

These minutes were approved at the March 23, 2011 meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, FEBRUARY 9, 2011
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Peter Wolfe; Secretary Susan Fuller; Richard Ozenich; Town Council representative Julian Smith; alternate Wayne Lewis; alternate Andrew Corrow; alternate Town Council representative Bill Cote

MEMBERS ABSENT: Richard Kelley; Bill McGowan

I. Call to Order

Chair Parnell called the meeting to order at 7:05 pm.

II. Approval of Agenda

Susan Fuller MOVED to approve the Agenda as submitted. Richard Ozenich SECONDED the motion, and it PASSED unanimously 5-0.

Chair Parnell said Mr. Lewis would sit in for Mr. Kelley, and Mr. Corrow would sit in for Mr. McGowan.

III. Report of the Planner

Mr. Campbell reviewed materials that Board members had been provided with at the table:

- two sets of site walk minutes
- memo from applicant Jerry Gottsacker
- aquifer boundary appeal from Capstone
- new set of plans and cover letter from Appledore regarding Capstone application
- Alteration of terrain application information on Capstone application
- request for Technical Review of an application
- updated Durham Master Plan visioning brochure done by Cooperative Extension

Mr. Campbell said he had met with University planner Doug Bencks, and they discussed the following:

- the March 2nd mini-charrette on the combined Fire Station and parking garage concept
- UNH Business school plans received by the Town, which will be on the March 23rd Planning Board agenda. Mr. Campbell said it was a big project, and said the plans for it were pretty complete. He said it was required to go before the Planning Board for review, and noted that while the Board didn't get to approve/disapprove the project, it

- could make note of deficiencies in the plan, and areas where the Zoning Ordinance wasn't met. He said the University had been responsive to input from the Planning Board on UNH projects in recent years.
- upcoming Traffic Safety Committee meeting, where there would be discussion on traffic issues concerning the new Town library that was being planned
- upcoming presentation to the Planning Board's on the University's South Drive project
- update and discussion on the Capstone application
- new bus service as part of the University system between Concord, Manchester and Durham
- upcoming University master plan update to address a few areas where more planning was needed. Mr. Campbell noted that this master plan was most recently updated in 2002-2003

Mr. Campbell said the Master Plan Visioning Forum held on January 28th had gone very well, and said over 100 people were there. He said he was looking forward to getting the report on it from NH Cooperative Extension.

He said the Inclusionary Zoning Implementation Program (IZIP) committee had received the final material from consultant Jack Mettee, and said the Planning Board would probably discuss this at its March 9th quarterly planning meeting. He noted that HB 348 currently before the Legislature proposed to give municipalities more power to approve or disapprove workforce housing, and said he was therefore hesitant to move forward with the IZIP material if that bill was going to change things. He said no hearing date had been set yet.

Mr. Campbell said the Economic Development Committee (EDC) met on January 31st, and he noted that these meetings were televised on DCAT. He said the Committee spoke with developer Peter Murphy about his proposal for re-use of the Town's Grange property, which was still moving forward. He said Mr. Murphy also attended the Historic District Commission meeting later that week. Mr. Campbell said he would keep the Planning Board in the loop concerning the proposal.

He said he had given a presentation on TIF districts to the EDC, and also provided a rough draft of a financing plan for such a district. He said he and Administrator Selig would be working on more details of this plan, as well as possible boundaries for a TIF district, and would bring these back to the EDC in March.

Mr. Campbell noted that the Board's meeting with planning consultant Beth Della Valle on possible Zoning amendments would be rescheduled.

He said there were two new applications for the February 23rd meeting, and noted that there would be a conceptual consultation at the current meeting on one of them, concerning the proposed use of the Hickory Pond Inn property as an assisted living facility.

Mr. Campbell said the other application was for a take-out restaurant at a concession trailer on the portion of the Kostis property off of Pettee Brook Lane that was formerly owned by the Town. He said the idea with this was to get the restaurant's customer base started, and

when the mixed use building was constructed on the site, to locate the restaurant in that building.

- IV. Public Hearing** on 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 represented the Gottsacker family, and reviewed the application again for the Board. He said a two lot subdivision was proposed, and said there was 100 ft of frontage on each lot. He said there was water and sewer service available for the new lot, which would come in at the driveway, which was located at the south end of the property. He noted that utilities could come in there as well. He said this would be a stand alone subdivision, and said access to the second lot would be from Madbury Road.

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

Chair Parnell asked if there were any members of the public who wished to speak for or against the application. There was no response.

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

Chair Parnell noted that the Board had done a site walk, and said what was proposed seemed straightforward.

The Board reviewed the Findings of Fact and Conditions of Approval.

Mr. Campbell referred to a note on the subdivision plan regarding a right of way in favor of lot 1-7-3-1, and said he believed it should be in favor of 1-7-2.

Mr. Garvey explained that there were two separate easements. He said one was for the paved section of the driveway, which went with 1-7-2. He said the other was with the entire Gottsacker property, which as this time was going with 1-7-3-1. He said it was an easement that went nowhere.

Findings of Fact

1. Director of Planning, James Campbell, wrote a letter granting exemption of this subdivision from the Conservation Subdivision regulations of the Zoning Ordinance on October 27, 2010.

2. Chief Kurz submitted a memo regarding the application on January 14, 2011.
3. Deputy Chief McCusker submitted an e-mail regarding the application on January 18, 2011.
4. A Site Walk of the property was held on January 22, 2011.
5. A Public Hearing was held on February 9, 2011 and no members of the public were in attendance to speak to the application.

Waivers

The Planning Board grants the waiver from the Subdivision Regulations for the preliminary stages of hearings because of the exemption from the Conservation Subdivision regulation.

Conditions of Approval to be met prior to the Signature of Approval

1. The applicant shall supply two mylar copies of the plan and one paper copy for signature by the Planning Board Chair. The final plan shall include a note that all new utilities will be underground and shall include a note with a FIRM reference for the flood maps.
2. A certificate of monumentation shall be provided to the Planning and Community Development Department.
3. The applicant shall apply for and be granted water and sewer permits.
4. The applicant shall apply for and be granted a driveway permit from the Department of Public Works.

Conditions to be Met Subsequent to the Signature of Approval on the Subdivision Plan:

1. The referenced Subdivision Plan and these Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. Trees targeted for removal shall be clearly marked.
3. Trees to be protected during clearing operations and construction shall be clearly marked to caution operators of machinery.
4. A site inspection of the trees marked for saving, cutting or clearing is required by the Durham Tree Warden prior to the cutting of the lot.
5. Prior to the issuance of a Certificate of Occupancy for a building or structure on any lot within a subdivision, three (3) copies of a certified plot plan shall be filed with the Zoning Administrator. The plot plan shall be prepared by a professional surveyor, engineer, or architect and shall be signed and sealed by the professional(s) preparing the plan. The plot plan shall show the post development conditions of the lot including, but

not limited to, the following information:

- A. The actual lot layout, dimensions, and lot area.
- B. The required setbacks for the zone in which the lot is located and the actual setbacks of the building(s) and structure(s) as constructed.
- C. The actual location of the building(s) on the lot including the building footprint and any appurtenant structures such as decks, porches, basement entry door structures, sidewalks, driveways, and aboveground utility facilities.
- D. The actual location of underground utilities such as septic systems, wells, water, sewer, and gas lines, electric, phone, and cable facilities, and stormwater drainage systems.
- E. The location of any significant natural features on the lot such as wetlands or floodplains, any required setback or buffer from the natural feature, and the actual setback or buffer provided.

Susan Fuller MOVED to approve 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. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

- V. **Continued 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. **Continued Public Hearing** on 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

Chair Parnell asked if the applicants had any new information for the Planning Board. John Acken of Capstone re-introduced the design team for the project. He noted that Cynthia Thayer of R.W. Gillespie Associates was also present, and would provide information to the Board concerning the appeal of the aquifer boundary. He also said staff of Cottage Builders, the general contractors for the development were in Town this week and

had come to the meeting.

He said some minor modifications had been made to the plans, and said Appledore engineer Joe Persechino would explain them.

Mr. Persechino said the first change was in regard to the cemetery. He said there had been a request from the Cemetery Committee Trustee to coordinate with Capstone about the removal of some large trees on the cemetery property, near the property line. He said he had made note of this on the plan.

He said they had also moved the trail to the other side of the buildings and shifted the buildings back to accommodate that shift, in order to provide a greater vegetative buffer near the cemetery. In addition, he said there would be a 5 ft 11 inch fence, rather than 5 ft, to get the maximum height for a fence without requiring a variance.

Mr. Persechino said there had been multiple meetings with the Town Engineer, and said the underground utility locations were revised based on those meetings. He also said Capstone had added two pressure relieving valves on Technology Drive, at the request of Mr. Cedarholm, in place of individual valves at each individual unit.

Chair Parnell asked if there was anything in writing yet from the DPW about the availability of water and sewer capacity, after the project came in.

Mr. Campbell said the details of this were still being worked out, but said staff had said it wasn't a concern.

Chair Parnell asked if there was anything from Code Administrator Tom Johnson on impacts, from his perspective, and Mr. Campbell said no.

Councilor Julian Smith MOVED to re-open the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

Councilor Neil Niman, Cold Spring Road, said he would wear the hat of a professional economist for the moment, but noted that although he was the Chair of the UNH Economics Department, what he said didn't reflect the views of that department or the University. He said he had watched the public hearing at the last meeting, and had heard Scott Hogan make some comments he disagreed with.

He said he had discussed with some people around Town Capstone's claim that the project would create better wildlife habitat. Concerning the idea expressed by Attorney Hogan that putting buildings on virgin land would make wildlife worse off, he said, speaking as an economist, that the landowner had certain rights as specified by the Zoning Ordinance. He said he believed that Capstone project would make the wildlife better, because the company wasn't exercising all of its rights in developing the property.

Councilor Niman said 50% impervious coverage was allowed on the site, but said the

applicants would have less than that, so were giving up some of the rights the Town had given them. He also said there would be fewer units than what was allowed, and said over 17 acres of upland would be permanently protected conservation land.

He noted that the Woodward's could build elderly housing, by right, and that such a development could have as many as 300 units, which would create greater density, use more land, and create more impervious surface than what was proposed with this application. He said looking at what the applicants had the right to do, and then looking at what rights they were choosing to exercise, he believed that wildlife habitat would be protected.

Councilor Niman said if what the applicants had proposed was building inexpensive boxes to house as many students as possible, while hiring a private security service to control behavior, he would be standing there and saying, concerning the issue of no alternate feasible location, that he didn't agree there should be an incursion into the buffers. But he asked the Board to consider the use that was being proposed. He said he would like to talk about the idea of creating human habitat that would lead to a certain kind of socially desirable behavior, which Durham would desperately like to see. He said the cottage concept was quite ingenious, and said these developments were designed to encourage certain behavior, without having to use the serious stick of evicting tenants. He said the purpose of Capstone's plan wasn't merely to collect rents and hope for the best. He said they were trying to use smart design elements to create habitat that generated a certain kind of behavior.

Councilor Niman noted that one of the most serious issues Durham faced was student housing in the residential neighborhoods near the University. He said while there were a variety of reasons to explain student behavior, what was so exciting about the Capstone plan was that they were trying to build communities that minimized the negatives that one associated with student behavior. He said he thought it was great that there was the opportunity to design a community that would bring out the best, rather than the worst of student residents.

He said some members of the community had raised concerns about amenities associated with the project. But he said he hoped that as the Planning Board discussed this plan, it would keep as many of these amenities as possible. He said he thought they were crucial in achieving the objective of this project, which was to bring out the best behavior possible from these students. He said people were at their best when they had something to lose. He said the biggest stick Capstone would have would be to tell a student that he/she couldn't live there anymore, and so would have to give up these amenities.

Councilor Niman said he greatly appreciated Capstone's desire to put a trail along the shoreline, stating that if a goal was for people to appreciate the environment, there had to be a way for them to walk along a river, and swim in it, and in this way see how wonderful it was.

He noted that his entire property was located within 250 ft of the Lamprey River, so he personally lived in a shoreland buffer. He said he and others who lived so close to the river had a very good appreciation of it.

Craig Seymour, Chair of the Durham Cemetery Committee, and Trustee of the Trust Funds spoke before the Board with resident Bruce Bragdon, who he noted also served with him on both committees. He explained that they managed the Town cemetery, which was the closest abutter to the Capstone site, and was a property that would probably be impacted more by this proposed development than any other abutting properties.

He said Capstone had contacted them concerning the project, and had been very cooperative and helpful in terms of working to overcome issues and concerns about the project. He said these concerns were regarding the need to protect the cemetery from access by students living nearby, in order to preserve its sanctity. He provided some details on the cemetery noting among other things that it had been there since the early 1930s-40s, and had about 60 years of capacity left.

Mr. Seymour said another concern of the Cemetery Committee had been the possible visual impact on the cemetery from the development. He said Capstone was working to buffer views into the cemetery, as well as buffering views out of it by people who were visiting the grave sites.

He said a third concern had been about possible noise issues as a result of having the development nearby. He said a landscape architect had come back with several suggestions, which were reflected in the applicants' plans, and said they should work well in meeting the Cemetery Committee's goals to minimize noise and other issues.

Mr. Seymour said one was the proposed fence and vegetative buffer. He said Capstone had realized that by moving the fence back onto their property closer to the buildings, this would allow for larger wooded buffer between the cemetery and the buildings. He said existing trees would be left there, and this would be augmented with additional plantings. He said the Cemetery Committee had asked the State arborist to provide advice on this, and noted that deer currently ate a lot of the vegetation in that area.

He also said moving the fence closer to the buildings would remove space that otherwise might be a gathering space for students. He said doing this would force students to have activities on their front porches, which was what the cottage style development was designed to make happen.

Mr. Seymour said it was believed that the fence as well as the buffer would help to attenuate sound. He said the proposed fence would be 5 ft 11 ³/₄ inches high, and said if it turned out that a higher fence was needed, the Committee would go along with that. He said they all realized that a variance would be needed for this, and said Capstone wanted a solution that worked.

He said the company had suggested an opaque wooden fence made of good material, and also said the Committee had suggested, and Capstone had agreed, that there would be a maintenance agreement in the documents the Planning Board approved, and that

maintenance of the vegetative buffer would run with the land. He said this was so that in future years, the Town could enforce this if needed.

Mr. Seymour said the Committee had also suggested, and Capstone had agreed, to run a fence along the entire property boundary and perhaps a little further beyond it in order to protect the edges against walk-throughs.

He said they had also discussed the spindly pine trees that were in danger of falling into the cemetery at some point. He said Capstone had agreed that when they logged their own land, they would also take out some of those pine trees, which would protect the cemetery in the future.

Mr. Seymour said the Committee had met that afternoon, and had passed a Resolution that codified these things that had been agreed on with Capstone.

Councilor Robin Mower, 11 Faculty Road, said she appreciated Councilor Niman's perspective about Capstone providing a human habitat, and that the appeal of the design was critical to filling the project. But she urged everyone to remember that this was not a blank slate location like a flat baseball field, and was a specific location with specific environmental concerns, including its proximity to the Oyster River

Councilor Mower said she had been asked to read into the public record letters from two Conservation Commission members who were unable to be at the meeting. She said they were not speaking as members of the Commission per se.

The letter from Jamie Houle, 95 Mill Road, said he would like to take the opportunity to add what he believed to be important context to the discussion of the stormwater controls for the proposed Capstone student housing development. He said that as a research staff member with the UNH Stormwater Center, he had spent the past 7 years testing and refining effective strategies for managing both quality and quantity of runoff from developments.

He said he was proud that the applicant proposed to use two of the most effective management controls in the Stormwater Center's portfolio, i.e., porous asphalt and gravel wetlands. He said he could say with confidence that, if designed, installed and maintained properly, these stormwater management facilities could provide high-level treatment to mimic pre-development hydrology, and would filter many harmful pollutants from stormwater runoff streams.

Mr. Houle's letter said there were three key steps to ensuring effective stormwater management facilities. He said the first was that the systems must be well designed. He said Appledore was a well-regarded engineering firm with experience designing and installing similar facilities. But he said it was an established practice for municipalities to require independent, third-party review of designs for these facilities, and he noted that this was an explicit prerogative of the Planning Board, under Section 9.03.1-7 of the Site Plan Review Regulations.

He said a third-party review was key, stating that while the Town was fortunate to have the services of a well-qualified engineer in addition to the drainage analysis and review that would be conducted by NHDES, these were not a substitute for independent review of the entire plan and the system designs. He said third-party reviews could often benefit both the Town and the applicant by locating critical errors, or identifying opportunities for design improvements.

He said the review should also encompass the erosion and sediment control plan for the construction period, which was by far the most critical time in protecting the adjacent wetlands and the Oyster River from polluted construction site runoff.

Mr. Houle's letter also said he strongly urged the Planning Board to require third-party engineering oversight of the installation process. He said that all too often, he had personally seen good designs installed improperly. He said while gravel wetlands and porous pavements had proven effective, it was known that the majority of failures were due to improper installation practices and construction sequencing.

He said having independent, third-party engineering oversight would assure the Town that a properly functioning system would be installed, and would ensure the site owners that they were delivered exactly what was promised. He said this was in the Town's best interest, and would save them from potentially expensive corrections to poorly operating or failed systems.

Mr. Houle's letter said the third key step to ensuring effective stormwater management facilities was system maintenance. He said proper maintenance and system inspections were critical to the proper function of stormwater management facilities. He said the newly-amended stormwater section of the Site Plan Review Regulations adopted by the Planning Board in July 2010 contained a provision under Section 9.03.1-8 that allowed the Board to require routine inspections to insure compliance with the Stormwater Management, Groundwater Protection, Impervious Surfaces, and Erosion and Sedimentation Control regulations.

He recommends that as a Condition of Approval for the Conditional Use permit, the applicant should be required to submit yearly operation and maintenance reports to the Town Engineer from a designated agent with appropriate certifications.

Mr. Houle's letter noted that Section 9.03.1-4i of the Site Plan Review Regulations stated that "the biological and chemical properties of the receiving waters shall not be degraded by the stormwater runoff from the development site." He said that considering all potential impact of a development of this size and its proximity to the Oyster River, which served as part of the Town's drinking water supply, it seemed reasonable to require demonstrated compliance with these regulations through a simple monitoring program.

He said such a program could be designed and contracted to a third party with

appropriate certifications to take storm samples in the river at a downstream location no less than (a) prior to the development, (b) during construction, and (c) post construction. He said these analyses could be conducted for a designated timeframe (such as five years) and could be included in the annual inspection report to the Town Engineer.

Councilor Mower next read a letter from **Derek Sowers, 32 Oyster River Road**, who said he reviewed NHDES Wetlands Dredge and Fill permit applications for the Conservation Commission, and had professional expertise in habitat protection and restoration, municipal/regional environmental planning, and climate change adaptation.

He said much of the parcel proposed for development by Capstone was currently mapped as “Highest Ranked Habitat by Ecological Condition in NH” by the State’s Wildlife Action Plan maps maintained by the New Hampshire Fish & Game Department. He said the entire parcel was also recognized as part of the Oyster River Conservation Focus Area in the *The Land Conservation Plan for New Hampshire’s Coastal Watersheds*.

Mr. Sowers’ letter said this broad recognition of the parcel as an area of regional and statewide importance for wildlife habitat contradicted the narrow analysis of wetland functions and values completed by the applicant’s wetland consultant, which concluded that “the forested wetland complexes did not provide any principle values or functions”, and represented “low quality wildlife habitat.”

He said the parcel in an undeveloped condition provided a complex matrix of wetland and upland habitats, both of which were likely to be well utilized by a variety of wildlife. He said a thorough assessment of wildlife habitat or presence/absence surveys for threatened or endangered species had not been conducted on the parcel.

Mr. Sowers’ letter said of specific concern was the potential for this parcel to be used by spotted turtles, which were recognized as a threatened species by the state of NH. He noted that spotted turtles utilized upland buffers in a matrix of wetland types and were sensitive to upland development and human disturbance. He said this project was therefore highly likely to negatively affect spotted turtles if they were present. He said the presence of turtles on the site had not been adequately surveyed to date in order to give reasonable consideration to this issue.

He said that according to the assessment of wetlands completed by Normandeau Associates on the proposed Capstone site, there were about 2.68 acres of forested wetland in the area of the parcel adjacent to Technology Drive. He said if Capstone was permitted to construct two access roads into the development area, these wetlands would be surrounded on all sides by roads. He said there was a vernal pool wetland on the southern boundary of the property and an extensive wetland complex on the northern boundary of the property primarily on the adjoining parcel, and said in the current undeveloped condition, all of these wetlands were connected via undisturbed upland areas.

He said once the roads for the project were installed, wildlife attempting to move between these wetland habitats would likely become road kill. He said a reasonable

Condition of Approval for building the access roads was that the applicants should demonstrate that their road design plans had incorporated wildlife passage culverts or bridges specifically designed to allow the safe movement of wildlife beneath the two access roads. He said this would help to mitigate some of the negative impacts of the development on the wildlife habitat.

Attorney Scott Hogan said he represented 9 property owners, and said in addition to speaking, he would submit written comments. He first said he had not been able to find another project of this scale and time frame in Durham or in the Seacoast area. He also said he hadn't been able to find another project that was looking for almost 5 acres of buffer intrusions.

He noted that there was also 6300 sf of wetland that would be filled with this project, as a result of a variance the applicant had recently received. He referred to the issues that wetland scientist Mark West had provided information on, and which had been discussed at the previous Planning Board meeting. He said the issues Mr. West had listed needed to be vetted.

Attorney Hogan said he would focus that evening on the Conditional Use requirements. He noted that there were also site plan review issues, and said when any information, such as the critique of the traffic study came back, the public would need to have an opportunity to review it and comment on it.

He said that concerning the issue of the suitability of the site for the proposed use, including adequate vehicular and pedestrian access, it was his understanding that Technology Drive was a private road, but the Town maintained it. He said there would be a dramatic increase in the use of that road with this development, and he provided details on this. He said this meant there would be an increase in the maintenance costs for Technology Drive.

He asked what the arrangement was for this, in terms of the responsibilities and possible liabilities to the Town concerning the use of the road. He noted that under the Conditional Use requirements, it was the Planning Board's responsibility to determine if there would be fiscal impacts from the project. He said there clearly would be an additional cost for the Town to maintain Technology Drive with this development, and said he couldn't see where that factor had been put on the table in the Fiscal Impact Analysis.

Attorney Hogan said the applicants had been advised by the Town that there was adequate sewer and water, and noted that there had been discussion about fire and police safety issues. But he said the costs for this would need to be quantified beyond what the applicants had represented to the Board.

He said the applicants had said there would not be school age children generated by the development, and said the Fiscal Impact Analysis indicated that the basis for this was that the cottages would provide housing that was rented on a per bed basis. He said the

Planning Board needed to consider how this would actually work in practice. He spoke in some detail on this, and said vetting this was as just as important as it was for other issues. He noted that the Site Plan Regulations said the Planning Board could hire someone to do this vetting.

Attorney Hogan said he didn't think anything had been said about the number of Code Enforcement staff that would need to be hired during the construction process. He said the Planning Board needed to know this, and needed to know what the cost for this staff would be. He said even more important was knowing what the cost would be for Town staff to enforce conditions of approval and Zoning requirements once the development was built. He said if the Board imposed a limit of 619 people who could live there, it would need to be able to confirm this, and would need to know the cost of having staff confirm this.

Concerning the issue of External impacts, Attorney Hogan said there hadn't been a project of this scale and intensity in Durham, so these Conditional Use provisions had particular importance in regard to it. He noted that these provisions said "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." He said the applicants had to prove this.

He said with this development would come pressure to have amenities like convenience stores, gas stations, and restaurants nearby, and said the regulations required that the Board look at that issue. He said this development would put pressure on that part of Town, but said the applicant had said there wouldn't be an impact on the surrounding area. He said there needed to be evidence concerning this.

Attorney Hogan next reviewed the Conditional Use requirements under the Wetland Conservation Overlay District, and focused on the wording in 175-61 B 1 "There is no alternative location on the parcel that is outside of the WCO District that is feasible for the proposed use". He said the most fundamental point of the application was there were clearly any number of other design options for the project than the 620 units of housing that someone could propose for a reasonable use of this property. He said they could even proposed 620 units in a different configuration. He said there were almost 5 acres of buffer and wetland impacts proposed because they had chosen the design they had. He said the applicants had been very clear that when they had enough space, they preferred the cottage design, and had said they needed 600 beds to make the project more attractive in terms of financing to many banks. He said in response to questions from the Conservation Commission about possible alternative designs that would make the project footprint smaller and pull it out of the wetlands and buffers, the applicants had said this would be costly and would not be the best use of the site, in terms of marketing the development.

He said what the applicants proposed might be a fine design, but said they were

requesting an almost unprecedented amount of relief from the wetland, wetland buffer, and shoreland buffer requirements because they had chosen a design that was in their business interest. He said everyone had a right to develop their property, but said the applicants were well past what was allowed by right on this parcel. He said they needed to show that there were no alternative designs that were feasible, and said there were in fact other designs that could be pursued.

Beth Olshansky, Packers Falls Road, said as Neil Niman had suggested, the Town had been interested in this development proposal in the hope that it would offer relief to the neighborhoods. She said this was why the Town had bent over backwards to change the Zoning Ordinance to allow this development, although this had opened a can of worms. She said this was a huge project, and said she hoped the Planning Board would undertake due diligence in reviewing it.

She noted that a purpose of the Zoning Ordinance was to protect the health, welfare and safety of Durham residents, including students, and said she was concerned about the estimate that people living at the Capstone development would use 75 gallons of water per person per day. She asked if there had been adequate analysis to determine that there would be enough water, noting that when the Hotel NH was proposed, there had been concern about this.

Mr. Campbell said the applicants were working on this with the DPW as well as the company that had done a water analysis for the Town, and when Ms. Olshansky asked if there would be an independent review, he said that would be up to the DPW or the Planning Board.

Ms. Olshansky said she hoped the Planning Board would seriously consider this issue. She noted that they were lucky to have some knowledgeable experts in Town provide their perspectives regarding water issues for this project, and said they could provide important suggestions.

She asked if it was true that there was a proposed outdoor swimming pool that would be heated in the winter.

Mr. Acken said a small heated outdoor pool was proposed next to the clubhouse, and Ms. Olshansky asked what the size would be. There was discussion.

Ms. Olshansky said she would be interested to learn the size. She noted that Capstone did a lot of its work in the south. She noted the work of the Energy Committee, and said Durham had put a lot of attention toward lightening its carbon footprint. She said an outdoor heated pool in winter might not be the best use of energy. She asked if this was critical to the design of the project, and said it seemed to be extravagant and a huge waste of energy. She noted that there was a large indoor heated pool in Town. She asked the Planning Board to take these things into consideration.

Ms. Olshansky also said she realized that tanning booths caused cancer, and said she

wasn't sure that Durham as a community wanted to support this. She said she had a hard time believing that parents would like these to be so readily available, and said she wasn't sure why they would be necessary.

Council Diana Carroll, Canney Lane, said she had been a resident of Durham for 36 years. She noted that she sat on the Town Council, and this year had the privilege of being the Chair. But she said she was speaking now only as a long time resident of Durham. She said she was not there to speak for or against the Capstone application, and would make some remarks that she hoped had already resonated, or would resonate with the Planning Board.

She said the first point she wanted to make was that if this application was approved and went forward, every decision and every detail of this proposed development would be very important, because of its size. She noted that it was the largest development ever built in Durham, with 99 buildings, 600 to 620 beds, and 640 parking places. She said it was so large that it had regional significance.

Councilor Carroll said whether constructing one building or ten buildings, issues such as energy usage, water usage, building materials and landscaping were important, but when 99 buildings and 600 to 620 beds were proposed, the importance of every decision was multiplied. She said the magnitude of the consequences of such a development was huge, and said these consequences could be positive or negative. She said every decision made therefore needed to be the best possible decision, for the best outcome. She said she believed that the best possible decisions would be made based on best management practices, good science, expertise from the community, etc.

Councilor Carroll said the second key point she would like to make was that Durham was working towards becoming a Green Community. She said that having lived there for over 36 years, she knew that Durham had exhibited a lot of Green characteristics before that label became popular. She noted that Town committees like the Economic Development Committee had been discussing a label for Durham, and said from what she had seen, "Green" was at the top of their list. She also pointed out noted that the Town Council had a goal of Sustainability, which fed into the Green label.

She said if Durham continued to work towards being a Green Community, it would be known as "Green" not by words but by actions. And she said if Durham moved forward with this application, it was paramount that "Green" be a guiding principle. She said she realized that there were already many green measures written into the proposed project, which was good to see. She stated again that every decision was significant, and said there were many decisions left to be made. She said "Green" was important.

Councilor Carroll said her third point was that they all had to be aware of what they were giving up, and needed to honor this with a quality replacement. She said the Woodward's 41 acres of woodland and wetlands was in fact, prime farmland, and was serving the residents of the area very well. She said these services were given free, as the trees and plants cleaned the Town's air, and the soil and wetlands provided flood control. She

noted how costly manmade stormwater management was.

She said this area also provides habitat for many kinds of animals, birds, etc, and said this was important because without good habitat, there was an ecology of only gray squirrels and crows, which was not a sign of a healthy environment.

Councilor Carroll said if it was decided that a housing development would be built on this land, they needed to see that it was of good quality, and that it would be constructed to last a long time. She said her motivation for speaking that evening was the protection of Durham. She said she was committed to this, just as she believed the Planning Board was.

She said she had been following this proposed development, and was very aware that the Capstone Co. had been very cooperative in working with Town staff, altering their design as needed or requested, etc. She said cooperation in this kind of venture was needed and was very much appreciated. She said she hoped that the Planning Board would take as their counsel that it was truly important that this development be done right.

Tom Richardson, Littlehale Road, said he and his wife owned student apartments in Durham, and said they had had no income from them in 3 years. He noted that over the past 10 years, the University had increased the number of students who lived on campus from 40% to 60%, which was an increase of approximately 1600 beds. He also said there was now substantial bus service to import students to Durham from outlying areas.

He said he talked to a lot of students, and said there were more and more students who wanted to live in residential neighborhoods close to campus. He said he had seen an increase in this in recent years. He also said the increase in the number of dorms and the importing of more students from out of Town had resulted in a decrease in the values of rental properties in Town. He noted that all of the larger landlords had submitted substantial abatement requests, and said it was important not to overlook the reduction in taxes coming in if these requests were approved. He said if one were considering just his property, the difference would be about \$30,000.

Mr. Richardson spoke about the estimated \$200,000 positive cash flow for the Town from the development, which was debatable, especially if there was a reduction in the value of existing properties in Town. He said overall, for \$200,000, it simply wasn't worth it, for a Town the size of Durham.

He noted the issue that had been brought up about the costs to the Town from the development, in terms of ambulance, fire and police, but said this wasn't the key issue. He said the key issue was response time. He said the Town had already been buffaloeed by the Spruce Woods development, and said ambulances went out there every day.

He said there was already a slow police response time, stating that waiting 10 minutes was fairly common now. He said if the police had to go out to the Capstone development on the edge of Town a few times a week, this would degrade the level of service for the

rest of the Town.

Mr. Richardson said he had ongoing concerns about the impact of the proposed development on downtown businesses. He described possible gas stations/mini-marts on the edge of Town, right off the exit ramp.

He said in addition to his financial concerns about the proposed development, he also had concerns about environmental impacts. He said while the Woodwards had every right to sell their property and get a fair price, there should perhaps be a conservation related use of the property. He asked where the Conservation Commission had been concerning this. He said he thought what was proposed was the wrong use of this property, and said when the costs and benefits were all looked at, it wasn't what people thought it was.

Chair Parnell asked Mr. Richardson what the reason was that he should be getting an abatement at this time.

Mr. Richardson said his rental income had declined significantly over the last 3 years, noting that the number of renters and rents had declined in the downtown area. He provided details on this, noting among other things that there were numerous apartments that were now not rented during the summer, and great pressure to drop rental periods from 12 to 9 months.

Councilor Smith noted that Capstone representatives had met with the Conservation Commission in November and December, and said the Commission had also done a site walk of the property. He said at the December 9th Commission meeting, it summarized its preliminary findings with respect to the proposal. He said Chair Jamie Houle provided these findings in writing, in a document dated December 14, 2010. Councilor Smith read this document into the public record (the document is available at the Planning Office.)

Charles Cox, President of the Oyster River Watershed Association (ORWA), noted that he was a resident of Lee. He said the Oyster River Watershed Association was a 501 c3 organization that sought to study and promote unimpaired water quality and flow in the Oyster River and beneficial land uses in the surrounding watershed. He said the ORWA has carried out a volunteer water quality monitoring program since 2001 in cooperation with and supported by the University of New Hampshire Water Utilities, NHDES, the Strafford Regional Planning Commission, and the UNH Water Resources Research Center.

Mr. Cox said a monthly sampling site was located at the Route 155A (Old Concord Road) bridge immediately downstream from the proposed project site. He said the overall assessment by the monitoring team was that the water quality in the river had remained relatively good for most categories that had been monitored, but that there were several trouble spots in the watershed. He said most of these trouble spots were in close proximity to commercial development and intensive land use. He said it was safe to say that there has been no indication that river water quality had improved over the period of observations, despite the development design controls that had been in place.

Mr. Cox said the ORWA had followed the Capstone student housing proposal at Technology Drive; had studied design elements; had attended meetings and hearings on the topic; and had visited the site on a Riverwalk on December 18, 2010. He said several areas of concern had arisen from their analysis.

He said although the proposal kept development away from the Oyster River Streamside Protection Zone, they noted that the property had river frontage in two locations. He said because of this, and because the proposal called for over 600 new residents, it would not be reasonable to believe that there would be no additional foot traffic or other impact due to their presence.

Mr. Cox noted that the stormwater treatment design for the development had been praised as first rate, including the fact that the design called for capturing and treating the first inch of storm precipitation, which was crucial. But he said storms that delivered over 1 inch of precipitation were commonplace, and said given the amount of impervious surface in the proposed development, it must be recognized that there would be impact on the river due to stormwater.

He said it had been recognized by the developer that salt would be used to treat streets in the winter, and that chemicals would be used for landscaping purposes. He said it could not be expected that all of the materials would be contained via stormwater treatment facilities, and said some should be expected to show up in the nearby river.

Mr. Cox said that related to this matter was the challenge for snow removal. He said if the plan was to store it on site, this should be designated. He said if off-site disposal was planned, there should be assurance that it would not be discharged into the river or estuary. He said downtown Durham had a continuing, outstanding example of how not to do it, at Mill Plaza.

Mr. Cox said the existence of an aquifer under the proposed site had been questioned, but he said there were published maps and GIS data layers that showed that one was present. He said that regardless of this, it should be noted that the Strafford County soil maps showed that the upland soils on the southern and western portion of the proposed site were Windsor loamy sands, which were deep, well drained soils that typically occurred above underground aquifers.

He said members of the ORWA made note of the absence of surface stones in this area during a site visit on December 18, 2010. He said if this was so, it was reasonable to conclude that there was a direct hydrologic connection to the nearby river, and said on-site activities should be planned accordingly.

Mr. Cox said the proposed project site was part of a large, relatively continuous undeveloped wildlife corridor along the river in both upstream and downstream stretches. He said this project would substantially narrow the corridor. He also said there were several aquatic species of concern in New Hampshire that had known populations in the

river. He said important measures to protect these populations included careful design and maintenance at river crossings, and wide riverine buffers.

He said it had become a well-publicized fact that the Great Bay system was impaired, largely because of the nutrient loading that arrived at the bay via the rivers that flowed into it. He said although a river might meet State water quality standards, it must be recognized that the present water quality was contributing to the impairment in the bay.

Mr. Cox said a difficult concept in measuring contributions to diminished quality was that of cumulative impact. He said at the point where a diminished quality element was measured, that point had been reached by the cumulative impacts of all the previous contributions, not just the impact of the most recent action.

He said it was therefore important to remember that if assurances couldn't be provided that the current proposal improved the water quality, then it was highly likely that the current proposal would contribute to further downstream problems. He said it was for these reasons that the Oyster River Watershed Association expressed deep concern about the adverse impacts of the proposed Capstone development, as it now stood. We would be happy to work with the firm and its consultants to devise ways to reduce the adverse impacts that we mentioned above.

Mr. Cox said ORWA did ongoing monitoring of the river. He said the intensity of monitoring needed with this development might be more than that, but said the Association would be happy to work with someone on this.

He noted that Capstone proposed to put a conservation easement on land that was not to be developed. He said that was well and good, but said most of it couldn't be developed under current law anyway. He said if that conservation area wasn't going to be prime wildlife habitat anymore, which it couldn't be with that number of houses, etc there, the existing wildlife corridor in the area would be greatly reduced.

He said connectivity was very important regarding wildlife corridors, and said it would seem appropriate that Capstone might be interested in seeing that the land on the other side, in Lee was permanently protected, so there would be a wildlife corridor that was maintained. He said if that land on the other side was developed as well, the corridor would really be lost.

Mr. Cox noted that there had been some mention of a possible conservation easement on that property, and said this was something that should be explored. He said if this project went through, they should all see what could be done to minimize, as much as possible, further development that would further impact wildlife. He said it was hard for him to say that the Capstone project would improve the habitat for wildlife. He said it was a great project, but said this was a bad site for it, for environmental reasons. He said he wished they could find another site.

He suggested some ideas for the applicants to consider in terms of greening the project further. He suggested using cogeneration to provide both heat and electricity for the

development, and said this would be very beneficial for the environment and the development. He also suggested that local materials and local contractors could be used for construction.

Councilor Smith noted the large, semicircular piece of land Mr. Cox had referred to, to the southwest of the Capstone property, where the river looped around. He said at that point, one could walk all the way around onto the abutter's property, and asked if the abutter would want that to be fenced off in some way.

Mr. Cox said he didn't know, but would think he would, with 600 people nearby.

Councilor Smith said a significant thing about the way the cottages were laid out was that the abutter's land was closest to one corner of the development. He said it would be very attractive for tenants to go down to an undeveloped parcel, which might or might not be a good thing. He said this was something he hoped the ORWA would take an interest in, along with the developer.

Mr. Cox noted the book *Last Child in the Woods*, but said a piece of land could be loved to death if there were too many people using it. He said it was the scale of this project that was the real concern, and said he wasn't sure where the balance was. He said he hoped the people living there could have the opportunity to appreciate the river, and said the question was whether they could do this without destroying it

There was discussion on whether to continue the public hearing at this point. Chair Parnell noted that there was information from the applicant that the Board was still waiting for, and Mr. Campbell also said the applicants would like to have some time before responding to some of the comments made that evening.

Susan Fuller MOVED to continue the Public Hearing to the next meeting. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Break from 9:14 to 9:21 pm

VII. Deliberation on Appeal of Aquifer District Boundary submitted by Attorney Peter J. Loughlin, Portsmouth, New Hampshire, on behalf of Capstone Development Corporation, c/o Appledore Engineering Inc., Portsmouth, New Hampshire.

Mr. Campbell explained that the Zoning Ordinance stated that an aquifer boundary could be challenged and also outlined the process for doing this. He said Capstone had submitted an appeal, and as part of this had provided various materials and studies to Code Administrator Tom Johnson, who then had a hydrogeologist (Town Engineer Dave Cedarholm) review them.

He said this review as well as the materials were then sent to the Planning Board, which would now hear from the applicant, could either agree or not with the conclusions, and would then need to make a recommendation to the Town Council. He noted that this process

had been done by the Town a few times before he had come to work in Durham, but said at that time, the process did not include going to the Town Council for approval.

Chair Parnell asked how the original aquifer boundary was set.

Mr. Campbell said it was based on 1970's USGS mapping, which itself was based on soils information, and said most of the delineations didn't make sense. He noted that the water resource protection subcommittee of the Planning Board was looking at the idea of amending the aquifer district language and the map itself.

Attorney Peter Loughlin spoke on behalf of Capstone, and introduced Cynthia Thayer, Chief Geohydrologist for R. W. Gillespie & Associates.

Ms. Thayer first noted that the company had followed the Ordinance regarding conducting hydrogeological studies, and provided details on this. She said these studies were usually done in conjunction with onsite wastewater disposal, but noted that in this case, the property would have Town water and sewer. She said the analyses done were therefore a high level of due diligence.

She said the company had first done 12 test borings, and said each was then developed into a monitoring well. She said the water quality was tested at five locations, and said this established the baseline conditions on the site.

Ms. Thayer showed on a map the locations of the monitoring wells as well as the delineated aquifer area, and explained that half of the borings were done inside the existing aquifer area on the site, and half were done outside of it. She said they had then compared the hydrogeology of each, and said they both turned out to be glacial till, which did not transmit water very readily.

She noted the perched wetland conditions in some places, and said the soils were so tight that water wasn't transmitted horizontally or vertically. She noted that some borings on the perimeter associated with the Oyster River had silty clay, which also didn't transmit water rapidly. She said by virtue of soil type, the areas tested fell out of being considered a productive aquifer.

Ms. Thayer said the second thing the company did was to try to pump three of the monitoring wells in the area of concern. She said they had a difficult time trying to test the wells, and said this process pretty much confirmed that it didn't make sense to put a productive well in there. She noted the calculations done in association with the pumping tests.

She said the company then went back to the site and looked at the geotechnical conditions there relative to building. She said in all, over 90 borings were done on the site. She said it was found that the conditions inside and outside of the aquifer district delineated on the site were about the same, and said nothing seen could be characterized as a sand and gravel aquifer.

Councilor Cote asked how they had determined where to place the borings.

Ms. Thayer said they tried to get good spatial distribution, and tried to stay out of the wetland area with the rig. She said in terms of depth, some borings went as deep as 40 ft, and noted that 25% of the borings were required to try to touch bedrock. She said most of them were 20 ft deep or more. She said the groundwater in the glacial till was quite deep, and said the shallowest measurement was 7.7 ft below the surface.

Ms. Fuller asked if there was any pattern as to where the deepest ones were.

Ms. Thayer noted Figure 3, a groundwater flow contour map, and said the flow was radial toward the river.

Chair Parnell asked if the site was one where one would expect to find an aquifer.

Ms. Thayer said no. She said the original aquifer mapping for this area was probably based on aerial photography and was not site specific. She said the USGS mapping showed this area as an isolated island that was cut off by the river, and that didn't continue outward to any great extent. She said there were a few other areas like it around there, and said she wasn't sure if those were aquifers or not.

Chair Parnell read from the Town Engineer's letter, which summarized that the aquifer boundary should not include the subject property. He then asked if Board members had any comments, or concerns that this still might be an aquifer.

Councilor Cote said the due diligence done by Capstone was extraordinary, and said he appreciated this. He said this weighed heavily for him that the company had proven that this was not an aquifer.

Mr. Campbell suggested that the Board recommend that the aquifer boundary be removed from this property.

There was lengthy discussion by the Board on what exactly the Board was recommending, and how the motion should be worded. It was agreed that the Board was recommending that the aquifer district delineation should be eliminated.

Susan Fuller MOVED that based on the evidence provided, and the review by the Town Engineer, the Planning Board recommends to the Town Council that the boundary area designated on the subject property as being part of the Aquifer Protection Overlay District be adjusted to remove the designation so that the subject property is not in the Aquifer Protection Overlay District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

- VIII. Conceptual Consultation** submitted by John Randolph, Stratham, New Hampshire, to change the use of a building from a Bed & Breakfast into an Assisted Living Facility. The

property involved is shown on Tax Map 18, Lot 12-1, is located at 1 Stagecoach Road and is in the Rural Zoning District.

Mr. Randolph said this was a change of use that was proposed, and noted that it was a permitted use in the Zone. He said the proposal was not to change significantly the outside of the building, although he noted that there was a significant amount of work needed right now for upkeep of the barn, roof, etc. He said they had been working with the Fire Department on some issues, including the need for sprinklers in the building in order to bring it up to code.

He said there was private water and sewer, noting that they were looking into the condition of the well and septic system, and would provide the Board with details on this. He said he had spoken with the Town Engineer about drainage on the property.

Mr. Randolph said he planned to meet the owners of neighboring properties and address any concerns or issues they might have. He said the goal was for the assisted living facility to be a contributing member of the community.

Chair Parnell asked if the intention was to use all of the buildings that were on the property now.

Mr. Randolph provided details on this, noting that they planned to keep the barn, and that a third building was a snack shack, and it wasn't clear whether there was value in keeping it.

Mr. Lewis asked how old the Bed and Breakfast was, and was told the building had been built as a farmhouse in 1783. It was noted that it had been a stagecoach stop at one time, and that the solarium area was put in in 1985 and the new kitchen was put in in 2008.

Councilor Cote asked Mr. Randolph if he had done other facilities like this before.

Mr. Randolph introduced Debbie Sanders, and said she and an administrator would run the facility. He said his own expertise was in upgrading buildings.

Ms. Fuller asked how many people the building would house.

Mr. Randolph said 22 bedrooms were authorized, and said there would be no more than 24 people living there. He noted that there would be two double occupancy units to provide more affordability. He also said both men and women would live at the facility. He said there would be a full time administrator and 5 eight hour shift employees each day, including an overnight person. He said there would be 11-12 employees.

Ms. Fuller noted that there were significant grounds on the property, and asked Mr. Randolph if he had any idea what would be done with it.

Mr. Randolph said a goal was to attract people who wanted to get outside and enjoy the

grounds, and said they would like to bring the grounds back to the way they had previously been cared for. He noted that the idea of using rain gardens to control water flow on the property was being considered.

Councilor Cote asked if there were any issues concerning ADA compliance.

Mr. Randolph said this had been discussed with the architect and Mr. Johnson. He said the State wouldn't issue a license if the facility didn't comply with ADA requirements, concerning widening of doors, etc. He noted that there was not a requirement that there be an elevator, and said a monthly evacuation exercise from the second floor would have to be done.

He noted that there was a 3% vacancy rate for assisted living facilities in the area, so there was a significant need for this facility. He said the national vacancy rate was about 10%.

There was discussion on what "assisted living" entailed.

Mr. Ozenich asked if alcohol would be allowed.

Ms. Sanders said yes, and said it would be stored for residents in a locked cabinet. She said the limit was two servings per day.

Councilor Smith asked if any residents would be driving, and Ms. Sanders said if a resident had a license, he/she might have a car there.

Mr. Randolph said most residents would not have a car.

It was noted that there was a significant amount of parking available on the property, and also that there was a Wildcat Transit stop right next to the property. Ms. Sanders said residents would be offered transportation off site, for medical needs, etc.

Chair Parnell determined that the Board would see the site plan application at its next meeting.

Ms. Fuller left the meeting at 10:02 pm.

IX. Other Business

A. Old Business: Deliberation on extending the deadline for the Conditions of Approval for the Site Plan Approval of 27-35 Newmarket Road, Map 6, Lot 11-7.

Mr. Campbell noted that as part of the Boundary Line Adjustment approval, there was a condition that the trailer on the property would be made legal. He said with the deadline approaching, Mr. Johnson had denied the building permit because of some code issues with the trailer, and said it would take some time to work things out. He said Mr. Johnson thought the situation was fixable. He said 3-6 months should allow enough time for the

applicant to either fix the trailer or bring in a new one.

Councilor Smith MOVED to grant a 90 day extension for the Conditions of Approval for the Site Plan Approval of 27-35 Newmarket Road, Map 6, Lot 11-7. Peter Wolfe SECONDED the motion, and it PASSED unanimously 6-0.

- B. New Business: Discussion on appointing a Planning Board Representative to the Durham Business Park Design Guidelines Review Panel.

Councilor Smith volunteered to serve in this position, noting that he was on the Planning Board when these guidelines were developed.

Peter Wolfe MOVED to nominate Julian Smith to serve as the Planning Board Representative to the Durham Business Park Design Guidelines Review Panel. Richard Ozench SECONDED the motion, and it PASSED unanimously 6-0.

- C. Request for Technical Review

Mr. Campbell said there was a request for Technical Review by the Durham Community Church in regard to a proposed thrift shop there. He said they would like to convert the activities room for this use, and said it would be accessed from the back of the building. He said Mr. Johnson saw this as a new use and not as an extension of the religious use, so Planning Board approval was required. He said the retail store would be under 5,000 sf., and would be a permitted use. He said Mr. Johnson didn't care whether it went to Technical Review, and simply wanted to see more review of the project than giving them a building permit.

Peter Wolfe MOVED to send the application to the Technical Review Committee. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.

Councilor Smith noted that he had gone to the recent ZBA meeting to speak in favor of a variance request to turn part of a single family residence into an accessory apartment. He said that under the current Ordinance, a family or retired couple who wanted to have one would have to get a variance in order to rent to a small family. He noted that in some zones, an accessory apartment could house two students who were not related to the people who lived in a house, and that some other zones, there could be as many renters as the building could fit.

He said he was someone who would prefer to share his home with a small family rather than college students, and said he thought the Zoning Ordinance needed to be tweaked. He said he could provide language on this at another meeting, and suggested that this could be a Planning Board initiated Zoning change.

Mr. Campbell asked how the ZBA had justified its decision, and Councilor Smith provided details on this. He said he thought it would be simpler to change the Ordinance than change the thinking of the Code Officer.

Mr. Campbell noted that the Code Officer didn't have to take the most restrictive interpretation of the Ordinance now because the Zoning Ordinance had been changed concerning this.

He said if the Board was interested in making the Zoning change Councilor Smith had suggested, he would ask Mr. Johnson what language he would like to see.

Board members agreed to discuss this issue at a future meeting.

Mr. Wolfe left the meeting at 10:13 pm.

C. Next meeting of the Board: February 23, 2011

X. Approval of Minutes

January 26, 2011

Page 2, line 22, should read "...would be a discussion by the EDC..."

Line 33, should read "Pettee Brook Lane"

Line 37, should read "...Edgewood Road wasn't big enough, and some people..."

Page 2, line 2, should read "...road that would come out at the Main Street roundabout with McDaniel Drive..."

Page 4, line 14, should read "...Capstone's College Station..."

Page 5, line 17, should read "...and provided details that Capstone's..."

Page 11, line 44, should read "...that they would be planted with..."

Page 13, line 8, should read "...for the Student Senate at UNH, said he hadn't heard anything that evening that would discourage..."

Page 15, line 14, should read "...he would address the Conditional Use permit..."

Page 18, line 40, should read "Richard Weyrick"

Page 19, lines 7, 18 and 34 should say "Weyrick"

Line 45, should read "...the particular conservation focus area where..."

Page 20, line 3, should read "Weyrick"

Page 21, after line 44, there should be a heading: Request from Pine Ledge Holdings for Reconsideration

Page 22, line 20-21, should read "...actually wanted the Board to reconsider. Mr. Campbell said..."

line 25-26, should read "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."

Check spacing between paragraphs throughout

Councilor Smith MOVED to adopt the January 26, 2011 Minutes as amended. Wayne Lewis SECONDED the motion, and it PASSED unanimously 5-0.

XI. Adjournment

Richard Ozenich MOVED to adjourn the meeting. Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.

Adjournment at 10:26 pm

Victoria Parmele, Minutes taker

Susan Fuller, Secretary