

**MINUTES
ZONING ORDINANCE WORK SESSION
CONSERVATION COMMISSION**

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

3:30 P.M.

FEBRUARY 9, 2010

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

MEMBERS ABSENT: Mary Ann Blanchard

ALSO PRESENT: Peter Britz, Environmental Planner

Chairman Miller called the meeting to order at 3:40 p.m.

Chairman Miller stated that the Commission would hear the plans for a minimum impact expedited application. Mr. Britz explained that there was a rush on the project and so he asked Mr. Duncan Mellor to come and present the project to the Commission and answer any questions they may have.

Mr. Mellor stated that the site of the project was familiar to the Commission as they had the application before them last year for the same location – the pocket park down by the waterfront on Ceres Street. He explained that when they removed the timbered cantilever deck that hung out over the seawall, they discovered that the heads of the timber piles were completely rotted. In addition, the tiebacks were severely corroded and some had been damaged during the installation of the storm water treatment units.

Mr. Mellor informed the Commission that they were able to find a 1966 plan when the seawall was built. He said it was built as a replacement for a previous wall that had collapsed into the river. Wright-Pierce was the contractor at the time and they built the wall only one stone thick so it relied on the timber piles and the tiebacks to keep it stable. Mr. Mellor explained that there was no way to dig down and repair behind the wall. He explained in detail how the reinforcement of the piles would take place. He added that the work would take place in areas that were already disturbed by the work that has already been authorized. There would be some minor temporary impacts.

Mr. Britz reiterated that the reason they were reviewing this application today was because of its crucial timeframe.

Chairman Miller asked if there were any questions for Mr. Mellor. Hearing none, he asked the Commission if they were okay with him signing the application. The Commission was in agreement that he should sign the application.

WORK SESSION ON ARTICLE 10

Chairman Miller stated that he wanted to make sure the Commission was comfortable with the changes to the new ordinance and what they would mean for the Commission with regards to their review process.

I. TIDAL WETLANDS

Mr. Britz explained that any work within the 100 foot setback would now be reviewed by the Conservation Commission. Also, the tidal area was expanded to include the North Mill Pond and the South Mill Pond.

Vice Chairman Horrigan stated that he was unclear as to what the Conservation Commission's jurisdiction was with tidal wetlands. Mr. Britz explained that it would be treated just like a wetland buffer, both fresh water and salt water, with the exception of the working waterfront. There was no setback in that area. He also pointed out that the Board of Adjustment would not be hearing about tidal setbacks anymore.

Mr. Wazlaw stated that with the tidal wetland, the Commission has to apply the Shoreland Protection Act. Chairman Miller passed out information about the Shoreland Protection Act to the Commissioners. There was considerable discussion concerning the Shoreland Protection Act.

Mr. Wazlaw asked if the criteria for approval were applied to tidal wetland buffers the same way they were applied to a conditional use permit for a wetland buffer. Mr. Britz said that was correct.

Mr. Britz pointed out that just because an applicant has received a Shoreland Protection Act approval does not mean that they are free and clear with the Conservation Commission. He added that if they got approval for the vegetation part of the application, the board would have to defer to that.

Mr. Britz stated that piers and docks are permitted in the wetlands and wetland buffers. Chairman Miller added that they still need to meet the State and Federal criteria.

IDENTIFICATION OF WETLANDS

Mr. Britz informed the Commission that the jurisdictional areas also now include vernal pools which have no minimal size limit and a 100 foot buffer zone.

Another new change to the zoning ordinance was Section 10.1015 concerning the notification to the Planning Director prior to any construction, demolition, tree cutting, vegetation removal or

other alteration in a wetland or wetland buffer. Ms. Tanner wondered if some locations would be grandfathered. Mr. Britz stated that enforcement would be tricky as there are quite a number of areas that are grandfathered.

Chairman Miller stated that with the new ordinance, a created wetland would be considered a wetland for the purposes of Article 10. He felt that was a great improvement.

III. PERMITTED USES

Mr. Britz explained that under permitted uses, approval was now needed to expand anywhere you want to when building on pilings. This means that sheds will now be required to have a conditional use permit. Chairman Miller thought this was an improvement to the ordinance.

Chairman Miller pointed out that the use of technology in the buffer (such as stormwater treatment) was no longer a permitted use.

Ms. Ennis asked for clarification concerning the 25% expansion of a home already in the buffer. Mr. Britz explained that the addition or extension could be no closer to a wetland or body of water than the existing structure.

IV. PERFORMANCE STANDARDS

Mr. Britz explained in detail the chart pertaining to vegetation management on page 140 of the zoning ordinance. He stated that an applicant would need to seek a variance in order to exceed the vegetation management requirements.

Chairman Miller pointed out that the 5,000 square feet listed in the chart should read 10,000 square feet. Mr. Britz confirmed that it was an error in the ordinance.

Mr. Britz also pointed out that chemical control of vegetation was now prohibited in a wetland or vegetated buffer strip. He also pointed out that fertilizer was not allowed in a wetland, vegetated buffer strip or limited cut area. Chairman Miller commented that this would be difficult to review and also difficult to enforce. There was considerable discussion concerning the use of chemicals.

Vice Chairman Horrigan asked what the Commission's jurisdiction was with regard to storm water standards. Mr. Britz said that storm water was dealt with in Site Review. He pointed out Section 10:1018.10 and dealt mainly with erosion and sediment control. Vice Chairman Horrigan pointed out that with the vegetation standards, the ordinance tells you what you cannot do but it does not tell you what you can do. Mr. Britz felt that was a good point and that this may be the first area that they would want to do an amendment.

Vice Chairman Horrigan pointed out that the new ordinance did not address wildlife corridors. Mr. Britz said that was probably the biggest reason they were doing the PULA study. He added that once they know where those corridors are then they can determine how to protect them.

It was pointed out that the removal of invasive species was located in Section 10.1018.23 (2).

Ms. McMillan stated that she thought the two documents cited under Stormwater Management were not the documents the Commission recommended. Chairman Miller and Mr. Britz said that they would check on that. Ms. McMillan said she would like to see the New Hampshire Stormwater Manual take the place of the first document cited in the ordinance.

Mr. Wazlaw stated that he was concerned that there might be some confusion the first few times applying the City's buffer requirements and the Shoreland Protection Act requirements. Chairman Miller agreed saying the applications that they normally review are existing situations.

V. PEASE DEVELOPMENT AUTHORITY REGULATIONS

Mr. Britz explained that the Pease Development Authority has its own wetland ordinance so the Conservation Commission does not review their applications; however, the City's Planning Board does and serves in an advisory capacity.

VI. ADJOURNMENT

At 5:00 p.m., it was moved, seconded, and passed unanimously to adjourn the work session.

Respectfully Submitted,

Liz Good
Conservation Commission Secretary

These minutes were approved at the Conservation Commission meeting on May 12, 2010.