

**MINUTES OF THE
CONSERVATION COMMISSION MEETING**

CONFERENCE ROOM "A"

3:30 P.M.

NOVEMBER 12, 2008

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

MEMBERS ABSENT: Eva Powers, Alternate Richard Adams

ALSO PRESENT: Peter Britz, Environmental Planner

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I. STATE WETLANDS BUREAU PERMIT APPLICATIONS

- A. Standard Dredge and Fill Application
Market Street
Pease Development Authority – Division of Ports and Harbors, owner
Assessor Map 119, Lot 5

Mr. Geno Marconi, division director of the Division of Ports and Harbors, Mr. Noah Elwood and Ms. Cheryl Coviello, both of Appledore Marine Engineering were present to speak to the application.

Mr. Marconi stated the Port Authority developed a set of plans back in 1990 to expand the terminal that included some upriver construction. Over the years only part of the project was completed which was the completion of the barge dock. Back in 2001, the Legislature merged the Port Authority with the Pease Development Authority. After that happened, they re-examined the 1990 plan. Mr. Marconi said that they realized that the ships were getting bigger and with the current design of Portsmouth Harbor, it was difficult to take in larger ships. This was how they came up with the design that was before the Commission.

Mr. Elwood explained that the existing dock was constructed in two phases, started in 1964 and completed in 1977. It currently covers 33,000 square feet of area. The total length of the dock is about 600 feet long but there is only about 500 feet of usable space. With the existing structure, a significant portion of a large ship hangs off of the end of the dock which can cause docking problems.

Mr. Elwood said that the proposed construction was very similar to the existing dock in that they will be using large diameter steel pipes sunk into bedrock. He added that the full expansion was approximately 25,000 square feet which will be supported by seventy steel pipes. He said that to form the dock along the shoreline, they will have a concrete curtain wall. They will also be adding a mooring dolphin. The mooring dolphin will allow them to get more lines to the aft of the ship. This would be designed to resist the wind forces.

Ms. Tanner asked how deep the water was. Mr. Elwood replied that at the base of the dock it was thirty five feet.

Ms. Tanner asked what they would do with the bedrock that was removed. Mr. Elwood said that it would be removed off site.

Mr. Elwood explained that some of the water along the shoreline currently drains into some type of retaining structure and then into the ocean. He said it was their intent to capture as much of the water as possible and re-grade the shore side area and add new catch basins and oil/water separators.

Chairman Miller asked if they knew where the new drainage and oil/water separators would be located. Mr. Elwood said that they did not know the locations but there would be about two or three of them.

Ms. Maher asked how much dredge spoil there would be. Ms. Coviello replied that there would be no dredging involved. Mr. Elwood pointed out that there would be excavations above the tide lines.

Ms. Blanchard asked when they anticipated doing the work and how long would it take. Mr. Elwood replied that it would take about a year to secure all of the necessary permits so he anticipated starting the project at the end of 2009. The construction would last about a year to a year and a half.

Chairman Miller asked what the bottom material was that currently exists in the pool area. Mr. Elwood said that within the pool area it was rip rap and then out in the area where the extension will be there are some areas of bedrock which transitions to a gravel bottom.

Chairman Miller asked what the environmental mitigation from 1993 was. He also asked what the 1993 permit allowed compared to what they are proposing now. Mr. Marconi explained that when they applied for the wetland permit in 1993 there were mitigation requirements specified. The requirement was for every square foot of area that was going to be disturbed; they were to replant eelgrass in other areas of the harbor. Mr. Marconi pointed out that there was a five year period of time when it was not certain whether the project would move forward. Included in the project was a fifteen year monitoring component. He said that Dr. Short from University of New Hampshire was doing the monitoring of the mitigated areas. He pointed out that the 1993 project was a more extensive project than what they are looking at now. Because of the delays in the start up of the mitigation, the complexion of the project changed.

Chairman Miller asked if the 1993 plan had a lot more surface area than the proposed plan and if the mitigation was completed for the 1993 plan. Mr. Marconi replied yes. Chairman Miller asked if the pool area was never filled in because of cost. Mr. Marconi replied yes. He added that the two approach bridges were put in because of lack of funds. He continued to say that if this expansion is completed, they would certainly be able to handle big projects.

Ms. Maher asked how the expansion would affect the direct access to the dock. Mr. Marconi showed Ms. Maher on the plan how the vehicles would get to the dock.

Ms. McMillan asked Mr. Elwood to show her on the site plan what area would drain to the new oil/water separator. Mr. Elwood showed her on the plan which was followed by considerable discussion about drainage on the site.

Hearing no other discussion, Vice Chairman Horrigan made a motion to recommend approval of the application to the State Wetlands Bureau with the following stipulation:

- 1) That an oil water separator is installed as part of the storm water management improvements included in the project as presented to the Conservation Commission and outlined in the Dredge and Fill Report.

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

Vice Chairman Horrigan commented that the need for the project was self apparent. He said the bottom of the river at that location was how it was described by the applicants. He stated that there was a remote possibility that any marine vegetation would grow on the site and that the site would probably remain as it is currently.

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 an oil water separator is installed as part of the storm water management improvements included in the project as presented to the Conservation Commission and outlined in the Dredge and Fill Report.

Mr. Marconi extended an invitation to the Commission to come down to the dock anytime to see the progress.

B. Standard Dredge and Fill Application
 130 Crescent Way
 Ken Scarpetti, owner
 Assessor Map 212, Lot 157

Mr. Jim Fougere of Schauer Environmental Consultants, LLC and Bob Desmathe, one of the owners were present to speak to the application.

Mr. Fougere stated that this was an after the fact permit for work that was done in the tidal buffer of the Piscataqua River. He said that the City informed the owner of the problem when it was discovered that a wall was under construction. He met with Dave Price from DES who recommended that the owner go through with the permitting process.

Mr. Fougere explained that they would like to retain the wall and create a secondary wall as well to help with the grading. The owner was also proposing a deck and screened porch as part of this application.

Chairman Miller clarified that this application was for the existing wall, the future wall and the addition on the house. Mr. Fougere replied yes. There was discussion on the 100 foot City setback. Mr. Britz pointed out that the setback did not apply in this part of the City.

Mr. Wazlaw asked the reason for the wall. Mr. Desmathe explained that the land slopes off very quickly making the backyard almost unusable. He said the reason for the wall was to raise the back edge to be able to bring the yard out. He added that the building inspector came out and said that he thought the addition to the house violated the new Shoreline Protection Act.

Vice Chairman Horrigan pointed out that on the plan the wall was referred to as a retaining wall. He said that he felt the only thing that it was retaining was the fill that was put in there. Mr. Desmathe explained that the original deed stated that the property went back 90 feet. He said that over time the property line, along with the abutting properties, seemed to have been extended.

Mr. Fougere indicated that they submitted information to the Natural Heritage Foundation and received a hit. He said he would see where that goes.

Ms. Blanchard asked when the work was done. Mr. Desmathe answered about a month ago. He explained that when they found out they might be in violation, they went to the State. Ms. Blanchard stated that she had a big problem with after the fact approvals.

Mr. Britz asked how many trees were removed. Mr. Fougere said that eight trees were cut. Mr. Britz asked if they have looked at the new Shoreline Protection rules. Mr. Fougere replied yes.

Ms. Blanchard stated that in consideration of the fact that there has been significant terrain alteration because of the cutting and the fill, have they considered making mitigation efforts as they move forward through the permitting process. Mr. Fougere said that the State would probably accept the planting of trees and shrubs.

Ms. McMillan said that she noticed when she visited the site that there was drainage coming out from the wall. She wondered if they had any plans to direct the drainage of the water. She said that she was worried about erosion. Mr. Desmathe told Ms. McMillan that it was just natural drainage and would go down the embankment.

Ms. Tanner left at this point in the meeting.

Ms. Maher asked what the surface material would be inside the proposed extension. Mr. Desmathe replied that it would be lawn. Ms. Maher said that she agreed with Ms. MacMillan and that some provisions should be made for the drainage. Mr. Desmathe replied that some stone under it should be adequate.

Ms. McMillan asked what would be in the fill behind the wall. Mr. Desmathe said it would be a sand fill.

Ms. Maher stated that she did not feel as if they had had enough time to look at the application. She added that it seemed incomplete. She did not feel the need to rush on it. Mr. Britz explained that the application came in on Friday and he wanted the Commission to have a chance to see it since it was an after the fact application. Chairman Miller commented that he was feeling the same way as Ms. Maher. He said they either vote on it or ask for more information.

Vice Chairman Horrigan asked Chairman Miller what additional information he would like to see. Ms. Maher said that she was concerned about the cutting that occurred. She added that she would like the opportunity to look at it further.

Ms. McMillan asked the applicants if they had any photos of the site prior to constructing the wall. She wondered what the slope was like and what was there for vegetation. Mr. Desmathe replied that there was just grass and vegetation, the same vegetation that is currently below the wall. He added that what was on the neighboring property was a pretty good indication as to what was there.

Ms. Blanchard asked Mr. Britz what the practical implications would be if the Commission said no to this application. Mr. Britz said that the application would go to the State with the recommendation that you do not approve of it. He also thought that the State would plug it into their State wetland review process as well as the shoreline protection process. He said that the State has to follow its rules as to whether the application is approvable or not.

Mr. Wazlaw suggested tabling the application until the December meeting. They could view the site again and could request additional information. Chairman Miller asked if there was any additional information that they needed. Mr. Wazlaw replied that more information was needed for the Shoreline Protection Act. Chairman Miller explained that the Shoreline Protection Act would be a State matter.

Vice Chairman Horrigan stated that he did not think his mind would be changed with any more information. He added that he would be glad to make a motion to request a delay of the application. Ms. Maher said that she did not like the after the fact approval but she was not sure that they had any jurisdiction. Mr. Britz said that the Commission has jurisdiction to make a recommendation on a Dredge and Fill application.

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

Ms. Blanchard stated that this was a significant terrain alteration and it would have been more helpful if they could have first looked at it.

Vice Chairman Horrigan said that a lot of work has been done but he felt it was questionable as to what has happened. He felt it has had significant impact to the shoreline. Trees have come

down and the slope has been changed. He could not see any circumstances in which he would vote yes for it.

Ms. McMillan stated that she agreed and said that she did not understand the need for this. There was no erosion happening on the embankment prior to the start of this project. She pointed out that the bank was amazingly stable. She did not see the reason for extending the yard, especially beyond what the neighbors have.

Ms. Maher pointed out that there was another property up the street that extended their yard a long time ago. She had a concern that when these properties change hands in the years ahead then there will be an inclination to do the same thing. She added that she did not want to give approval to an after the fact application that even if it was timely, they would not have given approval for.

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

II. OTHER BUSINESS

1. Update on 579 Sagamore Avenue application

Mr. Britz reported that the applicant originally filed a Permit By Notification application but the State determined that they would need to file a Standard Dredge and Fill application. They could probably expect to see that application before them in the near future.

Mr. Wazlaw asked what the standard of review was for Permit By Notification (PBN) applications. Mr. Britz explained that a PBN is a permit that is meant to be approved without any changes whatsoever.

Vice Chairman Horrigan felt that DES was objecting to the rip rap with the 579 Sagamore Avenue application. Mr. Wazlaw said he had a concern that sometimes proper information is not submitted making it difficult for the Commission to make a decision.

In other business, Mr. Britz informed the Commission that the Planning Department would supply the Commissioners (monthly) with copies of updates received daily from DES regarding the various projects that have come before the Commission. He said that he would appreciate the Commission's input on how best to communicate these updates.

Also, Mr. Britz reported on the Demoulas letter that was recently sent to the Kane Company and other abutters of the Demoulas Supermarket. He said that he received a call from the Kane Company and they are following up on the complaints.

Mr. Britz also informed the Commission of a beaver dam blocking the drainage outlet on the Home Depot site. They are working to solve the problem.

Mr. Britz said that the vernal pool report is now on the NHEP website but he has not had a chance to review it. He asked the Commission who would like a hard copy of the report once the review was complete. Ms. Maher, Mr. Wazlaw, Ms. Blanchard, Vice Chairman Horrigan, and Chairman Miller all stated that they would like to receive a hard copy.

Chairman Miller asked Mr. Britz where the draft zoning ordinance process stood. Mr. Britz said that the Planning Board is reviewing different sections now. Chairman Miller asked if the Commission would have a chance to look at their section of the ordinance. Mr. Britz thought that sometime in the winter there would be public hearings. Ms. Blanchard thought they were going to have another meeting with the Planning Board. Mr. Britz said he would try to get a draft of the document prior to it going to a public hearing. Ms. Blanchard added that if that was able to happen, she would like to see it on an agenda so that they can be prepared to talk about it.

III. NEW BUSINESS

A. Agenda items proposed at next meeting

Ms. Blanchard wondered, with regards to the Demoulas letter, how the Commission would go about setting a statutory fine for violations on other properties in the future. Mr. Britz said he would have to ask the Legal Department. Ms. Blanchard said it was not a priority but she did not want to drop this. She also asked what tools the Commission has to deal with after the fact applications. Mr. Wazlaw wondered how amendments to approvals are followed up. What was the enforcement by the City? Ms. Blanchard thought that this might be a separate meeting or work session with the Legal Department.

Chairman Miller asked three members of the public if they had anything they wished to convey to the Commission. Ms. Sarah Hamill stated that she was concerned about Mr. Richard Adams' resignation from the Commission.

Chairman Miller informed the Commission that he had received Mr. Adams' letter of resignation. He said he had not heard anything from the mayor but the process would be for him to make a new appointment.

Ms. Hamill stated that they have not felt welcome at the meetings. She felt it might be helpful during the meetings to ask if anyone from the public had anything to say. Chairman Miller replied that the Commission has asked them almost every time they have been there if they had public comment. He said it was a matter of what was on the agenda, time constraints, and whether there was anything on the agenda relating to the Sagamore Headlands.

Ms. Hamill asked about the open space sub-committee meetings. Chairman Miller told her that there have been three meetings so far and the meetings have been posted. Chairman Miller explained that the Commission recommended to the City Council that several seats be available for members of citizen groups and other city board members for the open space sub-committee. The City Council rejected that idea so subsequently the Conservation Commission formed the sub-committee among themselves. He added that there would be a point when the Commission

will ask for citizen input. At this point, the sub-committee was trying to write a Request for Proposal.

Ms. Hamill asked if the City Council would have to approve the money that was spent for the project. Chairman Miller responded yes, the City Council would have to approve money taken from the Conservation Fund.

Ms. Maher pointed out that the Commission meetings are not public hearings, however, when they have people who are interested in some issues, perhaps they could call Mr. Britz and have it put on the agenda. Chairman Miller stressed that time constraints and getting the work of the Commission done is the issue. He said he would rather have the person submit a letter requesting an item be added to the agenda.

Chairman Miller told Ms. Hamill that she was welcome to attend the meetings but he said he would not be opening the floor to comments unless he felt it was appropriate.

Ms. Blanchard suggested to Ms. Hamill that she come to the open space meetings so she would feel more comfortable with what was happening.

IV. APPROVAL OF MINUTES

1. October 8, 2008

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

Chairman Miller had two final pieces of business. One was to respond to Mr. Adams' letter of resignation. Mr. Adams stated his concerns in his letter and said he felt he could be more effective elsewhere. Finally, Chairman Miller said that he talked with the mayor concerning open space and in particular, the Commission's role in the possible use of the Jones Avenue site. He said he would be meeting with the mayor on Friday, November 14 at 4 p.m. and asked if another Commission member would like to accompany him. Ms. Blanchard and Vice Chairman Horrigan volunteered to attend.

V. 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 January 14, 2009.