

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

Conference Room "A"

3:30 p.m.

January 11, 2006

Members Present: Chairman, Charles Cormier; Vice Chairman Steve Miller; Members, Allison Tanner, J. Lyn Walters, Eva Powers, Don Green, and alternates Barbara McMillan and Skye Maher

Members Excused: Brian Wazlaw

ALSO PRESENT: Peter Britz, Environmental Planner

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

I. ELECTION OF OFFICERS

Ms. Powers moved to nominate Mr. Cormier for Chairman and Mr. Walters seconded. The motion was approved unanimously.

Ms. Powers moved to do away with the secret ballot and Ms. Tanner seconded. The motion was approved unanimously.

Mr. Walters moved to nominate Mr. Miller as Vice-Chairman and Ms. Tanner seconded. The motion was approved unanimously.

Ms. Powers moved to do away with the secret ballot and Ms. Tanner seconded. The motion was approved unanimously.

II. APPROVAL OF MINUTES

a) **December 14, 2005**

Ms. Powers moved to discuss the minutes at the end of the meeting and Mr. Green seconded. The motion was approved unanimously.

III. CONDITIONAL USE PERMIT

- A) **Off Middle Road (Map 232, Lot 122)
Irving W. Spinney, Revocable Trust, Janice L. Karkos, Trustee,
Owners and Dawn M. & Arthur R. Tobin, III, Applicants
(This application was tabled at the December 14, 2005 meeting)**

Ms. Powers moved to take the application off the table and Mr. Walters seconded. The motion passed unanimously.

Mr. Tobin, the owner of the property spoke on behalf of the application. He addressed the Commission and thanked them for their suggestions at the last meeting. As a result of those suggestions they had a discussion with their engineer and made some significant improvements to the plan. There are four major changes that were made:

1. They reduced the size of the footprint by approximately 400 square feet to just over 1,250 square feet, which is a 16% increase over the existing structure that is there now. This compares to a 50% increase on their initial plan, which is a significant reduction.
2. They moved the house farther away from the wetlands to increase the distance and also moved the house over to the right.
3. They also eliminated most of the grading that was proposed in the initial plan. As a result, the impact of the buffer will be cut in half from 10,600 square feet to 5,000 square feet.
4. They are proposing installing a pervious driveway instead of an impervious one.

Corey Colwell, of Ames MSC, spoke on behalf of the petition. He explained the new plan that was distributed to the Commission. He stated that last month they proposed much more grading out back between the foundation and the wetlands, and, they have now eliminated all the grading out back. The only grading being proposed will be in the front of the house and adjacent to the driveway. They reduced the size of the driveway and moved it from one side of the house to the other and they have eliminated the garage completely. This is the reason for the reduction in square footage. They moved the new structure from where it was originally placed. He stated that at the last meeting they were right over the existing foundation and indicated that the owners did not want to build on the existing foundation because of its age. He referred to a letter from Tobin Builders indicating that it is not a good idea to build on the existing foundation as it is not structurally sound. As a result of a meeting with Mr. Britz and Ms. Tillman, in which concerns were expressed about improving the buffer or increasing it, they moved the new building forward and to the right closer to the structure to the east. They increased the buffer from 22.5 to 32.9 feet. They reduced the impact of the buffer by over 50 %. In the previous plan they proposed 10,640 of total buffer disturbance. The revised plan has 5,004 total buffer disturbance. This is broken down by site disturbance for construction and grading, the house, the steps, the patio, which is pervious, the shed, the chimney and bulkhead and driveway, which is pervious. At the last meeting they had proposed an impervious driveway. This has been changed to a pervious driveway so the water will run through it, which will help the wetlands. The location of the driveway has been moved to the other side of the house and been reduced. Mr. Colwell noted that they have made some concessions and some major changes to this plan.

Ms. Powers asked if some of the mowed area in the rear of the property will convert to more natural vegetation and also wanted to know if they will be planting trees?

Mr. Colwell indicated that, at the last meeting, the Commission felt that it was necessary to let some of that grow into natural vegetation. Currently, it is a lawn, and, the owners would like to keep the lawn as it is now. He noted that they have made a lot of concessions by eliminating the garage, reducing the house and moving the house closer, and, they would like to keep the existing lawn, if possible. However, they would certainly consider growing some additional vegetation if the Commission feels that is a good idea.

Ms. Powers noted the Commission recommended that at the last meeting.

Mr. Colwell noted that at last month's meeting distances were not discussed, but, they did discuss the back section of the house.

Ms. Powers asked Mr. Britz about this.

Mr. Britz indicated that distance was never specified at the last meeting, but feels it is a good idea. He also stated that it would be nice if the lawn was made into a buffer enhancement area. The larger issue at the last meeting was that no fertilizer be used in the back.

Mr. Colwell indicated that the buffer that is there now is approximately a 30 foot buffer from the trees to the wetlands, and, if it was maintained throughout, they would be cutting off the back corner of the lawn. He stated that he does not think that the right hand side is as critical as the left-hand side and they could maintain a 30-35 foot buffer.

Mr. Britz asked if that would be the 40-foot contour line.

Mr. Colwell stated that it would be approximately the 40-foot contour line.

Mr. Miller stated that this seems reasonable.

Mr. Britz asked about not using fertilizer in the back yard.

It was noted that pesticides should be added to that.

Ms. McMillan asked what would happen if the house were to be sold. Can this be put in the deed?

Mr. Britz indicated that they could recommend this to the Planning Board and they can stipulate putting it in the deed as part of their approval. Mr. Britz indicated that he would look into this further to see if this can be done.

Mr. Miller indicated that the tidal wetlands has restrictions from DES as to the types of fertilizers to be slow released within 200 feet of tidal wetlands, and, there is also

restrictions on pesticide use, which is 30-40 feet. He wondered if this was also true of fresh water wetlands. He suggested this be looked into further because it may cover what the Commission is asking for.

Mr. Green referred to Section 10 607 Section 7B of the Zoning ordinance which deals with things that would be permitted and it states that “any building located within the buffer zone which is thereafter damaged or destroyed by fire or any other cause, other than the willful act of the owner or his agent, may be restored or reconstructed provided that such reconstruction shall not enlarge the footprint of the building”. In addition, a building permit must be obtained. He stated that a foundation is not a building and this ordinance refers specifically to a building, and, therefore, this should not be permitted.

Mr. Britz informed Mr. Green that the reason it is not permitted is why the applicants are here to obtain a Conditional Use Permit. If they did have a building destroyed by fire they could rebuild it without even coming before the Commission. The permitted uses listed in the ordinance are ones that do not need a Conditional Use Permit.

Mr. Cormier stated that the fact it is not permitted allows them to apply for a Conditional Use Permit.

Mr. Britz stated that they are permitted to build the house, but they need to satisfy the requirements of the Conditional Use Permit.

Mr. Cormier asked how they were able to make more room.

Mr. Colwell indicated that by reducing the size of the building, and, eliminating the garage it created a smaller footprint. He noted that protecting the buffer zone was paramount. The only way to increase the buffer zone was to reduce the footprint.

Ms. McMillan asked what the material they would be using for the pervious surface for the driveway and the back patio.

Mr. Colwell indicated that they would either be using pavers, brick or crushed stone. He also stated that underneath would have to be either sand or crushed stone so that the rainwater can seep through the cracks.

Mr. Cormier summed up the application. He stated that the applicants have agreed to leave the vegetation at the 44-foot contour line and will not use any fertilizer or pesticides within the buffer zone, which is essentially the whole parcel of land.

Mr. Colwell stated that is correct.

Ms. Powers asked about planting the trees adjacent to the property.

Mr. Tobin indicated that they would be planting trees toward the property line of the house next door as a dividing line.

Mr. Green asked if this requires informing the abutters of the change in the neighborhood.

Ms. Powers stated that the only abutter is the owner of the land.

Mr. Britz stated that the abutters will be notified prior to the Planning Board meeting.

Ms. Tanner made a motion to approve the conditional use permit and Mr. Miller seconded with the following stipulations:

1. That the natural vegetation be left at the 44 foot contour;
2. That there shall be no fertilizers or pesticides within the buffer zone; and
3. That the driveway and patio shall have a pervious surface.

The motion passed with a 6-1 vote.

**B) 500 Spaulding Turnpike (Map 238, Lot 20)
Thomas J. Flatley, Owner & Home Depot, Applicant**

Attorney Malcolm McNeill spoke on behalf of this application. He represents Home Depot. He thanked the Commission for coming out to the site for a site walk and felt that it helped a lot. Greg Mikolaities, of Appledore Engineering, Jim Gove of Gove Environmental and Ian McCarthy, Home Depot's architect were also present at this meeting and will be assisting in the development of this project. Home Depot is requesting a Conditional Use Permit within the 100-foot buffer. Attorney McNeill noted that this site is a highly developed site and has been for a number of years and predates the ordinance under which the Commission is acting regarding this proposal.

Attorney McNeill gave a brief history of the site. In 1985 the Omni Mall opened on this site. This was a large structure and had a short successful retail life of approximately one-year. The site consisted of approximately 185,000 square feet, which is a footprint larger than the combination of all of the buildings they are proposing to put on this site. There was no wetlands ordinance in 1985 with regard to this property. It contained 920 parking spaces, which far exceeds the number being proposed for this new project. The building was operated by Omni for one year, after which, they went bankrupt. In 1987 the current owners, The Flatley Company purchased the property and turned the site into the Portsmouth Circle Business Center. The purpose of the Portsmouth Circle Business Center was to primarily provide office space. In 1993 Liberty Mutual signed a lease for over 100,000 square feet of the site, which constituted approximately 50% of the building space. This was the first time the developers had reached that number in terms of occupancy. In 1995 the site was rezoned by the City from General Business to Office Use as part of the citywide rezoning. The city zoned the property in that manner to make it conforming to the use of the building, and, 1995 was the year the City ordinance came into affect. For approximately ten years preceding the ordinance, and even now, the vast majority of the site has been impervious and it continues to be impervious. Most of what they are proposing is going from parking lot to parking lot except for the pad they are proposing on the site. Attorney McNeill suggested that this would be a radically different

case if the applicant were coming to the Commission starting from scratch, but, in terms of what is being developed on the site it is going from office use with a larger building to a retail use with smaller combined buildings utilizing 2006 technology on the same site. He noted that the developers had an option not to come to the Commission and could have claimed that they were vested in regard to the parking areas on the site. They came forward to be cooperative with the process. He stated that the site is being regraded, and, as such, one could argue they are changing the character of the pavement somewhat, although the impervious surface continues to be there. He stated that on the easterly corner of the site, where the pad is being proposed, there was a slope that is not as conducive as it could be for the use of the proposal.

In 2003 Liberty Mutual left the site and took its 100,000 square feet of occupancy with it. As of 2004 the occupancy of the building reduced to 4% of the site. In 2004 a representative of the Flatley Company proposed that the property be rezoned to General Business. The process was accomplished with the City. Every parcel of land around the site is zoned General Business and has been for many years. Rather than this particular parcel being a thumb of office research, which recognized prior use, it became meshed into the entire General Business area. He stated that everyone should be familiar with the site with regard to it being on the Spaulding Turnpike and Brady Drive. He stated that the Omni Building is a non-conforming building with regard to setbacks as it relates to the Spaulding Turnpike. The building they are proposing is completely conforming as it relates to zoning. They are extinguishing a non-conforming use with regard to this site.

Attorney McNeill indicated that the building is a skeletal remain of what was there. Home Depot is proposing a building that is approximately 117,000 square feet with a garden center, which would be more of a seasonal use. In terms of the closed structure itself, the 117,000 square feet would be located on the northwesterly corner of the site and the front door will be facing toward Brady Drive. Also being proposed is Pad One, which is 26,650 square feet and will likely be used as retail space, and, will be consistent with the General Business zoning on the site. These two combined uses are a little over 170,000 square feet which is approximately 15,000 to 18,000 square feet less than the existing structures on the site.

Attorney McNeill noted that the applicant has come before the Conservation Commission because of the intervening adoption of the wetlands ordinance. He noted that they will not be building in the wetlands and they are only talking about disturbance in the buffer zone. He noted that, except for the site where the Pad is located, they are going from pavement to pavement with regard to the site. He indicated that the building site will also enhance the protection of the wetlands with regard to the property. Presently, the onsite impervious area is 589,800 square feet, which is about 72% of the site. The proposed development is 597,498 square feet, which is about 73%, which is not in the wetlands or in the buffer. The building footprint for the old Omni Mall was slightly over 185,000 square feet. They are proposing a combined building space of 171,000, which is approximately 14,000 square feet less. The garden center is an open roof design. In terms of the onsite impervious area within the 100-foot wetland buffer, currently it is 48,973 square feet. The proposed development within the 100-foot buffer is 44,443 square feet or approximately a 9.2% decrease within the buffer area and that includes the

revised parking space as well as the revised building location. Attorney McNeill stated that the off site impervious within the 100-foot buffer has decreased by 2,810 square feet. There is both a decrease in the size of the building mass and a decrease of the impervious area within the 100-foot buffer area by 7,340 square feet. Attorney McNeill stated that the most important component of this consideration is that the storm water has not been treated at all, and, it currently runs off the site into the wetlands. There is new technology being proposed for this site, in terms of hardware as well as a drainage system to catch the storm water, treat it effectively and to move it off site in a fashion that is ecologically sensitive. There is both a decrease in the size of the mass of the building and the size of the impacts.

Mr. Mikolaities gave the Commission a sense of what the drainage is now and what it will be under the new system.

Mr. Miller stated that their proposal shows that the on site impervious area within the property line is increased by 1 percent, but, two decreases were also mentioned.

Attorney McNeill stated that he is speaking in terms of building footprint and impervious surfaces within the buffer.

Mr. Mikolaities stated that, within the 18-acre site, there will be an increase from 589,000 square feet to 597,000 square feet, so there is an increase for the whole site. However, within the buffer zone there is a decrease of 7,300 square feet. He stated that they are adding more pavement outside of the buffer zone. When they started the proposal Jim Gove performed his wetland evaluation and they all met at the site. Mr. Gove's recommendation was to start with the edge of the pavement and work their way in, but not increase any more into the buffer zone. He stated that the net decrease in that area in the buffer zone is 7,300 square feet. There is a divide line where there is 516,000 square feet of impervious surface which is flowing down to a 32 inch culvert that goes under the road into the wetlands, and noted that, in predevelopment, 73,000 square feet is flowing down to the low point of the pavement into the wetlands and across the street.

In the post development stage, all the storm water will be captured and treated. Mr. Mikolaities indicated that they have done a drainage design that accomplishes this. He indicated that the piping will be done separately in the retention system and will go across the street. The water will be caught in the basins and brought down to the downstream defender in a concrete cylinder. He stated that the big concrete cylinder lasts 30 years and separates the flowables from the sediments. He indicated that they have been tested and there is anywhere from 50% to 60% removal. He noted that the roof drain discharges into the wetlands and the water will be clean.

He noted that the proposed layout for the pad includes the utility easements that run through the site. He stated that they held the edge of the pavement near the parking lot because they cannot go any further into the utility easements. He stated that they did a 25-year drainage analysis which will be submitted to the Town and State for review. Areas of disturbance will require state review.

Peter Britz noted that the drainage plan is designed for ½ inch of rainfall. He wanted to know what kind of storm that was designed for.

Mr. Mikolaities stated that it is also designed for a 25-year storm.

Mr. Gove stated that he did a delineation and functions and value assessment. He stated that he found a 1990 document in the city files that talks about what the wetlands were like before the site was developed. He stated that there were three houses on the site at one time and the site also had drainage that passed through. As part of the development of the site, mitigation portions were taken down and the houses that were there were taken down. He stated that the site was expanded and ponds were put in to bring more diversity to the area. He stated that they had an area where there was a farm field and it was all cultivated and a drainage system was put in. He noted that half of the wetlands were dug deeper to create a storm water storage area. Currently, there is a scrub wetland that lies to the north and there is some drainage that comes down to the forested area to the east, which lies higher elevation-wise than the site itself. Mr. Gove noted that, under the post construction, they won't have any change or affect to this because there is no drainage going to it now, and, there will be no drainage going to it with this new proposal. He noted that on the other side there is a forested and emerging wetland along with a ditch that lies inside the property boundary. He stated that the ditch was created to handle storm water flow. He indicated that there is no curbing there now. He stated that in post construction, the water will be drained away from where the parking area is. However, in the actual area of the building pad itself, the clean water will be discharging, so there is going to be a better overall water quality occurring in this particular wetland. This will allow the portion of the paved parking lot to come through and drain through the wetland. He stated that there is very little decrease of the actual volume of run off going into that area, and, these wetlands are controlled by a weir that was created. The contributory area is much larger so the decrease will have no impact on the volume of water.

Mr. Gove indicated that the other side of the wetlands to the south will be affected the most by the improvements. The wetlands currently get a great slug of untreated water going into it. It was created to accept this storm water flow. Because it is being picked up and treated by a downstream defender will increase the water quality. Under the post-construction scenario, this wetland will have the same amount of water as in the past, but with a higher water quality going into it.

Mr. Miller asked where the garden center will drain into?

Mr. Gove stated it will go down into the drainage system.

Mr. Cormier asked if the pond will remain a pond and whether there will be enough volume to maintain it but not too much.

Mr. Gove stated that is correct and the change will be very small.

Mr. Mikolaities stated that during post development the impervious draining to the pond area will go from 73,000 square feet to 27,000 square feet.

Mr. Gove noted that the drainage associated with contributory area is small.

Mr. Mikolaities stated that if you add the impervious and the landscape together the difference is 29,000 square feet.

Attorney McNeill noted that, in terms of the four criteria for the Commission's consideration, under any scenario there has to be consideration of the existing conditions. This is not a start from scratch site. What is being proposed is basically a transition from pavement to pavement with clean rooftops in terms of development of this site. First, Attorney McNeill stated that the existing condition is benefited by the improvements being proposed. He noted that the land is suited to the use and the wetlands values are not adversely impacted. They believe the land is reasonably suited. It would be unreasonable to expect that this site would not be used for a purpose such as this, and, the wetlands values are not adversely impacted with regard to the site. He noted that the City would not have rezoned this property for General Business use if they did not expect it to be used for General Business use. Second criteria is that there is no adverse impact on the wetlands values of the surrounding properties, which they feel have been met. Third criteria is that the applicant shall demonstrate the alterations of the natural vegetative state, which, Attorney McNeill notes is part of the plan, or managed woodland, and occur only to the extent necessary to achieve construction goals. He feels they clearly satisfied that criteria, although, this criteria is intended for uses other than a developed site. The fourth criteria is that the applicant shall demonstrate that the proposal is the alternative with the least adverse impact in areas under the jurisdiction of the ordinance. Attorney McNeill stated that, in terms of the criteria, the least adverse impacted areas considering the existing conditions is clearly disclosed by this proposal both in terms of the new hardware, the new drainage systems and the new building itself, because it improves the drainage. He stated that, in terms of the issue raised during the site walk regarding salt, the previous developer needed to make the site safe and the common procedure is sand and salt. He stated that the parking area previously used for this site is larger than the one being proposed for this site with this new plan. In terms of predevelopment and post development impacts on those issues, he noted that the impacts are less. He stated that it is not realistic that this property and this location would be developed for anything other than something along the lines of this proposal. In terms of considering this proposal in that context, they believe the criteria that is contained in the ordinance have been met. He noted that the impervious surface has been diminished, the building footprint has been diminished and the parking on the site has been diminished. He noted that they do recognize that there will be different utilization patterns. He stated that, in terms of the parking lot being proposed, they believe the needs of the site will be met.

Mr. Walters asked what connection the pad has with Home Depot and feels that Home Depot could be built there without building the office space.

Attorney McNeill indicated that the lot will remain one lot. The ability to further develop a valuable piece of retail property is compromised significantly by the easement area for

the PSNH lines. It is common for PSNH to permit parking under these lines but not the structures. In terms of the remainder of the site, Mr. McNeill noted that right now it is used for parking and noted that, if no building were built there, it will continue to be used for parking. The pad will be used differently than Home Depot and will be retained by the Flatley Company, and, Attorney McNeill noted that no variances are needed. All of the parking contemplates intensive pad site use as well as the Home Depot site.

Mr. Walters stated that, if the pad were not built, there would be no cars parked there as it is too far away from Home Depot, and currently, they are only speculating on the use of the space.

Attorney McNeill stated that the use will be permitted under the zoning ordinance. He stated that the use will require a site review of the Planning Board, and, it will be a use that will either be a retail or probable restaurant use.

Mr. Gove stated that the pad site is not beyond the edge of the pavement and is not encroaching into an impervious surface of the buffer. He stated that there will be an area of impervious surface that is clean and the runoff will continue to go to the wetland area, which is essentially clean. He stated that he is not sure that trying to curb everything with the configuration now will work. He noted that this plan is an improvement, and, currently there is no parking in that area. He stated that there will be an area that is clean.

Ms. Powers asked if there will be parking after the pad is developed.

Mr. Gove stated that there will be parking in front of it and the water will be picked up by the drainage system.

Ms. Powers asked if the garden center will be in an open space.

Mr. McCarthy, the architect from Home Depot, indicated that the products are all inside the garden center.

Ms. Tanner stated that the current Home Depot has them outside.

Mr. McCarthy stated that the garden center is not environmentally controlled and approximately 45% to 50% has a roof structure over it.

Mr. Cormier noted that it would not make sense having the products outside because they would get wet.

Mr. Green stated that it is not just the salt that bothers him, but, it is other solvents as well. He stated that the bags of fertilizer have fungicides and pesticides in it and they are in the building in very high concentration. He noted that the bags can get broken and spill onto the parking lot. He suggested that the water drainage that comes out of the building go into the sewer and be separated and not go down into the defender system. He stated that would reduce the risk. He stated that he is very skeptical about the fact that there is no mere change except for the parking lot. He stated that the parking spaces

are going to be used in a much more rapid way. He noted that, even though, Liberty mutual had 600 employees, they parked their vehicles there all day and left at the end of the work day. There will be 500 spaces being used by 3 different cars every hour for 8-10 hours a day which is a much larger use of vehicles. This would create a lot more chance for accidents and a lot more use of salt. He suggested that the standing water be collected after a rain, treated and put back as treated water and cleaned.

Mr. McCarthy stated that, he is not sure from the regulations of the New Hampshire building code. that you can tie outdoor drains into the public sewer system as it relates to outdoor rain.

Mr. Green stated that he is not just talking about outdoor rain, but is suggesting having the building in a basin so that everything that comes out of that building goes into the sewerage system.

Mr. McCarthy noted that Home Depot has a spill prevention program throughout the country as part of the federal EPA requirements. There are measures they need to take as part of those regulations, and, in the event of a spill the contents, after diluted, have almost no affect.

Mr. Gove stated that they are not talking about a bulk storage facility for solvents and fertilizer. These products are in relatively small bags that can be picked up. He does not think it will ever reach the wetlands but if it does it will be negligible to that wetlands.

Mr. Green stated that they do not belong there and it would be better off if these are prevented from getting in there.

Mr. Cormier noted that they have a lot of information and the plan has been presented.

Ms. Tanner requested that the general discussion be closed to the public and the discussion be open to the Commission only so this can be discussed among the members of the Commission only.

Ms. Tanner moved to recommend approval to the Planning Board and seconded by Steve Miller for discussion purposes.

Ms. Tanner stated that she does not want to be told what she should and should not consider. She stated that it was stated that the land is reasonably suited to the suggested use and she has a big problem with that. She stated that this is a much greater use of this land than the prior uses. She indicated that a home center is filled with noxious chemicals and she does not feel that the treatment that is going to occur from this parking lot is adequate to protect the wetlands so she intends to vote against this application.

Mr. Green stated that he agrees with Allison. He noted that this is a disturbed site once salt had gone into it and once it has been changed in other ways by chemicals. He feels that it is wise to take precautions to prevent this. He stated that it would not cost a great

deal to set up a system that would clean up the tanks from any solvents that are in there. He indicated that he is not in favor of this application as there are too many unknowns.

Ms. Powers indicated her concern and stated that there are few references to the law having changed and when the buffer came into existence. She noted that, even if the lot was built before the regulations became more stringent, it is the way it is now. She feels that the regulations should be regarded as they stand now instead of grandfathering them.

Mr. Miller stated that the issue is the reasonable use of the site. He stated that he is familiar with area and the idea of what is reasonable or not is a tough issue. He'd rather see this site developed than not having it developed. He does share Allison's concerns, but feels that this is a reasonable use of the site. However, he does have major concerns about the garden center and the chemicals that are there, and, feels strongly about the chemicals. He does not think that is the issue in front of the Commission. He would like to see Home Depot do more to prevent this problem.

Ms. Tanner stated that she does not think it is responsible to put this building on the site with minimal treatment, especially with all the water that comes off the parking lot. She doesn't feel that the defender system is adequate for the chemicals that will come out of the building.

Mr. Miller stated that he likes the underground detention system and would like to see more of this use for the parking lots as well. He indicated that the defender is great for certain things but it does not deal with chemicals and salt. He wishes there was something stronger on the books about the salt issue.

Mr. Green stated that the Commission needs to convince themselves that they have done their best to take care of the wetlands. They know that the car wash is run all the time using reverse osmosis. Mr. Green suggests flushing the water into the wetlands where it belongs.

Mr. Cormier feels that the Commission is getting into some things that are outside their scope. He stated that he gets the sense that some of the members would be in favor of building a moratorium, and, he is not sure that is the way to go.

Mr. Green stated that he is not against Home Depot, but he wants to see this site protected. He indicated that he wants it done in a way that he can say he's proud of it.

A vote was taken on the motion by Allison to recommend approval of the application as presented. The vote was two in favor and five opposed. The motion failed.

Attorney McNeill asked if the Commission has any recommendations for the applicant because eventually the site will be developed.

Mr. Cormier stated he voted on the plan as presented.

Mr. Walters indicated that the only reason he voted no is because of the Pad. It is in the buffer zone and does not need to be there.

Mr. Cormier noted that the applicant's next step is to go before the Planning Board and they may approve the application, as the Conservation Commission's recommendation is not binding on them.

Mr. Miller stated that, from an environmental standpoint, the roof water is relatively clean as compared to pavement for parking and it is already paved.

Mr. Green stated that if the applicant wanted the approval without including the pad they would have to come back.

Attorney McNeill stated that, if the pad is that significant in the Commission's denial of the application, his client would be willing to amend the application and remove the pad if that would make a difference.

Mr. Britz stated that, if they are going to change the plan, they would have to come back with a new plan.

Mr. Cormier stated that there are more issues involved other than the Pad.

Attorney McNeill stated that he understands the prudence of the Commission. However, he noted that the site can be developed without regrading, and, it does not have to be built this way. He noted that his clients can avoid jurisdiction.

Attorney McNeill stated that the end result may not be what is desired, but the building will go up anyway. He stated that his clients want to work with the Commission and they want to make the site work and make it environmentally sensitive.

Mr. Cormier stated that the Commission took a vote and the motion failed. He noted that there is nothing more the Commission can do.

Mr. Cormier suggested that the applicant come back with another plan or go to the Planning Board.

Attorney McNeill asked if there was anything else that else that the Commission can recommend his clients do.

Mr. Britz stated that there is a vote of denial on the plan as presented. He Suggested that the Commission and the applicant have a work session to discuss ways to come to a new plan.

Attorney McNeill noted that there are some things that can be done and some things that cannot be done. They cannot tie into the municipal system with their storm drainage.

Mr. McCarthy noted that anything inside of the building falls under the building code and those drains tie into the sanitary system.

Mr. Green asked if this includes the garden center and whether it is considered inside. He wanted to know if it is against the law to hook it into the sanitary system.

Mr. McCarthy stated that the garden center is not considered inside and tying it into the sanitary system could be interpreted as being against the law.

Mr. Green stated that they could ask for a variance.

Attorney McNeill stated that the parking lot is an existing condition, and, will continue to be with any developer that comes along. He stated that the way the pad is developed, it can avoid the buffer entirely.

Ms. Powers indicated that protecting the garden center is her main concern, and, if something were done in terms of not using salt and sand, and, other materials could be used, she would feel more comfortable.

Mr. Cormier reiterated that the applicant needs to come back with a new plan.

Mr. Britz stated that this has been denied, but, if they want to come back with a new plan or revise the plan, they can have a new vote on a new plan, and, now is the time to give the applicant advice and ideas.

Ms. McMillan suggested doing a work session now.

Mr. Cormier stated that, if the Commission wants to do a work session, there is a time limit on the meeting, and, the Commission will not get to the rest of the agenda.

Mr. Walters stated that, in his opinion the big drawback is the garden center and the pad.

Mr. Green stated that the solvent issue is very critical, as well.

Mr. Walters stated that the big drawback is the garden center and the pad. Mr. Walters stated that they could run the garden center into the sewerage system and they could do away with the Pad.

Chairman Cormier stated that running the garden center into the sewerage system would be subject to approval.

Mr. Mikolaities stated that one does not want the rain water that gets into the garden center to go into a drain to treat. He stated that the City is spending millions of dollars to separate the storm water from the sanitary system, which, is putting storm water back into the sanitary which the city is trying to eliminate.

Peter Britz indicated that this is a covered area and the wash down would not be much.

Mr. McCarthy stated that they are open to discussing the garden center.

Mr. Britz asked the Commission if more members would be in favor of this application if the garden center runoff water was contained and it could run into some sort of treatment. He noted that he would have to check with Public works to see if this could be done.

Ms. Maher stated that she would like to see the site redeveloped and she doesn't have any problems with the pad. Her confusion lies in the origin of the Commission's jurisdiction over this area and sees it only on one side and not the whole thing. She stated that she would not have voted to approve this application if she had voted. She stated she would like to see an increased in the amount of treatment. Her biggest concern is traffic and emission and the surface is what concerns her. She feels that the pervious pavement would be superior.

Mr. Mikolaities stated that there are currently no catch basins and the water flows into the wetlands. This proposal would control the drainage with curbing and deep catch basins to catch the sediments. He stated that the downstream defender is a vortex unit that takes the solvents, grease, oils, etc that stays on the outside of the unit. He stated that all the sediments would float to the bottom and 70% of the sediments would be taken out. He stated that they are doing the best they can and the technology they are using is state of the art. He stated that they can capture the runoffs such as oils, solvents, etc. and treat them. He stated that this is all subject to state jurisdiction. He indicated that they can tie into the drainage system for the garden center.

Ms. Tanner stated that the bad things that she is talking about are more soluble and are not going to stick anywhere. She noted that there are a lot of chemicals thrown into the water system that no one knows anything about. She stated that, because, Home Depot houses potent chemicals that do spill, if there is some other way that these things that come off the parking lot can be treated, it would be helpful.

Ms. McMillan stated that they can have spills and work on the treatment of them, but good housekeeping in cleaning it up is essential.

Mr. Green noted that everything leaving the lot goes into the wetlands, which is their jurisdiction, and the Commission needs control to save the wetlands.

Mr. Miller noted that every redevelopment is an opportunity to do that.

Mr. Cormier, again, stated that the applicant can either come back with a new plan or go to the Planning Board.

Mr. McCarthy stated that every Home Depot store cleans parking lots with a street sweeper every night.

Attorney McNeill indicated that it is one thing to put the osmosis system at a car wash. However, this does not apply to this parking lot.

Mr. McCarthy noted that a car wash has intensive water use. He noted that this site would not be an intensive water user. The only water use they are talking about is irrigation and toilets.

Mr. Green stated that he is talking about rainwater that falls onto the parking lot.

Mr. McCarthy noted that the wetlands are there to filter out contaminants.

Mr. Walters stated that they took a vote and the applicant has no other option. This plan cannot be redone. The applicant needs to come up with a new plan.

Attorney McNeill stated that major issue is the garden center along with issues about the pad and the runoff of the parking lot.

Mr. Green moved to adjourn and seconded by Ms. Tanner. The motion was unanimous.

IV. OTHER BUSINESS

A) New Hampshire Association of Conservation Commission's Membership

This was tabled until the next Conservation Commission Meeting.

B) Discussion of goals, objectives and strategies as outlined in the 2005 Master Plan

This was tabled until the next Conservation Commission Meeting.

V. ADJOURNMENT

At 5:30 p.m., a motion was made and seconded to adjourn to the next regularly scheduled meeting.

Respectfully submitted,

Gail McDowell
Acting HDC Secretary

/gm