

**REGULAR MEETING
CONSERVATION COMMISSION**

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

3:30 P.M.

May 13, 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

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I. OLD BUSINESS

- A. Approval of minutes – April 8, 2009

It was moved, seconded, and passed unanimously (7-0) to approve the minutes as presented.

II. PUBLIC HEARING

1. To approve changes to the Conservation Commission Rules and Procedures

Chairman Miller read the Legal Notice that was posted concerning the Conservation Commission Rules and Procedures. He then opened the public hearing.

Ms. Pat Gormley of 979 Sagamore Avenue stated that she had comments concerning the changes to the document.

She stated that Section C, 3. concerning the wording "The Chair shall approve and provide a meeting Agenda", although she did not think it was intended that way, thought it sounded like the Chair had the ability to preclude anything from being on the agenda that the Chair does not want on the agenda. She pointed out that there was a provision in the document for submitting agenda items to the Planning Department. If those items were required statutorily or by regulation, then they would have to be put on the agenda but there may be other issues that arise from other members of the Commission or the public and she hoped that those requests would be put on by the Chair.

Ms. Gormley commented on the change to the permits by notification applications, pointing out that there was no requirement to inspect the site anymore, but just requiring the signature of the Chair and the notification of the members of the Commission. She said that it stated that Commission members had seven days to review it and then it could be placed on the agenda if

there were questions or concerns. She wondered if this was routine for other types of business with other City bodies. She felt it would be worthwhile to test it a couple times to see how the procedure works to ensure that in fact, the Commission members are notified in a timely manner.

Ms. Gormley noted that there were no changes in other procedural areas including the statutory duties of the Commission. She said that in terms of the statutory duties, such as making an index of the open spaces, which is currently underway, the procedures do not state what will happen next and states no requirement to do that. She said that questions have arisen in terms as to whether the Commission can look specifically at certain areas of open space that are owned by the City and make recommendations for them. It has also been questioned as to whether that recommendation would impede their ability to discuss and recommend later in the process with the Planning Board. She was thinking in particular of the land on Sagamore Creek but there were other areas of concern as well. Ms. Gormley felt that Section F 7. gave the Commission permission to make recommendations and provide for action on a particular parcel. She suggested that clarification could be made with regard to this in the document in the future, especially if there are going to be other opportunities to see how things work.

Chairman Miller thanked Ms. Gormley for her comments and stated that the Commission looks at the document as a working document and that it is not set in stone.

Chairman Miller asked if anyone else wished to speak to the Conservation Commission Rules and Procedures. Seeing no one rise, he closed the Public Hearing.

This public comment session completed the approval process for the Conservation Commission Rules and Procedures.

At this point in the meeting, Chairman Miller explained that he would be moving item #3 under the State Wetland Bureau Permit Applications up to be heard next.

IV. STATE WETLAND BUREAU PERMIT APPLICATIONS

3. Minimum Impact Expedited Application
Ceres Street Waterfront Park
City of Portsmouth, owner
Assessor Map 106, Lots 46, 47, 49, 50, 51, 52

Mr. David Allen, Deputy Director of Public Works was present to speak to the application. He stated that the project involved the reworking of a small public area in the Bow Street and Ceres Street area. It would be in the area were the Poco's Bow Street Cantina's outdoor deck is currently located. The outdoor deck will be relocated to accommodate this project. The project involves redeveloping the site into a nice public area. An outdoor dumpster will be relocated and the area will be cleaned up and drainage will be installed that will tie into the sanitary sewer system. This will allow for better maintenance in that area.

Mr. Allen also said they would be doing a number of utility upgrades to help take care of drainage. The surface will be some type of paver and a railing right at the seawall will be

installed. He said that they have worked with the abutters. The alleyway is a private way so vehicular access will need to be maintained.

Mr. Wazlaw asked if the whole area would be pavers. Mr. Allen showed on the plan where the pavers would be located. He also showed the area where there would be some plantings. Mr. Wazlaw asked the width of the area leading down to Harpoon Willies. Mr. Dave Desfosses, the City Engineering Technician stated it was between 10-13 feet wide.

Vice Chairman Horrigan commented that when he was appointed to the Conservation Commission, a friend told him that he hoped he would conserve the views of the waterfront. He said that it was not one of their charges but this was an opportunity to do that. He also said that when he voted for Mayor Sirrell, this was her campaign plank in her first campaign. He was delighted to see this plan.

Vice Chairman Horrigan also asked about a relatively high fence on the property that detracts from the view. He wondered if it would remain. Mr. Allen said that they do not have a final design yet but he said it was a point well taken.

Vice Chairman Horrigan asked about the Poco's plan to have a permanent structure in the area. He asked if that would cause any run off problems. Mr. Allen said no, that they are working with the Poco's people to coordinate the two projects.

Chairman Miller asked if there were any more questions for Mr. Allen. Hearing none, he asked for a motion.

Vice Chairman Horrigan made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Ms. Powers. There was no discussion.

The motion to recommend approval of the application to the State Wetlands Bureau passed by a unanimous (7-0) vote.

III. CONDITIONAL USE PERMIT APPLICATIONS

- A. Echo Avenue Right-Of-Way
City of Portsmouth, owner
Assessor Map N/A, Lot N/A

Mr. David Edgar of Siena Engineering Group, Inc. and Ms. Jessica Day of New England Environmental were present to speak to the application.

Mr. Edgar gave an overview of the project. He explained that they were proposing to install two 4" conduits from the existing utility poles on Echo Avenue to other areas located next to the Ford dealership and adjacent to the Spaulding Turnpike. He pointed out on a map the utility poles where the conduits would be diverted to. The area of the pavement would be saw cut and the debris would be loaded onto a truck. Additional debris in the areas in the buffer zone during the excavation would be placed on geo-fabric or filter fabric next to the trench. Mr. Edgar said that the maximum trench opening would be approximately 100 feet at a time. The pipe would be

placed in the trench, backfilled and compacted. Once the project was complete, the disturbed areas would be loamed and seeded and returned to their original grade and elevation. Ms. Day added that this work was taking place within the 100 foot wetland buffer.

Ms. Powers asked if grass seed had to be used. She pointed out that there were some very nice grasses and plants in the area. Mr. Edgar replied that they were open to suggestions. Mr. Britz suggested New England wetland seed mix. Ms. Day explained that the area does not remain saturated enough to support wetland vegetation. She felt a wildlife seed mix might be a better choice. Ms. Powers said that she was more concerned that the plants have wildlife capacity. She pointed out that right now the area has not been mowed for quite some time. Ms. Day explained that this work is being done within the City's right-of-way so how the City maintains it would be their concern. She added that if it was not mowed during certain periods, there was the risk of attracting negative pests such as ticks and mosquitoes.

Mr. Britz stated since this project is in the City's right-of-way, the applicant would need permission from the City Council. Mr. Edgar explained that they have talked with Public Works as well as the Department of Transportation because there is a question as to the City's right-of-way and the DOT's right-of-way. He said, according to City tax maps, he felt the entire project fell within the City's right-of-way but a portion of the area is maintained by the DOT. He said that they would be filing applications with both the DOT and the City Clerk's office.

Ms. Day suggested using a conservation seed mix. She said that it would promote some environmental benefits to both the soil health and migratory birds. She pointed out that the area was not a wildlife corridor with the highway so close by. Ms. Powers said that this was not an area where people would walk and would risk attracting ticks. Ms. Day explained that ticks will move toward warm situations, even cars.

Ms. McMillan appreciated the drawing of the properly installed silt fence. She pointed out the problem of silt fences being removed when a project is completed. Mr. Britz recommended that this be stated as a condition of the approval.

Chairman Miller asked if there were any more questions for the applicant. Hearing none, he asked for a motion.

Ms. Tanner made a motion to recommend approval of the application to the Planning Board with the following additional recommendations:

- 1) That a conservation seed mix is used.
- 2) That the silt fence is removed once the area is stable.

The motion was seconded by Mr. Wazlaw. There was no further discussion. The motion passed by a unanimous (7-0) vote.

- B. 165 Bartlett Street
Bruce and Suzanne Phinney, owners
Assessor Map 158, Lot 10

Mr. Bruce Phinney and Mrs. Suzanne Phinney were present to speak to the application. Mr. Phinney explained they are in the midst of a project to control runoff from coming onto their property from an adjacent property. He said that their property is located next to a large parking lot belonging to Botany Bay Computers. The runoff was washing their yard away as well as two other properties beyond theirs.

Mr. Phinney stated that the project was about 90% complete. He said that before they started the project, they inquired as to whether they needed a permit to build a retaining wall. They were told they did not need one. The neighbor who owns the parking lot called the City to complain. Subsequent visits from the Inspection Department and Legal Department ensued with both representatives saying a building permit was not required for the project. Mr. Britz then came out to the site and informed the Phinneys that they were working in the buffer zone and told them they needed to file for a Conditional Use permit. And that was why they were now before the commission.

Mr. Britz informed the commission that this was not an after the fact application because the applicants did not know that they needed to obtain a permit.

Mr. Wazlaw commented that there was a lot of water coming onto the property. Mr. Phinney reiterated that it involved three properties. Mrs. Phinney added that they cannot even use their yard because it is too wet.

Chairman Miller wondered if there was a way to put an under drain on the terrace. Mr. Phinney explained that they were only addressing part of the problem. A drainage system was put in by the owner of the adjacent property / parking lot, Mr. Bratter, a number of years ago and was approved by the Planning Board. The system was supposed to catch the water but it does not. Mr. Phinney said that underground seepage is also a problem.

Ms. McMillan asked what type of vegetation they were planning to use. Mr. Phinney replied that they would like to put grass. He said it has been a lawn for years. Ms. McMillan told them that anything with deeper roots would help to absorb the water. Mrs. Phinney said they would be open to suggestions.

Chairman Miller stated that he thought it would take a good engineer to really look at a way to improve the drainage.

Chairman Miller asked if there were any more questions. Hearing none, he asked for a motion.

Ms. Tanner made a motion to recommend approval of the application to the Planning Board. The motion was seconded by Ms. McMillan. Discussion followed.

Vice Chairman Horrigan stated that this situation was not the Phinneys fault. He said that the parking lot is not draining off the water effectively. He felt the City should look into the parking lot to see how to improve the situation.

Mr. Britz agreed and thought maybe a separate letter from the Conservation Commission to the Planning Board asking them to look into the situation was needed. Chairman Miller agreed and felt it should be addressed separately from this.

Ms. Blanchard suggested talking about a possible letter when they get to Additional Business on the agenda.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application to the Planning Board passed by a unanimous (7-0) vote.

IV. STATE WETLAND BUREAU PERMIT APPLICATIONS

1. Standard Dredge and Fill Application
579 Sagamore Avenue, Unit 89
Tidewatch Condominium Association, owner
Assessor Map 223, Lot 30

Mr. John Chagnon of Ambit Engineering was present to speak to the application. He stated that he came before the Commission last year with a Permit By Notification application for the same project. He said that it was determined that a Standard Dredge and Fill application was required instead.

Mr. Chagnon said that the project involves work at the Tidewatch Condominiums. The units affected are #61-69. They have been experiencing some water problems so under drains were installed to direct the water away from the building. He said that this project had to go through site review and the City asked them to look at the grade issue.

Mr. Chagnon stated that there would be two areas of impact. He said that the impacts were minor in the channel section and involved 90 square feet of disturbance. He added that they would remove some check dams that were put into the channel and would repair a stone wall that was put there to divert the flow and help with the drainage. He pointed out that when there are storm events, the increased water would travel down the corridor. There is currently rip rap at the water's edge and a swale that was never properly armored and is now eroding.

Mr. Chagnon said that he has met with Dori Wiggin of the Department of Environmental Services and she has looked at the site. She asked him to look at alternatives to the rip rap. Mr. Chagnon felt that anything less than rip rap would not be stable and would cause more erosion. He felt that stone would stop the erosion.

Vice Chairman Horrigan asked if the swale could be vegetated as he was not a big fan of rip rap and he felt it would not work over time. He thought vegetation would look better and asked Mr. Chagnon to reconsider it.

Vice Chairman Horrigan asked if there was a pumping station that sits on the upper part of the site. Mr. Chagnon said yes, that there was a sewer pump station located there and it sat adjacent to the stream.

Vice Chairman Horrigan asked about the stone dams. Mr. Chagnon said that they were check dams.

Mr. Chagnon stated that he would be happy to mat down the area and seed it but when looking at the velocity numbers, he felt the vegetation would be washed out.

Chairman Miller pointed out that the constructed stream bed was designed to take that flow. Mr. Chagnon explained that Photo 6 of the plans showed three culverts on the left side which are higher than the one culvert on the right side. At the outlet of these culverts a stone dam was installed to divert some of the water to the swale. His plan was to put more rocks in this area and use a variety of sizes to fill the holes to redirect the water to the swale.

Ms. McMillan questioned taking out the check dams. Mr. Chagnon explained that the check dams are causing the water to flow back to the brook. The new plan will lessen that possibility. By not taking out the check dams, it will continue to allow the majority of flow to go to the brook. Ms. McMillan wondered if the work could be staggered so that the check dams do not need to be removed right away. Mr. Chagnon said that he was willing to do that but did not want to spend the association's money if it was not going to solve the problem.

Mr. Britz informed the Commission that he was at the meeting with DES where DES specifically asked that a vegetated solution be used at the outlet area to Sagamore Creek.

Vice Chairman Horrigan noted that there was natural seepage in that location already. He asked if it would undermine the plan. Mr. Chagnon said he had not observed that seepage.

Ms. Powers said that if the alternative of stabilizing it with vegetation worked, at the end of the day, wouldn't that save the association money. Mr. Chagnon did not know if it would.

Hearing no other discussion, Chairman Miller asked for a motion.

Vice Chairman Horrigan made a motion to recommend approval with the following recommendations:

- 1) That the applicant considers a vegetative swale on the part of the project that runs along Sagamore Creek.
- 2) That the check dams are not removed until the dam work is done and has been reviewed to determine whether the check dams are needed.

The motion was seconded by Ms. Blanchard. Chairman Miller asked for discussion.

Vice Chairman Horrigan said that it was a two part project and he did not have a problem with the upper part of the project. He would still like the applicant to think about it further before he moves forward. He did not want DES to think that the Commission thinks that putting rip rap along Sagamore Creek was a good idea but if that was the only solution, then fine.

Ms. McMillan stated that she was at the site and looked at the outlet to the creek and did not see any silt coming from the site. She felt it seemed to be working now.

Chairman Miller felt they were trying to correct a problem that was created by not doing a good job when it was built. He did not like the idea of rip rap there but he was not sure what the solution was. He said that he wished they had a better solution for protecting Sagamore Creek from run off and erosion.

Ms. Blanchard said that the only reason this application was before them was because the project was not deemed to be a Permit By Notification project. There was nothing new with the design. Chairman Miller thought they had a better understanding with a complete packet of material that was provided.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval with the following recommendations passed by a 5-2 vote:

- 1) That the applicant considers a vegetative swale on the part of the project that runs along Sagamore Creek.
- 2) That the check dams are not removed until the dam work is done and has been reviewed to determine whether the check dams are needed.

2. Minimum Impact Expedited Application
187 Wentworth Road
J.P. Nadeau, owner
Assessor Map 201, Lot 12

Mr. Corey Colwell of MSC., Inc. was present to speak to the application. He stated that the property was known as Witch Cove Marina. He explained sheet 1 on the plans which showed the existing conditions of the site. There were eight structures on the site, a large gravel parking access and paved parking areas. The blue line that ran through the middle of the site was the 100 foot tidal buffer zone. He said that the applicant would like to relocate structures A, B, and C on the plan from the easterly side of the property to the westerly side. Structures A and B were residential dwellings. Structure C was a garage. Once those buildings were relocated, there would be a new driveway installed to access those buildings. The driveway would be constructed of pervious pavement. Mr. Colwell stated that the applicant also proposed to rebuild the large building, which was currently used for boat storage. Currently, the building is half collapsed.

Mr. Colwell said that the applicant would like to improve the site and was proposing to remove some driveway areas and replace them with loam and seed to improve drainage. It would also help to improve access on the site. He added that the primary purpose of this was to separate the residential component of the site from the commercial component of the site.

By putting in the loam and seed, they would be going from 38.6% pervious to 45.9% pervious surface.

Mr. Colwell explained that there was a short term, Phase 1 of the project and a long term, Phase 2.

Ms. Blanchard stated that she was still very concerned that with all of the redesign there were still big buildings in the buffer. Mr. Colwell said that the buildings within the buffer were constructed a long time ago and are allowed to stay and allowed to be rebuilt. He agreed that it was not the ideal situation.

Ms. Tanner pointed out that they were proposing to move buildings A and B which were currently outside the buffer to inside the buffer. Mr. Colwell said they were trying to improve the amount of green space. Ms. Tanner said they should be doing what causes the least impact. She said what caused the least impact was to pull those buildings down on the site and out of the buffer.

Chairman Miller was not sure that this application qualified as minimum impact project criteria, specifically about involving tidal wetlands, work in the tidal buffer zone within 50 feet of a salt marsh or sand dunes that is not the repair of existing structures. Mr. Colwell said that his interpretation was that this was a minimum impact project. He said that someone on his staff called DES to confirm that this project qualified as a minimum impact project.

Ms. Powers stated that she went out to the site and said that the only part of the site that wasn't a disaster was where they were proposing to move the structures to. She had some photos for the Commission to review. She said that there was also an inlet that was tidal that seemed to come to where the houses were to be located. The lot was also poorly maintained. She did not think it made sense to move the houses. She felt there was another agenda with regards to that. Mr. Colwell reiterated that the owner wanted to separate the commercial ventures on the lot from the residential dwellings. Ms. Power felt this might become the launching pad for something bigger.

Vice Chairman Horrigan said that his concern was that they did not know what Phase 2 was. The whole site is zoned Waterfront Business and as a Conservation Commission, they are very interested in preserving it. The two houses are grandfathered right now but he wondered if they could legally be moved. He also said that he was not in agreement with applicant's designation of the high water tide mark. Mr. Colwell said that Gove Environmental flagged the highest observable tide line.

Vice Chairman Horrigan stated that the property was a mess and what has happened to the shoreline was a disgrace. He asked if there was a plan to clean it up. Mr. Colwell responded that the applicant was aware of it and he would strongly convey his comments to the applicant. It was the applicant's desire to clean it up and this application was step 1 in that process.

Vice Chairman Horrigan pointed out that the storage shed, which Mr. Colwell stated was partially collapsed, was in his opinion, totally collapsed and was just a pile of lumber that should have been removed long ago.

Ms. Blanchard asked if this was currently a functioning boat yard. Mr. Colwell replied yes but it was not functioning to its capacity.

Ms. McMillan commented that she was not sure this application qualified as a minimum impact expedited project. She too, was concerned by not knowing what Phase 2 would be and lastly, she said there was a lot of land that was filled and that would hold her back from making a recommendation at this point because what has been filled was possibly creating land that shouldn't be there on the shoreline. She added that there was a lot of evidence of dumping in the water.

Chairman Miller stated that he would like to have more information. Mr. Britz said that the Commission's options were to sign or not sign the application. If the Commission did not sign off on the application, then the applicant would have to file a Standard Dredge and Fill application. He stated that he also had a lot of questions about the project.

Ms. Blanchard asked if this qualified for the Shoreland Protection Act. Mr. Britz replied yes and informed the Commission that the applicant has already filed for it.

Vice Chairman Horrigan commented that he appreciated the proposal of the pervious surfaces. Mr. Colwell said that they were open to suggestions.

Ms. McMillan made a motion to recommend that the application not be signed at this time. The motion was seconded by Ms. Tanner.

Ms. Powers suggested that a letter be attached stating the Commission's concern that buildings are going into the buffer zone.

The motion to recommend that the application not be signed at this time passed by a unanimous (7-0) vote.

At this point in the meeting, the Commission discussed what they would like to include in a letter to the Planning Board concerning 165 Bartlett Street. It was agreed that they wanted to express their site concerns and compliance. Mr. Wazlaw suggested looking at the plan to determine if the drainage system was installed correctly or whether it was functioning correctly.

Mr. Wazlaw asked if Tropic Star Development received their approval because he noticed disturbance on the site. Mr. Britz said that they have not gone through site review yet. He said that he would look into it. Also, Mr. Wazlaw asked if they have seen any improvement at the Gerber Dental site. Chairman Miller said that he was not sure if there was a follow up.

V. ADDITIONAL BUSINESS

- A. Approval of funds for Public Undeveloped Lands Assessment (PULA)

Mr. Britz informed the Commission that four consultants were interviewed and in the end one was chosen whose bid was \$27,330.00. He said that the Commission needed to recommend that expenditure from the Conservation Fund to the City Council. Then the City Council will need to authorize it. Chairman Miller commented that it was a good process with very impressive candidates. In the end, he said that West Environmental was chosen. Mr. Britz said the bids ranged from a low of \$19,000 to a high of \$85,000.

Ms. Tanner made a motion to approve \$27,330.00 to come from the Conservation Fund to pay for the Public Undeveloped Lands Assessment. The motion was seconded by Ms. McMillan. The motion passed by a unanimous (7-0) vote.

In other business, the Commission worked on an activity sheet that would list, when completed, all of the activities undertaken by the Conservation Commission and the activity's current status.

Chairman Miller informed the Commission that Skye Maher resigned from the Commission. He said that the mayor asked her to resign since she was serving on two boards. Ms. Maher submitted her resignation and it was accepted.

Ms. Powers stated that she contacted the mayor's office to tell him that she would not be reapplying to serve another term on the Commission. Vice Chairman Horrigan said that he would miss Ms. Powers and Ms. Maher because they were both role models for him as they were such strong advocates for conservation and environmental protection. He appreciated how they both pushed for natural vegetation as ways of controlling unintended or unexpected consequences of various development proposals. He learned a lot from listening to both of them.

Ms. Powers said that she was told there are 22 applicants for the openings. Ms. McMillan asked if there would be opportunity to give input on the selection process. Chairman Miller said that he hoped so.

Chairman Miller stated he was sorry to hear about Ms. Powers's resignation. Ms. Powers said that she has enjoyed working with the Commission.

IV. ADJOURNMENT

Hearing no other business, 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 June 10, 2009.