

Conservation Commission

7/10/18

Draft Minutes

Call to Order:

1. Introduction of Members Present

Sally Ward, Alyson Eberhardt, Carlos Guindon, Bill Campbell, Andrew Koff, Todd Piskovitz, Dave Short, Ginny Raub, Don Clement, and Kristin Murphy were all present. The meeting was called to order at 7:00PM by Mr. Campbell.

2. Public Comment

There was no public comment at this meeting.

Action Items

1. Standard Dredge and Fill Wetland Application for a Light Industrial/Distribution Facility from Garrison Glen, LLC located at 24 Continental. Tax Map 56, Lot 3-1. (Brendan Quigley, Gove Environmental Service, Inc.)

Brendan Quigley, from Gove Environmental Services, told the commission that no changes to the project had been made after it was approved. The project is at the end of Continental Drive, and is a heavily forested area. The wetlands in the area are marginal. The proposed project is a 116,000 square foot building with associated parking and stormwater management. The most sensitive resources are being avoided, included Little River and the shoreland protection area to the west. There are two small wetland impacts, about 4,950 square feet total, on the fringes of the area.

Mr. Quigley briefly went through the questions on the application. The need for the impact is that this type of project requires a single piece of land on which to build. There is existing pavement on the site to connect to, and they are constrained by Little River and the wetlands on the sides of the project. The direct wetland impacts have been minimized using steep grading. The wetlands are classified as seasonally saturated forested wetlands, dominated by red maple. Mr. Quigley said that this is a very common type of wetland in the state. There are also no species of concern that would be impacted.

Mr. Campbell asked about the effect on the larger wetlands outside of the site, because drainage might go into it. Mr. Quigley said that all the wetlands are in the Little River watershed. The drainage goes off the site onto the adjacent properties, before it would go into Little River. The wetlands in this area act more like upland habitats, and act like a buffer to the more sensitive wetlands downslope. Also, any drainage will be treated.

Mr. Quigley continued that public commerce will probably be positively affected. One condition of approval is that the developer work with the board to relocate the trail so that recreation is not negatively impacted. The project will not interfere with set interests because it is consistent with current zoning for an industrial area. The impacts are contained within the site, and will not affect abutting

properties. There are no ill effects on public health or safety, the zoning area is contained. For drainage, the project will eventually have to gain approval for alteration of terrain. Impacts on flooding, erosion and sedimentation are minimal.

Ms. Ward asked about the commission's previous concern of snow storage and removal. Mr. Quigley answered that it was a condition of approval, and Ms. Murphy said that all of the conservation commission's concern were made conditions of approval by the planning board. Ms. Eberhardt asked for more information on erosion control. Mr. Clement was similarly concerned about the steep slope next to impact area A, because of possible erosion into the wetland.

Mr. Quigley said that the erosion control plan is straightforward. Once the slopes are formed, they will be seeded and stabilized. There will also be retaining walls alongside some sections of slope. The water will be captured from the pavement by a catch basin, and the grass seeding will prevent physical movement by rain. The slopes are engineered so that they will not collapse. Mr. Clement suggested recommending to the wetlands bureau to install substantial erosion control adjacent to area A.

Pete Steckler thought that it was frustrating that the project is only considering what is the impact from this sole tract of land, and urged the commission to consider the cumulative effect if others did this as well.

Ms. Eberhardt would like to see some details corrected. For instance, the application states there were no records detected but the NH Natural Heritage Bureau showed a hit on their record for the species in the area, but the project would not impact this. She would also like a screening of the trail from the development, so it is less visible to recreation users. She also wanted to clarify that the stormwater quality is going to be affected in some way, and suggested that the word "minimal" is used instead of saying there will be no impact on water quality. Concern was expressed for how the site would be graded near the wetland fill and whether erosion will be an issue. Mr. Short added that generally erosion is only an issue if the land is not stabilized, or if water is pouring directly on it from pavement.

MOTION: Ms. Ward moved to approve the wetland dredge and fill application with the conditions outlined above. Mr. Guindon seconded the motion, and it passed unanimously.

2. Review and Discussion of Application Materials for the "Exeter Rose Farm" Open Space Subdivision at Oak Street Extension and Forest Street Tax Map 54 Lot 5, 6, 7 and Tax Map 63, Lot 20. Submission includes Natural Resource and Wetlands Reports, Revised potential Conservation Land of 6.31 acres in accordance with Zoning Ordinance 7.7.1, Shoreland Conditional Use Permit application in accordance with Zoning Ordinance 9.3, Wetland Waiver request in accordance with Zoning Ordinance 9.1.6.C. and Site and Subdivision Regulations 9.9.3 (Marc Jacobs, CWS, Brenda Kolbow, TFM):

Ms. Eberhardt and Mr. Piskovitz recused themselves from the conversation, and Ms. Raub will be acting as a voting member. Todd Baker, the owner of the developer, showed the commission the area of revised conservation land due to the last meeting. There is a total of 6.31 acres abutting the town forest. There will be street parking, and people can also access it from the town forest. Mr. Campbell read the conditions for the conservation land as following:

- Hunting would not be permitted on the property.

- Prior to Town acceptance, the applicant will provide: a draft deed to the Commission for review and approval, a surveyed plan, a baseline documentation report, and on-site boundary marker placement will be confirmed on the ground by the Commission (or their representative) and the Grantor.
- The applicant is responsible for construction of the trail connection to the existing trail network, any required crossings along that connection, and installation of a trailhead sign at the trail entrance.
- The applicant will install conservation boundary discs along the conservation boundary adjacent to house lots

MOTION: Mr. Guindon moved to submit a memo to the planning board that the commission is supportive of the town accepting fee ownership of this land with the conditions as read. Mr. Koff seconded the motion, and it passed unanimously.

Shoreland Conditional Use Permit:

Marc Jacobs, the wetland/soil scientist for the development, showed the commission a map of various shoreland zones on the site. The total site area is 2,176,025 square feet. The biggest land area is the 0-75' vegetative buffer (about 500,000 sq.ft), and the biggest impact in that area is associated with the construction of Rose Farm Lane and the construction of stormwater gravel wetland. The largest amount of impacted area is in the 150'-300' shoreland protection district area, which has about 95,000 sq. ft of permanent impact. Other impacts include the construction of driveways for multifamily units, the remediation of land and removal of waste, additional stormwater gravel wetlands, and the construction of homes/lots.

Brenda Kolbow reviewed the various strata. The Shoreland Protection Zone gets 300' buffer around Norris Brook. The perennial stream gets a 150' buffer because it is a tributary to Norris Brook. Within the vegetative buffer, surface alteration is permitted for the road. No buildings will be added within the structure setbacks. Most of left side of map shows impacts due to remediation. Mr. Jacobs clarified that there are no special exceptions being asked for, and that everything is covered by conditional use. He also explained that CUP use for the Shoreland Protection meets all requirements and permitted uses.

Mr. Campbell asked about potential climate change effects to the sewer pump station due to sea level rise. Mr. Jacobs said that the sewer pump station was designed to be at the lowest point to capture the most water, and it was designed based on projected sea level rise including storm surge. It is also a sealed unit. Mr. Campbell also asked about snow storage on the site. Mr. Jacobs said that it would be pushed into the right-of-way, not stockpiled, and would melt into the storm drains because the roads are designed with a slant.

The roads have a slanted design so that snow melt will go into storm drain. Majority of snow will be captured and go into treatment system. He also said that the gravel wetlands use layered gravel that doesn't seep into ground. Dirt is put on top and vegetation is added to help filter any water. Mr. Clement mentioned the administrative order to manage and reduce nitrogen. The gravel wetlands are very good at treating nitrogen, removing about 85-90%.

Mr. Jacobs went through the requirements for a Shoreland CUP. He said that for waste treatment, the entire subdivision will tie into the municipal sewer system and will be part of public water/sewer. There will be no individual waste disposal. He mentioned that a significant piece of this project is also to remediate existing hazardous waste from previous greenhouse.

He said that damage to wildlife habitat will be minimal. Norris Brook lacks spawning beds and they designed the project to manage stormwater. The proposed stream crossing for Rose Farm Lane is using a box culvert with stream simulation to replicate stream characteristics. The culvert will have an upland bench on both sides of the bank to provide a migration corridor. They were open to using an open-box culvert if the commission preferred. Mr. Clement asked about fish species going up Norris Brook from Squamscott River. Mr. Jacobs said that he could not find specific data on that migration.

Mr. Campbell asked about building setbacks with properties 39, 40, and 41. Mr. Jacobs clarified that they are existing homes, and that any new construction would need to be outside the setback. The developers are limiting side slope grading to reduce the wetland and shoreland footprint. Also, they will be obtaining an alteration of terrain. The project is not requesting work in any of the 75ft vegetative buffers for home construction. Mr. Guindon emphasized the importance of minimizing the expansion of invasive species into town forest, and that anything to reduce spread is important. Mr. Jacobs said they could develop an invasive species management program.

For prohibited uses, Mr. Jacobs said that the only proposed one is fertilizer, which would be applied during construction to establish vegetation to mitigate erosion. After this, a prohibition on fertilizer use will be included in the HOA. Mr. Campbell asked about the wastes that will be removed vs. buried. Mr. Jacobs said the lead contaminated soils in former greenhouse area and pond will be removed from the site. Any coal ash will be capped. Solid wastes will be removed as much as possible.

Mr. Jacobs moved on to ordinances, and said that they have tried to minimize all impacts and are complying with all requirements. The project is not located in the Exeter River watershed or the Fresh River watershed. Continued access to the spring will be protected by HOA. Mr. Guindon asked where the water from the spring is coming from. Mr. Jacobs said that they are not entirely sure, but the bulk of the area contributing to the spring is covered by residential neighborhoods. The spring provides water to existing homes, and those lines will need to be capped.

The commission opened the discussion for public comment:

Mark West said that the buffer restrictions are meant to protect the resources in town including Norris Brook and the perennial rivers which flow into Squamscott and the Great Bay. There is a total of 5.33 acres of permanent impact. Many of them are directly adjacent to resources, removing the buffer completely in these areas. The wetlands might help protect the streams, but the wetlands are also an important resource and shouldn't be degraded. There are also a lot of clay soils, which are very fine and erode much easier. There is a lot of digging in construction on these soils, loosening them. The wildlife habitat will be impacted by the road, culverts, basins, pump station, and gravel wetlands. They are all in middle of the wildlife corridor.

Eileen Flockhart asked the commission to consider the impact of the construction on the nearby spring. She said that many in the neighborhood see the spring as a valuable resource and want to ensure it is truly protected.

Maura Fay, an abutter to the property, said that her biggest concern is the sheer size of impacted land out of total area. She was also worried about the tidal impact of the sewer pump station on Norris Brook, especially decades from now. Also, other recent development projects like on Epping Road flow into the same watershed. She doesn't think there has been enough study on the cumulative impacts or quality/importance of wetlands.

Pete Steckler requested that the commission recommend denial. He emphasized that surface water quality will be affected negatively, and that the wetlands will not be as effective as a buffer for long because they will become contaminated. He also pointed out that gravel wetlands only last about 10-15 years. He didn't think that it is conclusive to say that the area lacks spawning beds. Also, there may be indirect impacts to wildlife like water temperature, trash, minerals, sedimentation, invasive species, etc. This is an important wildlife corridor, and the assessment seemed to be based on visual observation. He also wants more definitive language in the application, firmer requirements in the HOA documents, and a commitment from the developer. He also thinks there should be a requirement for a no-cut and vegetative buffer along the town forest at the top of the property.

Suzanne Iverson talked about EPA Estuary protection program and PREP to protect Great Bay. The State of the Estuary report shows that water quality is on the decline. One way to protect health is to protect buffer lands along water resources like Norris Brook. Small streams are recognized as important to estuarine health and have an impact on water quality. Green infrastructure like buffers prevent degradation and also are cost effective by reducing treatment costs. She emphasized the important economic role of protecting open space.

Todd Piskovitz talked about protecting and enhancing the water quality of the Squamscott River, that it needs to be emphasized and the project has not proven how they plan to enhance the water quality. He also said that they have not proven that the planned uses for the land cannot be outside of the wetland area. In the past, as well, Norris Brook was considered to be important enough to put a 300-ft buffer around it.

Doug Murphy does not think that the use of fertilizer by the river should be allowed. He also suggested putting two smaller pump stations instead of one, so that way it could be further away. Also, the pump station is not going to be repaired before it has issues, so it should not be placed in such an important area.

Melissa Paley, from the Conservation Law Foundation, said that the estuary is in a state of decline in numerous ways. Squamscott River in particular is an impaired waterway for nitrogen and dissolved oxygen, and this has a major impact throughout the system as a major tributary. The 2010 PREP report stated that Exeter has about 50-60% of impervious cover, much higher than other communities. Generally, 10% is threshold for a healthy watershed that isn't impacted. There are lots of examples of good developments with good water management. This project will create a lot of new impervious surface. She also mentioned that Exeter is regarded as a community that is making a good effort to fix their issues with water quality, so they should continue this effort.

Mr. Jacobs responded to some of the concerns brought up. He said that the impacts mentioned all acknowledged that the infrastructure involved needs to go where it is proposed, due to topography and other factors. They will need to capture all water before it gets to Norris Brook so that it can be treated. He also said that the wildlife corridor of Norris Brook is already broken up by Oak Street Ext.

The commission needs to strike a balance between the protection of waterways and the applicant's rights to access property and use their land. There are no other means of access except for crossing Norris Brook. A detailed topographic evaluation was done for the crossing location. Mr. Clement said that the area will also be extensively reviewed by the town's engineering consultants.

Mr. Clement reminded the commission that some impacts are unavoidable, but that they need to be mitigated as much as possible. The conditional use application does not say there will be no impacts, but instead that there will not be excessive damage. Also, a 2018 report about the impervious surfaces in Exeter shows there are less now compared to the 2010 report. The commission cannot deny access to the property, but they can demand that the impacts are minimized as much as possible. If they cannot be minimized, there is an issue.

Mr. Jacobs said that all of the improvements will be under the purview of the HOA, unlike other developments with no maintenance or update requirements. They will need to develop a maintenance plan, and the HOA will be saving money for the purpose of maintenance as well which will include the environmental aspects.

Ms. Ward had some concerns about the HOA. She asked how they would be held to their standards, and who would be providing oversight. Another concern is the spring. She believes more work needs to be done to look at how the spring flows and what the pipe structure is. Her third concern is the impact on the estuary. She is not confident that everything has been done to mitigate impacts. Development is good for the town, and they need affordable housing, but Norris Brook is unique and she wants to make sure that everything possible has been done to protect the waterways.

Mr. Koff shared similar concerns with Ms. Ward. He did not think they had enough information about the effect on the nitrogen in the water. There needs to be ways to make this a more nitrogen neutral project for the Great Bay.

Jack McTigue stated they are using the best BMP that the AOT approves of for removal of nitrogen. Its rated at 85% removal nitrogen, 95% total solids.

Mr. Campbell asked about the location of some of the gravel wetlands. Mr. Jacobs said that the site soils dictate the selection of the gravel wetlands. In this case, the clays promote good stormwater management by filtering. Weekly inspections and status reports in erosion and sediment control during construction are needed.

Suzanne Iverson asked to address the board in response to a question posed by Mrs. Ward. She said that one option would be to decrease the number of homes, and to conserve the western part. The abutting neighbors want to reduce the development to 12 homes, and would even help with a fundraising campaign for conservation.

Mr. Campbell said that the developers have done a good job at minimizing impacts, but he still thinks that having 1/6 of the shoreland protection district permanently impacted is alarming. 5.3 acres of land is too much impact. Mr. Jacobs responded that 5 acres of permanent impact represents about 10% of the total property area. Also, the HOA is a legal entity with an elected board of directors to manage their affairs. Mr. Clement pointed out that track record of HOA with maintaining these types of structures is a concern. Ms. Murphy said that the town does not inspect the HOA to ensure compliance, but if there is a complaint, the town has the ability to ensure enforcement.

Ms. Ward asked how much impact would be lessened by a bridge vs a culvert. The developer responded that the bridge would be very expensive and is not feasible. The impacts to Norris Brook could be lessened, but there would be the same amount of impervious surface.

Ms. Raub said she has been part of a HOA, and they have a lot of turnover. They do not reliably enforce rules, because they do not want to police people. She is concerned about the buffer between the development and the town forest not being monitored except by the homeowner. She also asked if the townhouses could be relocated off of Rose Farm Lane, which would reduce the amount of impervious surface and reduce impacts. Mr. Baker responded that one major improvement to the plan was that the 6-acre conservation land would not be touched, so they squeezed in properties more tightly elsewhere.

MOTION: Mr. Koff moved that they do not recommend the Shoreland CUP as proposed due to the following concerns over wildlife and water impacts (see below). Ms. Raub seconded the motion, and it passed unanimously.

- Snow storage/snow melt
- An open-bottom culvert is preferred over a box culvert
- Stormwater infrastructure be designed to reduce nitrogen loading
- Construction activities must reduce invasive species spread
- A prohibition of fertilizer by the HOA
- Capping the connection to homes from spring
- The enforcement of the HOA

Wetland Waiver Request:

Mr. Jacobs went through the areas that would be impacted. Out of a total area of 333,000 square feet, about 52,000ft will be permanent buffer impact, and 3,600 ft is permanent wetland impact. Impacts from cleanup include removal of solid waste and coal ash. The area will be restored and re-vegetated. The impacts from construction will include Norris Brook crossing, drainage, the sewer pump, and the improvements to access. The spring access impacts include drainage, a turnaround area, and more parking.

They have done a wetland evaluation to determine the value of the wetland. The Rose Farm Lane wetland crossing will be particularly impacted. Manmade wetlands will also be impacted, mostly to remove waste. All negative impacts will be minimized, and the spring will be protected. He reminded the commission that the property is zoned for the proposed use, and that there is no access without a wetland crossing. There will not be any home construction in the wetland buffer.

The developers believe that the gravel wetlands are the best management practice. No more than 50% of drainage is located within the wetland buffer (specifically, about 40% of the drainage is). There are also a number of mitigation opportunities that they have proposed. Originally, they had proposed to cross two other streams with cul-de-sacs, and have since downsized to avoid that. They are also re-vegetating the area with grass seed, shrubs, and no-mowing, so that they will eventually grow a tree canopy.

The commission turned the discussion over for public comment:

Mary D. Hanson said that the owner bought land knowing what the access to the land was. Also, she said they would not be able to put the cul-de-sac back in on the land to the left because it's not likely the planning board would approve that.

Mark West agreed that the drainage structures need to be put into lower areas. He said that wetlands are being filled to build some of this, and they are not leaving any buffer at all. The wetland is too important to have these high impacts, especially going from a 50-foot buffer to none at all.

Pete Steckler reiterated that it is not possible to not have any negative impact. The finfish and shellfish habitat function should be represented as a function of this area. This is a good habitat for a lot of different species of fish and shellfish, and he wants to make sure that we are not just relying on visual observation to come to the conclusion that no species are present. He asked if there was a way to access Oak Street Ext. to cross Norris Brook only once. Mr. Clement answered that Oak Street Ext. does not meet the town standards of width. Mr. Baker also said that it would be too close to the spring.

Mr. Jacobs said that there had been a lot of design review, and the grades are very steep in that area. None of the proposed uses are prohibited. He also emphasized the difference between adverse impacts, and any impact at all. They are not creating excessive adverse impacts.

The commission was not satisfied that all of the conditions had been met, and they felt that the impact on the wetland was unknown. Mr. Campbell did say that the criteria for this waiver seemed more straightforward than the Shoreland CUP, but he was unsure if criteria 1 and 2 especially were met. Ms. Ward had concerns about water quality similar to the concerns above.

Mr. Jacobs said that the TRC reviewed the management designs, which was sent for peer-review and received no comments. He also said that the impacts need to be gratuitous in nature to fail the criteria. The impacts in the west are due to the removal of hazardous material, and to the east they are due to that area being the only access point.

MOTION: Mr. Koff moved that they do not feel comfortable recommending the wetland waiver due to the concerns about the water quality and wildlife habitat as outlined below, and the other concerns as outlined from the Shoreland CUP. Mr. Guindon seconded, and it passed unanimously.

- 3rd party information review of management design needs to be seen
- More information about the fish/shellfish habitat of the area
- Net-zero nitrogen loading
- Better understanding of the wetland function

3. Other Business

MOTION: Mr. Koff moved to approve a \$1,200 payment to the Preservation Company for their work on the LCHIP application. Mr. Guindon seconded the motion, and it passed unanimously.

4. Next Meeting: Date Scheduled (8/07/18), Submission Deadline (8/3/18)

The meeting was adjourned at 11:30PM.

Respectfully submitted by recording secretary Samantha Cave