



City of Nashua
Conservation Commission
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EXPANDED MEETING SUMMARY

THIS IS NOT AN OFFICIAL TRANSCRIPT OF TAPE RECORDED PROCEEDINGS

NASHUA CONSERVATION COMMISSION

Tuesday, May 4, 2021

A. Call to order

A regular meeting of the Nashua Conservation Commission was called to order on Tuesday, May 4, 2021 at 7:00 PM, via Zoom virtual meeting.

B. Roll call

Members present:

- Sherry Dutzy, Chair
- Gene Porter, Vice Chair/Acting Clerk
- Brandon Pierotti, Treasurer
- Richard Gillespie
- Carol Sarno
- Josh Hauser, Alt.
- Gloria McCarthy, Alt.
- Jed Crook, Alt.

Also in Attendance:

- Matt Sullivan, Planning Manager
- Chris Webber, Department Coordinator
- Ald. Ernest Jette, Alderman Liaison
- Deb Chisholm, Waterways Manager

COVID-19 Address

Chairman Dutzy addressed the COVID-19 pandemic as follows: Due to the State of Emergency declared by Governor Sununu as a result of COVID-19 pandemic and in accordance with the Governor's Emergency Order #12, pursuant to Executive Order 2020-04, this public body is authorized to meet electronically until further notice.

Please note that there is no physical location to observe and listen contemporaneously to the meeting, which was authorized to meet electronically pursuant to the Governor's order. However, in accordance with the Emergency Order, this is to confirm that we are:

1. Access

The Commission is video conferencing utilizing Zoom for this electronic meeting. All members of the Conservation Commission have the ability to communicate contemporaneously during this meeting through this platform. Public access to this meeting is also provided via Zoom. The link to this meeting is contained in the meeting agenda, available on the city website.

2. Public Notice

The Commission previously gave public notice to the meeting and the necessary information for accessing the meeting through public postings, and where applicable notice to abutters. Instructions have also been posted to the city website, and publicly noticed at City Hall.

3. Public Alert

The Commission is providing a mechanism for the public to alert the Commission during the meeting if there are problems with access. If anybody has a problem accessing the meeting via phone, please call (603)-589-3115, and they will help you connect.

4. Adjourning the Meeting

In the event that the public is unable to access the meeting via the methods above, the meeting will be adjourned and rescheduled.

5. Procedures

The Chair is in control of the meeting, and to the extent practicable and advisable the Commission will follow the procedures identified in the Bylaws. The applicant will present the applicant's case, followed by questions by the Commission. The Chair will then allow testimony from persons wishing to speak in favor, or with questions or opposition, before the Commission deliberates and determines an outcome.

Applicants and their representatives, and individuals required to appear before the Commission are appearing remotely, and are not required to be physically present. These individuals may contact the Planning Department to arrange an alternative means of real time participation if they are unable to use Zoom. Documentary exhibits and/or visual presentations must be

submitted in advance of the meeting so that they may be displayed for remote public access viewing.

Real-time public comment can be addressed to the Commission utilizing Zoom virtual meeting software for remote access. Real-time public comments via audio will be addressed at the conclusion of the public hearing. This application will allow users to view the meeting, and submit questions or comments to the Commission utilizing the Zoom software.

The public is also encouraged to submit their comments via email to the Department email at planningdepartment@nashuanh.gov or by mail. Please be sure to include your name, address, and comments. Letters should be addressed to Planning Department, P.O. Box 2019, Nashua, NH 03061.

Please note that all votes taken during this meeting will be done by roll call. Conservation Commission meetings will be held electronically until further notice, when it is deemed safe to conduct meetings at City Hall.

The Planning Department and Conservation Commission thank you for your understanding and patience during this difficult time.

C. Membership

Commissioner Sarno has moved from alternate to full member.

The Commission welcomed Jed Crook as an alternate member.

Commissioner Parker will be resigning from the Commission.

D. Approval of minutes

April 7, 2021

MOTION by Commissioner Porter to approve the minutes of April 7, 2021, as written

SECONDED by Commissioner Gillespie

MOTION CARRIED UNANIMOUSLY

E. New Business

➤ *Consideration of Additional SCA Fund Authorization for*

Materials (\$3,500)

Mr. Sullivan gave an overview of this request. The funding request is to be used primarily for trail building materials and port-a-potty rentals for the trail crew. He said this is not an exact fund amount, but an estimated cost, and they suspect this will be an adequate amount to cover the cost of the project.

MOTION by Chairman Dutzy to favorably recommend an additional request of \$3,500.00 for the purpose of SCA trail building

SECONDED by Commissioner Porter

MOTION CARRIED UNANIMOUSLY

➤ **Joyce Wildlife Park Improvements**

Mr. Sullivan provided an update on all aspects of the project. They are continuing in their efforts to provide lodging for the SCA trail builders. They are trying to finalize quotes for the materials. The poison ivy is scheduled to be sprayed in mid-May. The tree issue has been resolved during the clean-up day, which went tremendously well. He thinks they are in fairly good shape.

Chairman Dutzy provided an update on the Swamp Inc poison ivy spraying. She plans to meet with them to show them where the poison ivy is onsite. She said they have a potential location for the SCA trail builders at a campground in Litchfield.

Chairman Dutzy said when they were doing the cleanup, they became aware that the boundary had been surveyed. She asked if they have those plans on file, and if they can use that to put up posts.

Mr. Sullivan said yes. Traditionally the posts are supplied by the developer; they will need to purchase these.

Chairman Dutzy asked if they have any in inventory.

Mr. Sullivan said no.

Chairman Dutzy asked if they sell them to developers at cost.

Mr. Sullivan said he doesn't know. He can look into it

Chairman Dutzy said they should get the boundary line monumented as soon as possible, before the house is sold. She asked if two Commissioners would volunteer for a monumentation subcommittee.

Commissioner Porter asked if they can get Public Works to install posts once they have an inventory, installation plan, and owner agreement.

Mr. Sullivan said no. They are hesitant to do contract work on private property for liability reasons.

Chairman Dutzy led a brief discussion on potential plans to purchase and install posts. She thinks the Joyce Wildlife Park area would be a good place to pilot this.

Commissioner Gillespie asked if they have to have a wetland delineating to know where the posts have to go.

Chairman Dutzy said it would have to be delineated. A wetland scientist would have to mark it off.

Mr. Sullivan said that is the challenge. He showed a plan of the Joyce Wildlife Park and indicated the wetland setback.

A detailed discussion of posts and wetland buffers ensued.

Chairman Dutzy said the wetland buffer extends onto the abutting properties, where houses are being built. Last time she talked with the developer he said he would be amenable to installing the post. She would be happy to send him an email. They would still have to buy the posts. She asked how much they charge.

Mr. Sullivan said he can find out.

Commissioner Pierotti asked if this proposal never went before the Commission.

Mr. Sullivan said correct.

Commissioner Pierotti said it is awfully close to the buffer.

Mr. Sullivan said the plans don't show regarding within the buffer or setback. He agreed it was close.

Commissioner Porter asked if they have authority to place the markers on private property without homeowner permission?

Chairman Dutzy said no.

➤ ***Jackson Falls Turbine NHDES Permit***

Waterways Manager Deb Chisholm gave an overview of the proposal. The Jackson Falls dam is located between the library and Margarita's restaurant. The DES is requesting a letter from the Commission as part of this project.

Ms. Chisholm said in order to fit the new turbine and equipment into the facility, they need to break rocks at the bottom of the dam. One of the things that needs to happen first is the installation of a coffer dam, so that the area can be dry and workable. They are hoping the fish passage season will be done by mid-June, and they are hopeful this will not impact fish and eel passage throughout the project.

Commissioner Sarno asked if any study has been done on the effect of the new, more powerful turbine on migrating fish and eels.

Ms. Chisholm said the turbine is the same power level as the current turbine and operates the same. They are in constant discussions with Fish and Game, Fish and Wildlife, NHDES, and NOAA to improve wildlife interactions. She doesn't think there are going to be changes to the rate at which fish are impacted.

Commissioner Porter asked if this will impact the water level above the dam.

Chairman Dutzy said there are threatened and endangered species nearby.

Ms. Chisholm said they aren't next to the dam, but they are in the area. The data they received from the site for sighting are up near the cove.

Commissioner Crook asked if there is any expected impact on migratory fish.

Ms. Chisholm said she doesn't think so. They are looking at

upstream passage to start soon, and end in the middle of June. That's the biggest chunk of fish passage, and they are waiting until after it's over. They are hoping to finish most of the in-water work before fall.

Chairman Dutzy asked if they need a letter.

Ms. Chisholm said yes.

Mr. Sullivan said as soon as possible. If there are substantial concerns they can address them, and the Commission is not bound to vote. But if they do, the letter would be issued as soon as possible.

MOTION by Chairman Dutzy to favorably recommend the Jackson Falls Turbine Project

SECONDED by Commissioner Porter

Commissioner McCarthy said she didn't know there was a fish ladder. Is there a viewing area?

Ms. Chisholm said yes. The outdoor deck seating for Margarita's has a view.

MOTION CARRIED UNANIMOUSLY

➤ ***Referral from the Board of Aldermen on O-21-058, amending the Floodplain Management Land Use Ordinance***

Ms. Chisholm provided an overview of the request. This is based on the City's participation in the national flood insurance program. One of the benefits from this program is that residents who need flood insurance gets a discount.

Chairman Dutzy asked if the usage of 'development' vs 'construction' is broader.

Ms. Chisholm said broader. That change was suggested by one of the floodplain managers from the Office of Strategic Initiatives. She had seen instances where people were putting in solar farms in special hazard areas. They wanted non-buildings to fall under this ordinance as well.

Ms. Chisholm provided the Commission with a visual of the areas affected and diagrams of what the floodway looks like.

The goal of this is to reduce flood damage, which is one of the most frequent natural hazards to happen in Nashua. The current ordinance allows building right on the same level as the base flood elevation. This proposal would increase that 1-ft above that, including electrical and mechanical equipment. This will have a significant impact. The idea is to make sure that buildings in the flood zone have basements at least 1-ft above base flooding elevation.

Ms. Chisholm said there are not many properties in the special flood hazard area that are way under the base elevation. These changes will show they are looking to be a more resilient community. It will keep them in the national flood insurance program.

A discussion ensued regarding the definitions of floodway, flood fringe, base flood elevation, and 100-year floodplain.

Commissioner Porter said the recent Costco proposal is that the deck will be 1-ft above the floodplain, but the electrical and mechanical is below.

Chairman Dutzy said if it doesn't meet the city ordinance, that is something the Planning Board would have to address.

Mr. Sullivan asked if the ordinance prohibits electrical.

Ms. Chisholm said it does for residential, but not nonresidential. This will come after the plan goes to the Board for site plan review, so they are behind on being able to enforce this ordinance on this project.

Mr. Sullivan said it's nothing more than an example of where this ordinance could have had an impact.

Commissioner Sarno led further discussion regarding the floodway definitions.

Chairman Dutzy asked if this has been approved by other commissions already, or if the Commission has any authority to make changes.

Mr. Sullivan said they have authority. However, in the event that this change is something the Commission wants to recommend, it may trigger new review and delay the process. The amendment being discussed is administrative in nature, but

any adjustment to the ordinance as proposed will delay its passage. The Board of Aldermen could also proceed in spite of the Commission's recommendations.

Ald. Jette said this Commission could recommend any change it sees fit, and when this comes before the Board of Aldermen it will be noted that the Planning & Economic Development Committee and Planning Board have recommended it 'as is', and the Commission with recommendations. It could be referred back to the other committees for consideration, the Board could approve it with the amendments, or ignore them entirely. If they feel clarification is needed, that is their privilege and duty to request it.

Commissioner Sarno asked if they could just keep the original diagram. She thinks it's correct.

Chairman Dutzy said any change would be the same process. The Aldermen could amend it, refer it back, or ignore it.

MOTION by Commissioner Sarno to favorably recommend O-21-058, with the recommended amendment to revise the image to reflect the same content as the original

SECONDED by Commissioner Porter

Ms. Chisholm provided further clarification on the two images.

Further discussion ensued.

Ald. Jette said all of this language is very technical and refers to language in the National Flood Insurance program. Any changes could have dire consequences. He wonders if Commissioner Sarno's concerns would be best directed to the Planning Dept. to see if further clarification is warranted.

Commissioner Sarno said she just saw this today and may not have this grasped fully, but she is concerned that the two images represent different information.

Commissioner Porter thanked Ald. Jette for providing a solution. He is uncomfortable with wordsmithing important legislation like this today. He suggests they support the Planning Dept. to clarify as necessary.

Mr. Sullivan said the Planning Dept. did review this, and

provided suggestions that were either incorporated or explained. If the Planning Dept. is asked to weigh in on this, they will be going to the resident division expert, Ms. Chisholm. What will functionally occur is a conversation between him and Ms. Chisholm on what needs to be done to further clarify. He would be uncomfortable promising that a conversation result in a proposed amendment at all, if one is not necessary.

Ms. Chisholm said the concept of switching out the image was suggested by a floodplain manager at the state level. The figure is really there to show the different between floodway and flood fringe. Whatever they decide to move forward with, it should be specific. As far as she is concerned, this meets the objective of modifying the ordinance to keep them in the program.

MOTION amended by Commissioner Sarno to favorably recommend O-21-058, with the recommended amendment to add the base flood elevation to the image

SECONDED by none

MOTION FAILED

MOTION by Chairman Dutzy to favorably recommend O-21-058, as written

SECONDED by Commissioner Gillespie

MOTION CARRIED 4-1 (Sarno opposed)

F. Old Business

None

G. NCC Correspondence and Communications

None

H. Nonpublic Session per RSA 91-A: 3 II (d) concerning land (Roll call vote required).

Nonpublic session was not required.

I. Commissioners Discussion

➤ **UNH Wildlife Camera Request**

Mr. Sullivan said they received a request from UNH to install wildlife cameras in Mines Falls Park and the Northwest Conservation Land. He feels it is necessary to receive the Commission's consent on access.

Commissioner Sarno said there are tracking transects where they create 3-ft circular areas of sifted soil to see what walks by. Do they remove that sifted soil after the study? She wants to know if there will be any permanent change to the vegetation. It sounds like a good opportunity to know what's out there.

Mr. Sullivan said another good question would be whether they can share a summary of their findings.

Chairman Dutzy asked if it is a classroom project.

Mr. Sullivan said he believes so.

Chairman Dutzy said a group at Dartmouth did studies on the use of neonicotinoids and solid waste disposal, which they shared.

Mr. Sullivan said it is funded by NH Fish & Game.

Commissioner Porter asked to condition access on their willingness to share the results.

Mr. Sullivan said he will pass the questions along and get back to the Commission by the June meeting for their approval.

➤ **NRCP Water Supply Protection District Mapping Update**

Mr. Smeltz provided an update to the Commission. He has added the Critical Wetlands to the map set.

Chairman Dutzy asked if it could be interactive.

Mr. Smeltz said he would have to develop it. As of now, it is only a static pdf.

Mr. Sullivan said they plan to incorporate it into the

online Nashua GIS. It's not something Mr. Smeltz would directly do, but he would work with the city's analyst.

Chairman Dutzy asked if the last step would be to identify critical wetlands not on the map and incorporate them.

Mr. Smeltz said that step is complete, unless they have comments.

Chairman Dutzy asked if it would move over to Pam for incorporation.

Mr. Smeltz said it can. He displayed the map and described to the Commission some of the changes he made.

Commissioner Porter asked what would show up on Nashua GIS.

Mr. Smeltz said the wetlands and the buffers.

➤ ***Outstanding Projects List***

Postponed

➤ ***Committee Reports***

None

J. Adjournment

MOTION to adjourn by Commissioner Porter at 8:57 PM

SECONDED by Commissioner McCarthy

APPROVED:

Gene Porter, Acting Clerk, Nashua Conservation Commission

DIGITAL RECORDING OF THIS MEETING IS AVAILABLE FOR LISTENING DURING REGULAR OFFICE HOURS OR CAN BE ACCESSED ON THE CITY'S WEBSITE. DIGITAL COPY OF AUDIO OF THE MEETING MAY BE MADE AVAILABLE UPON 48 HOURS ADVANCED NOTICE AND PAYMENT OF THE FEE.

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