

**Minutes of the October 13, 2004 Conservation Commission Meeting**

**REGULAR MEETING  
CONSERVATION Commission  
PORTSMOUTH, NEW HAMPSHIRE  
1 JUNKINS AVENUE  
CONFERENCE ROOM "A"**

**3:30 P.M.**

**October 13, 2004**

**PRESENT:** Acting Chairman, Charles Cormier, Donald Green; Steven Miller; Allison Tanner; Brian Wazlaw; J. Lyn Walters; Eva Powers; and alternates, Barbara McMillan and Skye Maher

**MEMBERS EXCUSED:** None

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

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**I. Acceptance of Minutes - Meeting of September 8, 2004**

Dr. Powers stated the statement she made under Old Business was omitted, and she would like to see it reflected in the minutes where she inquired if the Commission would hold meetings even if there were no application. The Commission members all agreed this would be done. Let the record reflect this change has been made.

Mr. Miller stated that there was discussion under Old Business that was omitted where he suggested that a Commission member be present during Site Review meetings. Mr. Miller feels it would be a loss if there was no representation at Site Review. Mr. Britz stated that there were some ideas; however, nothing has been finalized

Mr. Miller made a motion to accept the minutes with the above changes; Dr. Powers seconded and all approved with a 7 – 0 vote.

**II. Presentation by Leonard Lord**

**Re: Freshwater Wetland Mitigation Inventory**

Mr. Dave Kellam of the NH Estuaries Project presented two hard copies of the New Hampshire Estuaries Project Report funded to the Commission members to review that contains information concerning restoration and protection opportunities for wetlands in the City. He added that to replace wetlands that developers impact, they will often suggest mitigation projects be located on the building site, which is not often the best choice.

Mr. Kellam stated the report will give planners a list of other potential sites that scientists have determined would protect significant natural resources and benefit the entire community.

Mr. Leonard Lord of Carex EcoSciences, LLC stated he has worked on this project and it has been completed. He gave a brief presentation of the

Freshwater Wetland Mitigation Inventory for Nineteen Coastal Communities report to the Commission members.

Mr. Lord stated the goal is to improve the water quality and overall health of New Hampshire's estuaries; to support regional development patterns that protect water quality, maintain open space and important habitat, and preserve estuarine resources. They also track environmental trends through the implementation of a long-term monitoring program to assess indicators of estuarine health and, develop broad-based support for the plan by encouraging involvement of the public, local government, and other interested parties in its implementation.

Mr. Lord stated that New Hampshire has over 230 miles of sensitive inland tidal shoreline in addition to 18 miles of open ocean coastline on the Gulf of Maine. New Hampshire's estuaries contain bays, tidal river and salt marsh systems. The coastal watershed that drains water into New Hampshire's estuaries via rivers and streams spans three states and approximately 80% of it is located in New Hampshire. Forty-two New Hampshire communities are entirely or partially located within the coastal watershed. The largest estuaries in the system include Great Bay and Hampton-Seabrook Harbor. Other estuaries of importance in the State are Little Bay, Little Harbor, Rye Harbor and portions of tidal tributaries.

Mr. Lord went on to state that New Hampshire's estuaries are dynamic, complex systems that greatly influence the Seacoast's economy, communities, quality of life and environment. The systems function and gauge their relative health and tracks key environmental indicators and evaluates their status against a net of management goals. This report communicates the state of 12 of the 30 environmental indicators tracked by the New Hampshire Estuaries Project.

Mr. Lord stated that the Estuaries Project tracks 30 different environmental indicators of water quality, shellfish resources, land use, and critical species and habitats. The estuaries project has formed partnerships with other groups to leverage efforts to protect the estuaries. The New Hampshire Coastal Program has restored over 200 acres of salt marsh habitat in the last five years.

Mr. Lord suggested two examples of possible project in Portsmouth and illustrated the locations on a plan. The first site is off Lang Road near the Berry Brook watershed that has 75 acres. There is a small metal culvert that will allow wildlife through them if the road will be upgraded. The second site is off Banfield Road at the Community Campus. The area has been filled and there is much debris and junk cars that extend into the woods. We feel this site should be cleaned up to help protect the Great Bog.

Dr. Powers stated the functions and values of wetlands had been brought up previously and asked if there was such a thing as valueless wetlands. Mr. Lord stated you could say low value wetlands but not valueless wetlands.

Mr. Miller stated that the report is a good place for sites and mitigation work that could be used for potential restoration. Mr. Lord replied there are other sites that could be looked at; however, this report is not all inclusive.

Dr. Powers asked if a citizens group could go in and clean up the site off Banfield Road. Mr. Lord replied this project would be too big to handle for a citizens group.

Mr. Britz stated that both reports will be in the Conservation Commission office if anyone would like to review them.

Dr. Powers stated that she and Skye Maher, the Commission's new alternate, attended a program presented by Mr. Miller and others on impervious surfaces and water resources in Portsmouth. The map section in yellow shows what the impervious surface was in 1990. The section in red shows the impervious surface that was added in the last ten years from 1990 to 2000 that shows that the situation is getting far more critical very quickly and ties in with the presentation given by Mr. Lord.

Mr. Lord stated we need to take action on some of the sites and what direction we want to focus the money.

The Commission thanked Mr. Kellam and Mr. Lord for their presentation.

Acting Chair Cormier stated that Dr. Powers is now a bona fide member and that Ms. Maher will now be the alternate and asked her to please take a seat at the table.

### **III. State Wetlands Bureau Permit Application**

#### **a) 2859 Lafayette Road for Port City Touchless Car Wash**

Mr. Ian Trefry, a Wildlife Biologist with New Hampshire Soil Consultants, stated his client would like to expand the car wash. Currently, the car wash contains 3 mechanical car wash bays and is unable to support customer demand, often causing car wash traffic to back out onto Lafayette Road. The proposed expansion will consist of installing 4 additional self-service bays on the northern side of the existing facility and completion of the proposed project will require filling of wetlands to construct rear access to the proposed car wash self-service bays and vacuum stations.

Mr. Trefry stated the wetland that will be impacted is classified as palustrine forested, broad-leaved deciduous wetland system that is seasonally flooded or saturated. In order to complete this application package, the DES Wetlands Bureau addressed the following:

- The wetland that the applicant is proposing to impact is a palustrine forested broad-leaved deciduous wetland system that is seasonally flooded or saturated;
- The applicant is proposing to fill 2,337 s.f. of wetland to construct a paved rear access to the proposed car wash facilities;
- The subject wetland is hydrologically connected to an adjacent forested wetland via a culvert to the southeast that the current conditions have created. Neither wetland has a surface water connection with the Berry Brook system which is located to the east.

- The proposed car wash expansion will not disturb current drainage patterns therefore, the project will not alter wetland hydrology. The wetland impacts will not infringe on the property rights nor negatively affect the value of abutting properties and will not decrease the abutters' enjoyment of their property. The project is appropriate for this location given the character of adjacent properties, it's location in the commercial district and the realized success of the existing car wash.
- The proposed expansion has been designed to minimize wetland impacts to the greatest extent practicable while maintaining in part the required property setbacks and fire safety requirements for the City of Portsmouth. A Variance for frontage setbacks will be requested by the applicant reducing the frontage setback from 105 ' to 64' allowing the expansion to be shifted northwest away from the wetland area as much as possible. He added that the side slopes have been designed to be graded at a 1:1 slope to minimize wetland fill.
- Mr. Trefry stated that the proposed impacts have been minimized to the greatest extent possible. He requested a wetlands permit be issued for this project.

Mr. Wazlaw stated when the car wash was first built, the applicant was before the Commission. The applicant knew originally the land was limited to what could be built on the lot and at that he could have moved the initial building. Now the applicant is returning to us to expand. Lafayette Road has been impacted over the years by many establishments.

Ms. Tanner stated all we are doing is allowing this to continue happening. The wetland has been fragmented, but it is a wetland and did not want to degrade the value of the wetland any further with this development.

Mr. Green stated three years ago it was Dunkin Donuts and we were very concerned then and now we are concerned that this is not the proper place for a car wash.

Acting Chair Cormier stated that Frank Richardson indicated this is a viable project; storm water runoff will be treated before it enters into the wetlands, therefore; there will be no adverse affects to the wetland area.

Mr. Kevin Ravenelle, the owner of the property, stated this is a separate lot to the rear of his property that he recently purchased to expand the facility. The lot is taxed as a buildable lot; however, a house could not be constructed on the lot.

Mr. Miller stated he was reading through the application and that it was isolated and the wetlands drain below and flows into the

Mr. Miller inquired about the impervious cover and that all the surface water would be treated. Now what will happen to the surface water. Mr. Trefry replied that all the water runoff will be transported into the vortex system

Mr. Trefry stated the actual building will be outside the wetland area.

Dr. Powers inquired that the plan shows proposed wetland fill. Mr. Trefry illustrated on the map where the fill would be. Dr. Powers asked why the land was purchased

knowing there were limitations. Mr. Ravenelle stated the City has determined it is a buildable lot.

Mr. Walters asked if the application could be cut in half and use two bays.

Mr. Green stated when we first looked at this lot, it was well within the 100' setback, now it is being enlarged considerably and more of the wetlands are being invaded.

Acting Chair Cormier stated that this application can receive a favorable recommendation or an unfavorable recommendation; however, the State can still review the application on its own merits.

Mr. Green made a motion that a favorable recommendation be made and was seconded.

Dr. Powers stated that what the Conservation Commission represents is an effort to conserve.

Mr. Green stated our roll is twofold, but he is afraid that this is a creep on the wetlands. There is a better way to build a car wash than what is being proposed.

Mr. Miller stated he will not support the motion and would be happy not to have the wetlands filled. He is concerned that little by little incremental creeping will invade the wetlands. He added he is not against the use.

The motion to make a favorable recommendation did not pass and failed with a 1 – 6 vote with Mr. Walters, Ms. Tanner, Dr. Powers, Mr. Green, Mr. Miller; and Mr. Wazlaw voting in the negative.

#### **IV. Conditional Use Permit Application**

##### **a) 107 Pearson Street for Brian D'Amour (with two supplements)**

Mr. Trefry from NH Soil Consultants, stated that this is an after-the-fact conditional use permit application. The project involved the installation of an 18' x 33' above ground pool within the Inland Wetlands Protection District Buffer Zone. It seems the owners were away on their honeymoon when the contractor's came to the site and installed the pool not realizing that approval was required from the Board of Adjustment. The Conservation Commission does not grant approvals only recommendations.

Mr. Trefry stated there are no direct impacts proposed within the wetland. The above ground pool has been placed within the 100' wetland buffer approximately 35' from the wetland boundary that occurs on the property. The land is reasonably suited to the use and wetland values are not adversely impacted. There are no adverse impacts to the wetland values of surrounding properties. The applicant shall demonstrate that alterations of the natural vegetative state will occur only to the extent necessary to achieve construction goals, and the applicant can demonstrate that the proposal is the alternative with the least adverse impact to the areas and environments under the jurisdiction of the Zoning Ordinance.

Mr. Trefry stated that the entire rear of the lot and portions of the existing house are within the 100' wetland buffer and consists entirely of mowed lawn as well as the above ground pool. The abutter located to the east of this property also has an above ground pool installed in 1977 within the wetland buffer with no apparent adverse effects on wetland values. This pool was placed in the flattest area possible minimizing soil disturbance while minimizing encroachment to subject wetland by installing the pool as close to the house as possible.

Acting Chair Cormier stated this a Conditional Use Permit.

Mr. Wazlaw made a favorable recommendation as presented; Mr. Green seconded.

Dr. Powers stated she is against this recommendation. This is an after the fact application and feels a precedent could be set.

Acting Chair Cormier stated he did not agree with Dr. Powers statement because it may not be setting a precedent. The criteria has been met for a Conditional Use Permit and the Ordinance does not mention anything about impervious surface.

The motion to make a favorable recommendation failed with a 4 – 3 vote and an unfavorable recommendation will be made to the Planning Board.

#### **V. Other Business**

##### **a) New Hampshire Association Conservation Commission Membership Dues**

Mr. Miller stated the Association meets the first weekend of every month in Concord. They have a good web-site and they have numerous work shops that are very beneficial. The Commission members voted that the Membership Dues be paid with a 7 – 0 vote.

##### **b) Report from members who went on Estuary Tour**

Mr. Walters stated he went on the tour and thought it was just great. The members are enthusiastic and happy. They are doing all kinds of experiments and it is all operational. Once data is collected we will be able to see what is working for this area. Ms. Powers also agreed that it was a wonderful Tour.

#### **VI. Next Scheduled Meeting – November 13, 2004**

#### **VII. Adjournment**

There being no further business to come before the Commission, the motion was made and seconded to adjourn the meeting and the motion passed with a 7 – 0 vote.

Respectfully submitted,

Joan M. Long  
Secretary, Planning Department

/jml