

**MINUTES  
CONSERVATION COMMISSION  
1 JUNKINS AVENUE  
PORTSMOUTH, NEW HAMPSHIRE  
CONFERENCE ROOM "A"**

**3:30 P.M.**

**FEBRUARY 10, 2010**

**MEMBERS PRESENT:** Chairman Steve Miller; Vice Chairman James Horrigan; Members, Allison Tanner, Barbara McMillan, Brian Wazlaw, Catherine Ennis

**MEMBERS ABSENT:** Mary Ann Blanchard

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

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**I. OLD BUSINESS**

A. Approval of minutes – January 13, 2010

It was moved, seconded, and passed unanimously (6-0) to approve the minutes as presented.

**II. STATE WETLANDS BUREAU PERMIT APPLICATIONS**

1. Permit By Notification Application  
Route 1A (Sagamore Avenue) over the Sagamore Creek  
City of Portsmouth, owner

Ms. Deb Finnigan, City engineer for transportation was present to speak to the application. She stated that this project was a bridge repair. The plan was to place sister beams next to the existing beams that were in the worst condition. In 2005, an examination of the bridge identified about fifteen beams in need of repair. The plan was to reinforce them until the design work was completed, sometime in January of 2011. Construction would begin in August of 2011.

Ms. Finnigan said that it was a very simple job. They would slide beams underneath and attach them to the failing beams. Any debris that was currently in the bays would be cleaned out into buckets so that nothing would go into Sagamore Creek. She pointed out that the circles on the submitted plans showed the approximate locations of the beams that would be reinforced. There would also be a close examination of all beams. Ms. Finnigan showed the Commission on the plans where the lay down areas would be located. She added that no work would be done in the water or on the banks. All work would be done from the bridge.

Mr. Britz stated that these types of applications normally do not come before the Commission. They require the signature of the chairman but since this meeting was scheduled, it made sense to put it on the agenda.

Hearing no other discussion, Mr. Wazlaw made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Ms. Tanner. There was no additional discussion. The motion passed by a unanimous (6-0) vote.

### **III. CONDITIONAL USE PERMIT APPLICATIONS**

- A. 800 Lafayette Road  
Sureya M. Ennabe Revocable Trust, owner  
Assessor Map 244, Lot 5

Attorney Peter Loughlin, representative for the applicant and Mr. Tom Saucier of STY Design Consultants were present to speak to the application. Attorney Loughlin told the Commission that they tried to incorporate the Commission's suggestions from the last two meetings into their current plans. He felt they have submitted a detailed package and asked the Commission if they had any questions concerning it.

Mr. Wazlaw stated that he thought it was a great improvement to the site; however, he still had concerns with the flow of the water from the front of the building.

Mr. Saucier indicated that he would speak to all of the concerns the Commission voiced at the meetings. He said that one of the concerns was the proposal to put a lawn in at the back of the property. It was suggested that clover or a wildflower mix be used instead of grass. He explained that they had a landscape architect look at the plans and there was concern as to whether clover was hardy enough to survive in that area. They decided to propose a low maintenance lawn area for safety and access but there would be restricted mowing and no use of fertilizers.

With regard to the catch basin at the front of the site, Mr. Saucier explained that the device they would be using was called a "snout" that would fit over the outlet pipes of the catch basins and collect oil and floatables.

Mr. Saucier explained that the water from the front of the building would flow toward the street and the water from the rear and the roof would flow toward the wetland. He said that the drainage patterns would not change and there was no proposal for any significant re-grading. He added that they would be replacing the existing canopy with a new canopy and would be replacing the existing building with a smaller building.

Another concern stated by the Commission was the amount of loam to be used once the pavement was removed. Mr. Saucier said that they were proposing to use a minimum of four inches of loam but would re-evaluate that amount when the work began. He pointed out the Erosion Control plan in their packets for their review. Mr. Saucier informed the Commission that they filed a Dredge and Fill application with the State yesterday for permission to remove the pavement.

Vice Chairman Horrigan stated that he appreciated all of the changes and for responding to all of the Commission's remarks. He disagreed with the comment that clover would not be hardy enough. He said that as an amateur gardener, he was a big fan of clover. He said that it holds nitrogen in the soil and dies off to make good fertilizer. Other than that, he liked the plan that was presented.

Ms. McMillan felt that the plan was vague about how the water would flow from the parking lot to the vegetative area. She asked if there would be curbing between those two areas. Mr. Saucier explained that there would be no curbing at the rear of the property. He added that the run off from the employee parking lot at the south end of the building would sheet flow through the vegetative buffer. The roof run off would probably go through a shallow swale.

Hearing no other questions, Chairman Miller called for a motion.

Vice Chairman Horrigan made a motion to recommend approval of the application to the Planning Board as presented. The motion was seconded by Ms. Tanner. There was no additional discussion.

The motion to recommend approval of the application to the Planning Board as presented passed by a unanimous (6-0) vote.

B. 187 Wentworth House Road  
J.P. Nadeau, owner  
Witch Cove Marina Development, LLC, applicant  
Assessor Map 201, Lot 12

Mr. J.P. Nadeau, representative of Witch Cove Marina Development, LLC and Mr. Marc Jacobs, certified wetland and soil scientist for the project were present to speak to the application. Mr. Nadeau passed out a memorandum to the Commissioners.

Mr. Nadeau stated that he was advised by his professionals that Witch Cove Marina Development, LLC should not be required to apply for a conditional use permit because they have been in the permitting process with the Conservation Commission since they filed their first application with the State in April of 2009. He explained that the first exhibit in his memorandum (tabbed in blue) spoke to that issue. Mr. Nadeau pointed out that the process began by wanting to move two buildings from the easterly side of the property to the westerly side of the property. There was no master plan for the site and also no thought of a yacht club. He continued to say that when they presented the original plan, the Commission suggested they come back with a total plan for both lots. However, Mr. Nadeau stressed that he did not feel they needed to come before the Commission to move the two houses when it was first proposed in April of 2009. He stated that they have applied for the conditional use permit and feel that they have satisfied all of the criteria.

Mr. Nadeau stated that the first bulleted item in the memo addressed the existing conditions and their relationship to the tidal buffers and all of the setbacks and other regulations. Item #2

addressed the two residential buildings. They sit in the most active section of the commercial uses of the marina. He felt the proposed location provided the least encroachment in the tidal buffer and would allow them to comply with all of the setbacks and requirements. Mr. Nadeau explained that exhibit 4 showed the proposed locations. The third bulleted item addressed adverse impact of which Mr. Nadeau said there would be none. He reinforced this point by referring to exhibit 4 which showed the buffer delineations. He felt the new location was a marginal encroachment into the tidal buffer. Where the buildings are presently located, there was no natural vegetative buffer between them and Sagamore Creek. At the proposed location, they were planning to put grass in and plant blueberry bushes to improve the quality of the water run off. Mr. Nadeau pointed out that the two abutting property owners approved of the plan. Exhibit 2 showed letters of support from those abutters. He added that moving the buildings would make the marina more functional.

Mr. Nadeau gave the Commission additional photos showing conditions on the site.

Mr. Nadeau stressed again that all they were asking for was to move the two houses and accomplish this first step to help the marina become more functional. He said that they were trying to de-intensify the lot. The prior plans called for three new homes in that area.

Ms. Tanner asked Mr. Nadeau why he has ignored the 100 foot tidal buffer. She pointed out that the houses would be sitting in it. She felt that the houses were not harming anything where they were located now. Mr. Nadeau responded that he did not see it as ignoring the buffer but saw it as an improvement with natural vegetation between the houses and Sagamore Creek. He felt they were respecting it.

Ms. Tanner said that it was hard to take it all in, in a short period of time. She pointed out that the application did not address the landscaping plans. Mr. Nadeau responded that he saw this as a give and take process. He thought this was a win-win situation for both conservation and the marina.

Mr. Wazlaw asked how much of the houses would be in the tidal buffer. He estimated it to be about 500 square feet. He thought it would be a helpful figure to know. He also asked if there would be parking in the area where the houses once stood. Mr. Nadeau said it would be either parking or boat storage. Mr. Wazlaw said it would be nice to have a plan to show what would be there. Mr. Nadeau added that it would have a pervious surface.

Vice Chairman Horrigan stated that he understood the applicant's frustration. He said that from a conservation perspective he has felt deeply frustrated initially by the proposal but also by the procedures. Mr. Nadeau commented that they would not be here unless the Board of Adjustment granted his request. Vice Chairman Horrigan pointed out that the Board of Adjustment's criteria were much different than the Conservation Commission's. He asked if any other variances were requested besides the moving of the two houses. Mr. Nadeau stated that they requested to add a second story on the bait shop and to raise the height of one of the houses to be in conformity with the other house. Vice Chairman Horrigan asked if they were granted the variances. Mr. Nadeau said the variance for the bait shop was granted but the other was not. He added that they would be going back before the BOA to ask for a lesser height expansion. Mr. Nadeau reiterated that

all they wanted to do was upgrade the marina by moving these two houses. They then were asked for an overall plan and it was not their plan to do a massive development. Now it was coming back to haunt him to suggest that he is doing things piecemeal.

Vice Chairman Horrigan pointed out that the moving of the two existing houses became two new houses. Mr. Nadeau explained that the plan changed completely after the first submission. He said that he did not know how hard and fast the nonconforming use situation would be.

Vice Chairman Horrigan asked if it this application was just for the moving of the two houses. Mr. Nadeau replied yes and explained that he was trying to develop something to come back before the Commission for the lot across the street. He said there was no plan at present and there never was a plan unfortunately.

Mr. Wazlaw commented that the project was an improvement to the area. He pointed out that there are a lot of issues associated with the site; it was in the Waterfront Business zone, it had a 100 foot tidal zone, and it had a wetland. Mr. Wazlaw said he has been running by the site for twenty years and has watched the area deteriorate. He felt the project was coming together. It was a large project and so the size of it raised concerns. He did think, however, it would be a big improvement to the area.

Ms. McMillan clarified that what Mr. Nadeau was talking about was the wetland buffer and not the tidal buffer. She asked if the houses were currently in the tidal buffer or the wetland buffer. Mr. Nadeau thought they were in the wetland buffer. Mr. Britz added that a tiny portion of the property was in the tidal buffer.

Ms. McMillan had a concern about the land in front of the houses and where the existing ones would come out. She wanted to know what would be put in place with regards to soil and vegetation. She also asked about the septic system. Mr. Nadeau replied that the septic was already in place. He showed the Commission where it was located on the plan. Ms. McMillan felt there was some ability to move the houses in such a way that they would not in the buffer area.

Mr. Marc Jacobs pointed out that the houses were as far back from the tidal buffer as they could be and still respect the side and front setbacks required by zoning. Ms. McMillan suggested angling the houses differently. Mr. Nadeau said they were positioned because of the drive and the access to the drive. He also pointed out that his BOA approval was based on where they were represented on the plans. He also said that it would be an improvement on the water side because it was all packed gravel in that area and in front of it would be vegetative matter.

Ms. Tanner said it would help to know how much of the houses were currently in the wetland buffer and how much disturbance would be needed in the proposed area. She also asked what the driveway material would be. Mr. Nadeau said the driveways would be pervious pavement. Ms. Tanner pointed out that they had none of that information before them. Mr. Nadeau suggested making it a condition of the approval.

Ms. Tanner asked how the run off from the roofs would be handled. Mr. Nadeau stated that he understood it would handle itself. He said he would put in a dry well if they requested one and added that he would do whatever the Commission wanted.

Chairman Miller suggested postponing the application to next month to allow time for the applicant to bring the calculations that have been asked for. He said they would like to know how the buffer would be treated, percentages in the buffer, existing and proposed, roof run off, and the driveway.

Mr. Britz added that the applicant would need to be very specific about what was going to happen where the houses are going to be moved to and what would happen long term to the area where the houses were removed. He suggested also showing where and what the plantings would be. Mr. Britz pointed out that all of this information was in the ordinance but that he was willing to sit down with Mr. Nadeau and go through it. Mr. Nadeau said he would do that.

Ms. Tanner said that anything else that was going to put gas or oil in the area was not looked upon favorably. She also suggested plantings instead of grass.

Vice Chairman Horrigan made a motion to postpone the application to the next meeting so that landscaping plans could be submitted and reviewed. He felt this was a good idea because the Board of Adjustment had given permission to move the houses and the Conservation Commission was not in a position to override that. He also said that he thought the new locations were better locations than where the houses are currently.

The motion was seconded by Ms. McMillan. She added that in addition to the landscaping plan, she would like to see square footage figures. Chairman Miller said he would also like to see the septic.

Mr. Nadeau thanked the Commission. He said that he could understand why they wanted to see these things and pointed to his inexperience in the process as to why it was lacking specifics. He thanked them for their input.

Hearing no other discussion, Chairman Miller called for the vote. The motion to postpone the application to the next meeting passed by a unanimous (6-0) vote.

#### **IV. NEW BUSINESS**

1. Drainage improvement presentation – Clough Drive  
In preparation for a minimum impact expedited application

Mr. Dave Desfosses and Mr. Jared Sheehan, both from the Department of Public Works were present to speak to the application.

Mr. Britz stated that the project started as a grant for salt marsh improvements because neighbors complained about flooding in the area and the spreading of invasive species.

Mr. Desfosses explained that the Rockingham Planning Commission's preferred alternative was to put in a sedimentation basin down in the fresh water wetland area and remove all of the vegetation because it was full of phragmites.

After looking at the area, the Department of Public Works came up with an alternative which they are calling alternative 4. Mr. Desfosses explained that the drainage pipes in the area were hodge podge. Because the drainage system was below 100 year flood, when they have a big storm, the water backs up and the water cannot drain because the pipes are too small. He said that the plan tries to address three areas: inadequate pipes, phragmites and wetlands, and drainage on a school playground. Mr. Desfosses said Mr. Sheehan would explain the project in detail but the basic plan was to gate off the sensitive area, dredge out the existing swale, replace the undersized pipes, and to put in a stormwater sediment trap in a location where it can be maintained easily.

Mr. Sheehan stated that what was currently in place was a 15" drain line that drains into a swale. He said they were proposing to abandon that drain line and put in an 18" line with a sediment trap. They would also like to upgrade the drainage on Clough Drive. He showed two catch basins on the plan that they would like to upgrade. They were also proposing two more catch basins at the end of Haven Road.

Ms. Tanner asked how they were planning to handle the phragmites. Mr. Desfosses said that they were looking to the Commission for guidance with that issue. Ms. Tanner suggested that when it was pulled out, it should be put under black tarps and let the sun get to it. Chairman Miller said that it could also be burned but cautioned that the roots can go very deep to get to fresh water. Mr. Britz said that he would work with DPW on the disposal.

Vice Chairman Horrigan commented that he was not a big fan of fencing but he knew there was going to be a lot of fencing on the site. He wondered if it was possible to remove some of the fencing in the lower salt marsh area to allow the wildlife to pass. Mr. Britz said that he was concerned about disturbing the salt marsh in that area. Mr. Desfosses suggested cutting the posts off flush with grade and leave what was there. He added that he would want to run it past the school department for their approval. Chairman Miller stated that it made sense to cut out a triangular area of fencing in that area.

Ms. McMillan asked if the lower part of the fence could be installed in such a way as to allow wildlife to leave the wetland for the upland. Mr. Desfosses said that they could set the fence four inches off of the ground. Ms. McMillan said that would work.

Hearing no other discussion, Chairman Miller signed the Permit By Notification application for the project.

#### **IV. OTHER BUSINESS**

1. NH Association of Conservation Commissions membership due

Ms. Tanner made a motion to approve the expenditure of \$850.00 to the New Hampshire Association of Conservation Commissions for 2010 membership dues. The motion was seconded by Ms. McMillan. There was no discussion.

The motion to approve the expenditure of \$850.00 to the New Hampshire Association of Conservation Commissions for 2010 membership dues passed by a unanimous (6-0) vote.

Chairman Miller commented that the New Hampshire Association of Conservation Commissions had a nice newsletter. He thought it would be nice to update them on all of the work the Commission has done; the changes in the ordinance, the vernal pool inventory, and the wetland mapping. Mr. Britz suggested putting a link to the Association's newsletter on the City's website.

There was discussion concerning conditional use permits and the information required to be submitted for review by the Commission.

In additional business, Vice Chairman Horrigan suggested discussing the use of the Conservation Fund to purchase land. Most recently, the Stokel property has come up at City Council meetings as a possible purchase. He would like to discuss the use of the funds and what the Conservation Commission's role would be in acquiring such conservation land. He added that the fund was being considered for a Jones Avenue conceptual study as well. He thought it might be good to put the topic on the next agenda.

Mr. Wazlaw stated that if the Stokel land comes up for consideration, the Commission should have a site walk. Chairman Miller felt it was a bit premature. Mr. Britz informed the Commission that he has submitted a grant application to the Coastal program for funds. Other grant sources are being considered as well. He explained to the Commission that the process would be that the Conservation Commission would recommend the expenditure of funds for any purchase of land to the City Council. Chairman Miller said that it would be good to have a discussion at the next meeting.

There was discussion concerning the State Wetlands Bureau permit application for the dock at 67 Bow Street.

## **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 March 10, 2010.