

Approved October 11th, 2007

DURHAM CONSERVATION COMMISSION
Meeting Minutes of Thursday, September 13, 2007
Durham Town Hall- Council Chambers
7:00 PM

Members present: Peter Smith, Stephen Roberts, Julian Smith, Duane Hyde,
Cynthia Belowski, Jim Hellen, George Thomas, Robin Vranicar,
Dwight Baldwin, Beryl Harper

Excused Absence: None

Public Attendees: Robin Mower, Mr. & Mrs. Kendall, Jim Gove, Sharon Summers,
Mike Sievert, John Carroll, Dea Brickner-Wood

Cynthia Belowski called the meeting to order at 7:05 pm. She suggested amending the agenda to accommodate the later arrival of Mike Sievert.

Julian Smith moved to postpone item 1a (presentation of subdivision at 401 Bay Road) to the third item under New Business. This was seconded by Dwight Baldwin and approved unanimously.

It was also noted that Durham Day and a request for televising meetings would be discussed under "other business". Also Jackson's Landing will be added as a subtopic under "ongoing business".

1. New Business/Presentations

a. Discussion about the importance of Durham's agricultural soils – Dr. John Carroll made a presentation to the Conservation Commission on Durham's abundance of land with prime agricultural soils and how agricultural land can be utilized in preserving open space. Dr. Carroll noted that local agriculture can generate revenue; farmers markets are thriving, and contracts with local restaurants and local retail stores are increasing for locally grown products. He also noted that the local organic or close to organic, small scale, sustainable farms are ecologically favorable. He pointed out that the decision to develop land is an irreversible decision. That is to say, once the land is developed it is permanently lost to the possibility of using it for agriculture. It was noted that the current zoning actually encourages that the best soils are cheapest to build on and therefore most attractive for developing. The Commission noted that the Commission, as a whole, needs to have a discussion regarding zoning. Dr. Carroll also cautioned that none of the University of New Hampshire land should be considered part of Durham's open space land. This is because the Town of Durham has no authority over the University's land, and the University may alter or develop any of their land as they wish.

b. Proposed land conservation project – Dea Brickner-Wood of the Land Protection Working Group presented the “Roselawn Farm” protection project to the Commission. This property is located both in Madbury and Durham NH. Dea explained that in March and April Madbury and Durham residents began gathering over concerns that a subdivision was being planned for part of this property. The group met with Phil Auger of Cooperative Extension in an attempt to seek alternatives for the land. He noted that because the property is over 70% prime soils it would be a good candidate for Farm and Ranchland Protection Program (FRPP) Grant funds. An application was put in for funding. At the end of August the group was alerted that the project could receive monies if a 50% match for the funds could be found. In working with the owners of this property, they indicated their willingness to have a “landowner bargain sale” of the property easement to assist in the success of this project. They took the land off the market in hopes that this would aid in the groups plan. Dea explained that the Conservation Easement appraised value is \$931,700. The proposed funding is as follows:

FRPP grant funds: \$326,300 (35%)
Town of Madbury: \$163,150 (17.5%)
Town of Durham: \$163,150 (17.5%)
Landowner Bargain Sale: \$279,100 (30%)

Dea noted that there will be over 50% of forested land available for public use. There will be designated and identified access points for the wooded portions for hiking, bird watching, hunting and fishing with permission. The landowners will retain the right to post farm fields. She also noted that there is an IRS regulation regarding the deduction available to landowners wishing to donate bargain sale property that will expire at the end of 2007, making the time frame for this project very short. Duane Hyde explained briefly to the Commission the difference in the IRS regulation and how it would affect the landowners. Peter Smith expressed his wish to have confirmation of this and therefore the need to proceed with this project in such a short time period. Dea was asked what the Town of Madbury’s reaction was to the presentation. She responded that she had meet with their Conservation Commission and Selectmen and that they are in favor of the project and are currently looking in to the finances. The Commission discussed the political ramifications of this project. Specifically how the discussion of the change in status of the LUCT funds would affect the attitude toward this project and also how this project may affect the vote regarding the LUCT funds. It was noted that this could be used as an opportunity to illustrate to individuals in town interested in open land use to see why is it very important for the LUCT funding to remain to be used for conservation land. It was noted that this issue needs to move forward, recognizing the potential risks as to how it may affect the LUCT funding issue. The commission discussed their formal response to this project and Dea’s request. It was decided that the Commission would review the materials, set a public meeting date to discuss the issue and then forward their decision to the Town Council. The next meeting of the Conservation Commission will be October 11th, this will act as the public meeting. Dea noted that

if a statement was needed before that time, she would let the Commission know and if they were amendable, they could schedule a special meeting.

c. Presentation of proposed subdivision at 401 Bay Road – Mike Sievert of MJS Engineering was at the meeting to present on behalf of the owners of the land, James and Kathleen Adams. Duane Hyde recused himself from this matter because of work done in his professional capacity for the abutters. Mike Sievert distributed copies of maps to the commission members of the property. He noted that this plan involves subdividing 22 acres into two lots. One lot would be 15 acres and the other lot approximately 6 acres. The larger lot will have the existing house on it. The existing entrance will be utilized as the entrance for the new lot and a roadway would be extended from this to provide access to the new lot. Mike noted that there will be some wetlands buffer impact from the new roadway, but no impact to the wetlands. Three existing culverts will be utilized. Mr. Sievert noted that because of the disturbance to the buffer a conditional use permit is needed. Therefore Mr. Sievert was asking the Commission to review the project and advice and/or make a recommendation to be forwarded to the Planning Board. He advised the Commission that he will be presenting at the next Planning Board meeting. Stephen Roberts, Planning Board representative to the Conservation Commission, explained that the Conditional Use Permit should be recommended only if the Conservation Commission finds that the following four factors are in affect: 1) there is no alternative location on the parcel, outside of the wetlands conservation district, that is feasible; 2) the amount of soil disturbance is the minimal needed; 3) location and design construction will minimize the detrimental impact on the wetlands; 4) restoration activity will leave the site as nearly as possible in its existing condition. The Commission asked if they were given a copy of the packet filed with the Planning Board. Mike Seivert responded that the packet was filed with the Planning Board on August 22nd and that a separate copy of the packet was delivered to the Town for the Conservation Commission earlier in the week. Unfortunately, the Commission had not received the packet. Peter Smith asked if any of the abutters had raised any questions or concerns regarding the project. At this point Sharon Summers, attorney for the Kendall's (abutters), introduced herself to the Commission and said that they had reviewed both the packet from MJS Engineering, as well as spoken with Mr. Jim Gove of Gove Environmental Services, Inc. for his opinion of the project. Stephen Roberts asked if Mr Sievert had dealt with the four criteria in written form. Mr. Sievert said that these have been addressed in the packet. The Commission expressed the opinion that they would like to have a site walk of the property and that it would be most helpful to coordinate the site walk with the Planning Board. After the site walk and review of the printed materials (which Mr. Sievert will email to Chair Cynthia Belowski and she will distribute), the Commission will discuss the project at a public meeting.

2. Acceptance of minutes of August 9, 2007 -----*Duane Hyde moved to accept the minutes as written This was seconded by Jim Hellen and approved unanimously.*

Note: Stephen Roberts did not vote on the minutes, as he was not the planning board representative at the last meeting.

3. Ongoing Business

- a. Meeting with Town Council, October 1, 2007 regarding the LUCT and change in policy for acquiring conservation land. The Commission discussed the best manner in which to present their view of the LUCT issue to the Town Council. It was noted that the discussion would occur as part of the regular Town Council meeting on October 1st. The LUCT issue would be an item on the agenda for that evening and the Conservation Commission's view will be solicited. The Public Comment portion of the Town Council meeting will occur before this item is discussed. Jim Hellen suggested that the letter composed by the Commission should be read at both the September 17th and October 1st meeting, so that this letter will be a part of the public record, as well as having the general public hear the letter and therefore the Commission's views and reasoning behind this topic. Peter Smith agreed that the letter should be read and said that it should be made clear to the Council just how strongly the members of the Commission feel about this issue. He asked if it would be possible to gather data regarding towns that have passed ordinances which utilize LUCT as a separate account and how many have retracted that decision. Peter said that this data would show to the Council just what a radical step this is. Duane Hyde said that the Center for Land Conservation Assistance may have some of this information. Dwight Baldwin noted that a councilor who had voted in favor of having the Town Administrator write a resolution asking that the LUCT funds be distributed 100% to the general fund spoke with him. Dwight noted that this councilor felt that perhaps these funds should be put into a separate environmental fund, not the general fund or the conservation commission's Conservation Account. He noted that there is a feeling that these funds are there and that the council does not have any input as to how they are spent. Dwight also reported that a proposal had been submitted for Jackson's Landing that would have required a Town match. The feeling was that the Town would have requested the use of the LUCT funds to pay for the town match if this proposal had been awarded to the Town. Beryl Harper said that she felt the Town Council should be reminded how cooperative the Commission has been and that the funds have been used for projects others than buying easements, such as paying the first year interest on the land conservation bond, and paying for maintenance of property. The Commission asked if it would be possible to get information as to what the funds have been spent on. Cynthia Belowski will request this information and distribute it to members. Julian Smith said that he had spoken with Councilor Neil Niman. His comments regarding this issue were that he had the impression that the Council felt the Conservation Commission only buys easements for land conservation with these funds. Julian felt it was worth stressing that the Conservation Commission can and does do other things with these funds. With regard to the October 1st meeting, Cynthia volunteered to make an introductory statement and read the letter. It was suggested to follow this with individual Commission members each emphasizing a different issue.

Beryl Harper said she would speak to the minimal impact that this would have on taxes. Dwight said that he would speak to the idea of the funds being used for more than just conservation land. Duane said that he would speak to the issue of how reasonable the Conservation Commission has been with these funds. Duane noted that the Commission should think about what their response would be if the Council engages in negotiating a different percentage change. The consensus of the Commission was to respond that the Commission would need to discuss this as a group before responding. The question of the possible feeling of remorse by the Town Council regarding the four projects from last year that were approved and bonded by the Town was raised. It was discussed that this remorse may be part of the reason behind the proposed resolution. Duane suggested that if this topic is raised by the Town Council the Commission should respond in a manner that makes clear that the Commission is proud of what has been accomplished and to reference articles such as the one in the Boston Globe lauding the conservation of Emery Farm and to ask the Council what it is they feel remorse about. Jim Hellen noted that there may be others speaking during the public comment section in favor of the change in the LUCT fund distribution. The Commission noted that they would also encourage citizens interested in this issue to attend the meeting. Peter Smith said that he would be unable to attend the October 1st meeting as he will be out of town. He will be going to the September 17th meeting to speak to this subject during the Public Comment section. George Thomas suggested that John Carroll may be a good individual to encourage attending the October 1st meeting. The Commission will gather the suggested information and proceed.

- b. Wetlands application --- none were discussed at this meeting.
- c. Mill Pond ----- Julian Smith discussed the possibility of having the dredging of Mill Pond done professionally. It was the consensus of the Commission that Julian would inquire as to the cost of such a job before this issue is discussed further.
- d. Land Protection Working Group ----- Duane Hyde had no further report this evening.
- e. Town Land-use/Trails Subcommittee ----- no report this evening
- f. Town-owned land/conservation easements ----- no report this evening
- g) Jackson's Landing ---- Dwight Baldwin said that \$250 had been received as a gift from Cadmus Group, Inc. He suggested that there may be other venues, such as this, to explore for funding besides the federal sources. Dwight also reported that the group would be meeting to discuss how to expend the funds that they currently have (\$127,000). He noted that they may be coming to the Commission to advise that the money will be spent to deal with the erosion problems and that nothing regarding the green area or parking will be able to be performed.

4. Board and Committee Reports

- a. Town Council ----- Julian Smith had no further report at this time.
- b. Planning Board ----- Stephen Roberts reported that there will be a brief presentation of the proposed CIP at the next Planning Board Meeting. He asked if there was anything specific that he should be aware of from the Conservation Commission point of view. Jim Hellen suggested encouraging the Town to “think green” when planning projects.
- c. Mill Plaza Planning Committee ----- Julian Smith reported that there had recently been a meeting with the AIA partners and the plaza study committee at which the three different architectural teams presented their designs. One common element of the three plans is that there is almost no parking near the brook. There was a combination of landscaping in the buffer between college brook and whatever development was proposed. Also, for the most part the buildings were low, offering retail offices downstairs and residential space upstairs. Julian also reported that there is a land lot, approximately 1.25 acres in size, on the south side of the brook which is adjacent to .75 acres owned by the plaza owner. It was suggested by the owner of the 1.25 acres that this would make a nice park. Julian suggested that the Commission review this.
- d. Lamprey River Advisory Committee ----- Cynthia Belowski had no report at this meeting.

5. Other Business

- a. Update shore land tree cutting Old Piscataqua Road ----- Cynthia Belowski reported that there had been some confusion as to whether or not the tree warden had been notified of the tree cutting. Subsequently the tree warden has signed off on this project, however, he did reprimand the owner for not going through the process in the proper manner. She also noted that the landowner will be doing some shrub planting to help with erosion. Tom Johnson, the Town Code Enforcement Officer, has asked the DCC to review the landowners report and provide him with a written statement that the DCC agrees that the cutting was okay. Commission members decided that they would like to do a site walk before approving the shore land cutting. Cynthia will contact Tom Johnson to set up a site walk.
- b. Durham Day ---- Dwight Baldwin said that the Commission had been given permission to share a table with the Parks and Recreation Committee at Durham Day. He noted that he would be there and suggested that perhaps John Parry may have some maps that could be brought along. Peter Smith said he would be there giving boat rides, showing the difference between different shorelines with cutting and minimal cutting. Jim Hellen will be there for part of the day as will Beryl Harper.

6. Administrative

- a. Correspondence. --- none
- b. Special Meeting ---- Land Conservation Priorities Workshop on September 18, 2007 at 7 pm at the Durham Police Department Community Room.
- c. Next Meeting ----- The next meeting of the Durham Conservation Commission will be held on October 11th, 2007 at 7:00 pm at Town Council Chamber in Town Hall.

7. Adjournment

Jim Hellen moved to adjourn at 11:03 pm, this was seconded by Julian Smith and approved unanimously.

The September 13th, 2007 meeting of the Durham Conservation Commission was adjourned at 11:03 pm.

Respectfully submitted by,

Sue Lucius
Durham Conservation Commission Recording Secretary