

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

3:30 P.M.

APRIL 9, 2014

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

MEMBERS ABSENT: Shelley Saunders, Alternate Paul Ambrose

ALSO PRESENT: Peter Britz, Environmental Planner

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I. APPROVAL OF MINUTES

A. September 11, 2013

Ms. McMillan made a motion to approve the September 11, 2013 minutes with corrections. Vice-Chair Blanchard seconded.

The motion to approve the minutes passed by a unanimous (6-0) vote.

B. October 9, 2013

Ms. Tanner made a motion to approve the October 9, 2013 minutes with corrections. Ms. Stone seconded.

The motion to approve the minutes passed by a unanimous (6-0) vote.

II. STATE WETLANDS BUREAU PERMIT APPLICATIONS

1. Standard Dredge and Fill Application
292 Lang Road
Ertugrol Yurtseven Revocable Trust of 2010, Ertugrol Yurtseven, owner
Lang Road Land Holdings, LLC, applicant
Assessor Map 287, Lot 4 (Proposed Lot 4-4)

Mr. Christopher Berry of Berry Surveying and Engineering was present to speak to the application. Mr. Berry told the Commission that he was asking for a Conditional Use Permit of 3,700 square feet within the 100-foot prime wetlands buffer, which also included a 3,700 square-foot jurisdictional wetlands permit for work within the prime buffer. There would be no direct

impacts to the wetlands, only to buffers that applied to the wetlands across Lang Road. Mr. Berry stated that he had appeared before the Commission the previous month and had gone through the plans in great deal, and the Commission had asked for a few modifications to the plans as well as further information on maintenance manuals and the functions and values analysis, which he had done. A few Commissioners had also asked for testing information on designs for proposed advanced systems and removal efficiency reports on stormwater best management practices, and those were included in the package given the Commission.

Mr. Berry stated that the Technical Advisory Committee (TAC) asked them to add some separation between the seasonal high water table and the bottom of the effluent field. Those systems allowed them to go 2 feet, but TAC asked them to make it 3 feet so that they would be away from the high water table. It would also increase the capacity within the system for the users on each individual site. TAC approved the plans and also reviewed the stormwater analysis and best management practices. Mr. Berry mentioned that the stormwater maintenance manual was typical for the style and design. The functions and values analysis provided by the wetlands scientist indicated that the functions and values were extremely low because the buffer was to a wetland across Lang Road and bisected the buffer already, so any offering that they had in stormwater controls would be replicated by the rain gardens provided.

Chairman Miller told Mr. Berry that it was a great packet with a lot of information that included everything the Commission had asked for, especially the maps. He appreciated Mr. Berry's time and effort and said that it had been very helpful to have the work session.

Vice-Chair Blanchard asked Mr. Britz to address his memo and comments relative to a proposed approval that might include a stipulation about the restrictive covenant. Mr. Britz stated that the same question had come up on the Marjorie Street application. The biggest concern on the site was the stormwater coming off the property that would eventually go into a wetland area on Hodgson Brook, and the treatment of the stormwater system and the rain gardens was critical, not just to the property owners but also to subsequent owners. On the Marjorie Street application, the Commission put a clause in the deed that addressed the fact that there was a stormwater plan, and they also recorded the site plan so that it could be referenced to show the areas of concern. The maintenance manual was included as well. Therefore, it would be no surprise to the property owner if a title search was done on the property because the information would come up, and the owner would know that it had to be maintained. The most important concern was that the stormwater plan be maintained through time. Mr. Berry stated that he had no issue with it and that they would work with Mr. Britz to reinforce it. Mr. Britz suggested that they use the Marjorie Street project as a model and have the City Attorney approve it after the Planning Board approval.

Vice-Chair Blanchard said she could not remember the language that the Commission had used. Mr. Britz stated that he didn't think they saw the final language in the covenant, but they would use the same language. Mr. Vandermark asked if it had gone through, and Mr. Britz told him that it had and was filed with the registry. Vice-Chair Blanchard thought it was nicely done and everyone would know that it was part of the property when the ownership changed hands.

Ms. McMillan asked if they were referencing the chart in the Inspection and Maintenance Manual and was told yes. She noted that there was a maintenance and clean-out threshold and asked if the recommendations would be what the future property owners would follow. Mr. Berry agreed. Ms. McMillan surmised that the use of the primary agent for parking lot safety during the winter was for the best management practice to avoid using sand, and she asked Mr. Berry if he could add something about plowing or snow removal as the primary agent because people who strictly followed it might think they had to put sand down, which could be a potential liability. Mr. Berry stated that they could modify it. Plowing was the main source of snow removal, and then de-icing, salting and sanding agents followed it. The point made in the manual was that people tended to overdue it when it came to that sort of thing, and all of that was not required on large commercial sites. He told Ms. McMillan that her point was well taken that it was not the primary action. Chairman Miller thanked Ms. McMillan for bringing it up because the Department of Environmental Services had been working hard to get a handle on the use of salt due to the chloride impacts to waterways.

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

Ms. Tanner made a motion to approve the application as presented with the following stipulation:

1. That a restrictive covenant be put into the deed to require that each homeowner follow the stormwater system/operation and maintenance plan submitted at the meeting.

Vice-Chair Blanchard seconded the motion. The motion passed by a unanimous (6-0) vote.

III. CONDITIONAL USE PERMIT APPLICATIONS (OLD BUSINESS)

- A. Off Spinney Road and Middle Road
 Frances T. Sanderson Revocable Trust and Anderson Revocable Trust, owners
 Spinney Road Land Holdings, LLC, applicant
 Assessor Map 167 & 174 & 24
(This item was postponed at the February 12, 2014 meeting.)

The applicant was not present to speak to the application. Attorney Peter Loughlin told the Commission that he knew the applicant planned to come in the following month.

Ms. Tanner made a motion to postpone the application to the May 14, 2014 meeting. Vice-Chair Blanchard seconded the motion.

The motion passed by a unanimous (6-0) vote.

- B. 292 Lang Road
 Ertugrol Yurtseven Revocable Trust of 2010, Ertugrol Yurtseven, owner
 Lang Road Land Holdings, LLC, applicant
 Assessor Map 287, Lot 4 (Proposed Lot 4-4)

Mr. Christopher Berry of Berry Surveying and Engineering was present to speak to the application. Chairman Miller asked Mr. Berry if he had additional or different information that had not already been discussed during the earlier State permit application session.

Mr. Berry stated that he did not and said the only reason it was not in a separate packet was that it was almost identical information, with the exception of the Division of Historical Resources (DHR) report and the National Heritage Bureau (NHB) report, both of which had come back with no harmful impacts.

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

- 1) That a restrictive covenant be put into the deed to require that each homeowner follow the stormwater system/operation and maintenance plan submitted at the meeting.

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

C. 209 Gosport Road
Christine V. Crockett Revocable Trust, owner
Assessor Map 224, Lot 10-12

Attorney Peter Loughlin representing the owner, Mr. John Chagnon of Ambit Engineering, Inc., Ms. Adele Fiorillo of Normandeau Associates, and Ms. Robbie Woodburn of Woodburn and Company were present to speak to the application.

Mr. Britz stated that he had followed up with the City Attorney Bob Sullivan and had met with Attorney Loughlin as well. Attorney Sullivan had told him that he needed to do further research and would get back to him. Mr. Britz said that he recently followed up with Attorney Sullivan, who said he had not been able to look into it because it was a complicated issue, especially the vesting part, and since both the property agreement and the vesting were intertwined, it was important to consider both. As a result, Attorney Sullivan had recommended that the Commission postpone the application until he could research it, and he felt that any assumptions made at that point could create unintended consequences in the future.

Attorney Loughlin knew they had gone back and forth and but didn't know about the communication that the Commissioners had received from Attorney Sullivan. Attorney Loughlin had sent several letters to Attorney Sullivan, who had thought that the application was advertised for the Commission and the Planning Board and assumed that the wetland buffer was in place. Attorney Loughlin did not think the buffer was in place, but perhaps for the purpose of the hearing, they should assume that the wetland buffer and the ordinance were in place.

Attorney Loughlin told the Commission that in 1998, the City entered into an agreement with the subdivision's developer that stated that the wetlands buffer jurisdiction ordinance would not apply to any parcel over a half-acre of wetlands. The application did not have a half-acre, so

they felt that the vesting was exempt under the existing agreement with the City. He thought that would be something Attorney Sullivan would have to sort out and that he could go forward with the application.

He stated that he was there for a 1.06 acre lot that the Crocketts purchased in 2001 for \$300,000. Mr. Britz had mentioned that perhaps the reason it had not been developed was because it had been too difficult, but that was not the case. The reason was that the Crocketts purchased it with the lot next door with the intent of holding it as an investment for retirement. They had retired and moved to Wyoming the year before and started the preliminary action of selling the lot. The issue of the wetlands crossing arose, and because it was within 250 feet of the Sagamore Creek, it resulted in the detailed application showing the actual building. The only place to reasonably put a building on that lot would encroach into the 100-foot tidal buffer. Therefore, they were asking for a Conditional Use Permit for 925 square feet of wetlands impact to cross the wetlands, an impact that was shown on the plan approved back in the 1990s.

Another impact that would be worked into the wetlands buffer could be dealt with the agreement with the City instead of arguing about vesting and general misgivings. Attorney Loughlin was therefore requesting a Conditional User Permit for all three issues: 1) crossing the wetlands, 2) the impact of the wetlands buffer, and 3) the impact on the tidal setback. There were 925 feet of impact into the wetlands and 12,000 square feet of impact into the buffer, and 3) 2,750 square feet of impact into the tidal buffer. Approximately 981 square feet of the proposed home would actually be in the buffer. They needed the Conditional Use Permit for relief, otherwise there was no reasonable use for the lot. Attorney Loughlin thought they should just go forward and state why they felt they met the requirements, and the Commission could vote on it.

Vice-Chair Blanchard told Attorney Loughlin that the issue of how it was taxed was a question that did not belong with the Commission and should have happened at the assessor's office. She believed that there was a concern prior to the ownership of the property going back to 1986 as to whether or not they were actually vested and allowed to develop a house. Attorney Loughlin strongly disagreed with Vice-Chair Blanchard and stated that there was never any question as to whether it was a buildable lot. It was one of 51 lots that showed the wetland crossing on it, and the reason it was relevant was the issue of what the landowners reasonably expected when they bought the property. At that time, it was approved by the Planning Board and shown as 9,000 square feet of wetlands, and it designated no wetland buffer. It was in the registry. It was less than 20,000 square feet, and the wetlands jurisdiction of the City was not triggered at all. There was no question about the wetlands crossing without City approval.

Vice-Chair Blanchard verified that it was all 1998 correspondence. Attorney Loughlin told her no, that the owner had bought the property in 2001. Mr. Chagnon stated that the Crocketts went to the assessor the last time the assessment was increased to ask for an abatement because the property was assessed higher than other lots in the area. Chairman Miller thought that the issue would be raised that it dealt with environmental aspects. If the issues were taxes and covenants, he felt that the Commission was not qualified or comfortable in assessing it legally. There may have been a plan with the driveway shown on it in 2001, but he wasn't sure that it helped the Commission in terms of assessing the current packet in front of them because it seemed to be a legal issue.

Attorney Loughlin stated that it all went to the vesting issue and suggested that they not deal with it. It was a critical issue because the lot was worth approximately \$500,000 and was buildable, so the owner could sell it to someone else who would put a house on it, or the City would take it over. What he wanted was to address whether or not the Conditional Use Permit requirements were met.

Chairman Miller verified that Attorney Loughlin wanted the Commission to immediately address the property on its environmental aspects for a Conditional Use Permit. Mr. Vandermark thought that whatever the Commission decided could be reversed if Attorney Sullivan deemed otherwise. Chairman Miller agreed and noted that there had been previous issues when the Commission had voted and the decision was determined elsewhere, and he was uncomfortable with it.

Mr. Vandermark wanted to clarify that it was possible that whatever Attorney Sullivan decided could make the Commission's conversation unnecessary. Chairman Miller stated that it seemed to be the case.

Mr. Britz stated that there was a complicated vesting issue and a legal requirement that Attorney Sullivan needed to review in detail, and the Commission could go forward and base their decision on the Conditional Use Approval of that day's requirements. However, the Commission had not reviewed the legal issues, and Attorney Sullivan had told him that he did not see why the Commission would go forward before getting counsel. The applicant had prepared a plan that did take into consideration the existing 100-foot buffer that had a direct impact on the wetlands. The Commission and the Planning Board could review it, but there could be unintended legal consequences if they moved ahead with it.

Attorney Loughlin stated that their plan was the same and there was only one place to put a home on the lot. Mr. Britz asked him if the footage of the existing 100-foot buffer was shown because the impact was that buffer. Mr. Chagnon told him that it was in the plan that Mr. Britz put in the memo. They provided an exhibit of the buffer area showing 10,106 square feet of development, and if there was a 100-foot buffer, that would be the number. Mr. Britz asked him if it was 10,000 square feet plus 2,750 square feet. Mr. Chagnon said that the total square footage that Mr. Britz had reported as 13,781 was off slightly because the 10,106 square feet included the 925 square feet from the direct wetland impact, so it would be 9,181 square feet of direct wetland impact. Mr. Britz concluded that Mr. Chagnon would have all the information for an application to submit that day.

Attorney Loughlin stated that it was essentially all in the wetlands buffer. If Attorney Sullivan said it was exempt from the wetlands buffer and the Commission denied a permit, it would mean that the applicant did not need that particular wetlands buffer permit but still needed the other two permits they were seeking. He didn't know if the Commission really cared about the vesting issues but thought that they should decide the Conditional Use Permit regardless of the vesting issues.

Ms. Tanner thought they were referring to more than the vesting issue, and she was not comfortable moving forward until they got the advice that they asked for. There were perhaps other things in play that they did not fully understand that could affect their decision outside of the vesting issue. They had asked for legal counsel and they should wait for it. Ms. Stone agreed.

Vice-Chair Blanchard stated that she regretted the fact that there was a good team in front of them who wanted to give them more information, but the City Attorney's office had not been very responsive up to that point and could have at least alerted the applicant that the Commission didn't have the information necessary to move ahead. She had noticed in the packet that the applicant had obtained important permits from the Army Corps of Engineers, The Department of Environmental Services, and Shoreland Protection, and that spoke well for the efforts put forward, but the missing piece was a presumption that could have unintended consequences. As a result, she felt that the Commission should not act until they had the legal answer. Mr. Vandermark agreed.

Attorney Loughlin realized that Attorney Sullivan was under a lot of pressure every day due to all the difficulties currently going on in Portsmouth, and he understood why they were still waiting for a decision.

Ms. McMillan stated that it was difficult to make decisions without all of the information, and she wondered if there were other wetland issues in the packet or recommendations from the wetlands scientist. Chairman Miller said Mr. Britz had mentioned it was in the same memo from the last meeting, saying the applicant had provided additional information to points raised that were in the new packet. Mr. Britz pointed out that it had been at the end of July and that the applicant had done a good job of addressing issues.

Chairman Miller wanted to separate the vesting from all the other issues but he did not want unintended consequences or to create an issue. Attorney Loughlin told him that if Attorney Sullivan said the vesting did not apply, he was properly before the Commission asking for a Conditional Use Permit for the crossing, buffer, and tidal impacts. He believed that the application had been broadly advertised, and he did not want to lose another month. He needed relief from the buffer and asked for a vote. Chairman Miller believed that the Commissioners were in agreement about waiting to hear from Attorney Sullivan, which meant postponing the application for another month. Mr. Chagnon stated that he wanted to ensure that when they came back the following month, based on the decision, there was enough time to get the notice out for the abutters. He also wanted to verify what the third impact was.

Mr. Britz stated that Attorney Loughlin had said the application might be over-advertised, but he thought it had more than what the Commission needed. Attorney Loughlin said that they could discuss it and he might have to change the advertising. Mr. Britz did not think he would have to because the Commission had more than they needed. They could consider it as if the subdivision was in the past, and he would try to get an answer and would follow up with Attorney Loughlin before the next meeting.

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

Vice-Chair Blanchard made a motion to postpone the application to the May 14, 2014 meeting, pending information to be received from the City's legal department concerning the proposal.

Ms. Tanner seconded the motion. The motion passed by a unanimous (6-0) vote.

D. Off Brackett Road
Ann Coffey and Janice Stanley, owners
Francis Sullivan, applicant
Assessor Map 206, Lot 17

Attorney Bernie Pelech representing the applicant, Fran Sullivan, and Steve Riker of Sandpiper Environmental, were present to speak to the application. Attorney Pelech stated to the Commission that they had incorporated their suggestions from the previous month by considerably reducing the footprint of the proposed home and adding a rain garden. He hoped the Commission would look at the application favorably.

Mr. Riker told the Commission that the house footprint was reduced from 2,464 square feet to 1,841 square feet. In order to comply with the Commission's recommendations for a rain garden and controlling the stormwater that came off the house, they took approximately 50% of the stormwater that hit the roof and went to the western side of the house to a stone drip edge. The other 50% of the stormwater went in the opposite direction to a gutter and downspout system and then discharged into the 380 square-foot rain garden. The area would be planted with native vegetation that would handle the strong water flow. There would also be a 4" PVC pipe underground to make up a gravity system that would go from the gutter to the downspout and then to the rain garden. They would have liked to do the same thing to the other side but couldn't due to the lack of topography. They would have had to install something underneath the house or go out and around the driveway to get to the rain garden. They expanded the size of the stone drip edge to 3 feet from the original 16-18 feet so that it would provide more storage area and more infiltration for the stormwater.

Ms. Tanner asked if the house had a basement. Attorney Pelech stated that it did.

Mr. Riker mentioned that there was a new detail plan that showed the gutter, downspout and rain garden detail.

Ms. Stone asked Mr. Riker to show how the 3 inch-wide drip edge along the basement foundation would flow by gravity. Mr. Riker stated that the stormwater came off the roof and the drip edge was constructed on the ground at grade and was 3 feet from the edge of the hard surface of the foundation. There were 12 inches comprised of two different sizes of gravel to allow infiltration. Ms. Stone asked if he meant that the filter fabric was impermeable. Mr. Riker told her that it was permeable. Ms. Stone asked how it would keep the water up in that zone. Mr. Riker said that it wouldn't. The filter fabric was there to trap and catch anything that came off the roof so that the system would not clog up.

Ms. Stone said Mr. Riker was making the assumption that the water would be flowing horizontally on top of the filter fabric through the gravel drip. Mr. Riker replied that the water would be flowing vertically through it. Ms. Stone was confused and asked how the stormwater from the roof would get to the rain garden. Mr. Riker told her that it would on the other side of the house. Ms. Tanner asked Mr. Riker why the water would not just go into the basement. Mr. Riker said that he had worked on other projects with stone drip edges, and modern-day basements were built to handle water in the soil around them.

Ms. Stone thought that Mr. Riker assumed that the water table would be below the bottom of the basement. Mr. Riker disagreed and said that most houses in New England on a water table were within 3 feet of the surface in soils that were exceptionally well drained. Ms. Stone stated that was not her experience. Mr. Riker asked her if she meant groundwater that was contained in an aquifer and was moving. Ms. Stone meant the water table and the unconsolidated formation that the house was being constructed in to close proximity of the wetlands.

Ms. Stone asked Mr. Riker if he thought the water table was connected to the wetlands. Mr. Riker replied that it probably was connected in some way. Ms. Stone surmised that there must be a shallow depth of water table on the property. Mr. Riker believed it was within 3 feet of the surface. Ms. Stone thought they were basically making a void in the water table by putting the foundation in there and would cause hydrologic pressure in the basement. She said that when she built her house and her basement did not keep water out, so she had to have a sump pump connected to everything around the foundation and have it pumped out. Mr. Riker wasn't sure if they had a plan for a sump pump at that time. Ms. Stone told him that she could not see it functioning without a sump pump.

Attorney Pelech stated that they could connect something up to the rain garden. Ms. Stone told him that it would be handling a lot more water than just the runoff from the roof. It would handle the depth of the water.

Chairman Miller thought the rain garden could theoretically handle the water the day of a storm and the sump pump would run a day after the storm, as it did in his own home. He thought it would be a viable solution to run it to the rain garden. Ms. Tanner did not think a sump pump would help because it would have to run constantly if the water table was that high. She knew because her sump pump ran almost continuously.

Chairman Miller asked Mr. Riker to address the basement design. Mr. Riker stated that he was not in the construction business and had not done construction drawings for the house. They were seeking approval first and then the applicant would take the next step to get the drawings done, perhaps when the Building Inspector was on the site.

Mr. Sullivan said he had talked to the neighbor who wanted to see his property. The house was 20 feet away and, with the exception of the major flood from a few years back, the neighbor said he had never had a wet basement. Mr. Sullivan said that they couldn't go by the water table because a lot of foundations were put below the water table.

Ms. Tanner stated that it only took one project to change the whole table in the neighborhood. The house was 100% in the buffer, and a basement would just compound the problem. She appreciated that the applicant had installed a rain garden and a pervious driveway, and that he had stepped down the size of the house. However, she did not believe that the application was acceptable with a basement.

Ms. Stone stated that her house was 100 feet from a wetland and they had tested the property before the house was built and had determined that the bottom elevation of the basement floor, based on modeling and the water table, had to be above the water table to not have water coming in. When the huge flood occurred, the water had streamed in, so they had a sump pump that discharged to the upland in the yard.

Ms. McMillan replied that there was no upland on the property that it could discharge to because beyond it was all wetlands. Mr. Riker stated that there was plenty of upland on the property. Ms. McMillan asked how far away the upland was. Mr. Riker told her that the nearest corner of the house was 34 feet from the wetland. Ms. McMillan thought the rain garden would run into some problems, but if the water discharged to the rain garden, its design would have to be changed to handle the water. Mr. Sullivan stated that even if a crawl space or slab were installed instead of a basement, it would go down 4 feet, and he didn't see much difference between 4 feet and 8 feet. They would have to have a cross wall.

Mr. Vandermark asked what the big circle was on the drawing near the wetland buffer. Mr. Riker told him that the dotted line was the 100-foot wetland buffer and pointed out that almost the entire lot was within the 100-foot buffer. Mr. Vandermark noted that the other part of the dotted line was the front yard of the house across the street, and he asked if it was 20 feet from the ocean. Mr. Riker told him that it was over 200 feet from the tidal wetland, which was 100 feet from the other wetland.

Vice-Chair Blanchard stated that, for purposes of discussion, she wanted to make a motion to approve the application with the stipulation that the ongoing maintenance of the rain garden be ensured as well as the continuation of the permeable driveway.

Ms. Tanner wanted to add a stipulation that there would be no basement. Vice-Chair Blanchard accepted the amendment. Ms. Stone seconded the motion.

Vice-Chair Blanchard stated that she felt torn because the nature of the project was all within the buffer, and she could appreciate the challenges of the lot. She wasn't sure if the basement issue would resolve a lot of her concerns, but it was one of those situations of whether it was a viable house lot or not, so she had made the motion for purposes of discussion. She did not feel strongly about the basement and was more concerned about the impact to the area in terms of surface drainage as well as groundwater alterations.

Ms. Tanner agreed, but the entire project was in the wetland buffer and she felt very strongly that they should not put impervious materials in the wetland buffer. She had previously joked that the house should be put on piers, and now she thought that was an absolutely viable option and that if the applicant did not do piers, they could not have a basement. She thought the applicant

had done a lot to address the issues that the Commission suggested, but that was the only compromise that she would consider acceptable.

Ms. McMillan mentioned that if a basement were not approved, it would be something that might have to be placed into the covenant.

Attorney Pelech stated that he did not think they would go forward if they could not have a basement, and they would probably return with a new plan with a larger footprint. Mr. Sullivan was a woodworker and needed a woodworking shop in the basement, so they would just add it to the footprint, but it would mean more impervious. It was a lot valued at \$250,000 by the City, and the owners have maintained taxes on it as a buildable lot for many years. Chairman Miller stated that it wasn't the Commission's issue but he understood.

Vice-Chair Blanchard told Mr. Sullivan that she appreciated that he had been faithful by coming to a work session, and she thought it was the best place to put a house. Otherwise, he would have to do a lot of cutting that would have as much impact on the drainage and runoff in terms of where the building was sited.

Chairman Miller felt that the lot with the lawn was the perfect place for the house and that the basement was good engineering. One could build a pool to hold the water or build a basement to hold water out. It had the potential for changes to the area's hydrology. However, the Commission did not cover basements in their ordinance and he believed that the basement issue could be handled. Mr. Sullivan stated that they could put the sump pump into the uplands, which would help, and he didn't think there would be too much water in the basement. Chairman Miller told him that there were ways to keep the water out of the basement, and it might cost more depending on the location, so that was the reason some people didn't do it and ended up with a sump pump. In terms of buffer and hydrology, it could impact the hydrology due to its location, but he wanted to meet in the middle.

Vice-Chair Blanchard stated that the motion the Commission had in front of them was to approve the stipulation that the rain garden and permeable driveway remain permanent if the house was constructed, and for discussion purposes, she had accepted Ms. Tanner's amendment saying there would be no basement. At that point, she felt that she would not support the motion but would come back if it was stipulated with a new motion that would include just the coving of the rain garden and the permeable driveway. She thought the conversation was important to have.

Chairman Miller asked for public comment. Attorney Derek Durbin approached and told the Commission that he represented Denise and Michael Todd, who were direct abutters of the property on the north side. They were out of town and could not attend the meeting, and he had drafted a letter on their behalf that he wanted to submit and also had a photo that depicted the back portion of the lot.

Chairman Miller asked Attorney Durbin if the Todds had spoken to it in the past, and Attorney Durbin said they had not. Chairman Miller asked what the point of their issue was. Attorney Durbin stated that the issue was regarding the cumulative environmental impacts from the

proposal, mainly the stormwater runoff and management of stormwater on the property. The assumption was being made about the lack of details regarding the stormwater management plan and the drainage calculation. Their concerns were that there was a high water table in the area, so the impact of construction in the water table and surrounding wetlands would make the property a bit wetter than it was being represented. The back of the property as shown in the picture was a recent depiction of what it looked like in the back portion of the lot. To the right side of the driveway, there was a sloping down from the driveway facing from Brackett Road into the culvert area, and clearly any stormwater coming off the proposed construction would go in the culvert. They were not sure that the rain garden as proposed would be able to effectively manage the amount of runoff coming from a project of that size. As a general policy matter, the project was being proposed completely within the 100-foot wetland buffer zone, and that made it a big issue. It had been assessed by the City as a buildable lot, but some properties, whether assessed or not, were not suitable for building.

Chairman Miller thanked Attorney Durbin for conveying the abutters' comments.

Vice-Chair Blanchard had a question relative to the photo because it looked like the house would be in the foreground of the photo. Attorney Pelech said that he also had a question. The letter noted that the northern back of the lot was extremely wet, and that was the dry upland part, so he was not sure what view they were taking, but the northern back of the lot was not wet at all. Someone else mentioned that the elevations of the two nearby houses sloped away, so he didn't see how it could be an issue to the abutters.

Chairman Miller went of the rules of making motions to either grant or deny an application with the Commission to make sure they were clear about the possible outcomes. Vice-Chair Blanchard stated that it was a big vote because it would either go forward or it wouldn't. Ms. Stone said that she would not vote for it, even without the basement.

Mr. Vandermark said that he wanted to abstain from the vote because he had not been at the previous meeting.

Vice-Chair Blanchard stated that she had accepted Ms. Tanner's amendment but would withdraw the motion that had the three stipulations, the covenant relative to the rain garden, the permeable driveway, and no basement.

Mr. Britz told the Commission that people had stated what they wanted, and the Commission should also clearly state what it wanted and send it to the Planning Board. The Planning Board would want to know what the Commission thought, and not what the rules were. It should go into the minutes and the motion should go forward clearly.

Chairman Miller said he thought that the original motion was for discussion and asked Vice-Chair Blanchard if that was the motion she wanted.

Vice-Chair Blanchard stated that the motion she spoke to was too broad relative to the basement, and she felt that it did not have the engineering or enough of the water table information. She preferred to move the motion forward on just two parts, the covenant for the rain garden and the

permeable driveway. She withdrew her motion and Ms. Stone withdrew her second of the motion.

Chairman Miller stated that the table was clear for a motion and the Commission could go forward.

Vice-Chair Blanchard made a motion to recommend approval of the Conditional Use Permit with the stipulation that a restriction that included the perpetual maintenance of the rain garden and the permeable driveway. Ms. Stone seconded the motion. Chairman Miller called for the vote.

The vote to recommend approval of the Conditional Use Permit with the stipulation that a restrictive covenant for the perpetual maintenance of the rain garden and the permeable driveway is required **failed** to pass by a vote of 2-3 with Chairman Miller and Vice Chair Blanchard voting in favor and Ms. Tanner, Ms. McMillan, and Ms. Stone opposed. Mr. Vandermark abstained. The motion failed to pass for the following reason:

1) There was a concern about excessive water problems that might be caused by putting in a basement and also by disrupting the site.

IV. CONDITIONAL USE PERMIT APPLICATIONS (NEW BUSINESS)

1. 28-30 Dearborn Street
Brian M. Regan and Susan M. Regan, owners
Assessor Map 140, Lot 1-11

The owner Mr. Brian Regan was present to speak to the application.

Mr. Regan told the Commission that he wanted to remove a concrete wall that was between two houses. The front would be sloped and a set of stairs would be installed. He pointed out on the drawings and maps the existing driveway, the proposed grass area, the existing and proposed hot top, the existing wall and the proposed stone wall. An area of crushed stone, ragweed and grass that was currently used for parking would be loamed and re-used for parking. He showed a photo of a concrete walkway that would be removed and grassed in with an elevation that would be sloped. He stated that he would landscape the area to hold the soil in. Mr. Regan also showed an area that was close to the shore near a boat, with a 3-foot wall that prevented the tide from coming in. He stated that the area would also be loamed and seeded.

Chairman Miller verified that Mr. Regan wanted to remove the wall and make a green area in front with a slope, and that he would cut some space further down for the proposed pavement for parking. Mr. Regan agreed and said that the wall was 90 feet long and would be removed to the end of the red house, and then a rock wall with a set of stairs would be built between the two houses.

Chairman Miller asked if the area near the boat would be loamed and seeded with conservation seed mix. Mr. Regan said that he would use a mixture of grasses called Eliot Mix that someone had recommended to him, and he gave a sample of it to the Commission.

Chairman Miller noted that Mr. Regan had said there was current parking on the proposed seeding and loaming area. Mr. Regan replied that it was unlevelled crushed stone with a nearby shed on it, and he would re-loam and re-seed the area and place evergreens on it. Chairman Miller asked Mr. Regan how he would keep the cars from going back there and parking after doing all that work. Mr. Regan replied that he would probably put a small shrub line or some type of vegetation so the cars wouldn't turn in. Chairman Miller asked if the shed could be removed. Mr. Regan wasn't sure because it was someone else's shed.

Vice-Chair Blanchard said she was confused about the photo and asked Mr. Regan if he owned the two buildings and if the neighbor owned the house where the new driveway would be.

Mr. Britz then spoke up and said he wanted to explain some of the background of the application. He told the Commission that Mr. Regan had received a variance to allow the two houses to stay on the lot and had also gotten approval from the Historic District Commission to change the paved area to the wall. The big push for the project was to get the sewer line from the lower property into the sewer manhole on Dearborn Street above so that it would provide better access to the sewer for himself and his neighbors, resulting in some benefit to the neighborhood from the project. He had provided a plan showing the balance of increase in impervious surfaces, but he wasn't aware of the shed, and he thought the suggestion about the boulder barrier to stop cars from going in was a good one. Because the project was in the 100-foot buffer and was a very urban site, Mr. Britz felt that the Commission needed to see the plan because the project could end up in a little bit of buffer area. Perhaps plantings could be specified, but in the end, the Commission would see a net improvement.

Chairman Miller stated that a tree line or shrub line with rocks in-between would perhaps help, and it would be something that the plows wouldn't disturb. He mentioned that any site without a 48" diameter tree was fair game for the plows and would be wiped out.

Ms. McMillan noted roof runoff from the red house and asked where it went. Mr. Regan stated that there was an existing gutter that led the runoff down the street. He had resurfaced the street and put a drain line under the walkway into the street so that the runoff went down the hill and into the street. Chairman Miller asked what the side yard looked like. Mr. Regan told him that he had gone before the Trees and Greenery Commission to receive permission to take them down, and currently it was a shaded grass area with an oak tree. Chairman Miller asked if it was possible to direct the downspout under the walkway and street toward the back and let it flow through the grass area to the pond. Mr. Regan agreed and said he had recently put new gutters with covers, but he could put them on the side so that the runoff would drain better. Chairman Miller told him to make sure he did not create a problem with his foundation but try to infiltrate as much as possible. Mr. Regan told him that it was a stone foundation and normally got just surface water from the back and the sides of the houses.

Vice-Chair Blanchard asked Mr. Britz if the Commission should stipulate that the applicant be in touch with City people to ensure that the construction proceed as specified in the plans. Mr. Britz replied that it would be helpful to have an on-site meeting with the contractor before the sewer and street construction work was begun because the City would want to ensure that it was done properly and that it worked for the whole neighborhood. Mr. Regan told the Commission that once he got all the final approvals, he would talk to his contractor and give the City a two-day notice and figure it all out.

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

Vice-Chair Blanchard made a motion to approve the Conditional Use Permit application as presented with the following stipulation:

- 1) that the pre-construction meeting be held with the applicant, the applicant's contractor, as well as staff from the Planning Department and the Department of Public Works to insure that the construction of the project proceeds as specified on the plans provided to the Historic District, the Planning Board (Conditional Use) and meets the construction requirements for work in a City street.

The motion was seconded by Ms. Tanner. Ms. Tanner then made a motion for an amendment to the motion to add a second stipulation:

- 2) That the seeded area have a border of plantings and boulders to prevent cars from turning and parking as well as having snow accumulate in that area.

The motion to approve the Conditional Use Permit application as presented with the following stipulations was seconded and passed by a unanimous (6-0) vote:

- 1) that the pre-construction meeting be held with the applicant, the applicant's contractor, as well as staff from the Planning Department and the Department of Public Works to insure that the construction of the project proceeds as specified on the plans provided to the Historic District, the Planning Board (Conditional Use) and meets the construction requirements for work in a City street.
- 2) That the seeded area have a border of plantings and boulders to prevent cars from turning and parking as well as having snow accumulate in that area.

2. 299 Vaughan Street and 319 Vaughan Street
299 Vaughan Street, LLC, and 319 Vaughan Street Center, LLC, owners
3S Artspace, applicant
Assessor Map 124, Lot 9

Mr. John Chagnon of Ambit Engineering was present to speak to the application.

Mr. Chagnon stated to the Commission that the application had been approved the year before. The egress was supposed to go to the property on the north side but they couldn't come to terms. In the interim, a parking lot was built on the 299 Vaughan Street site. They had agreed to let 3S egress across their property somewhat, so they had to amend the Conditional Use Permit. He

had revised plans that showed improvements that were done on a TAC level, and he pointed out the patio in the back where a tree had been added at the corner of the open space. He stated that it had been done the year before and he had brought it in for reference. The area next to the tree was now a parking lot. There were additional impacts to the buffer square footage, but because the building was tight to the property line, there was no way to get from the back exit to the street without coming around the building. Mr. Chagnon mentioned that a description of the project and justifications for granting the Conditional Use Permit were included in the packet.

Ms. Tanner noted that the proposed pavement going in was pervious and asked Mr. Chagnon if that was the case. Mr. Chagnon agreed that it was within the buffer. There was an exit and ramp that were not pervious to provide access and egress to the area that was at a different elevation. Because the Commission had approved a 2,470 square-foot buffer area as part of the parking lot, they were going into the buffer slightly with a new sidewalk and would replant, so it would still be a 2,470 square feet of buffer planting.

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. The motion was seconded by Ms. McMillan.

The motion passed by a unanimous (6-0) vote.

V. OTHER BUSINESS

Vice-Chair Blanchard mentioned stewardship responsibilities of the Commission regarding public undeveloped plans. She had received an email about the North Mill Pond suggesting that now that it was City-owned, it should not be mowed.

Mr. Vandermark talked about being proactive about some of the projects. Ms. Tanner said that she had requested an evening to meet the members of the City Council, and it was postponed to the May meeting. Mr. Britz suggested that it be scheduled at a separate time if the agenda was long. Chairman Miller instructed Mr. Britz to conduct a Doodle poll to find a date that worked for everyone.

VI. ADJOURNMENT

At 5:25 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 August 13, 2014.