

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

3:30 P.M.

DECEMBER 11, 2013

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman Mary Ann Blanchard;
Members Allison Tanner, Barbara McMillan; Elissa Hill Stone,
Peter Vandermark, Alternates Shelley Saunders,

MEMBERS ABSENT: Paul Ambrose

ALSO PRESENT: Peter Britz, Environmental Planner

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I. CONDITIONAL USE PERMIT APPLICATIONS (OLD BUSINESS)

1. Off Spinney Road and Middle Road
Frances T. Sanderson Revocable Trust and Lynn J. Sanderson Revocable Trust, owners
Spinney Road, ~~Request to Postpone~~
Assessor Map 167 & 170, Lots 5 & 24
(This item was postponed at the November 13, 2013 meeting to the December 11, 2013 meeting.)

Ms. Tanner made a motion to postpone the application as presented to the January 8, 2014 meeting. Ms. Saunders seconded the motion.

The motion to postpone the application passed by a unanimous (7-0) vote.

2. Between Islington Street and Borthwick Avenue
Borthwick Forest, LLC, owner
Assessor Map 233, Lots 223 & 13
Assessor Map 241, Lot 25
(This item was postponed at the November 13, 2013 meeting to the December 11, 2013 meeting.)

Attorney Sharon Somers of Donahue, Tucker, and Ciandella Law Offices, Jim Gove of Gove Environmental Services, Mark West of West Environmental Services, and Patrick Crimmins and Gregg Mikolaities from Tighe and Bond were present to speak to the application.

Attorney Somers stated that she would recap what had been done. On October 29, they made a presentation to the Commission, and at that meeting a staff report was issued and it was recommended that an independent wildlife scientist be hired to examine the wildlife corridors

and impact. It was agreed, and there was an amended notice of decision issued, to postpone the matter in order to 1) assess the site to determine the current wildlife usage and impacts for the proposed project, 2) to hire a hydrologic specialist to assess the site and determine how the water poured across the site, where it went, and the overall impact of the roadway on the hydrology of the site, and 3) to meet with DPW to discuss acceptable means for wildlife passage. Once that took place, the Planning Department Director hired RCCD Conservation District (RCCD) to perform some of the tests. Mr. West was hired to do the wildlife study, but he wasn't able to complete it by the November meeting, so they postponed it and met with him on site to identify the wetland boundaries and the wildlife. Mr. West's findings were in the December 5 report, which Mr. Gove would speak to.

With regard to the hydrology study, Attorney Somers stated that Tighe and Bond prepared an aerial map that showed the water flow direction on the site and after further discussion had also prepared a drainage analysis. That analysis was reviewed by Mr. Ed Minnick of RCCD. The meeting with DPW never took place because the plans were revised to incorporate sloped curbing, so there was no need for the discussion since no waivers were required. With the RCCD review complete, Attorney Somers believed that all pending matters and questions raised by the Commission had been identified and addressed, and that the Commission should be able to make a decision. Attorney Somers stated that she was aware that the RCCD review for the drainage analysis raised questions about some of their conclusions, but she did not believe they were fatal to the Commission's ability to make comments, and going forward to the Planning Board that day would enable the process to go forward. Their intention was to address the issues with Mr. Minnick and try to resolve any differences of opinion in terms of methodology or substance or, failing that, come up with an engineering solution. Attorney Somers also wanted to note that the project would require alteration terrain permission from the State and that the AOT process would be the final arbiter of any differences in opinion in terms of the peer review and their work. The Planning Board would review the drainage analysis as well as the City Staff and others, so there would be a lot of eyes on the issues raised by Mr. Minnick.

Attorney Somers said that, at the October meeting, they had stated that they had no definite plans as to what would go on the site, but it would be something permitted by the zoning code. They did not even know if they would remain the owners of the property. Attorney Somers said she knew that it was unusual for the Commission to be presented with a simple subdivision instead of a full-blown development proposal. However, the context in which the applicant was presenting it was that the same property and same owner had been before the Commission on a few occasions, and one of the owner's projects had required a zoning change, which was defeated, so the owners had done various other things to see what they wanted to do and had decided that they would need access to the site. The logical conclusion was to start with the subdivision approval to create the access, and once they received it, they or the future owners would come back with definitive plans for the site. Attorney Somers stated that it was in their and the Commission's best interests to design and construct something to go on the site that would avoid additional impact to the buffer and wetland. They did not want to have to undergo additional regulatory processes before the Commission and would do everything in their power to avoid it. They understood, however, that if they tried to design something that did not go into the buffer and consequently had to move it by a foot or two, they knew they would have to come back before the Board, so she assured the Commission that they did not think their appearance

that day was the last stop. They also did not think they would have to come back once the site plans were developed. They would be amenable to the Commission's comments and were prepared to go to the Planning Board to be subject to comments similar to those the Commission had made with the 299 Vaughan Street project, where they had stated that favorable recommendation would not constitute a precedent for any future application. Attorney Somers stated they would be very comfortable with those terms. She hoped that the Commission would make a favorable recommendation to the Planning Board for the Conditional Use Permit subject to the understanding that the issues identified by Mr. Minnick would need to be addressed as part of the Planning Board and alteration terrain permit and subject to their work with Mr. Minnick.

Mr. Crimmins stated to the Board that he would summarize the site revisions. The road was still designed to City standards and was 32' wide with a 60' right-of-way, with travel lanes and shoulders to allow bicycle use. One big change they had made was to add a vertical granite curb that lined the entire street and sidewalk, but they had revised it so that the entire street was now lined with a sloped granite curb to alleviate concerns about wildlife crossing. They had also set the sidewalk back with a 6' vegetative strip so that they could install tree box filters in locations between the road and the sidewalk. They also did a detailed grading and drainage analysis, which he would next address.

They had previously provided an overall plan for drainage but they now had a far more detailed plan. A large gravel wetland was previously called for in a location that caused the Commission some concern, so they had tried to redesign it to come up with less of a footprint and less impact. They came up with a series of tree box filters and three rain gardens that would collect and treat the storm water runoff. Those practices were already in use by the City and they wanted to be consistent. Mr. Crimmins showed the Board some new sketches and the changes on the plan and reiterated a few details. He mentioned that one change in the wetland expanded the buffer out with a small increase in buffer impact and a temporary buffer impact. Due to the small wetland, they had previously proposed 5,000 square feet of temporary impact but were now proposing 6,545 square feet of temporary impact. It was the same impact and roadway grading and drainage. They had previously noted a 100-foot net decrease in the buffer impact, as a result of moving the existing pavement 800 square feet. They were now proposing a 425 square-foot net impact. With respect to restoration, they would remove the entire WBBX road which currently sheeted directly in the wetland with no treatment provided, which was about 17,000 square feet of impervious area. The revised design with the curbing, tree box filters and rain gardens would collect and treat all the storm water runoff generated by the impervious, so it was an overall improvement on the roadway granite system from what currently existed on the WBBX road.

Relating to hydrology, Mr. Crimmins explained how the water would drain from the site. Due to the Commission's concern about where the water would go, they had walked the site and evaluated it. Mr. Crimmins referenced the drawings and pointed out runoff sections and discussed them. He stated that they had provided a detailed drainage analysis and had designed the site to show the drainage flow patterns and had used rain gardens, tree box filters and infiltration to improve the site. They would reduce the runoff and provide required treatment through the rain gardens and tree box filters. They would also provide infiltration through trenches connected between the tree box filters. Mr. Crimmins stated that he had received the peer review the day before and had not had the chance to review all of it. It was a RCCD

engineer's difference of opinion, and Mr. Crimmins and his team respectfully disagreed with the report. They had provided RCCD with their files as a courtesy, and RCCD then remodeled their model, which they disagreed with. RCCD had all the water flow going to one point of analysis, which was Wetland D, and that was not the case, so it made it difficult to compare apples and apples in terms of the numbers for peak analysis and volumes. Mr. Crimmins stated that he didn't think it was anything that could not be worked out between the offices. They could come up with a solution to resolve the differences. The project would be scrutinized through many boards on many different levels. They had the peer review to work through with RCCD. It would then go for subdivision approval at TAC, then to the Planning Board, and if the road required an alteration for terrain permit, those regulations were far more stringent than the storm water ones, so it would probably go to DPW. RCCD had indicated that the applicant needed to provide more infiltration, which they were going to do anyway, so it would be done by modifying the design if it was necessary. They did not feel that was the case because there could be compromise.

Mr. Gove told the Board that he would discuss the wetlands. He and Mr. West had gone out and covered the entire site. He noted that 234 flags were placed around the site and pointed them out on the plan. He showed areas where changes were made to the boundary. The wetland delineation boundary had been set, they didn't have to worry about the future review of the boundary and would like to move forward.

He then discussed the wetland buffer impact. The impact of the road as far as the buffering was 50' away and they would maintain that area. Mr. Gove pointed to the yellow area that extended south that had impervious surface and a parking lot, and he stated that there had been no storm water management treatment done at all, but that would come to an end. The entire area would be taken down to grade. The Commission had asked about the number of trees that would be cut, and he said it would be 50 trees in that particular location. They would restore the area and could plant trees of the same species that would minimize impact to the wetland.

Chairman Miller asked if Mr. West could speak to his report. Mr. West stated that he was asked to review all the wetland boundaries on the property so that moving forward they'd have a clear and understandable line. He had looked at the boundary first, which Mr. Gove had just discussed the changes to. He was also asked to look at the overall impact to the wetlands, both on site and in the vicinity, and the impact to wildlife and wildlife corridors. As far as his review of wetland impact and conditional use, in order to get from one point to the other (which he showed on the map), they had to dodge the wetlands and the existing road access, so it was determined that it was reasonable that they make the turn where they did to avoid the wetland and come back. Mr. West stated that the RCCD report talked about it as a wet meadow, and his report filled in the fact that there were forest portions, scrub brush portions, and a shallow marsh that drained into a culvert, so there were different components that gave it more diversity. He agreed with the functional assessments and the functions that the wetland provided of water quality renovation and wildlife habitat. As far as other wetlands on the site, they were relatively degraded by overhead lines, gas lines, and railroad beds, so there was a lot of disturbance and a fair amount of invasive species. He felt that the more important wetland was the large prime wetland, which was a significant size, and the marsh complex at 35 acres, which was also a pretty good size, that provided good wildlife habitat and a stream system. The diversity alone increased the value, like

the forest next to a prime wetland, the hardwood forest, a mowed field for the tower, and an old field area with additional forest. Therefore, in a relatively small area near downtown Portsmouth, he felt it was a moderate value of habitat. As far as the wildlife corridor movement, they narrowed it down with the development of Islington Street and the Route 1 bypass as well as Route 95 and Borthwick Avenue, so any wildlife movement was running out of room. It had the larger open spaces of Great Bog in one direction, and there was not a lot of wildlife moving from there that connected, but there might be a lot wildlife moving into the area. Overall, in their report, they stressed the importance of protecting the buffers in the future in order to preserve the habitat. They knew that development would occur in the future and there may be some incursions, but with a 100-ft buffer adjacent to those resources, the prime wetland, and Wetland D, they felt that the buffers would help preserve the continued function of those wetlands and the associated habitat. The road impacted some habitat, and even more future development would have a more significant wildlife impact, so that was why they stressed that protection. Overall, the function evaluation was agreed with as far as the functions the wetlands provided, and there was a reasonable approach to get from one side to the other in the area. Therefore, Mr. West stated that he differentiated that property compared to the other property in the report.

Chairman Miller stated that one of the things he looked for in the report was whether or not the whole curb would be sloped and if there was a specific wildlife corridor from one wetland to the next. Mr. West stated that he had not seen a defined corridor. He found some movement along the wetland in a few locations, which he pointed out on the drawing. There was another area that wildlife was more apt to travel, but there was not a single path.

Chairman Miller stated that they had spent a lot of time discussing the road design and minimizing the potential impact of wildlife from one area to the next, and he wanted the curbing and the design itself addressed. Mr. Minnick stated that he had followed what the engineer had done and had used that information to apply to the best hydrology report, in which a wildlife pipeline or path had been suggested so that wildlife could get from one point to another. Mr. West stated that he found that the wildlife didn't use a specific path because the area was not an aquatic situation, so there was no stream where there would be movement along the channel. The animals tended to go across the road. The turtles could move, but the area wasn't big and it was isolated by the railroad. In his experience, he had seen box culverts with dead turtles on top of them, but it would be different if it were a stream situation.

Mr. Minnick discussed the rain garden's design and function. The rain garden they had in mind was designed for retention and infiltration. Construction specifications were missing, and hadn't known about the two wetland separations, so he had used 2.5 acres as a measure in his calculations to get the increase in depth for the runoff into the wetland.

Ms. McMillan asked if the two wetlands being separate changed their calculations or if the percentage was different. Mr. Minnick said the difference was mostly in peak, not volume.

Ms. Blanchard mentioned that the two packets needed to be organized. Sheets C1, C3 and WS were not in order. Mr. Crimmins stated that they had renumbered the sheets from the last

submission, and the latest packet had Sheets C1 through C5 or C6, but the WS sheets were part of the drainage site and not part of the plan.

Ms. Blanchard asked Mr. Crimmins to identify the parcels geographically in terms of how many and what sides of the road they were on. Mr. Crimmins pointed to various parcels, one of which Portsmouth Hospital owned, and a few others for which the applicant had an easement for a roadway access to allow them to bring a road to that point. He pointed out the railroad crossing right-of-way which the road would cross, and it was the reason for the buffer impacts to be maintained. He stated that parcels would be merged and then subdivided, and showed a parcel that was already subdivided. They would cross over the railway and eventually tie into Islington Street.

Ms. Blanchard asked where the current WBBX building was. Mr. Crimmins said the road ran through it. He showed the existing WBBX road and the building coming together at the same location, which would utilize the driveway and a portion of the property. The road swung out around the buffer.

Mr. Vandermark asked if a white dotted line delineated the 100-foot buffer on the left portion of the field, and Mr. Crimmins said it was a yellow dashed line.

Chairman Miller asked the applicant to recap the revisions to the wetlands and buffer. He stated that the existing buffer impact to be removed was 5,800 square feet and the proposed buffer impact was 6,225 square feet, so it would be a net increase of 425 square feet of buffer impact, and the temporary impacts would be restored at 6,500 square feet.

Ms. Saunders asked, in reference to the removal of 50 trees, if there was anything in the current plan that stated there would be an ongoing tree planting system. Attorney Somers said that it would not be on the road itself. The existing would be replanted but not necessarily the trees.

Chairman Miller asked if the applicant could address the concerns with the rain garden design. He had looked for more detail but couldn't find it, and he wanted the infiltration concerns addressed. Mr. Crimmins stated that Sheet C-2a had the details. The rain gardens were designed to collect storm water runoff and they were providing a filter showing the detail. The overflow, set at a 10-year storm event, would be infiltrated. The water would temporarily be detained in the rain garden but ultimately infiltrated down to ground water. With the larger storm events, the water would spill over into the overflow and then into the closed drainage system and then downstream. He mentioned several culverts.

Chairman Miller asked if there was a plan that showed it. Mr. Crimmins said it was in the details.

Ms. Stone asked if the erosion control installation would continue all the way down to the wetlands and be within the 100-foot buffer. Mr. Britz told her yes and pointed to the area on the plan where it would stop.

Ms. McMillan asked Mr. Crimmins if he could discuss the rain garden retention area and the overflow infiltration beneath it. Mr. Crimmins stated that the overflow was tied to a perforated pipe at the bottom, and the pipe would keep the groundwater, so there would be a foot of separation from the filter. The water would hit the bottom of the filter and recharge into the native soils until it overflowed.

Chairman Miller asked the applicant if they could address the differences between the two drainage studies in practical terms that mattered to the Commission. The differences mentioned in the reports were in terms of engineering, and there was a ton of data that was difficult to go through. He wanted to understand the substance of the differences between the two reports and how it would ultimately affect the drainage in terms of flows to the wetlands, and whether there would be a substantial difference in impact.

Attorney Somers stated that she did not believe there was a substantial difference in the impact to the wetland function. There would not be an increase in flow as a result of the drainage. She mentioned that Mr. Minnick had said the Commission had concerns about storm water going into Wetland D, but she disagreed. Neither report suggested a negative impact to the wetland function. They could discuss the engineering methodology further at a later time.

Mr. Crimmins stated that they had four points of analysis, or discharges at four different locations. They provided the files to RCCD to expedite their review, and RCCD merged the four points into one. Mr. Crimmins said that they had disagreed because the water didn't really go into one place, but they were comparing a four-point analysis with a one-point analysis. Rockingham Country told them that they were increasing the peak runoff volume, and the applicant had disagreed because they could not do that based on subdivision and alteration terrain regulations. Mr. Crimmins stated that the differences would be worked out, and if they needed to provide additional infiltration and retention to reduce those rates, they would do so.

Chairman Miller said that if there was a real difference between the two reports, the requirements from the AOT permit and others would require that there was no increase in runoff. Consequently, the difference, if any, would be taken care of in the final design. He asked if all the water on the roadway would be created in the rain garden or the tree box filters. Mr. Crimmins said it would. Chairman Miller concluded that if there was a difference in the two reports, the design may change that would encompass more tree box filters or a bigger rain garden, and if there were a substantial design change, a condition of approval could be crafted so that the Commission had a say in how that water would be treated. He was thinking ahead and would rather handle a change immediately than in the future.

Attorney Somers thought Chairman Miller was absolutely correct. The rules were what they were, but the applicant had to come up with a way to comply with the rules, and part of that could be increasing the rain garden and tree boxes. She asked Chairman Miller if he wanted to ensure that the Commission had a voice in terms of the final design. Chairman Miller stated that it may not be a voice at the table since they already had that, but it was a matter of being comfortable with the solution. Attorney Somers stated that they would be happy to report back to the Commission what solution they arrived at between discussions with Mr. Minnick and proceeding with the Planning Board and the alteration terrain permit. She stated that when the

petition went to the Planning Board and got worked out, the Planning Board would welcome any comments from the Commission in reviewing the final design.

Chairman Miller asked Mr. Britz if that made sense. Mr. Britz thought that the best option was to have Mr. Crimmins and Mr. Minnick come to a solution at the Planning Board after the commission reviewed it.

Attorney Somers agreed that they would meet with Mr. Minnick to resolve their differences and make sure that all parties complied with the rules. She did not want to screen the process, however, because the Planning Board process would continue to hammer away at the City engineers and she did not want to predicate any movement on the part of Mr. Crimmins and Mr. Minnick yet.

Mr. Britz stated that the ultimate goal was that all of the storm water drainage was treated and that the storm water velocity did not increase.

Mr. Mikolaities stated that his stamp was on the plan, and he was a professional engineer. He had a legal obligation to make sure it was right. He said that he would work with Mr. Minnick. He thought that the design was better since the October meeting, due to the sloped curb and the landscape buffer and sidewalk.

Mr. Minnick stated that the rain gardens should be designed by meeting the regulations and he talked about the riser pipe and how storm water could be routed through infiltration. It had to be routed through a physical outlet. He mentioned that the riser in his rain garden was designed for retention, but that it couldn't be done through hydrology. It was called dead storage. He talked further about how a rain garden was constructed.

Chairman Miller thought that the pipe drained out through the trench if there was an overflow. Mr. Minnick said that the volume of water in the rain garden up to the crest was dead storage. Chairman said that the storage of the water gave it time to infiltrate. Mr. Minnick agreed, but said that it could not be counted on. They had to assume that the water was at the riser. Infiltration changed all the time, and things like vegetation or freezing changed it. Storm water could not be counted on.

Attorney Somers noted that it would not be solved that day. They had to work with the Planning Department, and they would be happy to work on the rain garden. Chairman Miller wanted to make it clear that this would be resolved because the regulations required that it be resolved.

Ms. McMillan stated that the road was a private one that would be maintained privately, so she asked where the statement had come from that the applicant did not need a waiver for the curbing to be angled. The Commission had discussed it with DPW, who had insisted on having it. Mr. Crimmins stated that they did not need the vertical slope with the granite curbs. Ms. McMillan said that at some point, they would have to go to TAC. She wanted to ensure that the curb didn't change during the process because it had happened before in other petitions. Mr. Crimmins said that a lot of the time, it was because the sidewalk abutted the road, but they had a vegetated strip between the sidewalk and the curb, so they would be fine. Attorney Somers said

that the regulation stated that granite curbs shall conform to the following and then it gave dimensions for sloped. They allowed it, provided that the dimensions were met. There was no waiver required.

Chairman Miller said that she shared Ms. McMillan's concern because he had thought it might get changed later on without consideration. He thought it was great that it was in the regulations, but wanted to make a stipulation to make sure it was stated.

Mr. Vandermark asked what future developments would look like because he was concerned about them impacting the 100-foot buffer. Mr. Britz said that the goal would be that future projects would not have an impact. They could work in the short run, but he wasn't sure about the long run. The new owner could wiggle out of the agreement or come back to the Commission or Planning Board. It would need to be stated in a stipulation to the Planning Board so that they understood it.

Attorney Somers stated that the Commission's task was to protect the watershed resources and to look out for the proper utilization of natural resources in terms of the Conditional Use Permit that was before them. As a practical matter, she thought that no one would be lax in coming up with a design that would intrude into the wetland buffer because they would know they would have to come back before the Commission, and no one in their right mind would want to do that. She appreciated Mr. West's comments about recognizing the importance of the wildlife, but it tied the hands of the present and future applicants as well as the Commission as far as the flexibility to be able to do much of anything. If they came up with a design that created a minimal intrusion into the wetland, they would be precluded by the terms of the Conditional Use Permit in coming back to the Commission and discussing whether it would even be feasible to craft a Conditional Use Permit which would still be protective of the wildlife. Wild life was the ultimate concern as expressed by Mr. West, and it would be difficult to enforce it because they would be talking about impacts to the buffer. She thought that it was far too Draconian on the City and any present or future owner in terms of how a discussion would unfold about how the buffer would be safely used. If there was a future application for a Conditional User Permit for the 100-foot buffer, the Commission could deny it, and that would be the end of it.

Mr. West clarified that he was talking about all of the wetlands south of the rail bed, not just Wetland D, and his intention was to recommend that the protection of those buffers would help protect the function of the wetlands and wildlife on the site more in the future. It was not a forever and ever condition, but rather it was an "if" condition if the Commission's goal was to protect the resources. Protecting them in the future as much as possible made sense.

Ms. Tanner stated that the members of the Commission understood what their responsibilities were, and that was to protect the wetland. She went on to say that if the Commission believes that they need to institute a stipulation stating that there will be no intrusion into the 100-foot buffer around the wetlands, then they can do that and it does not preclude the applicant from coming back and trying to finagle a way to abuse the wetland buffer for their purposes.

Chairman Miller said that he took Mr. West's comments as they were intended, but they were talking about the roadway, knowing that it would be developed in the future, and it was not what

was before them. He had tried to assure himself that the process would work and they had a 100-foot buffer in their regulations, and they had worked hard over the years to improve it and had done a great job in evaluating it on a case-by-case basis. They would figure out how to improve it or how to vote 'no'. He knew that eventually something would be developed in the buffer, but it was nothing that they could decide then.

Mr. Britz stated that it was an impact in the buffer that the Commission was allowing. A future impact in the buffer could not be overruled, but it was a reminder that a concession was made in Wetland D based on the project, and they did not want to make another concession. He said that when they approved it, they did not want to revisit it, and they had an Ordinance in place for it.

Attorney Somers said that perhaps the solution was to indicate that it was clear that the granting approval was not the precedent for them or any other future application. The Commission had a strong desire not to have further intrusions, and ultimately it would be a Planning Board decision.

Chairman Miller said that what made the proposal different from the others was because the Commission mostly saw redevelopment or changes to existing, and the proposed parcel was more pristine than any other place in Portsmouth. The Commission was concerned because it wasn't someone just putting in an addition that would go into the buffer. The Commission had always done a good job of making things work out while protecting the resources to the best of their ability, and he thought they were okay. He liked the idea of reminding themselves in the future of what was discussed that day and to not lose that continuity, and he thought the buffer ordinance would take care of it.

Ralph DiBernardo of 1374 Islington Street stated that he was speaking for his wife and himself and would base his comments on the wetland issue. He referred to the memo that had been sent out about the 100-foot buffer. There was a statement made that buffers were the least expensive way that municipalities had to protect roads and homes from flood damage, to manage flood water, and to protect water quality. The Commission had an exception to the 100-foot buffer, an equal application under the law regardless of whether it was a developer or a homeowner. The Commission had heard from four experts who disagreed. If the Commission moved the application forward, then they would not have discharged their responsibility as stated by the attorney representing the development of its own members. They did not have the information to make a vote. The experts should be required to come to an acceptable agreement and then go back to the Commission, who would then agree that it met their criteria. They presently did not know what the agreement would be. It was suggested that the Planning Board would take care of it, in which case coming before the Commission wasn't necessary. It was a 'cart before the horse' situation. The applicant asked for the road, but they had no idea how they were going to use the property or how drainage would be affected by the development. The Chairman expressed a concern about curb cuts. There would absolutely be curb cuts, or no one would ever exit the road into the new development. A change in the water run off and other engineering-based items would be changed when the property was developed. How would this affect the aquifer of the Sherburne wells? There was a hole. The comment was made that the road would be developed consistent with the zoning, but that did not preclude a request to change the zoning. The owner had already gone through that process, and he had the right to do it again. Once the

property was cut in two, the zoning might change, so to say it would be developed consistent with the zoning was a dubious statement. He suggested tabling the application until the Commission got a report that they could accept from the experts.

Ms. McMillan wanted to clarify the cutting of the fifty trees because it would be a huge impact to the area. All the calculations would not account for the fact that the trees absorbed a lot of the storm water before it got to the ground. She asked if there were specifics about the kinds of plantings as well as flexibility on planting trees in areas where they could recreate another forest.

Attorney Somers stated that they would be agreeable to replanting trees. There was a concern about the cut trees being in the wetland buffer area and where the replacement trees would go, and it wasn't known for sure where the restored road would be or where the original trees would be cut. Ms. McMillan asked if there would be room for the trees to be planted once the area was disturbed. Mr. Crimmins told her that they could not plant on the pipe itself or close to it, but the opportunity would present itself to replant.

Hearing no other questions, Chairman Miller asked for a motion.

Ms. Blanchard made a motion to approve the application as presented for purposes of discussion. Ms. Stone seconded the motion.

Ms. Blanchard stated that she would not vote for the application because it was a significant disturbance of 7.2 acres. The Commission had questions about the infiltration and the retention relative to reducing rates of flow that directly impacted the wetland area, and more specifically, the intensity of land development along the road potentially had a greater impact than the road itself. Therefore, on the basis of Section 10.1017.50, Criteria for Approval, she did not think it met the criteria of no alternative location outside of the buffer area.

Ms. Tanner stated that the Commission had data in front of them that suggested there was a discrepancy between what the developer said and what their hydrologist had said, so she could not support it, and she did not think that relegating the responsibility to a higher authority was right.

Chairman Miller said that he was interested in the condition of approval on the motion. The Commission had talked about a few, but he was not sure how to articulate the buffer for the future. They had a good discussion about the design and the differences in the reports. It had been stated that the differences would be resolved, so he was comfortable with it. There were complex parts, and he believed that they would get a resolution on the reports in terms of infiltration. They were required by regulation not to increase runoff, so that would be resolved. If the design did change, one of the conditions of approval was how it might impact the buffer and its treatment, and the Commission had received a satisfactory answer. The water on the roadway would be treated. The Commission could not address what would happen to the parcel in the future because it wasn't something that they were voting on. There was nothing in their regulations that said they couldn't vote on something if it would be developed in the future. The whole point of the roadway was to develop the parcel, so they knew that would occur. What was in front of them for approval was the roadway. The applicant had done a good job implementing

the Commission's comments by treating the runoff and resolving the differences in the reports. Ultimately, it was about removing an old road. Mr. West had agreed that the road design was good, given the crossings and wetland avoidance. Chairman Miller didn't know what else the Commission could do. They had a good discussion about wildlife. His worry about the wildlife curb cuts had been addressed by the sloped curb. They discussed water quality, but the proposal was not about that, so he had to vote for what was in front of him. He had faith that the discrepancies would be resolved. Therefore, he would vote for the proposal. The Commission made concessions on the buffer and had to remember the buffer if the design changed. Given discrepancies in the two reports, they could craft a condition for the rain gardens and the tree box filters. If it was a major design change, they could craft a condition that made sense. It was not about whether they liked the road or not.

Ms. Blanchard stated that there were alternative responsibilities for the wetland and alternative engineering solutions that were more protective of the wet areas and the drainage issues that were resolved with the advancing development along that corridor. Part of the problem was the scope of what the applicant wanted to do with one piece and so many unknowns. The Commission had no idea what the footprint of buildings or impervious surface were going to be, and they could not say that they would close off that part of their thinking. That was why she was voting for denial. There could be some alternative ways of using parcels that were not as potentially or presently invasive.

Chairman Miller told her that the Commission did not have parcels in front of them. Ms. Blanchard replied, 'if we build it, they will come'.

Ms. Tanner stated that she was not looking at anything in the future, and she did not accept assurances. She didn't want to leave it to someone else to determine if the design was acceptable. The Commission needed to make the decisions and understand what was going on.

Ms. McMillan mentioned the trees and stated that there were other issues that could not be addressed immediately, but the trees could. She would want a stipulation that fifty trees would be planted to replace the fifty trees lost, and if not, she would want to see a planting plan for the future. As far as the big picture, the drainage would drain to Hodgson Brook. Any new impervious surface within the Hodgson Brook watershed was something that the Commission needed to look at carefully because of the chloride impacts.

Chairman Miller stated again that there was no way to deal with that issue without a petition or an actual development on one of the parcels. There was no way to address drainage, impervious, salt, and so on at that time.

The Commission discussed the stipulations. The trees that were cut down within the existing WBBX road area would be replaced and restored, the sloped curbing would remain in the final plan, and the buffer concessions that had been made and the importance of the buffers for the two wetlands would be noted for the future. Ms. Blanchard stated that she would accept the conditions.

The motion to approve the application as presented failed to pass with a vote of 2-5 with Chairman Miller and Ms. Saunders voting in favor.

Mr. Vandermark left the meeting.

3. 77 South Street
Craig Welch and Stefany Shaheen, owners
Assessor Map 102, Lot 48

Mr. John Chagnon of Ambit Engineering was present to speak to the petition. Mr. Chagnon stated that he was there for an amendment to the Conditional Use Permit that had been granted a year before. During the construction process, the foundation design engineer installed a drain, and the drain needed to be daylighted. The plan showed 360 square feet of temporary impact from running a pipe down so they could nail in the drain.

Ms. Blanchard asked what it looked like visually. Mr. Chagnon stated that it was all underground and nothing would be seen at the surface except for an orange pipe with a 4" grate that would be seen at the outlet.

Chairman Miller asked where the outlet was located. Mr. Chagnon stated that the outlet was 7-1/2' upslope from the edge of the pond and was in the buffer. Chairman Miller asked why it had to go that far. Mr. Chagnon stated that it was because the contours of the ground made it hard to get to daylight. Chairman Miller asked if the trench had to be 5' wide, and Mr. Chagnon told him that it did not and stated that it would be a bucket-width trench.

Chairman Miller wanted to be clear that the only thing draining would be the ground below the foundation. Mr. Chagnon said that it would only be ground water that welled up that would otherwise put water pressure on the basement.

Ms. Tanner asked if there was some concern that, in the future, the South Mill Pond would be above the outflow. Mr. Chagnon stated that they had included a backflow valve to alleviate that concern.

Ms. McMillan asked what exactly was at the outlet. Mr. Chagnon said it outletted onto a grassy area above the mud. Ms. McMillan verified that it was beyond the lawn area and that it was vegetated. She asked if they would have to re-vegetate it. Mr. Chagnon said it would be re-vegetated under standard control measures and would be planted with grasses.

Chairman Miller asked if there were other questions. Hearing none, he asked for a motion.

Ms. Tanner made a motion to recommend approval of the application to the Planning Board as presented with the following stipulation:

- 1) That the drain is only capable of receiving the flow of ground water running from the foundation.

Ms. Stone seconded the motion. The motion to approve passed with a unanimous (6-0) vote.

II. OTHER BUSINESS

Chairman Miller said there was an application for Christine Crockett at 209 Gosport Road in their packet, and asked Mr. Britz why it was there. Mr. Britz stated that it didn't make the typical deadline, and since it was an amendment to an application, he wasn't sure what the process was. Typically, they asked the State to report a delay on a new application, and he didn't know if they could grant it, so he wanted the Commission to review it. Chairman Miller had recommended denying the application because of the driveway issue, and the State had asked the applicant questions and had requested additional information, so the amendment was a response to those questions. It showed the driveway site and the location for a house that addressed the wetland boundaries.

John Chagnon of Ambit Engineering was present to speak to the application and stated that there had been talk of a permit. The applicant had shown all the trees within the 100-foot buffer to see which ones could be saved. There was also discussion of the driveway and being part of the subdivision that had been approved but was missing a date.

They thought the original application had taken place back in 1989 and it was not for a subdivision at that time. The State would not approve the freshwater crossing without showing the house, so the applicant worked diligently to find a suitably-sized house and put it on the lot on the plan. The proposed house was 2,081 square feet.

Chairman Miller asked what was required of the Commission. Mr. Britz stated that he wasn't sure because it was an amendment. He thought the Commission could add comments, and if the State approved it, it would have to come back for a Conditional Use Permit

Mr. Chagnon stated that it was not fair to the applicant to spend the money because they were selling the property, and any buyer would want to know about permits. The owner had sold the house in 2005 and bought the lot next door, where they were told they could put a house. The two issues were fresh water and tidal water.

Mr. Britz thought both issues would need a Conditional User Permit, but they hadn't been asked for. He thought the whole thing was grandfathered. They would respond to a request once it had been put to the City, and it hadn't been asked yet.

Ms. Saunders stated that she thought the document was something they should view, and look at it as an amendment. Chairman Miller stated that the Commission had made a decision and would stand by it.

Mr. Chagnon asked if Chairman Miller still thought the decision to deny was appropriate. Chairman Miller said that he did because of the wetlands on the lot. Mr. Chagnon told Chairman Miller that he had wanted to see what would go on the lot before making a decision, and now he saw what would go on the lot, so there was an opportunity to discuss it.

Chairman Miller stated that his decision was based on whether or not he thought the lot was buildable, and he did not think it was. It was wet on both ends, and the only dry place was the hump of rock in the middle, and that had been what his decision was based on. It was not based on not knowing where the house would go. His decision remained the same.

Mr. Britz told Chairman Miller that if he wanted to add additional comments, this was his chance. Chairman Miller asked what the others thought.

Ms. Tanner stated that she did not feel the need to make a change. Chairman Miller assumed they were willing to move it forward as it was. Mr. Britz said that typically they did not review applications. Chairman Miller said that if the State required that the Commission review it again, they would, and if the State didn't require it, then they were fine where they were. The problem was that they couldn't get the 40 days because it was an amendment. Mr. Britz said that he had a copy for resubmittal and needed to follow it up with DES and close the loop.

Chairman Miller mentioned that Ms. Good was working on the minutes and they would be out shortly.

Ms. McMillan stated that she went to a public meeting on the Market Street extension and added that there were a lot of environmental impacts to enhance the gateway, such as the road they would be installing. They had referred to an environmental permitting process that they would have to go through, and she wondered if it was an opportunity to have the Commission's input on it.

Ms. Saunders stated that she had read all the articles and was concerned about all the things on the water that they talked about. Chairman Miller asked who 'they' was. Ms. McMillan said it was the City. Ms. McMillan said there was a lot of talk about natural vegetation and the park where they would take down the vegetation. The bridge construction would use that parcel as a staging area, so a lot of the vegetation would be removed and then the area would be restored. It was a good opportunity for discussion.

There was no other business requiring action to come before the Commission.

III. ADJOURNMENT

At 5:35 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Joann Breault
Acting Conservation Commission Recording Secretary

These minutes were approved at the Conservation Commission meeting on May 14, 2014.