

# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

September 8<sup>th</sup>, 2011  
Durham Town Office – Council Chambers  
7:00 PM

**Members Present:** Julian Smith, Derek Sowers, Malin Clyde, Jamie Houle, John Parry

**Members Not Present:** Larry Harris, Robin Mower

**Alternates Present:** Peter Smith, Ann Welsh

**Alternates Not Present:** Steven Burns

**Others Present:** Greg Caporossi, Diana Carroll

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

Vice-chair Welsh called the meeting to order at 7:03 pm and noted that two voting members were not present, and appointed Ann Welsh and Peter Smith as voting members for the evening.

*Peter Smith MOVED to amend the agenda to add two items to be placed after the presentation: 2a) Discuss the issue of the authority of an alternate being allowed to be chair of the commission and 2b) discuss a current matter before the town council. Vice-Chair Ann Welsh amended this to have item 2a) be the item originally listed under 8b. This was SECONDED by Derek Sowers and APPROVED unanimously.*

*Ann Welsh MOVED to approve the agenda; this was SECONDED by Malin Clyde and APPROVED unanimously.*

**2) Presentations:**

**a) Greg Caporossi – update on Sprucewood Forest Project**

Mr. Caporossi said he is here to update the members on the Sprucewood Forest project and to answer any questions. He noted the project ranked 12<sup>th</sup> in the country for CELCP funding, however, this was not high enough to receive funding last year. Mr. Caporossi said the project was resubmitted for consideration for Fiscal Year 2012 and they are currently waiting to hear where it has been ranked. He said they are hoping to hear within the next two weeks. Mr. Caporossi cautioned that news coming from the Federal Agency is pessimistic with respect to all conservation funding and particularly CELCP funding. He said they are therefore, looking at other opportunities for this project and wanted to see if the Commission still felt this is important for the Town of Durham. Mr. Caporossi noted the agency is currently out of contract with the landowners and are looking for ways to fund the project without using Federal Funds. He said the project may be structured as a multi-phase project. Mr. Caporossi said the landowners have expressed a spirit of cooperation.

Peter Smith asked if the current owners have expressed an interest in considering other options and if they are prepared to take a lower offer in purchase price. Mr. Caporossi said his sense is that there is flexibility in how the project is configured and in the purchase price. He said the owners have expressed an interest in seeing a conservation outcome. Mr. Caporossi said if the project is still important to the community and the Conservation Commission, he would suggest thinking about packaging the project differently and bringing it to private donors. He said the project needs to resonate with the community and possible donors.

Derek Sowers said he considers this property one of the highest priorities in Durham and would like to do as much as the Commission can to see that it is protected. He asked if the landowners understand the tax benefits of a bargain sale and

# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

Mr. Caporossi responded that they do and it is an advantage to this project. The members discussed other possible federal monies for this project.

Malin Clyde said she likes the idea of maintaining this project and asked if there has been a discussion regarding a new appraisal and how this might change the cost of the property. She said she is also wondering what another project would be like and if there could be public access if not all of the property is conserved.

Mr. Caporossi replied that an appraisal now could be much different then when it was originally done – he said the purpose of appraisal was to inform negotiations and that TPL recognizes that the appraisal will need to be done again at some point in the future. He said the purchase price will be based on the value at the final appraisal.

Julian Smith asked when the last appraisal was done and Mr. Caporossi replied that it was in September of 2009. Mr. Smith said that since the zoning was changed prior to that date it made the land more valuable for developers.

Mr. Sowers agreed saying the rezoning has inflated the appraised value of the land. He said there are certain portions of the property that are less sensitive and appropriate for some development, but that most of the area is not appropriate for development. He asked if a lot line adjustment, making some of the property developable and the rest set aside for conservation would be possible. He suggested revisiting the zoning.

Jamie Houle said it can be discussed if the property is developable, but it should also be discussed if it should be developed.. He said a subcommittee has been revisiting the Town's Aquifer District due to this land being over the most productive aquifer in town and from a protection standpoint is a critical habitat. Mr. Houle said one approach being discussed is to make more stringent regulations around more productive aquifer areas and have less stringent regulations on the less conductive areas.

Mr. Sowers asked if the subcommittee is talking about a source water district overlay.

Mr. Houle said there is an aquifer protection district, but the town does not have a source water protection district at the moment.

Ms. Clyde said there is the question of the risk of keeping the entire project and finding a way to afford it or realizing that we will not be able to afford to protect all of the area and be willing to negotiate for a portion of the property.

Mr. Caporossi said he still thinks of the whole 170 acres as the project; but is trying to find a way to fund it that will keep it all protected. He said the question is, given the funding constraints, is there a way to structure this in a multi-phase way. Mr. Caporossi suggested conserving a certain number of acres at first, with an extended option over the rest of the acres.

Mr. Houle said there is rationale for rezoning it to a more fitting category and moving it into a less potentially polluting class. He said he feels zoning may be the best way to protect this property, noting options are limited and one option is to push for rezoning back to a residential zone.

Ms. Clyde noted the difficulties in discussing rezoning for the purpose of one property.

Ann Welsh also noted that this would not be a good approach to take while the TPL is negotiating with the owners.

Peter Smith said he did not sense that anyone in this room has changed their minds on the importance of the project. He noted that the climate is not conducive to funding these projects. He said he does not want a misunderstanding between this Commission and TPL regarding how much funding is available for this project. He encouraged Mr. Caporossi to think of alternative ways to fund this project.

# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

Mr. Caporossi said the most important thing to him is that this is still an important project to the Durham community and if we are able to put something together there is a willingness to think about funding a portion of it and also that you are still interested in holding this property.

Ms. Clyde said they would be interested in holding the property as long as there is an easement on it.

Vice-Chair Welsh thanked Mr. Caporossi for taking the time to speak with the Commission.

### 2a) **Committee Chair Discussion:**

Vice-Chair Welsh said her acting as Chair is unusual since she is an alternate. She said there is a member willing to be Chair that is not an alternate and asked what the process is to elect a new chair.

Mr. Houle said a vote by the Commission is needed.

Julian Smith asked John Parry if he would be willing to be Chair and Mr. Parry responded that he would be willing if there are no other interested parties. He warned that he travels a lot for his work and will attempt to avoid meeting dates. He also noted that he is still fairly new and is still learning and may require assistance.

*Julian Smith MOVED to nominate John Parry as Chair of the Conservation Commission. This was SECONDED by Derek Sowers and APPROVED unanimously.*

### 2b) **Proposal going before Town Council regarding LUCT fund distribution**

Peter Smith said there is a proposal going before the Town Council on Monday evening to change the regulations of how the LUCT funds are distributed. (Julian Smith distributed the council communication to the members). He noted the proposal does not involve existing money in the fund, but is seeking to change the rules for future funds. Mr. Smith noted that the Town Council Chair is in the audience this evening.

Julian Smith said he believes the key issue is the second to last paragraph on the second page of the proposal, which states that the change is to be a temporary change and is meant to be a solution to a shortage in the Town budget. He said he believes this will sound reasonable to a number of the Town Councilors. Mr. Smith noted the Town Administrator requested that an additional paragraph be added to the communication inviting input from the Conservation Commission.

Diana Carroll suggested that one or more members of the Conservation Commission be invited to join the Councilors at the table to be included in the discussion when the communication comes up on the agenda. She noted this would allow for the members to be fully included in the discussion. Ms. Carroll noted that when a similar proposal came before the Council four years ago, four Conservation Commission members came to a Town Council meeting and sat at the table to discuss the proposal with the Council. She said that discussion was very enlightening and helpful and hoped the same could occur this year.

The members discussed abatements being sought by property owners, the process of abatement, the reasoning for abatement and how this affects the Town budget.

Peter Smith said the issue that troubles him is that he believes part of the difficulty of the Town budget is also due to the State of New Hampshire passing on more of the costs for retirement.

# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

Ms. Carroll suggested that the Conservation Commission explain to the Councilors why it is important to keep money in the Conservation Fund. She said she is concerned that councilors who are normally pro conservation will be undecided on this proposal.

Maliln Clyde asked how familiar the Councilors are with the enabling legislation that allows LUCT funds.

Ms. Carroll said she believes they are not very familiar and suggested adding that to the Council packet.

Derek Sowers suggested reminding the Councilors that the Conservation Fund was set up because people felt it was important and explain the real value of the funds and how it is the only means to have a stake in conservation projects without raising taxes. He suggested pointing out that the fund is the only source of revenue for land protection projects and that raiding the only fund available to protect land for short term budget funding is not wise.

Ann Welsh added that the Commission has been using the funds to protect water supplies and if they are not protected it will be very expensive to deal with water supply issues.

Ms. Carroll said she believes some Councilors will say that over 25% of land in Durham is protected and ask; “isn’t that enough”. Malin Clyde said that figure includes UNH land (which has no permanent protection) and Wagon Hill Farm (which has no permanent protection).

Peter Smith noted that this is a difficult political situation and the proposal may go through unless one of two councilors agrees with the Conservation Commission position. He said the discussion needs to be presented in a way that recognizes the realities of what the Town Council is dealing with.

Ann Welsh said the communication implies that the Town Council will get \$250,000 from LUCT taxes next year. She said the reality is that we have no idea how much money it will be next year and this should be noted.

Julian Smith said the paragraph talking about making it temporary to April 2015 only is impractical because the Council can change anything each year. He said most members on the current council were not on the council the last time this was attempted. Mr. Smith said at the start of the Town Council meeting he will make a motion to amend the agenda to remove this item from the agenda. He said he will point out that this will be a big distraction which will eventually fail. Mr. Smith said if this items gets to a discussion and the motion is brought forward he will attempt to amend the motion to not include the temporary aspect of the proposal.

Derek Sowers agreed, saying it would be good to frame the discussion as something that has been brought up in the past and raised a lot of public ill will and eventually will not pass, but will be a huge time sink and distract Councilors from thinking about other ways to solve these problems.

John Parry asked if any other reasonable alternatives are being considered by the council.

Ms. Carroll said the reserve fund is on the low side; money was set aside in the budget for abatements but not enough money. She agreed that the other question is the retirement contribution. Ms. Carroll suggested educating the Durham tax payer that the State is passing on additional retirement costs to the Town.

Derek Sowers asked if there has been a number of how much the Capstone project will be adding to the tax base and if that can be used to offset abatements.

Ms. Carroll said when the project is fully built out it is expected to have a specific property value; so the Town will get the taxes from it and now they are also requesting the Land Use Change Tax as well.

# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

Peter Smith noted that Malin Clyde has the most extensive background regarding Land Use Change Taxes and suggested she be one of the members to discuss the topic with the Town Council by giving the history of this program and what it has made possible in the Town. He also suggested Duane Hyde be invited to be part of the discussion and that Derek Sowers be another member included in the discussion.

Ms. Welsh said the Councilors need to understand that there is no absolute expectation of money in this fund and that the amount collected is random. She noted there will not be much added to the fund next year because the Capstone project will not be built up yet and note that the Conservation Commission can leverage the money and would be a better use than the Town using it to fill a hole in the budget.

Ms. Carroll suggested having a list of how the monies have been spent in the past.

Derek Sowers suggested that Malin Clyde present the historical perspective; what the money has paid for and why it has been a public benefit to the Town and have the new Chair of the Commission, John Parry, say this was discussed and the consensus is that it is a poor policy idea and it will benefit the Town for the Conservation Commission to retain the funding.

Peter Smith suggested that it would be important for all members to be in the audience if at all possible.

The members decided to have John Parry, Derek Sowers and Malin Clyde represent the Commission at the table. They also wish to invite Duane Hyde to be at the meeting and encouraged attendance from all members.

### **3) Acceptance of June 9, July 5<sup>th</sup>, July 14<sup>th</sup> and August 11<sup>th</sup> minutes**

#### **June 9<sup>th</sup> minutes:**

*Jamie Houle MOVED to accept the June 9, 2011 minutes as written, this was SECONDED by Ann Welsh and APPROVED unanimously.\**

\*Malin Clyde abstained as she was not present at the June 9<sup>th</sup> meeting.

#### **July 5<sup>th</sup> minutes:**

*Jamie Houle MOVED to accept the minutes of July 5, 2011 as written. This was SECONDED by Malin Clyde and APPROVED unanimously.*

#### **July 14<sup>th</sup> public session minutes:**

A wording change was suggested by Ann Welsh and agreed upon by the members. Mr. Houle noted that the minutes should note he was not present at this meeting.

*Peter Smith MOVED to approve the July 14, 2011 minutes as amended. This was SECONDED by Derek Sowers and APPROVED unanimously.\**

\*Jamie Houle and Peter Smith abstained as he was not present at the July 14, 2011 meeting.

#### **July 14<sup>th</sup> nonpublic session minutes:**

*Derek Sowers MOVED to accept the nonpublic session minutes of the July 14, 2011 meeting. This was SECONDED by Malin Clyde and APPROVED unanimously.\**

# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

\*Peter Smith and Jamie Houle abstained as they were not present at the July 14, 2011 meeting.

### **August 11<sup>th</sup>:**

*Malin Clyde MOVED to accept the August 11, 2011 minutes as written. This was SECONDED by Ann Welsh and APPROVED unanimously.\**

\*John Parry, Derek Sowers and Jamie Houle abstained as they were not present at the August 11, 2011 meeting.

### **3) New and Old Business**

#### **a) Petition on Mill Pond by HDC/Heritage Commission**

Ann Welsh said she was made aware of a petition seeking support to have the Mill Pond dredged. She asked if this was a topic the Conservation Commission should be involved in.

Derek Sowers said the petition was put forth by the Heritage Commission of Durham, which is another Town commission and said his concern is that the petition is not accurate and regards a natural resource request that this Commission did not comment on. Mr. Sowers said he is concerned about the process not seeking out the Commission's input. He explained that the petition proposed draining the pond at the first hard frost to deal with invasive species that are not clearly defined.

Ms. Welsh noted that there is no definition of the invasive species and at this point it is not clear that the draining of the pond will correct the perceived problems without causing harm to other species.

Mr. Sowers suggested sending a brief letter to the Heritage Commission saying the Commission has become aware of the petition and invite them to discuss their concerns at our next meeting.

*Derek Sowers MOVED to have the Conservation Commission compose a letter to the Heritage Commission telling them the Commission had been made aware of the petition and inviting them to discuss their concerns regarding the pond and any appropriate management measures they are interested in by coming to a Conservation Commission meeting to discuss them with the Commission members. This was SECONDED by Julian Smith.*

Discussion: John Parry will write the letter as the Chair of the Commission. He noted that if decisions regarding the dam will affect this topic it may not make much sense to get into this topic too deeply.

Derek Sowers, agreed saying it may fit to have a further discussion after the dam's fate is decided.

It was decided that an initial discussion with the Heritage Commission would be helpful.

*The motion was APPROVED unanimously.*

#### **b) Response by DES to questions re: Paul Business School Construction**

Ann Welsh reported that the Conservation Commission had written a letter to the DES (and copied UNH) noting that appropriate measures to prevent erosion and sediment control were not being followed. She said photographs were taken and sent with the letter. Ms. Welsh reported that the DES responded with questions, made suggestions to correct the measures lacking and the contractor made those changes.

#### **c) Site walk regarding wetlands permit for 313 Durham Point Rd**

# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

Mr. Houle said he believes the members came to a consensus that limiting the amount of tree removal on the slope and what tree removal there is leaving the roots intact would be appropriate measures.

Derek Sowers will write a response to Dorie Wiggins regarding the standard dredge and fill application noting the Commission's concerns.

John Parry noted that the contractor, Mike Sievert asked him for names of consultants that could come in at the appropriate time to look at the two trees the Conservation Commission are concerned about to determine if they should be saved and how best to protect them during construction. He said he will send him some names of certified arborists that do that kind of work.

Mr. Houle said the members also suggested the use of more environmentally friendly pilings and decking.

Mr. Sowers said his preference would be for decking and piling materials that are the least toxic, such as recycled composites.

Ms. Welsh said the owners are not necessarily interested in building a dock, but want the permit in order to make the house more saleable.

*Jamie Houle MOVED to recommend approval of the permit with the following conditions: tree removal be minimized to the maximum extent possible, if trees do need to be removed the root structure and stumps be left in place to the maximum extent possible, more environmentally friendly alternatives to decking and pilings be considered as much as feasible. This was SECONDED by Malin Clyde and APPROVED unanimously.*

### **5) Ongoing Business**

#### **a) Wetlands Applications**

Updates as reviewed by Derek Sowers:

- (1) Routine roadway and railway maintenance on Adams Point replacing a small culvert. The Commission had no comment and this was a notification only.
- (2) Trail work in College Woods has been completed. This consisted of routine trail maintenance and culvert replacements and was a minimal impact.
- (3) 20 Cedar Point Road project involving a garage and driveway to be constructed over a septic system. DES received a certification that the appropriate septic system will be built and has been approved.

#### **b) Land Protection Activities**

Derek Sowers said six months ago the Commission discussed the Master Plan update and agreed the Conservation Commission should have some input regarding land conservation priorities. He said he took part in a GIS class and did the GIS analysis on conservation land priorities for Durham. He said he weighed more heavily parcels on top of significant aquifers in town that are contiguous with existing conservation land. Mr. Sowers said he would like to present this information at a meeting at a further date. He said the data reaffirms some parcels that the Commission believes are very important and may be a basis to get some of our priorities into the Master Plan.

Ann Welsh suggested scheduling this under presentations for the next meeting.

# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

### **c) Land Stewardship Committee**

Malin Clyde said she spoke with Charlie Moreno who noted he has not been out to Doe Farm. She suggested reviewing the area to decide if another work day is needed.

Ann Welsh volunteered to review the property to see if a work day is needed.

Ms. Clyde said she also spoke with the Public Works Director regarding management plans for Langmaid Farm.

Ms. Clyde discussed the topic of the north side of Wagon Hill Farm being made appropriate for cotton tail rabbit habitat. She noted this use is in the stewardship plan.

The members noted they had a brief presentation on this issue and that they would be interested in another presentation and a proposal.

### **d) Town's Master Plan Advisory Committee Survey**

This topic was noted discussed at this meeting.

### **6) Board and Committee Reports**

#### **a) Town Council**

No further report.

#### **b) Planning Board**

Julian Smith noted that the Planning Board met two weeks ago and scheduled a design review for an application for an 8 lot conservation subdivision at 99 Mill Road. He said this was postponed and will be coming forward next Wednesday.

Mr. Smith reported that a conceptual consultation site plan review by Nevada Land and Water Company to use a commercial building for retail sales (the former Cumberland Farms building) was presented.

Mr. Smith reported that there was a request for the Planning Board to discuss the rural district dimensional controls. He said he would like the Planning Board to review the history of dimensional controls in rural areas for a future discussion.

Mr. Smith suggested it would be useful for members of Conservation Commission to review the Capstone site for their own education and information.

Mr. Houle said for members who are not familiar with large developments, it would be good to see the true nature of a development project. He said this is classified as a green development, but this does not mean it fits into nature seamlessly. Mr. Houle reminded the members that the Commission did not recommend for this and came out strongly against it. He said, however, that Severino Construction is top of the line in regard to environmental controls.

Derek Sowers said that the Sprucewoods area is zoned as ORLI and does not need to meet the Conservation subdivision requirements. He asked if the Planning Board has restored the Conservation subdivision requirements.

Mr. Houle said the stipulation exists, but did not become effective in the case of the Capstone project because it is not a subdivision. He asked if the same thing could happen at Sprucewoods.



# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

Mr. Smith responded that it could because a multi unit development does not need to subdivide.

Mr. Sowers suggested that the zoning should be changed to close this loophole.

### **c) Water Resource Protection Subcommittee**

Mr. Houle said the subcommittee was successful in passing new stormwater regulations. He said the next task for the subcommittee is to work on the aquifer protection district. Mr. Houle noted a review has been done of the aquifer protection overlay that was paid for by the Conservation fund and this should be completed soon.

### **d) Zoning Board of Adjustments**

Ann Welsh reported that the ZBA will be meeting next week and there are several projects on the agenda with wetlands involved:

- 1) A request to allow a garage addition with a second story apartment and septic system in the wetlands setback. There will be a site walk on Tuesday at 6 pm.

Mr. Houle said this application will need a permit from DES who would require comment from the Conservation Commission and an innovative septic system.

- 2) A request for a septic system within the wetland setback and the removal of a house in the wetland and the building of a new house outside of the wetland.

Mr. Houle said once a variance is received this project will not need to go through the Planning Board process, which would require our review. He noted this project would then be getting around review and comment from this Commission.

- 3) A request for an exception to create a house lot and to allow a septic system within the wetland and allow light manufacturing on the lot.

### **e) Lamprey River Advisory Committee**

No discussion at this meeting.

### **7) Other Business**

Mr. Houle said the “Friday Updates” will have an announcement that the Durham bioretention system (at Tedeschi Store) is installed and working relatively well. He said they will begin monitoring it and it will treat .7 acres of impervious surface that otherwise would go into Pettee Brook. Mr. Houle said it is an innovative design using structural configuration and media additives to target phosphorous and nitrogen.

The members discussed the absence of alternate member Steven Burns. Ms. Welsh said he should be asked if he is still interested in being on the Commission. Malin Clyde said she would speak with Mr. Burns to find out his interest and intents.

Ms. Clyde reported that John Parry and Duane Hyde will be doing a nature walk at Durham Day. She thanked them.

### **8) Administrative**

- a) **Correspondence** - none

# Approved – October 13, 2011

## DURHAM CONSERVATION COMMISSION

### **b) Next regular meeting**

The next meeting of the Durham Conservation Commission will be held on October 13<sup>th</sup>, 201.

### **9) Adjournment**

*Julian Smith MOVED to adjourn the September 8<sup>th</sup> meeting of the Durham Conservation Commission at 10:05 pm. This was SECONDED by Jamie Houle and APPROVED unanimously.*

Respectfully submitted by,

Susan Lucius, Secretary to the Durham Conservation Commission