

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

3:30 P.M.

October 13, 2010

MEMBERS PRESENT: Vice Chairman James Horrigan; Members, Allison Tanner, Brian Wazlaw, Barbara McMillan, Catherine Ennis, and Alternate Elissa Hill Stone

MEMBERS ABSENT: Chairman Steve Miller; Mary Ann Blanchard

ALSO PRESENT: Peter Britz, Environmental Planner

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I. OLD BUSINESS

A. Approval of minutes – September 8, 2010

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

Approval of minutes – October 4, 2010

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

II. STATE WETLANDS BUREAU PERMIT APPLICATIONS

1. Standard Dredge and Fill Application
120 Ridges Court
Stephen and Karin Barndollar, owners
Assessor Map 207, Lot 61

Ms. Tanner made a motion to take the application off of the table for consideration. The motion was seconded by Ms. McMillan. The motion passed by a unanimous (6-0) vote.

Mr. John Chagnon of Ambit Engineering, Marc Jacobs, certified wetland scientist, and Stephen and Karin Barndollar, owners of the property were present to speak to the application.

Mr. Chagnon stated that he was not present at last month's meeting but that it was his understanding that there were questions about the state of the shoreline and the existing rip rap. He said that authorization had been given in November of 1994 to place the rip rap in the current location and he included pictures in the packet. He felt the property was in better shape than

before the rip rap was installed and the area was re-vegetated with eel grass. He pointed out that the shore was not eroding into Little Harbor.

Mr. Chagnon explained that they would like to remove the rip rap and put in an extension to the stone wall along the shore. He said that the owners would like to do landscaping behind the wall. He added that a shed and a clothesline were part of the application as well. He also pointed out that the removal of the rip rap would necessitate the re-vegetating of the area. Mr. Jacobs prepared a wetland re-vegetation plan for the Commission to review. He ended by saying that he would like a letter of recommendation to the Department of Environmental Services for the project.

Ms. Tanner stated that one of the questions the Commission had was that there was no real evidence of more erosion so she could not see the reason for the wall. Mr. Chagnon said that he thought it was an aesthetic interest as well and explained that the Barndollars wanted to complete the wall to separate the planting area from the tidal area. He added that at a pre-application meeting with Dori Wiggin of DES, she suggested going back at least five feet from the highest observable tide line.

Vice Chairman Horrigan asked the Commission if they had questions for the presenters.

Mr. Britz stated that it was not totally clear on the plans as to what was new and what was going to be removed. Mr. Chagnon explained that the lighter colored items were existing conditions and the darker colored items were proposed conditions. He pointed out that the shed was in the tidal buffer zone. Mr. Britz asked if the labeled plants were new to the plan. Mr. Chagnon replied yes.

Mr. Barndollar said that the big question was that if the rip rap was removed, would there be erosion on the bank. He pointed out that for some reason the decision was made by DES in 1994 to allow the original rip rap so there must have been something happening at the time.

Ms. Tanner stated that the concern now was disturbing an area that did not seem to have a problem purely for aesthetic reasons. Mr. Jacobs said that they wanted to restore it to the conditions that were originally there. He also said it was not mitigation but if they could restore the salt marsh community in place of the rip rap, it would be desirable.

Ms. Tanner pointed out that there was landscaping and walkways around the boat house that was not in the original plan. Mr. Barndollar explained that the steps were already there but they put stepping stones down because the area was muddy.

Vice Chairman Horrigan stated that there were many elements to this proposal and so he wished to focus on one element at a time. He asked the Commission if they had any additional comments on the rip rap removal.

Ms. Stone asked Mr. Jacobs if they lifted some of the rip rap to see what was underneath it. Mr. Jacobs said that there was a geo-tech style fabric and substrate under it. Ms. Stone asked if soil would need to be added to aid the establishment of the plantings. Mr. Jacobs said he would

prefer not to but he would have to explore some more. He explained that the plan was to remove the stone and monitor the area through a number of tidal cycles to be sure of where the tides are. If the grades were proper then they could plant. If not, they would need to bring in additional substrates.

Vice Chairman Horrigan commented that when he looked at the 1994 pictures, he was not convinced there was a unique problem. He felt they might have been a bit hasty putting in the rip rap. He thought the erosion was from the retaining walls to the north. Mr. Jacobs said that that was an astute observation. He stated that it was not clear to him how much erosion there was at the actual salt marsh. There was no erosion now but it was clear to him that there was some erosion at an earlier time.

Ms. McMillan asked if any soil would be placed on the lawn side of the wall. Mr. Chagnon said that he did not think it was needed.

Ms. McMillan asked when they anticipated construction to begin. Mr. Barndollar said they would likely start in the spring.

Vice Chairman Horrigan asked if the Commission had any questions concerning the re-vegetation plan. There were no questions from the Commission. Vice Chairman Horrigan commented that it looked like a well designed program but cautioned that these programs do fail sometimes. Mr. Jacob said that he was aware of that but he had a good record.

Vice Chairman Horrigan asked if the Commission had any questions on the landscaping plan. He asked if the seawall was necessary for the landscaping plan. Mr. Chagnon stated that the applicant hired a professional to do it, Terrence Parker of Terra Firma. Vice Chairman Horrigan asked about the possibility of allowing rock weed or ivy to grow over the wall. Mr. Chagnon said that wall would define the landscaping space. Vice Chairman Horrigan asked what vegetation would be on the outside of the wall. Mr. Jacobs said that it would be salt marsh grass.

Vice Chairman Horrigan asked the Commission if they had any questions about the shed. He said that it was his understanding that the clothesline was removed. Mr. Barndollar confirmed that it has been taken down but they would like permission to put it back up. Mrs. Barndollar stated that the reason for the location of the clothesline was to put it out of site of the neighbor.

Vice Chairman Horrigan suggested two separate motions since the proposal had two different elements: the shed which had no connection to the wall and the landscaping and then they had the proposal for the wall, the landscaping and the rip rap removal. He said that he could foresee that some members might vote yes or no on parts of the application. That was why he was suggesting two separate motions. Ms. Ennis stated that Vice Chairman Horrigan's suggestion made sense.

Ms. Tanner made a motion to recommend approval of the wall, landscaping, and rip rap removal. The motion was seconded Mr. Wazlaw. Vice Chairman Horrigan asked for discussion.

Ms. Tanner stated that she did not see any erosion and did not see a reason to move anything around which could cause more problems. She felt that the landscaping plan was good but she did not feel good about the wall.

Ms. McMillan said that she thought the landscaping plan was great and would not cause any problems. She added that everyone has admitted that the wall was purely aesthetic and that there was no water quality or environmental reason to put the wall in. Removing the rip rap had some risks associated with it which might cause some erosion. Ms. McMillan also pointed out that if everyone put in stone walls along that shore land, it would have ramifications.

Ms. Ennis echoed Ms. Tanner's and Ms. McMillan's comments and added that she thought the re-vegetation program was very thorough. She had concerns about disrupting something that was not broken.

Ms. Stone agreed with everyone's comments. She said that re-vegetating where the rip rap is was high risk because they do not know what is there now and they do not know what they will need to add to stabilize it for as long as the vegetation needs to get going.

Mr. Wazlaw agreed that there were a variety of elements associated with the proposal. He said that the wall was a problem. He felt the re-vegetation plan was a good one.

Vice Chairman Horrigan also shared the comments of the Commission. He agreed that the re-vegetation plan looked good and he said he was a fan of removing rip rap whenever possible. He felt the landscaping plan was nicely done but the wall would change the whole view of Little Harbor and he was not convinced that it would solve the tidal problem. In fact, it may just shift it to other properties.

Ms. Ennis amended Ms. Tanner's motion to remove the landscaping plan from motion. The amended motion was seconded by Mr. Wazlaw. The amended motion passed by a unanimous vote. There was no discussion.

Vice Chairman Horrigan informed the Commission that they would be voting on the amended motion. He called for the vote.

The motion to remove the landscaping plan from the original motion passed by a unanimous (6-0) vote.

Vice Chairman Horrigan explained that they would now vote on the original motion with the landscaping plan removed from it. He called for the vote.

The motion to recommend approval of the wall and the removal of rip rap failed to pass by a unanimous (0-6) vote.

Chairman Horrigan said that he would now entertain a motion on the shed. He added that he thought the shed would come before the Commission again as a conditional use request.

Ms. Tanner made a motion to recommend approval of the shed. The motion was seconded by Ms. McMillan. Vice Chairman Horrigan asked for discussion.

Ms. Tanner stated that she did not agree with it because of its location. Vice Chairman Horrigan suggested recommending to the State that another location be considered. Ms. Tanner pointed out that it was not up to the Commission to find another location. She felt the shed needed to be out of the buffer. Vice Chairman Horrigan said that they could recommend that it be placed outside of the buffer. Mr. Chagnon commented that there was not much property outside of the buffer. Vice Chairman Horrigan thought there was some space. Mr. Chagnon said that it did not give the applicant many options. Vice Chairman Horrigan reminded Mr. Chagnon that they were in the deliberation stage.

Vice Chairman Horrigan said that it bothered him that they were asked to approve a shed that has already been installed. He pointed out that they have had a number of shed proposals as of late that the Commission has approved and this shed seemed to fit those same features. He was feeling ambivalent about this application because of the after the fact nature of it but it was something that they have approved on other properties.

Mr. Wazlaw stated that he did not have a problem with the shed. He said that they have had other cases where the sheds have been in the wetland buffer. They have been raised up off of the ground but they have not had any walkways.

Ms. Ennis said that she shared Vice Chairman's ambivalent feelings as well. She pointed out that it does not appear that there are a lot of options for the shed.

Mr. Britz asked if the motion included the clothesline. Vice Chairman Horrigan clarified that the motion included the shed and the clothesline.

Hearing no other discussion, Vice Chairman Horrigan called for the vote. The motion to recommend approval of the shed and the clothesline passed by a vote of 4-2 with Vice Chairman Horrigan, Mr. Wazlaw, Ms. Ennis, and Ms. Stone voting in favor and Ms. McMillan and Ms. Tanner voting in opposition.

III. CONDITIONAL USE PERMIT APPLICATIONS

- A. 774 Middle Street, Unit #4
Alison and Christopher Pyott, owners
Assessor Map 153, Lot 9

Mr. John Chagnon of Ambit Engineering and Mr. Chris Pyott, owner of the property were present to speak to the application. Mr. Chagnon stated that they were seeking a conditional use permit. He said that the packet included an existing conditions plan and a proposed plan with details. He explained that the Pyotts owned Unit #4 at 774 Middle Street which was located in the back of lot. They Pyotts would like to put on an addition on to the back of the structure. Mr. Chagnon pointed out that there was a wetland that was located off of the property but it was over

10,900 square feet in size and part of the proposed deck and stairs would be within the buffer zone.

Mr. Chagnon explained that the applicant met with the Planning staff recently and it was advised that they mitigate the project so they were proposing a rain garden to handle run off from the parking area. He added that they would install a curb to direct the water from the parking area into the rain garden. They would also install gutters. There would also be a retaining wall and re-grading work around the basement entrance.

Ms. Tanner asked how they would deal with the invasive Japanese knotweed. Mr. Pyott explained that the rain garden would have a membrane underneath it which should prevent the knotweed from coming through. Mr. Chagnon said that there was a lot of knotweed between the rain garden and the house but that they would stay on top of it. Considerable discussion ensued about how to control its spreading. Vice Chairman Horrigan pointed out that someone has been cutting it down and dumping the knotweed adjacent to the property. Mr. Pyott said that he has had quite an education on knotweed recently and would do what he could to stay on top of it.

Mr. Wazlaw asked if they had thought of reconfiguring the deck. Mr. Pyott explained that they have wrestled with the design for about seven years and have had three different design architects. He felt this was the only option for the deck and pointed out that they have made it smaller than the existing deck.

Ms. McMillan noticed that there were some established trees behind a shed on the property. She asked if they would need to be cut down to make way for the rain garden. Mr. Pyott explained that there was a bit of open space behind the shed so he did not think they would have to take down too much vegetation. Ms. McMillan commented that removing large trees would defeat the whole purpose of the rain garden. Mr. Pyott assured her that he would like to keep them as well. He said that he enjoys that natural area in his backyard.

Ms. McMillan questioned whether the drainage from the driveway would be advantageous. She said the water seemed to sheet flow off. Mr. Britz said that he suggested the drainage to the rain garden. Mr. Pyott thought that it would have a positive impact. Mr. Britz did not think it would cause any new erosion but said that the goal was to treat the stormwater. Vice Chairman Horrigan commented that the rain garden would filter the pollutants coming off of the driveway better than the existing conditions. Ms. McMillan stated that the only reason she was questioning it was because it was a BMP in the buffer.

Vice Chairman Horrigan asked if the proposed deck would be slotted. Mr. Pyott replied yes and added that it would have gravel underneath it.

Vice Chairman Horrigan asked if the house had been built on fill. He did not think the contour looked natural. Mr. Pyott stated that he was not sure. He said that he has seen old pictures of the site which showed an old farmhouse on the site with an old barn. The old barn was turned into the Pyott's carriage house in 1986. Vice Chairman Horrigan explained that it did have some bearing on the 100 foot buffer zone.

Ms. McMillan asked how the stormwater management plan would work when the property changes hands. Mr. Britz said that it would be part of site review. There would be a condition to keep a maintenance log. If the property sold, the log would go to the new owner. Mr. Chagnon pointed out that it was part of the common space so he thought it would be a function of the condominium association. He said that it was talked about at the Technical Advisory Committee meeting and TAC felt that it was not necessary for them to report every year since it was not a large site.

Hearing no other questions, Vice Chairman Horrigan asked for a motion.

Ms. Tanner made a motion to recommend approval of the application to the Planning Board. The motion was seconded by Ms. Ennis. Vice Chairman Horrigan asked for discussion.

Ms. Tanner stated that she thought it was a reasonable plan as long as they followed through with their plan as presented. Vice Chairman Horrigan asked if they wanted to make a stipulation regarding the knotweed. Ms. Tanner said that there was not much they could do about it.

Ms. McMillan asked about the cutting down of larger trees. She asked if they wanted to specify a specific caliper. Vice Chairman Horrigan thought there might only be one medium size maple tree that would need to be removed. He added that given the condition of the wetland, if a mature tree had to come down, it was still an improvement. He felt that this was a very battered and abused site. He pointed out that the wetland was a dumping ground right now.

Vice Chairman Horrigan stated that he liked the design of the rain garden and he also thought that the maintenance plan was one of the best ones they have seen.

Ms. Ennis had a question about the condominium association and the maintenance plan and how the two interacted with each other. Mr. Britz explained that the condominium association was the owner of the property. Mr. Pyott was an owner of one of the properties within the condominium association. So if they do not do what they are told with regards to the maintenance plan, then if the City wanted to sue them, they would have to sue the association and not Mr. Pyott. Mr. Pyott added that all common areas are taken care of by the association through the collection of condominium fees.

Vice Chairman Horrigan recommended one condition to the motion. He suggested recommending that all of the existing trash and dumped vegetation abutting the condominium property was removed as part of the project.

Ms. Tanner amended her motion to include the following stipulation: that all of the existing trash and dumped vegetation abutting the condominium property was removed as part of the project. The motion was seconded by Ms. Ennis.

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 (6-0) vote:

- 1) That all of the existing trash and dumped vegetation abutting the condominium property was removed as part of the project.

B. 3612 Lafayette Road
 Regeneration Park, LLC, owner
 Assessor Map 297, Lot 3

Mr. Eric Weinrieb of Altus Engineering, Mr. Jason Bailey, and Ms. Greta Finch of TMS Architects were present to speak to the application. Mr. Weinrieb stated that they received conditional use approval for a change of use from an auto dealership to a multi-use retail and storage facility. Since that approval, the owner would now like to put a restaurant in the front of the building. In order to do that, they had to reconfigure the site for additional parking. He highlighted various areas on the plan where changes would take place. Mr. Weinrieb pointed out that TAC placed a stipulation on them that they would plant native grasses in one area. He showed that area on the plan.

Mr. Weinrieb introduced Mr. Jason Bailey and Ms. Greta Finch of TMS Architects and offered to answer questions.

Ms. Tanner asked if they would consider planting wildflowers instead of the native grasses since it was an area that they did not plan to mow. Mr. Weinrieb said that it was an area that should be promoted to grow up naturally.

Ms. McMillan asked about curbing. Mr. Weinrieb explained that there was no curbing on the site. He said that everything sheet flowed off of the site.

Ms. Stone asked if there would be vegetation in the drip area. Mr. Weinrieb said that there would be a drip strip which would be stone and in front of that there would be a thin landscape area.

Vice Chairman Horrigan asked if these were the only changes that have been made since it was last before the Commission. Mr. Weinrieb said that there were some changes to the parking but it was outside the wetland buffer. The changes were made because of the proposed restaurant use.

Hearing no other questions, Vice Chairman Horrigan asked for a motion. Ms. Tanner made a motion to recommend approval of the application to the Planning Board. The motion was seconded by Ms. Ennis. There was no additional discussion.

The motion to recommend approval of the application to the Planning Board passed by a unanimous (6-0) vote.

IV. OTHER BUSINESS

The Commission expressed interest in acquiring a small island in Sagamore Creek and directed Mr. Britz to inform the City Manager of their interest in negotiating the acquisition.

IV. ADJOURNMENT

At 5:20 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 10, 2010.