

Approved January 11, 2011

**Durham Conservation Commission
December 9, 2010
Durham Town Office – Council Chambers
7:00 PM**

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

Alternates Present: Peter Smith, Stephen Burns

Alternates Not Present: Ann Welsh

Also Present: Joe Pereschino, Adele Fiorillo, Mike Sievert, Diana Carroll, Maggie Bogle, Dick Weyrick, Carter Sawtell, David Choate, Joe Persechino, John Acken, Peter Loughlin

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

Chair Houle called the meeting to order at 7:02 pm.

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

2) Presentations

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

Chair Houle said the Conservation Commission members participated in a site walk of this project two weeks ago and made a number of recommendations about minimizing incursions into the WCO and had some discussion regarding the applicability of a residential unit as a conditional use in the WCO – noting that this is a Planning Board issue.

John Acken (Capstone) thanked the members who attended the site walk and said he felt it was productive. He said the project team took the information from the site walk and made modifications to the plan. Mr. Acken said he felt there were three areas of concern: (1) concern regarding intrusion into the setback closest to the Oyster River (northwest side of the property). He said to address this concern the team collapsed the buffer which makes it possible to move buildings outside of the buffer and removed the proposed retaining wall and replaced it with appropriate grading. (2) concern regarding wetlands in the central east area – to address this the team moved buildings and sidewalks away from the buffer area and redesigned the trail to the south of the wetlands to stay further out of the setback. He said they are keeping the grading in the area and would like to create a playing field associated with the clubhouse. (3) concern regarding a building in the setback – to address this the building will be moved away from the setback to another area on the property. He said they plan to minimize grade changes in areas and in general minimize the impact to setbacks. He said the team has reduced by 61.5% the amount of intrusion on the setbacks.

The members discussed the areas of the plan that require a variance and the areas that require a conditional use permit. They also discussed why some of the asphalt is porous and some non porous. Chair Houle noted that the storm water management portion of the plan is phenomenal.

Derek Sowers asked about the red section on the map that falls within the WCO. He said this area and the 75 ft buffer around this area are not reflected as an infringement on the plan. Joe Pereschino (Appledore Engineering) said it is their understanding that they will not be required to seek relief for that area. Mike Sievert said the Planning Department has determined that the wetland application and the wetland fill permit is eliminating the wetland so a conditional use permit is not needed for the construction in the buffer because there will no longer be a buffer. Derek Sowers said the Town ordinance states that the wetland should be protected. Attorney Peter Loughlin said he understands the point that there is a wetland and a wetland buffer to adhere to, however, if the wetland is eliminated the buffer requirement is eliminated. Derek Sowers said there is an ordinance in the Town of Durham that says all wetlands over 3000 feet are protected and shall not be infringed upon. He said that is the bar that needs to be met.

Julian Smith said the project would need to go to DES and ZBA for a variance to fill the wetland. He asked the project team if the variance is denied what would happen with the project. John Acken said he did not know how the project could move forward if approval to fill the wetland is not approved.

Derek Sowers suggested that the number of units and the configuration of the units should be more flexible due to the constraints of the site. He said there is more being impacted than what the design indicates. John Acken asked if the wetland is of a quality that should be filled or protected. Derek Sowers said all wetlands serve a function.

Peter Smith asked Peter Loughlin if he felt it is appropriate for the Conservation Commission to make a recommendation to the ZBA regarding the filling of the wetland. Peter Loughlin said he feels the Conservation Commission has a right to make recommendations to the ZBA regarding the filling of the wetland. He said the project team feels, based on conversations with DES and Adele Fiorillo's analysis, the filling of the wetland is an appropriate trade-off.

Malin Clyde asked about the proposed playing field on the northwest section. She said from a conservation perspective, a maintained field on the edge of a wetland is not appropriate. Ms. Clyde said she is not happy to hear about the proposed field or the volleyball court in the shoreland area and suggested it could be moved or deleted as it does not seem critical to the plan. John Acken said the team wanted to propose it as an option and get feedback from the Commission and the Planning Board. Ms. Clyde said if there were no impacts in the project other than the wetland in the middle of the project, the filling of the wetland would be one thing. She said the infringement to wetland buffers throughout the site is troublesome.

Julian Smith asked if any significant mitigation is being planned for the parcel. Adele Fiorillo said a considerable amount of wetland buffer in the proposed plan would be revegetated.

Julian Smith asked if the quality of water that leaves the property and enters the Oyster River would be improved or degraded by the project. Joe Pereschino said the team has done their best to look at post-development storm water runoff, but it is difficult to say with any certainty that there will be no impact to the water coming off the site.

Derek Sowers asked if there has been a determination made about the necessity for the amount of parking needed. He said many of the impacts into the buffers could be lessened if reduced parking is needed.

Julian Smith said no determination regarding parking has been made by the Planning Board. He said there has been discussion whether the 1.05 spaces/bed is necessary. Mr. Smith said this determination would not be made until an application is accepted and a public hearing is held. He said one of the conditions of the project might be an increase in parking or a decrease in parking.

Chair Houle said the plan has the same number of units and the same number of beds. He said the members would like to see a reduction in parking and recreational uses on the property.

John Acken said it has been determined that in order to fiscally be able to have the robust management staff wanted, there needs to be enough beds to offset that expense and that number of beds is 600. He noted that the 1.05 parking spaces per beds is needed for safety reasons. He said they have found that when there are fewer parking spaces, cars are double-parked, parked in fire lanes and on curbs. Mr. Acken said this becomes a safety issue and a fire hazard. He said the Durham Police Chief supports the project, but only if there are 1.05 parking spaces/bed. Mr. Acken also said the parking spaces make the project more attractive in terms of financing to many banks. He said the project is seeking to fill 6300 sq ft of wetlands on the parcel.

Robin Mower said one of the constraints of the conditional use permit is that another location on the site cannot be found. She said an option could be removing parking spaces and this may be a comment provided by the Commission.

Chair Houle asked about the recreational path in the project. Joe Pereschino said the majority of the path is outside the buffer – one of the changes is the location of the path on the backside near the isolated wetland – it has been moved out of the buffer. He said the team has pulled the vast majority of the path out of the wetland buffer.

Chair Houle asked for any other public comments or questions.

Dick Weyrick said he is a member of the Oyster River Watershed Association, who has an interest in this project. He said it would be useful for the public to see what is going on and asked if there is permission for the public to walk on the land?

Carter Sawtell said he has no problem with that, he noted the land is not posted, but if anyone wants to walk on the property, it is fine. He said the property has been in the family for a long time and has been open to the public all these years. Mr. Sawtell said some people have permission to hunt on the property so anyone walking on the property should be careful.

Adele Fiorillo said there was discussion at the site walk regarding educational signage along the walking path and asked if the Oyster River Watershed Association would be interested in this project.

John Acken said a conservation easement over the wetlands and some of the uplands is also being considered – and noted that they are willing to explore that option.

Dwight Baldwin asked what controls are planned to maintain the natural conditions and discourage partying by students by the river. John Acken said they are planning to have extensive signage and good management of the property. He said there would be courtesy officers on the property and off-duty officers will be offered living space in the development for a reduced rate so there is a police presence in the development.

Dwight Baldwin asked if energy efficiency would be taken into account in the buildings. John Acken said it is in their best interest to ensure all buildings are as efficient as possible.

Jamie Houle MOVED to close the public session discussion of the project. This was SECONDED by Robin Mower and APPROVED unanimously.

Chair Houle asked Julian Smith if the Planning Board would be discussing this project at their next meeting. Julian Smith said the Capstone matter is not on the agenda for the Planning Board meeting in two weeks. Mr. Smith asked Mr. Acken if they would be submitting an application for the first Planning Board meeting in January. He said that until the Planning Board accepts the application there will not be a site walk, but once the Planning Board accepts the application a site walk and public hearing will be scheduled.

Chair Houle said the Commission is being asked to make a judgment on a plan that there has not been a ruled on from the ZBA (only conceptual). He noted it is difficult for the Commission to go through the criteria list for conditional use permits without having an accepted plan and said at this point the Commission would only be able to make a recommendation. Chair Houle said the question is the wetland encroachment. Peter Smith asked what the schedule is with respect to going to the ZBA for a variance to fill the wetland. John Acken said the group is looking to file for the variance at the end of the month and hold a hearing January 11th – the same week of the Planning Board.

Chair Houle said the developers filed a dredge and fill application with DES today.

Peter Smith said if the group would be going to the ZBA in January that will be before the Conservation Commission's January meeting. Derek Sowers asked if there is any reason why the Conservation Commission cannot comment to the Planning Board and the Zoning Board of Adjustment on the current proposal. Peter Smith said the Commission would need to develop those comments at this meeting.

Derek Sowers said he feels the Commission should develop those comments now since the Commission has met twice to discuss the proposal and participated in a site walk. He said he feels the Commission should make comments to the other boards.

Derek Sowers said his concerns with the current proposal are that there are incursions in the wetland buffer and proposed filling to a wetland protected under the Town's ordinance. He said he feels the Commission should suggest minimizing incursions to the buffer by reducing the number of units and reducing the number of structures, and reducing parking. He asked if the style of housing and number of units could be modified.

The members discussed the impacts of the project saying the Commission appreciates the time and commitment from the development team. Chair Houle said the Commission wants applicants to come before them and to follow the process and discuss projects with the Commission. He said they do not want developers to avoid the Commission. Chair Houle said the developer has come to the Commission, listened to our questions, and provided an alternative plan. He said the members appreciate that, but the Town's zoning clearly states that the buffers are to be protected. The members had an in depth discussion regarding the wetland that the developers are proposing to fill, its value and how this affects the proposal and the Commission's comments. Robin Mower suggested advising the Planning Board regarding the value of the wetland. Derek Sowers said he feels this is a slippery slope – the Commission's view is that wetlands are important and all serve some level of function. Chair Houle said there are many venues to get a variance for wetlands and the Commission's job is to protect them. Dwight Baldwin said every site is different and needs to be treated that way. He said he thinks the Commission needs to weigh the positives and negatives.

Derek Sowers suggested that the Commission make a general comment showing the Commission has reviewed the proposed plan and are not comfortable with some of the elements. Robin Mower suggested making a statement that underscores the importance of protecting wetlands. Malin Clyde said the Commission should be making comments that can help to shape the project. She said comments should include the understanding that impacts around the second road seem unavoidable and that a site walk was held. Dwight Baldwin said the alternative plan is much better than the first and he appreciates the developers coming before the Commission to consider our comments and provide us with the opportunity to make a better plan. Peter Smith said the Commission could make comments that will be helpful to the Planning Board in terms of minimizing or eliminating features that are inconsistent with pieces of the zoning code that the Commission is concerned about.

Peter Smith asked Mr. Acken if it is feasible to have the buildings built taller than two stories. Mr. Acken said this type of project, since it is removed from campus, is dependent upon creating a feeling of community. He said the two story buildings are important in creating this feeling. Mr. Smith suggested having a few three story buildings, which would alleviate some of the space difficulties. Mr. Acken said they could look into the redesign, but it may be costly and not the best use for the site in terms of marketing.

The members summarized their comments regarding the proposal:

The Commission has now met with the development team at two of its monthly meetings and conducted a site walk of the property on November 22. It should be noted that the commission is pleased with the development team's cooperation to date. After initial comments during the Nov 11th meeting and subsequent site walk a new proposal was presented at the Dec 9th meeting which substantially reduced the amount of incursion into the wetland conservation overlay (WCO).

There was also mention at all meetings that the commission was pleased with the stormwater management plan for the site. The stormwater control measures selected (porous asphalt parking and gravel wetland treatment cells) offer some of the most effective water quality and runoff reduction treatment possible for a development site of this nature.

That said there are still significant incursions into the WCO. The commission membership discussed the potential difficulty that the December proposal would meet in determining the Conditional Use Permit (CUP) requirement of no "alternative location on the parcel that is outside of the WCO District that is feasible for the proposed use".

To the extent feasible the commission recommended exploring additional opportunities to reconfigure the site (such as increasing the height of buildings, reducing the number of parking spaces, or utilization of compact parking spaces as allowed for in the zoning) to reduce incursions in the WCO district and Shoreland Protection Overlay (SPO) to comply with the zoning.

Where incursions may occur the commission recommend that the areas be restored with native or naturalized species and wetland vegetation as identified in "The United States Fish and Wildlife Service National List of Plant Species that Occur in Wetlands.

The exception to the findings listed above is the roadway proposed through the southeastern portion of the site. The Commission felt that the WCO incursion and disturbance associated with this feature would pass the four requirements necessary for issuing a CUP.

Lastly there were two outstanding issues that the commission wished to comment on:

- 1.) With respect the issue of the proposed wetland fill in the eastern center of the site plan. There was concern that the plan did not reflect the wetland and the associated 75 ft buffer as an infringement of the WCO. It is clear to the commission that the Town zoning ordinance states that the wetland should be protected or that any proposed disturbance in this area should be included in the CUP process.
- 2.) In reviewing the permitted uses within the SPO and the WCO it was recognized that residential structures are not permitted within these zones.

Robin Mower MOVED that Chair Houle write a letter to the Planning Board to include the recommendations and comments discussed by the Commission. This was SECONDED by Derek Sowers and APPROVED unanimously.

The members discussed the wetland that the developers are proposing to fill.

Malin Clyde said the wetland is an isolated wetland and a large portion of it would need to be protected to make it useful. She asked what is the point of having the wetland in the middle of all of the development? Ms. Clyde said she would rather see some wetland filled that is isolated, than see all the incursions around the perimeter in some of the larger wetlands and along the river.

Derek Sowers said if the project stayed out of the wetland buffer and reduced the project by ten houses the wetland would be connected and its functions would be boosted. He reminded the members that this area has one of the highest ranked habitat wildlife in New Hampshire. Mr. Sowers said by putting in the development, the wetlands value is diminished, but it still has value.

Chair Houle said he agrees in concept, but does not believe the Commission will be able to come to a consensus on this issue.

Derek Sowers said it is appropriate for the Commission to state their concerns about filling a wetland by means of a variance. He agreed that the members will not reach consensus on the specifics, he also noted that people could individually comment at the ZBA meeting. He suggested writing a statement that the Conservation Commission is concerned there is a proposal to fill a wetland that is in the WCO and is asking that this concern be considered during deliberations.

Derek Sowers MOVED that the Conservation Commission write a memo to the ZBA stating the understanding that the developer will approach them for a variance to fill a wetland within the wetland conservation overlay and the Commission is concerned about this action and feels it may be more appropriate to do this through the conditional use permit process. This was SECONDED by Malin Clyde.

Discussion:

Dwight Baldwin said he feels a blanket statement like that suggests to the ZBA that the Commission is opposed to filling the wetland. He said he could see tradeoffs such as, if the wetland is filled, other land can be preserved that is being encroached. Mr. Baldwin said he does not want to imply to the ZBA that this is a bad thing to do for this site.

Chair Houle said he thinks the best recommendation in this situation is to make the recommendation to the planner that a filling of a wetland should not go through the ZBA and that there should be a conditional use process for this.

Julian Smith said the ZBA knows that the Commission has a duty and responsibility to consider these issues – that is why the developer is going to ZBA in the first place. He said the ZBA would weigh different things, among them the off-setting benefit to the community.

Vote on the motion:

3 In Favor (Derek Sowers, Malin Clyde and Larry Harris) and 4 Opposed (Dwight Baldwin, Jamie Houle, Julian Smith, Robin Mowers)

Motion did not pass.

The members thanked the applicants for their time.

3) Acceptance of minutes

- a) October 14, 2010

Robin Mower MOVED to accept the October 14th, 2010 minutes as written. This was SECONDED by Derek Sowers and APPROVED unanimously.

- b) November 11, 2010

Minor corrections were suggested for the minutes.

Robin Mower MOVED to accept the November 11, 2010 minutes as amended. This was SECONDED by Jamie Houle and APPROVED unanimously.

4) New and Old Business

- a) Discussion of the Library Trustees' progress and happenings relative to the DiMambro site and compliance with the Towns WCO.

Chair Houle said the land purchased for the Durham Public Library has wetlands on it. He said he had a discussion with Doug Banks, Chair of the Library Design Team, regarding the Town adhering to the WCO, the conceptual designs for the library and provided him with a copy of the zoning code. Chair Houle said they have agreed to consider this in their designs. He said Mr. Banks has agreed to include the Conservation Commission in meetings held with the Planning Board on this project.

Julian Smith suggested a site walk of the property to view the wetland before it freezes and get an understanding of its value and the consequence of development to upstream.

Chair Houle said the functional assessment of the wetland may not be high, but from a stormwater management aspect, it may be quite high by providing storage. He said the Commission will be included on communications and can schedule a site walk when the Planning Board holds a site walk.

- b) Update on 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 David Cedarholm spoke with Emery Garrett, who accepted the scope of work and agreed to attend two meetings: one in February as an informational meeting to discuss important components of the aquifer protection overlay district and a second meeting, which would consist of the final presentation to the Town Council. He noted that the Water Resource Subcommittee would continue to develop a draft aquifer protection overlay district that will be reviewed by Emery Garrett and develop a list of questions to be addressed at the informational meeting in February.

Dwight Baldwin said he thought the consultant would write the overlay district ordinance. Chair Houle said the consultant would review the draft document written by the subcommittee and make comments.

- c) Update on 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 said there is an ongoing search for someone to review and comment on the Calculation of Usable Area, section 175-55 (F).

5) Ongoing Business

- a) Wetlands Applications

Derek Sowers reported that DES copied the Commission on an application from the Town of Durham regarding the Morgan Way turning lane. He said this work is in the shoreland of the tidal portion of the Oyster River and we were copied for our information. Mr. Sowers said there would be 4340 sq ft of impact to the shoreland (not wetland).

- b) Land Protection Activities

Malin Clyde reported that there has been no news regarding the TPL project. Robin Mower said the budget for CELCP funding for Spruce Woods Forest/Trust for Public Land project is waiting for congressional funding.

- c) Town Owned Land/Conservation Easements

There was no further discussion of this topic at this meeting.

- d) Discussion of questions for the Town's Master Plan Advisory Committee Survey

Robin Mower reported that the Commission has until January 21st to submit questions for the survey.

Dwight Baldwin suggested having questions regarding the health of the Great Bay, water resource protection, drinking water and open space conservation. Malin Clyde said she would like to ask the citizens to rank what they think is most important regarding conservation.

Derek Sowers asked how many questions the Conservation Commission could propose. Robin Mower said three or four would be appropriate.

Malin Clyde asked what is the purpose of the survey. Robin Mower replied that it is one of the means to get broad based community input regarding values.

Peter Smith said he thinks it is valuable to have questions that will give people the opportunity to indicate how they want Durham to spend their money. He said this is useful when an initiative comes forward to the Town Council – it can be shown to be in the survey.

Derek Sowers said he feels this is important, but is concerned that there is not enough time at this meeting to discuss this topic.

Chair Houle suggested the members review the information sent to them by Ms. Mowers and be ready to discuss this topic at the January meeting.

6) Board and Committee Reports

a) Town Council

Robin Mower reported that the Town would be holding a Charrette regarding the configuration of the proposed new Fire Station/Parking Garage to be located on C Lot, which is near College Brook. She suggested the Conservation Commission might want to monitor the meeting.

Ms. Mower also reported that there was a discussion about the funding of the restoration of the Smith Chapel. She said two Town Councilors expressed an interest in reopening the discussion regarding the LUCT distribution and said it may be likely this will be brought forward in the next few months since a change in the provision needs to be done by April 1st if it is to occur.

Julian Smith said he does not think it is likely that a change will occur with the current Council.

b) Planning Board

Julian Smith reported that there will be a site walk next week on the Kimball property and that there continues to be discussions regarding the parking spaces on this property.

Robin Mower said the quarterly meeting of the Planning Board would consider having a public comment period so people may address issues not specific to an application. She suggested the Conservation Commission might want to bring news of interest or request information during this period.

c) Water Resource Protection Subcommittee

Chair Houle said there was no additional information to report.

d) Zoning Board of Adjustments

There was no further report regarding the Zoning Board of Adjustments at this meeting.

e) Lamprey River Advisory Committee

Stephen Burns reported that design plans for the Wiswall Dam are in the final stages and construction is scheduled to begin April 2011 and finish in September 2011.

7) Other Business

Dwight Baldwin reported that he wrote a letter on behalf of the Commission to Scout Leader, Mr. Frye commending Kyle Mullaney.

Peter Smith reported that he was told the Town Administrator is drafting a “standard rules for Committees/Commissions” regarding the alternates role on committees and commissions.

Chair Houle said the annual report for the Commission is due to the Town shortly. He will write the report and submit it to the Town Administrator.

8) Administrative

- a) Correspondence – none to report at this meeting
- b) Next regular meeting January 13, 2011

9) Adjournment

Robin Mower MOVED to adjourn the December 9, 2010 meeting of the Durham Conservation Commission at 10:37 pm. This was SECONDED by Julian Smith and APPROVED unanimously.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Conservation Commission