

*These minutes were approved at the April 25, 2022 meeting.*

**DURHAM CONSERVATION COMMISSION**  
**Monday, January 24, 2022**  
**DURHAM TOWN HALL, COUNCIL CHAMBERS**  
**7:00 p.m.**

**MEMBERS PRESENT:** Jake Kritzer (Chair), James Bubar (Planning Board Rep, attending remotely due to illness), Coleen Fuerst, Walter Rous, Carden Welsh (Town Council Rep), Alternate Erin Hardie Hale, Alternate Roanne Robbins (attending remotely due to childcare issues.)

**MEMBERS ABSENT:** John Nachilly (Vice Chair)

**ALSO PRESENT:** Town Planner Michael Behrendt, Land Stewardship Coordinator Tom Brightman, Contract Planner Rick Taintor and Minute Take Lucie Bryar

**I. & II. Call to Order & Reading of Land Acknowledgement Statement**

Chair Kritzer called the meeting to order at 7:02 p.m. and read the Land Acknowledgement Statement.

**III. Roll Call**

Roll Call Attendance was taken.

**IV. Approval of Agenda**

The Chair said times indicated on the agenda indicate the projected end time for each item and are intended as a time management tool only.

It was noted that both alternates (Ms. Robbins and Ms. Hale) are seated as voting members this evening.

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

**V. Public Comments** (Only for items not on the agenda.) There were none this evening.

**VI. Review of Minutes:** December 21, 2021

Mr. Welsh had submitted spelling corrections to the Minute Taker via email.

***Mr. Welsh MOVED to accept the minutes as amended; SECONDED by Mr. Rous, APPROVED unanimously, 7-0, Motion carries.***

As required, Mr. Behrendt asked members attending via zoom to state the reasons why they couldn't attend in person. (Reasons indicated in attendance list above.)

**VII. 10 Cedar Point Road Dock Replacement.** Providing comments to NHDES about an application under Wetlands Permit-by-Notification for a dock replacement. Half acre lot situated on Little Bay. Bruce and Ellen Bates Revocable Trust, property owners. Steve Riker, Ambit Engineering, designer. Map 12, Lot 2-13

Steve Riker of Ambit Engineering came forward to address the application. Tonight he's requesting the Commission sign an application to NHDES. If they agree, it will reduce the review period for the property owners from 24 days to 14 days.

The proposal calls for replacing an existing dock (on Sheet C1 of the plans) with a new structure (on sheet C2.) In answer to a question, Mr. Riker said the new dock will be the same size and in the same configuration as the existing dock, with the same supports.

Mr. Welsh referenced a study on sea level rise which indicated this area can expect to see a significant rise and asked if the plan was designed to account for that.

Mr. Riker replied the applicant isn't required by the State to address sea level rise in their plans. There was discussion with Commissioners about raising the elevation of the deck or pier, but Mr. Riker noted the size of the gangway can't be changed under this permit. In his opinion, the proposed dock would be safe from sea level rise for at least 100 years.

Action Item: Conservation Commission members agreed to sign the application to NHDES. It was decided no vote was needed on this item.

**VIII. Public Hearing – Proposed contribution acquisition of Pike Property.** Proposed contribution of \$35,000 from the Durham Conservation Fund toward the acquisition of the Pike Property. The 37.4 acre lot would be owned by the Town and placed into conservation with an easement held by the Southeast Land Trust (SELT). Grants secured by SELT would pay the remainder of the purchase price. The parcel is located on Wednesday Hill Road just east of Thompson Forest. Map 14, Lot 10-2.

Duane Hyde, Land Conservation Director of the Southeast Land Trust (SELT), is present to discuss the project. He said there are two requests before the Commission tonight: 1.) To recommend the Town accept ownership of the Pike Property subject to an easement held by SELT and 2.) To commit funding of \$35,000 from the Durham Conservation Fund.

Mr. Hyde showed a photo of the Pike Property and some context maps. Considering other conserved properties contiguous to this one (i.e, Thompson Forest, the Burroughs and

Dunham easements), he noted the acquisition of the Pike Property would bring the total in conserved land here to over 400 acres.

He noted Commissioners went on a site walk in December. SELT has applied to the Planning Board for some boundary line adjustments and has since learned the proposed subdivision and selloff of a circa 1800s house on the property doesn't meet zoning ordinances for side yard setbacks. SELT is now requesting a variance from the ZBA.

Key features of the Pike Property are its 1200-foot frontage on the Lamprey River and its potential to protect the town's drinking water due to its proximity to a pump house and an intake pipe.

The Nature Conservancy has identified about 13 acres of the property as high priority Tier 1 (conservation land) due to its role in attenuating pollutants before they reach Great Bay; the Lamprey River is federally designated as a Wild and Scenic River and is home to three rare turtle species. A Wildlife Action Plan also shows the property to have Tier 1 and Tier 2 designations.

Mr. Hyde then reviewed the funding sources to date and the requirements associated with each, summarized here.

### **Funding Sources and Provisions:**

- Aquatic Resource Mitigation Program (ARM) has committed \$220,000 with an original restriction that no trails be constructed on the property. Mr. Hyde said ARM has now agreed the Town could request a trail, but it would need to be permitted by NHDES and the Army Corps of Engineers. Further, no ground can be disturbed without an archeological investigation first; SELT has set aside funds for this. Forestry can be done to benefit wildlife, but not for profit.
- Drinking Water and Ground Trust Fund: Has committed \$87,606, with no restrictions on any improvements pertaining to the drinking water supply.
- Regional Conservation Protection Partnership: Has committed \$202,500 and allows for agriculture to take place in the field on the property, however, any associated buildings or structures need to be defined in advance. Mr. Hyde will work with the Conservation Commission on this.
- Great Bay Partnership has committed \$22,075.
- There's an outstanding request of \$35,000+ to the Lamprey River Advisory Committee.

The overall budget for acquiring the property is just under \$600K, including the purchase price, all legal work and titling, etc. SELT will handle all due diligence, including the certificate of title, a Phase 1 Environmental Hazard Assessment and a Boundary Survey.

Mr. Welsh asked about the projected ownership/annual maintenance costs to the Town for the Pike Property.

Land Stewardship Coordinator Tom Brightman estimated it could be about \$1K/per year, which would include maintenance of a fence and control of invasives – especially if it's turned into young successional habitat.

Chair Kritzer asked what would happen if the Commission votes to approve the \$35K funding request, but then Town Council votes not to acquire the property.

Mr. Hyde replied due to the funding structure in place, the property cannot be acquired without an easement. In this instance, SELT would probably take ownership of the property and grant an easement to the Forest Society. He added the Conservation Commission can make its funding contingent upon Town Council accepting the property.

***Mr. Rous MOVED to recommend that the Town of Durham take ownership from SELT of the Pike Property and the Conservation Commission commit \$35,000 from the Conservation Fund, contingent on Town Council accepting the property; SECONDED by Ms. Fuerst, APPROVED unanimously, 7-0, Motion carries.***

**IX. Land Stewardship.** Tom Brightman, Land Stewardship Coordinator. A. Update on presentation by Doug Tallamy at the commission meeting on February 28. B. Update on the Doe Farm visitor survey.

Mr. Brightman discussed the upcoming talk by Professor Doug Tallamy on February 28th. He said 90 online participants can be accommodated, with an additional 10 spots reserved for the Commission and 17 in-house seats. Sign-ups will begin February 16th. There will be no live chat, but a Q & A afterwards.

Ms. Robbins said she has a 20% off gift code from Water St. Books for anyone wanting to purchase any of Mr. Tallamy's books.

Reporting on the Doe Farm Visitor Survey, Mr. Brightman said initial surveys have been successful, with 63 online responses and 22 in-person responses in the first week. The Committee is looking for volunteers to administer onsite surveys, with the following dates and times available: Tuesdays and Sundays from 10:00 a.m. to 12:00 p.m. and 12:00 p.m. to 2:00 p.m.

**X. Mill Plaza Wetland Buffer.** Revisiting the earlier recommendation from the Conservation Commission about the wetland buffer under the Wetland Conservation Overlay District for Mill Plaza. Colonial Durham Associate, property owner. 7 Mill Road, Map 5, Lot 1-1.

Chair Kritzer noted the Commission had sent a recommendation to the Planning Board dated January 4, 2021 in which they advised the Board to ask for a full vegetative restoration of the 75-foot buffer to College Brook. At that time, the Commission did not comment on Standards 2-4 regarding Conditional Use within a WCOD, since it was their belief if Standard 1 was met, the others would be irrelevant.

Since that time, resident Dennis Meadows has shared a proposal for restoration of the buffer and the applicant has made revisions to the site plan. Mr. Kritzer said further discussion (re: Mr. Meadow's proposal and re-visiting standards 2-4) was delayed at the December meeting so that all interested parties could be notified in advance – including the applicant and the public.

Contract Planner Rick Taintor said all parking spaces have been pulled out of the wetland buffer since the Commission issued its recommendation last January. He recommends they now look at all four standards for conditional use in the WCOD and also consider an overlapping performance standard for the Shoreland Overlay Protection District.

Mr. Bubar, who serves on the Planning Board, said he may have inadvertently misled the Commission on an earlier motion in which they agreed to recommend an exception in the buffer for a roadway to accommodate turning trucks. It's now his understanding that this request isn't part of the application and the Planning Board must either approve or deny access within the wetland buffer, without exceptions.

Chair Kritzer asked Planning Board Chair Paul Rasmussen what actions by the Conservation Commission, if any, would be most helpful to the Board at this juncture. Mr. Rasmussen replied it would be helpful to get input on the other conditional use standards and to hear the Commission's thoughts on the new plan.

The Chair then invited the applicant's representative to speak. Attorney Ari Pollack and Agent Sean Cauley came forward on behalf of Colonial Durham Associates.

Attorney Pollack said the Commission's whole process has been backwards. He believes it's only after he complained about mistreatment to the Town Administrator that the Commission delayed its discussion to this evening.

He asserted the Commission had discussed the project at its November and December meetings (without proper notice to the applicant) and quoted from the minutes of the December meeting. He objected to circulation of a draft statement the Chair sent to

members last month, re-affirming their earlier recommendation – although Mr. Pollack acknowledged discussion of that statement never took place.

Attorney Pollack said the application has been before the Town for seven years and suggested the Conservation Commission may have invited the applicant here this evening only as “window dressing.”

Chair Kritzer responded to some of Attorney Pollack’s points, noting that initial discussion about the project was led by one chair and then taken over by another. It was only recently the Commission considered if they should review standards 2 through 4 and decide whether to offer further comment to the Planning Board.

He said nothing has been done in secret and the Commission deliberately delayed substantive and meaningful discussion of the project last month in order to allow time to give notice to the applicant and the public.

Planning Board Chair Paul Rasmussen came forward and said the Planning Board is getting ready to start its deliberations on the project. This is, therefore, the last chance for the Conservation Commission to add to their previous recommendation.

The Commission then proceeded to discuss next steps. Should they comment on Standards 2-4 or is it too late in the project timeline? Are those standards relevant, given their position on standard 1?

Attorney Pollack said the current plan (dated December 21, 2021) shows activity in the buffer will be reduced from 55,000 square feet (proposed earlier) to 28,000 square feet. The reduction was achieved by reducing the total parking spaces from over 400 to 370.

Chair Kritzer then opened the meeting to public comment, summarized below:

**Joshua Meyrowitz: 7 Chesley Drive.:** Mr. Meyrowitz urged the Commission to re-affirm its earlier position to help those like himself who live downstream. He showed slides with increased flooding on rainy days/snow melt and said flooding increased dramatically after CDA did unauthorized bulldozing of an adjacent hillside. He showed a slide with highlights from the Stormwater Peer Review report and said Colonial Durham’s own consultant confirmed that without a reduction in impervious surfaces, the [flooding] situation will get worse.

**Beth Olshansky:** Ms. Olshansky urged the Conservation Commission to make a strong statement to the Planning Board to uphold zoning. CDA has moved parking out of the buffer but is still planning a roadway – which is in violation of the settlement agreement.

Degradation of College Brook has been going on for 50 years. She believes once there is work in the parking lot, nothing there is grandfathered.

**Dr. Dennis Meadows:** Said the Conservation Commission has spent eight hours discussing the project, plus did a two-hour site walk. It only took CDA about two minutes to announce they weren't going to pay attention to their recommendations. He urged the Commission to "reject the myth" that it's impossible to move the driveway out of the buffer. He also rejects the argument that if the Town doesn't accept CDA's plan, the site won't be re-developed. In his view, this property is unique and will undoubtedly draw other proposals.

**Eric Lund, 31 Faculty Road:** Urged the Commission to re-affirm its previous recommendation. He said the proposal before them continues to violate the first of four criteria [for conditional use] in the WCOD. There are impervious surfaces proposed inside the buffer that have a practical option to be placed elsewhere. He noted there is substantially more flooding during rain events at his home than there were in the first three years he lived there.

**Emily Friedrichs, 18 Garden Lane:** Ms. Friedrichs noted the application is before the Planning Board and not the Conservation Commission and the CC is therefore free to act in its role as advisors to the Planning Board. She does not believe they need to respond to the applicant. She urged the Commission to provide comment on all four standards and also talked about climate change and the inevitability of increased flooding.

There were no more public comments.

In response to a question from Mr. Welsh, Mr. Taintor gave an overview of significant (conservation-related) changes to the site plan since the Commission last reviewed it. He said Building B has been moved forward; all of the proposed parking spaces are now outside of the buffer and the amount of driveway inside the buffer has been reduced, which would allow for more vegetation and screening.

Later, he added that due to an increase in impervious surfaces, there will likely be more runoff (as indicated in Joshua Meyrowitz's presentation), however, most of the stormwater will be treated.

Mr. Meyrowitz was asked to re-share the slides from the Peer Review on discharge volumes projected for the site at all storm levels – showing volumes will increase and there was further discussion on this.

Attorney Pollack said the Town's third-party peer review by engineering firm Horsley Witten concluded the project "maintains compliance with the Town of Durham site regulations and New Hampshire requirements, pending minor comments outlined above." He added the comments were reviewed with both the TRG and Planning Board to "general satisfaction."

After further discussion, Chair Kritzer asked Attorney Pollack about his statement that CDA had reduced disturbance in the buffer "as much as they can." Atty. Pollack replied that sufficient parking needs to be provided for the tenants in order to assure the plan is financially viable. He added the plan on the table is "without question the best we can and will offer."

The Commission then reached consensus that they did not have sufficient time within the project timeline to offer new and meaningful input on standards 2-4 to the Planning Board. Some expressed that those standards are still irrelevant, given their position on the issue. They agreed to re-affirm their original position calling for a full vegetative restoration of the 75-foot buffer.

Chair Kritzer then drafted a letter to the Planning Board to this effect. The letter acknowledged while CDA had made revisions to the Plan in the direction of their earlier recommendation, the Commission still affirms its position calling for a full environmental restoration.

The letter also included language encouraging the Planning Board to ensure compliance with Standard 3 for Conditional Use within a WCOD.

***Mr. Welsh MOVED to approve the letter to the Planning Board re-affirming the Commission's earlier position on the Mill Plaza Development as drafted; SECONDED by Ms. Fuerst, APPROVED unanimously, 7-0, Motion carries.***

XI. Mill Pond Dam. Revisiting the earlier recommendation from the Conservation Commission about the Mill Pond Dam.

The Chair noted the Commission previously recommended removal of the Mill Pond Dam and Town Council subsequently voted to remove it. Now a citizen petition has moved forward to bring dam removal to a referendum vote.

The Commission is considering tonight if they should issue a public education position statement about the environmental impact of dam removal prior to the vote in March. Chair Kritzer said some in the public may not be fully aware of the inter-connectedness of this waterway to College Brook and ultimately the Lower Oyster River.



There was discussion about if it's appropriate for the Commission to get involved in a public vote. Ms. Fuerst, who has stated she opposes removal of the dam, said the Commission could advocate for fertilizer reduction or water conservation instead.

Chair Kritzer said this is an opportunity for a more holistic approach on stewardship of the entire watershed, which can sometimes get lost when issues are looked at piecemeal.

There was brief discussion about some homeowners who might be adversely affected by removal of the Dam, but Ms. Hale said the role of the Commission is not to advocate for property owners but for the environment. She believes it would be worthwhile to provide the public with more information about watershed restoration.

Mr. Welsh read verbatim from the Commission's mission which states the Commission is charged with "protecting the natural resources of the town." Mr. Rous concurred that issuing an educational statement about dam removal and its role in protecting a larger watershed is consistent with the Commission's mission.

The Chair polled members and asked if any of them would change their vote on dam removal from a year ago and they all replied no.

Due to the late hour, consensus was reached to call a special meeting of the Conservation Commission for February 14th to draft a public statement on removal of the dam. Any early drafts of the statement (sent via email) will also be shared on the Town website so the public will have access prior to the special meeting.

***Mr. Welsh MOVED to adjourn the meeting at 10:29 p.m.; SECONDED by Ms. Fuerst, APPROVED unanimously, 6-0, Motion carries. (Ms. Robbins was not present for the final vote.)***

Respectfully submitted,  
Lucie Bryar, Minute Taker  
Durham Conservation Commission

***Note: These written minutes are intended only 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.***