

**MINUTES OF THE  
CONSERVATION COMMISSION MEETING**

**CONFERENCE ROOM "A"**

**3:30 P.M.**

**June 11, 2008**

**MEMBERS PRESENT:** Chairman Steve Miller; Vice Chairman James Horrigan; Members, Allison Tanner, Brian Wazlaw, Barbara McMillan, Skye Maher, Eva Powers; and Alternate Mary Ann Blanchard

**MEMBERS ABSENT:** Richard Adams

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

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Chairman Miller stated that he would be taking the applications out of order from the agenda so that the Commerce Way applications could be heard together.

**II. CONDITIONAL USE PERMIT APPLICATIONS**

1. 1275 Maplewood Avenue  
Heritage Hill Condominium Association, owner  
Assessor Map 219, Lot 40

Ms. Mary Z. Walker, a representative of Heritage Hill Condominium Association and Mr. Robert Fisher of Po Folk Electric were present to speak to the application.

Mr. Fisher stated that when the underground electric service was installed on the property 25 years ago, it was not put in any type of pipe and as a result, a wire has shorted out, probably due to moisture or a pebble rubbing against it over the years. It now needs to be replaced. He explained that the red line on the submitted plan showed the proposed work area. He said they would not be bringing in a back hoe to do the job. They would dig a small trench approximately 12-18 inches deep. He went on to say that light pole #56 that was noted on the plan was where they would get power from. The green line on the plan indicated the edge of the buffer zone and the blue line indicated the edge of the wetland. Mr. Fisher also pointed out that the proposal included the clearing of dead undergrowth.

Chairman Miller asked if the construction would take place from light pole #56 to the light pole in need of repair. Mr. Fisher replied yes and added that it was a distance of about 110-120 feet. Chairman Miller asked if the yellow tape seen in the submitted photos was where the digging would take place. Mr. Fisher replied yes. He said that he was going to try to keep the digging close to the road so that the trees could be protected.

Ms. Powers stated that she and two other Commissioners visited the site that morning. She said that one of the first things they saw when they arrived was a painted turtle nesting next to the foot path. It then made its way into the underbrush. She had pictures she shared with the

Commission. She wondered if the work could be done on the grass because the area was clearly a functioning habitat. She also stated that she felt construction would be affecting the roots of the trees.

Mr. Fisher explained that in the top left picture of the submitted photos, the road was on the right and the foot path was on the left. He said that utilities run under the foot path. Mr. Fisher stated that he did not care where he ran the line. He was only looking for the easiest solution. He told the Commission to tell him where they wanted it and he would put it there.

Ms. Walker stated that that was not only the nesting place for the turtles. She indicated that the turtles are all over the place.

Ms. Maher said that she was at the site that morning. She commented that the roadway and foot path from side to side was all construction fill. She pointed out that there were some beautiful plantings right along the edge along with mature trees. She said she did not see how they could trench along there without damaging the trees. She added that she would like to see the trenching done in the grass buffer between the foot path and the roadway. Ms. Maher thought that the brush did not need much attention as it was protecting the area. She did not want to disrupt the root structure.

Chairman Miller asked if it was possible to run the trench down the middle between the road and the foot path. Mr. Fisher said that he would have to cross the utilities if he did that. He added that he is not sure if the plans adequately reflect where those utilities are. He said that if that is the way it has to be, then he will deal with it.

Chairman Miller wondered whether it was possible to run the line right along the outside of the foot path. Mr. Fisher said he could do that. Chairman Miller pointed out it would avoid the utilities and minimize any damage to the trees.

Mr. Wazlaw asked what the width of the trench would be. Mr. Fisher replied it would be about 12" wide. Mr. Wazlaw asked about the width of the pipe that would be used. Mr. Fisher said that it would be a 1 ½" pipe. Mr. Wazlaw said he would like to see it as close to the foot path as possible.

Ms. Blanchard asked since it was not a liquid bearing pipe, why did it have to be 12" deep. Mr. Fisher replied that it was because of the electrical code.

Vice Chairman Horrigan said that he assumed that the previous wire had a straight run along side the foot path on the wetland side because the junction box was located very close to the foot path. Mr. Fisher said that he was not sure of that and he was not sure of how deep it was. Vice Chairman Horrigan stated that he thought it was a good idea to put it either on one side or the other of the foot path. He also cautioned Mr. Fisher that in 10 or 15 years, they might have the problem where they do not know where they put it. Mr. Fisher replied that that was the beauty of the pipe because he can just pull the old wires out and put new ones in.

Ms. McMillan said that she had concern about digging on the wetland side of the foot path. Ms. Maher agreed. She thought it was best to dig on the side of the road. She also said that it was her understanding that the utilities run underneath the pavement. She pointed out that water, sewer, and gas utilities are buried far deeper than 12" so she thought it should be fine.

Ms. Powers stated that she would be comfortable with construction between the foot path and the roadway. Mr. Fisher said that he was agreeable to that.

Ms. Maher made a motion to recommend approval with the following stipulation:

- 1) That the trenching takes place on the east side of the footpath, between the road and the foot path.

The motion was seconded by Ms. McMillan. Chairman Miller asked for discussion.

Ms. Blanchard asked if the removal of the dead undergrowth was included in the motion. Chairman Miller stated no, they were just discussing the conduit.

Chairman Miller pointed out that the proposal called for planting high bush blueberry bushes. Mr. Fisher stated that those would not be planted now since they would not be digging in the original area that was proposed.

In addition, Mr. Fisher indicated that light pole #54 needed to be repaired as a truck backed into it and so he wondered if he would need to come back before the Commission for permission to fix it.

Mr. Britz stated that the motion could be amended to include that. Chairman Miller asked for clarification. He asked if the pad needed to be replaced. Mr. Fisher replied yes. Chairman Miller asked if the pad at #56 needed to be replaced as well. Mr. Fisher said that when the pad goes in, he will put plastic pipes out so that if something should happen, he can get back into the pad.

Ms. Blanchard amended the motion to permit the applicant to reconstruct light poles #54 and #56 and to permit limited clearing of dead debris in the adjacent buffer.

Ms. Powers asked why they needed to work around in that area at all. She said that the dead debris is not even visible by anyone that is walking there. She would like to see the undergrowth left as is.

Ms. Walker stated that there are dead trees in that area. She said she worried about someone throwing a lighted cigarette into that area that might result in a fire when it is very dry. She also said that if some of it were cleared out, the water would flow better. Mr. Fisher pointed out that the growth from weeds and beaver activity has raised the water level about 4" before it runs into the 2' pipe so that would eventually need to be cleaned out. Chairman Miller said that that was fine to do.

Ms. Powers said that that was very different than clearing the undergrowth. She felt the culvert was a different place with a different activity. Chairman Miller did not think that clearing dead brush from the buffer was not allowed.

Ms. Blanchard amended the motion to just include the reconstruction on light poles #54 and #56.

Ms. Maher said that if clearing the brush was a permitted use then they did not need to include it in the motion.

Ms. McMillan urged the applicant to check with the State before clearing brush from around the culvert.

Chairman Miller called for the vote.

The motion to recommend approval of a conditional use permit with the following stipulations passed by a unanimous (7-0) vote:

- 1) That the trenching takes place on the east side of the footpath, between the road and the footpath.

With approval of this application the applicant is permitted to reconstruct light poles shown on the plan in rectangles #54 and #56.

## **I. STATE WETLANDS BUREAU PERMIT APPLICATIONS**

- A. Standard Dredge and Fill Application  
260 Walker Bungalow Road  
Sagamore Landing Condominium Association, owner  
Assessor Map 202, Lot 13

Mr. Zachary Taylor, Projects Planner for Pickering Marine Corporation was present to speak to the application. He explained that the Sagamore Landing Condominium Association was seeking permission to extend their current float system. He said that they would like to install four additional 6' x 15' floats on the existing dock system. Mr. Taylor stated that the original dock was installed in 1993 and was then rebuilt in 1995. The original docking structure encompassed three 6' x 20' floats and accommodated a certain number of boats. They have now acquired more boats and would like to extend the boat and personal access system on the dock system.

Ms. Maher asked about condition #5 put in place by the Department of Environmental Services Wetlands Board in 1995 that stated that "old pilings to be removed by being cut off even with the river bottom." She asked about the logic of that and what was now being proposed. Mr. Taylor replied that the pilings from the original pier were no longer reusable. He explained that when they get to that dilapidated state, worms enjoy chewing on them. He added that when you try pulling the pilings, they can snap off and leave stubs so it is easier to cut them off. Ms. Maher said that her concern was with the quality of the river bottom.

Chairman Miller asked what the pilings were made of. Mr. Taylor replied pressure treated southern yellow pine.

Vice Chairman Horrigan asked how many households are in the condominium association. Mr. Taylor did not know exactly but he believed it was approximately fourteen households.

Vice Chairman Horrigan wondered who the dock would service.

Ms. Maher pointed out that there are only seven houses in the association. When she visited the site today, she was told that they have six numbers slips on the existing floats and one mooring.

Mr. Britz pointed out that the property was brought in through a PUD. The PUD went through site review and one of the stipulations of the site review was that they never have more than one dock. He said that they were pretty much limited to one dock.

Chairman Miller asked what the extent of the shoreline was. Ms. Maher pointed out that it said 822 feet in the plans.

Vice Chairman Horrigan said that he visited the site at almost low tide. He wondered what the bottom looked like. Mr. Taylor said it was just a muddy substrate.

Vice Chairman Horrigan pointed out that there was an aluminum ramp instead of a wooden ramp. Mr. Taylor replied that is the only type of ramp that they use and the State has never had a problem with it. Vice Chairman pointed out that at certain times of the day, the sunlight is not able to get the vegetation underneath it. There was considerable discussion about this.

Ms. Maher said that she also expressed concern about the fact that they are back before the Commission a few years later asking for more floats. She said she was hoping that they would not have big boats coming in that would result in more requests. She said she expressed that concern to the homeowner.

Chairman Miller asked if the Commission was ready for a motion. Ms. McMillan made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Ms. Maher.

Chairman Miller stated that he would like to add the stipulation that the applicant minimize the turbidity as much as possible when pulling out the pilings and that they be removed during slack tide.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application to the State Wetlands Bureau with the following stipulation passed by a unanimous (7-0) vote:

- 1) That the applicant minimizes the turbidity as much as possible when pulling out the pilings and that they be removed during slack tide.

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Chairman Miller stated that they would hear the following applications together as the information presented would be the same for both applications. He explained that following the presentation, separate votes would be taken.

**I. STATE WETLANDS BUREAU PERMIT APPLICATIONS**

- B. Minimum Impact Expedited Application  
Commerce Way  
Commerce Way, LLC, owner  
Assessor Map 216, Lot 1-1

**II. CONDITIONAL USE PERMIT APPLICATIONS**

- 2. Commerce Way  
Commerce Way, LLC  
Assessor Map 216, Lot 1-1

Mr. Sergio Bonilla and Ms. Adele Fiorillo of New Hampshire Soils, Inc. and Mr. Patrick Crimmins of Appledore Engineering were present to speak to the application.

Mr. Bonilla stated that they were requesting impacts on Commerce Way to a wetland system located in Commerce Park. He said that they were seeking a favorable recommendation for a State Wetland permit to the State and a favorable recommendation for a Conditional Use permit to the Planning Board.

Mr. Bonilla explained the wetland area in question was a 325 acre area. They have assessed the functions and values of the system and found it limited to flood flow alteration and to have some capability to provide wildlife habitat. He said that they were requesting impacts for roadway improvements that would increase the turning radius of the road. He pointed out that the road is privately owned but the owner wanted to bring the road up to City standards. A 30 mph speed limit is being proposed. The roadway improvements would involve the installation of erosion control measures, landscaping, lighting, the relocation of above ground utilities to underground, guardrail installation, and pedestrian sidewalks. The overall increase of pervious surface would be approximately 440 square feet. He added that there would not be much impact to abutting properties. He said they expected an impact of 1,104 square feet that would have no adverse effect on the wetland function.

Mr. Crimmins explained that the road is twenty years old and does not drain well. He said that they were proposing to construct all along the south side of Commerce Way a six foot pedestrian sidewalk with an eight foot wide landscaped island down the middle of the road with trees and lighting.

Ms. Tanner asked if the road was wide enough right now to do that or would the road need to be widened. Mr. Crimmins pointed out an area where the pervious pavement would be increased. He explained that the road is currently privately owned. They are proposing to reconstruct the road way to the City of Portsmouth's standards and eventually turn ownership of the road over to the City. He said that the City's standard was a 30 mph road. Mr. Crimmins continued by saying that in order to have proper sight distance, the radius would need to increase slightly. He explained that the actual net gain was 4,400 square feet of pervious area in the buffer zone.

Ms. Tanner asked that in order to create that pervious area, would they be encroaching anywhere else. Mr. Crimmins said just up in the corner area. Ms. Tanner asked if there were phragmites in that area. Mr. Crimmins replied yes, and cattails as well. Ms. Tanner asked how they would keep the phragmites from spreading. Chairman Miller asked if they could complete the presentation and address that issue in the discussion time to follow.

Mr. Crimmins explained that the overhead wiring would be placed underground and there would be drainage enhancements. They will also be installing new catch basins all along the roadway and improve the grade of the roadway. He explained in detail the specifics of the proposed catch basins.

Mr. Wazlaw asked when entering from Woodbury Avenue, would the sidewalk be installed on the east side. Mr. Crimmins replied that was correct. Mr. Wazlaw asked if the existing trees would be taken out to make way for the sidewalk. Mr. Crimmins replied yes. Mr. Wazlaw asked about the curved area of the roadway. Mr. Crimmins said that it is a sharp curve right now so they will be pulling the radii in, removing some pavement, and reconstructing it to curve and flow to the catch basins.

Ms. Tanner asked how the phragmites would be controlled. Mr. Bonilla said they would try to control the spread of the seeds. Ms. Fiorillo added that they could add something more to the construction sequence to address that concern. Chairman Miller asked if there would be any spoils pulled out of there. Ms. Fiorillo asked Mr. Crimmins what their excavation requirements were. Mr. Crimmins replied that everything will have to be excavated out and common fill would be used.

Chairman Miller asked if the road would meet City standards if they just put a stop sign at that corner. Mr. Crimmins said that was a question he would have to ask the Department of Public Works. Chairman Miller wondered if it had to be a 30 mph road. He commented that he liked what they were doing to the roadway with the island. He said that maybe a stop sign would not stop the truck problem. Mr. Crimmins replied that it would most likely not solve the turning issue.

Vice Chairman Horrigan stated that he could not understand why this project was being proposed. He said that the current roadway seems more than adequate. He did not see it as an improvement to Commerce Way but instead as having a negative impact. He added that he liked the stop sign idea suggested by Chairman Miller.

Ms. Fiorillo explained that the Kane Company wants to do an overall rework of the park. This is only a small part of the plan.

Ms. Blanchard pointed out that with the completion of the project, it would create a big commercial artery.

Ms. Maher asked if they have been assured that the City will accept this street when it is constructed. Mr. Crimmins replied yes, as long as it is constructed to City standards. He added that the City would have to accept the plans prior to construction.

Ms. Maher pointed out that there are two properties just to the north of the curve. She wondered if there was anyway to impact those lots rather than taking more of the impacted flood controlled area. Mr. Crimmins said that one of the properties has a big slope with a retaining wall. He added that the Kane Company owns one of those properties.

Ms. Maher stated that she was not inclined to say that the corner needs to be in the wetlands any further than it is when there are adjacent properties owned by the current landowner where the road could be relocated. Ms. Fiorillo stated that they might impact wetlands when dealing with the slope.

Chairman Miller asked if there was any other option for that corner to minimize the fill in terms of constructing that road. Mr. Crimmins suggested putting in a wall that would slightly reduce the impact but there would be safety issues regarding pedestrians.

Ms. Powers stated that when most of Portsmouth's roads are 20-25 mph, she wondered why this road needed to be 30 mph. Mr. Crimmins said that they were directed by DPW that it had to be 30 mph. He said in order to get it changed; it would have to go before the City Council. Ms. Powers thought it would be worth discussing. Mr. Crimmins said he could have discussions with DPW.

Ms. Blanchard asked Mr. Britz if he had any information about what conditions the City sets to accept roads. Mr. Britz replied that the City does not have to accept them. He said that the City wants that corner to be safer. Ms. Fiorillo added that 30 mph is just a rating based on a curve radius, not a safety issue.

Mr. Britz suggested tabling the application so that the applicant could speak with DPW. He also thought the idea of the retaining wall should be explored. At this point in the meeting, there was detailed discussion regarding alternatives.

Ms. McMillan stated that she thought the addition of a stop sign was a good idea. She asked where the curbing would be. Mr. Crimmins said it would be along the entire road and would be raised granite. Ms. McMillan requested that they put in a slanted curbing that is friendlier to wildlife, such as turtles and baby ducks.

Ms. McMillan pointed out that sheet flow is not always bad and she wondered if the sheet flow should remain in the curved area.

Ms. Tanner stated that she was concerned about the boulevard and the proposed trees. She pointed out that DPW salts very heavily in the winter and she felt that would hurt the new trees. She suggested eliminating the boulevard and relocating the sidewalk in order to keep the mature trees. Chairman Miller asked how many trees it would involve. Mr. Crimmins replied it would involve seven trees.

Ms. Powers asked why there would be a sidewalk at all. Mr. Crimmins said that it would provide for pedestrian traffic through the park.

Ms. Maher said she felt they did not have enough information. She thought the stop sign should be explored further. Mr. Britz added that he thought there was a lot of interest in other alternatives. He said if the applicant was willing, they could come back with some alternatives that can be worked through better. He said he could also ask if someone from DPW could come and speak as well.

Mr. Britz informed the Commission that the applicant could submit the minimum impact expedited application without a signature from the Conservation Commission Chairman.

Ms. Fiorillo explained that they would need to take all that was discussed today and relay it to the owner. She felt it was worthwhile to table the application. Mr. Crimmins added that he would speak to DPW prior to the next meeting.

Ms. McMillan said that she agreed with Ms. Tanner about the boulevard. She felt Ms. Tanner's suggestion was much more beneficial to the wetland.

Ms. Blanchard asked Mr. Britz to explore how DPW interfaces with the Police Department concerning safety.

Chairman Miller asked the Commission if they were ready to vote.

#### **CONDITIONAL USE PERMIT APPLICATION:**

Ms. Tanner made a motion to table the conditional use permit application submitted by Commerce Way, LLC, to the July 9, 2008 meeting. The motion was seconded by Mr. Wazlaw. Chairman Miller asked for discussion.

Chairman Miller said that he liked the idea of the proposed pervious area but he shared the concern of the existing trees. He added that he liked the idea of a sidewalk for pedestrians. He was also concerned about the nibbling away at the wetland.

Ms. McMillan pointed out that she thought five feet was the new requirement for City sidewalks and not six feet as proposed in the plan.

Ms. Powers asked if the sidewalk could be pervious. Mr. Crimmins said he would have to go back to the City to discuss it.

Hearing no other discussion, Chairman Miller called for the vote. The motion to table the conditional use permit application submitted by Commerce Way, LLC, to the July 9, 2008 meeting passed by a unanimous (7-0) vote.

**MINIMUM IMPACT EXPEDITED APPLICATION:**

Ms. Maher made a motion to table the decision to sign the minimum impact expedited application submitted by Commerce Way, LLC to the July 9, 2008 meeting. The motion was seconded by Ms. Powers. There was no discussion.

The motion to table the decision to sign the minimum impact expedited application submitted by Commerce Way, LLC to the July 9, 2008 meeting passed by a unanimous (7-0) vote.

**III. APPROVAL OF MINUTES**

May 14, 2008

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

May 1, 2008 (Vernal Pool Walk)

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

**IV. OTHER BUSINESS**

Update on formation of Open Space Sub-Committee

Chairman Miller informed the Commission that a letter was sent to the City Council outlining the Commission's recommendation for the formation of the Open Space Sub-Committee.

**V. ADJOURNMENT**

At 5:30 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 July 9, 2008.