

**DURHAM CONSERVATION COMMISSION SPECIAL MEETING
THURSDAY, FEBRUARY 11, 2021 – 7:00 PM
DURHAM TOWN HALL - COUNCIL CHAMBERS - DURHAM, NH**

Note: Due to the Coronavirus pandemic, most members and presenters attended via Zoom video conferencing while a limited number were in Council Chambers.

Members Present: Chair Sally Needell; Vice-Chair Mary Ann Krebs, James Bubar; Jake Kritzer; John Nachilly and Walter Rous

Absent: Coleen Fuerst and Alternate Roanne Robbins

Also Present: Town Planner Michael Behrendt and Minute Taker Lucie Bryar

I & II. Call to Order and Roll Call plus Reading of Covid Emergency Preamble

Chair Sally Needell called the meeting to order at 7:00 p.m. and read a required statement pursuant to the Governor's Emergency Order #12 pertaining to meeting remotely during the Covid-19 pandemic and outlining how the public can continue to participate. More information is available on the town of Durham website. She then conducted roll call.

III. Approval of Agenda

Mr. Rous MOVED to approve the agenda as submitted; SECONDED by Mr. Nachilly, APPROVED unanimously, 4-0, Motion carries.

IV. Subdivision off Gerrish Drive. Parcel at 91 Bagdad Road., Conditional use application to cross/fill three wetlands and build infrastructure in the wetland buffer for conservation subdivision for 15 dwelling units (7 single family and 4 duplexes plus one existing house) on 16-acre lot off Gerrish Drive. Marti and Michael Mulhern, property owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Mark West. Wetland Scientist. Map 10, Lot 8-6. Residence B District.

Engineer Mike Sievert came forward to give a brief update, highlighting changes made to the plan since he last appeared before the Conservation Commission. He showed maps and explained changes to the stormwater system for the road in the Right-of-Way section and said with the latest changes, there will be no runoff from impervious surfaces into the wetland. The road remains at 26-feet wide, but one shoulder will be wider to accommodate the water flow as it goes through the treatment system.

Landscape Architect Robbi Woodburn said the current plan doesn't show updated landscaping, but she said evergreens will be shifted so they'll be between the swale and the White's yard.

Chair Needell asked about snow removal and Mr. Sievert said contractors hired will be required to have Sno-Pro certification, which allows a modified salt/brine treatment to be applied.

There was discussion about stormwater runoff maintenance and Mr. Sievert said there's a full maintenance plan, as required by the town of Durham and the Alteration of Terrain permit. The plan uses best management practices for each system, including the detention pond, sediment basin and treatment swale.

Mr. Rous asked how the plan will be enforced if the road is privately owned. Mr. Sievert replied that maintenance requirements should be built into the HOA (Homeowners Association). He said if homeowners don't maintain the stormwater systems to standards, they could be negatively impacted. He explained if silt builds up and the pond isn't cleaned out on an annual basis, residents will start to see standing water on their properties.

In summary, Mr. Sievert said with the latest changes, the impact to wetlands has been decreased slightly while the impact to the buffer is slightly increased.

Mr. Rous asked about the cutting to take place on the White's hill and Ms. Woodburn confirmed they are working with the Whites to provide a "robust" buffer of about 21 evergreens from Ambler Way to their property.

Mr. Rous then asked about the wetland crossing, particularly as it pertains to the Lewis, Kelly and Merton properties. He recalled a video sent out last year by Mr. Merton showing water flowing over the road and said it appears a bottleneck is occurring further downstream. He's not sure how the proposed project will affect those properties and he believes further hydrological study is important. In his view, the current proposal may make things worse.

Mr. Sievert replied that water problems in the area are a result of existing culverts that are inadequate and it's the responsibility of the town to address them.

In further discussion, he said the Mulherns' project doesn't add any impervious surface water flow since it's directing water away from the area. He added that Mr. Lewis might benefit from getting information about water flowing to a culvert near his property to better assess where the bottleneck is.

Mr. Rous asked for assurances that any hydrological review will specifically look at that area (potentially affecting the Lewis, Kelly and Merton properties) and Mr. Sievert confirmed that a review will look at it. He added that when doing the original analysis of waterflow in that area, he made the assumption Durham was going to enlarge the culverts. He will revisit his analysis.

Wetland Scientist Mark West came forward to share photos of the stream under discussion. He discussed the water flow and mentioned the impact to the wetlands when the Gerrish/Ambler Way developments were built. He also said a degraded wetland doesn't have ecological integrity, but it's still able to trap sediment. The wetlands on the White property will still be functional.

Mr. Rous said at last night's [Planning Board] meeting, there was discussion about why the town has declined to own the road. While it's not a decision for the Conservation Commission, he said it does affect long-term maintenance.

Mr. Bubar recalled an ice storm when Durham Point Road got isolated and it was difficult for the town to remove trees. He said he's fine with this project having a private road, but there's a concern about who will assume responsibility and pay for the maintenance.

There was more discussion about the town's decision to make the road private and Chair Needell re-read parts of a town memo indicating the decision was made out of concern for the "inordinate maintenance cost" associated with the straight section of road.

Town Planner Michael Behrendt said the town attempts to treat people equally; in this instance the DPW and staff believe the "significant infrastructure" on this road would impose a [financial] burden on the town.

Ms. Woodburn said other than plowing and cleaning of culverts, she does not see a lot of long-term maintenance costs. Mr. Sievert said he respects the DPW Director and Town Engineer, but believes they mis-characterized this road as "drastically different" in infrastructure and associated maintenance costs. He said it's not different than Canney or Bagdad Roads or a number of others.

Chair Needell then said she'd been advised that since the applicant's representatives were allowed to speak tonight, the Commission must also allow public comment. She asked that comments be about issues not previously raised to the Commission and be brief.

Public Comments, Summarized:

John Lewis: said if the town were to retain ownership of the road, they could ask the applicant to pay annual fees toward maintenance. If something unfortunate occurs here, he believes it could destroy a lot of property. He urged the Commission to consider the diminished value to adjacent properties when looking at the four criteria. He has repeatedly asked how road construction will take place and not received an answer. He advocates for independent review by another wetland scientist and said he's not convinced that access from Bagdad Road has effectively been ruled out.

Gail Kelly: said with all due respect to the Commission, they are misinterpreting the first criteria, i.e., "there is no alternative location on the parcel outside the WCOD that is suitable." Gerrish Drive wetland is not on the parcel. In her view, the location Mr. Sievert has used to bring in equipment is practical. She said, "I'm pleading with the Conservation Commission to do a site walk from the Bagdad Road ROW entrance. She said the maps shown are deceptive and a poor substitute for visiting the area in question.

John Carroll: said he respects Mr. Sievert's engineering work but strongly believes the Bagdad entrance is legal for the town to use. He doesn't oppose the 16-house subdivision, only the proposed access.

Diana Carroll: would like to see a complete list of required maintenance and projected costs. She questioned if 15 households can pay for the required maintenance and also questioned

how it will be enforced in perpetuity, since the town won't have oversight. In her prior experience on Town Council, she recalled many residents living on private roads were unhappy with the lack of services and added costs. Lastly, she would like to see the Bagdad entrance looked at more closely as an option.

Michael White: had specific questions for Ms. Woodburn about the plantings near his property and if they would affect the sandbox in his yard. Mr. Sievert replied that he believes they would need to re-locate their sandbox and is not sure about the swing set; He and Ms. Woodburn will be in further contact with the homeowners.

John Lewis: asked for an answer to his question about how the road would be built without intruding on adjacent properties during construction.

Mr. Sievert explained the construction process and said it would have to proceed from the edge of Gerrish Drive and would be "built into the site." Utilities will be installed as they go. Culverts will be brought in in sections.

Alexandria Turcotte: asked Mr. Sievert how construction equipment and work would impact pedestrians. She wanted to know if equipment would be left on site each day. He explained the types of equipment, including an excavator, bulldozer and dump trucks and said the equipment would be removed from the site daily. He added the entire project may take 8 to 9 months.

Chair Needell said the homes would not be built as spec houses, but only constructed as they are sold. There will be trucks on site until all homes are built. Mr. Sievert clarified that his description of the construction was pertaining to the main road and infrastructure, not to the individual homes.

Kim Sweetman: said she foresees 7-9 months of heavy construction noise when school children are out of school and "right when we have our windows open."

Mr. Sievert said construction in the first 150-feet of the wetland area will be limited to the dry time of the year, between July and September.

Chair Needell then closed the Public Comment portion of the meeting. She suggested the Commission start to draft recommendations to the Planning Board, beginning with points not in dispute.

Mr. Kritzer first asked to address the question about the Bagdad entrance again since the public continues to bring it up. His understanding was it's not an option, but now he's questioning why it was suitable to bring in construction equipment for test pits, etc.

Mr. Sievert said his clients don't have full ownership of the Right-of-Way from Bagdad Road. He also said the Bagdad access is 2.5 to 3 times longer and would impact a higher value wetland. He said the best buildable location was established through a three-step process [with the

Planning Board] and added that construction equipment was brought in on a path, not a road. Further, the Bagdad access is not outside the WCOD.

Chair Needell asked about the role of the NH Department of Environmental Services and Mr. Sievert replied they've already done a 2.5 hour site walk. He expects to submit the wetlands application to NHDES soon.

Vice Chair Krebs said she would like to consider hiring an independent wetland scientist to review Mr. West's work, in order to allay any resident concerns. There was further discussion with the following points:

- Mr. Kritzer said he believes the impacts to the wetlands have already been clearly laid out and he cautioned against hiring another wetlands expert if there are no specific questions still needing to be addressed. He said if the Planning Board endorses this parcel as buildable, then the road needs to go over a wetland. Later in the discussion he said it appears the Bagdad entrance is not a good option.
- Mr. Nachilly agreed that having a review done would likely be just a paper assessment and wouldn't yield any new information.
- Chair Needell questioned if the functional value of the impacted wetland (as established by Mr. West) turned out to be incorrect, would that change their decision?
- Mr. Rous favors an independent hydrological study. He believes if the wrong decision is made, it could have serious consequences. He's concerned with what will happen downstream and would like to see predictions about that.

Mr. Behrendt clarified the Commission's role is to make a recommendation to the Planning Board based on the four criteria. Separately, the Planning Board looks at eight general criteria.

Mr. Bubar said he's struggling with the decision in comparison to Colonial Durham's project (Mill Pond Plaza), where the Commission recommended full restoration of a 75-foot buffer.

Mr. West said there's no question constructing a road will impact the wetlands function, but he believes preservation of 12 acres of land surrounding the wetland will protect the buffers.

Mr. Rous asked how many functions were assigned to Wetland 1 and Mr. West replied that wetland 1 has two principal functions – sediment trapping and shoreland stabilization. Mr. Rous mentioned there's a NH bill pending (backed by the NH Association of Conservation Commissions) that states in effect a wetland will need to have five principal functions before being assigned the highest value.

Commissioners discussed further the pending hydrological study and Mr. Behrendt clarified it's not a hydrological study; it's an outside peer review of Mr. Sievert's drainage plan. Candidates

for that study are currently being interviewed and will present to the Planning Board on March 10th.

Mr. Rous asked again for reassurance that any review will look at the potential to cause greater water back-up for the properties already experiencing it, i.e., the Lewis, Kellys and Whites. He does not question Mr. Sievert's engineering about waterflow, but said it's important to look at the speed of the flow. Mr. Sievert and Mr. Behrendt confirmed that will be part of the study.

There was discussion about when the Conservation Commission needs to reach a decision on the four criteria. Mr. Behrendt recommends the Commission make their recommendation at the February 22 meeting. The drainage review will be done after that. He said the Commission can make its recommendation but reserve the right to re-visit it if new information comes in.

IX. Other Business

Chair Needell had emailed commissioners about the Mill Plaza project, which the Planning Board will discuss at their February 24th meeting. She encouraged commissioners to attend if they can, since there will be discussion of the affected wetlands.

Mr. Bubar said the Planning Board has focused some of their discussion on the restoration efforts recommended by the Conservation Commission and also the fact the applicant only controls one side of the wetland. There has been talk of eliminating the proposed walkway to further reduce impervious surfaces.

Mr. Bubar said he voted against the Conservation Commission's recommendation to restore a full 75-foot buffer at Mill Plaza because he felt there wasn't enough consideration given to the stormwater management system (to protect the buffer) and he thinks a 50-foot buffer might have been sufficient. He regrets not supporting the recommendation but said he still has concerns.

Commissioners discussed the need to be consistent in reaching decisions – comparing the Mill Plaza with the discussion so far on the Gerrish subdivision.

Mr. Kritzer said wetlands do more than provide stormwater management. He feels each application is different and the Mill Plaza project would affect the entire buffer. Later he said, you can't build the Gerrish Drive subdivision without building a road across a wetland. With Mill Plaza, you can [build the project and still protect the wetland].

Chair Needell said the Commission's position on Mill Plaza might have been partly to offset what's going to happen to the adjacent hillside. Mr. Kritzer said there are "no net loss" policies in place in some cities and towns.

Mr. Rous also brought up his idea mentioned at a prior meeting of having the applicant contribute to a "slush fund" that would benefit restoration of the entire watershed.

With no further business, Chair Needell MOVED to adjourn at 10:11 p.m., SECONDED by Mr. Bubar, APPROVED unanimously, 6-0, Motion carries.

DCC SPECIAL MEETING FINAL MINUTES – FEB. 11, 2021

Respectfully submitted,
Lucie Bryar, Minute Taker
Durham Conservation Commission

Note: These written minutes are intended 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.