

**D R A F T**

**DURHAM CONSERVATION COMMISSION**  
**Monday, November 25, 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; John  
Nachilly; Richard Kelley (Planning Board Rep) – arrived at  
7:13 p.m.; and Neil Slepian. Alternates: Anne Lightbody, and  
Steve Moyer.

**MEMBERS ABSENT:** Jacob Cragg (Alternate)

**ALSO PRESENT:** Michael Behrendt, Durham Town Planner

1 **I. Call to Order**

2 Chair Dwight Trueblood called the meeting to order at 7:02 p.m.

3

4 **II. Land Acknowledgement Statement**

5 The Chair read the Land Acknowledgement Statement as adopted by the town.

6

7 **III. Roll Call and Seating of Alternates**

8 Roll call attendance was taken and since a quorum was present, no alternates were  
9 seated.

10

11 **IV. Approval of Agenda**

12 Vice-Chair Hale said regarding **Item X. Plant Species in Site Plan Regulations** that  
13 she had not had a chance to consult with Roanne Robbins and asked if other  
14 members had done any research. It was determined they had not. Mr. Behrendt  
15 offered to delve into the topic prior to the December meeting and bring a new  
16 recommendation forward.

17 ***Ms. Hale MOVED to strike Item X from the agenda for this evening and postpone it***  
18 ***until such time as Mr. Behrendt has time to research it; SECONDED by Mr.***  
19 ***Nachilly; APPROVED unanimously by a show of hands, 6-0, Motion carries.***

20  
21 Mr. Behrendt also noted the minutes of the September meeting were already  
22 approved (Item XI.) and the Chair said they have not yet received minutes for the  
23 October meeting.

24

25 **V. Public Comments:** None this evening.

26

27 **VI. Land Stewardship Update:** Mr. Behrendt said a search is ongoing to fill the position  
28 of Land Stewardship Coordinator.

29

30 Vice-Chair Hale asked if she could give an update on the Land Stewardship Education  
31 Working Group at this time and the Chair said yes.

32

33 She said they've held three walks, all well-attended, in collaboration with Durham Parks  
34 & Rec. The last one, the lichen walk with Jeremy Howell from NYC College, was attended  
35 by more than 40 people. Plans are to continue the collaborative walks through the  
36 winter and next spring.

37

38 Ms. Hale asked if commissioners had ideas for winter walks. The Sub-Group has  
39 discussed a full moon snowshoe hike and possibly a history walk. Mr. Slepian suggested  
40 an animal track walk.

41

42 Mr. Nachilly said UNH has done a lot of snow research, which might be an interesting  
43 topic. The University also has a CO-2 research tower and it might be good to take the  
44 Commission there to see what's being done.

45

46 Ms. Lightbody said she had proposed a geology walk at Adams Point to the Land  
47 Stewardship Committee. She also realized it's the 50th anniversary of the [town vote  
48 rejecting the] refinery, so possibly a Sweet Trail tie-in to that would be good.

49

50 Reporting briefly on Land Stewardship activities, Mr. Slepian (an alternate on the  
51 Committee) said they plan to keep improving trails. Some boardwalks have been  
52 updated on the Sweet Trail. Also, there's beaver activity in the meadow at Oyster River  
53 Forest that has flooded a walkway. There will be a request for funds to build a bridge  
54 next year.

55 The Chair noted Richard Kelley (Planning Board Rep) joined the meeting at 7:13 p.m.

56

57 **VII.4 Riverview Court – Conditional Use Application.** Conditional use in the Shoreland  
58 Protection Overlay District for an existing single-family house for structures to be  
59 located within the 125-foot setback line: expansion of existing driveway, retaining wall,  
60 shed and buried electric line that currently runs overhead. Arthur McManus, property  
61 owner. Chris Guida, Fieldstone Land Consultants, wetland and soil scientist. Map 214,  
62 Lot 11. Residence Coastal District. **POSTPONED TO DECEMBER 23.**

63

64 **VIII. Conservation Commission Preparation for Annual Report.** Discussion about  
65 accomplishments in 2024 and goals for 2025.

66

67 The Chair said he needs to submit a written report to the town by December 6th. He  
68 plans to model it in part on last year’s report by former Chair Jake Kritzer – which tied  
69 the Commission’s activities to town goals. Mr. Trueblood recalled when he presented an  
70 update to Town Council in July, he was asked if the Commission aligns its activities with  
71 those goals. This highlighted to him the importance of approaching it this way.

72

73 Mr. Behrendt had distributed the Natural Resources Master Plan. Chair Trueblood then  
74 opened discussion about major accomplishments for the past year.

75

76 Mr. Slepian asked how Mr. Trueblood wants to approach accomplishments – in a  
77 general way or using more specifics. The Chair said he’s drafted a bulleted list of  
78 accomplishments from past agendas; now he wants to identify where they fit with  
79 broader town goals. One aspect is to show the Commission has spent funds wisely to  
80 restore and improve habitat in town.

81

82 His report will also show how many applications were reviewed for Conditional Use  
83 Permits. One topic of discussion has been improving communication between the  
84 Commission and town residents. He asked about the best way to accomplish this.

85

86 Adding to the list of accomplishments, Mr. Nachilly said the town took ownership of the  
87 Pike Property this year, which was significant in adding protected acreage. The  
88 Commission also spent a lot of time on the water line project at Wagon Hill. Mr. Kelley  
89 said revision of the Wetland and Shoreland Overlay District has taken a lot of work and,  
90 in his view, will have the most significant impact on the town.

91 Mr. Burton said the Wagon Hill project is complete and working well. The Chair asked if  
92 the Commission acted in an advisory capacity and Mr. Burton said their role was more

93 persuasive. He recounted how the City of Portsmouth originally planned to put the  
94 pipeline down the driveway, using a 40-foot right-of-way. However, Mr. Burton  
95 recommended an alternate site, which was eventually agreed to by Portsmouth.

96

97 Mr. Nachilly asked how the Natural Resources Master Plan fits into this discussion and  
98 the Chair replied he sees it more as a resource and background information.

99

100 Mr. Behrendt said in an ideal world, a Master Plan would be actionable and realistic.  
101 However, the reality is the goals in the plan are very ambitious, some are aspirational or  
102 a continuation of what's being done; and some are difficult to implement. He suggested  
103 commissioners be mindful of it, but they should also consult the town's 2025 Master  
104 Plan. He asked when they expect to set new goals. Typically, it's been scheduled for  
105 May, but he recommends doing it earlier.

106

107 The Chair suggested goals could be looked at in January or February.

108

109 Vice-Chair Hale said she likes the idea of paying closer attention to the Master Plan but  
110 cautioned it will require careful thought about how to facilitate the conversation. She's  
111 happy to chat off-line with the Chair and others for how to better utilize the town's  
112 Master Plan.

113

114 Mr. Burton raised the topic of conservation vs. workforce housing and asked how the  
115 Commission can balance those two conflicting goals.

116

117 Chair Trueblood acknowledged that development of workforce housing can conflict with  
118 conservation. He noted the recent presentation on carbon sequestration by Alexandra  
119 [Kosiba] indicated the best thing to do is to keep [forests] standing as much as possible.  
120 But pressures on the Seacoast are such that towns are looking to increase tax revenues  
121 through development.

122

123 Mr. Burton said he's advocated for a regional approach to workforce housing, in his role  
124 on the Strafford Regional Planning Commission – but this approach is not going to be  
125 adopted. Each town has been given individual goals for workforce housing.

126 There was further back and forth discussion between Mr. Burton and Mr. Behrendt  
127 about increased density on non-conservation land, to facilitate development of  
128 workforce housing. Mr. Behrendt briefly explained how density is calculated and Mr.  
129 Burton said he believes there's a role for the Conservation Commission to play in  
130 workforce housing.

131 The Chair said in his view the Commission’s role is advisory. This can be discussed in the  
132 conversation on goals in the new year. He then asked if there are individuals available to  
133 review his draft report to Town Council and Vice Chair Hale and Mr. Behrendt said they  
134 would be willing to review it.

135  
136

137 **IX. Wetland and Shoreland Overlay District – Zoning Amendment.** Continued  
138 discussion about proposed new Wetland and Shoreland Overlay District (WSOD) to  
139 replace the current Wetland Conservation Overlay District (WCOD) and Shoreland  
140 Protection Overlay District (SPOD).

141

142 The Chair invited Mr. Slepian to continue leading the conversation on this item.  
143 Mr. Slepian said at the last meeting, they got up to page 9 in discussion. The process  
144 used was to review anything not nailed down and tie up loose ends. Draft changes are in  
145 blue, purple or red, depending on their status. Consensus was reached they would  
146 continue in this manner.

147

148 Pg. 1 – Under Invasive Plants: Commissioners agreed to change the sources for native  
149 plants from Extension Service, NH-DES or Native Plant Trust to the NH Division of  
150 Environmental Services and NH Department of Agriculture, Markets, and Food.

151

152 Vice-Chair Hale then said approaching revisions this way seems like it will be too time-  
153 consuming. She proposed that Mr. Slepian ask if there are any objections or comments  
154 to items that have already been discussed. It was decided the Commission would take  
155 five minutes of silent review to see if they agreed with the proposed changes up to page  
156 9.

157

158 After quick review by members, Mr. Slepian said if there are no comments as he reads  
159 through, then it will be assumed members are in concurrence with the changes.

160 P. 6 Under Native and Naturalized Vegetation – Mr. Behrendt said he’s heard from a  
161 number of people, including the town’s tree warden, on #8: “Dead trees shall remain  
162 and not be cut.” He said the consensus is this would be a problem with homeowners.

163 Ms. Lightbody said this is standard practice in Maine, but Mr. Behrendt countered that  
164 everything in the ordinance should be oriented toward protecting the shoreland and  
165 wetlands. It was clarified this item is referring only to trees in a buffer.

166 Mr. Behrendt said as a planner, he thinks about cost/benefit. There has to be a  
167 reasonable distance from a house that is sacrosanct. He's proposing dead trees could be  
168 removed at the homeowner's discretion if they are within 100 feet of their home.

169  
170 Mr. Slepian said the Fire Marshal (in his communication via email) recommended a  
171 distance of 50-feet from the house. It was clarified he was referring to fallen trees that  
172 could pose a fire hazard, not standing trees. Chair Trueblood noted that fires are more  
173 likely to occur due to drought brought on by climate change. He would concur with  
174 increasing it to 100-feet.

175  
176 Mr. Lanzer read the proposed change: *Dead trees, whether standing or fallen, shall*  
177 *remain and not be cut, except for trees that are a threat to persons or property and trees*  
178 *located within 100 feet of a house or other principal building.*

179  
180 In theory, he said this allows homeowners whose homes are close to the water to take  
181 out a number of dead trees near the water. The ecological value of downed wood near a  
182 water body is important because it helps to slow erosion and also provides wildlife  
183 habitat. He noted the exception is any tree deemed to be a hazard, which can be  
184 removed.

185  
186 Mr. Behrendt said maybe they should specify x feet from the water. There was further  
187 discussion about what the appropriate distance from the house should be to require  
188 standing dead trees to remain. Speaking as a forester, Mr. Lanzer said it's about striking  
189 distance, which is determined by the height of the tree.

190  
191 Mr. Trueblood asked Mr. Behrendt: if a change is written into the ordinance, can a  
192 homeowner still come to the Commission seeking a variance. Mr. Behrendt said there  
193 are a number of permitted uses in the ordinance. Residents do not have to pay  
194 application fees and notices don't need to be sent. They would have to appear once  
195 before both the Conservation Commission and the Planning Board. The town needs to  
196 be mindful of keeping the process reasonable for homeowners.

197  
198 Mr. Kelley asked about [the distance of trees from] power lines and Mr. Behrendt said  
199 that's covered under "property."

200 There was discussion about what occurs if homeowners have a large group of standing  
201 dead trees. Mr. Behrendt recounted a recent case where a homeowner sought to take  
202 down a lot of red pine trees that were dead. After review and consultation with a  
203 number of experts, it was agreed all the trees should be removed.

204 Chair Trueblood said that particular situation was seen as an environmental threat. If all  
205 75 trees fell, it would be difficult to remove them and then invasive species could take  
206 over.

207  
208 During further discussion it was suggested to leave the language more general, but Mr.  
209 Behrendt said he thinks the Commission should specify a distance around a house  
210 where the homeowner doesn't have to come before a board or commission. He noted  
211 that he's extremely busy and doesn't have time to review a lot of new applications for  
212 tree removal. The Commission needs to be mindful of how changes to the ordinance will  
213 impact town resources.

214  
215 Mr. Trueblood proposed they adopt the fire marshal standard of 50-feet [from a house].  
216 Mr. Lanzer said anything beyond the 50-feet that is within striking distance of your  
217 house would be considered a "candidate for removal" because of the potential hazard.  
218 He agrees 50-feet would be a reasonable compromise. There seemed to be consensus  
219 on this.

220  
221 Mr. Behrendt will re-write the language to say: any tree that's a threat can be removed  
222 and any dead trees standing or fallen with 50 feet of a house can be removed; while any  
223 fallen tree within 25 feet of the reference line may *not* be removed without a  
224 conditional use permit.

225  
226 Commissioners continued to discuss if the 25-foot restriction should apply to both  
227 standing and fallen trees and ultimately decided it should be for fallen trees only. Mr.  
228 Behrendt pointed out potential issues if there's a dead tree on a slope, which should be  
229 removed.

230 Mr. Slepian noted their discussion has focused on trees near a river or shoreline, but the  
231 ordinance also applies to wetlands. He questioned how the issue should be addressed  
232 near a bog or vernal pool, for example.

233  
234 There was back and forth discussion on this and Mr. Kelley asked how big of an issue it  
235 poses. Are homeowners removing a lot of trees? Mr. Behrendt said this is difficult to  
236 answer. The town is aware of those seeking permission but isn't aware of those  
237 removing trees illegally unless it's brought to their attention. Mr. Kelley said the  
238 ordinance talks about threats to property but doesn't mention ecological threats.

239  
240 Vice-Chair Hale proposed adding a clause that trees could be removed if they are a  
241 threat to persons, property, or the "ecological integrity of the site," which would cover

242 trees on a slope, for example. It was agreed this was a good approach and Mr. Behrendt  
243 will re-word the draft to reflect everything discussed.

244

245 Mr. Slepian then proceeded to move the discussion to other changes and comments on  
246 the draft. Regarding a comment from former Land Stewardship Coordinator Sara  
247 Callaghan that some items on page 8 aren't "measurable and actionable," Vice-Chair  
248 Hale said much of the ordinance isn't measurable. The Chair said at the least it gives the  
249 town the ability to intercede if a complaint is lodged or something comes to their  
250 attention.

251

### 252 **Discussion of C – Agricultural Activity**

253

254 The draft states no agriculture is permitted within 100-feet of a water body. Mr.  
255 Behrendt said that means no livestock or planting of crops.

256

257 It was agreed the phrasing "activity related to agriculture" should be changed to  
258 "agriculture and activity related to agriculture" to avoid confusion. This includes the use  
259 of herbicides and pesticides, e.g.

260

261 Mr. Behrendt questioned if the ordinance, as written, would allow the use of pesticides  
262 within a buffer. It was noted that homeowners are being directed to follow Best  
263 Management Practices when using pesticides/herbicides and in some cases, their  
264 activities would be reviewed by the Agricultural Committee. Vice-Chair Hale pointed out  
265 that BMP doesn't mean "no pesticides," rather that all directions are followed to  
266 maintain water quality.

267 Ms. Lightbody made a formatting suggestion to reduce confusion within the body of the  
268 ordinance and minimize broken links in the future. She recommended moving some  
269 content to the appendix and consensus was reached to do that.

270

### 271 **Item D – Septic Systems**

272

273 Mr. Slepian asked if a 125-foot setback from the reference line is appropriate and Chair  
274 Trueblood said he dug into NH Code of Administrative Rules on this. The State requires a  
275 75-foot setback for a septic tank and bed. The proposed 125-feet is more for ecological  
276 reasons.



277 The Chair said Great Bay is being adversely affected by nutrients and any septic system  
278 too close is going to pose a problem. Ground water is coming up due to climate change  
279 causing rising sea levels, posing a risk of failure to septic systems too close to the Bay.

280  
281 Ms. Lightbody proposed changing the wording to say homeowners are *encouraged* to  
282 set back a septic system as far as practical, but a minimum of 125 feet.

283  
284 Mr. Slepian raised the question whether residents would be allowed to put a septic  
285 system in a buffer when a buffer is greater than 125-feet. Mr. Behrendt pointed out a  
286 sewer line, septic tank, and leach field are all a little different [in terms of their impact  
287 on the water]. He thinks it should be clarified.

288  
289 After discussion, it was agreed Mr. Behrendt will revise the wording to say septic  
290 systems must be set back 150-feet, pending further research. Mr. Trueblood will look  
291 into “Buffers on the Bay,” the document used for much of the science recommended in  
292 the ordinance. Mr. Behrendt noted as written, the ordinance allows septic and sewer  
293 lines to be within the buffer by conditional use. Leach fields need to be set back at least  
294 125 feet, with no conditional use permits granted for those.

295  
296 The Commission then moved on to review Permitted Use A – Uses that Do Not Require  
297 Review (pg. 9 of draft)

298  
299 Ms. Lightbody said she’s confused by the wording and is unclear if lawns are allowed in  
300 the buffer. There was discussion about what’s included and what constitutes a lawn. Mr.  
301 Behrendt said it’s possible certain native grasses could be considered lawn. Mr. Lanzer  
302 asked if lawns would be permitted within a wetland buffer.

303  
304 Mr. Nachilly pointed out generally when they talk about lawns, they’re referring to  
305 maintenance like mowing and fertilizing.

306 After discussion of various items within this section, Mr. Behrendt said he’ll try to  
307 rewrite it to clarify the language and intent.

308  
309 The Chair said in light of the time, he’d like to move on to the next item on the agenda.  
310 He believes they’ve made some progress on the ordinance draft this evening.

311 **X. Plant Species in Site Plan Regulations.** Continued discussion about list of plant species  
312 in Site Plan Regulations, including list of invasive plants. POSTPONED

313 **XI. Review of Minutes:** September 23, 2024 – APPROVED at prior meeting

314 **XII. Other Business**

315 Chair Trueblood asked how many members expect to be in attendance at the December  
316 23rd meeting and it was decided there would likely be enough members present for a  
317 quorum.

318 Vice-Chair Hale asked for clarification about last month’s discussion on collaborating with  
319 the town of Newmarket on a PREP grant, since she wasn’t present at the meeting. She  
320 has a group of UNH students who will be working with Ellen Snyder and another  
321 Newmarket Conservation Commission member to help write the grant proposal. She  
322 asked if Durham is planning to participate since she needs to advise her students.

323 Mr. Behrendt said it was unclear if Ms. Snyder was proposing to write the grant for both  
324 Newmarket and Durham. The Chair said he believes the proposal was for the towns to  
325 use the same contractor [to map the vernal pools]. He thinks it would be great to get  
326 student help to write the grants.

327 Ms. Lightbody suggested that students could also be involved if the town is thinking of  
328 pursuing a natural resources inventory. The Chair concurred this could be a good way to  
329 meet the community engagement piece of the grant. He added that PREP is offering an  
330 online webinar in mid-January.

331 He also noted Ms. Snyder mentioned a salamander crossing brigade and the  
332 Commission hasn’t discussed that yet.

333 Vice-Chair Hale said there’s a whole group of people interested in starting a salamander  
334 brigade on the seacoast, but mapping of vernal pools needs to take place first so they  
335 know where it would be most effective. She said Durham isn’t ready to do the  
336 salamander project in spring of 2025 but can start the groundwork.

337 In answer to a question about whether the [vernal pool] survey would look at both public  
338 and private lands, Mr. Lanzer said it had been decided that private landowners would be  
339 included if they grant permission.

340 **XIII. Roundtable**

341 Chair Trueblood said the seminar and Doe Farm nature walk by Alexandra Kosiba were  
342 very informative. He recommends two of her publications: one being *Twelve Steps for*  
343 *Climate Resilience* and the other being a compilation of two papers she’s written on

344 climate change. Both are available on the University of Vermont Cooperative Extension  
345 website. He believes bringing Ms. Kosiba in to speak was a good use of resources.

346 Mr. Lanzer said thanks go to Sara Callaghan (former Land Stewardship Coordinator) for  
347 organizing the event. It was noted the presentation was recorded and might be available  
348 on the town website. If so, it could be highlighted in *Friday Updates*.

349 Mr. Kelley asked if the Commission has a regular listing in *Friday Updates* under  
350 “Conservation Matters” and it was generally agreed this could be a goal to pursue in  
351 2025.

352 **XIV. Adjournment**

353

354 ***Mr. Lanzer MOVED to adjourn the meeting at 9:31 p.m.; SECONDED by Mr. Kelley and***  
355 ***APPROVED unanimously by a show of hands, 7-0, Motion carries.***

356

357 Respectfully submitted,  
358 Lucie Bryar, Minutes Taker  
359 Durham Conservation Commission