

**MINUTES
CONSERVATION COMMISSION**

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

3:30 P.M.

JULY 14, 2010

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

MEMBERS ABSENT:

ALSO PRESENT: Peter Britz, Environmental Planner

I. OLD BUSINESS

A. Approval of minutes – January 8, 2009 (PULA meeting)

It was moved, seconded, and passed unanimously (7-0) to approve the minutes as presented.

Approval of minutes – June 9, 2010

Ms. McMillan requested a change on page 2. It was then moved, seconded, and passed unanimously to approve the minutes as amended.

II. STATE WETLANDS BUREAU PERMIT APPLICATIONS

1. Standard Dredge and Fill Application
206 Northwest Street
Elizabeth G. Vestner, owner
Assessor Map 122, Lot 6

Mr. Zachary Taylor, project planner for Riverside and Pickering Marine Contractors was present to speak to the application. He stated he spoke at the last meeting about this project. The timber bulkhead was deteriorating and was in need of replacing. A previous approval in 2005 allowed for the bulkhead to be replaced with a granite wall, but because of the new owner's financial situation, it would be too costly so they are in the process of amending that approval to put in a new timber bulkhead.

Mr. Taylor explained that he felt the best way to stabilize the eroding shoreline was with rip rap. He said it would be a permanent fix in that area. There would 184 square feet of impact over a 45 foot section.

Mr. Taylor clarified that all of the new revisions on the submitted plan was in red ink. Everything in black ink was from the previous approval.

Chairman Miller asked for clarification as to where the work would be done. Mr. Taylor showed him with the aid of the submitted photos, where the work would take place. He pointed out that they would not be touching any marsh grass. The impact is only occurring at the toe of the upland slope.

Chairman Miller asked Mr. Taylor to describe the work that would be done. Mr. Taylor explained that the existing timbers, cinder blocks, bricks, etc. would be removed. They would then dig out a toe and lay an 8 ounce non woven geo-tech style filter fabric over the bare soil. There would be a thin layer of crushed stone placed on top of that with a 24" minus on top of that.

Chairman Miller asked what would happen to the vegetation above it. Mr. Taylor said they would not be touching any existing trees. Some shrubbery might be cleared out.

Mr. Wazlaw asked the length of the work area. Mr. Taylor said it would be about 45 feet in length and about 4 feet wide. He added that at the widest section, it would be about 6 feet wide. Mr. Wazlaw asked if they would be changing the existing slope. Mr. Taylor replied no.

Vice Chairman Horrigan asked how high the tide was in that area. Mr. Taylor said it was close to 7 ½ feet. Vice Chairman Horrigan commented that the nearby bridge was going to be rebuilt and he wondered if that would change the tide. Mr. Britz stated that he did not think it would affect the tidal height.

Ms. McMillan asked where they would be doing the work from. Mr. Taylor answered that it would be done from the upland. Ms. McMillan was worried about additional disruption. Mr. Taylor said that all of the growth was right on the slope itself.

Mr. Taylor stated that the owner was interested in talking about plantings along the timber bulkhead. He also said that if the lawn gets disturbed, it would be reseeded.

Vice Chairman Horrigan encouraged any type of marine vegetation on the rip rap. Mr. Taylor said that it was above the tidal zone and said it would have a more natural feel than the Noble's Island rip rap.

Hearing no more questions, Chairman Miller asked for a motion.

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

Vice Chairman Horrigan stated that he would like to add a stipulation: to further discourage the expansion of the lawn area and to maintain the vegetative buffer.

Chairman Miller stated that he would not be voting in favor of the motion. He felt this was a perfect location for a natural restoration. He was concerned about the vegetation strip and felt that was what was holding everything together. He felt that if the debris was removed, the vegetation would take off and hold everything together and give them a functional buffer.

Ms. McMillan asked Mr. Taylor for clarification of the rip rap area. He pointed out the section on the submitted plan. He then explained in detail the process they would use for the rip rap.

Vice Chairman Horrigan stated that he would like to add another stipulation: that whatever vegetation was disturbed, that it be replaced with natural shoreline vegetation. He said he thought this was a good compromise.

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 recommendation passed by a 5-2 vote with Chairman Miller and Ms. McMillan voting in opposition:

- 1) That the lawn area is not expanded and that whatever vegetation is disturbed, is replaced with natural shoreline vegetation.

- 2. Standard Dredge and Fill Application
Adjacent to 200 New Castle Avenue
City of Portsmouth, owner
Assessor Map n/a, Lot n/a

Mr. Zachary Taylor, project planner for Riverside and Pickering Marine Contractors was present to speak to the application. He stated that the application was for an expansion of an existing docking system located on New Castle Avenue. He explained that this dock and two additional docks were permitted to be replaced when the restoration of the seawall took place. There was a license agreement between the City and the owners to have the docks.

Mr. Taylor explained that the current dock has a ramp and small float. They were requesting to build an 8' x 20' float that would attach to the existing 4' x 12' float. The dock would be for private, residential use.

Mr. Wazlaw asked if the float would rest on the mud. Mr. Taylor said no, it would have skids. Mr. Wazlaw pointed out that the marsh grass was coming in now. He wondered how close the grass was to the dock. Mr. Taylor said it was not anywhere near the marsh grass.

Ms. McMillan asked Mr. Taylor to show her from the submitted plan, the old dock and the new section. Mr. Taylor pointed out that the hatched section on the plan indicated the new float.

Mr. Britz informed the Commission that there were other docks permitted in that area as well. Mr. Taylor said this was the only dock so far. He said that the Department of Environmental Services has allowed three to be rebuilt.

Ms. Blanchard commented that it seemed like a limited use for the structure since it sat in the mud at low tide. Mr. Taylor said that about 50% of the docks in the City have the same situation. He added that it was difficult to find deep water access at all times.

Ms. Blanchard asked if the floats would be pulled up in the winter. Mr. Taylor replied no, they would be permanent.

Chairman Miller commented that a lot of effort was made to restore the marsh in that area and he was concerned that a "T" dock might inhibit the growth. Mr. Taylor said that the marsh restoration would not expand any farther out than the "socks" that are still there.

Ms. Blanchard asked about the size of the float and its stability. Mr. Taylor explained that the proposed size of the new float was the size needed to be a stable float that would hold more than one person at a time. He added that a 20 foot section of float was an undersized slip according to the NHDES standards. He pointed out that they were asking for an undersized float.

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

Ms. McMillan made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Mr. Wazlaw. There was no additional discussion.

The motion to recommend approval of the application to the State Wetlands Bureau passed by a 6-1 vote with Ms. Blanchard voting in opposition.

III. CONDITIONAL USE PERMIT APPLICATIONS

- A. 579 Sagamore Avenue, Unit #70
 Tidewatch Condominium Association, owner
 Bruce Ocko, applicant
 Assessor Map 223, Lot 30

Mr. Bruce Ocko, owner of the property was present to speak to the application. He stated that he was requesting to replace an existing 5' x 6' platform deck with a larger 12' x 16' platform deck. He said the existing deck was located off his sunroom on the rear of the house. The new deck would not have any railings or steps.

Vice Chairman Horrigan asked if the yellow lines on the submitted plan indicated the proposed deck. Mr. Ocko replied yes.

Mr. Ocko pointed out that the dotted line on the plan, which was difficult to see, delineated the 100 foot buffer zone. He said that his unit sits within the buffer zone. He added that his plan was submitted to the Tidewatch Condominium Association and was approved.

Vice Chairman Horrigan commented about the common open space and wanted to know what Mr. Ocko owned. Mr. Ocko said that he owned basically the building. He added that when he purchased his unit in July of 2009, he was told that he was responsible for the shrubbery and plantings within 3 ½ feet of the property. Vice Chairman Horrigan wondered if the wetlands were considered Tidewatch common open space. Mr. Ocko said he did not know. Mr. Britz stated that he did not know how the agreement worked with the owners.

Chairman Miller asked what was to the right of the yellow line on the submitted plan. Mr. Ocko explained that it was a hillside that went down into the wetland.

Ms. McMillan asked about access to the deck from the outside. Mr. Ocko said that the primary entrance to the deck would be from the inside. There would not be any paths to access it.

Ms. Blanchard asked if the new deck platform would be wood. Mr. Ocko said it would not be wood but would be of a composite material that would have the look of oak. Ms. McMillan asked if it would require maintenance. Mr. Ocko replied no but after a year, it would need a sealant put on it.

Chairman Miller asked if there were any more questions for the applicant. Hearing none, he asked for a motion.

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

Vice Chairman Horrigan stated that he did not see any change to the water run off and thought the water would still drain into the mulch area. He thought there was no change from a conservation standpoint.

Ms. McMillan commented that the vegetation along the bank was very heavy and looked really nice. Vice Chairman Horrigan agreed and added that it was in its natural state. Chairman Miller also added that the buffers were very healthy.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application to the Planning Board passed by a unanimous (7-0) vote.

- B. 123 Sparhawk Street
Lois Erickson, owner
Assessor Map 159, Lot 4

Ms. Lois Erickson, owner of the property was present to speak to the application. She stated that she would like to place a pre-built shed in her backyard. She explained that no earth would be disturbed and it would meet all of the City's setback requirements. Ms. Erikson passed out photos of the site to the Commissioners.

Chairman Miller asked Ms. Erikson why she picked that particular site for the shed. Ms. Erikson said that she did not want to obstruct anyone's view of the water. Chairman Miller asked why she did not locate it closer to the house, in the corner next to the drive. Ms. Erikson explained that snow gets pushed into that area and sometimes they use that area for parking.

Chairman Miller asked how the water would run off of the roof of the shed because he wanted to prevent erosion of the slope. Ms. Erikson explained that it was peaked in the middle. He suggested she might want to put in a gravel drip line to deal with the rain water.

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

Ms. Blanchard made a motion to recommend approval of the application to the Planning Board. The motion was seconded by Ms. Ennis. There was no discussion.

The motion to recommend approval of the application to the Planning Board passed by a unanimous (7-0) vote.

- C. 48 Ball Street
Michael & Hallie Goelet, owners
Assessor Map 207, Lot 53

Chairman Miller informed the Commission that the applicant would discuss the conditional use application as well as a minimum impact expedited application.

Mr. Phelps Fullerton of Fullerton Associates and Ms. Hallie Goelet, co-owner of the property were present to speak to the applications. Mr. Fullerton stated that the applicants would like to make modifications to the residence and to the lot. He said that they would like to extend the existing deck, re-grade between the house and the garage to eliminate water seepage into the garage, construct stairs to access the lower lawn and dock, and construct a front portico. All of these items extended into the 100 foot buffer zone.

Mr. Fullerton said that they were sensitive to the fact that when the house was built, a lot of area was replaced with lawn. He said that the applicants would like to reintroduce native vegetation to the site. Ms. Goelet stated that she had extensive experience in doing this. Mr. Fullerton added that a landscape architect would help them as well.

Mr. Wazlaw asked what the slope down to the water was. Mr. Fullerton said that the mean high tide was 4.5 feet. The elevation at the existing polygon structure of the deck was 14.5 feet. It was quite a slope down to the water.

Chairman Miller asked Mr. Fullerton if the minimum impact expedited application entailed all of the same work. Mr. Fullerton replied yes.

Mr. Fullerton explained that the new structures to be modified were cross hatched on the plan. Vice Chairman Horrigan pointed out that there was a patio there already. Mr. Fullerton said that it was crushed stone for the most part. Vice Chairman Horrigan asked if they wanted to replace that with bluestone. Mr. Fullerton replied yes. There was considerable discussion about pervious and impervious surfaces with regard to the crushed stone and bluestone.

Ms. Goelet stated that she has shared the plans with her neighbors for their feedback.

Vice Chairman Horrigan asked what would be under the new deck extension. Mr. Fullerton said that it would probably be crushed stone as not much will grow underneath it. Ms. Goelet said that she could try ivy.

Ms. McMillan asked about the timeline for the landscaping. Ms. Goelet replied that it would begin as soon as possible. She would like to do fall planting.

Ms. McMillan stated that the City's memo said that the application met the criteria, partly because of the planting of the buffers. She had concern because she did not know exactly what would be planted. She said she would like to see a landscape plan. Ms. Goelet explained that she would like to plant as many native plants as possible but she did not have a species list prepared yet.

Mr. Britz said that the Commission could stipulate what types of plants they would like to see. Ms. Goelet wondered if they could make the approval conditional on the submission of a planting plan.

Ms. Ennis said she understood where Ms. McMillan was coming from and wondered if a stipulation with very general wording about the replacement of lawn with appropriate plantings was sufficient.

Ms. Goelet gave the Commission an idea of what type of plantings she would use and where she might plant them. Chairman Miller stated that he felt the applicant understood their concerns. He explained that the Commission recognized that the plantings by the buffer would really help the buffer and help the function of filtering material before it gets to the creek.

Ms. Tanner wanted to make sure that the applicant was aware of the use of herbicides and pesticides in certain areas. Ms. Goelet said that she did not use herbicides. Chairman Miller suggested that she check the Comprehensive Shoreland Protection Act which was very specific about what can and cannot be used in certain zones.

Ms. Tanner stated that she was still not comfortable with adding impervious material in the buffer. She liked the idea of adding vegetation. She added that the only way she would be satisfied with the application was if they had a one to one relationship between the impervious and the plantings.

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

Ms. Tanner made a motion to recommend approval of the application to the Planning Board. The motion was seconded by Mr. Wazlaw. Chairman Miller asked for discussion.

Ms. Tanner added the stipulation that there was a one to one relationship, as a minimum, between impervious area added and the area of new native perennial landscaping.

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

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

- 1) That there is a one to one relationship, as a minimum, between impervious area added and the area of new native perennial landscaping.

Chairman Miller also signed the State minimum impact application for the same project.

IV. OTHER BUSINESS

1. Mill Pond Way tree clearing request

Mr. John Chagnon of Ambit Engineering and Ms. Elizabeth McGovern, property owner, were present to speak to the request. Chairman Miller informed the public that a site walk was held to view the specific trees that they were requesting to remove.

Mr. Chagnon stated that one of the stipulations of the site plan approval was that any tree cutting would need to be reviewed by the Conservation Commission. Mr. Jeff Ott of Northeast Shade Tree submitted a letter with his comments concerning the work that was being requested. Mr. Chagnon said that the project would not propose a direct impact to the vegetative buffer.

Chairman Miller had questions about the original report of the wetland assessment as it related to the plan and then to the original tree cutting. He said that he did not remember a plan where tree cutting was proposed. His recollection was that no trees were going to be cut. Mr. Britz confirmed that there was a plan that showed that trees would be cut. He added that there was a court settlement agreement. He explained that the court settlement agreement stipulated that any other cutting would have to be approved by the City. Mr. Britz recalled that there was not much involvement of the Conservation Commission.

Mr. Chagnon stated that the project received a lot of scrutiny. He said that the developer did not want to cut the trees until the building was up. Some trees were cut that were not allowed but that has since been rectified.

Chairman Miller explained that originally, the Shoreland Protection Act specifically denied viewscapes. That has changed now and they can now be considered. He added that he felt the reason the developer did not want to cut trees until the building was up was to determine which way to point the windows. That was his interpretation of the situation and a point of difficulty for him.

Ms. Blanchard commented that she appreciated the fact that the owner went to an arborist to consult him about the work that needed to be done. It made sense to her. She said that managing a tree lot is not just letting it be what it wants to be. If the cuttings follow the recommendations, then she thought it would be a good thing.

Chairman Miller urged the applicant to be thinking into the future as to how to maintain the buffer as a functional buffer.

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

Ms. Blanchard made a motion to extend permission for the proposed tree clearing at Mill Pond Way to be done in accordance with the recommendations of Northeast Shade Tree stated in their letter dated June 21, 2010. It was further recommended that all oriental bittersweet is removed.

The motion was seconded by Ms. Ennis. There was no additional discussion.

The motion to extend permission for the proposed tree clearing at Mill Pond Way to be done in accordance with the recommendations of Northeast Shade Tree stated in their letter dated June 21, 2010. It was further recommended that all oriental bittersweet is removed passed by a unanimous (7-0) vote.

Chairman Miller stated that the applicant also had a minimum impact expedited application for the same property for the Commission to review.

Mr. Chagnon stated that the applicant would like to install a walkway that would connect the deck to the front of the unit. The applicant had a letter from the abutter who indicated that they were okay with the project. Mr. Chagnon said that there would not be any change to the grade. He also said a Natural Heritage inventory revealed no potential impacts.

Ms. McMillan asked if they would be using pavers. Mr. Chagnon replied yes. Ms. McMillan commented that this would be a great opportunity to use pervious pavers. Chairman Miller added that there were several options available such as Eco pavers. Ms. McGovern thought that was what was proposed to be used. Mr. Chagnon stated that he could find out the specifications of the pavers and add it to the plans. Chairman Miller said that their preference would be something porous.

Ms. Tanner asked if there would be any plantings. Ms. McGovern said yes but what they would plant had not been decided yet.

Hearing no more discussion, Chairman Miller signed the application.

In other business, Mr. Britz stated that the Planning Department was considering some proposed changes to the Zoning Ordinance and wanted the Commission's input. Topics discussed were: sheds and marine accessory structures in wetland buffers, generators in wetland buffers, and vegetative buffer standards.

Continuing with other business, Vice Chairman Horrigan asked when the Commission would see the newest version of the Public Undeveloped Lands Assessment (PULA) study. Mr. Britz stated that he hoped to have it at next month's meeting for the final review. He said that Mark West would then need to present it to the Planning Board. Mr. Britz stated that he thought the process would be complete in September.

Also, Vice Chairman Horrigan stated that he was on the stakeholders committee for the bridges and updated the Commission on the status of the bridge repairs.

Chairman Miller informed the Commission that the prime wetlands assessment was on the City Council agenda for Monday, July 19.

V. ADJOURNMENT

At 6:05 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 8, 2010.