

City of Nashua
Conservation Commission
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NASHUA CONSERVATION COMMISSION

January 3, 2023

A. Call to order

A regular meeting of the Nashua Conservation Commission was called to order on Tuesday, January 3, 2023 at 7:00 PM, 229 Main Street, City Hall in Room 208.

B. Roll call

Members present:

- Sherry Dutzy, Chair
- Jed Crook, Clerk (Zoom)
- Megan Cook, Treasurer (Zoom)
- Brandon Pierotti
- Maureen Bourque
- Carol Sarno
- Gloria McCarthy, Alt.
- Dick Widhu, Alt. (Zoom)

Also in Attendance:

- Matt Sullivan, Community Dev. Dir.
- Deb Chisholm, Sustainability Dept. Mgr.

C. Approval of minutes

December 6, 2022

MOTION by Commissioner Sarno to approve the minutes, as amended

SECONDED by Commissioner Pierotti

MOTION CARRIED 7-0, BY ROLL CALL

D. Old Business

- *Paul & Jose Dudley, Zhiying Zhan & Jin Sun (Owners) Fieldstone Land Consultants (Applicant) requesting review of restoration plan for wetland buffer disturbance. Property is located at 73 & 67 Musket Drive. Sheet C, Lot 1606 & 1607. R30 Zone. Ward 5.*

Chris Guida, Wetland Scientist, Fieldstone Land Consultants,
206 Elm St, Milford NHU

Mr. Guida introduced himself as the wetland scientist for this project. With him is Paul Dudley, property owner.

Mr. Dudley expressed his support for the plan.

Mr. Guida said they will also be allowing the existing growth to regenerate. None of the stumps were disturbed, so they are sprouting. With the additional light, it will fill in and heal pretty quickly. After that it's going to be education and making sure this doesn't get disturbed. Most people don't know this is a forested wetland.

Mr. Guida asked the Commission for any additional comments or suggestions. Now isn't the best time to plant, so revegetation would be done in the spring.

Commissioner McCarthy asked about invasive species.

Mr. Guida said those can be monitored too.

Commissioner McCarthy said lives two houses away and has some kind of vine climbing up her trees. She's gotten a lot more of it since this has happened.

Mr. Guida said it is probably Japanese Bittersweet.

Commissioner McCarthy said she has noticed more water in her backyard and claimed it is coming from this property.

Discussion of stormwater and bittersweet removal ensued.

Commissioner Sarno said there should be an invasive management plan in the report.

Mr. Guida said it's a challenging topic, as some have been here for a long time. If it's a new situation here they can be hand plucked. A huge growth is a problem. To some degree it's a lifelong struggle. It's not fair to burden anybody with saying they have to go out every week and pull purple loosestrife. At some point it's just not up to the homeowner, if it has to be treated chemically. They can't physically expect it to be 100%.

Commissioner Sarno asked for an inventory of what invasive species are there.

Mr. Guida said they can look at that in the spring as part of the plantings. Management would be based on the best management practices for the NHDES. If it gets to the point of chemical treatment, the Commission may not want to apply chemicals. It depends on what the worse of the evils is. There is a little bit of time for the Commission to come up with a list of recommendations for treatment.

Commissioner Bourque asked if the shed is within the buffer.

Mr. Guida said yes, it was there before the homeowner bought the property.

Commissioner Bourque asked if they could consider relocating it out of the buffer, or if a new one could be placed out of the buffer.

Mr. Dudley said it is a fairly new shed and very well built.

Chairman Dutzy asked if the shed was to be replaced, because it's in a buffer wouldn't they have to return?

Mr. Sullivan said the question would be whether the shed was installed with a valid building permit or not. If it was, it has certain rights to be reestablished. If not, it could be a matter of enforcement or working with the homeowner that a new shed would be installed in a conforming location. They have upwards of 500 illegal or encroaching sheds in the city, in order to enforce on all of them they would need ten more employees. They try to take a reasonable approach. Generally if it's within the last 2-5 years and there is no permit, they may pursue enforcement. If it's beyond that scope, they would likely not. It's an independent issue from the Commission's consideration, but certainly the buffer is a consideration when enforcement works with a property.

Chairman Dutzy asked whether one of the Commissioners to volunteer as a project manager and make sure the owner has a book on the state invasive species and help them in the spring, rather than making them return to the Commission with an inventory.

Mr. Dudley said he would be amenable to that. They want to do

the right thing and it was never their intention to cause harm. He is willing to work with anyone who wants to help. He's not going to go out there every two weeks for growth, probably spring and fall to take care of these things.

Commissioner Cook asked to add a stipulation that the owners be educated on invasive species and make a minimum of two hand pulling attempts during this growing season to control the species out there.

Commissioner Sarno said she would be happy to work with the homeowner as the project manager.

Chairman Dutzy summarized the proposed plantings. They would want to stipulate that wetland markers be installed along the buffers.

Mr. Dudley said that is not acceptable. He only has 20-ft from his foundation to the area they're talking about. There's a fire pit there right now, which was there before he moved in.

Mr. Guida indicated the tree line. It's about 40-ft, and this is all lawn area. They were proposing a placard on each end of the property. For all intents and purposes, with the other stipulation of recording the plan, anyone else who buys the property will know. It's not like you'll have people coming in here and not knowing, like it's a public area. The treeline is 15-ft in from the buffer. At that treeline would be a reasonable spot given that it's all lawn before that and it slopes down pretty good there.

Mr. Dudley said if they put it in the middle of the grass he's going to have to mow around it every single time. He has such little backyard as it is, he's trying to hold on to it. It's nice that there's a buffer and it's not going to be built on, but putting the sign back fifteen feet is not going to do much difference beside keeping it off of his lawn.

Mr. Guida said the intent of signage would be there.

Commissioner Sarno said if there were two signs on the edge of the property, would he know that there was a buffer there?

Mr. Dudley said yes. The property he moved from had wetlands, and he was well aware of wetlands and conservation. By having two signs on either end, that could be right on the line. That

wouldn't bother him. But the one in the middle he would like to be set back a little to the retaining wall.

Chairman Dutzy said he should go look at 13 Curtis Drive, where one of the monumentation markers is in the front lawn. Then he can come back to the Commission. Their experience has been is if someone can do a workaround on their property to get what they want, they will. As a Commission they should think long and hard whether to give an exception on this.

Mr. Dudley said he has been dealing with this since 2020, he's not here to cause the Commission any problems. But all he's hearing is "you must, you shall, go do this, you should, hurry up and get this done". He's almost three years into this, and he hasn't done a single thing but wait and wait. All he wants to see this do is come to an end so he can stop worrying about people he owes money to. If this was on the deed it wouldn't have been a problem.

Chairman Dutzy said he is here because of a code violation. The Commission did not go out to his property and cause this problem. They are offering a solution and he is saying that is not acceptable.

Mr. Dudley said he is not saying that. He asked that a sign not be put in the middle of his lawn.

Chairman Dutzy said the city has an ordinance that he has to have monumentation every fifty feet, three of them.

Further discussion ensued.

Mr. Guida said they're not asking to omit the marker, just move it.

Chairman Dutzy said she would not vote for the plan when that amendment.

Commissioner Sarno said the ordinance requires monumentation every 50-ft, the reason being that the next homeowner wouldn't be as intuitive. She thinks the third post should be at the buffer, not the treeline. She believes the next homeowner will think that the buffer is at the treeline, not 15-ft back where it actually is.

Mr. Dudley asked if he agrees to have the sign in the middle

of his backyard, they'll agree to this.

Commissioner Sarno said yes.

Mr. Dudley said then he agrees, he just wants this over with.

Chairman Dutzy said he could make an island out of it with shrubs.

Mr. Dudley said if he puts shrubs around it no one will see it. If this is what the Commission needs for him to move on with his life and put this behind him, he's fine with it. He never argued that he didn't want the third sign, he just didn't want it in the middle of his backyard.

Mr. Sullivan led a brief discussion on potential challenges to recording the plan at the Registry of Deeds.

Commissioner McCarthy asked if they can contact the former owner so he doesn't have to bear this burden alone.

Chairman Dutzy said Mr. Sullivan is doing that.

Commissioner McCarthy said the new owner should know about this. She said she will abstain from voting

MOTION by Chairman Dutzy to favorably recommend the reconstruction plan, with the following stipulations:

1. Wetland markers shall be installed along the wetland buffer every 50-ft.
2. Site shall be monitored for invasive species, and removed if necessary.
3. Wetland survey shall be recorded in the Hillsborough County Registry of Deeds, unless otherwise technically not possible.

SECONDED by Commissioner Bourque

MOTION CARRIED 6-0-1 (McCarthy abstained)

E. New Business

- *City of Nashua (Owner) requesting removal of seven trees*

within the 75-ft "Prime" wetland buffer of the Nashua River to provide vehicle access related to sewer line siphon repair. Property is located at 10 Whipple Street. Sheet E, Lot 1487. RB Zone. Ward 4.

Dan Hudson, City Engineer

Mr. Hudson provided the Commission with a brief summary of the proposal. A sewer interceptor was constructed onsite in 1968 and runs through Mine Falls Park. He indicated the locations of various sewer lines and siphons in the area. They found some deterioration in the pipes, and the plan is to line some of the siphons that run under the rivers, rather than dig them up. During their preconstruction walk they identified trees that would have to be removed.

Mr. Hudson described the tree sizes and species to be removed, and the locations. They are proposing to cut them low and leave the stumps in place. They need to get the trucks in, and keep the pipes from being damaged by tree roots. They have grown in since the pipes were placed, and it would have been better to remove them as they grew in. These trees would potentially damage the pipes.

Mr. Hudson said they performed this application in-house in the interest of time, as winter would be the best time of year to avoid disturbing wildlife. They did not have a wetland scientist, but they had the city surveyor find the top of bank, edge of water, and the area of work. The buffer line shown on the plan is from the edge of water, although edge of bank may be more appropriate. They do not anticipate any additional trees would need to be removed beyond those proposed. No work is planned below the top of bank. All they need to do is get access to this sewer chamber to be able to do the pipe lining. The tree clearing would be done by the Parks and Recreation Dept., and they would leave the stumps.

Commissioner Cook said the package states the hydrological absorption will not be affected, but she heard him state that a wetland consultant was not involved.

Ms. Gill said she didn't think the tree removal was impacting any material in the buffer area. There is not going to be any excavation in the buffer. The area that the trees are in is a clear area because it was disturbed at the time that the siphons were constructed. They didn't think it would change

the area to take down four trees on one side and three on the other.

Commissioner Cook said that is somewhere the expertise of a wetland consultant would be able to answer the question. She is not sure whether that is true or not.

Mr. Hudson said the Nashua River is the wetland they're talking about. It's in Mine Falls Park, a huge forested area. They don't feel this will change the character of the area. These trees can't stay, they need to be removed. They are happy to satisfy the Board's concerns, if they need a wetland scientist.

Commissioner Sarno said the area near exit 6, her recollection of the trail is that it is very narrow. How will the trucks access that? Her concern is soil compaction.

Ms. Gill said they walked the trail with the contractor. At the time that the trails were constructed, a 30-ft swatch was cleared for the sewers. You can see where the sewer easement is. They intend on using the trail that is existing.

Commissioner Sarno said her concern is more about vehicle access to the sites. What is the time table for this work?

Ms. Gill said the contractor is on board and ready to do the work. They have to inspect the pipe and prepare the material to do the work. They are fortunate that there is no snow right now, as snow could impact the work.

Mr. Hudson said the vehicles are regular, not oversized. They would be driving on the existing trail.

Commissioner Sarno repeated that she is concerned about soil compaction. She wants this to be done in the winter or some steps to prevent compaction by these vehicles.

Mr. Hudson said they are in the sweet spot for time. They are hopeful to get some kind of approval so they can get the crews out there in the next couple of weeks.

Commissioner Sarno said if they miss that window she wouldn't want to see this in the spring.

Ms. Gill said the contractor wouldn't want to be out there

then either, in case they get stuck. These are regular trucks, Parks equipment, or bucket trucks. This is the lighter of the equipment they could use.

Mr. Hudson it's either that or in the summer, when it would be drier. Every indication is that the contractor is ready to go.

Commissioner Bourque asked when the material is being mixed, is there any concern of aerosols blowing to the soil or water?

Multiple overlapping discussions ensued.

Mr. Hudson provided a description of how the pipes are lined.

Ms. Gill said this is a procedure that is done quite frequently nowadays. It's trenchless, so there is no impact to the waterways.

Chairman Dutzy asked what kind of material it is.

Ms. Gill said it's a kind of fabric they impregnate with a resin. There is no aerosol component.

Mr. Hudson said it's steam cured to harden. You wouldn't want to sit there and breathe it, but it's temporary. It's a hard plastic

Commissioner McCarthy asked if there was no residue that would wash into the river.

Mr. Hudson said no.

Ms. Gill said they have three pipes side by side. They'll close one pipe and direct wastewater into the other two, one at a time. Once they start the process they have to continue, as it is one length of fabric. Each could take 8-10 hours.

Commissioner Cook said a lot of the applications she has seen have been prepared by developers or property owners who aren't comfortable answering questions and enlist a wetland consultant to assist. Does the Commission feel they are being consistent in what they expect to see from an application if they make a decision based on this information? She is not overly concerned about the trees being removed because they have to be, but would a wetland consultant recommend anything different? Are they ok with no consultant advising on this?

Mr. Sullivan the wetland ordinance speaks to three professional certifications that may be included as part of the application. They are chiefly a certified wetland scientist, but it also speaks to the fact that the buffer really should be certified by a licensed land surveyor or engineer. Typically the applications that the Commission reviews do not include certifications by a surveyor or engineer, it is typically a wetland scientist plan with a buffer added on. He would argue that it's important for the plan to include some professional certification, but he does not believe it specifically has to include a certified wetland scientist when a certified surveyor or engineer are also included in the preparation of the application.

Mr. Sullivan said Engineer Hudson spoke to him previous to this application about this top of bank issue, and because the waterline was known and the critical measurement was the 75-ft buffer, he was comfortable bringing this to the commission provided that the city's certified surveyor prepared the plan. He believes this meets the intent of the ordinance. If there is a specific wetlands issue, Mr. Hudson would be willing to secure a wetland scientist to address it. Because no stumping is going to occur, he feels that a certified wetland scientist is not needed here.

Chairman Dutzy asked if they will leave the trees in place or take them away.

Ms. Gill said they like to use the trees to line trails. They will likely be somewhere in the area.

MOTION by Commissioner Cook to favorably recommend the tree removal, with the following stipulation:

1. Best Management Practices for trail maintenance shall be used.
2. Work shall be done while the ground is frozen to minimize soil compaction.

SECONDED by Commissioner Sarno

MOTION CARRIED 7-0, BY ROLL CALL

F. NCC Correspondence & Communications

None

G. Commissioners Discussion

1. Joyce Park Wildlife Sanctuary Plan Update

Chairman Dutzy asked whether hiring a wetland scientist to assess the property should be done prior to sending the plan to the Board of Aldermen.

Mr. Sullivan said no. He and Ms. Chisholm reviewed other stewardship plans throughout the city, and some of them were not supported by technical documents. It is not a requirement. The Commission has the ability to amend the plan, but this first action is their one shot to get it done. The document can be amended moving forward to include scientific and supporting information as needed.

Chairman Dutzy said they didn't include any information about the turtle study. She would like to go back and add that, then send it to the Board of Aldermen.

Commissioner Cook said there were a couple of comments related to adding topography and soil types. She can add some of that from her study.

Chairman Dutzy said they can have a deadline of the end of the month to get these changes to staff so they can get it to the Aldermen in February.

Commissioner Sarno said she would like to prohibit bicycle activity here. The road is narrow and there is quite a bit of erosion. The easements seem to exclude bicycles except those used by police officers.

The Commission expressed support for prohibiting bicycles.

2. Lund/Almont Beaver Deceiver Update

Mr. Sullivan said he is looking for clarification on the situation along Lund Road and adjacent to Hassells Brook. Beaver dams have become a major issue over the last year and a half, and they are concerned about flooding. There are 4-5 dams along Hassell Brook and at the intersection of Almont. Assuming that these meet the definition of a dam that could be

removed, what is the Commission's preference for beaver deceivers or full removal? There would be impacts upstream and downstream, and a financial impact. Time is of the essence. With the frozen ground and recent heavy rains, action has to be taken quickly.

Mr. Sullivan showed the Commission a map of Hassell Brook and the dams installed by beavers. They have had a major issue at Almont. He has spoken with Public Works about a hybrid approach. Some dams are a higher hazard and need to be removed in short order. Public Works has offered to fund and purchase a beaver deceiver, but at some of the higher risk ones to the south they are considering full removal without a deceiver. There is an interest in having deceivers installed, but if they assume it is effective at all five locations that is \$20,000 in cost. Public Works doesn't have the budget for that exclusively, so they would need Conservation funding to cover the cost. That would require approval from the Board of Aldermen, which creates its own timing constraints. He thinks that piloting two deceivers in this area and removal of the others would be his preference.

Ms. Chisholm said, how long does it take a beaver deceiver to work? She doesn't know, and her concern is their inexperience with it. If they put four or five in and wait, who knows what the weather is going to be. All it takes is another storm the size of what they got two weeks ago, frozen ground, and some of those properties are being severely impacted, along with the infrastructure and the roadway. Her other concern is with putting the deceiver at the downstream location. She would be concerned with taking all of the dams out upstream and suddenly having a whole lot of water coming through. Are they putting in the proper beaver deceiver first, and then two weeks later they take all the beaver dams out upstream, does that have an impact on what they put in at the location on Almont? Her preference is a hybrid approach. They are at a point where they would just remove the beavers and the dams. She would like to see some actual evidence how the deceivers work and how long it takes before they spend \$20,000 on using them.

Chairman Dutzy said she could try to get Skip Lisle on the phone.

Ms. Chisholm said she thinks it would be site specific. Mr. Lisle may not be able to comment on a site he hasn't seen in

person.

Commissioner Cook asked what the most recent beaver activity has been. Do they know that beavers are along this stretch?

Mr. Sullivan said the flooding issues have gotten worse. But he's not aware of the most recent chews or trees falling. They don't know if the dams are any bigger than they were six months ago.

Commissioner Cook said she spoke with the USDA wildlife services. The gist she got was that the area around Almont Street would not be the best area for a beaver deceiver based off of the height of the road and the water. She would recommend that next time they have high water they get them to come out within that timeframe and look at the other end and see whether any other spots would be more suitable for a deceiver. The guy who came to look at the Almont dam said it doesn't look like there has been beaver activity in a while, so they may need to assess the whole stretch and determine if beavers are actively working on these dams before installing deceivers. She recommended knocking down portions of the dam to see if beavers try to fix those areas. If they do, the Commission should have the USDA or Mr. Lisle assess it. The USDA could also provide a proposal for deceiver installation.

Mr. Sullivan asked if Mr. Lisle has spoken about the installation of one versus many.

Chairman Dutzy said there are local testimonials on his page. Her feeling is that this is an emergency and they have to move forward. Right now Mr. Lisle has availability and the ability to assess the situation. He could probably do one and make a recommendation on the others. They have the opportunity to have someone who is an expert in the field look at it. If they don't do something fast DPW is going to be forced to come in and rip all of them out.

Commissioner Sarno said this is a complicated situation. The dam near Almont is big, and it's a complex network. She thinks someone needs to look at it. How recent the beaver activity might be is a good point.

Mr. Sullivan indicated he spoke to Director Fauteax today, who may be able to take on the financial burden of getting one of these installed in the future. Adding a scope of work for Mr.

Lisle to do an assessment of the other dams is reasonable. He would request a motion that that the Commission would allow DPW to bring in Mr. Lisle to install a deceiver at one of the locations and an assessment of the other locations. In the event that DPW funding is not available, they would request the costs associated with it from the Board of Aldermen.

The Commission expressed agreement.

Chairman Dutzy said Mr. Lisle can't come out and do the work in 20-degrees and high flows. It would be nice to get an assessment, but can they do it that fast?

Mr. Sullivan said he doesn't think so.

Commissioner Sarno asked how the flow is. If they videotaped the streams and send that to Skip, would that be helpful?

Discussion ensued. Commissioner Sarno volunteered to film it.

Mr. Sullivan said there is a new challenge. There are some new policies surrounding removing dams that can only be accessed by private property. They are working on trying to secure a legal method to even go in and look at these dams.

Commissioner Sarno asked if they have contacted the homeowners.

Mr. Sullivan said they have amenable homeowners, but they have to get it in writing.

Commissioner Cook said access to the property is a concern. Maybe Mr. Lisle has a template form for getting permission?

Chairman Dutzy said she can call Mr. Lisle tomorrow. If they're not seeing any active beavers, what would they do?

Mr. Sullivan said they might be back at the removal conversation.

Chairman Dutzy asked what kind of leeway they have. One weeks? Two?

Mr. Sullivan said the neighbors have been patient, but if they get heavy rain it would be a major problem. They don't have six weeks to get legislation passed by the BoA.

Commissioner Cook said if they need to take immediate action to knock down a portion of the dams, she is fine with that.

Mr. Sullivan said there is a specific right granted to municipalities by state statute to remove beaver dams, specific to road or bridge infrastructure. A municipality cannot go into a dam in the middle of a pond with no bridge or road associated with it, and take a beaver dam out.

Chairman Dutzy said if it comes to the point where they have to remove the dams, they can still have him come down and do an evaluation of the area for preventative measures. If they can build a dam once they can do it again.

Mr. Sullivan stated the relevant RSA for dam removal.

3. Middle School Hibernaculum Design

Postponed.

4. Forestry Management Plan

Commissioner Sarno said she may not have shared the quote with the Commission.

Mr. Sullivan said he could distribute that to the Commission.

5. Vernal Pool Ordinance Discussion

Postponed.

6. Elections

Chairman Dutzy asked if staff would be willing to handle nominations for the positions.

Mr. Sullivan said yes.

A brief discussion regarding the position types ensued.

7. Public Comment Policy

Chairman Dutzy said if they are going to have public comment, it should be done in person. If it's important enough to speak, they can come in. If they continue to have Zoom access

and public comment is allowed, they need to have time limits, turn their camera on, and identify themselves.

Chairman Dutzy said the other thing is that oftentimes public comment is only related to agenda items and the Commission cannot interact with them. It's not a discussion or dialogue like they would have with a presenter. Transparency is important, but so is brevity.

Commissioner Sarno agreed. They need to have a time limit, like three minutes, relevant to something on an agenda. There should be no back and forth discussion. One question she has is, assuming Zoom isn't available, can letters be submitted as part of public comment?

Chairman Dutzy said yes.

Commissioner Cook agreed with the time limit and restriction to the agenda. She is concerned about limiting it to only in-person given that there are still concerns about Covid. Everyone might not be considerate about exposure. Her preference would be to allow Zoom as an option, provided that the speaker is on video, identifies themselves, and has a time limit.

Chairman Dutzy said at other public meetings, public comment is held at the beginning. That is a good idea, it would be better to have it after approval of the minutes.

Mr. Sullivan said the Board of Aldermen has it at the beginning and end.

Commissioner Cook asked what happens if there are ten people, they can't limit it to a certain number.

Mr. Sullivan said that is correct. As the Chair you can say that people should not repeat comments over and over again.

Commissioner Cook asked who would be the timekeeper.

Mr. Sullivan said perhaps the Clerk could keep time. It would be helpful for the Commission to take a vote on these policies, because they may be challenged at some point in the future. They should lay out those rules and take a motion. Or they can include them in the minutes.

Chairman Dutzy said that would be fine.

Commissioner Bourque asked if that can be added to the website.

Mr. Sullivan said he doesn't think it would be a rules and procedures amendment, but they can modify the agenda. They do want to make the public aware that there is a time limit and it has to be germane to the topic at hand.

Commissioner Sarno said at the Planning Board, people who are in person get to speak first.

8. Virtual Meeting Access

Postponed

H. Subcommittee Reports

Land and Trail Management

Commissioner Sarno said she spent \$460.00 on tarps for Japanese Knotweed removal. She would like to be reimbursed.

MOTION by Commissioner Sarno to spend \$460.00 on tarps for knotweed removal

SECONDED by Commissioner Bourque

MOTION CARRIED 7-0

Commissioner Sarno said there are some trees down by Buckmeadow, big enough to need a chainsaw.

Mr. Sullivan said he can ask Public Works if they can.

Commissioner Sarno asked if there is an update on boulders.

Mr. Sullivan said no.

Commissioner Sarno said they have had an issue with hunters in Terrell.

Discussion of hunting and signage ensued.

I. Public Comment

None

J. Adjournment

MOTION to adjourn by Commissioner Sarno at 9:15 PM

SECONDED by Commissioner Bourque

MOTION CARRIED 7-0

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KP - Taped Hearing

DRAFT