

**TOWN OF DURHAM**  
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**Town Planner's Project Review**  
**Wednesday, October 12, 2022**

IX. **Subdivision off Gerrish Drive.** Application and conditional use for 18-unit conservation subdivision for seniors. 91 Bagdad Road address. *\*The project was remanded by the Superior Court back to the Town for consideration.* Marti and Michael Mulhern, property owners. Mike Sievert, Horizons Engineering. Mark West, Wetland Scientist. Sharon Cuddy Somers, attorney. Map 206, Lot 46. Residence B District.

➤ I recommend that the board accept the application as complete and schedule the public hearing for October 26.

Please note the following:

**Application remanded**

The Planning Board approved the subdivision plan for 18 residential units and the conditional use for activity within wetlands and the wetland buffer on November 10, 2021. Gail Kelley, an abutter to the project, appealed the decision to Superior Court. The court remanded the application back to the Planning Board.

Many things were discussed in the appeal and the judge's order makes reference to various issues that Ms. Kelley referred to, but Laura Spector, the Durham Town Attorney, advised the Planning Board and the Conservation Commission that the remand is based on only one issue, a review of the HISS map.

Two items were not submitted with the original formal application:

- 1) A HISS map (High Intensity Soil Survey map) was provided electronically from soil scientist Mike Mariano to Mike Sievert, design engineer. Mike Sievert incorporated the HISS map into a Site Inventory Plan (showing the HISS soil groups and other required information) that was submitted. However, the Subdivision Regulations call for a certified HISS map. We did not receive a separate HISS map from Mike Mariano with his stamp.
- 2) The subdivision regulations require that the HISS map be verified by the Strafford County Conservation District (not the Conservation Commission). I missed this requirement.

Without these two items the judge determined that the application was not complete and the Planning Board should not have accepted it as complete. Thus, a new application with these items must be submitted to the Planning Board for review. This will involve acceptance of

the application, a public hearing, and a recommendation from the Conservation Commission on the four wetland criteria for activity within the wetlands and wetland buffer (in accordance with the Wetland Conservation Overlay District).

### **Application materials**

The application has been resubmitted. It is complete and the Planning Board can accept it. The application materials were passed out to the Planning Board at the meeting on September 28 (to save mailing costs).

The key application materials and plans were resubmitted, especially those related to the HISS map and verification. The countless documents related to various aspects of the project have not been resubmitted in the interest of saving the tremendous amount of paper, copying time, and postage costs that would be involved.

One can see all of the current documents resubmitted at the Planning Board's website at: [https://www.ci.durham.nh.us/boc\\_planning/subdivision-application-gerrish-drive](https://www.ci.durham.nh.us/boc_planning/subdivision-application-gerrish-drive).

The website includes a link at the bottom to the documents submitted with the earlier review. Here is that direct link:

[https://www.ci.durham.nh.us/boc\\_planning/subdivision-conditional-use-gerrish-drive](https://www.ci.durham.nh.us/boc_planning/subdivision-conditional-use-gerrish-drive).

See the list of these earlier documents on the four pages at the bottom. Note also that there are many letters from abutters and other interested parties to the Planning Board that are included on the website at the bottom under Citizen Comments. The Planning Board should look at these earlier documents and the letters. If any board members would like a hard copy of any of these earlier documents or letters please let me know.

### **Application review**

The original Site Inventory Plan incorporating the HISS was dated November 20, 2019. Mike Sievert informed soil scientist Mike Mariano that a stamped HISS map is needed now for the new review by the Planning Board. Mike Sievert conveyed to me that Mike Mariano wanted to take another look at the original map to make sure it was correct. The map that Mike Mariano submitted recently for this new review incorporates some changes from the original HISS map. Mike Sievert shows these changes on the maps included in the new submission. He can explain these changes to the Conservation Commission and the Planning Board. ***The commission and board will need to decide if these changes are significant and would affect the review and approval of the conditional use and subdivision.***

The Strafford County Conservation District hired soil scientist Mike Cuomo to verify the HISS map. Mike Cuomo verified the map and included some comments with the verification. ***The commission and board will need to decide if these comments are significant and would affect the review and approval of the conditional use and subdivision.***

\*\*\*According to the Town Attorney the review now by the Conservation Commission and the Planning Board should be restricted to the HISS map which would include these two items that I show in bold italics above. This is not an opportunity to reconsider every aspect of the original subdivision review.

Regarding the first item, changes that Mike Mariano made to the HISS map, this is a little complicated so Mike Sievert can best explain this.

Regarding the second item, the verification is attached. Here are the pertinent comments from Mike Cuomo:

*Resulting from my review, I agree that the HISS map accurately represents the soil conditions on the site.*

*There are minor issues which I am bringing to your attention.*

*A. The slope designation 'A' is used in 2 map units. The HISS standards do not use 'A' slopes.*

*B. The 'HISS' plan sheet prepared by Horizons Engineering has four notes...*

*Note 1 cites the wrong publication. "High Intensity Soil Maps for New Hampshire" SSSNNE Special Publication No.1, is the correct reference.*

*Note 2 is incorrect. HISS maps are not used to meet the State requirements for Alteration of Terrain rules.*

*Note 3 cites the wrong date for Mr. Mariano's report and page 32 is an incorrect reference.*

*Note 4 is correct but does not apply to this project.*

*C. There is an 'access easement' to Durham Road which was not soil mapped. There is a strip of land identified as Gerrish Drive Extension on sheet S3, and as Ryder Way on sheet C101, which was not soil mapped. It is unclear to me if these need to be soil mapped as part of this project*

There are five symbols on the HISS designation, 353BH for example. The symbols refer respectively to drainage (well drained, poorly drained, etc.), parent material (sand, silt, clay, etc.), restrictive features (bedrock and clay), and percent of slope. The last H simply identifies the code as a HISS code.

- The HISS is not used to identify wetlands but it shows poorly and very poorly drained soils which are generally wetlands. These soils line up exactly with the wetlands that were delineated separately by the wetland scientist.
- The HISS is used for two purposes: 1) to plan the site overall, identifying the appropriate locations for roads, houses, leach fields (sewer will be extended to the

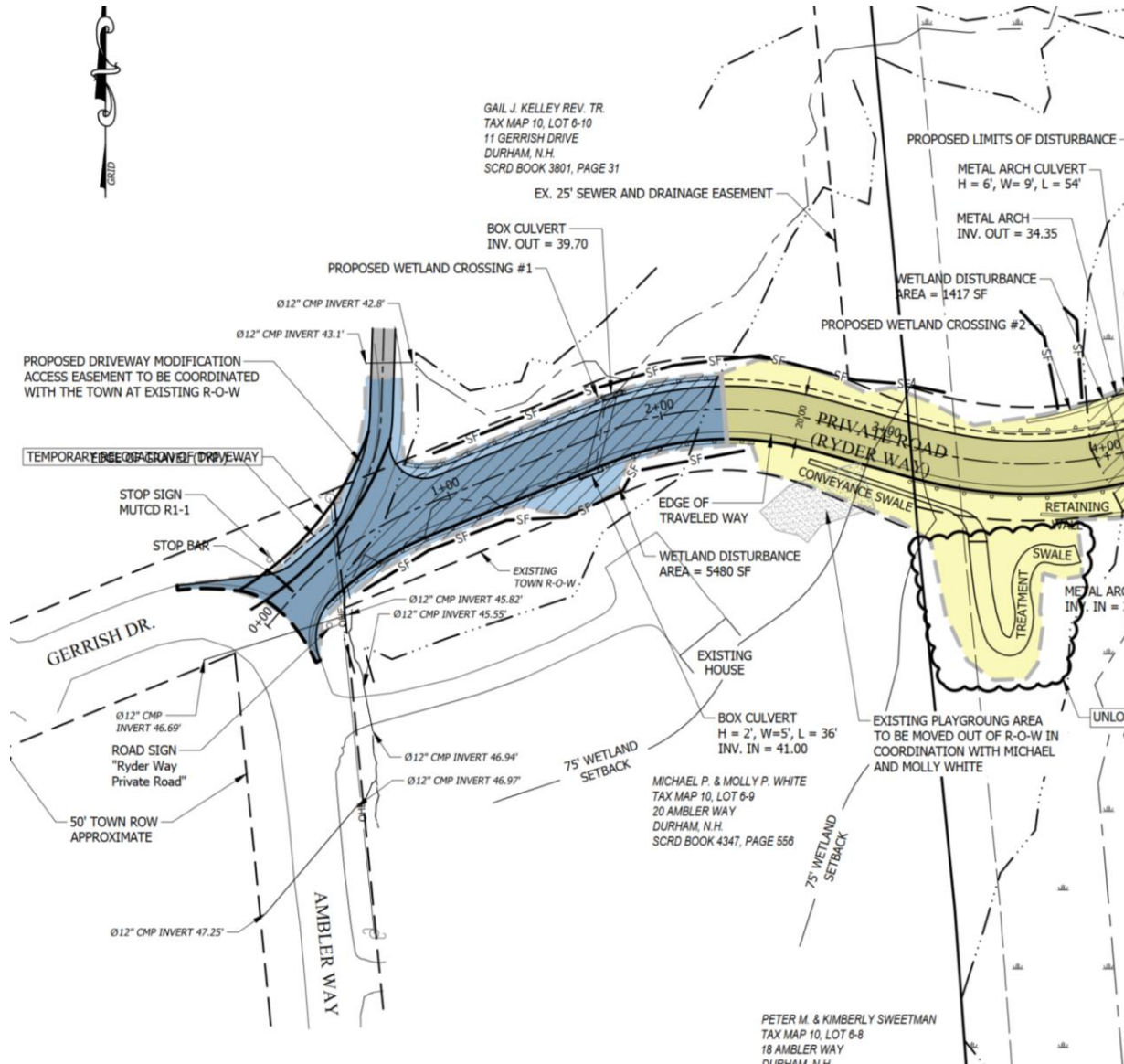
site), and infrastructure and 2) to establish allowable density for the project. It doesn't appear that the changes on the HISS map would affect those elements but the board should look at this carefully.

The Conservation Commission reviewed the conditional use application again at its meeting on September 19. The commission voted to reaffirm that under the strict conditional use criteria the commission does not change its recommendation to the Planning Board, i.e. that under a strict reading of the ordinance the four conditional use criteria are met. However, the commission will further examine the impact of the selected access and potential alternative access points on the watershed resources of the town.

**Waiver for HISS map in right of way**

The applicant submitted a request for a waiver from doing HISS mapping for the right of way located off Gerrish Drive, presently owned by the Town of Durham and which will be conveyed to the applicant. This is a waiver from Section 7.01.C.6. the requirement to provide a High Intensity Soils Survey (HISS) for the soils on the site.

This small right of way does not count toward the density of the project and is not used toward overall planning of the parcel since the applicant decided at the outset to use the right of way for the access road. Most of this right of way is wetland for which the application provides substantial information, more than would be provided with a HISS designation of the wetland. There is a small section of upland within the right of way. Would HISS designations for this area be useful? The board can discuss that. See the drawing on the next page. This is excerpted from page 9 of the plan set. The right of way is located to the west of the bold vertical line demarcating the parcel. The impacted wetland is shown with diagonal lines. The wetland boundary is shown with \_\_\_\_ . . . \_\_\_\_ .



**Waiver for subdivision fees**

The applicant submitted a request for a waiver from the fees for the project. I think it appropriate to waive the application fees since the board already conducted an extensive review of this application and the main thing remaining now is to evaluate the HISS map and verification.

























This was largely an oversight by the Town Planner and not one by the applicant so I think it fair to waive the application fees. I leave it to the board whether or not to also waive the fees for the public notice.


The application fees are \$600 + \$100 per lot (or unit) for a total of \$2,400.

The public notice fees are \$9 per abutter (within 300 feet for the conditional use) + \$225 for the legal notice for a total of \$432.


➤ I recommend that the board waive the application fees (and possibly notice fees).  
Town Planner's Project Review – Gerrish Drive

## Supporting Documents


-  HISS Report (678 KB)
  -  HISS Map, stamped by soils scientist 7-11-22 (2 MB)
  -  Final Notice of Decision (182 KB)
  -  Draft Notice of Decision #2 (237 KB)
  -  Draft Declaration of Condominium (259 KB)
  -  Updated Construction Management Plan 11-4-21 (171 KB)
  -  Information on Pocket Neighborhoods 11-4-21 (4 MB)
  -  Response to Draft Notice of Decision 11-2-21 (78 KB)
  -  Revised Plans 11-2-21 (21 MB)
  -  Draft Notice of Decision (301 KB)
  -  Memo from the Town of Madbury 10-21-21 (766 KB)
  -  Comments from the Department of Public Works 10-5-21 (191 KB)
  -  Construction Management Plan (2 MB)
  -  Landscaping Operation & Maintenance Plan (70 KB)
  -  Revised Subdivision Plans 10-5-21 (7 MB)
  -  Revised Drainage Report 10-5-21 (940 KB)
  -  Site Grading Plan (777 KB)
  -  Public Works Director Rich Reine's Response to Question from Eleanor Lonske 10-1-21 (222 KB)
  -  Email from James Bubar 9-28-21 (722 KB)
  -  Comments from Durham Conservation Commission 9-22-21 (113 KB)
  -  Planner's Review 9-22-21 (72 KB)
  -  Letter from Attorney Sharon Sommers 9-15-21 (181 KB)
  -  Updated Plan 9-15-21 (21 MB)
  -  Condominium Plan 9-15-21 (598 KB)
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-  Draft Declaration of Condominium Document 9-15-21 (246 KB)


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  -  Planner's Review 8-11-21 (250 KB)


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  -  Declaration of Condominium with Planner Comments 7-22-21 (433 KB)


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  -  Bylaws with Planner Comments 7-22-21 (310 KB)


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  -  Planner's Review 7-14-21 (139 KB)


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  -  Letter from Horizons Engineering 7-8-21 (177 KB)


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  -  Draft Declaration of Condominium Document 7-8-21 (264 KB)


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  -  Updated Subdivision Plan 7-8-21 (7 MB)


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  -  Comments from Public Works Department 6-28-21 (6 MB)


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  -  Email from the Fire Chief of Madbury 6-9-21 (102 KB)


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  -  Revised Waiver Request for Road Construction 6-8-21 (127 KB)


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  -  Planner's Review 6-9-21 (319 KB)


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  -  Email from Michael Behrendt Regarding Gail Kelley's Property 6-2-21 (748 KB)


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  -  Planner's Review 5-26-21 (171 KB)


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  -  Email Exchange with Mark Verostick Regarding Drainage 5-12-21 (1 MB)


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  -  Planner's Review 5-12-21 (275 KB)


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  -  Public Works Memo on Private Road Ownership 5-7-21 (6 MB)


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  -  Conditional Use Criteria Supporting Documents 5-6-21 (57 KB)


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  -  Planner's Review 4-28-21 (185 KB)


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  -  Letter from Attorney Sharon Cuddy Somers 4-26-21 (112 KB)


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  -  Memo from Durham Public Works Dept. 4-26-21 (216 KB)


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  -  Letter of Opposition from Attorney Kelsey Peterson 4-26-21 (178 KB)


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  -  Response to Engineering Technical Review 4-26-21 (78 KB)


























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  -  Letter from Horizons Engineering and Waiver Applications 4-22-21 (2 MB)























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  -  Revised Plans 4-21-21 (6 MB)
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-  Revised Stormwater Systems Management Plan 4-21-21 (649 KB)
-  Revised Drainage Report 4-21-21 (7 MB)
-  Planner's Review 3-24-21 (180 KB)
-  Final Report from Conservation Commission 3-22-21 (81 KB)
-  Letter from Horizons Engineering 3-22-21 (1 MB)
-  Letter of Opposition from Attorney Kelsey Peterson 3-19-21 (142 KB)
-  Letter from Attorney Sharon Cuddy Somers 3-18-21 (173 KB)
-  Letter from Applicant 3-10-21 (179 KB)
-  Planner's Review 3-10-21 (293 KB)
-  VHB Peer Review 3-4-21 (133 KB)
-  Letter from Applicant Regarding Property Values 2-18-21 (50 KB)
-  Letter from Attorney Sharon Cuddy Somers 2-16-21 (96 KB)
-  Stormwater Systems Management Plan 2-15-21 (241 KB)
-  Revised Drainage Report 2-15-21 (6 MB)
-  Operation & Maintenance BMP Plan 2-15-21 (570 KB)
-  Pre-Development Conditions Plan 2-15-21 (430 KB)
-  Post Development Conditions Plan 2-15-21 (528 KB)
-  Planner's Review 2-10-21 (265 KB)
-  Explanation of Changes in Plans 2-4-21 (290 KB)
-  Revised Plans 2-4-21 (19 MB)
-  Letter from Mark West - Existing Impacts to Wetlands 2-5-21 (2 MB)
-  Letter from Mark West - Wetland Buffer Impact Reductions 1-25-21 (4 MB)
-  Letter from Attorney Sharon Cuddy Somers 1-21-21 (277 KB)
-  Letter on Revisions 1-21-21 (193 KB)
-  Revised Plans 1-21-21 (3 MB)



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-  Revised Landscaping Plans 1-21-21 (2 MB)
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-  Letter from Marti & Mike Mulhern 1-20-21 (44 KB)
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-  Site Walk Minutes 1-13-21 (213 KB)
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-  Planner's Review 1-13-21 (398 KB)
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-  Email & Deeds from Attorney Sharon Cuddy Somers 1-11-21 (4 MB)
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-  Letter from MJS Engineering 1-8-21 (245 KB)
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-  Cluster Grading Plan 12-23-20 (2 MB)
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-  Planner's Review 12-16-20 (188 KB)
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-  Wetland Assessment Report by West Environmental 12-15-20 (14 MB)
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-  General Description of Common Open Space Ownership & Stewardship Plan 12-9-20 (412 KB)
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-  Revised Subdivision Plans 12-9-20 (19 MB)
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-  Landscaping Plan 12-9-20 (3 MB)
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-  Photo Log for Wetland Conservation Overlay District (1 MB)
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-  Updated Trip Generation Analysis by Stephen G. Penaw & Company Inc. (494 KB)
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-  Drainage Report (7 MB)
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-  Planner's Review 11-18-20 (190 KB)
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-  Technical Review Committee Notes 11-10-20 (139 KB)
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-  Revised Subdivision Plans 11-4-20 (24 MB)
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-  Subdivision Application (794 KB)
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-  Conditional Use Application (686 KB)
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-  Letter of Intent (3 MB)
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-  Subdivision Plan (9 MB)
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