

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

DURHAM CONSERVATION COMMISSION
Monday, August 26, 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; Neil Slepian; Alternates: Jacob Cragg, Anne Lightbody, and Steve Moyer.

MEMBERS ABSENT: John Nachilly and Richard Kelley (Planning Board Rep)

ALSO PRESENT: Michael Behrendt, Durham Town Planner and Sara Callaghan, Land Stewardship Coordinator

I. Call to Order

Chair Dwight Trueblood called the meeting to order at 7:01 p.m.

II. Land Acknowledgement Statement

The Chair read the statement as adopted by the town's Human Rights Commission.

III. Roll Call and Seating of Alternates

Roll call attendance was taken. The Chair seated Alternate Jacob Cragg as a voting member this evening in place of John Nachilly. An alternate cannot be seated for the Planning Board Rep.

IV. Approval of Agenda

Mr. Slepian MOVED to approve the agenda as presented; SECONDED by Mr. Lanzer; APPROVED unanimously, 6-0, Motion carries.

V. Public Comments: None this evening.

VI. Recognition of Jake Kritzer, former member and chair of the Conservation Commission

The Chair invited Jake Kritzer to come forward to be recognized. He noted Jake did a

commendable job chairing the Conservation Commission for 18 months during his seven-year tenure with the Commission from 2017 to 2024.

Mr. Slepian commented Mr. Kritzer's leadership was thorough, organized and very even-handed, especially in weighing public comments. Ms. Hale added that she appreciated his leadership in terms of professional expertise and also his sense of humor.

The Chair then presented an appreciation plaque to Jake Kritzer, noting the town's "deep gratitude for his outstanding leadership and eminently rye sense of humor" during his tenure on the Commission.

VII. Land Stewardship Update. Sara Callaghan, Land Stewardship Coordinator.

The Chair noted Ms. Callaghan had sent a proposal regarding trail accessibility and she's seeking a vote on funding it from the Commission this evening.

As background, Ms. Callaghan said Town Administrator [Selig] had received an email about improving waterfront access at Wagon Hill for wheelchair users. This was brought to the Land Stewardship Committee for discussion.

Ultimately, it was decided to hire consultant Enoch Glidden to assess the trails. He works for Trails Finder in Maine; has his own consulting company, is wheelchair bound and an avid outdoorsman.

Mr. Glidden would be hired to assess which trails could be made more accessible. In some cases, he would simply provide a detailed description of existing trails so individual users can decide for themselves if they're accessible.

As a member of the original group advocating for the purchase of Wagon Hill in 1989, Mr. Burton said one of the goals was to preserve the farm-like feel of the property. While he's a strong supporter of ADA and agrees there should be waterfront access for all, he's concerned the proposal would overhaul the property and diminish the farm-like feel.

Ms. Callaghan stressed there's no specific recommendation for Wagon Hill on the table, other than to have an assessment done and decide where accessibility could be improved. She said the town isn't looking to meet ADA-compliance, which is a whole different level of compliance. They are simply looking to improve accessibility.

Mr. Burton suggested the access road being built for the shoreline restoration project would make a good permanent access road for those in wheelchairs (and later added baby strollers as well). He strongly recommends Ms. Callaghan communicate with project managers now so modifications can be made.

Ms. Callaghan described the properties to be assessed, explaining briefly why the Land Stewardship Committee had selected these specific properties:

- Wagon Hill would be a priority because of its high use.
- Oyster River Forest already has one “accessible” trail that hasn’t been maintained;
- Spruce Woods has an access road from the Spruce Woods community.
- Jackson Landing has handicapped parking and a short trail to the waterfront.
- Thompson Forest has a 1.3-mile loop and a relatively flat, hard surface.

Mr. Behrendt noted Ms. Callaghan’s proposal is for \$2,200 for the consultant. Once a study is done, he said the town will be faced with challenges, questions and potential liabilities.

Ms. Callaghan said as long as the town isn’t claiming trails are ADA-compliant, there are no liabilities. The term “accessibility,” which is the goal here, is more open and not as restrictive.

In answer to a question from the Chair, Ms. Callaghan clarified the consultant will not provide cost estimates for making trails accessible; he will only provide expertise on what could be improved. Any trail improvements would be done by contractors, who would determine costs.

Mr. Slepian asked which town board or commission would be charged with reviewing the consultant’s report and Ms. Callaghan said it would be the Land Stewardship Committee. She added the Town Administrator, as well as DPW Director Rich Reine, are on the Committee so the town will be well represented.

Mr. Behrendt believes the ultimate decision will rest with Town Council, based on costs and if the changes would significantly alter the character of a property. Ms. Callaghan added some funding could come from the Conservation Commission or from grants; not all costs would necessarily be borne by the town.

Mr. Lanzer MOVED to approve the requested amount of up to \$2,200 from the Conservation Commission Fund to Enoch Glidden for completion of a trails accessibility analysis; SECONDED by Ms. Hale; APPROVED unanimously, 6-0.

On another topic, Ms. Callaghan distributed a new guide by Jim Lawson about Durham’s conservation areas and parks, which she handed out at Farm Day.

She announced the Land Stewardship Engagement and Education Group has a walk on Sunday, September 15th at 10:00 a.m. at Longmarsh Preserve – focusing on mushrooms and beavers. Sign up at Durham Parks & Recs.

The Committee is also finalizing plans for guest speaker Ali Kosiba for November 20th at the library. Ms. Kosiba is asking for travel costs and lodging from Burlington, VT., estimated to be about \$600.

The speaker's planned activities so far include a site walk at Doe Farm with members of the Conservation Commission and Land Stewardship; dinner at Tideline and then a talk at the library about how to manage northern forests for climate resiliency.

Ms. Hale MOVED to approve supporting the expense of up to \$600 for the guest speaker for travel and lodging (pending confirmation of sufficient funds in the general budget); SECONDED by Mr. Cragg; APPROVED unanimously, 6-0, Motion carries.

VIII. Discussion About Housing. Discussion with Sally Tobias, chair of the Durham Housing Task Force, about housing issues in Durham.

Sally Tobias came forward and introduced two members of the Housing Task Force also present: Paul Rasmussen (Planning Board rep) and Heather Grant (Town Council rep). She said the Task Force is seeking residents' opinions in this type of forum instead of in open sessions, which may not be well attended.

Ms. Tobias gave a brief history of the Durham Housing Task Force, which began in 2020 when the Economic Development Committee was being sunsetted. It was decided at that time that a housing committee would be the best way forward.

She said there's currently an amendment in front of the Planning Board to promote a specific aspect of housing but added the Task Force is looking at all options.

She gave a short slide presentation about workforce housing; why lack of affordable housing is a big issue in New Hampshire and reasons Durham should respond to the crisis.

She said the State of NH produced a Fair Share Housing Production Model for municipalities, which projected a shortfall of 88,395 housing units statewide by 2040.

The Housing Task Force hired consultants RKG to look at the data and produce a report specific to Durham. They projected the town's 2040 future needs for non-student housing to be about 455 units.

Ms. Tobias noted a "missing middle" type of housing in Durham and said the town suffers from lack of growth and diversity. There's a high economic and educational level, but many people earning less find it difficult to afford housing.

She shared RKG numbers from a 2020 Census report showing which populations in Durham have increased or declined over the past decade. Most notably, between ages 45

to 54 and ages 55 to 64 have declined by 47.7% and 23.6% respectively, while the population over age 65 has increased by 31.75%.

Ms. Tobias showed slides highlighting some current zoning restrictions and asked Commission members for opinions about where opportunities exist:

- Attached accessory dwelling units (ADUs) are allowed in all zones per state law;
- Detached ADUs are currently not allowed in RA or RB districts, but are allowed in rural zones and RC. Should this be changed?
- Duplexes have a negative history in Durham due to past issues with students and are not allowed in residential areas except for senior housing; Should this be re-visited since conditions have changed?
- Cottage Courts (e.g., project on Back River Road in Dover) – provide for high density of units around open green space and attract young and old; Should these be allowed in residential?
- Multifamily residential is currently not allowed, except for senior housing. Ms. Tobias commented it's time for Durham to re-assess why they're not allowed.
- Conservation subdivision – is the only residential subdivision currently allowed. Usable areas are limited in order to provide for open areas. It comes out to about 3.5 acres per unit.

Mr. Burton asked what constitutes a conservation subdivision, who owns the common land and how can they be created at affordable market prices. Mr. Behrendt said current regulations provide for a substantial amount of the overall parcel to be protected as conservation land, which limits development.

Ms. Tobias said if the open space were to be reduced and density increased, it could become more affordable. This would require an ordinance change.

Paul Rasmussen came forward and said several ordinances could be changed to address housing. The Planning Board is looking at a Workforce Housing Overlay District. The town could also change the way densities are calculated in a conservation subdivision.

Mr. Burton said large landowners are worried about the variance process. Is there a way to re-write ordinances to provide flexibility? Can decisions be made by site? Mr. Rasmussen replied changes need to be made by zone or through creation of an Overlay District, to avoid spot zoning violations.

Mr. Behrendt explained how usable land is calculated for conservation subdivisions. While the minimum lot size is about 3.5 acres, it's often closer to 4 to 5 acres, because of the way open space is calculated. As Town Planner, it's his view the density could be

increased substantially while still protecting open space. He believes the low density has discouraged development in Durham.

There was discussion if increasing density would lower housing prices. It was pointed out some surrounding communities (like Portsmouth) have built smaller homes that are still out of reach for many.

The Chair agreed with Mr. Behrendt that increasing density would be desirable. He would also like to see climate change addressed and recommends the town require developers to provide Type 2 (fast-charging) electric car charging stations.

Mr. Burton sits on Strafford Regional Planning Commission and said Somersworth, Dover and Rochester have more affordable housing options. He asked if the state data [regarding how many units will be needed] has been updated. He advocates for a regional approach to affordable housing and asked what responsibility Durham has to help solve the issue vs. cities and towns with more resources.

Ms. Grant said the state is updating data regularly and every town has a target number based on their needs. If one town meets their goal, they can't share credits with another town.

Continued discussion about housing issues and possible solutions followed.

Ms. Callaghan asked HTF members why they chose specific areas for a proposed Workforce Housing Overlay District and Mr. Rasmussen replied they focused on areas with town water and sewer plus those on the UNH bus line. Having infrastructure in place is important.

Ms. Tobias noted the idea for an Overlay District came directly from a property owner who wants to develop his land for workforce housing and came to the town to discuss how to make it work.

The Chair thanked the Workforce Housing Taskforce for their presentation.

IX. Wetland and Shoreland Overlay District – Zoning Amendment. Discussion with Neil Slepian and Dwight Trueblood about proposed new Wetland and Shoreland Overlay District (WSOD) to replace the current Wetland Conservation Overlay District (WCOD) and Shoreland Protection Overlay District (SPOD). A committee appointed by the Conservation Commission has been working for over a year to rewrite the WCOD and SPOD. The committee now has a draft to present to the Commission.

Chair Trueblood asked how the Commission would like to proceed due to the late hour. He feels it's important to address this item since it was tabled last month.

It was decided to discuss the proposed 330-foot buffer in the next 30 minutes, even if a decision can't be reached this evening.

Mr. Slepian said the Commission was advised the 330-foot buffer would meet with objections once it reaches the Planning Board. One key question: should the Conservation Commission stick with the science recommending 330-feet and let the Planning Board deal with the politics of it; or should the commission revise its recommendation. He reiterated the science indicates wide buffers are needed to protect the town's natural resources from climate change and sea level rise.

Mr. Burton asked if buffer size could be indexed to actual sea level rise and Ms. Callaghan replied, yes. Mapping has been done by Regional Greenways and NOAH. She has it available on her computer and was hoping to share it with the Commission tonight.

Mr. Trueblood asked if the Conservation Commission could use mapping tools when homeowners apply for a Conditional Use Permit and make decisions case-by-case based on data. He asked how difficult it would be to have different buffers in different areas of town.

Mr. Behrendt said buffers need to be clear and precise. They can vary for different zones, but shouldn't vary by property. He reiterated that he finds 330-feet to be problematic and recommends that increases in buffer size be incremental. Homeowners most affected by the proposed increase would be those on Durham Point Road, Bay Road and also some off Route 4.

He noted tree removal is a big issue that takes up a lot of staff time. The proposed buffer is almost three times larger than the current one and would necessitate Conditional Use Permits for tree removal, as well as new wells, garages, etc. If the town goes forward with the larger buffer, he advocates for a strong communication program with homeowners so there are no surprises.

Mr. Burton pressed Mr. Behrendt to express how large he thinks the buffer should be and Mr. Behrendt said he served on the committee that came up with 330-feet and compromises had to be made. Since he's not an environmental scientist, he can't recommend a specific buffer size but can speak to the challenges of implementation.

Mr. Slepian asked Mr. Behrendt if he believes the 330-foot buffer has a chance of getting Planning Board approval and Mr. Behrendt said if all affected homeowners are alerted, he believes there would be a roomful of people with very expensive properties who would object. He doesn't think it will pass but can't predict for sure.

Ms. Slepian read from RSA 36A from the State of New Hampshire, stating [Durham] Conservation Commission “has a mandate to inventory, manage and protect the natural resources of the town.” In his view, the Commission should follow its mandate, recommend 330-feet and let Town Council or the Planning Board tell them they’re out of line.

Mr. Behrendt said he expects a lot of pushback. At an earlier meeting, he said he thought it would hurt the Conservation Commission’s credibility if they proposed such a big change. He thinks it would be best to increase the buffer in increments.

Ms. Callaghan commented while the science recommends 330-feet to protect the environment, individual homeowners have very different goals for their properties. She doesn’t believe the proposed 330-foot buffer is realistic and questions if there’s a way to balance it with some conditions, possibly by lot size.

In answer to a question, Mr. Behrendt confirmed anything already built would be grandfathered. A larger buffer would only impact new activities such as tree cutting, new driveways, decks, wells, landscaping walls, etc. – all of which would require a Conditional Use Permit if within the buffer.

Mr. Slepian questioned if conditional use could be a good workable solution. The Conservation Commission could make an evaluation based on the individual property.

Mr. Trueblood said the point of increasing the buffer isn’t to encourage special permits to circumvent it. Durham wants an ecologically-sound community and protected resources. He believes the Conservation Commission’s role is to provide the best scientific information possible to the Planning Board and leave it up to them to discuss practical aspects of implementation.

Vice-Chair Hale acknowledged an increased burden on town staff. She asked if the Conservation Commission could help with targeted outreach to homeowners about different aspects of conservation, especially for those living on sensitive properties.

Mr. Behrendt proposed three changes to consider: one, allow residential buildings by conditional use. Currently, the town allows accessory buildings but not houses. Secondly, eliminate some of the burdensome conditions for conditional use in the WCOD. Finally, he recommends tree removal shouldn’t require a Conditional Use Permit within the full 330-feet.

Ms. Callaghan said if houses are allowed, it’s possible more property owners would seek a conditional use permit to site them in the buffer. She asked if there’s a way to tier options to limit certain types of construction.

Mr. Behrendt said possibly a minimum setback could be established. For example, between 0 to 100 feet, no building would be allowed; 100 to 330 feet – conditional use would be required. Beyond 330 feet – no restrictions.

In light of the time, the Chair wrapped up discussion to be continued at the September meeting. He added he won't be in attendance in September and Ms. Hale will chair the meeting.

XI. Review of Minutes: June 10, 2024 and July 22 2024 - TABLED

XII. Other Business

Ms. Callaghan quickly shared her screen to show a sea level rise viewer from NOAH, using Jackson's Landing as an example. She showed how sea level rise could leave a trail there potentially underwater. If the town doesn't plan for this in future development, she said, a lot of homes, septic systems and wells could be inundated with salt water. Ms. Lightbody added that storm surges can also affect this.

Mr. Lanzer advocates for using this modeling when speaking to the Planning Board.

XIII. Roundtable

XIV. Adjournment

Mr. Lanzer MOVED to adjourn at 9:39 p.m.; SECONDED by Mr. Slepian, APPROVED unanimously, 6-0, Motion carries.

Respectfully submitted,
Lucie Bryar, Minutes Taker
Durham Conservation Commission