

**REGULAR MEETING
CONSERVATION COMMISSION**

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
CONFERENCE ROOM "A"**

3:30 P.M.

September 12, 2007

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman James Horrigan; Members, Allison Tanner, Brian Wazlaw, Eva Powers; Alternates Mary Ann Blanchard and Richard Adams

MEMBERS ABSENT: Skye Maher, Barbara McMillan

ALSO PRESENT: Peter Britz, Environmental Planner

Chairman Miller stated that the individual who wanted to speak to the Conservation Commission about the first agenda item was not present yet so he moved on to agenda item two.

Mr. Britz explained that he was contacted by Mr. Andrew Cole of Portsmouth Harbor Cruises a few days ago about filing a minimum expedited application. Since the meeting was coming up, Mr. Britz thought it best to put the application on the agenda.

**II. State Wetlands Bureau Minimum Impact Expedited
Application/Presentation**

Portsmouth Harbor Cruises
Andrew Cole – representative

Mr. Andrew Cole of Portsmouth Harbor Cruises and Greg Garron from the Oar House Restaurant spoke to the application. Mr. Cole explained that they are lessors of the wharf on Ceres Street that is owned by the National Society of Colonial Dames. He said that the wharf is in need of some piling replacements. They would like to drive new pilings in next to the deteriorating ones.

Chairman Miller asked how many pilings would be involved. Mr. Cole replied that there are twenty one pilings in all that support the wharf. He said that they would like to get approval to replace all of them but would only replace what was necessary.

Chairman Miller asked if it would mean removal of the deck to get to the pilings. Mr. Garron said no, they are planning to take four of the decking boards off and then drive the pilings in.

Ms. Tanner asked if they would be removing any of the pilings. Mr. Cole responded no.

Mr. Garron explained that they had engineers dive to examine the condition of the dock and asked them to provide a five year maintenance plan.

Ms. Tanner asked if they would be using the same type of timbers. Mr. Cole replied yes. Ms. Tanner asked how the timbers were treated. Mr. Cole said that they were pressure treated and would be southern yellow pine wood.

Chairman Miller asked about the next step in the paperwork process. Mr. Britz explained that the application was completed and the Chairman would need to sign it in order to send it to the state for final approval. He also explained that if the Chairman does not want to sign it, the applicant would have to submit it as a standard application. He added that an expedited application was a 30 day turn around whereas a standard application was a 75 day turn around.

Ms. Tanner asked the life expectancy of the pine. Mr. Cole replied that it was about 20 years. Mr. Garron added that the pilings that they plan to replace have lasted 22 years and some of them are still okay.

Ms. Powers asked if there was any toxicity to the pressure treated yellow pine. Mr. Cole said that he did not know.

Chairman Miller reminded the Commission of the time when Glenn Normandeau was before the Commission and talked about pressure treated wood. He said that most of leaching that does occur with the wood happens within the first 90 days. He added that they try to use timbers that have aged. Mr. Britz did not know if there was an alternative for marine pilings. Chairman Miller thought the only alternative would be concrete encased steel.

Mr. Britz asked if the same type of cross bracing would be used. Mr. Cole replied yes.

Ms. Powers asked about the pressure treating process. Chairman Miller explained that the wood is saturated with a chemical preservative. He said that studies have shown that most of the chemical leaches out within the first 90 days. Ms. Powers asked if the Commission could specify that they use timbers that have been allowed to age for at least 90 days. Chairman Miller said yes, they could ask.

Ms. Tanner made a motion to recommend approval of the application to the State. The motion was seconded by Mr. Wazlaw.

Ms. Powers asked that if possible, timbers that have been allowed to age for at least 90 days be used.

The motion to recommend approval of the application to the State with the following stipulation passed by a unanimous (7-0) vote:

- 1) That the pilings to be used be allowed to age 90 days before being installed.

I. Discussion on conservation land

Ms. Sarah Hamill, Mr. Robert Burns, and Mr. Bob Barnes were present to speak to the Commission about conservation land. Ms. Hamill said that she was interested in talking to them about land at Sagamore Creek that is being considered for the possible location of a new middle school. She said that the whole 66 acres would be taken up by the school and the playing fields. She added that about 10 acres of that area is a dump site.

Ms. Blanchard asked of the 66 acres, how much of it was conservation land. Ms. Hamill replied that she thought the whole area was designated NRP. Mr. Britz stated that it is in a conservation zone. He added that about half of the land has a grant restriction that dates back to 1975.

Ms. Hamill explained that the thirty two acres which abut Jones Avenue and Sagamore Creek is the area that has the federal grant attached to it. She felt that it was possible in the City to get a waiver to take off the restriction. She said that what worried her also was that it would be easy to put ball fields on the land. She felt it would be easy because it would be for outdoor recreation. Ms. Hamill indicated that she thought the land was quite fragile, with vernal pools and a wildlife corridor.

Ms. Hamill asked the Commission if they would speak out to try to save the area from development. Ms. Tanner stated that the Commission was advised to not offer opinions on the subject because they could be bound by some legal situation. She asked Mr. Britz to explain the City's position more clearly. Mr. Britz said the guidance the Commission was given was that if the Commission was to take a position on the land before any proposals were formally made – then when a formal proposal did come before the Commission, through whatever process, then the Commission would already have a preexisting interest in it. They would be conceived as biased and might have to remove themselves from any vote. He added that the Commission needs to be objective.

Chairman Miller offered his thoughts. He said that if the Commission took a stand officially as a board against the site as being one of the proposed sites for the middle school, then if and when in fact it became a chosen site and came before the board, the board would have no power to vote on because they had already taken a stand on it.

Ms. Tanner pointed out that it was advised that they not only not speak as a Commission but not as individuals as well because they might be asked to recuse themselves from any vote. Mr. Adams thought this seemed like an absurd process. He said that if this Commission had some regulatory capacity it might be one thing, it doesn't. He felt that whether they take a stand at any point on the timeline seems to make no difference. He pointed out that one of the Commission's chief functions is to protect open space. Chairman Miller said that that was correct but there are many ways to do that without making the middle school the target of the effort. He felt it would be foolish to associate any of those efforts with a particular site. It would be best to look at it Citywide or with all conservation lands.

Chairman Miller stated that this situation is a problem in many towns because they have conservation land that they assume is protected but when you actually look at the deeds, the trusts, and the agreements associated with the land, many of the parcels are not in fact permanently protected. They can be used for other purposes.

Mr. Adams made a suggestion that possibly the Commission could give a recommendation to the City Council recommending that they support the conservation easement on that land and other conservation land as well. Mr. Britz pointed out that if the City were to forward a recommendation to permanently protect the conservation land at the proposed middle school site, it would be conflicting with the grant that funded the recreational opportunity on that land.

Mr. Horrigan said that in regards to the middle school site, he did not agree with the City attorney's interpretation regarding the role of the Commission. He pointed out that the school board's proposals never came before the Commission. He said that the only opportunity that they had if they were concerned about the site was to join Portsmouth Listens, which he did. He added that he would love to see it come before the Commission.

Mr. Wazlaw stated the Commission has had significant input in the past, for example on Lang Road. He said that there needs to be impartial hearings.

Ms. Blanchard suggested that Ms. Hamill might want to explore with the Department of Resources and Economic Development the issue of what could be done to tighten up the release process.

Mr. Burns asked if the School Board and the City Council can do these things without the input of the Conservation Commission. He said that was his primary concern. When does the Conservation Commission speak up he wondered.

Mr. Britz said that he was at a joint meeting with the City Manager and the School Board concerning this project and the City Manager said that when this gets to the point that you have a plan to develop the site, the Conservation Commission should be involved.

Mr. Britz said he wanted the Commission to understand that that land is a valuable resource property and that there is an existing grant condition there where the land can be used for recreation. Mr. Adams pointed out it could passive as well as active recreation. Chairman Miller said the land has also been used for years by some of the Portsmouth High School athletic teams.

Mr. Horrigan said that it may possible that it will come before the Commission, but at that point it will be about the details of the project not about the concept of putting playing fields there.

Ms. Blanchard stated that she has been concerned about conservation land in Portsmouth because it comes with different deeds and restrictions. She said that only when specific projects come up does the City look at the legal aspects. She felt that significant focus should be on stewardship. Mr. Britz interjected that a "friends" group would be a great way to get land protected. He added that there is a lot of land that has no stewardship protection. Ms. Blanchard talked in detail about what might be able to happen at the State level. She suggested that Ms. Hamell contact Martha Fuller Clark.

Ms. Powers pointed out that another weakness is that the State has nothing to protect vernal pools.

Chairman Miller thanked the speakers for coming and told them that they support their efforts.

III. Continue discussion on potential changes to Article VI of the Zoning Ordinance

Chairman Miller stated that he would like to try to find the best approach to getting their suggestions into the new document. He suggested that they make a list of areas they would like to see included, clarified, improved upon, or removed. The following list was generated and various Commissioners volunteered to gather information in the chosen areas for the next meeting:

- 1) Protection of trees – Richard Adams
- 2) Clearcutting – Richard Adams
- 3) Stormwater management – Chairman Miller
- 4) Buffers – Vice Chairman Horrigan
- 5) Vernal pools – Mr. Wazlaw
- 6) Sustainability – it was suggested that Ms. Maher might be interested in this area
- 7) Wildlife/Green spaces – Ms. Tanner
- 8) Shoreland regulations – Mr. Britz
- 9) Upland fill –
- 10) Stewardship
- 11) Prime wetlands

Mr. Britz suggested that at the next meeting, the ideas can be shared to determine if all Commissioners are in agreement with it. Then the list can be taken to Mr. Rick Taintor, the City's Zoning Ordinance Consultant for possible submission in the new Zoning Ordinance. Chairman Miller thought that this approach would get the Commission to their final goal more quickly.

Ms. Tanner talked at length about wildlife habitat issues and pointed out that resource mapping would need to be in place before wildlife habitat guidelines could be put in the new ordinance. She asked where the areas are in the City that help to form wildlife corridors. She said that this information would be useful for crafting information for the new ordinance. Mr. Britz said that an inventory of the City was a good grant idea.

Ms. Tanner asked if there was still a tree ordinance in place. Mr. Adams replied that he did not think so. He referred Ms. Tanner to Mr. Peter Loughlin, Chair of the Trees and Greenery Committee. Ms. Tanner said that she had concerns about how trees are handled in the City.

Mr. Adams asked Mr. Britz what he thought the City Manager's thoughts were about putting City conservation land into conservation protection. Mr. Britz said that the City Manager's role is to protect the long term interests of the City. He said that the City Manager supports conservation, it just has to be look at on a case by case basis

Ms. Powers stated that Taintor and Associates in September of 2006 made recommendations for what needed to be included in the new ordinance. She said that the first item on the list stated clear cutting and clarified how much can be cut. Mr. Britz added that he hoped that they could include the requirement that an applicant submit some sort of a wetland management plan.

Ms. Tanner said that the ordinance really needs to address vernal pools. Mr. Wazlaw pointed out that there needs to be a definition of a vernal pool.

Mr. Britz told the Commission that the Planning Board was planning to hold a public hearing on prime wetlands at their September 20, 2007 meeting.

Chairman Miller asked the Commissioners to work on their assignment and determine what they would like the ordinance to say or do pertaining to their various topics. He asked Liz Good to send out the assignments via email.

VI. Other business

Ms. Tanner wanted to mention that the town of Henniker, NH Conservation Commission has a Henniker conservation plan, a vision statement, and a list of goals.

V. Approval of minutes – July 30, 2007

It was moved, seconded, and passed unanimously to approve the minutes as presented.

Approval of minutes – August 8, 2007

It was moved, seconded, and passed unanimously to approve the minutes as presented.

VI. Adjournment

At 5:15 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Liz Good
Conservation Commission Secretary

These minutes were approved at the Conservation Commission meeting on October 10, 2007.