

**MINUTES OF THE SEPTEMBER 10, 2003 CONSERVATION COMMISSION MEETING**

**CITY OF PORTSMOUTH  
CONSERVATION COMMISSION**

**3:30 P.M.**

**CONFERENCE ROOM "A" SEPTEMBER 10, 2003**

**PRESENT:** Chairman Alanson Sturgis; Members Allison Tanner; Steven Miller; Charles Cormier, J. Lyn Walters; and, Brian Wazlaw

**MEMBERS EXCUSED:** Donald Green

**ALSO PRESENT:** Peter Britz, Environmental Planner

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Chairman Sturgis called the meeting to order at 3:30 p.m.

The Commission members took a few minutes of silence to remember Carlton McNeil.

**1) Acceptance of the minutes from the meeting of July 9, 2003.**

Ms. Tanner made a motion to accept the minutes from meeting of June 11, 2003; Mr. Walters seconded and the minutes were approved with a 6 – 0 vote.

**2) Conditional Use Permit application:**

**a) Aranco Oil Co. for Route 33** (This application was tabled at the June 11, 2003 meeting pending receipt of the report from the independent wetlands scientist).

Ms. Tanner made a motion to take the application off the table; Mr. Cormier seconded and all agreed with a 6 – 0 vote.

Mr. Dennis Moulton, with Millette, Sprague and Colwell and representing Aranco Oil stated the site is located on Route 33 and is currently a filling station and a convenience store and has 24,000 s.f. of paved area within the wetland buffer. There is approximately 17,000 s.f. of gravel parking available for tractor-trailers to use for overnight parking mostly after-hours. Currently there is no treatment of storm water runoff, which flows directly into the wetland. They are proposing to tear down the existing buildings and islands and construct a new convenience store located further back from the road together with new gas station islands and new canopies. A car wash facility will be constructed to the side of the store that will use clean water. The proposal will provide 10 parking spaces for tractor-trailers on the site in addition to the parking spaces along the side of the building. Improvements will also include an earthen berm that surrounds the site. Parking is designed to prevent tractor trailers from encroaching upon and using areas outside of the paved parking areas and also to

enclose the storm water runoff so it will not flow beyond the edge of the pavement without being treated. The improvements also include the construction of a drainage system with an oil/water separator that connects to a series of treatment basins, which provide secondary treatment for water quality purposes. The changes that they propose are to include an additional 23,770 s.f. of impervious surface in the wetland buffer and in addition to that approximately 15,000 s.f. of fill added to the buffer area as well as construction of the detention basins. The sewer line adjacent to the site currently has a force main, comes along the front of the site, and then down the Old Greenland Road. They are exploring connecting into that force main and then to the Portsmouth wastewater treatment plant.

Mr. Michael Cuomo, the State of New Hampshire Certified Wetland Scientist made a review of the site on July 23, 2003 and he reported the following comments: (see attachment "A")

Mr. Moulton stated the four criteria required to grant the Conditional Use. With regard to the criteria that the land is reasonably suited for the use and that the wetland values are not adversely impacted, Mr. Moulton stated that the land is currently used as a gas station and will probably not change. They felt that this will be an improvement over the current situation, which is not a very good situation. Mr. Moulton stated that there would be no adverse impact to the surrounding properties. He added that he felt this would be a benefit to the wetlands.

Mr. Paul Kenny, representing the owner of the property, stated the site is designed in such a way that they would be able to control the truck parking. He illustrated that if the truckers' park in the wrong spot they will be in the way of moving vehicles. Signs will be posted where the "no parking" area is as well as signs posted to show where truck parking is allowed. This will also allow for monitoring of trash.

Mr. Wazlaw asked the maximum amount of trucks that are allowed to park? Mr. Kenny replied 10 and they will be in and out on a daily basis. The other thing is that they will not allow any tractor-trailers to be unhooked.

Mr. Chris Danforth, a Certified Wetland Scientist, was asked to do a function and values assessment on the site, which is part of the requirement for the Conditional Use Permit. He added that he visited the site in last August and used the Army Corps Methodology Workbook for evaluating wetlands. He took photographs, notes and filled out a form to evaluate the site and the buffer zone that surrounds most of the property. (see attachment "B")

Mr. Cormier made the motion to recommend approval to the Planning Board; Mr. Walters seconded the motion.

Mr. Cormier stated that at the site walk, he was very disappointed in that the area was dirty with old tires laying around and broken bottles and was in a sad state. He hoped that Aranco Oil would keep the area clean as it is in the buffer zone.

Chairman Sturgis stated that was also the way he felt. The station is closed during the evening hours; therefore, the station personnel had no control over what was thrown into the wetland. Personnel were present during the day and it would have been perfectly feasible for them to clean it up. There is a lack of intent to keep the area cleaned up. Chairman Sturgis stated he did not know if the berm would be high enough to keep people from throwing things out and he has his doubts about how long the vegetation on the berm will last after a couple of trailer trucks back into it.

Chairman Sturgis asked if he understood correctly that the water would not be recycled? Mr. Kenny stated it would be partially recycled for the washing of cars and further stated that other sites are monitored by the oil companies and the rear of the sites look like the front of the sites – that is how well they are cleaned up.

Mr. Cormier stated he liked the improvements that are being made and he liked the fact there is a conscious effort being made to improve water quality and felt that the Commission had to have faith in what they were seeing.

Mr. Walters stated it would be an improvement over what is existing now. He added he does not like the whole concept of what is there; however, what is being proposed would be much better than what is there now.

Mr. Britz stated that almost a half an acre of buffer zone would be impacted by this project and approving this project could serve to weaken our Wetlands Ordinance. If the members think they should approve the application then each member should address that fact, with reasons why this project should be approved.

Chairman Sturgis stated that there would be an added encroachment in the buffer zone. The buffer zone is supposed to protect the wetland. He added that he had not heard anything in the presentation that made him feel that generally the condition of the wetland would not be improved, but it is all on paper. The fact that there would be a major encroachment into the buffer zone really stuck in his craw.

Mr. Sturgis stated one of the criteria is whether the area is suited for the proposed use. He went on to state that it was argued that is what it is being used for currently, but just because “the kittens were born in the oven, doesn’t make them muffins”. Mr. Sturgis stated he did not feel any piece of wetland was suitable for a gas station. That criteria had not been met, but he feels the other criteria have been met.

Mr. Miller stated that he would vote in the affirmative. He added that he struggled with this application because they have seen the plans and had a site walk. The alternative is unacceptable and he could not see anyway of voting 'no' in terms of improving this site and allowing the contaminants to continue to impact the wetlands down stream.

Mr. Cormier voted in the affirmative.

Mr. Tanner voted in the negative. She felt that the project was too large and it is a gas station in the wetland that should not be there

Mr. Wazlaw voted in the affirmative. He stated that on the site walk they were encroaching upon the buffer and the wetland however, he stated that he had to consider the current status of that area is one of poorest for business that he has seen in Portsmouth. What could be done to clean that place up needs to be done. If this is what it will take to clean up the site, he would vote for the motion.

Mr. Walters voted in the affirmative.

Chairman Sturgis voted in the affirmative on the grounds that he felt that the potential benefits outweigh the invasion or the impact on the buffer zone. It was not an easy decision to make. He added that he is putting a great deal of faith on Aranco Oil sticking to what they said they would do. In spite of their past record that is not good; however, in recent years it has been better. He added he trusts that his faith in them would not be misplaced.

The motion to recommend approval to the Planning Board passed with a 5 – 1 vote with Ms. Tanner voting in the negative.

Chairman Sturgis advised the applicant that he would see them at TAC.

**3) State Wetlands Bureau Permit application:**

**a) Tucker's Cove, LLC. for Lot 20, Odiorne Point Road;**

Earl Chase, with West Environmental, gave a brief history of himself adding that he been in this line of work for approximately 10 years and that he was a Certified Wetlands Scientist and a professional forester. He added that he also served with the Wetlands Bureau for three and half years.

Mr. Chase stated that Corey Colwell of Millette, Sprague and Colwell as well as Lorraine Neal were present to answer any questions the Commission may have.

Mr. Chase stated that they have two options and asked if any members had visited the site. Chairman Sturgis replied that Mr. Britz and himself had visited the site. Mr. Chase stated that Lot 020 is one

of several lots within the development. Sagamore Creek is located to the east. What they are proposing is to situate the house in the middle of the lot. There is a small wetland area to the front, which protects the existing wetland, but it pushes the house into the buffer along Sagamore Creek.

Mr. Chase stated at first, the site looks like a good idea because it only creates a small impact to the existing wetland by the driveway; however, they have gone to the site and did a thorough investigation and found that the wetlands area to the front has been degraded by previous excavation. There is a drainage easement on the east side of the property and it is actually 6' lower than the elevation of the wetlands that has changed the hydrology of the small wetlands area. Because of prior work in the easement, it has taken away the water that normally maintains the wetlands. There is a specie called the European Buckthorn that is a New Hampshire invasive species and is very competitive and displaces what would normally be found in the wetland. The wetland area is getting dryer because of prior excavation. He presented a photograph of the area for the Commission members to review.

Mr. Cormier asked Chairman Sturgis what he thought about the drying out of the wetland area. Chairman Sturgis replied that it did not look like a very high value wetland. Mr. Chase stated the excavation is causing the wetlands to drain prematurely

Mr. Chase stated that because of prior excavation, they are proposing to shift the house out of the wetland buffer. It would be more of an impact to the wetlands but it will enhance the remaining wetlands by creating a berm to hold back the water and maintain the hydrology in the upper portion of the wetlands which seems to be less affective. Basically, they want to preserve the upper portion of the wetland with a berm that helps to maintain the original hydrology and preserve the upper portion of the wetland area with a berm that helps to maintain the original hydrology since this part of the wetland is the most affected by the 6' change in elevation.

Mr. Walters inquired where the water would flow after the dam was placed across the berm. Mr. Chase replied downward into the water table to restore the hydrology that was once very evident. He added that unless there is a 50-100 year storm occurs, the water would swell over the top of the bank of wetlands.

Mr. Colwell of Millette, Sprague and Colwell stated he could address this situation. It has been recommended to the contractors to beef up the foundation drains. It is a small wetlands being less than one half an acre and some of the water will flow to the wetlands area. They are proposing to have a 24" PVC drainage pipe to drain water from Odiorne Point to the Sagamore Creek.

Mr. Miller stated he did not understand the easement. Mr. Colwell explained to Mr. Miller just what it was and where the drainage pipes would be located.

Mr. Chase presented another option for the placement of the house and met with the Wetlands Bureau on site to request their opinion. They replied that they were in agreement of protecting high value wetland area.

Chairman Sturgis stated the Commission has two plans before them and one of them was submitted to the Wetlands Bureau requesting permission to fill the wetlands. Mr. Chase replied that was correct. Chairman Sturgis stated that they would forget the other plan. Mr. Chase replied that was fine.

Mr. Britz stated that the house could be built without filling wetlands or putting in a 100' buffer. Mr. Chase replied that was correct.

Mr. Walters stated the wetlands may be protected by a 100' buffer. Mr. Chase replied that studies do not indicate this. Everyone knows that the wider the buffer the more protection.

Chairman Sturgis stated that a house could be put on this lot without either going into the wetland or going into the 100' buffer. Mr. Chase agreed and added that only the driveway would impact the wetland slightly.

Mr. Cormier asked when was the wetland was last delineated as a wetland? Mr. Chase replied this year.

Ms. Neal from Western Environmental stated that Tucker's Cove offered a conservation easement deed 150' from high water for no disturbance of trees over 10", and no grading or re-grading or altering contours. This is also meant to protect the valuable upland that is very beautiful as well as very valuable to wildlife.

Chairman Sturgis stated that the ordinance does not apply to this application and cannot use the criteria. The Ordinance does state that the City is leaving a regulation of the tidal wetlands to the State.

Mr. Cormier stated he felt there was something that Mr. Chase was not telling the Commission. Mr. Chase replied that was not true and added this is a degraded wetlands and what they are suggesting is that they enhance the value on the remaining portion, increase the width of the... ..

Mr. Walters made a motion to approve the application to the Wetlands Board; Ms. Tanner seconded.

Chairman Sturgis stated that having seen the sight, he could almost toss a coin. He liked the looks of the tree area and added the

proposed easement would create a wildlife corridor across that portion of Lot 020 which lies within 150' of mean high water on Sagamore Creek. In the wildlife corridor, the following activities shall be prohibited:

- The placement of any fill, grading or regrading of any portion of this land or otherwise altering of the contours as they exist and shown on the subdivision plan
- The removal of any tree with a diameter greater than a diameter of 10" and creates greater than 10" in this wildlife corridor may be removed only if diseased or creates a hazard.

The motion to recommend approval failed with a 0 – 6 vote with Mr. Cormier, Mr. Miller, Ms. Tanner, Mr. Wazlaw, Mr. Walters and Chairman Sturgis voting in the negative.

**b) E & D Mulcahy for Wentworth Road, Rye.**

Chairman Sturgis stated he does not feel the Commission should act on this application because it is a dredge and fill permit and only impacts all of Rye and not the Portsmouth area bordering conservation land on one corner and no impact whatsoever on our conservation land.

Ms. Tanner asked if there would be any change to the drainage. Mr. Jeff Cantara from Gove Environmental Services stated that approximately one half an acre of the 13 acre site does fall in Portsmouth. We are bringing the application to the Commission's attention as a courtesy. Mr. Sturgis stated there is no question in his mind that we should recommend or vote on the application at all because the dredge and fill does not affect any Portsmouth property. Ms. Tanner asked if there would be change in the soil drainage. Mr. Cantara replied "no". The site is a highly disturbed site and has been the location where quite a bit of dumping has occurred. The applicant is proposing to remove all the dumping that has occurred in the wetlands and the upland areas.

Mr. Chagnon stated the pond on the site flows under Wentworth Road, it starts in Rye and flows out to Sagamore Creek.

Mr. Chagnon stated the application would have no affect to the water flow. It is a 12-acre parcel.

Chairman Sturgis stated he did not feel the Commission should vote on this application since it is not in the Portsmouth wetlands.

**4) Other Business**

Ms. Tillman, Planner I stated that the Board of Adjustment has an application for the Belle Isle property and the City is an abutter for Belle Isle that is located on the City Conservation land on Little Harbor Road. She added that she wanted the Commission to be aware of the application. Ms. Tillman stated that for the mean high water wetlands, a permit would need to be

applied for. She then explained the plans to the Commission members. She did not believe it is necessary on an island of that size to have an impact on the buffer.

No action was taken

Chairman Sturgis stated that the Commission now has two vacancies open for two alternates and would be checking on the status of the vacancies with Mayor Sirrell.

**5) Next scheduled Meeting: October 8, 2003**

**6) Adjournment**

There being no further business to come before the Commission, at 5:35 p.m. Mr. Walters made the motion to adjourn; Mr. Cormier seconded and the motion passed with a 6 – 0 vote to meet at the next scheduled meeting on October 8, 2003 in Conference Room “A” at 3:30 p.m.

Respectfully submitted,

Joan M. Long  
Secretary  
Planning Department

/jml