



City of Nashua
Conservation Commission
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NASHUA CONSERVATION COMMISSION

March 1, 2022

A. Call to order

A regular meeting of the Nashua Conservation Commission was called to order on Tuesday, March 1, 2022 at 7:00 PM, via Zoom virtual meeting.

B. Roll call

Members present: Sherry Dutzy, Chair
Brandon Pierotti
Carol Sarno
Jed Crook
Meghan Cook
Gloria McCarthy Alt.
Maureen Bourque, Alt.

Also in Attendance: Matt Sullivan, Planning Manager
Ald. Ernest Jette (via Zoom)

C. Election of Officers

MOTION by Commissioner Sarno to nominate Sherry Dutzy as Chair

SECONDED by Commissioner Cook

MOTION CARRIED 7-0

MOTION by Chairman Dutzy to nominate Gene Porter as Vice Chair

SECONDED by Commissioner Sarno

MOTION CARRIED 7-0

MOTION by Commissioner Cook to nominate Jed Crook as Clerk

SECONDED by Commissioner Pierotti

MOTION CARRIED 7-0

MOTION by Chairman Dutzy to nominate Megan Cook as Treasurer

SECONDED by Commissioner Bourque

MOTION CARRIED 6-0

D. Approval of minutes

January 18, 2022 - Special Meeting

MOTION by Commissioner Pierotti to approve the minutes of January 18, 2022, as amended

SECONDED by Commissioner Bourque

MOTION CARRIED 6-0

E. New Business

- *City of Nashua & Nashua Millyard Associates (Owners) Public Service Company of New Hampshire (Applicant) Requesting review of temporary and permanent impacts to "Prime" wetland and "Prime" wetland buffer for the for the rebuild of electrical lines. Property is 10 Whipple St & L Pine St. Sheet E, Lot 1487, & Sheet 77, Lot 5. Zone RB and GI/MU. Ward 4.*

Nick Golan, Civil Engineer, TF Moran

Mr. Golan introduced himself as the project manager. With him is Kurt Nelson from Eversource Energy.

Mr. Golan said this project is the culmination of many years of effort and is associated with the land swap between the city, various stakeholders, and Eversource to relocate portions of electrical line. This did not previously have to come before the Commission because it is within the Shoreland Urban Exemption Area. The portion that they are currently working with is not, and requires Commission review.

Mr. Golan showed a plan of the existing site and proposed work. They will be using matting to mitigate the impact of equipment and construction vehicles. The permanent impacts are from poles and their anchoring lines. There will be no grading or impervious surfaces.

Mr. Golan provided a brief overview of site elements and the decisions made to reduce impacts to view-shed and walking paths.

Chairman Dutzy asked if the current substation will be totally dismantled.

Mr. Golan said correct.

Chairman Dutzy asked where the new substation will be.

Mr. Golan said it will be directly adjacent to the old substation. That is part of the land swap with the city to open up more land to development. The old substation will be dismantled in its entirety, and the new substation is already under construction.

Chairman Dutzy asked if this was to enable economic development of the area.

Mr. Golan said that was a portion of the city's request behind the land swap. They wanted to move it far enough away to provide the opportunity. He showed an aerial of the existing substation.

Commissioner Sarno asked for clarification on the relocation of the electrical lines.

Mr. Golan showed the proposed changes. He said the city's goal was to move the poles off of the peninsula.

Commissioner Sarno said this is a bit of an eyesore. But right now in Mine Falls the canal overlooks where the new transmission lines are. They didn't gain anything in beautification.

Mr. Golan said he will leave that up to the experts who made those decisions. Corporation Counsel, Community Development, the Mines Falls Committee, the Board of Aldermen and the Mayor all and felt it was in the best interest of the city.

Commissioner Cook asked for clarification regarding the species notes on the application.

Mr. Golan said as part of the project they are required to review species lists for the NH Fish & Game, Natural Heritage

Bureau. One of the species shown on the application was a typo.

Commissioner Cook asked if there are vernal pools.

Mr. Golan said there are no vernal pools within the work area.

Commissioner Sarno said the list of onsite vegetation doesn't include Japanese Knotweed, which she knows is there.

Mr. Golan said he has seen it himself.

Commissioner Sarno asked how they are going to do construction within the wetland without transferring the knotweed.

Mr. Golan described the vegetative matting procedure, which would stay in the duration and then be removed. They wouldn't be moving around that matting.

Commissioner Sarno said a lot of invasive species get transferred by construction vehicle tires.

Mr. Golan said their tires will be on the wooden mats.

Commissioner Sarno said a lot of the knotweed is on the access area. Her concern is that they will pick up the knotweed and carry it into the wetland.

Mr. Golan said if the Commission has a suggestion for how to implement this, he would appreciate it. The areas outside of the work area are existing gravel roads. It is around those areas, but it is not across the gravel. In that situation, he wouldn't see it as likely to be transmissible.

Commissioner Sarno asked if all the trees within the power line easement will be cut.

Mr. Golan said correct. It is fairly limited in that more than half of the easement is on city land.

Commissioner Sarno referred to the endangered wood turtle, and expressed concerns that the wood mats would prevent the turtles from moving around. She asked what time of year they are planning.

Mr. Golan said that ideally it would start in June, with the

duration not to exceed three weeks. It would be fairly short. He outlined the due diligence measures they will be performing in regards to endangered species.

Commissioner Cook said that most turtle will emerge from their shells August through October.

Mr. Golan said that ideally they will be done with construction before that.

Chairman Dutzy said the application states 36 trees will be removed, and it is a pretty scrubby area. Does this include scrub trees?

Mr. Golan said they counted all the trees. Most of them are already dead or dying. These are hazardous trees that would have to be removed even if they were not within the right of way. These are not healthy trees which provide habitat.

Commissioner Sarno asked if the area that the mats will be installed is already infested with knotweed.

Mr. Golan said he can't give specifics of where the knotweed is, his memory isn't that good.

Commissioner Sarno asked if all the trees listed are dead and diseased.

Mr. Golan said they are dead or diseased in some locations.

A brief discussion of known Japanese knotweed spots ensued.

Commissioner Crook asked if there are any bird boxes.

Mr. Golan said there are, and the locations are noted on the plan. If any are impacted by the matting, they will take them out and put them back after construction.

Commissioner Sarno asked if they would consider installing an osprey nesting pole.

Mr. Golan said he doesn't know if he has the liberty to answer that. Ospreys were not listed in the Natural Heritage Bureau data track, so he doesn't have enough information to speak to whether or not that would be appropriate.

Chairman Dutzy asked if they could look into it. The Commission can't stipulate it, but they can recommend an evaluation of whether it would be a good place for one.

Mr. Golan said in his experience there would need to be a certain clear distance which would impact the line. They are fairly limited in the work area. He thinks asking the development team to evaluate the potential is something they can do.

Discussion of the motion ensued.

MOTION by Chairman Dutzy to favorably recommend the proposal with the following stipulations:

1. Best Management Practices for invasive species management shall be followed, including those identified within the New Hampshire Department of Agriculture's Best Management Practice Handbook, particularly those related to Japanese Knotweed and Oriental Bittersweet.
2. The applicant shall evaluate the feasibility of installing an osprey nesting pole onsite.

SECONDED by Commissioner Cook

MOTION CARRIED 5-1 (Sarno opposed)

A brief conversation of voting members ensued. Mr. Sullivan said that in the event that there are two alternates available to fill the position of a voting member, there should be a coin toss.

- ***John J. Flatley Company (Owner) Requesting review of permanent impacts to "Other" wetland and "Other" wetland buffer for culvert upgrades and associated site grading. Property is located at L Daniel Webster Highway & L Dozer Rd. Sheet A, Lots 44 & 712. PI Zone. Ward 8.***

Chris Guida, Wetland & Soil Scientist, Fieldstone Land Consultants

Mr. Guida introduced himself as representative for the owner. The proposed development associated with this application is a flex building with light industrial use. It will be very similar to where the Spyglass Brewing Company is. This will be

off the end of Innovative Way and the Gateway Hills residential development.

Mr. Guida said the largest impact is upgrading the existing crossing over the intermittent stream. Right now there are two 36-inch culverts underneath Dozer Road and Route 3. They are proposing to remove those and replace them with 6-ft box culverts. It is an intermittent stream and does dry out. Typically they aren't looking at the need for wildlife habitat on intermittent streams, but given that this is a major roadway and will be elevated, opening it up provides passage for whatever may be traveling along the water courses.

Mr. Guida indicated on the plan where they are showing some impact, but it is actually within the state right of way. It probably won't happen as far as permitting goes. They will probably end up pulling that culvert back a bit and it may not be necessary to extend that far. During the last site walk up by Spindlewick, they discussed extending the Dozer Road all the way through to provide for traffic and emergency access.

Mr. Guida said that some of the buffer impacts are due to the stub of Innovative Way. The location has been chosen based on the slopes and other wetlands onsite. This alignment was planned to avoid some of those wetlands and follow the slope to minimize cuts and fills. This amounts 1,575-sqft of buffer impacts and 150-sqft of impact to an isolated wetland. He doesn't think it is a vernal pool, but because it is winter he can't evaluate it for characteristic species. This area has a lot of shallow ledge; his guess is that the water table is not deep enough to have a sustained hydrological period. He can't say for certain without looking at it in the springtime. The impact to the wetland itself is 725-sqft. There is some water flow, but it's fairly obvious that it's not deep and does dry up in the summer.

Chairman Dutzy asked if the owner has prospective tenants, or if this proposal is being built on speculation.

Mr. Guida said it's a little bit of both. The ones currently under construction is 90% filled out and it isn't even finished yet. They are anticipating a need here. This is obviously in the preliminary stages.

Chairman Dutzy asked what the timeframe is they want to break ground on this project.

Mr. Guida said he doesn't know, but would guess this summer.

Commissioner Sarno asked if there is a restaurant associated with this proposal.

Mr. Guida said no.

Chairman Dutzy said page 12 of the application refers to a restaurant.

Mr. Sullivan said a brewery and restaurant are proposed in one of the current flex buildings.

Further discussion of nearby developments ensued.

Commissioner Cook asked how the buffer impact areas will be revegetated.

Mr. Guida said all of the slopes will be seeded once grading is complete, typically with a conservation mix. They wouldn't want large trees because it might inhibit maintenance of the roadway. The roadside will be mowed each year, and the areas that would not affect road maintenance will be allowed to grow. If world war 3 happens, it stops here. But if they plan into the future, there is a roadway proposed here. They may be coming back for additional requests.

Commissioner Cook asked if beyond a grass seed mix, they could consider something a little more substantial.

Mr. Guida they frequently do that on steeper slopes, and this is a 2:1 slope.

Commissioner McCarthy said this is going to be 160,000-sqft of impervious surface. Is there some method to collect gas and oil from cars in the parking lot so it doesn't run off into the wetland? Is there a more permeable surface they can use?

Mr. Guida said this is a preliminary design. There will be stormwater management basins proposed, but they haven't been designed yet. As far as the paving goes, they would prefer to have asphalt and curbing so that drainage can be directed to pretreatment infrastructure. Oils and greases are better channeled to a designated treatment area with a separation to the water table, rather than a pervious pavement. Pervious

pavement works, but there's a lot of maintenance involved.

Commissioner McCarthy asked if there would be some form of stormwater maintenance.

Mr. Guida said yes, in accordance with the NHDES Alteration of Terrain and City of Nashua regulations. It's all going to be outside of the buffer.

Chairman Dutzy asked if they need to apply to the Zoning Board.

Mr. Guida said he anticipates they would need to go to the ZBA for the wetland crossing, and then Planning Board. Starting the project in summer would be ideal, but might be an aggressive timeline.

Chairman Dutzy asked what their expectations are tonight, given that this is not the final design. Are they asking for a site visit?

Mr. Guida said as far as the wetland crossings go, this is as final as it gets. The other stuff is not going to impact buffers. Depending on the commission's recommendations, it is the final plan.

Chairman Dutzy said the next step would be a site walk. She asked if they could wait until April, so they can get a better idea of the vegetation out there.

Mr. Guida said they would want to do it sooner than later, but he understands.

Mr. Sullivan said he is concerned about the impact to the NHDOT right of way that has not yet been resolved. That either needs to be resolved or consent from the DOT needs to be provided before the Commission takes action on the application. This plan shows impacts on the state property, and does not include consent or authorization by the state. That needs to be resolved.

Mr. Guida said he suspects he can resolve that within a day. The impact to the state right of way is not going to happen. They will be pulling back the proposed culvert replacement so that it will be done on the Flatley property. He can get that answer quickly.

Mr. Sullivan said it's a critical issue, a site control matter.

Commissioner Crook asked if the trail system currently there would still be accessible.

Mr. Guida said he expects that they would be rerouted around the development. This would impact the trail as it is now.

Commissioner Crook said he was on the trails a few months ago and it was very wet. He wonders what it would be like in the spring. He knows there is one vernal pool, but is surprised there are not more.

Mr. Guida said this area has a lot of shallow ledge. It's more like ephemeral runoff across this whole site, but it doesn't get to the level of a jurisdictional wetland. The soils are not wet enough, the vegetation doesn't support it. It's certainly not uncommon on the trails, where the soils have been compressed, where you can get some seepage from groundwater running along the ledge. Spring is the best and worst time to do site walks, because everything is very wet.

Commissioner Crook asked if he has already studied this area in spring.

Mr. Guida said they have not done a vernal pool assessment. They have done work on other sections in previous years, but not specifically to this area to see if it meets the criteria.

Commissioner Crook asked if there is to be a continued roadway, is there a reason it has to impact that wetland? Why not go around it?

Mr. Guida said there are other wetlands too. It's hard getting around the wetlands and maintain the slope. The more you get off the slope line, the more you have to cut and fill. He can discuss it with the engineers, but obviously there are certain radiuses you have to maintain for vehicles. They are trying to avoid it as much as possible.

Chairman Dutzy asked if the plan for the Innovative Way extension was to connect it into the new conservation development to have an alternate route.

Mr. Guida said correct, if all goes as planned.

Mr. Sullivan said that road is not being extended at this point in time. That has been contemplated, but no plan has been approved showing the build-out of that road.

Chairman Dutzy said she would prefer not to set a date for the site walk due to the weather. They could look into performing one at the end of March, after daylight savings time begins.

➤ ***Riverfront Development Project***

Mr. Sullivan said the purpose of this is to discuss the purpose of the proposal, request an amendment to the prime wetland boundary, and request to submit payment in lieu of permittee responsible mitigation. With him is Peter Walker from VHB, Nicole Martin from VHB, Economic Development Director Tim Cummings, and Amy DeRoche from Economic Development.

Mr. Sullivan said this is one of the first formal discussions of this project. The Commission has discussed permittee responsible mitigation in the past. They would like to provide a more formal presentation of this project once plans are more fully developed, however this is a critical conversation they need to have due to the permitting and construction to make sure this moves forward on the timeline.

Peter Walker, Civil Engineer, VHB

Mr. Walker provided a presentation to the Commission. He described the features of the Nashua Downtown, including the Clocktower Apartments, Parque de Renaissance, Cotton Mill Bridge, and existing pathways. This project is seeking to increase the connectivity in the Downtown for pedestrians and cyclists, as well as improve access to the river. That will create an opportunity for recreation. They are not intending to present all elements at this meeting, but they have two key elements they want to discuss.

Mr. Walker said the project extends almost to the new Broad Street Parkway to Main Street, downstream to the Jackson Falls Dam, down to the existing Pan Am Crossing.

Tim Cummings, Economic Development Director

Mr. Cummings said in 2017 the city developed a Master Plan specifically for the Riverfront. It broke the Riverfront down into four quadrants. What this project does is implement the Master Plan as contemplated. It came about through tremendous community input, and they had a great public dialogue that led to the implementation of this plan. Now they are moving forward to the design and implementation of the vision.

Mr. Cummings said this plan came about thanks to Community Development Director Sarah Marchant's efforts, and they are carrying on her legacy. Six big ideas came about from the Master Plan. Resiliency and environmental stewardship were two of the goals this plan tries to accomplish. Starting in 2018 they started to get a handle on the invasive species in the area. Once they get the hard construction done, they will revegetate appropriately.

Mr. Cummings said other items are economic development, passive recreation, access to the riverfront, connectivity. This project is really 18-20 smaller projects bundled into developing a vision for the downtown river. In the industrial age, the river was thought to support the mills. Now, the river is a natural asset that can be a catalyst for the downtown and redevelopment to make Nashua a place where people want to live, work, and recreate.

Mr. Walker said this is a number of small projects stitched together to make one large project. He showed the upstream side of Main Street and showed the elements that are expected to have a direct impact on the river. One project element is to construct an ADA compatible ramp so that folks can access the Cotton Mill bridge. There is an existing pathway that loops around the Eversource station; they propose a boardwalk to span the cove, with an additional boardwalk south of the river. Bicentennial Park would be enhanced, and one of the major features is the redevelopment of Parque de Renaissance and the installation of a public docking facility. They may offer kayaking rentals. The factory street between Clocktower Apartments and the river would be enhanced with landscaping. They are discussing creating a public sculpture at the substation to screen it from the Riverwalk and enhance the aesthetics.

Mr. Walker showed concepts of the boardwalk design, which will match what is currently installed around the Peddler's Daughter, 48 Main St.

Mr. Walker showed the downstream portion of Main Street. They will be on existing pathways, then create a new walking and cycling path along the BAE parking lot. There is a pedestrian crossing on the Pan Am bridge; they have some issues with that access so they are proposing a new pedestrian crossing which would connect a new section of pedestrian path which would connect back to Main Street using pathways and ramps.

Mr. Walker said they are not asking for review of the project as a whole, they are asking two specific things. The first relates to the Prime wetlands boundary. The NHDES version of the prime wetlands is different than the GIS mapping and the onsite measurement of top-of-bank. From the 1990 wetlands study, it seems the intent was to designate the river itself as the prime wetland. They are proposing to use the wetland delineation as their data source. The state boundary is inaccurate, and includes large portions of developed upland. The DES requires the Conservation Commission to concur with this suggestion.

Mr. Walker said this proposal will impact wetlands, below the riverbank and below the water itself. Because this is a prime wetland, they are required to mitigate those impacts. They have studied Permittee Responsible Mitigation and they are proposing that the project use the NH Aquatic Resource Mitigation as their specific mitigation.

Mr. Walker said the state and Army Corp of Engineers recognizes two forms of mitigation. One is Aquatic Resource Buffer Preservation, which is a conservation easement that is placed on a significant upland buffer adjacent to the wetland or stream. Or, they can attempt to restore or create a wetland or stream resource. The key issue is that both forms of permittee responsible mitigation must be implemented at the time they start construction, or even prior to the project. The other key point is that either form of PRM requires extensive technical information that takes time to generate. Alternatively, the ARM fund allows them to offset their wetland impacts. The money paid into the fund would become available to the city through a grant program.

Mr. Walker said there were a few promising projects on the list, but they couldn't establish how they would tie that and use that project for the downtown riverwalk with the schedule and the issues that are specific to that project. They

discussed the projects with the DES and Army Corp, and at the end of the day they are recommending a payment in lieu.

Mr. Walker said they are asking the Commission to adopt their top-of-bank measurement for the prime wetland boundary, at least for this permit, which would require the Commission to concur in writing with their interpretation of the map. They will return to the Commission afterward to discuss the project in more detail. They are asking also for the Commission to agree to a payment in lieu fee for the mitigation.

Mr. Cummings said they are fairly early in the design and are trying to meet a timeline to get under construction sometime next year. They are welcoming this as an opportunity to start gathering community engagement.

Commissioner Cook said they supplied a list of potential mitigation. The challenge is that in order to flesh out the ideas they need to spend some money and research and develop so that they're ready when a project like this comes along. How do they get to that point?

Mr. Sullivan said they have the funds available. This would be a higher priority use of Commission funds. They would need to engage with a consultant to conduct a study to pare the list of projects down, identify some higher priority projects, and create the technical documentation.

Mr. Walker said the conundrum is one that many communities have. The barrier is the level of technical information required to convince the DES and Army Corp that any permittee responsible mitigation is going to be viable and work. He thinks it would be a great idea for the Commission to work over the next few years to vet their list. There are great conservation projects, but they are never going to rise to the level where DES would consider them as offsetting wetland impacts. What needs to happen is an initial prioritization of that list, and then developing a base plan and conceptual plan, so that they have a starting point for the next development project. They can also engage with the DES Wetlands Bureau. VHB would be quite interested in helping with sketching out what a study would look like that the Commission could use to move forward.

Chairman Dutzy asked if he could indicate the top contenders to qualify for possible mitigation.

Mr. Walker said he can talk with Mr. Sullivan further. The challenge is that he doesn't know enough about the projects on the list. He thinks they need to keep it separate from the riverfront project.

Commissioner Crook said the handout states which projects were potential contenders, at least for the top two.

Chairman Dutzy said they can look into it further.

Mr. Walker said they should interpret the list carefully because they didn't have as much information as they would like. He noted that they are currently contracted by the residents of Thoreau's Landing for bank stabilization. This is the type of thing they like to help communities do.

Commissioner Crook asked what it would mean to accept or not accept the new delineation.

Mr. Walker said they had talked with the DES about map accuracy because that's all it is. They are not disputing the contents of the prime wetland study, but the DES treats the old GIS maps as sacred. He suggests that they make sure down the road that the state map is corrected to the top of bank mapping VHB has performed. For the purposes of this initial application, a letter is what they are looking for.

Commissioner Crook asked what would happen if the Commission were not to accept the new map.

Mr. Walker said it would mean that the state would claim jurisdiction over upland areas of the project. They are creating pathways, so presumably the permit description would change. He doesn't think it makes the permit more or less likely to be approved.

Commissioner Crook asked if in terms of environmental impact, does it change how the project is executed?

Mr. Walker said no. He thinks it is a paper exercise. He doesn't think it will change the way the DES reviews the permit. Hypothetically, if the project didn't impact the river in any way and they were tightening up the boundary so that it was outside of the buffer, it would change the project in a big way. That's not what they are suggesting.

Commissioner Sarno said it seems the VHB mapping is more accurate. Will this get into the city GIS?

Mr. Sullivan said yes, they can discuss it with the GIS technician. The only issue is fitting it into wetlands that haven't been adjusted. The city prime wetland boundary is recognized to be inaccurate and requires field delineation to be used in a jurisdictional manner. It's been more recently delineated based on clearer and more accurate imagery.

MOTION by Commissioner Cook to accept the VHB top-of-bank prime wetland delineation for the Riverfront project.

SECONDED by Commissioner Sarno

MOTION CARRIED 6-0

Chairman Dutzy asked Mr. Sullivan to draft that letter.

Mr. Sullivan said they will have it later this week.

Chairman Dutzy said in terms of the PRM, they don't have a leg to stand on. This has brought to light the kind of work that would be needed. Her recommendation is that they allow the mitigation dollars go to the fund.

Mr. Sullivan said he would be comfortable with the motion including that the Commission explore a more appropriate list of mitigation projects in the future.

Mr. Walker said he is fine with that, so long as the motion is clear that this is separate from the Riverfront project.

MOTION by Commissioner Cook to allow payment in lieu to the Aquatic Resource Mitigation Fund for wetland impacts associated with the Downtown Riverfront development, and that the Commission move forward with researching the potential for further projects that could satisfy Permittee Responsible Mitigation independent of the development

SECONDED by Commissioner Bourque

MOTION CARRIED 6-0

Chairman Dutzy thanked Mr. Walker for his time.

G. Commissioners Discussion

➤ ***Pennichuck Solar Project Restoration Update***

Mr. Sullivan asked the Commission to review the submitted letter in advance of the next meeting.

Chairman Dutzy said she received a request from an Antioch grad student for a bee study up at Pennichuck.

➤ ***Disc Golf Course***

Mr. Sullivan said he spoke with Public Works, and there was a commitment to a site walk.

Commissioner Crook said there has been further cutting, right up to the stream.

➤ ***Joyce Park Site Walk***

Commissioner Sarno said Mike Gagnon and Matt Tarr will join them at Joyce Wildlife on April 8th at 9AM to look at invasives and erosion.

Discussion of the walk ensued.

➤ **Subcommittee Reports:**

None

H. Adjournment

MOTION to adjourn by Commissioner Pierotti at 8:42 PM

SECONDED by Chairman Dutzy

MOTION CARRIED 6-0

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