

Approved – May 12, 2011
DURHAM CONSERVATION COMMISSION

April 14, 2011
Durham Town Office – Council Chambers
7:00 PM

Members Present: Jamie Houle, Robin Mower, Dwight Baldwin, Julian Smith, Larry Harris, Malin Clyde and Derek Sowers* (arrived after the vote on to accept the agenda)

Alternates Present: Stephen Burns, Ann Welsh

Alternates Not Present: Peter Smith

Also Present: John Parry, Gary Anderson

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

Chair Houle called the April 14, 2011 meeting of the Durham Conservation Commission to order at 7:05 pm. Ann Welsh was appointed a voting member for the meeting until all regular members are present.

Julian Smith MOVED to adopt the agenda as presented. This was SECONDED by Ann Welsh.

Discussion:

Jamie Houle asked to amend the agenda to add Mark West discussing the reconstruction of bridges over College Brook as an expedited permit. He suggested this item be 2 c) Presentation by Mark West of West Environmental.

Jamie Houle MOVED to amend the agenda to add item 2c) Presentation by Mark West. This was SECONDED by Robin Mower and APPROVED unanimously.

Vote on motion: *The amended agenda was APPROVED unanimously.*

2) Presentations

- a) CUP for a project within the WCO proposed at 20 Cedar Point Road. Presented by Ray Holmes

Ray Holmes said he and the property owner David Ieni were here in late October after having gone to the Zoning Board of Adjustment and receiving approval of plans for a non-conforming lot. He explained that the ZBA requested that the orientation of the driveway and garage be changed. Mr. Holmes said this change increased the impervious area to 25.8%. He said they resubmitted their application to DES and have since received shoreland approval.

Chair Houle read to the members the comments the Commission made on the original Dredge and Fill permit application: (1) concerns with increased impervious surface area on the lot and felt there should be a formal stormwater management plan required. He reminded the members that he did not sign the expedited application.

Ray Holmes said they are now seeking an expedited application with the Chair's signature and will then be going to the Planning Board for a conditional use permit.

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Robin Mower asked if the Commission would then be asked to comment on the conditional use permit request. Chair Houle said the Commission could give comments on the conditional use permit at this point if requested instead of waiting for the Planning Board to request them.

Chair Houle asked what role the Commission plays in this project since the Zoning Board of Adjustment granted a variance. He read the ZBA motion regarding this project: "...after review of pertinent sections.....motion was made and seconded that the ZBA approve a petition on behalf of David Ieni for a variance of article XXII, article section XXIII and XXIV; to construct a deck and detached garage with the following conditions: there be pervious paving for the driveway, crushed rock under first floor and splash rock, adherence of storm water management plan as submitted and all deck surfaces be pervious.

Chair Houle suggested the Commission deal with the Dredge and Fill Permit request first. He reminded the members that their role is to review the proposal and sign it if no concerns, if there are concerns the Commission can chose not to sign it in which case the project would then need to be submitted as a standard Dredge and Fill Permit request.

Dwight Baldwin asked what the stormwater management plant would be. Mr. Holmes responded that there would be a rain garden and a drip line trench to handle the runoff of the main house and the garage. He said an infiltration trench would capture water running down the driveway, which will then drain into a rain garden.

Julian Smith said given the constraints of the lot, it looks like a very good design and that he is comfortable with it.

Chair Houle suggested excavating another 6-8 inches deeper and placing pea gravel.

Larry Harris MOVED to sign the Expedited Permit for 20 Cedar Point, map 12a, lot 1-21. This was SECONDED by Malin Clyde and APPROVED unanimously.

Chair Houle asked Ann Welsh if she had any insight into the ZBA ruling on this project and if that ruling would change the Commission's review of the application. Ann Welsh replied that she felt once the ZBA gave their approval there is no longer an improper use.

Chair Houle asked the members if they wanted to provide advice and recommendations on this project so the owner and builder will not need to return to get comments regarding a Conditional Use Permit. He asked Mr. Holmes if he had spoken with Jim Campbell. Mr. Holmes replied that he had spoken to Mr. Campbell who said the Conservation Commission would make a recommendation regarding the Conditional Use Permit based on discussions at this meeting and give that recommendation to the Planning Board.

Robin Mower and Ann Welsh both noted that the normal procedure is to have the project presented to and accepted by the Planning Board who then asks for the Conservation Commission's comments.

Julian Smith said the Commission is able to, with the final application received; give comment to the Planning Board so the applicant does not need to go to the Planning Board and then return to this Commission once again.

Derek Sowers said the Commission's role is to comment on the wetland overlay and the shoreland overlay, so if there is a variance, the Commission has nothing to comment on. Dwight Baldwin and Chair Houle agreed. Chair Houle said the Commission's recommendations are for a rain garden, silt fence and straw bale installation for sedimentation control and the addition of 6" of pea gravel. He offered to send

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these comments to the Planning Board. Chair Houle said he could also reference the ordinance requirement for shoreland properties that limits the mowing within the 25 ft buffer from the highest observable tide.

- b) Application for a NHDES expedited minimum impact wetland permit for a residential redevelopment at 569 Bay Road. Presentation by Mike Sievert P.E., MJS Engineering.

Mike Sievert presented this project to the Commission. He said the owner is Benjamin Bulkley, who recently purchased the property. He showed the existing conditional use plan to the members and he also presented a site plan of what is being proposed and a blow up of the site plan area. Mr. Sievert explained that the entire house down to the foundation and possibly some of the foundation would be removed. He said they have come before the Commission because of the 100-foot tidal zone buffer area. Mr. Sievert said they received three variances for the project.

Chair Houle asked if they are applying for a Conditional Use Permit. Mr. Sievert said they are not applying for a Conditional Use permit.

Chair Houle noted that the project is within the setback and involves a structure that is not allowed in the setback because it is residential. Mr. Sievert said since this is an attached structure they are not requesting a Conditional Use Permit on a residential lot. He said the shoreland permit is in process.

Mr Sievert said the project involves removal of the pool house and shed and a propane tank and reclaiming this area as lawn. He said the house would be built on the same footprint, but raised which required a variance.

Dwight Baldwin asked if the pool and deck would remain. Mr. Sievert said they are being removed and that the project will have a decrease of 22% of impervious area within the 100 ft. buffer. He said there are currently gutters on the old house discharging to the side. Mr. Sievert said if there are gutters on the new house they will discharge into planted or wooded areas. Dwight Baldwin asked if there is anything planned for the front of the house. Mr. Sievert said the garage will be built and the driveway will be reconfigured, there will be a walkway and a landscaped area. He explained that the existing 2-car garage is being remodeled into living space. Mr. Sievert said a new septic system (that was previously approved) would be installed. He said the Wetland Permit only includes the disturbance to remove the pool, pool house, deck etc. and the work required within that area. Dwight Baldwin asked what would be done to minimize erosion during the work. Mr. Sievert said the area would be lined with silt soxx and fence.

Ann Welsh said it appears that there will be a fair amount of disturbance on the side of the house and asked what would be disturbed. Mr. Sievert said that there is a grass area there that will provide temporary access to remove the pool and other structures. He said it would be re-loomed after the work is complete.

Derek Sowers asked if a Shoreland Protection Permit is required. Mr. Sievert said it is required.

Dwight Baldwin asked what variance was granted. Mr. Sievert said 175-30D 3 C – which states a footprint within the shoreland protection district cannot be increased greater than 15% for a non-conforming use. Derek Sowers asked if the variance was granted to allow the increase of the footprint to be over 15%. Mr. Sievert said it was, and noted that the increase occurs because the existing garage was not counted as the footprint in the existing footprint, but since the garage is being remodeled to be used as living area, it is now counted in the footprint. He noted that a portion of the proposed new garage also is within the Shoreland Protection District and adds to the footprint.

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Mr. Sievert said the second variance is regarding the 30% volume increase. He noted that the current basement is only 7 feet in height and the proposal is to raise that to 8 feet which increases the volume by over 30%.

Chair Houle reminded the members that they are to consider the Expedited Dredge and Fill Permit. He said the choices are to sign or not to sign the permit if the Commission feels the project is deficient in the areas of sediment control, and maintaining minimum impact into the tidal setback.

Robin Mower asked Chair Houle if he looked at the construction erosion measures and if he was satisfied with them. Chair Houle said he was.

Ann Welsh asked what would occur to the areas where structures are being removed. Mr. Sievert said those areas would be replaced with loam and turf.

Dwight Baldwin MOVED to sign the expedited impact permit for 569 Bay Road; tax map 20 lot 3-4. This was SECONDED by Larry Harris and APPROVED unanimously.

c) Mark West – West Environmental

Mark West explained to the members that a bridge over College Brook was rebuilt last summer and that the proposal is to rebuild two additional bridges this summer.

He explained that one project would be by Spaulding Life Science Center and involve the repair of the abutments and the bridge. He said it is possible some work may need to be done on the deck and where the deck connects to the abutment.

Mr. West said the other project would be by Paul Creative Arts Center and would involve replacing the retaining wall with cement blocks and work on the base where there is erosion. He said the face of the bridge is in good shape, but work will be needed on the deck and railing. Mr. West said silt fence would be used to keep debris close to the work area. He said the total impact for both projects would be 764 ft.(419 for the Paul Creative Arts area and 345 for the Spaulding Life Science Center area).

Malin Clyde MOVED to sign the Expedited Impact Permit. This was SECONDED by Robin Mower.

Discussion:

Chair Houle noted that the 17 abutters were noticed just today. He said the Conservation Commission meeting is the avenue provided for the public to give their input and wondered if this provided enough notice. Mark West said he believes he only needs to notify the abutters before the meeting with the Conservation Commission, and that it is not stipulated what amount of time before the meeting is required.

Chair Houle said he would send an email to Dori Wiggin stating that the Commission approved the Expedited Impact Permit, but that the 17 abutters were only notified earlier in the day of the meeting on this application.

Mr. West said the abutters have a right to contact the Town or the Commission or State regarding this application with comments.

Derek Sowers asked if machinery would be used. Mr. West said the work will be hand work with sand blasters, but machinery will be used to set up the block wall – but that will be in an upland area.

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Chair Houle asked what sedimentation control measures will be taken during construction. Mr. West said silt fence and erosion controls around each abutment will occur, also the work will be done during the lowest flow.

Chair Houle suggested adding straw bales and asked what the period is for the project. Mr. West said each project should take approximately one day each.

Vote on motion: *APPROVED unanimously.*

3) Acceptance of minutes

- a) February 10, 2011

Robin Mower suggested amending page 2, line 21 to read "...the Trust for public land project..."

Robin Mower MOVED to approve the minutes as amended. This was SECONDED by Derek Sowers and APPROVED unanimously.

- b) March 03, 2011

Robin Mower MOVED to approve the minutes as written. This was SECONDED by Dwight Baldwin and APPROVED unanimously.

4) New and Old Business

- a) Welcome new and reappointed members

Chair Houle welcomed John Parry as a new member of the Commission.

John Parry introduced himself saying he has lived in Durham for 12 years and previously served on the Parks and Recreation Committee and worked with the Jackson Landing Committee and the Strafford Regional Planning Commission. He said his term expired and that he has always been interested in this Commission and its work. Mr. Parry said he works with the US Forest Service out of the Durham office.

Dwight Baldwin commented that Mr. Parry was the Chair of the Parks and Recreation Committee and was integral to the Jackson Landing project. He said Mr. Parry has been very involved in Durham.

Chair Houle said Dwight Baldwin is finishing his term as a commission member. He said Mr. Baldwin has been instrumental and a tremendous asset to the Commission and the Town. Chair Houle said Mr. Baldwin has put in many years of dedication to the Town and that the members are very grateful for his efforts.

Malin Clyde said Mr. Baldwin would be participating in the Land Stewardship Committee

- b) Consideration of DCC support for creation of an Agricultural Committee or Commission.

Robin Mower asked if the Conservation Commission would like to come to a consensus about whether it should take a formal role in supporting the creation of an Agricultural Commission in Durham. She said the Town Council is developing its goals and one goal may be to see the

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creation of an Agricultural Committee whose purpose would be to promote the production of locally grown foods. Ms. Mower said she could see such a group being an asset and supporting this Commission regarding land preservation.

Malin Clyde said that on the statewide level people are attempting to get Agricultural Commissions together to support local food and farmers.

Julian Smith said the issue came up four years ago and a suggestion of forming a Commission was put before the council. He said it was turned down by some on the Council who saw such a thing as a stealth scheme to take land out of economic development. Mr. Smith said he would like to support this proposal and hopes this Town Council will be more receptive to the formation of an Agricultural Commission.

Malin Clyde said in other towns an Agricultural Commission is not a land protection committee, it supports farmer markets, news letters etc.

Robin Mower suggested that an Agricultural Commission could be an alliance for the Conservation Commission.

Chair Houle said it is beautiful if someone wants to do this, and he does not see this as anything this Commission would oppose, but he does not see an obvious role for the Commission in this other than to be supportive.

Ann Welsh said the Conservation Commission has a specific purpose and there may be times when there may be issues that the two groups can collaborate on.

Malin Clyde said there might be enabling legislation on the state level that will give the function and purpose of the commission.

Robin Mower said if she is asked as the Council Representative to this Commission what the Commission's stance on this issue is should she respond that it was discussed and the consensus is that the Conservation Commission feels there is a role for an Agricultural Commission and supports it, but is not spear heading it.

Julian Smith said he could envision a time when land in Conservation may be proposed to be restored to agriculture and the Conservation Commission would then have to weigh in on that issue.

Ann Welsh said this Commission would only have a role if it were to involve areas that the Commission has control over; such as wetlands, developments etc.

Derek Sowers said people are beginning to grow local food and we should promote that. He said most of the local growers are very conservation minded. He summarized that the Commission supports the introduction of an Agricultural Commission.

5) Ongoing Business

a) Wetlands Applications

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Chair Houle said the Commission was copied on the official rebuttal to the DES on the McNeil property. He said he distributed it to Derek Sowers for him to review and determine the proper procedure or action needed and will notify the commission.

Chair Houle said he received a Permit By Notification from UNH regarding an installation of a monitoring well to monitor levels at the Lamprey River intake by the UNH water drinking water intake on the Lamprey River. He said according to the zoning it is a permitted use. Chair Houle said he reviewed the notice quickly and it does not look like anything major. He said the proposed work disturbs 150 sq ft. and the Commission can either sign or not sign it.

Chair Houle said he sent an official letter of concern to Hollis Adams regarding Permit By Notification noting that it is a potential way around local bodies like this Commission.

Chair Houle reported that NH DES Alteration of Terrain Program has given a permit to Capstone, dated April 6, 2011. He said one contingency from DES is that activities shall not cause or contribute to any violation of the surface water quality standards established in Administrative Rule Env-Wq 1700.

Derek Sowers asked if the AOT permit required them to do a pollution analysis. Chair Houle said according to state regulations they are only required to do pollution water analysis if the water body they are distributing is impaired. Derek Sowers said it is an impaired water body. Chair Houle noted that this particular portion is not on the impaired list. He said DES does not administer the NPDES permit in New Hampshire, EPAL has jurisdiction over the administration of the clean water act and they would need to file a notice of intent.

b) Land Protection Activities

Chair Houle said he was contacted by Southeast Land Trust and asked to inquire if the Town would be interested in purchasing an easement on the Thompson land in order to make the deal more financially attractive to the Thompson family.

Chair Houle said the Southeast Land Trust suggested the idea to the Thompson family and to the Town Administrator. He said the thought is that the sale of a portion of the land and the sale of the easement might get a combined price that the Thompson family would agree to.

Malin Clyde said over the last 5-10 years we have spoken as a community that we have a lot of land and are challenged by our role as land owners. She said the Town has taken the position that we prefer to have land on tax roles, so that is a consideration. Ms. Clyde said the Town would need to be stewards of that property forever, and asked if is the best way to accomplish the goal of conserving the property. She noted it is a long term cost.

Ann Welsh said that piece of property is next to a drinking water source on the river, and directly abutting a very large conservation greenway. She said in terms of taking care of the property it is not an area that will be forgotten because it is by our drinking water. Ms. Welsh said the biggest issue here is money. She said it is not property that will be developed so there is not the possibility of receiving a lot of tax dollars from it.

The members discussed how a purchase and easement would add to the value of the deal and where the funds could be found to finance this deal. The members discussed the possibility of using the funds

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available from the bond to buy conservation land and noted that the Town owning this land would be in their best interest since it is land next to the primary drinking supply.

Derek Sowers said the Commission is interested but needs more information and details on how it would work.

Robin Mower suggested speaking with the Town Administrator about possible UNH participation.

Malin Clyde commented that for conservation projects you need to work with the project that is in front of you. She said it is not best to put off work and wait for other projects when you have something in front of you.

Chair Houle said he agreed. He said he would follow up the request by speaking with the Town Administrator and invite UNH into the conversation.

c) Land Stewardship committee:

Malin Clyde reported that the Land Stewardship Committee would be holding clean-up days at Doe Farm on April 30th and May 1st to remove buckthorn.

Robin Mower suggested that the day would make a good photo opportunity for the “Friday Updates”.

Ms. Clyde said she is hoping to scan all of the land documents into electronic form and committee member Nancy Lambert will input all the material into spreadsheets, which will be available on the Town website. She said this would help with long-term record keeping in keeping track of land and having the documents publicly available.

Ms. Clyde said she was contacted by a colleague who works with the New England cottontail restoration project. She said Durham has been included as one of the focus areas for this and one area that is being looked at is the north side of Wagon Hill. Ms. Clyde said they are interested in speaking to the Commission regarding this. She suggested that the Parks and Recreation Committee might want to join the meeting.

Robin Mower suggested that this would be a good opportunity to invite the community to educate them on what is being done to create cottontail habitats.

It was the consensus of the members to invite Emma Cargen speak to the Commission regarding Wagon Hill Farm’s potential for creating cotton tail habitat.

d) Town’s Master Plan Advisory Committee Survey

There was no update on this topic at this meeting.

e) **Board and Committee Reports**

a. Town Council

Robin Mower said the Town Council’s goals would include an item addressing the concept of sustainability. She solicited comments from the members to be relayed to the Town Council.

b. Planning Board

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Julian Smith reported that the Planning Board met last night and there was a motion to reopen the public hearing on the Capstone application. He reminded the members that the public hearing on this application closed in late February, but after the public hearing closed more information and more documents were received from the applicant and additional information was received from members of the Town staff including 8 suggestions/recommendations from Tom Johnson. Mr. Smith said at the Planning Board meeting the motion was unanimously approved to reopen the public hearing to allow the public to comment on any new information that has come in since the closing of the public hearing. He said some information has to do with energy uses, some with things regarding alteration of terrain, fertilizer issues etc. Mr. Smith said the public hearing will be on April 27th and encouraged the members to comment.

Chair Houle said he feels this Commission has done extensive review of the situation and does need to reassemble a new argument – however, reiteration is never a bad thing. He said the last time he spoke to the Planning Board they adopted a third of what was suggested. Chair Houle said he sees an opportunity to reiterate things; such as pollution control assessment, etc.

Robin Mower said the March 3 meeting minutes reflect that Peter Smith suggested the Planning Board hire an expert if the proposal for fertilizer will cause any harm to the Oyster River. She said it is appropriate to suggest there be experts look into determining what fertilizer should be used.

Malin Clyde asked if that was one of the points covered in the initial letter. Chair Houle said one of the points was close to that, the Commission said it would be beneficial to do a loading analysis. Chair Houle suggested reading through the conditions and attend the public hearing to reiterate points that were not adopted.

Robin Mower said the one of the Commission's comments regarding the conditional use permit was the recommendation that a wildlife assessment be done in the spring.

Chair Houle suggested the members go through the existing terms and reinforce items that the Commission suggested in the original letter that do not show up in the terms --such as pollutant loading assessment etc. He also asked for any assistance from the members who are more knowledgeable about certain aspects of the Commission's testimony than him – such as wildlife habitat etc.

Robin Mower volunteered to send conditions of approval for the members to review.

Ms. Mower suggested tying in nutrient loading into AOT and fertilizers. Chair Houle said he would do that.

Ms. Mower said the public hearing will be open and closed on the April 27th.

Malin Clyde said she would review it for items related to a wildlife crossing.

Ms. Mower said the public has not seen a set of the conditions of approval and wondered how they would be able to comment. Julian Smith said it was agreed that comments would have to be limited only to response to information that came to the Planning Board after they closed the public hearing. He said he interprets that to mean information that came out subsequent to the public hearing would be new information.

Derek Sowers asked if it would be possible to provide a list of what is new information. Chair Houle said the Conservation Commission meeting on March 3rd was subsequent to the closing of the public hearing – so that is all new information.

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Derek Sowers said there might be other issues that some of the members would like to comment on. He suggested the need for a list of what is new information. Julian Smith said he asked Jim Campbell to compile such a list.

Chair Houle said he would forward the current terms to all members. He asked the members to review the documents and if they have revisions forward them to him which he will then put together in another communication to distribute for the Public Hearing. Chair Houle said he will plan to resubmit the Commission's communication and will be present at the public hearing to emphasize those points which have not been adopted or those which would apply to new information.

c. Water Resource Protection Subcommittee

No updates at this time.

d. Zoning Board of Adjustments

Ann Welsh reported that the ZBA approved a building that is currently completed. She said the project started when the setback was 50 ft and continued with construction after the set back changed.

e. Lamprey River Advisory Committee

Chair Houle said the Lamprey River Watershed Association sent the Commission an invoice for \$100. He asked if the Commission is a member of the Lamprey River Watershed Association. Julian Smith suggested speaking to Gail Jablonski regarding the invoice.

f) **Other Business**

Chair Houle said the Stormwater Center at UNH has received funding to install a bioretention system to test phosphorous and nitrogen removal systems. He said they are looking for a highly visible site in Durham for the installation and research. Chair Houle said there have been some preliminary discussions with the Mill Plaza, which has no stormwater management. He said the site would provide an opportunity to develop a bioretention area to treat a portion of the runoff. Chair Houle said the owners of the property are insistent that the system be placed at the far end of the parking lot and not be tied to any other project. He said a conditional use permit might be needed and asked if this project is something that the Conservation Commission would consider a worthwhile pursuit. Chair Houle acknowledged that it is potentially controversial because the location the property owner is insisting on is an area that is in zoning limbo and the Stormwater Center would want the project to go through the formal Town process.

Malin Clyde asked for a further explanation of the issues involved with the location. Chair Houle said the area is not permitted so the Stormwater Center would be doing water quality improvements in an area that is not legally permitted.

Ann Welsh said by allowing the system in the portion of the property that is not permitted it is helping with issues the neighborhood is concerned with. She said some people will be upset but this system will help with the pollution coming from the parking lot and assist a new technology.

Julian Smith asked how much land would be involved. Chair Houle said approximately 160 sq ft.

Chair Houle asked if the members had any strong opinions as to whether this is something that should not occur.

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Larry Harris said his concern is that the reason the owner wants the system installed in that location of the property is to establish his control over it and to override the fact that the location is an illegal, unpermitted area.

Chair Houle said the fact that the area is unpermitted could not be rectified. He asked if improvements to the existing condition should not be done because of fear of implications.

Derek Sowers asked if this system would fit with the conceptual redevelopment plan. Chair Houle said yes, because part of the plan is to improve water quality.

Chair Houle said he is looking for advice; he does not want the Stormwater Center to be part of the political ramifications of this issue.

Malin Clyde suggested the Town lot on Pettee Brook Lane as a possible location for the system.

Robin Mower announced that the Strafford Rivers Conservancy will be holding a Vernal Pool Workshop on Saturday 9-noon at Madbury Hall.

Chair Houle said there will be an Invasive Species Talk in Newmarket on Wednesday April 27th.

g) **Administrative**

- a. Correspondence
- b. Next regular meeting May 12, 2011

h) **Adjournment**

Robin Mower MOVED to adjourn the April 13, 2011 meeting of the Durham Conservation Commission at 10:09 PM. This was SECONDED by Julian Smith and APPROVED unanimously.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Conservation Commission