

TO: Durham Conservation Commission and Planning Board
RE: Use of Bagdad Road right-of-way (ROW) to access proposed Mulhern subdivision
DATE: Feb. 19, 2021

On behalf of residents of the Gerrish-Ambler neighborhood, I respectfully ask members of both the Conservation Commission and the Planning Board to take under advisement the following points as they consider Michael and Martha Mulhern's application for a proposed subdivision on their property at 91 Bagdad Road.

- It is now clear to all concerned – or should be – that, in the judgement of Durham Town Attorney Laura Spector-Morgan, the Mulherns have legal right of access from the Bagdad Road ROW to all of their property at 91 Bagdad Road, not just their house on that property but the proposed site of their subdivision as well.
- Any discontent that might arise from the Mulherns' two neighbors on that easement if the Mulherns use this access for their subdivision does not detract from their legal right to do so.
- If the neighbors' discontent results in litigation, the Mulherns will have inflicted it upon themselves – first, by claiming they owned the entire ROW, which they didn't (the ROW was jointly owned by all the property owners on it); then by persuading the one other homeowner on the ROW to relinquish his ownership interest so the Mulherns could convey all ownership interests to the buyer of a second house they owned on that road; and then by getting that buyer and now the holder of all ownership interest in the ROW to write a letter to the Planning Board announcing his sole ownership and saying he would not permit the Mulherns "to build a road in its place to access their land." Yet, despite these efforts, the Mulherns failed to lose legal access to their property from the Bagdad Road ROW.
- Due diligence requires an assessment of the Bagdad Rd. ROW access point especially with regard to 175-61 B(3) of the Durham Zoning Ordinance: "The location, design, construction, and maintenance of the facilities [*in this case, a road*] will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts."
- Due diligence also requires an assessment of the Bagdad ROW access point in terms of its compliance with 175-23 C(2): "... the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment"
- In its duty to exercise due diligence in the above matters, we urge that the Town (through the Planning Board) hire an independent wetlands scientist to assess the degree of impact on wetlands of a road from the Bagdad Road ROW access point as compared to the degree of impact of the presently proposed road through the Gerrish Drive wetland. Lacking this information and comparison, neither the Planning Board nor the Conservation Commission can make a reasonable decision on the Mulhern application with respect to meeting pertinent conditional use criteria. There is

considerable evidence that a road from the Bagdad Road access would have much less detrimental impact on wetlands than would the proposed road through the Gerrish Drive wetland. Due diligence requires this study.

Respectfully submitted,
Gail Kelley
11 Gerrish Drive, Durham