

**REGULAR MEETING
CONSERVATION COMMISSION**

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

3:30 P.M.

January 14, 2009

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman James Horrigan; Members, Allison Tanner, Brian Wazlaw, Barbara McMillan, Eva Powers, Alternate Mary Ann Blanchard

MEMBERS ABSENT: Skye Maher

ALSO PRESENT: Peter Britz, Environmental Planner

.....
I. WORK SESSION

Borthwick Avenue
HCA Health Services of NH, Inc., owner
Assessor Map 237, Lot 7-4A

Mr. Mike Parsont of New Hampshire Soil Consultants, Inc. (NHSC, Inc.), Mr. Patrick Crimmins and Mr. Greg Mikolaities of Appledore Engineering, and Mr. Bill Duffy of HCA Portsmouth Regional Hospital were present to speak to the project.

Mr. Parsont explained that the purpose of the project was to provide medical office space and a two tiered parking deck for the proposed medical office building. The plan submitted showed the limitations of the lot. He pointed out the one and only wetland on the site that was greater than a half acre in size. It was highlighted in a light green color on the plan. Mr. Parsont referred the Commission to the plan that showed the wetland impacts with the project. He pointed out that a gravel wetland system and retaining walls were being proposed to lessen the impact. He also said that a small portion of the parking lot will drain in a different direction. A small portion of the lot would drain to a treatment swale to handle that flow.

Mr. Wazlaw commented that he was surprised with the amount of paved parking. He pointed out that the Commission expressed their concern previously with the amount of parking for a prior application. He felt that this was an intensive use of the existing lot. Mr. Crimmins stated that a utility easement runs through the parking area so they could not go higher. He also explained the code for providing handicapped parking spaces.

Vice Chairman Horrigan said that when he looked at the site it appeared to be one wetland not five wetlands which the applicant was indicating was on the site. He also said that he had a global earth picture of the site which showed it to be clearly one piece and draining into the Hodgson Brook. He felt the applicants were not portraying the wetland situation properly and dismissing most of the wetlands as non functional. He thought the entire site seemed to be quite functional. Vice Chairman Horrigan felt the project was too large for the site and found the concept very difficult to accept. He asked where the conservation values were.

Mr. Parsont responded by saying that they went out to the site and did a detailed study of the hydrology, vegetation, and soils on the site to assess where the boundaries of the wetland systems were. He said that they met the three criteria of the Army Corps of Engineers. Mr. Parsont explained in detail the results of their assessment of the wetlands.

Mr. Britz pointed out that if this project were to move forward, the Commission could recommend that an independent wetland scientist be brought in for additional assessment.

Vice Chairman Horrigan suggested that with a project like this, they might want to start thinking along the lines of green roofs and pervious pavement. He felt the project needed some conservation gestures.

Ms. Tanner asked the presenters if they had been to the site during a large rain event. Mr. Parsont responded that he had. Ms. Tanner said that it was like a lake. She was concerned about putting an impervious surface next to the wetlands and how it would affect the properties around it.

Chairman Miller stated that he recalled in a prior work session with HCA Portsmouth Regional Hospital where it was discussed that some of the power lines might be relocated. Mr. Duffy said that was correct but that did not pertain to these power lines.

Chairman Miller pointed out that the Commission has been working on ordinance changes to better deal with these types of issues. Currently, the ordinance allows best management practices in the buffer but the Commission is proposing to change that with the new ordinance. He added that he appreciated the proposed gravel wetland system but he was concerned about its location.

Chairman Miller pointed out that the demands on storm water systems, buffer systems, and wetland systems would be even greater in the future so the Commission wanted to get a handle on things now for the future. He continued to say that there may be utility fees in the future and any ways to reduce run off would be a benefit to the applicant. Mr. Crimmins replied that the gravel wetland system would be reducing run off in the post development condition. He added that it does infiltrate for the smaller storm events and it was sized for the larger storm events overflow.

Mr. Mikolaities asked if they could get a copy of the draft ordinance. Mr. Britz explained that it was currently before the Planning Board. He said that there would be public hearings and the draft would be available then. Chairman Miller said that future demands would be greater with rainfall as well as growth and there will be increasing pressure on municipalities to deal more

effectively with storm water. Chairman Miller pointed out that this was just a work session but he wanted them to know that anything they can do to reduce run off will help them in the long run.

Vice Chairman Horrigan mentioned that the Deputy Director of Public Works has proposed publicly a square footage tax on impervious surfaces which includes roofs, both commercial and residential. Mr. Britz said that there was State enabling legislation to do it and it might happen within the next few years. He pointed out that there was a public hearing on January 28, 2009 at City Hall on the new storm water rules.

Mr. Duffy explained that the hospital does not own the Jackson Gray building. He said they did occupy the third floors of the Millennium East and West buildings at 555 Borthwick Avenue and there are plans to take occupancy on the first and second floor of the West building.

Ms. Blanchard asked what the parking requirements were for the proposed building. Mr. Crimmins said it was one space for every 200 square feet for a total of 435 spaces. He said that this was the minimum parking requirements.

Ms. Powers stated that it was the owner's responsibility for trash removal from the wetlands.

Ms. McMillan said it would be helpful to have a visual of the whole wetland area. Mr. Parsont said it was difficult to go onto someone's property to delineate a wetland. He said that an aerial photo might help. Mr. Parsont gave a detailed description about the functions and values of wetland C and the site constraints.

Ms. Tanner, after hearing Mr. Parsont describe the difficulties of the site, asked if they felt the scope of the project was too large for the location. She said that she did not like the idea of putting pavement in the buffer.

Vice Chairman Horrigan asked about the ledge outcropping in the area running along Borthwick Avenue where they were proposing the left side parking lot. Mr. Crimmins said that the area along the road would not be impacted. He added that there will be catch basins to accommodate the run off.

Ms. Tanner asked about the potential vernal pool indicated on the site plan and wondered why there was not a wetland buffer showing around it. Mr. Parsont answered because it was an isolated pocket. Ms. Tanner said that in a high water event there was a connection.

Chairman Miller explained that the Commission has had concern about ½ acre size wetlands and they are trying to get more protection for them.

Ms. McMillan asked if it was the setbacks that were keeping them from putting any storm water treatments along the road. Mr. Parsont said yes and there is also ledge there. Mr. Mikolaities added that they did look at under the pavement storm water treatment but it would have been difficult because of the ledge.

Chairman Miller stated that the gravel wetland system was the best performer but that the Commission was trying to work toward getting those types of devices out of the wetland buffers. He pointed out that the proposed parking structure was totally in the buffer. He said that he liked the gravel wetland, he just wished there was a better place to put it.

Ms. Powers asked why the parking lot could not be permeable. Mr. Mikolaities explained that they have been working with the University of New Hampshire for the last two or three years with regards to porous pavement. He said that they installed a porous pavement section at their new office in June. The UNH Storm Water Center is now recommending fiber mesh in the pavement because when the asphalts heats up in the summer, it is dripping away and is reducing the strength of the pavement. He said that in the near future, they are going to try putting fiber mesh in the mix in hopes that it will catch the dripping asphalt and help to strengthen it.

Ms. Powers asked when the proposed project might happen. Mr. Duffy said that there was not a schedule as of yet but it could happen as early as next year. Ms. Powers asked if the current economic climate might delay things. Mr. Duffy replied that there does not seem to be a slow down in the leasing of medical office space. Ms. Powers hoped that the improvements to the porous pavement materials would coincide with the start of this project.

Ms. McMillan explained that chloride is in the Hodgson Brook Watershed and this project would just add to the existing problems. Even though there is the proposed gravel wetland system, it does not deal with reducing the functions and values of the wetland where wildlife habitat is concerned. She said that the project did not work for her.

Hearing no more questions, Chairman Miller thanked the applicants for coming and ended the work session.

II. APPROVAL OF MINUTES

November 12, 2008

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

III. OTHER BUSINESS

1. Update on Utility Right of Way (PSNH) applications – Between I 95 and Ocean Road

Chairman Miller updated the Commission concerning two permits that came in shortly after the cancellation of last month's meeting. He said that one was a minimum impact expedited application and the other was a permit by notification application. Both applicants were PSNH and were utility right of ways for the same project. The application was for the upgrading of power lines and their structures between I95 and Ocean Road. Chairman Miller told the Commission that he read the applications thoroughly and felt comfortable with the proposal. He signed both applications. He told the Commission that the files were available for them to review if they wished.

2. Review of Conservation Commission Rules and Procedures

Chairman Miller stated that he would like to review the Rules and Procedures to make sure that the Commission was up to date on everything.

Chairman Miller discussed the difference between a motion to approve and a motion to deny. He pointed out Section H, (2.) of the Rules and Procedures Document for clarification.

At this point in the meeting, Assistant City Attorney Suzanne Woodland arrived to speak to the Commission concerning email communications.

She explained that when there is an email communication that goes out to all of the Commissioners, or at least a quorum of the Commissioners, that constitutes a meeting if you reply to the email. Once one hits the "reply to all" button, then a meeting has started on that particular topic if four or more members respond. She said that if one of the Commissioners responds to that email by calling or emailing the Chair to ask that the emailed topic be put on the next agenda, then that was entirely appropriate. Assistant City Attorney Woodland said that the concern among the public and the press in general was that they do not want communications happening outside formal notice of meeting that they could either attend or review the minutes of. She indicated that was the real problem with email communication.

Assistant City Attorney Woodland stated that if there was a contested issue, such as someone filing a Right To Know request, and if the City knows that the only emails that have been sent have come from the City, then it would be easy to search the City's system and respond to the right to know request. She then said if the Commissioners begin to email one another, it becomes problematic because some of the emails might fall under the right to know request. Then Commissioners personal emails would have to be looked through. She said they would like to prevent that from happening if at all possible.

Vice Chairman Horrigan stated that he has been chastised two or three times concerning this issue. He felt this was absurd. He said this was the 21st century where everyone uses email instead of telephones. He thought it was ridiculous to not be able to communicate with the other Commissioners via email. Vice Chairman Horrigan told how he had emailed the Commissioners to see if they wanted to meet him at a particular site in preparation for an upcoming application and was jumped on by the Planning Director.

Assistant City Attorney Woodland replied the State Right To Know laws are such that it becomes much more problematic. She said that if there is going to be a visit to a site or any other organizational situation, she would prefer that the staff emails the Commissioners and relays the information about the gathering. She added that if there is going to be a quorum, it should be noticed.

Chairman Miller suggested that the Commissioners check out the website of the New Hampshire Association of Conservation Commissions as there is a whole section on the Right To Know law and it supports what Assistant City Attorney Woodland has said. He also pointed out that when

Mr. Britz sent out the draft RFP for the Commission's review prior to the meeting, the emails started going out responding to it. The meeting was scheduled for them to respond to it.

Ms. Tanner asked why the emails couldn't just be deleted. Chairman Miller responded because it was against the law. Assistant City Attorney Woodland said that the email still exists and deleting does not solve the problem.

Assistant City Attorney Woodland said that if the Commission had a conference call, that would constitute a meeting and it would have to be noticed.

Vice Chairman Horrigan asked if the City could put all of their email correspondence on a website available to the public. Assistant City Attorney Woodland replied that it still did not get around the meeting notice requirements. She reminded them that once you have a quorum involved in your conversations and communications, you have a meeting.

Ms. Blanchard commented that in fairness to all of the members of the Commission, all members should be part of the conversation and that is the spirit of Right To Know. She added that they did not want to be the kind of board who gets a black mark.

Assistant City Attorney Woodland left the meeting at this point and discussion resumed on the Rules and Procedures document.

Mr. Wazlaw recommended an addition on Page 4, Section G after item number 3, that Permit by Notification should be listed with a description.

Ms. Blanchard reminded the Commission that these changes to the Rules and Procedures document would need to be brought before the Commission at the next meeting. Chairman Miller said that it would be added to the February agenda.

Ms. Powers pointed out footnote 3 on Page 3 and asked if the five days that are referenced there were five regular days or five business days. Ms. Blanchard thought "business" was a good idea. Mr. Britz said that it could be added. Mr. Wazlaw thought that maybe they should see what other boards do in order to be consistent.

Vice Chairman Horrigan indicated that it was very difficult to get a new item on the agenda based on things that arise at a meeting. He asked if they could propose an agenda item to be placed on the next month's meeting. Chairman Miller said that he should tell him of agenda items but explained that it was a balancing act with regards to the meeting time. Vice Chairman Horrigan felt that issues were not being followed through on. He said that he has been trying to talk about the spraying of herbicides but can't seem to get it on the agenda. Chairman Miller reminded him that they have talked about it numerous times.

Vice Chairman Horrigan stated that they are called to follow Roberts Rule of Order and they are not following it. He said a major part of it is that all discussion is to go through the chair.

Ms. Powers asked what would be the best way to get items on the agenda. She referenced Ms. Blanchard's request to discuss further the possibility of imposing fees on wetland violations. Chairman Miller said that sometimes it is not feasible to have an item roll to the next meeting. He felt there needed to be a formal request to put it on the agenda. He cautioned that he wanted to discuss items that they could actually deal with. Ms. Blanchard said that the way she would precede was to speak with Mr. Britz to see if the agenda was light enough to accommodate her request.

Ms. McMillan pointed out page 2, section B, (6.) and said that it should include that fact the alternates can participate in discussion.

Ms. Blanchard pointed out that the Rules and Procedures state that yearly elections should take place every January.

Chairman Miller asked the Commission to read through the document and bring any additions, deletions, or changes they would like to see to the next meeting.

With regards to Section F (4.), Mr. Wazlaw suggested that they look more closely at the definitions of marshlands and swamps. He was not sure if the term "swamps" was used anymore.

Vice Chairman Horrigan commented that he thought alternates could engage fully in conversation until a motion is made. If the alternate will be voting, then they can continue the discussion in the motion phase. Chairman Miller said that Roberts Rules are not totally applicable to the Conservation Commission meetings.

Chairman Miller suggested the following order for upcoming meeting: Call to order, approval of minutes, old business, then new business (he suggested letting the applicant give their presentation without questions, then open the floor to questions, then call for a motion, then discussion).

Ms. Tanner suggested limiting the time of the applicant's presentation.

Chairman Miller stated that the Commission needs to focus on the ordinance guidelines when reviewing an application. He said that they may not like the project, but it's their job to apply it to the ordinance. Mr. Wazlaw suggested keeping the four criteria in front of them for each application.

Chairman Miller encouraged everyone to do their best to attend the meetings.

Ms. McMillan asked Chairman Miller if he was going to discuss the packet of correspondence from DES. Chairman Miller said that given the time, he would put it on next month's agenda.

Ms. Powers suggested that when there are no applications to review, they could discuss other items .

IV. ADJOURNMENT

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

Respectfully submitted,

Liz Good
Conservation Commission Recording Secretary

These minutes were approved at the Conservation Commission meeting on February 11, 2009.