

Approved - December 10, 2009

DURHAM CONSERVATION COMMISSION
Meeting Minutes of Thursday November 12, 2009
Durham Town Office – Council Chambers
7:00 PM

Members Present: Larry Harris, Jamie Houle, Jerry Needell, Dwight Baldwin, George Thomas, Stephen Roberts (arrived 8:20 pm)

Alternates Present: Peter Smith, Stephen Burns, Ann Welsh

Members Not Present: Beryl Harper

Guests Present: Robin Mower (arrived 8:20 pm)

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

Chair Houle called the meeting to order at 7:05 pm and noted that Ann Welsh would be voting in place of Beryl Harper and Stephen Burns would be voting in place of Stephen Roberts.

2) Presentations:

1. Presentation on CUP required due to wetland impacts from a Standard Dredge and Fill Application for an upgrade to the PSNH power line that runs through Durham -- Kimberly Peace of Normandeau Associates

There was no presentation at this meeting.

3) Acceptance of minutes of October 8th Meeting

The following corrections and changes were made by the members to the October 8th, 2009 minutes:

Page 2, section 2b) correct the name of the legal counsel representing the Durham Colonial Associates to read Ratigan.

Page 5, line 30 correct to read "... he did not see any outright attempt in the proposal to respect the buffers."

Page 5, line 40 correct to read "...and the wetlands compared to the existing conditions..."

Dwight Baldwin MOVED to accept the minutes as amended. This was SECONDED by Jerry Needell and APPROVED unanimously.*

*Peter Smith, Larry Harris and Ann Welsh were not present at the October 8th meeting so abstained from voting on the minutes.

Acceptance of non public minutes of September 10, 2009 non public session meeting.

Jamie Houle MOVED to accept the September 10, 2009 non public session minutes as written. This was SECONDED by Dwight Baldwin and APPROVED unanimously.*

Peter Smith and George Thomas were not present at the September 10, 2009 meeting so abstained from voting on the minutes.

4) New and Old Business

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

Dwight Baldwin reported the subcommittee of 8 people has broken down into subgroups and the subgroup he is on is researching groundwater issues (this subgroup consists of Brian Gallagher, Stephen Roberts and Dwight Baldwin). He noted they are wrestling with the issue of town codes as it relates to the aquifer overlay district to see how it can be adapted to fit into a model ordinance that the NH DES established and recommends. Mr. Baldwin said the subgroup met with Tom Ballestero to discuss the geology of the Spruce Hole Aquifer and to gather his thoughts on recharge in the area. He said the subgroup is meeting again on Monday November 16th at 8 pm and hope to finalize their charge soon.

Jamie Houle reported the second subgroup (consisting of Dave Cedarholm, Richard Kelly and Jamie Houle) is charged with working on storm water issues and drafting site plan review regulations for the commercial zone and subdivisions for the Town. Mr. Houle said he has been working professionally with the Town of Newington on drafting the same type of regulations and has looked at the Newington draft for consideration by the subgroup. He noted the Newington regulations consist of a storm water management plan for any disturbance in the sector over 5000 sq. ft. – essentially compelling any commercial development to have a storm water management plan. Mr. Houle said he felt the approach needs to be as comprehensive as possible.

Jamie Houle reported the subgroups will present to the subcommittee as a whole and once the subcommittee reaches consensus, they will make a recommendation to the Planning Board. He said after recommending to the Planning Board, the recommendations will go to Public Hearing and then be voted on by the Planning Board.

- b) Discuss role of DCC in the DPB Water Resource Protection Subcommittee

Jamie Houle reported the subcommittee's thought that paid outside expertise may be needed to help draft guidelines, such as a drinking water protection ordinance and suggested a discussion regarding the use of Conservation Fund monies to pay for the consultant.

The members discussed if it is legally possible to use Conservation Funds to pay for a consultant and if it is good policy to do so. Peter Smith said his first thought is if the consultant is working to write a law, the process should be funded by the entity that has the legal responsibility to make the laws. He said he did not feel it is a good idea to have monies derived from land use change tax pay for the creating or amending of Town ordinances.

Chair Houle said he felt it is an appropriate use of the funds since land use change is the single highest contributor to the problems being discussed. He said he felt it would be a good use of the funds to help present sound policy that secures the Town's resources into the future and conserves resources from the threats that the land use changes impart.

Peter Smith suggested reviewing the State statute that creates the charge for the Conservation Commission. He said he sees the Commission's role as one of giving advice with respect to policy, not creating the laws. Mr. Smith said he does not want the Town to think the financial responsibility for creating laws can be delegated to boards and commissions.

Ann Welsh said using Conservation Fund monies to pay for a consultant to write ordinances may open up the beginning of being asked to use the Conservation Fund to pay for more and more Town responsibilities.

Jamie Houle said the use of the Conservation Fund would be to make policy language that meets the Conservation Commission's objectives and would be voted on by other boards. He said he does not feel this is policy making, but rather funding initiatives that help preserve and protect our water resources.

Dwight Baldwin said the subcommittee has been charged with coming up with rationale and advice to the Planning Board that pertains to water resources for the Town. He said he agrees that using the Conservation Funds to pay for a consultant to help with the ordinance is appropriate to the Commission's charge.

Peter Smith said he agrees that the Conservation Commission should be offering expertise and opinions with respect to this issue. He said he has problems with the Town thinking it does not have the funding responsibility to pay for the writing of these ordinances.

Jerry Needell said the alternative to having the Conservation Fund pay for the consultant is to ask the Council to fund the consultant. He noted there are two problems that arise with such a request; 1) it is not a good time economically to ask for funds and 2) it may give rise to a discussion among the Council as to whether or not they support such ordinances.

Larry Harris suggested presenting to the Planning Board that the subcommittee is in need of outside expertise. Jerry Needell agreed, suggesting the request be presented to the Planning Board and ask them for suggestions regarding sources of funding to pay for the expertise.

The members discussed how their recommendation of policy should be affected by how the Council will respond to such recommendations.

c) Spruce Hole Dedication Scheduled for November 17th, 2009 at 1:30 pm

Peter Smith reported the Spruce Hole Dedication will be held at 1:30 pm on November 17th. He noted there will be a representative from the Department of Interior present at the dedication and encouraged all members to attend. Peter Smith asked Chair Houle to preside over the dedication, noting there will be two speakers as well as the Department of Interior representative and Matt Davis. He invited any Commission member to join them for lunch prior to the dedication ceremony. Dwight Baldwin said the plaque is up at the site and Peter Smith distributed photos. Chair Houle thanked Peter Smith and George Thomas for their work on this issue.

d) Update on Bryant Park West Property

Jamie Houle reminded the members that this project has been reviewed by the Commission. He said the developer has amended his plans to reduce the number of buildings on the property due to the economic downturn. He noted this is on the agenda for the November Planning Board meeting.

Jerry Needell commented that the new plans seem to be reducing the possibility of reverting to the larger development and asked if it is possible to move all buildings out of the buffer if the project is being reduced. Dwight Baldwin asked if the same green practices would be used in the project and Jamie Houle responded it was his belief the same green practices would be used in the reduced project.

e) Revision to the Conservation landing page for the Town website item.

Chair Houle encouraged any member interested in this topic to take up oversight of this issue. Jerry Needell reported the website is the next highest priority for Luke and that he will have the help of an intern to begin updating the website.

f) DCC Annual Report

Jamie Houle reported the DCC Annual Report is due by December 1st and should include a review of the 2009 accomplishments and outline goals for 2010. He asked for volunteers to draft the annual report. George Thomas volunteered to write a draft update of the report. Jamie Houle said he would ask for an extension of 10 days so the Commission would have the chance to review the draft at the December 10th meeting before submitting it to the Town.

5) Ongoing Business

a) Wetlands Applications

George Thomas reported there were no new applications. He noted the Michael Olson application for a dock on Piscataqua Road from July has received approval from the DES.

Jamie Houle reviewed the October request for a wetlands expedited permit for the sewer pump station redevelopment project. He noted when signing the permit he requested requiring an erosion sediment control plan in the RFP for the project.

b) Land Protection Activities:

No discussion at this meeting.

c) Town Owned Land/Conservation Easements:

i) PREP CTAP project

Jamie Houle reported there will be a site walk at Doe Farm on Saturday November 14th at 1 pm. He noted Beryl Harper had distributed an email with the management report on the properties. Dwight Baldwin asked what will happen now that the reports have been written. Ann Welsh said the group will work on prioritizing the recommendations contained in the report.

Peter Smith asked if the goal of creating an end product that explained the do's and don'ts, restrictions, and recommendations for how certain properties should be used and not used has been met. Ann Welsh responded that there are recommendations in the report. She noted one thing that was discovered during the process is that each property is taken care of by different parts of the town structure. Jerry Needell said part of the reason for this project was to have the plans in place to say how the properties should be managed. Ann Welsh said the Doe Farm management plans need to be discussed with the other stake holders and that one of the major recommendations is to have all the properties surveyed. She said the reports are well done, detailed and include a lot recommendations that need to be looked at and prioritized.

Jamie Houle asked if the subcommittee would be willing and able to give a general review at the December meeting. Ann Welsh and George Thomas both replied that the subcommittee would plan on presenting in December.

Jamie Houle suggested that these reports should be noted in the annual report.

6) Board and Committee Reports

a) Town Council

Jerry Needell reported the Town has been holding design Charrettes about the future of the downtown. He said the original charge was to look at the central business district and see if there was something within the zoning that is preventing development downtown. Jerry Needell said a lot of the focus has been on making the Pettee Brook a central focus to the downtown, rather than something that is hidden.

Jerry Needell reported there will be public hearings next Monday which will include budget hearings. He noted the Conservation Commission budget has been recommended to be reduced from \$1183 to \$900 (after secretary's salary and FICA). He said there will also be a presentation about the sale of the Durham Business Park for \$350,000. He noted the revenue from the sale

would go to the water and sewer department (with the appropriate split between Town and UNH).

b) Planning Board

Stephen Roberts reported he has not received his copy of the new proposal for Bryant Park, and asked the members if a site inspection is scheduled if they would like to be invited. The members would appreciate an invitation to a site inspection of this project. Stephen Roberts asked the members if they had any concerns they would like him to bring forward when the Planning Board discusses this amended project. Jamie Houle instructed Stephen Roberts to ask about the possibility of eliminating incursion into the buffer and to inform the Commission of any changes in the project. Stephen Roberts said he would keep the Commission posted and ask the Planning Board Chair to copy the Commission Chair on any correspondence of this project.

Stephen Roberts reported the Planning Board met to discuss the Mill Plaza parking proposal. He said the discussion resulted in a 5-7 vote against the proposal based on advice from the Town attorney. Mr. Roberts noted the attorney felt no change in use should be contemplated until the 2002 illegal incursion issue is cleared up. Jamie Houle said the zoning article for Durham states that illegal incursions should be restored to their previous state. Stephen Roberts noted the Chair of the Planning Board felt a penalty was negotiated at the time with the owner and that may close the issue.

Stephen Roberts reported the planning Charrette has shown that there is room for development downtown with some changes.

c) Zoning Board of Adjustments

Ann Welsh reported that two items came before the Zoning Board of Adjustments. She said the first item was a generator in a neighborhood that was approved and the second item was regarding a property on Route 108 that currently has apartments. Ann Welsh said the owners were requesting another building on the property and the ZBA voted 3-2 in favor. She noted that after the vote it was discovered there is a deed restriction that would not allow another building on the property – this request will now require the Planning Board's review.

d) Lamprey River Advisory Committee

Stephen Burns reported the Committee is in negotiations on the Thompson property with regard to the placement of the house lot on the property. He noted that the LRAC has in the past had a self imposed limit of 50% funding for any one project. Mr. Burns said because of certain fiscal requirements LRAC may be considering funding certain projects up to 100% and the properties in Durham may be some of these. The members discussed the advantage of being partial participants in the conservation easement of some of these properties. It was the consensus of the members that it would be advantageous for Durham to be a part of the agreement and purchase, especially with the Thompson property. Stephen Burns said he will remind Sharon Meeker (chair of LRAC) that the Durham Conservation Commission is very interested and

would like to participate in the Thompson project and looks forward to receiving information on the progress of the project.

6) Other Business

Stephen Roberts reported that he attended the Bellamy and Oyster River Watershed Protection Meeting. He noted the USGS website has valuable resources regarding supply, demand and disposal of water (where it starts, who uses it and where it goes). He said it has been predicted that the region would be in a water scarcity mode in 15-20 years if the growth rate continues as it has been. Mr. Roberts said Ted Diers from NH DES gave a report on the decline of the Oyster River and nutrient loading of the Great Bay. He said there has been the formation of the South East Watershed Alliance (SEWA) – which Durham has not joined yet. The members discussed writing a letter in support of the Town joining SEWA. Stephen Roberts said he felt SEWA would appreciate a letter of support from the Conservation Commission being written to the Department of Public Works, the Town Council and the Planning Board of Durham. Chair Houle agreed to write a letter stating the Commission's support of SEWA. He said the Commission has realized these threats; and ground water protection has been the focus of a good deal of effort from the Commission over the past year.

Robin Mower reminded the members that there will be a SEWA meeting on December 14, 2009.

7) Administrative

- a) Correspondence – none at this meeting
- b) Next regular meeting December 10, 2009

8) Adjournment

The November 12th, 2009 meeting of the Durham Conservation Commission was adjourned at 9:55 pm.

Dwight Baldwin MOVED to adjourn the November 12, 2009 meeting of the Durham Conservation Commission at 9:55 pm. This was SECONDED by Jamie Houle and APPROVED unanimously.

Respectfully submitted by,

Susan Lucius, Secretary to the Durham Conservation Commission