

**MINUTES
REGULAR MEETING
CONSERVATION COMMISSION**

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

3:30 P.M.

September 9, 2009

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman James Horrigan; Members, Allison Tanner, Barbara McMillan, Brian Wazlaw

MEMBERS ABSENT: Mary Ann Blanchard

ALSO PRESENT: Peter Britz, Environmental Planner

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I. OLD BUSINESS

- A. Approval of minutes – August 12, 2009

Chairman Miller stated that the approval of the minutes would be postponed to the October 14, 2009 meeting.

- B. Conditional Use Permit Application
187 Wentworth Road
Witch Cove Marina Development, LLC
J.P. Nadeau, owner
Assessor Map 201, Lots 17 & 18

Mr. Rick Taintor, Planning Director stated that he wanted to address some of the confusion that came about from the recent Planning Board meeting. He acknowledged that the process had been different but he assured those present that they were not trying to push the application forward but only trying to get things out in the open. He explained that a conditional use permit was an application to the Planning Board. When an application is received, the Planning Board refers the application to the Conservation Commission. The Conservation Commission reviews it and makes a recommendation to the Planning Board and then the Planning Board holds a public hearing on the application. He said in this case, there was a lot of interest in the application. Although the Conservation Commission would not complete their review by the time of the first advertised Planning Board public hearing on the application, Mr. Taintor thought there might be members of the public at the Planning Board meeting wishing to speak to it. He felt it was important to give them an opportunity to weigh in on the project. In addition, he said that he spoke with the applicant and suggested to the applicant that he make a brief presentation because they were going to allow public to comment on it. He said that that caused a lot of confusion and he apologized for that. He added that part of the problem was that he was not present at the meeting to explain it because of an unexpected last minute situation. He wanted

people to know that there was no attempt to push the application forward but since the public hearing had been advertised, they wanted to give people a change to speak to it. He pointed out that the Planning Board postponed the application indefinitely which meant that the application will not come back before the Planning Board until the applicant requests it come back and the abutters are again notified.

Mr. Britz stated that independent wetland scientist, Dr. Leonard Lord, was asked to assess the site. After assessing the site, Mr. Lord had additional questions concerning the project. Mr. Britz also pointed out that at the site walk on August 25, 2009 he noticed some new fill that had not been there before. He said that Dr. Lord found an area of wetland fill on the site which would have the affect of changing the wetland boundary a bit.

Attorney Bernard Pelech stated that he would like to address the Commission and submit for the record, an email that he sent to Mr. Taintor on August 17, 2009, the day of the Planning Board meeting. He also submitted a letter that was addressed to Planning Board Chairman Ricci asking that the application be tabled as they did not want to go forward until they had a complete review and recommendation by the Conservation Commission. He stated that he did not attend the meeting either because he did not think that anything would occur. In his twenty five years of representing applicants, when an applicant requests that a matter be continued, whether there were abutters present or not, the first thing the Chairman did at the meeting was to notify everybody that the matter was going to be continued. Attorney Pelech pointed out that that did not happen in this case and he felt it was a change in the policy of either the Planning Board or the administration. He said that he did not want the public or the press to get the idea that they were somehow trying to bypass the Conservation Commission.

Mr. J.P. Nadeau, owner of the property, stated that Mr. Taintor called him and told him that he might want someone there to represent the project and he felt it was advice well taken. Mr. Nadeau added that it was not a change in policy.

Attorney Pelech explained that since the last meeting, a site walk had occurred. He said that they have submitted additional information and have modified the plans. They have also submitted a wetland analysis. All of this was submitted in an effort to deal with Mr. Britz's August 6, 2009 memorandum that pointed out a number of things missing from the applicant's plans. Attorney Pelech pointed out that they also received a copy of a memo from Dr. Lord to Mr. Britz indicating additional things missing from the plans. So they have tried to address those issues in today's presentation.

Attorney Pelech stated that in April, the applicant filed a Department of Environmental Services minimum impact expedited application to the Department of Environmental Services and it was determined that it did not meet the minimum impact expedited criteria. He said that they would be withdrawing that application and would file a new application with DES depending on where the local permitting process leads them.

Attorney Pelech pointed out that the Conditional Use permit application before the Commission today did encompass work on both sides of the road. He also pointed out that it has been determined that there were jurisdictional fresh water wetlands on the southerly side of the property. He explained that the applicant would also need to go before the Board of Adjustment. These were just the first steps in a long process.

Chairman Miller stated that he wanted to make sure that the Commission understood what they would be concerning themselves with with regards to this application. He said that they would be dealing with the parking lot and the small area in the 100 foot buffer on the north side. They would not be dealing with the buildings.

Mr. Taintor explained that the revising zoning that was being proposed right now would change the tidal wetland buffer from a variance to a conditional use permit.

Attorney Pelech said that it was his understanding that Dr. Lord checked the delineation that was done by Mr. Marc Jacobs and to the best of his knowledge, there had not been any inland wetlands identified on the northerly side of Wentworth Road that would require any buffer.

Attorney Pelech stated that Mr. Colwell would speak to Mr. Britz's and Mr. Lord's memos. He said he would also update them on changes that have been made to the previously submitted plan. He pointed out that they have pulled some of the parking lot away from what has now been determined to be a vernal pool.

Mr. Corey Colwell stated that he thought that the two memos served as a good basis for the changes to the plans. He said that he would like to go through the memos item by item and show the Commission how they have addressed the request on the plans and where they appear on the plans.

Mr. Colwell explained that the first paragraph of Mr. Britz's memo suggested that the applicant add the impacts to the inland wetland protection district and its buffer zone. He said that they have provided a description of impacts and calculations of wetland buffer impacted by the type, and the quantity of fill to be added. It also requested information on the pervious parking and there were now details of the proposed parking on both sides of the road. Mr. Colwell pointed out that Mr. Jacobs has prepared a wetlands functional evaluation. He also prepared an analysis of wetland and buffer zone impacts and an Analysis of Alternatives report. They have also added to the plan the limits and square footage of three different types of impacts in the buffer zone. They were shown with the various colors of green on the plan. He pointed out those areas out on the map.

Mr. Colwell stated that sheet 2 of 4 showed the whole project in detail. Across the road on the north side, they were proposing a marina with a deck and three residential buildings on the northwest section of the property with some parking. He said that all of the parking on the north and south side would be pervious parking. Mr. Colwell explained in detail how the pervious pavement worked and pointed out that there was information in the packet concerning it.

Mr. Jacobs talked about the impacts to the wetland values. He explained the functional valuation was preformed according to the highway methodology. It looked at thirteen functions and values provided or performed by wetland areas. His analysis determined that the wetlands associated with the stream provided two of the functions, one being sediment retention. There was also a minor flood flow alteration function of that wetland, largely associated with the trash rack located at the culvert at Route One B. The wetlands that were more interior to the site provided one function which was ground water discharge. He pointed out that the wetlands on the site do not provide functions and values and it could be argued that the functions and values that they do

provide are to a limited degree. Mr. Jacob also said that the project as currently designed would help to largely retain those functions and values. He reminded the Commission that the project would result in 6,730 square feet of impact to the wetlands on the site. He added that 92 square feet would be considered a minor impact application.

Mr. Colwell addressed Mr. Britz's comment related to parking. He pointed out that sheet 2 of 4 showed a parking calculation. He explained that the size of the parking lot was dictated by the zoning ordinance. The plan showed all of the proposed uses for the parking. Mr. Colwell explained in detail the number of spaces required for each use on the site. The required number of parking spaces totaled 173. He noted that the last time they were before the Commission, they were not aware of a vernal pool on the site. The old site had more parking spaces but now the parking was located 40 feet away from the vernal pool.

Mr. Jacobs commented on the impact to wildlife habitat. He said that there would be no adverse impact to wetland values of surrounding properties. He continued to say that the physical attributes and topography of the wetlands at the site are such that the functions and values of wetlands that could be harmed by this project largely involve wildlife habitat and potential flooding issues. With the revisions that have been made to the plan, the project now provides a physical buffer of approximately 40 feet to the vernal pool. Also, the project proposes no work to the south and west of that potential habitat and protects that area. Mr. Jacobs said with regards to flooding, there would be no impact to adjacent properties from that type of issue.

Mr. Colwell addressed Mr. Britz's comment concerning the possibility of altering the natural vegetative state of any woodland areas. He said that sheet 1 showed the forested area, the shrub thicket and the mowed turf. The only area that would be impacted would be the northwest corner which accounted for about approximately 500-600 square feet of forest land impact. The rest of the impact would be shrub thicket with most of it being in the mowed turf areas.

Mr. Jacobs stated that he has prepared a summary of the alternatives analysis for the Commission to review. He pointed out that he failed to account for one alternative. He said that was an alternative that proposed impervious pavement opposed to the pervious pavement that was proposed with the project. He discussed in detail alternatives 1 through 5.

Mr. Colwell pointed out that the boat storage building that was collapsed would be removed entirely and replaced with green space. The concrete would be removed and replaced with landscaping.

Mr. Colwell explained that the purpose of the retaining wall was to reduce impacts. The retaining wall would eliminate the amount of fill needed. He also explained that the proposal was to eliminate the need for septic. He explained that there was an existing septic system in the middle of the site on the north side, shown on sheet one, identified by a green rectangle. He said that they were proposing to eliminate the leach field and tie into the City's sewer system.

Mr. Colwell pointed out a handout in the packet that showed that, pre-construction, there was a total impervious area of 80,671 square feet. The proposal reduced the impervious area by 21,358 square feet. He said that was a 27% decrease in impervious area on the site. He also pointed out that there was currently no stormwater treatment on the site. He said that runoff was leaving Wentworth Road, leaving the parking lots, and the area around the kayak store. There was

nothing to prevent the runoff from entering Sagamore Creek. Mr. Colwell said that the pervious pavement would treat that runoff. In addition, they would be eliminating the septic affluent on the site. These three areas, pervious pavement, stormwater treatment, and septic upgrades were the main improvements to the site.

At this point in the meeting, Mr. Colwell commented on questions raised in Dr. Lord's memo. Chairman Miller pointed out that this was the first time the Commission was seeing Dr. Lord's memo so they would need some time to digest it.

Mr. Colwell stated that sheet 2 of the plans showed a worst case scenario for the size of this parking lot. He said that the parking lot would not grow beyond this. Sheet 4 of 4 showed erosion control, sedimentation control, and how they proposed to manage and prevent siltation into the wetlands. He pointed out that they have not issued any site grading. He continued to say that site grading was very complicated and very costly. He reiterated that the parking lot would not get any larger than what was shown on the plans.

Mr. Colwell explained that where heavy truck traffic occurs on the site, it might be necessary to use conventional pavement to accommodate that. It would be graded away from Sagamore Creek. He added that stormwater treatment on that small strip of conventional pavement could be handled with a couple catch basins and a very small detention area.

Mr. Colwell stated that the highest observable tide line was reviewed and the line has been slightly modified and shown on the plan. He added that they have identified the vernal pool and the stream on the plan as well.

Mr. Jacobs said that the project has been designed to minimize impacts to wildlife habitat on adjacent properties and flooding issues. He also said that the project has been designed to protect the likely migration corridor to the vernal pool and other suitable habitat.

Mr. Colwell stated that the previously shown existing tree line was not accurate as it did not take into effect the shrub thicket. It has been corrected on the new plan.

Mr. Colwell pointed out that sheet 2 of 4 had the buffer calculation table. He said they had broken it down for both the north side of Wentworth Road (Map 201, Lot 12) and the south side (Map 201, Lot 17&18). They listed the buffer zone for each property, the total buffer zone disturbance for each property, and then calculated the percentage of proposed buffer zone disturbance. Mr. Jacobs went through the calculations in detail with the Commission. Mr. Colwell added that the calculations take into consideration the 100 foot tidal buffer zone.

Mr. Colwell said that the parking was governed by the zoning ordinance. They were proposing exactly what the zoning ordinance dictates.

Chairman Miller stated that before the Commission asked their questions, he asked Dr. Lord if there was anything that he wanted to add.

Dr. Lord, wetland scientist with the Rockingham County Conservation District said the applicant had done a good job on the Sagamore Creek side of the road. The porous pavements would go a long way to reducing the impacts and having some green space would be beneficial.

On the south side of the road, Dr. Lord said there were some important wetlands, including a stream and a vernal pool. He said that the vernal pool was disturbed but that they did find some wildlife value. He felt that the impacts on the south side of the road could be reduced a little bit more. He said that the important part of the buffer was along the stream and it would be beneficial to try to pull the impacts further away for that stream. He suggested utilizing the area with the existing shed and proposing parking on the Rye, NH area of the site.

Chairman Miller asked if anyone from the public wished to speak to the application. No one rose to speak.

Chairman Miller opened the discussion to questions from the Commissioners.

Ms. Tanner stated that she was the longest sitting member of the Commission, and when she remembered a prior site walk, it was with the previous owner. She did not recall any other members of the Commission on that site walk. She said that if there was a comment made about removing the storage building, it was probably because it was so dilapidated. She did not think that, at that time, they did not want boats on the site because as long as she has been on the Commission, the Commission has always wanted the site to be a marina.

Ms. Tanner continued to say that anytime you fill a wetland, the land is adversely impacted. She felt that there was too much parking on the site and that would mean decreasing the number of uses on the site. She agreed with Dr. Lord's suggestion of eliminating parking on the northwest side. She felt the mowed area could be used for parking but she was against anything coming closer to the stream, the vernal pool and the forested area. In addition, she did not want to see trees taken down.

Mr. Wazlaw thanked Mr. Nadeau for taking him on a walk through of the site since he was not able to make the initial site walk. He agreed that more could be done on the northwest corner of the property, especially with parking spaces. He said that the issue was with the sheer size of the project. He felt that the number of parking spaces was being dictated by the uses of the property. He too, wanted to keep the parking away from the stream.

Vice Chairman Horrigan commented that it was not his impression that the water flowed off of the site but instead flowed into the stream or into the proposed entrance. Mr. Colwell clarified that the water was flowing off of the north side of the property.

Vice Chairman Horrigan asked with regards to the entrance, what type of surface they were proposing to use. Mr. Colwell stated that it would be pervious surface. Vice Chairman Horrigan pointed out that the water table was almost up to the surface. Mr. Colwell explained that they would have to elevate the area.

Vice Chairman Horrigan asked if they had found the outlet for the stream. Mr. Colwell explained that the stream went into a catch basin across the street. From there, there was a pipe that runs down to Sagamore Creek but the outlet cannot be found. They believe that the pipe has collapsed somewhere in the gravel. Vice Chairman Horrigan asked where the water was going. Mr. Colwell said that it was leaching into the ground and then eventually into the creek. He added that the situation was undermining a lot of what was going on at the site.

Vice Chairman Horrigan stated that he had assumed that the stream drained water from a fairly large piece of conservation land owned by the City along Sagamore Avenue. Mr. Jacobs said that there was significant forested swamp in that area. He added that the stream that flows across Mr. Nadeau's property was a stream that he believed outlets that area.

Vice Chairman Horrigan pointed out that part of the proposal was to remove a lot of vegetation along the stream. He wondered if that would speed up the flow of the stream. Mr. Jacobs explained that the water that was currently getting to the stream will continue to get to the stream but only by passing through the porous pavement, the various transmissive layers, and the sub layers and then back into the stream.

Vice Chairman Horrigan asked if the proposed retaining wall would be a geotech style wall. Mr. Colwell stated it would be designed by a geotechnical engineer. He said they would be stacked blocks that would be stepped back as it goes upward.

Vice Chairman Horrigan commented that he was concerned about the sewer system on the site. He wondered that if the City decides to not install a sewer line, then what happens with the proposal. He felt that the whole project hinged on the sewer line. He wondered why they were even looking at the project until they know that is going happen. Mr. Colwell said that they were not anticipating that the City was going to install the sewer line. They are hoping that the City will participate in its installation but the developers would be installing it. He explained that the sewer would run right down the road within the right-of-way. He said it would require the purview, review, and authority of the Department of Public Works and the City Engineer. The Department of Transportation would get involved as well because it was a State highway. He pointed out that they have done it a number of times. Mr. Colwell pointed out that if they did fall short with the plan, they could always put a septic system under the pavement but then that pavement above the system would not be pervious.

Vice Chairman Horrigan did not feel they were reducing the impervious surfaces as much as they claimed because a large part of the site was pervious already. He stated that he appreciated the applicant's willingness to consider pervious surface for the project as a whole.

Ms. McMillan asked if they lost parking spaces by moving away from the vernal pool. Mr. Colwell replied yes. He said that the old plan proposed 190+ spaces and now they are proposing 173 spaces. She said that it was difficult to look at the parking spaces when a lot of the uses on the site are undetermined. Her other concern was the high water table and the use of pervious surface. She said she felt she did not have enough information to feel confident that it would work out the way it was planned. Ms. McMillan agreed with going into Rye with the parking and thought that made more sense. She also asked about landscaping. Mr. Colwell said that all of the light green areas on the plan showed proposed landscaping.

Chairman Miller asked Mr. Jacobs to point out wetland C on the plan. Mr. Jacobs showed that it was the small wetland in front of wetland D on the plan. Chairman Miller also asked the date of the photo on the last page of the Wetlands Function Evaluation report. Mr. Jacobs thought it was taken in 1978.

Mr. Jacobs addressed the recent fill in the driveway. He said it has been a driveway and has been depicted as such in a number of photos over the years. He pointed out that material has been added to the driveway on and off to help stabilize it for about 30 years. Mr. Britz asked wouldn't it still have been a wetland turned into a filled wetland. Mr. Jacobs said that occasionally wetlands are filled and due to various factors, usually related to the depth of fill, the fill will revert to a wetland condition. He added that it was important to note that delineation that was done in late July identified functional wetlands. He pointed out that page 28 and 29 of the Function Evaluation report, there was a graphic that identified the areas that they believed were previously wetlands and the driveway falls within that area. He also pointed out the driveway has been a driveway for 30+ years and maintained as a driveway before Mr. Nadeau obtained the property and he has continued to maintain it as such. Mr. Britz asked if it should be labeled as a wetland. It changes the characteristic of the area of the wetland whether they are connected or not. Mr. Jacobs said they were trying to get a functional wetlands assessment for the purposes of any future dredge and fill applications that they will be bringing to the attention of the Wetlands Bureau and the Army Corps their estimate of previously and historically impacted wetland areas. It was unclear to him at this juncture how they would want to treat the area in terms of applying for impacts as it relates to the jurisdiction of the Commission and the City. If there was a connection between the two areas, it would change the jurisdiction under the local ordinance. Mr. Jacobs continued to say that as a practical matter, it changes very little with the property.

Chairman Miller had a concern about the culvert. He felt the culvert needed to be resolved because it would change the drainage on the other side of the road. He also said that there would need to be proper drainage under it or around it because that water would eventually run to the stream which would ultimately get blocked by the culvert. He felt the culvert was where everything would end up. Mr. Colwell assured Chairman Miller that they would resolve it. He explained that the culvert was very close to their proposed building so they did not want that undermining construction.

Chairman Miller commented that this was a very challenging site. He appreciated the information the applicant has given them. In addition, he thought a pollution loading analysis of the different land cover types would help as well. He pointed out he was not requiring it or asking for it at this point. He said that he appreciated the reductions so far, the pulling away from the vernal pool, and the pervious surface.

Mr. Nadeau stated that he has owned the property since 2000 and the driveway has always been a road. He said that it tends to get potholes throughout the year and was particularly bad this year because of the excessive rain.

Mr. Taintor stated that he did not think the applicant needed anything near the parking spaces he was proposing. He felt there would be much less of a parking requirement after all of the potential uses were confirmed. He also commented on the buffer area impact quantities. Mr. Taintor asked about the swale over by the water. He asked if it was shown on the plans. Mr. Colwell explained that that has been changed to pervious pavement. Also, Mr. Taintor stated that they asked that the boat storage building not be shown on the proposed plan. He wondered why it was still there. Mr. Colwell pointed out that it was not colored and they only wanted to show the existing concrete pad where a building used to sit and show that it has been replaced with green space.

Attorney Pelech stated that they may be able to reduce the parking by 16 spaces if the Planning Department makes a determination that where the residences are is not considered boat yard. He said he would sit down with Mr. Taintor and the Principal Planner, Lee Jay Feldman, to discuss it further.

Ms. Tanner made a motion to postpone the application to the October 14, 2009. The motion was seconded by Mr. Wazlaw. The motion passed by a unanimous (5-0) vote.

II. STATE WETLAND BUREAU PERMIT APPLICATIONS

1. Minimum Impact Expedited Application
518 New Castle Avenue
Helen I. Garvey Living Trust, owner
Assessor Map 205, Lot 3

Ms. Etoile Holzaepfel, landscape architect, and Mr. Neil Garvey, owner, were present to speak to the application. She explained that this was an application to renew permission for fencing on the property that was originally granted in 2001. Some of the work was completed in 2002 but the fencing was not deemed necessary at the time.

Ms. Holzaepfel stated that the property sits close to the bridges where there is a lot of activity and some of that activity carries over onto Mr. Garvey's land. That activity included picnicking, beach parties, and sometimes even pitching a tent on the property. She showed on a map where this activity was taking place. She also showed the areas where there were footpaths from the bridge area down to the Garvey's property. She pointed out that the activity has gotten more intense in the last couple of seasons and it has now become an intrusion for the owner.

Ms. Holzaepfel explained that they would like to erect the chain link fence that was previously approved for the property. She told the Commission that there are people who go down to the water when it is low tide to fish and they are not a problem. She said it was the people who use it for their own use and leave litter, stay through the night and partying. She pointed out that they were accessing the area from a footpath coming from the bridge area.

Ms. Holzaepfel said that 26 fence posts would be needed and would impact about a square foot of the upland tidal buffer zone. She showed the Commission on the plan where the fence would be located and how far it would extend on the property.

Mr. Garvey reiterated that there were people down on this property all of the time, trespassing, wearing down paths, leaving trash, and he was getting tired of it.

Ms. Tanner asked how they differentiated between people who just want to fish and those who were there for other reasons. It was her understanding that there should be an ability for the public to fish at that point. Ms. Holzaepfel said that they primarily fish from the bridge. Ms. Tanner said that she remembered when they had the original proposal in front of them; there was a concern that there would be no access to fishing along the shore. She asked if they were going to block all public access to the shore area. Ms. Holzaepfel replied yes and said that there was no obligation of the property owner to provide access to the water. She said the public can still walk under the bridge and along the shoreline on either side below the mean high tide line. She

also pointed out that the NH Fish and Game Department has acquired property on the other side of the bridge that connects Portsmouth to New Castle where there is parking and an extensive area for fishing or walking along the water.

Mr. Wazlaw asked the location of the last fence post. Ms. Holzaephel showed him on the plan where it would be as well as the entire length of the fence.

Ms. McMillan asked why the highest observable tide line was not drawn all the way through. Ms. Holzaephel said that was the way the wetland scientist showed it. She added that the fencing would be above the highest observable tide line.

Vice Chairman Horrigan stated that he could not find the top footpath on the east side. Ms. Holzaephel said there has been a lot of vegetation growth but it was still there. It was not as pronounced as the first one. Vice Chairman Horrigan said that the lower footpath has been there a long time and even had a very crude staircase. He also pointed out that a lot of the debris looked to be old.

There was considerable discussion with Mr. Garvey concerning how individuals access the site.

Hearing no other discussion, Mr. Wazlaw made a motion to recommend approval of the application to the State Wetland Bureau. The motion was seconded by Ms. Tanner. Chairman Miller asked for discussion.

Vice Chairman Horrigan stated that he would not be voting in favor of the motion but it was not because he was insensitive to the problem. He said that he was not a fan of chain link fences and he was not convinced that this would solve the problem.

Chairman Miller called for the vote. The motion to recommend approval of the application to the State Wetland Bureau passed by a vote of 4-1 with Vice Chairman Horrigan voting in opposition.

2. Standard Dredge and Fill Application
67 Bow Street
Forum Group, LLC, owner
Assessor Map 106, Lot 53

Mr. Zachary Taylor, Project Planner for Pickering Marine was present to speak to the application. He stated that the project entailed an extension of the existing deck at Harpoon Willys. He said that they were proposing a 6' x 35' pier running parallel to the shoreline. There would be a 4' x 4' landing attached to a 3' x 22' ramp running along side the pier down onto a 10' by 34' float. The ramp and float would be seasonal. He also said that because of the extremely small and tight conditions in the area the actual square footage would be 209.37 square feet on the 6' x 35' pier and 13.85 square foot on the 4' x 4' landing. This was because on the westerly side they had to shave a sliver of the dock to keep it on the actual property. Mr. Taylor explained that it was within the abutting 20 foot setbacks but they have received signed waivers from both abutters. He also stated that they would not be extending any further out than the Hodgson property which was west of the proposal site. There would not be any further

impact to the waterway. He said that the sub straight and the riverbed in that area were rock and ledge which drops off extremely quick. It was not an area particularly hospitable to eel grass. He added that there would be minimal environmental impact.

Mr. Wazlaw asked if this would be a residential or commercial dock. Mr. Taylor replied that he believed it would be a commercial dock since it was located in a commercial area.

Mr. Taylor explained that there were areas along that shoreline where they were able to drive piles. He said that if they couldn't, they would have divers drill into the ledge and set the pilings on top.

Ms. McMillan pointed out that the plans stated that they had been denied a permit in the past. Mr. Taylor explained that the original plan was applied to as part of the River walk project. He said that it was denied because of extension further out to the waterways. He said that in the denial, it was stated that if the dock was built to a similar scope and extension to the waterway as the Hodgson property, then it would be an approvable project.

Ms. McMillan pointed out that the proposed dock was for the business. Mr. Taylor said that was correct. Ms. McMillan said it was her understanding that a docking structure could not be used for land based activities. She asked who would access the ramp and float. Mr. Taylor assumed it would be used by the owners and the public. Vice Chairman Horrigan added that he questioned the same thing.

Vice Chairman Horrigan stated that there was currently rock weed growing on the concrete wall. He wondered what the impact would be by extending out a total of 16 feet. He wondered if the rock weed would survive. Mr. Taylor replied, yes it should. He said that the rock weed was all underneath the existing pier and had been there for quite some time.

Chairman Miller asked about the existing steel fender and wondered when it was installed. Mr. Taylor said he was not sure but he thought it was used for a very large boat at one time.

Ms. McMillan pointed out that currently, there was a roof over the deck. She asked if the roof would be extended out over the new deck area. Mr. Taylor said he was not sure but he did not think so.

Ms. McMillan asked about the flooring of the deck. Mr. Taylor said it would be the standard 2' x 6' construction with $\frac{3}{4}$ " spacing between the boards.

Mr. Britz reminded Mr. Taylor that he would need to apply for a City permit as well. Mr. Taylor also said he would need to go before the Historic District Commission.

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

Mr. Wazlaw made a motion to recommend approval of the application to the State Wetland Bureau. The motion was seconded by Ms. McMillan. Chairman Miller asked for discussion.

Ms. McMillan stated that she had a couple of concerns with the application. She was not sure that this application was permissible since it was being used for land based activities. She also had a concern about extending out over the waterways and stated that it would still impact the area. She felt that it would block the sunlight and darken it under the dock as well as contribute litter from the dining use from the dock.

Mr. Taylor said he was not suggesting that there were no impacts because no matter how hard you try there will be some eventual impact. He added that it would be incredibly hard for endangered type species like eel grass and marsh grass to grow there.

Vice Chairman Horrigan stated that he had a complicated feeling about the application. He had no problem with extending the pier because it would provide more access to the public at large to enjoy the riverfront. But he was not persuaded that this site needed a boat ramp. He felt they were asking for too much because no matter what you do, it has an impact. He said that he saw very little benefit from having a float and ramp at this site and he also saw some possible conservation consequences. He added that he could vote for part of it but not for all of it.

Mr. Taylor pointed out that the impacts were substantially less than installing a pier over marsh grass and landing it in an inter-tidal area where there were mudflats. He felt this had a very minimal impact compared to what has been approved in the past to gain access to the waterway.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application to the State Wetland Bureau failed by a vote of 4-1 with Chairman Miller, Vice Chairman Horrigan, Ms. McMillan, and Ms. Tanner voting in opposition and Mr. Wazlaw voting in favor.

Mr. Taylor asked what the reasoning was for the votes in opposition. Vice Chairman Horrigan stated that he gave his reasons. Ms. Tanner said her opposition to the project was the same as Vice Chairman Horrigan's. She said that she saw the wharf as being too much.

Chairman Miller stated that he felt they were escalating out into an area that they should not be escalating out into.

Mr. Taylor asked if it would be the purview of the Army Corps of Engineers to decide that. Chairman Miller replied that there was nothing stopping him from going to them with the application.

Mr. Taylor stated that he was surprised that the application caused such discontent with the board that only one member voted in favor of it.

Vice Chairman Horrigan commented that he has been raising his issues on every dock application. He said that he understood Mr. Taylor's argument with this particular area. Mr. Taylor pointed out that they are talking about an extremely developed section over the river. He said they were not opening up a pristine area. He felt this area was probably developed previously and has gone by the wayside since considering the level of development in that area.

Chairman Miller thanked Mr. Taylor for the presentation and Mr. Taylor thanked the Commission for their time.

III. OTHER BUSINESS

1. Update of PULA, Pease Development Authority

Mr. Britz reported that Pease Development Authority has set aside \$5,000.00 to do a PULA study on the Pease property. So now the whole city will be studied with the PDA paying for theirs.

Chairman Miller stated he was confused with correspondence received from DES concerning the North Mill Pond. He wondered what had been amended in the submitted plans. He said he would like to know because there was a lot of concern in the neighborhood. Mr. Britz thought it had to do with the restoration plan but he would check on it.

IV. ADJOURNMENT

At 6:20 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 November 18, 2009.