

Approved – September 18, 2011

DURHAM CONSERVATION COMMISSION

Meeting Notice and Agenda

June 9, 2011

Durham Town Office – Council Chambers

7:00 PM

Members Present: Derek Sowers, Jamie Houle, Julian Smith, Robin Mower, John Parry

Alternates Present: Peter Smith

Members Not Present: Larry Harris, Malin Clyde

Alternates Not Present: Stephen Burns, Ann Welsh

Also Present: Duane Hyde, Mike Sievert

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

Chair Houle called the meeting to order at 7:15 pm and elevated Peter Smith to a voting member for the evening.

Robin Mower MOVED to approve the agenda, this was SECONDED by Derek Sowers and APPROVED unanimously.

2) Presentations

- a) Review of additional disturbances in the SPO and WCO for the 9-11 Madbury Road project, currently under construction – Michael Sievert, MJS Engineering

Michael Sievert presented plans for the 9-11 Madbury Road project. He said he previously received a waiver to maintain the overhead utilities from the Planning Board, with the telephone and cable remaining above ground. Mr. Sievert said he has returned to the Conservation Commission because the Council, under the 79E program (tax incentive release program) required that utilities be underground. He said in order to fulfill this requirement, a transformer will need to be placed on the property which will create a disturbance within the SPO and WCO.

Chair Houle asked if the overall impervious surface area will continue to be less than the existing overall impervious surface area. Mr. Sievert replied that it would be less than is currently on the site. He noted that the landscaping plan will remain as it is and that they will be using native plantings.

Mr. Sievert said the limitations of the site does not provide any other location on the site out of the overlay district to place the transformer.

Duane Hyde asked if the design can withstand a flood. Mr. Sievert said it could withstand a flood up to an elevation of 43. He noted the transformer will only service the building and that the pad will sit 8" above grade with the transformer sitting on top of the pad.

Chair Houle reviewed the criteria needed to fulfill in order to receive a "conditional use permit":
(1) No alternative location outside of the SPO or the WCO.

Mr. Sievert commented that he attempted to locate the transformer behind the building but found it was not possible.

Peter Smith asked if the Town Council was aware of the consequences of requiring the utility lines being underground. Robin Mower noted that she requested this be considered as a public benefit. She said the Council did not have the information why it would be a problem logistically. Ms. Mower said it may be worth a discussion by this Commission to see if it is an advantage or a disadvantage and comment to the Council.

Derek Sowers noted the impact would only be an 8 x 8 area. He said he did not see an advantage to halting the project at this time.

Chair Houle said the transformer could be a public advantage since overhead utilities in flood prone areas are a disadvantage from a municipal view point. He said the trade-offs could be construed as a public benefit. Chair Houle said he is fine with moving forward unless there is other discussion.

Peter Smith encouraged Robin Mower to bring to the Council the possibility that not having adequate information when making project requirements may cause unintended consequences.

Chair Houle said the process of planning a project requires a certain amount of time to discover what is feasible and what issues may arise.

(2) Amount of soil disturbance will be minimized

The members noted this is met by the erosion sediment controls in place for the project.

(3) Location and design/construction will minimize impact

The members noted the existing landscapable shoreland will be revegetated with native species and not be overly maintained.

(4) Restoration activity will leave site as near as possible to preexisting conditions

The members noted the area will be left better than before the project since there will be a removal of a culvert and stabilizing of the area.

Robin Mower MOVED to recommend the approval of the conditional use permit, this was SECONDED by Derek Sowers and APPROVED unanimously.

3) Acceptance of May Minutes

Minor corrections were suggested by members.

*Derek Sowers MOVED to approve the minutes as amended. This was SECONDED by Julian Smith and APPROVED unanimously.**

*Robin Mower abstained as she was not present for the full May meeting.

4) New and Old Business

a) Update on the Spruce Forest Conservation Project

Chair Houle said he spoke with Gregg Caparossi who reported that the Department of Commerce operates on a different schedule and therefore their 2011 fiscal year appropriations are due June 15th. He said as a result there is still no clarification on how the funds will be appropriated. Mr. Caparossi said he appreciates the notification but does not see any issue with the Commission moving forward to appropriate the \$45,000 to the Beaudette Farm property project.

Peter Smith said he felt it would be prudent to have something in writing changing the amount being requested of the Commission regarding the TPL project. Chair Houle said that is an appropriate request and will move forward with this.

b) Discussion of the potential conservation easement for Beaudette Farm, Durham NH

Duane Hyde noted the project involves an acquisition, not an easement.

Julian Smith asked to reschedule a site walk. He said the property deserves a thorough walk through. Duane Hyde said he would be happy to accommodate this request.

Chair Houle said a Public Hearing is required to expend funds for the purpose of purchasing property. He said a site walk could be scheduled and then a public hearing scheduled for the next Conservation Commission meeting (July 14, 2011). Chair Houle said after this process the Commission could make the nomination.

Duane Hyde noted that the Town Council is required to hold a public hearing after a recommendation by the Commission.

Robin Mower noted that the Town Council meets on July 11th and 25th.

Duane Hyde said the Commission could make the recommendation on July 14th and have the Town Council hold their Public Hearing on July 25th. He said the Conservation Commission holds a public hearing for the expenditure of the public funds and the Town Council holds a public hearing to accept the legal authority of the property.

Chair Houle said the Commission would hold their public hearing on July 14th and request that the Town Council hold their public hearing during their meeting on July 25th.

Robin Mower suggested that Chair Houle email the Town Administrator requesting that this subject be placed on the agenda as a public hearing for the Town Council meeting on July 25th.

Robin Mower MOVED to hold a public hearing on July 14th for the purpose of determining whether to appropriate monies from the Conservation Fund to acquire 66 acres of property on the Beaudette Farm. This was SECONDED by Derek Sowers and APPROVED unanimously.

The members set July 12th at 5 pm for the site walk of the Beaudette Farm property, with a rain date of July 13th at 5 pm.

5) Ongoing Business

a) Wetlands Applications

Chair Houle reported there were no new applications received.

Derek Sowers reported updates on previous applications:

- (1) Mark West on behalf of UNH for bridge abutment repairs along College Brook. He said this was expedited and approved.
- (2) Minimum impact application for 20 Cedar Point Road to install a driveway over a septic field presented by Ray Holmes. Mr. Sowers said the Planning Board approved this application. He noted the Commission signed the minimum expedited application, and the DES wetlands bureau requested more information regarding this application; specifically if the subsystems bureau confirmed this construction.
- (3) McNeil property on 44 Colony Cove Road application for riprap for shoreland stabilization. Mr. Sowers said the DES treated the application as a minimum impact project and agreed with the applicant. He said they did reference the Commission's concerns regarding the lack of effort to use vegetation for stabilization purposes. Mr. Sowers said the DES did enforce the 25 ft no mow zone from the reference line to encourage the return of normal growth. He said if an application for further hardening is entered in the future it will require a planting plan. Chair Houle noted that a conditional use permit will be required for the addition of rip rap under the Town of Durham zoning.
- (4) Capstone Development dredge and fill application for a total of 6956 sq ft – filling a wetland in the center of the property. He said this was granted as a minor impact project (less than 20000 sq ft). He said the Fish and Game had comments which were sent to DES. Mr. Sowers said Fish and Game are satisfied with the efforts by the applicant to incorporate their recommendations.
- (5) Benjamin Bulkley, 569 Bay Road minimum impact permit granted to modify the footprint of a nonconforming. He noted the Conservation Commission agreed this should be a minimum impact project.

b) Land Protection Activities

Chair Houle noted there were updates previously in the meeting regarding land protection activities.

c) Land Stewardship Committee

Chair Houle noted that Malin Clyde was not present to give a report on this.

d) Town's Master Plan Advisory Committee Survey

Robin Mower reported that the survey has been completed and that 400 web based surveys have been completed and another 70 partial surveys have been completed. She said the Committee will meet again soon to receive the responses, a report will be written and provided to the Planning Board.

6) Board and Committee Reports

a) Town Council

Robin Mower reported that the Council decided to welcome the offer from the Piscataqua Regional Cooperative of a facilitator to discuss issues regarding the Great Bay impairment.

Robin Mower reported that the current plans for the library have stayed out of the wetlands area on the site. She noted there has been some discussion as to whether or not the Town will purchase the adjacent property for use as the Town Hall.

Chair Houle noted this was discussed at the last meeting. He said the Town Administrator asked for the Commission's comment, which was provided.

b) Planning Board

Julian Smith reported that the Planning Board accepted an application for a boundary line adjustment regarding the Capstone project for the purchase of the Shea land. Mr. Smith said the land will be added a conservation easement will be placed on the property. He said there is a question of who will hold the easement and who will monitor the conservation land.

Julian Smith also reported that the Planning Board met with Mike Sievert on behalf of Peter Murphy who is in the process of purchasing the Grange and moving it forward to the sidewalk.

Julian Smith also reported that the Planning Board held a discussion with Grant Development regarding the Durham business park to explore the possibility of subdividing the property into six lots. He said if the plan goes forward the Conservation Commission will need to be involved because of wetlands on the property.

Chair Houle said he looks forward to receiving more information.

Derek Sowers asked what the motivation is on this project. Peter Smith said the property was sold to Chinburg Developers, who believe it may be easier to market in smaller lots.

Derek Sowers said the concern is as one big parcel there are more options to develop away from tidal areas, but splitting it into small parcels will open up the possibility of each parcel stating constraints and requesting variances.

Chair Houle noted this is a concern. He said there are a lot of development constraints on the property. Chair Houle said there are zoning ordinances that the Commission will advocate following and the Planning Board should be aware of the Commission's stance early on.

Julian Smith noted the Planning Board did not have a discussion on this.

Peter Smith said the Planning Board needs to be reminded of the restrictions of this property.

Chair Houle said it would be appropriate for Julian Smith to express to the Planning Board that the Conservation Commission has concerns and the fact that there are many zoning, shoreland and wetland constraints in the Town ordinances that impact a developer regarding this property. He said it would be increasingly difficult to adhere to zoning and conditional uses if the property were split up into smaller parcels.

Julian Smith reported that Jeffrey White has appealed the Planning Board's approval of the Capstone project. He said Judge Brown would hear the appeal on the June 16th.

c) Water Resource Protection Subcommittee

Chair Houle said the subcommittee is lacking a Conservation Commission representative and a Planning Board representative. He said the Subcommittee is pursuing an aquifer protection overlay rewrite/revision.

Derek Sowers expressed an interest in attending a few meetings.

d) Zoning Board of Adjustments

Ann Welsh was not present to report on the ZBA.

Robin Mower said the next agenda of the ZBA has a couple items of interest to the Conservation Commission; 1) building an addition larger than originally proposed within the wetland setback in the Foss Farm area and 2) request for permit to install a septic system within 25 ft of poorly drained soils in the Garrish farms area.

e) Lamprey River Advisory Committee

Steven Burns was not present to report on this.

7) Other Business

Derek Sowers reported that the Oyster River has been formally entered into the state's management designation program. He said this presents an opportunity for a volunteer to be recognized by the Town of Durham to serve on the local advisory committee (ORAC) to help develop the river management plan. He said he would discuss this with the Water Shed Association who may have people wishing to be involved and be designated by the Town.

Derek Sowers asked if the Strafford Rivers Planning Commission will be performing an analysis of useable area for the Commission. Chair Houle said he met with them once to review the conditions, they said they would review it but he has not heard anything further from them. Chair Houle said Julie LaBranch of the Rockingham Planning Commission has expressed an interest in reviewing this for the Commission. He noted the Strafford Regional Planning Commission needs to say they agree to have Rockingham Planning Commission review this for the Commission. Chair Houle said funding was voted and allocated but this was prior to revelations that the Conservation Fund is overcommitted. He said at this point he is not actively pursuing this since he has not heard any requests from the Planning Board regarding this.

8) Administrative

a) Correspondence

Chair Houle said the Commission received notification of routine railway maintenance which was signed by Dave Cedarholm. He said the maintenance will replace two culverts on Dane Road.

b) Next regular meeting July 14, 2011

9) Adjournment

MOVED to adjourn the June 9th, 2011 meeting of the Durham Conservation Commission at 8:51 pm, this was SECONDED by Derek Sowers and APPROVED unanimously.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Conservation Commission