

**REGULAR MEETING  
CONSERVATION COMMISSION  
PORTSMOUTH, NEW HAMPSHIRE  
1 JUNKINS AVENUE**

**Conference Room "A"**

**3:30 p.m.**

**May 11, 2005**

**Members Present:** Chairman, Charles Cormier; Vice-Chairman, Steve Miller; Members, Brian Wazlaw; Allison Tanner; Eva Powers; Don Green and J. Lyn Walters; Alternate, Barbara McMillan

**Members Excused:** Skye Maher

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

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

**I. STATE WETLANDS BUREAU PERMIT APPLICATION**

**a) Piscataqua River Back Channel Pier  
for Charles and Melissa McLeod**

Glenn Normandeau of Pickering Marine spoke on behalf of the owners, Charles and Melissa McLeod. The site is located on Ridges Court and there is approximately 70 feet of waterfront which is between a piece that the City owns ("paper street") and the Vandermark's property. There is an existing pier at the site currently. Originally, he noted, that they planned to rebuild it within the same footprint and shorten it with the addition of a ramp and float. However, he stated, after extensive negotiation with the City, it was decided due to the property lines it precluded the McLeods from having a docking structure because they could not meet the setback requirements. He said that after some months with working with the City staff, the City Council granted a waiver of the 25 foot setback provided that the whole structure move far enough away that none of it actually crossed the property line extension out into the state owned wetlands. Additionally, he noted, the Vandermarks gave the McLeods a letter approving the plan on record. He pointed out that the McLeods also have another neighbor, the Harveys, who gave a letter to the McLeods accepting the same. Essentially, he stated, all of the abutters gave their consent to the McLeods to build their pier. He informed the Board that the existing pier would be removed and the new one would meet modern standards, in that, it would be as high as it was wide above the marsh.

Chairman Cormier asked if the new pier would be installed in the same location as the old one they plan to remove.

Mr. Normandeau answered no because the City would not go for that.

Vice Chairman Miller asked about the description of the area on the permit application to be covered by the new pier. In it, the area is described as sand and stated that from looking at the attached pictures of the proposed site for the pier it appeared to be salt marsh.

Mr. Normandeau stated that the pier itself would be over marsh and then there is a drop-off, a typical marsh undercut edge, and the ramp and float would be out into the edge area.

Vice Chairman Miller asked if the size of the proposed pier in relation to the other would be similar.

Mr. Normandeau answered yes with a slightly smaller float.

Chairman Cormier asked if there were anymore questions.

Mr. Wazlaw wanted to know what the size of the proposed dock would be in relation to the old existing one they plan to remove.

Mr. Normandeau replied that the ramp would be the same length, the float would be 10 x 18 instead of 10 x 20 and the pier would be the same width but 10 feet shorter. He stated that the entire structure is somewhat smaller than the Vandermarks'.

Mr. Green asked if the Harvey's existing pier was on City property.

Mr. Normandeau answered that he didn't know the history on that or how long the existing pier had been there. However, the City left it to the Harveys as long as they kept it insured even though the Harveys were not the ones who built it.

Vice Chairman Miller asked about the area underneath the old dock whether there were any plans to restore that area after the old dock was removed.

Mr. Normandeau answered that he would pull the structure out and leave the conditions as is. He stated they would come in with the barge off-shore and pull the timber out.

Vice Chairman Miller asked if there were any loose rock on the old site and if so, if it would be possible for them to have them removed from the marsh.

Chairman Cormier asked if there were any further questions.

Seeing none, the Chairman asked for a motion.

Mr. Green made a motion to approve and Mr. Walters seconded.

Chairman Cormier asked the Board for all those in favor. The Board then voted on the motion to recommended approval of the permit application and the motion passed with a 7-0 vote.

## II. CONDITIONAL USE PERMIT

### a) Lafayette Road

*This application was tabled at the April 13, 2005 meeting to the May 11, 2005 meeting.*

Mr. Wazlaw made a motion to take the petition off the table and Vice Chairman Miller seconded.

Chairman Cormier asked the Board for all those in favor and the motion passed with a 7-0 vote.

Attorney Bernard Pelech spoke on behalf of the applicant. He noted that the Board was familiar with the proposed lot, as it is the lot next to the existing car wash. He stated that this application was before the Board when the NHDES Application to the State for a fill was being considered and the Board recommended denial after requesting the 40-day review period. He further stated that subsequently the NHDES granted the fill permit and as a result, they seek to obtain a conditional use permit for the expansion and disturbance to the buffer as well as the fill from the Board. He reiterated that in 2002, the site where the car wash is currently located was granted a conditional use permit and at that time, the owner did not own the current lot presently before the Board. He noted that they installed a Vortech unit to manage stormwater runoff and underground storage tanks for water runoff and detention. In addition, he remarked that they plan to utilize the system for some of the stormwater on the new proposed site. He presented Ms. Adele Fiorella from NH Soil Consultants who delineated the wetlands at the sites in 2002, 2003 and 2004 and Mr. Eric Salle from Jones and Beach who created the site plan and developed the Vortech unit.

Ms. Fiorella gave a quick overview of the site. She went over the site plan that had accompanied the dredge and fill application. She pointed out the wetland areas to the Board, which were colored in green. As previously stated in the dredge and fill application, she explained that the carwash has been very successful and thus, the owner wants to add four additional bays. She showed the Board where on the site plan the owner proposed to construct the additional bays which would require the extension of the bays over to the right of the site and before the extension of the bays, the fill would not be required because it is a rear access that is not only required for safety reasons but for access reasons and noted that was one of the reasons why the State issued a wetlands permit. She further elaborated that the State felt having pavement going around the back of the building is a fill for access and use of the lot. Accordingly, she stated that again they were before the Board to discuss the fill of the wetland and to discuss the work outside the wetlands within the buffer, which essentially covers the entire property. She spoke of the wetland and offered a grading plan that showed how the land slopes which eventually flattens out into a fairly flat area and then would drain via a colvert underneath a paved roadway and

eventually toward the apartment buildings and Berry's Brook. She noted that they are isolated in that they are surrounded by existing development and roadway, but are connected via the culvert. She went over her functional assessment with the Board and stated that the wetland did not provide any principal functions however they were suitable or capable to wildlife habitat due to the current vegetation. She further remarked that the wetland habitat was not consistent with wetland related species but could be potentially used by raccoons, skunk, etc. She stated that the wetland does have some potential for flood flow alteration, which meant that as the water flows into the wetland it is somewhat slowed due to a large flat area but that it does not have a lot of potential for flood storage because of the way the culvert is set and the way the slopes drain toward the wetland and flow right into the culvert. She noted another component they addressed in the functional assessment was sediment and toxicant retention. She explained that the Vortech unit they installed has kept the runoff minimal. She stated that currently the buffer to the wetland is already over 50% impervious pavement utilized for the carwash and that the remaining buffer portion would become, under the proposed conditions, about 75% impervious and that anything outside of the silt fence would maintain vegetation cover. She asked the Board if there were any questions so far.

Chairman Cormier asked how many bays were there now, how many would there be total and how much of the pavement would be removed.

Ms. Fiorella answered that there are currently three bays, they are proposing a total of seven and that a small section of pavement would be removed between the lots in order to install the new bays and drainage systems.

Chairman Cormier asked what the grey area depicted on the site plan was portraying.

Ms. Fiorella answered that the grey areas were the new paved portions of the lot.

Mr. Wazlaw asked since there were so many maps associated with the current project, he wanted to know if the map dated 05/25/04 received last year was the same map they were viewing today.

Ms. Fiorella and Attorney Pelech answered yes.

Mr. Wazlaw asked if everything the client was proposing to build would be in the buffer.

Ms. Fiorella answered yes.

Mr. Wazlaw asked when the client initially put the existing car wash on the lot it was defined by the City and when the current lot, before the Board, was purchased, the client should have known that any building proposed to be built on the lot would be in the buffer zone and possibly in the wetland area as well and that would be problematic.

Ms. Fiorella answered that is true.

Mr. Wazlaw then stated that if he looked at a wetland map or even a topographical map that he could notice right away that the property was in a wetland area and that currently the Board is being asked by the client, who purchased this lot, for a conditional use permit to build everything in the buffer zone and the wetland area. Additionally, he remarked that the buyer knew about the wetland area and the lot restrictions when he purchased the lot.

Attorney Pelech stated that the client has not purchased the lot as of yet but that it is currently under agreement.

Ms. Fiorella stated that the client's initial contact with her explained that he had a conditional use permit for the existing carwash and also a variance on the front line setbacks to avoid wetland impacts and he thought it was appropriate to ask for a conditional use permit again for impact to the buffer as well as a variance on the front line setbacks to minimize wetland impacts. She thought it was reasonable since a conditional use permit had been granted before although the difference is the wetland impact, but that obviously when a piece of land is purchased there is always risk associated with that purchase.

Chairman Cormier stated that this had come before the Board before when they were applying for the state wetland permit and the Board recommended denial but that the Board's recommendation for denial was overturned. He asked Mr. Britz if that was correct.

Mr. Britz said yes.

Ms. Powers stated that she had visited the site during the midafternoon and it was not busy. She also remarked that kitty cornered across the street there is another carwash as well. She asked if this was really for the public good and whether there really is a need for something like this.

Attorney Pelech stated that at peak times the business is very busy and that is why the owner would like to expand.

Attorney Pelech stated that one of the problems with the current lot is that it is very small lot and no buildable area on it without the conditional use permit and variances. He noted that another reason this was proposed was the ability to use a shared driveway and no need for a separate curb onto Lafayette.

Chairman Cormier stated that the ordinance sets out certain criteria that have to be met in order for a conditional use permit to be issued which said criteria had been cited in Mr. Britz's memorandum for denial. He informed the Board that Ms. Fiorella would be going through those criteria and would explain to them how they have met the same.

Mr. Green stated his general feeling is that the Board ought to insist another piece of land be provided due to the loss of the wetlands.

Ms. Fiorella went over each of the criteria cited in Mr. Britz's memorandum. She stated that the first is that the land is reasonably suited for the use and that the wetland values are not adversely impacted. She noted that in the memo it states that there would be no wetland left and that currently there is about a half an acre of wetland on the site and the fill they were requesting would take about 0.05 acres and she said there would still be about .45 acres of wetland remaining. She also noted that the land is reasonably suited for the proposed use due to its zoning being commercial and its location within plenty of other commercial units. She said that the wetlands' values would still remain despite the fill simply because it still will remain vegetated in its main portions, it would still remain ponded in those areas that are ponded and the NHDES's review of the project stated there would not be any adverse impact to the wetlands.

Ms. Powers stated that she respectfully disagreed that the property is reasonably suited from a conservation commission member's standpoint. She stated that they would be reducing a lot of the green area and wildlife habitat.

Ms. Fiorella stated there has not been a change in the quality of the wetland area, in its functions or its values on the original lot.

Mr. Britz asked about the edge of the wetland and since they propose squaring it off, how that would affect the wildlife of the wetland.

Ms. Fiorella stated given the fact it would be a grassed area and sloped, it should give them a defined area. She stated that it is such a small area, that there isn't much diversity of animals using the area and that she didn't think that the use is that high and even if so, she felt that the use wouldn't stop simply because they filled in one area.

Ms. Tanner stated that she could not see how filling the wetland would not be an adverse impact and asked Ms. Fiorella how she thought it would not be an adverse impact to the wetland.

Ms. Fiorella replied that it is an adverse impact to that wetland and stated that was why they were currently before the board but that on a larger scale, there would not be an adverse impact to the wetlands as a whole.

Vice Chairman Miller asked about the size of the wetland.

Ms. Fiorella said there is approximately .5 acres of wetland.

Vice Chairman Miller asked about the proposed new construction which stated that some of the water would go into the Vortech unit and he was more concerned about how much would and how much would not. He asked for a percentage.

Mr. Eric Salle stated that approximately half of the development would go into the system and that the half in front of the building would drain off to the side and

down a vegetative swale. He reiterated that there is not enough pitch for a catch basin but that they are catching most of the stormwater from the rear.

Ms. Fiorella stated that there would not be any adverse impacts to abutters with respect to the wetland fill and there aren't any connected or adjacent wetlands to affect.

Ms. Tanner asked about the value of the buffer that would be covered.

Ms. Fiorella stated that currently most of the buffer is wooded and that vegetation would be lost. She stated that some of the area is currently functioning as a natural filter into the wetlands. She stated that the alterations they were proposing were to be fit on a very tight lot and that they are necessary because they will have to request to reduce the front yard set back requirements and utilize a retaining wall to minimize the encroachment into the wetlands and it is a loss of vegetation. She suggested that maybe providing a better buffer would help the Commission make a favorable recommendation for the project. Ms. Fiorella stated that given what the land offers being a small lot and the constraints of the lot and it currently being very successful within its commercial setting they have done the best they could.

Chairman Cormier stated that everyone had heard the arguments and seen the proposal and asked if there was any comment.

Mr. Walters stated the only advantage he could see would be the removing of the giant trash heap that everyone throws their trash into. He also offered other locations for their development.

Ms. Fiorella stated that the owner obviously wants to make more money and capitalize on his business so there could be the potential of him leaving the area if he is not able to build where he would like.

Attorney Pelech noted that there was a larger issue at hand with the last remarks in that what would happen with the lot, it is zoned as a commercial lot and taxed as a commercial lot and is virtually an unbuildable lot and suggested that maybe the Board should consider purchasing to preserve in perpetuity. He noted that someone would eventually be back for building on that lot.

Mr. Green thought the area needed to be preserved.

Ms. Fiorella stated that the proposed construction would actually be beneficial to the wetland area serving as a better buffer than the now existing natural wooded buffer area.

Ms. McMillan made the remark to Ms. Fiorella's statement that it was not a good argument to say that the new building would act as a better buffer to the wetland area than the now natural wooded buffer area and also questioned where the applicant would go from here once the Conservation Commission recommends or denies the petition.

Mr. Britz answered that they would go before the Planning Board who makes the final decision.

Vice Chairman Miller asked if they would go to TAC after that.

Mr. Britz stated if they were approved by the Planning Board then they would probably go before the Board of Adjustment next and then to TAC.

Ms. Powers asked if there would be someone who would reiterate the Commission's recommendation or denial to the Planning Board.

Mr. Britz answered that it would be relayed in the form of a memorandum.

Attorney Pelech said the applicant could always withdraw the application and come back to reapply.

Chairman Cormier asked for a motion.

Mr. Walters made a motion to recommend approval and Vice Chairman Miller seconded.

Chairman Cormier asked the Board for all those in favor. The Board then voted on the motion and the motion failed with a 7-0 vote.

### **III. ACCEPTANCE OF MINUTES**

Ms. Tanner made the comment that she had never had such volume in minutes before and was very pleased.

Ms. Powers agreed with Ms. Tanner and added that she thought they were wonderful.

Ms. McMillan agreed, she thought that they were great and very detailed.

Ms. Powers added that she felt reassured that if there were ever a time down the road when something that came before the Board and that ended up in Court that they would have a document that depicted what happened.

Ms. Tanner just made the request to have the minutes double sided in order to conserve paper.

The Board agreed.

Mr. Walters made the motion to approve the January 12, 2005 and April 13, 2005 minutes. Mr. Green seconded the motion.



Chairman Cormier asked the Board for all those in favor. The Board then voted on the motion to approve the January 12, 2005 and April 13, 2005 minutes and the motion passed with a 7-0 vote.

**IV. OTHER BUSINESS**

Terms were discussed and Peter asked if everyone that had received notices replied to them indicating their wish to continue for another term.

The Board indicated that each member had taken the appropriate measures for the same.

Mr. Britz and Vice Chair Miller informed the Board that they got approved for the buffer project with Moose Plate funding.

Mr. Green spoke about a Bio Blitz he was putting together. His plans were to arrange a forum of environmental naturalists to come and name as many species of plants and animals as possible over the course 4 hours. The event will be held on Saturday, June 4, 2005 from 7:00 am to 11:00 am. He informed the Board that he would be taking donations for the Bio Blitz and anyone that wished to donate could make their donations payable to the Seacoast Land Trust. He asked the Board if anyone was interested in the same, to please contact him.

Mr. Britz spoke about two state wetlands applications that were approved, Pier II and Gray, and the Tidewatch Condominium expedited permit, which was signed off by Chairman Cormier, is still awaiting approval from State.

**V. NEXT MEETING – June 8, 2005**

**VI. ADJOURNMENT**

There being no further business to come before the Commission members, at 5:00 p.m. a motion was made and seconded to adjourn to the next scheduled meeting on June 8, 2005 in Conference Room “A” and the motion passed with a 7-0 vote.

Respectfully submitted,

Christina V. Staples  
Conservation Commission Secretary

/Cs