

**THE TOWN OF NEWINGTON
NEW HAMPSHIRE
INCORPORATED 1764**

**NEWINGTON CONSERVATION COMMISSION
MEETING MINUTES
THURSDAY, SEPTEMBER 14, 2006**

Call to Order: Vincent Frank, Chair Person called to order the meeting of August 10, 2006 at 7:10 P.M.

Present: Vincent Frank, Chair Person; Barbara McDonald, George Fletcher, Peggy Lamson, Justin Richardson (arrived at 8:20 PM), Dottie Watson, and Tom Morgan, Town Planner

Not Present: Jane Hislop

Guests: Mark West, Richard Spinney, Bernie Pelech, Atty. for Texas Road House, Sara Romeo, and John Sinnette with WD Devel. Partners.

Old and New Business

1. DOT-Spaulding Turnpike Mitigation – Mark West

He was asked by the Commission to review the Department of Army Wetland's Permit application for the Spaulding Turnpike Project. Some of the information is generally summarized in this document, a very pared down version. Mark started looking at the impact assessment. Before you can decide on a mitigation plan, you need to understand what the impacts are and have some bullets from the Comments Response Draft, basic information so you can get a handle on it. Wetland Impact Assessment:

- Total permanent wetland impacts 11.9 acres mostly forested and emergent wetlands with approximately 1 acre of scrub-scrub and impacts to the bay associated with the bridge piers.
- Wetland Evaluation is summarized only and does not include photos and data but indicates that groundwater recharge, production export, nutrient removal/transformation and wildlife habitat are the main functions impacted.
- Temporary wetland impacts are not as clearly defined and their restoration is not detailed.
- The majority of the impacts are associated with the new Exit 2 (reconfigurations) connection to Arboretum Drive. Mark Pointed out the impact on the map.
- No discussion of tidal buffer zone impacts is included.

Barbara: Has a letter dated 8/18/05 from DOT and potential mitigation sites, and we prioritized them and what the Board was thinking about doing and doesn't see it reflected in the report. You had Flagstone Brook, Great Bay Water shed a priority, also McIntyre Brook as a priority, and Pickering Brook and Halbrook in with the Flagstone Brook and the driveway was taken out. Mark reviewed each of the ones that

were recommended and they have narrowed their choices and all choices were relatively high, except for the Drive-in. Flagstone Brook is part of the restoration and a reasonably restoration site. Barbara is interested in what is restoration and what is preservation because we should really be looking for what should be restored. Mark: There is a lot of questions that are raised and if he can go through the draft, and then you can get an idea of what he found and what they have recommended so far. The Railway Brook Restoration talks about a whole habitat assessment of the brook. That's sort of a baseline understanding of what the health of the brook is. Again, Mark doesn't know if it's in the EIS or not, if it is, it's an important document for this Commission to review because it really tells you what the status of the brook is today and can start to understand what restoration might be needed and would also be a good reference document for McIntyre Brook because it's a similar type disturbed water shed. So, because EIS is such a huge document, what Mark is trying to do in his review, is pick out what we want to spend some time on understanding. That not only helps them understand what the need is for restoration and what happens to these brooks that were ditched in this community. The second thing is, there is Risk Assessment that they mention for either of these restorational alternatives to do with contamination because of the landfills in the water shed and because the contaminates that may historically have been in the brook. That sounds like it hasn't been done yet and has a big wait on whether they pursue this. In other words, if to do the restoration, they would cause contamination or reopen some issues, it may not even be an alternative and again he's just dealing with the document he has. In this document, it says that a Risk Assessment would need to be done prior to pursuing the work. It seems to Mark that it would need to be done prior to selecting the site. You don't select the mitigation site, and then say you're going to do the Risk Assessment and then eliminate it before you even can start pursuing it. The DOT has to look at cost assessment every time they go through the process and don't want to spend all this money. The areas restored in either of these upper or lower parts of the brook should be preserved permanently in Mark's opinion. They should include a preservation component because there's no sense in going through all this huge restoration project and then leave it open for development next to it and future degradation. They don't mention that. Alternative A (Arboretum Drive north to Pickering Brook intersection) 2,542 linear feet of stream with newly created wetlands that are not estimated for size. Adjacent to Upper Pickering Brook Prime Wetland-increases value. Alternative B (Arboretum Drive south to airport runway) 2,700 linear feet of stream with newly created wetlands that are not estimated for size and are adjacent to North Ramp Prime Wetland. Landfill may cause problems. Treatment of runway runoff discharging into stream is not discussed.

Preservation: Watson Property – This 35-acre parcel would permanently protect Trickey's Cove and Shackford Lot Prime Wetlands and the scenic view from the bridge. This parcel is a very high value frontage on Great Bay. No discussion of an easement holder or local access was included. These two are important to the Commission and how it affects the community.

Alternative Mitigation Options, Preservation: Knights Brook – Three parcels totaling 100 acres that would provide permanent major protection to the Knights Brook

Wetland. Diverse upland and wetland complex. Very high in value. No discussion of an easement holder or local access was included.

Restoration/Preservation of the Drive-Inn Theater Property – 16-acre site includes potential grassland species habitat, etc. No wetland restoration acreage is given. This site is rated low on previous reviews.

NHDES Requirements- (are similar to what Federal requirements are going to be) so based on 12 acres of wetland impact, the ratios required would be 18 acres of restored wetlands and that means a wetland that used to be there that's either filled or drained, will now be a wetland. They would have to clearly define this to meet this 18-acre criterion. If it were preservation of Upland Buffer, it would be 120 acres, 50% of which can be wetland. They would need 60 acres of Upland. We need to understand the acreage in order to understand whether they are providing the appropriate amount of mitigation. If you look at the protection of the 35-acre Watson parcel, that represents 29% of the required mitigation. You still have 12.3 acres of wetland restoration/creation project. More information would need to be provided as to how much wetland will be restored or created by this alteration. The commission may wish to pursue protection of some of the Knights Brook area to compensate for any additional mitigation required to meet the NHDES ratios. All three of the proposed mitigation parcels appear to be good options. Alternative A, is the more attractive option because of its distance from the runways however the ideal scenario would be to restore both stretches if either is pursued to create a more complete wetland system. The success of the preservation parcels is easier to predict, however the easement holder and restrictions are a key component to evaluating the mitigation benefits. It's a much clearer mitigation option in understanding the potential for success. Any wetland construction or wetland restoration is more of an experiment than a sure thing. Some of this information may be contained in the EIS and should be reviewed prior to making final recommendations. Need more information before final recommendations can be made. This is all the information Mark has at this time.

Barbara: We don't have an option of time. The Public Hearing is on the 21st. The deadline for written submission is October 6th. Mark: The Board has the opportunity to intervene and request 40 more days and to write a letter to the Bureau and the Corp of Engineers indicating that information is missing and to give you more time. Mark was given the Wetlands Application to review (not the EIS) and the Board can write a letter to the Department of Army and the NH Wetlands Bureau to comment on the permit. What's interesting is they have a Department of Army application filled out, but they don't have a Wetlands Bureau permit filled out. Barbara: They are leaving it open. We need to take a stand and delineate some of these things and as far as Knights Brook goes, in her notes, it wasn't an option with the committee because it goes with prime and they decided that Knights Brook was protected with prime wetlands and it wasn't a restoration and wasn't a priority for the Committee and the owners of the property haven't been approached. Mark: His understanding is that a letter was written to Mr. Spinney. Mr. Spinney was present at this meeting. Mark: You are dealing with a broad sort of moving target process and were dealt a ton of information and what Mark can define for them is their various options and duties. There's a date on the signature of the applicant dated 8/11/06. Mark: Tom, did you receive a NH Wetlands Bureau Permit. Tom: Hasn't seen one. Mark: It has to be filed with the

Town Clerk. Mark: It wouldn't be difficult, before the hearing to have a discussion with Peter Walker to get a better understanding on exactly when different documents are supposed to come in. Discussions/speculations continued. Barbara: Who makes the final determination? Mark: You do. You were given a bunch of options, we commented on high, medium, and low in our opinion and they made the choices. Right now the choices you have to look at are the five different elements that they proposed. In Mark's opinion, they are missing some stuff. We don't know how much restoration you will get. Mark believes the Board can't make any recommendations without knowing what is gained from these restoration parcels, what kind of easements are going to be placed, and who is going to hold them on these preservation parcels. Mark thinks the Board needs that information to make their recommendations. The discussion continued. Barbara: Mr. Chairman, as a committee we have to make some decision for Mark to go to this meeting and advocate what we want. Mark continued the discussion. Barbara brought up Bloody Point and explained the research she did. The State owns land, 3.4 acres of land and the house is owned by the Town of Newington and always had a twenty-year lease for a dollar and the town let it expire. Her thoughts are on asking the State for that land back. Barbara continued her explanation. Discussion ensued.

Vincent would like to see Mark send a letter to the Board on their discussion and he will forward it to DOT. Barbara: Make a motion to have Mark do the research that needs to be done on DES questions and to pursue any avenues he needs to gather the information that's necessary for the Board to make some kind of a decision and also would like to see Mark speak at the Public Hearing for the NCC, and maybe meet before that and put the Drive-In out as absolute, valuable commercial land that we need for our tax base and it shouldn't be on there. George seconded it. Vincent: Any discussion? Barbara could we possibly meet before next Thursday night in Dover (possibly Tuesday night?). Mark: Make them aware that we feel they are missing information. Mark will re-draft letter. Vincent: Regarding e-mail, he requested Mark to e-mail him and Tom with revisions/answers. Vincent: All in favor, AYE. Motion passed. Barbara would like to meet prior to the hearing at 5:45 on 9/21 and Mark will see if he can get some answers on when they are going to file a Wetland Permit and what their plans are.

2. Texas Road House Landscaping Change of Plan – Sara Romeo

John Sinnette of WD Partners spoke, representing Texas Road House Restaurant. He addressed the Board for the second time, regarding concerns, recommendation, and suggestions from last months meeting and addressed all the questions. The trees are still staked and tied on site. Vincent had a chance to take a look and happy with what he saw. John, site plans were delivered on time. Please turn to L01; you will see how they are to maintain landscaping. Vincent would like to see the site changes John mentioned. Sara: She will go over a couple of the changes made. First, there was a patio introduced to the layout, approximately 350 square feet of patio, which was originally landscaping. Second, they made a landscaping island and lost a parking space. The third change, added a door, entrance just shifted. Barbara asked questions regarding placing flowering plants, etc. to block the façade of the building. John is will to add anything they request. Barbara liked what they had originally. John: Easily

done/changed. Barbara, where is the cemetery on this? John: It's to the back portion and there's no change on it. Peggy: Asked a question on vegetation. Are you going to have any ground cover or mulch? John: It will more likely be a natural ground mix and it's tough to tell how it will end up once that clearing has been made and can include a note that discusses following up with the contractor during construction and making sure it's accommodated. Vincent: Make a motion here? Barbara makes a motion to accept the plan with the stipulation that they get in writing a letter from John and signed by all his principals involved, stating that this maintenance was approved and agreed upon by the CC and Texas Roadhouse and this is how it will be maintained and make a motion to approve this contingent upon them coming in before next Monday when they go before the PB. Barbara doesn't want to wait another month. John doesn't know if he can get this by next Monday, doesn't have a problem with that condition, they will try. Barbara wants to make sure that they word it such that it's between the principals, the Roadhouse, the Town of Newington, and the NCC and this is what they agreed to and this is what they agreed to maintain and if the ownership of the franchise changes, that the upkeep goes along with this. John: What would happen in that instance is a franchisee would say they are not getting a return on their investment, whatever the case may be, and generally the corporate entity involved has first options to taking over and running that site. If the franchisee backs out, it would change ownership. Vincent wants to keep it preserved and not sure of the stipulation being franchise. Bernie, you would need an agreement with the property owners. Tom: Is TR going to own the land or lease it? Bernie at this point, doesn't know and not involved in that aspect. He could find out. Vincent: Need to second the motion. Peggy seconded the motion. Vincent: Any questions? John: Would it be possible to send a PDF of that landscape area with some day lilies along with the draft letter (minus burning bushes). Vincent: Yes. Vincent: All in favor, AYE. None opposed. Motion passed. Vincent would like to make a motion. He would like to adopt this particular plan so that everyone that comes down the road, they can use this as a template. When any one comes to Tom, he can show them exactly what the Board wants and to send it to each member of the Board two weeks before a meeting. Everything is right there and self-explanatory. It was decided by all.

3. Great Bay Wildlife Refuge Permit, DES #2006-1299 and #2006-1300, Map 40

Does everyone the have the copies of the Great Bay Wildlife Permits? Board: Yes. It says additional information is needed and DES is concerned with the current status of the refuge being open/closed. Also asked information on the boat ramp and felt it was overkill.

4. Great Bay Wildlife Refuge Permit, DES #2006-1287, Map 35

It was okay for them to dredge and fill 400 sq.ft. of wetland to replace a failed 12" culvert with an 18' x 40' culvert on existing public trail at Great Bay National Wildlife Refuge and remove existing beaver fence and debris. **The new beaver control pipe requested, is not permitted.** That's specified in the permit.

5. Brickyard Way, DES approval #2006-1812, Map 22

It's an approval for two locations to install a culvert with headwalls, placement of rip-rap outlet protection, and slope regarding for the reconstruction of the existing Brickyard Way.

6. Other Business - Bloody Point

Barbara went down to see Bloody Point and talked previously with Mark West about mitigation and getting the property back from the State and to preserve it. She went on to explain the research she did to Justin, who arrived at the meeting (8:20 P.M.) at this point. The State owns the land, 3.4 acres and the Town of Newington owns the house and always had a twenty-year lease for a dollar and the town let it expire. Her thoughts are on asking the State for that land back. It's on the State historic preservation deed, etc. When Chris Cross was on the Board tried to get an encroachment easement on it and nothing happened. Discussion continued. Justin gave his views and if the Selectmen doesn't enter into a lease agreement the Board can try to negotiate to do that and Justin will look into that. Vincent: Let's table it now.

Acceptance of the Minutes of August 10, 2006

Peggy moved to accept the minutes and George seconded it. One correction on Page 4 at the bottom that starts with: "Gail: Bridge Brooks, etc." Delete the sentence. Vincent: All those in favor of accepting the Minutes, AYE. None opposed. Motion passed.

Correspondence

1. Haberstroh Boat Ramp DES #2005-02042 Revision – Adele Fiorillo

The project has been revised a second time to propose a 70' pier with a 52' ramp connected to a 20' floating section that terminates with a 240 sq. ft. "T" section. This reduces the total dock length to 152'. The Board just received a copy of the communication. Justin: As he recalled, DES never approved it. Vincent the first time it wasn't accepted. Justin: DES never issued a letter that the permit was denied and Haberstroh never acted on it. They should have provided us with correspondence with respect to what was submitted in June. We could ask for a copy of what was submitted and tell DES that we haven't received it. They must have submitted a plan in June, which the Board never got. Discussion continued. Vincent, next.

2. Current Land Use 20% Recreational discount NH Current Use Coalition

Barbara had a brochure that came from SPACE Newsletter about a program of action to conserve our environment. It reads: "If a landowner decides not to post, and opens the property to public use without an entrance fee, the land is entitled to a 20% reduction in the current use assessment of the acres opened to public recreational use, which also qualified for current use assessment under an open space category. The owner of land who opens his land to public recreational use shall not be liable for personal injury or property damage to any person, and shall be subject to the same duty of care as provided in RSA 212:34. To receive the 20% Recreation Discount the landowner must allow all of the following activities: hunting, snow shoeing, skiing, hiking, fishing and nature observation. There's a deadline to file. She passed the article around to the Board. Discussion ensued. Next.

3. Barbara received a memo from Chris Lynn, Office of the BOS. This memo is to ask that all Boards and Committees that hold any type of non-public/public meeting, to provide her with the time and location of the meeting. After the meeting, she would like a copy of the meeting minutes.
4. Another memo from the UNH to the Town CC. Michael Pullen has written a book and it's encouraging small-scale local epilogical and substantial agriculture in their towns and the UNH group has the wisdom of small farms and local foods. The NH Cooperative Extension is providing this book to serve the town and use it as an important tool of conservation. A copy is \$15.00. Barbara thought it would be something to put in the Library. No decision made.
5. A letter was sent by the Chairman, Vincent Frank of the CC to Stephen G. LaBonte, Assistant Attorney General, stating that it was so voted by the Commission to *"recommend that the Commission encourage the NH DOT to develop a storm water treatment system as part of the turnpike expansion."*
6. A letter was sent by the Chairman, Vincent Frank of the CC to Kevin Burke, Newington Energy regarding the Shattuck Way Landscaping and responding to their letter dated July 28, 2006 from Mr. Michael Madia, VP, Newington Energy, LLC. *It stated for the record that the NCC finds it necessary for their understanding to clarify the sequence of events surrounding the Town of Newington's loss of landscaping on the right-of-way of Shattuck Way, etc.*
7. **VIP Boat Tour of Great Bay Estuary 9/20, 9/30**
Reminder. You can bring a guest on the boat also. Tom will be bringing his family.

Peggy made a Motion to Adjourn, and George seconded it. Vincent: All in favor, AYE. Meeting adjourned at 8:59 P.M.

Respectfully submitted:
Pearl Travis-Sirois, Recorder/Transcriber
File: NCC Mins. 9-14-06