

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

3:30 P.M.

JANUARY 11, 2012

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman Mary Ann Blanchard, Barbara McMillan, Elissa Hill Stone, Peter Vandermark, Rich DiPentima

MEMBERS ABSENT: Allison Tanner

ALSO PRESENT: Peter Britz, Environmental Planner

Chairman Miller called the meeting to order at 3:30 p.m. He welcomed new member Rich DiPentima to his first meeting as a Conservation Commission member.

Chairman Miller stated that he would be moving the election of officers to the end of the meeting.

II. OLD BUSINESS

1. Approval of minutes – December 14, 2011

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

Chairman Miller again took the agenda out of order and asked Attorney Peter Loughlin to speak to the Commission on the status of the draft tree ordinance.

IV. OTHER BUSINESS

1. Draft tree ordinance

Attorney Peter Loughlin stated that they were in the process of updating the tree ordinance and would like the Conservation Commission to offer their comments. He gave some history as to how tree removal has been handled over the years. Currently, the Trees and Greenery Committee determines whether a tree should be removed. He pointed out that the red notations on the draft copy were his recommendations.

Vice Chairman Blanchard stated that after hearing Attorney Loughlin's remarks, it seemed that the committee was functioning well. Attorney Loughlin agreed.

Mr. Vandermark asked if this ordinance spelled out the process of the meetings and of the appeal process. He asked how someone would go about having a tree reviewed. Attorney Loughlin explained that when they receive a request; the request is published in the paper. He said there was no notification requirement; however, the tree is clearly marked. He added that neighbors tend to take an interest in the markers so he felt the system worked.

Mr. DiPentima asked about the interface between the committee and the public utility companies. Attorney Loughlin said that for the removal of a tree, the utility companies would come to the committee. For tree trimming, they would go to Everett Kerns at the Department of Public Works.

Ms. Stone asked if the ordinance would cover shrubs as well as trees. She found the language in the draft ordinance to be vague and undefined. Attorney Loughlin explained that the committee has very little to do with shrubs. Ms. Stone felt that the ordinance should read "trees." Attorney Loughlin added that the committee has been very careful to not overstep the boundaries of site review.

Vice Chairman Blanchard asked if there was intent to create a new position of Tree Warden. She did not see a definition for the tree warden or what their qualifications should be. Attorney Loughlin agreed that the ordinance did not spell that out. He said that it should be someone interested in trees and someone who would defend them.

Mr. Vandermark commented on the word "corporation" in Section 8.302 (C).

Chairman Miller stated that he was happy to see the tree ordinance and said that it served an important and valuable function. He liked the Purpose and Tree Warden sections. He added that he appreciated the committee taking this on.

Mr. Britz asked if there could be a provision inserted that encouraged the planting of only native trees. Attorney Loughlin said that the committee would need to talk about that. He said that they have had a good deal of success with the London Plane tree because they can withstand any condition. He pointed out that there was one planted by Allie's Jewelers. Mr. Britz said that maybe they should use the term "non invasives."

Mr. Britz said that it was not clear in the ordinance as to whether all of the members were voting members. He thought they should set the number of voting members.

Chairman Miller commented that the words "sprayed" and "preserved" were removed from the document. He wondered if spraying would not be covered under this ordinance. Attorney Loughlin said that the committee was not sure if they wanted to get into regulating spraying. He pointed out that Public Works takes care of that. Chairman Miller said that if a homeowner was

to spray a public tree, it would be helpful to know what was being applied and if it was being applied correctly.

Ms. McMillan asked what would happen if someone cut down a public tree. Attorney Loughlin said they would have to replace it. He told the Commission that some trees were cut down in front of Ocean State Job Lots without permission and the owners were fined \$6,000.00. He felt that there was a weakness in the site review process about not being able to cut down trees in the right of way.

Chairman Miller thanked Attorney Loughlin for his willingness to come and speak to the Commission about the tree ordinance.

III. CONDITIONAL USE PERMITS

- A. Off Spinney Road
 Lynn J. Sanderson and Frances T. Sanderson Revocable Trusts, owner
 Paul G. Sanderson, trustee
 Maps 167 & 170, Lots 5 & 24

Mr. Eric Weinrieb and Mr. Eric Saari of Altus Engineering and Mr. Paul Sanderson, trustee of the property were present to speak to the application.

Mr. Weinrieb stated that they were proposing a simple nine lot subdivision of the 12.74 acre parcel. The parcel has been in the Sanderson family since the 1840's. He said that the project required a conditional use permit, multiple lot line adjustments, and subdivision approval. Mr. Weinrieb explained that they met with the neighbors to discuss the project and offered the neighbors the option of purchasing small portions of land to increase their lot sizes. Many neighbors have accepted and the lot line adjustments were shown as hatch marks on the submitted plans. He also explained that part of the land was used by Peter Loughlin for a tree farm. The intent was to allow Mr. Loughlin to continue to use that area for that purpose.

At this point, Mr. Weinrieb guided the Commission through the submitted plans showing the three lots with frontage on Spinney Road, the two lots with frontage on Middle Road and the proposed road off of Spinney Road with the remaining four lots.

Mr. Weinrieb explained that at the TAC meeting they proposed a 24 foot wide roadway with closed drainage on one side, vertical granite curb on the Middle Road side of the road and open drainage on the other side to promote better drainage. He said there was concern from DPW with that proposal so they were going to redesign it to have closed drainage for the entire road. Mr. Weinrieb did not think it made a lot of sense but if that was what they wanted, they would provide it.

Mr. Weinrieb stated that stormwater on the site would be handled by three stormwater management areas. He pointed out on the map the three areas and explained that they would each have a rain garden. He also said that a culvert would be constructed out to Sewall Road.

Mr. Weinrieb informed the Commission that the total buffer area was three acres with 1.04 acres of "no cut" zone, .75 acres of limited cut area and 1.22 acres of no cut zone between the 50-100 foot buffer. He added that they were proposing no disturbance of land between 0-25 feet in the buffer, 2,800 square feet of impact in the 50 foot buffer, and 5,700 square feet of impact in the 100 foot buffer.

Other alternatives were discussed for the land including a PUD. Mr. Weinrieb said that they explored many options but this was the scenario that best worked for the owners and for maintaining the harmony of the neighborhood.

Mr. Weinrieb addressed the criteria to be met for a conditional use permit. He stated that the land was very suitable for residential use. It was harmonious with the neighborhood, had plenty of upland soils, had utilities available and the road infrastructure was in place. He felt the impact was small and reasonable. There was no alternative location outside of the wetland buffer that was feasible. They looked at many scenarios but believed that this proposal was the best alternative. Mr. Weinrieb stated that there would be no adverse impact of the values and functions of the wetland and added that they could submit a report to confirm that. He added that they would not be clearing anything beyond what was proposed and would put "no cut" restrictions into the deeds; however, the tree farm would be allowed to continue. They were also proposing mitigation by clearing out some existing yard waste and seeding the area with conservation mix.

Mr. Weinrieb concluded the criteria requirements by saying that they could probably do something that would have less of an impact to the buffer but that they had to design the project with a delicate balance between the abutters, the wetlands, and minimizing impacts.

Mr. Weinrieb stated that they exceeded the City's design standards by designing the project to meet and exceed the 100 year storm event. He said that they did this because when Fells Road and Thaxter Road were developed, the area was flooding out. This design took that situation into account.

Mr. Weinrieb informed the Commission that they have not done a tree inventory yet but that they were only impacting 2,800 square feet. He explained that they would have to cut some trees but would re-grade the area. He showed the Commission on the displayed map where it would take place. With that, he concluded his presentation.

Ms. Stone stated that she thought a wetlands functions and values report should be provided. She pointed out that there would be a lot of water going into the wetland and it was important to determine what would happen in the neighborhood as a result. Mr. Saari commented that the system was designed to detain the peak rate to minimize flooding. He agreed that there would be more volume but it was stretched out over a longer time frame so that it was not going all at one time into one place.

Chairman Miller expressed curiosity as to how the rain garden would work on a piece of land that was going to be owned by the abutter. Mr. Weinrieb said that there would be an easement and the City would maintain it.

Chairman Miller also wondered about the need for the rain garden where they were proposing to cut trees. He pointed out that the Planning Department changed the ordinance to not allow the buffer to be used for storm water management. He added that if you had a functional buffer, why would it be removed to put in a manmade structure to replace the buffer function. Mr. Weinrieb explained that the rain garden would be providing treatment as well as detention which the buffer would not provide. In addition, the soils in that area were not exceptional. Chairman Miller said that he understood the sensitivity of timing. Mr. Saari explained that it was all about timing in this case. He said that the water peaks very fast and gets to the wetlands quickly and is then choked by the existing culvert on Fells Road. Mr. Weinrieb said that they did not want to take the risk of having that water level coming up any higher in that area and creating adverse impacts to the properties.

Vice Chairman Blanchard stated that she was concerned with the fact that Mark West described it as being an isolated wetland. She was concerned with the drainage because of the nature of the slope and making the situation worse. She was not comfortable with the level of detail put in the report. Mr. Weinrieb said that they could look at it further. He pointed out that the wetland system has been receiving untreated flow from all of the houses. Their plan was to provide treatment and capture some of the run off from the Middle Road houses.

Ms. McMillan stated that there was not enough information as to where the houses and driveways would be located. Mr. Saari said that each house would have a footprint of over 2,000 square feet with the exception of Lot 4 which would have 1,640 square feet. The average driveway would be about a 100 feet in length.

Mr. Vandermark asked how the no cut zone would be enforced on Lots 4 and 5. Mr. Weinrieb said there would be a deed restriction and also neighbors were pretty vigilant about letting the City know if something was going on.

Ms. Stone thought there needed to be some sort of hydraulic analysis. Mr. Saari said that they did their own analysis and they met all of the storms up to the 100 year mark. Ms. Stone asked if the discharge from the wetland went directly into a storm water drain. Mr. Weinrieb replied yes.

Ms. McMillan asked if the detention area could be moved back into two of the lots. Mr. Weinrieb said that if they did that, they would still need the permit and they would be looking at a different design scenario in order to get the nine lots; however, he said he did see some merit in that alternative.

Chairman Miller asked if the detention area had to be that shape or could it be elongated. Mr. Saari said that they were following the contour. There was considerable discussion about alternatives.

Ms. McMillan expressed her concern with the stipulation of curbing the other side of the proposed road. Mr. Britz thought the reason it was suggested had to do with plowing. Mr. Sanderson interjected and said that one of the criteria that he gave Mr. Weinrieb when designing the project was to try to get the best possible environmental outcome. To do that was to use the smallest amount of impervious surface which was why he proposed the road the way he did. He told the Commission that to the extent that this was a concern of the Commission, he said he would appreciate them expressing that concern to the remainder of the City. Mr. Saari said that they would like to keep the open drainage on the one side.

Mr. Don Green, an abutter, stated that they looked for drainage solutions about ten years ago. They had studies stating that porous surfaces were a good fix. He pointed out that the area proposed for the road did not have very good soil and so he felt this was an opportunity to improve it with porous pavement and felt it was appropriate.

Vice Chairman Blanchard asked Mr. Britz that if the Commission wanted a complete wetland report, should the Commission postpone the application until they received it. Mr. Britz suggested postponing the recommendation to the Planning Board and asking the applicant to submit what the Commission wants. He said the Planning Board could then decide on whether they will act on it, act on part of it, or postpone the entire application until they get a Conservation Commission recommendation.

Mr. Steven Moore, an abutter at 19 Sewall Road commented that it seemed like a nice project. He pointed out that drainage was obviously a problem. He hoped that the proposal would work but he wondered what the plan was if it did not.

Vice Chairman Blanchard made a motion to postpone the application to the next meeting so that a complete wetland report, with regard to how the project would impact the large wetland complex adjacent to it. The motion was seconded by Ms. McMillan.

Ms. McMillan added that she would like the applicant to explore the option of moving the rain garden away from the trees and closer to the lots.

Mr. Britz asked the applicant to provide a complete drainage report including a complete functions and values assessment. He added that details on the restoration and mitigation plans would be needed also.

Chairman Miller asked for a written report outlining how the criteria for a conditional use permit would be met.

Mr. Weinrieb asked the Commission look further into providing a recommendation on open versus closed drainage systems.

Vice Chairman Blanchard thanked everyone and complemented the applicant for trying to work with a very difficult situation. She said everyone has been blessed to have that open space for a long time and the Sandersons have been good stewards. She said that now they have a different

set of challenges. She thought the plan was an improvement in a lot of ways. She added that more information can only buttress the idea.

At this point, Chairman Miller called for the vote. The motion to recommend a postponement of the application to the Planning Board for the following additional information passed by a unanimous (6-0) vote:

- 1) That a complete wetlands report is submitted, including a functions and values assessment, showing how the project will impact the large on-site wetlands system adjacent to it.
- 2) That a complete drainage report is submitted.
- 3) That information and plans for the restoration area and the mitigation area are submitted.
- 4) That a report addressing the criteria to be met for a conditional use permit is submitted.
- 5) That an alternative location for rain garden #2 is explored.

I. NEW BUSINESS

A. Election of officers – Chairman, Vice Chairman

Ms. Stone made a motion to re-elect Chairman Miller and Vice Chairman Mary Ann Blanchard to their respective positions for 2012. The motion was seconded by Ms. McMillan. The motion to re-elect Chairman Miller and Vice Chairman Blanchard passed by a unanimous (6-0) vote.

In other business, Vice Chairman Blanchard asked if discussion on the tree ordinance could be added to next month’s agenda. Chairman Miller agreed. Mr. Vandermark asked if a member of the Conservation Commission served on the Trees and Greenery Committee. Chairman Miller replied no. Vice Chairman Blanchard commented that she was pleased to see that A.J. Dupere, State Forester was on the committee. She said that was a level of expertise that was not duplicated in the proposed ordinance. Vice Chairman Blanchard suggested that the Commission think about how things are really working and whether they need to create a whole statutory piece. She commented that she was concerned that there was no criteria for the expertise of the tree warden. Chairman Miller added that Ms. Tanner was not in attendance today and he felt she would like to be a part of the discussion as well.

In another piece of business, Mr. Britz stated that there were a flurry of bills before the State legislature but House Bill 1515 was the one he wanted to bring to the Commission’s attention. He explained that this bill would repeal the ability of the funds collected for the current use penalty to go into a conservation fund. He felt that for the Portsmouth community it would be significant because he did not see a lot of current use penalties coming up. He pointed out that the funds have been used for a number of value projects. He thought it might make sense to have

the Commission write a letter to the City Manager stating that they did not support this bill. Vice Chairman Blanchard said that she would like to include the other three bills as well.

Ms. Stone made a motion to have Chairman Miller prepare a letter to the City Manager in opposition of House Bill 1515 as well as the three other bills currently being considered. The motion was seconded by Ms. McMillan. The motion passed by a unanimous (6-0) vote

There was discussion concerning various grants that the Planning Department was applying for.

IV. ADJOURNMENT

At 5:25 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 February 8, 2012.