

MINUTES

CONSERVATION COMMISSION

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

3:30 p.m.

June 10, 2015

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman MaryAnn Blanchard; Members, Barbara McMillan, Kimberly Meuse, Kate Zamarchi and Alternates Samantha Wright and Adrienne Harrison

MEMBERS ABSENT: Matthew Cardin

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

.....

Chairman Miller welcomed the three new Conservation Commission members, Kate Zamarchi and Alternates Adrienne Harrison and SamanthaWright. He stated that all new members would be voting today.

I. APPROVAL OF MINUTES

- A. April 8, 2015
- B. April 29, 2015
- C. May 13, 2015

It was moved, seconded, and **passed** unanimously (4-0) to approve the 3 sets of minutes as written (approved at the end of the meeting).

II. CONDITIONAL USE PERMIT APPLICATIONS

- A. 200 West Road
Micronics, Inc., Owner
City of Portsmouth, applicant
Assessor Map 267, Lot 22

Dave Desfosses with DPW was present to speak to the application. Mark West and the team from Altus Engineering were also present. Efforts are to clean up drainage deficiencies in the West Road area so the road can be resurfaced. It was a gravel yard for years after which it was excavated and turned into a subdivision. Sediment got into the drainage system. The City would like to restore functionality to the system. The pavement is in disrepair due to (3-4') fill at the site where the drainage swale used to be. The fill needs to be dredged out. This is part of a larger construction project with the City. Cory Belden with Altus Engineering was present to speak to

the application. He was hired to look at the drainage situation and come up with a design to convey the 10-year storm. The existing system is inadequate. The outlet structure is blocked, filled by sediment. The vegetation is now classified as wetland vegetation, but the area must be cleared in order to contain the stormwater. The existing culvert is corrugated metal pipe, 30" in diameter. The size of this has to be increased so the plan is to put in a double culvert. However, it will be in the same location with the same grade and parallel to the current culvert. They have tried to minimize wetland impacts. There is about 4,600 s.f. of impact to the wetland buffer, but that is to dredge out the existing drainage channel and put in the culvert. There will be no additional impervious area. The existing drainage system will be improved. They will be staying within city easement for improvements for the most part, but will extend the slope slightly beyond the easement. Construction is planned for the fall of 2015. The wetland permit application has been submitted.

Chairman Miller inquired about specifics around impact to the wetland area.

Mr. Belden stated that the existing watershed will not be altered. Everything funnels to the outlet structure. Impervious area will not be increased. Peak discharge, quantity and volume will all remain the same.

Chairman Miller asked for details about the location of the culverts and where the grading will occur.

Mr. Belden stated that they will be replacing the culverts from West Road to the back of 200 West Road. Culverts will be buried. Grading would occur along the culverts to the outlet structure.

Ms. McMillan inquired about the existing vegetation and the mature trees. She wondered if all of it has to be removed.

Mr. Belden stated that everything over the culverts will need to be removed and will be planted in grass.

Ms. McMillan inquired about whether water is infiltrating the area.

Mr. Desfosses stated that water is sitting over the area now. The land is sitting approximately 3' above what it was due to the amount of fill.

Mr. Belden stated that the top of the current culvert is submerged in 3 1/2' of water. Without proper water flowage, it backs up to other pipes on West Road.

Mark West, Wetland Scientist, West Environmental was present to speak to the application. He stated that shrubs and woody debris are creating dams and holding water back. The vegetation is mostly invasive and the dominant species is Phragmites. The ditch is filled in and can no longer carry the water.

Ms. McMillan inquired about how the same problem will be avoided in the future.

Mr. Desfosses stated that because the park is fully built, because the city no longer uses sand in winter, it is unlikely that this will happen again. There will be a plunge pool to prevent the same situation from manifesting again. However, if it does, it will be on a much smaller scale.

Chairman Miller is looking for some way to recapture ecological function in terms of water quality. While he understands not wanting trees planted over the culvert, he wondered if there was anything else to plant other than grass.

Mr. Desfosses stated that the grass will only be over the culverts, not over the path of the water. The subdivision was built with grass line swales so it is treated as it runs off the road. In this regard, it is different from other drainage systems.

Mr. Belden stated that the area is fully developed. The plunge pool will prevent erosion and sediment transfer beyond the site.

Ms. McMillan inquired about the timeline for the project stating that at this time of year, there are a lot of birds present.

Mr. Belden stated that construction is slated for this fall.

Ms. McMillan stated that there is a lot of dumping/stockpiling going on at the site.

Mr. Belden stated that there is a NH DES wetlands permit for this application.

Chairman Miller stated that there is a CUP and State Wetlands Permit under consideration for this property. He asked the presenter if there would be anything different to present between the two applications.

Mr. Belden stated that there would not be anything different to present.

Hearing no other questions, Chairman Miller asked for a motion. Vice Chairman Blanchard made a motion to recommend approval of the application to the Planning Board as presented. The motion was seconded by Ms. McMillan. Hearing no discussion, Chairman Miller called for the vote.

The motion to recommend approval of the application to the Planning Board as presented **passed** by a unanimous (7-0) vote.

Ms. Blanchard made a motion to recommend approval of the application to the State Wetlands Bureau as presented. The motion was seconded by Ms. Harrison.

The motion to recommend approval of the application to the State Wetlands Bureau as presented passed by a unanimous (7-0) vote.

- B. 1163 Sagamore Road
Chinburg Builders, Owner
Assessor Map 224, Lot 17

Mr. Britz stated that it was the request of the applicant to postpone this application.

Ms. McMillan made a motion to postpone the application to the July 15th, 2015 Conservation Commission meeting. The motion was seconded by Vice Chairman Blanchard.

The motion to **postpone** the application to the July 15th, 2015 Conservation Commission meeting passed by a unanimous (7-0) vote.

- C. 3201 Lafayette Road
Hillcrest at Portsmouth, LLC, Owner
Assessor Map 291, Lot 7

Revised plans and photographs of the site were distributed. Bernie Pelech, Attorney, was present to speak to the application. Mr. Glen Gibley, Principal of Hillcrest Estates, Tom Sokolowski, Wetland Scientist, Steve Oles, MSC Engineering, were also present. The proposal is to replace 5 of the existing modular homes (now vacant) with new modular homes. There are currently over 200 modular home sites on the parcel. Modular homes exist within the buffer. Hillcrest was built in the 1950's and 1960's. In the mid 1970's, permits (from the Army Corps of Engineers) were received to fill a large area and Codfish Corner to Lafayette Road was built. In 1983, there was no wetland ordinance in the City. Up to 2010, as the area in question was considered a man-made wetland. In 2010, the zoning ordinance was amended reducing the jurisdictional size of wetlands and including a setback from drainage swales. The petition in the packet is signed by 130 residents of Hillcrest for the Conservation Commission to approve the CUP. They are proposing to increase the impervious area to 3127s.f. and 75-80% of the entire lot is within the buffer. The residents are concerned because there are free standing outdoor oil tanks within 15-20' of the wetland. When replacing the units in Hillcrest, they will be changing from oil and kerosene to propane. They have attempted to reduce impervious surface. They have added stone drainage around all paved areas. This was previously untreated. Stormwater will now run off driveways into the 18" deep stone drainage area. A stone infiltration area is proposed around each home as well as around storage sheds. In the packet of photographs, 150 Codfish Corner Road was a very shaded, heavily treed lot. A home had to be removed because it was mold infested. So the applicant is proposing removal of some of the trees (not within the 25' no-cut zone) to open it up to sunlight. On Sheet C4, the proposed house is moved closer to the road. It is wider than the previous house. They are proposing a small 12' X 24' 1- car garage, almost entirely out of the buffer as well as a stone drip edge around the perimeter of the house, a small (8' X 10') shed to replace the old shed. They are proposing a 5' landscaped area around the home with the exception of the garage. The existing impervious area was 549s.f. The proposed impervious area will increase by 105s.f. Sheet C2 is the property at the corner of 429 Striped Bass Avenue and Dolphin Drive. Most of this site is within the buffer. This site has a proposed house slab (26 1/2' X 64') and a proposed 2-car (24' X 24') garage. They are proposing to remove much of the pavement, but also proposing pavement within the buffer. On this lot, they have

proposed a planting of 10 Red Oak saplings to replace the willow tree. The willow tree will be removed due to interference with the drainage (from branches). The proposed homes are larger than the former or existing homes. The days of 12' wide by 40' wide mobile homes that can be transported down the road are no more. People who move to Hillcrest are looking for one-level living with about 900 -1500 s.f. of living space. The question may arise about the necessity of garages. The average age in Hillcrest is in excess of 50 years of age. They want garages so they don't have to shovel and clean ice off cars in winter. Sheet C3 is 229 Mackerel Avenue. There was a home at this site. It was a 13' wide unit. They are proposing a 26' wide unit but are proposing a much smaller (8' X 10") shed. They will remove much of the existing paved driveway. There will be a stone drip edge along the home and all surfaces of driveway. They are proposing 550 s.f. increase of impervious area due primarily to a change in size of the home. Sheet C4 is the layout for 150 Codfish Corner Road. Sheet C5 is 180 Codfish Corner Road. The 100' buffer runs along the front of the property line. The entire lot is within the buffer. There is 2,140 s.f. of impervious. They are proposing an increase from 1,600 s.f. to 3,710 s.f. of impervious surface. They cannot move the house any closer to street. They have minimized impact to the buffer as much as possible. They are proposing the stone drip edge, a landscaped area around the house and garage, and a stone edge around the driveway. Sheet C6, 171 Codfish Corner; 85-90% of this lot is within the buffer. They are proposing an increase from 1,962 s.f. to 2,855 s.f. of impervious area due to a slightly larger home and garage. They are proposing a 5' landscaped area around the house, an 18" stone drip edge around the perimeter of the house and also along the driveway. This may very well be Portsmouth's most affordable housing, something not all that common in the City. He stated that it is the most congenial neighborhood that he has visited in a long time. The neighborhood is a very well-cared for, well-kept neighborhood.

Glenn Gibley, Proprietor of Hillcrest Estates was present to speak to the application. He stated that based on comments they received in the report from Peter Britz, they have made significant changes to the plans. Steve Oles from MSC Engineering covered some of the additional changes to further minimize wetland impacts. They have decreased the buffer disturbance by roughly 2,800' and decreased the overall permit impact by 500'. They have reduced the impact as best as they can. They are bringing in roughly 6"- 1' of fill so they have minimized grading describing on Sheet C2 how they come out at about a 1% Slope.

Vice Chairman Blanchard inquired if there was any consideration given to reconfiguring the existing lot lines in order to achieve a more long range comprehensive development strategy that would respect the wetland terrain.

Mr. Gibley stated the only area left that they would have to reconfigure is the streets. There is a large wetland area in the back of the site that is approximately 100 acres and part of the original development. Most of that area was never developed.

Vice Chairman Blanchard inquired about the large wetland in back and inquired if there was a conservation easement on that.

Mr. Gibley stated that they would like to look into this further. They are amenable to discussions of easements, or other things they can do to enhance the wetland area. He felt that they should eventually have a plan for the setback issue.

Tom Sokolowski, Wetland Scientist with the State of NH, and with his own firm, TES Environmental Consultants was present to speak to the wetland issue. In 2014, he delineated the wetlands around the property. Following the wetland delineation a month ago, Mr. Gibley approached him to prepare a Functional Assessment. The previous plan prepared by Gove Environmental Consultants indicated that site wetlands are man-made and not considered jurisdictional wetlands by Portsmouth Zoning, but are wetlands according to wetland hydrology. There is an extensive wetland to the east associated with Berry Brook. The remaining wetlands are not considered prime wetland. They are not shown on a City map. These wetlands are bounded by development. It is not mature forest throughout most of the wetland area. With the development surrounding it, the wetlands do not provide the wetland functions and values that others may provide. However, they can act as a sediment retention area and stormwater conveyance, perhaps with some wildlife habitat. He has expanded upon the functions and values assessment. This is included in the submission package the Commission has in front of them tonight. The wetlands on the north and south side are similar to the interior in that they are channelized drainage ways. However, they have more flow, more mature vegetation, intermittent streams and some wildlife value. These wetlands had fairly low functional wetland values, although higher than in other areas. Along Lafayette Road, there is another low-lying wetland area, bisected by an old road. There are some invasive species present with some areas being almost entirely overgrown by Phragmites. On the eastern portion of the site the large prime wetland adjacent to the back end of the modular home park can be found. This is not pristine wetland. Old ditches (dug by the CCC) can be seen on aerial photographs. His findings for the functions and values assessment are that there is a very low chance of impact for the 3 isolated wetlands surrounding the homes because they are already at a low functions and values level. Regarding the remaining wetlands, there is also a low chance of impact due to the fact that the site is already fully developed. NH DES looks at lawns as degraded environments. They don't absorb water as fast as a forested environment. The design factors incorporated into the replacement homes includes a crushed stone apron (18" wide) around the home to catch rooftop runoff. The only contaminants that typically occur from rooftop runoff are from bird excrement. In addition to the new stone aprons (approximately 10" thick), the newly landscaped area (5' wide) is part of the design outside of the stone drip apron. The plantings proposed (at the recommendation of Peter Britz) include trees (a cluster of Red Oak) to replace the willow that will be removed. The trees are not wetland plants, but there are upland soils in this area. Silky Dogwood and viburnum will also be planted.

Chairman Miller called for questions from Commissioners.

Chairman Miller stated that the Commission looks for ways to replace buffer or water quality function and said that there might be better wetland function through the spreading out of the cluster of trees along the edge.

Mr. Sokolowski stated that these trees are good in terms of wildlife value (acorns). He felt that some depth to the planting would make the best buffer rather than a long linear edge. However,

if additional plantings are desired by the Conservation Commission, the applicant is certainly amenable to this.

Chairman Miller called for a discussion of the buffer function of the 3 wetland strips between the modular homes. He stated that when they conducted the site visit, one of the things that impressed him (and felt that it was missed in the assessment of wetland function) was the visual, aesthetic and audible benefits that the buffers hold. He felt that this was significant at the site. He felt the strip between the homes held a lot of value. He stated that Mr. Sokolowski's assessment was correct for the most part, but he emphasized that there are other values to this area over and above just functional wetland values. A comprehensive site plan for the wetlands would be very valuable. There is a real opportunity with the other values to make the homes even more desirable through enhancements to and protection of the wetland area.

Mr. Sokolowski stated that he understands where Chairman Miller is coming from. He explained why he rated the wetlands on the lower side as he did. They do not meet the characteristics of the higher rated wetlands which tend to have unusual qualities such as a nice vista overlooking a salt marsh, or the presence of species such as winterberry (providing nice contrast in the winter). He said the wetlands at this site do provide aesthetic values to the homeowners (as open space) as well as pre-treatment of stormwater.

Ms. McMillan stated that she visited the site after the site walk. She observed respect and stewardship for the wetlands in the community. She felt that with the unity of the neighborhood, there is an opportunity for a community stewardship plan for the wetlands on the site.

Mr. Sokolowsky stated that there would be no use of fertilizers other than low phosphate, slow release nitrogen in the buffer area.

Mr. Britz clarified that there is a restriction for use of fertilizer in the buffer zone. It is prohibited all together in the first 25-50'. From 50-100' of the wetland, only slow release nitrogen and low phosphate fertilizers are allowed.

Chairman Miller stated that research shows that established lawns really do not need fertilizers, but even more importantly pesticides are a concern due to the proximity of Berry's Brook. He stated that the City website is a good resource for information.

Vice Chairman Blanchard inquired about the timeline for this application with regard to the Planning Board.

Mr. Britz stated that the Planning Board will look to do the Site Plan Review and CUP at the same time so that the relationship between the two can be understood.

Vice Chairman Blanchard stated that because the Commission now has new information and that this project is complex in nature, a work session may be helpful. Also, a map of the entire parcel, not just the development, would be helpful.

Chairman Miller expressed support for the idea for a work session.

Attorney Pelech showed a map of the entire parcel.

Mr. Britz stated that the Planning Board would like to hear the Site Plan and the CUP at the same time. This could be postponed in order to hold a work session at the next Conservation Commission meeting. However, it is understood that the applicant would like to move forward in short order. He commented that the applicant has made a terrific effort in terms of plantings and consideration of wetland and buffer areas. However, consideration of the larger picture and how this wetland and its stewardship impacts surrounding ecological areas is in order. A more comprehensive plan can be helpful in this regard and would result in a much better project in the end.

Attorney Pelech stated that they are currently working on a comprehensive site plan and he stated that if the Commission was amenable to it, they will present it for consideration at the next Conservation Commission meeting.

Chairman Miller asked for construction details that are not in the packet.

Mr. Sololowski stated that they are generally interested in having a more systematic way to maintain drainage and wetlands. They are committed to protecting the wetlands. He is requesting to be able to move this process forward. There are time issues involved with residents wanting to move into the estates. He added that it is a major undertaking for them to go to the extent that they have to ensure the lowest impact possible while using Best Management Practices. They are only talking about replacing 5 of the homes. He added that there is also a silt sock proposed for each one of the 5 areas being built. They are planting (on one site alone), 53 trees on an 8,000 s.f. site. He felt that this demonstrated their commitment to preservation of these areas. On every one of the 5 sites, they are adding plantings such as Silky Dogwood. They've reduced pavement on each site (since receiving the memo from Mr. Britz only yesterday) for the 3rd time. They have moved the home at 150 Codfish Corner Road closer to the road. They have spent a significant amount of money to demonstrate the minimal amount of grading that will happen for each one of these sites. Increase in elevation is as little as 6", but never more than 12". There is very little impact on the water table. They have done all they can do for the time being. The construction season is slipping away so there is a sense of urgency. The Conservation Commission has the commitment of the team that they will do a comprehensive site plan. It is in their best interest to take care of the wetlands. They urge the Conservation Commission to move this along. They have buyers that have committed to purchase homes, but are awaiting approval prior to moving forward. The City of Portsmouth has the applicant's commitment that they will be good stewards.

Ruth Griffin of 479 Richards Avenue was present to speak to the application. She was present in support of Hillcrest Estates. She is part of the Housing Authority, but is not present wearing that hat. She is interested in the state of housing in Portsmouth. Portsmouth is made up of neighborhoods where people want to live, be happy and be part of this community. Hillcrest is a wonderful place to live. She stated that when a trailer park was talked about in the City in the past, it had a negative connotation, but Hillcrest is a model example. She hopes there is an easy

solution to the issues the Conservation Commission is seeing. She doesn't want to see the project held up. She is in support of adding 5 homes to the site.

Ronald Cypher of 319 Salmon Avenue was present to speak to the application. He moved to Hillcrest in 1997. He stated that the first 5 years were not pleasant. People were threatened with eviction at very minor things. Permits were not obtained early on; 6 homes (including his) went in without permits. The new owner has made it a pleasure for people to live at Hillcrest. He is urging the Conservation Commission to do "what's right" by granting this application.

A Portsmouth resident (name not recorded due to inaudibility of the tape) was present to speak to the application. She stated that she and her husband have lived in Portsmouth for 4 years. They went to live at Hillcrest Estates when they had to leave their rental. They thought they were secure in the place they were renting, but were asked to leave when the owner's son needed a place to live. Consequently, they were homeless. They need to stay in Portsmouth due to medical needs (her husband is disabled) and Hillcrest is affordable. They cannot afford to live anywhere else. Portsmouth needs what the owner is offering at Hillcrest Estates. She is asking the Conservation Commission to approve the application.

Bob Carpenter of 304 Salmon Avenue was present to speak to the application. The current environment at Hillcrest Estates is wonderful. He was in the military for 20 years and has lived all over the world. This is the best place they have ever lived. They live where they watch the wildlife from their home and enjoy it very much. He asked the Conservation Commission to do the "right thing" and approve the application.

Chairman Miller thanked everyone for coming to the meeting, for speaking and stated that he appreciated the sense of community.

Vice Chairman Blanchard put forth an idea. She stated that the Site Plan is in process and will go to the Planning Board. The complication with this site is its proximity to the Berry's Brook Watershed. Maintaining the integrity of this watershed is very important and this gives her pause in approving the application immediately, as much as she would like to do so. Incremental changes can make a significant difference when it all adds up. She would like to have some security that there would be no further development along the perimeters of the currently developed areas. She respects that it is important to move things forward, but stated that she will not put the rubber stamp on something that is not complete.

Chairman Miller stated that there may be ways to make this work when a motion is made.

Ms. Zamarchi inquired as to whether the walkways could be more porous.

Mr. Gibley stated that they will use pervious pavers for all the walkways.

Ms. Zamarchi inquired about Sheet C3 and the driveway up to steps and whether that will be porous.

Mr. Gibley stated that they could make the area along the home pervious pavement.

Chairman Miller stated that these are tools in the comprehensive plan for current and future work.

Mr. Gibley reiterated that this project constitutes 5 sites, all less than 10,000 s.f., each in an area less than 200 acres. He understands the concerns of Vice Chairman Blanchard so they would be amenable to a work session in conjunction with the Planning Board submittal. They have 10 other vacant sites in Hillcrest Estates. They are also within the buffer so they will be back. He stated that 6 homes have been replaced in the past two years that are smaller than the previous homes, so they are not on a large scaled development tract. They will not redevelop the entire site.

Hearing no other questions, Chairman Miller asked for a motion. Vice Chairman Blanchard made a motion to recommend approval of the application to the Planning Board as presented with the following stipulations:

- 1) The applicant shall include in the Site Plan a comprehensive water resource management plan (pavers, drainage, drip edge) as well as an invasive plant management plan to include potential restriction of further future development in the wetland buffer proximal to the Berry's Brook Watershed.
- 2) The applicant shall install pervious pavers on all walkways.

The motion was seconded by Ms. Meuse.

Chairman Miller called for discussion.

Chairman Miller felt that the second part of the first stipulation (regarding future development) may be a bit too restrictive and that with a comprehensive water resource management plan, protection of the wetlands would be covered.

Mr. Gibley stated that Chairman Miller proposal would be acceptable to them.

Mr. Britz stated that they are allowing them to put an expansion of up to 25% without getting closer to the wetland buffer. He would like to get more detail (perhaps for the comprehensive plan) regarding what areas they are going to restore.

Ms. McMillan stated that she would include only the first stipulation, but include some sort of restriction on future development in the buffer. She would like to add "maintenance" to the first stipulation.

The second stipulation will be removed (and added to the first stipulation) and stipulation 3 will become stipulation 2.

Mr. Britz posed the question of who will decide when the applicant has achieved what they are asking of them.

Chairman Miller stated that he would like to start this review with a work session. In the work session, what they are looking for could be outlined in more detail.

Mr. Britz inquired if a work session prior to the Planning Board meeting was desired. In which case, they would need to develop this plan prior to the Planning Board meeting.

Chairman Miller stated that he is thinking of a long-term plan for the entire site.

Ms. Harrison stated that they have not really discussed sites proposed today versus sites slated for future development. There may be things they should do now versus later given that future sites may be proximal to the wetland areas.

Mr. Britz stated that the Planning Board may not hear this until July. It presents some difficulty not knowing what the Planning Board will do at their next meeting.

Chairman Miller stated that his faith in the process is good. He felt that the applicant will be a good steward and that they are willing and able to do what is requested of them.

Attorney Pelech stated that drainage swales have already been improved (over 100 shopping carts were removed). They will continually be working on improvement of the site.

Vice Chairman Blanchard appreciates everyone's willingness to be patient as they struggle through this in order to protect the natural resources of the community, which is in their best interest as well as the best interest of the City.

Hearing no further discussion, Chairman Miller called for the vote.

The motion to recommend approval of the application to the Planning Board as presented with the following stipulations **passed** by a unanimous (7-0) vote:

- 1) The applicant shall include in the Site Plan a comprehensive water resource management plan (utilizing tools such as pavers, drainage systems, drip edge, and other best management practices for stormwater) as well as invasive management to include potential restriction of further future development in the wetland buffer proximal to the Berry's Brook Watershed.
- 2) The applicant shall install pervious pavers on all walkways.

Chairman Miller called a 10-minute recess to move to Conference Room A.

- D. Borthwick Avenue (amendment)
Public Service Company of New Hampshire, Owner
Assessor Map 234, Lots 1, 3, 7-4A, 7-7, 7-3

Greg Halsey with Tighe and Bond was present to speak to the application. Eversource is seeking an amended Conditional Use Permit. The project has largely been completed. However, Eversource has requested approval to construct one additional riser structure which will result in an additional 10s.f of impact to the wetland buffer.

Hearing no questions, Chairman Miller asked for a motion. Vice Chairman Blanchard made a motion to recommend approval of the application to the Planning Board as presented. The motion was seconded by Ms. Zamarchi.

Hearing no discussion, Chairman Miller called for the vote.

The motion to recommend approval of the application to the Planning Board as presented **passed** by a unanimous (7-0) vote.

III. STATE WETLANDS BUREAU PERMIT APPLICATIONS

- A. Standard Dredge and Fill Application
200 West Road
Micronics, Inc., Owner
Assessor Map 267, Lot 22

This agenda item was voted on and presented earlier along with the Conditional Use Permit for this application.

- B. Standard Dredge and Fill Application
99 Bow Street
Martingale, LLC
Assessor Map 106, Lot 54

Zachary Taylor, Director of Operations for Martingale Wharf was present to speak to the application. Dana Bisbee of Divine, Millimet and Branch, Attorneys at Law was also present. The project consists of a deck expansion (2,197 s.f. total) on either side of the existing deck along the waterfront. The project will allow expansion of the seating area and customers to enjoy more of a waterfront view area. Twenty-five percent of the expansion is for public use. The HDC has approved the project. The habitat is really a manmade structure along the shoreline with ledge and rocky areas. The proposed impact is in a previously disturbed area. The Bow Street waterfront area has been a commercial wharf area for the past 200 years. There are no signs of marsh or oat grass growing in the area. Ecologically, there is very little impact. There are also fill areas. The project has been submitted to the Natural Heritage program for review and they have determined that there will be no impact to endangered or other listed species. Once built, this project will bring continuity to the shoreline. The entire business area west of Martingale Wharf have structures currently in place so when the applicant builds, it will not be out of character with what is already there, and not out of proportion to what Harpoon Willy's and so on down

the line has for docks/decking. The current deck is approximately 1,000 s.f. With the additional s.f. proposed, it would bring them to just fewer than 6% of s.f. of parcel space to deck space. Compared to other businesses on the same line, Martingale Wharf will have a much lower percentage of parcel space to deck space. Overall, the goal of the project is to provide an enjoyable public area on the waterfront allowing the public to have direct access to the water and desired water seating for a restaurant.

Ms. McMillan confirmed that the existing float will stay and stated that the two new decks will be extending out further than abutting decks and will also be extending out further than their current deck.

Mr. Taylor stated that the deck is currently in line with Harpoon Willy's and that the new decking will be approximately 6' past the existing float.

Ms. McMillan felt that the applicant is asking for too much in terms of deck expansion. It should be in-line with existing decks of other businesses. She does not want to set a precedent with this project. She felt that the applicant is taking a liberty already by using the land for activities other than just for boat use. The expansion is more than double what was originally requested. In addition, this is more impervious area over the water.

Mr. Taylor inquired as to what would be acceptable.

Ms. McMillan stated that constructing the deck to be in line with what is already there is what she would expect them to do.

Mr. Taylor stated that this area is approved for an urban exemption. They are only filling the last two spaces over the shoreline area.

Chairman Miller inquired about the impact to the substrate and whether it meets NH DES regulations in terms of docks, setbacks, and peers (Sheet 1 of 3).

Mr. Taylor stated that they worked closely with NH DES and the City to ensure that they met all requirements and that the project could move forward. The project meets the 20' setback. They have approval letters from abutters and NH DES has given the approval to move forward.

Dana Bisbee, attorney with Divine, Millimet and Branch stated that part of the wetlands application package is a request for a variance for the land based activity regulation that Ms. McMillan spoke about. Unless the variance is obtained, this regulation would not be satisfied.

Vice Chairman Blanchard wondered whether the decks would restrict public access to the water by its very nature.

Mr. Taylor inquired how the public would be accessing this area anyway.

Vice Chairman Blanchard stated that the area would be accessed by boats.

Mr. Taylor stated that the site is ledge after which there is a drop-off. It is not an area to be accessed with a vessel. It would not be accessible by the shoreline either and there is no way to get there from anybody's property. It was even challenging for the surveyor to gain access to this area due its physical barriers. It is not an area that kayaks or canoes use and is not friendly to use.

Ms. Wright stated that the decks are really not open for true public use if they are open only when Martingale Wharf is open. In addition, Martingale Wharf can put restrictions on use of the deck.

Mr. Taylor stated that it is open to the public, but for liability reasons, there will be restrictions. The other area is specifically for Martingale Wharf restaurant usage.

Mr. Britz stated that the public use aspect is a nice benefit of this project. A future (floating) easement of the large deck area with the right to pass over for the public would be appropriate. It wouldn't encumber the property now, but in the future if there is a riverwalk through this area, he encourages the Commission to think about this in balancing the public benefit with the applicant's proposal. There is public access up to Ceres now.

Chairman Miller stated that he felt that it was a missed opportunity in not having a riverwalk in this area. However, he is uncertain how to address it now with this application. He inquired if there were floating easements on the other properties.

Mr. Britz stated that this could be a recommendation to NH DES (along with the recommendation on the permit).

Vice Chairman Blanchard recused herself from this application.

Keith Eveland of 82 Liberty Common in Rye, NH was present to speak to the application. He has a condo in the abutting building. He had purchased the place with the idea of retiring there. He will be about 15-20' from the new deck at Martingale Wharf. He described (using a photo) the area and that from a certain point over is largely residential. He stated that four units are very opposed to this project. Two units are owned by a realtor, who is a supporter. Restaurant patrons being present 15-20' from his deck will be very loud and this project will drive out residents. The deck is going to be 33' X 57 ½'. At the present time, the expansion of the deck does not bother the residents, but any extension in the direction of the bridge will have a severe impact on the quality of life for residents of the condo association. He showed signatures of the 4 residents opposed to the expansion. He requested the Commission conduct a site walk and consider the project from the view of the abutter. He stated that he met with City Manager John Bohenko and Deputy City Manager Dave Allen. The City Manager had stated that he was in favor of the project because as he understood it, the condos were commercial, not residential.

Chairman Miller clarified that the letter from the City Manager stated not that he "approves" this project, but rather "supports" the proposal. However, the application will need to go through all regulatory processes that any other application must go through. These are two very different things.

Attorney John Sherman of Portsmouth and son-in-law to Mr. Eveland was present to speak to the application. This property is of personal interest to him as he imagines that one day he will enjoy it with his family. The applicant previously requested a deck, now they are requesting a larger deck. There will be commercial activity from 8am to 1am. This is 20' feet away from residents at 111 Bow Street. This is taking land in the public trust and giving it to this commercial entity. He urged caution on the part of the Conservation Commission. The applicant states that they have approval from abutters. One of the owners of the 6 condos at 111 Bow Street gave approval. There was no authority for the business to say that they have approval from abutters. There was no Board meeting to address this and no Board approval. The Commission has objections in front of them this evening. He stated his father-in-law didn't know about this meeting until the HDC advised him of the meeting. He asked for additional and sufficient time for the Commission to conduct a site walk in order to give ample consideration to how it will impact the abutters. The Commission can request a statutory delay in order to give full consideration to what is before them and to allow those that will be affected by this project to provide input. He added that, in addition, there will be impact to the seals, the birds and the kayakers (which he has seen in the area). He urged the Commission to at least provide time to address the environmental impact.

Chairman Miller asked Mr. Serenay to give specifics about what he sees as the environmental impact.

Mr. Serenay stated that the Commission is being given the reason to approve is additional public space. There is a public park at Ceres Street now. In addition, a dock was approved about 6 months ago between One Harbor Place and Memorial Drive next to the bridge. This will be a deck of the same size a few hundred yards away. There is a mitigation that occurred. This project is indeed providing handicap accessibility, but the other decks are already handicap accessible. This is just providing another means of accessibility through the business and out to the deck. He is asking for denial of the permit or at least some additional time so that important issues can be addressed.

Mr. Britz clarified that the Conservation Commission made a *recommendation* to approve, but did not approve the project that Mr. Serenay is speaking about.

Mr. Britz stated that there was mitigation for the City project. He let the new Commissioners know that this will be a recommendation to the state, not an approval or a denial.

Mark McNabb, one of the owners and the Principals for the project could not be present today. However, he was present at the HDC meeting. A participant spoke on his behalf stating that the applicant wants to do this for the business, but there is also a significant public benefit. He believes there will not be any adverse impact on the neighbors. There are two consents from each side for the 20' setback. They received a letter from the President of the Condo Association on behalf of the association in support of the project. He added that the requirements have been met.

Mr. Eveland stated that they were never informed of this or the HDC meeting.

Mr. Britz stated that the purpose of this meeting is not a public hearing. There is no notification process for a wetland permit. If this was a City Wetland Permit, the abutters would be notified because of the hearing that would occur at the Planning Board meeting.

Mr. Serenay stated that the letter in support of the project is dated May 11th, 2015 and signed May 28th, 2015. It is on Riverside letterhead. It is not on Condo Association letterhead. He stated that the law specifically requires notice to abutters and they received no notice of this application. The application that the Commission has in front of them tonight is not complete and does not represent the abutters accurately.

Chairman Miller stated that in Conservation Commission procedures, a motion to approve is different than a motion to deny. If the motion to approve fails, then the motion fails. If there is a motion to deny, and that fails, the motion must be taken up again.

Hearing no other questions, Chairman Miller asked for a motion. Ms. McMillan made a motion to recommend approval of the application to the State Wetlands Bureau for discussion purposes. The motion was seconded by Ms. Zamarcki.

Chairman Miller called for discussion.

Ms. McMillan stated that the environmental impact is avoidable and this project is excessive, the deck extending out too far. She also does not see public access with this project. The current deck is supposedly open to the public, but she has been on the deck and has been confronted by Martingale Wharf staff. She also hears the concerns of the abutters and that they are not in agreement.

The motion to recommend approval of the application to the State Wetlands Bureau **failed** to pass with a vote of 5-1 with Chairman Miller voting in favor.

IV. OTHER BUSINESS

A. Mr. Britz presented an opportunity for a land donation. The parcel is, Map 296 Lot 2 (6.6 acres). The owner of the property would like to donate the parcel to the City (this year) for tax purposes. The property is comprised of forested wetlands and is adjacent to City property. Mr. Britz asked if the Commission was in support of acceptance of this property. There would be no easement. The City would own it outright. The owner has requested that the property be used for recreation. There is no access to the property except through a rail trail. Ms. Blanchard inquired about the assessed value of the land and stated that it is a significant gift. Mr. Britz stated that he doesn't have the assessed value, but can get that information.

B. Mr. Britz distributed a handout on the Monday, June 22nd 2015 Invasive Species Pull (see handout). There is a sign-up on Stewardship Network website.

C. Chairman Miller discussed the meeting with the Southeast Land Trust. There was discussion about purchase of the Ferrari property on Ocean Road. The owner is anxious to move things along, but there are several factors involved. City Council approval would be needed. The

Southeast Land Trust is also anxious to move this along as well. Mr. Britz felt that there was no rush. Chairman Miller suggested a work session to review the options. This will be scheduled via email.

V. ADJOURNMENT

At 7:40 pm, it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully Submitted,

Toni McLellan
Conservation Commission Recording Secretary

These minutes were approved at the Conservation Commission meeting on July 8, 2015.