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## FINDINGS OF FACT AND CONDITIONS OF APPROVAL

Approval of a Site Plan Review submitted by Capstone Development Corporation, c/o Appledore Engineering Inc., Portsmouth, New Hampshire on behalf of William & Edna Woodward Rev Trust, Durham, New Hampshire, to construct approximately 100 structures consisting of 141 units of single-family and duplex residences with a total of 619 beds/residents and 650 parking spaces. The property involved is shown on Tax Map 9, Lot 10-3, is located on Technology Drive, and is in the Office Research/Light Industry Zoning District.

The applicant has submitted the following documents and plans for the proposed site plan review, which are on file with the Planning and Zoning Department.

1. The applicant submitted an Application for Site Plan Review with supporting documents on December 22, 2010.
2. The applicant submitted a letter of intent on December 22, 2010.
3. The applicant submitted a copy of the deed for the property on December 22, 2010.
4. The owner of the property submitted a letter on December 22, 2010 designating Capstone Development Corp. to represent her at the Planning Board meetings.
5. The applicant submitted on December 22, 2010, a Site Plan entitled "The Cottages of Durham, Capstone Companies, Technology Drive, Durham, NH" prepared by Doucet Survey Inc., Newmarket, NH, dated December 22, 2010.
6. The applicant submitted an Operation and Maintenance Plan on December 22, 2010.
7. The applicant submitted a Stormwater Management Plan on December 22, 2010.
8. A copy of the Request for Project Review by the New Hampshire Division of Historical Resources was submitted on December 20, 2010.
9. The applicant submitted a Site Development Signage Plan on December 30, 2010.
10. A Fiscal Impact Analysis was submitted on January 21, 2011.
11. The applicant submitted an updated Site Plan on January 21, 2011.



12. The applicant submitted a Stormwater Management checklist on January 21, 2011.
13. The applicant submitted a copy of a Co-Ed Addendum for Parent/Guardian document on January 24, 2011.
14. The applicant submitted a copy of a Mold & Mildew document on January 24, 2011.
15. The applicant submitted a Management Plan on January 24, 2011.
16. The applicant submitted a copy of a Pet Agreement document on January 24, 2011.
17. The applicant submitted a copy of a Rental Application document on January 24, 2011.
18. The applicant submitted a copy of a Bedroom Lease document on January 24, 2011.
19. The applicant submitted architectural plans on January 24, 2011.
20. The applicant submitted a LID Stormwater Treatment Plan on January 26, 2011.
21. The applicant submitted a Site Specific Soil Survey Plan on February 3, 2011.
22. The applicant submitted an updated set of plans on February 4, 2011.
23. A copy of the Shoreland Permit Application was submitted by Appledore Engineering on February 11, 2011.
24. A letter from Erik Lindholm to Steve McCusker regarding the fire sprinkler system proposed for Capstone was submitted on February 15, 2011.
25. A letter from attorney Peter Loughlin requesting a waiver from the School Impact Fee was submitted on February 18, 2011.
26. The applicant submitted a Traffic Evaluation on the proposed project on March 9, 2011.
27. The applicant submitted a Wetland and Upland Buffer Assessment and Summary from Normandeau Associates on March 9, 2011.
28. Correspondence between the NH Fish and Game and Normandeau Associates was submitted on March 9, 2011.
29. A copy of the draft Conservation Easement Deed was submitted on March 9, 2011.
30. A copy of the extended conservation easement plan that includes land to be purchased from the abutter (Tax Map 9 Lot 10-3) was submitted on March 23, 2011.
31. The applicant submitted an updated rental application and lease agreement on March 23, 2011.
32. A request for more information was submitted by NHDES regarding the Alteration of Terrain Permit #110207-015 and received on April 1, 2011.
33. A copy of the FEMA Letter of Map Amendment Determination Document with associated site plan was received on April 1, 2011.

34. The applicant submitted the sewer application for a New Discharge and Increase in Use to the Department of Public Works with a copy submitted to the Department of Planning & Community Development on April 1, 2011.
35. A letter was received from the NHDES, Alteration of Terrain Bureau, regarding the approval of the Alteration of Terrain Permit on April 6, 2011.
36. A letter from Attorney Peter Loughlin was received on April 7, 2011 requesting that the vote be delayed from the scheduled April 13, 2011 meeting and that the applicant was granting the Planning Board an extension on the deadline for making a decision until the end of April 2011.
37. On April 26, 2011 the applicant submitted a revised application for water and sewer.
38. On April 27, 2011, an email was received from Appledore Engineering stating that Capstone has accepted the proposal from the UNH Stormwater Center for third party review of the Stormwater Management Plan and Erosion Control and Sedimentation Plan.
39. Peter Loughlin, the applicant's attorney, submitted an updated lease on April 27, 2011, adding three paragraphs. One allows for "Town Officials" to inspect the cottage units under paragraph 9, the second adds language from RSA 48-A:14, Minimum Standards, that lists certain tenants rights under paragraph 34, and the final change adds a new paragraph 35, which references the Durham Town Code Section 118:11 for Offensive Material (garbage, etc.).

## FINDINGS OF FACT

1. The Durham Conservation Commission submitted a letter of preliminary findings on the project on December 14, 2010.
2. Chief David Kurz submitted a memo regarding the proposed development on January 5, 2010.
3. The Planning Board made the determination that this development was a Development of Regional Impact on January 12, 2011.
4. An e-mail from Steve Pesci of the University of New Hampshire to Cynthia Copeland of Strafford Regional Planning Commission was submitted on January 21, 2011.
5. A Site Walk was conducted on January 22, 2010.
6. A letter with maps regarding Regional Impact from Strafford Regional Planning Commission was submitted on January 23, 2011.
7. The Zoning Board of Adjustment approved a variance request on January 25, 2010.
8. David Cedarholm, Town Engineer, and April Talon, Assistant Town Engineer, submitted a memo regarding the development on January 25, 2011.
9. Douglas Bencks, UNH Director of Campus Planning, submitted a letter regarding the development on January 26, 2011.

10. West Environmental Inc. submitted a letter on the proposed development on January 26, 2011.
11. The Law Office of Scott E. Hogan submitted a list of represented property owners on January 26, 2011.
12. The Oyster River Watershed Association submitted aerial maps on January 26, 2011.
13. Public Hearings were conducted on January 26, February 9 and February 23, 2011.
14. The Oyster River Watershed Association submitted a letter regarding the development on February 9, 2011.
15. Attorney Scott E. Hogan submitted a letter regarding the development on February 9, 2011.
16. The Town Engineer submitted a letter dated February 15, 2011 regarding the capacity of sewer and water for the project.
17. A Technical Memorandum submitted by RSG, Inc. regarding the Traffic Model run was submitted on February 23, 2011.
18. A letter regarding the Regional Impact Review from the SRPC with agenda and minutes was submitted on February 23, 2011.
19. A memorandum was submitted on March 7, 2011 by the Conservation Commission regarding the proposal for a conservation easement. A second memorandum from the Commission was also submitted on March 7, 2011 regarding the Conditional Use Permit under the Wetland Conservation Overlay and Shoreland Protection Overlay Districts.
20. The Code Enforcement Officer/Health Officer/Zoning Administrator submitted a letter regarding the application on March 8, 2011.
21. An email from RSG, Inc. was received on March 9, 2011 in response to the applicant Traffic Evaluation submitted on March 9, 2011.
22. A letter from Michael Sievert, MJS Engineering, to Dori Wiggin of the NHDES, was submitted on March 9, 2011. The letter was submitted to NHDES in support of the applicant's Wetland Permit to be issued by the State and not the Town of Durham.
23. Douglas Bencks, Director of Campus Planning at UNH, submitted a letter with supporting documents on March 15, 2011.
24. The applicant appealed the boundary of the Aquifer District and the Town Council, following the recommendation from the Planning Board, removed the parcel from the Aquifer Protection Overlay District at its meeting of February 21, 2011.
25. The applicant has agreed to build two (2) ADA accessible units by the clubhouse and will retrofit other units on an as needed basis.
26. The applicant stated they are attempting to build to the latest version of the Energy Star standards/guidelines and that the construction will exceed 2009 IECC code for Climate Zone 6 by a range of 1.4% to 5%. The applicant is encouraged to find as many ways as possible to be energy efficient.

27. An email was received on March 23, 2011 from the UNH Stormwater Center regarding third party review of the Stormwater Management Plan and Operations and Management Plan. In addition, the UNH Stormwater Center will also be onsite to inspect the construction and installation of the stormwater system.
28. A memorandum from the Director of Planning & Community Development regarding the variance received by Capstone was submitted on March 22, 2011.
29. Several letters and emails were received by the Planning & Community Development Department from members of the public regarding the applications and are on file with the Department of Planning & Community Development and are part of the record.
30. A letter dated April 5, 2011 was received from Keith Weston, American Engineering Consultants, Corp., regarding independent review of the Erosion Control and Sedimentation Plan as well as inspections during installation and throughout construction.
31. At its meeting on April 13, 2011, the Planning Board passed a motion to reopen the public hearing for the limited purpose of accepting comments on any new information that may have been received by the Planning Board after the closure of the February 23, 2011 Public Hearing on the Site Plan Review Application and the Conditional Use Permit Application.
32. The Director of Planning & Community Development provided a memorandum dated April 21, 2011 that consisted of a list of new information that was provided after the close of the public hearing on March 23, 2011 to help clarify the "limited purpose" of the reopened public hearing.
33. A copy of RSA 48-A was provided to the Planning Board for reference on April 22, 2011.
34. The UNH Stormwater Center submitted a Scope of Work (SOW) on April 21, 2011 for their third party review of the applicant's Stormwater Management Plan and Erosion Control Plan. The SOW included site inspections during construction.
35. An email was received on April 26, 2011 from the newly elected president of the Oyster River Watershed Association (ORWA), Eric Fiegenbaum, regarding monitoring of the Oyster River.
36. At the April 27, 2011 meeting the Planning Board reopened the public hearing and heard from interested members of the public.

## **WAIVER**

The applicant has requested a waiver from the School Impact Fees. The Planning Board has reviewed the request and hereby approves the waiver.

## CONDITIONS OF APPROVAL

The following conditions shall be met prior to the Signature of Approval on the Site Plan. These conditions shall be met within six months of the signing of these Findings of Fact and Conditions of Approval by the Chair of the Planning Board. If these conditions are not met within six months, the applicant must come before the Planning Board for review of the conditions:

1. The applicant shall supply one mylar plat and one paper copy for signature by the Planning Board Chair.
2. All plans must be stamped by the appropriate professionals and all Federal and State permit numbers shall be listed on final plan.
3. A note shall be added to the landscape plan that either there will be an underground sprinkler system installed or outside hose attachments in place for the care and maintenance of the landscaping.
4. A note shall be added to the overall site plan allowing for minor site plan changes to occur in the field with the approval of the Code Enforcement Officer. Because the applicant is planning to bring gas to the development, the proposed gas line shall be shown on the site plan so the applicant will not have to return to the Planning Board for approval. We are requiring a certified plot plan and as-built plans that shall show any changes.
5. A lawn and landscape maintenance plan shall be submitted to and be accepted by the Department of Planning & Community Development and shall describe the use and amount of any fertilizer, herbicide, or pesticide. The use of fertilizers, pesticides, and herbicides for the landscaping and lawn care shall be kept to a minimum, especially considering the proximity to the Oyster River. Alternative methods of landscaping and lawn care, such as organic materials and mulching, shall be used. The plan shall address irrigation practices so as to minimize leaching of chemicals during run-off.
6. The applicant shall post an acceptable financial surety prior to the signature of the final Site Plan that is approved by the Planning Board. The financial surety shall be in an amount sufficient to ensure the completion of all roads, water service, sewage disposal, drainage, and erosion control. In addition, the surety shall include money to ensure that any damage to Technology Drive, due to the construction of the development, is repaired at the applicant's expense. The financial surety shall be effective until work is completed by the applicant. The financial surety shall be approved by the Town as to the form and type. The Town will accept cash, pass book savings in the Town's name, letter of credit or a construction surety bond. At its discretion, the Planning Board may require

approval of the construction guarantee by the Town Attorney. The construction guarantee shall be released in phases as the portions of the secured improvements or installations are final.

7. A guarantee or performance bond or escrow agreement must be posted in an amount to be determined by the Director of Public Works and approved by the Town Administrator to ensure satisfactory completion of the landscaping plan as submitted and approved. This may be included in the financial surety discussed in number four (#4) above.
8. The applicant shall receive a Dredge & Fill Permit from the NHDES.
9. The applicant shall receive a Shoreland Permit from the NHDES.
10. The lighting plan shall be reviewed by an independent third party hired by the Town of Durham and paid for by the applicant and any deficiencies shall be corrected to the satisfaction of the third party.
11. The Town of Durham shall be reimbursed by the applicant for the cost of the Traffic Model run by RSG, Inc.
12. An independent third party hired by the Town of Durham, and paid for by the applicant, shall review the stormwater management plan, erosion and sedimentation control plan, and the maintenance and operations plan and any deficiencies shall be corrected to the satisfaction of the third party.
13. The applicant shall continue to work with the Cemetery Committee regarding fencing, landscaping, and tree removal. Fencing and landscaping shall be placed along the entire common boundary and the fence shall continue down Technology Drive toward Route 155A for a short length. The fence shall be opaque and a maintenance agreement shall be submitted. The fence shall be at least 5'11" high as noted on the plan. The landscaping shall be inside the fence on the applicant's property. The landscaping/trees planted shall be approved by the State Arborist. A letter from the Cemetery Committee that a final agreement has been reached shall be received by the Planning and Community Development Department.

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

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. The applicant shall provide adequate transit for the occupants of the development travelling to and from the University Campus. As part of this obligation, the applicant shall submit a letter to the Planning Board from UNH Transportation Services indicating the proposed transportation schedule is adequate to meet the transportation needs of the students residing in the Capstone complex. There is a current bus service that serves the UNH Interoperability Lab (IOL) and the Rivers Edge Apartments via Technology Drive. This service shall be extended, or a new service added, with the operating costs funded by Capstone Development Corp., or its successors. Annual meetings with the Durham Director of Planning & Community Development, UNH Transportation Services Director, other UNH transportation planning staff, and Capstone discussing transit issues shall be held to determine what, if any, changes should be made to ensure sufficient transit service is available for the development. As part of this review, Capstone shall include in its resident survey a question ascertaining whether the residents find the Capstone-funded bus service meets their respective needs, a copy of which shall be forwarded to the Director of Planning & Community Development to be used in the annual review. The UNH Transportation Services Director shall be invited to this review.
3. The land shown on the proposed "Conservation Easement Plan" dated March 10, 2011 shall be placed into a conservation easement transferred to a qualified conservation organization. If no such organization is willing to accept the transfer, then the land shall be deeded as dedicated open space that will not be used for construction or building.
4. Signs shall be installed along the gravel path stating that the area beyond the path is a conservation area and a drinking water supply and shall be treated accordingly (or similar language).
5. All buildings within the development shall have sprinkler systems as approved by the Durham Fire Department (this includes the Cottages and other public buildings).
6. Water and sewer permits must be approved by the Town Council.
7. Maintenance Guarantee--a financial surety to guarantee that all site work was properly done shall be posted by the applicant with the Town. Such maintenance



guarantee shall be in an amount of two (2) percent of the estimated project cost and shall remain in force for two (2) years after site improvements are completed. If such repairs are needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements.

8. Limits of clearing shall be established in the field by a NH Licensed Surveyor with construction fencing. Trees to be protected during clearing operations and construction shall be clearly marked to caution operators. The developer is required to notify the Tree Warden to ensure this occurs. Impacts outside of clearing limits shall be reestablished with native species at applicant's expense. However, trees targeted for removal by the Cemetery Committee shall be excluded.
9. Preservation of Natural Features and Amenities - Grading and clearing should be minimized so as to avoid creating undue erosion or interruption of natural drainage ways. Particular attention should be given to natural features suitable as buffer strips. Similar natural features that provide buffers between sections of a development should be preserved to enhance privacy and attractiveness. Developers shall use construction methods which cause the least disturbance to the environment possible. No cut trees, stumps, debris, junk, rubbish, or other waste materials of any kind shall be buried in any land, or left or deposited on any lot or street at the time of issuance of a certificate of occupancy, and removal of same shall be required prior to issuance of any certificate of occupancy. Nor shall any debris be left or deposited in any area of development at the time of expiration of the performance bond or dedications of public improvements, whichever is sooner.
10. Prior to the issuance of a Certificate of Occupancy for a building or structure on any lot within a subdivision, at a time determined by the Code Enforcement Officer, three (3) copies of a certified plot plan and in an electronic format suitable to the Code Enforcement Officer shall be filed with the Zoning Administrator. The plot plan shall be prepared by a professional surveyor, engineer, or architect and shall be signed and sealed by the professional(s) preparing the plan. The plot plan shall show the post development conditions of the lot including, but not limited to, the following information:
  - A. The actual lot layout, dimensions, and lot area.
  - B. The required setbacks for the zone in which the lot is located and the actual setbacks of the building(s) and structure(s) as constructed.
  - C. The actual location of the building(s) on the lot including the building footprint and any appurtenant structures such as decks, porches, basement entry door structures, sidewalks, driveways, and aboveground utility facilities.

- D. The actual location of underground utilities such as septic systems, wells, water, sewer, and gas lines, electric, phone, and cable facilities, and stormwater drainage systems.
  - E. The location of any significant natural features on the lot such as wetlands or floodplains, any required setback or buffer from the natural feature, and the actual setback or buffer provided.
11. During the development and construction process, wooded natural and non-wooded natural areas will be manipulated to maintain a healthy vegetative cover to maintain the soil structure, minimize soil erosion and enhance the quality of the proposed community. In wooded natural areas, the healthy forest cover will be retained to reduce the amount of stormwater running across the ground surface.
  12. All utility piping and wiring shall be located underground.
  13. All deeds covering land to be used for public purposes, easements, and rights-of-ways- over property to remain in private ownership, and rights of drainage across private property shall be submitted in a form satisfactory to the Town Attorney.
  14. The School Impact Fee will be assessed for any units that are occupied by school age children.
  15. An independent third party hired by the Town of Durham, and paid for by the applicant, shall be on-site to inspect the installation of the stormwater drainage systems and the erosion and sedimentation control measures. The erosion and sedimentation control measures shall be monitored on a continuous basis and any deficiencies shall be corrected as soon as possible.
  16. The Town of Durham engineer, or assistant engineer, shall perform on-site inspections during the installation of the water and sewer utilities. The applicant shall pay the Department of Public Works for these additional inspections.
  17. The biological and chemical properties of the Oyster River shall not be degraded by the stormwater runoff from the development site. The applicant shall work with the Oyster River Watershed Association (ORWA), to pay for water quality monitoring by taking storm samples upstream and downstream before, during, and after construction for a period of five (5) years, a copy of which shall be submitted to the Town Engineer, Conservation Commission and the Director of Planning & Community Development. If the ORWA is no longer able to assist with the monitoring, Capstone Development Corporation (or its successor) shall contract with a qualified third party, as approved by the Director of Planning &

