for 75 gallons per day per bed.

He said Capstone had recently taken a more in-depth look at the design with DPW, and said there was a request to add pressure reducing valves to the line. He said two such valves would be added to the system, and said this design was being finalized.

He also said the sewer design was being finalized, and said they were working with site contractor Tom Severino, who had recently gone to Capstone's Baton Rouge development to observe the water and sewer installation layout design there. He said the design for Durham would be tweaked to make it a bit more efficient, and said this design would be submitted along with the sewer permit once it was complete.

Fiscal Impact

Attorney Loughlin noted the considerable detail provided on this issue in the Fiscal Impact Analysis done by Mr. Thibeault.

Conditional Use Permit required for Wetland Buffer Disturbance

Attorney Loughlin said it was a 41 acre site, with 32.8 acres of upland, and 8.2 acres of wetlands. He said 14 acres, which was 32% of the site, was wetland buffer, which impacted a substantial area of the site. He said between the wetland and its buffer, 22.2 acres, or 54% of the site had one restriction or another, and said 43% of the upland was restricted.

He said Capstone proposed 100 single family or duplex buildings, which was 141 units. He said the permitted density based on soils, etc, was 298 units. He said the impervious lot coverage permitted in the ORLI district was 50%, but said the development, including the porous pavement would have an impervious coverage of 27%.

Attorney Loughlin said the applicant was asking for a Conditional Use permit concerning the impact on the wetland buffer. He read the definition of uses requiring a Conditional

Use permit, and said the drafters of the Ordinance recognized the value of wetlands and wetland buffers, but also recognized that there would be times when perhaps there would need to be an incursion into them, and that there was a need to establish a matrix for addressing this.

He said the impact Capstone proposed would be that 1.8 acres of the 14 plus acres of wetland buffer would be disturbed for the sidewalks, the clubhouse, parking and the retaining walls. He also said grading of 2.19 acres of buffer was proposed, along with an impact on 0.66 acres of buffer from gravel wetland construction as part of the stormwater management proposed for the site.

He said there would also be disturbance of 2,865 sf of shoreland protection area of the perennial stream in the northeast portion of the property, for parking and grading and provided details on this. He referred to a large map that showed the various areas to be impacted, and noted that some of the wetland complexes on the site weren't that large yet had buffer areas of a significant size.

Attorney Loughlin reviewed the purposes of the Wetland Conservation Overlay district. He said the buffer relief requested by Capstone would protect water quality by managing stormwater runoff, and said it was accepted by the Conservation Commission and Town staff that the stormwater management plan proposed was superlative in terms of protecting the quality and functioning of the wetlands.

He said the relief requested would not impact on the wetlands' flood storage capacity. He also said wildlife and fisheries habitats would be protected. He noted that it had come up at the ZBA meeting that the development would not affect fisheries habitat. He said although there would be some loss of wildlife habitat, it wouldn't happen in a way that frustrated the purpose of the Wetlands Conservation Overlay district. He said most of this loss would result from the fact that it was developable land.

Attorney Loughlin said the development proposal would maintain the stream flow and groundwater recharge area, and would conserve natural and scenic qualities, among other things through the conservation easement to be placed on a portion of the property. He said the applicant would prefer the maximum amount of protection for this area, whether this was through an independent organization or the Conservation Commission was the grantee. He said the goal would be to make sure that there was no question about the protection.

He said the crown jewel of the natural resources on the site was the Oyster River and its watershed area. He noted that the forest all around the river would be preserved and protected, so there would not be adverse impacts on the river and watershed. He said wetland scientist Adele Fiorillo would discuss the wetland impact studies and mitigation recommendations she had completed.

Ms. Fiorillo, from Normandeau Associates, first provided some context on the wetland areas on the Capstone property. She said wetland delineation of the site was done in

2010, along with an assessment of the wetlands using the Army Corps of Engineers methodology, which looked at wetland functions and values. She said work related to soil mapping and estimation of seasonable high water tables had also been done in support of the Alternation of Terrain permit and the engineering work Appledore was doing.

Ms. Fiorillo said a functions and values report on the wetlands had been developed, and also said she had completed an assessment of the wetlands and buffers that included a mitigation plan. She said the site had been previously logged so there weren't a lot of large trees, but said what was left was a fairly mature forest. She said there were a series of woods roads on the site from logging activities, and noted that a number of the roads being designed for the development followed these roads that were already there.

She said the Oyster River was a part of the rear property boundary, and also said there was a perennial tributary in the northeast corner that flowed between the Goss and Capstone properties, and then onto the Capstone property.

Ms. Fiorillo said the wetlands on the property were interesting in that they were clustered. She noted that they were assessed based on their vegetation cover types and their hydrological component, and said using these two variables, and also looking at any unique features, the wetland were clumped into complexes A, C and D. She said there was also an individual wetland B that was separated out because it contained a vernal pool.

She spoke in some detail on the wetland complexes, and explained that complex D was comprised of 4 small wetland areas, and included the wetland area Capstone proposed to fill, as well as an area where a gravel wetland was proposed. She said wetland complex D was distinguished from complex A because the wetlands in D were much smaller, and also because there was a drainage divide on the property that ran between them.

Mr. Kelley received clarification that the smallest component of wetland complex D was on one of the trail roads.

Ms. Fiorillo explained that this area was actually a skidder rut trail that had developed into having wetland characteristics. She said wetland complex C included the wetlands that were hydrologically connected to and immediately adjacent to the Oyster River.

She provided the Board copies of Table 1. Summary of Principal Wetland Functions and Values, and Table 2. Wetland and Buffer Function and Mitigation. She explained that a function was an inherent component of a wetland, such as water filtration for water quality, while a wetland value was something not necessarily inherent in the wetland, but that humans could gain from the wetland, such as recreation and fishing opportunities on the Oyster River.

She said it was clear from Table 1 that wetland complex C contained the greatest number of principal functions, and was surely the highest functioning, most valuable group of wetlands on the site.

Ms. Fiorillo said the wetland assessment was important in terms of evaluating the property relative to where the impacts were, and also assisted in terms of evaluating mitigation that was needed. She next provided a slide presentation on the wetland areas on the site, and noted that where possible, she had superimposed onto the photos the wetland boundaries that were determined.

She explained that wetlands were delineated using three criteria: hydrophytic vegetation, signs of hydrology and hydric soils. She showed a slide of the proposed impact area that was part of wetland complex D, and noted that there was no standing water there, and not much of a topography break, so soil was an important trigger for the wetland boundary.

Ms. Fiorillo noted that this impact area contained a bit more of red maple, which was a wetland tree, as compared to areas on the edge where there was gray birch and hemlock, which tended to be upland species. She also noted the subtle shift there from a somewhat poorly drained soil to a poorly drained soil. She said this wasn't typically what one would look for in looking for a wetland. She said other slides would show wetlands that were associated with the river and were distinct wetlands compared to the marginal wetlands in complex D.

She showed a slide of an impact area in Wetland complex A, which she said was also a marginal wetland area. She also showed the vernal pool area in wetland B, which she explained was somewhat lower on the landscape and had a better capacity to hold water. She noted that this was probably why there had been signs of frog breeding activity there in the spring.

Ms. Fiorillo provided additional slides of wetland complexes A, C and D, including photos of the wetlands adjacent to the Oyster River, which she described as having robust vegetation and canopy. She noted some steep slopes in some areas.

She said Capstone was seeking relief for 6,349 sf of wetland fill for impacts to an area in complex D, as well as the encroachment into the wetland buffers.

It was noted that the wetland buffer impacts included: 1.8 acres for the sidewalks, the clubhouse, parking and the retaining walls; 2.19 acres for grading; and 0.66 acres for gravel wetland construction. It was noted that Capstone had received a variance for impacts to 6,700 sf of wetland buffer from some of the residential buildings that were proposed. It was also noted that there was a very small area of parking proposed within the Shoreland Protection Overlay district.

Ms. Fiorillo said they had looked at how to best fit the project on the site, while protecting what were ecologically important areas of the site, which was the Oyster River, wetland complex C, and the vernal pool in B. She said the design proposed for the development followed this very well. She said the biggest wetland buffer encroachments proposed were to allow gravel wetlands, which would provide stormwater management and protected water quality. She said this was an appropriate use of the wetland buffer,

and was one of its functions to begin with. She said other buffer encroachment areas were fairly minimal.

Ms. Fiorillo next described the wetland mitigation that was proposed. She spoke about the low impact development design that included the use of two gravel wetlands. She said there would also be buffer restoration where no building was proposed but grading was needed. She said this would be located throughout the perimeter of the site, including around gravel wetlands. She said there would be a seeding and planting re-vegetation plan that would involve no maintenance.

She said there were also areas where the buffer was very narrow, adjacent to wetlands. She said because the area had been logged, and had a thick hemlock tree cover, there wasn't a lot of ground cover. She said in developing the site, removal of some trees would mean more light would come in, and said they therefore proposed to enhance the wetland understory with an herbaceous layer and a shrub layer. She said this would allow the buffer to function better.

Ms. Fiorillo also noted the land preservation component, where almost 18 acres would be put into a conservation easement or deed restriction.

She said Table 2 correlated wetland and buffer function for wetland areas A-D, and also showed proposed mitigation for each area. She spoke in some detail about these mitigation approaches.

Mr. Kelley received clarification that the applicant's team would be invited back for future meetings so board members could ask them questions.

Chair Parnell said when the Board deliberated after the public hearing closed, they would most likely have questions.

Ms. Fiorillo said because of the way the mitigation plan was developed, there was about 7000 sf of wetland impacts. She said they were proposing to enhance about 19,150 sf of wetlands, and said 76,230 sf of buffer would be restored. She said the gravel wetlands would comprise 28,558 sf, and noted that besides the stormwater management benefits from this, it would provide wildlife habitat. She said that looking at this overall, she was confident that there would be no net loss of wetland function on the site. She said that goal had been exceeded with this project.

Mr. Persechino said the two key low impact development (LID) stormwater management approaches proposed for the site were gravel wetlands and porous asphalt. He said gravel wetlands were the best LID approach in areas of high seasonal water table, and resulted in wonderful pollutant removal, including nitrogen and phosphorus. He noted that the UNH Stormwater Center had studied this. He provided details on where these gravel wetlands were proposed to be located, and explained that they would be planted with wetland species and would provide filtration as well as stormwater detention.

He said in proposed fill areas for parking and structures where the land would be brought up to grade, they were able to create a separation from the seasonal high water table, which allowed the construction of the relatively deep pavement section required for filtration of groundwater as part of a porous pavement system. He noted the areas where this was proposed. He said they had also proposed porous asphalt systems that had a deeper gravel reservoir in order to hold water from large storms and allow infiltration into the soil and/or collection by under drains that drained into surrounding wetlands.

Mr. Persechino explained that there were 4 primary subwatershed areas on the site now, and described how the surface water that hit them flowed. He said with the proposed conditions, they had tried to match these existing conditions as much as possible.

Attorney Loughlin spoke next about the four conditions that needed to be met in order for the Board to grant a Conditional Use permit for impacts in the Wetland Protection Overlay district. He said when looking at these, it was helpful and necessary to look at the development proposal as a whole. He also noted that what the applicant proposed was a permitted use, if certain conditions were met.

He said the first condition was that there was no alternative location on the property outside of the Wetland Conservation Overlay district that was feasible for the proposed use. He said if there was, the applicant wouldn't be asking for this relief. He said Capstone and Ms. Fiorillo had worked to orient the development so it wouldn't require any relief, but were not able to find an alternative location that would result in no impact.

Attorney Loughlin said the second condition was that the amount of soil disturbance would be the minimum necessary for the construction and operation of facilities, as determined by the Planning Board. He said the development had been designed to have the narrowest possible effect, and said in the plans, every square foot of impact and mitigation of that impact had been accounted for.

He said the third condition was that the location, design, construction and maintenance of the facilities would minimize any detrimental impact on the wetlands, and mitigation activities would be undertaken to counterbalance any adverse impacts. He said this was what Ms. Fiorillo had concluded in stating there would be no net loss of wetland functions. He said the Ordinance wasn't saying that wetlands or wetland buffers could never be touched, but said their ability to protect water quality had to be maintained. He said the solutions the applicant proposed met this condition.

Attorney Loughlin said the fourth condition was that restoration activities would leave the site as nearly as possible in its existing condition and grade. He said while the site would be developed overall, there would be minimal change in some limited areas. He said even in areas where the buffer would be impacted, the site would be left pretty much as it was now, with some minor changes.

Mr. Kelley asked Mr. Persechino if the hydraulic analysis took into account tail-water effects on the closed conduit system.

Mr. Persechino said the Hydrocad system used to do the analysis did take into account that it was a dynamic system, and did consider tail-water effects.

Councilor Smith MOVED to open the Public Hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

A J Coukas, External Affairs Chair for the Student Senate at UNH, said he hadn't heard anything that evening that would discourage pursuing the project, and said he was in favor of the application. He said he believed the development would provide benefits to all the parties concerned.

He said it would provide affordable, desirable housing near the campus, would alleviate pressure from UNH student housing, would give the Town both revenue from the land sold and student housing removed from residential areas. He also said it would draw students away from neighboring towns, which would stimulate local businesses. He said it would serve the interests of the University and the Town at large.

Richard Peyser, UNH Student Body President, said Mr. Coukas had summed things up well. He said the students he had spoken to about this were overwhelmingly in favor of this proposal. He said it would bring new amenities to the student body, and said perhaps this would spur competition and provide a better living standard for more students, which he said was something they had been clamoring for and desperately needed. He implored the Planning Board to support the application.

Cynthia Copeland, Executive Director of the Strafford Regional Planning Commission, said she was present in an abutter status, and was trying to be objective and neutral. She said this was a project of regional impact, and explained that SRPC had a regional impact committee that consisted of commissioners from Dover, Rochester and Rollinsford. She said they were unable to meet last week due to the storm event, and would be meeting on Friday at the Rochester Community Center. She said this meeting was open to members of the public and Planning Board members.

She reviewed, as Mr. Campbell had previously done, the things to be considered in regard to whether there was a regional impact from the proposed development. She said as staff to the regional impact committee, she had prepared a report for them to consider, and said they would review this and ask questions about it. She said as staff, her role was to take both a micro and macro look at the site.

She said a question for the committee to consider was whether the development would cause an increase in traffic that would diminish the capacity or safety of the street system in the adjacent town.

She said the Land Conservation Plan for NH Watersheds prepared in 2006 indicated that this property was within the core focus area for the Oyster River. She showed a map from this plan that had been provided to PB members, and said the Capstone property was a

slim area that linked the northern and southern portions of the conservation focus area, both of which pretty much followed along the Oyster River.

Ms. Copeland noted that she said had provided the Planning Board with a description of the qualities of the conservation focus area. She said the issues most relevant for this project was that the Capstone property provided the link between the larger northern and southern portions of the conservation focus area, and also that it was a rearing habitat for the American brook lamprey.

She noted that a map in the NH Wildlife Action plan indicated that the property was an Appalachian oak pine forest, and was part of the highest ranked wildlife habitat in NH. She said she realized this was a macro analysis that she was providing. She said she had also looked at the information compiled as part of the Oyster River nomination into the NH Rivers Management and Protection Program. In addition, she said she had looked at what was happening in the neighboring community of Lee regarding land conservation and agricultural protection. She noted that this information was being updated on a regular basis.

Ms. Copeland noted there had been questions about the aquifer boundary issue, and asked that she get a copy of the Town Engineer's letter regarding this so she could update the regional impact committee on this. She said she had noted in her report to the committee that the floodplain boundary was being updated.

She said the 1970's Soil Conservation Service soil survey indicated that the property included prime farmland, and asked that the soils inventory done by Normandeau be provided to her so she could provide this updated soils information to the regional impact committee.

Ms. Copeland noted that SRPC was a federally designated Metropolitan Planning Organization that dealt with transportation planning, and said she had communicated with UNH campus planning regarding the traffic access and parking issues with the proposed development. She said the information provided appeared to address her questions. She said the final area the SRPC had to look at was the issue of housing needs. She noted that consultant Bruce Mayberry had provided their regional housing needs assessment. She said there was the question of whether the development would replace a substantial number of existing houses used for student housing in the region. She noted that Dover and Newmarket, as well as portions of downtown Durham, provided student housing for the region. She said this was an ongoing topic of discussion for the region, and said this project would be considered as part of that discussion.

Ms. Copeland said the impact committee would be reviewing the basic macro and micro level information she provided to them, and would make recommendations to the Board based on this. She said this was an objective and open process they were involved with, and said anyone who would like to come to their meeting on Friday was welcome to attend it.

Mr. Kelley asked when the Board should expect to see the committee's response.

Ms. Copeland said it was understood that the Planning Board's review process was moving right along, and said she would be working on the report that weekend.

Chair Parnell asked if there was anyone who would like to speak in opposition to the project, or who had concerns about it.

Attorney Scott Hogan said he represented nine Durham property owners, one of whom was the Rivers Edge apartments property and was an abutter. He noted that he had represented these property owners at the ZBA meeting the previous evening, and at the site walk.

He said he would address the Conditional Use permit application proposal that evening. But he said generally, when he looked at the proposal for the project and its location, its scope was what he had heard the most concern about. He said he hadn't been able to find an equivalent project in the region in terms of the proposed density of 620 beds and with the kinds of amenities proposed.

Attorney Hogan said on the site plan review side of this, the Board would look at various possible impacts. But he said the scale of the project required a level of vetting on all of those issues beyond anything they had seen in Durham. He said the sensitive nature of the natural resources on the site, the fact that it abutted the Oyster River and the fact that almost half of the property had been designated as having some of the highest quality wildlife habitat in the State were things he had looked at initially, in considering the wetland, wetland buffer and shoreland impacts proposed by the project.

He said when Capstone initially came to the Conservation Commission, it was pretty clear that this cottage design was the best product for student housing when space was available. He said inherent in the current design was the fact that it had a very large footprint, with spread out buildings and a lot of amenities. He said the applicant had said they needed about 600 beds to fiscally allow the kind of management they wanted to have, and had also said this kind of layout was what was best in terms of getting financing, and marketing the project.

Attorney Hogan said because of that, there would be significant wetland and buffer impacts. He said the applicant had designed the plan based on the way the Zoning Ordinance was drafted. But he said the Ordinance had an unusual aspect in that residential structures were prohibited in the wetland buffers, which was why a variance was needed, while nonresidential structures were allowed in the buffers as a Conditional use and so were to be addressed by the Planning Board.

He said this point had been made at the ZBA meeting last night, and the ZBA had made it clear that it would deal strictly with wetland impacts from residential structures. He said what the Planning Board was dealing with now was just part of the total wetland and buffer impacts to the site, and stated again that this was only because of the peculiar way

the Zoning Ordinance was written.

Attorney Hogan said a fundamental representation by the applicant was that when the development was complete there would be an improvement in water quality function and wildlife habitat on the site. He noted that Mark West from West Environmental had been working with him, and in his review of the project had focused on the fact that half of the project site had a high wildlife quality ranking. Attorney Hogan said saying that wildlife habitat would improve as a result of this project was a pretty big statement, and said there was a pretty big burden for the applicant to prove this.

He said when the applicant first came to the Conservation Commission, the commission was concerned about wetland and buffer impacts throughout the site. But he said when the applicant later returned to the Commission, it was represented that various changes had been made to the design, and that a 61% decrease in impacts to buffers had been achieved. He said under the Conditional Use process, the Planning Board needed to look at whether there were feasible alternatives to allow 620 units in a way that wouldn't impact the wetlands and buffers.

He said the Conservation Commission had asked questions such as whether some buildings could perhaps be three stories, or if some recreational facilities could be eliminated. He said the Board would need to get into these kinds of issues and determine whether the applicant had met the burden of proof that there were no other feasible alternatives. He said the applicant had made a very specific statement that there were not.

Attorney Hogan next spoke more specifically about the Conditional Use criteria. Regarding the issue of the cost of municipal services if this project was approved, he said it was clear that new staff would need to be hired for code enforcement during the construction process. He noted that the construction would have to be done carefully especially because of the sensitive resources on the site, and said the cost of this needed to be quantified.

He also said the Board would need to quantify what level of staff would be needed to oversee and enforce the Zoning Ordinance for a development of this size. He said the layout and floor plan for the development easily invited more than 620 people, and said he didn't know if much had been said in terms of the cost of code enforcement regarding this issue. But he said it was something that needed to be factored in. He also said that regarding fire and safety issues, the cost to the Town of ensuring that these things were overseen would need to be quantified.

Attorney Hogan said the site plan indicated that Technology Drive was a private road, but said this had to be resolved in terms of the Conditional Use permit requirements concerning basic vehicular and pedestrian safety and traffic study issues.

He said this project had the standard issues of external impacts, but said a concern he had heard was that eventually, with 620 students living there, someone would suggest accessory uses that this community would draw to itself. He noted the Conditional Use language in the Ordinance that spoke to this: "The location, nature, design, and height of

the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.“

Attorney Hogan noted that the applicant had said there would not be such external impacts, but he said the Board needed evidence from the applicant that this wouldn't happen, or if it did, it would be appropriate and would be consistent with the Master Plan.

He said the Conditional Use criterion regarding the preservation of natural, cultural, historic, and scenic resources specifically spoke to preservation of wetlands and significant wildlife habitat. He said the language required that the applicant prove that this habitat would be preserved, but said right now, the evidence on this seemed sparse in demonstrating how this project would improve some of the highest ranking wildlife habitat in the State.

In regard to the criterion concerning possible fiscal impacts on the Town, Attorney Hogan noted that although this was a student rental housing development, anyone who would like to could live there, so there was the possibility that families with children would like to live there. He said the applicant had represented that there would not be an impact on local schools from this development, but said the Board would have to consider this issue.

Attorney Hogan next reviewed the Conditional Use criteria that had to be met concerning construction within the Wetland Conservation Overlay district. He noted the first criterion, that there was no alternative location on the parcel that was outside of the Wetland Conservation Overlay district that was feasible for the proposed use.

He said there were any number of alternative designs that were possible and reasonable for this development on this property, and said the applicant had chosen a preferred design as a matter of their business plan. He said the Planning Board was required to have actual proof that showed there were no alternative locations where the uses could be located.

Attorney Hogan reviewed the other Conditional Use criteria that had to be met under 175-61 B, and noted that Mr. West's letter addressed these. He read the letter out loud, and noted a map Mr. West had included with it, which showed the ranking of wildlife habitat on the site.

He noted that Mr. West said that a significant portion of the proposed development was in areas identified by NH Fish and Game as highest ranked habitat Statewide. Mr. West's letter said the project would significantly impact the value of surrounding habitat due to the large amount of clear cutting that was planned, estimated at 22 acres.

Attorney Hogan said the applicant's position was that the mitigation to be provided would adequately match the wetland function and values there today, and would actually

improve water quality and wildlife habitat wetland functions.

He said Mr. West's letter said the project would impact over 4 acres of wetland buffer zone, including the buffers to wetlands directly associated with the Oyster River. The letter said these steep slopes protected the river, and were sensitive to alterations of upslope hydrology through fill and stormwater infiltration. It said these buffer impacts posed the greatest threat to the most important wetland on the site, and could be avoided by reducing the size of the development.

Mr. West's letter said the mitigation plan included wetland enhancement in the form of planting in wetlands, which did not provide increased wetland function, and also said it hadn't been indicated that the proposed species to be planted currently existed on the site. It said more human disturbance would not increase the function of the wetland.

The letter said the 19,000 sf of buffer restoration represented only 10% of the buffer encroachment by the project, and included plants that might or might not exist on the site. It said these measures did not replace the loss of mature forest adjacent to sensitive wetland resources.

Attorney Hogan said Mr. West had noted in the letter that one of the small isolated wetlands in complex D was avoided through project design, which demonstrated the ability to preserve these smaller wetlands on the site.

Mr. West's letter said that contrary to the conclusion in Attorney Loughlin's letter, this development would not improve the wetland functions of water quality protection and wild habitat at the site. It said the stormwater measures were designed to mitigate the impacts of the development, and were not designed to replace these functions.

Attorney Hogan provided copies of the letter and map from Mr. West to Board members. He summarized that the applicant had requested substantial relief from the provisions of the Zoning Ordinance relating to wetlands, wetland buffers and shorelands. He said to get that level of relief, they had to demonstrate that there was no other way to do this project. He said it seemed that some of the design options the applicant had right now undercut the idea that this was the only feasible option. He said the applicant had stated in its letter to the Board that what was proposed was the only feasible option. He said the Board needed to ask them to prove this.

Attorney Hogan submitted into the public record the parties that he represented.

Richard Weyrick, Vice President of the Oyster River Watershed Association, said that for the past 10 years, the Association had held meetings and done river walks on a monthly basis. He said they had walked the Capstone site. He also said there had been a volunteer water quality sampling program conducted for 10 years in conjunction with a number of entities, and said the good news was that there hadn't been a substantial decline in river quality during that time.

But he said there were some trouble spots along the river. He said one of the sampling points, the USGS gauging station, was immediately downstream of the Capstone site, and said the Board might be interested in obtaining the water quality information from it. He said at that sampling location, some troubling incidents of sediments in the water had been found, and said this had been a minor concern from time to time.

Mr. Weyrick said the planning for the Capstone project had been very carefully done, but said there were still some major concerns about it. He said a question regarding the fill being planned was that it looked like the fill would result in steeper slopes than the natural slopes, which would require some special considerations.

He said another issue was that the time of greatest risk regarding the project was during construction, and said if a lot of disturbance happened at the same time, and occurred during a time of significant storm activity, it would be very difficult to keep impacts away from the Oyster River. He said impacts from a storm like the Patriots Day storm or the Mothers' Day storm would show up.

Mr. Weyrick said the stormwater treatment design had been praised as first rate, especially regarding treatment of the first inch of precipitation. He said that was crucial, but said storms that delivered over an inch of precipitation were commonplace so it didn't mean there would be no release of water into the river, but that when this happened it would probably be of a better quality than if it came from the first inch of precipitation. He said at the first Conservation Commission meeting where this application was looked at, he had asked whether salt would be used on the roads in the wintertime, and if chemicals would be used for landscaping during the growing season. He noted that salt had been a continuing water quality concern throughout the watershed, and in regard to Great Bay.

He spoke about the decline in the water quality of Great Bay over the last few decades, and said it had occurred in the face of meeting the design standards that had been in place for the development that had occurred. He said meeting the standards hadn't been enough, so perhaps there needed to be a higher standard.

Mr. Weyrick noted that a question had arisen was whether there was a stratified drift aquifer under the site. He said there were GIS layers that said there was, and also said he had looked at the soil maps for Strafford County for the southern and western portion of the site, which indicated a deep sandy loam outwash soil that often was found underneath a stratified drift aquifer. He said if that was the case, there certainly was a hydrologic connection between the project site and the river. He said this needed to be determined, and said if it was the case, there was an implication in terms of how to handle the impervious portions of the project.

He said the area where the property was located was a relatively large, undeveloped corridor along the river. He said there large areas of protected land upstream as well as relatively large protected areas downstream. He said the particular conservation focus area where the development was proposed was sort of an hour glass, and said the

development would restrict that hour glass even more. He said this was something that should be recognized.

Mr. Weyrick said the Oyster River Watershed Association was ready to work with people who were looking to make improvements to the project and design it in ways where the Association's concerns could be incorporated into it.

Chair Parnell said given the time, the fact that there were others who would like to speak, and the issues that were still outstanding and that the Board was waiting for more information on, the public hearing should be continued to the next meeting.

Richard Kelley MOVED to continue the Public Hearing to February 9, 2011. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Break from 9:43 to 9:51 pm

VII. Other Business

A. Old Business:

Mr. Campbell said the original Council initiated Zoning change adding ORLI and MUDOR to section Article XIX, Section 175-107 B regarding conservation subdivisions was passed by the Town Council at its meeting on Monday. He noted that this was the proposed Zoning change that the Planning Board had voted down twice.

Councilor Smith said if the Planning Board was concerned about what the Council had done, it might want to do some tweaking of the Ordinance.

Mr. Campbell said he would have a list for the Board that involved more than tweaking.

Master Plan Survey

Mr. Campbell said most of the boards and committees had gotten their ideas and questions back to the survey subcommittee. He said the subcommittee had started developing the draft survey, and would meet again the following Tuesday.

Aquifer Boundary Appeal

Mr. Campbell explained that there was a letter from Town Engineer Dave Cedarholm that responded to the submittal by Capstone, Normandeau Associates and R.W. Gillespie & Associates that challenged the classification of the aquifer, and asked that the boundary be adjusted. He noted that Mr. Cedarholm was a certified hydrogeologist, so had reviewed Capstone's submittal, and basically agreed that the boundary could be adjusted.

Mr. Kelley asked why the Board was having this discussion now, and not as part of the Capstone applications.

Mr. Campbell said it wasn't part of the application, and said the applicant was aware that it was an issue to be treated separately. He said it was something the Board had to review, and was something that could affect the application. He said the appeal process for doing this was spelled out in the Zoning Ordinance under 175-85 B.

He said Section 175-85 B 2 said that: The Planning Board may, based upon any findings or reports submitted under this section, recommend to the Town Council of the Town of Durham that the boundary or area designation of the Aquifer Protection Overlay District be adjusted to more correctly define the aquifer(s) and recharge area(s) on a site-specific, case-by-case basis. In all cases the burden of proof shall rest with the applicant or property owner.

Mr. Campbell said right before he came to work in Durham in 2001, there were two challenges to the Aquifer Protection district, and at the time, it was only the Planning Board that was required to review.

He said he would like the Board to put this on an agenda to discuss and make a recommendation to the Council. There was discussion that the Board would get a copy of the report itself in its next packet, so it would be ready to discuss this issue at the February 9th meeting.

Mr. Kelley asked what the appropriate Town Council Resolution would be if the Council agreed with the aquifer boundary change.

Mr. Campbell said he'd questioned why the Council was included in this process, while it had been taken out of the conditional use process. He said it was political more than anything else since the Council wasn't a land use board. He said he didn't see how the Council could go against several field experts on something like this.

Mr. Kelley said it didn't seem to be defined what the applicant's recourse would be if the Council did go against the experts.

Mr. Campbell said he assumed that this could be appealed somewhere. He said Attorney Mitchell had been asked about this situation, and had determined that it was a black and white process. He noted that the Town's water resources subcommittee was interested in updating the existing aquifer mapping as better data became available. He also said it would be good to get this process done before there was a changeover on the Council as a result of the March election.

Chair Parnell recommended that the Board cover this issue before the continued public hearing at the February 9th meeting.

Request from Pine Ledge Holdings for Reconsideration

There was discussion on the January 18th letter from Pine Ledge Holdings.

Mr. Kelley noted that the Board had been provided with the complete building permit application for the property.

Mr. Campbell said he had talked to Mr. Johnson again, who said the permit application made no mention of the parking, and that he didn't approve it. Mr. Campbell said Mr. Johnson said the plan that showed the parking came in after the permit application.

Mr. Kelley asked if there was a plan that showed the parking in the building permit folder.

Mr. Campbell said no and provided further details on this.

Mr. Kelley noted that the applicant had stated that somehow he thought the parking was ok because he got a building permit.

Mr. Campbell said even if the parking had been incorporated as part of the building permit, this was something that required a Conditional Use permit, which only the Planning Board could approve.

There was discussion on what Pine Ledge Holdings actually wanted the Board to reconsider. Mr. Campbell said he believed their intention was that the Board had approved the application for 8 parking spaces, and they wanted the Board to reconsider that decision, talk with Mr. Johnson, and then perhaps vote to approve 10 parking spaces.

Chair Parnell asked if there were any Board members who wished to reconsider the vote to approve 8 parking spaces. No one wished to reconsider the vote.

Mr. McGowan noted that the building permit application said 5 spaces. There was discussion that the applicant was presuming that this was for the back building, and that they would get 5 more spaces up front with the other building. There was further discussion.

Mr. McGowan asked Mr. Campbell what he recommended.

Mr. Campbell said he didn't think that rehearing the application would change anything. He noted that he had previously recommended 10 spaces, and the Board hadn't listened to him.

B. New Business

Mr. Campbell suggested that the quarterly planning meeting should be held at the first meeting in March. He said it would cover some Zoning changes, but also would include a discussion with the Energy Committee and a Public Comment session.

He noted that there would be a new application for the February 23rd meeting, to convert

the Hickory Pond Inn to an elder care facility.

Councilor Smith agreed to attend the Strafford Regional Planning Commission's regional impact committee meeting regarding the Capstone project on Friday. There was discussion about the fact that a report would be provided to the Planning Board with the committee's recommendations. Mr. Campbell said he would try to get to the meeting.

C. Next meeting of the Board: **February 2, 2011**

VIII. Approval of Minutes

December 15, 2010 Minutes

Page 1, line 17 should read "...meeting to order at 7:03 pm."

Page 2, line 3 should read "...joined the Planning Board at the table and..."

Page 6, line 16 should read "...to encourage the adaptive reuse of a single family..."

Line 38, should read "...multi-unit buildings."

Page 8, line 16 should read "He said the Town..."

Page 9, line 3, should read "...a Conditional Use there,..."

Page 11, line 19 should read "...with what was proposed."

Line 28, remove bolded italicized wording.

Page 16, line 36 should read "...appropriate commercial establishment that looked like a house or a barn and was used as roadhouses,..."

Page 18, line 6 should read "Ms. Della Valle said..."

Line 15, should read "She said an alternative..."

Page 19, line 7 should read "...Rite Aids that were small,..."

Line 9, should read "...the Professional Office district..."

Line 13, should read "...that included retail. He said the issue was the use, not the building."

Line 26, should read "...he was more in favor of Zoning map revisions than..."

Page 25, line 4, should read "After further discussion, the meeting adjourned at 10:05 pm."

Richard Kelley MOVED to approve the December 15, 2010 Minutes, as amended.

Susan Fuller SECONDED the motion, and it PASSED 5-0-2, with Richard Ozenich and Councilor Smith abstaining because of their absence from the meeting.

January 12, 2011 Minutes

Page 1, line 37 should read "...a decision on the second issue that evening."

Page 2, line 11, should read "...process of soliciting feedback..."

Line 22, should read "...the Inclusionary Zoning Implementation Program (IZIP)..."

Page 3, motion at the top of page should say PASSED unanimously 5-0.

Page 5, line 7 should read "...and said let's be reasonable."

Line 16, should read "...that did in fact come through..."

Line 23, motion should read "...PASSED unanimously 5-0."

Page 12, motion on the page should read "...Richard Kelley and Andrew Corrow voting

against it.”

Page 17, line 30 should read “...the clubhouse building more efficient with...”

Page 19, line 37 should read “...Richard Kelley SECONDED the motion,...”

Page 20, line 28 should read “...January 26th,...”

***Councilor Smith MOVED to approve the January 12, 2011 Minutes, as amended.
Richard Kelley SECONDED the motion, and it PASSED 5-0-2, with Susan Fuller and
Richard Ozenich abstaining because of their absence from the meeting.***

IX. Adjournment

Richard Ozenich MOVED to adjourn the meeting. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 10:40 pm

Susan Fuller, Secretary