

**REGULAR MEETING
CONSERVATION Commission
PORTSMOUTH, NEW HAMSPHIRE
1 JUNKINS AVENUE**

3:30 P.M.

CONFERENCE ROOM "A"

November 10, 2004

PRESENT: Acting Chairman, Charles Cormier, Donald Green; Steven Miller; Allison Tanner; Brian Wazlaw; J. Lynn Walters; Eva Powers; and alternate, Barbara McMillan

MEMBERS EXCUSED: Allison Tanner and Skye Maher

ALSO PRESENT: Peter Britz, Environmental Planner; David Allen, Peter Rice

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Acting Chairman Cormier called the meeting to order at 3:35 p.m. in Conference Room "A"

I. Acceptance of Minutes - Meeting of October 13, 2004

Dr. Powers stated that on Page 2 , the sentence read that there was a Mr. Leonard and a Mr. Lord; however, they are the same person.

Dr. Powers stated the third paragraph on page 3 indicated that the program was presented by Mr. Miller and should have reflected the program was presented by Mr. Miller and others.

Mr. Green stated that on page 5 it was reflected there could be a better place for the car wash and should have reflected there could be a better way to construct a car wash.

Dr. Powers stated the third paragraph from the bottom, the last sentence indicated that approval is required from the Conservation Commission and should have reflected that approval would be required by the Board of Adjustment.

Mr. Miller stated that on page 2 the last paragraph should have reflected that there are all kinds of experiments being done on water runoff on impervious surfaces. Mr. Miller stated that also on page 2 should have reflected a good place to begin looking for a site.

Mr. Miller stated that on page 4 had an incomplete sentence. Let the record reflect that this thought was not a complete thought and was deleted from the record.

Mr. Miller stated that on page 6 he would like to clarify the statement that the Association has their annual meeting on the first weekend of November every year rather than every month.

Mr. Walters made a motion to approve with the above amendments; Ms. Powers seconded and were approved with a 7 – 0 vote.

Let the record reflect that the above amendments have been reflected in the minutes.

II. Presentation by David Allen, Deputy Director of Public Works on Storm Water Regulations

Mr. David Allen, Deputy Public Works Director, stated that presentations have been made to the Technical Advisory Committee and the City Council. This presentation will be the same.

Mr. Allen stated this is the best management practice for the entire city and will be described in the following presentation. We put together an EPA poster and flyers that relate to storm water run off. Every year we go into a City school and this year it was an 8th grade class to educate the students on water runoff and storm water regulations. Mr. Allen stated they had a test completed on the discharge and that is an on-going project that we continue to work on. We have two new drain sites which show some information where the storm water run off is located and it separates the grit especially in front of the Middle School.

Mr. Allen stated that communities with populations between 10,000 to 100,000 are required to comply with EPA Phase II regulations, for storm water runoff. Some of the areas that are not covered are municipal industrial operations; waste water treatment plants, transfer stations, airports, power plants, and construction projects greater than 1 acre which all require their own Phase II permits.

Mr. Allen stated that rain or snow runoff is not absorbed into the earth's surface because it is hitting an impervious surface which then creates sheets of water, swells, volume of flow that contributes to erosion and collects in our water bodies.

Mr. Allen went on to show how this effects the City of Portsmouth adding that a permit is required for municipal facilities, contractors working in the City.

Mr. Allen went on to add that the community tax dollars are going toward capital upgrades to separate sewer and water and new storm drains. If any citizen has a question to contact the Department of Public Works for information.

The City of Portsmouth does have a storm water pollution prevention plan in which the following details have to be submitted:

- Details of the owner or operator of site;
- Details of who the responsible party is and duties;
- Site description, site map, significant material inventory, spills/leaks in the past three years and salt storage;
- Identify non-stormwater discharge, allowable stormwater discharges, existing stormwater monitoring data.
- Details to reduce/eliminate/control pollutants in stormwater discharges.

- The reason for the study is to education the community and to obtain input from all vested parties.

III. State Wetlands Bureau Permit Application

a) 20 Pleasant Point Drive for John Lindenthal

Since the owner of the property as well as Pickering Marine, the applicant, were not present to speak to the application, the Commission discussed whether they should listen to the abutters who were present to make their comments. The Commission members all agreed that since the abutters were present, they should be allowed to speak.

Mr. Charles Vaughan, a neighbor and also representing a direct abutter, Mrs. Baroni, stated the whole area is mud. Mrs. Baroni's dock extends approximately 10' from the shore where Mr. Lindenthal would like to build his dock out 30' from the shore. He presented a tidal chart map showing where the proposed 6' x 10' pier with a seasonal ramp and float would be located.

Mr. Vaughan stated the applicant is proposing to have a recreational boat access to the Back Channel from his property and added that he has commented that there will be no negative impact on the abutters; however, there will be a negative impact for the Baroni's who are direct abutters.

Mr. Vaughan stated the applicant is proposing skids or float stops to support the float above the mud. He added there is no emergent vegetation at the proposed pier site.

Mr. Vaughan feels the ramp should be cut back 10' – 15'. The proposed dock will be very long and probably half will be in the tidal floor or mud. He feels if the dock was cut back 10' – 15' it would be compatible to the Baroni's dock. This area is very small and if the dock is allowed to expand, the area will become overcrowded.

Acting Chair Cormier stated his main concern is the impact to the wetlands and would become a hindrance to the Baroni's dock and their property. He added that he would like to hear something more about being a negative impact to the area. Most docks in this area do sit in the mud.

Mrs. Baroni asked if there were any guidelines to follow for constructing a residential dock because she feels that if the dock is 50' out, that is excessive and if her husband and Mr. Lindenthal both constructed decks of the proposed size, they would collide

Acting Chair Cormier suggested that Mrs. Baroni talk with her neighbor, Mr. Lindenthal regarding the mud flat and to address her concerns with him.

At this point the motion was made and seconded to table the application to the next scheduled meeting on December 8, 2004 to allow for Mr. Lindenthal and Pickering Marine to be present. The motion passed with a 7 – 0 vote.

b) 10 State Street for Pier II, LLC

Ms. Amanda Barker of New Hampshire Soil Consultants as well as Mark Stebbins and Attorney Malcolm McNeill, representing the old Pier II, LLC were present to discuss the application with the Commission members

Ms. Barker stated that this building has been a commercial water front property since the early 1800's. The owners are proposing to re-develop the site from the existing 2-1/2 wood story building into four unit residential condominiums that sits entirely over land; however, there is a wood warehouse building that is totally over water. We are proposing that the existing building be reduced to about 1/3 of its size.

Ms. Barker stated that it is being proposed that all existing structures, supporting piles and bulkheads be removed from the site.

Ms. Barker stated the rip rap slope protection associated with the Piscatequa River will be repaired as well as replaced/repared dock/decks. This project is the redevelopment of the existing property replacing the high traffic restaurant use. Trash will also be reduced from the previous restaurant use. Storm water run off will be collected into a drain and eventually discharged into the Piscatequa River. A storm water management report is included in the Commission members packets. Each unit will have a garage for safe storage of vehicles. The applicant will also upgrade the facility and the sewer system will tie into the city sewer.

Ms. Barker stated that the applicant is also proposing to build sidewalks where there are none existing. During demolition of the property, a boat will be available to collect any debris as well as a dike will be constructed at the top of the bank to contain material onsite. She added that the deck and dock will be the last items removed so that they will be available to catch stray debris during the demolition process. Ms. Barker stated the NH Endangered species was contacted and they have indicated that there were no endangered species on the site.

Ms. Barker stated that balconies will be attached to the upper levels of the building and will be cantilevered over the other fixed structures and will not result in additional impacts. She added that it is important to note that the

projection of the building and attached fixed structures have been minimized so that they do not extend as far outward from the shoreline as the existing Pier II building, greatly reducing the impact of the facility over public water.

Ms. Barker discussed the building foundation of concrete deck and timber deck with the Commission members. She added that the proposal will replace a commercial land use with a less intensive, residential land use, even though the overall building area will be increased slightly. The existing condition of total area of coverage by all of the buildings on site will be reduced by approximately 5%.

Ms. Barker then discussed a brief history of the property adding that this property was used historically as a commercial waterfront facility since 1800 and currently has a 2-1/2 story wooden commercial structure that is totally over land and a wooden warehouse building totally over water. The existing restaurant and deck were constructed after a fire in the 1950's.

The present condition of the buildings, support piles, riprap and bulkhead on the property are such that any use of the existing structures will likely require significant repairs in the near future. The entire property is within the DES Wetlands Bureau's jurisdiction and, the proposed project cannot be completed without requiring a wetlands permit.

Mr. Peter Britz stated he had written a memo concerning a review of past actions to the Commission members which indicated that the last time this application was before this Commission was at a work session at the April 7, 2004 meeting. The applicant described the state permit process for this application. However, in the material submitted at the work session, the applicant provided a waiver granted by the Commissioner of NHDES allowing the applicant to exceed certain requirements of the State's Comprehensive Shoreland Protection Act. The Commission had written a letter to the NH DES for clarification of how the waivers were granted when it appeared. There is specification in the language not allowing for said waivers.

Mr. Britz stated that currently this project has been tabled by the Historic District Commission awaiting a response from the applicant regarding an historic structure (wharf) on the site.

Mr. Green stated he was worried about the public who enjoy the view of the water at this location and they will not be able to do this after the condominiums are constructed.

Attorney McNeill stated this application does not require any Variances; Site Review is not needed because of the nature of the application. The Historic District Commission has tabled the application pending material to be received on the 106 process for the wharf building. He added this is a combined effort on wetlands. When the restaurant was in use, tour buses

would drive up with 500 people, more or less, to have a meal. He asked that a Wetlands Permit be issued since the proposed use will have a considerably lesser impact than the previous use.

This is a private structure utilizing the waterfront, and it is a public building that is being developed with both State and Municipal law. This building is entirely within the 50' setback of the wetland area.

Attorney Michael King, representing abutters Katherine Reynolds and Sophia Collier, asked how the proposed Riverwalk will be protected. The waiver was granted in the year 2000 on another set of plans and added this application should not receive a favorable recommendation for that reason.

Acting Chairman Cormier asked Attorney King what he had against the project. Attorney King replied that his clients feel the proposal is inappropriate and will be a serious roadblock for the Riverwalk and added that he felt the City Ordinance has not been followed. The project has a 50' setback to the wetlands and asked that the permit not be approved.

Acting Chairman Cormier stated this is a Board of nine members and we want to know what is being proposed and will act on what the information is based on and what is being presented.

Mr. Walters stated that he feels the Commission should listen to what is being presented and to follow the criteria in the Ordinance and then base our decision.

Acting Chairman Cormier stated he is looking at the proposed plans of what the applicant is proposing.

Mr. Miller stated he was concerned about the Shoreland Protection Act. There has been a lot of good discussion on how to deal with this. The State Statute has been modified and the State will hold the City responsible for compliance. He is concerned about the section of the lot that is paved.

Acting Chair Cormier stated the State Wetlands can always overturn our decision and the applicant can still have their permit.

Mr. Wazlaw stated we are the Conservation Commission and asked Peter Britz where the Commission stands? Mr. Britz replied this is a State Permit Application and the applicant is asking to develop a structure within the 50' buffer and they are using the Waiver process to get through some of their hurdles. It is a complicated issue. This is a very complicated issue; however, do you want to make a favorable recommendation? The property is unique and there are legal issues involved. Just remember that this Commission will make a decision to recommend a favorable or unfavorable response to NHDES who has final permit authority.

At this time, Ms. Powers recused herself from the application.

Attorney McNeill stated this is not an historical case but an environmental impact to be considered.

Mr. Walters made a favorable recommendation to the State Wetland Bureau and Mr. Miller seconded; however, the motion failed with a 4 – 3 vote; therefore, this resulted in an unfavorable recommendation to the State.

Mr. Miller stated there was discussion on how the State Statute has been modified and added the State will hold the City responsible for compliance and is important for the Commission to keep this in mind. Mr. Miller stated his concerns are about the interpretation of the Shoreland Protection Act. There is a lot more building on the shore than on the water.

The recommendation to the State will be unfavorable with a 4 – 3 vote for the following reasons:

- The Commission was not convinced that the waivers per the Shoreline Protection Act were appropriately granted;
- The Commission felt the reduction of impacts, as described by the applicant, were over-stated.

IV. Presentation by Seacoast Land Trust

a) Re: Seacoast Land Conservation Prioritization mapping, as well as report on Bernard Maxam property (Berry's Brook)

Ms. Dana Truslow of the Seacoast Land Trust updated the Commission on activities for the last year on the recent mapping of Great Bog and upper Berry's Brook. She stated she did not bring all the maps, but we have been working over the last three years to understand the land resources in the Seacoast area.

They have looked at all the resources to find out where in the Seacoast that land protection is the most urgent. The upland area of the Winnicunnet water shed is also a natural resource area. The Great Bay Resource Protection Partnership is very active in this area.

Ms. Truslow explained all the maps to the Commission members.

She added there will be additional presentations during the next year.

The Commission voted with a 7 – 0 vote to expend \$25,000 from its conservation fund to contribute to a project by the Seacoast Land Trust to acquire about 27 acres of land at the end of Coach Road off Lafayette Road. Bernard Maxam, the property owner, is interested in selling the

property at a bargain price, which had unsuccessfully tried to develop for an industrial use.

Ms. Truslow stated that she felt the parcel of land would be a good addition to the City's other Conservation land such as the Great Bog. The organization is also looking for grant money and private contributions.

V. OTHER BUSINESS

a) Discussion Regarding Commission member to sit on Site Review

Since the hour was running late for the meeting, the motion was made and seconded to discuss this issue at the next scheduled meeting on December 8, 2004 and was voted with a 7 – 0 vote.

b) Vote on Memorial Tree

Mr. Wazlaw made a motion to approve \$360.00 for the Memorial Tree that was purchased in honor of Alanson Sturgis; Mr. Walters seconded and was approved with a 7 – 0 vote.

VI. NEXT MEETING – December 8, 2004

VII. ADJOURNMENT

There being no further business to come before the Commission, Mr. Green made a motion to adjourn and meet at the next scheduled meeting on December 8, 2004 and was seconded and passed with a 7 – 0 vote.

Respectfully submitted,

Joan M. Long
Secretary

/jml