

**DURHAM CONSERVATION COMMISSION MEETING
THURSDAY, MARCH 22, 2021 – 7:00 PM
DURHAM TOWN HALL - COUNCIL CHAMBERS - DURHAM, NH**

Note: Due to the Coronavirus pandemic, this meeting was held entirely on Zoom.

Members Present: James Bubar (Planning Board Rep), Coleen Fuerst, Jake Kritzer, John Nachilly, Walter Rous, Carden Welsh (Town Council Rep), Roanne Robbins (Alternate)

Members Absent: Mary Ann Krebs

Also Present: Town Planner Michael Behrendt, Land Stewardship Coordinator Ellen Snyder, Incoming Land Stewardship Coordinator Tom Brightman, Minute Taker Lucie Bryar

I. & II. Call to Order & Roll Call

Town Planner Michael Behrendt called the meeting to order at 7:02 p.m. and noted that former Chair Sally Needell is no longer serving on the Commission. A new Chairperson will be elected this evening. He welcomed Carden Welsh, a new member and Town Council appointee. He seated Alternate Roanne Robbins, filling in for Mary Ann Krebs.

Mr. Behrendt read a required statement pursuant to the Governor's Emergency Order #12 pertaining to meeting remotely during the Covid-19 pandemic and outlining how the public can continue to participate. More information is available on the town of Durham website.

III. Approval of Agenda

Mr. Bubar MOVED to approve the agenda as submitted; SECONDED by Mr. Welsh, APPROVED unanimously, 7-0, Motion carries.

IV. Public Comments

Mr. Behrendt invited public comment but said as previously noticed, the Commission is not taking any comments this evening related to the proposed subdivision off Gerrish Drive. There were no public comments.

V. Election of a New Chair

Mr. Behrendt said the Commission needs to elect both a Chair and Vice Chair, since Vice-Chair Mary Ann Krebs has chosen not to continue as an officer.

Mr. Nachilly MOVED to nominate Mr. Kritzer as Chair; SECONDED by Ms. Robbins, APPROVED 6-0-1, with Mr. Kritzer abstaining, Motion carries.

After brief discussion, Mr. Welsh MOVED to nominate Mr. Nachilly as Vice-Chair, SECONDED by Mr. Rous, APPROVED unanimously, 7-0, Motion carries.

Mr. Kritzer assumed chairing the meeting.

VI. Recognition of Ellen Snyder, Land Stewardship Coordinator, for her service to the community, upon her retirement from the Town.

Mr. Behrendt shared a couple of photos and later a video of Ms. Snyder being recognized with a plaque of appreciation by Town Administrator Todd Selig and others.

A number of Commissioners spoke highly of the work Ellen has done for the town and noted her deep knowledge of wildlife, forestry, and conservation issues, as well as her professionalism, ability to work well with various groups, and creativity in funding projects. Ms. Fuerst said Ms. Snyder should be recognized in particular for her work at Doe Farm.

Mr. Bubar recommended that the Conservation Commission plant a tree of Ellen's choice in her honor at a time and place to be determined and there was consensus this was a good idea.

Chair Kritzer then thanked former Chair Sally Needell for her leadership and commitment to the Commission and welcomed Mr. Welsh as a new member.

VII. Subdivision off Gerrish Drive. Parcel at 91 Bagdad Road. Conditional use application to cross/fill three wetlands and build infrastructure in the wetland buffer for conservation subdivision for 15 dwelling units (7 single family and 4 duplexes plus one existing house) on 16-acre lot off Gerrish Drive. Marti and Michael Ahern, property owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Mark West, Wetland Scientist. Map 10, Lot 8-6. Residence B District.

The Commission had extensive discussion on the four criteria for the WCOD at its last meeting, but opted not to send recommendations to the Planning Board at that time – due to the late hour and time needed to finalize the document. Chair Kritzer said the purpose tonight is to review the summary of recommendations drafted by Ms. Needell, not to re-open discussion.

Mr. Kritzer also drafted a preamble to the recommendations, which the Commission will review separately.

There are four impacted areas with four criteria to be considered for each area. Consensus reached (yes) or (no) is indicated on each of the criteria:

1.) ROW Wetland Crossing

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use. Yes.

While not endorsing the use of the ROW access, the Commission finds on a strict reading of this standard that there is no alternative location.

Mr. Rous said recent correspondence from Engineer Mike Sievert indicated NH DES will look at alternative access points. He does not understand why the Commission was prevented from doing the same. It was agreed, however, the Commission is charged strictly with reviewing the application before it.

*2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities [as determined by the Planning Board]: **Yes.***

The strict reading of this standard suggests there should be a pre-determination by the Planning Board. The soil disturbance will be significant, but will be the “minimum necessary” for a 20-foot roadway as required by the Planning Board.

Mr. Rous said he would like to note his reservations on this criteria since he believes the Planning Board should consider a narrower roadway.

*3. The location, design, construction and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts. **Yes.***

Mr. Bubar noted that mitigation activities would not address loss of wildlife habitat. He said more than 7,000 square feet of wetlands would be destroyed / not mitigated.

Commissioners acknowledged a bridge instead of a culvert would be less detrimental, however, the project engineer previously stated a bridge would be cost-prohibitive. Mr. Rous said in his view, the proposed stormwater management system is as effective as a bridge.

There was brief discussion about offsetting detrimental impacts to this wetland by improving the quality of other adjacent wetlands, but Mr. Bubar said in his experience the Planning Board does not allow trade-offs. It was agreed that installation of a sewer line and preservation of a conservation easement will provide environmental benefits. It does not appear that mitigation of all detrimental impacts is practical at this site.

*4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit. **Yes.***

The Conservation Commission does not support the destruction of wetlands, but believes their destruction is a necessary part of this application. The proposed plan leaves the site as nearly as possible in condition and grade given the proposal reviewed by the Commission.

2.) Ravine Crossing

*1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use. **Yes.***

While the Conservation Commission is not necessarily endorsing the use of the ROW access, they noted if the ROW is accepted, then this is the appropriate crossing location.

*2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities [as determined by the Planning Board]: **Yes.***

Commissioners acknowledged they have not received a determination from the Planning Board. The consensus was the large culvert proposed for this area will function much like a

bridge and a bridge would be cost-prohibitive.

3. The location, design, construction and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts. Yes.

Stormwater on the road over the ravine will be captured and treated in a stormwater treatment system.

4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit. Yes.

3.) Road Crossing and Filling of Finger of Wetland

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use. No

Mr. Bubar said he reviewed video from the previous meeting and noted engineer Mike Sievert indicated the sole reason to fill this area is to move the wetland buffer so the developer can put in houses 13 and 14. Mr. Sievert indicated without this fill a variance would be needed and it's questionable if one would be granted.

Mr. Bubar said the Conservation Commission cannot grant an exception to fill a wetland in order to move a buffer; It's not an allowable conditional use, unlike for streets, roads, and utilities, etc. Later he read directly from Ordinance 175-61 (page 97) which outlines acceptable conditional uses.

There was lengthy discussion on this point, with Mr. Behrendt saying he believes the wetland is being filled to accommodate the road.

Commissioners acknowledged this wetland is of low value and that drainage functions would be adequate; however, they do not believe the ordinance as written allows them to recommend filling this wetland.

2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities [as determined by the Planning Board]: No. See #1.

3. The location, design, construction and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts. No. See #1

4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit. No. See #1

4.) Activities in the Wetland Buffer

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably

practical for the proposed use. Yes, with the exception of units #13 and #14.

2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities [as determined by the Planning Board]. Yes.

3. The location, design, construction and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts. Yes.

4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit. Yes.

Chair Kritzer then summarized the preamble he drafted for the Planning Board, essentially saying this application was complex and contentious; there are a number of environmental benefits to the project, but controversy about the negative impacts remains. He said the Conservation Commission cannot take a definitive position on supporting or opposing it, but chose instead to narrowly review the four criteria for the application presented, staying within their purview.

There were some edits made to the preamble and the Commission also agreed to send an informal email to the Planning Board outlining some other recommendations – such as removal of invasive species, maintenance to stormwater systems and hiring of Sno-Pro certified professionals.

Chair Kritzer then MOVED to send to the Planning Board the preamble and full report with recommendations, as discussed and amended above; SECONDED by Mr. Rous, APPROVED unanimously, 7-0, Motion carries.

VIII. UNH South Drive – Wetland Application. Request for comments on Major Impact Standard Dredge and Fill application from the University to NHDES for road upgrade and construction of Health Science Simulation Center. University of New Hampshire, c/o Paul Henry and Doug Bencks, applicant. Leonard Lord, Environmental Scientist, Tighe & Bond, consultant.

Engineer Joe Persechino of Tighe & Bond is also here this evening. Mr. Welsh asked for clarification on the Commission's role on this application and Mr. Behrendt said the Commission does not have purview over the University's wetlands activities, but has been asked to give non-binding comments to the NH Department of Environmental services.

Mr. Lord shared site plans showing South Road and said UNH is proposing a two-part project: first, construction of a parking lot (near a wetlands) for its new Health Science Simulation Center currently under construction. Later, the University plans to expand South Drive to help alleviate traffic congestion on Main Street.

The South Drive project was previously permitted in 2014; however, the permit expired in 2019. The permanent impacts to wetlands is estimated at a little over 14,000 square feet and temporary impacts are expected to be around 5,000 square feet. Some of the permitted impact (from 2014) has already taken place.

The University is now re-applying for a permit to finish the project, which has since been altered due to the addition of the Health Science Simulation Center. College Brook is the main stream and watershed to be impacted. According to Mr. Bencks, the proposed timeline for full completion is up to five years.

Commissioners had a number of questions about the proposed mitigation efforts, specifically if they would occur concurrently with construction or be stretched out over several years. Some expressed concerns that the University would run out of funding or the permit would again expire before mitigation would be completed. Also, they questioned why some of the mitigation is not within the impacted area.

Mr. Persechino said moving forward, he expects NH DES to set closer timelines between construction with wetlands impacts and mitigation of those impacts.

Some of the mitigation efforts are proposed for areas downstream – specifically a rain garden behind the Paul Creative Arts Center and a retention basin under the Mill Road visitor's parking lot. Mr. Welsh asked if it's common to have this occur, i.e., mitigation to take place in a different area.

Mr. Persechino said it's quite common and referenced the ARM (Aquatic Resource Mitigation) Fund which requires payment if impacts in one location can't be fully mitigated. The funds then provide financial support for conservation in other locations.

In this instance, UNH is not required to pay into the ARM fund, but is essentially proposing its own version. He said the State seems amenable to the idea, since the plan provides for stormwater treatment in an adjacent area that is currently untreated.

Mr. Lord noted the wetlands being impacted by this project are already highly disturbed and degraded. A functional assessment showed their only function is stormwater treatment.

There was further discussion about a number of topics, including a railroad parcel impacting the project; design details for a large 18-foot wide culvert (essentially a bridge) replacing a 52-inch pipe; consideration of the floodplain and acceptable mitigation ratios.

Mr. Persechino said NH DES doesn't have an established ratio of total mitigation that should occur in this instance, but he believes the total volume of water to be treated (estimated to be about 4,361 cubic feet for each storm) will be acceptable. He said under current conditions, about 22 acres of runoff from impervious surfaces goes into College Brook untreated. The plan will mitigate for more than that.

Mr. Bencks confirmed there will be a lot of stormwater improvement in exchange for the loss of wetlands that are already degraded. There was discussion about the project timeline (with the

parking lot being more urgent than expansion of South Drive) and how best to frame comments to NHDES.

After more than an hour of review and questions, Commissioners agreed they would submit favorable comments to NHDES. The Commission would like to request that the timing of mitigation efforts be as close as possible to the construction. Chair Kritzer will work with Mr. Behrendt to draft and submit comments via email to DES.

At this point, Chair Kritzer noted the late hour and items remaining on the agenda. It was agreed that all items would be tabled, except for a time-sensitive proposal from Ms. Robbins under Other Business.

IX. Discussion about Pesticides. Discussion about proposal to work with the Agriculture Commission in educating the public about pesticides. - **TABLED**

X. Conservation Land. Updated Guidelines for Acquiring Legal Interest in Conservation Land/Open Space Land - **TABLED**

XI. Other Business

Ms. Robbins said the Taking Action for Wildlife Group is investigating wildlife corridors in Durham and would like to have a Conservation Commission-sponsored event April 9-11. During that time period, residents would be invited to document wildlife they see in their yards. The information would be entered into a spreadsheet and analyzed.

She said this is a first effort and may be expanded to all seasons; a Bio-Blitz with educational opportunities might occur at a later date. The group would like to publicize the backyard wildlife count in Friday Updates and other avenues.

There was discussion about the dates selected and the short duration of the count. Ms. Robbins said this is a trial run and later Ms. Needell added the dates chosen were partly due to expected wildlife migration.

Mr. Kritzer said feedback about expanding or changing the dates for the wildlife count will be taken back to their cohort at Taking Action for Wildlife.

XII. Roundtable. Updates from Conservation Commission members. - **TABLED**

XIII. Review of Minutes: January 4, January 25, Site Walk – February 5 - **TABLED**

XIV. Adjournment:

With no other business at this time, Mr. Rous MOVED to adjourn the meeting at 11:13 p.m.; SECONDED by Mr. Bubar, APPROVED unanimously, 7-0, Motion carries.

Respectfully submitted,
Lucie Bryar, Minute Taker

DCC FINAL MINUTES – MARCH 22, 2021

Durham Conservation Commission

Note: These written minutes are intended as a general summary of the meeting. For more complete information, please refer to the DCAT22 On Demand videotape of the entire proceedings on the town of Durham website.