

DURHAM CONSERVATION COMMISSION

March 3, 2011

7:00 PM

Durham Town Office – Council Chambers

MINUTES

Members Present: Chair Jamie Houle, Robin Mower, Dwight Baldwin, Derek Sowers, Julian Smith, Malin Clyde, Larry Harris

Members Not Present: Stephen Burns, Ann Welsh

Alternates Present: Peter Smith

Also Present: Joe Perischino, Appledore Engineering; Adelle Fiorello, Normandeau Associates; Attorney Peter Loughlin

1) Call the meeting to order and acknowledge absentees and those with voting authority. Approve agenda.

The meeting came to order at 7:03 pm. Chair Houle thanked Conservation Commission members for meeting on short notice.

Robin Mower MOVED to amend the Agenda to include discussion about the conservation easement proposed for the Capstone project, and whether to make comment on this to the Planning Board. Julian Smith SECONDED the motion.

Julian Smith said he didn't really think the amendment was needed, and said he thought this discussion could fit under the Conditional Use Permit discussion.

After discussion, Commission members agreed to address this issue as 4) b on the Agenda.

The motion PASSED unanimously 7-0.

2) Presentations

Chair Houle noted that the Capstone team was at the meeting, and said they were welcome to make a presentation, provided that it was based on what had fundamentally changed since the last time they were present. He said the Commission was familiar with what was presented originally.

3) Acceptance of minutes

February 10, 2011

Robin Mower suggested that acceptance of the Minutes be postponed.

There was discussion, and it was agreed to approve them to the next meeting.

Robin Mower MOVED to postpone approval of the February 10, 2011 Minutes until the next meeting. Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

4) New and Old Business

- a) Discussion of a Conditional Use Permit (CUP) for the Capstone Student Housing Development Project on Technology Drive (Tax Map 9, lot 10-3)

Engineer Joe Perischino of Appledore Engineering spoke before the Commission, and said he had put together some overlays to show how the design for the development had changed since the November 9th and December 9th Conservation Commission meetings, based on Commission members' comments, and trying to adjust the design to make things fit better. He reviewed in detail the changes that had been made, and explained that the red lines on the plans showed what had been deleted, while the black lines showed what remained.

- He said along the access road, there were previously two buildings, and said they were combined to make one building which had reduced the amount of square footage in the buffer there.
- He said in the northeast corner, the existing buildings had been rotated to reduce the square footage in the buffer, and one building was totally removed from the buffer.
- He noted that there were previously two sidewalks in the center of the site, and said they had been reduced down to one walkway, which had resulted in a reduction in impervious area.
- He said that in regard to the athletic field/recreational area, the volley ball court had been removed from the original area where it had been located, which was in the shoreland area, and was moved to the front, along the main drive. He said it was now completely outside of the shoreland area. He also said the walkway along the volleyball court was deleted, and said people could walk in the grass instead. He provided details on the reduction in the size of the clubhouse, and also said the bocce ball court would be located on grass.
- He noted that there had been discussion about the 800 sf heated pool. He said the proposed walkway in the pool area had been deleted, and the area around the pool was reconfigured, resulting in a reduction in the buffer impact.
- He said the buildings near the cemetery had been shifted back to make room for a walkway.

Mr. Perischino provided details on the reduction in square footage as a result of these changes that had been made. He also noted that the total impervious surface on the site before these changes were made was 27.7%, and said it was now 27.3%, which included

more than an acre of porous asphalt. He said the stormwater calculations had changed as a result of this.

Chair Houle suggested that the Commission focus on the Conditional Use Permit and the impacts on the overlays.

Robin Mower said since the first time Capstone had come to the Conservation Commission, the site plan had been adjusted significantly, which had resulted in a reduction in the encroachments by a large amount. She asked how much more could be done to alter the configuration.

Chair Houle said the reason Capstone was there wasn't so that the Conservation Commission could ask them what more could be done.

Peter Smith noted that he wasn't at the previous meeting, and asked where things stood with the conservation easement idea.

Mr. Perischino said right now, there were 17.9 acres proposed for protection, 10 of which was upland. He said Capstone proposed that this land be placed in a conservation easement if they could find an easement holder.

Malin Clyde asked if Capstone was asking that the Conservation Commission hold the easement, and Mr. Perischino said no.

There was discussion about the fact that information on the project had been sent to NH Fish and Game. Ms. Fiorello explained that because of the vernal pool on the site, the agency had requested a protective canopy, and a no cut zone, so they wanted to review the plans.

Mr. Perischino said the applicant was more than happy to have an easement holder, but hadn't found one yet. He said if an easement holder could not be found, the applicant was committed to putting a deed restriction on the property.

Chair Houle said he had some questions and concerns in particular regarding the gravel wetland design, and asked how this could perhaps be discussed. He said he would likely recommend third party review of the design as part of such a discussion. He noted that he had a professional interest in gravel wetlands, which he dealt with every day.

Mr. Perischino said he would be fine with discussing this, and would appreciate hearing any recommendations Mr. Houle might have.

Chair Houle said he didn't know how many people had actually done subsurface gravel wetlands.

Mr. Perischino said although they were relatively new, Appledore had some experience with them.

Chair Houle said his concerns were in regard to the specifications. He and Mr. Perischino agreed that they could get together to discuss this.

Deliberations

Chair Houle said Commission members were there to discuss the accepted site plan, dated January 12, 2011. He noted that the Commission had to consider the incursions in the shoreland overlay as well as the incursions in the wetland overlay, and went through the criteria for review, outlined in Section 175-61:B and 175-72 B of the Zoning Ordinance.

1. There is no alternative location on the parcel that is outside of the WCO District/SPO District that is feasible for the proposed use;
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;
3. The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts; and
4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit

Dwight Baldwin asked if the Commission could comment on water quality issues as part of the deliberations.

Chair Houle said they were free to comment on issues pertinent to the Conditional Use Permit criteria, and said there were ample opportunities as part of that to address water quality and other concerns. He suggested that the Commission address these concerns in an orderly fashion, as part of addressing the criteria.

Malin Clyde pointed out that there had previously been a lot of discussion by the Commission about filling a wetland on the site, and she also noted that the Commission had said it wanted to have the opportunity to discuss the site plan. She said this was the first time they had seen it, and said she could see from the plan that the wetland to be filled was now gone from the site plan. She said she was bothered by this.

Derek Sowers suggested that the Commission deliberate specifically on the incursions into the buffers and the 4 criteria that had to be met concerning this, and that they also discuss some more generic concerns.

Ms. Clyde asked if the buffer for the filled wetland counted as buffer.

Chair Houle said the decision concerning the filling of the wetland lay outside of the jurisdiction of the Conservation Commission, and also said the determination hadn't been made yet regarding filling it. He noted that the Dredge and Fill permit hadn't been granted yet.

He said in the Commission's last communication to Capstone, it had expressed some overall concerns. He said he was not averse to including that again, but agreed that they should follow the process that Mr. Sowers had described.

There was further discussion on how to proceed.

Mr. Sowers said he would like to start general, and then get specific. He said a general issue was whether there was an alternative location outside of the WCO or SPO for the proposed use. He said he would argue that there were in fact alternatives outside of the buffer that could accommodate student housing, and at the number the developer wanted.

He said it was the style the developer wanted that was driving the large footprint, and said he still didn't feel that this had been addressed. He said it was not evident that the applicant was looking at alternatives, such as a few higher structures that wouldn't have such a strong footprint on the site. Mr. Sowers spoke in detail on this.

Chair Houle said there had been adjustments, but said there were still incursions. He said the Commission needed to discuss the issue of whether the Zoning Ordinance was straightforward, as law, or was malleable and adjustable.

Malin Clyde said she was surprised that the footprint was still in the shoreland, that the swimming pool was still in the wetland buffer, etc. She said she totally agreed that there were plenty of alternatives, and said it was the cottage style for the development that was driving this.

Robin Mower said to a certain extent, the Commission might also need to discuss the definition of the use. She said Capstone's proposed use wasn't just student housing, it was the use for single family homes, and said she could see that the Planning Board would make the argument on that level. She said the Commission should address that specific use. She said she was not saying that the applicants shouldn't look for options to consolidate, but said to talk about a box style of housing was not appropriate.

Malin Clyde said it wasn't the Commission's job to design the project, and said their job was clear.

Chair Houle said at the last meeting, there was discussion by the Commission that according to the Zoning Ordinance, it had the right to review a full design and not just a conceptual design. He said that as a good faith measure, they had sort of opened themselves to reviewing the conceptual plan, but said that didn't qualify as weighing in. He said the Commission's view at that point had been conceptual at best. He said what they were doing now was a more thorough analysis, which carried a completely different weight.

In regard to the first criterion, he said it was quite possible that the Commission's position wouldn't change. He noted that for both the WCP and SPO incursions, the Commission had previously said:

"To the extent feasible the commission recommends exploring additional opportunities to reconfigure the site (such as increasing the height of buildings, reducing the number of parking spaces, or utilization of compact parking spaces as allowed for in the zoning) to reduce incursions in the WCO district and Shoreland Protection Overlay (SPO) to comply with the zoning."

Where incursions may occur the commission recommend that the areas be restored with native or naturalized species and wetland vegetation as identified in "The United States Fish and Wildlife Service National List of Plant Species that Occur in Wetlands. "

Chair Houle said the only caveat the Commission had had with this recommendation was that they felt the incursions resulting from the egress road in the southeastern portion of the site were unavoidable, because there was no other location for the road. He suggested that the Commission discuss whether it wanted to make any adjustments concerning criterion #1.

Robin Mower said her guess was that they all thought some adjustments could be made.

Peter Smith agreed that what the Commission had done two months ago was a conceptual review. He said he recalled an earlier threshold discussion about whether it was possible to avoid any incursions by designing upward. He said there was an underlying issue here to be careful about, which was that they didn't want to make a recommendation that deprived the owner of the land of the ability to do anything with it.

Derek Sowers said that was clearly not the case here. There was further discussion.

Chair Houle said it was not the Commission's position to ask the developer whether its recommendation was going to be financially feasible for them. He also said that from his understanding of Zoning, there were opportunities to address provisions of the Zoning Ordinance that might be deemed to be too restrictive. He said that had been done in this instance, with multiple variances, a change in the aquifer protection overlay delineation, and a change to the Zoning Ordinance.

Peter Smith said the point he was trying to make was done in order to create a framework beyond which he didn't think this board or the Planning Board could go.

Chair Houle said the Commission's original language was cooperative language, and said it might be time to make a definitive statement that with respect to criterion #1, the Commission didn't feel the criterion was met. He said he was hearing general consensus that there should be a statement to the effect that the Commission's original statement was one it would make again, but with stronger language.

Julian Smith said the ZBA had weighed in on these incursion issues, and on the question of whether there was any feasible alternative, and by a vote of 4-1, had granted several variances. He noted that those variances were being appealed on Tuesday by the attorney who represented the landlords. He said the only basis the attorney had for objecting had to do with conservation issues, and said he suspected that the ZBA wouldn't change its mind. He said the Commission could give the Planning Board its advice, and the Board was then free to not act on it. He said he believed that this was the outcome they would find.

Robin Mower said this was always the possibility.

Malin Clyde said it was clear that the people who were looking out for the Town's natural resources were at this table, and said she was sorry to see so little deliberation by other bodies on this issue. She noted the Purpose language in the SPO and WCO provisions, and said the Commission needed to put something in its recommendations that addressed this. She said they hadn't had that discussion yet, and noted that they hadn't had the wetland report back in December.

Ms. Mower noted that much of Durham saw wetlands as obstacles for development.

Chair Houle said he still believed there was a general consensus on the Commission concerning whether criterion #1 was met, and suggested that they could develop some specific language on this so they could move on to other issues. He noted the quick turnaround time needed for the Planning Board meeting.

Peter Smith asked for specifics on what the ZBA had ruled, and Julian Smith said all of the variance requests were granted. There was discussion that the issues before the ZBA had been the issue of proposed filling of a wetland, and the issue of wetland buffer incursions.

There was further detailed discussion on language to include in the response to criterion #1.

It was noted that “alternative location” could mean vertical as well as horizontal, and that an alternative that met the Zoning Ordinance could also be to have fewer units, if the applicant wanted to keep the cottage style of development.

Julian Smith noted that some two story cottages were proposed with the development.

Concerning the issue of trying to fit the development onto the site, Derek Sowers noted that this was a completely undeveloped site the applicant and design team were working with.

Recommendation concerning criterion #1:

The DCC agrees that the general standards for conditional uses with respect to question (1) that there is no alternative location on the parcel that is outside of the SPO District that is feasible for the proposed use has not been met.

The DCC feels additional opportunities exist to reconfigure the site (such as increasing the height of buildings, reducing the number of parking spaces, or utilization of compact parking spaces as allowed for in the zoning) to eliminate incursions in the Wetland Conservation Overlay (WCO) district and Shoreland Protection Overlay (SPO) district to comply with the zoning. Add exception for road egress.

Dwight Baldwin said to take a position less than this would be adverse to what this Conservation Commission was all about.

There was next discussion on criterion #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.

Derek Sowers said the plans were pretty clear that the areas that were going to be developed would be disturbed.

Malin Clyde noted that the Commission had focused a lot of its discussion on these details last time.

Chair Houle said he had made three recommendations relating to this criterion in a personal communication to the Planning Board, which the Commission might consider. He said one was that there should be third party review of the erosion and sedimentation plan, and inspection during the construction period. He said with a development of this size, it wasn't unreasonable to ask for this, especially with the proximity to the Oyster River and the wetland areas. He noted that the highest risk of sedimentation was during construction.

Julian Smith said this was the kind of advice that the Planning Board would probably put into the conditions of approval.

Chair Houle said it was routine to get third party review of the design.

Robin Mower said some people might want specific reasons why Town staff couldn't do this review.

Chair Houle said the applicant could benefit from having a third party review, especially given the fact that there were few people who had implemented this kind of designs. He noted that he was very glad to see that silt socks were proposed for erosion and sedimentation control, provided that the amount of soil disturbance would be minimal, and provided that third party inspections would take place.

Derek Sowers said if there were wetland and shoreland buffers incursions, there would be soil disturbance.

Chair Houle noted that he had looked at criterion #2 as addressing the construction period, and said he thought criterion #3 dealt in large part with the operation of the facilities.

Malin Clyde said she would defer to Chair Houle about criterion #2, and said she was ok with his response as long as there was third party oversight.

Chair Houle said he was confident that the erosion and sedimentation plan would be sufficient in controlling sediment, provided that it was monitored.

Robin Mower asked about the protection of the trees that would remain on the site, during tree removal.

Ms. Clyde said it looked like any place where there would be buildings and roads, there would be a complete conversion from the area's natural state.

Derek Sowers noted the demolition plan, and that all areas proposed for disturbance were to be re-graded. He asked the applicants to consider building in phases, so they wouldn't be bulldozing all the acreage at once. He said it was a lot of area to clear, and said there weren't many places that would be prepared for a big storm event coming through. He said with such a storm, sediment could wash into the Oyster River, even with erosion and sedimentation controls in place.

Chair Houle said the best standards of practice had been worked into the erosion and sedimentation plan, noting that the Site Plan regulations were explicit about what was required. He said if the regulations were followed, what was proposed would be sufficient.

Robin Mower asked whether everyone would know what those requirements were.

Chuck Baldwin said the phasing idea was a good suggestion.

Mr. Sowers asked if phasing was recommended in the regulations, and noted the size of this project. There was discussion

Recommendation concerning #2:

The DCC agrees that the general standards for conditional uses with respect to question (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, are met, provided that independent, third-party review of designs for the stormwater management facilities and inspection and oversight of the erosion and sediment control plan is required. In fact, such a requirement is an explicit prerogative of the Planning Board under section 9.03.1-7 of the Town's Site Plan Review Regulations.

Third-party review is key. While the Town is fortunate to have the services of a well-qualified engineer in addition to the drainage analysis and review that will be conducted by NHDES, there is no substitute for independent review of the entire plan and the system designs. Third-party reviews can often benefit both the Town and the applicant by locating critical errors or identifying opportunities for design improvements.

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

Chair Houle said it would be good to include the idea of phasing under the additional comments that would be provided.

There was next discussion on criterion #3: The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts.

Robin Mower said she had heard concern expressed at the Planning Board meetings about the use of chemicals in landscaping maintenance. She said while much of the site was not within the shoreland or wetland districts, everything did drain to the river, so the additional concern about that would be appropriate.

Dwight Baldwin suggested that there should be ongoing monitoring.

Peter Smith said he was struck by the quantities of fertilizer to be used.

Chair Houle said Durham was on the verge of having not only new stormwater permits passed that the Town would be in charge of, but said he had also just seen that Great Bay was listed as being impaired because of nitrogen. He said he it behooved the Town to recommend that developers partner with it to address nitrogen issues. He noted that 70% of the nitrogen was coming from nonpoint sources like fertilizer.

Ms. Mower noted the concern was about Great Bay and also the Oyster River, as one of the sources of the Town's drinking water.

Malin Clyde said she thought that criterion #3 was one where the Commission might have the opportunity to comment on the impact of development on wildlife habitat values, both of the wetlands and more importantly of the Oyster River, and the entire site's prominence in coastal conservation plans for species like spotted turtles, etc.

She said this wasn't addressed by a wildlife biologist in the wetlands work that was done, which she noted was brought up in the letter the Commission had received from wildlife biologist Ellen Snyder. She said the letter pointed out that the Commission could benefit from considering some of the mapping work that had been done, as well having someone look at what they might be losing on the site. She said water quality was an important public value, but said no one else but the Conservation Commission would talk about wildlife species.

Robin Mower agreed, but said she thought they should be slightly more general in their comments because the Planning Board had heard comments that the conservation plans were not site specific.

Chair Houle urged Commission members not to make their arguments by considering the arguments others had made, and instead make their own arguments with respect to preservation of wildlife habitat. He asked if they believed that an eight inch culvert would provide connectivity for wildlife.

Ms. Mower said she didn't want the Commission to write something that the Planning Board would dismiss.

Malin Clyde said she didn't think the applicants' plan addressed wildlife at all, and suggested that the Commission recommend that they do a wildlife study.

Chair Houle said they had to decide if the standards of #3 were met. He said they might think about recommending that appropriate structures be placed in road crossings to minimize detrimental impacts on wildlife habitat.

Ms. Clyde said that was a design idea that might be good, especially for the southern access road between the two wetlands. But she said evidence of spotted turtles using part of the river would make a stronger case for getting out of the shoreland zone.

Derek Sowers noted the wetland delineation that had been done, and the functions evaluation that had considered wildlife habitat very generally. He said this was not a wildlife assessment, and said it was really not until they knew what was there that they

could say that the potential detrimental impact of the development on the site had been minimized.

Peter Smith said the Planning Board should specifically hire an expert to determine, to the extent that science allowed, if the proposal for the fertilizers presented any reasonable threat to the Oyster River. He said this was a huge project, and said on smaller projects, the Planning Board had sometimes said it wanted an independent third party.

There was discussion that the Natural Heritage Bureau information said there might be threatened species on the site, but said this wasn't known yet. It was agreed that it was a reasonable request to want to know more about this.

Malin Clyde said the Conservation Commission could provide the emphasis on the wildlife habitat on the river, how it connected to undeveloped land to the northwest, and how this related to the way the development was laid out. She said the entire site was wildlife habitat now, but questioned the long term viability of most of the wetland and wildlife habitat on the site after the development was built. She said it was the Oyster River areas that would still have long term value as wildlife habitat.

Julian Smith said the site would still be attractive to some wildlife, with the development there.

Chair Houle suggested that the discussion should revolve around whether they thought criterion #3 was met concerning the location of the facilities.

Peter Smith said the Commission needed to concede that there were things they didn't know the answers to, and said this pointed to the need for an independent investigation.

Ms. Clyde said the Commission didn't think there was sufficient information to fully respond to question #3 without additional research. She suggested that they could recommend some sort of nutrient loading analysis, assuming there was a full 250 ft buffer, and could also recommend that a wildlife biologist do an analysis of habitat and species use.

Dwight Baldwin said fertilizer and pesticide application could be monitored, if the Commission asked the owner for ongoing funds to hire UNH personnel to continue to monitor the Oyster River. He said if it was found that levels of nitrogen, etc were high, there could be a requirement that the application of these chemicals must be decreased.

There was discussion on the letter from the Oyster River Watershed Association on the Capstone application, which noted that the association had already been doing monitoring of the river.

Peter Smith said he agreed with Mr. Baldwin, but said expert examination might also cause the Commission to say at this point that it recommended that the applicant could do what was in the plan, but that there would be ongoing surveys. He said they didn't have the answers right now, and said these answers should be obtained.

Robin Mower agreed that there should be a second wildlife assessment. She said they had heard from the applicant's consultant and the consultants that Attorney Hogan had spoken with, but had not heard information presented by a disinterested third party.

There was discussion that spring would be the time to do the wildlife habitat assessment, concerning the vernal pool, etc.

Dwight Baldwin said this was an important part of the recommendations that the Commission wanted to pass on.

Derek Sowers said he would advocate that there was not enough information on the wildlife habitat aspect of the project, and that the incursions into the wetlands overlay were a detriment to the wetland and wildlife habitat there. He said they knew the mitigation plan that was proposed, but said he couldn't say that cutting vegetation and then replanting on the site would be an improvement over leaving the buffer alone.

Robin Mower noted that the Conditional Use Permit criteria didn't required that there was an improvement, and Mr. Sowers said the applicant had said there would be an improvement. Ms. Mower said the Commission followed the criteria.

There was detailed discussion on language to include in the Commission's response concerning criterion #3. Peter Smith said it should emphasize the need for ongoing monitoring, but said at the threshold, there should be an initial determination as to whether what was proposed with the project would be appropriate or not, based on what the experts were telling them

Malin Clyde said there should be an analysis of proposed fertilizer levels.

Chair Houle said what they were talking about was anti-degradation standards, which would cover a wide range of things. He provided details on this.

Malin Clyde said once the development was built, it was hard to get at this. She said she would like to look at the amounts of fertilizers proposed, the slopes, etc.

Peter Smith said it was reasonable to look at what they were proposing, and based on that, what the prediction was in term of causing harm.

Derek Sowers said the recommendations could include a monitoring and maintenance plan for buffer areas, and said this should consider invasive species. He noted that the site plans included information regarding re-grading, and planting of native plants, but said they didn't say how long this would be monitored, or if there would be corrective action taken if invasive species came in. He said this needed to be spelled out.

Julian Smith said there was the issue of when the clearing of the site would begin, if the Conditional Use Permit was granted, which related to what the Planning Board would think was a reasonable condition of approval. He said in order to be meaningful, a wildlife assessment would have to take place over four seasons.

Ms. Clyde said spring was the key time to do this, in terms of the species most likely to be found in these types of habitat according to the Wildlife Action Plan. She said a wildlife specialist would use proxies of habitat, but said this was better than the Action Plan maps. She said there was no need to delay the project by a year, and said that wasn't what Commission members were asking for.

Dwight Baldwin asked what happened if salamander eggs and wood turtle habitats were found.

Ms. Clyde said people would know what they were losing, and also said the Commission wanted the best possible site plans in order to protect the resources on the site, within the confines of the Town's regulations.

Robin Mower said the Commission was advising the Planning Board, and said that board would then do as it saw fit. But she said the Commission had a mandate to protect Durham's natural resources.

Derek Sowers said it had been said that some of the wetlands had a low value for wildlife, but said he didn't think there was a body of evidence on that.

Malin Clyde said they didn't know what was there, and should ask.

Mr. Sowers said if there was no incursion into the buffers proposed, and no proposed filling of the wetland, the Commission wouldn't be asking for this.

Julian Smith asked what use this knowledge was to the Conservation Commission. He said if they were asking for the assessment as a condition of use, a question was whether they were doing this because they wished the assessment to happen before the first bulldozer moved in. He said he didn't think the Planning Board would accept that.

Ms. Clyde said Conservation Commission members were trying to uphold their job, and said people in Durham cared about natural resources, including wildlife, especially if they knew they were there.

Larry Harris agreed, stating that the Conservation Commission had been asked to address this issue and provide input on it.

Peter Smith said this was stated in the Zoning Ordinance. He said the Planning Board would do what it wanted with this input, but at least the Commission could say what he thought was important.

Dwight Baldwin said a reason to do the assessment was to learn if there were species there, so it would be known that effects on their life cycle could be mitigated by putting in culverts.

Julian Smith said if the Planning Board included this recommendation as a condition of use, and said nothing could be cut in specific areas until an assessment was done, the question was what would happen after the assessment happened. He said doing the assessment didn't mean that the habitat would be preserved.

Derek Sowers said by doing the survey, they could find out what was there, and a third party could ask that the development plan be revised to mitigate impacts. He said this could inform the Conditional Use permit approval.

Robin Mower said the Commission had to follow its procedures and uphold its mandate, regardless of the development.

Mr. Sowers said Julian Smith had made a practical point, but said if spotted turtles were found on the site, a question would then be how to minimize impacts on them.

Discussion began on possible recommendations concerning criterion #4: Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit.

Chair Houle said the answer for this might be linked to establishment, and re-vegetation of slopes that encroached into the buffer, and a management plan for the buffer restoration. He said a question was whether the Commission agreed that the standards were met, assuming that these things were done.

Derek Sowers said something that applied to both #3 and #4 was the idea of road crossings, and said he would like to see wildlife crossings designed specifically to help small wildlife species move from one side of the road to the other. He noted regarding the southern portion of the access road that there was a vernal pool area nearby and a wetland complex in the middle that needed to be connected.

He also said there was a northern section of the access road where there was a swale coming in from the north, and said there should be some kind of connection between the wetland there and where the gravel wetland would be put in. He said this would allow amphibians and other small animals to move through these areas and not be totally cut off by roads. He said the intent was to reduce mortality from the roads.

There was further discussion on possible wording of the recommendation for criterion #3. Robin Mower suggested that they recommend certain things to address the criteria, and then list some other things separately.

Recommendation concerning criterion #3:

The DCC agrees that the general standards for conditional uses with respect to question (3) - *The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the adjacent shoreland and waterbody as well as downstream waterbodies, and mitigation activities will be undertaken to counterbalance any adverse impacts*, cannot be determined with the information provided and recommends that the Planning Board require that:

- 1.) An onsite wildlife assessment be conducted in the spring to prove that there will be no adverse impacts based on the design.
- 2.) A Pollutant Loading analysis be conducted with respect to the potential adverse impacts of fertilizers on the oyster river.
- 3) Section 9.03.1-4i of the Town's Site Plan Review Regulations states that "the biological and chemical properties of the receiving waters shall not be degraded by the

stormwater runoff from the development site.” Considering all potential impact of a development of this size and its proximity to the Oyster River—which, serves as part of the Town’s drinking water supply, it seems reasonable to require demonstrated compliance with these regulations through a simple monitoring program. 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. These analyses could be conducted for a designated timeframe (such as five years), and be included in the annual inspection report to the Town Engineer.

Recommendation concerning criterion #4:

The DCC agrees that the general standards for conditional uses with *respect to question (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*, are met, provided that a long-term management plan for the buffer restoration be developed and followed, and that wildlife crossing culverts be utilized within road crossings on the southern end of the site plan.

Larry Harris MOVED to approve these Recommendations. _____ SECONDED the motion.

Robin Mower noted that when some trees cutting on Town land near Spruce Hole was proposed, there was some concern about timing the cutting relative to the life cycle of wildlife species there. She said the Conservation Commission hadn’t commented on that issue relative to the Capstone project, and asked if it was a concern.

Malin Clyde said everything would be destroyed where the cutting was done, so there wouldn’t be any habitat.

The motion PASSED 6-0-1, with Julian Smith abstaining.

Chair Houle received permission from Commission members that he could do final editing of the recommendation, and would send the recommendations to the Planning Board as soon as possible.

b) Conservation Easement Issues.

Robin Mower said Capstone proposed to protect some of the land on the site with a conservation easement, and said a question was whether the Town might be interested in holding the easement. She said if the Conservation Commission didn’t recommend this, it should let the Planning Board know.

Malin Clyde said she appreciated seeking a response from the Strafford Rivers Conservancy regarding the easement issue. She said what used to be done was to give undeveloped parts of a development site to the Town and then forget about them. She said she wasn’t saying that would be the case with the portions of the proposed easement area along the Oyster River, but she questioned what would happen with the upland area that would be preserved.

She said she didn't think the Town should take on a conservation easement for this project, and noted that the Conservation Commission had a hard time stewarding the protected lands the Town already had. She provided details on this, and said she thought providing solid buffers in the plan would be a much better way to protect land on the site.

Ms. Mower noted that 10 acres of the total land area to be protected on the site was upland.

Derek Sowers said if there was a conservation easement, and something happened that violated the terms of the easement, there would be the right of enforcement.

Ms. Clyde noted that the entity that held the easement was legally responsible for monitoring the land.

Ms. Mower said she was somewhat concerned about the specific location of the easement area, in regard to the need to possibly require more frequent monitoring.

Ms. Clyde asked if there was the possibility of doing some broader conservation project beyond the site itself, noting that there would be implications for the proposed conservation area if it got totally surrounded by development later on.

Ms. Mower said she had learned at the Planning Board meeting that an abutting landowner in Lee was working with an agent on possibly conserving their land. She said she wasn't sure how likely this was to happen, but said it would make the easement approach on the Capstone site more appealing.

Ms. Clyde noted a project she was aware of where the developer of a project gave a conservation easement to the neighbor for free, which made long term monitoring of the land simpler. She said it might sound like a radical idea, but said perhaps if Capstone didn't want to deal with the undeveloped, protected portion of the site over the long term, the easement could go to the neighbor.

Chair Houle said it sounded like Commission members wanted there to be some kind of communication to the Planning Board that reflected how they felt about taking on an additional burden. He said the easement idea had pros and cons, but said perhaps they felt they didn't have the capacity to do this, but would advocate a third party doing it.

Robin Mower said she wasn't sure how much experience the Planning Board had had with a development project where the easement issues hadn't been worked out yet. She also said she would like the Commission to make a clear statement to the Planning Board on this issue.

Derek Sowers said the Conservation Commission didn't have the capacity to fulfill the responsibilities involved in holding the conservation easement, and Chair Houle agreed that they weren't the best suited entity to do this.

Malin Clyde said she agreed that it would be good for the protection of the undeveloped land on the Capstone site to have legal standing, at least with regard to the portion near the Oyster River.

Peter Smith asked if they wanted to say to the Planning Board that in general, it would be good to have a conservation easement on this property. There was further discussion on what language to use in the recommendation to the Planning Board.

Mr. Sowers recommended that as part of the Conditional Use Permit approval, there should be a condition that there would be no further development of the property.

Chair Houle MOVED that the Conservation Commission would like to emphasize that an easement or any additional protection along the Oyster River is a good idea; it believes that the Town is not the appropriate long term easement holder and that a suitable third party is preferred. Dwight Baldwin SECONDED the motion, and it PASSED unanimously 7-0.

5) Ongoing Business

a) Wetlands Applications

Chair Houle said there were no wetland applications this month for the Commission to review.

There was discussion on whether there had been resolution concerning the McNeill application.

b) Land Protection Activities

c) Town-Owned Land/Conservation Easements

Chair Houle said he and some other Commission members had recently walked the Fogg property, and he provided details on this.

Malin Clyde said she had recently met with the Trustees of the Trust Fund, as well as with DPW Director Mike Lynch and forester Charlie Moreno. She said the Trustees had agreed to pay Mr. Moreno to work with volunteers on invasive species removal. She said buckthorn would therefore be addressed as part of harvesting activities planned for the Doe Farm, and said she was somewhat worried that this was a big task to take on.

She noted an ecological question regarding this work. She said there was already a new forest coming up, and said the understory that would open up more as a result of the tree cutting would facilitate excessive growth of the buckthorn in there. But she said there were also native shrubs, and trees like oak and hickory there that could survive if they got rid of the buckthorn. She said there was something worth saving there, and said it would be good to get as many people as possible interested in doing the work. She said the work was scheduled for April 30- May 1st, as well as the following weekend.

Robin Mower said it would be good to get this information into the Friday Updates. She also recommended that Malin contact Diana Carroll regarding getting some high school students involved.

Derek Sowers recommended contacting the local Americorps group.

- d) Town's Master Plan Advisory Committee Survey

6) Board and Committee Reports

- a) Town Council

Robin Mower noted that the Town Council had unanimously approved the removal of a portion of the Capstone site from the Town's Aquifer Protection Overlay district.

- b) Planning Board

Julian Smith said it was expected that deliberation would begin on the Capstone applications next Wednesday.

Chair Houle said he would be at that meeting, in case there were any questions on the Conservation Commission communication that would be provided to the Planning Board.

- c) Water Resource Protection Subcommittee

- d) Zoning Board of Adjustments

Julian Smith noted that there was a Request for Rehearing of the Capstone variance applications, and said Attorney Scott Hogan was representing those who had submitted the application for the rehearing.

- e) Lamprey River Advisory Committee

7) Other Business

Robin Mower said there was a mini-charrette the previous evening to address the potential for C lot to become a site for the Fire Station, with or without parking structure. She said according to the architect involved, there seemed to be no alternative regarding possibly day-lighting College Brook, because of the significant difference in elevation involved (12 ft).

Chair Houle questioned this, and Ms. Mower said this might be something the Conservation Commission would want to provide some comments on.

Derek Sowers said the Commission should say it was interested in restoring College Brook as part of development of that site, and said there might be grant funds available for such a project.

Chair Houle suggested that the Commission re-release Mr. Sowers statement on this issue. He said it should be provided to Administrator Selig, and said it should say there should be consideration of a reasonable design to restore College Brook as part of development of the site.

Ms. Mower said this recommendation should be provided in a way so that the entire community heard it, and said she would be happy to read it at the Town Council meeting.

Chair Houle said this could also be included in the Commission's yearly report to the Town Council.

Ms. Mower asked if Mr. Sowers' statement reflected the feelings of the Conservation Commission, and members said yes. She said she would read the statement at the Council meeting.

Chair Houle noted discussion on the UNH South Road project at the recent Traffic Safety Committee meeting.

There was discussion on the issue of how the project that was planned would affect College Brook, and whether the Town's regulations needed to be followed in regard to the development of the transit way.

Robin Mower said she had sent a note to Administrator Selig and Mr. Campbell explaining that a resident has asked her to inquire whether the section of RSA 674:54 III (a) was applicable to the University's South Drive proposal, and if so, if South Drive would therefore be subject to Durham's land use regulations on the basis of this section of the RSA. She said Administrator Selig had replied that South Drive would not be a public highway under paragraph III, and therefore UNH would need to follow the process set forth in paragraph II of the statute, which involved the advisory consultation process.

Derek Sowers noted that this road project involved some shared utilities between the Town and UNH, and said he wasn't sure they had gotten a full answer on this. He said it was hard to believe that the road would be exclusively on UNH property, and that the Town was not going to invest any money in, or take ownership of any of the utilities involved.

Chair Houle asked if an Alteration of Terrain permit would be needed for the project.

Ms. Mower said if this went to the Planning Board as part of the advisory consultation process, there was nothing to stop the Conservation Commission for making comments on the project. There was discussion on whether there would be a public hearing on the project.

Larry Harris said the road would go right across College Brook.

Mr. Sowers said perhaps the Council and Planning Board representatives to the Town Council could ask where the Town's public review of this project would take place.

Ms. Mower said if the project was entirely on UNH property, in the eyes of some people, public review of the project would be overreaching.

Mr. Sowers asked what the Town's connection was to the project.

There was discussion on traffic issues in Town and how they would be impacted by this project, for better and worse. Ms. Mower said the ways in which the project would impact

the Town were the locations where traffic from the new roadway was dumped onto Town roads. She said this would be an argument for having a public hearing on the project.

8) Administrative

- a) Correspondence
- b) Next regular meeting April 14, 2011

9) Adjournment

Malin Clyde MOVED to adjourn the meeting. Dwight Baldwin SECONDED the motion, and it PASSED unanimously 7-0.

The meeting ADJOURNED at _____ PM.

Victoria Parmele, Minutes Taker