

**MINUTES OF THE
CONSERVATION COMMISSION MEETING**

CONFERENCE ROOM "A"

3:30 P.M.

July 9, 2008

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman James Horrigan; Members, Allison Tanner, Barbara McMillan, Eva Powers; and Alternates Mary Ann Blanchard, Richard Adams

MEMBERS ABSENT: Brian Wazlaw, Skye Maher

ALSO PRESENT: Peter Britz, Environmental Planner

I. STATE WETLANDS BUREAU PERMIT APPLICATIONS

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

Attorney Malcolm McNeill, representing the developer, Ms. Adele Fiorillo and Mr. Sergio Bonilla of NHSC, Inc., Mr. Patrick Crimmins of Appledore Engineering along with City representatives Mr. Steve Parkinson, Public Works Director and Mr. David Desfosses, Engineering Technician, were present to speak to the application.

Attorney McNeill explained that the applicant was seeking to upgrade the road and the condition of the park. He said that the applicant was under no obligation to do so; they wished to make the improvement. He continued to say that this roadway was unique in that it would become the property of the City of Portsmouth when completed. They have worked very closely with the City with regards to all of the components of the plan. Attorney McNeill explained that when the road is done it has to meet the City's specifications or otherwise the City will not accept it. Additionally, the developer is paying the expense of the upgrades. So this was just a transition, going from private ownership to become public ownership, totally at the expense of the applicant.

Ms. Fiorillo addressed the concerns of the Commission that were voiced at the last meeting. She explained at last month's meeting that she presented a roadway improvement plan that required wetland impacts. The improvement plan included a planted island in the roadway, a sidewalk, plantings for landscaping, as well as improvements to the utilities, that would be put underground, and improvements to the storm water treatment system.

Ms. Fiorillo said that in response to the Commission's comments and concerns, they met with the City and asked them to speak to some of the issues they have not been able to change with

regards to the project. She explained the items they were able to change. They have revised the plans to include a retaining wall at the inside curve of the road. By doing that it reduced the square footage of wetland impact by 1,111 sq. feet. The permanent wetland impact was now only 43 square feet. She said that they also incorporated into the revised site plans a more detailed construction sequence that includes how the temporary impacts would be restored and how they would reduce or eliminate the invasive species. Ms. Fiorillo explained that in order to do that, they are specifying that all construction take place from the roadway. Before they excavate, they plan to cut down the vegetation, bag it, and dispose of it. They will then excavate the soil, back fill and then reseed.

Ms. Fiorillo stated that they were also able to reduce the width of the proposed sidewalk from 6 feet to 5 ½ feet. She said that the total of what will now be pervious surface is around 6,000 sq. feet.

Ms. Fiorillo also pointed out that there was concern about a row of mature trees that were proposed to be removed. She explained that there were eight Norway Maples. Two of the maples were in poor shape. She said that the proposed landscaping plan included ash trees and more native species.

Ms. Fiorillo asked if there were any questions specific to her presentation. She said that the City representatives could answer their additional questions.

Ms. Tanner stated that she appreciated the applicant's efforts to remove the phragmites. She also liked the reduced impact to the wetlands and the retaining wall. She said that she is still concerned with the center island. The Norway maples, she pointed out, are of an eight inch caliper and she was concerned that their replacement would not be the same. She also stated that the existing trees were serving as a buffer for the wetland. She felt that if they removed them to make way for the sidewalk and island, they would lose some of the benefit that is currently there. Mr. Bonilla responded by saying that the proposed ash trees would be of two to three inch caliper. He added that fifteen trees were proposed to be planted along that portion of the property where the Norway maples are and fifteen trees would be planted in the island. Those trees would consist of apple and pear trees, red maples, and ash trees. Mr. Crimmins added that they met with the Trees and Greenery Committee that morning and the plan was approved by them.

Ms. Powers asked if slanted curbing could be used to allow easier wildlife passage. Mr. Parkinson explained that the City standard is a vertical curbing. He said that the sloped curbing does not hold up as well to the riggers of road maintenance. They would typically use sloped curbing with an island situation where it is backed up by concrete. Even then, he said, it does not hold up well.

Chairman Miller asked if there was any way to address this concern since it is a very active wetland. Mr. Parkinson replied that in the past they have had duck crossings at various areas in the City. Ms. Tanner explained that these are two wetlands that need a connection point. She asked if maybe a 20 foot section could be sloped curbing. Mr. Parkinson said that it was possible. He explained that there are transitional pieces of curbing that would allow them to go

from traditional curbing to slope curbing. He added that he would not want to do a longer stretch than 20 feet. They would have to look at additional support behind the sloped curbing. There was considerable discussion about where that 20 foot area should be located.

Ms. Blanchard asked what the current speed limit on the road was. Mr. Parkinson replied that it is a private road so the City does not regulate the speed on it. He believed it was 30 mph. Ms. Blanchard asked if that would change when the City takes ownership of the road. He said that the City would determine the speed through its ordinances. Ms. Blanchard asked what the current speed limit was on Portsmouth Boulevard. Mr. Parkinson thought it was 25 mph.

Ms. McMillan asked about the maintenance of the proposed catch basins. Mr. Parkinson said that they like to clean catch basins about once a year but that does not always happen.

Ms. McMillan asked if the island in the center of the road way could be recessed. Mr. Parkinson said that the problem with recessed structures in the road is that the salt will end up inside the recessed areas. They are now trying to have raised areas.

Ms. Blanchard asked if the heavy dotted line on the plan denoted the wetland buffer setback. Ms. Fiorillo replied yes. Ms. Blanchard noted that the corner is almost entirely in the buffer and the wetland. Ms. Fiorillo said that was correct. Ms. Blanchard said that what the Commission needs to determine is whether the improvements make it better.

Attorney McNeill pointed out that this is a preexisting condition that predates the ordinance. He said the developers are trying to minimize the adverse affect that has been demonstrated by the progression of what Ms. Fiorillo has defined and to try to make the road safe and consistent with the City's specifications. He said that if the City thinks that there can be some modification of their specifications that do not involve unreasonable expense, the applicant would consider that. He said that the City has to answer that question.

Vice Chairman Horrigan asked about the inlet protection barrier noted on the plans. Ms. Fiorillo explained that that was a temporary situation. They would place hay bales around the catch basins during the construction phase.

Ms. Powers asked how the sidewalks would be maintained. Mr. Parkinson stated that they do not maintain every sidewalk. They do not have the manpower to do it so they concentrate on the main arterials. He indicated that this sidewalk would be a secondary priority. Ms. Powers said that if it was maintained then it would be plowed and salted. Mr. Parkinson said that was correct. Ms. Powers wondered if it would be possible to ask for non-maintenance in the winter.

Ms. Blanchard asked Mr. Parkinson who is responsible for the maintenance and enforcement of the road as it exists now. Mr. Parkinson replied that since it is a private road it is currently being maintained by the owner. He said he did not know much about the enforcement but he was fairly confident that it was patrolled.

Ms. Blanchard asked what the maintenance of the road has been in the winter months. Attorney McNeill stated that the owner, the Kane Company, takes care of that.

With the conclusion of the presentation, Chairman Miller stated that they would vote on the Minimum Impact Expedited application first.

Ms. Blanchard made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Ms. McMillan. Chairman Miller asked for discussion.

Ms. Blanchard stated that she may not fully understand what the developer intends with regards to the reconstruction of the road but that was not the Commission's purview. She said that the Commission's purview was the corner and she felt the plan was an improvement.

Chairman Miller stated that he would like to add the stipulation that approximately 20 feet of sloped curbing be placed adjacent to the wetlands, centered on the culvert or thereabouts, to allow for wildlife passage.

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

The motion to recommend approval of the Minimum Impact Expedited application to the State Wetlands Bureau with the following stipulation passed by a unanimous (7-0) vote:

- 1) That approximately 20 feet of sloped curbing be placed adjacent to the wetlands, centered on the culvert or thereabouts, to allow for wildlife passage.

II. CONDITIONAL USE PERMIT APPLICATIONS

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

With regards to the Conditional Use application, Ms. Fiorillo briefly discussed the criteria to be met for a Conditional Use permit. She highlighted the minimized impact to the wetland buffer, the traffic and safety considerations, the proposed retaining wall and improved drainage structures, the landscaping plan, and the reduction of impervious area.

Mr. Britz stated that he wrote a memo with the original application and stated that he felt it was lacking information. With regards to the revised plan, the applicant has done a nice job of reducing the impact. The big concern about phragmites has been adequately addressed by the applicant.

Hearing no other discussion, Chairman Miller asked for a motion.

Vice Chairman Horrigan made a motion to recommend approval of the application to the Planning Board. The motion was seconded by Ms. Blanchard. Chairman Miller asked for discussion.

Chairman Miller stated that he would again like to add the stipulation that approximately 20 feet of sloped curbing be placed adjacent to the wetlands, centered on the culvert or thereabouts, to allow for wildlife passage.

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

The motion to recommend approval of the application with the following stipulation passed by a unanimous (7-0) vote:

- 1) That approximately 20 feet of slanted curbing be placed adjacent to the wetlands, centered on the culvert or thereabouts, to allow for wildlife passage.

III. NEW BUSINESS

Permit By Notification
 180 Greenleaf Avenue
 City of Portsmouth, owner
 Assessor Map 243, Lot 67-1

In new business, Chairman Miller explained that the above application was not on the agenda but would be heard. He explained that the application was a Permit By Notification submitted by the City of Portsmouth. Mr. Peter Rice, City Engineer of the Water and Sewer Division, was present to speak to the application.

Mr. Rice explained that the project was the repair of a headwall which was currently restricting flow through the culvert. He passed out photos of the area. The project involved removing a tree that had fallen over, removing the stones and putting them back in place and rebuilding the headwall so that it will function properly. The project would also involve siltation and erosion control. They would also put down loam and seed to re-vegetate the area. He felt it was a straightforward project that would require a minimal amount of work so as to not disturb the stream bed.

Ms. Blanchard asked if this was on City land. Mr. Rice explained that it was land owned by Comcast but that the City had an easement.

Mr. Rice explained that the drainage comes from a wetland area up around Essex Avenue and Sheffield Road and comes across Hampshire Road and drops down onto Route One. It then runs along Route One to about the Sports Medicine area and turns inland behind the Toyota dealership and then wraps around and eventually drains out into Sagamore Creek.

Vice Chairman Horrigan asked if this affected the Toyota dealership. Mr. Rice replied that that was one of the reasons it came to the City's attention. They felt it was restricting flow to the Toyota dealership area and backing up. This repair work would address that.

Chairman Miller asked who cut down the trees in that area. Mr. Rice replied that he did not know. Mr. Britz responded that Portsmouth Toyota cut them down as part of their clean up effort on the site. He added that this site has been under a lot of scrutiny and this project is the proper way to improve flow on the site.

Mr. Adams asked if the cutting of the trees caused this problem. Mr. Rice said that he did not think so. He said that the tipping over of the tree was what caused it and Portsmouth Toyota claimed the tree was already tipped over. Mr. Rice felt they were accurate in their statement.

Ms. Blanchard felt this project was an improvement and she would support it.

Ms. Blanchard made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Mr. Adams. Chairman Miller asked for discussion.

Vice Chairman Horrigan asked for clarification regarding the process. Mr. Britz explained that the Commission would be voting to authorize the Chairman to sign the Permit By Notification application so that the application can be processed expeditiously.

Chairman Miller asked what was behind the rock area. Mr. Rice stated that there was a sewer line that was perpendicular to the culvert. He added that there are three culverts that come out in this area.

Ms. Tanner suggested that when they re-seed they use something that does not require mowing.

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

The motion to recommend approval of the Permit By Notification application to the State Wetlands Bureau passed by a unanimous (7-0) vote.

III. PRESENTATION

Mark West, West Environmental, Inc. – Vernal Pool Mapping

Mr. Mark West of West Environmental, Inc. gave an informal presentation on the City wide vernal pool mapping which has been done in preparation for a final report to the City Council.

IV. OTHER BUSINESS

A. Update on revisions of Draft Wetlands Ordinance

Chairman Miller informed the Commission that a letter was sent to Chairman John Ricci regarding the Commission’s comments on various issues raised during the joint meetings with

the Planning Board. The letter was also sent to the City's Zoning Ordinance Consultant, Rick Taintor.

Mr. Britz told the Commission that Mr. Taintor has incorporated the Commission's changes and the next step is for the Planning Board to finalize the draft zoning ordinance and put it out for public comment.

Vice Chairman Horrigan commented that the Toyota dealership case was decided against the City at the Supreme Court level. He asked if the City was still vulnerable in that area. Mr. Britz said that they have looked at the ordinance for that specific purpose with Assistant Attorney Suzanne Woodland to try to prevent the same thing from happening in the future.

At this point in the meeting, there was lengthy discussion regarding manmade wetlands. Mr. Britz explained that manmade wetlands are jurisdictional wetlands and are not excluded from the ordinance.

Ms. McMillan pointed out that there are new State documents coming out that could be referenced.

Vice Chairman Horrigan thought that the Commission did not want the use of pesticides to be included. He pointed out that the new Shoreland provisions also prohibits its use but allows it if it is by a commercial applicator. Ms. Tanner felt that was in regulations because of the fear of mosquitoes. Vice Chairman Horrigan said that he saw City workers spraying the sidewalks and he felt they should stop doing that. Mr. Britz explained it was pavement management.

Vice Chairman Horrigan asked that the spraying issue be added to next month's agenda and that the Commission bring it to a vote as to whether to ask that the spraying cease. Mr. Britz felt that they should have someone come and talk about it so that the Commission had information to back it up their concerns. Chairman Miller said that he could write a letter to Steve Parkinson asking what they are using so the Commission will be better informed. He said he would try to get the information for the next meeting.

B. Update on formation of Open Space Sub-Committee

Chairman Miller said that he has had interest from several Commissioners who would like to sit on this committee. He said he would like to set a date for the first meeting.

Ms. Powers asked if there was a limit to the number of Commissioners sitting on the committee. Chairman Miller replied no.

Mr. Britz suggested that some potential dates be chosen and then emailed to the Commissioners.

V. APPROVAL OF MINUTES

June 11, 2008

Ms. Powers stated that on Page 3, the second to the last paragraph, the word “walk” should read “work”.

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

Ms. Powers mentioned a DES habitat workshop being held on July 22 in Portsmouth. She wondered if it would be something helpful to the Commissioners for their work on the Commission. Chairman Miller said it could be but it would be more helpful for someone in a consulting position. He indicated that he would be attending.

VI. ADJOURNMENT

At 5:10 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 September 10, 2008.