

**DURHAM CONSERVATION COMMISSION MEETING
MONDAY, APRIL 27, 2020 – 7:00 PM
DURHAM TOWN HALL - COUNCIL CHAMBERS - DURHAM, NH**

Members Present: Chair Bart McDonough, James Bubar (Planning Board Rep); Coleen Fuerst, Jake Kritzer; John Nachilly; Sally Needell; and Walter Rous; Alternates Mary Ann Krebs and Roanne Robbins.

Also Present: Michael Behrendt, Town Planner; Ellen Snyder, Land Stewardship Coordinator, and Lucie Bryar, Minute Taker

I & II. Call to Order and Roll Call.

Chair Bart McDonough called the meeting to order at 7:02 p.m. and asked for roll call.

III. Approval of Agenda. Ms. Needell MOVED to approve the agenda as presented, SECONDED by Ms. Fuerst, APPROVED unanimously, 7-0, Motion carries.

IV. Public Comments: Chair McDonough invited public comments for any items not on the agenda this evening. There were none at this time.

V. Land Stewardship. Funding requests and update from Ellen Snyder, Land Stewardship Coordinator.

Before discussing funding requests, Ms. Snyder showed a slide thanking the many volunteers and donors who have been instrumental in land stewardship activities this year. Among those she thanked were: **Walter Rous** for documenting the cellar holes at Doe Farm and other work; **John Nachilly** for extensive trail work; **Will and Orion Carey** for improving kiosks at Longmarsh Preserve; **Dick and Eleanor Lily** for offering part of their land near the Merrick Trail; **Dennis Meadows** for the Oyster River Bridge Project, as well as a number of Trail Steward Volunteers.

Ms. Snyder showed new signs that have been installed recently to alert people about safe trail practices during the coronavirus pandemic and to reinforce leash laws. She said work is continuing on assessment of bridges at Wagon Hill Farm. She also showed a new template for trail maps and asked Commissioners to let her know if they'd like changes to the map design within the next week.

The Land Stewardship Committee is seeking to uncommit some funds from the Conservation Fund and make new funding requests this evening. A list was distributed to Commissioners prior to the meeting and they decided to consider the requests in three motions.

1. **Uncommit the following balances in the Conservation Fund.** This is a return of funds previously requested that were not used, either due to cost savings or other reasons.
 - **\$300** from the Conservation Fund to engage a consulting forester on the Weeks Lot and Longmarsh Parcels. [The forester hasn't been available and this is not a priority.]

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- **\$34.00** from the January 27, 2020 motion that approved up to \$350 expenditure for trail blazes.
- **\$150** from October 28, 2019 that approved up to \$750 for a town-wide map of conservation areas/ recreational sites.
- **\$90.20** from January 27, 2020 motion that approved up to \$1,000 for historical panels at the Doe Farm kiosk.

Mr. Nachilly MOVED to uncommit the four line items (above) detailed in the April 27, 2020 memo from Ellen Snyder, SECONDED by Mr. Rous, APPROVED unanimously, 7-0, Motion carries.

2. New Land Stewardship Requests from the Conservation Commission Fund:

- \$1200 for mowing of trails at Oyster River Forest & Thompson Forest from May to October 2020. Mr. Nachilly will continue to mow trails.
- \$800 to West Environmental Inc. for wetlands permits applications for Stevens Woods and Merrick Trail.
- \$2,500 for trail bridges and signage at Stevens Woods, Beaudette and Longmarsh, as well as other conservation areas.
- \$2,500 for tree removal at Doe Farm around the cellar hole and historic foundations.
- \$1,000 for removal of stumps and grading the area bordering the Doe Farm foundation so it can be better managed for forest health, invasive control and interpretation of the historic sites.
- \$5,000 to continue invasive plant control at Doe Farm based on an assessment of previous years control efforts and targeting management units IV and V, totaling 13.5 acres.

Mr. Kritzer MOVED to approve expenditure requests (above) from the Conservation Fund as detailed in Ms. Snyder's April 27, 2020 memo; SECONDED by Mr. Rous, APPROVED unanimously, 7-0, Motion carries.

3. New Land Stewardship Requests from the Patron's Trust (private donations)

Ms. Snyder reported that fundraising for the Merrick Trail bridge surpassed its goal of \$2,500 and is currently at \$2,600 from 32 donors.

Mr. Kritzer MOVED to authorize expenditure of \$2,500 from the Patron's Trust for the construction of a pedestrian bridge at the Merrick Trail at the entrance from Bagdad Road, SECONDED by Mr. Nachilly, APPROVED unanimously, 7-0, Motion carries.

VI. 253 Durham Point Road – Solar Array. Conditional use for freestanding solar array serving a single family house in the Wetland Conservation Overlay District. Bonnie Brown and Arthur Butt, property owners. Erik Pickhardt, Go Solar, contractor. Map 12, Lot 15.

Ms. Brown and Mr. Butt were present via zoom and Ms. Brown gave a short overview of their request. She said while the roof of their barn seems like a logical place for a solar array, the

barn is too deteriorated to support it and they're unable to get a tax benefit to remove the barn.

Solar Contractor Erik Pickhardt showed a site plan and said a trench would be dug across the driveway and a machine would be brought in to set a ballast box. There would be no digging for the unit – which is between 40 to 60 feet from the wetlands boundary.

Commissioners questioned why so many trees had been removed and Mr. Butt responded the Historic Society proposed removing the trees to allow the barn to dry out. The trees had grown into the side of the barn and were damaging the roof, fascia and foundation. Mr. Bubar said when he did a site walk he noted far fewer tree stumps than what was originally depicted on the site plan.

Commissioners then addressed the four criteria for Conditional Use in Wetlands Overlay District:

- 1.) There's no alternative location on the parcel that is outside the Overlay District that is reasonably practical for the proposed use. The applicants responded there is no alternative because the entire property is in the Overlay District. Location of the solar array is limited by the septic system, leach field and limited size of the parcel.*
- 2.) Amount of soil disturbance will be the minimum. Applicants responded the array is made up of pre-cast ballast boxes which do not need to be excavated and will not cause silt run-off or erosion.*
- 3.) Location design, construction and maintenance will minimize detrimental impact on wetlands. Applicants responded all measures will be taken to minimize risk; smaller machines will be used to do trenching.*
- 4.) Restoration activities will leave site as near as possible in existing condition. Applicant stated the grade of site will remain unchanged. Condition of site will remain as near as possible to original condition.*

Chair McDonough MOVED to recommend to the Planning Board a conditional use for a solar array at 253 Durham Point Road, SECONDED by Mr. Kritzer, APPROVED unanimously, 7-0, Motion carries.

VII. Alph Tau Omega Fraternity. 18 Garrison Avenue (formerly UNH's Elizabeth DeMerritt House). Conditional use application for construction within the Wetland Conservation Overlay District for fraternity. Richmond Property Group, owner. Bruce Scamman, Emanuel Engineering. Map 2, Lot 12-12.

Mr. Scamman is representing Richmond Property Group, which acquired the Elizabeth DeMerritt House from UNH. The proposal is to add 2,020 SF to the existing house to establish a fraternity, which typically needs to be a minimum size to be financially viable.

There's currently impervious pavement which runs directly down the slope to the wetlands (Pettee Brook). Mr. Scamman is proposing a porous pavement, through which all sand would be filtered. The filtering will reduce nitrogen and phosphorous in Pettee Brook, as well as hydrocarbons. Retaining walls, guardrails and a fence will be added to keep people out of the wetlands.

The applicant is seeking comments tonight from the Conservation Commission regarding removal or preservation of two large Norway Maple trees in the front yard. Land Stewardship Coordinator Ellen Snyder as well as an individual from the NH Department of Agriculture have been consulted about removal of invasive species on site and concluded the only species of concern is bittersweet.

Mr. Scamman described the porous pavement as a layered system, with sand at the bottom, and stone layered on top which acts as a small reservoir to slow the rate of drainage; this is covered by almost 30-inches of gravel. Water off the roof will be treated with drains.

The Commission discussed maintenance of the porous system, use of road salt and snow removal, with the following information offered by Mr. Scamman:

- The porous pavement needs to be vacuumed and power-washed twice a year.
- Porous pavement typically requires less salt usage.
- A berm will be added to help catch snow melt before it runs into the wetlands.

Landscape Architect Robbi Woodburn then came to the podium and said it's her recommendation the two Norway Maples be left in place; they have an estimated remaining lifespan of 40 years. She added the neighborhood has a large number of Norway Maples, so removing two would not have much impact on proliferation.

Commissioners discussed if the owners should be required to report back to the town each year regarding maintenance (vacuuming and power-washing) of the porous pavement. Mr. Scamman said each town handles reporting differently, but expressed his belief that written reports are not too useful. He thinks on-site inspection is more effective. It's unclear if the town of Durham has adequate staff and systems in place to monitor maintenance.

Mr. Rous said since the whole project hinges on an improved filtration system, he strongly believes there should be oversight regarding maintenance to ensure the property doesn't degrade. After discussion, commissioners agreed to recommend to the Planning Board that some form of annual maintenance report be considered.

Members then reviewed the project against the four conditional use criteria in a Wetland Overlay District (see criteria above in Item VI.) and reached consensus that all four criteria had been met.

Mr. Kritzer MOVED that the Conservation Commission finds the four conditions for conditional use are met and recommends approval to the Planning Board, subject to the applicant submitting periodic reports for maintenance of the porous pavement; Two Norway

maples be retained and the contractor provide before and after photos of the site.

SECONDED by Mr. Rous, APPROVED unanimously, 7-0, motion carries.

VIII. Subdivision off Gerrish Drive. Parcel at 91 Bagdad Road. Design review application for conservation division for 11 houses/14 units (7 single family homes, 3 duplexes, and one existing house) on 16-acre lot off Gerrish Drive. Marti and Michael Mulhern, property owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 10, Lot 8-6. Residence B district.

Mr. Sievert came to the podium to outline the Phase II preliminary design. Since last appearing before the Commission (in January 2020), he noted there has been an updated Site Analysis, Subdivision Plan and Ownership & Stewardship Plan.

The current proposal is for a condominium subdivision. He showed the layout of roads, utilities, and houses and said the updated plans show enhanced common space between buildings and noted the central common space is essential to the pocket neighborhood design.

The proposed road has been pushed further into Madbury and engineers are proposing to fill in the tip of a small “finger-shaped” wetland. The subdivision plans call for 13 new units including 3 duplexes, with the remaining seven units being single family homes. An existing property will remain as part of the development, but is not part of the pocket neighborhood.

Resource Impact & Conservation Plan

Mr. Sievert said a stormwater treatment system will minimize the primary impact on the wetlands. The water will be collected in the subdivision’s central space, then flow under the roadway and go upstream in a southerly direction into the stormwater system before outflowing into the wetlands. A secondary impact to wetlands will result from crossings of steep terrain and ledges.

Common Open Space/ Ownership & Stewardship

Mr. Sievert discussed the proposed Open Space and noted there are three delineations: Common land directly around the buildings would be restricted for use by residents only. That land is further divided into two categories: land for recreation, gardening and other permitted uses (which also includes septic systems); and additional conservation land that would be controlled by a homeowners association. A larger conservation parcel of about 10.7 acres required by the town could end up being managed and owned by another entity such as a land trust. This concluded the formal presentation of updated plans.

Chair McDonough advised Commissioners this evening is for design review only; there is no action being taken at this time. He added a site walk would be beneficial. Mr. Behrendt said the entire project is very complicated and Commissioners should not hesitate to ask questions, either during this meeting or in follow-up with him.

The presentation was opened up to questions/concerns from the Commissioners:

A number of initial questions were asked about the square footage of wetlands being impacted, including:

- Ms. Needell noted filling in the wetlands would move the buffer closer to the wetlands and asked how many square feet of surface area would be filled. Mr. Sievert replied about 1500 square feet and the 75-foot wetland buffer would move back further to accommodate the pocket neighborhood.
- In answer to a follow-up question, Mr. Sievert said a total of 9,000 square feet would be impacted by the proposed roadway, including 1500 square feet in the crossing and 7,800 square feet in the right-of-way.
- Mr. Bubar asked about the total square footage of impervious surface proposed for the development, including the right-of-way. Mr. Sievert estimated about 27,000 square feet of impervious surface for the roadway, and another 18,000 square feet for the houses, for a total of just under one acre.

Ms. Needell said she's new to the Commission and still learning, but questioned why a roadway would be allowed in a buffer. She asked how the land would be kept free from herbicides and pesticides. Mr. Sievert said there would need to be limits on lawn and pest-control products and the runoff would be collected into the subdivision's inside loop and then directed to a stormwater treatment system before it goes into the wetlands.

Ms. Needell asked Mr. Sievert to clarify a reference he made to the "lower function and value of wetland in the right-of-way" during his presentation in January. She asked if there is water quality data or if coring has shown past contamination below surface in soils.

Mr. Sievert said he used the phrasing "lower function and value" because the abutting Ambler Road subdivision, built in the 1970s, had no stormwater controls in place and all untreated runoff flows into the wetlands through culverts. He believes the septic systems and soils are in poor shape and the wetlands have long been jeopardized.

Ms. Needell said she walked the property and is concerned about how the culvert will be designed to deal with water flow coming from more than one direction. Mr. Sievert responded there are plans to install a shallow wide box culvert or arch culvert and then push the road to the left and put in a retaining wall so a new swale can be added down the right-hand side. The applicants will work with the town to improve drainage at the intersection of Gerrish and Ambler.

Ms. Needell asked if there are plans to re-route natural streams and what responsibility the developer has to the existing neighborhoods at the end of Ambler and Gerrish, which may be impacted by a new drainage system. She wanted to know what happens if there's a major rain event.

Mr. Sievert said engineers are only required to design the project for a 25 or 50-year storm event and all required "alteration of terrain" permitting will be done through the DES. There will be a bond in place during construction to ensure that everything is properly constructed. If there's a design or construction flaw discovered later, that would become a legal issue.

Ms. Needell asked why the existing Mulhern house is part of the new subdivision and Mr. Sievert replied it has no road frontage and can't be subdivided. Mr. Behrendt said he would encourage the applicant to apply for a variance to subdivide the house without frontage so that, if granted, the property would be unencumbered in a future sale.

There was discussion about access to the building site and Mr. Sievert acknowledged construction vehicles will need to cut through wetlands to get to the site. Mr. Rous said there appear to be two smaller wetland crossings that would be less injurious than the one proposed and he's not sure the current plan meets the criteria of "no alternative access route."

Mr. Sievert responded that a recent legal opinion has confirmed the developer has no ownership or access to the other right-of-ways cited by Mr. Rous. In light of that, engineers are proposing to cut through a narrow ravine and will have wetland scientists confirm or deny the impact on wetlands.

Mr. Rous, who recently walked the property with Mr. Nachilly, noted there are very steep grades and the area looks like it would be better suited for a bridge. He questioned how the treatment swale would work on such steep terrain and how water would "flow uphill." Mr. Sievert said the grades are still being looked at and this is still in the conceptual phase.

Mr. Nachilly asked about the fairly large wetland in the middle of the Ambler way subdivision and asked if there were plans to add a retention pond to mitigate that when it flows into the main stream. Three or four sources would feed the proposed culvert.

Mr. Sievert replied that it's not his client's responsibility to fix problems in an existing subdivision. While they might mitigate drainage issues on the corner (of Gerrish and Ambler) by re-locating some culverts, he said, "It's not our responsibility to fix problems that have been there since the 1970s."

Mr. Nachilly said proposing to fill in 7,000 square feet and forcing the runoff into a fairly narrow culvert before it's dumped into a stream that's already impacted is questionable. He said, "I've been on commissions close to thirty years and this is one of the worst I've seen from an access perspective. This is a stream and it's turning into prime access."

Mr. Sievert said the plan is to add a curbed road design and a significantly wider swale than what's there now. Further ideas are being explored. Mr. Bubar said he agrees overall with Mr. Nachilly, "This is a pretty sketchy design."

Mr. Sievert said he's been tasked with designing a road that fits into a 50-foot right-of-way and meets town requirements. He is proposing to push the roadway to the left (of center) and use a retaining wall to trap fill. The design meets requirements he was given, but he's willing to make further improvements and changes.

Chair McDonough then opened up the discussion to public comments, requesting that each one be limited to five minutes.

Resident John Lewis said he lives in an abutting neighborhood and would like more specificity from the engineer, particularly with regard to the proposed 50-foot right-of-way that runs across a stream. He believes a less ambitious plan (with fewer homes) would avoid a lot of the buffer issues. He attended prior presentations and believed wetlands concerns were being taken seriously. However, with this latest design – he is disappointed the Mulherns and their engineers are not hearing [abutters'] concerns.

Resident John Carroll of Canney Road said water currently flows substantially across the Ambler-Gerrish intersection, going to Madbury through the Gerrish Brook watershed, affecting landowners and the route 108 crossing in Madbury. The watershed is also subject to the impact of rising tides from the Great Bay/Oyster River and to increased precipitation. He urged the Commission to consider broader impacts (such as effects on Gerrish Brook, Johnson Creek and rising tides), not just those in the immediate vicinity. Mr. Carroll said the proposed increase in impervious surfaces and the removal of trees will also impact water flow.

Resident Gail Kelly, of 11 Gerrish Drive said their home is directly near the confluence of the three streams. The proposed plan doesn't address the stream that crosses the Lewis property, then flows under their driveway and eventually to a drainage system. Addressing Mr. Sievert, she said, "We're not asking you to fix problems of the past." She said the proposed project will have a negative impact, particularly on the Whites, the Lewises, and their property. She believes putting up a retaining wall will only increase the problem.

She urged the Commission not to be swayed by the argument that the Mulherns have had plans to subdivide since first purchasing the property in 2005 and now face limited access. In the ensuing years, she believes they should have negotiated with the owners of the easement from Bagdad Road. Ms. Kelly said, "This is the worst possible access for that property."

Resident Andrew Merton, 11 Gerrish Drive said in answer to Ms. Needell's question about if the developer bears any responsibility to surrounding neighborhoods, in his view Mr. Sievert gave a fairly long response that can be summed up in one word, "no."

Resident Kim Sweetman, 18 Ambler Way said her neighbors' comments expressed a lot of her own concerns. She would like to add that an additional 13 homes would impact water quality and wildlife as would the removal of so many trees. She encouraged the Commission to schedule an official site walk so their observations can be entered into the public record.

With no further public comments, Mr. Behrendt discussed the Planning Board review timeline with the applicant and noted it's possible the entire review could be continued to June 10th. He encouraged the Conservation Commission to compose their comments tonight and/or schedule a site walk soon and then provide feedback. The next phase of review is the Formal Phase.

Mr. Sievert briefly addressed the public comments and said alternative designs are still under consideration and he is pursuing further discussion with some abutters. In response to those

who felt the houses were being maximized, he said 18 units of 55-plus housing are allowed but only 13 are proposed. Regarding comments about damaging water quality downstream, he said that has been happening since the 1970s and emphasized the current project is being built to much higher standards today.

After discussion, the Conservation Commission scheduled an official site walk for Friday, May 1, 2020 at 10:00 a.m. They will provide official comments to the Planning Board after the site visit.

IX. Route 4 Exit Ramp

With time running late, Mr. Behrendt quickly recapped a proposed DOT project. Plans are to install signaling at the westbound off-ramp from Route 4 onto Route 108. Other improvements will be made and in the process, some ledge, trees and vegetation will be removed near Riverwoods.

Mr. Behrendt said the town of Durham has been asked to submit comments to the State by May 15. He asked Commissioners to look at the proposal and send him any comments or concerns by May 13. No formal action by the Commission is necessary.

X. Review of Minutes

Due to the late hour, The Commission decided to table review of minutes (July 22, 2019; August 26, 2019; September 23, 2019; October 28, 2019; January 27, 2020 and February 24, 2020) to the next meeting.

Mr. Rous MOVED to adjourn the meeting at 10:40 p.m., SECONDED by Ms. Needell and APPROVED unanimously, 7-0, motion carries.

Respectfully submitted,
Lucie Bryar, Minute Taker
Durham Conservation Commission

Note: These written minutes are intended only as a general summary of the meeting. For more complete information, please refer to the DCAT22 On Demand videotape of the entire proceedings on the town of Durham website.