

**City of Nashua**  
**Conservation Commission**  
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**NASHUA CONSERVATION COMMISSION**

**March 7, 2023**

**A. Call to order**

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

**B. Roll call**

Members present: Sherry Dutzy, Chair  
Jed Crook (Clerk)  
Brandon Pierotti  
Carol Sarno  
Gloria McCarthy, Alt.  
Dick Widhu, Alt.

Also in Attendance: Deb Chisholm, Sustainability Dept. Mgr.

**C. Approval of minutes**

February 7, 2023

**MOTION** by Commissioner Widhu to approve the minutes, as amended

**SECONDED** by Commissioner Crook

**MOTION CARRIED 6-0**

**D. Public Comment Related to Items on the Agenda**

None

**E. Old Business**

None

**F. New Business**

- ***Normand and Mary Lavallee (Owners) requesting approval to remove nine trees within the 75-ft "Prime" wetland buffer of Nashua River. Property is located at 115 Shore Drive. Sheet E, Lot 854. R9 Zone. Ward 5.***

Normand Lavallee, 115 Shore Drive, Nashua NH

Mr. Lavallee said they have been living here for over thirty years. The trees have become humongous, and are 30-50 feet from the home. If they fall, they would seriously damage the home. They still have plenty of trees around, and he intends to plant sapling in between the ones they are cutting.

Mary Lavallee, 115 Shore Drive, Nashua NH

Ms. Lavallee said with the crazy weather we've been having, big branches have been falling and some get lodged. They could come down at any time.

Chairman Dutzy asked how many trees they would be removing.

Ms. Lavallee said eight pines and one oak.

Commissioner Sarno asked if they have been evaluated by a certified arborist.

Ms. Lavallee said back in 2010. They got a four page report. Anyone going there now would get the same results. She doesn't know if the trees are damaged internally, but they have a lot of dead branches.

Commissioner Sarno said that would be normal for a pine tree. Was the person they hired an actual certified arborist?

Ms. Lavallee said they were recommended by the city to Mr. Flaherty.

Chairman Dutzy said he is a wetland scientist.

Commissioner Sarno said the difference is that a certified arborist could look at those trees and determine if they are what would be called "hazard trees", trees likely to fall. She would be more comfortable removing trees in a wetland buffer if they were actually hazard trees.

Ms. Lavallee said they are very high and on top of the hill.

Mr. Lavallee said over a hundred feet tall.

Commissioner Sarno said but they are all within the wetland buffer. The function of the buffer is to protect the wetland, the waterway, and trees provide a valuable service in that regard, absorb runoff etc. She is reluctant to remove trees that aren't hazardous as she feels this will set a precedent for others. That's her personal concern.

Ms. Lavallee indicated the submitted photos and said most of the trees on the street, probably way back when, the backyards were free of trees.

Mr. Lavallee said there will still be plenty of trees. They will be planting new ones.

Ms. Lavallee said the wind coming off the river is very strong. You can hear it at night. They have lost a couple of trees, during the October snowstorm a few years ago. They lost a few other trees. These trees looked strong and healthy, but the wind.

Commissioner Sarno said one of the functions of an arborist is structural integrity. She is not qualified to make that determination. An arborist has the skillset to make that determination. That would be her desire.

Commissioner Widhu referred to the oak, which is leaning towards the river. He doesn't think it would be necessary to cut that.

Ms. Lavallee said originally they were going to just remove the big branches. They trim it, but they can't do it anymore. That was debatable; it's the only hardwood trees so they don't want to let it go.

Commissioner Widhu said it wouldn't fall on the house. The other thing is, if they were cut, he would like to see them leave the stumps.

Ms. Lavallee said they don't want to remove the stumps. You can go right to the ground.

Mr. Lavallee said he is going to plant other trees in between. He's planted thirty some-odd trees since they moved there. He

likes his fruit trees.

Commissioner Widhu complimented their pollinator garden.

Chairman Dutzy asked if the house and the land are within the wetland buffer.

Ms. Lavallee said correct.

Chairman Dutzy asked when the house was built.

Mr. Lavallee said in the fifties.

Ms. Lavallee said they've had it for 31 years.

Chairman Dutzy suggested they perform a site walk. Trees are very expensive to remove. It might be possible that with some good trimming by an arborist that it might work both ways. It could cost them less money and save the tree. It's important for them to go out, look at the trees, look at the terrain, and make an assessment. You can't do it from a picture.

Commissioner Crook asked about the wetland scientist's report, which lists mitigation measures as maintaining a 50-ft from river's edge with tree work, no direct impact to wetland, and planting saplings for mitigation. Is that 50-ft on the plan?

Ms. Lavallee said yes. She indicated it on the plan. The measurements are from ten years ago, when they came in for a shed.

*\*Multiple cross conversations ensued, audio garbled\**

Commissioner Sarno said it's part of the Shoreland Protection Act. What he did matches up well with the grid system.

Ms. Lavallee said that it says if your tree is dead or dying you can remove it without permits.

Commissioner Sarno said correct. Her concern is whether they are cutting down good trees.

Ms. Lavallee said the trees look healthy, but that's not her concern as much as the danger.

Mr. Lavallee said two other trees have fallen, and they found

in the middle there's a big hollow spot.

Commissioner Sarno said she understands their concerns.

Commissioner McCarthy asked if since this is within the wetland, would they want to take the opportunity for monumentation.

Chairman Dutzy said they could consider it as part of the mitigation.

The Commission agreed to perform a site walk on March 13, at 5:10PM.

#### **G. NCC Correspondence & Communications**

None

#### **G. Commissioners Discussion**

##### **1. Lund/Almont Beaver Deceiver Update**

Matt Sullivan, Community Development Director

Mr. Sullivan said the legislation has been filed with the Board of Aldermen and will be at the Budget Review Committee on March 27<sup>th</sup>. Then it will be brought back to BoA in April. At the time of approval one of the discussions they had was, based on the estimated contract amount, the city has very strict procurement policies. They may need to seek additional quotes as a matter of formality. They don't have to go out for a competitive RFP or bid process, but they will have to seek some additional quotes before they can proceed with installing the deceivers. They can work on it over the next month. As a city entity, they have to follow the procurement policies to a Tee.

Chairman Dutzy asked if they are talking about May at the earliest.

Mr. Sullivan said maybe earlier, but not by much. It would be somewhat challenging. It also depends on the readiness of the contractor to perform the work.

Chairman Dutzy asked if there are other contractors they can go out to.

Mr. Sullivan said no. They are going to use google to find some other vendors. If anyone knows someone, they would welcome additional quotes. He is worried that they aren't going to be able to obtain quotes for the work based on the specific nature of it. There is an argument that Mr. Lisle is sole source, but they need to verify if that is an option or not. Procurements are well intended but can create issues when there is specialized work being done.

Commissioner Sarno asked if they recommended someone, would they need to submit a quote?

Mr. Sullivan said the recommendation doesn't matter. Even the fact that they got a scope of work based on an existing contractor. They still have to put it out for full procurement.

Commissioner Sarno asked if she gave the name of another vendor who did deceiver work, they would give a quote and it would be considered?

Mr. Sullivan said yes. If they got a quote for less than Mr. Lisle they have some flexibility to make it work but that would be seriously considered.

A brief discussion ensued.

Mr. Sullivan said Ms. Chisholm did a markup of the areas where the deceivers are prioritized, and they have to do some property outreach. One of the things they need to confront is that unless they want to invoke the statute in regards to municipalities doing removal of dams, which they want to avoid, they will need the private property owners' consent to install these. They plan to send a letter out to the abutters. There is some concern that if there is a more substantial impact as a result of the deceivers being installed, what the city's liability would be as a result of the work. The city's Risk Dept. is involved in the crafting of this letter because it's a litigious world and if one of these deceivers creates more of an issue or an issue elsewhere, that there could be a greater impact to a property.

Chairman Dutzy said this is more an art than a science.

Mr. Sullivan said yes, the letter will state that the city is

taking this action in an attempt to address this condition, and cannot guarantee the results. They will ask residents to contact them if they notice something out of the ordinary. This is a good faith effort by the municipality to remedy the condition. The city continues to get complaints, even today, from property owners seeing elevated groundwater and surface water. The snowmelt exacerbates this condition, so it's timely to get this done as soon as possible.

## **2. Vernal Pool Ordinance Discussion**

Mr. Sullivan said his understanding is that the Commission is interested in pursuing a 100-ft vernal pool buffer. He asked how committed they are to the request, as they need to find a sponsor for the legislation. They need to be prepared to not find sponsorship, and a debate about whether that is the right measurement.

Chairman Dutzy asked if Ald. Jette would not be sponsoring this.

Mr. Sullivan said that discussion has not occurred. He reminded the Commission that Ald. Dowd had offered to sponsor this sort of legislation. He has not spoken to either of them. They need the sponsor to have a strong level of support because there are going to be questions. What level of flexibility do they have? If he writes legislation for a 100-ft buffer and can't find a sponsor for it, but someone would support matching the 75-ft prime buffer, is that something the Commission would be comfortable with? Also, he needs to know what resources the Commission wants him to use to justify the buffer. He needs to understand more of what their objectives are.

Commissioner Sarno said there are a number of recommendations for the 100-ft buffer undisturbed, with an extra 750-ft of critical terrestrial habitat. She understands 75-ft will match the prime wetland buffer, but personally feels 100-ft is more in line with the literature.

No other Commissioners passed comment.

Chairman Dutzy asked the Commission if they wanted to request 100-ft, how hard is that line? If the Aldermen want to come back with 75-ft, are they amenable to looking at that?

Commissioner Sarno said 75-ft is way better than 20-ft. She would consider that. If they really want something that has some meaning, she thinks 100-ft makes sense. There are documents that support 100-ft, so she thinks it is more defensible. 75-ft is just the prime wetland buffer, why don't they do that for everything else?

Commissioner Crook asked what other local communities are doing for their vernal pools. Where do they fall?

Mr. Sullivan said they should look into it, but should be cautious because he doesn't think they will see a lot of leadership from other communities. He is looking for a report that used to have a table to communities and their wetland buffers from the seacoast. They can also look at adjacent communities and get a sense of it.

Commissioner Crook said it would be interesting to know if they are emulating something going on locally or being the outlier.

Commissioner Sarno said the state of Maine uses 100-ft, with a terrestrial buffer.

Chairman Dutzy said the issue is, having visited a couple of vernal pools in Merrimack, one of the problems they have is that conservation land in Nashua is pretty small. When you go to Amherst or Hollis, their vernal pools are in the middle of nowhere and there's nothing around it. One of Nashua's vernal pools has a path 50-ft away. They're not dealing with 1,000-acres, so that's a big difference.

Commissioner Crook asked if the middle school project has a second vernal pool project in the spring.

Chairman Dutzy said yes, that got done.

Mr. Sullivan said they have installed a fence. He said he found a table from the DES with communities and their buffers, but it is fifteen years old.

### **3. Virtual Meeting Access**

Mr. Sullivan said they had set policy around public comment, but there was no clear decision on whether they would have remote access.



Chairman Dutzy said they had decided to not have virtual access.

Ms. Chisholm said they still want to have it available for Commissioners who are unable to attend in person.

#### **4. Salmon Brook Archaeological Grant Update**

Mr. Sullivan said they handed in all the required documentation. The CLG has requested a meeting to discuss project scope in April. The scope was to use a qualified archaeologist to conduct a Phase I report on the Joyce Park Wildlife Sanctuary area, which they were granted \$3,500.00 for. It may not sound like a lot, but it is intended to cover 100% of the costs. That's a basic level report to build on what was included in the draft stewardship plan. The intent is for that work to be done this year, which he needs to figure out if they have to put out to bid for quotes. The state might have individual requirements.

#### **5. Joyce Wildlife Park Stewardship Plan Update**

Mr. Sullivan said he has not submitted the legislation yet.

Chairman Dutzy asked if it would be easy to get it on the agenda.

Mr. Sullivan said it's not always the easiest because it involves several jurisdictions weighing in and making sure it is suitable for legislation. He asked if they endorsed it moving forward.

Chairman Dutzy said yes.

Mr. Sullivan said it is an amendment to the Land Use Code to include this as one of the conservation areas. Conservation areas are required to have a stewardship plan; unfortunately the way the process works, the Aldermen will not take on an area as conservation land without a stewardship plan in prepared. Once the conservation plan is in place, the Commission can adopt the stewardship plan. The legislation going to the Aldermen is to adopt Joyce as a conservation area, and he is including the stewardship plan as an exhibit.

Commissioner Crook asked if it is listed as a Wildlife

Sanctuary.

Mr. Sullivan said correct.

Commissioner Crook asked what the different is.

Mr. Sullivan said it is not listed as a sanctuary, just a name. It's not formally designated. The goal is to ask for an allocation of funding after the designated stewardship plan in place.

Chairman Dutzy asked about the construction debris, and said the tonnage cost has changed at the landfill. Are they still accepting debris, or will they not accept hazardous debris?

Mr. Sullivan said that's outside of his wheelhouse. It is definitely because it is creosote soaked railroad ties, hazardous material. The city is unwilling to accept that type of material, even for its own work. The other complicating factor is that there are permitting phases that are heavily regulated, so their capacity is not unlimited. When they open a new phase, you actually have to line the new phase with household trash that is organic in nature, so you don't create a situation where you have hazardous material forming the base of the new landfill area. It's not a good time to accept material. He thinks as soon as they have funding allocated, they should put out a bid for disposal.

Chairman Dutzy said she doesn't know how they're going to do it. Massachusetts and Vermont aren't taking it, they're shipping it out to Ohio.

*\*Multiple speakers, garbled\**

Mr. Sullivan said it would be extremely expensive. It's like its own NIMBY-ism.

Commissioner Crook said he has two things. One is that he put a trail cam up to gather some wildlife data, then realized he might have needed permission first.

Multiple commissioners expressed interest in the data. Commissioner Crook described the various wildlife he observed.

Commissioner Sarno expressed concerns that someone might steal the camera. Multiple discussions ensued.

Mr. Sullivan said he thinks it is acceptable. They are placing a camera on public property, and he doesn't believe they are required to disclose it. He would like to confirm that though. It may need to be clearly the city's camera with the Commission's authorization.

Chairman Dutzy said they might want to do the same in Terrell and the Northwest.

Commissioner Crook asked if it is within their jurisdiction to place trailhead signage.

Chairman Dutzy said they need to talk about a trailhead. There's so much they have to do at Joyce Park. Eventually they wanted to have four parking spaces and a sign, and see what they can do over at Burke Street, which could be handicap accessible.

Commissioner Crook said the majority of the traffic comes in from Burke Street.

Chairman Dutzy said the first step is to get a pot of money allocated. Then they have something to work with. That's why they are working on getting it designated as a conservation area. They can also do signage of invasives or flora and fauna of interest. The turtle study is going to be underway in Field's Grove across the street.

Mr. Sullivan said he was contacted by Mr. Renner and Parks and Recreation Dept. to confirm whether there was any objection by the Commission. It's not their jurisdiction. He seemed pleased to work there.

Chairman Dutzy said he may be looking for volunteers.

Mr. Sullivan said he confirmed that he was not looking for additional funding. He has all the materials that he needs.

Chairman Dutzy said they have to look at the area where they planted and whether they have to do another cleanup.

## **6. Landscaper/Arborist Retainer**

Chairman Dutzy said they wanted to do a retainer for an arborist or a company to perform maintenance. Is that another

area of legislation?

Ms. Chisholm said they have discussed various ways to get someone under a retainer to remove trees.

Mr. Sullivan said it's a serious and more frequently occurring problem. They get complaints regularly, they have to have money ready to go. It feels constant.

Chairman Dutzy said anything they can put in place so they don't have to be making these decisions one-off would be nice.

#### **7. Boulders at Buckmeadow**

Mr. Sullivan said it's on his list for the spring.

#### **8. Forest Management Plan**

Commissioner Cook has volunteered to take on the management of the plan. There is a form indicating priorities for each parcel. She asked the Commission to review the form and consider what would individually be their priorities.

Commissioner Sarno led a brief discussion regarding SPHNF-owned parcel H-635, and whether it should be removed from the Forestry Management Plan.

A detailed discussion ensued on whether continued monitoring was required. Methods of access were discussed in detail.

#### **H. Subcommittee Reports**

None

#### **I. Deer Stands**

Chairman Dutzy led a brief discussion regarding the removal of permanent deer stands.

#### **K. Adjournment**

**MOTION** to adjourn by Commissioner Pierotti at 8:06 PM

**SECONDED** by Chairman Dutzy

**MOTION CARRIED 6-0**

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KP - Taped Hearing