

*These minutes were approved at the June 10, 2024 meeting.*

**DURHAM CONSERVATION COMMISSION**  
**Monday, March 25, 2024**  
**DURHAM TOWN HALL, COUNCIL CHAMBERS**  
**7:00 p.m.**

**MEMBERS PRESENT:** Jake Kritzer (Chair); Erin Hardie Hale (Vice Chair); Wayne Burton (Town Council Rep); Richard Kelley (Planning Board Rep); Nick Lanzer (Alternate); Roanne Robbins; Neil Slepian; and Dwight Trueblood (Alternate);

**MEMBERS ABSENT:** John Nachilly

**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 7:00 p.m.

**II. Land Acknowledgement Statement**

The Chair read the statement as adopted by the town's Human Rights Commission.

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

Roll call attendance was taken and the Chair welcomed Wayne Burton as the new Town Council rep, replacing Carden Welsh who served for several years. He invited Mr. Burton to introduce himself.

Mr. Burton said he's been a town resident for at least 60 years and has served as steward at Wagon Hill since the property was purchased by the town many years ago. He looks forward to working with Commission members.

The Chair then seated Dwight Trueblood as a voting member in John Nachilly's absence.

**IV. Approval of Agenda**

***Mr. Kelley MOVED to approve the agenda as submitted; SECONDED by Mr. Trueblood; APPROVED unanimously, 7-0, Motion carries.*** (This occurred after

Ms. Callaghan had started her land stewardship report and it was pointed out the agenda hadn't been approved.)

**V. Public Comments:** There were none at this time.

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

Ms. Callaghan reported she recently led a site walk at Long Marsh Preserve for the Land Stewardship Sub-Committee to discuss structures in need of repair and replacement.

She's coordinating volunteer workdays for next month with several different groups (ROTC/fraternities, etc.) and discussing a Milne workday with Diana Carroll.

Funding Request

Ms. Callaghan has a funding request for invasive species management at Doe Farm this evening. As background, she said for the last several years the Trust for Trustees has funded invasive species management of buckthorn at Doe Farm. Her memo to the Commission explained why the Trust has been involved.

Invasive management is important as Doe Farm is an active tree farm, with the most recent harvest in 2021. Harvesting opens up the canopy, allowing buckthorn to come up in the understory.

Last year, the town contracted with Rockingham County Conservation District (RCCD) to address some large buckthorn stumps. After cutting, new growth is best addressed with foliar spray.

Chair Kritzer read Ms. Callaghan's funding proposal: to authorize the expenditure of up to \$3500 from the Conservation Commission Fund for the management of invasive species at Doe Farm.

In answer to questions from Mr. Slepian and others about the proposed herbicide, Ms. Callaghan said the treatment area is away from trails. AquaNeat herbicide is approved by the state for use near water or aquatic systems.

Nick Lanza briefly explained how the herbicide works and commented that it appears RCCD is going through all the right steps and will likely close nearby trails during spraying. They're seeking special permitting from the state, which Ms. Callaghan said is being paid for by the Trust for the Trustees.

The state may reimburse the town for some materials. Chair Kritzer said they should keep an eye on how much time is expended trying to get reimbursed “a couple hundred dollars from the state.”

There was discussion about a long-term approach to timber harvesting at Doe Farm and briefly, the long-term management of invasives. Ms. Callaghan said she’s currently working with Charlie Moreno on updating the forest management plan for the property.

***Mr. Slepian MOVED to approve the expenditure of up to \$3500 at Doe Farm as requested; SECONDED by Ms. Hale; APPROVED unanimously, 7-0, Motion carries.***

In other business, Mr. Callaghan said she would like to do more education and outreach on land stewardship and connect more people to conservation lands. She proposed the formation of a sub-committee or working group. It could include members of Parks and Rec, Land Stewardship and at-large community members. The focus would be on creating and supporting programs.

After brief discussion, Mr. Kelley proposed that she come back to the Commission next month with a written proposal outlining more specific tasks and the charge of the sub-committee. There were several quick suggestions from the Commission including: involve the Oyster River School District and make it multi-generational to include older residents of Riverwoods as well.

**Public Comment:** Kara Hatafsky came forward to ask if there would be room for Citizen Science projects and Ms. Callaghan replied yes. She’s looked at engaging the community in the NH Butterfly Monitoring Network and other projects.

**VII. 12 Oyster River Road – Conditional Use.** Conditional use application to install deck, patio, steps, retaining wall, and landscaping within the Shoreland Protection Overlay District. Katherine Cook/New Heritage Designs, property owner. Ben Groves, Rye Beach Landscaping, contractor. Map 109, Lot 80. Residence A District.

Applicant Katherine Cook came forward to explain her request to install a retaining wall and steps to address major erosion issues in her side yard as well as a very steep slope to the rear yard. Plans include installing stone steps, an upper patio and a lower permeable patio at the top of the steps. She’s proposing a 12 x 12-foot deck to access the yard from the house. The Commission had received the full set of plans.

Ms. Cook provided a planting list which is all native plants. The square footage for the project would be about 624 square feet of permeable surface (deck and two patios) and about 140 square feet of impermeable surface (steps and walkway).

Ms. Cook said runoff from the street and garage runs directly into the Oyster River, about 120 to 150 feet from the garage. The ground has started to wash out under the foundation of the house.

Mr. Trueblood asked how waterflow would be controlled once a patio is put in at the end of the driveway and Ms. Cook replied gutters have already been installed and there are plans for a rain garden and drain. She does not believe there's a plan for overflow from heavy rain.

Mr. Kelley clarified the application is before them this evening because all proposed work would occur in the Shoreland Protection Overlay District, requiring Conditional Use approval.

Ms. Cook said all proposed work is outside of the 50-foot waterfront buffer but is within the 150-foot woodland buffer. It's within the 250-foot buffer for the Oyster River, which is designated [scenic and wild]. She's in the process of seeking a Permit by Notification from the state. Town approval would be pending state approval.

The Commission reviewed the four criteria for Conditional Use and reached consensus that all conditions are being met by the applicant, with one concern noted below.

[Note: The applicant had responded to older criteria for Conditional Use supplied to her; The Chair read the new criteria, noting they would not likely change her responses. Ms. Cook will be asked to submit revised responses to new criteria to the Planning Board.]

Re: Criterion #2:

*The design, construction, maintenance and operation of proposed structures and activities within the wetland and buffer will minimize soil disturbance and adverse impacts to water quality to the extent workable.*

Mr. Trueblood expressed concern about the permeable layer under the patio. Plans say, "Drainage to stormwater system as needed." It's unclear to him where the water is going. He advised if the rain garden and patios are collecting water, they should not be sending overflow to the waterfront.

Ms. Cook replied they are trying to address it as best as possible without adding more drainage systems. The goal is to manage a majority of the water. The current plan will be

a drastic improvement from what is there now. Her hope is plantings with stronger root systems will help control water flow.

***Ms. Hale MOVED to recommend to the Planning Board approval of the application, provided that the applicant revises her responses with the new criteria for the Planning Board; SECONDED by Ms. Robbins, APPROVED unanimously, 7-0, Motion carries.***

**VIII. Land Stewardship Committee.** Discussion with Ann Welsh, chair of the Durham Land Stewardship Committee about the role of the committee. Proposal to add alternates to the committee.

Ann Welsh came forward and gave background information about how the Land Stewardship Sub-Committee was formed. She said unlike most towns, Durham has split up management of public lands among different groups.

The Sub-Committee manages trails and invasives and handles complaints from neighbors; They've established purposes for all properties, depending on easements and deeds. Their major project right now is trying to establish the cost of maintenance for each property.

Ms. Welsh said the Sub-Committee is currently missing three representatives for most meetings, often making it difficult to reach a quorum (defined as five). She's here this evening to ask for two alternates, for the three members at large. Part of the issue in finding members is that the Sub-Committee holds morning meetings, largely to accommodate town employees.

Land Stewardship Coordinator Sara Callaghan said Town Administrator Selig told her that alternates could represent any of the committees and commissions represented on the Sub-Committee, providing they report back to that respective committee/board.

Ms. Callaghan noted that any change to the membership structure of the Sub-Committee requires a vote from the Conservation Commission. Essentially, the CC approved the original structure and is being asked to add two alternates, to replace at-large members or other town committee members, if necessary.

Sally Needell came forward to ask if members need to be appointed by the Town Council, but it was clarified members on the Sub-Committee are approved by the Conservation Commission.

***Ms. Kelley MOVED to authorize the Land Stewardship Sub-Committee to add up to two alternates to their Sub-Committee; SECONDED by Ms. Robbins, APPROVED unanimously, 7-0, Motion carries.***

Before voting took place, Mr. Behrendt clarified: alternates should be able to step in for any sub-committee member. However, if it's for a board member, the alternate should report back to the board they are representing.

**IX. Wetland and Shoreland Overlay District – Zoning Amendment.** Discussion with Neil Slepian and Dwight Trueblood about proposed new Wetland and Shoreland Overlay District (WSOD) to replace the current Wetland Conservation Overlay District (WCOD) and Shoreland Protection Overlay District (SPOD). A Committee appointed by the Conservation Commission has been working for over a year to rewrite the WCOD and SPOD. The committee now has a draft to present to the commission.

The Chair said Sub-Committee members Paul Rasmussen and Sally Needell are present this evening and may have input.

Mr. Slepian said he and Mr. Trueblood will start with an overview and then give members time to look over specifics on their own and come back for discussion and hopefully a vote next month.

The Sub-Committee, set up at the request of the Conservation Commission, was originally charged with updating Conditional Use criteria. That work was completed and approved.

Sub-Committee members then decided to review the entire WCOD and SPOD ordinances, to make them more understandable to applicants, easier to administer and eliminate ambiguous language.

As the Sub-Committee reviewed the ordinances, it became clear there was a lot of overlap between the two, so the group decided to combine them. The result is the Wetland and Shoreland Overlay District (draft) being introduced here tonight and which members are asked to come back prepared to discuss next month.

Mr. Slepian said Sub-Committee members also revised some language to reflect updated science and environmental knowledge. The group consulted NOAA, NH-DES and other sources. They reviewed other towns' shoreland and wetland ordinances in the Great Bay watershed as well.

The Sub-Committee adopted a statement to reflect why they believe their work is right for this time, which Mr. Slepian read:

*We believe that it improves the ecological function and promotes better protection for our precious wetlands in the town of Durham. It also incorporates current scientific and environmental knowledge that wasn't available or considered when the previous ordinances were adopted. We also believe it strikes a balance between resource protection and practical application of regulations in the ordinance, i.e., the regulation should meet our goal as a Commission without being unduly onerous to applicants or challenging or impossible to achieve.*

Mr. Slepian noted that both Town Planner Michael Behrendt and Paul Rasmussen were invaluable in providing knowledge about what is workable, from an applicant's perspective.

**He named Sub-Committee members:**

Emily Friedrichs (Planning Board), who is now on Town Council;  
Paul Rasmussen (Chair/Planning Board)  
Sally Needell (Chair/Town Council and former chair of CC)  
Dwight Trueblood and Neil Slepian (Conservation Commission)  
Michael Behrendt served as a staff member on the Sub-Committee.

Chair Kritzer asked if the group operated by consensus or if they took votes and Mr. Slepian said it was by consensus.

Mr. Trueblood then came forward to explain some of the specific proposed changes. He encouraged members to review the entire document closely on their own.

Highlights of the proposed ordinance:

- Emphasizes use of naturalized and native vegetation to help mitigate any disturbances from development.
- Eliminates 150-foot setback for sewer and septic lines.
- Adds buffer requirements for salt use and snow storage.
- Adds expansion of non-conforming fences and structures and clarifies the Conservation Commission's review process.
- Excludes outdoor recreational facilities from Wetland and Shoreland Overlay Districts.
- Clarifies dumping of snow under Prohibited Uses.

Mr. Trueblood said the biggest changes from an environmental standpoint were based on a NOAA study, “Buffers on the Bay,” which examined buffers around water. (See [bufferoptionsnh.org](http://bufferoptionsnh.org))

In order to protect the temperature of the Bay, according to the study, at least 30-feet of buffer is needed to mitigate runoff; To mitigate pollutants, 98 to 100-feet are needed. To reduce runoff and stabilize channel banks, about 164 feet are needed and finally, to provide habitat for terrestrial wildlife, about 330 feet are needed.

**Proposed Buffer Changes:**

Mr. Trueblood said the Sub-Committee tried to balance the ecological benefit of widening buffers with what is reasonable and practical to accomplish.

Bogs and prime wetlands: Increase buffer from 150-feet to 200 feet.

Vernal pools: Increase buffer from 100 feet to 150 feet.

Non-tidal wetlands in RR and RC Zones: would remain at 100-feet.

Non-tidal wetlands (in all zones except core commercial): Increase by 25-feet.

Core commercial zone: Currently at 75-feet; recommendation is to reduce to within 30 feet of College Brook.

Tidal wetlands: Mr. Trueblood said the Sub-Committee couldn’t reach consensus. Current buffer is 100 feet; Buffers on the Bay recommends 200 to 330 feet. They recommend the entire Commission discuss further.

Tidal Waters: Buffer currently at 125 feet. The group thinks it should be between 200 to 330-feet but recommends further discussion.

Lamprey River and Durham Reservoir: Proposed to increase from 120-feet to 200-feet, to protect drinking water.

Other perennial non-tidal rivers and streams, including Oyster River above the dam, (excluding College Brook and Pettee Brook) – Increase buffer from 75 to 150-feet.

College Brook and Pettee Brook: In all zones other than core commercial would increase from 25 to 100-feet.

College Brook and Pettee Brook in core commercial zone: Increase from 25 to 30 feet.



Mr. Burton asked if current uses are grandfathered and Chair Kritzer said they can remain in use until the property owner seeks to make a change (add or modify a structure, for example).

Sally Needell came forward to say one of the Sub-Committee's considerations was climate change as it pertains to tidal waters. Sea levels will continue to rise. That's why they proposed increasing to 30 feet from 25. She encouraged members to review general buffer requirements for the SPOD, particularly the part on vegetation (Section 175-61).

**Public Comment:**

Kara Hutulsky, Durham resident, came forward with questions/comments. She asked why the proposed buffer zone is smaller for vernal pools than wetlands when vernal pools are generally more vulnerable eco-systems. Mr. Trueblood said it was feasibility. Vernal pools are typically small and making a huge buffer would be difficult on residential lots.

She asked when was the appropriate time in the process to speak in favor of any of the recommendations and the reply was she could speak now or wait until the Planning Board holds a public hearing, since that will be a more finalized version.

Ms. Hutulsky said she's part of a UNH lab working with saltmarsh sparrows, which are endangered. They nest only in tidal saltmarshes. If that habitat disappears, there will be no more birds. She supports increasing the buffer zone in tidal marshes.

Mr. Kelley questioned the impact of the proposed changes on Cedar Point, which has a high density with small lots. He thinks it may bring their setbacks to Route 4. (He later clarified his remark, saying it was an exaggeration, other than at the intersection at Back River Road.) He asked if the Sub-Committee had discussed how many residents would be in non-conforming use if these changes were adopted and later Mr. Rasmussen replied they had not discussed it.

Chair Kritzer said if the new ordinance passes, it will increase the number of property owners needing to go through a review process with both the Conservation Commission and the Planning Board.

Mr. Slepian said in some cases it will be more difficult for people to get a conditional use permit. Mr. Kritzer said he's not sure he agrees. In his experience, Conditional Use Permits are generally granted. These changes will add to the workload of the Conservation Commission and Planning Board but shouldn't impact how many permits are granted.

Mr. Rasmussen came forward to encourage Commission members to look at proposed changes to Permitted Use A, Permitted Use B and Conditional Use. He believes when

those changes are taken into consideration, Mr. Slepian's statement is accurate: it may be more difficult for some homeowners to obtain permits.

Mr. Trueblood noted the town has aspirational goals to protect the environment, with a strong focus on Great Bay which is already under stress from nutrients, reduction in eel grass, and habitat fragmentation. He said, "We were trying to mitigate those things and get us toward where we want to be as a town."

Mr. Burton asked what would happen if a property changes ownership and Mr. Behrendt said that doesn't affect its status. Anything currently constructed on the property legally is grandfathered. If a homeowner has undeveloped woodland on their property leading to Little Bay, the new standards will come into play.

Chair Kritzer emphasized nothing would have to be torn down. These changes would affect only new patios, sheds, changes to driveways and additions to houses, etc.

Mr. Burton asked why buffers would need to be changed to account for sea level rise, if we can assume the buffers will move with the wetlands. Ms. Needell said the larger buffer will provide more protection so development in the near future wouldn't encroach.

Chair Kritzer noted the buffers, by themselves, aren't sufficient to protect water bodies. But combined with other measures, they will have an impact.

Wrapping up the discussion, the Chair expressed high praise for the work of the Sub-Committee. He said they did great work and should be applauded. Discussion will resume next month once members have had a chance to review the proposed changes more closely.

X. Review of Minutes: January 22, 2024

***Mr. Kelley MOVED to approve the minutes of January 22, 2024; SECONDED by Mr. Slepian; APPROVED, 6-0-2, Motion carries.***

XI. Other Business:

Mr. Burton said he's watching the marsh restoration project at Wagon Hill Farm. The city of Portsmouth owns an easement across Wagon Hill Farm for 75 percent of its water supply. Two pipes in danger of failing are in the process of being replaced. Original plans called for putting in a 40-foot access road along the driveway at Wagon Hill, but after negotiations with the town, the road was moved. Mr. Burton said the laydown area is formidable and in his opinion, it will tough to restore the area to its original use.

Mr. Behrendt said Public Works is keeping a close eye on it but Mr. Burton says he has not seen them there. Mr. Behrendt will follow-up.

### **Vacancies on the Commission**

In other business, Chair Kritzer said there will be two vacancies on the Commission soon. He's had three candidates express interest and all of them would be outstanding additions. All three have different skill sets that are highly needed. He asked if the Commission be expanded.

Mr. Behrendt said the Commission could be expanded by Charter amendment. There are currently seven regular members and three alternates.

Generally, the Chair recommends new members to Town Council and they vote to appoint/not appoint. Mr. Behrendt suggested Mr. Kritzer pass on the three names to TC and let them decide. Mr. Kritzer expressed preference for the Commission to decide how to handle three qualified candidates for two open seats.

Vice-Chair Hale noted the Land Stewardship Committee needs new members and possibly one of the candidates could serve there.

Mr. Behrendt noted that a vote on a charter change to expand the Commission wouldn't happen until next spring.

Chair Kritzer then reiterated that he's stepping down as chair, following the April meeting. Anyone interested in making a nomination or being nominated should speak up. Mr. Behrendt said members can speak outside the meeting to discuss their interest or recruit another member for the position.

It was decided that voting will likely take place at the May meeting.

### **XII. Roundtable. Updates from Conservation Commission members.**

Mr. Burton said Town Council has four new members and he feels confident in the present makeup of the Council.

### **XIII. Adjournment**

***Mr. Trueblood MOVED to adjourn at 9:37 p.m.; SECONDED by Mr. Kelley, APPROVED unanimously, Motion carries.***

Respectfully submitted,  
Lucie Bryar, Minute Taker  
Durham Conservation