

**REGULAR MEETING
CONSERVATION COMMISSION**

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
CONFERENCE ROOM "A"**

3:30 p.m.

May 9, 2007

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman James Horrigan; Members, Allison Tanner, Skye Maher, Brian Wazlaw, Barbara McMillan, Eva Powers

MEMBERS ABSENT: Alternates Richard Adams, Mary Ann Blanchard

ALSO PRESENT: Peter Britz, Environmental Planner

I. COMMISSION PHOTO FOR WEBSITE

The Commission had a new photo taken for the City website.

Mr. Mike Parsont of NHSC, Inc. asked the Commission if the order of the State permit applications could be switched due to the fact that the presenter for the first State permit application was stuck in traffic. Chairman Miller replied yes, that was acceptable to the Commission.

II. STATE WETLANDS PERMIT APPLICATIONS

- B. Standard Dredge and Fill Application
N.H. Route 1B
Assessor Plan N/A, Lot N/A
State of New Hampshire, Department of Transportation

Mr. David Scott, the chief of in house design for bridge design for the Department of Transportation spoke to the Commission. He stated that New Hampshire Route One B has a couple of bridges from Newcastle coming over into Portsmouth. The bridges were built in the 1950's and are supported on steel piles. He said that significant rehab work was done in the 1980's. They are trying to eliminate how much saltwater can penetrate the concrete to get to the steel piles and corrode them. Mr. Scott said that combined they have 100 piles that are encased in concrete and in need of repair.

Mr. Scott showed the Commission some photos where the concrete encasements were wearing off. He said that the replacing of the encasements would be accomplished by using either round

or square fiber reinforced jackets. He said that the bulk of the job would be getting the old concrete off. He explained that the jacket will remain in place and they will pump concrete from the bottom forcing the salt water up to re-encase the steel tiles. He said that the work will be done off of barges with the bulk of the work done at low tide. Additional work will be done by scuba divers using impact hammers. They will use high pressure washers to blast the tiles to a clear white finish. The jackets will be applied within 72 hours to keep marine growth out.

Mr. Scott mentioned that his boss, Mr. Mark Richardson came to Portsmouth a few weeks ago to hold a public meeting on the project. The meeting was held at the library. He pointed out that they would be doing this work under a specific time period, from July through October. Mr. Scott explained that the money that was set aside to do this project got spent to deal with the floods in April. So as a result, they did not have an advertise date yet but they were hoping to replenish their resources and publish an advertise date soon.

Ms. Tanner asked if the work would affect the traffic on top of the bridge. Mr. Scott replied it would affect the traffic when they have to pour the concrete into the jackets. Other than that, he did not see any other traffic tie ups. Mr. Britz asked how much concrete would be trucked in. Mr. Scott replied that about 35 truckloads can be brought in per hour. He added that they have provided for police to assist with the traffic flow.

Mr. Britz asked about noise. Mr. Scott replied that he understood that Portsmouth had a 7 a.m. to 6 p.m. weekday noise ordinance and so they will do the work within that time frame. He said that he had been in touch with the City inspectors about the scope of the work. He pointed out that the work would be dependent on the tide. They will want to do as much as they can at low tide. Mr. Scott added that it will be expensive to have the divers in the water.

Ms. Powers asked what happened to the debris while they are cleaning. Mr. Scott replied that the concrete that is chipped off would be removed by a contractor. He added that there would be some debris generated by the pressure washing and that would simply become a part of the water.

Mr. Horrigan made a motion to recommend approval of the application as presented. The motion was seconded by Ms. Maher. The motion passed by a unanimous (7-0) vote.

- A. Standard Dredge and Fill Application
48 Ball Street
Assessor Plan 207, Lot 53
Rebecca McBeath Harvey, owner

Ms. Sherrie Davis of NHSC, Inc. was present to speak to the application. She apologized to the Commission for being late. She introduced Rebecca Harvey, owner of the property. Ms. Davis pointed out that the property was located at the end of Ball Street. She said that the proposal was to remove the existing dock and construct a new dock on the eastern portion of the property. The current dock is in the right of way on Fernald Court. Ms. Davis presented a letter from the City's legal department that states that the dock was the property of the Harveys and that neither the

City nor members of the public have a right to control the dock. This conclusion was reached because no deed to the property could be located and as a result, the legal department determined that Fernald Court should be considered a public servitude type street. On Fernald Court the abutting property owners own from the center line out so the dock is located on the portion of the property that belongs to the Harveys.

Ms. Davis explained that the Harveys have insured the dock because it is accessible and used by the public and they wanted to protect themselves from any liabilities. The dock is now in need of repair. Ms. Davis showed the Commission the existing conditions. She said that the Harveys would like to remove the existing dock and construct a new dock on the eastern portion of the property, away from the access way. She pointed out that they have to remove the existing dock because they are not allowed to have two docks on their property.

Ms. Davis stated that they have chosen to locate the dock on the narrowest portion of the wetland because there was natural drainage with a break in vegetation. They have positioned the dock over that area to minimize any impact to the wetland. She added that NHSC, Inc. has determined that it was an estuarine inter tidal emergent specific wetland that was well vegetated.

Ms. Davis explained that the proposal includes a 65' by 4' permanent pier, a 30' by 3' prefabricated ramp, and a 36' by 12' floating section. The pier will be a minimum of 4' off of the ground to prevent shading. She added that they received a letter from Tracy Shadduck, the chief harbormaster, who concurred that the position of the dock was not going to impede any navigation within the channel.

Mr. Wazlaw pointed out that the existing dock was 60' in length where as the new one would be 130 feet in length. He said it was substantially bigger. Ms. Davis replied yes, the permanent part of the new pier was approximately the same size as the existing one. The seasonal parts of the dock would be removed each season.

Mr. Horrigan pointed out that on the site where they are proposing the new dock, it appeared to be sewage. Ms. Davis said that she did not know about that. She added that the surveyors for this project are also septic designers and they did not mention anything. Chairman Miller asked if they were on City sewer now. Ms. Harvey replied yes.

Mr. Horrigan stated that the City attorney's letter was basically saying that the public had no right to use the existing dock and that there was no issue with the dock. Mr. Britz interjected and said that there has been lots of concern expressed about the removal of the dock. He said that he spoke with the City attorney and he said that the Harveys offered the dock to the City when they found out that their insurance would be cancelled if they did not remove the dock. The City did not want the liability either so they thought it should be removed.

Mr. Horrigan pointed out that there really are no salt marsh issues with the current site but with the new site there was. He said that the old site was much more appropriate. Ms. Harvey said that she has been unable to keep the neighbors from dumping sand, rocks, and reconstructing the dock. She said that it has become intolerable. The dock cannot be seen from her home. She felt

she has been as generous as possible with the public but the public is not cooperating. Mr. Horrigan said that he understood the conflicts in that neighborhood.

Ms. Davis stated that with the removal of the dock, vegetation would regrow. There is already vegetation under the dock.

Ms. Powers asked for clarification of the last paragraph of Attorney Sullivan's letter. Ms. Davis responded by saying that she thought he was saying that this would be the end of the research if possible – that this would be the final pronouncement in all issues pertaining to Fernald Court. Chairman Miller added that it was not talking specifically to the dock but the whole Fernald Court issues in terms of the land.

Ms. Harvey said from the beginning she wanted the City to take the dock. She stated that she had a letter dated 1961 from the Planning Board to Mr. Fernald. He was trying to get the City to accept the street so that they could have garbage removal and postal delivery but the City did not want the responsibility of taking care of it.

Ms. Powers asked what will happen when the dock is removed. She wondered if there would still be foot traffic from the public. Ms. Maher replied that it is a public right of way. Ms. Powers felt that a large part of the problem would continue.

Ms. Harvey said that the use of the dock today is not what it was five years ago. There are lots of people using it regularly.

Ms. McMillan stated that there was a conservation side to this. She said that the dock is environmentally friendlier than people coming down on the beach. Ms. McMillan urged Ms. Harvey to continue to call the police every time some one brings something to dump in that area.

Ms. Harvey pointed out that the pilings of the dock were from the reconstruction of the Route 1B bridges built in 1956, the first application heard this afternoon.

Ms. McMillan asked if the existing dock would be removed before building the new one. Ms. Davis replied yes.

Mr. Britz asked if the float was bigger than what DES allows. Ms. Davis replied that it has to do with how much frontage the property has. With every 75 feet, there can be an additional slip.

Mr. Horrigan asked what the pilings were made of. Ms. Davis replied that she thought they would be wood pilings. Mr. Horrigan said that he did not like to see treated wood going into salt marsh.

Chairman Miller said that he did not recall with prior dock applications if that information was ever on the plans. He remembered talking about leeching. He added that he has talked to Glen Normandeau and he felt that he was very up to date on procedures and rules. They try to stockpile the pilings and about 90% of the material that does leech leeches within the first three months.

Mr. Britz said that the last he had knew, DES recommended against using pressure treated wood but pressure treatment technology has changed.

Ms. Maher asked about the highest observable tide line. She said that that has seemed to change since the map was drawn, and it was probably because of the storm in April. She asked if it changed their plans any or should it change the Commission's plans.

Ms. Davis stated that the highest observable tide line was not intended for extreme events, just normal cycles.

Chairman Miller asked if there were any more question for the applicant. Hearing none, he asked for a motion.

Ms. Maher made a motion to recommend approval of the application as presented. The motion was seconded by Mr. Wazlaw. Chairman Miller asked for discussion.

Ms. Maher said that they need to pay attention to the highest observable tide line. She said that unique events are coming sooner and sooner. She felt the Commission needed to be paying attention to it in a different way.

Ms. McMillan asked where the house was located. Ms. Davis showed her on the map. Ms. McMillan said that she hoped the owner would take some care as to what landscaping is done around the dock and to try not to disturb it but try to keep it as natural as possible.

Mr. Horrigan suggested sending a letter to the City asking them to consider mitigating the site after the old dock was removed. Chairman Miller said that they could do that. They could start a dialogue with them.

Chairman Miller commented that he appreciated the location of the new dock. He thought that was the area of least impact.

The motion to approve the application as presented passed by a unanimous (7-0) vote.

III. CONDITIONAL USE PERMITS

- A. US Route One Bypass (Amendment)
Meadowbrook Inn Redevelopment
Assessor Map 234, Lot 51
Key Auto Group, Inc., owner

Attorney Steve Roberts of McNeill, Taylor and Gallo, Mr. Gordon Leedy and Mr. Mike Leo of Vanasse Hangen Brustlin, Inc., Mr. Mike Parsont of New Hampshire Soil Consultants, Inc., and Mr. Anthony DiLorenzo, the property owner, were present to speak to the application.

Attorney Roberts said that they have taken into consideration the Commission's concerns and believe that they have come up with a favorable revised plan. He said that they have significantly reduced the impact to the wetlands by reducing it from 101,000 square feet to 77,000 square feet. They have also decreased the intensity of the use by going from three proposed restaurants to two restaurants. The convenience store has also been diminished as well. He said that overall it has resulted in a 25-30% reduction in the impact. Attorney Roberts said that they have spent a great deal of time and effort addressing the Commission's concerns and would like to hear their comments.

Mr. Gordon Leedy stated that there were a couple of issues with the existing site. One was site access. He said that they are proposing 250-300 feet from the stop bar to the new access road on Coakley Road. Another issue was that the site has about 10 feet of grade change and so that impacts the way they might consider redeveloping the site. He said they would be looking at some fill. He added that one of the existing buildings on the site represents about 28,000 square feet of existing buffer impact. Mr. Leedy said that they have made the development footprint more compact, they have pulled it away from Hodgson Brook in two areas and they have eliminated one of the fast food restaurants. They have been able to maintain in most cases a 50 foot buffer from the wetland and have shifted the gravel wetland area to the south of the wetlands which will leave more of a corridor for the brook.

Mr. Leedy pointed out that these changes have changed the circulation patterns on the site. They have replaced the porous pavement areas with infiltration chambers which will have largely the same benefits from a water quality standpoint but will allow them to put a more durable pavement on top of them. He explained that these would be chambers that are in the fill section that accept the drainage and allow it to percolate through the fill material and infiltrate into the ground. On other areas of the site, the drainage would be captured in deep sump catch basins, discharged into the gravel wetland, going through the treatment. Mr. Leedy stated that they were still proposing to isolate the convenience store site with a separate drainage system.

Ms. Tanner asked in the case of a significant snowstorm, would they remove the snow from the site. Mr. Leedy replied that the snow would either be pushed to the edge of the site or removed. He added that as part of their site plan application, they would submit for Planning Board approval an operations and maintenance plan for the overall site including drainage systems and regular inspections.

Ms. Powers asked about the 19 more parking spaces than were required by the City. Mr. Leedy replied that they could potentially reduce the parking spaces on the northwest corner of the property. Ms. Powers felt that would make a huge difference.

Mr. Horrigan stated that he attended a workshop concerning pervious concrete. Mr. Leedy said that there was a cost element involved with their proposal. Mr. Horrigan asked if there could be pervious pavement for the parking lot. Mr. Leedy replied that besides cost, the site would require that a curtain drain be placed around the entire site to intercept the ground water and then over excavate it to put in free draining material. In the end, the water would end up in the same place it was going anyway because the majority of the site is clay. Mr. Horrigan explained that

at some point the impervious pavement has got to stop. Mr. Leedy replied that he understood Mr. Horrigan's point, but it would be a significant cost to the project but it was not the only factor. Mr. Leo explained further how the underground infiltration system would work.

Mr. Parsont stated that by pulling back the buildings it opened up an area of 28,000 square feet and that would result in increased buffer plantings. He pointed out sections on his map that showed three components: upland vegetation, transition, and wetland vegetation. He said that those three components are cells of the gravel wetland system. He added that they are continuing to propose a contribution of \$20,000 to be used for the restoration of Hodgson Brook. Ms. Powers asked that if the 19 spaces were removed, could there be additional plantings in their place. Mr. Parsont said that he assumed so, that they would plant anywhere that there was not pavement.

Chairman Miller asked Mr. Leedy to explain the drainage. Mr. Leedy replied that the drainage from the hotel area would be going into the infiltration system. Everything else would be draining into the wetlands.

Mr. Britz asked how the cells would work. Mr. Leo stated that the gravel wetland would have three cells and explained in detail how they would work.

Mr. Leedy pointed out that a revised pollution loading analysis based on the new plan was submitted for their review. He explained in detail the results of that analysis.

In closing, Attorney Roberts stated that they have listened to the Commission and he felt that they have met the requirements of the conditional use.

Mr. Horrigan asked about the trees that were outlined on the plan. He wondered if they were committed to planting all of the proposed trees. Mr. Leedy said yes, they were planning more islands and more trees.

Ms. Powers asked how one enters the site. Mr. Leedy showed her on the plan the proposed entrances. She asked if the loss of the 19 spaces would affect where the entrances would be. Mr. Leedy replied no, but said that he would like some flexibility in regards to the 19 spaces. He said that he could commit to some number of spaces in the northwest corner to reduce the impact.

Ms. Powers asked about substitutions for salt. Mr. Leedy responded that that would be part of the operations and maintenance plan. He said that they would make a good faith effort to reduce salt on the property but it would be difficult with the highway which is right next door to them.

Ms. Maher stated that she was very concerned about the changes in the water events. She said that she understood that their figures were predicated on historical reporting of weather events. She added that she appreciated the changes that they have made and that there was more they could do. Ms. Maher said that she hoped they would consider turf roofs. She added that it was something that needs to be considered every place. Mr. Leedy replied that he could take it to his clients and discuss it. Ms. Maher said that this was an opportunity to make this project a

showplace. Ms. Powers mentioned that the use of turf roofs would also decrease the amount of air conditioning needs.

Ms. McMillan stated that in regards to the operations and maintenance plan, she wanted to request that when they maintain the vegetation, they replace any vegetation that dies off. Her other concern was salt. She said that she thought that the Irving Company was a showcase for what they do but at the Northwood station during the last storm, they had about half of an inch of salt in their area. She pointed out that their report mentioned working with the Hodgson Brook Restoration Committee and the Irving Company through all phases of the project. She wondered if they could ask for assurance that it would continue post construction. Mr. Leedy replied that what they have done in other communities was to create a log that is submitted to the City that would document the inspections that have taken place. He said that it gives the City assurance that the methods will be followed up on.

Mr. DiLorenzo stated that as the landlord, he is responsible for the maintenance. He wanted to assure Ms. McMillan that he would stay on top of it. Ms. McMillan also expressed a concern for trash and sweeping and would like that incorporated into the maintenance plan.

Ms. McMillan asked Mr. Britz about a public hearing on this application. Mr. Britz replied that the request has been made. He added that the applicant would have to submit an amended application to the State if this was approved today. Mr. Parsont suggested waiting to see what happens at this meeting and the Planning Board meeting if the response was favorable at this meeting.

Chairman Miller stated that he went through the storm water tour for the fifth time at UNH and has learned something new each time. He wanted to reinforce to the applicant that installation was critical. He encouraged them to check in with UNH as they have changed their soil mix in the gravel wetland. Mr. Leedy replied that they have been working with them to stay up to date.

Ms. Powers mentioned that a representative from the Hodgson Brook Restoration Committee was present and wondered if she would like to comment on the project.

Ms. Candace Dolan, coordinator of the Hodgson Brook Restoration Committee stated that she felt the Conservation Commission has done a wonderful job in asking good questions about the project. She said that she would like to echo Chairman Miller about how critical installation as well as maintenance was. She let them know that they have established a new sampling station downstream and they will be monitoring during the construction process if the application is approved. She thanked the applicants for allowing the Hodgson Brook Restoration Committee to work with them.

Mr. Britz asked if they knew what the retail would be or could be. Mr. DiLorenzo replied that it was important to him that it looks good and he has been talking to prospective tenants.

Mr. Britz asked if they had considered a wetland crossing to provide a little less impact. Mr. Parsont replied that there is no flow or standing water there. He said that the wetland does meet the criteria in that area but it is on the edge. He added that it was a disturbed location and it was

full of invasive plants. Mr. Leedy said that they had not considered it but they could talk about it. Mr. Leo thought it would be an expensive project.

Ms. Maher stated that she would like to spend some time talking about best management practices. Mr. Leedy said that they will be preparing a maintenance plan that will set limits for the catch basins and all of the inspections. They would provide that to the Planning Board. He suggested that being overly detailed was perhaps best left to the site plan process. Chairman Miller said that he would like them to add to their maintenance program the sump cleaning.

Ms. Maher wondered if the Hodgson Brook group should be included in this or did they want to say that it was the City's responsibility to review it. She felt that page 2 of the applicant's proposal adequately involved Hodgson Brook in the process.

Ms. Powers asked if the conditional use permit was like a legal contract. Mr. Roberts replied that the conditions imposed by the Planning Board were binding. Mr. Leedy added that if they make a recommendation to the Planning Board in a public forum and you rely on those to make a decision, while it might not be binding, it is still relatively enforceable. Mr. Britz replied that the site plan is.

Mr. Horrigan made a motion to recommend approval of the application with the following stipulations:

- 1) That the vegetation in the buffer zone be left in its natural state and not be subject to mowing.
- 2) That the applicant conform to the conceptual vegetation scheme submitted and that a minimum of sixty trees be planted, with the replacement of those that die.
- 3) Eliminate a minimum of eight parking spaces on the northwest corner of the property and replace with native vegetation.

The motion was seconded by Mr. Wazlaw. Chairman Miller asked if there was discussion.

Ms. Tanner stated that she was concerned with invasive species in the buffer, particularly the area that Mr. Horrigan was referring to in his stipulation. She felt that part of the maintenance would be to keep the invasives to a certain limit.

Ms. Maher pointed out that if they would use turf roofs, then possibly the eight parking spaces would not have to be eliminated.

Mr. Horrigan thanked the applicant for all of the changes that they have proposed.

The motion to recommend approval of the application with the following stipulations passed by a unanimous vote:

- 1) That the vegetation in the buffer zone be left in its natural state and not be subject to mowing.
- 2) That the applicant conform to the conceptual vegetation scheme submitted and

- that a minimum of sixty trees be planted, with the replacement of those that die.
- 3) Eliminate a minimum of eight parking spaces on the northwest corner of the property and replace with native vegetation.

IV. OTHER BUSINESS

A. 2007 Membership Dues of NH Association of Conservation Commissions

Chairman Miller stated that the 2007 membership dues of the NH Conservation Commissions were due. He said that the amount was \$825.00. Ms. Tanner stated that the Commission should pay it.

Ms. McMillan made a motion to approve the payment of the 2007 membership dues of the NH Association of Conservation Commission. The motion was seconded by Ms. Tanner. The motion passed unanimously.

B. Site Walk – 1800 Woodbury Avenue, May 14, 2007 at 3:30 p.m.

Chairman Miller pointed out that there was a site walk coming up. He said that they would be talking to the owners to get a sense of what was going on with the site. Mr. Britz reminded the Commission that the applicant was denied a favorable recommendation to the Planning Board. The applicant has not gone forward because they want to please this board first.

Mr. Wazlaw pointed out that there was a lot of trash down by Circuit City end of the property. He wondered if the Code Enforcement Officer could enforce that. Chairman Miller said that was something that he would have to look into before the site walk.

Ms. Maher commented that special attention would have to be made to make sure Ms. Blanchard gets notices about site walks as she does not currently have email.

C. Additional business

The Commission had a discussion about the Jones Avenue site for the proposed Middle School.

V. APPROVAL OF MINUTES

April 11, 2007

It was moved, seconded, and passed to approve the minutes as amended.

VI. ADJOURNMENT

At 6:10 p.m., it was moved seconded and passed unanimously to adjourn the meeting.

Respectfully submitted,

Liz Good
Conservation Commission Secretary

These minutes were approved at the Conservation Commission meeting on June 13, 2007.