

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

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**3:45 PM**

**Conference Room "A"**

**May 10, 2006**

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**MEMBERS PRESENT:** Steve Miller, Eva Powers, Allison Tanner, Barbara McMillan, Charles Cormier, Jim Horrigan, Brian Wazlaw, MaryAnn Blanchard

**MEMBERS EXCUSED:** Skye Maher

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

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**I. APPROVAL OF MINUTES**

- a) April 12, 2005 – Minutes were approved unanimously as presented.

Mr. Miller made a motion to approve the minutes, which was seconded by Ms. McMillan.

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**II. STATE WETLANDS BUREAU PERMIT**

- A) Standard Dredge and Fill Application  
Between Route 1 By-Pass and Borthwick Avenue, Portsmouth, NH  
Assessor Map 234, Lots, 1, 2, 2A & 7-4A  
City of Portsmouth, Owner

Peter Rice, City engineer from the Water and Sewer divisions, stated that he was seeking a standard dredge and fill permit. The project is in a section of wetland area between Route 1 bypass and the Jackson Gray building. Their existing sewer line now goes through a section of wetland that goes down Route 1 and ends at the Griffin Building. This project is part of an on going, long term control plan. This is to address a failing problem in the sewer, which lets excess water in from the wetland. That water takes up a capacity of the sewer line, and accidents have occurred where sewage has seeped into the wetland because of overflow. That is a difficult situation because at that point, they have to go in and clean up and maintain that section of the wetland. They would like to relocate this sewer line to a PSNH easement, and help make it easier to maintain and eliminate these tons of excess flow going into the sewer system. A fellow engineer, Jeff Clifford, will address the details.

Jeff Clifford stated that the project was between Route 1 and the Griffin Building. He referred to the Site Plan and indicated that the purple line is the existing sewer and the red line is the proposed sewer line. They will be relocated from the middle of the wetland to the edge of the wetland. If they were to replace the sewer in kind, they would have a 30' disturbance through the wetlands. They would have to dig up the wetland to lay down the new sewer line, so they worked extensively with the City and the utility companies. Public Service of New Hampshire bought the land from the railroad company in the

1950's, so they own the strip they are planning to build on. They have a high-powered strip down the middle of the lot that needs to be replaced. PSNH already had gas and live lines running through there, so their sewer line was pushed off to the side. Their proposed grade is upland. They moved it so it would restore 1,028 s.f. of wetland. They have a small area of permanent impact that they need to have access to. The other impacts are temporary. They first cut the vegetation and put down filter fabric, and then put a hood of sand and gravel. They will dig the sewer, then pull out the remaining materials and restore and reseed the area. They use the existing surface soils so that they have the native seed stock, and it is easier to vegetate. They've had a lot of success doing this in the past, such as the salt marsh in Hampton. It is standard construction to do that. This is half the project; the full project is over 2,000 s.f. This is the half that goes from the Griffin Building toward Barberry Lane. They don't want to deviate from the proposed plans. It would be highly disruptive to move the lines because of the wetlands and the existing infrastructure. The vegetation that comes back is usually better than it is now. There is 16,780 s.f. of temporary impact and 728s.f. of permanent impact between those two locations and they will be restoring 1,082 s.f. The old proposal would have called for 22,000 s.f. There is a culvert that comes across the City's water main, and he wants to stabilize it to stop erosion. If there is water running through it then they'll temporarily block it for the day or extend the pipe out temporarily.

Ms. Tanner asked if they were going to dig up the old sewer or just tie it off and rebuild.

Mr. Clifford showed where they would be digging on the map. They will remove the manhole from the existing sewer and will fill it in with sand. They will fill the existing sewer in with sand so that they don't have voids. They don't have a conduit for the water to reach different points in the wetlands. They don't want to dig it up.

Mr. Horrigan stated that he went into Barberry Lane and there was a huge gas bunker. Where would that have been?

Mr. Clifford stated that it is on the plan near the railroad tracks. There is a slight gravel road that extends beyond the bunkers, and goes into the toe of the fill.

Ms. Powers asked if they would be digging up that part and using the vegetation to restore the wetlands.

Mr. Clifford stated that they would also be seeding it. They are going to stockpile the organic surface material that they will remove when digging.

Ms. Powers asked if there was any invasives in the area.

Mr. Clifford stated that he did not know. The area that they would be digging would be the edge of the wetland, and if that were the case they would not use those soils. He isn't sure about the upper part. Some areas are more degraded than others. There are some mature growth trees there and they will have the NH Soils Consultants double check for invasives.

Mike Croissant, of the NH Soils Consultants, stated that there were ten wetland impact areas proposed. Eight of them are temporary, two are permanent and one is a restoration area. Regarding the question of invasives, this area has many. They have some trees such as sumac, multiflora rose, barberry and various thorny plants. He doesn't know if it makes a difference to not use the same soils and put in

fresh soil. This is such a small sliver that the invasives will just invade the area. The plan is to put the topsoil back and seed it with the wetlands' seeds. They want as much good vegetation there as they can get. The resources are all there. They propose to remove the filled in pipes from the previous work. The permanent changes will be the manhole and the road. The new plan makes it very easy to reach the sewer line without disrupting the wetland. They will be placing stabilizers near the upper stream to make sure it does not wash out. Essentially, they will be preventing impact on the wetland by putting it on the perimeter.

Ms. McMillan asked if there was already erosion happening from the stream.

Mr. Clifford stated that there wasn't any riprap there so when they go through, the soil will be taken out and put back in. The change in material shouldn't be a problem if the conditions are stable. There would definitely be an erosion problem if they did not take steps to stop it and put down an erosion free material.

Ms. McMillan asked if there was too much flow for it to become stabilized.

Mr. Clifford stated that they were right at the mouth of a culvert and that it is common practice to put riprap in. The velocity of when you come out of a pipe can affect the soils with their force. They need to spread the soil to a certain point and go through calculations. Often times they use the riprap to do that.

Mr. Cormier stated that it was hard to establish vegetation in an area with water.

Mr. Clifford stated that the stream flows intermittently.

Ms. Powers asked if anyone on the Commission had an idea of the invasives.

Mr. Britz stated that the main idea was that they were going to seed it.

Mr. Clifford stated that there is no insurance that they can control the invasive species.

Ms. Powers asked if they could add a stipulation for double seeding.

Chairman Cormier stated that it seems like a reasonable and necessary project.

Mr. Rice stated that it is part of the City's sewer program, and was identified as a part that needed serious work so they really need to continue to move forward with these projects. They realize that there are things they need to do to mitigate progress and will incorporate those things in the project.

Mr. Horrigan stated that the area looks to be used previously as a dump. Will the City clean the property?

Mr. Rice stated that they do clean it out periodically. PSNH put gates on either side of it but they can't regulate the amount of dumping even though it has improved. Part of the project is to clean out the area.

Mr. Cormier stated that they were approaching this with sensitivity to the environment.

Mr. Miller made a motion to recommend approval with the condition with seeding, which Ms. Powers seconded.

The motion to recommend approval passed unanimously with the following stipulation:

- 1) The Commission recommends that the area of disturbance be heavily seeded with a wetland seed mix in an attempt to keep phragmites and other invasive species from establishing in the area of disturbance.

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B) Standard Dredge and Fill Application  
 325 Little Harbor Road, Portsmouth, NH  
 Assessor Map 204, Lot 5  
 Michael R. Clark, Owner

This application was tabled until the end of the meeting.

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C) Standard Dredge and Fill Application  
 Off Greenleaf Woods Avenue  
 Assessor Map 244, Lot 3  
 State of New Hampshire, Owner

Ralph Sanders, of the Department of Transportation in Durham, stated that he submitted this application because of the catch basin on the corner of Route 1 and Greenleaf Avenue. It has built up to the point where, during heavy rains, there's too much flow coming down Route 1. The outlet has been built up for so many years that the water actually flows over Route 1 and floods the southbound lane. After the storms end, the water drains out through the marsh. The flooding is a safety hazard, so they are proposing to dredge the outlet with an 18" pipe into the marsh. The catchment area (area B shown on plan) will be 5' in diameter and about 1.5 to 2' deep, so when the tide goes out it will settle out and hopefully slow down the buildup at the end of the pipe. They have high tides that are dangerous sometimes. That is their intent and their plan. They plan on using equipment that is made especially for the wetland areas. It is an excavating type of equipment meant for marsh areas and used for dredging.

Mr. Miller asked him to explain more of what the catchment will look like because the tidal area was full of phragmites.

Mr. Sanders stated that they would be removing the phragmites and hauling them away to Greenland where they can burn them or cover them.

Mr. Miller asked what the new catchment would look like. He asked if the tide would flow in and out of the catchment.

Mr. Sanders stated that they would, and it will be 6' in diameter and roughly 3' deep. When the water comes in from the tide it will be able to settle out through the pipe. Right now its about 1' higher than the invert of the pipe so it's a bad situation.

Mr. Miller asked if that was due to silt coming in and out.

Mr. Sanders stated that it was a combination. He has talked to the patrol crew and told them not to use sand in the area, and they said that they just used salt. So the sand is coming in from other areas. Adding more sand to the area is just working against them. Elliot from the DES does the permitting for the DOT and has made them wait for about 4 to 5 months for a permit.

Mr. Miller stated that he was concerned they were there, but they serve as a type of filter to the water that goes into the marsh system. By removing it, he understands that it will facilitate not having Route 1 flood, but they will be removing the limited filtration that they have of the water. Salt and pollutants that come from the roadway would be put right into the marsh. Is there some way they can gain back some type of filtration?

Mr. Sanders stated that they could stoneline the channel. He is not a wetlands scientist; he is a civil engineer so he wants to leave that up the Commission. He will do whatever they would like to see done.

Mr. Britz asked if he could put a sill on it near the catch basin. Would the catch basin be more effective if it were lower so that silt could sit in there or would a catch basin in the street work better?

Mr. Sanders stated that there should be a 3' sump in that catch basin. He will check and find out. There's also one in the parking area.

Mr. Miller stated that they had to have a catch basin there to help with the water quality.

Mr. Sanders stated that they could do something to the two basins, one on Route 1 and the other in the parking lot of the Citco station. He hasn't looked at them but he assumes there's a 3' sump in each one.

Ms. Tanner stated that the plans were labeled wrong. The pump must be in the Sunoco.

Mr. Sanders stated that she was right. When he started the project 3 or 4 years ago he took the plans, but they were metric. He didn't want to hand them out to the Board, so he hand drew them.

Chairman Cormier asked if Mr. Miller was asking for conditions.

Mr. Miller stated that he wanted a sediment oil separator somewhere in the line as close to the marsh as possible, because they are removing the filtration of the basin. Even though they have the basin, the water needs to be filtered before it can go into the marsh system. It would facilitate the prevention of the flooding by having the water go directly to the channel.

Chairman Cormier asked Mr. Sanders if he was willing to accommodate that as a recommendation.

Mr. Sanders stated that he would. He would put any plants in there after they remove the phragmites.

Mr. Miller stated that the tidal channel was constructed in a way that they could get some salt marsh grasses growing in there. They will also filter that sediment out in time, just like the phragmites did. It might require another fix down the line, which is why an oil sediment separator also needs to be maintained. It requires a vacuum truck to suck it out once a year. This hopefully wouldn't be too expensive.

Mr. Sanders stated that the only problem with that is tidal area has a full-blown navigation. They cannot just go and clean it out without going through this permitting process.

Mr. Britz stated that it would help the state get a sense of what they are willing to do.

Ms. Powers asked if they could do some plantings of grasses, cattails or marsh seeds?

Mr. Sanders stated that they could do that.

Mr. Miller stated that it should be salt marsh because that area is tidal. He doesn't know how long it would take that to seed in. If you add in the flushing of the tide, it may take longer.

Ms. Powers stated that if they reseed, it's less likely to come in.

Mr. Miller stated it was also less likely to because it was salt water.

Mr. Britz stated that they would have to have full grown specimens and replant them. He recommends that the developers come up with a salt marsh development plan and put a catch basin on the roadway. They can add that as a stipulation but the State Wetlands Bureau can decide whether or not they want that stipulation on the permit. It would be an improvement.

Mr. Sanders stated that they could do it to both the catch basins. Two sumps in there would open it up.

Mr. Miller stated that it would be an advantage if they just put one in down line, but that makes it problematic because they would have to redig to put it in. It would be an advantage to the ecosystem to do that, and economically sound in the long run.

Ms. McMillan stated that she would like to add that the area be maintained.

Mr. Sanders stated that he doesn't do a lot of the stuff, but appreciates the feedback and suggestions. When the bridge plan was put together and designed it was not done correctly. They're back again seeing the same situations.

Mr. Miller stated that they had some good tidal flushing up there.

Mr. Miller made a motion to approve with the two conditions, which was seconded by Ms. Tanner.

The motion to recommend approval passed unanimously, with the following stipulations:

- 1) That the water be pre-treated through a deep sump catch basin with an oil water separator if it is not already being treated this way.

2) That a planting plan be prepared and completed to restore the salt marsh vegetation where the water will outlet.

Ms. Powers left prior to the Mill Pond Way Hearing and did not vote.

D) Standard Dredge and Fill Application  
Mill Pond Way, Portsmouth, NH  
Assessor Map 140, Lot 21-24  
Olde Port Development Group, LLC, Owner

Mr. John Chagnon, of Altus Engineering, spoke on behalf of the applicant. He filed an application with the Commission for a Dredge and Fill for some construction at Mill Pond Way. He indicated that they had a meeting with TAC, who had some worthwhile suggestions. They will be happy to comply with any decisions from City Boards. The application is for the construction of two, four unit buildings at the end of Mill Pond Way. The construction is in a tidal buffer zone. The buildings are set back 50' or more in some areas from the tide line. The application also had some freshwater wetland impact, which is temporary. There is a side near the back of the freshwater that they will be using to run utilities through the lot to access the building on the northern side. This is a result of the Technical Advisory Committee meeting. They were going to design this so it would alleviate impact. The only issue today is construction in the wetland buffer zone. The building is actually a 1918 subdivision that created Mill Pond Way and many lots. Mill Pond Way is shown on the subdivision plan as going all the way to the pond. This was formerly Dearborn Street. If you look at the tax map, the other side of the pond is Dearborn Street. The various lots along the road have not been developed and the road was never built beyond where it stops now. Basically, there are three tax map lots at the top and two lots on the south side. They are proposing to combine these three lots on the north side. They are proposing to build one 4-unit building on the south side and leave the remaining lots to the City to use as a public park. Before they do that, they would build a couple of parking spaces and a turnaround for snowplows. There will be some public benefit with the project. The dedication of the park will allow for public access of Mill Pond. They did do some alternative analysis, specifically in regards to the fact that some lots do not have frontage. They considered creating a public street and also thought of creating an additional building on the west side. The City and the developer agreed that that would be just more impact on the buffer zone and would cut down the buffer. The plan he presented has the least impact on the wetlands, and that is why they went forward with the application. He passed around additional photos. He referred to an aerial photograph that shows the extent of the existing tree buffer. They will be maintaining and leaving that as much as possible. As mentioned, this development was the result of a court order between the City and the developer. As part of that order, they were required to go to the Technical Advisory Committee, which they did on May 2nd. TAC reviewed the project and made some recommendations. They requested that they place a snow fence around the entire disturbed area prior to construction to keep construction equipment out of the buffer. At the end of the project, they will be revisiting the area on the pond side and checking to see if there is any damage to the vegetation. If there is damage, they will be replacing it in kind. They will work with the Planning Department to increase the trees, and ensure that in some areas the trees will not obstruct neighbors' visibility. They will work with the Conservation Commission regarding the vegetation in the wetland buffer. The project is in a shoreline protection zone, so there are many things they are aware they cannot do. They are going to look to do some selective thinning. Another

stipulation was on the site plan that all trees of a 6" diameter or greater be a baseline for the buffer zone. This is an extra step they are taking. The City will review the adequacy of the pump station before anything is done.

Mr. Horrigan asked if they could discuss part 5. It states that they will submit a landscaping plan as well and maintain the natural wood buffer. Parts A and B seem to be contradictory. Part A stated that they must be maintained to a reasonable extent, yet he mentioned selective cutting. Part B states that he must maintain the natural wooded buffer. What exactly are they planning to do there with so few details?

Mr. Chagnon stated that section 5 of the Court Stipulation was done before they went to the Technical Advisory Committee. They went to the City Council to settle the case. The City Council was concerned about the same things the Commission would be concerned about such as trying to protect the buffer and not using fertilizers that would run into the wetlands.

Mr. Horrigan stated that the substance of A and B contradict each other.

Mr. Chagnon stated that plan A could mean that they would be able to cut down all the trees and replace with other trees as presented in a landscaping plan. That is a landscaping plan, but it does not protect the existing trees.

Mr. Horrigan asked if that was in the buffer.

Mr. Chagnon stated that that was what they were trying to avoid. They were trying to ensure that the existing trees would be protected.

Mr. Horrigan asked if that was within the 50' buffer. He still does not understand part B.

Mr. Chagnon stated that part B was determined by TAC after they presented it. They did submit a revised plan that tried to address these things, but the plan to maintain the buffer has to start with exactly where the trees are.

Mr. Horrigan stated that the new trees would not block the view of neighbors. He stated that there are no trees even in the lot that they plan to designate to the City. What neighbors are they referring to?

Mr. Chagnon stated that that exact lettering came from TAC. He is not sure what they are trying to say with that.

Mr. Horrigan stated that they were coming in on the end of this one and they have had no input on anything previously. When he looked at the site, it struck him that where the buildings were to be put was actually the best part of the site. There are wetlands and remnants of an old apple orchard, berry bushes, and much bird and wildlife, yet the shoreline and 50' buffer appears to be dominated by ornamental pines made as a windbreaker. They are not native trees and look as though they were meant to be ornamental. He felt there was something odd about this. His concern is Mill Pond buffers are surrounded by trees that are really not natural vegetation. He asks if they would consider converting the shoreline to natural vegetation as part of development. The City has given them certain powers, and they have no presented landscaping plan. They have an opportunity here to restore part of the site to somewhat more natural vegetation.



Mr. Chagnon stated that they did have the landscaping plan. It is an 11x17 and the only thing that is proposed is under revision 5206 which is the saving of specific trees. They are denoting the edge of the proposed tree line and have scheduled the foundation plantings of several flowerbeds. There is really nothing else that they plan to do with regards to landscaping, but if they have suggestions, they would entertain them.

Ms. Powers asked if the mature hemlocks would be saved.

Mr. Britz stated they would.

Chairman Cormier also stated that they would unless there was a problem with the view.

Mr. Chagnon stated that the branches would just be pruned in that case. The whole tree would not come down.

Mr. Horrigan stated that mature hemlocks surrounded the shoreline, so he would do extensive cutting.

Mr. Britz stated that it was the stipulation of TAC that they maintain what is already growing there.

Ms. Powers stated that hemlocks were a very good tree to house wildlife, but are also very slow growing.

Mr. Miller stated that he would not like to see any of those mature trees cut down even if they were not typical or native to the area. They are helping the function of that buffer, and he would highly suggest reading the comprehensive Shoreline Protection Act because it specifically prohibits the cutting of these trees. Its 50% of the basal area within 20 years and that includes shrubbery and brush down below. It specifically states regulations that are against seascapes. This needs to be adhered to. He thinks that is what the TAC is saying. Anything within 50' of the basal area is protected and cannot be cut and TAC went beyond that.

Ms. McMillan stated that pruning or elimination of the trees have to be selective. They cannot cut off the tops of trees with the Shoreline Protection Act.

Chairman Cormier stated that this was a done deal, but they could send their comments to the Wetlands Board about the Act.

Ms. Power stated that all the optional garages significantly cover the area. She asked what does that mean, 'optional' garages.

Mr. Chagnon stated that it just means that they reserve the right to build a garage and not a parking area. There will be a parking area, so they may build a garage adjacent to that.

Ms. Powers stated that some of the parking areas were impervious surfaces, which would affect the buffer zone. By the time all the optional garages are built, they would have a complete circle around the area. Whose option is it? Is this a normal practice, to have it optional?

Mr. Chagnon stated that it was the developers. It is normal because it is usual to have a garage on a property.

Chairman Cormier stated that it depended on whether or not the customer wanted to pay for it.

Mr. Chagnon stated that the people are given the choice of whether they want it or not.

Ms. Powers stated that it was optional for the buyer.

Mr. Chagnon stated that it was an option to the developer to put them in as shown on the plan.

Mr. Miller stated that whatever stormwater management system or plan should be looked at carefully. He would like to see the stormwater drain go inward and not outward toward the buffer in some manner so that any water runoff would be directed inward and not toward the buffer. The water should also be treated.

Ms. Powers stated that there was a lot of public at the meeting and she would like to hear what they had to say.

Chairman Cormier stated that they aren't allowed to talk. This is not a public hearing. However, if the Commission would like to hear what they had to say, he would allow it.

Mr. Warren Ross stated that he was the only abutter constricted by the court order. He mentioned that they were restricted by a court order. This is not a court-imposed action. This is a court-approved settlement with a stipulation. There is no real court order, and they are not bound by anything.

Chairman Cormier stated that they were briefed by the Legal Department of the City prior to the meeting. They will have to go with what they were informed of.

Mr. Ross stated that they need to understand that this was a court order, not a court imposed settlement. The term court does not apply here. The Commission is not bound by legal orders, they are free to make whatever recommendation they choose, and advise this as it were a normal case before them.

Chairman Cormier stated that they were recommended by the City Council.

Mr. Ross stated that they should let the Wetlands Board know that their hands are tied.

Mr. Nick Ciotti stated that he was also an abutter and spoke at the TAC meeting. At first, Mr. Kelm did a good job at working with the neighbors and seemed concerned. As time went on, their interests in continuing the relationships with the true abutters were diminished. He does find that these proceedings are rather light because of what he has heard of the legal case. There needs to be a more in depth review of the Court Order. There is no substantive reason for the state to protect the wetlands – they do not say why or how they will in this curious application. This says there will be no impact based on NH natural heritage inventory. He was invited to read a letter from them as part of the package, which does not say there is 'no concern' to the endangered species. There needs to be a review of the endangered species and inventory taken. He felt there were a number of things to understand.

Chairman Cormier stated that they certainly agree with what is in the letter.

Mr. Ciotti stated that he wasn't adversarial to a point-by-point review of this order. They need to do the right things to get this done, and protect the pond and its environment. The City needs to set up certain checkpoints.

Chairman Cormier stated that the City made certain agreements with the developer and the City Council runs the City.

Mr. Miller stated that he understood the concerns and understood that this area has history which is interesting, but he doesn't know if there is anything of special significance here. It not typically reviewed by the heritage.

Ms. Powers would like to state her concerns.

Bob Sullivan, City Attorney, stated that the City will not oppose the Wetland Approval. If the Commission has concerns, they should attach a stipulation when making their recommendations. The Commission is bound by the City not to oppose the request. This was due to the settlement of the complex issues.

Mr. Ross stated that the stipulation does not say that the City will not oppose the approval; it says it will not oppose the State approval.

Attorney Sullivan stated that they've given the stipulation to everyone here.

Mr. Ross stated that the State could come in and change things around.

Attorney Sullivan stated that it could, because the City does not control the State.

Mr. Chagnon stated that he wanted to address the drainage concerns. They have concluded that they will take the pavement run off from the south side of the building and run it back to a point in the back where it will go through a 100' treatment swale before it gets to the freshwater. The same thing will occur with the other building. The water will go through a filter strip. The roof gutters will take off the clean water that will help them spread out the flow along that side. They are being conscious of the water runoff in that way. To follow up on the comments, the City is doing a fair job at protecting the buffer with stipulation #2, which speaks of drawing a line to determine any damage done during the project. This is a way of protecting the buffer.

Phillip Favell stated that he saw the backside of the property on the north side, where the road drainage is near where the pond was dredged. This is inside the buffer zone, and it would be a good idea if the builders could put the swale on the other side.

Mr. Chagnon stated that the drain is on that side because it slopes down. If they put it on the other side, they would not be treating the water. It is an intrusion into the buffer, but they have to construct it to follow the down slope.

Mr. Miller asked about the garage.

Mr. Chagnon stated that the road would be constructed in back as well as a parking area and building, which the neighborhood wanted.

Mr. Miller understands that but how big of a problem would it be to have a 10' drop off? There is nothing pictured there. Instead of constructing in the back side, they need to bring fill in to build the optional garage.

Mr. Chagnon stated that the problem with the drainage on that side is bringing the drainage down under the road. They would have to raise the elevation on the other side, put a culvert with a cover under the road and put a rather large swale in. They need the light. There is a grading plan.

Mr. Miller stated that he would hate to see water in a pipe.

Paul McEachern stated that he is the attorney involved with working out the details, along with Bob Sullivan. He gets the feeling that they feel as though they should have been involved earlier. This is not a fair assessment. A lot of work has been put into this plan, and the goal has always been to protect the buffer and the natural wooded area outlining the peninsula. This is a nice view, and it will remain. The developer deserves credit for taking this into consideration and this is reasonable. Obviously, some trees and branches will have to be removed in some places. He felt this is a dynamic plan that is still under the purview of the City and they intend to cooperate with everyone to make sure this is maintained. This proposal is the one reached by many hours of litigation and planning, and they hope it is reviewed and approved. The recommendations of TAC already protect the Conservation Commissions interests.

Mr. Ross asked Mr. McEachern if they were working under a court order approved by a settlement and if the Court imposed this?

Attorney Sullivan stated that the order was imposed and approved, and was presented to a judge. It is certainly Court approved. He did not know how that was relevant.

Chairman Cormier stated that there has been a lot of give and take, and the Court was involved. He stated that it does not change anything. He asked for guidance from the other Commissioners.

Ms. Tanner suggested that they write a letter to the State with their concerns and their desire to have the builder follow the protection act. Any other concerns should be stated as well.

Chairman Cormier agreed and noted that anything said in the letter has to be brought up at this meeting.

Mr. Miller wanted the drainage plan reviewed.

Mr. Tanner wanted to know what permeable materials would be used.

Ms. McMillan asked if the Act protected those trees that were older than 20 years.

Mr. Miller stated that he just wanted the current protection act adhered to, and it does have stipulations about the basal area of trees can be cut, as well as about fertilizer and viewscapes.

Ms. McMillan stated that the Act allows them to cut 50% of the basal area now, and not touch the rest for another 20 years. She wants this clarified and reiterated.

Chairman Cormier takes it on good faith that they will not do anything too drastic.

Mr. Britz stated that the TAC conditions are stricter than those provided in the Shoreline Protection Act.

Ms. Blanchard asked whose responsibility it is to make sure they follow these stipulations.

Mr. Britz stated that the City Zoning Officer would go down to make sure the building complies with the State. They also enforce water quality regulations and erosion control.

Mr. Ross stated that the City has an obligation to watch NH RSA protection for tidal buffer zones. The State has an obligation to patrol that.

Chairman Cormier asked if there was any reason to believe that they would not do that.

Mr. Ross stated that they were told they would not do that when he went to the Planning Board. They only have to protect the fresh water wetlands. The Zoning book says that the City has to work to protect the tidal wetlands.

Mr. Miller stated that the City will enforce that.

Mr. Chagnon stated that he believes Mr. Ross is referring to the original article 6 that did not have any buffer requirements or tidal reference. This City will put a buffer around Mill Pond and have it regulated.

Chairman Cormier asked if this was because the buffer zone was new.

Mr. Britz stated that was correct.

Chairman Cormier stated that they were a citizen board and they were there to help solve the situation. They do not take sides, but the property owner has rights as well.

Mr. Ross stated that NH RSA 482-A regulates tidal wetlands. He was referring to that.

Mr. Britz agreed with that.

Mr. Ross stated that this is 50' aside the tidal wetlands.

Chairman Cormier asked the Board if they thought TAC was stricter than the Protection Act.

Mr. Britz stated that in some areas it is. Nothing would change if they amended this to comply with the Shoreline Protection Act.

Ms. Tanner made a motion to send a letter with additional attention paid to the Shore Land Protection Act, and review the stormwater plan. This was seconded by Mr. Miller.

Ms. Nancy Joseph stated that her property was in the middle of the development and laid within the last open space. She hoped to build on the open property and construct a two family dwelling where her parents could stay and retire. She is concerned about buffers but also the buildings on the lots. They will not be able to see the trees. The buildings will be in front of their piece of property, obstructing their view. Any buildings higher than 35' will not see trees. She expects to be the heir to that land and will have no view if it keeps getting developed. She is also concerned about drainage.

Chairman Cormier stated that he is sensitive to her concerns, but that is an issue for the Planning Board.

Ms. Joseph stated that zoning had been granted and changed to accommodate the developers and will impose on the wetlands. Buildings can exist, but the protection of wetlands has been granted as a variance. The idea that they could go into wetlands should have been protected.

Chairman Cormier thanked her for her comments. He reiterated the letter and the stipulations and asked the Commission to rule on the motion.

Ms. McMillan stated that she would like to see it include a recommendation of TAC mapping or baseline mapping, just so the state has the full picture. She will be participating in the vote.

Chairman Cormier stated that that was part of the Court document.

Mr. Britz stated that she was referring to the Commission's letter.

The motion to send a letter to the State passed unanimously with the following points of interest:

- A) Insuring that the Shoreland Protection Act be adhered to by the applicant.
- B) Insuring that stormwater leaving the site infiltrate through or move through the upland vegetation before being discharged into tidal pond.

Mr. Favell stated that the developer did not talk about parking.

Chairman Cormier stated that the City has regulations on parking, and they will not address it now.



- E) Standard Dredge and Fill Application  
Sagamore Headlands Dock  
Assessor Map 223, Lot 25B  
City of Portsmouth, Owner

Mr. Britz stated that this was part of a land and water fund grant that starts with Pierce Island and wraps around and terminates on Sagamore Headlands. They are putting in water access points, so a

canoer or kayaker could land here, have a picnic and walk around on the conservation area and be back on their way.

Ms. Blanchard asked if this was a City petition.

Mr. Britz stated that the City was putting this request into the State to build the dock on the land on Sagamore Headlands.

Ms. Blanchard asked how long the dock was.

Mr. Britz stated that it was 10x30, but there is a pier and 40' ramp that slopes down from the shore and 30' from the land that will have seating. They will work to make it as handicapped accessible as possible.

Ms. Blanchard asked if it was seasonal.

Mr. Britz stated that it would be seasonal and that they would take the floating dock out in the winter.

Mr. Horrigan asked how people would get in here.

Mr. Britz stated that pedestrians could get in by foot. Parking for cars would be behind the Seacoast Mental Health Center. They've agreed to let them park behind the building.

Mr. Horrigan asked if it was an easement area.

Mr. Britz stated that it was not an easement area but is an informal agreement as long as there are no problems. They do have an area they could access, but that would affect their parking lot which would not accommodate the flow, so they've agreed to share it. It has not been a problem in the past year and it's very easy to get to.

Mr. Miller asked if they could walk there.

Mr. Britz stated that they could. It would be a difficult task to carry a canoe or kayak to the dock.

Ms. Blanchard asked if they were going to have to get a porta potty too.

Mr. Britz stated that the trash and recycling would be near the parking area, but they haven't gotten that far on the land development.

Chairman Cormier stated that they could access that through the urban forestry center as well.

Mr. Britz stated that Tuckers Cove separates it.

Ms. Blanchard stated that they can access it with the pier without a boat.

Mr. Britz stated that people can walk down to it. You do not need a boat to get to the dock.

Ms. Blanchard wanted to make sure the boats would preserve the impact on the property, especially the shorefront.

Mr. Britz stated that they've restricted the water trail so it's only accessible by canoe or kayaks. Ms. Blanchard asked about speedboats.

Mr. Britz stated that they have no way of stopping them but they would have to monitor them.

Ms. Blanchard stated that all waters were under the Port Authority of the Harbor Master.

Mr. Britz stated that he will ask them to assist.

Ms. Blanchard stated that she remembers the Wentworth Coolidge Mansion wanted to expand but could not have random welcoming trails for vandalism. They didn't want to create an attractive nuisance. They do have to provide the amenities, and is a good use of donated land that people can get to, for free.

Mr. Britz stated that they thought about the issue of vandalism, but they're using federal grant money and matching dollars to the City.

Ms. Blanchard stated that she would like to see the plans for that. She wants to see a public access and a sustainable plan. The last time something like this was put in, there was a huge problem.

Mr. Britz stated that the docks were being built in remote location.

Mr. Miller stated that the City might do well to speak to the Kayak Tour Company that operates on the Seacoast. They could help to self-police the area, since they would be users and have an interest in keeping it clean.

Mr. Miller asked if they could restrict it so that you cannot go past Sagamore Headlands with a motor.

Mr. Britz stated that if the State legislature made a law then they could enforce it as these are state waters.

Mr. Miller stated that there were private piers on either side of this dock, so those people should be able to enforce vandalism as well.

Mr. Britz stated that there is no close parking area. They would have to walk ¼ of a mile to even get near there.

Ms. Tanner asked if it was meant to be a boat launch area.

Mr. Britz stated that it wasn't. It would be difficult to launch boats from there because it's shallow.

Mr. Horrigan moved to recommend approval, which was seconded by Ms. Blanchard.

Ms. Tanner added that they needed the public access plan.



The motion to recommend approval passed unanimously with the following stipulation:

- A) That a public access plan be developed to coordinate new uses on the property.

Petition B was tabled until the next meeting.

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**III. OTHER BUSINESS**

- A) City Council Referral: Phragmites cutting in the Great Bog

Mr. Britz stated that Geoff Wilson has gone before the City and proposed a plan for the phragmite project. He will report back to the City Council with a recommendation.

Mr. Geoff Wilson, or Northeast Wetland Restoration, stated that they would like to create a self-funding mechanism to generate match money out of projects in order to apply for federal grants to restore the areas that they're working in. They've come up with six different initiatives, but they will only be proposing the first one right now. This program would be to go into phragmite areas, harvest the dead stems during the winter, and then they're sold to a place in Virginia. They take the proceeds and give it to the non-profit group that they work for, and apply for federal grant money as part of the match. Then they go back in and restore the area included in the overall plan. Right now, this is at the pilot project level and they would like to ask the City to be involved with a portion in the Great Bog where they could enact the program. There are hurdles, because this is a new program. DES had a meeting on invasive species, which they have been working on for the past 17 years. They restore them under the guidelines of restoration. The harvest of the invasives comes before restoration, so they can actually sell them. They are preparing the letter now for them, and will work with them to craft guidelines. The DES will set up a board to monitor them and the program.

Ms. Tanner stated that they go in and cut the phragmites, then sell them, then give the state the money, but they pay them to remove the phragmites.

Mr. Wilson stated that they could use the money for whatever they saw fit. They could use it for restoration, etc. They've worked on the ability of the invasive species to control themselves. They generate a match source from the site and its applied toward a federal grant, and then people come back and restore the area. Towns have a varying amount of harvestable reed. They'll make this a multi year program.

Ms. Tanner asked if they took care of anything else besides phragmites.

Mr. Wilson stated that they're leaving that option up to the partnership. If clients are interested in other invasive species, they will do it. If there is a legitimate program in place, they will take funds from one species to control another. They feel strongly that they are not farming but maintaining. They do not cross any ethical boundaries. The way that they want to craft it will allow them to proceed and recycle the species. It will be a very, very controlled program.

Chairman Cormier asked about the impact. What are they going in there with?

Mr. Wilson stated that they had low in ground pressure equipment, which is some of the best in the industry. Their primary machine is a wide track all season vehicle HD4520, which is a skid steer with a 4' wide track and ground pressure of 2.3-lbs/square inch.

Chairman Cormier asked if there was any chance they would be spreading this around where they weren't any previously.

Mr. Wilson stated that it would be a controlled program. They will harvest the reeds in bundles, stack them on a truck to an area that holds them for the holding process, clean cut off the seed heads and repack tightly. They would be 50 bundles per roll. The way that the reed is stacked in the roll is shingled so the wide ends are on the outside and the seed heads on the inside. The seed heads then can be burned on site or composted or contained for disposal. The state will recommend that. Everything will be contained before removal to stop the spread.

Chairman Cormier asked what time of year they would do this.

Mr. Wilson stated that ideally it would be from December to April. They can start to harvest when the leaves fall off the limb. They are still harvesting in Virginia in herbicide areas.

Ms. Blanchard asked if they used materials for thatching.

Mr. Wilson stated that they did, and they used thatches in Jamestown.

Ms. Blanchard stated that it was creative environmental economics.

Mr. Britz stated that the City Council wanted a recommendation on this. They should talk about this with the State and recommend later. They can get a sense of whether or not it's risky or safe.

Mr. Blanchard asked how much grant money they were talking.

Mr. Wilson stated that they thought they could go in and produce a usable product for the thatching industry but found that they cannot. The process is cost prohibitive. The future initiative is palletized fuel, but it should be big when it goes.

Ms. Tanner asked about ethanol.

Mr. Wilson stated that it has evolved into a removal of the older material. With the new invasive species scrutiny, they were advised to notify the State and harvest after. Once the fuel is workable, it becomes a component of a harvestable income source.

Ms. Tanner asked if he could compare phragmites to cornstalks.

Mr. Wilson stated that they are alike. He is working with the manager of Plum Island Animal Research Center who has some boiler fuel industry experience. They're working together on the pelletized fuel. Ethanol would be a green product.

Ms. Blanchard asked if they did research on the phragmite habitat. Does he have information on that?

Mr. Wilson stated that they were old school. Animals use this as a default habitat. The benefits that come out of phragmites are far less than native species. The stems are stacked vertically and tightly, which limits bird nesting unlike natural borders. This provides no migration food source.

Chairman Cormier asked if this was small scale, not acres.

Mr. Wilson stated that that was correct. A typical size would be about 25 acres. The man imports the reed from Poland for about 4\$/bundle. Based on that, they feel that they can get out and produce the bundles for about 3\$/bundle which would leave money. The 25 acres would produce 10,000 bundles. That would give 10,000 for the City for their own use.

Chairman Cormier stated that they would write something to the City council.

Mr. Britz gave a number of options and stated that there is more information coming.

Mr. Wazlaw asked how much was going to be harvest, and the impact on the wetland area. He has seen the work they did in Rye.

Mr. Horrigan asked where the machines were in Rye.

Mr. Wilson stated that they did some harvesting along Route 1-A, and by Locke Road in Rye. They did some at Fisherman's Pier and on Central Road. They did some in the freshwater system between Church Road and Central Street.

Mr. Britz mentioned the letter from Newington in the packet. From the standpoint of the City staff, Newington is using the PDA to try to get back.

Chairman Cormier stated that they were adversarial.

Mr. Britz stated that they were on the right track.

Mr. Miller thought the letter made sense. They did their homework and he wants to support them.

Mr. Britz stated that the PDA means local and they don't want to jeopardize the City and the PDA by fighting. They need to work constructively.

Mr. Miller stated that they weren't getting anywhere. Nothing has been done in terms of wetland ordinances.

Ms. Blanchard asked when the meeting would be.

Mr. Britz stated that it would be soon.

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**IV. ADJOURNMENT**

There being no further business to come before the Commission members, at 6:17 p.m. a motion was made and seconded to adjourn to the next scheduled meeting and the motion passed via a unanimous vote.

Respectfully submitted,

Danielle Auger  
Acting Conservation Commission Secretary

These minutes were approved at the Conservation Commission meeting on September 13, 2006.