



City of Nashua
Conservation Commission
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NASHUA CONSERVATION COMMISSION

May 17, 2022

A. Call to order

A regular meeting of the Nashua Conservation Commission was called to order on Tuesday, May 17, 2022 at 7:00 PM, 229 Main Street, City Hall in Room 208, and via Zoom virtual meeting.

B. Roll call

Members present: Sherry Dutzy, Chair
Gene Porter, Vice Chair
Jed Crook, Clerk
Gloria McCarthy
Carol Sarno
Meghan Cook
Maureen Bourque

Also in Attendance: Matt Sullivan, Comm. Dev. Dir.
Dick Widhu

Chairman Dutzy asked the Commission to identify themselves when speaking so that it is clear in the minutes.

C. Approval of minutes

March 28, 2022 - Innovative Way Site Walk

MOTION by Commissioner Cook to approve the minutes, as written

SECONDED by Commissioner Bourque

MOTION CARRIED 7-0

April 5, 2022

MOTION by Commissioner Bourque to approve the minutes, as amended

SECONDED by Commissioner Sarno

MOTION CARRIED 7-0

April 13, 2022 - 49 Buckmeadow Rd

MOTION by Commissioner Crook to approve the minutes, as written

SECONDED by Commissioner Sarno

MOTION CARRIED 7-0

April 18, 2022 - Nashua Country Club Site Walk

[Quorum not reached, meeting cancelled]

D. Old Business

- ***Property Possible, Inc. (Owner) Requesting preliminary review of permanent impacts to "Prime" wetland buffer for the construction of 10 single-family detached residences and associated site improvements. Property is located at 49 Buckmeadow Road. Sheet C, Lot 18. R40 Zone. Ward 5. [POSTPONED TO THE JUNE 7, 2022 MEETING]***
- ***Nashua Country Club (Owner) Requesting preliminary review of temporary impacts to the 20-ft buffer of an unnamed intermittent stream for the removal of 24 trees. Property is located at 25 Fairway St. Sheet 116, Lot 1. R9 Zone. Ward 7.***

Chairman Dutzy summarized the site walk, which was cancelled due to lack of quorum. She said that the leaves weren't out, so it was difficult to determine what the problem was. A number of trees were marked, some of which were within the intermittent stream and were small. They decided to schedule another site walk at the end of June to get an idea of the angle of the sun and what the problem was. She has some concerns that a lot of trees were marked that did not need to be removed.

Commissioner Sarno expressed concerns over the tree markings as well. Fairway 3 was sloped towards the stream, and she thinks the trees are essential for absorbing the runoff.

Chairman Dutzy said what was out there was totally different than what was presented and what they expected. Hopefully at the next site walk they will be able to get a better understanding of what is there.

E. New Business

- ***George and Rachel Matocha (Owners) Requesting preliminary review of impacts to an unnamed intermittent stream for the construction of a retaining wall. Property is located at 42 Hampton Drive. Sheet F, Lot 518. RB Zone. Ward 1.***

George Matocha, 42 Hampton Drive, Nashua NH

Mr. Matocha showed the Commission photos of the subject area. This is his backyard, and it shows the area where they would build a retaining wall a few feet tall. This would give him a more level backyard, and allow him to install a fence to protect his children from the neighbor's dogs. They hired Mr. Gary Flaherty to prepare this plan, and he delineated the area. None of the work would be within the stream, all would be upwards. He doesn't think there will be impacts to drainage or water retention. He received a letter from the Natural Heritage Bureau stating that they are unaware of any endangered species in the area. He would like to schedule a site walk for this.

Commissioner Cook asked if he will be removing any trees.

Mr. Matocha said no.

Commissioner Sarno asked if the retaining wall will be under the canopy of the trees.

Mr. Matocha said yes. There are some birch trees in the area with extending branches, so it is possible.

Commissioner Sarno said that would be a concern because the roots need air. If you put two feet of soil on the roots [*Audio unintelligible*]

Mr. Matocha said the retaining wall will be a foot or so tall.

Commissioner Sarno asked what the build is.

Mr. Matocha said he doesn't know, but they don't expect to use anything impermeable. The surface will be natural soil.

Commissioner Bourque asked how the wall would be stabilized on the stream side. Are they going to extend the surface?

Mr. Matocha said it should not be extending the surface, it will

still slope down. The water should still go in the same direction. The wall will be stabilized with a gravel foundation. It will not be buttressed.

Chairman Dutzy said she is having a hard time visualizing it. It is still going to slope?

Mr. Matocha said yes.

Discussion of the plan ensued.

Mr. Sullivan said the land is sloping away in the direction of the drainage line. He indicated the location of the 2-ft high retaining wall. The applicant said that even after the wall is placed, there will be a slight grade change such that it slopes down to the intermittent stream even after construction.

Chairman Dutzy asked if the wall would be within the buffer.

Mr. Sullivan said correct.

Chairman Dutzy asked if the fence would be in the buffer.

Mr. Sullivan said yes.

Chairman Dutzy asked if they will not be leveling all the way to the house.

Mr. Matocha said correct. It's approximately 15 degrees of incline, and he thinks it will be closer to 2-3 degrees. The grade varies across the yard and was never level to begin with.

Commissioner Crook asked how high the fence will be.

Mr. Matocha said six feet tall.

Commissioner Crook asked if that would be on top of the 2-ft wall.

Mr. Matocha said yes, behind it.

[Unknown] asked if the neighbor's dogs have gotten into his yard before.

Mr. Matocha said yes.

The Commission agreed to perform a site walk on May 23, at 5:30PM. Chairman Dutzy thanked the applicant for his time.

➤ ***Waterview Estates Property Owners Association, requesting review of Prime Wetland Restoration Plan. Property is located at "L" White Oak Drive. Sheet H, Lot 618. R9 Zone. Ward 2.***

Spencer Tate, Wetland Scientist, Meridian Land Services

Mr. Tate introduced himself as a representative for the Waterview Estates HOA. With him is HOA secretary Hassan Jafri, via Zoom.

Mr. Sullivan said the Commission previously denied a restoration plan for this property in October 2020, albeit by a different consultant who did not represent the association. After the denial, the association continued to work on a restoration plan for this property. This is a new plan for the Commission's consideration. This is more of an enforcement action, based on some cutting that was done by an adjacent property owner. He believes the applicant has put forth some effort to produce a plan that is more aligned with the Commission's objectives.

Chairman Dutzy said they wanted to restore it back to its natural state. The first plan they received was a landscaping plan.

Mr. Tate provided a summary of the site history. In 2020 there was a piece of open space part of this subdivision that was cleared by an abutter and an effort to claim it as lawn. The HOA wants to bring it back in compliance as amicably as they can. He showed the Commission a colorized plan. There was some stumping and minor regrading.

Mr. Tate said their approach is to give this area a jump start towards a forested area. They propose to remove some landscaped aisle, only one of which is in the buffer, reestablish the buffer and the property lines. They have installed monuments pretty heavily along the line. They have invasive species to be removed and managed; they are thoroughly in there so to eradicate them entirely is unrealistic. There were some stump slash piles which they are proposing to maintain, as they do not want to reintroduce machinery to the area and it is mammal habitat. There is a heap of concrete, which they will remove. They will till the landscape aisles so they can put down a wildlife upland seed mix, so that it's not managed lawn coming

up. They will plant some saplings of local species, to mimic the species that was previously there. After that it will be managed by the Association.

Mr. Tate said in summary, this plan is to get back to zero and give a little jumpstart so time and nature can take over. There is a list of suggestions for the management of the land after. There isn't a lot legally or civilly they can do beyond provide guidance. There is allowance in the ordinance for management practices.

[Unknown] asked what invasive species are onsite.

Mr. Tate listed species shown on the plan. He said they were fledgling, just coming up.

Commissioner Sarno asked if there will be monumentation of the wetland buffer.

Mr. Tate said they monumented the common land property line, not the wetland.

Mr. Sullivan recommended they require it as a part of this restoration plan. It's a standard requirement of the code. It should have been part of the subdivision approval to begin with. The city supplies the plaques, and the association would supply the posts. It's a 50-ft interval.

Mr. Tate asked a member of the association to comment on this.

Hassan Jafri, 7 Owls Head Drive, Nashua NH

Mr. Jafri said they intend to install monumentation for the wetland buffer.

Mr. Sullivan asked if the Commission would also like to stipulate that photographic evidence be provided that the restoration has taken place in accordance with the approved plan. He thinks that would be appropriate.

MOTION Mr. Porter to approve the Wetland Restoration Plan with the following stipulations:

1. Wetland buffer shall be monumented as per section §190-116(B) of the Land Use Code.

2. Photographic evidence shall be provided Commission as proof that the restoration has been completed in accordance with the approved plan.

SECONDED by Commissioner Sarno

Commissioner Cook asked when they can expect the restoration to be complete.

Mr. Tate said it depends on the funds for the planting.

Chairman Dutzy asked if the funding is coming from the association.

Mr. Jafri said correct. The first step is to remove the invasive species, which will be completed in July. They are hiring a professional removal service. They expect to restore by the end of the summer.

Chairman Dutzy asked if they can expect proof by the fall.

Mr. Jafri said correct.

Commissioner Sarno said finding trees to plant in July might be difficult. It may be difficult to get them established in the heat.

Chairman Dutzy said the approval isn't contingent on a certain timeframe. Planting depends on the weather and availability.

MOTION CARRIED 7-0

Chairman Dutzy said they will keep an eye on it. She asked Mr. Jafri to give Community Development an update by October on where things stand. They can follow up this time next year.

Commissioner Porter asked about the rules for building within the buffer zone. He said his basic understanding is that owners are not allowed to build in buffers without good reason. What are the good reasons for building within the buffer zone?

Mr. Sullivan said the criteria for granting an exception are very clearly delineated in the wetlands ordinance. The first is that the use or activity can't be avoided, which is chief. If that use cannot be avoided, the least damaging route must be used to complete the construction.

Commissioner Porter said he read and understands that. The argument that was given here tonight is, we want to build a swimming pool and cannot avoid the buffer zone. Is that an acceptable exception?

Mr. Sullivan said he would argue that it doesn't. But the Commission has a history of not strictly applying that criteria.

Commissioner Porter said he wanted to make sure the Commission understands that there is such a criteria. There has to be good reason to build in the wetland. It's hard to make a case of 'we'd like to build so please let us'.

Mr. Sullivan said the Commission has typically applied another of the criteria, which basically says, if there are acceptable mitigation measures being taken, then the construction may be reasonable. That's the approach they have relied upon for many decisions. He can't say whether that is right or wrong or whether strict application of the criteria is the right thing to do, but he believes there is more flexibility than direct wetland impacts.

Commissioner Porter said the application tonight said no mitigation was possible. He wants the Commissioners to understand his concern about building in the wetland with no good reason.

Chairman Dutzy said that's also why they perform site walks. It's very difficult to determine until they actually see it. The city has a standard with homeowners of reasonableness.

F. NCC Correspondence & Communications

None

G. Commissioners Discussion

1. Informational Presentation - Nashua Riverfront Project

Mr. Sullivan said at the previous presentation the Commission discussed an amendment to the prime wetland boundary. As part of that discussion there was an agreement by VHB and the city to regularly update the Commission during the design, permitting, and construction phase. Tonight there will be a brief presentation, and there will be ones in the future to

apprise the Commission of their progress. This project is outside of the jurisdiction of the Commission, but being a waterway the feeling was that it was imperative that the Commission be informed.

Peter Walker, Civil Engineer, VHB

Mr. Walker said they promised that they would be back before the Commission to get more detail and update them on the status. With him is environmental scientist Nicole Martin and Amy Deroche from Nashua Economic Development.

Mr. Walker provided an overview of the project goals, history, and project scope. He showed the Commission concept designs of walkways, river access, the permitting impact plan, and artistic features. He described temporary and permanent impacts below the riverbank.

Mr. Walker gave an update on the permitting schedule. They have submitted a wetland permit to the NHDES; this is currently under review and they have received no formal comments. The Army Corp of Engineers will regulate fill under the high water level, and they anticipate approval of the general permit process. Downtown Nashua is exempt from Shoreline permitting. Because the Corp has to issue a permit they have to comply with historic preservation, so they are collaborating with the NH Division of Historical Resources and will meet with the Historic District Commission. They have submitted an application to NHDES Alteration of Terrain, who has approved the project.

Commissioner Porter said he has been associated with the planning process for ten years. It looks like a fine improvement to the downtown. He asked about access for kayaks and canoes. A previous plan had an extensive dock on the north shore.

Mr. Walker said that is an element of this current plan. The whole point of the project is to connect the city to the river. Rather than having a floating dock on the north side by the substation, that area is quite shallow. It's an aquatic dead habitat. They thought it would be more difficult to permit that docking area, so it was relocated to the south side by Parque de la Renaissance.

Commissioner Porter said another purpose of this is to

increase property values along the river. This project has been underway for a few years now. Have property values increased? Have the assessed valuations increased?

Mr. Walker said he doesn't have an answer.

Mr. Sullivan said part of this project was the installation of a TIF district, which captures tax increments. They have seen considerable investments in the area and have invested them in public infrastructure. That area has increased greatly in assessed tax valuation. The areas that will be affected by this development, those they have not seen demonstrable increases. They believe that as a result of this project those values will take place, as they did for the Lofts 34 area.

Commissioner Crook said in the southeast multi-use path, it looks dirt or concrete. Will it be paved?

Mr. Walker said the dirt portions will be paved. Much of this trail will be boardwalks, which will not be impervious. For these pathways to be functional, paving is important.

Commissioner Crook asked if swimming will be allowed. Is it safe to swim?

Mr. Sullivan said he doesn't believe there are any plans to encourage swimming in the river, particularly in proximity to the dam.

Chairman Dutzy said she thinks the river body has a lot of heavy metals.

Mr. Sullivan said he can check.

Commissioner Sarno said she sampled the water at the Main Street bridge. The E. Coli levels there are remarkable. But they don't know what's on the bottom or could be stirred up by swimming. That should be the goal, to get the river swimmable.

Commissioner Crook said at least the public should be aware of whether they can or not.

Chairman Dutzy asked if the project looks like the renderings, she will be very pleased. Everything that seems to get made in Nashua or New Hampshire is just functional. It's exciting to see that this has creative appeal.

Mr. Walker said they are a pretty good representation, but they are renderings.

There being no further questions, Chairman Dutzy thanked them for their presentation.

2. Middle School Vernal Pool Study

Postponed to the June 7, 2022 meeting

3. Middle School Culvert Modification request

Postponed to the June 7, 2022 meeting

4. Middle School Planting Plan

Postponed to the June 7, 2022 meeting

Mr. Sullivan asked if the Commission would be willing to schedule items 2-4 to a special meeting in order to discuss them, as the representatives were unable to be here tonight.

After discussion, the Commission agreed to schedule a special meeting for May 24th, at 5:30PM.

5. Mine Falls Emergency Bridge Replacement - Update

Mr. Sullivan said he received a request from the city engineering office, through a citizen complaint. There is a bridge adjacent to Nashua South high school in Mine Falls Park that is in serious need of repair. A structural issue was identified and the bridge has been closed. Engineering is working to install a temporary bridge because this is a critical pedestrian way.

Mr. Sullivan said the timing on this is tight. He reviewed the wetlands ordinance, and there is a provision that allows for emergency waivers to be granted from the wetlands ordinance, and he believes that this meets that criteria. He would like to waive this to have the bridge installed in an expeditious manner. It's not a permanent improvement, but it will be in place for a few years until the bridge can be permitted and constructed. He would like to get the guidance of the Commission, but he is treating this as an administrative opinion on something that has already been granted. If they

have significant concerns he would like to discuss them, as well as any conditions. This is a critical bridge that must be replaced. City Engineer Dan Hudson is here as well.

Commissioner Sarno asked [unintelligible].

Mr. Sullivan said he does. There are several trees they will be removing, not only in this location but also in the staging area. The trees in the impact area will be removed so that construction can take place.

Mr. Hudson said he estimates 19 trees need to be removed, and another 15 need to be trimmed so the crane equipment can be used to install the bridge and remove the old one. The total area is .15 acres. They reached out to the NHDES for permitting of the temporary bridge. There is no impact below top-of-bank, but they have filed a permit for notification with Shoreland permitting. This is exempt because it is repair and maintenance of public facilities. They received confirmation from NHDES of this.

Chairman Dutzy asked for confirmation that this is number of trees will be removed.

Mr. Hudson said it is more or less 15 trees, don't hold him to that number.

Mr. Sullivan described the size of the trees they plan to remove. It's a range of caliper trees, and is substantial. He is not sure there is an alternative.

Mr. Hudson said this is for the temporary bridge. They plan to replace the existing bridge, but that will be a yearlong process. They will be back for full permitting to that. The DES asked them to provide a planting plan to reestablish the vegetated buffer along the canal.

Commissioner Porter said the current bridge is high and provides a lot of room for boat traffic. He is worried that the temporary bridge may obstruct navigation. How much head room will they have?

Mr. Hudson said he doesn't have that level of detail. The bridge will span bank to bank, so it won't be lower than the top of bank. It won't arch as much as the existing bridge. He

doesn't know what types of boats people are using. You should be able to get through with a canoe or kayak.

Commissioner Porter said it's a public waterway, and he and others use it with small motorboats. He would like to be assured that the temporary bridge will not obstruct that.

Mr. Hudson said they can look into it. They don't want temporary fill to extend to the top of bank. They will try to make it as close as existing as they can.

Commissioner Cook said it sounds like those trees need to be removed and won't be replanted until after the bridge is replaced. What can be done in the meantime to stabilize the bank?

Mr. Hudson said the bank will be stabilized. They plan to cut the trees, but not excavate the stumps. They will establish erosion control measures. They have to keep the area clear so they can use the crane to remove the old bridge.

Chairman Dutzy said that bridge is not that old. Why is it in failure?

Mr. Hudson said it's 46 years old. It's a wooden bridge, and each side is a glulam arch. The location being where it is, it stays wet. Being of a wooden material, the age has gotten to it. One of the beams basically split down the middle. It's become unstable. When they do the new bridge they will evaluate whether a new type of bridge would work better. It's a combination of the material, location, and environment.

Chairman Dutzy said she has all the confidence in the world in the engineering department. She has no issue with this. The situation can't be avoided.

Mr. Sullivan said he had a detailed discussion about this with Mr. Hudson. With the summer season approaching, the timing was critical. It's likely this would come for full review if the circumstances were different, but they feel this approach was appropriate. There are impacts, but they will be mitigated.

Mr. Hudson said they need to do the tree clearing before June 1st because of endangered species. They also want to get this bridge up so people can use it. He is afraid people are going

to try using the closed bridge, and in its current state it is not safe to do so. He wants to provide an alternative.

Chairman Dutzy thanked Mr. Hudson for his presentation.

6. Joyce Park Stewardship Plan - Update

None

7. Commission Work Days

None

8. Roby Park Frisbee Golf Course

Mr. Sullivan said there has been new conversation regarding a potential wetland buffer impact as a result of the construction. Work at the site has stopped to assess wetlands impact and review possible encroachments. Public Works Department has retained Gove Environmental to perform a full wetlands assessment of the site and detailed survey of the wetland, buffers, and encroachment. They are taking the citizen complaints very seriously. They are trying to stop the work and mitigate any impacts. Public Works is committed to working with the Commission, and there is a recognition of the need to do so.

Mr. Sullivan said a complaint was also filed with the NHDES from Ms. Laurie Ortolano, alleging wetland impacts, and that complaint status is pending. NHDES has visited the site to review any potential issues that may exist. All parties are interested in working together to allow recreation and respect the environmental qualities that exist in the area.

Mr. Sullivan said if wetland impacts are confirmed, an application will be filed with the Commission and potentially NHDES. The project is on hold until that can be determined. If they have any questions, direct them to him. He thinks they all wish this had been handled differently, but they are doing their best to respond to the issue. They may request a special meeting or site walk.

Commissioner Crook said he noticed this was happening in December. Are they allowed to write letters to the editor or notify abutters?

Mr. Sullivan said there is what they are allowed to do, and what is recommended. The Commissioners handled this well by bringing this to staff to investigate. He asked that anything be brought to staff, as they are the first point of contact. They are a team and are intended to be working together to be responsive. He believes they handled this appropriately. He would recommend against writing to the editor without consulting city staff.

Commissioner Crook asked if in the future, they are allowed to talk to residents in the area.

Mr. Sullivan said they are permitted to discuss things with residents. It's when they make any statements as a Commissioner that they potentially create issues. You are their eyes and ears. It's where you bring that input that matters. Even on social media there are potential pitfalls.

Chairman Dutzy said there have been a lot of changes in Community Development, and we all have so much bandwidth. It's one of those things that if they noticed it in March it would have been a lot more different.

Commissioner Sarno asked if there is a plan to update social media with what he just shared with them, to let residents know that their voices had been heard.

Mr. Sullivan said he will have to confirm that. They are in the data gathering phase. He doesn't believe there are any immediate plans to respond before that wetland evaluation. [Unintelligible] Communication could have been better and earlier.

Commissioner Crook said in talking with one of the workers onsite, he mentioned that the worker saw this as a way of preventing city owned property from becoming housing. He thinks that is a valuable perspective. He asked about the process of putting city-owned land into a conservation easement. The city is expanding, and there is only so much greenspace. He has seen a lot of lost over a short amount of time.

Mr. Sullivan said they had conversations about targeting parcels for conservation efforts. It's the Commission's job to develop a priority list. This is where that conversation should start. It's not something they have done in recent

years. The reality is that most of the developments they have seen recently on greenfield parcels have been privately owned parcels that were unlikely to be conserved. There are still lands out there offered to the city, albeit at an unreasonable price, that could be conserved. If they see those opportunities, the Commission has the ability to approach property owners to have that discussion.

Commissioner Crook asked about city owned properties.

Mr. Sullivan said in regards to city owned properties, there is a status of protection on parks. Not to dispute the comments made, but he does not see any risk that city parks will suddenly be converted to housing. There would have to be a transaction involved, and he doesn't think that's likely. That said, parks do not provide the same level of conservation protection as a conservation area would. There is a difference.

Chairman Dutzy said she would caution the Commissioners from talking to the workers and taking what they say as a voice of the city government. In her experience they are often too far down the chain to understand the bigger picture.

Commissioner Cook asked if they are still expecting an updated NRI report.

Mr. Sullivan said no. NRPC has lost several critical staff and will be requesting an extension. He believes the extension would be three months as they have been clear that they want to move forward with the project.

Commissioner Cook asked if they can get what is in the conservation binders.

Mr. Sullivan said yes, but it will not be done right now. He will be blunt, they are short staffed. He believes it can be done in the next four months. He thinks they should be tying it to the geospatial data. They have also been doing more analysis of open space lands with easements that might have a lower barrier of entry for the Commission to secure conservation.

Commissioner Cook asked if could be an internship.

Mr. Sullivan said they have the opportunity this year and it might be an option.

Commissioner Porter said they have an opportunity to extend the conservation protection on land owned by Pennichuck. The entire Pennichuck Brook corridor is owned by them, and they have already dealt with a solar array that encroached into a conservation area. They may want to consider expanding to all of the Pennichuck waterworks greenspace. It's city land.

Mr. Sullivan said it is a complicated situation. There are problematic elements to that. That does not mean it is a nonstarter, but he doesn't think Pennichuck Waterworks has any interest in the Commission holding easements on the property. That is his sense.

Commissioner Porter said he is confident Pennichuck Waterworks would not want easements.

Mr. Sullivan said their argument would be a valid one, that there are already protections on the properties.

Commissioner Sarno asked if there was a way for the Commission to work with the city to conserve undeveloped portions of city owned land.

Mr. Sullivan said there may be an opportunity. The friction will always be to what extent the easement limits the ability to expand recreational uses. For currently undeveloped areas, there may be able to be a conversation with Parks and Recreation. It's also a question of jurisdiction, so it would have to be a joint effort.

9. Miscellaneous

Chairman Dutzy said they submitted the documentation they needed. They had a work party at Joyce Park this weekend, and it went very well.

10. Subcommittee Reports

None

H. Adjournment

MOTION to adjourn by Commissioner Bourque at 8:52 PM

SECONDED by Chairman Cook

MOTION CARRIED 7-0

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Prepared by: Kate Poirier