

*These minutes were approved at the May 11, 2011 meeting.*

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

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

**MEMBERS ABSENT:** alternate Wayne Lewis

**I. Call to Order**

Chair Parnell called the meeting to order at 7:01 pm. He said Mr. Corrow would vote temporarily for Mr. Kelley.

**II. Approval of Agenda**

*Bill McGowan MOVED to amend the Agenda by postponing Item X, approval of the Minutes. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.*

**III. Report of the Planner**

Mr. Kelley arrived at approximately 7:08 pm.

Mr. Campbell said he had not met this month with University planner Doug Bencks.

He said the final report on the Visioning Forum had been received and was in Board members' packets. He said the Survey subcommittee was still meeting, and said March 17<sup>th</sup> was the last meeting of the committee before forwarding the survey to the Planning Board.

Mr. Campbell said the EDC had met on Feb 28<sup>th</sup>, and was presented with the preliminary results of the business visitation surveys. He said EDC member Yusi Wang Turrell would put the finishing touches on them, and would report back to the EDC at their next meeting later in March. He said the EDC also discussed the TIF district concept again, and he provided details on this.

He said on Wednesday, March 2<sup>nd</sup>, the Fire Department mini-charrette was held, and said it was fairly well attended. He said most of the discussion focused on C lot, but said other possible locations for the new fire station were discussed as well, including the Greens property, a property further down on Mill Road, and a Stone Quarry Drive property. He said information on the charrette would be provided in the Friday Update.

Mr. Campbell said the Conservation Commission held its March meeting on March 3<sup>rd</sup>, so that the Planning Board could get the Commission's comments on the Capstone application for this evening's meeting. He said he had thanked them for meeting early.

Mr. Campbell said on March 4<sup>th</sup>, he attended the Technical Advisory Committee (TAC) meeting at the Strafford Regional Planning Commission, and noted that he had provided information from the meeting in Board members' packets. He said the committee had talked a lot about the State Transportation Improvement Plan, as well as amendment #1, which showed two projects with money for Durham for the years 2012-2014.

He said after the amendment was voted on by the TAC and passed on to the Policy committee as a recommendation, there was a bill passed by the NH House that would get rid of the \$30 registration fee, a fee which paid for a lot of transportation projects in the State as well as betterment projects. He said there were eight projects on the chopping block, and four were for Durham. He said these projects could quite possibly be cut if funding for them wasn't found by June.

He said the TAC was also going through the 10 year project solicitation process, and said he had requested that those projects taken off would be put back on. He said hopefully they would be put back in the Ten year plan and would stay there.

Mr. Campbell said that at the Planning Board on March 16<sup>th</sup>, there would be a presentation by the Energy Committee on the energy checklist the committee would like the Planning Board to consider as part of reviewing applications. He said consultant Beth Della Valle would also be present to work with the Board on possible Zoning amendments it had been working on with her for some time.

He said two applications had been received concerning RSA 79-E (the Community Revitalization Tax Incentive Program), from Matt Crape, one for his Jenkins Court property, and the other for his 9-11 Madbury Road property. He said Mr. Crape's attorney would provide a presentation to the Town Council on the applications on March 21<sup>st</sup>, and said the public hearing on them would be held on April 4<sup>th</sup>.

**IV. Public Hearing on Application for Site Plan Review** submitted by John E. Randolph, Finally Home Properties NE, LLC, Stratham, New Hampshire on behalf of Bank of New England, Salem, New Hampshire to change the use of a property from a Bed & Breakfast (Hickory Pond Inn) to an Elderly Care Facility. The property involved is shown on Tax Map 18, Lot 12-1, is located on 1 Stagecoach Road, and is in the Rural Zoning District.

Mr. Kelley recused himself, and Chair Parnell said Mr. Corrow would be a voting

member in Mr. Kelley's place.

Mr. Randolph said this was a change of use that was proposed, and said the proposal to make the building on the site into an assisted living facility would not change significantly the outside of the building. He said inside, the major projects to be done were a sprinkler system, and some adaptation of the building to meet some ADA requirements. He said they had made contact with most of neighbors and asked if they had any concerns. He said the proposal was well received for the most part, but noted that concerns were expressed by one neighbor.

Mr. Randolph 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. Wolfe noted that at the site walk, he had asked if the septic system had been looked at.

Mr. Randolph said it had been looked at, and said the applicants were told the septic system was in good shape. He said they would be going through the State septic system approval process.

Chair Parnell asked if there was security planned for the facility.

Mr. Randolph said there would be a staff member there 24 hours a day, and also said there would be a centralized personal security system for residents, in case they fell, etc. He noted that if people wanted to go out in the afternoon, they would have the freedom to do that, and said there would be no residents living there who had dementia.

Chair Parnell asked if the property would be fenced.

Mr. Randolph said there had been discussion on this, and said it might be beneficial to add a fence in certain locations.

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

Chair Parnell asked if there were any members of the public who wished to speak regarding the application.

**Richard Kelley, Stagecoach Road**, said he was generally in favor of the application, but said he had some concerns about the parking that would be provided at the facility for residents, employees, visitors and delivery people. He asked for details on this, and said he was raising the issue because the former owner of the property had requested a waiver to allow special events there 2-3 times a year. He said at these times, parking had spilled out onto Stagecoach Road. He noted that this road was narrow and had no sidewalks, so there were safety concerns. He said he would hate to see chronic parking problems with

this facility.

Mr. Kelley also noted the issue of the condition of the barn, which he said had been gradually deteriorating, and resulted in roofing materials sometimes blowing across the road. In addition, he asked what the plans were for snow storage/removal on the site. He said what was proposed was an excellent change of use and would be of benefit to the community. He said he hoped that the Planning Board could direct some attention to the issues he had raised, and wished the applicants the best of luck.

Chair Parnell asked Mr. Kelley if he would like to see more parking on the site.

Mr. Kelley spoke again about the importance of knowing what the demand for parking spaces would be.

**Maria Millette, 5 Stagecoach Road**, said she was a primary abutter, and said if the Board approved this application, her way of life would change drastically. She said when the Inn was in operation, the impact was minimal, but said there would now be 22-25 full time neighbors living there. She said the applicants were targeting people 65 and above, and were also planning to offer respite care. She asked if this meant that the neighborhood would now become a quiet zone, and also questioned what other impacts there would be.

She noted that when she had bought her property, the area was zoned agricultural. She noted that she ran an herb and wildflower farm there, and then went through the concerns she had:

- She said she used heavy equipment at her farm during the day, and asked if she would be getting complaints that the noise from her farm was too loud. She also noted that she had 7 licensed dogs on the property, and asked if she would get a visit from the Town if the dogs barked.
- She said she had concerns about possible liability if a resident came on her property and got hurt. She asked what happened if someone fell in the pond on her side of it.
- She spoke about possible impacts from parking, including on Stage Coach Road, and also noted concern about lights from cars impacting her.
- She asked what the plans were for waste disposal.
- She asked about the existing barn, and whether it would be used for storage, or for laundry facilities. She noted that it was grandfathered and didn't meet the setback required from her property line.
- She asked if the septic system would be able to handle the laundry requirements as well as other water needs.
- She questioned having only one overnight person for 24 individuals who were living there.
- She asked who would pay for ambulance services that were needed, and if this would come back to the taxpayer.

Ms. Millette said she was not against this use per se, but said she was being put into a box now. She said if the Board approved this change of use, her property would be governed by that, and asked what would happen to her daily lifestyle.

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

The Board decided that it would deliberate on this application that evening.

Councilor Smith said perhaps the applicant could provide responses concerning the questions raised about parking, snow storage, location of the laundry facilities, etc.

***Councilor Smith MOVED to reconsider the vote. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

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

Mr. Randolph said that concerning the parking, there would be 4-5 employees there at most during the day, and also said at other facilities he knew about, fewer than 5% of the members had cars. He said deliveries, at most would be on a weekly basis. He said the people who live there did not have that many visitors, noting that there had been discussion on this to make sure there was enough parking provided.

He said the most parking they would expect at any one time was 7-10 vehicles, and said there was much more parking than that available. He said there was more than enough parking in front, and said there was no expectation that parking would occur on Stagecoach Road.

Mr. Randolph said that in regard to the issue of snow storage, it was a 3 acre lot, so there was plenty of room for the snow if it built up.

He said upgrading the barn was one of their top priorities, and said the roof would be the first project that was done on it.

Ms. Fuller noted that Stagecoach Road was narrow, and asked if perhaps some no parking signs could be placed along the boundary line of the property, along that road.

Mr. Campbell explained that it would be the Town that would need to put up those signs. There was discussion.

Ms. Fuller suggested placing a sign on the property that said, please - no parking on Stagecoach Road.

Mr. Randolph said if there was no parking available in front, they could direct people to the back. He said they would do all they could to keep people off Stage Coach Road.

Mr. Campbell asked how many employees there would be on a maximum shift, and Mr. Randolph said there would be 5 shifts, one of which was overnight. He said the

maximum number of employees on at the same time would be 4.

Mr. Campbell noted that the parking requirements, which took into account the particular use, said 1 space was required for every 5 beds, so there would be 5 parking spaces needed for the residents. He also said 4 spaces would be needed for the staff, for a total of 9 spaces that were required..

Mr. Randolph said they were well in excess of this. He also said that regarding the comment by the abutter about a possible quiet zone, no one wanted anyone to change their lifestyle so this would be a particularly quiet zone. He said the applicant was not looking to place restrictions of any kind that weren't already in place. He said there was a significant amount of space on the property, and said he hoped they would be far enough away so that there wouldn't be any impacts from the clients.

He said clients at the facility would be briefed concerning dogs on the abutting property, and said the property line would be clearly defined with a fence. He said the fence would also clarify things concerning the pond.

Mr. Randolph said the laundry service would be done on the second floor of the building, where there was already a laundry room.

He said there would be an RN on staff during the day, and on call at night. He said there would be an overnight person there, and said this arrangement met the State requirements.

He also said the cost of ambulance services was passed along to the individual who the ambulance was for.

Mr. Ozenich asked if there was a state law regarding smoking at the facility.

Mr. Randolph said there was no law concerning smoking outside, and also said they weren't planning to allow smoking inside the building.

It was noted that alcohol would be allowed, but would be kept in a closet, to be served when residents wished to have a glass or two. It was noted that the atrium area of the inn would serve as the dining room as well as an activity area.

Ms. Fuller asked if the applicant was required to have a design for a replacement septic system on hand, in case the existing system failed, or if this would be addressed at the time that a system failure occurred.

Mr. Randolph said if there was a fear of failure of the system, the State would require an additional plan. But he said he didn't think a backup plan would be required in this instance.

Concerning the issue of waste disposal, Mr. Randolph noted that they were required to have a dumpster, and said they would look into where the inn had kept it. He said perhaps

it could be put in the barn.

Councilor Cote asked whether when the septic system was assessed, the potential load with this particular use was considered.

Mr. Randolph said the system was built to a standard that would have to meet the needs of 38 people, which exceeded the number of people they were planning to have at the facility.

He said storage space in the main building would be offered to residents, and said they generally didn't have the need for that much storage space.

***Councilor Smith MOVED to close the Public Hearing. Peter Wolfe SECONDED the motion, and it PASSED unanimously 7-0.***

There was discussion about the issue of parking. Councilor Smith said he was fine with what the applicant proposed.

Mr. Ozenich said his in-laws were in and out of assisted living facilities for 10 years, and said from his experience, Mr. Randolph's assessment on the number of visitors was correct. He said allowing 5 spaces for 23 residents was fine.

Mr. Wolfe said the number of people at these kinds of facilities who drove was extremely small.

Chair Parnell said there seemed to be plenty of room for snow storage.

Regarding the idea of possible signage needed to not park on Stagecoach Road, Councilor Smith said if parking became a problem there, the management would hear about this.

Chair Parnell said something was needed in the conditions of approval concerning a fence, and there was discussion on wording for this.

There was discussion on the roof issue, and Councilor Smith said this was a code issue. Mr. Campbell developed a condition to be met subsequent for this.

Mr. Wolfe suggested a condition that said the applicant shall get all necessary permits.

There was discussion that screening for the dumpster was covered under condition #6.

Mr. Campbell suggested adding some more specific wording to condition #4 to be met subsequent, in regard to working with the Town Engineer on stormwater management of the site and considering such things as catch basins and a rain garden. He also suggested language concerning addressing snow storage on the site.

### Waivers

The applicant has requested a waiver from 7.02 (D) (4) of the Durham Site Plan Review Regulations for the requirement of a surveyed site plan. The applicant has provided a site plan of the property that was submitted as part of the septic system design. Section 8, Construction Guarantee, Section 11.02, as-built construction drawings, and Section 11.03, Maintenance Guarantee, are also being waived by the Planning Board. The Planning Board has considered this request and hereby grants the waiver.

### Conditions to be met prior to the Signature of Approval on the Site Plan

1. The applicant shall supply one paper copy of the plan for signature by the Planning Board Chair.
2. If applicable, the applicant shall apply for, and be granted, new water and sewer permits through the Department of Public Works.
3. The applicant will be required to submit a building permit application to the Code Enforcement Officer for any signage associated with this project.

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

1. 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. The applicant shall work with the Durham Fire department on the installation of the sprinkler system and fire alarm system.
3. The applicant shall apply for, and be approved, for all appropriate building permits for work done at the site. The applicant shall work with the Durham Code Enforcement Officer to ensure appropriate permits are received and that the building meets all code and ADA accessibility standards, in particular the existing barn shall be stabilized.
4. The applicant shall continue to work with the Durham Town Engineer on stormwater management and a snow storage area for the site.
5. If the Department of Public works (DPW) requires a drainage easement, the applicant shall submit an easement deed for approval by the DPW, and the applicant shall have the responsibility to record the deed at the Strafford County Registry of Deeds.
6. The dumpster for solid waste must be appropriately screened as per the Town Code.
7. Fencing shall be placed along abutting property (18-12-4) to ensure the occupants of the facility stay on the property, and shall be permitted by the Code Enforcement Officer.
8. The applicant must obtain all permits from the State of New Hampshire for the operation of an assisted living facility.



***Susan Fuller MOVED to approve an Application for Site Plan Review submitted by John E. Randolph, Finally Home Properties NE, LLC, Stratham, New Hampshire on behalf of Bank of New England, Salem, New Hampshire to change the use of a property from a Bed & Breakfast (Hickory Pond Inn) to an Elderly Care Facility. The property involved is shown on Tax Map 18, Lot 12-1, is located on 1 Stagecoach Road, and is in the Rural Zoning District. Bill McGowan SECONDED the motion.***

Councilor Cote asked if the facility should actually be called an assisted living facility, and not an eldercare facility.

Mr. Randolph noted that the Zoning Ordinance said elderly care, but said the applicants were applying to have an assisted living facility.

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

- V. Acceptance Consideration of an Application for Site Plan Review** submitted by DCoastal LLC, Epping, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire, to place a fully commercial concession trailer on a piece of property to be operated as a carry-out restaurant. The property involved is shown on Tax Map 2, Lot 12-11, is located on 10 Pettee Brook Lane, and is in the Central Business Zoning District.
- VI. Acceptance Consideration of an Application for Conditional Use Permit** submitted by DCoastal LLC, Epping, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire, to place a fully commercial concession trailer on a piece of property to be operated as a carry-out restaurant. The property involved is shown on Tax Map 2, Lot 12-11, is located on 10 Pettee Brook Lane, and is in the Central Business Zoning District.

The applicants, Daniel McNeill and Christopher Parece, said they were proposing a fully commercial carry out restaurant on a 100 sf piece of land, and said this would be phase one of their business plan. He said they intended to move into the new mixed use building that would be built by Ionian Properties at 10 Pettee Brook Lane, which was projected for June 2012.

Mr. McNeill said the purpose in starting the restaurant now was to establish a clientele and create a market for their business. They said the trailer unit would be anchored down, and would be in conformance with all State and Town regulations. It was noted that there were some easement and setback issues, and said these had been addressed. He said it was his understanding that Mr. Campbell and Mr. McCusker of the Fire Department were comfortable with their proposal, including the location of the restaurant. He said they also had documentation showing that they were in conformance with DPW regulations.

Chair Parnell asked what the proposed schedule was, and the applicants said they hoped to start putting the trailer in place as soon as possible.

Mr. Ozenich asked about the deep fryers that would be used, and if a seafood smell would be noticeable.

The applicants said a hooded vent would catch this.

Mr. Kelley asked if the application was complete, and Mr. Campbell said it was. He said the applicants were requesting a waiver, but said the Board didn't need to act on that this evening.

***Richard Kelley MOVED to accept an Application for Site Plan Review and Conditional Use Permit submitted by DCoastal LLC, Epping, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire, to place a fully commercial concession trailer on a piece of property to be operated as a carry-out restaurant, and schedule a public hearing for March 23<sup>rd</sup>, 2011. The property involved is shown on Tax Map 2, Lot 12-11, is located on 10 Pettee Brook Lane, and is in the Central Business Zoning District Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

It was agreed that a site walk would be held on March 23<sup>rd</sup> at 6 pm. Chair Parnell asked that the applicants mark out where the mobile unit would be located, and provide some pictures of the unit.

**VII. Deliberation on 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.

**VIII. Deliberation on 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 and other Board members agreed that they would follow the outline Mr. Campbell had provided on the various issues involved with the application. He asked Councilor Smith to read into the public record the wording from the memos provided by the Conservation Commission.

Mr. Campbell noted the ZBA meeting the previous evening, where there had been a Request for Rehearing concerning the variances that the ZBA had previously granted to Capstone. He said the request was denied because the ZBA determined that from its perspective, there was no regional impact, the applicants had no standing to request the rehearing, and no information had been provided by them to warrant the request.

Councilor Smith read the two letters from the Conservation Commission into the public

record.

Chair Parnell said he would like the Planning Board to go through the items discussed in the letters.

**Item #1 - There is no feasible alternative location on the parcel that is outside of the WCO/SPO District that is feasible for the proposed use:**

Mr. Kelley said that regarding the Conservation Commission's comments and Attorney Hogan's comments regarding possible alternative locations for the development outside of the buffers, he was willing to entertain that. He said he didn't think the applicant had responded to those contentions.

He said he had spent some time looking at the various buffer impacts, and recognized that of 33 upland acres, 14 acres of this was buffers. He said there were areas on the site where he could say the infringement into the buffer was minor, but also said there were other areas where the infringement was almost up to the wetland line. He said he was most concerned about the areas near the clubhouse, where the impacts went up to the edge of the buffer to the wetland on the far west side.

Mr. Kelley noted that there were also wetlands along the northern property line, and said an unnamed tributary to the Oyster River was the concern there. He said the buffer impacts there were significant in that they extended quite a ways. He said he was intrigued to hear that the applicant was in negotiations to add more land to the open space, and said if this was part of the mix, it would influence his decision.

He said he didn't think all of the wetlands and buffers could be saved. But he said he would be interested to hear the applicants respond concerning the contention that everything feasible had been looked at, and to see an update on the status of the additional conservation parcel.

John Acken of Capstone said that in regard to the issue of additional land for open space, this was currently under discussion with the abutter. He said it was hoped they could come to some resolution.

Dave Garvey, representing the abutter, said they had been more than cooperative in making something happen, and were entertaining the sale of the land to Capstone.

Mr. Acken said the idea to date was for Capstone to purchase the land in fee simple and place an easement on it, and for the situation to be no different than for the existing open space on the Capstone site.

Mr. Campbell noted that this additional land extended into the town of Lee.

Councilor Smith said if the additional land was included, the parcel would be more attractive to a conservancy or land trust because of the additional river front.

Mr. Acken said that regarding the placement of the buildings, this went to the heart of the design concept of a hamlet in the woods. He explained that the placement of the buildings along the westerly access road served to define the streets, as well as shield parking from view as one was driving into the development.

Mr. Kelley said his concern was the buffer areas that would be compromised the greatest. He said he understood that there was going to be fringe encroachments that occurred. He asked if it would be possible in the area of the westerly access road to adjust the radius of the curve where the red building was, so the road formulating the view corridor was pushed to the south and west, so that the encroachment into the wetland in that area was therefore diminished. He also asked if it would be possible to eliminate a portion of parking area next to the westerly access road to avoid some encroachment in that area.

Mr. Acken said losing any beds on the site would mean the project was not feasible in terms of losing financing if they lost beds. He said it was a function of the units and providing the management they needed to provide. He said a second aspect of the current layout was that they were trying to thread the westerly access road in a way that was as far away as possible from the vernal pool as possible.

Wetland scientist Adelle Fiorello said because of the vernal pool and the desire to maintain a tree canopy over it in order to control the water temperature, etc, they had kept the road pushed in a northerly direction as much as possible. She noted that this was also requested by NH Fish and Game when the agency reviewed the project, in order to maintain as much of a perimeter as possible around the vernal pool.

Mr. Kelley said he heard what the applicants were saying in terms of losing financing of they lost beds. He asked if it was feasible to revise some of the cottages in a way that would maintain the number of beds but design them so the units had more of a multi-unit look.

Mr. Acken said this got into the marketing side of things, and insuring that they had a marketable product that was feasible from that standpoint. He said Capstone would want to keep the cottage density there because of the sense of community this generated as a hamlet in the woods, as opposed to larger, box-like buildings that they thought would degrade the feel and hurt the overall project.

Mr. Kelley said he had given up on the wetland next to the stormwater treatment system being built, in terms of being a habitat. But in the three areas he said he was still concerned about, he asked if there was some way to take the three buildings involved and either find another place for them, or combine them with another three in conjunction with a multi-unit building.

Ms. Fiorello noted regarding the wetland to the north that with the alternatives analysis, they had been able to pull things back to preserve that wetland. She said they had also made changes to the layout in that area and were still able to accommodate the need for the recreation center, walkway, etc.

She said there might be engineering reasons why the westerly road was located and curved the way it was. She also said to eliminate any buffer encroachment in that area would mean eliminating a building. She said that regarding the wetland and buffer on the easterly edge of the site, there were some steep slopes to deal with, and said in this instance and in others, they had reduced impacts considerably through reduced grading, installing retaining walls and re-designing the site.

Engineer Joe Persechino explained that the layout reflected a holistic design, where everything fit together, so it wasn't simply a matter of being able to move one part of the layout in order to fit it in with the buffers. He said in order to fit with one buffer, the entire layout of a sub neighborhood would have to shifted to the north, which would then impact another buffer. He said the question then was which way to go.

He noted that where the layout went deeper into buffer areas, they did 2 to 1 slopes and added retaining walls. Concerning the westerly access road, he said it had been curved away from the vernal pool, but also said a certain radius was needed for the road to curve in coming into a neighborhood. He explained that if the radius was too sharp, parking would be lost, and visibility around stop conditions for the secondary roadways to the parking areas would be impacted.

He said the design team had spent countless hours on revisions. He noted that at the initial design with the Conservation Commission, they had tried to maintain existing vegetated areas within the development. But he said the design team had then pulled everything tighter based on Conservation Commission discussion, so there were now minimum separation distances, and the parking spaces were tight too.

He said that up at the clubhouse there were certain amenities that made the development what it was, and said they had provided retaining walls and 2 to 1 slopes in these areas, and had pulled everything tight to the building. He noted that the most recent layout, in the site plan provided to the Board pulled the clubhouse back even further.

Mr. Kelley said the design team had done a great job, but he said if the design criteria had changed, and the development was a combination of multi-units and the cottage style, there would be a smaller footprint.

Mr. Acken agreed that the cottage style development was the key thing. He noted that this development provided a better opportunity to pull students out of the neighborhoods, and also allowed them to have a sense of ownership, and allowed Capstone to better manage the properties. He said although it seemed that if they just shifted things a little, or went taller with some of the buildings, this would be a simple solution, the reality was that a few changes would have a ripple effect, and would change the entire character of the community Capstone was trying to create.

Mr. Kelley said if Capstone was able to obtain the additional land and create a contiguous parcel along the river, this was of much more value than the 4.25 acres out of 14 acres of

wetland buffer areas being impacted. He then asked if it would be feasible to put retaining walls in some other locations.

Mr. Persechino said this related to the function and value of those wetlands. But he said that in that eastern area Mr. Kelley had noted, the grading would be restored. He provided details on this, and also described plans to use retaining walls in certain areas on the site.

Mr. Kelley said to him, putting the other parcel in conservation went a long way toward allowing the applicant to infringe into the buffers.

Mr. Campbell noted that as part of Capstone's original submittal, it had explained why it felt the application met that section of the Ordinance. Mr. Kelley read the wording of this original submittal out loud.

Mr. Wolfe said the ultimate issue from the developer's perspective was that the project was not economically feasible with higher, or fewer units.

Chair Parnell said he thought the applicant had made adjustments in order to put this development into this particular spot, and said he was prepared to accept that as what was presented. He said if the Board rejected this one, they'd have to see what the applicants came back with. He said that regarding the wetland issues, the Board had seen some of the wetlands being impacted, and said he didn't think they were significant wetlands. He said they were basically defined by the red maples that were growing there. He said the important wetlands along the river had been pretty well addressed.

He said the issue of a possible different layout for the project had come up before, including as part of the public hearing. He said he thought that Board members with views on the issue of reducing the scope of the project and making the buildings bigger should get those views out in the open now.

Mr. McGowan said he agreed that the applicant had been working with the Conservation Commission on finding ways to do the project, and said at some point, the final decision had to be made. He also said he agreed that if the applicant could get the additional acreage, that would make it a lot easier for everyone. He said given what the applicants had done, he thought there was no other alternative.

Mr. Corrow said he disagreed. He said the Board was supposed to decide on a Conditional Use application with the advice of the Conservation Commission. He said this advice had been very valuable, and said he didn't think the applicant had met the standard. He said he realized it wasn't feasible for the applicants to change the design, based on their business plan, but said there were multiple feasible courses of action, which could be marketable. He said from his perspective, one never came to an approval authority with only one viable course of action, and said he thought there were other courses of action, such as fewer units, larger units, or different configurations.

Councilor Smith said the applicants' marketing model was cottages and duplexes. He

said the Board had heard from the applicants that they needed to have 600 beds and about 100 buildings in order to be able to afford a robust management staff. He said he suspected that they could accomplish what they wanted with fewer buildings and fewer parking spaces, and thus a smaller footprint.

He said another way to go about this was to market the development to students who didn't need to come to Durham with a car, and who could ride a bus to campus and to Town to do shopping. He said something he thought the applicant could do was abandon the free parking idea for this project, and said free parking meant that students who didn't have cars were subsidizing those who did.

Councilor Smith said if the rent was slightly smaller and there was a fee for parking, this would be an attraction in marketing to students coming to UNH without a car. He noted that Durham was unusual in NH in that it had a regional transit system.

He said there was some opportunity to scale back slightly the amount of parking and the number of cottages. He said he was saying this because there was some resistance to the incursions into the wetland setbacks that might not be absolutely necessary.

Mr. Kelley said he had an open mind, and was still weighing this.

Mr. Wolfe said if the Board said it wanted to narrow the scope of what was proposed, the question was whether Capstone would walk away or try to modify the proposal so it fit into the existing parcel, and fit within the Town's needs. He said the concern was that what they were proposing was quite nice, and would have some benefits for the Town. He said he worried that if Capstone walked away, the Town could get something a lot worse on this site. He said he didn't know if there was an alternative to less than 600 beds.

Ms. Fuller said the banks didn't lend money on innovative ideas, and there was discussion.

Mr. Kelley said Mr. Wolfe's point was valid, and said the applicant had done a lot to protect the critical resource area of the river frontage.

Mr. Ozenich said going into a pristine area along the river with tall, square towers didn't make sense. He said he liked the Capstone design, and said he thought they should stick with it. He said they had done a lot to preserve the wildlife areas and conform to the Ordinance, and questioned whether the Board wanted to push them to the brink. He said he thought the Board should make some concessions.

There was discussion.

Councilor Smith said he loved wetlands, and had been creating them for many years. But he noted that the Conservation Commission vote on this first item was unanimous except for him. He said he could not agree with all of the ideas expressed in their

document, and said he was willing, as the ZBA was, to overlook the relatively small wetland incursion, if there could be tradeoffs in other directions like energy, transportation options, and various cultural and social implications of this particular housing model.

He noted that he had been a university humanities professor for 40 years and was also a landlord to UNH students for 30 years. He said he had also lived in student neighborhoods, and said he would bring to the later stages of the discussion some suggestions that might seem radical, or perhaps overly philosophical.

**#2 - The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board**

Mr. Kelley said the Conservation Commission's second comment seemed to contradict the first comment. He then said he thought the independent third party idea was valid, stating that he didn't think this was the role for Town staff. He noted there were previous times when the Board had asked for a third party review.

Ms. Fuller agreed, and said there was a third party review on much smaller projects than this, including for the Irving station application.

Chair Parnell said the Board had said before that the third party would be selected by the applicant and the Town Engineer.

Regarding the Conservation Commission recommendation that there be third party inspection and oversight during construction, Mr. Kelley said it made sense to do this as well. He also said if they were asking someone to review the drainage design, it made sense for this person to also review the stormwater management and erosion control plan.

Mr. Wolfe said the testimony the Board had heard was that even the best design could get screwed up, and that installation was just as important.

It was agreed that there would be third party review for both, and that the State should be included in the third party review.

**#3 - The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the WCO/SPO; adjacent shoreland and waterbody as well as downstream water bodies, and mitigation activities will be undertaken to counterbalance any adverse impacts**

Chair Parnell noted that there were three different points under this item.

Wildlife habitat assessment

Ms. Fuller said conducting an assessment in the spring would mean putting a hold on the project. She asked how long an assessment would take, and Ms. Fiorello said this would



depend on the scope of the assessment. Ms. Fuller said this should have been done sooner, if it was going to be done. She also said whether it was done or not, wildlife would be impacted by the development. She said she therefore wasn't sure she saw the value of doing an assessment. But she said she did see the value in making roadways, pathways, tunnels, etc, for wildlife.

Mr. Kelley agreed that the assessment didn't need to be done, and said he was satisfied with the efforts to date. He said there was priority habitat all over Town, in Madbury, etc.

Councilor Smith said a student housing complex of this size would attract all kinds of wildlife. He said there were a number of ways to attract wildlife with the construction of the cottages, such as providing shelves for nesting birds under the overhangs, perhaps some space in attics for bats, etc.

#### Pollutant loading analysis

Councilor Smith said the Conservation Commission's recommendation was particularly good.

Chair Parnell said it was essentially asking for a snapshot of the site now.

Ms. Fuller noted that the Oyster River Watershed Association had offered to do water quality monitoring.

Mr. Kelley said the Planning Board hadn't asked an applicant to do a pollutant loading analysis in the past. He said perhaps it would be asking for this, down the road, and spoke in some detail on this. He said it was a pretty comprehensive analysis that the applicant would need to do.

Mr. Wolfe said concerning the water quality monitoring recommendation that he thought monitoring needed to be done of nutrients going into the water, even during construction. He said he didn't know exactly what would be involved, but said this was something that the Board could have some control over, to prevent degradation. He noted that several people had testified about this issue.

Councilor Cote said he wanted to know who to blame if monitoring was done and water quality problems were found in the river downstream of Capstone. He spoke in some detail on this, among other things noting other land uses in the area, including the salting of Route 4. He said it became over-burdensome to a developer to put these kinds of constraints on, when there were other land use issues involved.

Mr. Kelley said that historically, qualitative assessments were done by implementing stormwater management techniques, addressing short term impacts during construction, and recognizing the importance of buffers. But he said a pollutant loading analysis was a quantitative assessment that was being asked for.

Mr. McGowan said with a quantitative assessment, one could usually control the variables, but asked how that could be done with this kind of situation where there were so many variables.

Ms. Fuller noted that the Board had not asked any other applicants with projects along the river to do this.

Mr. Campbell noted that some projects had been built completely within the wetland setback.

**Jamie Houle, Chair of the Conservation Commission** asked if he could explain the rationale behind this recommendation. He suggested asking developers from now on to be partners with the Town in doing these analyses, in dealing with the EPA, because if they didn't do it, the Town would have to do it. He said quantifying discharges was a way to share the burden, and said this was especially important with a development of this size.

Mr. Kelley asked if the Town was required under the current NPDES (National Permit Discharge Elimination System).

Mr. Houle noted that the current NPDES permit had expired, but was still in place. He said the Town was not currently required to do the analysis, but said with the draft permit, it would be required to do so. He said these recommendations were taxing for municipalities, and said the Town would have to monitor all of its outfalls.

Mr. Kelley asked if they were recommendations or requirements.

Mr. Houle said there would be some requirements, and spoke further about what was involved.

Mr. Kelley said this was a bigger problem than this one applicant, and said the solution was through a combination of land use codes, stormwater management, etc. He said perhaps there was a stormwater tax down the road. He said this issue wouldn't be solved that evening, and said despite the comments received regarding it, he wasn't prepared to ask the applicant to do a pollutant loading analysis. But he said he was interested in asking them to do monitoring, especially with the assistance of the ORWA.

Chair Parnell said the Board hadn't asked other applicants to do monitoring, but said this was a larger project, which was on the river. He said he thought the Board should ask for an arrangement between the applicant and ORWA to do the monitoring.

Mr. McGowan asked what this would involve, and what guidelines were needed for the monitoring that would be done.

Mr. Kelley said the ORWA would have some good suggestions on this.

The Planning Board agreed that monitoring should be done prior to, during and post

construction.

**#4 Restoration activities will leave the site, as nearly as possible, in its pre-existing condition and grade at the time of application for the Conditional Use Permit**

Mr. Kelley said a monitoring plan was something that the Board asked for regarding landscaping. He said there were provisions in the Zoning Ordinance with requirements concerning plant survival rates, etc.

Mr. Campbell noted language in the Ordinance regarding a maintenance guaranteed, which would apply concerning this.

Mr. Wolfe said people wouldn't rent the cottages if the shrubs were dead.

Councilor Cote said another concern is invasive plant species, which could come in like wildfire in that zone.

There was discussion about the issue of invasive species, and that the landscaping plan that was approved shouldn't include invasive species.

Mr. Acken read from the application concerning the issue of invasive species. He said native plant material would be planted in the disturbed areas, and said as part of the maintenance plan, there would be invasive plant species removal.

Board members agreed that this answered the question concerning invasive species.

There was discussion about the issue of possibly providing tunnels for small wildlife to pass through on the site.

Mr. Kelley said he was not looking for bridges or embedded large culverts for this project.

Chair Parnell asked Mr. Persechino if there would be culverts under the access roads.

Mr. Persechino provided details on one open ended culvert that was provided as part of the project, which he said could provide connectivity for small species like salamanders.

Ms. Fuller asked about the use of porous asphalt as pavement on the site.

Mr. Persechino explained that porous asphalt would be used for the exterior parking areas, and said the access roads would be standard pavement.

Chair Parnell said these access roads wouldn't be high speed highways, so there was no reason why animals couldn't simply cross the road.

In regard to the memo from the Conservation Commission on the conservation easement

issue, Mr. Kelley said he realized that the Commission didn't want to be the easement holder, and that the Town didn't want to do this either.

Mr. Campbell said the Town could be the easement holder, but said he didn't think it should be. He said that with someone holding a conservation easement, the land protection would be stronger. But he said there would also be protection with a deed restriction. He noted that with additional land, the idea of a conservation easement might be more inviting. He said the Board could continue to encourage Capstone to do a conservation easement, but if not, they could go with a deed restriction.

Chair Parnell summarized that the Planning Board would prefer that there be a third party easement holder, and not the Town.

Mr. Kelley thanked the Conservation Commission for all of their work on the application.

#### Aquifer Issue

Mr. Campbell said it could be added to the Findings of Fact that the portion of the aquifer overlay district on the Capstone property had been removed.

#### Wetlands/Shoreland

Mr. Campbell said the applicants had applied for a Dredge and Fill permit, and said he had just received something from MJS engineering on this in response to DES's request for additional information. He said the applicants were still working through this, and suggested that it could be a condition of approval that the applicants receive this permit, as well as the shoreland permit they had applied for.

#### Water, Sewer, and Stormwater Utilities

Councilor Smith asked if each kitchen typically had a dishwasher and garbage disposal. He said his experience was that dishwashers and garbage disposals discouraged tenants from putting garbage into the landfill where it produced methane, which was recoverable. He said they also tended to put a lot of nutrients into the sewage treatment plant. In addition, he noted that dishwashers tended to be less energy efficient than washing by hand. He asked what the tenants would say if there was a condition of use that there would be neither of these things.

Mr. Acken said his expectation would be that the tenants would expect to have a dishwasher.

Mr. Corrow said he would buy the idea of no garbage disposal, but said it would be difficult to market the apartments without dishwashers. He suggested that garbage could be composted.

Mr. Wolfe said in his experience, when college students didn't have dishwashers, the

dishes were never washed.

Councilor Smith asked if the Board should give into laziness.

Chair Parnell said the idea of composting was a good one, and asked if this had been considered.

Mr. Acken said Capstone would take a look at this, and said it would reduce what went through the garbage disposal.

Mr. Campbell said this might be an option, noting that the Planning Board would be seeing an application for a composting facility, and that the applicant for that project wanted to bring in compostable waste from other areas.

Chair Parnell noted that composting units were available in Durham.

Councilor Cote agreed that composting should be encouraged, but said it was a Capstone issue. He said he thought the idea could really take off in that environment.

Mr. Kelley said while there should be third party review of the stormwater utilities, he could go either way regarding third party review of construction of the water and sewer system.

Chair Parnell said the Town Engineer had suggested in-house inspections for all of the infrastructure work, to be paid for by the developer. He asked how this was handled.

Mr. Campbell provided details on this, and said the Planning Board had done this for the Spruce Wood and Fitts Farm developments.

Mr. Kelley said he didn't think the Town should do the third party inspections for this, stating that this put the liability on the Town for issues that came up.

Chair Parnell agreed.

Councilor Cote said it was critical to monitor runoff during construction. He noted that runoff at Fitts Farm was incredible, and had destroyed a farm nearby.

#### Erosion Control

Mr. Kelley said there should be third party review of the erosion and sedimentation plan as well as on site inspection during construction. He said he hadn't seen the AOT permit submittal, and asked if those plans were the same as the Planning Board was seeing now.

Mr. Persechino said these were the latest plans that the Board was seeing.

Mr. Kelley asked if there was a phasing element, and said he didn't want to hear that the

applicant planned on clearing all of the land at once, and putting a ring around it.

Mr. Acken said there had been detailed discussions about how the site would be developed, and what the erosion control measures would be in regard to this. He said he could provide written comments that laid out the plan on this.

Mr. Kelley said he would like to see that, and also said he would rely on the AOT review and permit, and the third party review. He then asked Mr. Persechino to provide some idea of the balance, in terms of cut and fill that would be done.

Mr. Persechino said there had been multiple revisions to this analysis, and said on balance it would be a fill site, with approximately 80,000 cubic yards of imported material. He provide details on this, and said there would be 75-80 trucks coming in per day, or 8 trucks per hour, and said this would be phased to coincide with construction. He said one neighborhood would be built and stabilized before going on to another one.

Mr. Kelley asked if topsoil would be scraped and stockpiled on the site.

Mr. Pereschino said they would use loam on site as much as possible, but said some loam would have to be brought in. He provided details on this, and said it would depend on what they found. He said tree stumps would be ground up for erosion control, but said the majority of them would be ground up and taken off the site.

Mr. Kelley said he would want to see some sort of control, so that the contractor would be sure he was clearing the site to where he was supposed to.

Mr. Pereschino said a licensed surveyor would lay this out, and said things would be as exact as possible.

Mr. Kelley said that regarding the demolition plan, the contractor should not be able to begin work until the control lines were put in.

Mr. Pereschino agreed, and said the plan could be updated to reflect this.

Mr. Kelley asked how long the cleared areas could remain un-stabilized.

Mr. Pereschino said sheet C5 of the erosion control plan included the details on this, and he read this for the Board. He said with the ATO permit, they were limited to clearing 5 acres at one time, but noted that if there was a phasing plan in place, they could go beyond that.

Mr. Kelley said it sounded like the team was thinking about these things.

Councilor Smith asked if there would be individual water meters for each cottage, so Capstone could monitor the amount of water that was being used.

Mr. Acken said yes, and said this would be monitored on a unit basis.

Councilor Smith said when the semester started in September, this was generally a dry period of year for the Town, and was when they most needed to control water use. He asked if wells would be used to provide irrigation water, and was told yes.

Mr. Campbell asked if the Board wanted to have third party oversight for construction of the water and sewer system.

Mr. Kelley said he didn't necessarily think this was needed, and other Board members agreed.

Chair Parnell said the Town Engineer could do an in-house inspection.

There was further discussion.

#### Conservation Easement

Chair Parnell asked if there was the expectation that Capstone would know something soon regarding this.

Mr. Acken said the intent was to have something wrapped up soon.

Attorney Loughlin said there had been conversations with the Southeast Land Trust and the Strafford Rivers Conservancy regarding the additional land.

#### Open space and Recreation

Councilor Smith said when he had had tenants, they weren't allowed to hit golf balls, etc. He asked if there would be any restrictions on golf balls, skeet shooting, etc, and noted that such objects would be a nuisance if they landed in the river.

Mr. Kelley said he would like the applicant to pay careful attention to the walking path downstream of the outfall from the stormwater management pond. He noted that this was supposed to be a raised boardwalk. Told by the applicants that water would flow underneath the walking path, Mr. Kelley said that was great.

Councilor Cote said that regarding the issue of recreation, the concern was access to the river. He said knowing the student population as he did, he wasn't sure that respect for the resources would occur, and wasn't sure that there wouldn't be partying. He also said he wasn't sure what was in place to discourage easy access to the river.

Councilor Smith said the idea was to discourage inappropriate access.

Mr. Acken said the intent right now was to use signage, and enforcement through management. He noted that Capstone's Baton Rouge development included a large lake, and said "no swimming" was enforced there. He said that to date, there had been no

problems associated with this. He said maintenance staff would walk the property in Durham every morning, to see that everything was kept as pristine as possible.

Mr. Persechino noted the steep grade to the river, which would be maintained and vegetated.

Chair Parnell noted that it was getting late, and suggested that the Board discuss the fiscal impact analysis.

Mr. Kelley asked if the third party review items could all be identified so this could be underway for the next meeting. He noted that the idea of third party review had been mentioned concerning the fiscal impact analysis.

Chair Parnell said he had reviewed the work that was done. He said it was a good report, and was conservative, so he didn't think third party review was needed. Other Board members agreed.

Mr. Kelley said the other area where third party review might be needed was regarding the lighting plan. He said the Board typically, and on much smaller projects, had asked for this. He said he didn't feel comfortable reviewing a lighting plan, and would like to see third party review of it.

Mr. Campbell said that could be done, and Chair Parnell agreed that it should be done.

Councilor Smith said there were several items he would like to mention briefly. He noted that the Board had been provided with a model lease from Oklahoma, and said it would be useful to see a lease that was specific to Durham. He suggested that the applicant could get some advice on what to include in it.

There was discussion that energy issues should be addressed at the next meeting. Mr. Acken asked if there was any information with regard to energy use that Capstone could be working on over the next two weeks, or questions the Board might have.

Mr. Kelley noted the energy efficiency check list, and suggested that Capstone should take a look at it and address items in it.

Councilor Smith said a question for Capstone was who would pay for what if each cottage was metered for energy use.

Attorney Loughlin noted that traffic consultant Steve Pernaw was present to answer any questions on traffic.

Mr. Kelley asked Mr. Pernaw if he had seen the third party review and response to his report, and Mr. Pernaw said he had in fact seen it.

Mr. Kelley said he thought what the consultant was saying was pretty straightforward,



concerning whether they addressed 2022 now. He said he would like to get an update in two weeks on the bus scenario, and said he appreciated Capstone's efforts in working with the University on this.

Mr. Kelley asked that snow storage be addressed at the next meeting.

There was discussion on the issue of the plan for using fertilizers and pesticides.

Mr. Acken said the landscaping plan indicated that only organic fertilizers, such as Milorganite would be used, and the use of pesticides and fungicides would be restricted to the use of an organic compound such as neem oil. He said the fertilizers would comply with the shoreland protection requirements regarding low phosphorous and slow release nitrogen.

It was noted that a request for extension was needed, and Mr. Acken said he would provide this.

Chair Parnell said the deliberations would be continued in two weeks.

## **IX. Other Business**

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

Mr. Kelley noted that the Lamprey River Watershed Advisory Committee had provided a letter to the Planning Board. He noted that it wasn't supported by all of the members.

There was discussion that the Master Plan survey committee would be meeting again.

Mr. Campbell said if the committee didn't get the survey done at the meeting on March 17<sup>th</sup>, he and Charlie French of UNH Cooperative Extension would complete it on March 18<sup>th</sup>.

### **B. New Business: Technical Review Request by Varsity Durham LLC**

There was discussion about a request from Varsity Durham for a general permit (expansion of their existing permit) for their commercial properties located at 35 Main Street, to include all allowable businesses with the Central Business District, and that an expedited technical review was also being requested, since there was some activity relating to the leasing of the property, and Varsity Durham wanted the flexibility to show the space to a number of permitted uses.

Mr. Campbell provided details on the current situation, where when potential businesses were told that the business would be a change of use so they would have to go to the Planning Board, they were gone. He said if this application was sent to the Technical Review Committee, the committee would look at the different uses permitted in the CBD, and would allow the applicant the flexibility to do any of them. He said this meant the applicant wouldn't have to come back to the Planning Board.

Councilor Smith received clarification that this would just be for the buildings themselves, and not the parking lot.

There was further discussion.

Mr. Kelley said he didn't see the downside to allowing this, and said it provided flexibility for a downtown business owner to market a property and get a business in a vacant spot.

***Richard Kelley MOVED that Varsity Durham be allowed to go to the Technical Review Committee regarding their commercial properties located at 35 Main Street, as outlined in their February 25, 2011 letter. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

C. Next meeting of the Board: March 16, 2011

It was noted that at the Board's quarterly planning meeting on March 16<sup>th</sup>, there would be an opportunity to hear public comment. Mr. Campbell said he would send a notice out on the Friday Update about this. He said each member of the public would be allowed to speak for up to 5 minutes, and said comments on current or upcoming applications would not be accepted.

X. **Approval of Minutes** – February 9, 2011

Postponed

XI. **Adjournment**

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

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Susan Fuller, Secretary