

These minutes were approved at the March 25, 2024 meeting.

DURHAM CONSERVATION COMMISSION
Monday, January 22, 2024
DURHAM TOWN HALL, COUNCIL CHAMBERS
7:00 p.m.

MEMBERS PRESENT: Jake Kritzer (Chair); Erin Hardie Hale (Vice Chair), Richard Kelley (Planning Board Rep); Nick Lanzer (Alternate); John Nachilly, Neil Slepian; Dwight Trueblood (Alternate) and Carden Welsh (Town Council Rep).

MEMBERS ABSENT: Roanne Robbins

ALSO PRESENT: Michael Behrendt, Durham Town Planner, and Sara Callaghan, Land Stewardship Coordinator

I. Call to Order

Chair Jake Kritzer called the meeting to order at 7:01 p.m.

II. Land Acknowledgement Statement

The Chair read the Land Acknowledgement statement as adopted by the Town's Human Rights Commission.

III. Roll Call and Seating of Alternates

The Chair seated Alternate Nick Lanzer as a voting member this evening.

IV. Approval of Agenda

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

V. Public Comments: There were none this evening.

VI. Land Stewardship Update. Sara Callaghan, Land Stewardship Coordinator.

Ms. Callaghan reported on several initiatives:

- Conservation Easement Monitoring: the town has seven properties with easements including some from private landowners, NH Fish & Game, and the Society for the Protection of NH Forests. A Capstone conservation easement is held by a

corporation, which has a trust fund. Ellen Snyder was paid from the fund to monitor the property and submit a report.

- Ms. Callaghan met with all private landowners to discuss the terms of their easements.
- The Capstone easement is on a development with student housing. There's an ongoing issue with trash and a teepee that was built – both will be addressed with the property owner in the next month.
- A well-attended trail stewards' workshop was held in November, with 20 volunteers participating.
- She worked with Steve Letterman (the town's GIS specialist) to develop a couple of apps so that trail stewards can submit reports to her. She shared one app on the screen and briefly walked through how it works.

Mr. Welsh shared some observations from a visit to a trail across from the ice-skating arena. Signage needs to be updated – in particular to direct people to the trail. Ms. Callaghan said DPW has budgeted for new signs this year. Town Council has also approved surveys for some town properties this year, Jackson's Landing being one.

Ms. Callaghan said she's had recent discussions with Town Manager Todd Selig and Ann Welsh (Chair of the Land Stewardship Sub-Committee) about her larger goals and priorities for the upcoming year.

Commission members expressed interest in learning more about the goals. It was decided to postpone the discussion to the February meeting so more time can be allotted.

VII. 18 Deer Meadow Road – Tidal Dock. Comments to New Hampshire Division of Environmental Services for application for reconfiguration of existing dock. William Beckett Trust/Virginia Beckett, Property Owner. Sam Hayden, Project Scientist, Haley Ward. Map 215, Lot 49. Residence Coastal District.

Project Scientist Sam Hayden of Haley Ward came forward to present information about the reconfiguration of an existing dock, which has sustained damage to a support piling. It's the same one that was replaced a few years ago after being damaged by an ice floe.

The property owners are now seeking to reconfigure the dock by removing the pilings and replacing them with helical moorings and chains that would allow the dock to raise and lower.

Commission members briefly asked questions about the configuration of the project, the size of the float and the driving of the piling, etc. and reached consensus that they have no environmental concerns about the project.

Action Item: Mr. Behrendt will send an email to NH DES to let them know the Conservation Commission reviewed the project and they have no concerns.

VIII. 561 Bay Road – Conditional Use. Conditional use for retaining walls and landscaping within the Wetland Conservation Overlay District. The existing house will be demolished and a new house constructed. David and Karen Della Penta, property owners. Ron Beal and Eric Weinrieb, Altus Engineering. Robbi Woodburn, Landscape Architect. Ben Auger and Christian Cote, Auger Building Company. Map 239, Lot 9. Residence Coastal District.

Landscape Architect Robbi Woodburn is here this evening along with Ron Beal from Altus Engineering and Christian Cote of Auger Building Company. Ms. Woodburn presented project plans showing the proposed 5,400-square-foot house, as well as landscaping and the wetlands buffer area that would be disturbed during construction.

There's an existing conservation easement on a portion of the property. The proposal calls for an existing stone wall to be rebuilt at the same two-foot height and a new stone wall to be added above it.

The plan includes a new home with a garage, a patio at house level, a lower-level walkout and a new septic system. Also, a new porous driveway; front and side walkways and retaining walls. The existing lawn will be replaced with native plantings and some lawn walkways.

Vegetation/Plantings/Mowed Area:

Ms. Woodburn showed a landscape concept plan and said everything in the 100-foot buffer will be native; outside the buffer, plants will be chosen judiciously. Thirty new trees will be added to the property. The goal is to achieve 75 percent native plants.

Mr. Welsh asked why non-native plants would be considered and Ms. Woodburn replied that most homeowners desire some ornamentals that fall into this category.

Mr. Nachilly asked about the new proposed stairs, which would allow access to a lawn and then the wetlands. Google maps shows a mowed area, including a path that goes to the Bay. He asked how occupants would be directed not to impede the wetlands.

Ms. Woodburn replied one area is unencumbered by the conservation easement. Mowing is allowed in the area encumbered by the easement, including in the wetlands portion. The conservation land has been mowed at least once annually for years to control invasives. She believes trails in the wetlands belong to the homeowners association.

Project Engineer Ron Beal came forward to join Ms. Woodburn at the podium. He said part of the reason for mowing is to maintain the view to the water.

Slope/Retaining Wall/Septic

Ms. Woodburn noted there's an 11-foot drop on the property between the steps below the patio and the existing grade. She's proposing to add another wall and stairs to facilitate safe access for the homeowners and to help stabilize the slope. During discussion she maintained the new plan is better from a conservation perspective because it will prevent erosion.

Re: the septic system: Ms. Woodburn said it's outside of the buffer and is an improvement over the existing system.

Other Discussion/Site Walk

Mr. Kelley noted the 1.5-acre lot is non-conforming in size and a much larger structure is being proposed. His concern is the impact area is really one of choice, not necessity.

A few Commission members noted the plan pushes right up against the setbacks. Ms. Woodburn said even if the proposed home were smaller, the slope would still need to be stabilized. She noted the house is in compliance and within allowable setbacks.

There was lengthy back and forth discussion about doing a site walk, but consensus was reached that it wasn't necessary. Mr. Kelley expressed his general preference for a site walk, then added he will likely take part in one with the Planning Board or on his own with permission of the homeowner.

Mr. Welsh expressed concern about the ongoing degradation of the Bay and asked Ms. Woodburn what could be done better to address it. She replied the plan calls for an improved septic system, less lawn; and protection of the slope, with Mr. Beals adding that fertilization will be minimized.

Mr. Behrendt clarified the ordinance doesn't allow fertilization in the buffer.

Ms. Woodburn then proposed altering the mowing pattern, where the "yellow area" [the wetlands] shown on the plan would be mowed on the same limited schedule (twice annually) as the conservation easement area.

Commission members then reviewed the 4 criteria for Conditional Use, with written responses provided by the applicant. Note: new wording was recently adopted for the criteria. The applicant's responses were to the prior wording.

Criteria #1:

(In brief: There is no alternative design and location on the parcel that would have less adverse impact on the WCOD.) Commissioners agreed this was met.

Criteria#2: (Project minimizes soil disturbance and adverse impact to water quality to extent possible.) The Commission added a comment to reinforce that pesticides and fertilizers are not allowed in the buffer.

Criteria #3:

(Mitigation and restoration will allow the site to perform ecological functions.) The Commission added the following condition: The area of the lot that is currently wetlands will only be mowed on the same pattern as the conservation easement – no more than twice a year.

Criteria #4:

(Project will not impact rare known species. Applicant isn't required to submit documentation.) Criteria has been met.

Mr. Welsh MOVED to approve the proposal for 561 Bay Road as discussed; Seconded by Mr. Slepian, APPROVED 6-1-0, Motion carries.

Voting AYE: Mr. Kritzer, Ms. Hale, Mr. Lanzer, Mr. Nachilly, Mr. Slepian, Mr. Welsh.
Voting NAY: Mr. Kelley

IX. **Langley Conservation Easement.** Request for letter of support from the Conservation Commission for a Southeast Land Trust of NH conservation easement project. An approximately 44-1/2 acre portion of properties consisting of two lots on Langley Road located at the confluence of the Oyster River and Little Bay and along Durham Point Road. Map 218, Lot 35 and Lot 37. Langley Family Trust, property owner. Duane Hyde, Land Conservation Director, Southeast Land Trust of New Hampshire.

Mr. Hyde is here seeking a letter of support from the Commission to help with grant funding for the Langley Conservation Easement project. He does not anticipate needing money from the Town of Durham.

He described the geographical parameters of the project, which is made up of two segments: a 19-acre portion on Durham Point and about 26 acres along Durham Point Road.

The property extends down to the mouth of the Oyster River and Little Bay. Another portion also includes frontage on Langley Road (across from what is commonly referred to as Langley Bison Farm) all the way to Durham Point Road.

The property has very good conservation context (including 1,000-plus acres of adjacent conservation parcels). Durham Point Road is designated a scenic road. The parcel offers a mix of forest and field, currently being hayed by a local farmer.

Two areas, about five acres each, are excluded from the easement: the Langley Homestead (house, barn, out building, etc.) and a potential future house lot.

The frontage on the Bay and mouth of Oyster River is about 2,120 feet. Property is a nice wooded shoreline across from Wagon Hill, where Town has spent considerable time and money working on a living shoreline. Mr. Hyde said, “Here we have a natural living shoreline that’s in very good condition.”

He enumerated additional goals/features of the project:

- Will help protect water quality of the Bay;
- With one meter sea level rise, a net increase of .8-acre salt marsh is predicted on the property. The Nature Conservancy has ranked the entire property average or better on climate resiliency.
- It’s a rocky, intertidal shoreline -- valuable for crustaceans, periwinkles, mollusks, which are important for birds and fish.
- Property has been continuously farmed for 350 years. About one-third is national prime agricultural soil; another third is prime ag of local interest.
- There are three wetland pockets – two confirmed vernal pools.
- Documented occurrence of rare turtle species on property and in focus area for another rare turtle.
- It’s part of a proposed historic district in town. Langley Road was once part of the original ferry across Little Bay; the first way to get across the Bay from Fox Point.

Mr. Behrendt clarified the property isn’t part of a proposed historic district but was part of an area surveyed by Eversource as part of mitigation for a project. A large portion of Durham Point Road is eligible for the National Historic Register, but there’s no proposal to go further.

Giving more historical background, Mr. Hyde said there’s a plaque (installed by fifth graders at Oyster River) indicating over one dozen victims of the Oyster River Raid/Massacre are buried on the property.

He then identified two large funding sources for the Langley Conservation project:

- 1.) The Natural Resources Conservation Services (NRCS) Regional Conservation Partnership Program – which will fund 50 percent of the value of the property.

2.) NOAA – National Oceanographic and Atmospheric Administration provides funds for the Natural Estuarine Research Reserve System; the Langley property is within the System. Funding has been made available to NOAA through the Bi-Partisan Infrastructure Bill.

The Conservation easement will be co-held by the Southeast Land Trust (SELT) and Strafford County Conservation District because NOAA's funding requires a government entity to hold or co-hold the easement.

Mr. Hyde then shared photos of the property and Commission members asked several questions about forest restoration; the impact of potential subdivision of the property; the parameters of the easement if haying is no longer done, etc.

Mr. Hyde replied that easements are not generally prescriptive in terms of requiring a landowner to do something specific on a property. The Management Plan for the property would address many of these questions.

Mr. Welsh asked what would happen if the landowner decided to do more farming, possibly requiring the use of more pesticides and nitrogen. Mr. Hyde said NOAA has advised that active agricultural use (any tillage) be limited to about 15 percent of the land at one time.

In answer to a question about public access, Mr. Hyde said the landowner wants to retain hunting rights, which they manage on the property. Neither of the funding sources restricts the landowner from continuing to do so. As for public pedestrian access, NOAA requires the land to be open but doesn't require any specific improvements.

In his experience, without a trail system it's unlikely there will be heavy use. The landowner isn't required to allow trails. If they choose to do so at some point, SELT would review the proposal.

In answer to a question, Mr. Hyde said the total cost for the project is \$2.4 million. NRCS funds would pay for half of the purchase price and NOAA would pay for half of the purchase price plus some project costs.

Commission members spoke strongly in favor of the project and were supportive of writing a letter for funding.

Mr. Nachilly MOVED that the Commission write a letter in support of the project; SECONDED by Mr. Lanzer; APPROVED unanimously, 7-0, Motion carries.

X. 2024 Conservation Commission Schedule.

Commission members reviewed the proposed meeting schedule. Since the May meeting would fall on Memorial Day, Mr. Lanzer proposed June 10th for a combined May/June meeting. Members agreed this was a good idea.

XI. Review of minutes from October 23, 2023.

Motion was first made to accept the minutes as submitted but then Mr. Welsh asked for a correction on page 6, line 220:

He asked for it to be changed to: “Mr. Welsh said changes were made to the Housing Task Force Initiative to reflect more environmental concerns.” (Remove reference to Strafford Regional Planning Commission).

The motion was then re-stated:

Mr. Lanzer MOVED to accept the minutes as amended; SECONDED by Ms. Hale, APPROVED, 6-0-1, with Mr. Nachilly abstaining because he wasn't present at the meeting, Motion carries.

XII. Other Business – There was none.

XIII. Roundtable

Mr. Welsh reported Town Council passed the budget with no change to the tax rate. They awarded a contract for design of the Oyster River fish ladder to VHB. When the current dam is removed, a new fish ladder will be constructed on the UNH transport dam.

As a reminder, Mr. Kritzer said he's intending to step down after his term ends in April. Mr. Welsh added he won't be continuing on Town Council or on the Conservation Commission. He's planning to take one year off.

With no further business, Mr. Kelley made a motion to adjourn at 9:35 p.m.; SECONDED by Mr. Welsh, APPROVED unanimously, 7-0, Motion carries.

Respectfully submitted,
Lucie Bryar, Minute Taker
Durham Conservation Commission

For more complete information, please refer to the DCAT22 On Demand videotape of the entire proceedings on the town of Durham website.