

These minutes were approved at the April 14, 2021 meeting.

**DURHAM PLANNING BOARD
Wednesday, February 10, 2021
Town Council Chambers 7:00 p.m.
MINUTES**

MEMBERS PRESENT:

Paul Rasmussen, Chair (in person)
Lorne Parnell, Vice Chair (in person)
Richard Kelley, Secretary (remotely)
Bill McGowan (remotely)
James Bubar (remotely) (arrived at 7:13 pm)
Barbara Dill (remotely) (arrived at 8:45 pm)
Michael Lambert, alternate (remotely)
Heather Grant, alternate (remotely)
Raymond Philpot (remotely)
Sally Tobias, Council Representative to the Planning Board
(in person)
Jim Lawson, Council Representative to the Planning Board
(remotely)

MEMBERS ABSENT:

I. Call to Order

Chair Rasmussen called the meeting to order at 7:00 pm.

II. Roll Call and Seating of Alternates

The roll call was taken.

Chair Rasmussen	Yes
Lorne Parnell	Yes
Richard Kelley	Yes
Bill McGowan	Yes
Heather Grant	Yes
Michael Lambert	Yes
Ray Philpot	Yes
Councilor Tobias	Yes
Councilor Lawson	Yes

Chair Rasmussen appointed Mr. Lambert in place of Mr. Bubar, and Ms. Grant for Ms. Dill.

III. Approval of Agenda

Lorne Parnell MOVED to approve the Agenda as submitted. Councilor Tobias SECONDED the motion and it PASSED unanimously 7-0 by a roll call vote:

<i>Chair Rasmussen</i>	<i>Yes</i>
<i>Lorne Parnell</i>	<i>Yes</i>
<i>Richard Kelley</i>	<i>Yes</i>
<i>Bill McGowan</i>	<i>Yes</i>
<i>Heather Grant</i>	<i>Yes</i>
<i>Mike Lambert</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>

IV. Town Planner's Report

Mr. Behrendt said the Board would have a special meeting next week to address the 19 Main St parking lot application. He said on the 24th, they would address the Mill Plaza application, as well as a small site plan application for a new building for Yates Electric behind the police station. He said yesterday, he and DPW staff interviewed some firms for peer reviews for the Gerrish Drive subdivision application and the 19 Main St parking lot application. He spoke further on this. Mr. Parnell said these reviews should be pushed along, and said he thought that by now they would be underway.

Mr. Bubar arrived at the meeting remotely at 7:13 pm.

V. Reports from Board Members who serve on Other Committees.

Councilor Tobias said the Council approved the Agricultural ordinance at its meeting on February 1st. She also said Nate Balch provided a great report for the Council on the Energy Committee.

Chair Rasmussen said the Agricultural Commission was pleased about the passage of the agricultural zoning amendments, and said they were looking at things to do next. He said they'd prioritize the items, and decide which ones to accomplish this year, including possibly some zoning related items.

Mr. Kelley said the IWMAC winter compost challenge was gearing up.

VI. Public Comments

There were no public comments.

The DCAT coordinator noted that Ms. Dill was watching the meeting, but was unable to tune into the meeting this evening.

VII. Review of Minutes (old):

December 2, 2020

***Lorne Parnell MOVED to approve the December 2, 2020 Minutes as presented.
Councilor Tobias SECONDED the motion and it PASSED unanimously 6-0-1 by a roll
call vote:***

<i>Chair Rasmussen</i>	<i>Yes</i>
<i>Lorne Parnell</i>	<i>Yes</i>
<i>Richard Kelley</i>	<i>Yes</i>
<i>Bill McGowan</i>	<i>abstained because of absence from meeting</i>
<i>Jim Bubar</i>	<i>Yes</i>
<i>Heather Grant</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>

December 16, 2020

The first page should note that Guy Johnson arrived at the meeting at 7:30 pm.

***Lorne Parnell MOVED to approve the December 16, 2020 Minutes as amended.
Councilor Tobias SECONDED the motion and it PASSED unanimously 6-0-1 by a roll
call vote:***

<i>Chair Rasmussen</i>	<i>Yes</i>
<i>Lorne Parnell</i>	<i>Yes</i>
<i>Richard Kelley</i>	<i>Yes</i>
<i>Bill McGowan</i>	<i>abstained</i>
<i>Jim Bubar</i>	<i>Yes</i>
<i>Heather Grant</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>

VIII. Climate Action Master Plan. Discussion with Kyle Pimental, Principal Planner with
Strafford Regional Planning Commission, about Climate Action Master Plan (CAMP).

Mr. Behrendt said a question was whether the Planning Board would or would not want
to be the party that was responsible for the plan.

Mr. Pimental provided a Powerpoint presentation. He said the project goal was to
strengthen the Town's resilience concerning climate change with innovative actions and
solutions. He reviewed the timeline for the project, which involved a steering committee
meeting, chapter writing, and another steering committee meeting to get feedback on the
chapter. He said ideally the project would be wrapped up by June. He noted the
membership of the steering committee, project team, and stakeholder group.

The project involves 3 phases:

1. data collection, involving Council goals, master plan chapters, local reports including hazard mitigation reports, etc.
2. determine climate topics – driven by stakeholder input sessions in August/September 2020. These sessions really informed the development of the chapter.
3. Draft chapter, and final adoption piece. Responsibility right now is on the project team with the steering committee. The chapter will be shared with local boards, and the goal is to give the Planning Board a polished final draft in May-June.

Mr. Pimental noted that the Planning Board didn't previously issue a letter of support for the proposed chapter, but the application for the project was still put forth.

Mr. Pimental reviewed the reasons for making this a Master Plan chapter. He said it might make sense to include information from this plan in all of the Master Plan chapters, but noted the time and cost involved in doing this and said it could be done later. He said it would be helpful to have the climate change information in the Master Plan when applying for grant money.

Mr. Kelley asked what climate topics were identified. Mr. Pimental noted issues like sea level rise, warmer temperatures, frequency of drought conditions, population migration, etc. He said they looked at critical infrastructure issues, concerning roads, culverts, evacuation routes, wastewater treatment plants, dams, etc, as well as impacts on natural landscapes, invasive species, changes in wildlife habitat, fire risk, impacts on septic systems and wells, and public health impacts. He said they also looked at economic impacts, including impacts on food systems. Finally, he noted that all of this was looked at through the lens of equity. He said the input received on all of this was extremely valuable.

Mr. Kelley said it sounded very comprehensive, and said he liked the idea of Mr. Pimental bringing the Planning Board something in July.

Mr. Behrendt said as the Planning Board had left it, it wouldn't adopt the chapter, and this would happen administratively through the Steering Committee. But he said the Planning Board could still decide to adopt the chapter. Chair Rasmussen said he thought the Board would want to see it first, to see if it was worthy of being a Master Plan chapter on its own.

- IX. **Public Hearing - Downtown Zoning Amendments.** Zoning amendments regarding height, stories, uses, density, and building configuration in the Central Business District; drive-through facilities in various districts; method for determining building height; and related changes. New changes discussed by the board on October 28 are incorporated.

Councilor Lawson said last time, the Board discussed changing the setback of the 5th story. He presented some diagrams and photos of buildings along Main St. that showed the impact of increased setbacks.

He said the 10 ft setback for a 5th floor didn't help much in terms of softening the transition from 3 to 5 stories. He showed some buildings with 20 ft and 25 ft setbacks. He suggested letting the Council consider 20-25 ft setbacks for 5th floors, for areas of the downtown with three stories where a 5-story building was proposed.

Chair Rasmussen said a concern was that having a 20 ft setback in a narrow building 80-100 ft wide, it wouldn't be worthwhile to put on a 5th floor. He said he was more in line with not allowing a 5th story than having a setback that was too large. Councilor Lawson noted that several lots fronting on Main St were large.

Lorne Parnell MOVED to open the Public Hearing. Councilor Tobias SECONDED the motion and it PASSED unanimously 7-0 by a roll call vote:

<i>Chair Rasmussen</i>	<i>Yes</i>
<i>Lorne Parnell</i>	<i>Yes</i>
<i>Richard Kelley</i>	<i>Yes</i>
<i>Bill McGowan</i>	<i>Yes</i>
<i>Jim Bubar</i>	<i>Yes</i>
<i>Heather Grant</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>

Eric Lund said the Planning Board and members of the public had said they didn't want drive-through in the Central Business District. He said the curb cuts would be disruptive to walkability. He noted the claim that most large chains didn't consider Durham a suitable location, but said he was skeptical about this. He also said if the setbacks became excessive, it might be better not to allow the 5th story.

Beth Olshansky, Packers Falls Road noted the huge effort of creating the Master Plan. She said it was supposed to be the foundation for zoning. She said some of these downtown amendments seemed to be ignoring the Master Plan. She said the Master Plan said 3 or 4 stories would be at the core of the downtown, and the feel of a small New England town should be maintained. She thanked Councilor Lawson for the idea of maintaining the 3-story limit and changing the square footage per occupant. She said she also appreciated his ideas about a larger setback for a 5-story building. She said she liked a 25 ft setback, and said it honored the wishes of the citizens, but would stimulate redevelopment. She spoke further on this.

Ms. Olshansky said she agreed that drive-throughs downtown weren't consistent with having a walkable downtown. She also noted the importance of keeping the gateways attractive, which drive-throughs didn't work with. She said they would change the whole

character of the Town. She also said drive-throughs on Route 108 would compete with downtown businesses. She said that regarding allowing flexibility about the use of floors for residential space and not commercial space, she hoped the Planning Board and Town Council would consider this more in the future. She said she supported what Councilor Lawson was proposing this evening.

William Woodward, Madbury Road said he was a Town Councilor in 1999. He said they were taking a reasonable approach with this Zoning proposal. He spoke about a coming downturn in enrollments at UNH, and said he couldn't see the idea of expanded dormitory space in the downtown. He said he was sentimental about Durham, and said upgrading it for shopping was what he would like to see. He spoke further on this, and said surely there were compromises to be made here.

Robin Mower, Britton Lane thanked Ms. Olshansky and Councilor Lawson for their very thoughtful approaches to ways to encourage development downtown while maintaining some of the character that many people in Durham would like to see. She said the 5th floor amendment was intended to allow more residential space, and said why not compromise by allowing some increase with a partial 5th story, using the setback approach. She spoke further on this, and said she supported letting the Council evaluate more closely the degree of setback. She noted that she'd already made comments about the proposed Zoning amendment concerning drive-throughs.

Gail Kelley said she was impressed with the thoughtfulness from Councilor Lawson, Ms. Olshansky and Ms. Mower, and said she agreed with them. She said people could drive to drive-throughs in Lee, and said they weren't needed in Durham.

Lorne Parnell *MOVED to close the Public Hearing. Councilor Tobias* **SECONDED the motion and it PASSED unanimously 7-0 by a roll call a vote:**

Chair Rasmussen	Yes
Lorne Parnell	Yes
Richard Kelley	Yes
Bill McGowan	Yes
Jim Bubar	Yes
Heather Grant	Yes
Councilor Tobias	Yes

Chair Rasmussen said paragraphs 8 and 9 were an awkward way around defining an overlay district, and asked if they should create an overlay district so there was zoning that was consistent throughout the zone. He spoke further on this.

Councilor Lawson said they'd had the 3-story area for a 4-5 few years, and said he didn't think developers were confused by this. He said what they were doing now was allowing a 5th story in an area that was previously limited to 4 stories. He said he didn't think an

overlay district was needed. He said at 66 Main St, the frontage was 247 ft, but said clearly a 5-story building wouldn't work on some other lots downtown.

Chair Rasmussen said developers might not be confused, but said others might have trouble envisioning exactly where 3 stories ended and higher stories were allowed.

Councilor Lawson said making this clearer had merit, but he asked the Board to recommend this Zoning amendment, and said if an overlay was needed later, that was fine. Chair Rasmussen said he wouldn't argue with that. He said it would be a cleanup activity.

Mr. Bubar said if people were going to put tables and chairs along the edge, it would be pretty obvious it was a 5th floor, and said and he wasn't sure what the setback achieved. He also said he didn't know that the setback needed to be symmetrical on all sides. He spoke further on this.

Mr. Kelley said he wasn't a fan of the drive-through provision, and would like to know what other Board members thought about it. He asked if that provision could be removed from what was being recommended, and said he'd like it to see that happen. He spoke further.

Chair Rasmussen said Durham was going to grow in the next 10 years, and said the question was whether there would be suburban sprawl, or higher density areas in the center of Town. He said this crossed multiple chapters of the Master Plan, and reflected conflicting needs. He spoke in some detail on this, and said it was the Planning Board's responsibility to consider how best to budget the Town's land now and in the future.

Drive-through issue

Councilor Lawson said there had been a lot of feedback from the community and Planning Board members that they didn't want drive-throughs in the CB district. He suggested that the Board recommend that it not be a permitted use in the CB district, and said he would be 100% for carrying forward that recommendation to first reading by the Town Council, based on feedback received concerning aesthetics, safety, curb cuts, and other impacts on the downtown.

Councilor Tobias said she was a fan of pharmacy drive-throughs. She said she didn't have a problem with leaving drive-throughs out of the CB District, but said she would prefer to allow drive-through pharmacies and banks in the Courthouse District. She also said she was aware of public comments on this, and said the concerns were valid. She said a drive-through for a pharmacy was a benefit for a community, but said she wouldn't have a problem supporting not allowing it if others Board members felt that way.

Mr. Kelley said he wasn't a proponent of drive-throughs in any district.

Mr. Parnell said there was a drive-through in the CB district that was popular, and said the Board approved one at Mill Plaza some time ago. He said the proposed drive-through of the drugstore had some popularity. He also noted that at the drugstore in Durham, people parked their cars and employees brought their purchases out to them.

Chair Rasmussen said the areas where this was happening, at the bank and drug store, there was a curb cut that was supported by a parking lot where traffic was being generated anyway.

Mr. Parnell noted that this would be a Conditional use so there could be discussion on a case-by-case basis.

Councilor Lawson said perhaps the drive-through issue should be thought through more thoroughly, and the Board should leave things as they were for the time being. Councilor Tobias noted that banks needed drive-throughs, which allowed them to stay open during COVID. She spoke further on this. There was further discussion.

A straw vote was taken, concerning whether Planning Board members were in favor of rolling back the language on drive-throughs to what was allowed before the proposed Zoning changes.

Councilor Tobias	yes
Lorne Parnell	yes
Councilor Lawson	yes
Heather Grant	yes
Richard Kelley	yes
Michael Lambert	yes
Ray Philpot	yes
Bill McGowan	yes
Jim Bubar	yes

Setback Issue

Chair Rasmussen said he was thinking that making the setback 20-25 ft could result in a 5th floor roof top patio. Councilor Lawson noted that this 5th floor would be a CU, and the Board could decide on that. Councilor Tobias said conditions could be put in as to how the space would be used. Councilor Lawson said a decision could be made in terms of how it impacted the streetscape. Councilor Tobias said it was important to add this in order to provide flexibility for the developer. Chair Rasmussen said he didn't see the 5th story in the Table of Uses as a Conditional use. There was discussion that 6A addressed that in the text for the CB District.

Ms. Grant asked if they had to say a certain number for the setback, or could instead just review the design for the specific lot. It was noted that CU needed to include a minimum setback, as a benchmark. Mr. Bubar said he didn't see this coming back to the Planning Board when a use was actually proposed for the 5th floor. There was discussion, and Mr. Behrendt said this would be looked at as part of the building permit process. Councilor Tobias said the actual use could be addressed under CU. There was further discussion.

Chair Rasmussen asked whether with a 20-25 ft setback for the 5th floor, they also needed to be specific that there would need to be a 5 ft railing at a setback, in regard to the potential use of the open space. Councilor Lawson said this would be addressed when an actual design came forward.

There was discussion on the size of the setback. Councilor Lawson said he recommended 20-25 ft to the Town Council. Mr. Parnell said he would support that, and said having a 5th floor without the setback would be impossible. There was discussion that the Council would decide on the exact number of the setback.

Chair Rasmussen said the Board could say the setback could be no less than 20 ft, and the Council could agree with that, or on something more.

Councilor Tobias MOVED that the Planning Board approve the Town Council submitted Zoning amendments regarding height, stories, uses, density, and building configuration in the Central Business District; drive-through facilities in various districts; method for determining building height; and related changes as amended by the Planning Board in the document presented on February 10th and discussed at this meeting. Heather Grant SECONDED the motion.

Mr. Kelley asked if this motion captured the Board's decision to put a hold on the drive-through changes, and the recommendation for a 20-25 foot setback. Councilor Lawson said he expected that Mr. Behrendt would write something that reflected that. Mr. Behrendt spoke further on this, reflecting what the Board had discussed.

Mr. McGowan asked if there could be two motions, one concerning the drive-through and one concerning the 5th floor setback. Chair Rasmussen said they needed to approve the overall document, with the changes made. There was further discussion on how to proceed. It was agreed that the motion would stay as it was, and the votes by Board members would be conveyed to the Town Council.

The motion PASSED 6-1 by a roll call vote:

<i>Chair Rasmussen</i>	<i>Yes</i>
<i>Lorne Parnell</i>	<i>Yes</i>
<i>Richard Kelley</i>	<i>Yes</i>
<i>Bill McGowan</i>	<i>No</i>

<i>Jim Bubar</i>	<i>Yes</i>
<i>Heather Grant</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>

Mr. McGowan said he was in favor of leaving the drive-through language as it was, but had concerns about the setback amendment that had been recommended. He said based on different ways of viewing a building, that wouldn't make a difference. He also said there were clearly several buildings as one came into Town that were five stories or higher.

- X. **Public Hearing - Subdivision off Gerrish Drive.** Parcel at 91 Bagdad Road. Formal application for conservation subdivision for single family and duplex houses (15 units total) on 16-acre lot off Gerrish Drive including conditional use for wetland crossings. Marti and Michael Mulhern, property owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 10, Lot 8-6. Residence B District.

Chair Rasmussen recused himself for this application, and Mr. Parnell took over as chair.

Ms. Dill arrived at the meeting remotely. Vice Chair Parnell said Ms. Grant would sit in for Mr. Rasmussen.

Mr. Sievert said he'd provided updated plans, which included wetlands information, and design updates based on comments and meetings. He said he wanted to review all of this.

Mr. West spoke about the wetland functions and values, as addressed in the report he'd done. He said the functional assessment was key to understanding wetland and wetland buffer impacts. He said he had many years of experience evaluating thousands of wetlands. He provided details on the 4 different wetlands on the site.

#1 pink wetland complex– has the wetland crossing, also takes water from Gerrish Drive subdivision area that drains into green wetland area that includes a perennial stream that comes out of Madbury. This wetland has a functional evaluation of #1, does sediment trapping, shoreline anchoring, helps protect from erosion where there is flooding. Also has some flood storage, nutrient trapping, wildlife habitat Has a stream system in it that has been altered by Gerrish Ambler way road system.

#2 - green wetland complex- is part of much larger stream system, and a much larger watershed. Is large enough to have fish and shellfish habitat; principal functions include ecological integrity, significant buffer, fairly undeveloped watershed, flood storage with flood plain, groundwater storage, shoreline anchoring. Has more functions and is a more intact system than wetland #1.

#3 – purple wetland complex (3A, 3B) This is a highly functioning wetland system. It is quite a bit larger (4 acres), and undisturbed. Houses are mostly further away from main wetland. There are 2 small stream channels, and much diffuse flow as well. Because this wetland is less disturbed, it has ecologic integrity, groundwater discharge, springs, nutrient trapping and retention, sediment trapping, shoreline anchoring, wildlife habitat.

#4 – yellow wetland complex– very small, is similar to the forest around it. Is undeveloped and has ecological integrity, but that is its only principal function.

Mr. West said the larger and more functions a wetland had, the more important it was and the more impacts there could be if there was a wetland crossing and development next to it. He said the state based its evaluation on the functions, and also considered alternative designs and requested minimizing impacts. He said the proposed project showed a wetland crossing of wetland #1 and #3B, and impacts to wetland #4. He said DES wanted minimizing impacts to #2 and #3. He noted all of #3A was left intact with what was proposed.

He said he reviewed with Mr. Sievert each wetland impact and buffer zone, to try to minimize impacts from the roadway, etc. He said part of understanding the functions of #2 was looking at what was impacted by Ambler Way, Gerrish Drive and the 2 driveways previously. He said this played into understanding the function of the wetland. He said he did a lot of research on this and provided details on what he found.

He said the impacts occurred from previous development and altered the stream channel more than what was proposed now but said the wetland continued to function. He said even with additional impacts it would still function. He said the stream would continue to flow and there would still be habitat, and said the wetland would still function downstream and upstream. He noted that regulators typically preferred impacts near where there were already impacts, rather than going into a wetland area that was totally undisturbed, which was the case with #3A.

Mr. Sievert said the plan set now related the wetland functions to the overall site. He said they used Mr. West's information to minimize the design as much as possible. He said with Phase I, there were 10,500 sf of impacts, and they had been shooting to get under that. He said today, with the refinements, there would be less than 6000 sf of impacts. He said they were at 5700-5800 sf by narrowing the road, and using guard rails and retaining walls. He provided details on this and other areas where impacts were lessened.

He said C104 and 105 of the plan set showed the wetland buffer impacts, and said the largest reduction was at the westerly side of the stormwater treatment system. He noted the reconfiguration of the gravel wetlands and the sediment basin, which pulled all disturbance away from the wetland. He spoke further on this.

He also said a significant design change was that in the front of the road they would collect all the runoff from impervious surfaces from the intersection and beyond in order to treat surface water coming off of the road. He said this was a requirement of the Alteration of Terrain permit, and also said all of this tied in with the CU permit. He noted other sheets in the plan set that reflected these changes, and showed reduced impacts.

Mr. Sievert said they spoke with the Fire Department about access, and providing another hydrant. He said they also widened the road out a bit for the fire truck. He said the possible tie in of houses to the sewer system was still on the table with the DPW. He noted minor changes on the detail sheets, concerning the guard rail, and road cross-section updates with added pavement so runoff would run down the shoulder into the swale and wouldn't go into the wetland.

He said there would be no additional runoff from impervious surfaces from this subdivision that went into the front wetland that wasn't treated first, unlike the current situation where runoff was dumped into the wetland. He said nothing had changed concerning the landscape plan.

Mr. Sievert said they felt the 4 Conditional Use criteria under 175-62 of the Zoning Ordinance were met, including #1 concerning alternatives. He reviewed how the design met the other criteria. He said they chose to include gravel wetlands in the design because they provided the highest quality treatment in what was a high value wetland area. He provided details on this.

He referred to the letter from John Carroll that said don't mess with mother nature and that engineers couldn't replace nature. He said he agreed with that, but said he disagreed with what Mr. Carroll said concerning using the Bagdad access. He said doing that would also require studies, and would impact one of the highest value wetlands on the property. He also said the road would need to be almost 3 times as long, and would go through an undisturbed wetland.

Vice Chair Parnell said the Planning Board would evaluate the different perspectives on this.

Mr. Kelley asked if geotechnical engineers needed to make recommendations concerning the foundations of the retaining walls. Mr. Sievert said as a structural engineer, he didn't believe so. He said there were clay soils on the site that were pretty stiff, and also said the walls were less than 4 ft tall. He said they would have a geotechnical engineer there to check on things.

Councilor Lawson confirmed that the gravel wetland would capture 95% of total suspended solids. He asked if the system to collect runoff from the roadway would be able to effectively capture melting snow during the cold months. Mr. Sievert said yes,

although noting that it wouldn't do this as effectively as grass would. He said even with frozen ground, water would run underneath it and sediments would be trapped in the swale. He spoke further on this. There was discussion that the flow would be diffused over a large area.

Vice Chair Parnell asked if the entrance of the road would need to be raised more, to get the runoff to go where they wanted it to go. Mr. Sievert said it was already graded for this.

Mr. Bubar asked where the utility lines were proposed to go. Mr. Sievert said they would be under the paved road, and would go down the roadway, shoulders, or disturbed area. Mr. Bubar suggested putting the cable line there, and said it was a long roadway. He urged Mr. Sievert to contact the utility to be sure they were on board with the plan. Mr. Sievert said the utility would shift the cable location to where they wanted it to go.

Mr. Behrendt asked if the water pressure was sufficient for the subdivision. Mr. Sievert said a flow test was being scheduled.

Vice Chair Parnell said it might be useful for the Board to provide some comments now on the CU criteria under 175-62B.

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use.

Councilor Tobias said she agreed it was in the location it needed to be. She said on the site walk, she saw the challenges of the supposed alternative access. She said they were putting the homes in the only place that was appropriate. She said the 108 access was very steep and wasn't an access point. She said she thought the access that was proposed was the most logical and appropriate place.

Mr. Bubar said the fact that there was no alternative location didn't mean that the Board had to think that what was proposed was a good location. He said it might be the best location, but frankly not what he thought was a good idea. He said it was taking out a lot of wetland, and said just because it was the best didn't mean they had to approve it.

Ms. Grant said it was a reasonable place to put it.

Councilor Lawson said he didn't think there was a better access, for legal reasons or because of the degree of wetland impact. He said he respectfully disagreed with Mr. Bubar, and said they couldn't add criteria, and had to work with what they had.

Vice Chair Parnell said he didn't intend that the Board come to a decision on this yet, and said he was looking to see if there were concerns the applicant could do something about.

Ms. Dill said better minds than hers would be discussing this tomorrow at the Conservation Commission meeting, and said she was anxious to watch that meeting. She said this would seem to be the best place for the development.

Mr. Kelley said he concurred that there was no alternative location that was outside of the WCOD that was reasonably practical 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.

Mr. Kelley said that was yet to be determined, and was secondary to the first criterion. Vice Chair Parnell agreed.

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.

Councilor Tobias said they had done their due diligence in satisfying that requirement. Mr. Kelley said he would expect things to be explained that hadn't been explained yet.

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.

Vice Chair Parnell said they would expect to hear more on this in the future.

Mr. Sievert provided details on criterion #4 with the design. He said the culvert was as low as he could possibly get it, at 2 ft high, and said it was 5 ft wide to maintain the flow. He spoke further on the design, and about how he tried to minimize grading as much as possible. He spoke about having to meet the road standards, even though it was a private road. He said the restoration standards and how they were met were fully laid out on the plan. He also noted the enhanced landscape plan, which addressed disturbed slopes, etc.

Ms. Grant asked when they would hear more details on the sewer design, which was of interest to the Whites, etc. Mr. Sievert said what was proposed was to go into the manhole at Sumac, which was what would cause least impact rather than going up Gerrish, etc. to the manhole at Bagdad. He said he and the DPW believed this was the best way to go. He spoke about repairs that were needed for this line, and said the applicants would contribute to some of this. He spoke in some detail on this. He said the Whites and the Kelleys would be the easiest hookups to the sewer line. He also said the line was being designed to be large enough to hook up everyone on Gerrish Drive if they wanted to. He said a total replacement system would be much more costly.

Vice Chair Parnell reopened the public hearing.

John Lewis, Gerrish Drive asked if the changes made would have any impact on his side of Gerrish Drive, going into the wetlands. Mr. Sievert said none of the design changes that had been explained changed the road design in a way that negatively impacted drainage there. He provided details on this, using a Lidar map, and explained the reason for the current flooding problems there.

Mr. Lewis said it took work to get the water to go into the wetlands, as he and neighbors had done over the years. He said he had big concerns about big changes being made to a wetland that had worked well over the years, and said he was glad a third-party stormwater review would be done.

M. Lewis said he wasn't hearing discussion about a public vs private road, and said that issue should be discussed. He spoke further on this. He also said he hadn't heard anything about the use of temporary construction easements. In addition, he said Mr. West had admitted there was a certain degree of subjectivity concerning functionality and value of wetlands. He said this should be reassessed by a third-party wetland scientist.

Kim Sweetman, Ambler Way said she was happy to hear about the design for the guard rail, noting her concerns about the aesthetics of it in the past. She said she had similar concerns about the location and design of the mailbox and would like to hear the plan for this. She said she agreed with Mr. Lewis about a privately maintained road, and said there needed to be more discussion on this, especially about a private road over Town owned land. She said it was hard to know how maintenance would occur, and said the Planning Board should provide some direction on this for a future homeowners' association, to be sure the minimal impact standard would be maintained.

Daniel Duval said he'd known the Mulherns for 20 years. He said they were dedicated to the neighborhood and the community. He said he was a construction general manager, and knew the design team for this project. He said there were a lot of good things about the project, and said it was needed in the community. He said the cluster concept was the best use of land. He said the drainage features of the project would provide enhancements, and would address runoff concerns. He spoke in detail about the features of the design, including the conservation land involved. He said the guard rail was a great feature. He questioned where people could go in Durham when they wanted to downsize, and said a project like this met that need. He said the project should be given serious consideration.

Ted Mulligan, Rocky Lane said he was now an empty nester. He said they might want to downsize. He said there was a marketplace for 55 and older housing but the options were limited. He said he was in favor of this project for that purpose.

Alexandria Turcotte, Gerrish Drive said when she and her husband bought their house on Gerrish Drive in late-September 2019, they were immediately attracted to the quiet neighborhood there. She said they loved it that Durham was a small-town community that offered a safe place to raise a family. She said as a UNH graduate, she'd long understood that Durham was a community that stood to protect its land and its citizens' best interests.

She said she walked, ran, or rode in the neighborhood nearly every day, year-round, in daylight and in darkness using a headlamp and reflective gear. She said the corner where Gerrish Drive met Ambler Way caused her to run a little closer to the shoulder of the road. She said this corner was sharp and lacked visibility. She said in the summertime, the thick cover of the wetlands shielded the visibility of pedestrians from cars in both

directions. She also said snow piles in the winter impacted visibility. She said to build an access road on this corner put pedestrians in jeopardy.

Ms. Turcotte said approving this subdivision would not align with the strong history Durham had in advocating to protect its environment and promoting its small-town feel. She said this proposal would utterly destroy town-owned wetlands. She said these wetlands and surrounding woods were home not just to the Gerrish-Ambler residents, and were home to wildlife. She spoke in some detail on this, and said approving this subdivision would force animals to relocate their habitats, and would endanger pedestrians.

She said the process of restoring destroyed wetlands was long and costly. She said even when a wetland was restored, its function could never truly be restored.

She said the personal characterization of the applicants should not matter concerning this application, despite several "character witnesses" speaking tonight. She said what should matter was the impacts to the environment, and residents' well-being.

Robert Cardone said he used to live in Durham and was an empty nester. He said their community was still Durham, and he spoke fondly about Durham's small town feel and about wanting to find another place to live in Durham. He said the Mulhern's project was the solution for people like him, and said the project was just what was needed in Durham. He asked the Board to consider the project favorably.

John Carroll, Canney Road said when he and his wife moved to Durham 47 years ago, Walter Cheney had completed his development on the Ambler-Gerrish horseshoe and was soon to start the larger Canney Farms development. He said the Planning Board issued 76 conditions of approval for that application, and said most of them were environmentally related. But he said given environmental errors Walter committed on the Ambler-Gerrish horseshoe, his earlier development, those environmental issues couldn't be resolved by compounding them.

He said there was opposition not to the project, but to the access proposed. He said both the horseshoe ecosystem and the horseshoe neighborhood were settled entities today, and should not be seriously damaged by the improper use of town-owned wetland. He said there was an obvious and much less ecologically complicated alternative for access, which was obvious to all, and said it should be used.

Juan Nieves, 95 Bagdad Road spoke about learning how he owned part of the Mulhern driveway when the Mulhern's were selling 93 Bagdad Road. He said there was no other option for access because he wouldn't consent to use his right of way for a development. He said the reason he chose this location for his home was that it was tucked back. He noted his disabilities, including PTSD, and therefore the importance of being away from the sounds of traffic, etc.

He said the Ambler Gerrish wetland wasn't a true wetland and had already been damaged by development. He said to damage other wetlands as part of this project was absurd. He

said the wildlife corridor was more toward wetland #2. He said he'd love for there to be trees everywhere, but said things had to progress. He said he'd like this project to be a go.

Gail Kelley, Gerrish Drive noted previous comments by members of the public this evening about living in Durham and being part of the community. She spoke in some detail about her own experience in Durham and contributions to the Town, having lived there for over 60 years. She noted the straw vote the Board took on the conditional use criteria, and said each Board member who said going through the Gerrish wetland was the most sensible access hadn't walked the Bagdad access.

She said the proposed access road would go through the wetland and would destroy it in various ways. She said Town staff decided that the proposed road should be private, and she spoke in some detail on this. She noted the cost of maintenance of the complex infrastructure concerning the road, in part because of the wetland crossings involved, and said Town staff said the cost should be borne by the homeowners in the subdivision. She spoke in detail about what she saw as the consequence of building an ill-conceived road in an ill-conceived location.

Ms. Kelley spoke about the liability issues that could be involved, as a result of a possible fatality on an ill-conceived Town approved road. She said every decision with this proposed subdivision had been predicated on saving money, both for the developer and the Town, rather than on the Zoning Ordinance conditional use criteria, including the criterion concerning possible diminution of property values. She spoke further on this.

Mike White, Ambler Way spoke briefly.

Vice Chair Parnell said the public hearing would continue to the next meeting on March 10th, when the Board would hopefully have the third-party stormwater review in hand. He asked the Board if they'd like to see any other third-party reviews, such as a wetland assessment. There were no comments. Vice Chair Parnell said at the March 10th meeting, there should be discussion on the issue of maintenance of the stormwater system and the road by the homeowner association.

Mr. Behrendt noted his memo, and recommended that the Board take its vote about the Conditional Use application as soon as it could, separately from the subdivision application. He said he questioned the fairness of asking the applicant to provide final information before doing that.

Vice Chair Parnell said he thought the Board shouldn't take that vote until they had all the information they needed.

Mr. Bubar said he was concerned about whether the public/private road was a done deal. He said if it was a public road, it would have a big impact on the fiscal analysis. He said he was concerned that the funding wouldn't really be there.

Mr. Behrendt said that was a good question. He said it was the Planning Board that decided on the road issue, and said it would be helpful for the Board to make a decision on this sooner rather than later. Mr. Bubar asked about whether the road design would qualify as a public road. He said there was still a lot of work to be done concerning the application.

There was brief discussion on whether the Planning Board agreed with Town staff concerning the private/public road issue.

Mr. Kelley said he did have reservations about the private road issue, but didn't want to get into that this evening. There was discussion that the issue needed to be clarified in the future.

Chair Rasmussen returned to the table.

XI. Other Business

- Suggested change to Rules of Procedure regarding remote participation of members

Chair Rasmussen said he'd like to rewrite what he was going to discuss on this, and said he'd present it at the February 24th meeting.

XII. Review of Minutes (new):

January 13, 2021 site walk

Postponed

XIII. Adjournment

Councilor Tobias MOVED to adjourn the meeting. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0 by a roll call vote:

Chair Rasmussen ***Yes***

Lorne Parnell ***Yes***

Richard Kelley ***Yes***

Bill McGowan ***Yes***

Jim Bubar ***Yes***

Heather Grant ***Yes***

Councilor Tobias ***Yes***

Adjournment at 10:53 pm

Victoria Parmele, Minutes taker

Richard Kelley, Secretary