

MINUTES

CONSERVATION COMMISSION

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

3:30 p.m.

April 13, 2016

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

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

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I. APPROVAL OF MINUTES

A. March 9, 2016

This was postponed until the May 11, 2016 meeting.

II. WORK SESSION

1. Minimum Impact Expedited Application review
Sarah Mildred Long Bridge/Cutts Cove/Market Street Extension
Ray Grizzle & Krystin Ward, University of New Hampshire, presenters

The Chair read the notice into the record.

Raymond Grizzle, Ph.D. and Krystin Ward from the University of New Hampshire Department of Biological Sciences were present. Dr. Grizzle said this was a habitat improvement project, and said it would need a Department of Environmental Services (DES) wetlands permit. They were seeking to improve the area in Cutts Cove with recycled oyster shells, and said this would be good habitat. They were hoping to have winter flounder, as well as other species, come in to the area, and they would expect oysters and mussels to inhabit the area. They would want to demonstrate the habitat value to the City.

Ms. Zamarchi asked if they planned to use local oyster shells. Dr. Grizzle said they would be local, but they would obtain shells recycled from six local restaurants, and some restaurants bought shellfish from out of state.

Ms. McMillan asked about the timeline for construction with respect to the bridge. Dr. Grizzle said the shells would be put in during June or July. It would all happen this summer, then they

would perform periodic monitoring. Dave Burdick would be presenting other features. He said they wanted to be able to bring the shells in earlier.

Chairman Miller asked about boating impact, and Dr. Grizzle said there would be no impact, but it would be looked at. Ms. Tanner said she was glad to see it.

Chairman Miller said it was nice to have some enhancements. Dr. Grizzle said the shell accumulation was major, and that this was a good experimental project.

Ms. Wright asked about dredging, and Dr. Grizzle said none would be done.

Ms. Zamarchi asked if anything would be in the paper for the community to ask about. Dr. Grizzle said maybe there would be a press release but he was not sure.

Mr. Britz offered clarification from this project to Dr. Burdick's project location.

Chairman Miller asked if the Commission had seen those plans, and he asked if the storm water would affect the plans. Dr. Grizzle answered yes, and that they had been working with Dr. Burdick. This would be part of four projects they were doing. Chairman Miller asked when the Commission would be able to see the permit. Ms. Ward answered that they had the permit.

Ms. McMillan asked about the research regarding the ph and samplings of water and sediment and if they were able to coordinate with other sampling projects. Dr. Grizzle answered that was Dr. Burdick's part of the project. He said they looked at what literature was available, they did video mapping, and they were out with Dr. Burdick on some of the tests. Chairman Miller asked what some of the large numbers meant. Dr. Grizzle said Dr. Burdick would need to address that. He said there were contaminants in Cutts Cove, but he did not know the significance. He stated they were not seeking to have shellfish that people would consume.

Chairman Miller stated that the Commission as agreeable to signing the permit application. He signed the permit, as there were no further concerns from the Conservation Commission.

III. STATE WETLANDS BUREAU PERMIT APPLICATIONS

- A. Standard Dredge and Fill Application
Marcy Street (Prescott Park)
City of Portsmouth
Prescott Park Arts Festival, applicant
Assessor Map 104, Lots 1, 3-2 & 3-3
- B. Standard Dredge and Fill Application
185 Wentworth Road
J.P. Nadeau, owner
NHDOT, applicant
Assessor Map 201, Lot 12

The Chair read the notice into the record. Ralph Sanders from Durham said this was a maintenance project that had been ongoing for several years. He said that during high tide, the water flow came across the road. It would bubble out and run across the property causing icing in winter. They wanted to install a new catch basin using a standard sump. The date to get the permit from DES was June 1st. They did not have an easement signed from JP Nadeau, the property owner right now, because the owner would like to change a few things, but Dr. Sanders said he hoped to get that rectified soon. This was a 10 year long project so far. He asked if they had seen this area when it was flooded. Chairman Miller said the pictures were helpful in understanding the problem. Dr. Sanders said they would not be able to solve all of the water problems, but they would make some improvements. Chairman Miller hoped they would have been able to do something with the swale to address the other issues, but he understood why they couldn't.

Chairman Miller asked how the flow would go into Sagamore Creek. Dr. Sanders said they would install a new catch basin, and from that, they would install a culvert next to the kayak building.

Chairman Miller asked about the descriptions for the new outfall. He added that it would be visible, and there had been discussion about hiding it. Mr. Sanders responded that currently there was rip rap there. When the new culvert and outlet were installed, it would only be visible from one view. Chairman Miller asked if there would be a map this time, and he asked that they check that on the final easement so that they didn't mask the site.

Ms. Tanner asked if they located the heritage species in the area. Mr. Sanders said they were not too concerned due to the location of the project. Mr. Britz said there was a map in the packet. Chairman Miller asked if they planned to use the grassy field across the street. Mr. Sanders said they would stay on the road. They would put a head wall on the culvert, so there would not be any equipment concerns.

Mr. Britz asked if they would clean up the old sump, and Mr. Sanders said yes.

Ms. McMillan asked about the outlet out of the wetland and if they were replacing the header on the south side. Mr. Sanders said they would put a new headwall there. Ms. McMillan asked how it would affect the water level in the wetland, and Mr. Sanders said it would stay the same, but Mr. Cardin said he thought it would change the height of the water level in the wetland. He said he thought the wet line would recede. Ms. Wright asked if this would only occur during high flows, and Dr. Sanders said yes.

Mr. Cardin suggested they increase the invert of the culvert pipe. He said that the header was the cap of the culvert pipe. Mr. Sanders said they can get precast concrete headers to prevent erosion. Ms. Zamarchi said they should make sure the pipe was up high enough so that height was not impacted.

Mr. Sanders said the wetland dried up in the summer. Chairman Miller wanted to be certain they didn't improve the design by lowering the pipe. The Chair said he wanted this assurance in the

record. Mr. Sanders said it would be the same elevation as it was now. They would not change that.

Vice Chairman Blanchard asked who would do the work. Mr. Sanders said they would do it themselves.

Mr. Cardin asked what the standard DOT Best Management Practice (BMP) details would be. Mr. Sanders said they did test pits previously and the water table was high. Mr. Cardin asked if they would de-water, and Mr. Sanders said yes, and they would put hay bales around. Mr. Cardin asked about standard BMPs, and Chairman Miller asked Dr. Sanders to send those to Mr. Britz, who could share those with the Conservation Commission. Normally they would have been in the packet. Mr. Cardin said he thought they would implement those, but he was concerned about discharge, and he wanted that on the record.

Vice Chairman Blanchard asked that when this got approved and if the BMP was part of the plan, would they know how to implement that. Mr. Sanders answered yes, he would probably do the work himself. Vice Chairman Blanchard asked when they would start. Mr. Sanders said if they obtained the permit by June 1st, it would be in the summer, and it would take no more than 10 days. Chairman Miller said it would be nice to get it done before next winter.

Vice Chairman Blanchard moved to recommend approval of the application to the Planning Board and Ms. Tanner seconded with two added stipulations:

- 1) That the bottom of the culvert pipe is kept at the same elevation as the bottom of the existing pipe and
- 2) That best management practices are followed during construction.

The motion passed by a unanimous (7-0) vote.

C. Standard Dredge and Fill Application
36 Shaw Road
Gregory and Sandra DeSisto, owners
Assessor Map 223, Lot 22

Zachary Taylor of Riverside & Pickering Marine was present on behalf of the owners. He said they were seeking replacement and modification of the existing docking structure. He described the location. Currently they had a large old dock. He said the pilings were rotted and needed to be replaced. They proposed to reduce the length of the fixed pier to 59 feet. This would allow them to install a longer gangway, because the existing one was treacherous. They wanted a 40 foot long one which would reduce the grade and would allow for reduced damage from ice. They also wanted to modify the existing floating dock and make a more traditional design. He said they submitted an application to the DES and the Natural Heritage Bureau (NHB) for a review check, and stated the result was that the NHB said there were no species in the area that

would be impacted. He said he would forward those results to the Conservation Commission, as they were not in the packets.

Ms. Tanner said the 60 foot float seemed huge, and Mr. Taylor said the overall impact would be smaller.

Vice Chairman Blanchard asked how many boats would the dock accommodate, and Mr. Taylor said it would be a three slip design. They would have three full slips with two on the face and one on the back.

Chairman Miller asked if there would be any elevation changes in the piling pier as they shortened it down. Mr. Taylor answered they might look at increasing it one foot or so, possibly bringing it up, but not down. He added that the longer gangway would allow that. Chairman Miller said they wanted to make sure they were not getting closer to the shore vegetation. Mr. Taylor said there would be no changes along the shore. Chairman Miller stated that the concern was about the emerging vegetation and it being shaded.

Ms. Zamarchi asked if they were replacing the pilings, as they looked to be in the same place. Mr. Taylor said it all would be removed and replaced. Ms. Zamarchi asked how the current ones were installed. Mr. Taylor was not sure, but they intended to drive pilings, setting themselves back from the marsh grass. They would drive the pilings with the crane and driving unit, keeping the workers off the mud as much as possible, and when they were done with the construction, they would remove the old pier and pilings. He added that they had an extracting unit. Ms. Zamarchi stated she was concerned about impact to the area.

Ms. Meuse asked if they took the floating part of the dock away in winter. Mr. Taylor said they did.

Mr. Cardin made a motion to recommend approval of the application to the State Wetlands Bureau as presented. The motion was seconded by Ms. Meuse. The motion passed by a unanimous (7-0) vote.

Chairman Miller reminded Mr. Taylor that he must send the BMPs to Mr. Britz.

IV. CONDITIONAL USE PERMIT APPLICATIONS

1. 2839 Lafayette Road
Mira Lafayette Ventures, LLC, owner
Meredith Village Savings Bank, applicant
Assessor Map 286, Lot 18
(This item was postponed at the March 9, 2016 meeting.)

Attorney Bernard Pelech said he was present on behalf of the applicant. Also present was Joseph Noel the wetlands expert and scientist who was responsible for delineating the wetlands.

He said Mike Cuomo agreed with the delineation of the wetland. He referenced a memo that had been sent to Dr. Britz stating this, and although there was a hydrological connection between this wetland and the one across the street, this wetland was not part of a larger wetland. Attorney Pelech noted this wetland had been before the Conservation Commission in 2002, and at that time, a permit to dredge and fill was applied for, for the car wash next door, which was granted in 2004. On October 13, 2004, the Conservation Commission recommended denial because of concerns about a cumulative effect. The DES made specific findings in 2004. He said when the DES visited the site, they determined this was an isolated wetland of 2,337 sf. He read the DES findings from 2004, which stated there would be no impact.

Attorney Pelech said the wetland across the street was within 100 feet of this lot, and there was a culvert connection from this land to the one across the street. So they were seeking the Conditional Use Permit for being within 100 feet of the wetland across the street. He stated that Mike Cuomo said there were man-made drainage ditches, and that land was what was left of a wetland that was filled in years ago.

Mr. Noel added that he previously didn't know the history that Attorney Pelech just presented. He said on this parcel he delineated the boundaries and there were 15 flags. He described it as a small sloping wetland, with mostly red maple trees and poison ivy. The site sloped toward the culvert on the access road. It was clear to him the wetland drained to the culvert and not to a wetland. Across the street, he said there was a swale that took the water perpendicular away from the parcel. He said it was not a high functioning wetland, and it was not a diverse system.

Chairman Miller asked about the 2002-2004 history. Attorney Pelech said in September 2004, with regard to the carwash, the Conservation Commission asked for a 40 day delay. They then recommended denial. After that, the Planning Board granted the approval. The car wash was built. Attorney Pelech referenced a permit that was never used, and said that in 2009 the DES found that there was no evidence as to the impact to the wetlands. Also, it was determined that it was along a commercial corridor, that the impact to the wetland was previously impacted by other development, and it was then delineated as a separate wetland.

Chairman Miller recalled this came through the Conservation Commission and they worked with the car wash to minimize the impact. Mr. Britz said the car wash went in with the vortex storm water treatment. He asked about the size of the wetland. Attorney Pelech said that 594 sf was the size of it on this lot, and the additional 2,000 sf was on the car wash lot. He displayed the delineation from 2002 which showed the wetland encroaching on the corner of the lot in question. He displayed the site plan from the car wash showing the wetlands from 2002.

Chairman Miller said there was concern about this being a separate or a part of the same wetland. He added that there was a lack of agreement on this regarding the non-jurisdictional wetland delineation on the property side. Mr. Noel said there was a narrow upland that was against the road, and that made it clear the wetland was not connected to the wetland on the car wash site. Attorney Pelech said they were connected by a culvert, but they could have different values and functions.

Chairman Miller brought up the DES, but when he reviewed Article 10 of the zoning ordinance, he did not see qualifiers like “usually” or “ordinarily”. Water quality was the main issue when water flowed from one site to the other, and he said he was still unsettled as to whether they were connected or not. Attorney Pelech said they were hydrologically connected, that was agreed. Chairman Miller said there were a lot of qualifying terms in the reports from Mr. Cuomo and Mr. Noel. He stated that when they worked with the car wash, they worked hard to prevent impact to the water quality. He was still concerned about water quality issues for water coming off the property.

Ms. Tanner said it would help if the proposal was in front of them. Chairman Miller agreed that would help. Ms. Zamarchi agreed and said she had nothing to look at, as it was in the packet from the previous month. Chairman Miller asked if they would go over the proposal.

Attorney Pelech said this application was for a Meredith Village Savings Bank at the corner of Robert Avenue and Lafayette Road. He said they have received variances from the Board of Adjustment, and he highlighted the plans for existing conditions, showing the veterinarian clinic that would be demolished. He held up Sheet C2.

David Eckman from Eckman Engineering said they did the design of the site plan. The site was driven by safety so they created a drive loop around the building. They designed more parking spaces than necessary, but they could remove a few if required by the City. The wetland was 594 sf, and that was what was mapped. The 100 foot buffer they used was from the other side, and it caught the corner of the site. The existing condition had a large amount of paving already, and they planned to improve that. He said they would filter the sediments with an isolator row, and the water would get collected and put back into the ground to recharge the wetland. The watershed plans would go with the drainage study, which went to the Technical Advisory Committee.

Mr. Eckman said the site did need to be cleaned up. The question was where the setback was. He discussed options for reducing parking spaces near the wetland.

Ms. Tanner said the dumpster could be relocated so it was not near the wetland. Mr. Eckman agreed.

Mr. Cardin asked how many spaces could be reduced, and Mr. Eckman said about three, depending on what the bank said. He said it was a small site, but overall it was a positive project.

Ms. Wright asked if there were three drive up lanes and asked if that could be reduced. Joe Morrison with Paramount Partners said it was three lanes, and that was determined by branch studies of what worked best for banking customers.

Ms. Tanner asked if they could reduce the footprint in the buffer. She said if they lost three or four spaces and relocated the dumpster, it would reduce impact in the buffer area. Chairman Miller asked if they were to move the dumpster out of the wetland area and lose some spaces, can that be done without losing the functionality of the underground storm water capture and

treatment system. He asked if it would work if it were moved toward Robert Avenue. Mr. Eckman said there was 10 feet of fill there already. But he was worried about the turning radius of the drive-thrus. Attorney Pelech said the variance they got was for the parking between the building and Robert Avenue.

Ms. Wright asked about shifting the parking spaces closer. Mr. Eckman said he looked at that, but it interfered with the traffic flow. He said it was a tight site, but an improvement.

Ms. McMillan asked what the plan was for trees. Mr. Eckman said there would be heavy landscaping, but those plans were not yet available.

Mr. Britz asked about vegetative slope and the fact that there was no rip rap proposed, and Mr. Eckman said that was correct.

Chairman Miller said an issue with the cutting of trees was for the people that lived nearby, because the trees were a noise buffer for the large neighborhood southeast of the lot. He asked if all the trees would be cut from behind. Mr. Eckman said the two tree lines were not to be touched. Chairman Miller said that was mostly shrubbery, not trees.

Ms. Tanner asked what was planned for the vegetative slope. Mr. Eckman said it would be grass. Ms. Tanner said creating a barrier would be useful if there were some trees planted. She asked what type of lighting the bank would have, and if it would be down-lighting. Mr. Eckman answered yes, and added there would be no spillover onto the next properties.

Ms. McMillan asked if there were two access points to the bank. Mr. Eckman answered yes, there was a right-in from Lafayette, and the main in/out was from Robert Avenue.

Ms. McMillan asked about the three lanes. She said that half of the building was the drive thru, so why would there be three lanes. Mr. Morrison said they based this on a study of existing branches to address peak hours. They looked at existing branches within the area to be competitive. Ms. McMillan said that did not warrant the impact that the added lane would have on the buffer.

Ms. Wright asked if the lanes were for one teller and two ATMs. Mr. Morrison said it would be one ATM and two tellers. Vice Chairman Blanchard asked how many windows for tellers would be on the inside. Mr. Morrison said there would be two tellers. Vice Chairman Blanchard said this encouraged people to drive to the bank.

Vice Chairman Blanchard said she would like to see more definition to the planting along the corner. She hoped the dumpster being moved and the reduction of parking did not reduce the storm water treatment.

Mr. Britz said they were talking about a buffer plan, not a landscape plan. Chairman Miller said there was no detail about what would remain after construction, so he would like to see more detail about the buffer area after the construction. Also he would like to see information about

the vegetative slope. Chairman Miller asked about the timetable, and if they were ready to go with everyone else except for the Conservation Commission, and they answered yes.

Chairman Miller asked if it would be possible to see an updated plan with drainage information before they approved this. The updated plan should also include the dumpster having been moved, the spaces removed from the buffer, the buffer management plan along the access road behind, and what would be left after the construction. Ms. Tanner said if they removed some of the invasive plants, that would be good for the buffer, and she suggested they plant other things.

Ms. Wright asked if there was a walk up ATM. Attorney Pelech said no, the police frown on that because people get victimized.

Ms. Zamarchi asked when they analyzed the number of drive thru lanes did they take into account that people went online to do banking. Mr. Morrison said customers still required the convenience when they did come to the bank.

Ms. McMillan asked about the jurisdictional concerns. Mr. Cardin said this would be an improvement aside from the jurisdictional concerns.

Mr. Cardin said the system looked good, but asked if on the northwest side of the property swale, if that would be a spot for invasive removal. Mr. Eckman said they would look at that. Mr. Cardin asked if there was a discharge from there (referring to C-3), and Mr. Eckman answered yes. Mr. Cardin said there was poor understory there, and asked if they could have a rain garden. Mr. Eckman said they needed to give both a 12 foot and a 10 foot (22 feet total) easement to the state. Mr. Cardin said he was trying to find additional measures to supplement or lessen impact to water quality. He said they should concentrate resources on those lower spots.

Chairman Miller asked for a better understanding of the water flows for the site. He loved the underground chambers, and that would do a lot of good work on water from the site.

Ms. Tanner said she liked the willingness to consider the Conservation Commission suggestions. She said this project would be an improvement, if they were to get some of the concessions the Conservation Commission asked for.

Ms. Harrison asked how much water it would take to maintain the landscape and to make the plants drought resistant. Ms. McMillan added that the functional plantings being native were important.

Vice Chairman Blanchard asked about the snow removal. Attorney Pelech said the TAC asked them to show it, and it was between the Robert Avenue in the front area. Vice Chairman Blanchard asked about salt in the three driveways. Chairman Miller said there was not treatment for salt.

Mr. Britz stated they should have a wetlands scientist work with them to help them understand what the Conservation Commission was looking for.

Chairman Miller said they were not making an issue of the jurisdictional matter across the road from the site. He wanted to make sure the Conservation Commission was okay with that. Ms. McMillan said it was a jurisdictional wetland, and they should ask the applicant to draw up the new plans with that in place. She said they should show it on the plan, and she said she did not want to set a precedent. She felt strongly that this was a jurisdictional wetland. Chairman Miller agreed they should not set a precedent. They were willing to work with the applicant, and if it was jurisdictional, it would not change how the Conservation Commission would work with them.

Chairman Miller said in reading Article 10 of the zoning ordinance he did think it was a jurisdictional wetland. So he asked they show the line on the plan. The Conservation Commission was agreeable to that approach.

Ms. Tanner made a motion to postpone the application until the May 11, 2016 meeting, and Ms. Zamarchi seconded. The motion passed by a unanimous vote (7-0).

V. OTHER BUSINESS

A. Crumbling retaining wall

Bob Graham was present.

Mr. Britz said he thought the seawall might be considered for an emergency permit, but the State determined he should apply for the standard review.

Mr. Graham said he has been a general contractor since 1989. He explained that the wall was across the river from the Chamber of Commerce for a condex located at 250A and 250B Northwest Street. The people in 250A were his clients. Dr. Graham showed pictures that displayed progressively worsening conditions of the wall.

He said he saw the wall on Sunday, April 10th, but on Monday, April 11th, he saw a sinkhole series begin to impact the area with the stones falling in. He added that he used to be a stone mason. He said his clients were out of town, and did not understand the extreme nature of the condition yet. The objective was to try to save the stone wall. Mr. Graham asked for direction on how to proceed. He said that when the tide came in, it created a hydrologic suctioning on its way out.

Chairman Miller said he needed an engineer and approval from his client. Mr. Britz said it should be replaced with the same material and design as what was there, meaning stone and not rip rap.

Mr. Graham said there was 210 feet of stone wall, if he put the wall back to the way it was, a lot of fill would have to be removed and proper plantings and fill would need to be added as well. Mr. Britz said the look should be the same.

Chairman Miller asked about regulations regarding the height of the wall. Mr. Britz said the State would want the same in-kind size. Mr. Britz said an engineer would need to sign off on it. Mr. Britz said plantings would interfere, but Mr. Graham said they would be set back.

Mr. Cardin said they would have to replace it but they should talk to Riverside and Pickering Marine, for example, who did waterfront construction. He said they would need a waterfront engineer. The first issue was to retain the land that was there. Dr. Cardin said from a regulatory standpoint they cannot go seaward.

Chairman Miller asked if this needed to go before the Historic District Commission (HDC), and Mr. Britz said not if it was in kind. If it were changed, the HDC would need to see it, and they would then need a permit.

Mr. Britz said they would need two permits, a State Wetlands permit and a Conditional Use Permit.

Ms. Tanner said the Conservation Commission did not like grass, and said that other plantings would be preferable.

Mr. Britz said suggested they get going on the design and the permits quickly.

Mr. Graham was concerned about sea level rise, and Mr. Britz said that wall would not hold back any water. Chairman Miller said the sea level rise issue could be addressed by an engineer that might design something that could be added to in the future to address that. But he did not want to see a higher wall now.

B. Continuing discussion of Article 10 zoning amendments

Mr. Britz said the amendments were not done, and the Planning Board would hear the amendments in June.

Vice Chairman Blanchard said the Conservation Commission should all have the existing Article 10. She read a section regarding water quality and suggested the Commission look at the big picture instead of parcel by parcel. She recommended that they read Article 10 to be able to understand the challenges they face.

Mr. Britz wanted to get the stewardship sub-committee back together. He said he might need help addressing some violations. He said he would send an email regarding that.

Ms. McMillan asked if they would include the Green SnowPro in the amendments.

Chairman Miller suggested the CC read the zoning ordinance. Vice Chairman Blanchard said the last time they did this, the Planning Board accepted all the recommendations.

At 5:43 pm, Vice Chairman Blanchard moved to adjourn, and Ms. McMillan seconded. The vote passed unanimously.

VI. ADJOURNMENT

Respectfully Submitted,

Marian Steinke
Acting Secretary for the Conservation Commission

These minutes were approved at the Conservation Commission meeting on May 11, 2016.