

MINUTES

CONSERVATION COMMISSION

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

3:30 p.m.

December 14, 2016

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

MEMBERS ABSENT: Barbara McMillan

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

.....
I. CONFLICT OF INTEREST PRESENTATION – City Attorney Robert Sullivan

Attorney Sullivan’s conflict of interest presentation elaborated on the following statements:

- It is important to understand conflict of interest because: public officials are required to understand and follow their obligations; to avoid unintended consequences; and, for governmental bodies striving to meet high, ethical standards.
- The City Charter and Code of Ethics emphasize that no Board member is to engage in a violation of any form of or appearance of a conflict of interest.
- There are two different standards that apply to municipal bodies, which are in either legislative or judicial capacities. The legislative role occurs when a public body is called upon to make policy decisions. The judicial and quasi-judicial capacity requires decisions be made based on the findings of fact. The Board of Adjustment, Conservation Commission, and Planning Board are required to be neutral and objective when making a decision. It is possible that one situation could have two different outcomes depending on which type of capacity that the public body made the decision under.
- A voluntary decision to refrain from voting on a matter is a recusal. State law allows for the Board to vote on that voluntary decision or to consult with the legal department before making a determination on whether or not a member should recuse. However, the determination is ultimately made by the Board member.

Vice Chairman Blanchard asked how best to handle conflicts that may arise in site walks. Attorney Sullivan reminded that the site walk needs to be notified and proceeded in the same formalities of a regular meeting.

Ms. Wright asked whether another individual can speak on a member’s behalf when that member has recused from voting. Attorney Sullivan explained that it would be legal for someone else to

speak on your behalf. Although, he advised that it could have the potential of giving the appearance of seeking special treatment.

Chairman Miller mentioned that at times there is public dialog that can pull into a questionable conflict of interest situation. Attorney Sullivan explained that in the legislative capacity, such as when referred for a policy recommendation, it is acceptable to engage the public. However, once the discussion refers to a particular application, then the member is required to remain neutral.

II. APPROVAL OF MINUTES

A. November 9, 2016

Ms. Zamarchi moved to approve the November 9, 2016 minutes, as presented, seconded by Ms. Tanner. The motion passed unanimously.

III. STATE WETLANDS BUREAU PERMIT APPLICATIONS

1. Standard Dredge and Fill Application
363 New Castle Avenue
Briggs Realty Association of Delaware, LLC, owner
Assessor Map 207, Lot 3
(This applicant has asked to postpone to the January 11, 2017 meeting.)
2. Standard Dredge and Fill Application
70 & 80 Corporate Drive
Pease Development Authority, owner
Assessor Map 300, Lot 1 & 2
(This applicant has asked to postpone to a time uncertain.)
3. Standard Dredge and Fill Application
Portsmouth International Airport at Pease
Pease Development Authority, owner
Assessor Maps 260, 261, & 300 (Portsmouth) Assessor Maps 24 & 23 (Newington)

Kimberly Peace, Hoyle, Tanner Associates, Inc., and Jared Sheehan, Pease Development Authority, were present to speak to the application.

Ms. Peace explained that the project intends to remove trees near the airport runway that were identified as obstructions by the Federal Aviation Administration. The total amount of impact is 0.79 acres.

Chairman Miller asked how the area will be treated once the trees are removed. Ms. Peace replied that there are no plans for seeding. The trees will be cut and then the stumps will be grinded down to the ground surface, which prevents them from growing back. Eventually, the area will turn into a scrub shrub wetland. It is possible that in 10 to 15 years that a few more trees will need to be cut. The goal is to keep those trees from re-growing.

Ms. Zamarchi asked if invasive species could potentially take over the area. Ms. Peace replied that some have been identified, but not in the particular wetland where the City's impact is located. The airport has a vegetation management plan that oversees the growth of invasive species.

Ms. Peace explained to Mr. Cardin that swamp matting would be used for the stump grinding. The Army Corps considers that to be a temporary impact. If the tow-behind grinder is used then lay down mats would be utilized.

Mr. Cardin asked if there will be monitoring of pre and post conditions. Ms. Peace noted that it has not been proposed, however, it is something that could be done if necessary.

Vice Chairman Blanchard asked if there is a potential for changes to the water tables. Ms. Peace stated that when the trees are removed, the water is also removed. The upland areas will be converted into lawn surface. Based on the hydrogeology, no substantial changes are expected from pre to post conditions. Chairman Miller added that the stormwater treatment in and around that area appears to function well. Mr. Sheehan added that NHDOT designed it to drain within 24 hours.

Ms. Tanner asked what will be done to prevent the vehicles from spreading any materials outside the site. Ms. Peace replied that they adhere to NHDOT Best Management Practices and they are required to clean their equipment.

Mr. Britz asked at what height the trees become an obstruction. Mr. Sheehan replied that it depends on the slopes, elevation, location of the tree, and where the aircraft is entering.

Ms. Wright asked how often the studies are completed. Ms. Peace believed that the next study would be conducted in 10 to 15 years.

Mr. Cardin noted that the stream crossing is a large span and a standard 12' mat would likely not be adequate. Ms. Peace mentioned that had been considered and currently it is permitted to use logs to cross. If equipment needs to be transported, there is a possibility that the vehicles will instead travel up and around the stream.

Vice Chairman Blanchard moved to recommend approval of the application to the State Wetlands Bureau with the additional recommendations:

- 1) That post construction monitoring is conducted to insure that the vegetation rebounds from the matting in the wetlands. A post construction monitoring report will be submitted to the Conservation Commission upon completion documenting the success of the project.*
- 2) That monitoring of invasive species is conducted in the wetland areas and the areas adjacent to the wetland areas with the results provided in a post construction monitoring report submitted to the Conservation Commission.*

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

IV. CONDITIONAL USE PERMIT APPLICATIONS

- A. 3 Curriers Cove
Chase B. Bailey and Kathryn E. Soave-Bailey, owners
Assessor Map 204, Lot 12
(This application was postponed to the December 14, 2016 meeting.)

Joe Coronati, Jones & Beach Engineers, and Kevin Roy, The Kevin Roy Building Company, were present to speak to the application.

Mr. Coronati highlighted recent revisions to the plan to include:

- The largest modification is along the property line. There was initially a hot tub was proposed and existing pool house in the 40' restricted area and in 100' City buffer. Instead, the pool house structure will be eliminated and a new structure built in front of the house, which is outside the buffer and conservation easement.
- The proposed additions for the overhangs along the roofline were described. The only section of the overhang that is impervious is above the front entrance to the house, which is about 80 s.f.
- By removing the pool house, pool, and concrete around the pool, there is a net reduction of 3 s.f. in the City's buffer.

Ms. Tanner asked how roof runoff would be controlled. Mr. Coronati replied that stone drip edges around the building are going to be proposed in the shoreland permit application.

Ms. Bailey replied to Ms. Zamarchi that the fence in the 40' setback is existing.

Mr. Coronati clarified that the shed on the plan is the same as the pool house. He noted that the concrete floor underneath the pool shed is to be removed.

Alec McEachern, an attorney representing the abutter, asked to clarify whether the proposed fence line is considered an extension of the existing fence line that joins up to the house. Ms. Bailey provided further context as to why the fence needs to be replaced. Mr. Britz mentioned that there can be a field inspection. Typically, the wetland permit would not be called for unless there are foundation posts being installed on the fence. The building permit or easement issues does not need to be considered for the conditional use permit.

Vice Chairman Blanchard asked whether the applicant has addressed the requirements noted in the staff memorandum. Mr. Roy replied that a silt fence along the back of the house is proposed and the gravel beneath the rear deck will provide adequate treatment.

Mr. Roy replied to Ms. Harrison that natural landscape will fill the area where the pool house is being removed. He added that the proposed pool is close to the original location of the existing pool.

Ms. Zamarchi recommended approval of the application to the Planning Board as presented with the following stipulations:

- 1) That erosion control measures are put in place to protect the adjacent wetland areas from runoff from the project and stockpile areas.*
- 2) The applicant will provide a detail showing how the stormwater coming off the roof of the new enclosed porch will be treated.*

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

B. 205 Odiorne Point Road
Hayes H. and Carla C. Henderson, owners
Assessor Map 224, Lot 10-29

Ben Groves, Rye Beach Landscaping, was present to speak to the application.

Mr. Groves provided a brief overview of the project that proposes converting the backyard into traverse lawn space. A vertical granite curb wall will be replaced with an attractive stone wall. The fire pit will be moved away from the house and into an actual hollow on the site. Once it was discovered that the construction was occurring in a wetland buffer, a silt sock was installed and the property was hydro seeded to prevent any additional erosion or runoff. Where there were pockets of plant material in the wetlands, a robust vegetated wetland buffer will be planted to catch most of the runoff.

Chairman Miller asked what is planned in the patio area. Mr. Groves explained that the material from the existing curb wall will be reused to build a platform for the patio. Because of the nature of that installation, the pieces will not tightly fit together leaving the area permeable. It is 12" of non-graded stone that will let the water infiltrate through.

Ms. Tanner asked if there was a plan created for plantings. Mr. Groves replied that planting would be purchased and planted as the native plants become seasonally available.

Ms. Tanner asked if any trees would be removed. There are rhododendrons and other ornamental material that be removed and re-planted elsewhere on the site.

Mr. Groves replied to Chairman Miller that the old fire pit will be filled, graded, and seeded.

Ms. Wright asked how far towards the wetland would the grading occur. Mr. Groves explained that the grading will lead up to the existing boulder wall in order to level out the lawn. With the addition of the grass swale, the grading does not need to be as high as originally intended.

Vice Chairman Blanchard stated that the applicant should provide a letter reporting which plants were selected to ensure that the wetland is not affected.

Mr. Groves explained to Ms. Tanner that the plant material will be planted in the spring season. The seed, tackifier and mulch will stabilize the soil to avoid erosion during the cold season.

Mr. Cardin moved to recommend approval of the application to the Planning Board as presented, seconded by Ms. Tanner.

Vice Chairman Blanchard noted her appreciation for the letter stating the unique situation regarding the site being previously altered that essentially required an after the fact permit.

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

V. OTHER BUSINESS

1. Report on site walk, the Great Bog – Brian Hart

Mr. Britz explained that there are immediate opportunities for creating trail maps and access guides or kiosk and asked whether there is interest for that being the first phase of the trail. Ms. Tanner noted the one area that has been previously disturbed and in need of mitigation could be incorporated into this effort. Mr. Britz said that may be a possibility depending on whether or not it is considered restoration. He added that there is also a need for constructing a crossing. Once all that is completed, the level of usage thereafter could determine whether additional improvements could be made. He believed the best place to construct a crossing is under the powerline corridor. The crossing near the rail trail would still require someone to walk up the railroad tracks to get in which does not make it contiguous.

The Commission decided to form a sub-committee to explore options for improving and maintaining the Great Bog trail.

2. Report on Dec. 1 sub-committee meeting concerning wetlands mitigation opportunities

Mr. Britz presented three options for wetlands mitigation opportunities as follows:

- 1) Lois Street – The lot at the end of Lois Street recently was subdivided into an unbuildable lot that the City may want to convert into conservation land. There is an opportunity for stormwater treatment. However, it is unknown whether the property owner would want to sell it, how much, when that would happen, and whether the Commission could use their funds. Ms. Peace noted that she is unsure as to how DES would feel about the City not owning the parcel. She reminded that the application would need to be finalized before April. Mr. Britz thought that a P&S agreement could be offered to DES. Ms. Tanner noted that there were trees recently cut along the perimeter of the wetland on the opposite side.
- 2) Banfield Road – There is an opportunity to restore the upland wetland buffer to mitigate invasive species and put the corner of the lot into conservation. It would only need about 800 s.f. for restoration or creation. Ms. Peace noted that if there are stormwater issues, a treatment situation could be proposed, such as hold, detention, or infiltration improvements. Creation or restoration for the City is 0.14 acres. It is a viable option to do planting in the wetland to help combat the invasive species. The Commission further discussed specific opportunities for enhancing the site.

- 3) Cleanup and signage – There are wetland buffer areas throughout the City where dumping has occurred. Those areas could be identified and signage could be added to help mitigate that from occurring.

Vice Chairman Blanchard favored mitigation at Banfield Road because it reconnects the Commission to the investment previously made to the City for acquiring the property. The planting in that area would not require additional funding and is a shovel ready project. The other proposals appear to require more long-term planning. The Commission discussed and supported the plan for mitigation at this site. Ms. Peace explained how she will present the options to DES.

Ms. Peace noted that there is still a potential for improvements at the Great Bog. It doesn't address similar functions and values, but there is a viable opportunity. Mr. Britz stated he would follow up with photographs or site plan regarding where the boardwalk could potentially go at the Great Bog.

3. Other

Mr. Britz briefly discussed a project that the applicant requested be discussed with the Commission for their awareness. The property is at 99 Baycliff Road. The City's ROW is mainly covered in pavers and the prime wetland is located at the bottom section. The project intends to remove the patio and make other improvements to the entrance. The Commission deliberated the history involved with the owner using the City's ROW as their driveway and how the neighbors access it. The Commission reached consensus to submit a letter to the State and the owner to suggest plantings in the patio area, to question the efficacy of the paver area, and to consider the proximity to the City's ROW. It was thought that a wetland permit would not be necessary.

VI. ADJOURNMENT

Ms. Tanner moved to adjourn the meeting at 5:43 p.m., seconded by Ms. Zamarchi. The motion passed unanimously.

Respectfully Submitted,

Marissa Day
Acting Secretary for the Conservation Commission

These minutes were approved at the Conservation Commission meeting on January 11, 2017.