

[D R A F T]

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

1 **I. Call to Order**

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

3

4 **II. Land Acknowledgement Statement**

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

7

8 **III. Roll Call and Seating of Alternates**

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

10

11 **IV. Approval of Agenda**

12

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

15

16 **V. Public Comments:** There were none this evening.

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

18 Ms. Callaghan reported on several initiatives:

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

- 22 corporation, which has a trust fund. Ellen Snyder was paid from the fund to
23 monitor the property and submit a report.
- 24 • Ms. Callaghan met with all private landowners to discuss the terms of their
25 easements.
 - 26 • The Capstone easement is on a development with student housing. There's an
27 ongoing issue with trash and a teepee that was built – both will be addressed with
28 the property owner in the next month.
 - 29 • A well-attended trail stewards' workshop was held in November, with 20
30 volunteers participating.
 - 31 • She worked with Steve Letterman (the town's GIS specialist) to develop a couple
32 of apps so that trail stewards can submit reports to her. She shared one app on the
33 screen and briefly walked through how it works.

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

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

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

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

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

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

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

56 **Action Item:** Mr. Behrendt will send an email to NH DES to let them know the
57 Conservation Commission reviewed the project and they have no concerns.
58

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

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

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

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

76 **Vegetation/Plantings/Mowed Area:**

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

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

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

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

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

91

92 Slope/Retaining Wall/Septic

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

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

100

101 Other Discussion/Site Walk

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

104

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

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

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

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

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

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

123 Criteria #1:

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

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

129

130 Criteria #3:

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

135

136 Criteria #4:

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

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

141

142 ***Voting AYE: Mr. Kritzer, Ms. Hale, Mr. Lanzer, Mr. Nachilly, Mr. Slepian, Mr. Welsh.***

143 ***Voting NAY: Mr. Kelley***

144

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

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

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

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

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

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

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

169 He enumerated additional goals/features of the project:

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

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

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

190 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.

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

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

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

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

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

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

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

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

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

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

223 **X. 2024 Conservation Commission Schedule.**

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

227 **XI. Review of minutes from October 23, 2023.**

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

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

233

234 The motion was then re-stated:

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

238 **XII. Other Business – There was none.**

239 **XIII. Roundtable**

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

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

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

249

250 Respectfully submitted,

251 Lucie Bryar, Minute Taker

252 Durham Conservation Commission

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