

**MINUTES  
CONSERVATION COMMISSION**

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

**3:30 P.M.**

**MARCH 13, 2013**

**MEMBERS PRESENT:** Chairman Steve Miller; Vice Chairman Mary Ann Blanchard,  
Allison Tanner, Barbara McMillan, Elissa Hill Stone, Rich  
DiPentima

**MEMBERS ABSENT:** Alternates Shelley Saunders, Paul Ambrose, Peter Vandermark,

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

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**I. OLD BUSINESS**

A. Approval of minutes – February 13, 2013

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

**II. STATE WETLAND PERMIT APPLICATIONS**

1. Standard Dredge and Fill Application  
300 New Castle Avenue  
City of Portsmouth, owner  
Priscilla Semprini Revocable Trust of 2010, Priscilla Semprini, trustee  
Assessor Map 207, Lot 36

Mr. Zachary Taylor of Riverside and Pickering Marine Contractors was present to speak to the application. He stated that the proposal was to construct a dock – one of three docks that were approved in the original application to build the seawall. He explained that prior to the building of the seawall, three docks existed. As part of the seawall approval, the docks were removed with the agreement that they could be rebuilt at a later date. One dock has since been built. This one represents the second approved dock. Mr. Taylor said that the proposed dock would match the first dock and would be built using the standard construction procedures. He said that there would be approximately 387 square feet of wetland impacts.

Chairman Miller asked how high the fixed pier was above the salt marsh. Mr. Taylor stated that from the salt marsh to the bottom of the joist, it would be six feet.

Vice Chairman Blanchard asked if the fence along the top of the wall would have to be reconstructed. Mr. Taylor replied no and added that there were gates constructed in the wall in anticipation of the new docks.

Chairman Miller said how impressed he was with how the marsh was coming back after the construction of the seawall.

Mr. DiPentima asked if the floating section would be in the mud at low tide. Mr. Taylor replied yes, at low tide the boats would rest on the mud.

Hearing no other questions, Ms. McMillan made a motion to recommend approval of the application as presented. The motion was seconded by Ms. Tanner. There was no discussion.

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

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

- A. 299 Vaughan Street  
GSM Realty Trust, owner  
299 Vaughan Street, LLC, applicant  
Assessor Map 124, Lot 10

Mr. Patrick Crimmins and Mr. Greg Mikolaities of Tighe and Bond and Mr. Tim Levine of Old Harbor, LLC, representing the owner were present to speak to the application. Mr. Crimmins stated that the proposed work was within the 100 foot tidal buffer zone. Because of that, they also had to submit a minimum impact expedited application.

Mr. Crimmins explained that the scope of work involved demolishing the buildings on the site and removing all existing pavement. The proposal was for a 90 space parking lot; proposed in conjunction with the City.

Mr. Crimmins said that there was approximately 1,000 square feet of building and 1,950 square feet of impervious gravels in the 100 foot buffer. He said they would be replacing it with 1,850 square feet of new pavement. To enhance the buffer, they would construct a rain garden along the rear of the property. He explained that the water currently sheet flowed to a catch basin and directly discharged to the North Mill Pond. He said they would intercept the storm water in the rain garden to filter it and treat it. Additionally, a portion of the adjacent parcel shown on the plan, owned by the same owner would be tilled and seeded with a conservation mix to create a meadow effect to enhance the buffer. Overall, they would be improving the buffer by reducing the impervious surface and introducing storm water management and buffer enhancements.

Mr. Crimmins explained why they were not proposing porous asphalt. He stated that the bio-retention system was a better best management practice for storm water treatment than porous asphalt. There would be a higher run off reduction efficiency. He pointed out that the reduction of nitrogen was important to address and he felt that the proposed rain garden was the best

application for this site. This would allow them to get as much filtration as possible and would also be an improvement in the buffer.

Ms. Tanner asked if there would be any mowing or fertilizing in the proposed meadow area. Mr. Crimmins said that it would be mowed once a year for maintenance but not at any other time.

Chairman Miller stated that he found the packet confusing. He said that the standard boundary survey legend did not have the information that he needed to understand the boundary. He was also confused about the buffer enhancement that was not located on this property. He asked if that was correct. Mr. Crimmins replied yes. Chairman Miller asked that if it was located on an adjacent property how it would be protected in the future. Mr. Crimmins explained that the owner owns both properties and the applicant has an option to purchase both properties. Once the applicant obtains the City approvals, the applicant will purchase both properties.

Chairman Miller also pointed out that on page C1, he could not find on the legend what area was yard. He said that in the future, he would probably reject plans that were not complete.

Chairman Miller also said that he understood that the application was for a temporary municipal parking lot and he had concerns about developing temporary lots and what that might mean for the future. He asked that if the application was approved, did the minimum impact expedited application go with the property when this was no longer a municipal parking lot. Mr. Crimmins said that if they were to do any additional work in the tidal buffer zone, they would need to seek another conditional use permit and another minimum impact expedited approval.

Chairman Miller indicated that he was struggling with the nearly 100% impervious surface for a parking when they could be totally out of the buffer and only lose nine parking spaces. He also asked if there were options to put the rain garden out of the buffer and not even need a conditional use permit. Mr. Crimmins said that by putting the rain garden out of the buffer then they would lose more parking spaces besides the nine spaces. He did not know if it would be a viable project at that point.

Mr. Levine explained that this was a project that was developed with the City Manager, similar to the Hanover and Deer Street parking lot which was now under construction for a new building. Since they are not using this property for any other use, this was a use that could be developed on an interim basis and that was a benefit to both parties. He pointed out that they were reusing the light poles and the gates on this project as it was a marginal project that would not gain them much money. Chairman Miller commented that he was troubled by the development pattern they seemed to be falling into. He said that now is the time to put in 100% stormwater treatment for the entire lot since it will be developed into something else in the future. Mr. Crimmins pointed out that they were proposing porous pavement on the front part of the lot. Chairman Miller stated that it wasn't shown on the plans. Mr. Crimmins said that revised plans were submitted yesterday to incorporate stipulations voiced at the Technical Advisory Committee meeting.

Ms. Stone wanted to know what TAC asked for. Mr. Crimmins said they asked for treatment on the front of the site by putting a strip of porous asphalt. They also asked that the sidewalk along

Vaughan Street be brick. It was also agreed to put bike racks at the southwest corner of the lot. They would also be relocating a utility pole. There was also discussion about creating a pedestrian access path but that would need to be coordinated with the City attorney. All other necessary permits would need to be obtained as well.

Chairman Miller asked if the Shoreland permit traveled with the site for this proposal. Mr. Crimmins said no, they would have to come back for all approvals, State and City, for any future projects.

Ms. McMillan asked what the function of the rain garden was when the water table was high. Mr. Crimmins said that the rain garden would still collect the water and he explained in greater detail how it would handle overflow.

Ms. McMillan asked if there were any other ways to get infiltration within the parking lot. Mr. Crimmins pointed out some proposed landscaping strips on the plans.

Vice Chairman Blanchard said that she shared Chairman Miller's concerns about the future drainage issue relative to the treatment of stormwater. She presumed there must be a contract. Mr. Levine said there was a contract with the City for a minimum of two years and to a maximum of ten years. Mr. Levine added that with a future project, whatever it may be, it will obviously be a more significant project and they will at that point have more resources available to address the storm water issues.

Chairman Miller pointed out that the rainfall data submitted was outdated and he wanted them to be aware of that.

Ms. McMillan asked if all of the existing trees would remain. Mr. Crimmins replied yes.

Mr. Crimmins spoke briefly about the drainage analysis that was reviewed by TAC.

Chairman Miller asked if there were any more questions for the applicant. Hearing none, he asked for a motion. He stated they would address the conditional use permit application first.

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

Ms. McMillan said she was torn because the applicant said that they would have to come back to the Commission with any future projects but this project would be granting them approval to impact the buffer now. A future project may not need to impact the buffer but the impact would already be in place because of this approval. She agreed that the buffer was a mess already and that the applicant was not going into an established vegetated area.

Ms. Tanner said that whatever goes into the site in the future, she would think that the Commission should be able to reanalyze the site.

Chairman Miller said that he shared the same concerns. He liked the rain garden but he did not like it in the buffer. He liked the porous pavement and the fact that all approvals would not travel with the site in the future.

Mr. DiPentima asked if it was possible to add a stipulation that indicates that this approval does not establish any precedence for any future development and that this approval is only for a temporary parking lot. Mr. Britz said that stipulation could be added to the recommendation.

Mr. Britz also recommended the removal of the top four inches of existing top soil in the buffer planting area and replaced with four inches of new top soil.

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

- 1) That the approval for the parking lot in this location does not, in any way, grandfather this site from the need for a conditional use permit when proposing future projects on this site.
- 2) The applicant shall remove the first 4 inches of soil in the area on the site/landscaping plan labeled "proposed buffer enhancement area" and replace them with 4 inches of clean loam prior to adding the proposed plants to the enhanced buffer area.

It was agreed by all to have Chairman Miller sign the minimum impact expedited applications.

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B. 50 Martine Cottage Road  
Jean R. Johnson, owner  
Assessor Map 202, Lot 16

Ms. Sherry Trefry of GZA Environmental representing the Johnson family was present to speak to the application. She stated that they were requesting a work session with the Commission rather than seeking a formal recommendation at this time.

Ms. Trefry stated that the parcel was seventeen acres and the plan was to create an acceptable residential lot from the existing waterfront lot. She said that the Johnson family would like to donate the waterfront property lot to Cornell University for their Shoals lab. She added that the University leases the adjacent Creek Farm property. She explained that the family would like to subdivide the lot for a single family residence. The proposal was to construct a pervious driveway to provide access to the new lot. It would require impacting 7,900 square feet of wetland buffer and 250 square feet of wetland impacts at the narrowest point.

Ms. Trefry said that the wetland was part of a larger wetland complex, connected to open water wetlands on the west side of Martine Cottage Road. She explained that the wetland has been impacted by Martine Cottage Road, Little Harbor Road and Creek Farm Road. The lack of a wetland crossing at the Creek Farm Road has impacted the hydrology of the area. She pointed

out a stone culvert that does not appear to be functioning. There are dead standing trees indicating a change in hydrology. She said that the change of the hydrology of the wetland complex has had two impacts: one is that it has created a larger open water, highly valuable, high function wetland system, and two, the open water systems have disproportionately impacted the land holdings of the Johnson family. Their objective was to reach an approvable subdivision plan.

Ms. Trefry discussed the approval criteria. She pointed out that the land was reasonably suited for a residential lot; there was no alternative location that was reasonable. She discussed in length the constraints of the property with regards to accessing the site. She said they could check into obtaining an easement to access the site from Creek Farm Road.

Ms. Trefry pointed out that the primary function of the wetland was that it was a wildlife corridor. There were invasive species and in particular, oriental bittersweet was a major problem. She added that the stone walls were providing nesting opportunities for small animals.

With regard to indirect impacts, they were proposing a pervious driveway so it would not increase runoff. Because it was a forested area, they would have to remove quite a few trees. This would increase the flow rate of water but not the volume. Nesting opportunities might be removed. She stated again that oriental bittersweet was a big concern in the area.

Chairman Miller thanked Ms. Trefry for requesting a work session for the project. He stated that it was a complicated package to sort out. He said that the lot lines were different on the two maps that were submitted.

Ms. Tanner stated that there was no way she could vote for what was being proposed. She said that when you have a manmade disturbance, it increases the invasive species. She said that she would like to support access to the site from Creek Farm Road. Chairman Miller agreed and added that it would cut down the amount of driveway by about 75%. He also had difficulty with the cutting of 49 trees.

Ms. McMillan noted that the proposed driveway was at least a quarter of a mile long. She also noted that the area was really wet and would require a lot of fill to be brought in. Also, she noted the amount of maintenance it would require.

Chairman Miller allowed abutters in attendance to speak briefly about the project.

Ms. Robin Najar of 10 Martine Cottage Road spoke to the proposal. She told the Commission that the area was very historical. She also said that the road gets very wet and they have had problems with the road washing out. She pointed out that it was an active wildlife area and she and her husband have seen over 40 species of wildlife. Ms. Najar stated that she was not sure of the extent that Cornell University was involved with this proposal and felt that a lot of this was conjecture at this point.

Ms. Skye Maher of 21 Martine Cottage Road stated that she was glad this was a work session. She said that this was clearly the wrong place for the access road and she hoped that there could

be another solution. She thought they should back up a bit and find out what the landowner really wanted and how they can make it work for him. She added that they liked him and they liked his goals, especially with donating land to the Shoals marine lab. She felt they needed more information about what exactly the owner wanted. Ms. Maher concluded by giving some history of the area.

Mr. Rick Simpson of 40 Martine Cottage Road spoke next. He explained that Tom Johnson manages the property for his mother, Jean Johnson. Mr. Johnson recently purchased Mr. Sturgis's property and has given Mr. Sturgis life long residency on the property. Mr. Simpson said that he believed that there was access granted to Lot 16 over the Creek Farm property at one point in time. He pointed out that on one side of road was a really old stand of pines and on the Creek Farm side it was more of a hard wood forest so it was a very different dynamic going on. To put in a road or to do any development would significantly impact the buffering capacity of the trees because it has been forested for so long. He closed by saying that there was tremendous historical value to the area as well as a wetland impact and he felt there had to be some other alternatives to explore.

Mr. Bob Najar stated that he has lived in that area for 23 years. He said that they bought their parcel mostly because there were wetlands there which would limit the amount of development. He felt the proposal was inappropriate because it was a wet area. He explained in detail how the area got subdivided many years ago. He also pointed out that to his knowledge the Cornell proposal was not a done deal.

Ms. McMillan asked if the lot created other problems besides access. Mr. Najar said that there was a lot of ledge in the area. When his septic system was built, they had to bring in a lot of fill. He also felt it would require a tremendous amount of site work.

Vice Chairman Blanchard stated that she did not think it was a good idea since the area was very wet.

Ms. Trefry said that they have not done any test pits yet. She said that they wanted to try to get access first and then subdivide it and then do the other work.

Mr. Britz said that on an application like this, the City would call for an independent wetland scientist to look at the site.

Ms. McMillan stated that she would be strongly opposed to the project without the independent evaluation. She felt there were too many barriers to the project. Chairman Miller and Vice Chairman Blanchard added that they shared the same concerns.

Ms. Tanner commented that trees are generally interlocked and when you cut them down, they lose hold and that would be a complete disaster in this area.

Hearing no other discussion, Ms. McMillan made a motion to postpone the application to the April 10, 2013 meeting. The motion was seconded by Ms. Tanner. The motion passed by a unanimous (6-0) vote.

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

The Commission reviewed a draft informational wetland letter that will be sent to property owners living within close proximity to wetlands to inform them of wetland regulations. The Commissioners were to email their comments concerning the letter to Mr. Britz for final changes.

#### **V. ADJOURNMENT**

At 5:45 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 May 8, 2013.