

**REGULAR MEETING
CONSERVATION COMMISSION**

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
CONFERENCE ROOM "A"**

3:30 p.m.

March 14, 2007

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman James Horrigan; Members, Allison Tanner, Skye Maher, Barbara McMillan, Eva Powers, and Alternates Mary Ann Blanchard and Richard Adams

MEMBERS ABSENT: Brian Wazlaw

ALSO PRESENT: Peter Britz, Environmental Planner

I. PSNH PRESENTATION – Steve Fuller

This item was rescheduled to the April 11, 2007 meeting.

II. STATE WETLANDS PERMIT APPLICATIONS

- A. Standard Dredge and Fill Application
518 New Castle Avenue
Assessor Map 205, Lot 3
Helen I. Garvey, owner

Ms. Etoile Holzaephel, landscape architect, and representative of the applicant, spoke to the project. She said that their request is to retain minor construction impacts that occurred within the 100 foot tidal buffer zone on the applicant's property. She said that she was before the board in January of 2001 where she was granted a state wetlands permit the following June of 2001 for 2,300 sq. feet of impacts in the tidal buffer zone. She continued to say that at the time, there were some small areas of wall and grading that encroached into the 100 foot tidal buffer zone. The project went forward and was completed in 2002. Ms. Holzaephel stated the owners recently had an as-built survey conducted and the survey showed that there were some minor unintended incursions into the buffer zone. She said the total of those impacts was 228 sq. feet. The areas affected were the end of the sidewalk which encroaches less than 2 feet, the end of the shuffleboard court which encroaches approximately 2 feet, the corners of the pool house, the roof overhang of the pool house, fencing in two sections, and air conditioning units. Ms. Hozaephel said that at the time of construction, they had to determine where the buffer zone was. The surveyors were asked to come back and re-determine the buffer setback from the highest observable tide. They staked the area but where they staked it was not the same as where it was shown on the original survey. She explained that there could have been movement of some of the markers during the construction project since there was excavation involved. Ms. Hozaephel stated that when the owners realized that the surveys showed these impacts, they wanted to get them properly permitted. She continued to say that since the original permit had expired, it could

not be amended. So they are submitting a new application and requesting that these impacts remain. She said that she did not feel that 228 feet of impact, approximately 90 feet from the high tide line, would disturb and degrade the habitats. She added that the applicants have maintained the vegetative buffer.

Chairman Miller asked the Commission if they had questions for Ms. Hozaephel. He also reminded Ms. Blanchard that she would be voting in Mr. Wazlaw's absence.

Ms. Tanner stated that she remembered the initial application. She said that it was a large area and the applicant still couldn't put everything into the area that they wanted to without encroaching into the buffer. She thought that the terrace was something that the board was concerned about at the time.

Ms. Hozaephel pointed out that what were permitted in the original application were the retaining wall, a section of wall and terrace, and another terrace.

Ms. Powers asked how much of the gardens or lawn are within the 100 foot buffer zone. Ms. Holzaephel replied that the 100 foot buffer zone takes up approximately 5.5 acres of the 7.5 acre spot. Ms. Powers asked how much lawn was inside the metal fencing. Ms. Holzaephel replied that she did not know. Ms. Powers said that what was at issue was the use of fertilizer and pesticides in that area. Ms. Holzaephel said that there was less lawn before the property was constructed. She said that there was a large portion of meadow that is maintained once or twice a year. She also pointed out the areas of the property that were mature, natural wooded area.

Vice Chairman Horrigan stated that he disagreed with her assessment of the impact of abutting property owners. He felt that the project did not enhance the appearance of the property. He thought the old home that was situated there was more suited to the site. He said that although he did not like the structure, he would vote to grant the relief.

Ms. Tanner said that she was disappointed that the State disregarded the Conservation Commission's recommendation. She read from a letter that the Conservation Commission sent with their comments to the State stating their concern with the terrace and the proposed fill.

Mr. Britz added that the recommendations to the State are taken under advisement. He said that one of the rules the State follow closely is the 50 foot primary building line. If it is outside the 50 foot primary building line, they generally allow structures.

Ms. Powers asked Mr. Britz what the significance of the 100 foot buffer was. Mr. Britz replied that anything within the State's 100 foot buffer requires a state wetland permit, but within that, that State has rules that they follow as to what can be done. He said in terms of where structures can be located, they can be located up to 50 feet from the highest observable tide line.

Chairman Miller stated that the State regulations are the minimum regulations for any municipality but the municipality can have stricter regulations.

Ms. Hozaephel said that the City of Portsmouth's reference line is the mean high tide line which is different from the highest observable high tide line. She pointed out both lines on her plan.

Ms. McMillan asked if anything on the application falls within the 50 foot buffer. Ms. Hozaephel replied no, the closest that anything was was about 90 feet.

Ms. Powers asked why the Commission was even voting on this since the applicant has an equitable waiver and the State said that it was fine. Chairman Miller said that the State was asking for the Commission's input to put everything in compliance. Ms. Holzaephel added that they have not received State approval for the impacts that she laid out earlier in her presentation.

Ms. Blanchard asked if there were any penalties for an after-the-fact situation. Chairman Miller replied that he could not find anything in the regulations. Ms. Blanchard said that she realized that it was not a significant impact but she felt that more care could have been taken. She added that she was inclined to support the application but she felt it would have been better if the applicant had come with some sort of mitigation plan. Ms. Blanchard said that after-the-fact permitting becomes a problem.

Ms. Blanchard made a motion to recommend approval of the application as presented. The motion was seconded by Ms. Maher. Chairman Miller asked if there was any discussion.

Ms. Tanner stated that she was concerned about setting precedence for doing permitting in reverse. She said that she would not support the motion.

Ms. Powers said that she would have to vote against it also unless the applicant can do a mitigation that was the same square footage as the impact. Chairman Miller said that they were only talking about 228 sq. feet of impact so he suggested asking the applicant for a planting of that size in the buffer zone with native vegetation.

Mr. Britz said that the State would have a hard time forwarding a mitigation plan. He said it was a much stronger situation when the State can actually weigh in on it and this was something they could not do. He thought it would be nice if the applicant did some mitigation. He felt it would be better to ask the applicant instead of the State.

Mr. Horrigan amended the motion to include that the applicant be requested to plant native vegetation in an area roughly the equivalent of the area of unintentional construction impact to serve as mitigation after the fact in the tidal buffer zone.

Ms. Tanner said that this was the Commission's way of making the applicant accountable after the fact. Mr. Britz said that a letter could be sent to Dori Wiggin explaining the Commission's request. He said that he would work on that. Chairman Miller stated that he too was uncomfortable with approvals after the fact.

The motion to recommend approval of the application with the following stipulation passed by a unanimous (7-0) vote:

1. that the applicant be requested to plant native vegetation in an area roughly in the equivalent of the area of unintentional construction impact to serve as mitigation after the fact in the tidal buffer zone.

- B. Standard Dredge and Fill Application
24 & 33 Johnson Court
Assessor Maps 102 & 110, Lots 47 & 12
Sean & Lina Tracey, Guthrie R. and Elizabeth VC Swartz, owners

Mr. Corey Coldwell of AMES-MSA spoke to the application. He said that the application before the Commission was to construct drainage improvements within the wetlands and within the 100 foot buffer zone. He said that the problem was that there was run off coming from South Street and from some of the abutting properties and it was puddling in a low point of the Tracey's yard. He pointed out that the water used to come down and drain naturally into South Mill Pond. Over time, there has been a lot of construction, particularly the installation of a sewer line. He said when they back filled the sewer line, it made for a little hump in the ground and that hump was now preventing the run off from South Street and the abutting properties to drain into South Mill Pond. He said that the area has to fill up quite a bit before it can get up and over the hump and then into the South Mill Pond. Mr. Coldwell stated that he believed the solution to the problem was to install a drainage pipe at the edge of the wetland with a flared section. He felt the pipe would pick up much of the water and then drain it through a closed pipe back into a drywell. The drywell would be surrounded by washed stone. Once the water was in the drywell, it would eventually spill into the stone, eventually permeate into the ground and then into South Mill Pond. He added that they would also add insulation to the pipe to prevent the water from freezing. Mr. Coldwell stated that Ms. Dori Wiggin of the Department of Environmental Services felt this was the best solution. He mentioned that the Tracey's have children and the standing water was creating a nesting ground for mosquitoes. He also pointed out that the wetland was not a natural one. He said that that, compounded with the topography was what was causing the problem. He said that if it was a high value wetland that had some function, he would not suggest eliminating it and draining it but he believed that it had very little if no function that he could determine.

Chairman Miller asked if the Commissioners had questions.

Ms. McMillan asked what the hardships were pertaining to the site. Mr. Colwell said that they believed that the entire situation was created by the sewer installation. That was the main hardship. Ms. McMillan asked if the water was flooding the house. Mr. Colwell introduced Mr. Sean Tracey and asked him to address the question. Mr. Tracey responded that they were getting water in the house. He added that they had a company come in and put in a perimeter system but the water continues to come in. Mr. Tracey said that for about two months out of the year, the yard is unusable.

Ms. Powers stated that she went out there and it looked like the proposed well would be between two trees. She wondered if the installation of the well would damage the trees. She asked if it could be pulled back. Mr. Colwell replied that the dry well was positioned there for a reason- it was on the high point of the slope so that the water would go into the ground and follow the slope to the South Mill Pond. Ms. Maher asked if the drywell could be moved 5 degrees to the east. Mr. Coldwell replied that it was possible. He said that Mr. Swartz, the abutter, has indicated that he would give them the necessary space on his property to address the problem.

Chairman Miller asked Mr. Coldwell to outline the property line on his plan. Mr. Coldwell pointed out the property line as well as an easement line that has been agreed upon by both parties.

Mr. Horrigan stated that the drywell looked like it would be located on the edge of the slope. He asked if the water would flow out from all sides of the drywell. Mr. Coldwell replied yes. He said that there was 20 feet between South Mill Pond and the end of the drywell.

Mr. Horrigan asked the dimensions of the drywell. Mr. Coldwell replied that it was 48 inches in diameter and would be about 6 feet below the surface.

Ms. McMillan asked if the area that was wet was mostly wooded. Mr. Colwell said it was partially wooded, partially lawn. Mr. Coldwell said that the property owner would like to clear out some of the dead trees but did not want to clear cut it. Ms. Powers asked Mr. Tracey if he was planning on draining the wetland and turning it all into lawn. Mr. Tracey replied that he wanted to keep as many trees as possible although they do not know what results they will get out of this structure.

Ms. McMillan asked where the pipe started. Mr. Colwell replied that it would start outside the buffer but on the edge of jurisdictional wetland. Ms. McMillan pointed out a small area within the wetlands where she would like to see some plantings. Mr. Tracey said that was certainly within the scope. It was a very spongy area.

Ms. Tanner made a motion to recommend approval of the application with the stipulation that the drywell be moved to the east to avoid the trees on the South Mill Pond. The motion was seconded by Ms. Mary Ann Blanchard.

Ms. Maher amended the motion to include the addition of obligate wetland species along the western property line for the purpose of treating the water prior to entering the flared drain.

The motion to recommend approval of the application with the following stipulations passed by a unanimous (7-0) vote:

- 1) That the drywell be moved to the east to avoid the trees on the South Mill Pond.
- 2) That plantings of obligate wetland species be added along the western property line for the purpose of treating the water prior to entering the flared drain.

- C. Standard Dredge and Fill Application
 US Route One Bypass (Meadowbrook Inn Redevelopment)
 Assessor Map 234, Lot 51
 Key Auto Group, Inc., owner

Attorney Malcolm McNeill, representing the applicant spoke to the application. He asked if it would be advantageous to discuss the Standard Dredge and Fill application and the Conditional Use Permit application together since much of the information was the same. Chairman Miller replied that that made sense in terms of the presentation.

Attorney McNeill introduced Mr. Gordon Leedy and Mike Leo of VHB, Inc. and Michael Parsant of New Hampshire Soils. Attorney McNeill stated that the property consists of 18 ½ acres. It has been used for many years as a motel/function facility with a great deal of associated parking. The property was located in a very prominent area in the General Business zone. Attorney McNeill explained that the owner was Key Auto Group who purchased the property in 2005. He said that originally the plan was to put in an auto dealership as the property was ideal for the use. Attorney McNeill stated that the applicant has now come forward with this plan which he felt was a far more appealing plan for the City and for the improvements that are being proposed by the applicant. He stated that the new proposal was for a new retail building, hotel, three restaurants, and a gas station/convenience store. He pointed out that all of the proposed uses are permitted in the General Business zone. He felt the project would require no variances, no waivers, and they would be able to meet all density requirements under the land use regulations of the City of Portsmouth. He continued to say that they were not overbuilding the site

Attorney McNeill stated that they started talking to the Hodgson Brook Committee from the onset, in the fall of 2005. They have had more than one meeting with the group. They have attempted to bring forth a plan that was responsive to their concerns.

Attorney McNeill pointed out that on January 3, 2007, the applicant agreed to an independent study of the site. He said that on February 5, 2007, a report was submitted by the independent wetland scientist. He stated that he received a letter from the Chairman of the Rockingham County Conservation District, responding to the report of Mr. Bond, the author of the report. The highlights of that letter were as follows – “Mr. Bond agrees with the analysis of the wetlands found on the property which was done by NH Soils. Mr. Bond is satisfied that if the storm water treatment plans are carried out as proposed, they will adequately treat the storm water run off entering the wetland. The buffers proposed along the wetland are narrow but they have a variety of plant species and heights and should provide a significant amount of wildlife habitat. It is Mr. Bond’s conclusion that the proposed plans are appropriate. The wetlands on the site will be protected with storm water run off and continue to provide significant wildlife habitat if the project plans are implemented as proposed.” Attorney McNeill stated that on February 9, 2007 they received a memo from the Planning Department with regards to the project. He said that the Planning Department was of the opinion that the intensity of development goes beyond the ability of this site to withstand it. Attorney McNeill pointed out that they have never been before the Planning Board. He said that this plan complies with the land use regulations of the City of Portsmouth. He also pointed out that the scientific evidence, by the City’s own consultant, supports the project. He said that the cumulative evidence that exists in this case supports what they are doing.

Attorney McNeill stated that they would be happy to go through the plan again for Mr. Adams benefit if Chairman Miller felt it would be beneficial. He said they would like to discuss the pollutant study since it was new information for the Commission. Attorney McNeill said that they were trying to make an innovative use of the property that admittedly changes the character of the property of what is there. He said that they believed that they can achieve the maximum desired result. He said that the client paid millions of dollars for the property and will develop it. He felt that this use was a highly desirable one. Attorney McNeill stated that they have also appeared before the Department of Transportation with regards to issues related to traffic. He added that for the Planning Department to suggest that a conforming plan under the City’s own

land use regulations is an over intensification of the use is at best, premature, and at worst, perhaps an indictment of their own ordinance.

Chairman Miller asked the Commission how they would like to proceed. Ms. Powers pointed out that two Commissioners had not heard the prior presentation. Ms. Blanchard stated that she was not present for the first presentation; however, she had studied the materials and had a general sense of the project. She said that she had a concern about the nature of the redevelopment of the traffic circle. Attorney McNeill said that they have been at meetings with the DOT. He stated that they have to design this project now. They would have to anticipate their concerns. They would also have to get a driveway access from the DOT. Mr. Gordon Leedy added that there are no formal plans with regards to the traffic circle. The City has their ideas, the State has their ideas. He said that this plan would accommodate those improvements.

Mr. Horrigan stated that he disagreed with a couple of Attorney McNeill's comments. He said that he felt Mr. McNeill made a threatening comment that if the Commission does not buy into this project, they may get something less desirable. Attorney McNeill stated that he knows what the initial intended use of the property was. He said that the applicant has made a good faith effort to do something desirable. There are other options as well. He told the Commissioners that they did not have to accept this plan. Ms. Tanner stated that she agreed with Mr. Horrigan and said that she did not like the preemptive strike.

Mr. Gordon Leedy, a landscape architect and planner with VHB, Inc. spoke next. He stated that Hodgson Brook runs almost through the middle of the property. The property was surrounded by roads so water quality in this area has always been a challenge. He said that the rear of the property was regulated by wetland. There was an existing 100 foot buffer. Mr. Leedy pointed out that their plan would need to address safe and adequate access to the property. He said that they would want about 350 feet of separation from the stop bar (the signal) at Coakley Road and the driveway location to the site. He added that the property has a significant amount of impervious area that currently drains into the lawn. He pointed out that there was currently no storm water treatment on the site.

Mr. Leedy stated that there would be a significant buffer impact with the project as well as wetland impacts. He said there would be approximately 15,000 square feet of direct wetland impact which the majority of it is from the relocation of the driveway. He said that this impact should occur if this property were to be redeveloped. He said in terms of water quality measures that they would initiate to mitigate the impacts; they are proposing a number of options. One was to add one or two subsurface detention areas. The other was to add two areas of pervious pavement. They also are proposing a small tree box filter. Mr. Leedy said that the biggest improvement to the area was the addition of a gravel wetland area. It will treat water runoff from storm water. The plan was to drain to the wetland area and then discharge it after treatment. He pointed out that the gas station area was lower in elevation and so it would have its own treatment. He said that they would be using all of the current technology on storage double wall tanks and double wall distribution systems. He felt this plan was appropriate for the location.

Mr. Leedy said that the overall impact was approximately 101,000 square feet. When it was broken down, there was an existing area of buffer that was impacted currently. That area represents approximately 32,000 sq. feet.

Mr. Leedy spoke to the issue of pollutant loading. He said that proposal represents an increase in developed area than what is there today. He explained that they looked at three different scenarios. The first scenario was what if the site was left alone. The second scenario was to redevelop within the existing footprint with the exception of providing a new access out on Coakley Road. The third scenario was the LID design which would incorporate all of the bells and whistles that they have been discussing with the Commission. Mr. Leedy said that the data shows that they are doing the right thing. It explained that a reduction in the development footprint would not necessarily improve the water quality situation.

Chairman Miller asked if the Commission had any questions.

Ms. Blanchard asked about the gravel filtration. Mr. Leedy said that there would be a system of pipes that would drain to that area. Ms. Blanchard asked who would maintain and monitor that. Mr. Leedy replied that the site owner would be responsible for it. The maintenance to the pervious surface would consist of periodic vacuuming with minimal use of salt and sand. He said that in regard to the gravel wetland area, the only maintenance would be periodic cleaning and inspection of the four bay area. He explained to the Commission how the four bay system worked.

Ms. Blanchard asked how deep the ponds were. Mr. Mike Leo of VHB, Inc. replied that they might be 3 or 4 feet deep. He added that they may need a fence around them.

Ms. Maher asked about pollutant loading with relation to the traffic studies. Mr. Leedy said the study was based on the use of the site and type of surface. He added that the study assumes the highest level of traffic.

Ms. Maher mentioned that some of the comments made by the redevelopment team did not open the door to friendly conversation with the Commission. She continued to say that she was excited about the project. She said that she liked the energy that has gone into the engineering of the site. She felt there was potential to do better however. There was still a lot that could be done in terms of the site, the buildings, and the clustering of the buildings on the site. Ms. Maher said she would like to see this location a flagship for Irving, a flagship for Key Auto, and for Portsmouth.

Ms. Powers asked for a clarification as to where the 6-8 feet of fill would be located. He pointed out that the current building has a walk out where it is high on one side and low on the other. He said that they are constrained by the fact that there is generally high ground water on this portion of the property. They are left with the choice to fill the backside of the property to make it relatively flat to make the grades work for the proposed buildings. He said that they are taking advantage of it and will locate some of the underground technology in that area.

Ms. Powers asked Mr. Richard Bond what further information they would get from a professional geologist who is experienced in the field of hydrogeology. Mr. Bond, who is a soil and wetland scientist and works for the Rockingham County Conservation District responded to Ms. Power's question. He said that he did not have any credentials in the area of hydrogeology. He pointed out that the inclusion of a gas station in the proposal was unique and a hydro geologist could better deal with that portion of the project.

Ms. Powers asked Mr. Bond if he was aware of the 6-8 feet of fill. Mr. Bond replied yes. He said that he reviewed the plan with great care. He also visited the site in January and because there was very little snow, he got a good look at it. Mr. Bond agreed that much of the site had been altered over the years. He added that the lawn area behind the building and between the wetland appears to be a constructed site. He said that the little wetland that is in the middle of the lawn was there because the ground underneath was quite dense and it keeps the water up near the surface. Mr. Bond stated that he agreed with most of what Attorney McNeill said. He said that how well the devices work will be determined by how well they are installed and maintained. Mr. Bond pointed out that his letter was not to serve as an endorsement to the number of buildings on the site. He was addressing the storm water run off. He concluded by saying that all of the proposals would protect the storm water run off on the site.

Ms. Powers asked that since there was no hydro geology report, how could they speak to it. Chairman Miller replied that they would have to rely on trust as well as the rest of the process that will occur with the Technical Advisory Committee and the Planning Board. He said that it is a permitted use in the area.

Mr. Britz suggested that they keep their discussion in the context of conditional use and state permits. Ms. Powers asked if the land was suitable for the project. Mr. Mike Leo stated that what a hydro geologist would look at was the location and the movement of ground water. He said that it was clear that the ground water was 24 – 50 inches below the surface and it was moving toward the Hodgson Brook.

Chairman Miller reminded the Commission that they had both the Conditional Use Permit and the Standard Dredge and Fill Application before them. Chairman Miller said they would deal with the Standard Dredge and Fill application first.

Mr. Mike Parsant, of New Hampshire Soils, spoke to the Standard Dredge and Fill application. He said that the application has been summarized by what the Commission has already heard. The application was based on three wetland impacts – one isolated pocket wetland and two large wetland areas. He explained the two cells that would be planted with native vegetation. He said that in pre-application meetings with Dori Wiggin and Laurie Summers, the application had been deemed appropriate by them. Mr. Parsant also stated that they would like to donate \$20,000 to the Hodgson Brook Restoration project.

Ms. McMillan stated that she felt there was a misunderstanding concerning the positive feedback from Ms. Wiggin and Ms. Summers. Mr. Parsant replied that he was not aware of any misunderstanding. Mr. Leedy interjected that they expected to have further discussions with DES on that regard. Mr. Parsant added that it was a proposal. Ms. McMillan said that she appreciated the clarification that it was just a proposal. She also suggested that the Commission request of DES to hold a public hearing on this application.

Vice Chairman Horrigan asked where the dredging would be taking place. Mr. Parsant replied that there would be no dredging on the project, just three areas of fill. Vice Chairman Horrigan asked where the fill would be coming from. Mr. Parsant said it would be coming from off site. Mr. Leedy stated that if on site materials were generated, they would like to use that in these areas but additional material would be needed.

Vice Chairman Horrigan asked what the height of the biofiltration gravel wetland would be. Mr. Leo replied that it would be about 5 feet. Vice Chairman Horrigan said that he wanted to make sure that the wildlife corridors are preserved. Mr. Leedy replied that there would be a pathway and the edge would be replanted with native vegetation.

Chairman Miller invited Ms. Candace Dolan, of the Hodgson Brook Restoration Project to speak to the applications. She said that she was pleased to see that they included LID in their plan. She said the group was dismayed to hear that there was going to be a gas station on the site but was pleased that it would be located on the corner of the site. She said that they still have some remaining concerns. There would be a significant amount of re-grading on the property, incursions into the buffer, and no winter maintenance plan. She felt there needed to be a balance.

Ms. Blanchard asked about the process and where the applications go from here. Mr. Britz replied that the State Wetland application goes to the State after the Commission makes a recommendation. He said that the Conditional Use application goes on to the Planning Board where they will make a decision on the conditional use of the property, then it will go on to the Technical Advisory Committee who makes their recommendation to the Planning Board.

Ms. McMillan asked if they should make the request for a public hearing to the State. Mr. Britz replied yes. Ms. McMillan said that there were two abutter letters that they had not had a chance to discuss. Attorney McNeill stated that he did not have a chance to respond to the letters. He said that it is hard to judge the credibility of the letters.

Ms. Powers asked how the information from today's meeting was being conveyed at tomorrow's Planning Board meeting. Mr. Britz replied that he will be present at the Planning Board meeting and will summarize where he can. He added that any Commission members can be present and speak as well.

Mr. Adams left the meeting at this point.

Chairman Miller stated that he would entertain a motion on the Standard Dredge and Fill application first.

Ms. Blanchard made a motion to recommend approval of the application as presented. The motion was seconded by Ms. Maher. Chairman Miller asked if there was any discussion.

Ms. Tanner stated that she has been a member of the Conservation Commission for over 15 years and she felt confident that she knows what her responsibilities are. In her judgment, she felt that this application was too high an intensive use. She said that she appreciated the efforts to make the project more appealing but it was just too overwhelming of a use for the site.

Ms. Powers stated that if it were less intensely used, then the road could be configured so that it would not run through the buffer. She said that she could not support it.

Vice Chairman Horrigan said that he would not be voting in favor of it. He appreciated everything that has been considered to deal with the storm water impact. He said that he agreed with the City staff that it is too intensive. Mr. Horrigan felt that whatever is developed there should be harmonious with the site. He stated that he was very concerned about the intrusion of the buildings into the buffer zone. He was also concerned about how this project would impact

the Hodgson Brook Restoration Project. The City is a partner in its restoration. He stated that a lot of vegetation has reappeared and he is afraid that the engineering for the storm water treatment would alter the corridor for the vegetation and wildlife. Vice Chairman Horrigan said that he wished the project were more modest.

Ms. McMillan felt that the retail building was too much for the site.

Ms. Blanchard spoke in support of the motion. She stated that it was not the purview of the Commission to decide what they would like to see on the site. She said that this was the beginning of a long project. She pointed out that the loading study helped to see that it was an improvement over what exists now.

Ms. Maher stated that there was much more work to be done. She wondered what would happen if it did not get approved this evening. Mr. Britz replied that the Dredge and Fill application goes to the State and they have the right to approve it or not. Ms. Maher felt this was a project that was worth going forward.

Chairman Miller stated that he would vote in favor of the motion. He said he would like to see everything out of the buffer but that this was a site that has already been altered. He added that he liked the use of LID and improving the water quality. Chairman Miller said that he appreciated the effort that has gone into the planning and that they would get better water quality from the plan.

Ms. McMillan asked if the request for the public hearing should be in the motion. Ms. Blanchard amended her motion to recommend approval of the application as presented with the request that a public hearing be held on the application.

Chairman Miller called for the vote. The motion to recommend approval of the application as presented with the request that a public hearing be held on the application **failed** by a vote of 4 – 3 with Ms. Tanner, Ms. Powers, Ms. McMillan, and Mr. Horrigan voting in opposition.

III. CONDITIONAL USE PERMITS

- A. US Route One Bypass
Meadowbrook Inn Redevelopment
Assessor Map 234, Lot 51
Key Auto Group, Inc. owner

Chairman Miller suggested that the Commission move forward and deal with the Conditional Use permit. He asked Mr. Britz for a review of the difference between the two applications.

Mr. Britz explained that both applications are recommendations, one to the State and the other to the City. He said the Planning Board deals with Conditional Use permits. He said that the State does not deal with the 100 foot buffer setback. He continued to say that with this Conditional Use application, the Commission should concern themselves with the 100 foot buffer setback and the wetlands impact and the four criteria stated in Article VI dealing with approval of conditional use permits.

Mr. Horrigan made a motion to agree with the recommendation of the Planning Department staff memorandum dated February 9, 2007.

Mr. Britz explained that the Planning Board received the same memo. He said it would be helpful to them if the Commission could be more specific.

Mr. Horrigan made a motion to recommend denial of the application for the following reasons:

- 1) That the proposal would leave too narrow a buffer zone from the edge of Hodgson Brook.
- 2) That sufficient consideration had not been given to natural vegetation to treat storm water coming from the site.

The motion was seconded by Ms. Maher for the purposes of discussion.

Ms. Tanner stated that she would like to add to the motion that the land is not suited to the use.

Ms. Maher asked if Ms. Tanner was open to other options. Ms. Tanner replied that something needs to go there but this proposal was too much.

Mr. Horrigan felt that another reason for denial would be that as a general rule, buildings should not protrude into buffer zones. He explained that he liked some of the techniques they were proposing, he just did not like that it was going so close to Hodgson Brook. He said he would like to add another reason for denial and that was that it posed a threat to the Hodgson Brook Restoration Project.

Mr. Horrigan amended his motion to recommend denial of the application for the following reasons:

- 1) That the proposal would leave too narrow a buffer zone from the edge of Hodgson Brook.
- 2) That sufficient consideration had not been given to natural vegetation to treat storm water coming from the site.
- 3) That the land was not reasonably suited to the use.
- 4) That there was a concern that the buildings would protrude into the buffer zone.
- 5) That it posed a danger to the Hodgson Brook Restoration project.

Chairman Miller asked if there was any more discussion.

Mr. Horrigan stated that he hoped that this was not received as criticism of the plans. He said that he was impressed by the details but as a whole, he could not support it.

Chairman Miller stated that he would vote against the motion for the same reasons as the Dredge and Fill application. He said that what it comes down to for him is the functions of the buffer and what they are trying to protect there. He was not comfortable with the buildings in the buffer but from a water quality standpoint, he would be voting against it.

Chairman Miller called for the vote. The motion to recommend denial of the application for the following reasons passed by a 4-3 vote with Ms. Blanchard, Ms. Maher, and Chairman Miller voting in opposition.

- 1) That the proposal would leave too narrow a buffer zone from the edge of Hodgson Brook.

- 2) That sufficient consideration had not been given to natural vegetation to treat storm water coming from the site.
- 3) That the land was not reasonably suited to the use.
- 4) That there was a concern that the buildings would protrude into the buffer zone.
- 5) That it posed a danger to the Hodgson Brook Restoration project.

IV. OTHER BUSINESS

A. Prime Wetlands Assessment Update – Peter Britz

Mr. Britz stated that due to the late hour, perhaps he could address the Prime Wetlands Assessment at the next meeting, either before or during the meeting. Chairman Miller stated that once the Commission has heard the report, it would be a good idea to meet with the Planning Board to discuss it further. Mr. Horrigan said that he would like to forward a recommendation to the City Council. Mr. Britz felt it was important to point out that this was not going to change anything in regards to the 100 foot buffer protection but it will protect them at the State level. He added that anything adjacent to these wetlands would get a public hearing.

Ms. McMillan suggested that it be added to next month’s agenda.

B. Schedule site visit – 1800 Woodbury Avenue

Mr. Britz said that the site visit could be coordinated via email. He pointed out that the applicant does not want to go before the Planning Board with a negative recommendation.

C. Conservation News Bulletin

Mr. Britz discussed this publication with the Commission.

V. APPROVAL OF MINUTES

January 10, 2007

It was moved, seconded, and passed unanimously to approve the minutes as presented.

VI. ADJOURNMENT

At 6:35 p.m., it was moved, seconded, and passed to adjourn the meeting.

Respectfully submitted,

Liz Good
Conservation Commission Secretary

These minutes were approved at the Conservation Commission Meeting on April 11, 2007.