

City of Keene
New Hampshire

CONSERVATION COMMISSION
MEETING MINUTES

Monday, September 19, 2016

4:30 PM

**2nd Floor Conference Room,
City Hall**

Members Present:

Thomas Lacey, Chair
Thomas P. Haynes
George Hansel, Councilor
Jan Manwaring, Councilor
Sadie Butler
Andrew Madison, Alternate

Staff Present:

Tara Kessler, Planner

Members Not Present:

Denise Burchsted
Dr. Brian Reilly

1) Call to Order

Chair Haynes called the meeting to order at 4:30 PM.

2) Minutes – August 15, 2016

Mr. Lacey noted corrections to the minutes of August 15, 2016. On page two of eight in the second to last paragraph, "...he is also interested in how current recreation activities effect wildlife;" should be corrected to, "...he is also interested in how current recreation activities affect wildlife." Additionally, on page five of eight in the second to last paragraph, the following sentence should be removed from the minutes: "He indicated a better definition may be worthwhile because it is broad currently."

Councilor Hansel made a motion to accept the minutes of August 15, 2016 as corrected. The motion was seconded by Ms. Butler and carried unanimously.

3) Communication and Notifications

a. Surface Water Protection Ordinance Conditional Use Permit – Hillside Village – 99 Wyman Road

Mr. Lacey recused himself for this matter.

Ms. Kessler introduced Jim Phippard of Brickstone Land Use Consultants, LLC. Mr. Phippard was present to represent Hillside Village, a proposed development at 99 & 0 Wyman Road, which is going before the Planning Board on September 26, 2016. Part of the application before the Planning Board is a Conditional Use Permit through the Surface Water Protection Ordinance for impacts to the 75-foot Surface Water Protection buffer, which includes wetlands. Mr. Phippard presented the proposed impacts so that the Commission can review and provide comments to the Planning Board based on the criteria in the Ordinance.

Mr. Phippard explained that Hillside Village is a proposed continuing care retirement facility on Wyman Road. The facility will provide primarily independent living apartments for seniors,

allowing them to age in place. While it is largely independent living, there is on-site full nursing care if additional care is needed by patients at any point during their stay. The development will also include a Memory Unit for those with Dementia and Alzheimer's.

Mr. Phippard provided background on how the proposed site was chosen for development. The project began in 2011 with a vigorous site search for a large site at least 25 acres in size with access to City water and sewer. They wanted reasonable street access for transportation needs and they wanted to be in Keene because of access to medical and other services. They viewed over 200 properties in Keene and narrowed down to four sites, which could meet most of the criteria; however, each of the sites had limitations.

Because of limitations at the three other sites, the Wyman Road site was selected for the development of Hillside Village. Mr. Phippard displayed the location of the site on a map. He noted that it is adjacent to various wetland areas and steep slopes. The property is approximately 50 acres spanning the east and west sides of Wyman Road. There is an existing single family home on the property as well as several barns across the road. Surveys of the property boundaries and wetlands on site were completed. Mr. Phippard displayed on the map the various wetlands and the 75-foot buffer zone required by the Surface Water Ordinance. He also showed the nearby Black Brook, which is a part of the City's tax ditches. There is a large, unique peat wetland adjacent to the Brook. The rest of the property is fields or forest. Mr. Phippard noted that they intend to maintain these forests. The peat wetland is also in the 100-year flood plain of Black Brook.

Mr. Phippard showed the three proposed buildings on the map as well as the steep slopes to the west and large wetland to the east. The first building is a community building which will house the central offices, administration, and common spaces. Within the wings of the community building is residential, independent living units. There is parking at the ground level under each wing as well as surface parking proposed outside the wings and visitor parking at the front of the building. The healthcare building will be located across the street and connected to the community building via a tunnel under Wyman Road. There are also assisted living units for patients requiring additional daily assistance. The third building, The Villa, is made up of independent living apartments. Each of the three buildings will be connected by enclosed walkways so residents do not have to be exposed to weather to get to other buildings.

Mr. Phippard noted that to get to the proposed configuration, they went through many iterations of the design to minimize impacts to steep slopes, wetlands, and wetland buffers. The original design included two-story buildings with 26 separate cottages spread across the property. Because of the site constraints, this level of impact could not be justified so they increased to three- to five-story buildings to reduce the footprint of the independent living units. The health center begins as two-stories and follows the slope of the ground to become a three-story building. The community building is two-stories facing the street and follows the slope to become four-stories in the back with underground parking. All forest and swamp land will remain untouched and undeveloped. The Villa building is not visible from Wyman Road because of the forest. By building up and not out, they are able to protect more wetlands and buffers.

Mr. Phippard noted that since the application was filed with the Planning Board some minor changes have been added to further reduce impacts. This process will lead to a wetland application with the NH Department of Environmental Services (DES), which will also come to the Commission for review and comment. This application will also go before the Army Corps of Engineers and the EPA. The NH Division of Historical Resources became involved with the project because some of the buildings currently on the property may be eligible for the Historic

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Register and under Section 106 of the National Historical Preservation Act, adverse impacts to a potential historic resource must be mitigated. The adverse effect in this project is removal of the historic buildings. They have brought in contractors to see how the old buildings can be disassembled and salvaged.

The Conditional Use Permit filed with the Planning Board asks for permission to impact buffers, not the wetlands themselves because the Surface Water Protection ordinance deals only with buffer impacts. Because of this, the Commission can make recommendations to the Planning Board about impacts to wetland buffers. Mr. Phippard identified the proposed impacts to buffers. They will apply for a permit to fill a small wetland area and therefore the buffer around it would no longer exist. In areas where portions of wetlands remain, there will be buffer impacts. Some grading is proposed at the health center, which will affect the buffer and storm water treatment.

At this site, stormwater infiltration cannot occur because the soil is glacial till, so water pools and either evaporates or transpires. Mr. Phippard indicated that because ground water cannot infiltrate, stormwater will have to be collected and treated. State and Federal agencies require the stormwater be collected and pre-treated before treatment within a vegetated area. This development will use a series of pipes and catch basins to collect stormwater. Next, the water will be sent through sediment forebays, which slow runoff and force sedimentation. There will be a stone berm between the forebays and the main treatment area. Following treatment, the water will enter the wetland, where it will be further treated. This helps to maintain wetlands because they depend on water flowing into them. The stormwater management system is designed for 2-, 10-, 25-, and 50-year design flows. This system duplicates many functions of the existing terrain while protecting the main wetland features and reducing flood impacts.

Chair Haynes asked if there will be piping south of the catchment basin to continue flow of water in that area. Mr. Phippard replied that all impact to the south of the catchment was eliminated in the original design. Chair Haynes asked if they are trying to mimic the current wetland and flow of water, why would they not keep the ground moist. Mr. Phippard replied there would still be surface water runoff on anything east of the road into that area. Anything from the road and developed area will be collected and treated before being released into the wetland. Councilor Hansel asked if there is any impediment between the road and the forest. Mr. Phippard replied that there is not a lot of runoff there in normal conditions.

NH DES is pleased with the newest version of the proposal because of the 2- to 50- year design flows.

Mr. Phippard indicated he provided all information to the Commission based on the criteria in the Surface Water Protection Ordinance. They have considered other designs and alternatives and tried to minimize impacts; the remaining impacts are unavoidable. They will be conducting more test borings on the property involving the existing wetland. He provided a plan of the boring footprint in addition to those already done on the site. Borings will be conducted over the next month.

Councilor Hansel asked Mr. Phippard to point out areas in the buffer zone that will be left as grass as listed under item D. Mr. Phippard demonstrated where the existing water lines support the nearby corporate park, and noted that all area around this would be left undisturbed. All wetland buffers to the east with the exception of parking will remain in their natural state. They also plan to maintain the natural fields by cutting two or three times per year to contribute to a variety of habitats on the property. They have an agreement with MEDC on the adjacent property

to run gravity-fed sewer mains under their property. A 12-foot gravel road must be maintained over the sewer main.

Chair Haynes asked for the total acreage impacted. Mr. Phippard replied less than one acre. He noted there are changes in the figures provided in the original narrative: 33,700 square feet of wetland buffer will now be impacted on the west side of the road, as opposed to the original 18,500 square feet proposed. This is the only area where the size of impacted buffer has increased. By moving the stormwater treatment system on the east side of the road to the north, only 8,820 square feet of wetland will be impacted as opposed to the original 19,550 square feet proposed and only 41,040 square feet of buffer will be impacted as opposed to 112,690 square feet. A maintained gravel emergency access road will extend from the lower road on the property through the MEDC property to Black Brook Road. The emergency access road will be gated and plowed year round. The emergency access road reduced the buffer impact from 35,450 square feet to 29,960 square feet.

Mr. Phippard indicated he will be meeting with NH DES in October to begin the wetland mitigation process. They require a pre-application meeting because over 30,000 square feet of wetlands will be impacted. He hopes that a conservation easement or conservation restrictions will be placed on the property and that pathways will be developed on site. This is something the Commission can get involved with before the wetland application is due next month. Mr. Phippard will come back before the Commission before the wetland application is submitted.

Councilor Hansel asked if the emergency access road will affect wetlands or just buffers. Mr. Phippard replied only buffers. Mr. Madison asked if they plan to limit road salt use in the winter. Mr. Phippard replied that because it is a City street it will be treated by the City. He assumes something might come from NH DES about salt treatment.

Ms. Butler asked for the total square feet of wetland impacted. Mr. Phippard replied that the total wetland impact is 35,410 square feet. The total buffer impact is 104,700 square feet. There is over 900,000 total square feet of wetland existing on the property.

Chair Haynes explained that the Commission normally conducts a site visit. Mr. Phippard noted there is still time if the Commission would like to conduct a site visit. He noted that he will be going before the Planning Board on September 26, but anticipates the public hearing will be continued into October.

The Commission agreed to arrange a site visit before making any recommendations to the Planning Board. Ms. Kessler will schedule a time with Mr. Phippard before the Commission's October 17 meeting. Councilor Manwaring, Ms. Burchsted, and Mr. Madison will not be at the site visit or next meeting.

Chair Haynes thanked Mr. Phippard for his presentation. Mr. Lacey returned to the meeting.

4) Surface Water Protection Ordinance Proposed Amendments

Ms. Kessler indicated that she spoke with the City Engineer to clarify #1 under Section 102-1486. There was concern at the last meeting that "maintenance and vegetative control of the buffer," was too broad. The City Engineer included that because he wants to ensure that the City can maintain tax ditches and to protect property owners along those channels. He did not mean to imply that all property owners should have maintenance and vegetative control of the buffer. He suggested the following edit: "Maintenance and vegetative control of the buffer required to

protect and maintain structures and utilities.” Ms. Kessler was unsure if the new passage fully addresses the concern for more clarification.

Mr. Lacey noted the Commission has been working on this revision for a long time and part of the process was getting comments from the City Engineer and Public Works Director. Those suggested changes were not all accepted. He said this proposed addition from the City Engineer is not something the Surface Water Committee would support. Councilor Manwaring agreed. Mr. Lacey said they addressed this initially by changing the definition of buffer. They modified the definition to remove the phrase “in an undisturbed and natural condition.” This modification would allow the City to maintain the buffer. Another reason to eliminate the phrase “undisturbed and natural condition,” was because City homeowners should be able to maintain the buffer in practical ways. He said there is no reason to make it more specific and that it should stay broad. He suggested leaving it as “maintenance and vegetative control of the buffer.”

Ms. Kessler stated that the Commission is welcome to make any proposed amendments. However, as City Staff, she thinks that broadly allowing for maintenance and vegetative control of the buffer, without further clarification, will undermine the intent of the Ordinance and allows subjectivity as to how and in what manner buffers can be managed. She questioned how something so subjective can be enforced, without allowing for all forms of vegetative control, including mowing of all vegetation to the edge of the surface water. Mr. Lacey commented that enforcement is already an issue in this Ordinance. He said this is one of the most subjective ordinances. Ms. Kessler suggested being more specific or removing number one entirely.

Ms. Kessler noted that she thought the purpose of the buffer was to provide a vegetative area that slows stormwater runoff and reduces the amount of pollutants that enter surface water. She questioned the utility of the ordinance if anyone can mow or remove vegetation to the water line. Mr. Lacey added that keeping it in a natural state is not a practical requirement either. Ms. Kessler said the buffer could be managed but the types of management activities should be clearly defined. One type of activity could be allowing for the removal of dead and diseased trees. Mr. Lacey added that these changes can be made but if someone comes in for a Conditional Use Permit, as the Planning Board still has the ability to decide what activities are allowed within the buffer area.

Mr. Lacey questioned if the intent of the Ordinance is to gradually make everything a natural area through restriction of use. Ms. Kessler replied that it is her opinion that the intent of the Ordinance was to create a vegetated buffer on the edge of water bodies. She agreed with Mr. Lacey that the original Ordinance did not successfully delineate or prioritize wetlands areas or surface waters in the community. Mr. Lacey stated that he does not think that writing the Ordinance in a way that allows for vegetative maintenance in the buffer area will lead people to begin mowing right up to the edge of wetlands. Councilor Manwaring noted there are businesses that are directly adjacent to the Branch River, and she said this is not unusual. Mr. Lacey added that the same thing happens many residential areas.

Chair Haynes questioned how to finalize the wording of amendments to the Ordinance. Mr. Lacey replied that the City can maintain buffers and ditches the way they always have if number one is removed because the definition of buffer just says it has to remain vegetative. Councilor Hansel added that removing number one would make any maintenance of vegetation subject to a Conditional Use Permit. Mr. Lacey replied that this is what the Ordinance currently requires. Mr. Lacey said the Ordinance is currently unenforceable and is not being adequately enforced.

The Commission agreed to move forward with item number one written as “Maintenance and vegetative control of the buffer,” and “required to protect and maintain structures and utilities,” will be removed. Ms. Kessler noted this is the version that will go before City Council for an amendment change.

Councilor Manwaring made a motion to adopt the amendments reviewed and discussed at the September 19, 2016 meeting to the Surface Water Protection Ordinance and to seek approval from City Council to initiate the ordinance amendment process. The motion was seconded by Councilor Hansel and carried unanimously.

Councilor Hansel asked what the agricultural activities and operations defined in the RSA consist of. Ms. Kessler replied that is likely mowing as long as best management practices are used in compliance with State and local laws. Councilor Manwaring said it could also be fertilizer use, etc. not just mowing.

Mr. Lacey stated that he is confident this amendment straightens out a lot and will make the Ordinance better than it was.

5) Conservation Master Plan

a. Scope of Work Discussion

Chair Haynes stated the goal today was to layout a scope of work for the Conservation Plan. He asked to briefly talk about what the Commission hopes to accomplish and items for the scope of work so they can be ready next month. Councilor Manwaring asked if the scope of work is to hire someone for a forest inventory. Chair Haynes replied the Commission needs to figure out what they hope to accomplish and how that fits into the bigger picture of the Commission. Mr. Lacey asked if they were talking about specific data the Commission wants someone to collect. He said as a part of the NRI working group, he and Dr. Reilly talked about the types of data needed. He said Dr. Reilly probably has a list to share next meeting. The Commission agreed to wait until the October meeting to include Dr. Reilly and to carry the conversation into November.

Ms. Kessler shared the Conservation Plan RFQ from Concord with the Commission. She asked everyone to look at their purpose and goals as they move forward with identifying a consultant. Chair Haynes also asked everyone to review the conversation with Steve Roberge because there is a lot of good information that may help prepare this scope of work.

b. Next Steps

Review Scope of Work in October and November.

6) New or Other Business

Councilor Manwaring noted the construction at the Woodland Cemetery and encouraged everyone to go see it.

Ms. Kessler added that the NH Association of Conservation Commissions is having their annual meeting on November 12. To register, let Ms. Kessler know and the cost will be covered by the Commission’s budget. Chair Haynes and Mr. Lacey went last year and found it helpful.

7) Staff Updates

a. Woodlawn Cemetery Wetland Restoration

Ms. Kessler indicated that the construction phase of this project is nearing completion. Ms. Kessler is happy to arrange a tour if anyone on the Commission is interested. The construction is

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being overseen by a wetland scientist. The project should be complete in two or three weeks and will be monitored for invasive species for three years in partnership with KSC. The project was funded by the Aquatic Resource Mitigation Fund.

8) Adjourn- Next Meeting Date: Monday, October 17, 2016

Hearing no further business, Chair Haynes adjourned the meeting at 6:05 PM.

Respectfully submitted by,
Katie Kibler, Minute Taker

Reviewed and edited by,
Tara Kessler, Planner