

*These minutes were approved at the September 19, 2022 meeting.*

**DURHAM CONSERVATION COMMISSION**  
**Monday, April 25, 2022**  
**DURHAM TOWN HALL, COUNCIL CHAMBERS**  
**7:00 p.m.**

**MEMBERS PRESENT:** Jake Kritzer (Chair), John Nachilly (Vice-Chair),  
Coleen Fuerst, Walter Rous, Neil Slepian, Carden Welsh,  
Alternate Erin Hardy Hale and Alternate Roanne Robbins

**MEMBERS ABSENT:** James Bubar (Planning Board Rep)

**ALSO PRESENT:** Town Planner Michael Behrendt, Land Stewardship  
Coordinator Tom Brightman and Minute Taker Lucie Bryar

**I. Call to Order**

Chair Jake Kritzer called the meeting to order at 7:02 p.m.

**II. Land Acknowledgement Statement**

The Chair read the Town of Durham's Land, Water and Life Acknowledgement Statement.

**III. Roll Call**

Neil Slepian was welcomed as a new member to the Commission and roll call attendance was taken.

**IV. Approval of Agenda**

*Mr. Welsh MOVED to approve the agenda as submitted; SECONDED by Ms. Fuerst, APPROVED unanimously, 8-0, Motion carries.*

**V. Public Comments:** The Chair invited comments for items not on the agenda and there were none.

**VI. Recognition of Coleen Fuerst and Walter Rous for their service to the Commission.**

This evening is Coleen's and Walter's final meeting with the Commission, since both have opted not to seek a new term. Chair Kritzer thanked them for their years of service,

presented each with a certificate of appreciation and noted both have offered many valuable comments, insights and a lot of time serving the Town. Members joined in thanking them.

**VII. Review of Minutes: January 24, February 28, and March 28.**

*Mr. Welsh said he submitted a few small typos to town staff for correction and MOVED to approve all three sets of minutes as corrected, SECONDED by Mr. Nachilly, APPROVED unanimously, 8-0, Motion carries.*

**VIII. 52 Oyster River Road – Regrading of Site.** Permitted Use B for regrading of site for new single-family house including removal of vegetation in Shoreland Protection Overlay District (SPOD). Ted and Christina Baker, property owners. Alex Ross, Ross Engineering, engineer. Stephen Meade, contractor. Map 6, Lot 7-4. Residence A Zone

Chair Kritzer noted the Commission did a site walk on April 16th and saw the steep and eroded gully proposed to be filled. There was consensus that the extent of fill is required due to the magnitude of the erosion.

*After brief discussion, Mr. Rous MOVED that the application meets all three criteria for Permitted Use B in a Shoreland Protection Overlay District, SECONDED by Ms. Fuerst, APPROVED unanimously, 8-0, Motion carries.*

**IX. Durham Point Road – New Driveway.** Conditional Use Application for driveway to cross wetland buffer for new single-family house. Located catty corner to the Durham Transfer Station. The lot shares a driveway with 101 Durham Point Road. Karon Walker and Peter Howd, property owners. Scott Boudreau, surveyor. Map 11, Lot 38-2. Residence Coastal Zone.

Chair Kritzer noted the Commission did a site walk on April 16th and this is a continued discussion from last month. The applicant submitted revised plans on April 11th.

Applicant Peter Howd said Emergency Services required an increase of the driveway from 8 feet to 12 feet wide, which will extend two feet into the buffer on each side. Also he met with NH Audubon regarding an active eagle's nest on the property. No activity will be undertaken within 600 feet of the nest until the birds have fledged.

Ms. Hale asked for a brief recap of the site walk since she was unable to attend. Mr. Welsh commented there appears to be another location on the property that is "reasonably practical," [for a driveway] although it depends how you define the term. It would be further from the river and wouldn't impact the wetlands.

Mr. Howd responded that siting the driveway in that area would require crossing a stream to get to the house. He reminded the Commission they are evaluating the driveway, not the proposed house.

Mr. Howd questioned [Planning Board member] Emily Friedrichs videotaping of the property after the site walk and called it a violation of procedure. In his view, it constitutes discussion of the project among Board members outside of a public meeting.

Town Planner Michael Behrendt said Ms. Friedrichs asked for and was given permission to videotape. No discussion of the project took place outside of the official site walk. Following procedure, he shared the video with board and commission members via email.

Chair Kritzer said Commission members should be clear that while the use of the driveway is to access the house, the Commission is not being asked to comment on the location of the house, which is outside the WCOD and not within their purview. They are only commenting on the impact of the driveway in the WCOD.

Mr. Welsh asked the applicant how runoff will be controlled from the south side of the driveway, which is closest to the wetlands. Surveyor Scott Boudreau said erosion control measures will be taken. A slope will be used until natural grade is reached.

There were questions about water hitting the impervious driveway stronger and faster before going into the wetlands. Mr. Boudreau said the driveway will be crowned with water going to a ditch and then a culvert.

Mr. Rous shared his interpretation of the site plans, showing where he believes the water will flow. There was brief discussion about adding a swale, berm (or something similar) to deflect the water on the upland side.

**The Chair then opened Public Comment, summarized here:**

**Bob McNitt** is an abutter to the west who would share the driveway with the applicant. He questions the proposed use. He believes the intent of the ordinance is to keep people from requesting a Conditional Use Permit when there's an alternative. He encouraged the Commission to read the ordinance restrictively.

In his view, there is an alternative location [for the driveway] on the upland side of the property. He referenced a detailed email he sent to members earlier today and said the applicant led the Planning Board and Conservation Commission astray in his original presentation stating there was a deed restriction to use the existing driveway.

**Attorney Chris Wyskiel**, representing Mr. McNitt, came forward. He noted on the original subdivision plans (1981 and 1986), there were Findings of Fact and Conditions of Approval. The Findings of Fact indicated both lots would use the common driveway. After conducting a title search for both lots, however, he noted there are no deed restrictions requiring that to happen.

The Chair noted the Commission isn't looking at this as a deed restriction. It's understood the applicants want to build their house to take advantage of a water view.

Discussion followed between the applicant, his Attorney, the abutter and Commission members, with topics including:

- Is a driveway legally part of a house?
- What is the intended use for the driveway?
- What is the definition of "reasonably practical?"
- What is the intention of the CUP ordinance?

Mr. McNitt said in his view the applicant didn't do due diligence before purchasing the land. He maintained the Commission would be "creating a horrible precedent" if they allow the applicant to decide to build near the best view when the original ordinance doesn't address this (or other similar factors) and in fact, precludes it.

Mr. Rous said the ordinance allows for distinctions to be made by the Commission. In the case of the Gerrish Drive subdivision, for example, the Commission determined the buildable area couldn't be accessed without directly crossing a wetland. He sees the current application as much less of an infraction.

Chair Kritzer noted there are legitimate questions in this case about intended use but he does not believe these issues need to be resolved by the Commission.

Resident **Katie Payne, 51 Durham Point Road**, came forward to say she grew up horseback riding on the property and is very familiar with it. In her view, there are many places on the site to build that would not impact the WCOD.

APPROVAL OF 4 CRITERIA with comments to the Planning Board:

*After further discussion, Mr. Welsh **MOVED to accept the proposal with comments as described below; SECONDED by Ms. Fuerst, APPROVED unanimously 6-0, Motion Carries.***

[Note: Mr. Behrendt noted that alternates Erin Hale and Roanne Robbins should not be voting this evening since a quorum of members is present and an alternate can't be appointed for Planning Board Rep James Bubar.]

1.) There is no alternative location on the parcel that is outside the WCOD that is reasonably practical for the proposed use. Conservation Commission comment: *“Proposed use” in this case is defined as construction of a driveway to access the northern end of the site to reach the proposed location for the single-family residence. The Commission is not commenting on the merits of the proposed house site.*

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. Conservation Commission comment: *Recommend to the Planning Board that the driveway must be designed to prevent stormwater from flashing into the wetland, as appropriate, using best management practices.*

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

**X. 22 Cedar Point Road – Replacement of Dock.** Nonbinding comments to New Hampshire Division of Environmental Services about proposal to replace an existing dock at 22 Cedar Point Road. Aaron and Jill Grueter, property owners. Steven Riker, wetland scientist, Ambit Engineering. Map 12, Lot 1-19. Residence Coastal Zone.

Engineer Steve Riker came forward to represent the applicants. NH Division of Environmental Services is seeking non-binding comments. This is a major permit application with NHDHR and U.S. Fish and Wildlife Services involved as well.

Mr. Riker showed site plans and gave details about the proposed dock replacement for the single-family residence. The existing dock will be removed and a new structure built.

He described the construction process, which takes place during low tide and is done from the waterside using a barge and crane. Portions of the dock are constructed off-site. The dock will be built on piles which won't create sedimentation or erosion. Construction is only permitted between November 15 to March 15, to protect spawning sturgeon in the river.

Mr. Welsh questioned the “mammoth” size of the new dock and said it isn't truly a replacement but a new build. He asked if it would interfere with navigation issues on the river.

Mr. Riker said the length of the dock is allowed by DES as long as it's deemed necessary to get to the water. The proposal has been submitted to the harbormaster for comments on navigation.

Ms. Hale asked why the construction would involve pilings and not floats and Mr. Riker said DES no longer approves floats. Docks must have a fixed pier with sufficient height to allow sunlight underneath.

With no further discussion, the Commission agreed to submit a letter to NH DES indicating they reviewed the application and have no comments.

**XI. 190 Piscataqua Road – Installation of Wells.** Permitted Use B application for installation of a drinking well and eight geothermal wells within the Wetland Conservation Overlay District. Tom and Erin Daly, property owners. Eric Buck, Terrain Planning & Design. Map 12, Lot 7. Residence Coastal District.

Eric Buck, Landscape Architect, came forward to present the project. The applicant is seeking a permit for installation of a new potable drinking well and eight geothermal wells to service the HVAC for the new residence to be constructed.

Mr. Buck displayed site maps and described the lot as fairly unique since its bound on the southern and eastern sides by the Piscataqua River plus there's a large wetland to the north of the buildable area. The existing well is located in the wetland far north of the existing house and its condition is unknown.

Applicants propose a new potable drinking water well just north of the new house in an area of the buffer slated for re-vegetation. This location is more accessible and would require shorter lines. Eight geo-thermal wells are proposed just to the south, with three under the driveway and five to the north of the driveway in the re-vegetation area.

Commission members asked a number of questions about the geothermal system, including if geothermal wells are a permitted use. Mr. Behrendt replied while the ordinance doesn't specify geothermal wells, it allows for private water supply wells.

Mr. Welsh wanted to know why eight geothermal wells are proposed and Mr. Buck replied the mechanical engineer for the project specified that number due to the capacity of the house.

Homeowner Tom Daly came forward to explain features of the geothermal system and answer questions from the Commission.

With no further discussion, members reviewed the three criteria for Permitted Use B:

- 1.) Appropriate erosion control measures will be used. *Mr. Buck noted that an elaborate erosion control plan was submitted as part of the Conditional Use Application.*
- 2.) Any disturbed area will be restored. *Mr. Buck said there will be large native re-vegetation and removal of invasive species taking place just north of the driveway.*
- 3) Activity will be conducted in a manner that minimizes any impact on the wetland. *The Commission finds this not applicable since the wetland will not be impacted by the wells.*

***Mr. Rous MOVED to accept the application as submitted since the Commission finds the three criteria for Permitted Use have been sufficiently met; SECONDED by Mr. Welsh, APPROVED unanimously, 6-0, Motion carries.***

**XII. Land Stewardship.** Tom Brightman, Land Stewardship Coordinator. Funding request for \$500 for volunteer supplies and request to sponsor program on invasive species management.

Mr. Brightman said in 2020, the Commission approved \$500 for volunteer supplies like work gloves, water, and snacks etc. Those funds are now depleted and he is requesting a motion to authorize \$500 from the Conservation Fund for future volunteer workdays.

***Mr. Rous MOVED to appropriate \$500 to replenish the Land Stewardship volunteer supply fund; SECONDED by Mr. Welsh, APPROVED unanimously, 6-0, Motion carries.***

Mr. Brightman also said he's been working with individuals from UNH Extension about sponsoring an "information trading" session on invasive species. The event would be open to members of conservation commissions from surrounding towns. Thompson Forest is the proposed field location since a lot of invasive species work has been done there.

It's being seen as an interactive session among members so everyone can exchange information. It would not be a conservation meeting, as he sees it. He's seeking comments and feedback from the Commission.

Chair Kritzer asked about any approvals needed for an event on town property and/or whether it would constitute a Conservation meeting. Mr. Behrendt said he does not believe it would be treated as an official meeting since official business would not be discussed.

There was consensus that the session would be a good idea and Mr. Brightman should continue to pursue it.

**XIII. UNH and Town Greenways.** Discussion with Stephen Eisenhaure, UNH Land Use Coordinator, about ways to connect UNH and Town greenways.

Mr. Nachilly had shared maps showing conservation areas and the potential for interconnecting areas to create Greenways. He is inviting discussion about interconnecting town-owned parcels to those owned by UNH and also surrounding towns. Some reasons for doing so include:

- Allow visitors options other than driving and parking at overcrowded sites.
- Enhance conservation-minded focus by putting emphasis on pedestrian activities.
- Enhance connections from the center of Town.
- Provide more off-road recreation opportunities.

Mr. Nachilly developed a list of priorities, as he sees it, with connection from Durham to Madbury being at the top of the list. Mr. Eisenhaure has been invited to provide perspective and feedback regarding properties owned by UNH.

Mr. Eisenhaure is a licensed NH forester who manages properties for the University throughout the State. He said the University values recreation, but also needs dedicated space for research and education. Multiple uses need to be managed at each site.

He described the organizational structure for land management at UNH. Currently a Woodlands Committee (comprised mainly of natural resource faculty) oversees his work. The Committee and ultimately Mr. Eisenhaure report to the Dean of COLSA who reviews and makes final decisions. There is a separate governing body for acquisition and disposal of land.

Chair Kritzer asked if a trail or Greenways plan would be decided on a parcel-by-parcel basis or if the University would be more interested in seeing a Master Greenways Plan from the Town.

Mr. Eisenhaure used a potential trail under discussion near the Horticultural Farm as an example. In that instance, the trail would need review by Farm Services, the Equestrian Program and the Agricultural Experimentation Station. Putting in a trail where equestrian events take place would be difficult.

Discussion turned to College Woods. A survey last year showed there are 75K visits annually. Mr. Eisenhaure noted that adding trails invites more impact on the land. In some cases, those high numbers wouldn't be desirable.



He mentioned squash and watermelon breeding/cultivation taking place at Kingman Farm and said visitors allowing their dogs to run through the plots necessitated a fence being erected. A fence was also put up at the Horticultural Farm to deter deer and visiting dogs.

He also spoke of snow research underway at Thompson Forest. UNH is flying a UAV to see if they can judge snow depth, but researchers have to race out to the fields very early after snowfall to beat snowshoers and cross-country skiers.

Chair Kritzer asked Mr. Eisenhaure if he knows of any UNH properties that have potential for further connectivity. Mr. Eisenhaure said in his opinion the properties are saturated with trails. He would like to see better communication about land management between UNH and the Conservation Commission.

He would like to discourage repeated recreational use in some areas, to allow for education and research to take place undisturbed.

To wrap up the discussion, it was decided Conservation Commission representatives could be invited to attend a meeting of the Woodlands Committee at some point.

Mr. Welsh said the Commission should bring forth a specific proposal to the Committee rather than discussing the greenway concept in general.

The Chair thanked Mr. Eisenhaure for his input and time.

### **XIII. Other Business**

As he prepares to leave the Commission, Mr. Rous shared an excerpt from the book *Arctic Dreams* by Barry Lopez. One key point was that while boards and commissions make decisions about land use, the land retains an identity of its own and has its own wisdom.

### **XIV. Adjournment**

***Ms. Fuerst MOVED to adjourn at 9:59 p.m.; SECONDED by Mr. Rous, APPROVED unanimously, Motion carries.***

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.***