

**MINUTES OF
WORK SESSION**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:00 P.M.

APRIL 3, 2008

**PLANNING BOARD
MEMBERS PRESENT:**

John Ricci, Chairman; Jerry Hejtmanek, Vice-Chairman;
M. Christine Dwyer, City Council Representative; Anthony
Coviello; John Rice; Cindy Hayden, Deputy City Manager;
and Richard A. Hopley, Building Inspector, MaryLiz
Geffert, Alternate and Norman Patenaude, Alternate

MEMBERS EXCUSED:

Donald Coker and Paige Roberts;

**CONSERVATION
COMMISSION**

MEMBERS PRESENT:

Steven Miller, Chairman; Eva Powers; Allison Tanner;
Brian Wazlaw; Skye Maher; MaryAnn Blanchard,
Alternate and Richard Adams, Alternate

MEMBERS EXCUSED:

Jim Horrigan, Vice Chairman and Barbara McMillan;

ALSO PRESENT:

David M. Holden, Planning Director;
Lucy E. Tillman, Planner I
Peter Britz, Environmental Planner
Robert Sullivan, City Attorney
Rick Taintor, City Zoning Ordinance Consultant

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Chairman Ricci called the meeting to order. All Members introduced themselves for the viewing audience at home. He then turned the meeting over to Deputy City Manager Hayden.

Deputy City Manager Hayden apologized for getting the handouts out with such short notice but she explained that they have a lot in the pipeline. She indicated that the Planning Board appreciated the Conservation Commission having a number of meetings on the draft revised Zoning Ordinance. This will not be the end of discussion on these items as this fall they will commence public hearings and if there are particular issues that the Conservation Commission has concerns with, they will meet with them again to work those out.

I. JOINT WORK SESSION WITH CONSERVATION COMMISSION

A. Review and discussion of the Draft Revised Zoning Ordinance:

- 1) Article 8 - Environmental Protection Standards (in particular, Wetlands);

Rick Taintor explained that they tried to straighten out the language from the existing ordinance. The first thing is to take the Title Wetlands and put it into the same section as the Inland Wetlands and then expand the jurisdiction of the Inland Wetlands to 5,000 s.f. which was reduced from ½ acre. They added vernal pools for additional protection and to provide additional levels of protection within the wetland buffer. That was the overview of the wetlands section. The next section is a placeholder for Riparian Corridors. It did not seem that the placeholder was that important and will be added later. Lastly, the third section has to do with earth removal and earth placement operations which are now a special permit from the Planning Board and a Special Exception from the BOA and the language is quite parallel. It made sense to put them both under the Planning Board. Ms. Tillman looked at it further and noticed the striking parallel between the two sections so they will consider combining them. They also have an excerpt from the definitions section. Some are existing terms, others are new and some are defined differently.

Chairman Ricci suggested that they go page by page, as they have in the past.

Mr. Taintor first asked for general questions. Ms. Powers mentioned that the Shoreline Protection Act has just gone into effect on April 1st and it's quite parallel with what they are talking about but it isn't exactly the same. She asked if what they are doing to be in line with that. Mr. Britz felt it was difficult to respond to because it is in flux. April 1st is the date it will be enacted but there is also legislature to extend it to July. There is more protection at the State permit level and they certainly are watching it closely. He does not know what the role of the Conservation Commission will be in that process yet. He will keep watch and keep them up to date. One thing that will be different is that the State is looking at more rural areas and we are an urban setting.

Vice Chairman Hejtmanek asked if they should try to make our standards as close as possible to the State? Mr. Britz stated that the tidal shoreland has different setbacks and a different vegetative buffer. They don't have the same diagramming of the shoreline. The state will still have stricter control.

Mr. Taintor stated that there were only two changes in the Purpose Section. The first is in item 1 where they added the phrase "controlling the rate and volume of stormwater runoff" and the second is item 8, to promote the use of best management practices and low impact development.

Chairman Ricci asked, under item 1, after "wetlands to filter pollution", should that be pollutants? Mr. Taintor agreed that makes more sense.

Mr. Coviello asked if they are covering all types of species? Does that cover the element of creatures in the vernal pool? Mr. Taintor confirmed they have wildlife habitat. Mr. Britz felt it was all inclusive.

Ms. Maher stated that in July they specifically requested to include "improve" in various places and she asked what happened to that. Mr. Taintor did not believe these regulations were actually improving anything and they were protecting things. They are protecting things going into the

water. Ms. Maher was also concerned that as they go forward, almost all of their work is redevelopment. Developers come in and say they don't have to do anything and their only option to make improvement is the language that they have in their documents. She asked for the experience of others if they felt that was useful. Chairman Miller confirmed they had talked about it quite a bit at the Conservation Commission because most of what they work with is either redevelopment and they always look for opportunities to improve and make suggestions on things but they rarely have teeth to require improvement. It's nice but he didn't know if it was effective and Ms. Maher's point is well taken. Chairman Ricci asked City Attorney Sullivan if they were going to get themselves into a corner if they say "and improve"? What about if they can't improve? Attorney Sullivan didn't think it would do any harm but he stated that the background section was not a criteria that actually requires it. Mr. Coviello suggested perhaps using the wording "or demonstrate". Deputy City Manager Hayden suggested saying "where possible improve" and she asked Ms. Maher how she felt about it. Ms. Maher felt it was alright but they don't have the ability to ask for anything. They need to have some improvement in the wetlands that people are trying to develop and for a developer/attorney who are well versed in manipulating the system say it is not economical for them so they don't have to do anything. She just wants to give them some teeth. Chairman Ricci asked if they would solve that with "where possible"? Mr. Taintor was happy to put that in but he felt they would have to put something in the regulations. Mr. Coviello felt these are grand ideas but Mr. Taintor is telling them that they have to turn the page and find it in the ordinance. Attorney Sullivan stated that the only time that the purpose section becomes an issue is when someone challenges the regulation. Then you go back to the purpose section. Standing alone it does not apply to anyone's project. He felt they are arguing about how many angels can dance on the head of a pin. Later on it will be important. Chairman Miller added that a lot of suggestions of the Conservation Commission were from the position of giving them improvements where possible. As they go through they will see that they made improvements where possible. Ms. Tanner asked if they can they make any redevelopment subject to this as it stands in case someone has paved in the buffer, they no longer can pave the buffer? Attorney Sullivan indicated that any use of property prior to the adoption of this ordinance will not be affected by this. Chairman Ricci asked about change of ownership and Attorney Sullivan confirmed it was virtually irrelevant. Chairman Miller asked about redevelopment. Attorney Sullivan indicated this would apply to redevelopment. Chairman Ricci said they cannot change what's there. Mr. Holden felt they have to determine what constitutes redevelopment. Mr. Coviello asked what if someone wants to change site lighting. Mr. Holden confirmed that is in the standards and they will move into it.

Ms. Powers indicated she had a few other general comments. Originally in July, there was also a couple more points to enhance existing wetlands, man made, degraded or native, and the last one was to protect natural buffers and enhance buffers that had previously been disturbed. She was in the July document that they worked on. Mr. Britz spoke to that and the purpose of separating out man made wetlands and enhanced disturbed wetlands, he felt they wanted to remain silent on that. Ms. Maher indicated they get a lot of people who say they have man made wetlands so the ordinance doesn't apply. Mr. Britz confirmed they will not be able to say that any more as they will be jurisdictional. So, by leaving it out they are strengthening it.

Page 132 Jurisdictional area. Mr. Taintor indicated that the jurisdictional areas are defined as inland wetland, other than a vernal pool, that is 5,000 s.f. or more in area, vernal pool regardless

of area, any perennial river or stream, and lastly, tidal wetlands. One thing that was confusing was they appeared in three different places and the North Mill Pond appeared in two section. There were slighting different regulations and he tried to combine them and tidal wetlands were also included. Councilor Dwyer asked whether they had some clarification on their jurisdiction at Pease. Attorney Sullivan explained that under State law Pease has their own zoning ordinance, which was adopted by the PDA. Mr. Holden felt they try to deal with it by trying to encourage them but it is outside of our jurisdiction. Councilor Dwyer wondered if it would be helpful to indicate what that status is and if they could clarified that status. Deputy City Manager Hayden felt that was a good idea but not in an article in the Zoning Ordinance but maybe in the preamble or a separate guide book. Chairman Ricci felt that would be a good spot for it.

Ms. Maher didn't understand when Sagamore Creek, Little Harbour and North Mill Pond are listed, what happened to the Piscataqua River. Mr. Taintor explained that in the current ordinance it is not addressed because it is in the shoreline. Ms. Maher indicated they did have a case and Pierce Island is entirely within a buffer zone. Mr. Taintor said that was a very good point. They do not have jurisdiction under the current ordinance but he will look at that.

Mr. Coviello asked about the North Mill Pond description. Mr. Taintor stated his interpretation is that it is everything except the cemetery lot. Mr. Coviello asked why not the area from Maplewood to Market? Mr. Holden explained that the two sections came about under two different impacts. Once in 1995 when it changed from industrial to OR which put some controls on the OR portion which would be the B&M railroad. There was a deliberate decision not to make it pertain to the residential properties on the other side of the river. That changed in a later amendment which was drafted to include some protection on the westerly side and it was not deemed necessary to cross the bridge at Maplewood. Mr. Coviello understood that was a historical review but he asked if it was still accurate? Mr. Holden felt that Mr. Taintor was doing a good job of combining it. If the Board felt it should be included, they should work on it. He thought the intent now was to close the gap. Historically they have stayed away from the Piscataqua River and he felt it was beyond the scope of the Zoning Ordinance to control the Piscataqua. He also would not encourage extending this into the other side of Maplewood Avenue but they might want to on the pond side. He indicated they do not want to be reviewing every ship that comes in and comes to unload it's cargo. The State peer is going to be exempt and the downtown as been developed for 250 years. They should pick the limits of what they are looking at and even the State legislation is not aimed at urban areas. Mr. Coviello felt that would have impact on Cindy Ann Cleaners. Mr. Holden pointed out that was on the other side of the road.

Mr. Adams asked if Harbour was spelled correctly? Deputy City Manager Hayden thought that it was but they will double check. Mr. Adam also felt the word "lot" after cemetery seemed unnecessary. Mr. Holden felt it was better to include it.

Mr. Rice asked why wouldn't the South Mill Pond be included? Mr. Taintor indicated he didn't change the Zoning Ordinance so it's a policy decision. Mr. Holden felt it was a good issue for discussion as it is a policy matter. Ms. Maher felt if they excluded the commercial/industrial use of the river, she would like to have Pierce Island included. She also felt there should be a conversation about what happened along the shoreline for residential development in the

Christian shore and Northwest Street area. Councilor Dwyer felt this was a very unsatisfactory discussion and she felt they should have a map to assist with the discussion. She felt they could more specifically delineate sections. Chairman Ricci suggested perhaps they could capture the highlights and the big issues and then they can get a map and maybe a powerpoint and review it again. Deputy City Manager Hayden pointed out that it is not like this area doesn't have any regulations. The State regulates the tidal wetland areas and the City regulates inland wetlands. What has happened to get them to this point is Rick and staff have been meeting with the Conservation Commission and are receiving new input tonight. They can go back and look at some of these issues and instead of having faith in the State regulations maybe they can find a way to do it themselves.

Mr. Coviello asked what approvals would the property along Christian Shore have to get? They would need DES and Army Corp approval? Mr. Britz confirmed it depends on the work they are doing. If it's over 3,000 s.f. it's Army Corp but anything within 100' needs a buffer permit. That would be the extent of it on Northwest Street. They look at environmental and historic issues. It is not a light issue. They get scrutinized very closely. The City 100' setback is much less than what the State would look at.

Page 133. Mr. Taintor referred to the top of the page where they have new definitions of wetlands. The current ordinance has an exemption for stormwater management facilities that have become wetlands or are treated as wetlands. What they have done it taken away that exemption and added a buffer around created wetlands. It doesn't have to specifically be a stormwater management structure. They then have the existing provision saying things that were wetlands at some point and filled with properly issued permits will still be considered wetlands. This section on wetland buffers is significantly changed. They have included the purpose statement in there. They have added the two smaller areas based on recommendations from the Hodgson Brook Group, called an inner strip and another area in between in the middle. This comes into the Vegetative Management section later on in terms of what you can do in those strips. It says these areas are automatically increased in width if it slopes by more than 10%. There is also a provision that the Planning Board may require greater setbacks to protect water quality and habitat.

Mr. Wazlaw asked about vernal pools. In the Purpose section, he asked if they should include vernal pool so there's no question and the minimum size is very clear? Mr. Taintor stated that vernal pools are part of the definition of wetland. Mr. Wazlaw felt, under the jurisdictional area, he felt they should define cutting. Mr. Taintor said they will look into that. Mr. Wazlaw felt they should extend out the buffer for clear cutting and they suggested 75 – 100'. Mr. Taintor indicated that is originally how he wrote it and it became confusing. It got back to the restrictive vs. permissive issue. He originally wrote they could use certain things in the buffer. City Attorney Sullivan asked them to think about the concept of trying to list all the things that could possibly happen. They find that there are always going to be uses of property that nobody can think of that they want to prohibit. The only way to do that is to have a permissive type ordinance and if the ordinance doesn't say you can do it, then you can't. Ms. Tanner felt that a lot of it is positive. They are saying certain things are allowed but with clear cutting could they say cutting of 1% of the tree population or something like that. Attorney Sullivan agreed they could put it in a positive way. Mr. Taintor stated that is coming up and they will look at that to

see how they can write it. Maybe it is possible to say you cannot cut because of some reason but they can look at it. It is a challenging thing to write.

Mr. Coviello asked where does the vegetative buffer strip and unlimited cut area come from? Mr. Taintor advised the Board that these were much less than a lot of places. Mr. Coviello asked why? The Audubon Society recommends 300' for a vernal pool, which he understands is extreme. If they are altering the land within 100' of the vernal pool, they might as well eliminate the vernal pool. Either the City is going to protect them or it isn't. Deputy City Manager Hayden asked if there is any State guidance on that? Mr. Britz felt that, like all buffers, there is guidance all over the board. A larger area of protection would work better. They are at this point because they want to get something on the books as they have no protection now. If someone is draining a vernal pool, in most cases it is one side or the other. He has read that 300' is what EPA has but the science is still evolving. Deputy City Manager Hayden asked if they know of any vernal pools except those on City property? Mr. Wazlaw indicated there are a wide variety and they are present in many areas. This is the time of year when they really start appearing. Mr. Britz confirmed they are just beginning to map vernal pools in the City with Mark West so it will be the location of all vernal pools but they will not visit everyone. If they are going to go for a bigger protection, they should pick a quality level and then go bigger on those. Mr. Coviello asked why not start big and then as they do their investigation they can close it down. Chairman Ricci agreed that 100' wasn't enough but 300' was too much but that should be part of a future joint discussion. Even without Mark West doing his research, Councilor Dwyer indicated they have done some work already at Jones Avenue which might help them look at the distances of the different quality pools. Chairman Miller stated that Mr. Wazlaw spent quite a bit of time researching vernal pools. One of the things the Conservation Commission feared was making it so restrictive they wouldn't be able to develop any house lots.

Chairman Ricci referred to the first sentence under Wetland Buffers. He asked if it should be sediment rather than sedimentation? Mr. Taintor felt it should stay that way.

Ms. Powers was puzzled in same sentence where the purpose of the buffer is to aid in the control of non-point source pollution, and they are allowing fertilizer in the buffer. Mr. Taintor stated it was an existing regulation but he did strengthen it. Chairman Miller also made the point that it should model the comprehensive shore protection act. Mr. Taintor confirmed that it does. Chairman Miller did not know if it was the same numbers. Ms. Powers indicated that, before putting this to bed, she would like to see this screened. Also, the paragraph following said pesticides can be used outside the buffer and she wondered why they would say what they can do especially when they usually ask people not to use pesticides. Mr. Taintor explained that the reason is that kind of twisted language of being permissive. He couldn't say they can't use fertilizer in the buffer so they say they can use fertilizer outside the buffer. That makes the implication clear. Mr. Taintor used information that he received from the Hodgdon Brook group. Ms. Powers asked them to include the Hodgson Brook group again to review this section.

Page 134, Permitted Uses. Mr. Taintor pointed out there was a specific allowance for motor vehicles in the wetlands which they have shortened. They have required allowed stormwater management structures to be at least 50' back from the jurisdiction area and everything else is pretty much the same.

Mr. Wazlaw referred to Item 3 docks. This is the Conservation Commission's worst nightmare as they have no control over docks.. Did they add the word "local" and what does that allow them? Attorney Sullivan explained that procedures such as the HDC, building permit, electrical permit help control docks. One of the limitations on the zoning ordinance authority is where the State has preempted the area. Docks are structures but that is the argument.

Mr. Adams referred to permitted uses Park and recreational uses. Parks seems like an odd thing to say and recreational seems excessively broad. Deputy City Manager Hayden confirmed that is out of the current zoning ordinance. Mr. Taintor stated they talked about this some. Mr. Britz felt it is more of an earth use in that area. They would still have to follow the regulations for a park bench or a swing set but it would be nicer to see a park in that area which is why he didn't oppose it. Mr. Adams asked if they are talking about nature trails. Mr. Taintor pointed out there is a park on the South Mill Pond. Deputy City Manager Hayden pointed out Pierce Island park. Mr. Coviello wondered if item 4 was confusing. What they are allowing are homes along North Mill Pond and they are allowed to put an addition on closer to the water under this? Ms. Tanner pointed him to #2. Mr. Taintor pointed out that they added "lawfully".

Chairman Miller addressed #6, Stormwater management structures, including detention ponds, drainage swales and ditches that are set back 50' from the jurisdictional area. Does that mean from the wetland or from the buffer? Mr. Taintor confirmed from the wetland. On the prior page they talked about a created wetland which included stormwater structures. So, when they create that structure 50' from the wetland does that create another 50' buffer? Mr. Taintor stated if it was something over 5,000 s.f. then it could create a buffer. Chairman Miller felt they should really look at this as they struggled with this on the Conservation Commission and it is contrary to the buffer to allow stormwater management in the buffer. It is part of replacement for a buffer. They hoped to get them out of the buffer. If they put a gravel wetland in that will bump their buffer back 50'. 5,000 s.f. would be nice but what if they put in their stormwater units that don't do a thing other than store their pollutants for a little while. Vice Chairman Hejtmanek agreed. It's getting closer to the wetlands. Ms. Powers indicated when they discussed it in July they agreed not to allow them. Mr. Britz thought they went back and forth and they came up with 50'. It certainly has been a problem putting detention ponds in the buffer. They would rather have a detention pond that functions rather than not having it and that is where they got 50'. Chairman Miller indicated they have had some really good discussions but they have had some proposals where the buffer was pretty much worthless as a buffer and they were gaining function by putting the stormwater units in there so it's nice to have the flexibility but as a general rule if you allow those devices in the buffer you are diminishing the value of the buffer. Mr. Taintor felt a very important point was that the current wetland ordinance and the wetland ordinance as it is written allows anything to go anywhere as long as they get a Conditional Use Permit from the Planning Board. You could actually exclude things and then still allow them in if they say it's a better solution because the Planning Board can grant it. It is written so that the Planning Board can grant a Conditional Use Permit for anything so it's very wide open. He is not concerned about making it stricter because the Planning Board can always vote it down. Deputy City Manager Hayden asked if they want to say that they could have stormwater management structures there if they are gravel wetlands or other innovative devices? Councilor Dwyer was going to make a suggestion along the same lines by saying they could have

something that was an improvement. Deputy City Manager Hayden suggested eliminating item 6 and know that the Conservation commission could always recommend to the Planning Board and the Planning Board could approve, allowing something innovative mechanism. Chairman Ricci felt that they will see technology in the next ten years that no one even dreamed of now.

Mr. Coviello thought that anything that happened within a 100' buffer needed a Conditional Use Permit. Mr. Taintor clarified that these are things that that don't need a permit.

Councilor Dwyer thought that maybe the language could be more explicit or even redundant so that everyone is very clear on it. Mr. Holden felt it is a hard concept when you are dealing with a new person with the ordinance. Councilor Dwyer asked for a preface which would make it more explicit about what this section is about, saying if it's not here, you can't do it. Mr. Taintor wondered, even though it wouldn't have any regulatory effect, they could list some common uses that are not encompassed by these permitted uses that people would like to consider and are not listed. Attorney Sullivan felt there probably was a way to do it. He likes stating if things are expressly not listed, it is not allowed. Mr. Wazlaw asked about septic systems. You can replace a current system you but you can't put a new one it. Mr. Taintor stated it's not listed because you need a Conditional Use Permit.

Page 135, General statement. Attorney Sullivan stated they are talking about the Zoning Ordinance and generally zoning related decisions go to the BOA. This is one of the few times where a zoning related decision is made by the Planning Board because in wetlands the Planning Board would look with a more critical eye. This is an arrangement created for more protection. Mr. Taintor added this type of thing also goes along with Subdivision and Site Review approvals.

Chairman Ricci referred to 10.816.23, Procedure, should that say certified wetland scientist or should it read certified wetland soil scientist. Mr. Britz confirmed this was correct but added that a certified wetland soil scientist often does a wetland delineation study but you want the certified wetland scientist. They have different training and a different stamp. Chairman Ricci asked if they need to incorporate soil scientist somewhere. Mr. Britz felt if someone does wetland delineations they go for that stamp. Mr. Taintor pointed out that the way they defined wetland scientist is someone qualified to perform wetland delineation and certified by the State.

Ms. Mahar referred to the third paragraph and indicated that she has no idea of what it says. Mr. Taintor explained it basically says you need to have the findings of an independent scientist for any project except unless the existing wetland buffer area is at least 50% or more of the existing wetland buffer. Mr. Holden explained this came in because the applicants felt if their land had been disturbed, that their land should be looked at differently. It was a weakening of the ordinance. Mr. Taintor thought they could take out the "except clause". Mr. Britz indicated he is often the one that has to deal with these people. Homeowners come in with a small wetland on their property and they go through considerable expense to go before the Board. Sometimes they may be completely in the wetland buffer and it doesn't seem fair to require them to get a wetland scientist report.

Mr. Wazlow referred to the first paragraph on procedure. The applicant wants to do something in the buffer and they go through the four standards, shouldn't they state those four standards in this paragraph too? Mr. Taintor noted under 10.816.26 below they refer to the standards but Mr. Wazlaw was probably right and they could consolidate them.

Chairman Miller appreciates what Mr. Britz says regarding the homeowner but they have seen large commercial developments that might have also qualified. Mr. Britz stated that has been handled by telling the applicant that because of the extent of the project they will be required to do a report.

Ms. Maher would like to see this gone or at least cleaned up because it is confusing. Mr. Holden felt Mr. Britz brings up a good point but he's not sure how to handle it.

Mr. Coviello indicated that in other cases they give the Planning Director the authority to waive a requirement for one or two family homes. Mr. Taintor added they could just exempt that use rather than require it. Mr. Holden explained that really came about so that people could do a small addition. Mr. Britz will work on it and they can discuss it next time.

Section 10.816.24, Mr. Taintor indicated that Ms. Tillman had pointed out that this is wrong as State law requires 144 hours notice rather than 10 days.

Page 135. Ms. Powers referred to where it stated all applications to the Conservation Commission. She asked if they could have a time line to give them a chance to meet? Mr. Britz indicated when an application comes in it goes on the Conservation Commission and the Planning Board Agendas at the same time. It has to go to the Conservation Commission first. Mr. Holden stated that the Planning Board automatically defers it to the Conservation Commission. Mr. Taintor added they had talked about changing the first few paragraphs so that it didn't actually go to the Planning Board before it went to the Conservation Commission. .

Page 136. Mr. Taintor indicated the only change is in 10.816.40, where they added public and private utilities. Before they get away from uses, there are some things they removed. There was an exemption of new construction of decks about ground level and the maintenance dredging.

Vice Chairman Hejtmanek asked if this only applies for utilities? Ms. Powers felt it should apply to both. Ms. Blanchard indicated they had quite a few conversations about utilities cutting in their rights of way. In this area it is not required but they ought to tell us or give notice before they do any cutting. Mr. Britz confirmed that they invited PSNH to come to the Conservation Commission. They are required by DES to do cutting but he is not sure where the utility exemptions lie with the State. There is a much more restrictive ordinance on what they can do. Mr. Britz felt may want to think about exempting them. Attorney Sullivan confirmed there is a huge preemption on this. Deputy City Manager Hayden thought they can pretty much do what they want. They have reached out for more communication. Mr. Taintor asked if this section on utilities was superfluous or should they just have a section saying any action regardless of whether it is permitted or now should require Planning Board approval.. Attorney Sullivan indicated there are two kinds of utilities. There are the kind the City owns and controls and the

utilities that other people own. Mr. Taintor thought maybe they should raise a broader question about requiring notification. Should they be notified even though they are permitted.

Ms. Geffert thought if they were going to improve the quality of the wetlands, the conditional use permit would be an area they want to consider putting some language in about improvement. They are going for the least common denominator so she asked if there was a way to consider improvement. Also, with respect to utilities, because they are obligated for public service obligations they are pre-empted, but she does not believe a notice is pre-emptable as long as it doesn't restrict the activity they are entitled to do.

Deputy City Manager Hayden asked if the wetland ordinance is the place to put a notice requirement. Attorney Sullivan was trying to think of where they have had problems. The gas line complained about being regulated and it didn't involve wetlands but it involved going close proximity to homes. If there is going to be a notice it should be broader and not just be for wetlands. Mr. Holden felt they had another problem. They could write something requesting that the City be notified but more than likely they will have someone calling in a complaint to the City and they City will then go out and do something.

Mr. Coviello felt unresolved with Vice Chairman Hejtmanek's question about economic considerations alone are not enough for item 10/816/30. He agreed that this item could be changed and he want' clear on whether the Boards felt that could be put in there. Deputy City Manager Hayden was amazed it wasn't in there because they have actually used it. Mr. Taintor confirmed he will put it in.

Ms. Maher felt this section needs to be reworked to add improvements into the language. Chairman Ricci suggested having Mr. Britz, Rick Taintor and staff stake a stab at it and pass it on to the Conservation Commission? Ms. Maher thought that was an excellent idea. Ms. Powers thought that the Master Plan bolstered zoning and if it is in the Mater Plan it more than likely has teeth but they have not referenced the Master Plan. There was a lot about improvement of natural resources in the Master Plan and she wondered if that could be added somewhere. Mr. Taintor confirmed there is a whole section on sustainability in the front of the Zoning Ordinance. Deputy City Manager Hayden felt that the Master Plan comes up more in a court of law. Attorney Sullivan confirmed that. The Master Plan is a plan rather than a regulation. Mr. Taintor noted that the second section of the Zoning Ordinance addresses the Master Plan and the protection of natural resources.

Mr. Coviello indicated that while the Meadowbrook pollutants study had it's drawbacks, he really liked it, and he wondered if they could require pollutant loading studies. Chairman Ricci thought the Planning Board could request additional studies whenever the Planning Board deemed it necessary? Mr. Taitnor referred to Page 135 where it says the Planning Board may assess the cost of additional studies for investigative purposes. Mr. Coviello felt it was awkward to ask for that report at the Planning Board meeting, which is the end of the process. Chairman Ricci felt that was not the Board's problem and they should be able to ask for it. Deputy City Manager Hayden indicated that sometimes the Board does not see that there is a lot of staff interaction with big development projects. She didn't think they wanted to try to do too much with this section that would effect "Bob the Homeowner" trying to do something.

Councilor Dwyer noticed in the Earth Products section for a Conditional Use permit there is no requirement about what should be in the plan, short of a special study, so she asked if they should list what the plan should include. Some basic things to give people guidance. Mr. Britz explained it was on the application form but does it need to go in the Regulations as well? Deputy City Manager Hayden suggested that they should take a look at that.

Page 137. Mr. Taintor indicated this is where the vegetative buffer strip, the no cut area and the remainder of the buffer come into play. It addresses removal or cutting of vegetation, fertilizers and pesticides and herbicides. He has seen other regulations that control raking or a lot more but he used the memo from the Hodgson Brook Group as his guide. They are not allowing any fertilizers in the limited cut or buffer area and outside that only the low phosphate and slow release nitrogen fertilizers. The last piece, as they discussed earlier, how do they say no pesticides in the buffer. He says they allow them outside the buffer. Ms. Blanchard asked what happens if they omit it completely. Mr. Taintor was not sure that would work because by implication they would say they couldn't do it anywhere in the City. Deputy City Manager Hayden asked if there was any down side to eliminating pesticides. Mr. Holden indicated they could have a public health issue because of Triple E. Ms. Tanner stated that concerns her because anything they get in any home center are really detrimental to the environment. Chairman Ricci felt that enforcement is the biggest thing to deal with. Mr. Holden felt they may want to approach this as more of an educational opportunity.

Mr. Wazlaw asked about putting the information from page 133 in the performance standards. Mr. Taintor felt that was a good point. They could take 23 and 24 out of page 133 and put them in this section. He was trying to define the buffer areas in one place but this would work.

Ms. Maher referred to Section 10/817.12, fertilizers. She suggested in the last line changing "or" to "and".

Vice Chairman Hejtmanek asked if removal of more than 50% of the trees was permitted? Mr. Taintor explained that this is again part of being permissible. Ms. Geffert did not think this section could be written permissibly. If they do that, they would get away with the items that they are allowed to use. She felt this was the one area where they can be permissive with this section. Mr. Taintor agreed it would be so much easier if he could list out things they cannot do.

Mr. Wazlaw was concerned with pesticides. Whatever you put on the ground in the buffer area is eventually going to get in the ground and into the wetland. When they add these to a soil, eventually it is going to become part of the water they drink. They should explain this to people and maybe the sustainability group could do something on that. Mr. Holden thought this will allow them to continue to work with this.

Mr. Coviello felt it would be fantastic to have a diagram of a 100' cross section of a wetland going up slope 150' showing things that weren't allowed.

Chairman Ricci agreed they could do that. He also requested that they add to Best Management Practices or innovative stormwater, January 2004 or latest revision. Deputy City Manager

Hayden thought they had been saying “as amended”. Mr. Taintor also suggested “current edition”.

Chairman Miller referred to stormwater management. He asked if that was the extent of stormwater management? Mr. Britz confirmed that was everything in the Zoning Ordinance but not in the Site Review Regulations. Chairman Miller indicated he would like to see a copy of that as there are a lot of things that were of concern to the Conservation Commission. They made some suggestions and it would be nice to have some teeth to require better stormwater management practices. It would be nice to deal with all of the stormwater on the lot, and he knows that is not possible on all lots. A lot of commercial lots that are almost all impervious surfaces, they really need to find some way to require treatment of surface water. On a private lot they could say something like if coverage was more than 25% impervious cover then they would require some type of stormwater management on site. Maybe the City should collect a stormwater fee to work with pollutants going into the City water. Mr. Taintor felt this has all been reviewed in the Site Review Regulations and confirmed that they have gone over all of that. Maybe they can refer to the Site Review Regulations and say that they must be in compliance with the City Site Review regulations. Deputy City Manager Hayden pointed out that a lot of work has gone into the new Site Regulations and they are almost done. By next Thursday they could provide copies to the Conservation Commission for their review. Mr. Taintor asked if Julliette Walker’s questions had been answered and Ms. Tillman thought they might have. She will check with Dave Allen.

Ms. Turner was very concerned about wild life habitat protection. The Master Plan reflected a lot of public interest in protecting green space. She felt they have some upland habitat that needs to be protected and there is nothing regarding that. There is also not a tree ordinance and she doesn’t understand that. There are a lot of trees that have historic value and ecological value to the City and they need to be protected. Ms. Blanchard added that they have to use an ad hoc tree committee but they are not part of the institution and don’t have the appropriate support.

Mr. Coviello indicated there was an issue a while back, when a property comes before the Conservation Commission for a Conditional Use Permit, there was a question of whether they should discuss stormwater outside of the buffer (Meadowbrook, gas station). He wondered if there was something in this document that resolved that issue? Ms. Tanner did not see anything. She indicated that the attorney’s stand up and tell them what their legal right are to use a piece of property to it’s fullest extent. Mr. Coviello was shocked that the Conservation Commission is not able to consider that. Mr. Wazlow stated that he felt very bitter because they deal with the four standards and they did not want the gas station as they felt there was too much on the lot. Chairman Ricci pointed out that the process worked. Mr. Wazlaw understood but the Commission was frustrated. Chairman Ricci didn’t believe they could get everything every time. There is no gas station out there so the process worked. Councilor Dwyer felt it worked but it was a bit of a miracle. She certainly was one of the people who didn’t understand how someone could have reviewed the criteria and still approved a gas station. They need to review the guidelines to determine if something is too narrow to give the Planning Board what they need to make a decision. Ms. Tanner stated that when the applicant’s experts testify the Commission does not feel comfortable challenging them. She felt that the Conservation Commission was not an “official board” and they are just a board that recommends things. She did not believe they

have any power. Deputy City Manager Hayden felt there are different levels of power and that they have tremendous power because they have such credibility with the Planning Board. The Planning Board and staff appreciate their expertise and the Planning Board highly values what the Conservation Commission does.

Chairman Miller does not feel the Conservation Commission had anything to deal with in a situation like the gas station at the Meadowbrook. He did have total faith in the system working but it was just an issue that the Conservation Commission felt they did not have the authority to say No to the gas station.

Mr. Coviello stated that as the spirit of the ordinance, if it's not said, it's assumed, that situation was reversed that as there was no comment on it, they assumed the Conservation Commission approved it. Maybe they should have a comment saying they take no opinion on it. Chairman Miller indicated that their minutes are excellent now and he hoped that those minutes serve as part of that as there was a lot of dialogue on the gas station.

Deputy City Manager Hayden made a motion to continue this discussion to next Thursday, April 10, 2008 at 7:00 pm.

Chairman Ricci asked Rick Taintor to work on the exhibits for the next meeting.

Chairman Ricci announced that the City Hall campus has become smoke free effective April 1, 2008.

Chairman Ricci thanked the Conservation Commission for coming.

Vice Chairman Hejtmanek seconded the motion.

The motion to continue this discussion until next Thursday, April 10, 2008 passed unanimously.

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I. ADJOURNMENT

A motion to adjourn at 9:05 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on April 17, 2008.