

From: [John Carroll](#)
To: [Karen Edwards](#); [Jen Berry](#)
Subject: The Big Picture on Gerrish is a Matter of Rights
Date: Tuesday, October 19, 2021 9:02:15 PM

To the Planning Board and the Town Council,

We know and accept that private property owners have rights. But do the people of Durham, the owners of the Gerrish Wetlands, have rights as well? Do the people of Durham, as represented by the Town Council, the Town Planning Board, and the Town Conservation Commission, have rights? And do the people of Durham, as so represented, have the right to ask the owner of adjacent private property, a party who seeks ownership of town-owned lands, to properly consider the use of his own land to achieve his objective before asking the people of Durham to sacrifice their own land to achieve his private objective? It is up to the Town Council, the Town Planning Board, and the Town Conservation Commission to protect the rights of the people of Durham by requiring the private owner, the private developer, to properly assess his own land before asking the people of Durham to surrender their own rights to their own property, the Gerrish Wetlands.

Where do the rights of the private landowner end and the rights of the people of Durham begin? The Gerrish Wetlands are, by federal standards, by state statute, and by town ordinance, fully functional wetlands, and thus legally protected wetlands. They are owned by all the people of Durham, not by private individuals, and town government is obligated to protect those wetlands and, as well, the interests of the people of Durham.

The applicant, who seeks a permit to destroy those wetlands, has a possible alternative access for his proposed project, an access which he himself owns, but refuses to consider or even study. The applicant demands that the town permit the destruction of its own property, the Gerrish Wetlands, to provide access to his project. There is also a negative impact downstream in both water quality and flooding, however extensive to be determined, in Madbury (Gerrish Brook and Johnson Creek) and in Durham (Johnson Creek and the Oyster River), resulting from destruction of the Gerrish Wetlands. Townspeople argue that, first and foremost, the alternative access to the project, that on the applicant landowner's own property, be first considered, an alternative that primarily affects upland wetland buffer rather than jurisdictional wetlands themselves (and thus has reduced impact on water quality and downstream flooding). Such consideration needs to happen before any consideration is given to destroying publicly owned, town-owned active and flowing wetlands, thus imperiling the watershed of Gerrish Brook and ultimately the Oyster River and Great Bay, all three of which are also public entities downstream.

Are not public rights, the rights of all the people, superior in this instance to the rights of any one private landowner to destroy or damage public property, public assets?

The Planning Board of the Town of Durham, and ultimately the Town Council of the Town of Durham, has the obligation to protect public rights over private rights, especially when the private applicant has another alternative to consider on his own property, an alternative which is yet to be considered.

All that the people of Durham ask for, all that they seek, is a fair assessment, a fair study of the Bagdad Access before any decisions are made by the Planning Board or the Town Council on the Gerrish Access. The report issued this week by First Street Foundation on flooding in New Hampshire and New England in coming years, as reported in Fosters, makes this assessment even more imperative. (The figures used by the applicant for the 100-year flood are now obsolete, based on much more up-to-date findings.)

Sincerely,

John E. Carroll