

**MINUTES OF THE
CONSERVATION COMMISSION MEETING**

CONFERENCE ROOM "A"

3:30 P.M.

FEBRUARY 13, 2008

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

MEMBERS ABSENT: Alternate Mary Ann Blanchard

ALSO PRESENT: Peter Britz, Environmental Planner

Chairman Miller stated that the Commission would hear the 120 Ridges Court Permit By Notification application first so that the Standard Dredge and Fill Application and Conditional Use Permit application for 3618 Lafayette Road could be reviewed together.

I. STATE WETLANDS BUREAU PERMIT APPLICATIONS

- A. Permit By Notification Application
120 Ridges Court
Stephen Barndollar, owner
Assessor Map 207, Lot 61

Mr. Glenn Normandeau of Pickering Marine Corporation was present to speak to the application. He asked if the Commissioners who wanted to view the site were able to do so. Several Commissioners indicated that they visited the site.

Mr. Normandeau explained that the building is sagging badly so he was proposing to lift the building up high enough to get underneath it to drop new posts in and drop the building back down onto the new posts and pilings. He said that the only foundational change that he would make would be to add a post in the middle, in addition to the four posts currently at each corner of the building. In addition, he was proposing to raise the building about one foot higher than it currently is to better deal with the high tides.

Chairman Miller asked if any abutters have expressed concern with the project. There had been no concerns expressed at this point in the process.

Ms. Maher asked how the construction would take place. She wanted to know where the access point would be. Mr. Normandeau explained that it would be mostly hand work. He thought they might need to rent a mini excavator to help with the digging. He said that they would slide cribbing underneath to jack the building up to work underneath it. They would be not pulling the building out of place but instead it would be a straight up and straight down proposition. Mr.

Normandeau stated that any materials brought to and from the site would come down and across the applicant's front lawn. He explained that the structure can not be reached from the water.

Mr. Normandeau said that he hoped to do the work while the ground was still frozen but they might not be able to do it until next winter. He explained that he has done a lot of buildings like this one but this one is unique in that the substrate is softer than what he is used to. Ms. Maher stated that was what her concern, about run off in the area. Mr. Normandeau replied that they would make sure that that was all contained. Nothing will happen outside of the footprint.

Ms. Powers asked about the chimney. Mr. Normandeau said that the chimney, which is in jeopardy of falling down, would be removed and not replaced as the owner had no use for it.

Ms. Powers asked why the word boathouse was in quotes. Mr. Normandeau replied that he thought that was what it was used for many years ago. Today it is just being used as storage of kayaks, bicycles, etc. Ms. Powers asked if the Permit By Notification was restricted to boathouses. Mr. Normandeau replied no, it was restricted to the nature of what the work was, a repair of a non-docking structure. Ms. Powers asked if there was any guarantee that the structure will not be used for living space. Mr. Normandeau replied that if it was converted to living space, it would be illegal because you cannot have a structure used for living purposes over state waters. He added that the Commission could put that as a stipulation with the approval. Ms. Powers said that she would make it a condition. Chairman Miller thought that would be a City issue. Mr. Britz replied that it would be both a City and State issue.

Ms. McMillan asked about the current access to the structure, a single door facing the house and then a set of double doors. Mr. Normandeau believed that the applicant would continue to use the single door rather than the double doors. Ms. McMillan stated that her concern was the possibility of creating a path through the marsh grass to the other doorway.

Mr. Horrigan asked about flooding of the structure during high tide. Mr. Normandeau clarified that the structure does not flood regularly but that the floor of the structure gets wet from time to time. Mr. Horrigan asked that if the structure was raised a foot higher than it is now, would it be a problem to launch kayaks. Mr. Normandeau replied that he felt that was not the applicant's concern.

Mr. Wazlaw asked if the Commission would be recommending approval with a favorable motion. Mr. Normandeau explained that the Commission would be the approving authority. He said that if the motion passed then the Chairman would sign five copies and turn them into the City Clerk's office. The application then goes to the Wetlands Bureau for review and if he does not hear from the Wetlands Bureau with any complaints or concerns within 10 business days, he is then authorized to begin the work.

Mr. Wazlaw said the he would want to put in as a stipulation that the area be restored to its current status once the work is finished.

Chairman Miller asked for a motion. Mr. Wazlaw made a motion to approve the Permit By Notification with the stipulation that the area be restored to its current status once the work is finished. The motion was seconded by Ms. Maher. Chairman Miller asked for discussion.

Ms. Powers stated that she would like to add the stipulation that the structure will not be used as a dwelling unit.

Mr. Horrigan stated that he was concerned with the description of the structure as a boathouse. He wanted it to be clear that he was approving a shed and not a boathouse where boats might be coming and going in the future. Mr. Normandeau reiterated that he used the word boathouse in the application because that is what the building once was but that was not its purpose today.

Chairman Miller stated that he was having trouble with the Commission dictating how the applicant uses his building. He explained that the application was a Permit By Notification to take care of a building so that it does not fall down. He said that he appreciated the comments from the Commission but felt there was a line where it should not be the Commission's concern.

Mr. Normandeau pointed out that any changes to the use of the building that a future owner might want to do would have to come back before the Commission.

Mr. Horrigan stated that Mr. Normandeau's explanation was sufficient and he wished to pull back his remarks.

Hearing no other discussion, Chairman Miller called for the vote.

The motion to approve the Permit By Notification with the following stipulations passed by a unanimous (7-0) vote:

- 1) That the area be restored to its current status after the work is completed.
- 2) That the structure will not be used as a dwelling unit.

Chairman Miller stated that the next two applications would be reviewed together since they involved the same address.

I. STATE WETLANDS BUREAU PERMIT APPLICATIONS

- B. Standard Dredge and Fill Application
3618 Lafayette Road
City of Portsmouth, owner
Assessor Map 297, Lot 1A

II. CONDITIONAL USE PERMIT APPLICATIONS

- 1. 3618 Lafayette Road
Rye Line Wastewater Pump Station

City of Portsmouth, owner
Assessor Map 297, Lot

Mr. Peter Rice, City Engineer for the water and sewer division and Mr. Paul Schmidt, engineer with CMA Engineers were present to speak to the application.

Mr. Rice explained that the project was a combination of maintenance and upgrading. Currently, the pumping station is located behind Auto World on Lafayette Road. A wetland surrounds the entire pumping station and at certain times is often in the pumping station. He passed photos around showing high water conditions. He said that they have had situations where the station was flooded and the pumps were unable to function. He added that there is beaver activity that causes some of the backups of water. In addition, the height of the road is about a foot higher than the doorway into the pumping station so as a result, water is spilling into the building.

Mr. Rice said that in addition to addressing the water problem, they would also like to upgrade the pumps and the electrical equipment. They plan to replace the current constant speed pumps with variable speed pumps which are more energy efficient. They are also improving the electrical system by using premium efficiency motors. He also stated that they are planning for the future as well. He explained that there has been discussion with the town of Rye to potentially expand the sewer areas out there. The City currently services a mobile home park that is across the town line in Rye.

Mr. Rice explained that they would raise the elevation of the doorway so that it was above the elevation of the road. He pointed out in one of the photos an orange cone that was sitting on top of a manhole. He said that there have been significant discharges of raw sewage into the wetlands as a result of the flooding. Mr. Rice added that they would be improving the access around the pumping station by adding gravel around the back of the structure. They will also be adding additional impervious surface which would approximately double the amount of impervious surface on the site. He said that pervious pavement would not work with high ground water. He mentioned that they did look at alternatives to try to mitigate the impact but felt that this was the best approach.

Mr. Rice asked if there were any questions for him or Mr. Schmidt.

Ms. Maher asked what the final elevation around the building would be. Mr. Schmidt replied that the land around the building would be raised about 2 ½ feet. He said that the floor of the building addition would be about 2 ½ feet higher. He explained that there would be stairs in the new addition that would go down into the existing building.

Ms. Maher asked how they would use the existing building and how would they keep it dry. He explained that they would be building the grade up around it and that would keep the water shedding downward.

Chairman Miller asked if there were any more questions for the applicant. Hearing none, he stated that they would vote separately on the two applications.

Chairman Miller asked for a motion concerning the State Wetlands permit application, the Standard Dredge and Fill application.

Ms. Maher made a motion to recommend approval of the application as presented. The motion was seconded by Ms. Tanner. There was no discussion. The motion to recommend approval of the application as presented passed by a unanimous (7-0) vote.

Chairman Miller asked for motion concerning the Conditional Use Permit application.

Mr. Rice asked the Commission if they would like him to briefly address the six conditions that are required to be met for a conditional use permit. Chairman Miller asked the Commission if they were comfortable with the Mr. Britz's memo addressing the conditions. The Commission was satisfied that the comments in the memo adequately addressed the six conditions.

Ms. Tanner made a motion to recommend approval of the application as presented. The motion was seconded by Ms. Maher. There was no discussion.

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

III. OTHER BUSINESS

Update on Draft Zoning Ordinance Revisions document

Chairman Miller informed the Commission that the document has been forwarded to Mr. Rick Taintor, the City's zoning ordinance consultant. He asked Mr. Britz when the Commission might hear back from Mr. Taintor. Mr. Britz explained that Mr. Taintor is currently working with the Planning Board on the site review regulations. Chairman Miller asked if the Commission would have a work session with Mr. Taintor. Mr. Britz replied that he thought that would be the next step.

Mr. Horrigan commented that he had watched a current Planning Board meeting where they were reviewing a large document wherein the discussion of vernal pools came up. Mr. Britz said that they were reviewing the site regulations document. Mr. Horrigan wondered if it was possible for the Conservation Commission to see that document since it contained language on vernal pools. Mr. Britz said that he would talk to the Planning Director as to the status of their review. Mr. Horrigan asked if the Planning Board seemed to be favorably disposed to including vernal pools. Mr. Britz replied yes.

Mr. Horrigan stated that the Conservation Commission gets into site review matters when reviewing an application and so he felt they should be in the information loop as to what the new site regulations will potentially look like. Mr. Britz agreed. Chairman Miller asked if there was a need or a desire of the Planning Board to speak to anyone on the Conservation Commission about relevant issues. Mr. Britz did not think so since Mr. Taintor has taken much of the Conservation Commission's input from the draft zoning ordinance revisions document that was submitted. He said the Conservation Commission could review them when the draft ordinance is

completed and comment accordingly. He said that he thought the ultimate goal was to have the site review regulations and the zoning ordinance approved at the same time.

Mr. Britz informed the Commission that he has applied to the NH Coastal Program for a grant to conduct a natural resource inventory. He said he was also going to apply to the Estuary Project under a separate grant program to do a vernal pool survey.

Update on upcoming work sessions

Mr. Britz explained that the original dates for the joint work sessions with the Planning Department concerning two separate projects have been rescheduled. He said that both applicants could not meet on the previously scheduled dates. He continued to say that they were looking at the date of March 6, 2008 to reschedule both projects.

Chairman Miller stated that he and Ms. McMillan had a conflict with the March 6 date. Mr. Wazlaw was unable to attend as well.

Mr. Horrigan asked about the Lafayette Road work session and what the applicant was proposing to do. Mr. Britz explained that the applicant was looking to expanding the site where the car wash is. He pointed out that it was a challenging site.

Mr. Britz said that he would speak with John Ricci, the Planning Board Chairman to see about rescheduling. He said that the Planning Board meets on Thursdays at 7 p.m. He was not sure how flexible they could be with regards to rescheduling. Ms. Maher suggested the next available Thursday. Chairman Miller suggested meeting after the Conservation Commission meeting on March 12.

In other business, Ms. Powers asked if the prime wetlands assessment had been approved yet. Mr. Britz replied not yet, that it needed to be approved by the City Council. He said that he hoped to get it on the March City Council agenda. He explained that there would be another public hearing at a City Council meeting, and if approved, it would get forwarded to the State. Ms. Powers asked if Mark West would be at the meeting. Mr. Britz replied that he thought he would.

Ms. Powers asked if everyone received a copy of a letter by the Friends of Sagamore Creek, written by Sarah Hamill. She asked if the Commission would like to respond to it. Ms. Powers felt that the sentence in the second paragraph stating that Mark West did not designate that wetland section because we a study of vernal pools was being undertaken was inaccurate. Chairman Miller agreed. He explained that the reason that area was not designated as prime wetland was that it did not qualify as one. He felt it was a good idea to write a formal letter to clarify it.

Mr. Adams stated that his recollection was that Mark West's report stated that it could have been deemed as prime wetland but was not. Mr. Britz replied that he felt that was incorrect. He said that the problem with vernal pools is that there is not definition of a vernal pool. He explained that there was an area nearby that could have qualified as a prime wetland but it was mapped

incorrectly and had pavement and houses in it that did not belong there so they narrowed the size down and it did not rise to the level of prime wetland. It was not the vernal pool area.

Mr. Wazlaw said that it was very valuable to be get input from the community but he thought the Commission had been very clear at the last meeting with the Friends of Sagamore Creek that they were working on vernal pools and would make a recommendation to the Planning Board and the City Council. He felt that the Commission had to be clear that they were dealing vernal pools in the entire City, not just at the Jones Avenue site.

Mr. Horrigan stated that he felt the letter was asking the Commission to do what they could to conserve the area. He thought they should consider suggesting to the City Council that they consider designating the site as a conservation site. He said the site as a whole deserves the Commission's attention. Mr. Wazlaw said that he thought that science would win in the end. He felt the best thing to do was to rely on the science from the vernal pools study and go with some really solid evidence to the City Council. Mr. Britz said that if they get the Coastal grant, it would be very helpful to the City. He explained that they would hear in a couple months if they received the grant. He added that it is a \$30,000 grant and if the City receives it, then the City has to match the \$30,000 so he would be asking for those matching funds from the Conservation Fund. The City Council would have to approve that request so he thought that would be a good time to educate the City Council on these valuable issues.

Mr. Adams stated that he felt the Commission micro focuses on issues more than he expected when he volunteered to serve on the Conservation Commission. He said that suppose the school board had prevailed to build a school on the Jones Avenue site. He asked if the Conservation Commission would have taken a stand at that point. Chairman Miller replied that the Commission had that discussion when the site was first in the news. There was discussion on how to respond and the feeling of the City was, if the Commission responded prior to having any application before them, it would be inappropriate because it would jeopardize the Commission's validity on the issue because the Commission's views would have already been stated.

Mr. Adams said that suppose there was no discussion of a school on the site and someone on the Commission said that they felt they should propose to the City Council that the site be preserved in perpetuity as a City park. Chairman Miller asked Mr. Britz what the procedure would be in that case. Mr. Britz thought that ultimately it would be the City Council who would have the authority to do that. Chairman Miller asked if there was currently any City owned land that was permanently protected. Mr. Britz replied yes, with conservation easements. At this point in the meeting, there was lengthy informal discussion concerning conservation land, particularly the Jones Avenue site.

Discussion then converted back to how to respond to the letter from the Friends of Sagamore Creek. Chairman Miller suggested that he respond to the Planning Board explaining why the area did not qualify as a prime wetland. He added that Sarah Hamill could receive a copy.

Mr. Britz stated that he questioned whether they needed to respond to the letter. He pointed out that they receive letters all of the time but that that does not mean that you agree with what is in

the letter. He added that the Commission had told the group very clearly what the position was on that land but they chose to write the letter after they had been told the situation.

Ms. Maher said that she felt they should respond to the letter but only to correct the misinformation. She thought it should be written to the Friends of Sagamore Creek with a copy going to the Planning Board. Chairman Miller was in agreement.

Chairman Miller stated that he would like the Commission to be open to the idea of being proactive concerning the Jones Avenue site and other sites as well to see if they can find a way to be involved without jeopardizing the Commission's ability to have a say if a proposal comes forward.

Ms. Maher suggested making a priority list of lands that they are interested in. Mr. Britz said that it would be more appropriate to start the list after an inventory is taken. Ms. McMillan volunteered to research what other cities have done. Ms. Powers said that she would be willing to work with Ms. McMillan.

Mr. Horrigan stated that he was still concerned about the letter. He felt that the Commission was being timid about responding. He felt it should be stated in the letter that the Commission agrees that the site was worthy of consideration. He said that to say nothing did not seem right.

Ms. Maher commented that she appreciated Mr. Horrigan's concerns, but she reminded him that they were still dealing with the School Board. She said that the reason the School Board was holding back from being more forthright with the Commission was because of money and they do not want to make a commitment until they know what it is going to cost. She explained that all of this is still out there. Mr. Horrigan said that that was why he wanted to say something. Ms. Maher said then they would be jeopardizing their position of being impartial. Mr. Adams felt that was a bogus argument. He did not know why they could not take a philosophical stance.

Ms. Maher said that one of her concerns was that the Friends of Sagamore Creek has become a sparking point for people. They have been very active. She now hoped that they would back off and let the project go forward as it would. She had a concern that they were becoming a point of aggravation and she would not like to fuel that.

Chairman Miller said that he would be interested in how other towns deal with conservation land without stating Jones Avenue and adding fuel to the fire.

Ms. Powers wanted to clarify that it was not the City that told the Commission that they could not take a stand concerning the site; it was one attorney, City Attorney Sullivan.

Ms. McMillan said that she did not agree with a number of things in the letter. She suggested holding off and saving the Commission's clout for later. Ms. Maher commented that the letter did not warrant a lot of effort other than correcting the misconceptions. Ms. Powers suggested just changing that one sentence in the second paragraph. Ms. Maher added that it would be courteous to respond.

IV. APPROVAL OF MINUTES

January 9, 2008

Ms. Powers asked that clarification be made to Page 7 in the 7th paragraph concerning the fact that DES would be drafting a statement on vernal pools and that Mr. Taintor should be made aware of it.

Ms. Maher made a motion to approve the minutes as amended. The motion was seconded by Ms. Powers. The motion to approve the minutes as amended passed by a unanimous (7-0) vote.

IV. ADJOURNMENT

At 5:20 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Liz Good
Conservation Commission Recording Secretary

These minutes were approved at the Conservation Commission meeting on March 12, 2008.