

# Approved - August 12, 2010

## DURHAM CONSERVATION COMMISSION MINUTES

**July 8, 2010**

**Durham Town Office – Council Chambers**

**7:00 PM**

**Members Present: Jamie Houle, Malin Clyde, Robin Mower, Larry Harris, Julian Smith**

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

**Not present: Derek Sowers, Dwight Baldwin**

**Also present: Bob Eckert, Stephen Roberts, Mike Sievert**

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

Chair Houle called the meeting to order at 7:01 pm, Stephen Burns and Peter Smith will be voting members for the evening.

Steven Kimball is not present for the meeting so item 2b will be discussed but not have a presentation this evening.

### **2) Presentations**

- a) Presentation on the work of the Bellamy and Oyster Rivers Watershed Protection Partnership (BORWPP) – Bob Eckert

Bob Eckert thanked the Commission for inviting him to speak with them. He spoke to the members about the history and purpose of the Bellamy and Oyster River Watershed Protection Partnership. He distributed handouts regarding the partnership and noted that the partnership was formed in 2003. He said their purpose is to promote the protection of the Bellamy and Oyster River watersheds by evaluating watershed issues, offering advice to municipal boards, and by furthering public awareness regarding water utilization and its impact on the watersheds. Mr. Eckert said the group has been focusing on educational activities and working on the nitrogen and phosphorous problems, noting that a large proportion of nitrogen contribution is from non point sources and therefore difficult to control. He said a document has been written focusing on a holistic watershed model approach.

The members briefly discussed the differences and strengths of both Southeast Watershed Alliance (which has legislative authority) and BORWPP and if Durham should have representatives on both boards. Chair Houle said if BORWPP can demonstrate that a watershed approach is effective it would be an economic benefit to the municipalities and show that it is a feasible approach.

Mr. Eckert said the voting members are appointed from each town as their representative. He noted at this time Durham had Mr. Stephen Roberts attending the meetings, but the Town has not

# Approved - August 12, 2010

## DURHAM CONSERVATION COMMISSION MINUTES

formally appointed a representative. Mr. Eckert said the meetings are the second Thursday of each month at 10 am.

***Peter Smith MOVED to recommend to the Town Council that they appoint a representative from the Town of Durham, that will report to the Town Council, to this partnership. This was SECONDED by Larry Harris, and APPROVED unanimously.***

Robin Mower will prepare a Town Council communication reflecting this vote and presentation.

b) Conditional Use Permit in the WCO for 20 Strafford Avenue. -- Steven Kimball, Pine Ledge

Chair Houle discussed the communication from Jim Campbell regarding this property; which included partial minutes from the last planning board meeting and some direction regarding the request of the Planning Board regarding this application.

Chair Houle said the Planning Board is asking the Commission to comment on parking spaces within the wetlands overlay. He noted that some of the parking spaces currently exist and that Mr. Kimball is requesting 11 spaces in total.

Julian Smith said Mr. Kimball presented to the Planning Board and said he is requesting to regularize what parking has historically taken place on the property, however, there is no proof that the parking he is requesting has been there historically.

Chair Houle said the Planning Board explained that the application is requesting 11 total parking spaces (5 upper and 6 lower) the property is required to have 6 parking spaces (3 per dwelling), but the ordinance allows up to 10% more which would allow an additional space, for a total of 7 spaces. He noted the Planning Board is inclined to approve 7 spaces.

The members discussed if they should be considering the application for 11 spaces or the Planning Board's inclination to approve the application for 7 spaces.

Chair Houle recommended the members discuss the 3 locations under consideration (front parking area, back parking area and the roadway/driveway) and make recommendations based on the four criteria for a conditional use permit.

Peter Smith agreed saying the members need to comment with respect to conservation issues concerning any of the potential places the Planning Board might consider for parking.

The members reviewed the proposed areas, beginning with the driveway leading up to the rear of the property. After a discussion among the members, the group came to the consensus to recommend a different configuration of the driveway and approach to minimize the infringement on the wetland conservation overlay area. The members recommended establishing vegetation (on the slope below the drive) to enhance the buffer of the old gravel drive that remains in the WCO.

The members then discussed the upper parking area. The members concluded that three spaces, plus an additional space under the car port – all of which are outside of the WCO – be recommended to be permitted.

# Approved - August 12, 2010

## DURHAM CONSERVATION COMMISSION MINUTES

The members discussed the lower parking area and recommend the lower parking area leave the site as nearly as possible in the existing condition in the WCO, allowing for 3 spaces as permitted in the zoning.

Chair Houle noted that the Conservation Commission is concerned that an unpermitted encroachment may have occurred on this property.

*Robin Mower MOVED to recommend to the Planning Board the following actions with regard to the conditional use permit application for 20 Strafford Avenue; 1) With respect to the driveway leading up to the rear parking area to grant the permit as proposed and recommend that the unused portion of the existing gravel road be revegetated to restore its wetland buffer function, 2) With respect to the rear parking area, recommend an alternative configuration of the driveway and approach to minimize the infringement on the wetland conservation overlay area (such as slanted parking and a narrower approach) and the permitting of three spaces, plus an additional space under the car port – all of which are outside of the WCO, 3) recommend the permitting of three parking spaces in the lower parking area as permitted in the zoning while leaving the site as nearly as possible in the “existing” or natural condition within the WCO. This was SECONDED by Larry Harris and APPROVED unanimously.*

The members had a lengthy discussion regarding “right to know” law issues.

### c) Conditional Use Permit for 10 Pettee Brook Lane, Durham, NH 03824. -- Ionian Properties

Mike Sievert, MJS Engineering represented Ionian properties. He explained the property was originally 12,000 sq ft and an additional 3500 sq ft. was added for a total of 15,500 sq ft. Mr. Sievert said the adjacent parking lot was transferred from the Town to Ionian properties. He said the conditional use permit is for the development of the north side of the property for a 4 story building (lower level is under building parking, 1<sup>st</sup> floor will be commercial, 2<sup>nd</sup> floor will be residential apartments (handicap accessible), 3<sup>rd</sup> and 4<sup>th</sup> floor will be student housing. Mr. Sievert reported that the parking lot will be removed and replaced with the building and a vegetated rain garden. He said they are attempting to improve the drainage and flow into Pettee Brook by first having runoff flow through the rain garden before entering the catch basin which drains into Pettee Brook. Mr. Sievert noted that 70% of the runoff from the roof will flow through the rain garden and either be infiltrated into the ground or flow into the catch basin.

The members discussed the design of the parking island with Mr. Sievert. They suggested creating a depression to mediate water in the parking lot.

Mr. Sievert said there is a 6% slope in the lower level parking lot toward Pettee Brook Lane. He said they will use a trench drain (sump and bioskirt) underneath the parking lot that leads to a new basin at the edge of the property which ties into the pipe. Mr. Sievert said a full maintenance plan, which addresses the maintenance of the basin, how often it will be pumped and cleaned and the maintenance of the skirt will be instituted.

The members and Mr. Sievert discussed construction, staging, erosion and sediment control during the proposed project. He said construction staging is addressed – demolition and removal, construction of the basin, and construction of building, noting that there will be no pumping directly into Pettee Brook.

The members discussed the need for oversight during the project. Mr. Sievert agreed with this suggestion.

# Approved - August 12, 2010

## DURHAM CONSERVATION COMMISSION MINUTES

The members then reviewed the project with the 4 criteria for the conditional use permit in mind. The members concluded that the proposal meets the criteria and felt they could recommend their approval with some recommendations.

*Robin Mower MOVED to recommend to the Planning Board the approval of the conditional use permit with the following actions; 1) submission of an erosion and sediment control plan with specifics regarding construction sequencing so as to minimize potential discharges of stormwater from the building excavation to Pettee Brook, 2) engineering oversight be included as a condition of permitting to ensure adequate erosion and sediment control and to ensure that the implementation of innovative stormwater management practices are successful, and 3) recommend the constructed vegetated median strip be depressed so as to not shed water onto the pavement. This was SECONDED by Julian Smith and APPROVED unanimously.*

### **3) Acceptance of minutes**

#### a) June 10, 2010

The members noted minor changes to the June 2010 minutes.

*Robin Mower MOVED to accept the June 10, 2010 minutes as amended. This was SECONDED by Larry Harris and APPROVED unanimously.*

Jamie Houle was not present during the June 10, 2010 meeting and therefore abstained from voting on the minutes.

### **4) New and Old Business**

- a) Discussion regarding amending Chapter 175 "Zoning", Article XII "Zone Requirements", Section 175-53 "Table of Uses" to allow single-family homes and duplexes in the ORLI zone as a conditional use and to allow single-family homes in the MUDOR zone as a conditional use.

Chair Houle noted that there will be a public hearing on Monday night at the town council meeting regarding this issue. Stephen Roberts said he made this motion to the Planning Board. He said he feels when a use is not supported by the Master Plan, the conditional use permit, can be a powerful tool. Mr. Roberts said the conditional use process can allow a unique occurrence that could potentially cause deep zoning rewrites if not done under the conditional use process.

The members discussed this proposed amendment. Robin Mower noted her concern that the two zones under discussion do not require a conservation subdivision approach to development. Larry Harris said this is an issue that should go back to the master plan rewrite. He said the implications of agreeing to this amendment could bring about numerous potential development applications and the implications of spreading out and impacting these zones should be seriously debated. Robin Mower said the Conservation Commission needs to decide if this is an appropriate approach to this part of town. Peter Smith said there will be a continuation of the hearing before the Town Council and this issue is important, complex and the Conservation Commission should not comment too quickly or harshly. Chair Houle agreed, saying the commission needs to be careful with this important, complicated issue.

# Approved - August 12, 2010

## DURHAM CONSERVATION COMMISSION MINUTES

- b) Discussion of Section 175-55f of the Zoning Ordinance “calculation of usable area”.

Chair Houle said Jim Campbell has asked the Conservation Commission to give comments on the email sent to him from Peter Anderson regarding his concerns on how Durham calculates useable area and his suggestions. The members discussed the standards and that they are typically used in areas where septic systems are required. He said the intention of these tables, are to restrict uses in rural areas where you are dependent on point of use wastewater treatment. The members had an in depth discussion regarding growth, minimum lot size, poorly drained soils, somewhat poorly drained soils, residential development and its effect on the tax burden. Stephen Roberts said the language was written 5 years ago when the data to support the use of somewhat poorly defined soils as useable for septic systems did not exist. He wondered if the language does not change, if the Zoning Board of Adjustment will look at it and grant variances. He said the Planning Board is looking for guidance from the Conservation Commission.

The members discussed the need to do research and obtain information from experts in the field. Chair Houle said the Conservation Commission takes any change to a regulation seriously and would like the opportunity to research the issue thoroughly in order to provide an educated opinion to the Planning Board. He is in contact with representatives of the Strafford and Rockingham County Planning Commission and will research these provisions, present any findings at the next DCC meeting and forward a timely response to the Planning Board.

### 5) Ongoing Business

- a) Wetlands Applications

Chair Houle reported that an application will be filed for a boat house that is in need of new pilings to support the boat house. He said the owners requested the Conservation Commission do a site visit in anticipation of them filing for an expedited wetlands permit. Chair Houle said he felt a site visit should wait until an application is filed. The consensus of the Commission was to wait for a site visit until an application is filed.

- b) Land Protection Activities –

Chair Houle said the appraisal for the Thompson property is valid for six months; so a decision needs to be made this month. He said The Thompson family asked that the appraisal be reviewed by a family friend who indicated that the appraisal was undervalued. Chair Houle reminded the members that there is a funding source that is interested in partnering with the Town to purchase the land and discussed with the commission members ways to reinvigorate this project. He reported to the members that he will contact Town Administrator Selig and suggest he follow up with regard to the Thompson property. Malin Clyde volunteered to speak with Mrs. Thompson.

Chair Houle also reported that the Colasante property is in the process of being handed over to the Manchester Diocese.

- c) Town Owned Land/Conservation Easements – no further report.

### 6) Board and Committee Reports

- a) Town Council – Robin Mower had no further report at this meeting.

# Approved - August 12, 2010

## DURHAM CONSERVATION COMMISSION MINUTES

b) Planning Board – Julian Smith had no further report at this meeting.

c) Water Resource Protection Subcommittee

Chair Houle reported that there will be a public hearing regarding the storm water regulations on Wednesday.

d) Zoning Board of Adjustments

Ann Welsh reported that there will be meeting next week of the Zoning Board of Adjustments. She said there is a property on Madbury Road which will involve wetlands that will be presenting to the ZBA at the next meeting. Ms. Welsh also reported that there will be a public hearing on Tuesday regarding the changes in the Perry Bryant proposal.

e) Lamprey River Advisory Committee

Stephen Burns had no further report from the Lamprey River Advisory Committee. He said he will express the Commission's enthusiasm for the Thompson property to LRAC.

### 7) Other Business

**Robin Mower asked that Durham Day (September 19<sup>th</sup>) planning be placed on the agenda for the next meeting.**

### 8) Administrative

a) Correspondence

Chair Houle reported that he received a letter from Ray Konisky updating the Commission on the Oyster Project.

b) Next regular meeting

The next meeting of the Durham Conservation Commission will be Thursday August 12, 2010 at 4 pm.

### 9) Adjournment

The July 8<sup>th</sup>, 2010 meeting of the Durham Conservation Commission adjourned at 10:55 PM.

*Robin Mower MOVED to adjourn at 10:55 pm. This was SECONDED by Malin Clyde and APPROVED unanimously.*