

MINUTES

CONSERVATION COMMISSION

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

3:30 p.m.

November 9, 2016

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman MaryAnn Blanchard;
Members, Allison Tanner, Barbara McMillan, Matthew Cardin,
Kate Zamarchi, Adrienne Harrison and Alternate Samantha Wright

MEMBERS ABSENT: Kimberly Meuse

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

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I. APPROVAL OF MINUTES

A. September 14, 2016

Ms. McMillan moved to approve the September 14, 2016 minutes, as presented. Seconded by Ms. Zamarchi. The motion passed by a unanimous vote (7-0-0).

B. October 12, 2016

Mr. Cardin moved to approve the October 12, 2016 minutes, as amended. Seconded by Ms. Tanner. The motion passed by a unanimous vote (7-0-0).

II. STATE WETLANDS BUREAU PERMIT APPLICATIONS

- 1) Standard Dredge and Fill Application
363 New Castle Avenue
Briggs Realty Association of Delaware, LLC, owner
Assessor Map 205, Lot 3
(This applicant has asked to postpone to the December 14, 2016 meeting.)
- 2) Standard Dredge and Fill Application
70 & 80 Corporate Drive
Pease Development Authority, owner
Assessor Map 305, Lot 1 & 2
(This applicant has asked to postpone to the December 14, 2016 meeting.)
3. Standard Dredge and Fill Application

Ocean Road
City of Portsmouth, owner
Eversource, applicant
Assessor Maps 281/282, Lots 2/5

Ms. Adele Fiorillo, Normandeau Associates, Inc., provided a brief background for the after-the-fact application. On June 1st, DES issued an emergency authorization to Eversource to replace a structure on Rte. 1. It was estimated that 1,500 s.f. of temporary impact would be imposed to access the replacement structure in order to lay down mats and replace the pole. However, the work resulted in an actual impact of 24,590 s.f. Most of the impacts were located in the City's prime wetland area, which is dominated by invasive species and has an active osprey nest. The activity from the osprey nest appeared to be undisturbed after completion of the work.

Ms. Tanner asked what can be done differently in the future to prevent substantial, unexpected impact in emergency situations. Ms. Fiorillo mentioned the impacts are typically calculated based on the width and length of the vehicle route. She thought that perhaps DES could benefit from changes in their internal procedures.

Vice Chairman Blanchard asked if there was any notice provided to the City prior to the work being performed. Ms. Fiorillo replied that only the Town of Greenland was notified because that was where the impact was expected to occur.

Ms. Zamarchi asked why the issue was not identified through regular inspections. Ms. Fiorillo thought it may have been overlooked due to the surrounding thick vegetation.

Chairman Miller noted the replacement pole appears to be much safer than the what had existed previously.

Vice Chairman Blanchard questioned whether there are penalties that apply to this type of situation. Ms. Fiorillo was not aware of any penalties for emergency authorizations and added that Eversource paid a fee for the full square footage.

Ms. Fiorillo replied to Mr. Cardin that mitigation to the prime wetland is not required because it is all considered temporary impact.

Mr. Cardin suggested that going forward it may be helpful that the City staff or Commission be given the opportunity to provide guidance to all parties involved before an emergency authorization is made. Ms. Tanner added that it is important to have rules in place that ensures the location and square footage of impact identified before conducting the work.

The Commission reached consensus that it would be beneficial for the Commission to submit a letter of concern to DES and Eversource.

Ms. Fiorillo replied to Mr. Cardin that there is nothing in the regulations governing after-the-fact wetland buffer impacts and noted that utilities are an exemption.

Chairman Miller and Mr. Cardin expressed concerns for the lack of communication that was had.

Mr. Cardin moved to recommend approval of the application to the State Wetlands Bureau as presented, seconded by Ms. Harrison. The motion passed by a unanimous vote (7-0-0).

4. Standard Dredge and Fill Application
802 Lafayette Road
J & M Family Properties, LLC
Assessor Map 244, Lot 2

Brendan Quigley, Gove Environmental Services Inc.

Mr. Quigley's presentation included the following statements:

- The proposed project involves reconfiguring the existing parking lot to improve traffic flow. The surrounding resource areas include a salt marsh and wetland buffers. An amended application will be submitted to DES to correct the location of the prime wetland on the site plan.
- The construction would take place within or directly adjacent to the existing parking lot. The tidal buffer disturbance attributes to the proposed parking area and the existing pavement line in the rear of the site will be maintained. The proposed expansion of parking area was demonstrated.
- The existing dumpster enclosure will be moved further away from the building.
- The proposed stormwater improvements were highlighted. The marsh area has been identified as sensitive area. The stormwater management improvements includes installing mechanical treatment structures, catch basins, and directing the runoff directly into a pipe that exits out the ditch. The significance is that the ditch is large and deep and receives a lot more tidal flushing. It does not receive the surface flow water that can cause those impacts.
- The amount of disturbance to the prime wetland buffer was described and explained.

Ms. Tanner asked where the proposed location of the additional impervious surface area would be. Mr. Quigley indicated those locations on the plan. Ms. Tanner asked if trees would be cut down. Mr. Quigley was unsure which individual trees in that area would be cut.

Chairman Miller referenced the existing conditions and landscaping plan and questioned how the trees would remain if the area would be paved. Mr. Chris Tymula, MHF Design Consultants, Inc. explained that the existing ornamental trees are to be removed and two additional trees will be added.

Chairman Miller asked whether the drain pipe or ditch is proposed to be changed. Mr. Tymula explained that the existing catch basin exists to receive flow from the existing drain pipe. The catch basin frame and grate would be removed and replaced with a manhole cover. He explained the new drainage structure.

Vice Chairman Blanchard asked to describe the proposed traffic circulation. Mr. Tymula explained that the parking spaces against the building are proposed to be removed since they are blocked when more than five cars are sitting in the drive-thru queue. Those spots would be

redistributed to the side and rear of the site. A stop sign will be added at the end of the drive-thru to control the entrance and exit of vehicles to the site.

Mr. Tymula explained to Ms. Harrison that the snow storage will remain as it currently exists, except that there will be no snow storage along the rear four-foot fence. Ms. Harrison asked if there would be landscaped, filtration elements added. Mr. Tymula replied that the rear fence is the high point of the site, which diverts drainage towards the nearby wetland. Chairman Miller asked whether it would be beneficial to add something that will divert drainage away from the parking lot given that high point. Mr. Tymula noted that a gutter would need to be added and felt the significant slope and elevation grade of the overall site would provide adequate drainage flow towards the wetland.

Mr. Quigley told Mr. Cardin the City's wetland buffer impact is a total disturbance of 7,982 s.f. and the grading would meet the existing edge of the disturbed area. Mr. Tymula added that the ground cover would be loam and seed for that area.

Mr. Quigley also explained to Mr. Cardin that the trees were not surveyed. Mr. Cardin suggested that it would be beneficial to identify what is to be removed and the plans for mitigation.

Mr. Quigley explained to Chairman Miller that the area where the parking is to be paved is considered developed tidal buffer because it is graded soil that cuts into the slope.

Ms. Zamarchi referenced the pictures presented and questioned how the trees would not be removed in order to replace the dumpster.

Chairman Miller suggested planting native species.

Ms. McMillan asked how the catch basin and oil water separator will be maintained. Mr. Tymula explained that the Operations & Maintenance Plan will indicate those details. He mentioned that maintenance is usually the responsibility and concern of the property owner.

Mr. Britz advised Vice Chairman Blanchard that a postponement would be ideal if additional information is required regarding vegetation management and tree cutting in order to make a decision.

Mr. Tymula explained that the applicant would be willing to compensate for any trees cleared with planted vegetation elsewhere on the site. However, the dumpster location is the only reasonable location.

*Vice Chairman Blanchard moved to recommend **approval** of the application to the State Wetlands Bureau as presented with the following stipulations:*

- 1) That low growth, native plants requiring low maintenance are planted in the back corner of the lot just outside (to the west) of the proposed dumpster pads. The new plantings shall cover an area equal or greater in size than the proposed dumpster pad expansion.*
- 2) That the hydro-seed mix area proposed on the plan is replaced with a conservation seed mix. The areas where the conservation seed mix is proposed shall be left un-mowed.*

The motion was seconded by Ms. Harrison.

Vice Chairman Blanchard acknowledged the complications of the site and the proposed drainage improvements. She encouraged a firm commitment from the applicant about the specific tree removal, which can be finalized between the applicant and staff.

The Commission deliberated on how to best stipulate in the motion to address potential tree removal while enhancing the buffer area near the dumpster with vegetation.

The motion passed by a unanimous vote (7-0-0).

III. CONDITIONAL USE PERMIT APPLICATIONS

- A. 802 Lafayette Road
J & M Family Properties, LLC, owner
Assessor Map 244, Lot 2

*Ms. Tanner moved to recommend **approval** of the application to the Planning Board as presented, with the following stipulations:*

- 1) That low growth, native plants requiring low maintenance are planted in the back corner of the lot just outside (to the west) of the proposed dumpster pads. The new plantings shall cover an area equal or greater in size than the proposed dumpster pad expansion.*
- 2) That the hydro-seed mix area proposed on the plan is replaced with a conservation seed mix. The areas where the conservation seed mix is proposed shall be left un-mowed.*
- 3) That maintenance as specified by the manufacturer is conducted on the proposed "First Defense" stormwater unit with copies of a maintenance report provided to the Environmental Planner annually.*

Seconded by Mr. Cardin. The motion passed by a unanimous vote (7-0-0).

- B. 2355 Lafayette Road
Alissa C. Bournival Revocable Trust, owner
Assessor Map 272, Lot 7

*Vice Chairman Blanchard moved to **withdraw** the application from further consideration per the applicant's request, seconded by Ms. Harrison. The motion passed by a unanimous vote (7-0-0).*

- C. 3 Curriers Cove
Chase B. Bailey and Kathryn E. Soave-Bailey, owners
Assessor Map 204, Lot 12

Joseph Coronati, Jones & Beach Engineers, Inc.

Mr. Coronati's presentation included the following statements:

- The proposed plan is a home improvement project. The house has existed for about 20 years near Sagamore Creek.
- The site consists of different types of wetlands including a tidal wetland at Currier's Cove, a freshwater wetland, two setbacks from the City, and a small wetland at the end of a culvert near the actual roadway with buffers on either side.
- A brief description of the house architecture was provided. The rear deck would be screened in and slotted overhangs around the structure would be added. The proposed roof above the existing front door would be solid to prevent rain and snow from entering the house. The existing pool is to be replaced with a different shape and style pool in a slightly different location. A hot tub would be added and the existing shed converted into a pool house.
- Total increase of impervious surface is 418 s.f., which is within the 100' buffer. All the proposed impacts are outside of 100' tidal wetland buffer zone.

Mr. Britz noted that the neighbor has a 40' conservation easement adjacent to Assessor Map 204, Lot 4. The Planning Board would have to decide whether anything could be built within that area. The applicant could coordinate the process with the Planning Board, or postpone, or clarify with Planning Board and return with a conditional use permit.

Mr. Alec McEachern, Shaines & McEachern, PA, provided the original subdivision plans to the Commission that demonstrated the agreement with a declaration of restrictions. He cited the terms and conditions regarding the conservation setback and suggested that it be included on the existing conditions plan.

Mr. Coronati noted that he was not aware of the easement that restricts what can be built within that area.

*Vice Chairman Blanchard moved to **postpone** review of the application to the December 14, 2016 meeting, seconded by Ms. McMillan. The motion passed by a unanimous vote 7-0-0.*

D. 154 Maplewood Avenue
Gideon Walker House Trust, owner
Assessor Map 124, Lot 7

Ms. Britt Audet, CMA Engineers, explained that the existing stonewall is to be restored to its existing configuration and height.

Ms. Audet replied to Chairman Miller that the period of performance is planned for next year.

Ms. McMillan asked whether excavation would be necessary in Pictures 3&4. Ms. Audet thought that excavation would not be necessary in that section.

Ms. Audet confirmed to Chairman Miller that the final elevation of the wall will match the elevation of the wall along Maplewood Avenue.

Ms. Audet explained that it is essentially a repair in kind. The word repair was used in the application because of the wetland permit application by notification. Chairman Miller referenced the excavation on the side of the wall closest to the home and suggested that a small amount of gravel should be used as a base depending on the soil mixture.

Mr. Cardin suggested that the salt marsh be temporarily removed during the work and kept hydrated until it is replanted. Removing it entirely could potentially cause harm to the surrounding vegetation.

Ms. Wright pointed out the migrating salt marsh due to the sea level rise and questioned at what point the wall itself would become essentially unnecessary. Chairman Miller described how the applicant is likely aware of that and would not expect it to be an issue in the short term.

*Vice Chairman Blanchard moved to recommend **approval** of the application to the Planning Board as presented with the following stipulation:*

- 1) That the applicant insures that the saltmarsh grass is reestablished in areas where it is growing today on the inside and outside of the wall.*

Seconded by Ms. Zamarchi. The motion passed by a vote (6-1-0), with Ms. McMillan opposed.

IV. OTHER BUSINESS

1. Vote to utilize Conservation Funds – 850 Banfield Road

Mr. Britz explained that it has been suggested to convert the lower portion of the property into conservation land or subdivide it with conservation easements. The City Manager recommended to Council to subdivide the lower area for stormwater management and possibly to provide an upland edge for buffer area. The Commission would have to authorize \$150,000 to facilitate the project.

Mr. Britz replied to Ms. Tanner that it has not been confirmed as to whether or not the well is contaminated.

The Commission expressed interest in ensuring there are opportunities available for the Commission to be involved in the planning process. Vice Chairman Blanchard suggested to include in the motion that a letter be submitted to Council stating the financial commitment and the Commission's interests in supporting stormwater management and natural resource management for the remaining parcel. Mr. Britz believed that the 3.8 acres would be divided and sold off with the intention to recuperate some of the costs. Chairman Miller felt there are opportunities to keeping the back portion as part of the Bog for recreation. Ms. Tanner questioned whether the Commission would be reimbursed if there was any possible profit made. Mr. Britz replied that it is not likely there will be an excess of funds with this project. Mr. Britz replied to Ms. Zamarchi that the total currently available in the conservation fund is about \$1 million. Vice Chairman Blanchard also felt that there are opportunities for protecting the natural resources that would not want to be forgotten.

*Vice Chairman Blanchard moved to **authorize and approve** the expenditure of \$150,000 from the Conservation Fund to acquire the property at 850 Banfield Road and request continued involvement with the Conservation Commission in the City's disposition of the property, seconded by Mr. Cardin. The motion passed by a vote (5-2-0), with Ms. Tanner and Ms. Zamarchi opposed.*

2. Mitigation opportunities in Portsmouth

Kimberly Peace, Hoyle, Tanner Associates, Inc.

Ms. Peace provided an overview of the opportunity to include the following statements:

- The Federal Aviation Administration (FAA) identified obstructions to the aircraft runway in 2009-2010 and is required to either remove or monitor the trees. There was much discussion between the FAA and Town of Newington as to which trees exactly would be removed.
- The proposed plan includes tree removal in both Portsmouth and Newington. There would be .79 acres of wetland impact for Portsmouth and there is no permanent fill. Because it is a temporary conversion of the wetland, the FAA would provide mitigation for 20% of the impact in Portsmouth.
- The FAA does not encourage creation of wetlands or restoration of wetlands on an active airspace because it is a wildlife attractant. Because of that, there has been discussion making a payment to the ARM fund for the mitigation.
- The request is for any readily available projects that the FAA could provide a grant to as compensation for the impacts. If there are no projects available within Portsmouth and Newington, then a donation to the ARM fund would be pursued.
- The permit is anticipated to be received in April and it would be helpful to know beforehand how much and what projects could potentially receive funding from FAA.

Mr. Britz asked what kind of property can be purchased and how much. Ms. Peace explained that for upland preservation it is less than one acre. For wetland creation or restoration, it is roughly .14 acre for wetland creation or restoration. The funding amount is about \$20,000. The various methods for how that funding would be used was explained and she emphasized the main consideration is what can be achieved in the shortest amount of time. It would have to be a defined project that DES could review. Either the \$20,000 could be allocated to the project or approximately 1 acre could be allocated towards mitigation.

The Commission deliberated potential options and consideration was given to improving the Great Bog trail system as a viable wetland restoration plan. Ms. Peace explained to Mr. Cardin that the DES would approve the project and have some form of a legally binding agreement before releasing the funds. The grant is anticipated to be awarded for FY17 and then release the funds in the Spring.

The Commission reached consensus to form a subcommittee to consider a few options and invited Ms. Peace to meet on December 1, 2016 at 3:30pm.

V. **ADJOURNMENT**

Ms. McMillan moved to adjourn the meeting at 6:23 p.m., seconded by Ms. Tanner. The motion passed by a unanimous voice vote.

Respectfully Submitted,

Marissa Day
Acting Secretary for the Conservation Commission

These minutes were approved at the Conservation Commission meeting on December 14, 2016.