

**MINUTES
OF
JOINT
WORK SESSION
PLANNING BOARD
AND
CONSERVATION COMMISSION
CONFERENCE ROOM A
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:30 P.M.

MAY 29, 2008

PLANNING BOARD

MEMBERS PRESENT:

John Ricci, Chairman; Jerry Hejtmanek, Vice-Chairman; M. Christine Dwyer, City Council Representative; Donald Coker; John Rice; Richard A. Hopley, Building Inspector; Cindy Hayden, Deputy City Manager; and Norman Patenaude, Alternate

MEMBERS EXCUSED:

Anthony Coviello; Paige Roberts; and MaryLiz Geffert, Alternate

**CONSERVATION
COMMISSION**

MEMBERS PRESENT:

Steven Miller, Chairman; Jim Horrigan, Vice Chairman; Barbara McMillan; Brian Wazlaw; Eva Powers; Allison Tanner; and Richard Adams, Alternate and MaryAnn Blanchard, Alternate

MEMBERS EXCUSED:

Skye Maher;

ALSO PRESENT:

David M. Holden, Planning Director;
Lucy Tillman, Chief Planner
Peter Britz, Environmental Planner

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A Site Walk was held prior to the Work Session at Commerce Way.
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Chairman Ricci had the Board members introduce themselves for the viewing public.

I. JOINT WORK SESSION WITH THE CONSERVATION COMMISSION

- A. Property located off Commerce Way and Portsmouth Boulevard – Proposal for additional development and site improvements;**

Chairman Ricci explained that they were discussing the merits for the potential application for a Conditional Use. He did not want to get too deep into types of treatment but rather wanted to get a consensus of whether this has merit. He felt that the Site Walk was very eye opening.

Ms. Tanner remembered a petition that came before them for a Conditional Use Permit to move the School House Restaurant and the Conservation Commission recommended denial of that. Mr. Coker recalled that they were going to move the school house restaurant. Mr. Holden thought they might want to use Article 6 to help guide the discussion so they are looking at the Conservation Commission criteria to frame some discussion. He read off the criteria for their consideration:

1. The land is reasonably suited to the use and the wetland values are not adversely impacted;
2. There is no adverse impact on the wetland values of the surrounding properties;
3. The application shall demonstrate that alterations of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals;
4. The applicant shall demonstrate that the proposal is the alternative with the least adverse impact to areas

He felt the applicant should be looking to see if they feel there was sufficient merit.

Mr. Coker had a couple of significant concerns. One concern is that in summary the flow is going to be re-routed. He is concerned that the flow from one area gets off the streets and it concentrates in one place and then goes into the wetland. Also at the top, the water sheet flows down and there were some catch basins but in some areas the water runs straight down into the wetland. He felt there was a lot of run off that was untreated. He is having a hard time finding the value in improving one wetland when the other flow is still what it is now. He doesn't see the value of digging and channelizing if they still have a lot of bad "stuff".

Chairman Ricci commented that as the plan was presented, he has several questions and a lot of things just didn't feel right to him. He was not comfortable with the building layouts and the treatment. He needs to see a lot more information as far as treatment. There is a lot of stuff going into this area and he needs to know where it goes and where it comes from and are there areas that can help upstream to prevent what they saw downstream?

Ms. Tanner thought if they looked at the ordinance and think about what the least impact was, this plan does not qualify. Channelizing the stream is significant alteration to the area and while it is disgraceful how people have littered back there and the people aren't held accountable is a deficit on the City's part. They need a regulation to prevent that from happening. She does not think a major disturbance of this area is suitable.

Chairman Miller he liked the idea of improving these wetlands. But, he reinforced what Ms. Tanner said that walking along Portsmouth Boulevard it is beautiful and he doesn't believe they can replace the water quality purification function that the forested wetland has. It is a nice visual buffer, sound buffer and environmental buffer, without benefit of a good drainage plan. He is concerned about losing the forested buffer on the one end. He would need to see good data that supported the trade off and what they were losing in terms of water quality and what they were gaining in terms of water quality. Aside the visual and the trash, there are a lot of signs of health and habitat and activity and there are birds. He does not think they will see improved water quality with the plan as it is presented.

Deputy City Manager Hayden felt that Chairman Miller "hit the nail on the head" with the word "trade off". They would be giving up that forested area that is wetland in exchange for what? She's not sure. She has to separate out the aesthetic part as it is disgraceful out there. She does not see the trade off for retail development on that end piece. She believes just on probability that sooner rather than later the K-Mart plaza will be redeveloped and that is where she would like to see changes and drainage swales behind that.

Chairman Ricci also commented that he would be more inclined to support if the retail building was removed and some mitigation items were done. He agreed with Chairman Miller that even though it is a bit of an eyesore, he did see plants, etc. The retail bothers him more than the office building in the rear.

Mr. Coker doesn't know enough about the value of channelizing that and creating the pond. It takes a long time for a wetland to recover from being disturbed and there are a lot of red winged blackbirds, a muskrat and green frogs back in there. He too questions the trade off. He does not have enough information to make a decision. He thinks it would be worth while to have an independent certified wetland scientist do a study of what is there and give a professional opinion about this plan and digging the pond. For instance, where does the stuff go when it leaves the pond? The applicant made reference of going to the PSNH property, who is not on board at this time. But even if PSNH does something, they are negated by the upper left hand corner where the run off goes straight into the wetlands. He does not see this as a viable plan as presented and he would like a lot more information

Ms. McMillan felt an independent wetland scientist is a good idea. The phragmites is a big concern and she understands the concept of buildings the pond but any disturbance just creates a habitat for the phragmites to take over. She doesn't see any of the things that are presented as mitigation as a good trade off. She felt the habitat would take a long time to recover.

Mr. Britz stated that the phragmites are not new and has been there for many years so it doesn't spread that fast. They would need to study whether that would be a threat out there because that wetland is currently functioning pretty well. Realigning and grading the pond could have a benefit but the wetland has its own positive function right now so they have to be careful when they start tinkering with it.

Mr. Coker asked Mr. Britz about the nice blue sheen on the top of the water. Ms. Tanner stated it is pollen. Mr. Britz indicated it could be pollen but there is natural oil in wetlands. If you try to break it apart and it breaks apart easily it is the natural oil but if it doesn't, it is motor oil. Mr. Coker asked him about his comment that there is a functioning wetland value now. Mr. Britz responded that there certainly is. One area has phragmites and they aren't even that extensive. The idea that they do not know enough now is a good point.

Mr. Holden encouraged everyone to speak or else they will be doing this at an application process.

Mr. Wazlaw felt, after seeing it tonight, it is a significant wetland. It is large and it provides a wildlife habitat. There is some trash but it can be removed. It is a real functional wetland. The sedimentation worries him behind DeMoulas. He thinks something has to be done but agrees with Ms. McMillan that altering or tinkering with the wetland area could have some consequences that they don't expect. He would agree to have an independent source look at it and maybe offer some advice.

Deputy City Manager Hayden asked if the retail portion wasn't part of this, how would people feel about the presentation?

Mr. Coker stated that his understanding is that the way it is proposed is that the retail will pay for the wetland mitigation so felt one could reasonably assume that if there was not retail, there is significantly reduced wetland mitigation. He was not even sure the mitigation is workable. Would he be more supportive of a proposal without the retail? He's not so sure. He doesn't understand the wetland enough and what the impact is. He would like an independent wetland scientist evaluation before he makes his next thought process.

Chairman Ricci felt that he was hearing they would like to get a significant amount of data and possibly have the Conservation Commission have a work session with the applicant Everyone is in

agreement that they don't know what they are looking at and don't know what to ask. They need more information prior to seeing a Conditional Use Permit application.

Mr. Coker felt that the way it sits now, there are two criteria which he is not sure he could vote yes on. Whether the land is reasonable suited to the use and the wetland values are not adversely impacted. He was not sure that the land was reasonably suited and he doesn't know if it is adversely impacted. That would be the purpose of the wetland scientist. He also doesn't know that the alternative with the least adverse impact. He hates to do this to any applicant but he really felt they need more information and the first step would be the independent.

Deputy City Manager Hayden asked if the wetland scientist is first or if the application is first? The application would indicate what they are looking at. The applicant is here for feedback. Isn't the ball in their court to decide what they want to do next? She wanted to clarify when they think they should bring in a wetland scientist? Mr. Holden reminded the boards that the applicant already has a wetland scientist on their team. At this pre-application stage, they are giving guidance of whether or not to start a process, not what the answer to that process is going to be. If he was the applicant, he would be very frustrated. They need to know if they should go down this road and are looking for comment on what is before the Boards tonight. He's not sure it's fair, at this point, to ask for more information.

Ms. Blanchard indicated that she spent quite a bit of time reviewing the written proposal. The existing wetland is very clear to her and the retail is entirely in the wetland buffer and that is not acceptable to her. For purposes of getting things on the table and clarify things, she doesn't think they need to ask the petitioner to go through the extra expense of documenting what we know is a functioning wetland.

Ms. McMillan stated that if the proposed retail building justifies the money to do the mitigation, what she finds the most disturbing is the proposed building in the wetland and the mitigation. Without the building and the mitigation they would be much better off.

Vice Chairman Horrigan stated that when this plan originally came before them he felt very positive and he appreciated the spirit in which it was offered and parts looked like improvements. Now that he has been on the site he feels that he needs more information. He would like to know what might happen hydrologically along the wetland along Portsmouth Boulevard. It is a mess right now but it is serving a purpose. What happens when they start re-channelizing the flows. Also, he would like more information on the two potential treatment areas and would like to know what kind of technology they have in mind as there is a wide variety of treatments. Hopefully they will be doing something which is state of the art which would allow them to learn more about how certain types of treatment systems work. He does not see any need for a pond. It is a perfectly good site and he's afraid they will end up spreading the phragmites all over the place. He is torn at this point. He does appreciate their intention. He would like to see a little less paved surface. It is the hydrological flows he is concerned about.

Deputy City Manager Hayden felt it seems they all ought to weigh in based on what they know now. The applicant has a fair amount of expense into this and they need to know what to do next.

Ms. Powers indicated that Ms. Blanchard summarized her feelings in the sense of having the entire retail building in the wetland buffer and looking at all of the walkways in the wetland buffer. She does not feel the land is reasonably suited for that purpose.

Ms. McMillan felt the same as far as the building being in the buffer and the mitigation being an off set.

Councilor Dwyer felt that Ms. McMillan said it best. The primary reason given to them before was the trade off between the two. What they are really looking at is clean up and that is what everyone is looking at as opposed to actually changing what is happening out there. She is looking forward to other Planning Board issues.

Vice Chairman Horrigan is torn but he does not want to discourage them from working on this further.

Chairman Miller did not think it was suited for here. It gives them a lot of function and he is concerned about channelizing the stream and flow. He is willing for trade offs but he doesn't see it on this plan. He would like to see this reconfigured to pull out the forested wetland but he doesn't know how to do that. He just doesn't think this is well suited.

Chairman Ricci stated that the retail piece really bothers him. He would like to see the retail piece removed. He would like to see grease and oil water hoods and felt there were some small mitigation measures they could take on the site which would provide a huge benefit. He would also echo that he appreciates the applicants' efforts and mitigation but the retail piece bothers him and there are other items they could implement down the road.

Chairman Miller asked about some of the trade offs. Some of the buffer enhancements are nice but he doesn't think the buffer enhancements give them the same water quality improvements that the forested wetland does. Without knowing more about the way the water flows, he doesn't believe those buffer enhancements are going to give them the same water quality that they currently have.

Mr. Britz really appreciated the applicants' effort. One of the draw back is the limited area of site area that they have to do wetland mitigation on. He felt a little more could be done with the site that they have. He is wondering why they didn't approach the area that is very sedimented behind DeMoulas and improve the corridor and why they isolated a separate stream channel from that. Maybe it is a hydrology or topography thing. He too feels like the retail area has lot of benefit and water quality, forested wetland and open space feeling to it. It is a little too much going on and too little area to do the mitigation that they want, given that there are wetlands where they want to mitigate. He sees why they stayed out of those wetlands because it's very difficult to get wetland permits in wetland areas.

Mr. Wazlaw felt it is an ambitious plan but he has a difficult time with the retail space and wonders if that is the right place for it as it is in the buffer and in the wetland. The Conservation Commission has had issues with buildings edging into the wetlands before.

Mr. Hopley agreed it is the retail component that is a problem for him and fussing around in the perfectly good wetland.

Vice Chairman Hejtmanek went back to the retail portion in the wetland which bothers him and puts a risk into the existing wetland by developing. He would rather not see that happen.

Mr. Rice agreed with everything that has been said. The retail area is the area that bothers him the most. He would have to know that the construction would be mitigated with post mitigation steps to improve the wetlands or maintain them in a better way. They did not discuss the 3 story office building but he does not have a problem with that at all.

Ms. Blanchard stated that she could not support the proposal because of the retail space and has concerns that the mitigation would be more destructive.

Deputy City Manager Hayden would like to see an aesthetics benefits. In terms of the wetlands mitigation she felt it was very precedent setting to think they would allow construction of a retail building in a wetland without a massive incentive.

Mr. Adams was opposed to it. He thinks they are pushing the envelope and bending the rules. He felt it strains credibility that the purpose is to improve the ecology of the site and the retail pays for it. He did not believe they were that naive.

Ms. Tanner agreed the site was not suitable.

Mr. Coker stated that he does not find two work sessions to be unduly burdensome to an applicant, particularly as this is a complex trade off. This work session really determines the direction. He agrees with the retail being problematic but he felt there is seemingly possible enough improvements that should the applicant decide to move forward, in order to support any proposal he would want an independent wetland scientist and a hydrology study because of the way the run off goes. As it sits right now, if this were a Conditional Use Permit application he would ask for those studies.

Mr. Patenaude favored the independent evaluation. Someone asked if this use was compatible to the zone at the last work session and he is not sure that was ever answered. Mr. Holden believed the property proposed for retail is OR so it would have to be a zone change or a use variance use.

Attorney McNeill advised the Boards that the direction is clear. He would like to say the developer is appreciative that they have taken the time to freely express their views. The next threshold is a significant step. They will consider what they have said and they have brought this to them in a spirit of good will and they will decide where to go next.

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Deputy City Manager Hayden reminded the Planning Board that there will be a work session next Thursday and also that they will be winding up their weekly work sessions the end of June. Rick Taintor and staff will keep working during the summer but no work sessions will be scheduled.

Chairman Ricci thanked the Conservation Commission for joining them on their Site Walk and Work Session.

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II. ADJOURNMENT

A motion to adjourn at 8:45 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on July 17, 2008.