

**MINUTES
CONSERVATION COMMISSION**

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

3:30 P.M.

JUNE 8, 2011

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman James Horrigan; Members, Allison Tanner, Barbara McMillan, Mary Ann Blanchard, and Elissa Hill Stone

MEMBERS ABSENT: Catherine Ennis

ALSO PRESENT: Peter Britz, Environmental Planner

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I. OLD BUSINESS

A. Approval of minutes – May 11, 2011

Ms. Tanner and Chairman Miller asked for changes to be made to the minutes. Ms. Tanner made a motion to approve the minutes as amended. The motion was seconded by Ms. Blanchard. The motion passed by a unanimous (5-0) vote.

Chairman Miller informed the audience that a site walk was held prior to the meeting at 3:00 p.m. at 180 Greenleaf Avenue. He also stated that they had a very full agenda so the Commission would do their best to stay focused and that he would appreciate all speakers being brief and to the point.

He explained that they would take the two 180 Greenleaf Avenue applications together for the presentation but would vote separately on each application.

Chairman Miller also informed the applicant that the Commission only had four members voting on the applications. He explained that the applicant had the choice to either move forward with the application or wait and present it at next month's meeting where one additional Commission member would be present. Ms. Tanner and Ms. McMillan were recusing themselves from the discussion and the votes. Mr. Mikolaities stated it was his desire to proceed with the presentation of the applications.

Ms. McMillan arrived at this point in the meeting.

II. STATE WETLAND BUREAU PERMIT APPLICATIONS

A. Standard Dredge and Fill Application

180 Greenleaf Avenue
Comcast of ME/NH, Inc., owner
City of Portsmouth, applicant
Assessor Map 243, Lot 67-1

III. CONDITIONAL USE PERMIT APPLICATIONS

1. 180 Greenleaf Avenue
Comcast of ME/NH, Inc., owner
City of Portsmouth, applicant
Assessor Map 243, Lot 67-1

Mr. Gregg Mikolaities of Appledore Engineering, representing the applicant was present to speak to the application. He stated that the project was a culvert restoration. There were currently three 12” corrugated metal pipe culverts that were installed in approximately 1967. They would like to replace the three culverts with a 24” x 38” elliptical reinforced concrete pipe culvert. It would be embedded twelve inches into the stream bed to provide a natural bottom. They would also be replacing the existing stone headwalls.

For the Department of Environmental Services application, Mr. Mikolaities explained that they were proposing 200 square feet of temporary impacts. He pointed out on a large plan the areas to be impacted. The site had already been disturbed and the work would be staying within that disturbed area. He added that there would be no permanent wetland impacts with regards to the project. Mr. Mikolaities informed the Commission that he met with DES who had two criteria regarding the project – one was to bury the bottom of the culvert so it would become a natural bed on its own and the second was to try to release as much water as possible from the watershed located further up above the project area. He said that they conducted a drainage study for a 2, 10, 25, and 50 year storm and he then talked about the conclusions from that study.

Mr. Mikolaities stopped at this point in his presentation to answer any questions regarding the standard dredge and fill application. Hearing no questions, Mr. Mikolaities continued his presentation to discuss the conditional use application.

Mr. Mikolaities then explained how they met the five criteria in Section 10.1017.5 and the four criteria in Section 10.1017.6 of the Zoning Ordinance for a conditional use permit:

Section 10.1017.5

(1) The land is reasonably suited to the use, activity or alteration – the portion of the property was a sewer easement embankment where they would be replacing some existing drainage structures in the same location.

(2) There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration – the buffers overlapped each other so there was no way to avoid the buffers. They were not creating any additional disturbance of the buffer.

(3) There will be no adverse impact on the wetland functional values of the site or surrounding properties – it would be 200 square feet of temporary wetlands impact and additional flow would be released while trying to be responsible downstream.

(4) Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals; and – they were doing their best to work within the existing footprint that had previously been disturbed and they were going to the extent to replace the headwalls to stabilize the embankments on both sides.

(5) The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this Section – it has already been disturbed and there would be no permanent wetland impacts.

Section 10.1017.6

(1) The proposed construction is in the public interest – the existing culverts have been there forty years and are in need of replacement. The replacement would alleviate some of the ponding in the area and would hopefully last the next fifty years.

(2) Design, construction, and maintenance methods will utilize best management practices to minimize any detrimental impact of such use upon the wetland and will include restoration of the site as nearly as possible to its original grade, condition and vegetated state – they would be matching the existing grades and inverts and were not changing any contours.

(3) No alternative feasible route exists which does not cross or alter a wetland or have a less detrimental impact on a wetland – the replacements would happen in the same beds and the same locations.

(4) Alterations of natural vegetation or managed woodland will occur only to the extent necessary to achieve construction goals – There would be no permanent alterations to the land.

Mr. Mikolaities stated that that concluded his presentation. Chairman Miller asked if there were any questions regarding the conditional use application.

Chairman Miller asked if the flow would be increased with these replacements. Mr. Mikolaities said yes, it would. Chairman Miller asked if the downstream culvert could handle the increased flow. Mr. Mikolaities said yes.

Vice Chairman Horrigan asked if there was any advantage to having a culvert as opposed to a small bridge. Mr. Mikolaities said that DES wanted something with an open bottom but because of the limited area they had to work with, within a sewer easement, they had to come up with a shape that would match the invert of the existing stream.

Ms. Blanchard referred to the watershed plan and asked what amount of land area the project represented. Mr. Mikolaities explained that they have identified three major watersheds and he pointed them out on the displayed plan. Ms. Blanchard asked if this repair and restoration was an integral part of a water management plan for the watershed. Mr. Mikolaities clarified that it was really a maintenance plan. The existing culverts were crushed and water was not flowing freely and effectively through the pipes.

At this point in the presentation, Chairman Miller stated that he would open the floor to public comment but pointed out that the Commission was not required to do so as this was not a public hearing. However, he said the Commission always tries to listen to concerns so he asked if there was anyone who wished to speak to the application.

Attorney John Kuzinevich, representing Mr. Jim Boyle, trustee of 150 Greenleaf Avenue who was an abutter of the applicant spoke first. He stated that he had legal concerns he wished to speak to. He added that Mr. Bruce Scamman of Emanuel Engineering, Mr. Boyle's engineer would address the Commission about some technical concerns.

Attorney Kuzinevich stated that the application was incomplete because the application did not show the setbacks from the property line. As a result, it was impossible to determine from the materials submitted whether there was an impact on his client's property. He also said that there was no sewer easement on his client's property and there was a lawsuit seeking to remove the sewer line in its entirety and to eliminate the culverts into a drainage ditch system that pre-existed the current conditions. The lawsuit was currently in Rockingham Superior Court.

Attorney Kuzinevich continued by saying that the City was very concerned about the downstream but was not disturbed about the upstream impact. Given the fact that there was no drainage easement possessed by the City, any water backing up is a trespass and the new culvert would be a new structure causing that trespass which constitutes the taking of his client's property. He pointed out that any board member who votes for it would be denying his client's civil rights by just taking his property and would be subject to personal liability under Section 1983 of the U.S. Code. Additionally, he wanted to note that the Commission refused to take a view of the entire drainage system and refused to consider how drainage flow of the entire culvert system in the area might impact this application. He felt that it was highly improper. Attorney Kuzinevich also said that there seemed to be an assumption of three pipes when the plan shows four pipes. Anything less than four 12 inch pipes as originally figured was reducing the drainage instead of improving it. He said that if water was backing up, an improvement is not a solution. It was still backing up and rendering his client's land unusable. Attorney Kuzinevich showed the Commission a large photo of his client's property and pointed out that when it rains, it floods and backs up to the Route One Bypass so it was not a minor problem. He felt that the water flow of the sewer installed in 1967 was not installed properly. He thought the appropriate starting point should be restoration of a free flowing channel. They recognize that that may have impact issues for solving problems further down at the Greenleaf Avenue culverts but that was a different issue and a City responsibility issue. Attorney Kuzinevich said that the City was trying to basically mislead the Commission on a new use and take care of the downstream while denying the upstream property owners any rights.

Attorney Kuzinevich stated that in terms of the alternate proposal currently before the Planning Board, although they had asked that it be on hold pending resolution of the lawsuit, was a proposal by Mr. Boyle to develop the back area of the property which concludes granting a proper sewer line easement that does not affect wetlands. He felt this was an alternative to the situation and has been proposed but the City has refused it. He also said that they did not believe the utilities section was applicable because a drainage culvert was not a utility. Attorney Kuzinevich pointed out that one of the Commission members asked if the sewer line was a limiting factor, and the City said that it was. The proposal was not to increase flow but to restrict flow to a convenient number for the City and its Greenleaf culverts. He closed by saying that this was a mess of an issue where his client was being flooded and there was no chance of a real solution. He added that should this project go through the process, there was a good chance that the City was going to spend a lot of engineering and construction money and then be told it was insufficient because they are still backing up water and trespassing. Attorney Kuzinevich stated that these were all legal issues of which the City's attorneys would debate the merits of. They are hot issues that are currently before the court. He closed by saying that Mr. Scamman would discuss his technical concerns.

Mr. Scamman gave the Commission two copies of a handout that addressed his concerns. He explained that the ditch was constructed in 1943 and he felt that if they wanted to do a restoration project to maintain the flow, it should be in that ditch. He also showed the Commission an old sewer plan. Chairman Miller reminded Mr. Scamman that they were not here to discuss a restoration project, they were to review a culvert replacement. Mr. Scamman pointed out that a restoration was an alternative.

Mr. Scamman explained that his calculations showed about 170 acres which was approximately 30% additional area that flows through the culvert. He showed the Commission on the plan where the water flowed onto the client's site. He felt that the culverts and the drainage study were dramatically undersized which would result in a back up of water. He also pointed out that there was no emergency spillway provided. Best management practices said that one was needed. As a result, they were concerned with what would happen with the overflow of water. Mr. Scamman also pointed out that there was no pipe outlet protection which was also required with best management practices. He explained that any time you have a pipe, rip rap is needed to protect the downstream side. His calculations on the flows and the diameter of the pipe required a minimum of 27.6 feet downstream for the rip rap and armor to alleviate erosion problems. He said that was not shown in the plans.

Mr. Scamman stated that with the combination of 30% more acreage going through and the heavily dense Hillside Drive neighborhood would result in a lot more water flowing on site. As a result, water would rise up higher on the dam. The City's calculation of the dam was 23.42 feet with a 24.15 as the top of the dam. Mr. Scamman measured it as 23.7 feet further down the dam. Chairman Miller asked for clarification about the use of the term "dam" and Mr. Scamman said he was referring to the sewer embankment. Mr. Scamman pointed out that by best management practices, a minimum of one foot above the water level up to the top of the dam was required. The emergency spill way needed to be two feet below the top of the dam. With a combination of the additional water from the extra area and with the pipe being smaller than the calculations, there would be water backing up even higher. He said they have seen the water

back over the dam with the current pipes within the last few years so this needed to be taken into account. Mr. Scamman also expressed a concern about the buried culvert. He closed by saying that he met with the Department of Transportation who said it was unacceptable to have tail water on the pipes running underneath the Route One Bypass.

At this point in the presentation, Chairman Miller asked the Commission if they had any questions for the applicant.

Attorney Suzanne Woodland, assistant City attorney, stated that the City disputes many of the allegations, conclusions, and analyses that were offered by the abutter and his representatives. She said she would be glad to answer any questions the Commission might have.

Vice Chairman Horrigan stated that he heard the threat that they might be sued in a civil rights case for serving on this board. He asked if that was a legitimate risk. Assistant City attorney Woodland advised that the Commission should hear the matter and apply the criteria as they deem fit. Vice Chairman Horrigan said that it was his inclination to abstain from voting.

City attorney Robert Sullivan responded by saying that this was not the forum and the Commission did not have the expertise or the authority to address civil rights issues. He said that those issues have been raised in an appropriate forum and will be resolved there. His advice to the Commission was to simply vote on the questions before them, applying the criteria that they have been given by the Ordinance. Vice Chairman Horrigan said that he intended to do that but as a citizen volunteer of the board he really objected to that type of threat. Ms. Stone said she agreed with Vice Chairman Horrigan.

Vice Chairman Horrigan stated that the general site was a hydrological system of some kind. He noted that the client had also dug it up extensively and he wondered if that had some effect on the problems they were confronted with today. Chairman Miller said that they were not addressing what has happened on the Toyota property or the Comcast property.

Mr. David Allen, Deputy Director of Public Works informed the Commission that this was intended to be a maintenance project to take care of three culverts that were in failure. It was just a replacement project. He added in the past the abutter requested that this be done.

Vice Chairman Horrigan said that the reason he was asking was because Mr. Scamman brought up a lot of issues with the site in general. Chairman Miller acknowledged that there were a lot of other issues but the issue at hand was the culvert replacement.

Hearing no other discussion, Chairman Miller stated that they would be voting on the State Wetlands Bureau application first.

Ms. Blanchard made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Ms. Stone. There was no discussion. The motion passed by a unanimous (4-0) vote.

Chairman Miller then called for a motion regarding the conditional use application.

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

Vice Chairman Horrigan stated that he would vote in favor of it because he agreed with the plan and added that the only issue was that the culverts have reached the end of their useful life. The other issues were not relevant to their approval. He saw nothing wrong with the plan. Chairman Miller and Ms. Stone agreed with Vice Chairman Horrigan.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application as presented to the Planning Board passed by a unanimous (4-0) vote.

III. CONDITIONAL USE PERMIT APPLICATIONS (continued)

Chairman Miller took the next application out of order.

3. 50 Andrew Jarvis Drive (rain garden)
City of Portsmouth School Department, owner
Assessor Map 229, Lot 3

Mr. Tanner Collins and Ms. Chloe Messier, students at Portsmouth High School and Mr. Eric Weinrieb of Altus Engineering were present to speak to the application. Mr. Collins explained that the rain garden would function as filtration and sediment retention as well as an educational tool for students at Portsmouth High School and community members. He explained that the proposed rain garden would be located in the buffer and would be built on existing lawn. The impact was approximately 500 square feet. The rain garden would be located 23 feet away from the wetlands. Mr. Collins said that the rain garden would be structured within the wetland buffer and would enhance the functionality of the current area. He hoped that the area would attract more wildlife and become a habitat area.

Ms. Messier stated that there would not be any negative wetland impact; instead it should be positive because as the water exits the rain garden it would be filtered and cleaned before it went into Sagamore Creek. The area would be planted with native plants and students would help with the planting. There were no buildings to be constructed in the area but there would be a sign explaining to the public the use of the rain garden. She also explained that the students would help to collect, document and maintain data. She also said that the University of New Hampshire had offered their services by offering sample bottles and testing equipments.

Ms. Blanchard commented that she thought this was an exciting idea. She asked how they would deal with the maintenance issues. Mr. Ken Linchey of the Portsmouth School Department said that he would make sure it was part of the storm water cleanout maintenance plan with the City for annual inspection.

Chairman Miller asked what area drains into this rain garden. Mr. Weinrieb said that the site was on a 33,000 square foot watershed and it all drained to a single catch basin. He explained they would be able to divert the entire watershed into the rain garden.

Chairman Miller asked if the area it was to be installed in was currently lawn. Mr. Weinrieb replied yes.

Vice Chairman Horrigan said that he really liked the plan. He wished that he had had their smarts and sensitivity to the environment when he was their age. He advised them they were going to need some type of clean up plan to deal with trash.

Ms. McMillan asked where they would be collecting the water to check for the water quality. Mr. Weinrieb explained that they would install some under drains with a clean out just before the water discharges back into the catch basin. He said that they should be able to see very easily the water quality coming out of the system. They could also have a grab sample in the catch basin to see the difference in the two.

Hearing no additional questions, Chairman Miller asked for a motion. Ms. McMillan made a motion to recommend approval of the application to the Planning Board as presented. The motion was seconded by Vice Chairman Horrigan. 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.

- 2. 50 Andrew Jarvis Drive (bleachers)
City of Portsmouth School Department, owner
Assessor Map 229, Lot 3

Mr. Ken Linchey, Portsmouth School Department Facilities Director was present to speak to the application. He stated that they wanted to replace a 30 year old bleacher system on the visiting side which was in the 100 foot buffer zone. He said that they would be reducing the size of the bleachers by six feet. There would be no impact to wetlands or the site. Mr. Linchey explained in detail how they would anchor the new bleacher system. A silt fence and hay bales would be used on the buffer line of the wetlands and around two catch basins.

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

Ms. Blanchard made a motion to recommend approval of the application as presented. The motion was seconded by Ms. Stone. The motion to recommend approval of the application as presented passed by a unanimous (6-0) vote.

- 4. Off Greenland Road

Isabelle Hodgson Trust, owner
Pease Development Authority, applicant
Assessor Map 279, Lot 9

Mr. Roch Larochelle of CMA Engineers was present to speak to the application. He reminded the Commission that he was before them recently with a State permit application for the construction of a multi-use path. This conditional use application only involved an area on the Hodgson property. He explained that he got a release from the Isabelle Hodgson Trust for access to the property to construct the multi-use path. The minor impacts would encompass 485 square feet.

Mr. Larochelle discussed the five criteria and stated that the land was previously disturbed and was reasonably suited for the use. He added that the temporary impacts were on the Hodgson property. The project also met the criteria of the DOT and DES. Also, best management practices would be followed during the construction process.

Vice Chairman Horrigan asked if the area would be filled in with natural vegetation. Mr. Larochelle stated that they would have a stone lined embankment and over time it would grow up with natural vegetation. He added that it would be a rip rap slope adjacent to a porous asphalt path and a wood rail.

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

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

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

5. 120 Ridges Court
Stephen and Karin Barndollar, owners
Assessor Map 207, Lot 61

Mr. Stephen Barndollar, owner of the property and Mr. Marc Jacobs, certified wetland scientist were present to speak to the application. Mr. Barndollar stated that they were back before the Commission for reconsideration of the retaining wall. He explained that there was an existing wall on the property along with some rip rap. He pointed out that there are existing walls on other properties in the area. Mr. Barndollar proposed to remove the rip rap and continue the wall to meet up with the existing wall on the property. He added that if the wall was not approved, they would not remove the rip rap because it would help with erosion.

Mr. Jacobs stated that the site currently had approximately 90 linear feet of stone retaining wall, approximately 64 feet of new wall that was being proposed, and rip rap of about 420 square feet.

He then went through the five criteria for approval and explained in detail how each criterion was met.

Mr. Jacobs explained that the retaining wall would allow them pull the rip rap out and replace it with salt marsh.

Mr. Britz stated that he received a letter from John Chagnon asking the Commission to consider the shed and the clothesline as part of this application. They were shown on the plan but not included as part of the review or in Mr. Britz's memo. There was discussion concerning the prior review of the State wetlands application.

Mr. Jacobs pointed out that since the approval of the rip rap in 1999, the department has had a change of heart in terms of slope stabilization. Now they prefer vegetative solutions over hard armoring. He felt the proposed wall was primarily intended to stabilize the site from the highest observable tide line to the uplands. He clarified that the wall was to keep the uplands from going into the salt marsh and not to keep the tide from eroding the property.

Vice Chairman Horrigan stated that the State already approved the retaining wall. Mr. Britz pointed out that this was a conditional use permit which was a City permit. Without the City's approval, they could not build the wall.

Chairman Miller asked how the wall would be constructed. Mr. Jacobs said that it would be a dry boulder wall. There would be no mortar and the stones would be of a larger size, similar to the stones in the wall that was currently in place. Chairman Miller asked if the new wall would be the same elevation as to what currently existed. Mr. Barndollar said that it would be no higher than the existing wall; in fact it would decline in height.

Chairman Miller asked for clarification that the wall was there as an erosion barrier. Mr. Jacob explained that the wall would keep the property in place. There was considerable discussion about the function the wall would serve. Chairman Miller had a concern about whether the salt marsh would be able to migrate inland with the wall serving as a barrier. He also asked if new rip rap had been added. Mr. Barndollar replied no.

Vice Chairman Horrigan asked if all of the rip rap would come out. Mr. Barndollar said it was the intention to take it all out.

Ms. Stone asked if there was any plan to add soil behind the wall. Mr. Barndollar said no.

Ms. McMillan asked about the sequence of events. Mr. Jacobs explained that after the rip rap was removed, they would observe the area through a number of tidal cycles to see where the tides were falling. He said that he would not want to touch or add to the substrate that was there.

Ms. McMillan asked if there was any consideration to not putting the whole wall in but to leave an opening to the left of the rip rap. Mr. Barndollar said no, they did not consider it. It was a possibility but pointed out that the wall was very low in the area. Ms. McMillan said it would reduce the look of armoring the area and would open up access for wildlife. Mr. Barndollar said

he was not opposed to it. Ms. McMillan explained that she was looking for a compromise because she could not vote for the plan the way it was.

There was considerable discussion about various configurations for the wall and the existing conditions of the land surrounding it.

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

Ms. Blanchard made a motion to recommend approval of the application with the suggestion that Ms. McMillan offer an amendment to the proposal. The motion was seconded by Ms. Tanner.

Ms. McMillan added the following amendment to the motion:

- 1) That the proposed wall is shortened on the west side by not less than 14.5 feet to the inflection point and is no higher than the existing wall.
- 2) That the clothesline and existing shed are approved as part of this application.

Chairman Miller stated that he was more comfortable with the proposed wall as long as it did not get any higher than the wall that was currently there. He was in favor of the removal of the rip rap and the restoration of the salt marsh. He also thought the planting plan would help but he pointed out that he hoped the new plants would be salt water tolerant because they were going to get salt water.

Ms. Blanchard thought there were some significant tradeoffs. She too felt removing the rip rap was a big plus. She also said that if the wall was porous, was not any taller, and did not have fill behind it, then she was more comfortable supporting it.

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 stipulations passed by a unanimous (6-0) vote.

- 6. 359 Corporate Drive
Pease Development Authority, owner
Freedom Bay Ring Communications, LLC, applicant
Assessor Map 316, Lot 1

Ms. Maria Stowell of the Pease Development Authority and Mr. Barry Keith, a wetland scientist were present to speak to the application. Ms. Stowell explained that the PDA has been enforcing a wetland buffer for a number of years. In 2008, they adopted it as a formal part of their zoning ordinance. She then explained to the Commission their buffers and conditional use permitting process.

Ms. Stowell went on to say that with regards to today's application, they were looking to the Conservation Commission for their opinion on a wetland violation. She explained that the tenant

went before the Planning Board for an addition. During the construction process, there was a change in contractors and as a result, there was some encroachment into the 50 foot buffer. Today's application was a restoration plan.

Mr. Keith stated that he accessed the area that was affected. The site was about 10 acres in size with 2 acres of upland area. He explained that two areas were affected and he showed those areas on the displayed map. There was about 4,000 square feet of impact within the two locations. The work that was done was tree removal, stump removal, and regrading. The grades have since been restored but what they were proposing was to plant 36 trees and shrubs to augment the affected area. The trees and plants they were proposing were high bush blueberry, silky dogwoods, harrelwoods, and red maples. They were also looking at container plants.

Mr. Keith gave the Commission a handout that addressed the five criteria for their review. He discussed each criteria with them.

Ms. Blanchard pointed out that the project received site plan approval in 2009. She asked when they noticed the incursion into the buffer. Ms. Stowell said it was over the winter months. The project did not start for a year after the site review approval.

Vice Chairman Horrigan asked about the rip rap structures next to the affected area. Mr. Keith said that they were approved structures. Vice Chairman Horrigan wondered what would grow in between the areas of plantings. Ms. Tanner thought they would get a bunch of invasive species. Vice Chairman Horrigan thought the plan was great; he just did not know if it went far enough.

Ms. Tanner reiterated that she had a concern about invasive species and said she would rather see an overseeding of a native grass mix. Mr. Keith said that there were not any invasive species there now but he would be willing to amend the plan. Ms. Tanner pointed out that there were invasives all over the place around the area. Chairman Miller agreed with Ms. Tanner.

Ms. Blanchard asked about the monitoring plan. Mr. Keith said that he did not have a monitoring plan. Ms. Blanchard asked that if it were his property, what he would recommend. Mr. Keith said he would probably recommend a monitoring plan similar to the one the State recommends in wetland permits.

Ms. McMillan cautioned against mounding the bark mulch around the trunk of trees.

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

Ms. Tanner made a motion to recommend approval of the application as presented to the Planning Board with the following stipulations:

- 1) That native seed mix is broadcast between the plantings to fill in the open areas so as to deter the growth of invasive species.
- 2) That there is a monitoring plan consistent with the State wetland restoration monitoring plan.

The motion was seconded by Ms. Stone. There was no discussion.

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

- 1) That native seed mix is broadcast between the plantings to fill in the open areas so as to deter the growth of invasive species.
- 2) That there is a monitoring plan consistent with the State wetland restoration monitoring plan.

- 7. 162 Corporate Drive
The Kane RDII, LLC, applicant
Assessor Map 313, Lot 1

Mr. Michael Kane, owner of the property, Mr. Gregg Mikolaities of Appledore Engineering, and Mr. Jim Gove, of Gove Environmental Services were present to speak to the application. Ms. Stowell of the Pease Development Authority was present as well.

Mr. Kane stated that the ownership stated on the agenda was incorrect but he did not offer the correct ownership.

Mr. Kane explained they were before them today because they would like to cut some trees down and they wanted the Commission's approval to do it. He said that this proposal was entirely motivated by economic interest. The site was a three building campus and the third building was the subject of this application. Mr. Kane explained that one of the tenants they were considering would like to increase the visibility of the third building by removing some trees. Mr. Mikolaities talked with DES and they did not have a problem with removing the trees. He said that the PDA was not as enthusiastic. After discussions with PDA, Technical Advisory Committee, and Mr. Britz they have come up with a revised plan before the Commission to review and he hoped that it would meet with their approval and Mr. Britz's as well.

Mr. Mikolaities stated that they were proposing to remove 23 trees in Zone 1, none in Zone 2, and 12 trees in Zone 3 with 35 trees to be replanted in various areas on the property. The idea was to open up the view corridor. Also part of the proposal was to remove some manicured grass and let that area grow into a meadow. He pointed out that they have eliminated all of the proposed plantings in the wetland buffer but would plant 350 shrubs for buffer enhancement with no wetland disturbance. There was also about 7,000 square feet of invasive species.

Mr. Gove talked in detail about the wetlands on the site. He explained that the planting scheme had been designed to enhance the habitat for songbirds and small mammals. He added that the trees and invasive species removal would not have any detrimental impact. He also pointed out the dead, distressed and dying trees. Mr. Gove presented the Commission with a set of pictures showing the existing conditions on the site. He closed by saying that the plantings would enhance the buffer and would provide for additional habitat.

Ms. Tanner commented that dead trees did serve a function. She also said that when removing trees, their roots are tangled in other tree roots and it then weakens the tree structure of the remaining trees. She wondered what time of year would they plan to do the work. Mr. Kane said the cutting would take place in the winter.

Chairman Miller asked how the trees would be removed. Mr. Gove explained that they would be cut with no stump removal.

Ms. Blanchard asked what Ms. Stowell from PDA thought of the plan. Ms. Stowell commented that there had been quite a bit of discussion about it. She said that the PDA review board did recognize the need to do something. She added that this was the first time she was seeing this proposal and she felt the review board would be pleased with the no cut zone.

Ms. Blanchard thought it was constructive that they were dealing with it as a campus and not just looking at it as one building. She also said that given the conditions of the woods by looking at the submitted pictures, she did not think they have done a very good job of managing their forested areas. Mr. Kane responded by saying that he was not sure what they were allowed to do with those areas. He also commended Mr. Britz for helping them to look at the project in a different way.

Mr. Gove reiterated that all activity was taking place outside the wetland boundaries.

Vice Chairman Horrigan noted that the trees in Zone 3 seemed to be consistently dying and he wondered if that was due to construction. Mr. Gove said that the Oriental Bittersweet was doing most of the damage. Vice Chairman Horrigan wondered if it was also due to salt run off. Mr. Gove did not think so.

Ms. Tanner stated that there was a significant area of invasives. She thought that if they were able to cut it all out and did some selective pruning, they might get some positive results.

Ms. Blanchard expressed a concern about the fact that the PDA has not seen this plan. She wondered if it needed to be presented to them first. Ms. Stowell stated that she did not think it was necessary because this new proposal was less impacting than what was originally reviewed.

Ms. McMillan asked Mr. Britz to give an overview of the process of this project to date. Mr. Britz stated that he first reviewed this project during the TAC process. He felt they were encroaching into the natural areas. He added that the proposal was all about economics and that was not the purview of the City's zoning ordinance. Mr. Britz felt they have done a good job of improving the plan by adding the whole campus approach and reducing the amount of impact in the buffer. He also explained to the Commission that the TAC Committee did not have a problem with it because there were not technical issues. Mr. Britz said he was the only one to oppose it.

Ms. McMillan asked if monitoring could be part of this application as well. Mr. Gove said it would probably be prudent if they had the same guidelines as DES. He thought it would fit well with this project.

Ms. Blanchard thought it would be informative to the Commission to hear Mr. Britz's comments on this latest proposal. She suggested a recess so they could hear Mr. Britz's thoughts. Mr. Britz said no recess was necessary and offered his comments by saying that he thought he would support the application because there was more maintenance of the site and due diligence of taking care of the site. Ms. Blanchard added that she felt the plan was a good step forward.

Hearing no other questions, Chairman Miller asked for a motion. Ms. Blanchard made a motion to recommend approval of the application as presented to the Planning Board. The motion was seconded by Ms. Stone. Chairman Miller asked for discussion.

Ms. Tanner stated that she was not happy any time trees were cut down, except in the case of a hazard. Chairman Miller said that he appreciated the honesty about the viewscape. He went to the site earlier in the day and saw the dead trees. He also said he was impressed with the replanting plan, the buffer enhancements, and removal of the manicured lawn. He said he had not thought of Pease as having businesses out there needing to be seen.

Ms. McMillan said that she would like to add the same monitoring plan as the previous application.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application as presented to the Planning Board with the following stipulation passed by a vote of 5-1 with Ms. Tanner voting in opposition:

- 1) That there is a monitoring plan consistent with the State wetland restoration monitoring plan.

IV. OTHER BUSINESS

There was no other business to come before the Commission.

V. ADJOURNMENT

At 6:35 p.m., it was moved, seconded, and approved to adjourn the meeting.

Respectfully submitted,

Liz Good
Conservation Commission Recording Secretary

These minutes were approved at the Conservation Commission meeting on July 13, 2011.