

**REGULAR MEETING
CONSERVATION COMMISSION
PORTSMOUTH, NEW HAMPSHIRE
1 JUNKINS AVENUE**

Conference Room "A"

3:30 p.m.

November 9, 2005

Members Present: Chairman, Charles Cormier; Vice-Chairman, Steve Miller;
Members, Allison Tanner, J. Lyn Walters, Eva Powers, Don
Green, and Brian Wazlaw; and Alternate Barbara McMillan

Members Excused: Skye Maher

ALSO PRESENT: Peter Britz, Environmental Planner

Chairman Cormier called the meeting to order at 3:30 p.m.

I. APPROVAL OF MINUTES

a) September 14, 2005

A motion to approve was made by Mr. Miller and seconded by Ms. McMillan. The motion passed unanimously.

b) October 12, 2005

Approval was postponed until the next meeting so that Ms. Powers could make recommendations for corrections.

II. CONDITIONAL USE PERMIT

**a) 1855 Woodbury Avenue, Portsmouth, NH
Starbucks Coffee**

(This application was tabled at the October 12, 2005 meeting to the November 9, 2005 meeting.)

Mr. Green moved that this matter not be taken off the table until certain items were cleared up. The original map they received was not correct and the new map was not correct either, which is also an issue of Ms. Maher. He reviewed the lot with Ms. Maher on the 7th and they found that 270 s.f. of alleged paved area was not, in fact, paved along with other small portions, bringing it up to 350 s.f.

Chairman Cormier indicated that they would have to take it off the table to discuss it and Mr. Britz confirmed this.

Mr. Green suggested that the applicant may want to leave it on the table.

Chairman Cormier was not sure if that was proper.

Ms. Powers indicated there were issues regarding the topography also.

Chairman Cormier indicated he would like to discuss the matter.

Mr. Green made a motion to take the application off of the table. Ms. Tanner seconded the motion. The motion passed unanimously.

Attorney Bernie Pelech addressed the Commission on behalf of Starbucks. Ian Trefery of NH Soil Consultants and Luke DiStefano of Bohler Engineering were also present. Attorney Pelech stated that the Commission had wanted more details on the plans and a meeting was held with Peter Britz and David Holden to see what they thought should be on the plans. As a result they put together some conceptual drawings regarding site drainage with more details on the Vortechnic unit and where run-off was going to flow.

Attorney Pelech indicated that until yesterday he didn't realize there was a problem with the Existing Conditions Plans. Mr. DiStefano went to the site today and took some measurements and he can address Mr. Green's comments. It is their position that if there are an additional 350' of area being changed from pervious to impervious, they will still reduce the quantity or keep at the same level of flow off the site. Drainage is currently not being treated however they propose to treat it through the Vortechnic system.

Mr. DiStefano of Bohler Engineering next addressed the Commission. Since the last meeting, they had a follow-up meeting with the City Planning Department and they came up with a plan to get them through this portion of the Conditional Use Permit process. They have still not done a full boundary topographical study and don't have a fully engineered set of drawings but their current plans are sufficient enough to get their points across to this Commission and show the effect of redevelopment on the wetlands to the east of the property. Mr. DiStefano indicated that Mr. Trefery would later talk about the wetland values and wetland functions and will show that there will be no detrimental effect on site.

Mr. DiStefano stated that since the previous meeting they came up with a conceptual stormwater management plan. They modified some of the areas to provide more green space wherever possible, including more greenspace around the drive-thru in the northeast corner, still allowing for adequate traffic access. They came up with a rough number of 250 s.f. of additional impervious surface being created. He went out to the site and acknowledges that some of the measurements are not accurate. The most significant area is the edge of the building curve line that represents 240' of additional impervious cover. Adding that to what they already know of equals about 500 s.f. Even if they double it to 1,000 s.f., it is still well below the assessment evaluation which used 1,200 s.f. to determine no negative impact to the wetland systems. Any increase to impervious surfaces will be recharged, if possible, and if they can't do recharge, they will do

underground retention and still keep the rate of run off equal to or slightly below current conditions.

Mr. DiStefano felt this project, as presented, does meet the four conditions that allows them to issue a positive recommendation to the Planning Board. However, he further indicated that if the Conservation Commission issued a favorable recommendation, they would be comfortable with a stipulation that the impervious surface could not exceed the 1,200 s.f. which is included in their report, although, they are confident that they will see an overall reduction in impervious surface when they complete their existing conditions plan. If they exceeded 1,200 s.f. then they would have to come back before the Commission with a modified plan and assessment indicating that any excess impervious surface does not result in a negative impact to the wetland.

Ian Trefry, of New Hampshire Soil Consultant spoke to the Commission next. He indicated that a portion of the wetland is part of a much larger system from the west of Interstate 95 and ends at the Piscataqua River. They assessed the overall functions of the entire wetland complex and they addressed the site specific functions and values. They determined that it was performing sediment/toxicant retention and nutrient removal is based on the potential sources of the water shed above the wetland. Using the Vortech system with deep catch basins it will increase water quality outletting and reduce the sediment load to that wetland. The culvert is currently 2/3 buried with sediment and the Vortech system would trap 90% of that sediment. Additionally, they will be widening the buffer and providing more green space and have put together a native plant list to enhance the capabilities of the buffer. They based all of their calculations on a 1,200 s.f. additional impervious surface. They believe the site is appropriate for the proposed use and it will not have a significant impact on the wetlands.

Mr. Green stated that he needs a real clear idea of what the actual plan is and until they receive that they should not take any action on this. He's not sure the building is in the right position and the northeast side of the lot is much shorter than it is shown on the plans. He does not know if this is a design that enables traffic to both pick up and pass around as a drive-thru. Also, the slope of the land drops off rapidly and a significant amount of fill will be required in the wetland buffer.

Mr. DiStefano stated that the siting of the building is based on a plan that was previously approved for Pizza Hut with the City and he also went out and did some measurements. He could not determine where the property lines were but he did measure from the building and his measurements came out exactly the same except the drive aisle is actually 5' wider than the plan. He felt they would be showing even less of an increase in impervious surface. There is a difference with the back measurement of the building resulting in 250' of impervious surface but that is off-set by the building being back further. Their report gives an ultra conservative number for them to work with and they are happy to come back if that number turns out to be a misrepresentative. They are just trying to get through this process without a fully engineered set of documents. Combined with the report from NH Soil Consultants, they feel they have enough information for the

Conservation Commission to recommend approval. They will then go to the Planning Board and will eventually have a full site survey.

Mr. Walters asked about the fill that was mentioned.

Mr. DiStefano indicated that the site to the north to the edge of parking, near the shed, drops off to the access road to the mobile home park. They will be doing a little bit of filling in that area but the amount of fill would be minimal and they would propose a retaining wall along the edge. They will look at that a little closer when they get the formal topography survey however there would be no impact on the wetland from the fill they would bring in. Also, Mr. DiStefano confirmed that there are proper turning radii for two-directional traffic. There will be a 10' drive thru aisle with another 10' access aisle.

Mr. Miller asked about native vegetative plantings and the Vortech drainage system.

Mr. DiStefano indicated that the drainage is conceptual but the building can be pitched in a couple of different directions to get the drainage to the catch basins they need and the catch basins with hoods would catch 100% of the groundwater generated in the paved surfaces of this development. Therefore, all "dirty run-off" from the site would be pre-treated and discharged back. At the present time there is no pre-treatment. They are looking at a 94 – 95% TSS removal result with this system. They would see an increase of ground water recharge of 2,520 s.f. back into the existing ground water that they don't have today.

Mr. Trefry addressed the plantings. He confirmed that any area where they are removing pavement will be buffered with plantings.

Attorney Pelech also confirmed that they have proposed to put up a 6' stockade fence to prevent debris and trash from getting into the wetland. This is a problem across the street and they will try to help out with that problem.

Ms. Powers stated, for the record, that Mr. DiStefano stated that they didn't know about the problems with the drawing until yesterday and she wanted to point out that the minutes reflect that members had questions about the drawings at the last meeting. Also, the members don't receive their plans until a few days before the hearing so they brought it to their attention as timely as possible.

Chairman Cormier asked if this discrepancy goes back to Pizza Hut?

Mr. Britz confirmed that they are using Pizza Hut's plans.

Chairman Corner felt it was important to point out that the applicant is not trying to deceive anyone with their plans.

Mr. Green agreed but stated that the conditions presented are not the conditions that exist.

Mr. DiStefano agreed but he does not believe they are that far off and the numbers will not be different than what they will see when then get the full topographical study

Ms. McMillan asked about the stormwater maintenance plan?

Mr. DiStefano confirmed that they would have a full plan and that will be included on the formal civil drawings.

Ms. McMillan asked if the buffer plantings along the back would result in a natural vegetative area?

Mr. Trefry confirmed that there would be all native species behind the stockade fence.

Mr. DiStefano stated they would leave as much of the existing vegetation as possible. The site is filthy with a lot of debris in the wetland and Starbucks would be willing to go in and clean that up.

Mr. Green agreed that most members are not in favor of seeing property abandoned because that invites neglect. That pre-supposes that they need a plan that is based on reality. He would not approve of what he has heard so far unless he knows exactly what they are going to do.

Mr. DiStefano indicated that he felt they have a plan that allows them to make an informative decision.

Chairman Cormier summed up that they are willing to a stipulation based on this discrepancy and he reminded the Commission that they should stay focused on the wetland impact and stay away from traffic issues and other things unless they feel they have impact on the wetlands. He felt the applicant is acting in good faith and is willing to make the corrections necessary with a stipulation.

Ms. Powers asked how much screening would be between Starbucks and the mobile home park?

Mr. DiStefano compared the existing plan and the proposed plans which shows that the buffer is reduced to about 6 ½', and down to 5 ½' when they get a wall in, but they are also proposing native species so it will be an adequate buffer.

Attorney Pelech confirmed that they are increasing the buffer where the wetlands are which will substantially improve the impact on the wetlands.

Mr. DiStefano pointed out additional greenspace that will be created as a result of the drive-thru.

Mr. Britz was concerned about the three hooded catch basins and the Vortech system. He wanted to make sure that they are committed to putting those in and also doing the infiltration. He thought the Commission may want to do stipulations for those items.

Attorney Pelech confirmed that they are committed to the Vortech system, infiltration and catch basins.

Mr. DiStefano stated their next step was zoning. They will then be doing a full traffic study and a full soil evaluation. They will definitely propose subsurface detention but he can't say exactly what they will do without fully designing the site.

Attorney Pelech confirmed that they are also fully committed to the curbing and the fact that there will not be any untreated sheet flow across the parking lot.

Ms. McMillan asked about the small greenspace in the rear.

Mr. DiStefano indicated that area is where the menu board will be and it will be landscaped with a native species.

Ms. McMillan asked if there was an opportunity to put infiltration back in?

Mr. DiStefano confirmed that it would be a natural recharge area. They want to take the entire building and infiltrate it with 8' diameter drywalls and they will do for a 100 year storm event, not just a 25.

Ms. Powers addressed whether the proposed construction was in the public interest. She indicated that the folks that are living right off the road would be exposed to more sound and the visibility of cars. She asked if that was something that the Conservation Commission should be concerned about?

Mr. Britz confirmed that they should only be concerned with the extent that it impacts the wetlands.

Attorney Pelech advised the Commission that when Pizza Hut was built, it was built under the old Zoning Ordinance and did not require buffering between a business and residential uses. In 1995, when the Zoning Ordinance was amended, it became a requirement to have a barrier. He felt that the nearest mobile home was a considerable distance from the property and this proposal has more buffering than Pizza Hut ever had. When they appear before the Planning Board, they will have to show that they will not be diminishing property values.

Chairman Cormier called for a motion, with the stipulations that were discussed.

Mr. Miller moved to approve with stipulations.

Mr. Walters seconded.

The motion passed with the following stipulations, with Mr. Green, Ms. Powers and Ms. Tanner voting in the negative.

- 1) That the applicant shall return to the Conservation Commission should the increase in impervious surfaces within the wetland buffer exceed 1,200 s.f.;
- 2) That the stormwater maintenance plan shall include 100% of the water from the site going through hooded catch basins with oil/water separators and a Vortech stormwater treatment system;
- 3) That native plantings shall be added to the areas that change from impervious to pervious; and;
- 4) The infiltration of rainwater shall be provided from the building into the ground, if the soils permit.

b) 141 Banfield Road, Portsmouth, NH

(This is a request to amend previous approval received on November 15, 2002.)

Dennis Moulton, of AMES MSC, appeared on behalf of the owners of the property and Attorney Bernard Pelech was also present.

The property is located opposite the Temple Israel cemetery and previous approval for this site was received in 2002. At that time the site plan proposed 27,000 s.f. in the wetland buffer protection area. The site was constructed with 700 s.f. less in the wetland buffer from what they originally requested.

This was a request to amend the previous approval. One issue is that the area inside the buffer was improperly constructed. Those areas were to be loam and seeded and stone fill was actually put in. It's great for the drainage but did not meet the approval requirement. They will take out the gravel and put in loam and seed but they would like to construct a 3' stone apron along the edge as this area soaks up a lot of run off from next door. This will prevent further erosion.

Mr. Green asked if this was a pre-existing drainage ditch?

Mr. Moulton confirmed that it was. Other than that drainage ditch, they will plant the rest of the area. The second item of concern to the Conservation Commission was the area of pavement which was a result of an anticipated use of the property involving tractor trailers. As it turns out, the tenants are not users who require tractor trailers. The building has been divided into 13 different units and they are now using this pavement for parking for the employees. They are asking for permission for the area previously proposed for tractor trailer movement be striped for 44 additional parking places, most of which are in the wetland buffer.

They believe the previous conditions of this approval have been met and they are looking for an amendment.

Chairman Cormier asked if there is an existing drainage swale and he asked for clarification on what they planned to do with it?

Mr. Moulton stated that from the apron to the wetland, it is now stone filled and they want to remove the stone fill and loam and seed it.

Mr. Green asked if that was on the southwest side of the lot? (He was referring to the Department Memo.)

Mr. Moulton clarified that it should have said west.

Mr. Britz stated that he was talking about the same swale that Dennis was referring to and it was on the west side. They put in gravel where they said they would put in a vegetative swale.

Attorney Pelech was involved originally and their tenant at that time was going to take the whole building for a lumber warehouse but that did not materialize. It was decided to make the building into 13 small condo units, including businesses such as an auto reconditioning service, an irrigation company, and there is no need for tractor trailers.

Mr. Moulton stated that the change to parking is the addition of 49 spaces, 35 of which are inside the buffer zone.

Chairman Cormier asked what was the original proposal for that spot?

Mr. Moulton confirmed the space was originally to be used for tractor trailer movement.

Mr. Green asked if it was asphalt?

Mr. Moulton stated that one of the problems was that they were parking on the gravel areas.

Chairman Cormier asked about buffer enhancements and if that would be part of the proposal?

Mr. Britz recommended that they come up with a solution for lost impervious area. How much do they exceed the parking requirement by?

Mr. Moulton stated it is not being used solely by employees as some of the businesses need to use some of the parking spaces.

Mr. Britz felt it should be clear that uses are for the storage of vehicles being serviced on the premises. He recommended that they put some sort of barrier along the edge for snow storage.

The owner indicated that they could put up a one rail fence.

Mr. Britz stated they should put up a barrier so that they could not get cars across it.

Ms. Powers asked about the buffer enhancements.

Mr. Britz felt they could mitigate and reduce the impacts with buffer enhancements. He felt they may be able to come up with a better solution such as a blue grass.

Mr. Moulton asked if they could work with the Planning Department to come up with a planting plan that satisfies that condition.

Chairman Cormier confirmed that this was basically a change in use on the parking issue. They will remove the rocks at the swale with the stipulation that they will not only plant grass and seed but will enhance it with other plantings. Also, a barrier will be put along the edge of the pavement where they meet with the buffer.

Ms. McMillan asked that plantings maintenance be added to the stipulations.

Mr. Miller asked if this lot was gravel before?

Attorney Pelech indicated some was paved and some was gravel. It was an old junk yard where cars were stored.

Mr. Miller was concerned that what was approved then allowed for a substantial part of the buffer to be paved because the trucks needed it for movement. Now, it's not needed for that but rather it is required for parking. The approvals were all received based on a different use.

Mr. Britz stated that if this project came before the Commission today, they would not have approved the parking in the buffer. But, given that they have already put it there they are trying to make it a useable site.

Mr. Moulton indicated that the original swale was constructed but it was just the planting stage that wasn't finished. All of the drainage is there.

Ms. Powers felt it sounds like they didn't do what they said they said they would do. It seems awful easy to make changes now. She asked if there is any penalty in a situation like this?

Mr. Britz indicated that the next step is the Site Review procedure and the monetary penalty is the fees they will incur.

Chairman Cormier stated that the reason for the meetings is to get input from the applicants and for the Conservation Commission to present their suggestions to make things better.

Mr. Green had questions about the amount of parking. He understands that the conversion business has a lot of vans on the property. But, there are a lot of other cars and vans out there we well.

The owner explained that their tenant Green Mountain transfers mail and their employees park their vehicle on the lot while using company vans.

Mr. Green asked how they plan to resolve the issue when they loose gravel parking spaces?

The owner explained that the tenants were just parking wherever they could park. The owners send a letter to all tenants that the City did an inspection and determined that they were not parking properly. There are enough spaces for all of the tenants.

Mr. Green felt one advantage of this building is the immense amount of parking space around it. He hopes they get permission to line their driveway.

Mr. Green made a motion to favorably recommend approval with stipulations. Mr. Wazlaw seconded.

- 1) That the applicant shall provide a planting plan to be reviewed and approved by the Planning Department;
- 2) That a barrier shall be constructed at the edge of the pavement within the wetland buffer area and no snow storage shall be allowed in that area; and;
- 3) That the vegetative swale shall be constructed as originally approved and enhanced with plantings.

The motion to recommend approval passed unanimously.

III. OTHER BUSINESS

a) Work Session Prime Wetlands Grant

Mark West, of West Environmental, and Jodi Castallo from NH Estuaries, were present for this work session.

Mr. West indicated that prime wetland is a focus for him in NH and he works in various New Hampshire towns. The purpose of this work session was to review his initial work and also to potentially start to map out where to go from here and what the prime wetland designation process is.

He provided handouts. The first part addressed NHDES requirements. All wetlands have to have the three perimeters. Wetlands shall have the presence of hydric soils, hydrophytic vegetation and wetlands hydrology, and at least 50% of the prime wetland shall have very poorly drained soils and the remaining soils shall be poorly drained soils and designated

prime wetlands boundaries shall be walked and verified by the municipality or its authorized agent where landowner permission can be obtained.

It's important to get the public to understand why the wetlands need to be protected.

He reviewed the Gove study and has some questions. There is a huge 629 acre wetland that was not evaluated because it was tidal wetlands. The Conservation Commission needs to decide whether they are protecting their tidal wetlands. If a tidal wetland is protected as prime wetland then it will have a higher level of protection. Mr. West felt that some of the tidal marsh is very valuable because of the diversity of the tidal ecosystem.

Miller asked why they were not included.

Mr. Britz indicated it was partly due to budget constraints and the City has taken the position that tidal wetlands are already protected. He asked if they were talking about Sagamore Creek around Jones Landfill and the Urban Forestry Center. The other ones have a lot more development around them but these two need protection.

Mr. Miller indicated there are tidal wetlands and marshes that he feels are critical to water quality benefits.

Mr. West indicated that the Conservation Commission has a lot of flexibility on what they want to designate. He encouraged them to be thorough in knowing what their resources were. He had questions about the selection criteria and how it was applied to determine wetland boundaries and connections. He had seven wetlands that may want to be further examined. He provided a colored map highlighting the location of those wetlands.

Mr. Britz asked if they were eliminated because less than 50% of the soil was not poorly drained?

Mr. West indicated there was flexibility with that. He wanted to create a field data form and provided a draft for the members to review.

He found some problems with the classifications of the wetlands and he felt those areas needed to be re-examined. If they are not connected as vegetative wetlands, they may need to designate them as separate prime wetlands. They may need to do some boundary verification. He looks at inlet and outlet streams and reviews ecological integrity.

Mr. Britz confirmed that the orthophotos are from 2000.

Mr. West thought they should review them for changes. He will review urban quality of life and potential restoration opportunity.

He suggested that the Commission members get their comments back to Peter for his review and forwarding to Mr. West.

He also provided a Tidal Marsh Evaluation form that could be reviewed by the members.

Mr. Cormier thanked Mr. West for the overview and asked what would be next.

Mr. West indicated once they agree to the data form he is free to start field work. His work consists mostly of finalizing mapping of the boundaries and filling out the evaluation forms. His next presentation to them would be his findings and recommendations. Pease was something to discuss. If there is a real “hot potato” they may just want to take that wetland out.

Ms. Tanner asked what a “hot potato” would be?

Mr. West indicated if someone was impacting or crossing a prime wetland, they may be required by the State to do more protection and if a large scale project is being done, the Commission could review it.

Tanner asked if they could do anything along Route 33 to increase the ability of having prime wetlands?

Mr. Britz indicated the only area in Portsmouth would be behind Griffin Road. Most are in Greenland. It would depend where and when they got their wetland approvals Tanner is concerned about widening the road and impacting all of the wetlands.

Mr. West pointed out the wetland by Exit 3. A prime wetland has to be connected hydrologically. You have to be careful connecting along highways. DES required them to undesignate them.

The original contract is to look at the existing wetlands and he can't start re-evaluating everything but if there is a specific area they want him to check he can.

Mr. Britz indicated that in looking at the Gove study and looking at the region, they talked about things specific to Portsmouth, what might make a wetland more unique to Portsmouth to make them sway towards vegetating it?

West indicated a tidal wetland is a rare wetland in the State. In other towns a 5 acre may not be important but in an urban setting it is more important.

Mr. West confirmed that once they confirm the list of wetlands they want him to work with, they will identify them on a map and work with the Planning Board before going to the public.

Mr. Miller asked if wetlands could be brought up later?

Mr. West indicated nothing was limiting them but the original list would carry through to the future.

Mr. Cormier asked if he would need their blessing on both forms?

Mr. West confirmed that was correct.

Mr. Britz asked them to get back to him within the next week so that he can get back to Mr. West and not hold things up.

Jody Castallo indicated that all items in their management plan was based on what is important to a large group of people in this area. They are funding this project.

Mr. West indicated he was excited about working on the project and felt there were some very exciting wetlands in town.

Mr. West indicated in the spring they could do a site walk to identify prime and non-prime wetlands.

IV. ADJOURNMENT

At 5:25 pm, a motion was made and seconded to adjourn to the next regularly scheduled meeting.

Respectfully submitted,

Jane M. Shouse
Acting Secretary

These minutes were approved at the December 14, 2005 Conservation Commission Meeting.