

MINUTES
NEW DURHAM CONSERVATION COMMISSION
SEPTEMBER 30, 2008

Chairperson Dennis Gagne called the meeting to order at 7:13 PM.

Roll Call: Dennis Gagne (Chairperson), Ron Gehl (Selectmen's Representative), Charlie Berube (Vice-Chair), Bill Malay (Alternate), Bob Craycraft.

1. **Sullivan.** The Commission reviewed the Redevelopment Waiver Application for Daniel H Sullivan, 208 South Shore Road, Map 30, Lot 255 to repair an existing retaining wall by replacing and remortaring loose and fallen stones. Members had no concerns.
2. **Staples.** The Commission reviewed the Redevelopment Waiver Application for Shayne Staples, 120 Ten Rod Road, Map 2, Lot 6 to retain a 6150 square foot wildlife pond constructed in a poorly drained forested wetland without approval from the Wetlands Bureau. Commission members had many questions for Mr. Staples. They asked questions about the need for the pond, how much effort has been made to comply with DES directives, and how the proposed work will be done.

Bob Craycraft expressed concern about nutrient outflow. He said the swale would catch outflow from the lawn, but he saw no catch for outflow from the drainage area. Ron Gehl said the plan did not include any restoration of areas already disturbed.

Ron Gehl moved to recommend denial of the after the fact application on the basis of five specific concerns as follows:

- 1 Need: The rules require, and the Department reaffirmed in its April 18, 2008 letter to Mr. Staples, that the "need for the proposed impacts shall be demonstrated ...prior to department approval."

There is no documentation in the application of any need for the pond to replace the original wetland. On the first page of the narrative that responds to the requirements of Env-Wt 302.04 the application states that "The applicant wishes to retain" the pond. It goes on to describe interactions with the Department and potential improvements by the applicant and concludes "These actions...will enhance and diversify the wildlife functions and values of the pond..."

The wish to retain the pond is not a description of need. The enhancement of wildlife functions by adding minimal vegetation around a pond that replaced a wetland is not a description of need. No need is established. Unless need can be established the application should be denied on this basis alone.

2 Least Impacting Alternative: The rules require, and the Department reaffirmed in its April 18 letter, demonstration that the applicant's proposal is "the one with the least adverse impact." The application simply states that their proposal will reduce the current impact. In the absence of any information, the least impacting alternative is return of the area to its natural state. A less impacting alternative could be planned with additional drainage measures and plantings.

3 Compliance: The applicant either ignored the requirement for permission to dredge and fill in wetlands, or made no effort to learn of any permitting requirements before building the pond. The applicant has not responded to previous requests and directives from the Department in regard to this pond.

The Commission is concerned that the applicant will not fulfill his commitments, and approval of this application will give the applicant another opportunity to continue ignoring the law. At the very least, the Department needs to require a performance bond.

4 Nutrient Loading: The Department's letter of April 18, 2008 expresses concern that the project may contribute to "nutrient enriched" runoff.

The applicant's proposal only partially addresses these concerns. In the absence of other measures, attracting waterfowl to the area will actually

increase nutrient loading. The photograph of a Canada Goose is not encouraging in this regard.

The proposed plantings are thin. More is needed. The 1-foot swale will help but will be inadequate in heavy storms. The drainage leading down from the house will not prevent fertilizer runoff into the pond.

5 Restoration: The application offers only partial restoration of the impacted areas.

Mr. Gehl further moved to authorize the Commission Chair to approve the wording of a letter to NHDES expressing the Commission's views. Charlie Berube seconded. Unanimously approved with no abstentions.

3. **224-226 South Shore Drive.** The Commission reviewed before and after photographs of the reconstruction work done on shore front retaining walls at 224-226 South Shore Drive. Several complaints have been reported to the Town on this site. Commission members felt that considerably more work was done on the retaining wall than was shown in the original application for a Permit by Notification, and the level of work was certainly more than expected for a PBN. The Commission agreed by consensus to forward photographs and concerns to NHDES.
4. **Red Oak Ridge.** Commission members discussed a report that Red Oak's owners plan to take out over \$1,000,000 in wood chips and timber, considerably more than shown in their Timber Report. Chair Gagne will speak with the Town Administrator and ask that the Town Forester check out the accuracy of the report.
5. **Minutes.** Ron Gehl moved approval of the minutes of August 26, 2008 as presented. Bill Malay seconded.

Ron Gehl moved to adjourn at 9:10 PM. Bill Malay seconded. Approved unanimously with no abstentions.

Respectfully submitted,

David Allen
Land Use Administrative Assistant