

**MINUTES
OF
JOINT
WORK SESSION
PLANNING BOARD
AND
CONSERVATION COMMISSION
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

6:30 P.M.

MAY 1, 2008

**PLANNING BOARD
MEMBERS PRESENT:**

Jerry Hejtmanek, Vice-Chairman; M. Christine Dwyer, City Council Representative; Donald Coker; Paige Roberts; John Rice; Richard A. Hopley, Building Inspector; Cindy Hayden, Deputy City Manager; and Norman Patenaude, Alternate

MEMBERS EXCUSED:

John Ricci, Chairman; Anthony Coviello; and MaryLiz Geffert, Alternate

**CONSERVATION
COMMISSION
MEMBERS PRESENT:**

Steven Miller, Chairman; Jim Horrigan, Vice Chairman; Barbara McMillan; Brian Wazlaw; Eva Powers; Allison Tanner; Skye Maher; and Richard Adams, Alternate

MEMBERS EXCUSED:

MaryAnn Blanchard, Alternate

ALSO PRESENT:

David M. Holden, Planning Director;
Peter Britz, Environmental Planner

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Vice Chair Hejtmanek had the board members introduce themselves to the viewing public. He then turned the meeting over to David Holden, Planning Director.

Mr. Holden explained that they are conducting a work session bringing the two boards together to review some potential applications to assist the proponents of a project to find out what the issues may be if a future application were filed. Each project has met with City staff to discuss their project perimeters and each has presented challenges to City staff and they have tried to address them. In most instances, the issue needs to be better defined so they encouraged the applicant to come and discuss the project with the two boards before filing a formal application and potentially incurring additional expenses. They are not looking for motion but they are looking for guidance.

I. JOINT WORK SESSIONS WITH THE CONSERVATION COMMISSION

6:30 PM Property located at 2839 Lafayette Road (Map 286, Lots 18 & 19);

Mr. Holden advised that the City staff issue which they raised is what level constitutes an acceptable amount of development given the existing environmental constraints. Staff has discouraged any development in the buffer area and also encouraged that there should be no development in a wetland. The site is severely impacted by environmental constraints so the issue is what is a proper balance.

Vice Chairman Hejtmanek called for the presentation.

Adele Fiorilo from New Hampshire Soil Consultants presented. She was excited as this enabled them to get constructive feedback before diving into a full application. She first provided some history of the site, an outline of the current conditions, and seek input on the buffer ordinance as there are some things she was not clear about, and obviously seek input on what they might consider for this project.

The site is the touchless carwash and they originally asked to permit this within the 100' buffer adjacent to the wetland in 2002. There were no wetland impacts associated with that development. They received a Conditional Use Permit for working within the buffer. The car wash is currently very successful. Subsequently, in 2004, they filed a dredge and fill application to expand the car wash. They felt it was appropriate as it alleviated concerns about cars coming in from Lafayette and exiting onto Lafayette Road as water was dripping on the road and creating ice. They bought the lot next door to alleviate that concern. The second proposal to expand the car wash also impacts the wetlands. They received approval from the State to fill the wetlands however received a recommended denial from the Conservation Commission. Since that time because the lot is very limited and small the developer waited and purchased the next lot adjacent to Lot 19. That offers a significantly larger area for development and it is in a high profile retail area. Given what has happened along the entire stretch of Lafayette Road, they felt it was appropriate to request relief from the 100' buffer on this lot as well. Whether they could amend the State permit or whether they would have to file a new one has not been decided. The State indicated they would approve this if it wasn't any more than what was approved. Taking into consideration all setbacks, they have a small triangle that is buildable. This results in a high profile valuable retail property that is not sufficient to do anything on. They would like to take the two properties, eliminate the lot line and combine them, and put in a convenience store, fill a portion of the wetland and obviously encroach into the 100' buffer.

Ms. Fiorelle gave a background on the site conditions. Some is wet is a result of run off from Route One as there are not any type of catch basins. The water quality is very poor and it is a low line area. Currently there is a private accessroad to Dunkin Donuts on the other side and there is a culvert under the road. The 15' culvert empties into a manmade ditch which runs parallel to and connects towards Roberts Avenue. They had always assumed, when permitting the carwash, was that this wetland is .27 acres in size and it was less than a ½ acre but by virtue of that culvert there was some activity and therefore there was a 100' buffer. She didn't know if anything has changed given the Boyle decision which was recently decided by the Courts.

Her first question is how do they determine activity and how do they determine the presence of a buffer in those conditions?

As far as the wetland itself is concerned, it does not provide any principal functions and values. It is so isolated and fragmented that it is very limited. Because of it's position in the watershed

and receiving pollutants from runoff from the roadways, it does have detention capability and some potential for flood flow alteration, although by size it's very limited and doesn't have a lot of holding capacity. Because of those limited functions, stormwater would not be minimizing the functions of the wetland by doing that fill. They have reduced fill by putting in a retaining wall around the outer edge. Since the project proposes to manage stormwater they could likely do some improvements with their stormwater management.

Vice Chairman Hejtmanek asked her to describe how much buffer encroachment there is? Ms. Fiorello indicated that they did not compute that. She pointed out the encroachment on the exhibit.

She also pointed out from Lafayette Road and she showed a photograph showing the property and the boundaries of the wetland and wooded area. The most compelling component is that given everything that is along Lafayette Road they could improve the aesthetics of the building.

Ms. Maher asked if they are proposing to build a convenience store and leave the other building in place? Ms. Fiorello confirmed that all buildings would be removed. They would build a convenience store with gas pumps.

Frank Monteiro, Professional Engineer from MHF Design Consultants, in Salem, NH. He handed out exhibits to the board members. He explained that the property consists of two lots which they would like to consolidate. The buffer area goes through the two parcels, or 1/2 of the lot, or 1/2 acre. The initial proposal that they brought to staff was labeled as Concept Sketch "E". The initial thought was they were trying to resolve some concerns on the car wash with respect to the exit driveway and queuing on site which is a little inadequate. They would like to develop the rear of the lot, increase queuing, and extend the exit and close the existing driveway. In addition to that, they are proposing a retail motor fuel on the right side, an overhead canopy in the front, a 3,500 s.f. convenience store to the rear and a 2,250 s.f. retail building attached to the side with a 2nd storey office use it proposed. Their initial response from staff wasn't very good. They would fill about 10,700 s.f. of wetland in the back. After their meeting with staff, it was obvious that wasn't going to "fly". The next drawing is labeled Preliminary Site Plan and they met with staff in November of 2007 and they excluded the existing car wash lot from their development. This proposal was scaled down to minimize wetland impact, so they reduced the size of the building significantly and eliminated the 2nd story office use. They are proposing a 3,925 s.f. convenience store with six dispensers in front of the building. They have a retaining wall along the back and side. The wetland buffer was shown on the plan and underground fuel tanks were moved to the front as far as they could. It would be a right in/right out onto Lafayette Road. They met with staff on this layout and it wasn't well received either. Therefore, they are here to discuss their newest plan. The existing conditions are very constricted and they have two non-conforming lots. That leaves an area of about 456 s.f. to develop. They would need several variances for setbacks and green spaces along the streets. They feel they scaled back the project to make it feasible for the developer.

Ms. Tanner asked what line shows where the wetland buffer is? Mr. Monteiro point it out. He stated that half of the lot is in the buffer and half is out of the buffer.

Mr. Wazlaw asked to see how much is paved now. Mr. Monteiro stated the existing impervious was 23.6% or 11,808 s.f. Their proposal is 35,038 s.f. or 70% impervious. Due to the size of the lot he confirmed that most of it would be developed.

Councilor Dwyer stated that the Planning Board has stood firm that they are not going to approve gas pumps in a buffer area. After the Meadowbrook hearings, she was surprised that they are proposing gas pumps on a smaller lot. They all felt very strongly against gas pumps in the past.

Mr. Coker felt that Section 10.608 is fairly clear that the Planning Board shall grant conditional use approval, etc., provided that the Board finds that all other restrictions of this ordinance and that all of the following are met in accordance with , etc. Mr. Coker concurs with Councilor Dwyer that they worked very hard on the Meadowbrook proposal and the fueling was removed and he felt that was the only reason that that project passed. He would concur with Councilor Dwyer 100%.

Vice Chairman Hejtmanek added that the Meadowbrook was even outside the buffer whereas in this project they have buildings inside the buffer.

Ms. Tanner commented that when the car wash came before the Conservation Commission they walked the property and they said to the applicant at that time that they were very concerned about the wetland area and everything that happened at the adjoining wetland area which added to its degradation and they were very firm on not wanting anything else happening to this area and the applicant assured them that he only wanted the car wash and that was it. It's upsetting to have it not mean anything and have them back trying to build in the buffer again.

Ms. Powers pointed out that the wetland permit said the same thing that Ms. Tanner said so DES gave the permit with the understanding that that was the final development.

Mr. Coker asked if this drains into the Berry Brook Watershed? Mr. Britz confirmed that was correct. Mr. Coker also kept hearing about the carwash but he didn't see that on the plan. He wants to make sure this discussion is just about a gas station.

Vice Chairman Horrigan asked, from a conservation standpoint are there any conservation values or pluses in this plan? It seems like there is a lot of impervious surface.

Mr. Monteiro felt the lot is unusual as on Route One there is no drainage in the road so the only place it can go to is the culvert. There area no easements for drainage, and it is acting as storm water treatment. They are proposing to capture all on site run off and discharge it to an underground detention basin. They discussed with staff the dislike of private dynamic separators and vorhtec so they did not propose that. What they proposed was an oil/water separator to treat the water and discharge it into the swale before going back to the wetlands. Currently there is no stormwater treatment. They are aware of the concerns with the use and they will work with them to provide state of the art devices. The hard part is if the decision is that they cannot impact the buffer at all then they can't do anything with the property. The Meadowbrook project was a little different and it was a much bigger project. No matter what is developed here they will impact the buffer. He was looking for direction from the boards.

Vice Chairman Horrigan had not seen this until tonight but it struck him that they are filling the whole lot because it was a gas station. He felt it was hard to defend this as the proposal is too ambitious.

Deputy City Manager Hayden asked when Dori Wiggin provided her potential approval and she asked for a little more information on that conversation and whether it incorporated any recent changes in wetland regulations? Ms. Fiorello did not have the exact date but it was very recent. When they first permitted it was in Frank Richardson's territory but now it is Dory's territory. It was probably in the January timeframe. Deputy City Manager Hayden asked what exactly did she say she would support on this? Ms. Fiorello indicated that given that they already had an approved fill for the wetland area for the proposed car wash expansion. Since that approval had been issued she was willing to issue an exchange to fill the other wetland instead as long as the

wetland impacts were not greater than what was approved. The approval was partially on the car wash lot and partially on lot 19.

Scott Mitchell, the owner, confirmed that the car wash is a separate lot. They bought the adjoining lot to expand the car wash. In response to Ms. Tanner's comments, when they got their wetland permit, that was it and they are not doing anything other than what they said they would do. This is another lot. They told the Commission that they would never do anything more and that is still a fact. When they bought the lot they expanded the car wash use. Mr. Tanner confirmed it was still the same wetland. Mr. Mitchell indicated that when they came before the City they didn't even own the vacant lot. After they got a negative letter from Planning, they withdrew their car wash expansion application. They then bought the third lot and so that they could develop the two new lots. They haven't done anything different on the car wash lot.

Vice Chairman Hejtmanek felt there was a concern when the car wash was developed that the wetland would be protected so even though he did what he did, this is impacting the wetland. Therefore, Ms. Tanner's comment is accurate.

Mr. Coker stated there are those that believe the 100' buffer should not be impacted. He felt the Planning Board did not have any of those people on their Board. Their role is to determine the impact. He had a question regarding Ms. Fiorello's discussion with Dori Wiggin and asked if Ms. Wiggin was aware that by swapping the 2,300 give or take, was she aware that a gas station was going in. Ms. Fiorello confirmed she was aware of the additional development and they had shown her a plan. The State does not look at use.

Ms. Fiorello asked to take a step back because of comments received about the gas station. Under the current Zoning Ordinance, she asked if they have connectivity and they do have a buffer. Everyone is familiar with Lafayette Road and the use is conducive in the area. It is reasonably suited to what it is zoned for. Whether the wetlands would be adversely impacted, maybe they can work out the lot layout that avoids wetland impact but still allow them to work in the buffer.

Mr. Holden reminded the boards that they are working in the absence of an application. If an application had been filed, staff would be looking for expert testimony from the applicant as to whether there was connectivity and more than likely the City would hire an independent to look it over. The purpose of this meeting is to give them feedback. Anything further, they would have to file an application. Also, the Boyle lawsuit should not be considered.

Mr. Britz added that in terms of this particular wetland and connectivity, Mike Parsont, also from NHSC, was the one who confirmed the connectivity. Peter's handout shows that the connectivity goes to the fact that the topography on the site and that the wetland connects through the culvert on the site and nothing has changed in that area and he does not believe Mike would change his opinion. He would go back to Mr. Holden's point that it would be reviewed as part of the application and they would have a chance to make an argument that it was not connected if they feel that is the case. He does not see anything that has changed since they said it was connected and it was their firm that said it was connected. Ms. Fiorello was not disputing that. She was making a point based on a recent decision. Having that information, assuming they have a buffer on the site, little opportunity is afforded without relief.

Mr. Coker strongly disagreed that all along Lafayette Road it is other like places and it's okay because it's zoned. The wording on the Conditional Use Permit is that the "land" is reasonably suited to the use, not the neighborhood or the zoning. He is having a very hard time coming to grips with this piece of property being suited for this particular use.

Vice Chairman Hejtmanek agreed with Mr. Coker that it was the lot, not the surroundings.

Deputy City Manager Hayden felt in the current climate she is surprised the proponent hasn't come forward with something more innovative than just a statement that they are going to do 70% impervious surface in the buffer. What the expectation in the City is that it is not just all paved over and she would have expected some explanation of what they are going to do with stormwater and what innovative techniques they are explored and what may or may not work on this site. She would also look for something more than saying there is only one little buildable triangle on that lot because to make their case, they also have to, from her perspective, have to recognize there are two existing buildings there which presumably are grandfathered and perhaps something could be done with them. With staff feedback she thought they would have addressed some of those issues and if they go forward with this, that is something she most certainly expect to see.

Councilor Dwyer added that Lafayette Road is a priority of this Board, the Master Plan and the City to improve. They are looking at zoning and requirements and it really is not appropriate to make the argument that the road looks unsightly now so they can continue with that look. They are looking for improvement, not continuance, and the new Zoning Ordinance has Lafayette Road as a priority.

Mr. Monteiro responded to the gateway to the City. He brought some elevations of similar gas stations just to give them some flavor to what they are proposing. He displayed a rendering of a similar site. The convenience store would be a gable. The store in Durham was displayed and he indicated that they spent quite a bit of money on the architecture. They would make it aesthetically pleasing. They designed the Irving up the street and built right up to the buffer. He would like to hear what the concerns are about the gas station. Mr. Monteiro asked what if the lot didn't have so much buffer and wetlands?

Vice Chairman Hejtmanek responded that it is not their function to help design the project. They should design it and bring it back to the Board. As their time was running out, Vice chairman Hejtmanek summarized that they have over 70% as impervious surface, paving the buffer is a problem, a gas station and buildings in the buffer are a problem. He just doesn't see the selling points.

Mr. Coker asked how would they prevent people from turning left out of the site? Vice Chairman Hejtmanek confirmed those are site issues and not being addressed tonight.

Mr. Monteiro commented on the spill in Epping. They had an underground detention system and they were able to contain the spill in the catch basin and all joints are water tight. The outlet structure prevents it from leaving the system. There is no discharge to any wetlands. If it gets through the system they have a preventer. They have several redundant safety features.

Mr. Monteiro was hearing that they basically do not want a gas station. Vice Chairman Hejtmanek confirmed that was many of the board members said.

Vice Chairman ended the session. He hoped that their comments were helpful. Mr. Monteiro thanked the boards for their time.

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7:30 PM Property located off Commerce Way and Portsmouth Boulevard – Proposal for additional development and Site Improvements;

Mr. Holden stated that staff met with the components of this conceptual plan and, similar to the last presentation, the area was developed before the City's wetland ordinance so most of the development in the area lacks any significant wetland protection both on what would be the Commerce Way lot and the adjacent lots. The wetland in this area is extensive, the proponents are seeking to set a balance that allows for additional development, within the buffer, by proposing certain mitigation proposals. In effect, what is being proposed is new balance and staff is confronted with this issue and it was suggested that they do a work session.

Attorney Malcolm McNeill represented the principals of Commerce Center. A plan was handed out. He felt it was a creative way of continuing to address the office park. Michael Kane was present and available for historic questions regarding the area, Ms. Fiorello will speak to the wetlands, Gregg Mikolaities and Patrick Crimmins are present from Appledore Engineers.

Attorney McNeill pointed out the current office park, the roadways, the PSNH plant and 9 existing office buildings, one of which is in the process of approval. The area is zoned for office use. At the front of the site is Demoulas which is zoned GB. Between the two districts is the OF/MV district. They will be talking about a proposed retail building. He called this a green-green proposal. This relates to all sustainability issues and the other green component is the ability to complete the project by virtue of being able to develop a portion of the site.

By way of background, the Demoulas Shopping Center, of which they have not control, was built in the late 60's. The environment was just becoming popular. This is an older type of shopping center with no treatment on the site. The office park was slowly built in the 80's with limited controls. His clients have systematically been trying to improve the area. If anyone has been to the new Portsmouth Boulevard, it is a very nice roadway that has been landscaped, it has underground utilities and tasteful lighting. This was done 2002/2003 at the cost of \$2 million. The Planning Board approved the Homewood Suite hotel which has been an attractive addition to that area. At the same time, they are actively discussing having Commerce Way become a public street (it is currently private). That involves the developer bringing the road up to current municipal standards across the office park area and out to Market Street. When they complete negotiations with the City concerning cost, they will start that. That is anticipated to be in the \$1.5 - \$2 million dollars range, paid by the developer. Ms. Fiorello will give them a sense of the current watershed area and the conditions that exists, under their control, within the vicinity of their site, for which they seek to make improvements. The improvements are not as a result of any mandate. The environmental conditions deserve some form of remedy. Gregg Mikolaities will give a review of forms of relief, including Conditional Use Permits and set back relief. That will put them in a position to built two buildings, one office and one retail. This would be a community resource to Mariners Village residents as they could walk over. They have tried to be proactive rather than reactive. He has been before the Boards over the years with similarly challenging projects. He understands they are currently discussing zoning changes but this project will involve significant exercise and they are up to the challenge. They felt this was the best way to start.

Adelle Fiorello, of New Hampshire Soil Consultants, stated that they started working with the Kane Company on this project in 2003. There have been improvements around the Commerce Park. They hope to make this as environmentally green as possible. When they were first asked to look at expansion opportunities they had a lot of ideas and concepts and met with staff on some of them and tonight they have a pretty good result of all of that. Her role is to develop an environmental approach that is realistic. They did a watershed study as to what possible improvements could occur in the watershed. This is an unnamed tributary. There is a large pond by the Woodbury school and they show a stream that doesn't pop up on the surface until it hits Demoulas Plaza and ultimately ends up in the Piscataqua River. They looked mainly at Kane

properties and PSNH. What they found, as shown on page 3 of their exhibit, are areas that are uplands that show areas of opportunity. The purple areas offer restoration opportunities. Further down there is a fairly nice wetland complex which is suffering from degradation. Around PSNH there are upland areas that could be made into wetlands.

Mr. Fiorello displayed a map showing the wetlands. Because this project is at the top of the watershed it shows potential for restoration. Once they initiate a watershed effort they prevent further degradation further down stream. When they first started looking at this in 2003 there were a lot of invasive species which have jumped the road and are in the wetland area. Starting at the top and controlling invasive species, prevents further degradation downstream, even if down the road they don't get any further than the first step. She also noted beavers, muskrats, and a good amount of wildlife. The water quality is the biggest question as it is very degraded.

She walked them through the existing conditions. She displayed photos (page 4 in the handout). She explained that in order to realize the improvements they need some sort of financial support. They propose to look at impacting some wetlands at the corner of Woodbury Avenue and Portsmouth Boulevard which is a low quality wetland and is a result of all of the run off coming from the roads. Based on USGS, something had happened there before but that surface connection is no longer evident. From the financial aspect, they are looking at putting in a retail site to give the financial support they need for the wetland restoration.

She walked them through photos 5, 6, and 7 in their booklet. The first photo looks across the wetland which is fairly large but is full of phragmites. Photo #2 is looking at the wetland off site and there is a big difference between the two. Photo #3 is the ditch that runs behind the plaza. A lot of stuff goes in that ditch as everything releases with no treatment right into that ditch. Things blow in and snow gets plowed into the ditch. They are looking at water quality components and she will address that later.

One idea they had to address that run off (photo #4) is that is where there is a headwall that a culvert comes out of into the ditch.

The next page of photos, photo #5, they are proposing some improvements. It would be appropriate to put a barrier in so that cars don't pull into the wetland. Photo #6 is taken from the ditch into the wetland area. There is a lot of trash and she saw a homeless person living in there once.

In photo #9, they are looking at wetland impact but she wanted them to see the existing conditions. Photo #10 is looking down the roadway to the drainage fingers and it actually looks very nice. What they are considering is if they were to build retail and they had an entrance coming off, they would utilize the upland area and enhance its buffering capabilities.

Photo #11 is taken within the parking lot. They have a very large parking lot with oddly shaped cuts in and out of pavement. The photo shows an area they would like to square off and fill the little wetland finger.

Photo #12 shows the large parking pad and they would propose to pull that pad back so that there is another area for enhancement as well.

Ms. Fiorello next addressed proposed conditions. They are looking to take 2.33 acres of what is currently upland or wetland and either enhance or create wetlands from them or enhance the associated wetland buffers. Those treatment areas for water quality for the run off are coming off the plaza in two different locations. They initially proposed a berm along the edge but they need to think about how much wetland they can fill vs. how much they can avoid filling. A berm

would prevent debris and snow plows from getting in there. They are just showing treatment areas now. The green areas are existing wetlands and yellow areas are upland islands. If they don't do the berm then the best things they can do for water quality is to pull that water force away from the back of the plaza parking lot and create a nice meandering stream, going into the phragmites wetland area and making a large thong. Ms. Tanner couldn't see where the regular stream was. Ms. Fiorello stated they could see it on the aerial. Mr. Tanner could see the stream on the overhead but it is not on their overlay. They don't show it coming out of the area they are proposing to build on at the corner of Market Street Extension. They may not be able to see it but it is obviously there because it is creating a stream and yet it doesn't appear and she is wondering what happened to it. Ms. Fiorello stated there isn't really a stream. Ms. Tanner indicated that that they had said there was a stream right behind K-Mart, a pond over by the old Wentworth School on Woodbury Avenue and the pond runs underneath the road somehow and into the wetland area they are proposing to build on and then along the back end of the K-Mart parking lot, across and eventually into the status of Woodbury. She does not see it on the overlay and she wondered what they are proposing. Are they going to just take all of the water that was in that stream and diverting it into a pond? Ms. Fiorello could not find a connection to the pond any more. She does not know where it goes. They have "drainage fingers" which are basically squalls that come in from culvert outlets but there is not stream there. Ms. Tanner was simply concerned that she does not see the stream on the overlay as extending beyond the pond that they are proposing to create. Ms. Fiorello understood Ms. Tanner to be asking when this is all said and done, once the pond is here, how will it connect across the road. They will continue to allow things to flow through but it will be cleaner water. They are not proposing to take any hydrology out of the watershed at all.

Vice Chairman Horrigan referred to Portsmouth Boulevard, on the side of the site, there is a culvert that appears to be draining to the housing development and there is a lot of water running out of it. Ms. Fiorello felt they could put some dye in the pond to see where it is coming out. The point is there has been a lot of alteration in the water shed. Anything associated with pond isn't really on the surface so it is not being impacted by the development around it. All of that water is in pretty good shape.

Mr. Holden felt that part of the confusion is the City's own exhibit shows topography shows a connection where the retail building is which would flow directly to the ditch. It is showing the connectivity that the Conservation Commission was commenting on.

Deputy City Manager Hayden asked what will the pond look like? Ms. Fiorello indicated it will not look like the Liberty Mutual pond. On the very last page of the booklet there was a photo at top left showing that it will look very natural. But they would like to have some park-like component throughout the office park.

Deputy City Manager Hayden noted some wetland creation areas are over the town line to Newington and some are owned by others. She asked how would that work? Ms. Fiorello felt at this point it is not part of their proposal. All work is on Kane Company. It shows future potential for future partnerships for watershed restorations.

Ms. Fiorello pointed to the green areas which are existing wetlands that would be incorporated into the meandering channel. The main flow of the water will be pulled away from the plaza parking lot to a pond which is really the best way, without chemicals, to combat phragmites.

The areas in yellow are existing uplands used to create that channel but also to enhance the channel. They would plant the area with more native shrubs.

The pink areas would be pavement to be removed. Where there is currently mowed lawn, they would have a roadway cross and enhance the buffer along the edge as well.

Over all, wetland enhancement is almost an acre. Creating wetlands that are currently uplands is ½ acre and enhancing the buffer is almost an acre.....

Ms. Fiorello explained they are looking for input and welcome ideas. They would like to see the project move forward as it is a real benefit to the watershed. They might want to consider that this is zoned OR and they are proposing a retail use. If there was a zoning change they could probably further reduce wetland impacts because setbacks would change. She then turned the presentation over to Appledore Engineering to talk to them about how they perceive the site as far as stormwater management and what they are proposing to do internal to the site. She also stressed that she recommends a site walk.

Gregg Mikolaities, of Appledore Engineering, spoke next. He referred them to the last page of the exhibit booklet. They have been working on this project for well over a year now. This project started by designing Commerce Way. They are now trying to create a campus and this has evolved over the past year or so. They started putting cost numbers together and this retail component started allowing them to do some other things. The big picture includes landscaping, sidewalks, walking paths, underground utilities, spaces for alternative fuel vehicles, new lighting, signage. This last plan is what allows them to do that. They are trying to make the most efficient use of the land. They started looking at the stormwater system. He pointed out the high point and where it sheet flows. There are only four catch basins. They propose, with the addition of the retail space which is about another 2.5 acres of pervious but when they were all done, they would treat all 10 ½ acres as a whole. They would probably do a combination of ways to accomplish this due to site constraints, elevations, they would do a combination of tree wells, rain gardens, vegetative swales, some forebays, and some mechanical treatment units. His point is that at the end, if this concept was acceptable, they would have all of that detail work done. Also, the plan is to collect the stormwater for re-use for irrigation. Mr. Mikolaities stated that this is the vision that the Kane Company has for this office park.

Mr. Coker referred to the last page and the overlay, showing wetland buffer impact areas showing 93,500 s.f. He asked if there is a parking problem out there now? Mr. Mikolaities indicated the parking was sufficient. Mr. Coker asked why there was a proposed pavement area. Virtually all of that pavement is located within the buffer. If there isn't a parking problem, why are they expanding the pavement out? Mr. Mikolaities explained that is for the proposed new building and they are using the same ratio of 5 per 1,000. They are losing some parking in other places. Mr. Coker asked if that is a net trade-off? Mr. Mikolaities agreed.

Attorney McNeill stated that if this was a "start from scratch project" in 2008 it would not look at this. They are trying to improve the environmental characteristics of an existing site. They have to consider the costs. The relief would involve both Boards as they would need a Conditional Use Permit. The retail building would extend the existing General Business zone which is not uncommon with compatible uses. It would provide the financial assistance needed for the project and the environmental improvements. They are at the stage to determine whether the Boards in Portsmouth are willing to accept these types of trade offs to acquire these results. It is not purely an environmental result but it needs to have the economic latitude to achieve the result. In terms of the balancing act that exists, they perceive the City would derive a benefit, it would provide an incentive for downstream improvements and the incentive for the applicant to proceed. He would like to show them the site, and then let them know if they should continue with the project. They are trying to do this with full cooperation so that everyone could provide their input and comments to determine whether it will work. They are doing this in a spirit of cooperation in a sense of laying this before them rather than showing them a fully developed

plan so that everyone can have their input, comments and an ability to say this either works or doesn't work.

Ms. Roberts asked about the hatched pavement areas that Mr. Coker was asking about in the buffer. That is proposed to be impervious pavement and she asked if it was feasible from an engineering standpoint to be pervious?. Mr. Mikolaities explained that the problem is that the water table is very high. They are talking about underdrains on the upgraded Commerce Way.

Councilor Dwyer felt that the new retail store sticks out like a sore thumb. If the idea is they start their improvements at the head of the watershed, isn't that essentially the head of the watershed. She asked why would they put their biggest impact there if their goal is to improve going downstream.

Ms. Fiorello felt that was a good point. Their focus was, even though the area is a lot of drainage, it is basically acts as a detention pond now or a stormwater treatment system. As it is a new development the stormwater management would be state of the art. As far as the wetland fill is concerned, a lot of these fingers are really an artifact of the drainage that is coming through there. She believed the wetlands have probably expanded over time because of the drainage.

Michael Kane explained that when they first started working with NH Soils, Ms. Fiorello said this is 8' above the shopping center and they could not find any connection from the pond so as best they can tell these are man made wetlands. The addition is not violating anything significant and isn't going to be degrading the wetlands downstream. They have focused on the shopping center from the 70's sheet flowing and an office park from the 80' sheet flowing the other way and it all looks terrible. They can berm it up and screen it or they can attack it and try to make it better. There is no pride of ownership on this particular plan. It is what they distilled from a million conversations. They think this is a win-win situation and they can improve the wetlands. It has an aesthetic value, tenants will be happy with the environmental improvements and they will increase taxes to the City.

Mr. Coker thought this was a very interesting proposal and there are a lot of components. He asked what will happen to the flow from the pond to PSNH property. The Kane Company could do a great job with this and then PSNH could say they don't care what comes across their property. Then their efforts, while localized are nice, lose the value as it flows to PSNH. They mentioned a partnership and he wondered if they had approached PSNH. Mr. Kane indicated he has approached them and their comments were positive. The greener PSNH can get, the better their public image is. Even PSNH does nothing, he still thinks this is very positive and it doesn't lose value going downstream. It just could be further enhanced. They have the ability to fund some of those improvements. Their goal is to put more tenants into Commerce Center and get higher rents and have happy tenants. They are trying to be as LEEDs qualified as they can. Anything they would do would have maintenance programs.

Mr. Coker would love to see PSNH step up and make a commitment to work with them.

Deputy City Manager Hayden felt this is a work in process. How hung up should they get on the retail component? Mr. Kane responded they should get very hung up on the retail component.

Ms. McMillan stated that a lot of the watershed seems to be impervious surface so any opportunity to break up the impervious surface would be helpful as that is the major problem. Mr. Kane stated they want to make this the most environmentally responsible project they can have. He is not sold on the pervious issue but they are very open to it.

Ms. McMillan felt they will have to find out where that stream is coming from before they go any further.

Councilor Dwyer had a thought rather than a comment. If it really is a Kinko's or FedEx, it might want to be closer to the existing campus and be able to be outside of the buffer.

Mr. Coker likes the idea of the enhancement of this site. He looks favorably upon this with the exception of PSNH.

Deputy City Manager Hayden referenced the role of the shopping plaza, if they were to go a long way down the road, who should be enhancing that wetland? Who is the major mover? If they got all their approvals for this project and next year K-Mart came in and was going to redevelop their whole plaza, what would they think? Ms. Maher felt that was a really big issue. This plaza is ready to be redeveloped and they are ignoring that fact. They need to address that. She also asked what about the Town of Newington in addition to PSNH. She feels this is an interesting proposal but she thinks it is even bigger than what they are talking about.

Deputy City Manager Hayden noted that the presentation took up the entire hour so the Boards didn't really get to discuss it. She doesn't have a great need for a site walk. She proposes an additional work session with this group. Mr. Wazlaw felt site walks are important to the Conservation Commission. He would like to see a site walk. He would like to get a bigger picture of it and a site walk always put it in a better perspective.

Ms. Powers suggested a green roof on the retail store as it mitigates a lot of issues.

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Vice Chairman Hejtmanek asked if Staff would set up a time for a joint site walk, to be followed by a second work session.

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8:30 PM Property located at 1840 Woodbury Avenue (Map 239, Lot 8);

Mr. Holden gave some background on this project. He indicated that staff had met with the proponents. Exhibits were handed out. He stated that this lot is unique as it is almost entirely wet except where the old Kentucky Fried Chicken building is located. The site was developed in the 1960's or 1970's and there is no stormwater treatment at all. In the redevelopment scenario, they will show what balance can be set. Another unique item is the lawsuit the City got involved with between the owner and NHDES and he asked Attorney Pelech to brief the Board on that for additional background. The position of the City is if you are going to overlay an existing parking lot, no Conditional Use Permit would be required however the City could look for a Conditional Use Permit for reclamation of the parking lot or expansion.

Attorney Bernard Pelech spoke on behalf of the applicant, Churchill and Banks, for this proposal. They are looking to rehabilitate and put a small addition on the existing building. Mr. Holden is correct to some degree. That building was built in the 1960's and it came on the heel of Pease Air Force Base. It was built on land that was filled pre-jurisdictional before 1967. The area adjacent to Woodbury Avenue received about 7'-8' of fill and Kentucky Fried Chicken was constructed. It is a very unique site as it is 15 ½ acres and wraps around the entire Gosling Meadow complex and has frontage on Gosling Road, adjacent to the Motel 6. The aerial photo depicts the vast wetlands out there. The wetland flows through a 48" reinforced concrete pipe across Woodbury Avenue, under the Starbucks building.

Attorney Pelech indicated there has been a lot of litigation involving this property and basically the present owner, Mr. Daddario, appealed the Planning Board's granting of approval for the Durgin Square Shopping Center because stormwater drainage from the shopping center emptied into these wetlands. He was not successful and Durgin Square prevailed. Mr. Daddario then appealed the Home Depot site, which used to be a Cosco, on the same grounds, that their stormwater drainage ran into his 15 ½ acre lot and he was again unsuccessful. He appealed the approvals for the Saturn dealership and Motel 6 and was unsuccessful. He then attempted to get a permit to fill this property and was denied by NHDES and he appealed that decision to the Superior Court and was unsuccessful and then appealed that decision to the Supreme Court and was once again unsuccessful. The proponents are proposing to place a small addition onto the existing building. In his packet which he handed out, the first item is an aerial photo of the rear of the site. He pointed out the large cattail swamp wetland that exists. The next plan shows a blue line which is the 100' inland wetland buffer. Most of the property is within that buffer. The orange is the 70' front yard setback, the yellow line is 100' setback from the single resident district in the back of the property, and the little green triangle is the only area on the entire lot that is build able and is where they want to put 400' feet of their addition. The next plan is simply a tax map showing the lot in pink, showing the same lines and showing build able area. Finally, the last plan, done by Dennis Moulton, shows what they are proposing.

Attorney Pelech indicated that presently the entire site sheetflows untreated into the wetlands. When they looked at the site as part of Starbucks, the main concern was that there was solid waste being blown into this wetland and the biggest offender was Kentucky Fried Chicken. There were no barriers to prevent that from happening. Also the untreated stormwater run off from the parking area certainly did not help the wetlands. They propose to change the use to a less intensive use, a retail phone store. Secondly they are proposing to treat and detain stormwater run off. They propose to create an infiltration area at the northerly part of the existing upland that will hold storms up to a 5 year storm. There will be infiltration and treatment, the parking lot will run into a vegetative swale, into the infiltration area. In the event of a large storm there is a riprap spill way.

Secondly, they are proposing to eliminate 1,860 s.f. of pavement and make them pervious again for infiltration. Thirdly they are trying to keep all stormwater running towards the infiltration basin. They are attempting to keep the existing site as close to the grades as possible. They have reduced parking spaces. There are currently 37 spaces which they are reducing by 7-8 spaces. They are keeping the two existing curb cuts and keeping traffic one way through the site. They are keeping as much of the 1,750 s.f. addition within the non-buffer area as possible. They believe they are proposing a positive effect on the wetlands. They are adding landscaping to the front of the building to make it a more green site. They are looking for feedback from the Commission to file their Conditional Use Permit.

Attorney Pelech introduced Richard Baccari, of Churchill & Banks, who is the applicant and proponent. Mr. Baccari stated they were purchasing the property from Mr. Daddario, and he was available for questions.

Dennis Moulton, of MSC Engineers, was the next speaker. Mr. Moulton stated that Attorney Pelech did a good job explaining everything. Their goal is to provide treatment to the site where it does not exist now. They have done some preliminary work and they did a test pit. They have sized the detention area in accordance with the NHDES guide. They found soil is acceptable to provide this type of treatment. It would be designed to accommodate a 5 year storm. Current DES regulations would have them treat the first 1' of stormwater. Once you get to above the 5 year storm, it will spill out along the rip rap to the wetlands. They are removing about 250' impervious surface with pavement removal. They are removing a small amount of

pavement on the south side. That, in a nutshell, is where they are at. The pavement appears to be in decent shape but there will be certain areas in the buffer where there will be new pavement.

Mr. Coker asked about the fact that their treatment was based on a five year event. Mr. Moulton explained the infiltration basin will accommodate up to a 5 year storm. Mr. Coker asked if it troubled him that they have had two 100 year storms in the past three years? Mr. Moulton responded that it did not trouble him with this site as the run off from the site will be reduced because right now the stormwater just sheets off and what will happen with infiltration basin will be water will be caught to a certain volume and that volume will immediately run off to the wetland. Right away they are taking that amount of volume out of the equation. Mr. Coker asked if they will have detailed drainage plans and calculations for their Conditional Use Permit Application? Mr. Moulton indicated they can provide those.

Vice Chairman Horrigan asked if the business part of this site is built on fill? Mr. Moulton confirmed they were. Vice Chairman Horrigan asked if the swale and riprap they are proposing would be built essentially on the fill so the wetlands are about 10' below and they drain out and those would not be disturbed. They essentially want to replace what was filled with stormwater treatment which seems like a plus. Mr. Moulton explained they are constructing the stormwater treatment in the built area. Vice Chairman Horrigan asked if what they are proposing is what the UNH research center suggests? Mr. Moulton doesn't think they tested any infiltration basins there. Where they did their study was build on a clay surface. They tested several sand filters and this acts pretty much like a sand filter with its infiltration features.

Vice Chairman Horrigan asked how do you landscape with fill? Mr. Moulton indicated they will remove the pavement and it is pretty flat.

Councilor Dwyer asked if it was the intent to keep approximately the same number of parking spaces or does the use require less parking? Mr. Moulton confirmed they will reduce the spaces from 37 to 31. Councilor Dwyer added that other potential future uses may reverse that. Mr. Moulton confirmed this would also fit the ordinance for office use.

Deputy City Manager Hayden asked why use gravel parking instead of pervious pavement and how does that deal with plows? Mr. Moulton stated the use of gravel parking was to provide more permeable area which would be a benefit to the site. Use of the gravel vs. pervious pavement would involve a cost factor. Deputy City Manager Hayden asked how the gravel system is maintained over time? Mr. Moulton explained the gravel system will be a grid of some kind. The grid is what prevents issues with plowing as it can be raked right back. Deputy City Manager Hayden felt it could get washed into the wetland.

Ms. Maher asked if the existing building going to be demolished? Mr. Baccari stated they are trying to use the existing building. It would be better if they could demolish the building but that hasn't been determined yet. Ms. Maher indicated she would like them to consider green roofs.

Vice Chairman Hejtmanek indicated he had not heard too many negative comments. He asked if that means the boards are in favor of the proposal?

Mr. Coker indicated it is an improvement and he has a concern with sizing it for a 5 year storm. He would urge the applicant to file the Conditional Use Permit application and he would encourage them to have stormwater plans.

Chairman Steve Miller asked what prevents putting the infiltration pond on the back side of the lot rather than the side. The side is closer to the whole wetland. From an ecological point, they could have it in the back of the lot, then the overflow goes into the wetland they get a wetland

treatment before it goes into the pipe, wherever the pipe goes. Is there a grading problem? Mr. Moulton explained there is not enough room back there and the slope doesn't work.

Councilor Dwyer referred to the aerial view and noted that it's amazing how unaware you are about this property. At site review, some really thoughtful landscaping would be very important.

Mr. Holden thought everyone did a good job on Starbucks, which was a reconstruction. The problem is this building is pre-existing non-conforming. He is wondering if the applicant is willing to go before the BOA for a reconstruction. He thought there might be more flexibility but that would require the applicant working with BOA to set a balance. Maybe they should encourage that. If they can take the Starbucks model, understanding there is BOA relief needed, there might be more opportunities to do sustainable development. He is curious if the Boards would push for that.

Ms. Maher felt they always have this debate whether there is a real benefit. If the client is willing to be creative she would entertain the thought. It would be an interesting proposal.

Ms. Powers noted on the Conservation Commission they have often asked for permeable pavement and it is refreshing to have it volunteered. Deputy City Manager Hayden clarified that it was only a very small part that was going to be permeable.

Attorney Pelech indicated they are willing to meet with the Planning Staff. They are very limited on the site with all of their setbacks however the applicant has been very willing to work with the City.

Deputy City Manager Hayden agreed with Ms. Maher. She felt that a better looking building would make the Boards feel better about the over all project.

Mr. Baccari indicated that they are willing to demolish the existing structure and replace it with something nicer but the general dimensions of the building have to be a certain dimension. They would also like to move into the building by the beginning of the year but they will certainly look at everything.

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II. ADJOURNMENT

A motion to adjourn at 9:25 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 June 19, 2008.