

Approved - December 9, 2010

**Durham Conservation Commission
November 11, 2010
Durham Town Office – Council Chambers
7:00 PM**

Members Present: Jamie Houle, Julian Smith, Robin Mower, Larry Harris, Dwight Baldwin, Derek Sowers, Malin Clyde

Alternates Present: Stephen Burns, Ann Welsh, Peter Smith

Others Present: Joseph Pereschino (Appledore Engineering), Peter Loughlin (Attorney for Capstone), Adele Fiorillo (Normandeau Associates), Matt Aardin (Normandeau Associates), Mike Sievert (MJS Engineering), Katy Sternberger

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

Chair Houle called the meeting to order at 7:01 pm.

Jamie Houle MOVED to accept the agenda as written. This was SECONDED by Dwight Baldwin and APPROVED unanimously.

2) Presentations

- a) Conceptual review of a conservation subdivision of roughly 47 acres along Mill Road and adjacent to College Woods. – Jack Farrell

Mr. Farrell presented this project to the members. He displayed maps of the property and explained that the project would fall under the requirements of a Conservation Subdivision and would consist of eight lots. Mr. Farrell said the site was evaluated and test pits were dug to indicate the best location for building sites. He noted this project will not require building roadways and would like to have shared driveways where possible. Mr. Farrell said there would be individual wells and septic systems. He explained that one of the lots would be a large parcel, which will include the existing farmstead and a wetland. He explained the project is being sectioned this way to create the feel of a rural property and to increase the likelihood that the original buildings will be maintained and used.

Malin Clyde noted that this parcel of land is located between the heavily used Woodridge fields and the Spruce Wood Forest Project and suggested that a pedestrian way across the property would be useful. Mr. Farrell agreed and said he would make the suggestion. The members discussed with Mr. Farrell the difficulty of traveling the road and the need to improve safety for pedestrians and bicyclists along this section of Mill Road. Mr. Farrell said it may be useful for some of the land to be set aside to be used by the Town to create a shoulder along Mill Road.

Mr. Farrell said the proposal includes no impact to the wetland or the buffer and asked if the members would like to be included on a site walk with the Planning Board. The members agreed that a site walk would be a good idea and asked to be notified when one is scheduled.

- b) Preliminary review of the student housing project on Technology Drive. – Adele Fiorillo, PWS/NHCWS, Normandeau Associates, Inc.

Peter Loughlin (attorney for Capstone Development) began the presentation for this project by noting that Capstone is a student housing developer that has the option on property located on the west side of Technology Drive. He explained that Adele Fiorillo and Joe Pereschino would present the technical information on wetlands impact and the need for conditional use permits.

Joe Pereschino displayed a map of the 41 acre parcel, noting that there are 8.2 acres of wetlands on the site and 13.67 acres of wetland buffer. He said the company looked at many different concepts in an attempt to come up with a proposal of minimal impact. Mr. Pereschino said they met with Dori Wiggins of NH DES who made suggestions, which they incorporated, in their latest plan. He said the proposal is for a cottage style development, which would preserve 58% of the site as natural and open space. Mr. Pereschino said the closest building to the river would be 211 feet away, and the closest parking area to the river would be 300 ft away from the river. He noted there would be a maintenance crew available to sweep the parking areas on a daily basis in an attempt to keep trash out of the river and wetlands. Mr. Pereschino showed a drainage map of the current area and a proposed drainage map for the project. He explained that man-created gravel wetlands will be used to deal with runoff where possible and in the areas with fill, porous asphalt will be used for its filtration characteristics.

The members discussed with Mr. Pereschino the number of parking spaces, number of housing units and number of beds being proposed for this project. Derek Sowers asked if the same density could be obtained with less houses or taller buildings. Mr. Pereschino replied that would be possible, but not what the developers are interested in building.

Chair Houle asked if he could speak about the aquifers on the property. Mr. Pereschino said they had two consultants examine the aquifer and concluded that it is a very low capacity aquifer (less than 3 gallons per minute).

The members discussed the amount of area being preserved for open space, erosion controls to be used during construction, post construction re-vegetation, the need for engineering oversight during construction, and snow removal and storage practices.

Adele Fiorillo (Normandeau Associates) said the wetlands had been delineated, soil mapping was done, and a function and value assessment of the wetlands were done. She explained that based on input gathered the wetlands were separated by differences and then clustered based on similarities. Ms. Fiorillo said the result was the creation of three different wetland areas:

- 1) a wetland with a vernal pool classified as a stand alone wetland and labeled “Wetland B”,
- 2) a host of isolated wetlands with similar vegetation and soil types classified as “Wetland Complex A” and

3) all wetlands associated with the Oyster River and the small perennial stream that joins the Oyster River classified as “Wetland Complex C”.

Ms. Fiorillo said the site is currently wooded with wetlands, some of which appear to have been man-made wetlands with hydric soils that do not have a lot of interaction between the groundwater and the wetland areas. Dwight Baldwin asked what is below the clay soil. Joe Pereschino responded that dense till is located below the clay before reaching bedrock.

Ms. Fiorillo said some of the wetlands on the site are supported by surface water and are different from the wetlands associated with the river. She said from the function and value assessment it was clear that the high value wetlands are the ones associated with the river. Ms. Fiorillo said the report from the Natural Heritage Bureau indicates there are some species associated with the Oyster River and they will be working with the Fish and Game for their input. Derek Sowers said half of the area is classified as some of the highest-ranking habitat in the State.

Ms. Fiorillo said the project would include a landscape architect to restore buffers after construction by replacing lost vegetation. She said mitigation efforts, which include storm water management and re-vegetation of the buffer, more than adequately replace any lost wetland function due to the project.

Derek Sowers noted that the footprint of the project is within the Wetland Protection Overlay District and the Shoreland Protection Overlay District. He noted that the project is required to meet Town regulations and criteria for these districts; specifically the requirement that no alternate configuration is possible to keep the project out of the zone.

Ms. Fiorillo said the numbers of units have been reduced in an effort to reduce impact and a report would be given to the Commission outlining the measures taken to reduce impact.

Malin Clyde said she sees the need to have a means of egress in and out of the development, but thinks the amount of buffer impact needs to be addressed. She said she feels it is difficult to say that there is no alternative to the buffer impacts.

Julian Smith said there is mention that there will be 1.05 parking spaces per bed (619 beds, therefore 650 parking spaces) being required by the bank. He said a number of the significant impacts have to do with parking spaces and the road. Mr. Smith noted that this proposal is for a University community with a free bus system and the 1.05 spaces per bed seems to be excessive.

Chair Houle said from a stormwater management perspective this is a good development. However, mitigation is one thing, but it does not replace zoning and proper land use planning. He said there is impact to wetlands and the Town’s ordinance and zoning is clear regarding wetland impact. Mr. Houle said some of the most infringement occurs along the western perimeter of the site where the pristine wetland is located. He summarized that much of the Shoreland Protection Overlay and Wetland Protection Overlay regulations have not been fundamentally met. He said it is fundamentally hard to get into the plan because of the concerns regarding infringements to the WCO and the SPO. Chair Houle also expressed concern about a

600 unit residential area for students upstream of the Town's water supply. He expressed concern that there be maximum protection and signage alerting that it is a drinking water area.

Ms. Fiorillo thanked Mr. Houle for his comments and said this was the type of feedback they were looking for.

Chair Houle asked if the residential units are within the 100 yr flood plain. Mr. Pereschino said Tom Ballestero ran an analysis to find the 100 yr flood plain, taking a conservative approach, and found that it is below any of the proposed fill areas.

Robin Mower echoed concerns of the number of parking spaces in the proposal.

The members scheduled a site walk of the area with Mr. Pereschino for Monday November 22nd at noon.

3) Acceptance of minutes

- a) October 14, 2010

The members postponed acceptance of the October 14, 2010 minutes until the December meeting.

4) New and Old Business

- a) Update on October 18th, DCC Annual Report to the Durham Town Council – Houle
Chair Houle reported that he presented to the Town Council on October 18th, 2010 regarding the Commission's 2010 activities. He said he discussed with the Council the array of accomplishments of the Commission and noted he felt proud to represent the Conservation Commission.

- b) Discussion of relevant survey questions for the Town's Master Plan Advisory Committee.

Chair Houle said that Robin Mower would be representing several town boards on the Master Plan Advisory Committee (MPAC), including the Conservation Commission. Ms. Mower asked the Commission members to suggest questions that they would like to see on the Master Plan survey, which will begin in early January. The members discussed previous Master Plan Survey questions relating to the Conservation Commission and said they thought it would be helpful to have more information on past surveys. Robin Mower will email all members past surveys for them to review and give feedback to in December.

- c) Discussion of the use of the Conservation Fund to hire a hydrogeologist to review and suggest amendments to the town's Aquifer Protection Overlay District (APOD).

Chair Houle said in an attempt to expedite tasks that members have been asked to look into as a result of work on the Water Resource Protection Subcommittee, he would like to make the following motion:

Chair Houle MOVED to use the Conservation Funds in an amount not to exceed \$4,000 to hire a professional hydrogeologist to review and suggest amendments to the town's Aquifer Protection Overlay District (APOD). The Scope of Services shall include review and written recommendations in the form of a formal rewrite of the zoning or list of recommended amendments, at least one project kickoff meeting and one presentation to the conservation commission where feedback and edits can be collected and incorporated into the final draft. At least two additional presentations of the final proposed changes will be made to the conservation commission and planning boards. This was SECONDED by Robin Mower.

Discussion on the motion:

Chair Houle noted that the Water Resource Protection Subcommittee to the Planning Board would like to hire a professional to assist them in their charge of updating the town's Aquifer Protection Overlay District. He noted the APOD has come under some scrutiny with respect to the vagueness of the Town's definition of what an aquifer is. Chair Houle said this needs to be clarified so the Planning Board can use it adequately. Malin Clyde asked if the consultant would be correcting language in the APOD ordinance. Chair Houle responded that the consultant would be providing guidance on what can be done to correct the ordinance. He explained that the subcommittee does not have the professional background to make these potentially important changes. Chair Houle said as the zoning is currently written any land that produces a measurable amount of water is considered an aquifer.

Chair Houle said the Water Resource Protection Subcommittee was formed when it was felt that the town's zoning was not adequate to protect ORLI development in the area of the town's largest aquifer. He said the subcommittee wished to strengthen protections to address that issue. Chair Houle said after the subcommittee began it was clear that not everyone wanted to strengthen the ordinance for all aquifers and the idea of delineating aquifers began. He noted this proved to require more expertise than the subcommittee members were able to provide and this led to the request to hire a professional.

The members had an in-depth discussion regarding the appropriateness of using Conservation Funds to pay for this expenditure, or if another source of funding would be more appropriate.

Chair Houle said it is clear from the RSA that the Commission has the power to use these funds to guide decisions by hiring experts to inform the members. He said it also represents a value to the town and demonstrates that this body can execute and manage its funds to the benefit of the town.

Peter Smith said the fact that using the funds is justified based on the RSA does not answer the question if the need should be met from funds from a different source.

Chair Houle said he did not feel it was this body's decision to decide where the money should most appropriately come from but to have the discussion if the Commission feels it is a just use of the funds.

The members discussed if the information obtained for \$4000 would provide what is needed to update the APOD ordinance. Chair Houle noted that the scope of work is very narrow and concentrated. He said a hydrogeologist was asked to give an estimate for the scope of work and they noted that \$4000 would be adequate. Dwight Baldwin said the subcommittee has spent a lot of time with the ordinance; therefore, the basic thinking has been done. He said he supports getting a professional to look at the ordinance and using the Conservation Funds as the source. Mr. Baldwin said protection of our water resources is part of the charge of the Conservation Commission.

The motion was APPROVED unanimously.

- d) Discussion of the use of the Conservation Fund to hire Professional Planning Assistance to review and suggest amendments to the Calculation of Usable Area, section 175-55 (F), of the Zoning Ordinance.

Chair Houle MOVED to use the Conservation Funds in an amount not to exceed \$4,000, to hire Professional Planning Assistance to review and suggest amendments to the Calculation of Usable Area, section 175-55 (F), of the Zoning Ordinance. The Scope of services shall include review and written recommendations in the form of a formal rewrite of the zoning or list of recommended amendments, at least one project kickoff meeting and one presentation to the conservation commission where feedback and edits can be collected and incorporated into the final draft. At least two additional presentations of the final proposed changes will be made to the conservation commission and planning boards. This was SECONDED by Robin Mower.

Discussion:

Chair Houle said the Conservation Commission has been asked by the Town Planner to make recommendations for amendments/changes to 175-55 (e) "calculation of useable areas". He explained the Town Planner has asked the Conservation Commission to weigh in with the intention of amending these regulations and said he feels if the Conservation Commission does not make recommendations the regulations may be amended without the Commission's input. Chair Houle said he does not have the expertise to comment on this regulation and suggested hiring a consultant, such as the Rockingham Planning Commission, to make recommendations to the Commission.

Malin Clyde said she would like to see this phrased as an educational decision and not ask the consultant to rewrite this subsection of the ordinance. Chair Houle said the outcome would be a recommendation to the Planning Board for changes to this subsection.

The members again had an in depth discussion regarding the most appropriate source to pay for expertise from a consultant on this issue.

The motion was APPROVED unanimously.

5) Ongoing Business

- a) Wetlands Applications

Chair Houle reported there have been no new applications, just updates to previous applications.

He reported that the 571 Bay Road project will need to submit a conditional use permit and the Commission has been asked if we have any additional comments. The members agreed that they previously made recommendation for the project and feel comfortable with that decision if the project has not changed.

b) Land Protection Activities –

The members discussed the Oyster River Forest project and the status of the project regarding funding. It was noted that the project is 12th overall and stands a good chance of being funded. Malin Clyde said the Trust for Public Land will be a strong asset in providing guidance for acquiring the needed additional funding for the project.

c) Town Owned Land/Conservation Easements

Malin Clyde said a new committee of the Conservation Commission has been formed, “Land Stewardship Committee” that will work with Town Owned Land and Conservation Easement issues. She said this committee consists of herself, Ann Welsh and Derek Sowers. Ms. Clyde said they would begin by reviewing the report authored by Ellen Snyder. She said understanding who is responsible for which property is important. Ms. Clyde said thought needs to be given to what should be encouraged, discouraged and prohibited in terms of use for each property. She invited others to join the committee if they were interested.

6) Board and Committee Reports

a) Town Council

Robin Mower reported that the Town Council heard a presentation regarding construction ideas for the new Durham Public Library and noted there was mention of constructing parking spaces in the wetland buffer. She suggested a site walk and cautioned that the Town building in buffers may present an appearance to the public that it is acceptable to build in the buffers.

The members discussed the common practice of municipalities exempting themselves from their own ordinances and the bad example this sets for citizens. Chair Houle asked Robin Mower to communicate to the Council that the Commission would like to be kept informed of plans for this site and would appreciate having the opportunity to comment on the proposed ideas for this site.

b) Planning Board

Julian Smith reported that the Planning Board voted down a motion to add ORLI and MODOR to the list of Zoning Districts where Conservation Subdivision requirements should apply.

Mr. Smith suggested that a joint site walk of the proposed Durham Public Library site by the Conservation Commission and the Planning Board would be appropriate.

c) Water Resource Protection Subcommittee

No further report.

d) Zoning Board of Adjustments

Ann Welsh reported that the last meeting of the Zoning Board of Adjustments was very brief and included a discussion regarding the requested changes to an application by Julian Smith to store items in his shed. She said this requested change was approved.

e) Lamprey River Advisory Committee

Stephen Burns reported that the new chair of LRAC is Sarah Callaghan. He said the Committee discussed the 401 issue and decided they needed to discuss it further with the NH DES. Mr. Burns will report back to the Conservation Commission on this issue. He did note that the Committee is concerned that Durham has proposed increasing the amount of water they can withdraw.

f) Other Business

Peter Smith reported that a State Statute was enacted which states that any committee formally created by a town, if it wishes to adopt rules, may have a rule that an alternate may fully participate in all aspects of a meeting other than voting. He said he spoke with the Town Administrator and urged that a set of draft rules be created for all committees, which include the role of an alternate. Derek Sowers asked if the Conservation Commission could do this for themselves. Mr. Smith said that would be possible, but he thought it made sense for the town to do it across the board.

Dwight Baldwin asked for guidance regarding cutting back the alders on the peninsula. He asked if the members felt this should be done or left as is. Robin Mower said it is an interesting location as the area has been used historically for skating and boat access. Derek Sowers said the trail provides access, so clear cutting should not be necessary. Larry Harris said buckthorn would overtake the alders if some clearing were not done. He suggested leaving selective patches for the birds.

g) **Administrative**

a. Correspondence

Chair Houle said he received a letter from the Daniel Webster Council Troop 154 that an Eagle Scout Court of Honor ceremony will be held for Kyle Mullaney who helped with the Jackson Landing Property. He said all members are invited to attend the ceremony on November 27th at 10 am at the observation deck at Jackson Landing.

b. Next regular meeting of the Durham Conservation Commission has been scheduled for December 9, 2010 at 7:00 PM.

h) Adjournment

The November 11th, 2010 meeting of the Durham Conservation Commission adjourned at 10:20

Robin Mower MOVED to adjourn the November 11, 2010 meeting of the Durham Conservation Commission at 10:20 pm. This was SECONDED by Dwight Baldwin and APPROVED unanimously.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Conservation Commission