

Approved - November 12, 2009

**DURHAM CONSERVATION COMMISSION
Meeting Minutes of October 8, 2009
Durham Town Office – Council Chambers
7:00 PM**

Members Present: Jamie Houle, Beryl Harper, Jerry Needell, Stephen Roberts, Dwight Baldwin, George Thomas

Alternates Present: Stephen Burns

Members Absent: Larry Harris

Alternates Absent: Peter Smith, Ann Welsh

Public Attendees: Robin Mower, Don Sheehan, Tobin Farwell, James R , Michael Mengers, Deborah Hirsch Mayer, Joshua Meyrowitz, Peter Anderson, Dave Howland

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

Chairman Houle called the meeting to order at 7:00 pm and announced that Stephen Burns will be a voting member for the evening in place of Larry Harris

Amendments requested by the Chair:

Chair Houle said he had been contacted by the Lamprey River Advisory Council who said they will be here at 7:45 and will therefore need to be moved to later in the agenda. He also noted that Mike Mengers, the Durham Parks and Recreation Director will be here to present to the Commission, as well as Tobin Farwell from Farwell Engineers to present with regard to the Mill Plaza parking expansion project.

2) Presentations:

a) Mike Mengers, Durham Parks and Recreation Director

Mike Mengers introduced himself as the new Parks and Recreation Director for the Town of Durham. He noted that their offices are located in the old court house along with the ORYA. Mr. Mengers said they have been working with public works to get the court room area cleaned out in order to use it as a community gathering area. He said he had walked Wagon Hill with Beryl Harper and discussed Parks and Recreation and Conservation issues and realized there were a lot of similar goals between the groups. Mr. Mengers said he feels it is important to conserve the wilderness and natural areas in Town and wanted to speak to the group about ways Parks and Recreation and the Conservation Commission can work together. He said one thing of concern is the shoreland erosion at Wagon Hill and thought the adopt a trail committee could move the trails further away from shoreline and possibly get eagle scouts to build gazebos and lookout points to get views of the shoreland without being too close to the shoreland. Mr. Mengers said he wanted to offer his resources and told the members to feel free to contact him by email, phone, or set up an appointment.

Dwight Baldwin asked the status of the “adopt a trail” program. Mr. Mengers said that Patrick Moore and Patrick Houle are involved with this program and it is their long term goal to get a person or pair of people assigned to every trail system in town.

Beryl Harper said it is very exciting that the town has hired a Recreation Director and thanked him for taking the time to speak with the Commission.

b. Presentation by Tobin Farwell of Farwell Engineer Services regarding the Mill Plaza proposed expansion.

Attorney John Ratigan introduced himself as being the legal counsel representing the Durham Colonial Associates. He noted he had written a letter, dated October 1st, 2009 to the board. Attorney Ratigan said he felt the proposed project meets the criteria for the conditional use permit.

Tobin Farwell of Farwell Engineering Services said the proposed plan for the Mill Plaza is to install a drainage system consisting of 2 foot perforated pipe surrounded by stone, with a rain garden, to slow down discharge into College Brook; with a goal of improving the existing condition even with the proposed parking expansion to predevelopment conditions (assuming predevelopment conditions were woods).

Dwight Baldwin asked how the rain gardens work in the winter. Mr. Farwell responded that they may freeze in the winter, but the perforated pipe will always be there and work through the winter time.

Chair Houle and Mr. Farwell discussed the specifics of the drainage trench and rain garden, noting that the pipe will be 24”, sitting on top of 6” of ¾” stone and covered with filter media.

Stephen Burns asked how this plan compares to when the woods were still present to catch and filter the storm water. Mr. Farwell responded that this plan matches the flow as when the woods were present. The members discussed the levels of 2 year, 10 year and 25 year storms.

The members discussed the two setbacks required in this project; 25 ft setback from College Brook and 75 ft setback from the wetlands. Chair Houle noted that Durham’s zoning has specific provisions for College Brook and Pettee Brook of only 25 ft and that Planning Board Chair, Jim Campbell, advised that the wetlands on the property also require a 75 ft setback. It was noted that the wetlands had been delineated in April 2008 by NH Soils.

Stephen Roberts asked if the current proposal has any relationship with the company’s plan for future renovation of the plaza. Attorney Ratigan said the proposal is not related to the project that the owner of the plaza was seeking finance for. He said his client is still looking forward to renovating the plaza but there is no present plan to do what was recommended in the planning report. Attorney Ratigan said at this time they are attempting to address the parking constraints only.

Chairman Houle asked for public comments:

Robin Mower noted that she had sent a letter to the Commission and hoped the members had had time to read over it. She said she understands that the job of the Commission is to respond to the planning board within the set criteria, but she said the Commission may also provide additional comments to the planning board and encouraged them to do so.

Joshua Meyrowitz (7 Chesley Drive) noted that there are good points in the application in terms of dealing with storm water. He said there is a history of the neighborhood being protective of the buffer that separates the plaza from the neighborhood. Mr. Meyrowitz said he does not feel it makes sense to encroach on the wetlands buffer in order to pave the one remaining green area for 4 parking spaces. He said this is very disturbing to people in the neighborhood. Mr. Meyrowitz said he was surprised not to see Commission members at the site walk. He said he appreciates the attempts to mitigate storm water runoff, but feels the application is asking for retroactive permission for what was not allowed in 2002 which was a violation of buffer requirements. He said predevelopment conditions consisted of a wooded hillside. Mr. Meyrowitz said there are 28 additional spaces available for retail parking needs, if the rental spaces in the lot were not leased but used for retail parking, without encroaching on the wetlands.

Stephen Roberts commented that there would be more than 4 spaces affected because the aisle would be removed, thereby affecting 11 or 12 spaces.

Attorney Ratigan noted that the regulations have changed since the lot was paved and the only violation is that the paving occurred at a time when the regulations did not permit it.

Chair Houle reminded the members and the public that the time for lengthy debate is at the public hearing. He noted that the Conservation Commission can only make a recommendation to the Planning Board, the Planning Board will be charged with making the decision.

Peter Anderson (Chesley Drive) said he does not feel this proposal meets the four criteria's required for the conditional use permit. He said there has already been major soil disturbance and feels the area should be restored to preexisting conditions which would be the restoration of the hill and asked the Commission to recommend this to the Planning Board. He also noted that in both the Master Plan and the Mill Plaza study report there were recommendations to preserve the greenway in question. Mr. Anderson also expressed his opinion that additional parking is not needed in the plaza for their retail business.

Deborah Hirsch Mayer (Garden Lane) said she had sent an email to the Chair sighting a recent study discussing the positive effects of spending time in nature and urging the Commission members to support the protection of the Town's natural resources.

Chairman Houle thanked the public for their comments today and the letters that have been sent, and encouraged them to continue their efforts with the Planning Board.

C. Presentation of land conservation opportunities from Lamprey River Advisory Council

David Viale of the Southeast Land Trust of New Hampshire said that 20% of his time is spent partnering with the Lamprey River Advisory Council. He noted that he is here to discuss with the Commission a potential conservation easement project with the Lamprey River Advisory Council.

Chair Houle said that he and Dwight Baldwin met with Todd Selig to discuss conservation priorities and this property was identified as a priority. He asked Mr. Viale what type of partnership the LRAC is looking for.

Mr. Viale distributed a summary sheet describing the parcel, location, and natural resource values of the Thompson Property, tax map 14, lot 8-3. He said the conservation value includes prime agricultural soils, scenic views, frontage on the Lamprey River, 1300 ft on backwater channel, benefits for protection of water quality, and tier 1 habitats (highest quality of habitat in New

Hampshire). Mr. Viale said this property meets Town, State and Regional goals for conservation. He said they are asking the Commission for support in the form of letters and recommendations to the Town Administrator and Town Council as well as being a potential funding source.

Chair Houle said the Commission has a fund that is directly for this purpose. The members and Mr. Viale discussed the amount of funds needed for this purchase. Mr. Viale noted that an appraisal has not yet been completed, but that it is estimated to be around \$30,000 for the cost of the easement. He said the Lamprey River Advisory Committee may be able to provide up to 50% of the cost of the easement.

The members discussed what usage would be allowed on the property. Mr. Viale noted that the family would like to retain the right to have a home on the property, where that will be on the property is under negotiation. The members noted that some activity would need to be restricted in order to protect the water quality. Dwight Baldwin suggested that trails on the property would be appropriate.

The members then discussed who would fund the cost of the appraisal. Mr. Viale noted that sometimes the landowners split the cost of the appraisal with potential partners.

The members asked Mr. Viale what the time frame for this project would be. Mr. Viale replied that the next step would be to have a conversation on the easement boundary with the landowners and other partners, then commission an appraisal, when the appraisal is in, the project could move forward rapidly. He said if the Commission is interested in making recommendations regarding the easement wording, funding the easement costs and transaction costs would be a way to ensure they would have a say.

Chair Houle said that Todd Selig has agreed to bring this issue forward to the Town Council if the Conservation Commission requests him to.

Dwight Baldwin asked what other sources of funding are available for this project. Mr. Viale responded that the Lamprey River Advisory Council is the only other source.

Jerry Needell asked if Mr. Viale is looking for the bulk of the funding to come from Durham. Mr. Viale responded that they are looking to split the costs between Durham and the Lamprey River Advisory Council.

Dwight Baldwin MOVED to have the Durham Conservation Commission wholeheartedly endorse the Town joining with the Lamprey River Advisory Council in support of the purchase of a conservation easement on the Shirley Thompson property, Durham tax map 14, lot 8-3. This was SECONDED by Beryl Harper and APPROVED unanimously.

Jamie Houle MOVED to have the Conservation Commission authorize up to 50% of the cost of the appraisal of the Thompson property from the Conservation Fund. The Conservation Commission portion will not exceed \$1500. This was SECONDED by Stephen Burns and APPROVED unanimously.

Chair Houle asked if Mr. Viale would come back before the Commission to present an update. Mr. Viale responded that they would have a discussion with the family regarding the location of the house on the property with regard to the aquifer layer and then report to the Commission with a proposal and move forward with the appraisal.

Chair Houle thanked Mr. Viale for his presentation to the Commission.

3) Acceptance of minutes of September 10th Meeting

The members made the following corrections to the September 10, 2009 minutes:

Page 2, line 28 should be corrected to read "...bridge..."

Page 2 line 3 should be corrected to read "...rain fall..."

Page 5, line 28 should be corrected to read "...copy..."

Page 6, line 42 should be corrected to read "...Farwell Engineering..."

Dwight Baldwin MOVED to accept the September 10, 2009 minutes as amended. This was SECONDED by Beryl Harper and APPROVED unanimously.

4) New and Old Business

a) Discussion of Mill Plaza Shoreland Variance – Houle

Chair Houle said that it is his opinion that buffers are created for a purpose, and that there are many checks and balances within our system to address buffer incursion. He said his feeling is that it is the role of the Conservation Commission to support intact buffers and he has a hard time making recommendations to allow incursions into buffers. Chair Houle said he feels it is within the capacity of the plan to stay out of the 25 ft setback from College Brook and he would support that recommendation. He said he also feels there appear to be ways to stay out of the 75 ft setback from the wetlands and feels it is the role of the Conservation Commission to support this. Chair Houle said he did not see any outright attempt in the proposal to respect the buffers.

Dwight Baldwin said that he has the same feeling, but on the other hand feels that the Commission needs to look at the overall quality of the wetlands and the buffers that exist currently and factor in the improved drainage for the entire area.

The members discussed the two separate issues before them for comment; 1) the 25 ft setback from College Brook and 2) the 75 ft setback from the wetlands. The members also discussed, in great depth, the pre-existing condition of the lot, how this plan compares with the handling of storm water flow and the way the pre-existing land dealt with storm water flow, the overall impact and/or improvement the project will have to College Brook and the wetlands compared to the existing conditions of the lot, data to show the need for the additional parking spaces and the possibility of reconfiguring the plan to either eliminate or minimize impact on the buffers. Jerry Needell noted that it would have been helpful to have been invited to the site walk. Tobin Farwell showed the members drainage analysis which states that the plan improves over the predevelopment condition of woods.

The members decided to deal with the 25 ft setback separately from the 75 ft setback.

Jamie Houle MOVED to have the Conservation Commission recommend to the Planning Board that the incursion into the shoreland protection overlay be allowed because the benefits of the proposal far outweigh the impacts and the standards within the zoning requirement for conditional uses in the SPO district have been met as specified in 175-72 of the zoning code. This was SECONDED by Dwight Baldwin and APPROVED unanimously.

Chair Houle asked the members to now address the issue of the 75 ft setback from the wetlands.

The members discussed what affects the project would have on the quality of the wetlands and the four criteria of the conditional use permit with regard to the wetlands. The members also discussed the grassy area in question and what benefits it creates for the neighborhood and the wetlands.

The topic of the need for the additional parking spaces and if there is no alternative placement of the spaces or no alternative configuration of the spaces was discussed in great depth. The Chair suggested reconfiguring the parking spaces and leaving the grassy area and staying out of the buffer completely. Chair Houle said they are not saying don't develop, just develop outside of the setback. The members concurred that they agree with criteria 2-4 of the conditional use permit with regard to this project. However, the members agreed that they have substantial doubts regarding criteria #1. The members noted the possibility of reduced slot sizes, the reconfiguring of spots, and the relocating of parking spots as reasons for having doubts regarding criteria #1 of the conditional use permit. The members agreed that no evidence has been presented that there is no feasible alternate location/configuration for the project. Chair Houle suggested that a reasonable plan can respect the buffers and still provide the developer with their needs.

Dwight Baldwin MOVED that the Durham Conservation Commission finds that items 2-4 of zoning ordinance 175-61 are met assuming acceptance of the current existing conditions. The Commission has reservations regarding item one which deals with alternative location/configuration for parking that could achieve the developer's needs while respecting the integrity of the wetlands buffer. This was SECONDED Beryl Harper and APPROVED unanimously.

The members discussed their concerns regarding this project and their struggle to balance an existing condition with the overall environmental impact, while representing the commission charge of being an advocate for the environment and how that affects this proposal, as well as the overall concern over maintaining intact buffers. The members agreed to have Chair Houle write a letter to the Planning Board stating these concerns.

- b) Report/discussion of new DPB subcommittee work regarding ORLI zoning updates and advanced water resource protection needs

Chair Houle reported that the subcommittee will be meeting on October 21st at 7:30 am.

- c) Revision to the Conservation landing page for the Town website item – Houle

No discussion at this meeting

- d) Report on Durham day activities and displays –Baldwin/Harper

Beryl Harper presented the display board that had been put together by Robin Mower and Cynthia Belowski and used at the Durham Day activities this year. She reported that Larry Harris, Dwight Baldwin and herself rotated manning the booth during the day's activities. Dick Weyrick, retired UNH professor of forestry, led a nature walk around the loop trail along the northern shoreline. Professor Ray Grizzle of UNH set up an informative exhibit about oyster restoration in the Great Bay area. Ms. Harper said that the day had been a great success.

- e) Spruce Hole Dedication --Smith/Houle

Chair Houle reported that a suggestion had been made to have a professor speak at the dedication regarding the geologic formation of Spruce Hole. Beryl Harper suggested Dr. Wallace Bothner.

Jerry Needell volunteered to contact Dr. Bothner and to contact the members once a final date for the dedication has been finalized.

5) Ongoing Business

a) Wetlands Applications

Chair Houle reported on an application for improvements at the Pumping Station. The members decided to recommend for approval and suggested an erosion and sediment control plan, as well as a SWPP be included. Chair Houle will forward these comments to Dorrie Wiggins.

b) Land Protection Activities:

1) Discuss conservation opportunities –

Chair Houle noted the previous discussion regarding the Thompson property. He reported that the Colasante property discussion is at a standstill at the moment.

c) Town Owned Land/Conservation Easements:

1) PREP CTAP project

Beryl Harper reported that there will be a meeting with Ellen Schneider on Tuesday morning October 20th at 9 am in Town Hall. She said Ms. Schneider will have draft stewardship plans for four Durham town owned lands. Ms. Harper said she will email the draft plans before the meeting for review by the members.

6) Board and Committee Reports

a) Town Council

Jerry Needell reported the public meetings on November 5-9 regarding the planning process for the downtown. He noted the public is invited and there is more information regarding the meetings on the Durham website.

b) Planning Board

No report at this meeting.

c) Zoning Board of Adjustments

No report at this meeting.

d) Lamprey River Advisory Committee

No further discussion at this meeting.

7) Other Business

The members decided to give Chair Houle authority to approach Todd Selig to recommend that Durham be a signature on the SEWA.

8) Administrative

a) Correspondence - none discussed at this meeting.

b) Next regular meeting will be on November 12, 2009

9) Adjournment – The October 8, 2009 meeting of the Durham Conservation Commission adjourned at 11:06 pm

Dwight Baldwin MOVED to adjourn at 11:06 pm. This was SECONDED by Stephen Burns and APPROVED unanimously.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Conservation Commission