

Approved: September 13, 2012

**TOWN OF DURHAM CONSERVATION COMMISSION MEETING
Thursday August 9, 2012, 7:00 PM
Town Council Chambers**

Members Present: John Parry, Derek Sowers, Robin Mower, Julian Smith, Malin Clyde, Larry Harris

Alternates Present: Peter Smith, Otho Wells

Members Not Present: Jamie Houle

Others Present: Gregg Caporossi, Project Manager, the Trust for Public Land

1) Call the meeting to order

Chair John Parry called the August 9, 2012 meeting of the Durham Conservation Commission to order at 7:00 pm

Robin Mower MOVED to approve the agenda; this was SECONDED by Derek Sowers and APPROVED unanimously.

2) Public Comment

No comments from the public were made at this time.

3) Presentation: Spruce Woods Forest Project – Gregg Caporossi

Mr. Caporossi reported to the members that the Trust for Public Land (TPL) has been looking at alternative structures and other ways to obtain funding for this project. He said they are now looking at the Wetlands Reserve Program (WRP) through the USDA Natural Resources Conservation Service (NRCS) as a potential funding source.

Mr. Caporossi said they began the process with NRCS last fall because NRCS is interested in the New England Cottontail potential of the property. He said that WRP determines the value of an easement based on their own formula, which they used for this property, and initially determined the Geographically Adjusted Rate Caps (GARC) value for the easement to be just under 3 million dollars. Mr. Caporossi noted that this figure recognizes the commercial zoning where the property is located. He said if the value is determined to be above \$750,000 an appraisal process is required.

Mr. Caporossi said that the landowners and the land have been going through an eligibility screening process and they have been determined to be eligible. He said that NRCS hired Kevin McManus of McManus & Nault Appraisals to do the appraisal, which was completed and is now in the Federal Technical Review process, which in turn should be completed by the middle of next week. Mr. Caporossi noted that until the review process is completed the true value of the property for this project is not known. He said they anticipate that the full appraised value of the property will be north of 3 million dollars; perhaps 3.5 to 4 million.

Mr. Caporossi said he wished to revisit this project with the Commission to discuss the pros and cons of using the NRCS program and what it means to Durham's role with regard to the land. He said he

believes this is a great opportunity and that the NRCS program is a vehicle we can use for Durham to meet its management of the land. Mr. Capossi presented to the members for review a copy of the conservation deed that WRP. He said the language of the easement is non-negotiable and that the contract is between the current land owner and NRCS. Mr. Caporossi told the members that the owners need to sign the easement agreement by August 24th.

Malin Clyde asked if any thought had been given to attempting to build in a stewardship fund into the costs.

Mr. Caporossi responded that one of the required ways to score highly with NRCS was to include a stewardship fee as part of the costs; so this had been done.

The members discussed the choice of the Town owning the easement or of NH Fish and Game owning the easement.

Mr. Caporossi noted that NH Fish and Game cannot own the easement, because the NH Attorney General takes issue with a provision in the easement language and therefore will not accept the easement language.

Ms. Mower asked if this provision is one that the Town should review to see if they have an issue with it as well.

Ms. Clyde noted that other towns own lands with an easement owned by WRP. She said it is a good example for the Town of Durham to own land that has a permanent conservation easement on it. Ms. Clyde said that none of the other lands owned by Durham have that. She reminded the members that the Town is involved in another project with NRCS for another town-owned land (the north side of Wagon Hill Farm). Ms. Clyde suggested that it should be made clear that the Conservation Commission is the designated party responsible for this land.

Ms. Clyde asked what NRCS plans for the property.

Mr. Caporossi said they plan to have seven acres of vegetated community enhancement, plant 1,000 blackberry bushes, have 1,000 container plants, and do invasive plant control on the habitat.

Ms. Mower said that Councilor Howland noted some concern about the process of removing trees in close proximity to the drinking water supply.

Ms. Clyde said there was a discussion regarding the use of chemicals to treat invasive species. She noted that best management practices will be used and that a licensed applicator will perform the application. She suggested discussing a memorandum of understanding regarding the protection of the aquifer and the water supply.

Peter Smith asked if Durham has the right to change the use of the land.

Mr. Caporossi said that Durham has the right to sell the land or give it to a Land Trust but not change the use of the land.

Peter Smith and Mr. Caporossi discussed the issue of the power of "Eminent Domain" with regard to this project. Mr. Caporossi noted that this project will involve a Federal Easement that cannot be changed.

Ms. Mower asked how restrictive the easement language is, and Mr. Caporossi responded that it is not restrictive.

Ms. Clyde expressed her concern at what future plans the NRCS may have for the property.

Mr. Sowers said, from his experience with the NRCS, there is a certain portion of the property that qualifies for restoration action, the money is made available for that purpose, and the agency is not interested in the entire property.

Mr. Caporossi agreed, saying there is a desire to create and improve what is there but not to expand on it.

Mr. Sowers suggested having a workshop with the NRCS representative to determine the restoration plan and how that matches with the Town's thoughts and how joint management decisions will be made in the future.

Mr. Caporossi explained that the process will be that NRCS will make an offer to the landowners, they will accept it or not. If the landowners accept the offer, TPL will proceed with a contract with the landowner and NRCS will pay their portion for the easement which reduces the purchase price of the entire property. He said NRCS will close on the easement, TPL will acquire the property and convey it to the Town.

Mr. Sowers asked if there is a matching portion for this funding source.

Mr. Caporossi said there is no matching required. He noted that NRCS will pay the restoration costs up front. He said he is excited about this project because NRCS is talking about reintroducing New England Cottontails into New England, and this is one site that is being considered for that project.

Peter Smith recommended that the Conservation Commission review this proposed easement and compare it with what their reasons were for wanting to preserve this land and see if the conclusion is that all of those goals will be attained.

Chair Parry asked if there will be access for recreation.

Mr. Caporossi said trail construction and dispersed recreational uses will be allowed. He noted that the Town of Durham can exceed the restriction uses if they desire. Mr. Caporossi said the funds are available and need to be committed, noting that this is not a proposal hoping to be awarded.

Mr. Sowers asked what funding needs would still exist from the Conservation Fund.

Mr. Caporossi said the remainder of the property needs to be purchased and that amount will not be known until the appraisal is approved. He said the TPL has \$500,000 available through the ARM program (this expires end of this calendar year) and at present does not know how much above and beyond that will be needed.

Chair Parry asked if the available funds are tied to a fiscal year.

Mr. Caporossi said they are, which is why there must be a contract between NRCS and the landowner by August 24th. He said he anticipates the landowners won't sign the easement agreement unless they know someone is available to buy the property. Mr. Caporossi said TPL is the entity that will purchase the remainder of the property from the landowners, but it needs someone else to convey it to.

Mr. Sowers noted that there will not be a commitment from the Durham Town Council by August 24th, 2012.

Mr. Caporossi suggested the members' review the easement documents and he will ask an NRCS representative to attend the next Conservation Commission meeting.

The members discussed the need to articulate clearly the Commission's priorities in conserving land and how this project fulfills those priorities as well as fits with the Master Plan and the NH Wildlife Action Plan.

Mr. Caporossi said he would make available the document they compiled regarding this project. He said the Town previously provided a letter of support for this project. Mr. Caporossi noted that the Town will still have rights to the drinking water supply and will be able to protect it. He said this is fundamentally a water supply quality project.

Ms. Clyde suggested forming a small working group to compile information supporting this project and form a strategy for articulating that information.

Mr. Caporossi said TPL does not require a commitment from the Town Council prior to August 24th, but would like to get a sense that this Commission is interested in finding a way to get this project through the process.

Otho Wells asked if the Town Council does not approve the Town of Durham holding the legal rights to this land, who would own the land.

Mr. Caporossi said he would need to find someone else to own it.

Larry Harris noted that the Conservation Commission previously committed up to \$400,000 from the Conservation Fund, and depending upon the amount the appraisal comes in at, it may cover all the expenses or more may be required.

Mr. Caporossi said he feels strongly that the ultimate purchase price will be less than the previously requested purchase price; the question is how much.

Peter Smith requested that the Chair appoint qualified members to review the easement and other documents and meet as a subcommittee to determine if this proposal as currently configured is consistent with the Commission's original approval and whether it modifies it positively or negatively.

Ms. Clyde asked if the Commission needs to approve the expenditure of funds from the Conservation Fund.

Ms. Mower noted that the expenditure has already been approved and was voted on after holding a Public Hearing. She said the Commission voted to expend up to \$400,000 from the Conservation Fund, then went to the Town Council to ask for their support to submit the grant.

The members discussed if there is a need to repeat the process due to the length of time that has elapsed since the original vote or due to the change in funding source.

Mr. Sowers suggested that at the next Conservation Commission meeting when they meet with NRCS representatives they work on reaching a clarity on the relationship between NRCS and the Town, how to make joint management decisions, and make a recommendation to present to the Town Council and ask for them to accept the legal authority and note the Conservation Commission continued commitment to funding this project.

Peter Smith noted that there needs to be a discussion regarding money when there is a figure available and to have the Town attorney review the language of the easement.

The members continued their discussion as to the need of an additional Public Hearing and for the Conservation Commission to recommend to the Town Council that they accept the legal authority of this property.

Mr. Caporossi noted that a site walk of the property needs to be done by the Conservation Commission.

Mr. Sowers volunteered to search past minutes and review the wording of the motion regarding the TPL project to ascertain if an additional public hearing by the Conservation Commission is needed. He suggested having a site walk with members of the Commission, the Town Council and any interested members of the public. He also volunteered to review the project values and how they are being met by the current funding source

Mr. Caporossi said he will email pertinent documents to Chair Parry who can distribute them to the Commission members.

Mr. Sowers encouraged members to email him with any comments/concerns about the documents; he will then provide a summary to all members.

Ms. Mower initiated a discussion regarding the amount of funding available to commit to the project at this time. She noted that a motion was made previously to support the project up to \$400,000. Ms. Mower said at this time there is approximately \$350,000 available in the Conservation Fund. She said she asked the Town Administrator to check with the Town attorney to see if the Conservation Commission can commit to encumber the next \$50,000 as it becomes available.

Chair Parry noted that the balance of the Conservation Fund is \$380,000.

Mr. Sowers noted that after meeting with NRCS representatives, if the Commission is comfortable with the easement, the members can make a motion to the Town Council recommending that they accept the legal ownership of the property.

Peter Smith suggested first vote as a commission that this is our recommendation, then work out the mechanism to go to the Town Council.

4) Minutes – Review July 17 Minutes

The members reviewed topics from the July 17th, 2012 meeting that needed content. Chair Parry will send to the minute taker the content provided by the members and the July 17, 2012 minutes will be reviewed at the September 2012 Conservation Commission meeting.

5) Old Business

- a) Wetland/Shore land Permit Applications and Project Proposal for Adams Point

Derek Sowers noted that the NH Fish and Game has submitted an application regarding improvements at Adams Point that was distributed electronically to the members for them to review. He said he asked for any comments/concerns to be sent to him by August 6th; and having received none recommended that Chair Parry sign the expedited wetlands application.

- b) Technical Review Group (TRG) to review applications to the Planning Board -- Report on July 31 meeting; Discussion on DCC Participation and Representation

Derek Sowers noted that he and Jamie Houle attended the first meeting of the newly formed Technical Review Group. He said the newly hired Town Planner formed this technical review group to give

technical comments on applications to the Planning Board to better coordinate feedback. Mr. Sowers said he feels this is a good opportunity for the Commission to bring up concerns earlier in the process. He said the Group reviewed two agenda items; a) a boundary line adjustment for Amber Acres and b) the Peak Development current conceptual design for the Mast Road project. Mr. Sowers said their comments were to be sure that the 50% impervious cover is followed closely and they noted that it was unclear how the estimates were generated for the layout. He said they had a discussion regarding storm water, and suggested reducing the parking. Mr. Sowers said, the group is a good way for the Commission to bring issues up earlier in the process, which is constructive for the developer.

The members discussed the Planner's desire to have one member appointed as a representative to the group. Chair Parry said he explained it would be difficult for the Commission to appoint one member. He noted that Robin Mower, Derek Sowers and Jamie Houle all expressed a willingness to represent the Commission on the Group when available. Chair Parry suggested having one of those individuals as the "key person" and the other two as secondary and third representatives. He noted that the three volunteers will communicate with each other to assign a representative for each meeting. Chair Parry thanked the three members for volunteering for this Group.

c) Capstone Conservation Easement Update

Robin Mower said the boundary marking has been completed. She noted that Sarah Callaghan of Strafford Rivers Conservancy has raised a few points in response to the latest draft from the Capstone attorney. Ms. Mower said she reviewed the draft and discussed it with the Town Administrator who then forwarded questions to the Town Attorney. She said they hope to have another draft for the Commission to review at their September meeting. Ms. Mower noted that Capstone is anticipating move in for some of their cottages on August 15th and without an easement signed they will be no formal enforcement over the easement area.

d) Annual easement monitoring -- Discussion of general process for future easement monitoring.

Tagging of other Town Properties

The members discussed the possibility of tagging the boundaries on the Fogg property.

Malin Clyde suggested that a member contact the Fogg family before this moves forward.

Otho Wells volunteered to contact Mr. Fogg and to work with the appropriate people to get the property marked accurately.

Derek Sowers asked if it would be appropriate to have a small contract with a professional to mark all the boundaries of the Durham properties. He asked if this would fall under the auspices of the Stewardship Committee.

Robin Mower noted it would be necessary to authorize the Land Stewardship Committee to expend funds to hire a survey company to do the posting. She said the Commission needs to be sure the funds are available.

Ms. Clyde suggested putting this goal on the list of priorities and discuss it further.

Robin Mower suggested contacting Duane Hyde for advice on this topic.

Ms. Clyde will discuss this with Mr. Hyde.

Chair Parry said the general topic of annual easement monitoring will be a future agenda topic.

e) Master Planning Update

The members noted that this item has not moved forward since last discussed due, in part, to privacy issues. Ms. Clyde suggested using zones and not individual properties when stating priorities.

6) New Business

a) DCC Annual Report

Chair Parry reported that the Annual Report to the Town Council will be in September and the written report will be due in late November. He said he will make the presentation to the Town Council on September 24th and will present an outline to the members for their comments prior to that time.

b) Durham Day

Chair Parry announced that the date for Durham Day will be September 15th. He noted that Malin Clyde will not be available this year to lead the trail walk, but that Town Councilor Dave Howland has volunteered.

Robin Mower noted that Mr. Howland also suggested having such walks on a regular basis during concerts held at Wagon Hill Farm.

7) Ongoing Business

a) Wetlands Applications

Derek Sowers said there were no new Wetlands applications this month.

b) Land Protection

Land Protection was discussed during the presentation by Gregg Caporossi.

c) Land Stewardship Sub-committee

Malin Clyde noted that Emma Carcagno has walked the property with a US Fish and Wildlife representative. She said they will begin developing a rough plan, and the next step is for the Commission and NRCS to meet with the Town Administrator to discuss the project, access, and moving forward. Ms. Clyde noted that the timber harvesting will be visible from the top of the hill. She said Ms. Carcagno suggested this as a good location for an educational sign explaining what is being done on the property.

d) Water Resource Sub-committee

Robin Mower reported that Jamie Houle is in the process of scheduling a meeting of the sub-committee.

8) Board and Committee Reports

a) Town Council

Robin Mower reported that she had a discussion with the Chair of the Zoning Board regarding the proposal from the Commission to amend the zoning ordinance. She also reported that the Town

Administrator noted the status on the Capstone easement and the hope to have the revised deed for September, 2012.

b) Planning Board

Julian Smith reported that the Planning Board approved the boundary line adjustment for Amber Acres and that there was a discussion regarding the Peak design. He said they suggested moving one parking lot to the backside of the property.

c) Zoning Board of Adjustments

Robin Mower said she reviewed the ZBA packet for Tuesday's meeting and noted an item involving building into the shoreland. She said she will provide the information to Derek Sowers. Ms. Mower said the applicant states there will be no direct impact on the shoreline, but she does not see information provided to determine that. She suggested having someone review the Zoning Board packets with the option to check with the Code Enforcement Officer.

9) Other Business/Announcements

- a) Derek Sowers said the Technical Review Group will discuss the Mill Road subdivision. He noted a preliminary conceptual design was presented to the Commission two years ago by Jack Farrell who is now moving forward with the conservation subdivision through the Planning Board. Mr. Sowers said the Technical Review Group will discuss it next Tuesday.
- b) Malin Clyde noted she has been working on the new website and that her first priority is to migrate information from the old site to the new site in an organized way. She said that the Commission will now post their own minutes and Jenny Berry will post the meeting agendas.

Ms. Clyde announced that she will be on sabbatical for six months beginning December and the Commission will need to appoint another member to work on the website during this time period.

10) Administrative

- a) DCC Officer Appointments – this item was not discussed at this meeting.
- b) Correspondence since last meeting

Chair Parry noted that the balance of the Conservation Fund is \$380,000.

- c) Next regular meeting of the Durham Conservation Commission will be held on September 13, 2012.

11) Adjournment

Derek Sowers MOVED to adjourn the August 9, 2012 meeting of the Durham Conservation Commission at 9:40 pm. This was SECONDED by Robin Mower and APPROVED unanimously.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Conservation Commission