

These minutes were approved at the December 23, 2024 meeting.

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

MEMBERS PRESENT: Dwight Trueblood (Chair); Erin Hardie Hale (Vice Chair)
Wayne Burton (Town Council Rep); Nick Lanzer; John
Nachilly; Richard Kelley (Planning Board Rep) – arrived at
7:13 p.m.; and Neil Slepian. Alternates: Anne Lightbody, and
Steve Moyer.

MEMBERS ABSENT: Jacob Cragg (Alternate)

ALSO PRESENT: Michael Behrendt, Durham Town Planner

I. Call to Order

Chair Dwight Trueblood called the meeting to order at 7:02 p.m.

II. Land Acknowledgement Statement

The Chair read the Land Acknowledgement Statement as adopted by the town.

III. Roll Call and Seating of Alternates

Roll call attendance was taken and since a quorum was present, no alternates were seated.

IV. Approval of Agenda

Vice-Chair Hale said regarding **Item X. Plant Species in Site Plan Regulations** that she had not had a chance to consult with Roanne Robbins and asked if other members had done any research. It was determined they had not. Mr. Behrendt offered to delve into the topic prior to the December meeting and bring a new recommendation forward.

Ms. Hale MOVED to strike Item X from the agenda for this evening and postpone it until such time as Mr. Behrendt has time to research it; SECONDED by Mr. Nachilly; APPROVED unanimously by a show of hands, 6-0, Motion carries.

Mr. Behrendt also noted the minutes of the September meeting were already approved (Item XI.) and the Chair said they have not yet received minutes for the October meeting.

V. Public Comments: None this evening.

VI. Land Stewardship Update: Mr. Behrendt said a search is ongoing to fill the position of Land Stewardship Coordinator.

Vice-Chair Hale asked if she could give an update on the Land Stewardship Education Working Group at this time and the Chair said yes.

She said they've held three walks, all well-attended, in collaboration with Durham Parks & Rec. The last one, the lichen walk with Jeremy Howell from NYC College, was attended by more than 40 people. Plans are to continue the collaborative walks through the winter and next spring.

Ms. Hale asked if commissioners had ideas for winter walks. The Sub-Group has discussed a full moon snowshoe hike and possibly a history walk. Mr. Slepian suggested an animal track walk.

Mr. Nachilly said UNH has done a lot of snow research, which might be an interesting topic. The University also has a CO-2 research tower and it might be good to take the Commission there to see what's being done.

Ms. Lightbody said she had proposed a geology walk at Adams Point to the Land Stewardship Committee. She also realized it's the 50th anniversary of the [town vote rejecting the] refinery, so possibly a Sweet Trail tie-in to that would be good.

Reporting briefly on Land Stewardship activities, Mr. Slepian (an alternate on the Committee) said they plan to keep improving trails. Some boardwalks have been updated on the Sweet Trail. Also, there's beaver activity in the meadow at Oyster River Forest that has flooded a walkway. There will be a request for funds to build a bridge next year.

The Chair noted Richard Kelley (Planning Board Rep) joined the meeting at 7:13 p.m.

VII.4 Riverview Court – Conditional Use Application. Conditional use in the Shoreland Protection Overlay District for an existing single-family house for structures to be located within the 125-foot setback line: expansion of existing driveway, retaining wall, shed and buried electric line that currently runs overhead. Arthur McManus, property owner. Chris Guida, Fieldstone Land Consultants, wetland and soil scientist. Map 214, Lot 11. Residence Coastal District. **POSTPONED TO DECEMBER 23.**

VIII. Conservation Commission Preparation for Annual Report. Discussion about accomplishments in 2024 and goals for 2025.

The Chair said he needs to submit a written report to the town by December 6th. He plans to model it in part on last year's report by former Chair Jake Kritzer – which tied the Commission's activities to town goals. Mr. Trueblood recalled when he presented an update to Town Council in July, he was asked if the Commission aligns its activities with those goals. This highlighted to him the importance of approaching it this way.

Mr. Behrendt had distributed the Natural Resources Master Plan. Chair Trueblood then opened discussion about major accomplishments for the past year.

Mr. Slepian asked how Mr. Trueblood wants to approach accomplishments – in a general way or using more specifics. The Chair said he's drafted a bulleted list of accomplishments from past agendas; now he wants to identify where they fit with broader town goals. One aspect is to show the Commission has spent funds wisely to restore and improve habitat in town.

His report will also show how many applications were reviewed for Conditional Use Permits. One topic of discussion has been improving communication between the Commission and town residents. He asked about the best way to accomplish this.

Adding to the list of accomplishments, Mr. Nachilly said the town took ownership of the Pike Property this year, which was significant in adding protected acreage. The Commission also spent a lot of time on the water line project at Wagon Hill. Mr. Kelley said revision of the Wetland and Shoreland Overlay District has taken a lot of work and, in his view, will have the most significant impact on the town.

Mr. Burton said the Wagon Hill project is complete and working well. The Chair asked if the Commission acted in an advisory capacity and Mr. Burton said their role was more

persuasive. He recounted how the City of Portsmouth originally planned to put the pipeline down the driveway, using a 40-foot right-of-way. However, Mr. Burton recommended an alternate site, which was eventually agreed to by Portsmouth.

Mr. Nachilly asked how the Natural Resources Master Plan fits into this discussion and the Chair replied he sees it more as a resource and background information.

Mr. Behrendt said in an ideal world, a Master Plan would be actionable and realistic. However, the reality is the goals in the plan are very ambitious, some are aspirational or a continuation of what's being done; and some are difficult to implement. He suggested commissioners be mindful of it, but they should also consult the town's 2025 Master Plan. He asked when they expect to set new goals. Typically, it's been scheduled for May, but he recommends doing it earlier.

The Chair suggested goals could be looked at in January or February.

Vice-Chair Hale said she likes the idea of paying closer attention to the Master Plan but cautioned it will require careful thought about how to facilitate the conversation. She's happy to chat off-line with the Chair and others for how to better utilize the town's Master Plan.

Mr. Burton raised the topic of conservation vs. workforce housing and asked how the Commission can balance those two conflicting goals.

Chair Trueblood acknowledged that development of workforce housing can conflict with conservation. He noted the recent presentation on carbon sequestration by Alexandra [Kosiba] indicated the best thing to do is to keep [forests] standing as much as possible. But pressures on the Seacoast are such that towns are looking to increase tax revenues through development.

Mr. Burton said he's advocated for a regional approach to workforce housing, in his role on the Strafford Regional Planning Commission – but this approach is not going to be adopted. Each town has been given individual goals for workforce housing.

There was further back and forth discussion between Mr. Burton and Mr. Behrendt about increased density on non-conservation land, to facilitate development of workforce housing. Mr. Behrendt briefly explained how density is calculated and Mr. Burton said he believes there's a role for the Conservation Commission to play in workforce housing.

The Chair said in his view the Commission's role is advisory. This can be discussed in the conversation on goals in the new year. He then asked if there are individuals available to review his draft report to Town Council and Vice Chair Hale and Mr. Behrendt said they would be willing to review it.

IX. Wetland and Shoreland Overlay District – Zoning Amendment. Continued discussion about proposed new Wetland and Shoreland Overlay District (WSOD) to replace the current Wetland Conservation Overlay District (WCOD) and Shoreland Protection Overlay District (SPOD).

The Chair invited Mr. Slepian to continue leading the conversation on this item. Mr. Slepian said at the last meeting, they got up to page 9 in discussion. The process used was to review anything not nailed down and tie up loose ends. Draft changes are in blue, purple or red, depending on their status. Consensus was reached they would continue in this manner.

Pg. 1 – Under Invasive Plants: Commissioners agreed to change the sources for native plants from Extension Service, NH-DES or Native Plant Trust to the NH Division of Environmental Services and NH Department of Agriculture, Markets, and Food.

Vice-Chair Hale then said approaching revisions this way seems like it will be too time-consuming. She proposed that Mr. Slepian ask if there are any objections or comments to items that have already been discussed. It was decided the Commission would take five minutes of silent review to see if they agreed with the proposed changes up to page 9.

After quick review by members, Mr. Slepian said if there are no comments as he reads through, then it will be assumed members are in concurrence with the changes.

P. 6 Under Native and Naturalized Vegetation – Mr. Behrendt said he's heard from a number of people, including the town's tree warden, on #8: "Dead trees shall remain and not be cut." He said the consensus is this would be a problem with homeowners.

Ms. Lightbody said this is standard practice in Maine, but Mr. Behrendt countered that everything in the ordinance should be oriented toward protecting the shoreland and wetlands. It was clarified this item is referring only to trees in a buffer.

Mr. Behrendt said as a planner, he thinks about cost/benefit. There has to be a reasonable distance from a house that is sacrosanct. He's proposing dead trees could be removed at the homeowner's discretion if they are within 100 feet of their home.

Mr. Slepian said the Fire Marshal (in his communication via email) recommended a distance of 50-feet from the house. It was clarified he was referring to fallen trees that could pose a fire hazard, not standing trees. Chair Trueblood noted that fires are more likely to occur due to drought brought on by climate change. He would concur with increasing it to 100-feet.

Mr. Lanzer read the proposed change: *Dead trees, whether standing or fallen, shall remain and not be cut, except for trees that are a threat to persons or property and trees located within 100 feet of a house or other principal building.*

In theory, he said this allows homeowners whose homes are close to the water to take out a number of dead trees near the water. The ecological value of downed wood near a water body is important because it helps to slow erosion and also provides wildlife habitat. He noted the exception is any tree deemed to be a hazard, which can be removed.

Mr. Behrendt said maybe they should specify x feet from the water. There was further discussion about what the appropriate distance from the house should be to require standing dead trees to remain. Speaking as a forester, Mr. Lanzer said it's about striking distance, which is determined by the height of the tree.

Mr. Trueblood asked Mr. Behrendt: if a change is written into the ordinance, can a homeowner still come to the Commission seeking a variance. Mr. Behrendt said there are a number of permitted uses in the ordinance. Residents do not have to pay application fees and notices don't need to be sent. They would have to appear once before both the Conservation Commission and the Planning Board. The town needs to be mindful of keeping the process reasonable for homeowners.

Mr. Kelley asked about [the distance of trees from] power lines and Mr. Behrendt said that's covered under "property."

There was discussion about what occurs if homeowners have a large group of standing dead trees. Mr. Behrendt recounted a recent case where a homeowner sought to take down a lot of red pine trees that were dead. After review and consultation with a number of experts, it was agreed all the trees should be removed.

Chair Trueblood said that particular situation was seen as an environmental threat. If all 75 trees fell, it would be difficult to remove them and then invasive species could take over.

During further discussion it was suggested to leave the language more general, but Mr. Behrendt said he thinks the Commission should specify a distance around a house where the homeowner doesn't have to come before a board or commission. He noted that he's extremely busy and doesn't have time to review a lot of new applications for tree removal. The Commission needs to be mindful of how changes to the ordinance will impact town resources.

Mr. Trueblood proposed they adopt the fire marshal standard of 50-feet [from a house]. Mr. Lanzer said anything beyond the 50-feet that is within striking distance of your house would be considered a "candidate for removal" because of the potential hazard. He agrees 50-feet would be a reasonable compromise. There seemed to be consensus on this.

Mr. Behrendt will re-write the language to say: any tree that's a threat can be removed and any dead trees standing or fallen with 50 feet of a house can be removed; while any fallen tree within 25 feet of the reference line may *not* be removed without a conditional use permit.

Commissioners continued to discuss if the 25-foot restriction should apply to both standing and fallen trees and ultimately decided it should be for fallen trees only. Mr. Behrendt pointed out potential issues if there's a dead tree on a slope, which should be removed.

Mr. Slepian noted their discussion has focused on trees near a river or shoreline, but the ordinance also applies to wetlands. He questioned how the issue should be addressed near a bog or vernal pool, for example.

There was back and forth discussion on this and Mr. Kelley asked how big of an issue it poses. Are homeowners removing a lot of trees? Mr. Behrendt said this is difficult to answer. The town is aware of those seeking permission but isn't aware of those removing trees illegally unless it's brought to their attention. Mr. Kelley said the ordinance talks about threats to property but doesn't mention ecological threats.

Vice-Chair Hale proposed adding a clause that trees could be removed if they are a threat to persons, property, or the "ecological integrity of the site," which would cover

trees on a slope, for example. It was agreed this was a good approach and Mr. Behrendt will re-word the draft to reflect everything discussed.

Mr. Slepian then proceeded to move the discussion to other changes and comments on the draft. Regarding a comment from former Land Stewardship Coordinator Sara Callaghan that some items on page 8 aren't "measurable and actionable," Vice-Chair Hale said much of the ordinance isn't measurable. The Chair said at the least it gives the town the ability to intercede if a complaint is lodged or something comes to their attention.

Discussion of C – Agricultural Activity

The draft states no agriculture is permitted within 100-feet of a water body. Mr. Behrendt said that means no livestock or planting of crops.

It was agreed the phrasing "activity related to agriculture" should be changed to "agriculture and activity related to agriculture" to avoid confusion. This includes the use of herbicides and pesticides, e.g.

Mr. Behrendt questioned if the ordinance, as written, would allow the use of pesticides within a buffer. It was noted that homeowners are being directed to follow Best Management Practices when using pesticides/herbicides and in some cases, their activities would be reviewed by the Agricultural Committee. Vice-Chair Hale pointed out that BMP doesn't mean "no pesticides," rather that all directions are followed to maintain water quality.

Ms. Lightbody made a formatting suggestion to reduce confusion within the body of the ordinance and minimize broken links in the future. She recommended moving some content to the appendix and consensus was reached to do that.

Item D – Septic Systems

Mr. Slepian asked if a 125-foot setback from the reference line is appropriate and Chair Trueblood said he dug into NH Code of Administrative Rules on this. The State requires a 75-foot setback for a septic tank and bed. The proposed 125-feet is more for ecological reasons.

The Chair said Great Bay is being adversely affected by nutrients and any septic system too close is going to pose a problem. Ground water is coming up due to climate change causing rising sea levels, posing a risk of failure to septic systems too close to the Bay.

Ms. Lightbody proposed changing the wording to say homeowners are *encouraged* to set back a septic system as far as practical, but a minimum of 125 feet.

Mr. Slepian raised the question whether residents would be allowed to put a septic system in a buffer when a buffer is greater than 125-feet. Mr. Behrendt pointed out a sewer line, septic tank, and leach field are all a little different [in terms of their impact on the water]. He thinks it should be clarified.

After discussion, it was agreed Mr. Behrendt will revise the wording to say septic systems must be set back 150-feet, pending further research. Mr. Trueblood will look into “Buffers on the Bay,” the document used for much of the science recommended in the ordinance. Mr. Behrendt noted as written, the ordinance allows septic and sewer lines to be within the buffer by conditional use. Leach fields need to be set back at least 125 feet, with no conditional use permits granted for those.

The Commission then moved on to review Permitted Use A – Uses that Do Not Require Review (pg. 9 of draft)

Ms. Lightbody said she’s confused by the wording and is unclear if lawns are allowed in the buffer. There was discussion about what’s included and what constitutes a lawn. Mr. Behrendt said it’s possible certain native grasses could be considered lawn. Mr. Lanzer asked if lawns would be permitted within a wetland buffer.

Mr. Nachilly pointed out generally when they talk about lawns, they’re referring to maintenance like mowing and fertilizing.

After discussion of various items within this section, Mr. Behrendt said he’ll try to rewrite it to clarify the language and intent.

The Chair said in light of the time, he’d like to move on to the next item on the agenda. He believes they’ve made some progress on the ordinance draft this evening.

X. Plant Species in Site Plan Regulations. Continued discussion about list of plant species in Site Plan Regulations, including list of invasive plants. POSTPONED

XI. Review of Minutes: September 23, 2024 – APPROVED at prior meeting

XII. Other Business

Chair Trueblood asked how many members expect to be in attendance at the December 23rd meeting and it was decided there would likely be enough members present for a quorum.

Vice-Chair Hale asked for clarification about last month's discussion on collaborating with the town of Newmarket on a PREP grant, since she wasn't present at the meeting. She has a group of UNH students who will be working with Ellen Snyder and another Newmarket Conservation Commission member to help write the grant proposal. She asked if Durham is planning to participate since she needs to advise her students.

Mr. Behrendt said it was unclear if Ms. Snyder was proposing to write the grant for both Newmarket and Durham. The Chair said he believes the proposal was for the towns to use the same contractor [to map the vernal pools]. He thinks it would be great to get student help to write the grants.

Ms. Lightbody suggested that students could also be involved if the town is thinking of pursuing a natural resources inventory. The Chair concurred this could be a good way to meet the community engagement piece of the grant. He added that PREP is offering an online webinar in mid-January.

He also noted Ms. Snyder mentioned a salamander crossing brigade and the Commission hasn't discussed that yet.

Vice-Chair Hale said there's a whole group of people interested in starting a salamander brigade on the seacoast, but mapping of vernal pools needs to take place first so they know where it would be most effective. She said Durham isn't ready to do the salamander project in spring of 2025 but can start the groundwork.

In answer to a question about whether the [vernal pool] survey would look at both public and private lands, Mr. Lanzer said it had been decided that private landowners would be included if they grant permission.

XIII. Roundtable

Chair Trueblood said the seminar and Doe Farm nature walk by Alexandra Kosiba were very informative. He recommends two of her publications: one being *Twelve Steps for Climate Resilience* and the other being a compilation of two papers she's written on

climate change. Both are available on the University of Vermont Cooperative Extension website. He believes bringing Ms. Kosiba in to speak was a good use of resources.

Mr. Lanzer said thanks go to Sara Callaghan (former Land Stewardship Coordinator) for organizing the event. It was noted the presentation was recorded and might be available on the town website. If so, it could be highlighted in *Friday Updates*.

Mr. Kelley asked if the Commission has a regular listing in *Friday Updates* under “Conservation Matters” and it was generally agreed this could be a goal to pursue in 2025.

XIV. Adjournment

Mr. Lanzer MOVED to adjourn the meeting at 9:31 p.m.; SECONDED by Mr. Kelley and APPROVED unanimously by a show of hands, 7-0, Motion carries.

Respectfully submitted,
Lucie Bryar, Minutes Taker
Durham Conservation Commission