

**REGULAR MEETING
CONSERVATION COMMISSION
PORTSMOUTH, NEW HAMPSHIRE
1 JUNKINS AVENUE**

Conference Room "A"

3:30 p.m.

December 14, 2005

Members Present: Chairman, Charles Cormier; Members, Allison Tanner, J. Lyn Walters, Skye Maher, Eva Powers, Don Green, and Brian Wazlaw; and Alternate Barbara McMillan

Members Excused: Vice-Chairman, Steve Miller

ALSO PRESENT: Lucy Tillman, Chief Planner

Chairman Cormier called the meeting to order at 3:30 p.m.

I. APPROVAL OF MINUTES

a) October 12, 2005

The minutes were unanimously approved as presented.

b) November 9, 2005

The minutes were unanimously approved as presented.

II. STATE WETLANDS BUREAU PERMIT

**Standard Dredge and fill Application
99 Bow Street
RRJ Properties, Limited Partnership**

Eric Weinrieb, of Altus Engineering, Inc. spoke on behalf of the application. He stated that the parcel is located at the Martingale on Bow Street at the beginning of Chapel Street, to the east is 109-111 Bow Street, the Georgeoplous Condominiums and to the left is Harpoon Willy's, the Martingale Apartments and the existing dock. The Ricci family, owners of the property, propose to infill the open space and expand the Martingale on both sides with infill completely within upland areas with no substantial wetland disturbances. The project is all within the tidal buffer zone. An application was filed with the State and a letter dated December 2, 2005 was received from the State indicating that the application is complete. There are 6,850 square feet of impact area associated with the project which is, basically, the entire parcel because the 50 foot primary building setback goes almost entirely through the site, and, the 75 foot wetland buffer goes on the other side of Bow Street. Additional work will need to be done in the City right of way. Therefore, an application will have to be filed on behalf of the City to reconstruct

sidewalks and install utilities within the City right of way because it is still within the tidal buffer area even though it is all pavement.

Mr. Green asked about the profile of the building and asked if it will go straight down to the water on the riverside.

Mr. Weinrieb stated that it would. He noted that there will be several floors and that elevation 9 is existing. He talked about the 100-year flood and indicated that the building elevations will be above the elevation line and that the lower level will be above elevation 9. He stated that there is quite an elevation change on site. He indicated that on the front of the building from the walkway from Harpoon Willy's is elevation 24 and on Louis' parcel it is 36 feet so there will be 12 feet of elevation change along the front.

Chairman Cormier asked if there is a riverwalk there.

Mr. Weinrieb answered that there will be and asked Butch Ricci of Ricci Construction to speak about this.

Mr. Ricci of Ricci Construction indicated that the riverwalk from the outpost to the end of the property is four hundred feet and they own about half of that frontage. He stated that they gave the City a Letter of Intent preliminarily allowing them access to the front of the building. This includes the riverwalk across to the easterly side of the building pending the final design in order for the City to be allowed access to cross their property.

Chairman Cormier asked if there was something there now.

Mr. Ricci indicated that there is a dock there now.

Chairman Cormier asked if it is there intent for the dock to become a part of the plan.

Mr. Ricci indicated that the intent is to keep the dock and have the riverwalk the outboard of the dock.

Ms. Powers asked if the walkway would be continuous and asked if there would need to be an addition where you come down the steps.

Mr. Ricci stated that is correct, and, the walkway would come down the steps to the left. He indicated that the City would need approval and there is another area that would get infilled as well. He also indicated that they would take Harpoon Willie's and push it outboard more so that when you come to the bottom of the stairs at Harpoon Willy's you do not have to walk through Harpoon Willy's to go left. He stated that Harpoon Willy's would be outboarded and the riverwalk would be continuous all through the end so that people will not have to walk through Harpoon Willy's. Ms. Powers then passed around pictures she took of the area.

Mr. Green asked if there would be parking for this project.

Mr. Ricci indicated that no parking is planned on site for this project.

Corey Colwell, of Ames-MSC, indicated that they would be eliminating the few parking spaces that are there now and will provide pavement in lieu of parking. They will also provide handicapped accessible parking and a loading zone which will reduce the parking impact on the area.

Mr. Green asked if this will drain into the street.

Mr. Weinrieb indicated that there would be a reduction of the impervious area that is accessible to vehicles so that pollutants will be reduced. He indicated that the nearest catch basin is down by Izzy's.

Ms. McMillan asked if the steep vegetation area that is there now will be gone?

Mr. Weinrieb stated that they would be removing the steep vegetation but they intend to include some grass and plantings around the building, and, they have been working with the Wetlands Bureau to figure out what would be the best solution for vegetation.

Mr. Weinrieb indicated that the new building will go where the existing building is, and, there is a foundation there now that was built when they built the retaining wall.

Mr. Green asked if they were going to scour out the sites on either side of the Martingale down to the Martingale itself.

Mr. Weinrieb stated that the Martingale will be renovated so there would be no site changes. He noted that a concrete wall will be built so there is no potential for sediment to enter the Piscataqua River and they are recommending filter soft.

Mr. Ricci stated that the foundation is all set and that they are ready to build on top of the foundation so that there will be no impact.

Mr. Green asked how many times in the last decade the 100-year flood level has been surpassed.

Mr. Weinrieb indicated that he did not know, but, indicated that the flood maps were recently updated with more current information.

Ms. Powers stated that there is a wonderful view, but, it cannot necessarily be protected.

Mr. Ricci indicated that the view is being taken away. However, they are giving 200 feet in front of the building to walk in front of the riverfront by the water with the width of the riverwalk being about 12 to 15 feet.

Ms. Maher asked about the potential for signage on the building with regard to public access.

Mr. Ricci indicated that when the riverwalk is built people will come. He indicated that they would be happy to put signage up directing people to the riverwalk.

Ms. McMillan asked if there are restrictions on the use of the decks that are there now for the tenants.

Mr. Ricci indicated that there are, but, they are limited, i.e. no barbecuing, no noise, and no public access, etc. He stated that the intent is that the restrictions remain the same with the new building.

Ms. McMillan inquired if they can have a restaurant there with deck seating.

Mr. Ricci indicated that he did not know.

Chairman Cormier asked if the Martingale will change use.

Mr. Ricci indicated that the Martingale will not be residential but have varied uses ranging from retail to office.

Ms. Maher asked about the proposed elevation of 50 feet.

Mr. Ricci indicated that this is eight inches below the height requirement, and, that it is the average elevation around the building. He also stated that it will be three levels below the street.

Ms. Powers was concerned about whether or not a big storm surge would be an issue.

Mr. Green stated that it would if the new building lasts 50 to 100 years and indicated that global warming studies suggests a significant increase of 5 to 10 feet in the next century.

A motion was made by Mr. Green to approve the application as presented, and seconded by Ms. Tanner. The motion to approve passed unanimously.

III. CONDITIONAL USE PERMIT

- a) Off Middle Road (Map 232, Lot 122)
Irving W. Spinney, Revocable Trust, Janice L. Karkos, Trustee,
Owners and Dawn M. & Arthur R. Tobin, III, Applicants**

Corey Colwell, of Ames-MSA Engineering, spoke on behalf of the application. Mr. Colwell indicated that the applicant is proposing a two story, 1612 square foot residential building on an existing 0.93 acre site located on the northerly side of Middle Road across the street from Sylvester Street, and, that the Riverbrook Condominiums are next door. Mr. Colwell indicated that they will be using the concrete foundation that exists on the site. The owners put up a chain link fence across the top of the foundation as a safety concern. The foundation was installed, according to the records, in the late 1950's so it has been there approximately 50 years. He indicated that the foundation is currently 22

½ feet from the edge of the wetlands. He indicated that the applicants propose to construct a new building in the same location as the foundation, and, not go any closer to the wetlands and will use the backline of the foundation. However, since the building is larger than the foundation that is there, it will be coming forward toward the street. The new building is slightly larger due to the garage and the covered porch. The building would be the same distance to the wetlands of 22.5 feet. Currently, there is an existing lawn that goes to the tree line. The lawn is sloped toward the wetlands and they propose to reduce it by constructing a small swale on the west side of the building and a small swale on the east side which will take the runoff from the roof and the site. This will force it out toward Middle Road away from the wetlands. Therefore, in the back where it is currently going into the wetlands, it will be graded so the runoff will go in a northeast direction and altered northwest into the wetlands giving it a much larger route. This will actually reduce the amount of runoff currently going into the wetlands. The negative affect on the wetlands will be reduced as a result of forcing the flow toward the street instead of toward the back. He stated that Peter Britz had raised several concerns which the amended plan addresses regarding the grading and indicated that Adele Fiorillo of NH Soil Consultants will address these issues.

Adele Fiorillo, of NH Soil Consultants, indicated that they did a functional assessment to support the Conditional Use Permit. She indicated that the City has not received the assessment as yet. She stated that the wetlands is a fairly large complex, a portion of which is on the subject property. It extends toward Islington Street and Essex Street and there are houses and roadways on all sides. It does provide principle functions of sediment toxicant retention as well as nutrient removal because the sources of the roadway and properties are there so the wetlands can treat these influences. Also, because it is a large area surrounded by some impervious backyards as well, it does have some flow capable for storage of water. It also has an inlet that goes under Islington Street into the wetlands and one restrictive outlet that goes under Essex Street. Therefore, anything that comes in from Islington Street has a bit of a path and a long flat area for storage before flowing to the Essex Street side. Based on this determination it is their recommendation and conclusion that this project meets the four criteria for Conditional Use Permit, that the land is suited for the proposed use and that the existing foundation indicates that it is suited for a house. She noted that this is not a change in use and that the wetland values will not be adversely affected. The grading that was added to the plan will provide or prevent runoff from impervious surfaces going toward the wetlands except in one location, in which they recommend an alternative solution in the corner that gets closest to the wetlands. The recommendation is to install gutters. She stated that the roof runoff is clean. She indicated that if the Commission still has concerns about the runoff they can address this further. She stated that there will be no adverse impacts to the wetland values to the surrounding properties. She did state that the current foundation is not in good shape and will need to be upgraded. She stated that there will be site disturbance to do this, but, that the area is already disturbed. She stated that no vegetation will be required to be removed except for a small area. She indicated that there is weedy vegetation growing around the foundation that will need to be removed and that vegetation removal will be very limited. She stated that the applicant is willing to provide additional buffering around the edge as the back yard is large, and, that they are willing to consider a certain amount of regrowth of the area. She indicated that

there would be no buffering of the wetlands. She stated that there is debris piled up near the foundation and weeds are growing, but, that the grading plan will take care of this and that there will be minimal disturbance with no affect to the wetlands.

Chairman Cormier asked if the foundation is going to be reused.

Mr. Colwell indicated that it will not.

In his letter, Mr. Britz had asked if the house can be placed as far away from the buffer as possible.

Mr. Colwell stated that he saw Mr. Britz's letter and indicated that they are three feet from the front yard setback, and, it is also even with the house adjacent to the west. He stated that they could go three feet closer, but, they would be right on the setback and there would be no construction leverage at all. They feel that the house has been placed in the best possible location. Also, they would need a variance to bring it forward and did not feel that would be a good alternative.

Ms. Maher asked about the gradeout section – the dotted line on the plans.

Mr. Colwell indicated that this was the proposed lawn and landscaped area.

Ms. Maher asked about the disturbance on the property and whether they expect to go down another 20 feet off the corner of the building with construction.

Ms. Fiorillo of NH Soil Consultants indicated that the amended plan shows that the disturbance shows they could probably go down another 10 feet.

Mr. Colwell indicated that Mr. Britz is concerned about the temporary impacts necessary to the grading steeply toward the wetlands. To protect the wetlands from drainage, the fill is necessary to divert toward the street at the corner of the building.

Ms. Maher expressed her concerns about the negative impact of runoff on the house. She asked what the negative impact would be on the amount of impervious surface.

Mr. Colwell stated that the plan is to drain the impervious area away from the wetlands toward the street. He indicated that he does not see any negative impact since it is grading everything impervious away from the wetlands toward the street into a culvert and into an existing catch basin. He also stated that there is a lot of runoff on the site which is going down into the wetlands which is slightly graded toward the back and slanted toward the wetlands and their proposal would do the opposite.

Ms. Maher inquired as to how much water will not go into the wetlands that may have.

Mr. Colwell indicated it would be reduced.

Ms. Maher expressed concerns about the landscaped area and indicated that there are no regulations at the moment. The plan proposes a lot of landscaped area and Ms. Maher asked how close the amendments can be used to the landscaping, specifically, fertilizer or things that might affect the run off. She suggested that they consider the most natural landscape they can. She indicated that the biggest hazard to wetlands is nutrients put on the lawn.

Mr. Green expressed his concerned about the source of water for this project and how much water comes in from Islington Street or Middle Road. He does not feel the site is suitable for a house. Having a foundation which didn't get finished is not a suitable argument for building a house on the same footprint. Regulations don't suggest that if someone gives you a foundation that you can put a house on it within the wetlands. He indicated that most of this is within a 100 foot buffer and a great deal within the 50 foot buffer and feels it is a major invasion of the wetlands. He stated that, if this were to be approved, he agrees with Mr. Britz that the dwelling should be brought on to the street as close as possible.

Ms. Fiorillo from NH Soil Consultants indicated that there is nowhere you can move it that would be outside of the 100-foot buffer.

Mr. Green indicated that it doesn't have to be as close to the 50-foot buffer as the plan currently has it and asked if the front setback is 50 feet.

Mr. Colwell stated that the front setback in that area is 30 feet. Mr. Colwell stated that safety would be compromised if the house is moved any closer to the setback. In addition, to move it closer to the road, a variance would be required from the BOA.

Mr. Green stated that the way the plan is now it is too close to the wetlands, and, if it is moved it will be too close to the road so either way it will not be in the right place.

Ms. Fiorillo stated that they are suggesting increasing the buffer, and, there are homes next door and around this site that are similarly placed.

Mr. Colwell indicated that the current foundation is between 1,200 and 1,300 square feet and is in the single residential district. The proposed foundation would be 1,612 square feet.

Chairman Cormier stated that whether the project affects the wetlands and wetlands buffer negatively or positively, is somewhat subjective. He indicated that there is information on the wetland impact and it is backed up with the conclusions submitted by NH Soil Consultants, and, keeping in mind the ordinances as well, whether it is a house or some other type of disturbance, he does not think that makes a difference.

Ms. Powers stated that the problem is that Portsmouth is old and that there is no square footage that hasn't had something happen to it over the years, but, Portsmouth decided to set the 100 foot buffer zone. She asked if it could be a 2 ½ story house.

Mr. Colwell indicated that a 1,600-foot house is small by Portsmouth standards.

Ms. Powers asked what the footprint of the square footage is.

Mr. Colwell indicated it is 1,612 square feet.

Mr. Wazlaw asked if the garage and covered porch was included in this square footage.

Mr. Colwell indicated that the 1,612 square footage is the living square footage and refers to the actual house.

Mr. Wazlaw asked what the square footage would be with the garage and covered porch included.

Mr. Colwell indicated that the square footage, including the garage and covered porch, is 1,928 square feet.

Ms. McMillan asked about the regrading in the back and what kind of slope there would be from the grading down to the wetlands and how steep it would be.

Mr. Colwell indicated that the steepest point is directly adjacent to the house and is approximately 2 ½ to 1 and spreads out to a 10 to 1.

Ms. McMillan stated that there is a lot of disturbance back there and not enough soil and it needs fill.

Mr. Colwell stated that the maximum depth of fill will be 2 feet.

Ms. McMillan stated her concerns that there would not be enough benefit by the disturbance in the back with that amount of fill, although, the homeowner will get a benefit because they will have an extension that will be higher going off to the wetlands. Ms. McMillan stated that there is so much of a disturbance that the wetlands will not benefit from it.

Mr. Colwell indicated that the run off is currently going to the closest point to the wetlands. What they are trying to accomplish with the fill is getting the runoff to go the other way instead of going to the closest point. He indicated that they are trying to get more than 20 feet of treatment, in fact, they are trying to get 100 feet of treatment and it is only a small area going into the wetlands.

He indicated that the purpose of the fill is to divert the drainage to the front instead of going all the way to the back.

Ms. Powers stated that she would propose tabling this matter until Peter returns and can review the changes.

Ms. Tillman stated that with the new information that came in today, it would be appropriate to table until Mr. Britz can look at the changes in the plan.

Ms. Maher commented about Mr. Britz's letter and stated that the proposed site is totally within the buffer of pristine wetlands, and, she doesn't see where a building on the site would provide a reduction in the disturbance. Ms. Maher asked if this is the only location where the house can be put, and, asked if the foundation has to be that size? She commented that the boundary elevation for the Riverwoods is more gentler. She stated that she is not convinced this has been explored. She asked if the house can be tucked in more linear fashion, maybe to the left or the right of the foundation that is there now, closer to the setbacks.

Ms. Fiorillo from NH Soil Consultants stated that there would be a difference in knocking the current foundation out and putting a new hole for a new foundation to shift the house over. She stated that there would be more dirt disturbance if a new hole is put in for a new foundation.

Ms. Maher, again, reiterated that she is not convinced that this is the best or only location that they have come up with.

Mr. Colwell stated that they have not explored moving the house to the right and that this existing foundation was the first spot they looked at.

Mr. Colwell stated that if the Commission feels the buffer zone would be more protected by shifting the house to the right, they can certainly look at that.

Ms. Powers asked if the proposed driveway could be angled out instead of being straight in toward the garage. She is concerned about the shortness of the driveway.

Mr. Colwell, again, indicated that they are trying to minimize the buffer disturbance.

Ms. Powers suggested putting in a curved driveway.

Mr. Colwell stated that the 30-foot front yard set back would need a variance and stated that to move into that setback is not a safe condition. He indicated his concern about having a yard and a front door so close to a major street and the possibility of someone hitting the house, and, stated that the front yard of 20 feet is not enough.

Mr. Green indicated a lot of houses on Middle Road are close to the street and there has never been a problem.

Mr. Colwell stated that, in order to move the house closer to the road they would have to come up with a hardship to present to the BOA for approval.

Chairman Cormier indicated that, if the Commission feels more research is warranted and Mr. Britz's input is needed, then a motion to table would be appropriate. He also stated that he is not sure that moving the house around within the limited space will make much

of a difference. Where they have it is about right, but, he indicated that maybe it could be moved 3 feet forward.

Ms. Powers made a motion to table this matter for discussion at the next regularly scheduled meeting of the Conservation Commission in order to give Mr. Britz an opportunity to review the changes, and, that there be discussion about landscaping as it relates to pesticides, fertilizer, etc. The motion was seconded by Mr. Green. The motion to table to the January meeting passed unanimously.

IV. OTHER BUSINESS

Mr. Green indicated that the Board should, at some point, discuss the sustainability report results. He stated that Pic and Pay is moving out and many other issues about changes in property values within the city should be discussed including environmental issues. He also indicated that sewerage dumping into the Piscataqua is a big issue as well.

Chairman Cormier indicated that he does not know how much affect this commission can have on such things.

Mr. Green suggested that everyone write to the Mayor and City Council.

Ms. Powers inquired as to where the Commission fits into the master plan, and, indicated that there are very specific recommendations for the Conservation Commission. She noted that the Commission will not be able to do all missions cited. She stated that this should be discussed by the Commission at some point.

Ms. Powers also inquired as to whether the Planning Board receives a copy of the Conservation Commission Minutes on a timely basis.

Mr. Green suggested having a representative from the Conservation Commission sit in on the Planning Board meetings.

Ms. Maher expressed her support of Ms. Powers' comments about discussion of the Conservation Commission's role in the Master Plan. She feels it needs to be addressed at two or three meetings of the Conservation Commission. She suggested that the Commission build a work plan and become more proactive.

Chairman Cormier suggested that several committees be formed to work on certain issues and get commitments from everyone.

Ms. Maher suggested that the Commission have a discussion about this after reviewing the master plan.

Chairman Cormier stated that a work plan may have to be done between meetings.

Chairman Cormier suggested that this be discussed at a future meeting to get people interested enough to get things done.

Ms. Maher suggested discussing a possible five-year plan.

Mr. Green stated that not everyone has read the Master Plan.

Chairman Cormier suggested putting discussion of the Master Plan and goals for the Conservation Commission within the Master Plan on a future agenda.

V. ADJOURNMENT

At 4:50 p.m., a motion was made and seconded to adjourn to the next regularly scheduled meeting.

Respectfully submitted,

Gail McDowell
Acting Secretary

Minutes Approved at the Conservation Commission Meeting on February 8, 2006