

**MINUTES
REGULAR MEETING
CONSERVATION COMMISSION**

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

3:30 P.M.

October 14, 2009

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

MEMBERS ABSENT:

ALSO PRESENT: Peter Britz, Environmental Planner

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I. OLD BUSINESS

- A. Approval of minutes – August 12, 2009
- Approval of minutes – August 25, 2009

Vice Chairman Horrigan asked about the minutes of the site walk and wondered if they were necessary. Mr. Britz stated that it was important to have a record of it. Vice Chairman Horrigan said that the minutes were not very precise. Vice Chairman Horrigan suggested calling it a "field report" instead of minutes. Ms. Blanchard commented that she did not have a problem with them either way but she liked the idea of site walks being documented.

Ms. Tanner made a motion to accept the minutes of August 12, 2009 as presented and the minutes of August 25, 2009 as amended. The motion was seconded by Ms. McMillan. The motion to approve the minutes passed by a unanimous (6-0) vote.

Approval of minutes – September 9, 2009

Chairman Miller pointed out that the Commission had not yet received the minutes of the September 9, 2009. They would be put on the agenda for approval at the November meeting.

II. STATE WETLAND BUREAU PERMIT APPLICATIONS

- 1. Minimum Impact Expedited Application
650 Borthwick Avenue
Fairfield Inn
Portsmouth FFI, LLC, owner

Assessor Map 234, Lot 7-6

Mr. Chris Rice of TF Moran and Mr. Mark West of West Environmental were present to speak to the application. He explained that he would discuss the project to include both the State and City applications. He stated that the Fairfield Inn was experiencing some flooding in the basement. The maintenance personnel determined the blockage and cleared a channel behind the property that was approximately 10 feet wide and deposited the material on either side of the channel. It was determined that the applicant had impacted the wetlands without a permit. The Department of Environmental Services informed the applicant to prepare a restoration plan for the wetlands. Mr. Rice explained that they planned to restore the area according to the original design. He said that after consulting with Mr. Britz and DES, it was decided to submit a restoration plan for the wetland area and then file an expedited permit to restore the swale.

Chairman Miller asked if the Conditional Use permit application was for the restoration. Mr. Rice replied no, the Conditional Use permit application was for all of it since it was within a wetland area. Chairman Miller commented that it was difficult to determine the differences between the two applications.

Mr. West explained that DES would issue a restoration order separately for the restoration of the area that was excavated, and to restore it back to the condition that it was before, re-vegetate it, stabilize it, and plant shrubs. Then they would issue a permit for the restoration of the swale. That activity would be in wetlands and would be still be in wetlands when it was done.

Mr. Wazlaw asked if the storm drains drained into the trenched area. Mr. Rice replied yes. Mr. Wazlaw asked if the restoration plan would solve the problem. Mr. Rice explained that there would be positive pitch from the bottom of the pipe to the bottom of the swale. Mr. Wazlaw asked if the pipe was in good condition. Mr. Rice said it was an older pipe but he did not see any reason to change it. Mr. Wazlaw asked if there would be a maintenance sweeping program. Mr. Rice said that the catch basins should be cleaned out annually and the swale maintained. He added that to his knowledge, he did not think that they had a sweeping program. Mr. Wazlaw thought a sweeping program would be helpful because it would keep the sand from flowing into the storm drain system.

Vice Chairman Horrigan stated that they may have a bigger problem than they realize. He said he was at the site yesterday and the water on the parking lot north of the drain flows directly into Hodgson Brook. He pointed out that it was not going out through any pipe. Mr. Rice explained that once the work was done, the water would drain from the parking lot and out into the swale. There was considerable discussion as to the flow of water from the parking lot.

Vice Chairman Horrigan asked what type of trees were in that area. Mr. Rice answered silky dogwoods. He added that the swale would have wetland seed mix.

Hearing no other discussion, Chairman Miller explained that they would vote for the applications one at a time. The first vote would be for the State Wetlands Bureau Minimum Impact Expedited application.

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

Ms. Tanner asked if they wanted to discuss parking lot maintenance. Chairman Miller suggested taking that up when they voted on the Conditional Use permit application.

The motion to recommend approval of the application to the State Wetlands Bureau passed by a unanimous (6-0) vote.

CONDITIONAL USE PERMIT APPLICATIONS

- A. 650 Borthwick Avenue
Fairfield Inn
Portsmouth FFI, LLC, owner
Assessor Map 234, Lot 7-6

Ms. Tanner made a motion to recommend approval of the application to the Planning Board with the stipulation that there be scheduled parking lot maintenance. The motion was seconded by Ms. Blanchard. Chairman Miller asked for discussion.

Chairman Miller stated that he would like to add the condition that the maintenance staff participates in a brief presentation about storm water management. He felt that the hotel has created part of this problem themselves. He said that years ago there was a lot of dirt from potted plants littered throughout the swale.

Vice Chairman Horrigan suggested the stipulation that there be some sort of natural vegetation, possibly a shrub buffer, along the boundary of the swale.

Ms. McMillan suggested that the sweeping happen at least twice a year, possibly in the spring and fall. Ms. Blanchard commented that it really needed to be followed up on to make sure that it was happening.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application to the Planning Board with the following stipulations passed by a unanimous (6-0) vote:

- 1) That scheduled parking lot maintenance, to include sweeping and catch basin clean up, happen at least twice a year (spring and fall).
- 2) That hotel maintenance staff participate in a brief presentation on stormwater management, to include swale maintenance.
- 3) That a natural shrub buffer is maintained along the edge of the swale closest to the hotel, an area currently consisting of mowed lawn.

CONDITIONAL USE PERMIT APPLICATIONS

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

Attorney Bernard Pelech, Mr. Corey Colwell of MSC, Inc., Mr. Marc Jacobs, certified wetland scientist, and Mr. J.P. Nadeau, owner of the property, were present to speak to the application.

Attorney Pelech stated this was the third or fourth time before the Commission with revised plans. He said that they have met with Mr. Rick Taintor and the principals of Witch Cove Marina and went through the proposed uses and determined the parking requirements for each use. The new plan was as a result of that meeting. The new plan showed a considerable reduction of the impact on the buffer and on the wetlands. He felt it had solved a lot of the concerns that were expressed at the last meeting. They had also reduced the number of parking spaces and had reduced some of the proposed uses to reduce the parking impact. As a result, they had been able to take as many as 20 spaces off of the southerly side of Wentworth House Road.

Attorney Pelech said that Mr. Jacob's memorandum outlined the applicant's position with regard to the criteria of the granting of a Conditional Use permit. He felt that they now met those criteria. He added that there were some attachments that were photos and letters in support of the application.

Mr. Colwell stated that there were four changes to the plan since the last time they were before the Commission. He said that on the north side of Wentworth House Road, they have moved the parking further away from the wetland. He also said that they have shifted the entrance which resulted in moving the parking further away from the stream. That has reduced the wetland impact to 5,336 square feet. The old plan showed 67% of disturbance in the buffer. With the new plan, it had been reduced to 49%. Mr. Colwell pointed out that there was a lot less buffer disturbance, there was a lot more buffer, and there was a significant reduction in wetland impacts.

Mr. Jacobs stated that he would like to go through the memo that was submitted a couple months ago. He said that the memo was geared to speak to the points that Dr. Lord raised in his October 1, 2009 memo to Mr. Britz.

Mr. Jacobs pointed out that the property continued to be used largely as it has been for the previous 50 years and the proposed project would also use the property in a very similar manner. He said that they have submitted a letter from the prior owners indicating that the land on the opposite side of the road has always been used for parking and storage of boats and trailers. The driveway on the lot has always been maintained by adding gravel or crushed stone. He added that Dr. Lord's memo stressed that water quality, flood flow alteration, and wildlife habitat are important wetland features. Mr. Jacobs said that if the project was designed as proposed, none of those attributes would be adversely affected. With regard to water quality, they will be required

to put down a thick base of sands which will act as a sand filter. It will provide a treatment mechanism for the run off from the site.

It was also pointed out that Dr. Lord did not feel there would be any adverse impacts to properties to the south of the site. He did have some concerns about run off to Sagamore Creek. Mr. Jacobs said that their storm water management design would mitigate those issues. He also said that the applicant was committed to work with the State to try to get the culvert replaced or repaired to help minimize flooding issues.

Mr. Jacobs pointed out that the project has demonstrated the commitment to try to minimize the altering of the natural vegetative state.

Finally, he stated that the proposal was the least impacting alternative while still allowing for the reasonable development of the property. Mr. Jacobs pointed out a letter from D.D. Cook Builders regarding their thoughts on the intensity of the development or lack thereof. He also pointed out photos of the driveway showing that it has been there for a very long time.

Ms. Blanchard asked if there were existing pump out capabilities on the site as part of the marina facility. If there was not, would there be. Mr. Nadeau stated that they do not allow them to do it on the property at all.

Vice Chairman Horrigan stated that his major concern was the parking lot on the south side and the impact on the stream. He appreciated that they have pulled it back about 20 feet. He said he was trying to visualize whether that will protect the existing vegetation. He wondered if some of that area would be built up. Mr. Jacobs replied that after the retaining wall was constructed he thought the area would be allowed to grow naturally. Mr. Colwell pointed out that there were two types of tree lines, a forested tree line, and a shrub thicket. He said that there was some shrub impact (2,209 sq. feet) and a small corner of forest land impact (450 sq. feet). He also explained that the wall at its highest point would be about 18 inches to 2 feet high.

Vice Chairman Horrigan asked if the gray colored area on the plan indicated the parking spaces or the paved areas as well. Mr. Colwell said that it included the paved areas.

Ms. McMillan asked if the pavement was pervious. Mr. Colwell explained that on the south side of the road, the pavement would be pervious. On the north side, the area around the proposed yacht club would be impervious because it would receive heavy truck traffic.

Ms. McMillan said that she did not understand how they could use pervious pavement in a wetland where they are only raising the area by 2 feet. Mr. Colwell explained that they did a series of tests and determined that they needed about 2-3 feet of water above the water table for the bottom of the sand layer. They would build up the area at least 3 feet. Further back in the site, the water table was down deeper and so that area would not need to be built up quite as much. He added that the finished grade would be 3 feet above the water table.

Chairman Miller stated that was nice to see that the wall was smaller in size. He expressed his concern about water flowing through the base and to the wall. He wondered how that was going

to be handled on the wall edge when the water came through that base underneath the porous asphalt. Mr. Colwell said that there was going to be a drain pipe that would flow one direction or another to prevent the water from undermining the wall. He said it has not been designed yet but he felt one drain pipe would be adequate.

Ms. Blanchard asked about the septic system on the north side of the road. She asked if it would be one big system under the parking lot. Mr. Colwell explained that the proposal was to eliminate the septic system and tie into the City sewer system. Ms. Blanchard asked when that would take place. Mr. Colwell said that the applicant would work with the City but there currently was no time frame. He added that coming before the Conservation Commission was their first step, and then they would begin talking with the Department of Public Works and Planning Board. Mr. Jacobs stated that he thought the Planning Board would make the tying into the City sewer system a condition of approval. Ms. Blanchard said that her concern was that they were moving ahead before these other conversations have happened. Mr. Colwell pointed out that they know that the site is suitable for septic. He explained that their first option would be to tie into the City sewer system. Option two, as the fall back position, would be to install a concrete chamber system.

Mr. Wazlaw commented that there were some favorable qualities to the project. He was however, concerned with the south side and the intensive use of the site. He felt the parking was the main issue. He asked if any thought had been given to eliminating one of the buildings and the 7 parking spaces associated with it on the northeast side along the property line. Mr. Colwell said yes, there was. He explained that they are required to have 184 spaces as required by the zoning ordinance. If those 7 spaces were eliminated along the property line, the only place to put them was closer to a wetland elsewhere on the site. He said that their design goal was to get the required number of spaces and maintain a maximum buffer.

Mr. Wazlaw said that if they decreased the intensive use of the site, that would decrease the number of spaces required. He felt that the hang up for the Conservation Commission was the south side of the property.

Vice Chairman Horrigan asked if there was a source of drinking water on the site. Mr. Colwell said that it would be City water.

Chairman Miller reminded the Commission that it was nice to have a look at the whole project in order to understand it but they would only be voting on the project on the south side of Wentworth House Road.

Ms. Blanchard asked if this would be a private facility or would the public be able to use it for a fee. Attorney Pelech said that it was currently private and it would remain that way. Ms. Blanchard asked the number of floating piers. Attorney Pelech answered that there were 90. He explained that that was what was driving the parking. He added that has not changed since Witch Cove has owned it.

Chairman Miller asked Mr. Britz if he wished to speak to the memo dated October 14, 2009 from Mr. Lord. Mr. Britz explained that the memo was a summary of what Mr. Lord presented at the last meeting. He said he would be writing a report.

Ms. Blanchard asked about the process and where the application would go from here if approved. Mr. Britz said it would go the Planning Board, then to Board of Adjustment, then to Site Review, Technical Advisory Committee, Traffic and Safety, and then to DES for a shoreland and wetlands permits.

Attorney Pelech stated that if the applicant was not able to tie into the City sewer system, then the project would be drastically altered and they would have to come back before the Commission.

Vice Chairman Horrigan pointed out that they did not know if all of the proposal would be approved by the land use boards. If it came out with an approval that was less than what was asked for at the moment, that would reduce the number of parking spaces. If that were the case, he would make a recommendation that any relief granted by the land use boards be used to draw back the area further from the stream.

Chairman Miller felt that the parking was the heart of the issue. He stated that they should vote on the project today one way or the other and they should be very clear as to what they want to see on the site.

Mr. Nadeau assured the Commission that he wanted nothing but to improve the property.

Vice Chairman Horrigan made a motion to recommend the Conditional Use permit to the Planning Board, based on the most recent plan submitted, September 30, 2009 plan. He further recommended that any subsequent reduction in the required parking spaces be used to pull the parking further back from the stream. He also recommended that the applicant be granted some relief on the parking requirements. He felt that was the problem for the Commission.

Ms. Tanner disagreed with the last recommendation.

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

Ms. Tanner stated that the applicant will get parking relief when he reduces the uses on the lot. Ms. McMillan said that her concerns were similar to Ms. Tanner's. She added that she has seen great improvement by moving the parking back from the stream. She said that she saw 11 parking spaces that are taking up a lot of space in the buffer. If the property was not so intensely used they would be able to put parking in other places.

Mr. Wazlaw commented that he was torn on the motion. He said that there were some favorable qualities to the project but he too was concerned with the intense use of the property and the parking spaces on the south side. He pointed out that if this project went to the Planning Board and the Planning Board granted relief on the parking, he would vote in favor of it. But he said that they did not know that so he would have to vote opposed to it based on that.

Ms. Tanner stated that it was not just the parking for her; it was also the intensity of the use on the site. She felt they should get rid of some of the uses.

Vice Chairman Horrigan said that he understood the tangle that the Commission members were in. He was in it also. He reminded the Commission that they were only making a decision on the parking. He agreed that was being driven by what they were proposing on the other side of the road but they were going to need parking. The yacht club itself required 90 parking spaces by the zoning ordinance. He continued to say that the site has been badly abused. He felt their proposal of rebuilding the yacht club and the addition of pervious parking was an improvement from a conservation standpoint by improving water quality. He thought this was as good as they were going to get. Vice Chairman Horrigan said that if they could somehow convince the Planning Board to lower the number of required parking spaces, it would be an even better plan. He felt there had to be a way for the land use boards to reduce the parking to protect the stream.

Attorney Pelech pointed out that the current uses require four or five more spaces than what this proposal requires.

Ms. McMillan stated that she did not feel they had enough information on the repair or replacement of the culvert which would have to be done with the Department of Transportation. She also did not feel like she had enough information on the retaining wall. They had no cross sections or elevation drawings.

Chairman Miller commented that he shared a lot of the same feelings as the other Commissioners. He said he was just trying to focus on the parking on the south side. After the site walk and the several meetings held so far, he had a little more faith in the system. He stated that he would vote for the motion because the applicant had made a good effort to address their concerns. He liked the new plan much better. He also said that he was going to vote in favor of it because of the disturbed nature of the site. His sense was that the parking as proposed with the porous pavement would not impact the buffer that much. He added that he felt the project would get better and better as it went through its other reviews with the various boards.

Ms. Blanchard stated that she would support the motion but not without some reservations. She pointed out that they were at the beginning of the process. She felt the applicant had addressed their concerns. There was significant improvement in protecting the stream. She said her reservation had to do with continuing conversation with the City on the sewer system. But she pointed out that the applicant had a fall back position if those talks failed.

Ms. McMillan stated that she would not be supporting the motion. She felt that they were 11 spaces away from feeling really good about the project.

Hearing no other discussion, Chairman Miller called for the vote. He asked Ms. Good to read the motion which she did.

Ms. Blanchard stated that she had an issue with recommending relief from the parking requirements. She said that she would not support the motion with that language in it. Mr. Britz

explained that the Commission would be making a recommendation to the Planning Board and not the Board of Adjustment. Ms. Blanchard said that the plan was what it was and it was not the Commission's job to tell other boards what to do.

Vice Chairman Horrigan said that he wanted to convey to the other boards that parking problems sometimes cause conservation problems. He wondered how that could be put into a motion. Ms. Tanner pointed out that they were voting on what they see in front of them. They were not voting on what they hope to see down the line. Vice Chairman Horrigan felt he should withdraw the motion because he wanted some kind of statement that stated tradeoffs.

Mr. Wazlaw stated that the Commission's function was to either approve or not approve a Conditional Use permit. He felt they should vote on this motion in order to move forward. Then Vice Chairman Horrigan could state a new motion with stipulations listed if he so wished. Vice Chairman Horrigan commented that he could withdraw his motion. He added that the difficulty he was having with it was that this might be their last look at this proposal. They did not know what was going to happen with subsequent land use boards. They might approve everything on the other side of the road and if that was the case, this was the best parking proposal they could hope for. If they approved less than what was proposed, then he would like them to modify the parking on the southerly side of the road because of the concern for the stream. He added that if the Commission votes no, then they will be throwing in the towel and washing their hands of it.

Ms. Blanchard asked Ms. Good to reread the motion which she did. Ms. Blanchard offered to amend the motion to delete the last sentence of the motion that related to parking relief. The amended motion was seconded by Mr. Wazlaw.

Chairman Miller called for the vote. The amendment to delete the last sentence that related to parking relief in the original motion passed by a vote of 5-1 with Vice Chairman Horrigan voting in opposition.

Now on the table was the motion to recommend the Conditional Use permit to the Planning Board, based on the most recent plan submitted, September 30, 2009 plan. Also recommended was that any subsequent reduction in the required parking spaces by used to pull the parking further back from the stream.

Chairman Miller called for the vote.

The motion to recommend the Conditional Use permit to the Planning Board, based on the most recent plan submitted, September 30, 2009 plan. Also recommended was that any subsequent reduction in the required parking spaces by used to pull the parking further back from the stream failed with a 3-3 vote with Chairman Miller, Vice Chairman Horrigan, and Ms. Blanchard voting in favor and Ms. McMillan, Ms. Tanner, and Mr. Wazlaw voting in opposition.

Mr. Wazlaw quoted from the Conservation Commission Rules and Procedures manual (Section H, 2.) concerning tie votes: "A motion to grant that receives a tie vote means the motion and the item fails to pass."

Mr. Nadeau made a suggestion that was not picked up by the recording device. Chairman Miller's responded by saying that he did not think the Commission could do that but recommended that they go forward to the Planning Board with the application.

III. OTHER BUSINESS

1. Granite State Minerals Restoration Plan

There was discussion concerning the most recent restoration plan submitted by Granite State Minerals.

Mr. Britz also told the Commission that they would be seeing plans for The Port Inn at their next meeting. They would be proposing a restoration along the bank.

Also, Mr. Britz said that he hoped to have Mark West come to the next meeting to give an update on PULA.

At this point in the meeting, there was discussion on the revised zoning ordinance. Mr. Britz explained that it would be going to the City Council for review and public hearings.

IV. ADJOURNMENT

At 5:35 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.