SACO RIVER CORRIDOR COMMISSION

COMMISSION MEETING MINUTES - JULY 11, 2001

The 318th meeting of the Saco River Corridor Commission was called to order by Mike Towns, Chairperson at 7:35 p.m. at the Porter Town Hall in Porter, Maine. Commissioners present with the right to vote included Caryl Everett, Biddeford; Cullen Carpenter, Brownfield; Doreen Thirkell, Hiram; Marc Boucher, Hollis; Jane Bryant, Limerick; Sherwood Libby, Limington; John Moriarty, Alternate from Newfield; Rob Heard, Porter, Mark Johnston, Saco; and George McNeil, Standish. Also present was Toni Carros, Alternate from Limerick; Mike Towns, Chairperson and Alternate representing Waterboro; and Commission Staff Dennis Finn, Executive Director, and Lynn Parker, Administrative Assistant. A quorum was declared with eleven towns represented.

The first item on the agenda was the consideration of an amendment request submitted by the University of New England to Permit #20-209. On April 25, 2001 the applicant received an approval from the Commission to construct two dormitories at a height of 35 feet. The first building, known as The East Wing, will be 54 x 314 feet and the second building, known as The West Wing, will be 54 x 224 feet. Both buildings will be located 255 feet from the mean high water line. The original proposal by the applicant was for a hardship variance from the Commission's 35 foot height limitation standards to construct the buildings at a height of 50 feet. After considering the testimony offered during a two and one half hour public hearing, it was determined by the Commission that the applicant did not adequately prove their hardship case. The proposed 50 foot height was subsequently denied, however the Commission did approve the dormitories with a conditional 35 foot height restriction and the other aspects of the applicant's proposal including a cafeteria expansion, relocation of existing propane tanks, and the construction of a service road to provide access for the approval dormitories.

At the June 27, 2001 Commission Meeting, after a three hour public hearing, the Commission granted a redistricting request submitted by the City of Biddeford to change Lot #4 (Map #52), Hills Beach Road, in Biddeford, Maine from Limited Residential District to General Development District. This parcel of land is owned and utilized by the University of New England.

Buildings within the General Development District are not subject to a 35 foot height restriction. However, all proposals submitted to the Commission within all three districts are subject to the Commission's Environmental Standards. This fact was of great concern to the Commission when considering the applicant's hardship variance request in April, Mr. Finn explained. The Commission's Environmental Standards should also be closely looked at for this amendment even though the district has been changed and the 35 foot height limitation is not in effect. With the new district designation in place, the applicants are now seeking to construct the dormitories at a height of 50 feet. The lot in question has 3,500 feet of frontage along the Saco River.

Mr. Towns asked the Commission if they minded if the applicant made an audio recording of the meeting. The Commission did not object to such recording.

Ms. Sandra Featherman, President of the University of New England, was present at the meeting and made a brief speech regarding the importance of this project to the university. She stressed the importance of this project and that the university is a tuition dependent school.

Mr. Tom Saucier, of SYTDesign Consultants, was present at the meeting and provided the Commission with

a brief history of the project. Mr. Saucier explained that in addition to the amendment request to change the height, the applicant is also proposing minor changes to the approved roadways and walkways, and the building dimensions were slightly increased to accommodate for brick construction. Mr. Saucier also provided a brief description of the Commission's Environmental Standards and how they apply to the project. Mr. Saucier also shared some pictorial examples of how the buildings constructed at 50 feet will not cause an unreasonable visual impact from public roadways, neighboring properties, or the river.

Mr. Don McFadden, of Sebago Technics, was present at the meeting and provided an overview of the visual impact analysis completed for the project. The main component of the analysis was a balloon study. Balloons four feet in diameter were floated at 35 feet in height and 50 feet in height. Many photographs were taken showing this study. These photographs were presented to the Commission. Mr. Finn asked the applicant the distance from the camera to the balloons used in the study. He also asked what percentage of the entire buildings were the four foot balloons to represent. Mr. McFadden answered that the balloons were only to show height and that although he didn't know the exact distance from camera to balloons, the river is approximately 1,200 feet wide in the area. Mr. McFadden stated that he feels these pictures clearly show that the difference between a building of 35 feet and one of 50 feet is not great. He stated that a building constructed at 50 feet would not suddenly rise above the tree tops.

Another employee of Sebago Technics, was present at the meeting, and provided an overview of the buildings design concept.

Ms. Thirkell suggested that in the application, the buildings were proposed at a height of "approximately" 50 feet. She asked the applicant for a more definitive description. The applicants responded that the buildings will be 47 feet in height.

Mr. William Conway, of Sebago Technics, was present at the meeting and provided the Commission with additional insight into the visual impact analysis. A great concern to the Commission was the visual examples of the completed dormitories which also depicted full, mature trees, when in fact, the trees to be planted would only be fourteen feet tall and it would take more than a decade for the trees to reach the height shown in the pictures presented to the Commission this evening. Mr. Conway stated that in his opinion, the existing vegetation is adequate to provide the necessary visual impact screening for the proposed dormitories. The proposed trees shown in the drawings are not for the sole purpose of screening, although they will help.

Another issue that came up during visual impact discussions was the Rachel Carson Wildlife Refuge located across the river from the project site. Mr. Johnston stated that the wildlife refuge is in fact not directly across the river the University as previous testimony stated.

A concern of Mr. Finn was that although all conversation this evening focuses on the 250 foot buffer of vegetation between the river and the proposed residence halls as a source of screening, what assurance does the Commission have that the university will not fully use and develop right up to the 100 foot setback line in the future, thus removing the vegetation and creating a visual impact. The applicants responded that City of Biddeford zoning does not allow any development within 250 feet of the Saco River. Mr. Heard stated that he is not concerned with Biddeford's zoning requirements. He wants to be assured that the corridor will be protected from future incompatible development.

Ms. Elizabeth Butler, of Pierce Atwood and attorney representing the University of New England, stated she feels it is an essential point that no further development can be undertaken in front of the building without first coming to this Commission. She also stated that she feels the Saco River Corridor Commission should get

together with the City of Biddeford to discuss the University of New England's Master Plan.

Ms. Butler also offered her insight into the Commission's Environmental Standards regarding visual impact. Her opinion was that it was never the intent of the law to impose the full environmental standards to all areas of the corridor. Ms. Butler pointed out a sentence in the environmental standards which reads "To show no unreasonable despoliation of the scenic, rural, and open space character of the corridor,...", in her opinion if you are not in a rural area, than this standard no longer applies. She added that the university is not in a rural area but a General Development District.

Mr. Libby voiced her concerns over the protection of the 250 foot buffer between the river and the developed portions of the university campus. Ms. Featherman offered her concern over why, in her opinion, the Commission has made an automatic assumption that the university has an "evil" purpose. She further stated that the university is trying very hard to do good things for the community and the Saco River.

Mr. Libby again pointed out that all through past conversations regarding this project, the university has stated again and again that the 250 foot buffer will never be touched. Mr. Libby stated that he is only asking the applicant to prove that statement to be true.

Mr. Towns pointed out that he feels the university is missing the point that they are using the 250 buffer as the justification that they have met the visual impact requirement within the Act. Mr. Towns further stated if the university is sincere about retaining that buffer for visual impact purposes, than the applicant should have no problem placing that land under protection from future development.

Ms. Butler responded that the Commission found that the residence halls built at a height of 35 feet, within the Limited Residential District, would not have any unreasonable despoliation of the scenic, rural and open space character of the corridor. She further stated that the applicant is asking for the Commission to have a parallel finding that a 50 foot building, within the General Development District, would also not have the same unreasonable despoliation of the scenic, rural and open space character of the corridor.

Mr. McNeil expressed his concern that Ms. Butler would state that the Commission's decision to approve the 35 foot tall residence buildings had nothing to do with the maintained buffer. Mr. McNeil stated that the buffer had everything to do with the Commission granting the approval for the residence halls at a height of 35 feet.

Ms. Featherman stated that the University of New England has absolutely no plans to build within 250 feet of the river, and that the city as well as the university believe this buffer to be very sensitive and necessary for the protection of the river.

The discussion continued regarding the visual impact requirements of the Act and how it pertains to the proposal within the General Development District.

Mr. Boucher asked if there was still an ongoing litigation between the Commission and the University of New England. The applicant responded that all litigation has been withdrawn by the university.

The Commission then provided an opportunity for concerned citizens of the area to voice their opinions regarding this project. Citizens who spoke included Gary Archibald and Patricia Boston who are both residents of Hills Beach. Also providing comments was Durward Parkinson, an attorney representing Hills Beach Association. Mr. Parkinson discussed burden of proof regarding this situation and also discussed the level of development within the area in relation to Commission districting and the effects on the corridor.

Mr. Finn offered the question of what information needs does the Commission still feel they need. Mr. McNeil stated that he is still uncomfortable with the visual impact information offered as part of this project. Mr. Libby responded that he feels visual impact will be reduced with continued tree growth and preservation of the 250 foot buffer.

Mr. Johnston made a motion to approve the amendment request submitted by the University of New England to construct the two previously approved 35 foot tall residence halls at a height of 50 feet. Included with this motion is a condition, as allowed under Section 959-B of the Act, that the University retain a 250 foot wide vegetative buffer from the river. The motion was seconded by Mr. Moriarty.

Ms. Carros asked to clarify if the 250 foot buffer was only in front of the residence halls or for the entire parcel of property. Mr. Johnston stated that his motion was only pertaining to the project site, however, he further stated he would have no problem with extending the buffer for the entire lot.

Therefore, Mr. Johnston amended his motion to require a 250 foot no development buffer for the entire lot. Mr. Moriarty agreed and seconded the amendment. Discussion continued that the motion will include the ability to maintain the 250 foot buffer to include pruning and the removal of diseased trees within the buffer.

Mr. McNeil stated that he feels the visual impact issue hasn't changed even with the conditions 250 foot buffer.

Mr. Johnston stated that he would like a finding included which states that the testimony and visual presentation showed that there are existing buildings which can be seen from the river and that the proposed buildings cannot be seen from the river based on the information presented tonight.

Mr. Heard added that another finding should be included discussing the extensive discussions regarding the open space and rural character of the corridor in the area of the university and if one were to travel upriver from the project site they would see quite a difference in the use of the land. Mr. Heard continued that a finding should state that even though this is a General Development District the area is still fairly open and well vegetated.

The Commission vote was 9 yes and 1 no which approved the application.

The meeting was adjourned at 11:00 p.m.