

**REGULAR MEETING
CONSERVATION COMMISSION**

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

3:30 P.M.

November 18, 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

Approval of minutes – September 9, 2009

It was moved, seconded, and passed unanimously (6-0) to approve the minutes as amended.

Approval of minutes – October 14, 2009

It was moved, seconded, and passed unanimously (6-0) to approve the minutes as amended.

II. NEW BUSINESS

A. Update of PULA (Public Undeveloped Lands Assessment) – Mark West

Mr. Mark West of West Environmental, Inc. and Ms. Gile Bye of Neatline GIS Associates, gave a detailed presentation on how the assessment was being conducted and the current progress of the PULA project.

B. Informational update on Maplewood Avenue bridge design

Mr. Duncan Mellor of Waterfront Engineering and prime consultant for the project was present to update the Commission on the progress of the Maplewood Avenue bridge design.

Chairman Miller stated that each applicant would have time to make their presentation followed by a question and answer period by the Commission. He added that once a motion was on the table, then only the Commissioners would be discussing the application. He pointed out that a

Commissioner could ask a question of the applicant if it was necessary to the discussion. He felt these procedures would help to make the process more efficient.

III. CONDITIONAL USE PERMIT APPLICATIONS

- 1. 505 US Route One Bypass
Seacoast Development Group, LLC, owner
Hodgson Restoration Project, applicant
Assessor Map 234, Lot 5

Chairman Miller and Ms. McMillan recused themselves from the discussion and vote. Chairman Miller stated that he and Ms. McMillan were members of the Hodgson Brook Advisory Committee. Vice Chairman Horrigan conducted the meeting.

Ms. Candace Dolan, coordinator for the Hodgson Brook Restoration Project, was present to represent the applicant and to speak to the application. She explained that the Port Inn was located at the corner of Coakley Road and the Route 1 Bypass. The project was part of a larger project that had been funded through a 319 grant. The objective of the project was to reduce the amount of stormwater that was currently coming off of the property and entering Hodgson Brook. They have been trying to address this in a number of ways. One was to distribute rain barrels to the residents in the area. Another was by installing rain gardens next summer to deal with the run off. The City would be putting in a linear rain garden along the side of the street to address some of the street runoff. She added that recently, the City assisted them by putting in three tree box filters.

Ms. Dolan said that what she was presenting today was a buffer expansion. She explained that the brook borders the property on two sides. They had a grant to do a buffer restoration on one segment of the brook which would involve 120 square feet of expansion. It would require bringing the buffer out 10-12 feet along the edge of the gravel parking lot.

Ms. Dolan informed the Commission that the planting plan was developed by working with Dr. Cathy Neil and the planting design was done by students in landscape design class. She said the process would involve digging up the surface that was there now and mending that with composite and additional soil to bring the PH up to an acceptable level. The front edge of the buffer restoration would be bordered with a composite filter sock to protect the edge of the buffer. She also said that a bio-retention unit would be going in and was being designed specifically to handle the run off from a part of Coakley Road and the end of the parking lot. A plan was included in the submission. She added that it has been designed by the UNH Storm Center.

Ms. Dolan stated that the remainder of the parking lot would be paved. She hoped that this project would serve as an example to show that storm water can be filtered off of a parking lot with relatively little space and cost.

Vice Chairman Horrigan asked if there were any questions for the applicant.

Ms. Tanner asked about routine maintenance. Ms. Dolan replied that it has not been written in but that it could be done. She said that there would be a maintenance plan for the bio-retention unit and the other maintenance could be added to that.

Mr. Wazlaw made a motion to recommend approval of the application to the Planning Board. Ms. Tanner asked that a stipulation be added to include parking lot maintenance along with the bio-retention unit maintenance plan. Mr. Wazlaw was agreeable to that. The motion was seconded by Ms. Blanchard.

Hearing no other discussion, Vice Chairman Horrigan called for the vote. The motion to recommend approval of the application to the Planning Board with the following stipulation passed by a unanimous (4-0) vote:

- 1) That parking lot maintenance is added to the bio-retention unit maintenance plan.

- 2. 187 Wentworth House Road
 J.P. Nadeau, owner
 Witch Cove Marina Development, LLC, applicant
 Assessor Map 201, Lots 17 & 18

Ms. McMillan stated that Attorney Pelech contacted her to confirm some comments that she had made at the October 14, 2009 Conservation Commission meeting. She wanted to say that she did not feel the conversation biased her opinion with regard to the project and wanted her statement placed on the record. Mr. J.P. Nadeau explained that Attorney Pelech just wanted clarification on the parking spaces. He added that Attorney Pelech had to leave this meeting to keep a doctor's appointment.

Mr. Corey Colwell of MSC and Mr. Marc Jacobs, certified wetland soil scientist, were present to speak to the application.

Mr. Colwell stated that they have revised the plans as a result of last month's meeting that resulted in a vote to deny the application. He felt they received good input from the Commission and that they now had a better plan.

Mr. Colwell said that in comparison to last month's plan, this plan reduces the square footage of the parking lot on the south side of Wentworth House Road by 697 square feet. It reduced the buffer zone impact by 1,638 square feet and increased the vernal pool setback from 14 feet to 40 feet. He showed the Commission on the plans how they accomplished it. The plan now moves the parking lot further away from the vernal pool and the shrub thicket. He said that the benefits were the reduction in pavement, the reduction in buffer disturbance, and the increase of the buffer from the vernal pool. Mr. Colwell felt that they now only had 10 square feet of forested impact and did not believe that any mature trees would have to be removed. Most of the impact

for the parking lot was in the mowed turf with the exception of 1,830 square feet of impact in the shrub thicket. He stated that 95% of the impact was in the mowed turf area.

Mr. Colwell explained that since the first meeting with the Commission, they have reduced wetland impact from 9,136 square feet to 3,605 square feet. They have reduced buffer zone impact by over 22,000 square feet, which was a 40% reduction since they first came before the Commission.

Mr. Colwell pointed out that they were also proposing the use of pervious pavement on the parking lot on the south side.

Mr. Jacobs brought to the attention of the Commission his memorandum which addressed the four criteria. He stated that he would highlight the major changes.

Mr. Jacobs talked at length about the table on page 1 of the memorandum which showed pre and post construction information. He pointed out that the existing square footage available for parking was 31,000 square feet. The post construction available parking was now a little more than 18,000 square feet. The building footprint had dropped from 1,022 square feet to 922 square feet. The percentage of buffer zone that was currently disturbed was 54% which would be reduced to 25% with the current proposal. The square footage of buffer zone that was currently disturbed was 30,764 square feet but would be reduced to a little more than 16,000 square feet. Wetland impact was currently at 6,130 square feet but would be reduced to 3,605 square feet.

Mr. Jacob felt the uses proposed under the plan were the same uses that the property has had for the last 50 years. He pointed out the letter in their packets from a prior owner confirming that fact. He also pointed out that the wetland impacts for this project were associated with both access and lot development. Mr. Jacobs assured the Commission that all temporary impacts had been accounted for, particularly with the retaining wall.

Mr. Jacobs felt that the pervious pavement would improve the quality of the water leaving the site and as a result, protect the stream and adjacent wetlands and downstream areas. He said there was concern that increased suspended solids and nutrient loading associated with the project would affect downstream areas and Sagamore Creek but he said that this could not occur because of the use of pervious pavement. He added that the project would be tied to the City sewer. Mr. Jacobs stated that it was also a concern that the proposal was too intensive of a use for the site. He pointed out that the proposal was less intensive than its current use for parking and boat storage. He said this was considered a minor project.

Mr. Jacobs said it was suggested that the culvert be removed and replaced with an open stream channel and associated narrow vegetative buffer. He felt that doing this would not result in the creation of any meaningful wildlife habitat or wildlife corridors.

Mr. Nadeau talked at length about all of the submitted plans. Chairman Miller asked the date of the plan they were looking at. Mr. Colwell replied November 17. Mr. Britz pointed out that this

was the first time the Commission was seeing this version of the plan. Mr. Colwell said that was correct. Chairman Miller told the Commission this was the plan that they would focus on today.

Vice Chairman Horrigan asked how many parking spaces would be on the south and north sides of Wentworth House Road. Mr. Colwell said the south side would have 50 spaces and the north side would have 134 spaces.

Ms. McMillan asked if the comments they received from the City were referencing the October 19 plan. Mr. Britz replied yes. Mr. Colwell explained that Dr. Lord, the independent wetland scientist issued comments a couple days ago and this November 17 plan addressed those comments. He pointed out that the only differences between the November 17 and the October 19 plans was a very small removal of pavement with five spaces on the south side and the new setback from the vernal pool.

Mr. Wazlaw asked what the total number of spaces for the project was. Mr. Colwell replied 184. Mr. Wazlaw asked if that has remained unchanged. Mr. Colwell replied yes and showed the Commission the location of the parking spaces that had changed since the last plan.

Mr. Britz had questions about the calculations concerning the square footage for parking. Mr. Colwell pointed out that none of area on the north side was in the calculations. He explained that the buffer zone impact that they calculated on the submitted table was only for the south side of the road. He added that there was some buffer on the north side of the road and the reason that they did not include it in the calculation was that the buffer was already disturbed buffer. He considered existing buffer zone disturbance not new buffer zone disturbance as he noted on the south side.

Chairman Miller asked if the 14 feet took into account the mowed field to the vernal pool and the 40 feet was from the edge of the pavement to the vernal pool. Mr. Colwell said that was correct. Mr. Britz still had questions about the calculations.

Ms. McMillan asked how deep the porous pavement would be. Mr. Colwell said that it would be three feet.

Ms. Tanner thought that new pervious pavement was not effective if the water table was too high. Chairman Miller said it was a matter of seasonal high water and having separation. It was his understanding that the applicant would be adding a base so they will have the distance from the seasonal high water. The water that comes through the pavement will go through the base and through the sand that acts as a filtration unit and a storage unit as it infiltrates down below.

Vice Chairman Horrigan stated that the current system was a septic system. He asked if the applicant could not secure an agreement with the City, would they put in a concrete chamber. Mr. Colwell said that was correct. Vice Chairman Horrigan asked if cars could be parked on it. Mr. Colwell replied yes.

Mr. Wazlaw questioned the need for the new proposed wood structure and associated parking spaces on the south side. He felt it was still an intense use of the lot. He thought that if the building and parking spaces were removed, it would be a great viable plan. Ms. Tanner agreed. Mr. Colwell stated that the applicant informed him that if that was a major concern of the Commission, he was amendable to removing the building from the application. Mr. Britz stated that if that were the case, the whole lot would need to be reconfigured. Mr. Wazlaw commented that the over intensive use of the site has been a concern of his from the beginning. He added that the applicant had done a great job of reducing the parking spaces from west to east on the south side. Vice Chairman Horrigan thought it would free up more parking spaces elsewhere on the site. Mr. Colwell said that the building in question had 4 ½ spaces associated with it.

Ms. Tanner stated that she took issue with that building also and removing it would decrease the intensity of the site. She added that she was more concerned about some parking spaces on the other side of the road that had not been there before. She appreciated the decreases in the impacts but it was still too intensive. Chairman Miller pointed out that it has been a challenging project because they understand the whole picture which includes both sides but they are only voting on the south side.

Mr. Nadeau said that he appreciated all of the comments and they have tried to make everyone feel comfortable with the project. He felt it was a major improvement for the site and much more environmentally friendly. The alternative was to continue using it like it is.

Mr. Jacobs commented that they have tried to provide more of a buffer from the parking on the south side. He said that the project was not going to upset the connectivity of the site.

Ms. McMillan felt they were currently stuck and pointed out that the applicant, having heard their concerns, was now willing to remove a building but that would require redesigning the parking lots. She did not feel she could vote on the project the way it was now. She also pointed out that they had comments from the City and things have changed since they received those comments. In all of the comments, the City has not favorably recommended the project.

Mr. Jacobs stated that the comments that were made on the Commission's behalf were received after the public hearing on the last plan. He said that it skipped two "generations" of plans. Mr. Britz said that was not correct. He explained that the comments were made on plans that were submitted and advertised. He said that this plan, as submitted today, was a new plan that they were asking the Commission to approve. Mr. Britz also pointed out that to ask to remove a building at this late date was a lot for the Commission to comprehend. At every meeting, they have added a new plan and it was getting to the point where it was getting confusing. Mr. Jacobs said it was important to note that Dr. Lord first set foot on the site in July and they were just getting his first report in October.

Mr. Nadeau stated that he was getting frustrated with the process to date with particular regard to Dr. Lord's reports. He did not see a problem with removing the building and making it a condition of the approval. He added that the longer they go with this the more difficult it becomes to meet everyone's requirements.

Ms. McMillan asked if they could table the application. Chairman Miller said he would rather see a motion on the table rather than to table it so that they could discuss it. Ms. Blanchard asked if a motion to table was non-debatable. Chairman Miller did not think it was non-debatable.

Ms. McMillan made a motion to table the application to the December meeting. The motion was seconded by Ms. Blanchard. Chairman Miller called for the vote.

The motion to table the application to the December meeting failed by a tie vote (3-3) with Ms. Tanner, Mr. Wazlaw, and Chairman Miller voting in opposition.

Ms. Tanner made a motion to recommend denial of a conditional use permit for the application as presented. The motion was seconded by Ms. McMillan. Chairman Miller asked for discussion.

Mr. Wazlaw asked that if the motion to deny passes, did that mean that the applicant would return to the Commission again. Mr. Britz said that the applicant would go before the Planning Board tomorrow evening for a decision. If the Planning Board denied it, then it would be the applicant's choice to come back or not. Mr. Wazlaw pointed out that the applicant has been before them three times. He reiterated that the project had a lot of positive aspects to it and he did not want that to get lost if they sent a motion to deny to the Planning Board. Ms. Tanner stated the Planning Board was going to look at the project very clearly.

Chairman Miller stated that if the motion to deny fails to pass, the motion itself fails. Then they would need another motion to move forward. If it tied, the motion fails. They would then need a new motion. Mr. Britz added that only if the motion to deny were approved would it be done.

Vice Chairman Horrigan said that he has been reflecting on this application for the last month. After reading the Planning Department memo, it said it was likely the application would need to come back in any event. He said he felt that throughout this process he has felt that he has had one hand tied behind his back because all they were looking at was a parking lot which was just a derivative part of the proposal. He thought there were some good points about this site but there were also some things that concerned him.

Chairman Miller agreed but said that they needed to step up to the plate. He explained that they are only voting on the south side but that they understand the larger project. He said that they needed to have faith in the process, the other boards, and let them do their jobs. Vice Chairman Horrigan pointed out that they have never had an application before them where they could refer to the whole proposal that was creating the need for the parking.

Chairman Miller stated that the applicant has made a strong effort each time that they have seen a plan to improve it. He thought the applicant did a good job today of addressing Dr. Lord's comments. He added that he was comfortable with it and cited the various aspects that were improvements. He said that what they had now was an uncontrolled site. He would like to see an active marina and a site that was more controlled. He did not have an issue with the intensity.

Ms. Tanner asked if they remembered what the plan looked like when they first came before the Commission. She said that they have made a big difference and their concerns have been heard.

Mr. Wazlaw asked to move the question. Ms. Good stated that a motion to deny the granting of a conditional use permit was on the table and had been seconded. The Commission was reminded that if they vote for the motion, they are voting to deny a conditional use permit. Chairman Miller called for the vote.

The motion to recommend denial of a conditional use permit for the application as presented passed by a vote of 4-2 with Chairman Miller and Mr. Wazlaw voting in opposition. Ms. Tanner, Ms. McMillan, Ms. Blanchard, and Vice Chairman Horrigan voted in favor.

- 3. 333 Borthwick Avenue
Portsmouth Regional Hospital, owner
Assessor Map 234, Lot 7-4A

IV. STATE WETLAND BUREAU PERMIT APPLICATIONS

- A. Standard Dredge and Fill Application
333 Borthwick Avenue
Portsmouth Regional Hospital, owner
Assessor Map 234, Lot 7-4A

Ms. Tanner made a motion to postpone the Conditional Use permit application and the State Wetland Bureau permit application for 333 Borthwick Avenue to the December meeting. The motion was seconded by Ms. Blanchard. The motion passed by a unanimous (6-0) vote.

V. ADJOURNMENT

At 6:15 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Liz Good
Conservation Commission Recording Secretary

These minutes were approved at the Conservation Commission meeting on December 9, 2009.