

MINUTES

CONSERVATION COMMISSION

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

3:30 p.m.

September 9, 2015

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman MaryAnn Blanchard; Members, Barbara McMillan, Allison Tanner, Kate Zamarchi, and Alternates, Samantha Wright

MEMBERS ABSENT: Adrienne Harrison, Matthew Cardin, Kimberly Meuse

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

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I. APPROVAL OF MINUTES

A. August 12, 2015

Chairman Miller put forth a request to vote on the minutes at the end of the meeting.

II. CONDITIONAL USE PERMIT APPLICATIONS (OLD BUSINESS)

A. 36 Shaw Road
Gregory C. and Sandra M. Desisto, Owners

Chairman Miller stated that the Commission will consider the CUP and the State Wetlands permit application together, but will vote on them separately.

Corey Colwell, MSC Engineers, was present to speak to the application. Chuck Hugo (Landscape Designer), Jeff Demers (Project Architect) and Sandy Desisto (owner) were also present. Mr. Demers handed out a color description of existing conditions on the property. He also handed out a color version of the raingarden detail.

Mr. Colwell described the existing conditions using the pictures. He felt that it was important to see these pictures as there was no site walk. There had been some erosion onsite as a result of stormwater coming down the driveway, hitting the building, going around it eroding as it flowed. Mr. Colwell presented the revised plan, what changes have been made and how comments have been addressed since the last Conservation Commission meeting. There is currently less hardscape and less primary structure. Sheet C2 depicts the first significant change, which is that they have reduced the building size in the area closest to the creek. They have cut back 10'

between the building and the drip edge on the side of the building closest to the creek thereby increasing the buffer by more than 25%. The size of the screen porch in the back has also been reduced. They have scaled back the driveway and made it narrower. There was discussion about the riprap seawall last month and the Conservation Commission had asked for additional details. They will leave the stones as is. They are not proposing a new riprap seawall. They will remove the invasive species. There is some Poison Ivy, Multiflora Rose, Buckthorn and Euonymus on the site. Removal of invasive species is the only activity that will occur in this area. They will let this area naturally revegetate and the revegetation will serve as the buffer. Last month, the Conservation Commission expressed some concerns about the stone stairs. The applicant has pulled them back at least 10' and they have removed the lower step. They also found existing stone on site that can be incorporated into the stone steps. There are landscape terraces. Bluestone was proposed, but that has been switched to a pervious material. It may be Goshen or pea stone, or pervious pavers. The lower stone patio that straddles the 50' buffer would be pervious, but the steps to the upper terrace would not be. They have significantly decreased the impact area as well as the impervious area. The proposed impervious surface was 8,757s.f. They have reduced this to 8,519s.f. The permanent impact area was previously 14,060s.f. They have reduced this to 8,431s.f. The proposed temporary impact area was previously 1,353s.f. This is now 2,073s.f. This is temporary and associated with construction of the house. Regarding additional areas impacted within the 100' inland wetland buffer; there is no change to existing or proposed impervious surface. The proposed permanent impact area was previously 8,763s.f. This has been reduced to 1,598s.f. Drainage was discussed last month. They have submitted a drainage analysis, which is included in the package handed out today. In the analysis are color maps of areas impacted. The peak flow, velocity and runoff have been decreased in the 2, 10, 25, 50 and 100 year storms due to the decrease in impervious area and the raingardens. Total nitrogen and phosphorus will be reduced as well as total solids. The total flow leaving the site has been reduced from 1.24cfs to 0.35cfs. The velocity has been reduced slightly from 1.58cfs to 1.56cfs. The volume (in acre feet) has been reduced from 3,208 to 1,410. Mr. Hugo described the space for stormwater runoff. They will add native plantings including Juniper, Bearberry, Sweet Fern, Little Blue Stem, Clethra, Highbush Blueberry. Mr. Demers stated that they are introducing plantings to stabilize the steep bank (where the building has been pulled back). In the area where the seawall has been eliminated, they will remove the invasive species (Buckthorn, Bittersweet and Multiflora Rose). No plantings will be added in this space unless there is a void created by the invasive species removal. This effort would be to minimize erosion. The lower stone terrace is pervious. The stone used would be local. In the raingarden detail sheet there is a list of native plants. In summary, Mr. Colwell stated that they heard the excellent comments of the Commission last month, went back to the drawing board and made revisions accordingly. They would like to move forward.

Chairman Miller stated that the drainage analysis really helped and he thanked the applicant for providing it.

Ms. Zamarchi stated that with regard to where the garage used to be; one plan showed a raingarden in this area, one plan did not.

Mr. Colwell stated that there are 6 total raingardens, but not one in that area. There are gutters (all around the building) and downspouts on the house which will direct all roof runoff into the raingardens.

Ms. Zamarchi reiterated that there is no raingarden located in this area.

Mr. Colwell stated that from the front of the garage, with the grading, the runoff will fall in the landscaped area only (Sheet C2), not towards the creek. There are gutters all around the building.

Ms. Zamarchi stated that with regard to the Hot Tub, there is an ozone filtration/purification system but she inquired as to whether there were rules in the City for drainage of Hot Tubs.

Mr. Britz stated that he is uncertain about this, but a storm drain hook-up may be needed if a storm drain was to go in; however, he would have to check on rules. If certain drainage is desired, that should be specified as a stipulation or made a condition for approval. A future owner may choose to do it differently.

Ms. Zamarchi stated that on Page C3, the applicant indicates the use of fertilizer. The lawn should not be fertilized within 100' of the buffer. She inquired about the washout area.

Mr. Colwell stated that they will not fertilize anything within 100' of the tidal buffer zone. The washout area will be regraded and the runoff that went to the washout area will now be directed to a raingarden. That is the sole purpose of the raingarden in that area.

Ms. McMillan inquired about post construction recommendations.

Mr. Colwell stated that they have tried to include this detail in notes on Sheet C3.

Ms. Zamarchi stated that on Sheet C2, the washout is in the temporary disturbance area.

Mr. Colwell stated that Ms. Zamarchi is correct.

Ms. Zamarchi inquired about how many trees will be removed and how many will be added.

Ms. Desisto stated that there is one tree that interferes with the driveway that will be removed. In addition, there are 3 spruce trees that are dead and affecting the health of the trees around them so they will also be removed.

Mr. Hugo stated that some screening trees (Eastern Red Cedars) will be added.

Ms. Zamarchi asked for more detail for the sitting wall by the stone terrace.

Mr. Hugo stated that this will be a local stone 20" high with a bluestone cap. It works as a retaining wall behind the hot tub.

Ms. Zamarchi inquired about the pavers around the driveway and whether there is a stone trench.

Mr. Colwell confirmed this.

Ms. Zamarchi confirmed whether all the runoff from the driveway goes into the trench and will go into the ground and then flow to the creek.

Mr. Colwell stated that this was correct.

Ms. Zamarchi stated that she doesn't understand this.

Mr. Colwell explained this better. The drain looks like it ends and goes nowhere, but there is a drain that goes to the stone trench that the drain intercepts.

Ms. Zamarchi asked what the drain is catching.

Mr. Colwell stated that there should be a leader from the drain to the raingarden. It is not shown on the drawing. There is a section missing on the drawing.

Ms. Zamarchi stated that all drainage from the driveway goes through the trench and into the ground so it gets filtered.

Mr. Colwell stated that Ms. Zamarchi is correct.

Ms. Zamarchi asked whether the easement in the new garage is going to be a slab.

Mr. Demers stated that it will be a slab.

Ms. McMillan inquired as to whether there is any post-construction maintenance plan.

Mr. Colwell stated that they tried to incorporate this information into the site notes (C3).

Ms. McMillan stated that maintenance of the raingardens and pervious pavers should be specified in the deed.

Mr. Colwell stated that they have not included any maintenance for the raingardens.

Ms. Zamarchi stated that specifications for cleaning the hot tub should be included.

Hearing no other questions, Chairman Miller asked for a motion. Ms. McMillan made a motion to recommend approval of the application to the Planning Board with the following stipulations:

- 1) A post construction/long-term management plan to be recorded at the registry of deeds and to include:
 - a) A requirement for draining the hot tub requiring no chlorine and infiltration into ground rather than directly draining to Sagamore Creek;
 - b) A maintenance plan including schedule for raingardens;

- c) A maintenance plan including schedule for pervious pavers;
- 2) Details on the sitting/retaining wall shown around the hot tub;
- 3) Clarify the source and outlet for the drains shown under the driveway;
- 4) The site plan include a note stating that no fertilizer will be used within 100 feet of any wetland area.

Ms. Tanner seconded the motion. Chairman Miller called for discussion.

Mr. Britz asked Commissioners if the stipulations need to be met prior to the Planning Board meeting on September 17, 2015.

Mr. Colwell inquired as to when the plans would be needed for the Planning Board.

Mr. Britz stated that the plans can be brought to the Planning Board meeting next week (and don't necessarily have to be submitted beforehand), and they could be adopted at the meeting.

The motion passed by a unanimous (6-0) vote.

Chairman Miller asked the applicant if there was any additional information they wished to submit for the Minimum Expedited Application (State Wetlands Bureau).

The applicant stated that there was no additional information to submit.

Hearing no other questions, Chairman Miller asked for a motion for the Minimum Expedited Application (State Wetlands Bureau).

Vice Chairman Blanchard made a motion to recommend approval of the application to the State Wetland Bureau. The motion was seconded by Ms. Zamarchi.

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

The motion passed by a unanimous (6-0) vote

B. 1163 Sagamore Avenue
Chinburg Developers, LLC, Owner
Assessor Map 224, Lot 17

Mr. Britz stated that this application does not yet have a signature on the City piece. This has to happen in order for the application to move forward. He acknowledged that the City has not been as responsive as the applicant would have liked. This is due in part to the concern on the part of the City that it is a condo development and once it gets turned over to the owners, the street may change to a City street but the street is not built to City standards. However, deed restriction, protective covenant language (that the street will be brought up to City standards) that protects the City can be crafted and included. The Commission still has concerns about what that easement looks like and what the maintenance will be. He will help the applicant compile the

appropriate documents and work with them towards City signature so the completed application can be submitted in order to go forward at the next meeting of the Planning Board.

Mr. Chagnon stated that the applicant would like to find a way to move forward in order to appear before the Planning Board this month. The technical aspects of what they are doing in the wetland buffer are still an issue. But it is not a public street proposal. It is a driveway, not a street. However, they can draft language to put in an addendum to the Purchase and Sales agreement that it is a private roadway and that it will not be owned by the City and shall be maintained by the condominium owner.

Vice Chairman Blanchard stated that the current situation may not be the situation 50 years from now. It has not been reviewed by the DPW and she expressed concerns about the application given this fact.

Chairman Miller stated that the easement on the drainage is a concern in that the Commission might see an easement from DPW that is much larger than what the Commission is talking about.

Vice Chairman Blanchard stated that while she understands the desire of the applicant to move forward, she remains concerned that the easement may be abused by a future owner. It is a fragile area and the potential for degradation is significant. The Commission does not have a switch that they can flip to convince the City to move forward in a timely fashion (regarding the City signature).

Mr. Chagnon stated that Ms. Blanchard put it very eloquently and this input could be expressed to the City. He would like to work out the language so that they can move forward. The Commission might be better off to discuss their thoughts and submit them to the City so the concerns can be expressed and included. As far as what the legal document says, it is not going to be decided this evening.

Chairman Miller stated that from his perspective, the boundaries of the easement are important. He wanted some assurance from DPW on the easement and wants to see it defined. In short, he needs the City sign-off on the project.

Vice-Chairman Blanchard stated that she would be satisfied if the language included in the easement clarified that in the event that maintenance is necessary (before maintenance commences), there would be communication with the City Environmental Planner.

Mr. Chagnon stated that the language could include that in the future the work done has to be reviewed and/or signed off by the City

Mr. Britz stated that it seems that everyone understands what is needed and wanted. Unfortunately, the bottleneck seems to be the City signature. He suggested setting up a meeting between himself, the DPW and the applicant.

Mr. Chagnon asked for clarification on whether they should not come back until the Commission has the signature of the City.

Scott Gove, Chinburg Builders, was present. He stated that it was his understanding that at the last meeting, the Conservation Commission was going to forward comments on the easement to the City.

Chairman Miller stated that this had already happened. However, as a volunteer advisory board they do not push their stance to a significant degree. He stated that he too is frustrated.

Mr. Britz stated that the Commission provided comments that trees were looked at and the area of the easement needs to be defined.

Mr. Gove stated that his hope is that some language could be drafted about the concern of the Commission regarding the trees and that the easement area could be defined.

Chairman Miller stated that at the Site walk, they had a good discussion and understanding of what was needed.

Hearing no other questions, Chairman Miller asked for a motion. Vice Chairman Blanchard made a motion to postpone consideration of the application to the October 14, 2015 Conservation Commission meeting. The motion was seconded by Ms. Wright.

Chairman Miller called for discussion.

Chairman Miller inquired if there was anything the Conservation Commission could do to help with this application.

Mr. Britz apologized that the City approval has taken so long.

Mr. Britz stated that maintenance of the drainage area and the protective covenant (for the street) that all future landowners will be held to certain standards are the issues to be resolved. The Conservation Commission can provide their recommendations regarding maintenance (including the trees).

The motion to postpone the application to the October 14, 2015 meeting passed by a unanimous (6-0) vote.

III. STATE WETLANDS BUREAU PERMIT APPLICATIONS

- A. Minimum Impact Expedited Applications**
36 Shaw Road
Gregory C. and Sandra M. Desisto, Owner
Assessor Map 223, Lot 22

(This item was postponed at the August 12, 2015 meeting to the September 9, 2015 meeting)

This application was considered and voted upon along with the corresponding Conditional Use Permit 2A.

- B. Standard Dredge and Fill Application
150 Greenleaf Avenue
150 Greenleaf Avenue Realty Trust, Owner
Assessor Map 243, Lot 67

The applicant has requested postponement of this application.

Vice Chairman Blanchard made a motion to postpone consideration of the application to the October 14, 2015 Conservation Commission meeting. Ms. McMillan seconded the motion.

The motion to postpone consideration of the application to the October 14, 2015 Conservation Commission meeting passed by a (6-0) unanimous vote.

- C. Minimum Impact Expedited Application
85 New Hampshire Avenue
Two International Construction, Inc. Owner
Assessor Map 306, Lot 3

Steve Riker and John Chagnon, both of Ambit Engineering, were present to speak to the application. Included in the packet is an “after-the-fact” Minimum Impact Wetland Application. There was a building previously on the lot in a very similar location to where the new building is located. There was a wetland previously on site. There is no longer a wetland.

Ms. Tanner inquired as to why the Commission has not seen a CUP.

Mr. Riker stated that a CUP is not required at Pease Tradeport.

Mr. Chagnon stated that the buffer applies to where there was no building previously and will be no building with this application. The footprint of the new building will match (roughly) where the previous building existed.

Mr. Britz stated at Pease Tradeport some wetlands have a 25’ buffer while others have a 100’ buffer. This application never rose to the level of a CUP. It did go through TAC, however.

Mr. Britz stated that Pease Tradeport has a totally different set of regulations.

Chairman Miller inquired as to whether other applications for Pease Tradeport have gone through TAC that the Conservation Commission has not seen due to the variable buffer.

Mr. Britz stated that this was the case.

Chairman Miller stated that that this upsets him and he felt that it circumvents input of the Conservation Commission.

Mr. Britz stated that this may be true. However, if the applicant does something within the designated buffer for that particular wetland at Pease Tradeport, they would need to appear before the Conservation Commission.

Ms. Tanner inquired as to why the Commission needs to see the application at all.

Mr. Britz stated that the Conservation Commission has seen applications at Pease Tradeport when the applicant had an impact on the *variable* buffer and was required to do a CUP. However, they (Pease) are very good at ensuring that applicants stay out of the buffer. If they don't, then the applicant goes through the CUP process.

Vice Chairman Blanchard inquired about site access and whether it is through Manchester Square. She thought there was a large parking lot on Sheet C2. She visited the site, but she doesn't remember a wet area near the front of the building.

Mr. Chagnon stated that the wetland is located behind the building and it is not readily seen. The building is on a rise, and the wetland is down in the back lower than the building so it is easy to miss.

Chairman Miller asked the applicant to explain why the application is in front of the Conservation Commission.

Mr. Riker stated that it is in front of the Conservation Commission because David Price, East Region Inspector, NH DES Wetlands Bureau, wanted an explanation of the impacted wetland and why it disappeared. Mr. Riker presented a letter to the Commission from Mr. Price dated September 9, 2015. Mr. Riker provided his opinion of what happened with the wetland; however he stated that he is not a forensic wetland scientist. He took Commissioners through the Exhibits to explain his response to Mr. Price.

Exhibit A is a 1992 aerial photo (grainy but depicts areas that are vegetated, covered by asphalt or concrete and structures that existed at the time of the photo).

Exhibit B is a 2005 aerial photo (shows the building that used to be on the site)

Exhibit C is a 2009 aerial photo (shows the removal of the building that was on site previously)

Exhibit D is a 2010 aerial photo and is the best photo. Mr. Riker stated that this photo is the first photo that depicts the subject wetland area.

Exhibit E is a 2011 aerial photo (this photo has poor resolution but does depict seeding and vegetation growth following the removal of the building and parking areas)

Exhibit F is a 2013 aerial photo

The subject wetland area was delineated by James H. Long in May of 2007.

Its shape lends itself to stormwater conveyance. It held water long enough to make the soils hydric. However, the site no longer receives water other than direct precipitation given the reconfiguration of the site. His copy of the wetland delineation report is included in the package to Commissioners.

A function and values assessment of the impacted wetland was also requested of Mr. Riker. Mr. Riker informed Mr. Price that this would be difficult as there was no longer a wetland on site. Mr. Price asked him to provide his best assessment. The assessment of Mr. Riker was that the subject wetland did not perform any principal function and/or values. It was however, capable of sediment/toxin retention and nutrient removal on a very small scale. The wetland is not capable of providing a groundwater recharge/discharge function due to the lack of sandy soils and the presence of marine silts and clays.

Chairman Miller confirmed that the footprint of the impervious portion (of the building) in the buffer has not changed. He stated that the applicant's assessment seems fair in trying to figure out what was there in terms of the wetlands.

Mr. Riker stated that the portion in the buffer has not changed. He stated that they could have taken two routes; the first would have been to use his delineation, (he didn't identify it as a wetland), or secondly (what they felt was the better route) to get a permit to retain the impacts because it was on a previous plan.

Mr. Zamarchi wondered when a wetland is no longer a wetland. She wondered if there was a drought and the area dried up, would the wetland no longer be considered a wetland.

Mr. Britz stated that if it doesn't meet the core test, it wouldn't be a wetland. The boundaries change.

Mr. Riker stated that there would still be a hydric soil condition if it was a wetland.

Mr. Britz stated that that it is not a Minimum Expedited Application because the project is "after the fact".

Mr. Riker stated that this is correct.

Chairman Miller wondered why it was listed on the agenda as a "Minimum Impact Expedited Application".

Mr. Britz stated that this was an oversight. It is not actually a "Minimum Impact Expedited Application".

Mr. Chagnon stated that since it was not an expedited application, it does not require signatures.

Hearing no other questions, Chairman Miller called for a motion. Ms. Tanner made a motion to recommend approval of the application as presented to the State Wetlands Bureau. The motion was seconded by Vice Chairman Blanchard.

Chairman Miller called for discussion.

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

The motion passed by a (6-0) unanimous vote.

III. APPROVAL OF MINUTES

B. August 12, 2015

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

IV. OTHER BUSINESS

Ms. McMillan made an announcement that on October 5th, 2015 at the PDA Grill 28, there will be a SnoPro certification training. She stated that it would be a great opportunity to get certified for a reasonable cost.

V. ADJOURNMENT

At 5:24pm, it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully Submitted,

Toni McLellan
Conservation Commission Recording Secretary

These minutes were approved at the Conservation Commission meeting on October 14, 2015.