

*Approved - October 8, 2009*

**DURHAM CONSERVATION COMMISSION  
Meeting Minutes of September 10, 2009  
Durham Town Office – Council Chambers  
7:00 PM**

**Members Present:** Jamie Houle, Beryl Harper, Jerry Needell, Stephen Roberts, Larry Harris, Dwight Baldwin

**Alternates Present:** Ann Welsh, Stephen Burns

**Members Absent:** George Thomas

**Alternates Absent:** Peter Smith

**Public Attendees:** David Cedarholm, George Murray, Lindsay Russell, Michael Slavin, Joshua Meyrowitz, John Byatt, Roger Keilig, Peter Anderson, Deborah Hirsch Mayer, Annmarie Harris, Dave Howland

**1) Call the meeting to order and acknowledge absentees and those with voting authority**

Chairman Houle called the meeting to order at 7:05 pm and appointed Ann Welsh to be a voting member for the evening in place of the absent George Thomas.

**2) Presentations:**

a) Review and comment on Stormwater Pollution Prevention Plan (SWPP) submitted by CLD Engineers for the Durham Wiswall Bridge Project. --- Roger Keilig SWPPP preparer

Chairman Houle reminded the members that this project includes a Stormwater Pollution Prevention Plan (SWPP) as requested by the Conservation Commission. He thanked the contractors for agreeing to this stipulation by the Commission and noted that the plan was written by HTE Northeast, Inc.

Roger Keilig of HTE Northeast, Inc. began the presentation to the Commission. He noted that steel pilings will be driven into the river to form a raised ramp which will be used as access for a crane to remove the center pier. Mr. Keilig said this is a major advantage because it means that the workers will not need to enter the water to remove the pier, thereby, causing decreased disturbance to the soils. He added that because of the dam below the work area, the water flow is not brisk, which reduces sediment transport.

Chair Houle asked what type of monitoring will be done to ensure that the project is in compliance with the SWPP. George Murray of R.S. Audley, Inc., said that Mr. Keilig inspects

the job every week and after a rain fall. Dave Cedarholm (Town Engineer) noted that the Town has hired CLD Engineers as consulting engineers to be on the site every day to ensure that the contractors are in compliance with the SWPP. He said he will also be making daily visits to the site to ensure compliance and will ask for additional monitoring if the need arises.

Dwight Baldwin asked how potential petroleum compound contamination will be dealt with and what the plans are for containment if a leak does occur. George Murray noted that the risk of petroleum compound contamination is greatly reduced since the equipment will not be in the water. Mr. Keilig noted that as a further precaution the equipment will not be fueled within 75 feet of the water.

Larry Harris asked why the contract is from October to May rather than May to October when weather conditions are more favorable and less demanding. Dave Cedarholm responded that the New Hampshire Fish and Game was concerned for the river habitat and made the stipulation that the removal of the old abutments and the construction of the new abutments could only occur between the middle of August and the middle of February. He noted this is a common restriction that bridge contractors are accustomed to.

The members and Mr. Keilig discussed the process for dewatering to be used during the project; the different types of possible basins to be used, the expected discharge rate, and the discharge point. Chair Houle noted that this project involves the Lamprey River, which is a source for Town drinking water, as well as a focal point for conservation efforts.

Chair Houle asked what precautions will be taken to ensure that sediment contamination from the temporary bridge is limited. Mr. Keilig responded that a crushed stone cover on the temporary bridge will be used to control dust buildup and lessen sediment contamination to the river. Mr. Murray said the removal of the pier, which is the largest exposure to the water, will take less than a week.

Chair Houle asked if the Commission needs to officially comment to CLD Engineers for the project to proceed. Mr. Byatt responded that a formal statement saying the Commission has reviewed the SWPP and commenting on the plan is needed. He added the NH Fish and Game time line is very strict.

Chairman Houle asked for public comments.

Sharon Meeker of the Lamprey River Advisory Committee noted that her Committee is concerned with the wild and scenic portion of the river. She said she appreciated being able to hear the discussion regarding this project and noted that many of the questions she had have been answered by the discussion. Ms. Meeker said the Lamprey River Advisory Committee has also been asked to comment on the project. She said one of the members of the Committee is concerned for wildlife in the river as well as their passage along the river. Mr. Byatt noted that the removal of the bridge (which is scheduled as the first part of the project) will increase the passage for wildlife. She also noted that there is some concern for the habitat of the wood turtle that is believed to hibernate under the river banks at the edge of the river, as well as concern that there is an endangered plant species in the area (this species is mentioned in the SWPP).

Ms.Meeker asked if the Lamprey River Advisory Committee would be able to obtain a copy of the wetlands application. Chair Houle offered to send Ms.Meeker an electronic copy of the wetlands application and permit.

Chair Houle thanked Mr. Murray, Mr. Byatt and Mr.Keilig for their presentation. He noted that the Commission will defer discussion and comment of the presentation until after the second scheduled presentation of the evening.

b) Presentation on the proposed expansion of the Mill Plaza parking that is within the 75' Shoreland Zone. --- Dan Sheehan, property manager for the Plaza.

Chairman Houle noted that Jim Campbell of the Planning Board emailed him asking the Conservation Commission to review the proposed parking lot expansion at the Mill Plaza and provide guidance regarding the impacts to the Town Shoreland Protection Ordinance for a conditional use permit. Chairman Houle noted there are four criteria that need to be met to be able to approve a conditional use permit -- they are:

- 1) No alternative location on the parcel that is outside the Shoreland Protection Overlay
- 2) Amount of soil disturbance will be the minimum needed to complete the project
- 3) Location and design will minimize the detrimental impact on the shoreland and water body and mitigation activities will be undertaken to counteract any impacts.
- 4) Leave the site in the same or better condition than prior to the project.

Dan Sheehan introduced himself to the members and said that he is representing Colonial Durham Associates, who are proposing an expanded parking lot. He said the expansion will decrease the amount of runoff into College Brook. Mr. Sheehan noted there is no alternative location to expand the parking, there will be minimal soil disturbance, the project will minimize the current impact on College Brook and the project will leave the site in better condition with decreased runoff than currently. Mr. Sheehan presented a plan for the parking lot expansion and discussed this with the members, noting that there is a grass area that they are requesting to pave which would provide approximately 4 additional parking spaces. Dwight Baldwin asked if the entire proposed project is for 4 parking spaces. Mr.Sheehan said there is currently a section on the property that is paved but not stripped or permitted for parking. He noted that the paved area and the grass area would result in 28 new parking spaces. Mr. Sheehan said that the filtration system will be expanded and should result in a 10-15% decrease in runoff to College Brook. Stephen Roberts noted that a drainage study is due to be completed in a week and should determine what will happen to the runoff from the parking lot. Jerry Needell asked Mr. Sheehan if the application had been accepted by the Planning Board. He responded that the application was deferred until the next meeting. Stephen Roberts explained that the Planning Board did not want to accept the application without the drainage study and other additional information that was requested.

The members discussed with Mr.Sheehan the need for the additional parking spaces. Mr. Sheehan responded that there are plans for two restaurants to move in to the plaza, as well as the Meat House taking over the meat department at the Durham Market Place, all are expected to increase the need for parking. The members discussed that they are required to speak to the affects of the project to the predevelopment condition of the property and asked if they are to

consider the non-permitted paved area to be there as a paved area or to be considered as a non-paved area. This discussion led to discussing the condition of the area prior to being paved.

Jerry Needell asked if the Conservation Commission received a copy of the application for the project. It was determined the Commission had just received a copy of the application and none of the members had been able to read the application prior to this meeting.

Beryl Harper suggested to Mr. Sheehan that the grass area be left unpaved – thereby creating less disturbance, less runoff and leaving a natural buffer between the parking lot and the neighborhood. Mr. Sheehan noted this would mean the loss of more than the four parking spaces because other current parking spaces would be reconfigured if this grass lot was paved. Mr. Sheehan said it is their feeling that this application meets all the needs for a “conditional use permit”. The members again discussed the need for further information regarding this project, such as the engineering study, clarification regarding the non-permitted paved area and data on the need for additional parking spaces.

Chairman Houle asked for public comments:

Lindsay Russell (UNH student) asked if the need for the additional parking spaces has been determined by a traffic study. Mr. Sheehan said he would have further information on the need of the spaces for the next Planning Board meeting.

Peter Anderson (8 Chesley Drive) said that the Plaza Management currently rents 30 parking spaces which he does not believe is an approved use for the parking lot. He also noted that there is additional space on the parcel of land (at a higher grade) that could be used for additional parking. Mr. Anderson commented that he believes more could be done to improve the situation than just building a water garden.

Deborah Hirsch Mayer (19 Garden Lane) encouraged the Commission to make a recommendation to the Planning Board on this project before their next meeting. She questioned the need for additional parking spaces, saying if the spaces are truly needed the 30 spaces that are currently rented could be used rather than creating new spaces. Ms. Mayer noted that she was a member of the Mill Pond Study Committee and found that citizens consistently do not want to see increased parking and vehicular traffic and would like to be able to continue to walk on the footbridge in safety. She said that residents have noted consistently that they want to maintain the natural areas of the downtown area.

Joshua Meyrowitz (7 Chesley Drive) noted that a similar proposal came before the Planning Board in 2002 and one was resubmitted in May 2009 which was subsequently withdrawn. He said the Planning Board rejected the proposal in 2002. Mr. Meyrowitz said the Town Engineer, David Cedarholm, had commented that the project should be treated no differently than a new development. He said he wants to see the Mill Plaza thrive and he appreciates Mr. Sheehan’s style of management and that he is not against development, but is concerned about restoring College Brook and enhancing the buffer between the plaza and the neighborhood, not narrowing it. Mr. Meyrowitz noted that the 1978 plan called for mitigation in the way of 10 ft wide parking areas between parking rows, traffic calming t-ends, designated bike paths with

curbing, a landscaped buffer along the length of the plaza and all parking spaces facing away from the neighborhood – most of these were never done. He said that the current application will increase noise and light pollution, further degrade College Brook and the wetlands and compromise the neighborhood.

Annmarie Harris (56 Oyster River Road) said she had written a letter which was distributed to the Commission members. She apologized for not omitting her husband's name from the letter. Ms. Harris said she agrees with the comments brought forward by other residents and would request that this project be given consideration only if the owners plan a substantial redevelopment of the site that includes restoration of the original buffer areas.

Mike Slavin (10 Burnham Avenue) said he never has a problem finding a parking space in the plaza and suggested that the peak times for the Restaurants would be past the peak times for the other businesses.

#### Commission Discussion of the Wiswall Bridge Project:

The members discussed the need for oversight and meeting the requirements of the SWPP. It was noted that CLD Engineers and the town engineer, David Cedarholm, will be filling the role of oversight. Stephen Burns noted that the Lamprey River Advisory Board discussed the oversight issue and concluded that everything is being done that is required of the companies. Chair Houle recommended reviewing the wetlands permit to be sure there are no glaring omissions. The members decided to have Chair Houle send the wetlands permit electronically to all members, who in turn will reply to him with any comments. Chair Houle will then write a letter from the Commission to CLD Engineers (copy David Cedarholm) with any advisory comments from the members. The members suggested including in the letter the members appreciation of the companies that they will closely oversee and monitor guidelines as put forth in DOT 685, thank them for their professionalism in preparing the SWPP and taking the time to meet with the Conservation Commission, note to them the importance of the Lamprey River and working closely with the Town engineer.

#### Commission Discussion of the Mill plaza parking lot project:

Stephen Roberts said the Planning Board did not feel it had the basis to accept the application. He said the board wants to support the downtown and the plaza, but the application was missing storm water analysis and other data.

The members discussed the “grandfathering” of the parcel with regard to the 75 foot setback. They noted that the parcel, while nonconforming, is grandfathered until there is a land use change. The members discussed the need for further information before they can advise the Planning Board on this project and if it is appropriate to advise the Planning Board before they have accepted the application. It was the consensus of the members to table this issue until the application is accepted by the Planning Board and to advise the Planning Board to keep the Public Hearing open until the Conservation Commission has had the opportunity to comment on

the application. The members also wished to let the Planning Board know that they wish to attend any site walk that may occur with regard to this project.

### **3) Acceptance of minutes of August 13<sup>th</sup> meeting**

Beryl Harper noted that Ann Welsh's name should be corrected (no E) in two spots on page one and that Ellen Schneider's name should also be corrected on page three.

Chair Houle noted page 2, line 4 should read "...review and summarize existing ordinances and codes with respect to water resource protection for the Town of Durham and compare other up to date regulations for water resource protection in surrounding towns in the coastal watershed..."

Chair Houle noted page 3, line 49 should read "...site walk of the proposed Thompson Conservation Easement..." and page 4, line 21 should read "...Seacoast..."

*Jerry Needell MOVED to accept the minutes of August 13th, 2009 as amended. This was SECONDED by Beryl Harper and APPROVED unanimously.*

### **4) New and Old Business**

a) Report/discussion of new DPB subcommittee work regarding ORLI zoning updates and advanced water resource protection needs – Chair Houle said the group will be meeting on September 16<sup>th</sup> at 8 am.

b) Revision to the Conservation landing page for the Town website item – Chair Houle reported that the updates to the page will be put on hold until the Town adopts the new website. He said the new members names will be posted on the page at this time.

c) Discussion of Durham Day activities and displays – Chair Houle reminded the members that Durham Day is September 20<sup>th</sup> 1-4 pm. Beryl Harper said she spoke with Malin Clyde, who was kind enough to enlist the help of Dick Weyrick who will lead a nature walk around the loop trail at 2 pm. Chair Houle said he contacted Ray Konisky regarding the Oyster Display, who said Kristen Ward and Ray Grizzle would be at the event to set up and man the Oyster demonstration. He asked for volunteers to set up, break down and man the table for the day, noting that a table is needed. Beryl Harper, Dwight Baldwin and Larry Harris volunteered to assist with these duties.

### **5) Ongoing Business**

a) Wetlands applications – George Thomas emailed Chair Houle to alert him to the "Permit for Notification" from Farwell Engineering regarding a man-hole repair project. The members discussed this project and advised Chair Houle to sign the "Permit for Notification"

#### **b) Land Protection Activities**

i) Discuss conservation opportunities – Chair Houle reported that he had visited the Thompson property. He said after having walked the property he thought it is a compelling property for conservation. He noted that Duane Hyde and Todd Selig had a meeting to discuss

conservation priorities in town. The members decided that Chair Houle should meet with Todd Selig to ask him about the next step regarding conservation in town and what his thoughts are regarding the Thompson property. Ann Welsh and Dwight Baldwin volunteered to attend this meeting with Chair Houle. The members also decided to invite Todd Selig to the October Conservation Commission meeting.

c) Town Owned Land/Conservation Easements

i) PREP CTAP project – Beryl Harper reported that Ellen Schneider has visited more sites with other agencies and will be holding a joint subcommittee meeting on October 15<sup>th</sup> to submit her draft reports on the four properties (Wagon hill, Doe Farm, Longmarsh and Weeks).

Ms. Harper suggested inviting the new Parks & Recreation director to the Conservation Commission October meeting. The members agreed and directed Ms. Harper to forward an invitation.

d) Jackson's Landing – Dwight Baldwin had no report at this meeting and noted that this item no longer needs to be considered an ongoing item.

**Mill Pond** – Dwight Baldwin reported that the picnic area that has been cleared needs to be cut every year and asked for volunteers for next Thursday. Stephen Roberts and Stephen Burns volunteered.

## **6) Board and Committee Reports**

a) Town Council – Jerry Needell reported that there will be a public hearing on Monday September 14<sup>th</sup> regarding the sewer hook-up waiver policy.

b) Planning Board – Stephen Roberts reported that Todd Selig presented the Capital Improvement Plan (CIP) at the Planning Board meeting. He said that Wagon Hill parking was one of the items on the preliminary list.

c) Zoning Board of Adjustments – Ann Welsh had no report at this meeting.

d) Lamprey River Advisory Committee – Stephen Burns reported that he had attended the Lamprey River Advisory Committee. He noted that the Committee had asked him to bring forward to the Conservation Commission some proposals regarding land conservation purchases that are under negotiations. They requested that these be discussed in a non public session to protect the negotiations.

*Beryl Harper MOVED to adjourn to non public session at 10:30 pm. This was SECONDED by Dwight Baldwin and APPROVED unanimously.*

*Beryl Harper MOVED to return to Public Session at 10:45 pm. This was SECONDED by Dwight Baldwin and APPROVED unanimously.*

*Ann Welsh MOVED to seal the non public session minutes. This was SECONDED by Dwight Baldwin and APPROVED unanimously.*

**7) Other Business** - none at this time

**8) Administrative**

a) Correspondence - Chairman Houle noted receiving the following correspondence:  
--- A letter from the DES commissioner requesting the Conservation Commission's participation in the South East Watershed Allowance (SEWA). There will be a kickoff meeting on September 29<sup>th</sup> at Nottingham Town Hall. Chair Houle volunteered to attend this meeting to represent Durham Conservation Commission and report to the Commission at the October meeting.

--- A letter from The Lamprey River Nomination Committee along with the Lamprey River Watershed Association noting its desire to designate the upper part of Lamprey and its tributaries to the River Management Program. The letter requested a letter of support from the Conservation Commission and enclosed an example support letter. The Commission directed Chair Houle to send a letter of support.

b) The next regular meeting of the Durham Conservation Commission will be held on October 8<sup>th</sup>, 2009 at 7 PM

**9) Adjournment**

*Dwight Baldwin Moved to adjourn the September 10<sup>th</sup>, 2009 meeting of the Durham Conservation Commission at 10:50 pm. This was Seconded by Jamie Houle and APPROVED unanimously.*

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Conservation Commission