TOWN OF SCARBOROUGH, MAINE

Town of Scarborough Conservation Commission

June 25, 2024 | 6:00 p.m. | Virtual via Zoom

Meeting Minutes

Present via Zoom:

Commission: Bennett Flanders, Randi Hogan, Cathleen Miller, Abel Plaud, Jessica Sargent, Pete Slovinsky, Maggie Vishneau, Marla Zando
Town Council: Karin Shupe
Staff: Jami Fitch, Emerson Goodrich, Eric Sanderson, Autumn Speer

A recording of this meeting is available online: Conservation Commission – 6/25/24

Call to order

1. Meeting was called to order at 6:02 pm.
2. Randi offered a land acknowledgement to recognize the Wabanaki People as traditional stewards of Scarborough.
3. Abel motioned to accept the minutes. Pete seconded. Rollcall vote was five in favor, two abstain. Motion passed.
4. Public Comment
   - Andrew Mackie of Scarborough Land Trust (SLT) encouraged Commission members to attend the 6/26 Town Council meeting to support SLT's land bond request to support the purchase of 130 acres off Hansen Road.
     - Jessica noted the property in question is high value and SLT has received an additional $650,000 from the Land for Maine's Future program to go toward the purchase.

Old Business

1. Open Space Plan
   - A public workshop is scheduled on Thursday, 7/25, from 6:00 – 8:00 pm at the Public Safety Building. The interactive workshop will allow the community to help guide conservation priorities.
   - The Ad-Hoc Committee members will also attend the following community events over the summer to get public input:
     - Concerts in the Park on 7/11, 7/18, and 8/1
     - Summerfest on 8/16
     - Scarborough Farmers' Market (date TBD)

- An interactive project website is also in development to allow the public to weigh in virtually.
  - *Post-meeting follow up: link to the interactive website*
- **ACTION: COMMISSIONERS are encouraged to attend with workshop on 7/25. JAMI will send an invitation to get the workshop on everyone's calendars.**

2. Environmental Standards

- Autumn provided an overview of the developer forum, which was coordinated by SEDCO and held on 5/23. She described the reception to the standards as less than favorable. Councilors Anderson and Caterina attended the forum, and they suggested forming a working group of Commissioners and developers/engineers to work through the proposed standards.
- Pete asked if there will be any other opportunities to speak and receive feedback from groups other than developers. Autumn shared that there are no concrete plans, and added that the developer group saw no potential for negotiation.
- Autumn mentioned DEP's low impact development standards that are out for public comment, which the Town will be required to adopt by November 2025. The standards would be mandated and would cover some of the environmental standards that have stalled.
- Karin asked about next steps in the process. Autumn suggested reaching out to Councilor Caterina to set up the suggested working group.
- Randi asked if Councilors Anderson and Caterina should be invited to attend a Conservation Commission meeting to discuss the environmental standards, since they've only heard feedback from developers. Karin will touch base with Councilors Anderson and Caterina.
- Pete asks if more supporting information would be helpful in trying to move the standards forward.
- **ACTIONS:**
  - **JAMI will send DEP's proposed low impact development standards to the Commission.**
  - **JAMI and AUTUMN will work on coordinating the roundtable.**

3. Planning Board Submittals

- Anjon's
  - Eric introduced the submittal from Anjon's Restaurant (521 US Route 1). A restaurant has not operated at this location in over a year. Because a restaurant is a non-conforming use in the zone and has not been in operation for over a year, the owner/operator is required to get approval from the Zoning Board of Appeals (ZBA). As part of that process, the Planning Board needs to provide an advisory opinion.
  - Jami provided background on the property. The parcel has an overboard discharge (OBD) license from the Maine Department of Environmental Protection (DEP), which was initially granted roughly 40 years ago and is renewed every 5 years. An OBD is essentially a private waste water treatment system for properties that are not connected to public sewer and where septic systems cannot be installed. The effluent from an OBD goes directly into a water body (in this case, Phillips Brook and then Scarborough Marsh). DEP has said that the system is not in good condition and will need to be replaced soon, but the Department is not in a position to deny the license.

- DEP inspects the system annually. Four years of inspection reports were included in the Planning Board's materials. Each of the reports indicated that the OBD system did not meet the requirements of the license.
- The Commission discussed options for the site. Ideally, they would like the OBD removed from Phillips Brook. They recognize this option is likely unrealistic so they discussed alternatives. The following alternatives are listed in order of preference:
    - Discontinue use of the OBD and connect to the public sewer.
    - Fully replace OBD system.
    - Continue using existing OBD system, and conduct weekly sampling to test for bacteria levels, oil, and grease. Provide weekly testing reports to the Town.
- Pete asked if Anjon's flooded during the January 2024 storms. He also noted that the owner/operator should be made aware of MaineDOT's plans to raise Route 1.
- Jami shared that the item will be taken up by the Planning Board on 7/15 and the Zoning Board likely in August.
- Karin suggested Commissioners plan to attend the Zoning Board meeting to speak about this item. She noted that the first standard listed in the ZBA's Application for a Special Exemption requires that the proposed use "will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation."
- **ACTION: JAMI will draft a memo to the Planning Board and ZBA that outlines the Commission's concerns with the OBD system, provides the Commission's recommendations, and notes MaineDOT's plans for Route 1. The COMMISSION will review the memo and provide edits before it is sent to both groups.**

– Scarborough Downs Road
- Eric provided an update on Downs Road. The Downs developer removed improvements to Scarborough Downs Road from the site plan amendment to allow additional time to meet the Town's requirements. The Planning Board made the plans for the road a condition of approval for the subdivision amendment. Before Intermed receives a Certificate of Occupancy, Downs Road needs to be addressed.
- Bennett shared that the Planning Board wants to find an environmentally-acceptable solution for the road.

New Business

1. Piping Plover Ordinance

– Jami gave some background to the Ch. 610, Piping Plover Ordinance, revision process. The Town Council requested that the Commission and the Community Services Advisory Board review proposed changes to the Piping Plover Ordinance. A group of stakeholders, including volunteer beach monitors, representatives from Dogs of Greater Scarborough (DOGS), and beach residents proposed the updates to the ordinance to address gaps in the existing ordinance.
– Revisions include the following:
- Adding endangered least terns to the ordinance
- Including the effective date of the ordinance (April 1 – Labor Day)

- Updating definitions
- Clarifying protections around nesting areas
- Updating fines to be consistent with the Animal Control Ordinance
- Adding language about the Maine Department of Inland Fisheries and Wildlife (MDIFW) -owned parcel at the end of Higgins Beach, which has rules in place that are stricter than the Town's rules.

– The Commission had the following comments:
  - Pete asked about how the revisions may impact ongoing efforts to monitor beach profiles. Jami explained that the changes should not have an effect the beach profiling process. Those completing the profiling would still need to get approval from MDIFW to be within the piping plover management areas.
  - Bennett suggested language be made more general to capture other items that may become popular in the future.
  - Marla suggested that the ordinance should not reference Labor Day because visitors from other countries may not be familiar with the holiday.
  - Randi strongly agrees with the language related to running.

Updates

1. Education Subcommittee

   – The subcommittee is working with the Scarborough Public Library and the Scarborough Land Trust to coordinate a workshop in the importance of salt marshes as a carbon sink. The workshop will be on 8/6, and more information will be provided when it's available.
   – The subcommittee is also working on articles about the Commission and it's work. The articles are going in the Town e-newsletter. They are also working on blurbs about accomplishments and goals that will be posted on the Town's social media accounts.
   – Jami suggested that the Commission consider having a booth or display at the 2024 Sustainable Scarborough Day.

2. Town Council

   – Karin urged the Commission to move forward with the tree protection ordinance.
   – She also shared that the South Portland Conservation Commission wrote a memo in opposition to the Maine Turnpike Authority's (MTA) Gorham Connector. She would like to see the Scarborough Conservation Commission do something similar. Scarborough doesn't have a say in how MTA will move forward, but it can have an opinion. Scarborough Town Council was in favor of the project several years ago when it was in the very early planning stages (see attached). The Council is being asked to provide another opinion on the project, and Karin intends to vote against it. Randi asked about timing, and Karin shared that MTA is supposed to host a public meeting in Scarborough in July, and then the Council will be asked to vote on the project sometime after the meeting.
   – **ACTION: JAMI will share South Portland's memo with the Commission (attached).**

3. Parks and Conservation Land Board (PCLB)

   – Jessica noted that the work of the PCLB has come into questions recently. Some residents are speaking out against funding land conservation. Having people attend

the upcoming Town Council workshop to show support for the land bond would be helpful.
- PCLB is recommending a $6M replenishment to the land bond, which will be on the ballot in November. A Town Council workshop on the land bond is scheduled for 7/17.
- Marla suggested PCLB compile and share information about the funds leveraged with Scarborough's land bond funds.
- **ACTION: JAMI will send a calendar invitation to the Commissioners for the 7/17 workshop.**

Meeting adjourned at 7:45 pm.

Next Meeting:
July 24, 2024 @ 6:00 pm

Memorandum of Agreement

among

MAINE TURNPIKE AUTHORITY (MTA) and MAINE DEPARTMENT OF TRANSPORTATION (MaineDOT)

and

certain MAINE MUNICIPALITIES WEST OF PORTLAND
REGARDING a GORHAM CONNECTOR

2021 - 2026

Whereas, transportation deficiencies in traffic corridors west of Portland have been evident to the Maine public and policy officials for decades;

Whereas, these deficiencies arise from insufficient capacity, increasing congestion, safety hazards and outmoded roads;

Whereas, such deficiencies have been documented in numerous studies and reports dating back to the 1970's, including, among others:

the Westerly Connector Study (1988),
the Route 25 Corridor Study (1993),
the Gorham-Portland Alternatives Analysis (1997),
the Route 114/I-295 Ramp Study (1998),
the Route 22/114 Location Study (1999),
the Maine Mall Area Transportation Plan (2001),
the PACTS 22/114 Overlap Study (2002),
the Gorham Bypass Environmental Assessment (2003),
the Gorham East-West Feasibility Study (2012), and
the PACTS Destination Tomorrow Plan (2017);

Whereas, following a Gorham Bypass Environmental Assessment in 2003, MaineDOT constructed a two-lane limited access highway connecting Routes 25 and 114 to relieve congestion within Gorham Village;

Whereas, in 2007, in response to further concerns about the need to improve connections between Greater Portland and points west, the 123rd Maine Legislature enacted a Resolve (LD 1720) directing MaineDOT and MTA to study "existing highway infrastructure and future capacity needs" within the region;

Whereas, in 2009, MaineDOT, MTA, PACTS, and the municipalities of Gorham, Scarborough, South Portland, and Westbrook responded cooperatively to the Legislative Resolve by entering into a public process to develop solutions to traffic deficiencies west of Portland;

Whereas, after study and public engagement over a span of several years, the parties jointly produced in 2012 a comprehensive Gorham East-West Corridor Feasibility Study that identified three overlapping strategies:

1. **Improved highway.** Build an improved roadway system to reduce vehicle hours traveled, reduce fuel consumption, eliminate safety hazards, improve air quality, enhance economic productivity, create faster and more viable transit routes, remove through traffic from secondary and residential roads to make room for pedestrians, bicycles, and those seeking a local destination, create opportunities for long range community planning, and restore a village character to those parts of North Scarborough, South Gorham and Westbrook that are daily overwhelmed with rush hour traffic;

2. **Land Use Planning.** Revise and integrate comprehensive land use plans to take advantage of and preserve highway traffic solutions, to foster economic development and community revitalization, to preserve and enhance regional livability, and to preserve a sense of community and quality of life in a manner consistent with Maine's Sensible Transportation Act;

3. **Expand Transit.** Develop more transit routes into the region to preserve highway capacity, to fulfill land planning goals, to enhance connectivity to the Maine Mall, Portland downtown, transportation centers, hospitals, health facilities, and college campuses, to improve workforce access to good jobs, and otherwise to serve populations seeking to live in compliance with municipal comprehensive plans;

Whereas, significant mobility and safety deficiencies documented by MTA and MaineDOT persist in the region despite land use and transit improvements that have so far been implemented;

Whereas, in 2017, the State Legislature enacted Public Law 68 (LD 905) which authorized MTA to

> "Construct, maintain, reconstruct and operate a connector in Cumberland County from Route 114 in South Gorham to an interchange on the turnpike to address safety and mobility deficiencies in a manner that maximizes public safety, enhances the mobility of people and goods, and minimizes adverse effects on the community in accordance with local and regional comprehensive planning."

Whereas, this second legislative directive added turnpike bonding authority and was endorsed by municipalities most affected by the project;

Whereas, on September 6, 2018, the MTA Board approved a *Resolution Relating to the Proposed Gorham Connector* authorizing MTA staff to study potential corridor alignments for a Connector between the Gorham By-pass roundabout on Route 114 and Exit 45 on the Maine Turnpike, to perform traffic forecasts and revenue estimates, to engage with landowners along potential corridors, to analyze regional natural resources, and to evaluate requirements for permitting a highway corridor within the region;

Whereas, GPCOG's 2016 Destination 2040 regional long range transportation plan and 2021 Transit Tomorrow strategic plan projects that the region will continue to experience population growth, further exacerbating existing traffic deficiencies and reducing connectivity between the region and major transportation facilities in greater Portland including the Maine Turnpike, the Portland Jetport, the Portland Transportation Center, the Maine Mall, and nearby connecting highways;

Whereas, funding levels and work plan obligations for MaineDOT do not support constructing effective roadway improvements along existing roadways in the region and there is no room to expand existing roadways and intersections without condemning many homes;

Whereas, adding capacity via a Gorham Connector is most effective to achieve the goal of improving interconnectivity between the Maine Turnpike and other transportation systems in the region and is consistent with MTA's statutory purpose;

Whereas, a new Gorham Connector will reduce CO and GHG emissions as called for in 2020 *Maine Won't Wait: A Four-Year Plan for Climate Action*;

THEREFORE, MTA, MaineDOT, and the Municipalities agree as follows:

1. MTA agrees to advance development of the Gorham Connector between the southern terminus of the Gorham Bypass and Exit 45 on the Maine Turnpike based on financial viability, legislative direction, and municipal support.
2. MTA will develop a project plan through design, permitting and construction consistent with the requirements of the STPA, Maine Natural Resources Protection Act (NRPA), National Environmental Policy Act (NEPA) and the US Army Corps of Engineers New England Highway Methodology.
3. MTA will advance the Gorham Connector using a process to gather public input from an advisory committee and technical working groups on design components and potential public benefits to support local community goals beyond traffic improvements (e.g., multimodal transportation, commuter parking, public transit expansion, and achievement of land planning goals).
4. MTA will endeavor to obtain right-of-way in as amicable a manner as possible and will maintain strict adherence to the MTA Acquisition Policy.
5. To the extent practicable, MTA will design the Gorham Connector to avoid, minimize and mitigate impacts to cultural and natural resources, including wetlands, the Red Brook watershed, farmlands, historic areas and structures, and wildlife corridors and habitat.
6. Following construction, MTA will be responsible for ongoing operation and maintenance funded through the collection of tolls.
7. To assist in developing the Gorham Connector in a supporting role, MaineDOT agrees to:
   (a) Participate in an Advisory Committee through appointment of a representative to regularly attend Committee meetings and provide information and advice from the perspective of MaineDOT.
   (b) Explain publicly the benefits of the Gorham Connector as part of an integrated solution to safety and mobility needs and land planning in the region; participate in public forums to explain how the Connector fulfills goals contained in DOT work plans and asset management plans; and
   (c) Evaluate regional transportation improvements to maximize the effectiveness of investments in the transportation network and support municipal land use goals.
8. To participate in a supporting role each municipality agrees to:
   (a) appoint a representative to an Advisory Committee to guide development of the Gorham Connector, have the representative available to attend regular meetings and to coordinate with MTA and DOT in matters relating to the project:
   (b) explain publicly the benefits of the Gorham Connector as part of an integrated solution to safety and mobility needs of the region, participate in public forums and explain relevant land use goals contained in comprehensive plans;
   (c) support and explain the results and recommendations of studies and agreements, including specific transportation and land use management strategies, when requested by the legislative body of the Town, by PACTS, by the press, or by members of the public;
   (d) cooperate with other parties to this Agreement and with those who may join as partners; and

(e) seek to preserve the effectiveness and sustainability of transportation investments by promoting compatible land use management strategies.

By signing below, the parties acknowledge that they have read and understood the Agreement above and are fully authorized to bind their principals to its terms.

Peter Mills 3-1-22
Peter Mills Date
Executive Director
Maine Turnpike Authority

Bruce Van Note 2/2/22
Bruce Van Note Date
Commissioner
Maine Department of Transportation

Thomas M. Poirier 1/21/22
Thomas Poirier Date
Acting Town Manager
Gorham, Maine

Thomas Hall 1/5/22
Thomas Hall Date
Town Manager
Scarborough, Maine

1/5/2022
Michael Foley Date
Mayor
Westbrook, Maine

3/1/22
Scott Morelli Date
City Manager
South Portland, Maine

South Portland
Conservation Commission

TO: City Council
FR: SPCC
RE: Gorham Connector
DT: April 9, 2024

On March 1, 2022 the Council signed an MOA with the Maine Turnpike Authority and the Main Department of Transportation regarding the Gorham Connector. Since that date conditions and research have changed dramatically in the realms of climate change and environmental damage and the South Portland Conservation Commission believes this project presents a grave danger to the City of South Portland. Our concerns are:

- Increased awareness of the vital importance of trees and wetlands in alleviating climate change has been ignored in the project development to date. Trees are the planet's most important defense against climate change; this project would devastate the area and remove hundreds of trees.
- Proponents of addressing climate change believe reducing the number of cars and amount of impervious surface is an important piece of the solution. The Gorham Connector will encourage more cars and add many square miles of impervious surface to this area. We question why the impact of enhanced public transportation has been neglected in the Connector's planning.
- South Portland already has several urban, impaired streams; the runoff from the Connector's massive amount pf asphalt will drain into Long Creek and Red Brook, increasing the damage to those important habitats.
- Portland refused to sign the MOA.

We know that you already know and recognize these facts; we are suggesting that withdrawing South Portland's support of the Gorham Connector might help convince the MTA and MDOT that this is a bad idea and could open the door to alternatives that would not desecrate the environment.

DRAFT