

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

AUGUST 31, 2004

A meeting of the Planning and Economic Development Committee was held on Tuesday, August 31, 2004 at 7:02 p.m. in the Aldermanic Chamber.

Chairman David Rootovich presided.

Members of the Committee present: Alderman Kathryn D. Vitale
Alderman Richard LaRose, Vice Chair

Members Not in Attendance: Alderman David MacLaughlin
Alderman Robert G. Shaw, Jr.

Also in Attendance: Alderman-at-Large Brian S. McCarthy
Jay Minkarah, Director, Economic Development
Katherine E. Hersh, Div. Dir., Community Development
Mike Lowe, Planning Board Liaison
Roger Houston, Director/Manager, Planning Department
Christopher Hodgdon, President Nashua Chamber of
Commerce
Sean Duffy, Zoning Board of Adjustment
Mark Fougere, Planning Consultant
Kathryn Nelson, Chair, Nashua Conservation Commission
Karen Berchtold, Planner II, Planning Department

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Chairman Rootovich

Tonight we have put aside the evening for Division 10, which is the Wetlands. Before we start I would ask either Mrs. Hersh or Mr. Houston if they have any opening statements.

Katherine Hersh

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There is a revision that was submitted to you Mr. Chairman and the members of the Board that was worked on by the Conservation Commission and reviewed by the Planning Department and Community Development Division. I think that would be something that we would prefer to review. If everybody doesn't have a copy of that I would be happy to make more copies.

Chairman Rootovich

Mr. Houston while she is making those copies do you have any comments about wetlands before we get started?

Roger Houston

I think I might defer to Kathryn Nelson the Chair of the Conservation Commission because I know that they spent a lot of time and effort in looking at this and researching and reviewing. The original ordinance as most of you know was adopted by Referendum by the citizens of the City of Nashua back in the early '90s, and that is primarily the basis for the underlying ordinance before you tonight.

Kathryn Nelson

In a nutshell, what we aim to do on the commission is to update the ordinance. We relief heavily on comments that were received over the years on points that were not very clear, that citizens had confusion with. That was one of the overriding goals was to try to come up with a written document that was a lot clearer and able to be understood and interpreted by everyone. The other goal was to update the ordinance along the lines of bringing it more in keeping with today's standards. In doing that I researched some of the wetland buffers that other communities in New Hampshire have adopted over the years – over the 13 years since Nashua adopted their wetlands ordinance. I basically tried to come up with something that was a balance. I tried to look at other cities; Concord, Dover, Derry, and come up with something that made sense for Nashua. Those really were the two goals of how we came up with what you see in the package before you.

Chairman Rootovich

While she is passing those out I would entertain a motion to accept the communication and place it on file.

COMMUNICATIONS

From: Kathryn Nelson, Chair, Nashua Conservation Commission
Re: Proposed Updated Version of the Existing Wetlands Ordinance

MOTION BY ALDERMAN LAROSE TO ACCEPT AND PLACE ON FILE
MOTION CARRIED

Chairman Rootovich

Again Mrs. Hersh is it your intention to replace the document that was handed out this evening to take the place of the language that is in the current draft of the wetlands?

Katherine Hersh

Yes it is.

Chairman Rootovich

I would ask at least that we go through what is in the book. If any individuals have any comments with respect to anything that is in the book that is not in the amended version. We can cross reference as we go along.

Katherine Hersh

Absolutely. Given that some people were not aware of the revision it would be appropriate to do that. I agree.

Chairman Rootovich

We can incorporate this document when we finalize our final motions to make any changes as we go through. We will keep this as well.

Mike Lowe

It would help if they would point out where the changes actually are made.

Chairman Rootovich

Again we will go through it section by section. Mrs. Nelson can comment on any omissions, additions or complete changes in the language as we go through the document.

Beginning on page 209 – Wetlands – the first paragraph in the bullets any comments?

Mark Fougere

Do you want comments on the proposed changes also?

Chairman Rootovich

I would take them both.

Mark Fougere

It appears that the definition of wetlands has been changed. Is this being recommended by the State or how is this different from what is there today?

Kathryn Nelson

In the packet we are looking at what we are proposing? We have actually stayed with the same definition that is in the existing ordinance. That definition is consistent with the DDS definition, which is the three-part parameter.

Mark Fougere

I just see a reference to the Core of Engineer manual, which I don't see in the proposed. If it is consistent with State that is fine.

Kathryn Nelson

I cross-referenced that a few days ago to make sure that is how the state defines wetlands. They use the Army Corp.

Mark Fougere

Thank you.

Chairman Rootovich

Is there anything else with respect to 160270?

Roger Houston

Just posing a question. I am not sure if it is something that the city or the Conservation Commission would like to consider. Sometimes when definitions change, when you reference a particular study – sometimes those are amended from time to time and I notice there isn't a provision in here – if it is amended – if that is what the commission would like to go with that definition or come back and reconsider that definition at that time and change the ordinance. Do you see what I am saying?

Kathryn Nelson

Adding that flexibility may be an added bonus in case the definition is changed. I would think our goal has always been to be consistent with the state. If the state chose to adopt a new definition then we would follow.

Chairman Rootovich

Are there any further comments? In the book it is 16-270 – Generally – in the revised version it is 16-572.

Christopher Hodgdon

On 16-270 (b), there is reference to a subsection c below. Is that the table 271-1?

Chairman Rootovich

Yes. Are there any further comments? Section 16-271 – any questions?

Mark Fougere

There are a number of changes I think are occurring here not only with the proposed zoning ordinance, but the change. I will test my memory here. Today the ordinance has basically 4 types of buffers or 4 areas we have defined at 75 feet, which are major streams and brooks. We have critical at 40, which is the major smaller brooks, and then 20 feet for all other wetlands up to over an acre in size. New definition expands that to include any wetland no matter what size to have at least 20 feet. If it is larger than 9,000 sq. ft. the buffer goes to 40, which is a significant change and is a concern to the Chamber.

Kathryn Nelson

This is definitely the meat of the changes that will probably interest most people. Again I don't know if you want to – I did research again to try to update it along the lines of other localities. Then the other criteria was that most recent scientific evidence that has been supported by the state is that you really can't equate the size of a wetland with its function. You could have a very small wetland that has a very high level of value and function or you could have a larger wetland that may not have as high of a function.

We have had quite a few comments over the years – the fact that – I am trying to give an example for you. Right now in Nashua if a wetland is under an acre it is not provided any kind of a buffer. I guess I would say that is very inconsistent with the way most other localities choose to regulate their wetlands. That is why we made the change that basically said those under 9,000 feet would be given a 20...

Chairman Rootovich

Did you say most of the communities now have no buffers?

Kathryn Nelson

No have larger buffers. Again just for example – Concord has 50 foot wetland buffers and Dover has also 50 foot buffers on all wetlands, and I think Goffstown has 100 foot buffer around wetlands greater than 20,000 sq. ft for residential and then they drop down to a 50 foot. The goal here was to try to acknowledge that there could be some smaller wetlands that deserve a

20 foot buffer, and we felt that 20 feet is a reasonable amount that gives you some protection but at the same time does not limit development unduly.

Chairman Rootovich

Could you give us an example what a buffer zone we are talking about that would require a 20-foot buffer with respect to any streams that we have in the city currently?

Kathryn Nelson

Well again probably this wouldn't be for streams. I am thinking of ...

Chairman Rootovich

It says wetlands. I would assume that is part of ...

Kathryn Nelson

Well for the 20-foot buffer this may be – I am just thinking off of Searles Road.

Chairman Rootovich

Salmon Brook?

Kathryn Nelson

Salmon Brook would be provided a 75-foot buffer. There was a residential lot off of Searles Road that was developed and that basically had a decent – nicely functioning wetland and we covered the nature of our ordinance – it didn't qualify. It was actually kind of painstakingly there was some wetlands over in the Pennichuck Watershed right over by the area where Corning was being developed that did not qualify for any buffer under the existing ordinance because they were less than an acre. At that point, the Commission really has no say and at that point there is allowed to be development right up to the edge of that wetland.

Chairman Rootovich

Questions?

Christopher Hodgdon

I think that our concern is not principally the larger more easily identified wetlands in the community. I think our concern is the definition of a wetland when you combine that with the fact that you could have an area that may be a matter of only 20 or even 10 sq. ft. that could fit the definition outlined in 16-270 (b). You then have a relatively small area on perhaps a residential

property that then has a significant buffer around it. I think it is easy for us to imagine areas that we all in our mind consider a wetland, but I think we need to overlay our assumptions with the definition of that. You could have an area because of the way a residential lot was laid out 20 years ago that over those 20 years has taken on the characteristics of a wetland as defined in the beginning of the section and it could be very small. Now you would have a 20-foot buffer around it. I think it is an issue for the business community, but for people who are homeowners in the community they should be very interested in what these buffers may mean because we are not just talking about large areas that we may consider to be wetlands in our generic definition of it.

Alderman Vitale

Maybe Mrs. Nelson can explain to us what would happen under that circumstance if this ordinance was adopted.

Kathryn Nelson

First of all I think under the ordinance we don't have the ability to make a buildable lot un-buildable. For instance we just reviewed a lot that was adjacent to the Nashua River, which normally would have been given a 75-foot buffer, but we understood that person had full rights to develop that undeveloped lot. We worked with the developer and basically came up with an arrangement where they would leave the back area unmowed and they were able to develop it in the same way and at the same level that their expectations were, but there were some modifications and changes that we suggested that the developer worked around. It seemed like it was a win/win. Again I don't think that there is ever a circumstance where a homeowner would not be allowed to build on their property because there is a wetland. Usually by nature if you need to get to your lot for instance I think there was just on East Hollis Street an area where you had to cross over a wetland to gain access to build. It is pretty much understood by both the commission and DES that if you have to cross a wetland to gain access to buildable land in an upland we just ask that the crossing be minimized and we try to work with them to protect the wetland.

Christopher Hodgdon

I would like to be clear. I am not referring to someone not being able to build on a lot that hasn't been built on. My concern is if someone decides to put an out structure or a storage, they decide to put a porch on or something with their driveway. Those are the sorts of concerns that I have. I think you are quite right, the draft and I assume your proposed revisions allow people to cross wetlands to access their land and it is specific in not allowing people to – not creating a taking where they are not allowed to build on a lot, but what happens when you want an addition or some other sort of modification to an existing home?

Kathryn Nelson

I guess I would answer if you look on where 20 feet is and that is what we would be starting with to ask people to stay in that line. That seems to be an essential area to protect the wetland. By the very nature of the way the whole ordinance works is anyone is allowed to come before the Conservation Commission and request a special exception and to demonstrate their project and encroach a reasonable amount in – if there is a foot or two that is needed to make the home usable and if it seems reasonable more than likely that would be something that we would deem reasonable. If someone wants to build out over a wetland – to extend – they already have a nice deck and they wanted to build a large one that encroaches right over the wetland and uses the entire 20 feet that may be something that we would have a concern with.

I think there is a ... tape inaudible – speaker away from microphone ...

Christopher Hodgdon

I think that your comments sort of illustrate the concern I have that you much the way you just described is very subjective on the part of some of these now serving on the Conservation Committee. My concern is that someone else may have a different view. Someone looking at this ten years down the road may decide that it is in the best interest of the community not to allow any encroachment on the buffer. They may decide that and I think it is also sort of troubling that we could allow someone to make a judgment on whether or not they have an adequate deck on their house, whether or not they need a bigger deck or smaller deck. I think those sorts of judgments are dangerous to make. We are talking about peoples homes and again we are talking about small wetlands that are not I am guessing may not – if you asked the average person on the street how you define a wetland I am sure that 90% of them are not going to define it the way it is defined here.

I am not suggesting that is an incorrect definition I am just saying that we are talking about people perception of what is or isn't allowed in a wetland – you get a great variety of opinion. I don't think it is appropriate to rely on a special exception when you have something that is a very small wetland or a very small area where water pools and you have over time vegetation change. I think you are getting yourself into a dangerous situation where a lot of people in the community never in their wildest dreams would assume that this sort of ordinance would restrict them from being able to do those sort of things on their home.

Chairman Rootovich

Chris let me ask you a question – is your concern with all three of the definitions with respect to table 271 or is it just the first ...

Christopher Hodgdon

The definitions I think are universally accepted, but my concern is that we are now establishing – we are doing two things; we are creating a definition/a classification for larger wetlands over

9,000 sq. ft. classifying them as critical. I think that is a large change from the past ordinance, but it may not be unreasonable. However, taking any wetland whether it is a few square feet or even 8,900 sq. ft. and creating a 20 foot buffer around it particularly when we have small lots – these wetlands may have been created during the course of construction on that lots years and years ago and – I think this is – tree removal can cause water to pool and over time you can create a wetland. I don't know that most people would actually assume that there is now a 20-foot buffer around that.

Alderman Vitale

Maybe Mrs. Nelson can correct me if I am wrong, but I believe a wetland has to have certain types of soils present to be classified as a wetland and what I believe I heard earlier is that not all wetlands – there might be small wetlands that have greater importance than larger wetlands and therefore you would want to look at it as to its importance. I know from sitting on the Commission that at any time you can come in and have a specialist look at the soils and determine the importance of the wetland. That would be used in different circumstances by the owners coming before the Conservation Commission and the Commission itself uses specialists to help them determine different types of situations. Also what happens is not that much different than what happens now? It is just that they are looking to increase the amount of protection that is given to different areas. It is really not that much different the way I see it from what already takes place.

Christopher Hodgdon

I am guessing that if we were to number the number of wetlands that now fall under this definition that there would be a huge increase in the number of wetlands that are created by the definitions or the classifications used in this table as compared to what the existing ordinance has. The process may not be different, but if you are now applying it to larger number of wetlands around the city I think it does have a dramatic affect on property owners residential/business.

Mark Fougere

I would certainly concur that wetlands have different values and sizes and sometimes the size has nothing to do with the quality of the wetland, but this proposed change doesn't really take that into account. It is an arbitrary number saying everything over 9,000 has a 40-foot buffer even though that 9,000 sq. ft. wetland may have no value or very low value. The brooks and ponds listed in this chart are currently protected and labeled as critical and they are important to the city. I have a situation on a neighboring town where there is a small wetland that is probably less than a car size with a 50-foot buffer around it. It used to be a farm. It is currently mowed every year. If you look at it you would never know it is a wetland, but by statute it meets the definition of a wetland and there is a 50-foot buffer around it. It is ridiculous. Some cases you might have a 2,000 sq. ft. wetland that is extremely valuable. In the Conservation Commission's

changes they note out a pool which has very specific criteria, which is helpful and those should be protected and that is what they are proposing, but there is no qualifiers here of trying to say what is of value – let's protect that and the lower values don't need as much of a buffer. It is just based on size.

Chairman Rootovich

For the record Mr. Duffy has joined us.

Sean Duffy

I understand and hear the concerns, but my experience has been the last six years that by special exception EDA are basically predisposed to try and approve the ordinances that were there before were adopted and ratified – over the years of the Conservation Commission trying to define and simplify and make things easier to understand. I think this is a step towards easing some of the restrictions that were there under the definition of other under prime and critical. We took a look and I think the Committee took a look at taking all other wetlands and saying at least by size, 9,000 sq. ft., which is a lot – that is a whole buildable lot requires some review. It is not a restriction it is a condition of review to make sure that the right construction methods, the right setbacks, the critical nature over time is being looked at and addressed.

Again I understand the thoughts and the concerns, but I haven't seen it unrealistic in the last few years based on a new ordinance that Nashua has had to live with for developers, commercial, and residents. I do hear the concerns, but I don't think it is as significant as what we are talking about here.

Katherine Hersh

Certainly protecting natural resources is part of the goal of the wetlands ordinance, but the other goal of the wetlands ordinance when it was written and over time has been property rights because when you have water on a site even if it is a small wetland and you fill that or come close to that or build near that, which will eventually cause impact you force that water to go someplace else and that water ends up going someplace else on their property or on the next property. When we wrote the wetlands ordinance back in the late '80s I remember walking literally going door to door on Meadow Brook Road and talking to people who had Salmon Brook in their backyard and they said over the ten to fifteen years that they had lived there that brook had encroached significantly into their backyards, had impacted the amount of land that they had – usable backyards that they had. One person was showing me how the water was all the way up to his garage and how it had been many feet away from that garage when he had first moved there. Everybody attributed it to justifiably to development upstream – development upstream that was impacting the ability, the amount of storage for the water and so therefore was forcing that water to store someplace else on somebody else's property. A lot of what this is really about is protecting peoples' property.

Chairman Rootovich

I am sure Mr. Lowe has several albums of pictures that will show that exact thing on his property.

Mike Lowe

The biggest problem I ever had was the bridge on Searles Road. When they built the bridge on Searles Road they hit ledge and so they changed the actual depth of Salmon Brook and it backed up onto my property. It only backs up on my property when you have a gully washing rain. Two days later it is gone. My whole backyard is gardens. Those gardens get flooded so the plants that are in the gardens are plants that will survive flooding. In these ordinances there are things that say I couldn't mow my lawn actually, but course I am grandfathered since I got the permission from the state in 1978 to do it. Some of the things in here are very good. Some are bad because they don't understand that if you change something maybe a mile away by changing the topography a mile away you are changing what happens to the pools and the wetlands. It is not just right next door to it or a 200-foot buffer or 75 foot buffer or 40 foot buffer. It can be a whole mile away and you can get rid of all the wetlands that are in the area.

It is something you have to pay attention to. We are almost built out now so you are not going to get anymore large developments. There are probably only 3 or 4 that could be done in the whole city. That is where you are going to have to look very carefully not just small pools and so forth. You are not going to find them.

Kathryn Nelson

I just wanted to clarify the point of where the 9,000 sq. ft. came up. Believe it or not we started this back when Jack Currier who is now over at ZBA was on the Conservation Commission and we had the benefit of him being an engineer. The 9,000 sq. ft. was developed as the common sense approach that the buffer would not be any bigger than the wetland itself. We felt that didn't make sense to have an area where the buffer would be bigger than the wetlands. Jack did some calculations and that is why we used the 9,000 sq. ft.

The other point, and I will address this to Mark, you have to differentiate it. If you have a wetland and I assume you are talking maybe Milford or some other community that you are familiar with, but if you have a relatively small wetland and you don't give that wetland even a 20 foot buffer you just develop right up to the edge of it with impervious surface – a parking lot or whatever, in my mind you may as well just go ahead and ask for the drudge and fill and in most cases go ahead and fill that wetland because the buffer serves as an integral part of that wetland. It protects it and lets it do its thing. It is again more just common sense. We don't have that many small isolated wetlands left here in Nashua. Most of those were probably filled years back. There may be ones and those are the ones that we are trying to protect now that basically says stay back 20 feet with the impervious services or parking lot – other things might be able to be allowed to encroach in. I guess that is where I would address Mr. Hodgdon's point is that we're a board of between 7 and 10 people. It is not just my say. All of us are residents of Nashua.

Most of us own homes. It is a pretty balanced – you will probably never get 1 coalition of someone that is saying not development. Usually when someone comes to us for a special exception we consider the circumstances, and that is also why we always do site walks. You can't really just understand a wetland based on its size or sometimes what the applicant bring forth to you. You have to go out and take a look and see if it is a sensitive area, what the topography is, what the previous history was – we take all of that into consideration. Again just some background as to why we tried to make these changes.

Chairman Rootovich

Any follow up or any further questions?

Mike Lowe

I don't know if they have considered it, but I have tried from the Planning Board point of view and on the Conservation Commission before that – why do we always use impervious surfaces? There are pervious surfaces that will work almost as well or even in some places better but we never use them. I think some areas should say pervious surfaces are better than impervious surfaces. You want the water to go in the ground. You don't want it to run off and into the brooks and so forth. I have never been able to get anyone – I can remember when they were doing the hospital out on International Boulevard I tried with no luck. You could have saved a whole lot of underground water to go into the surface if they had done it, but they wouldn't do it.

Chairman Rootovich

Mr. Hodgdon is your concern more with the board itself not giving an exception rather than the 20-foot buffer? Is it the buffer itself?

Christopher Hodgdon

I think my concern is that as written you can have very small albeit important wetlands that are significant areas of individuals property that are not usable. Our concern is that is essentially a taking. Through these regulations you are limiting the ability of people to utilize their property. I think it is understandable. I hesitate to use a size qualifier, but I think that is the way this was written so I think it is reasonable either because it is a stream or a lake or the size of it – I think it is reasonable to try to understand what value you get out of something that is a very small wetland. I think that is our concern that something that may be just a few square feet can end up reducing the ability for people to use a significant amount of their property.

If I could just finish I think everyone has had a chance to articulate their positions – the issue of land owners abutting streams and rivers is one that when I worked for the U.S. House of Representatives I dealt with on the Connecticut River and farmers all the time. Farmers hated to see their banks erode. They were very happy to see in the spring when they had more land that they could farm. I think that no property owner should assume that these streambeds are going

to maintain the same footprint year after year after year. It is part of the natural evolution of the curves of these streams is that sentiment moves downstream and what may be there one year is not there the next. I don't think that we should make policy based on people's concern that there will be erosion. I think it is a dangerous thing to do. I don't think that you can control that.

Chairman Rootovich

Are there any further comments?

Neil Barrett, 9 Strawberry Bank Road

Thanks for allowing me to speak. I just have one quick question on the changes. Was there any attempt to map out the difference between the current ordinance and the proposed ordinance consideration Mr. Hodgdon's comments saying that some very small wetlands may have larger buffer areas than the wet lands themselves. I think a lot of times everything looks good on paper and the intent is good with this change – nobody will argue the benefits of wetlands, but I think that nobody knows the consequences of these proposed changes. I think it would be very enlightening to see if you took the City of Nashua and did an overlay of the prime wetlands and prime wetland buffers, the critical wetlands and the critical wetlands as written and then the other wetlands and then have a current status quo, and then the proposed ordinance where anything under 9,000 sq. ft. would have a 20 foot buffer. I think there are going to be parcels within wetlands scattered around the city if you did an overlay on the city map and put a 20 foot buffer around them I think that you would be shocked to see what you found. I don't know if there was any attempt to do that. I think that visual aid may be very enlightening.

Chairman Rootovich

Has that been done to your knowledge?

Kathryn Nelson

It would be a fantastic tool. It would be nice if our current GIS system could do that. We are actually working right now with the Manager of the GIS to add more of the wetland data to our GIS system. I could tell you I don't know about for other wetlands because that is very difficult, but as far as for the prime and critical we are working on trying to be able to in more detail map those and then we could obviously show those buffer areas. I have to say I have been on the commission for 12 years now and I have never seen anyone come in with a situation that they have an extraordinary small wetland where there is some concern. Again the three part DES parameter says that you have to have not only hydrology, which means you have to have enough standing water or vegetation, but you also have to have the soils and you have to have some vegetation. Again lots are not going to satisfy that. Over a very long period of time if you create a pond over time what will happen is you will wind up with some natural wetland vegetation around it. It takes a really long time for a wetland to be created. I can tell you lots

don't satisfy them and if someone has a small little puddle in their backyard more than likely that will not test out as an actual defined wetland. I think actually the definition is in the homeowner or the landowner's best interest.

Neil Barrett

Not to – I guess I have a couple of comments. One is that I don't know whether or not the definition of a wetland requires a freestanding water. You used the terms pond and puddle, but I have seen wetlands that people walk over or are in their backyards and according to the strict definition of a wetland are a wetland. There are other types of wetlands where there is not standing water for any period of time. I think that to go along with what Mr. Hodgdon was saying was that you are going to possibly be impacting property owners that don't even know what the consequences are of what they are doing and you are categorizing a type of land and you don't know where it is. I find it interesting that the City of Nashua under the Planning & Zoning Boards puts a lot of effort into notifying abutters of the new requirement or providing education to the people that live within – not necessarily the abutters for the development either before the Zoning Board or the Planning Board – you are potentially rewriting and changing the definition of what is considered an other wetland in the critical wetland in the City of Nashua.

You don't know which properties are going to be impacted and the property owners may not be aware of how their properties are being impacted. By changing the definition from what you have and not knowing the impact on individual property owners or a great deal of property owners I think is unfair to those property owners. I think that maybe a little more effort should be put into mapping it and then understanding the buffers.

Kathryn Nelson

I just want to make one point again. Wetlands are protected under state regulations. Anything we are talking about here is already protected by the state and cannot be filled or altered in any way. Obviously that is the – we just mimic that state regulation. Where we are talking about this and again not to confuse the two – If you happen to have what would classify as a wetland in the 3-point parameter in your backyard or on your property you are required by the state to not touch that. What the city is doing is we are just saying and again we are just embracing what any wetland scientist would tell you is that in order to protect that resource you need to stay back 20 feet. That is what the guidelines and the recommendations are and again now we have a special exception process that allows for exceptions to that. I was trying to come at it from a landowner property rights standpoint.

Basically that seems to be a decent balance, which is basically saying that common sense tells you you should be back 20 feet, but again anybody has the right to come to the commission and demonstrate as Mr. Lowe said there are some great things out there, permeable payments, all sorts of technologies that sometimes can be used to protect the resource. To answer Mr. Lowe sometimes those technologies are expensive or people just don't trust them or whatever, but they are out there. The commission certainly considers those in terms of imperviousness – will it

be left untouched or is it going to be left more in its natural state. If it is going to be improved that is usually a situation that we very much take a look at that if there is a degraded wetland within a certain buffer and the applicant comes in and proves to us that they are going to actually improve the site conditions, but in order to do that they need to encroach a certain amount of feet into the buffer I think history would show over the last – since the ordinance was put in, that the commission has been pretty reasonable in considering those.

Neil Barrett

One last comment. There is a process in place and I think that you will see a lot more applications. I would be curious to see what the cost of the average homeowner would be to go through this process, to hire a wetland scientist to do a site plan – any of that is all required because I believe there are review standards, and I don't know them off the top of my head, but has anybody done a cost analysis of what it would take to go through the Conservation Commission and the Zoning or Planning Board on the average homeowner. That was one of the concerns with the watershed protection district ordinance is the standards outlined as they would impact the residential property owner would be excessive. I would be curious to see what the cost is of going through this process and how many property owners would be impacted. I thank you for your time.

Chairman Rootovich

Can anybody think of any example in the last 12-24 months where a wetland has been developed under the definition of other wetlands within the city?

Kathryn Nelson

Where it wasn't provided as a buffer? That is a good question because I think in some ways you can say it is actually the procedure and I think Alderman Vitale mentioned that. We have a great Planning Department here and typically when they look at even if it is not something that comes before the Commission, in most cases people are staying back beyond the 20 feet of the wetland just as good development practices. I think Director Hersh mentioned common sense just as far as water flows and flooding. You don't want to sit things right up close to a wetland, and that in most cases is what happens. Unfortunately sometimes we have been in a case where we haven't been able – where someone does want to push beyond that and right up to the wetland that is under an acre and those are the situations where we might get inquiries from people saying why did you let that happen, and we feel very frustrated when we have to say we just don't have the tools basically under the ordinance to basically have a say or try to modify that.

Christopher Hodgdon

I just wonder since the existing ordinance has an acre as the minimum it was mentioned that there weren't a lot of conflicts between the homeowner, residents, and the wetlands ordinance,

but for the most part a homeowner will not have more than an acre of land and certainly not more than an acre of wetland so I don't know whether those conflicts – why would anyone come to the Conservation Commission with this sort of issue on their personal residence, their property? How would you know that you wouldn't run into the conflict?

Katherine Hersh

You have to do an application for a permit and layout for the building with the Planning Department and tell them what your plans are. There are two parts to that permit. There is that building permit and the land use permit. As part of the land use permit they review the site with respect to whether or not for all the information that we have within the office, not going out to the site, whether or not there are wetlands in that site. If it is approximate for example to a brook or if there are tell tale signs that there may be wetlands in that vicinity – that is how it works.

Christopher Hodgdon

Do those reviews identify wetlands or not primary or critical – do they identify all sizes of wetlands, pools?

Katherine Hersh

I would have to ask Roger if he knows because I am not involved in the details of that.

Roger Houston

What happens is when we review a land use permit one of the procedures they do look at the wetland maps that we have on file, but the primary tool now is obviously we look at using the GIS system. There is a water features part of that along with aerial photographs that provide us tell tale signs if there are wetlands on the property. If there are then we take it the next step further and ask the questions. You can usually tell from the GIS system how large a wetland it is and some other areas – there are measurement tools. That has been a very useful tool that we have been utilizing when we review land use permits and proximity to wetlands. Normally staff does a very good job of catching all of those. I think vernal pools might depending might be the only issue as you may not catch it if it is an upland vernal pool and it is wooded – it might not show up as easily on the GIS maps. Other than that the technology is there and we do a good job attaching those now.

Christopher Hodgdon

Maybe we can use that resource to predict how frequently there would be a conflict if there is a confidence that a great majority of these wetlands are caught during that process. That might be a tool for us to understand how frequently there will be private residence conflicts.

Roger Houston

I guess we would have to have the knowledge as to who wants to either expand their homes or what they want to place on – most people try to stay – common sense is you stay away from bodies of water and wet areas on your property – either there are low spots that drainage goes to – if there are wetlands then it doesn't make sense to put a foundation in because you would have moisture problems. Most people stay away from those. Portable sheds are probably the more frequent issues. Often times homeowners have opportunities to locate those in other parts of their property so they don't impact a wetland or wet area.

Sean Duffy

In the current ordinance on page 1228 section 16-575 it does talk about this 20 foot buffer that was put back in the late '80s. It talks about properties of 1 acre in size and again I think when you are talking about an other wetland of 9,000 square feet that is almost half or more of a buildable lot of an acre in size. To answer your other question Chairman Rootovich – how often do these cases come before us – at least in the ZBA in the last couple of years it is about once every other week. Other wetland again very small – nothing even close to 9,000 sq. ft. in size – usually they are very small in places near Salmon Brook and the Broad Street areas because of the streams – the hill areas that people built 30 years ago across a main covert areas and such – never in my experience in more than 6 years has there been something that couldn't be worked out and none that I am aware of any taking or any implication that the ordinances in the state now and I think as being proposed as being a taking. Again I think it is a little less invasive to say it is really trying to identify – you have a really big other wetland, 9,000 sq. ft., you can build right up to it if you want – not even 20 feet. You have to come before us for the first 75 or 50 feet – go right up to it go ahead, but these are very significant items. I understand the point, but I don't think it is a major problem.

Alderman Vitale

It was mentioned here before, but I think having the new GIS program that there will be people to identify the wetlands much easier than they are now.

Kathryn Nelson

My understanding of the GIS and when we use it, it is a fantastic tool. We are very luck in Nashua to have it. Having said that I think the words that I heard was kind of a tell tale sign – if you take a look at the GIS and you see a water body or something wet what that tells you is you probably have to go out on the site and take a look and see what is actually out there because there is not a 100% correlation as far as how those wetlands were actually digitized and put into the system. We are trying to work on improving that so that we can more readily get to it. Just to clarify the GIS could never be used to actually delineate wetlands because that would take field investigation to actually go out.

Another point is and again we really do try to understand and work with homeowners. For instance when a homeowner comes into us and wants an opinion as far as do you think this is a wetland as I am thinking of doing this in the buffer? We generally have a policy that there is a charge now for having large site plans reviewed through the Planning Department and the commission – that fee is waived. I am just trying to address the cost to the homeowner. There would be no cost to come in before the Commission and get an opinion as far as going out and taking a look at the site – does it look like it is a wetland or something that would be okay? In the same situation, in most cases, it is just a very small project or they just want an opinion, it doesn't require a wetland scientist to be hired. If it is common sense – if they are right near a brook and you know where the wetland vegetation goes to and there is something there – I guess to answer your question there could be no cost to a homeowner to come before the Commission however there could be if it were an extensive project in a very sensitive area where it was very critical to know exactly where the edge of the wetland was. Then it would be probably in their best interest to hire a wetland scientist and they probably would have to for the state process as well.

Christopher Hodgdon

For my own understanding I would like to clarify Mr. Duffy's comments. I think that you were talking about wetlands in excess of 9,000 sq. ft.?

Sean Duffy

I meant all special exceptions for other wetlands. I don't even remember on that has been greater than 9,000 sq. ft. They are all usually very small. Again I have never seen anything small or large not approved that wasn't worked out with some kind of special exception or condition that was interpreted to be a taken because of the ordinance being too restrictive. I think it is something that has always been worked out pretty directly. I understand your thoughts. Do you have any ideas of areas that you know that are 9,000 sq. ft. of other wetlands?

Christopher Hodgdon

No. My point is not that there are a lot of wetlands that are over 9,000 sq. ft. and would therefore qualify as a critical wetland. My concerns is that there are a great number of ones that are less than 9,000 sq. ft. too numerous to identify and therefore there would be a 20 foot buffer around them.

Sean Duffy

Again the current ordinance that we have used for quite a few years has been you can go right up to that ... tape flipped ... doesn't eliminate the use of those areas. You can walk, play, mow your lawn – we are talking about again foundations and structures going in that disturb or move those hydraulics in the area.

Chairman Rootovich

Chris just so I understand, what is the concern that you have that a homeowner might want to do within that 20 foot buffer that they can't do reasonably other than we said like a foundation?

Christopher Hodgdon

Site an outbuilding – a shed or some sort – build a deck that encroaches on it. There are any number of different things. If it is a 20-foot buffer then my understanding is that they wouldn't be able to do it.

Chairman Rootovich

Unless they were given a special exception, which from what I have heard has not been unreasonable withheld.

Christopher Hodgdon

People come in for special exceptions on 100 sq. ft. wetland? They haven't had to so I don't know ...

Chairman Rootovich

I am trying to play devil's advocate – it is not that I agree or disagree with you, but I guess I don't know if I would want to put any sort of structure within that 20 feet knowing that the landscape of that particular buffer could increase by 10 feet or decrease to 5 feet but why would I want to put anything into that area if I am a homeowner?

Christopher Hodgdon

It depends on what it is. If it is a brook or a pond or a wetland that is – couldn't even mow it as a lawn – you may well be right that you would not want to do it, but again I go back to the fact that I don't think that people understand the definition of a wetland and I think that people would be surprised to know how much land can be considered a wetland.

Mark Fougere

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As a follow up a majority of the lots in the community are smaller in size and under ½ acre, and you put in a 20 foot buffer on a small lot if somebody wants to put on a garage or a rear addition that 20 feet is a lot. Obviously if there is a stream or something of significance where there would be flooding obviously you wouldn't want to invade that, and most likely those are one of the higher brooks anyway, which would be called out and you wouldn't be able to do that, but it is more on the smaller size that is of concern. Also again to reiterate that the qualifier here seems to be on size not quality. The Conservation Commission mentioned that in some cases a

wetland smaller than 9,000 sq. ft. could be very valuable. Again vernal pools have been called out, but this seems to be no qualifier in here as to why it 9,000 sq. ft. is the key. The Commission may want to have a larger buffer on a 4,000 sq. ft. wetland for some reason. An acre wetland can be very low value yet it now has a 40-foot buffer around it. Wetlands have different values and some of them are very sensitive and some of them are not. The proposed change doesn't seem to reflect that.

Karen Berchtold

I would just like to clarify that the Commission does deal with many impacts to wetlands under 1 acre. It reviews all dredge and fill permits that the state sees and we often get many fill impacts for driveways, creating slope to retain a home, which the ZBA also reviews. That is actually a large bulk of the projects. Then I would just like to comment that I do think that as planners we often even without a 20 foot buffer or any buffer for small wetlands we try to work with engineers to create some kind of buffer. I think generally that is considered good engineering practice as well. I can think of several cases that we have looked at in the last several years where I think we actually had concerns about the engineering and potential erosion on the site. The applicants do come in and work with the Commission on basically an advisory basis, but I think that is my observation.

Katherine Hersh

I think that there is a very good point with regard to the fact that wetlands have different values and it is not necessarily governed by size, but that actually points to exactly why this is a good thing to do because there are smaller wetlands that have a high value that do need the protection and having all of them as proposed here go to the Conservation Commission and letting the Conservation Commission work with the applicant to determine which ones are valuable and which ones aren't and which ones can get a little bit of relief and which ones really need that protection is exactly what they do. I think that the point is well made that there are different qualities to different wetlands and that is why it is important for there to be a review by people that have really dedicated a significant amount of time to understanding what those values are.

Christopher Hodgdon

My comment regarding the special exceptions wasn't in relation to dredge and fill applications. My comment related to the number of homeowners who would need a special exception to do some sort of work in a buffer. That is my concern. I don't think we are talking about lessening people's responsibility as it relates to the actual wetland. The discussion is related to the buffers.

Sean Duffy

Again in the last 3-4 months I know there have been arrangements and agreements by special exception that people could build inside of that 20-foot buffer, but it was reviewed. Cases where

the review is made, there was mitigation made, or there was agreement that it wasn't a critical other even though – it was an important other, but by state law other wetlands if you identified them and I don't think Nashua has done a bad job identifying them myself, but other wetlands you shouldn't build within 20 feet, and again current ordinance in Nashua and the state is 40 feet from a critical wetland. Those are the State suggestions, and we have built inside of 40 feet on critical wetlands. I know in the last 2 years at least once or twice. The Salmon Brook area is a perfect example there. Again it is reviewed, it is evaluated. I don't think we are excluding all building. There have been times too that it wasn't allowed. There have been a couple, but not many. Usually the special exceptions are granted.

Mike Lowe

Ninety percent of all the homes in Salmon Brook are in the buffer. I think if everybody went for a special exception you would be swamped. If you went through and looked at the GIS where they are putting garages in and expanding their homes – I think there must have been a lot of them. ... tape inaudible – speaker away from microphone... I would ask whoever is giving out the permits is that reasonable to say or not.

Roger Houston

I can't really answer that question. I think a number of the homes along Salmon Brook were probably built – some are probably in the flood plain and others aren't and some might be in the wetland buffer because of the prime designation. Unless you do an actual study it is pretty difficult to say how many are and how many aren't.

Chairman Rootovich

Many of those homes have water problems now in the basements.

Mike Lowe

– These are great ordinances and so forth, but they don't take topography into mind. There is a high bank and low bank on all your brooks and streams and so forth – even on some of these vernal pools. If you are on the high bank you are not in wetlands at all, but you are considered in the buffer zone because you are within 75 feet or even 20 feet. If you have a 15-foot bank where it will never be flooded or do anything whatsoever and these ordinances don't take that into consideration.

Chairman Rootovich

Again I don't know of any homes on Salmon Brook that have the topography that is 20-30 feet.

Mike Lowe

You have the high bank on the Merrimack River and the Nashua River and so forth.

Kathryn Nelson

To take a step back and what we have kept here I will do sort of a pitch that we had a great ordinance to work with. The original ordinance is a fantastic ordinance, and I think we have gotten comments from the development community and planners. They did a good job. Again we are just trying to tweak it to update it. The whole concept, and it is spelled out right in here, that we used for our review is the three part criteria of avoid, minimize, and mitigate. For instance if a homeowner came and wanted to put a shed right up adjacent to a wetland or a stream or something and if we went out and looked at the site, which is when we always do site walks, and we look at the typography, which is really important – we always emphasize the site walk because there is a lot you can see that you don't either see from the GIS or from what people come in and show you on the application – if it looks like common sense that shed could avoid putting it in the buffer because there is another spot on the site that would work just as well – maybe they might want to bring their first choice, but that might be something we recommend. If it can be avoided that is the route we try to go down. Could it be minimized? If they absolutely need to have that shed and it has to encroach 5 feet in can they make it a little smaller, can they configure it a little differently, and then we go with mitigate. Usually in most cases especially for home owners mitigation would include some enhanced plantings so we might ask them to put some bushes or something with some wildlife around the shed. Again we like to try to walk away saying that the site has been improved. Maybe they have removed and just had grass and something – I understand what your thoughts are maybe 5 years from now there will be some outlandish members on the Commission that aren't going to be reasonable, but I honestly do think that with the crux of this ordinance it would be pretty hard to become extremely extreme in terms of the interpretation of the ordinance.

Jay Minkarah

Most of my comments when I went through the initial draft were addressed when I saw the revised draft. I did have a number of things that I looked up. I will say though just so everybody is clear whether it is a good idea or not the scope of the wetlands ordinance is proposed to increase substantially so there will be many more areas that will be included within its jurisdiction that aren't currently. That does mean that there will be more time spent in the process. It does mean more being done with the commission as well as the Zoning Board. There will be more special exceptions. That is something that we have to recognize. Ultimately I guess my biggest concern is making sure that we all understand what the scope of what is allowed in the buffer or not allowed in the buffer. I have heard references to buildings and foundations, but that is really not what the ordinance says. I guess what I would be looking for is for some language to make that clear. In particular my concern is with existing properties with existing residential properties as well as existing small businesses.

With that in mind I have a suggestion of some language that I think might help at least with my

concern. If everybody has their proposed draft it is just one sentence. If you turn to page 4 of the proposed draft under applicability, I guess this is where I would make my point – if you look under 16-575 – Wetlands Application it says “Applicability – The section applies to any activity proposed within a wetland or a wetland buffer. “ Any activity is obviously pretty broad, and certainly includes more than simply building foundations or new construction. I think what would make certainly me feel a little better is if at the end of that very first sentence inserting the language to the affect of “except for the ordinary, use, maintenance or repair of existing buildings, structures, or the improved portions of an existing developed site.” I don’t think it is our intent to include within the scope of this review to regulate or require special exceptions for ordinary maintenance or repair types of activities, ordinary use.

Alderman McCarthy

I guess I have a question about that, which is basically two things that are regulated by our wetlands ordinance – one is what you can erect within the buffers and how close and the other one is the methods by which you go about protecting the buffer while you are doing the work. I think that language may have the accidental affect of excusing normal maintenance from fences and other protections of the wetland during construction.

Jay Minkarah

Certainly it is not the intent to apply to construction activities – new construction. It is intended to apply to maintenance and repair of existing structures. ... tape inaudible ... the intent is to make sure that we have protection so that people know that they can make those kinds of ordinary repairs to existing buildings and structures and to use their property. I will use the example I used in the office. We just resurfaced or are still resurfacing Main Street. Is that a violation of the wetlands ordinance where we are doing resurfacing work, repaving, within 75 feet of the Nashua River? I don’t believe we view that as a violation. That is the kind of activity that I am talking about. We are not building a new street. We are resurfacing the existing street.

Alderman McCarthy

I still think we need to do something about the language regarding construction methodology. In fact if I have an existing building that I need to replace part of and for example I need to replace foundation footings or whatever because there is a problem I certainly would not want to see people undertake that without the normal kinds of protections they would give – I don’t want to stop them from replacing what may be a non-conforming structure in that case, but I do want them to use what is prudent construction procedures with regard to the wetland while doing it. I think we need to find somewhat finer language to differentiate that.

Jay Minkarah

I would agree that it may make sense to put some language in to ensure that proper control measures are used to protect against sentiment. I will say it wasn’t the intent of that language to

apply to replacement only maintenance and repair. I specifically didn't include replacement because that would be new construction, which of course should be reviewed.

Kathryn Nelson

The beginning part was all right. Other parts were a little confusing to me. Again that is the only thing – we are trying to wipe out anything that is confusing. Would the word disturbing as opposed to any activity make more sense? Again your example of repaving Main Street obviously would not be a disturbance because really the idea and I think the way the State's definition is basically if you are disturbing the soil, if you are doing anything that will undermine the stability of the soil obviously common sense would say if you are not doing anything other than going out and putting some fences along the river you don't need a special exception or a drudge and fill for that. However, the word disturbance sort of would cover and really is the way we interpret it now in terms of I think what most of the commission would expect to see for review.

Jay Minkarah

I think that sounds reasonable.

Katherine Hersh

I wanted to address the initial comments that Mr. Minkarah made, but also that other people have made about this huge amount of additional applications and possible impacts from that standpoint. I have to say that was – when the wetlands ordinance was first proposed and eventually voted on by the citizens of this city, that was one of the big arguments that there was going to be this huge impact when in fact I think if you go back and look at the newspaper articles they will read that development will be dead in Nashua, nobody will ever want to develop in Nashua again and it turned out to be not that case. It turned out to be that people are reasonable, that wetlands are important to protect both from the natural resource standpoint and from the standpoint of property rights and impacts to other people's properties. It is a balanced reasonable thing to do. I don't think that you will find this flood of new applications to the Conservation Commission. It is something that works itself out. If it became something that was untenable or something that was unreasonable certainly we could come back to this Board or the Board could take up on their own to amend anything like that. It is something that I think that the Board should consider.

Chairman Rootovich

Are there any further comments with respect to 16-271?

Unidentified Speaker

Just regarding the comments over here again from what I have seen recently or lately to change

the wording to be instead of disturbance to maintenance or replacement – the definition as well to maintaining so then we get into a discussion of a ruling that it is really maintenance and the building was here and now it is a little closer and again Alderman McCarthy's point about the construction affects and that is probably usually very close and has never been denied if it is replacing a pre-existing condition and the last part of your statement where you talked about development of the land the last little part of the sentence you are adding – I have dirt here and a retaining wall and now I want to have a really big retaining wall and again you get definition ally when you start putting that in it starts getting gray as compared to if you are in that area take a look at it, see if it can be worked out – again as far as I know it has never been denied when it is replacing something that has been there and they have been allowed to grow and move into areas. It is just the review process I think that the ordinance is asking for.

Roger Houston

On page 7 of the revised there is a section that is called non-conforming uses and that generally answers most of those questions as far as activities or uses that are pre-existing prior to the ordinance or the previous ordinance.

Chairman Rootovich

Any further comments? Moving right along – 16-272 – Administration – any questions or comments? Revised section is 16-574 – Mrs. Nelson or Mrs. Hersh do you wish to comment on adding section B, which is not in the original proposed draft?

Kathryn Nelson

I actually don't think that is a change. Basically what that says is that Roger Houston who is the administrative officer ...

Chairman Rootovich

It is a change in respect to it is not in this draft.

Kathryn Nelson

This actually just goes back to the original ordinance, which I think we went back to the original and that sort of standard operating procedure of how it has been carried out since it was initiated. Basically this allows the administrator to take a look and say is the application within jurisdiction and yes or no.

Katherine Hersh

My understanding is this is in the current ordinance.

Chairman Rootovich

Anything further?

Roger Houston

I just want to concur. It is what we do today.

Chairman Rootovich

Anything further? Moving on to 16-273 – Wetlands Application – any questions or comments? The new revised version is 16-575. Moving on to 16-274 – Wetlands Standards – 16-576 in the revised addition. Any questions or comments?

Christopher Hodgdon

Our concern is the expansion of the review area from 100 to 125. We currently have 100-foot review area. I think our comment is that the additional 25 feet only constitutes a regulatory creep on the part of the ordinance. I don't know why the addition of the 25 feet allows the city to protect the development or materially affect the development that goes on near these buffers. At most the primary buffer is 75 feet, and the review area is already 25 feet further than that. The proposal is to go to 125 feet. I think our recommendation is that it is excessive. The 100 is reasonable. We are consuming more land that is now under the regulatory purview of the city.

Chairman Rootovich

Are there any other comments or a response?

Katherine Hersh

I can just say that I am not aware of why that number changed and I would ...

Kathryn Nelson

I honestly don't know either.

Chairman Rootovich

There is no objection either from staff or commission to keep it at 100?

Katherine Nelson

No objection.

Roger Houston

If I may – we review all now for 125 feet because we have to look at prohibited uses under section e anyway. I think that is why – I am not adverse to having 100 feet either, but we routinely check for 125 feet for prohibited uses anyway.

Chairman Rootovich

Is there anything further in 274?

Mark Fougere

Under number 4 or d depending on which you are looking at – Non-Conforming Uses – if I am not mistaken the existing ordinance allows you that if you have a lot of record the zoning administrator is empowered to grant a special exception and you are not required to go to the Zoning Board. The new change sends you to the Zoning Board.

Sean Duffy

I believe that is supposed to be covered under the administrative ruling process in the zoning ordinance. It is not a full zoning hearing. There is a whole group of ordinances that are now going to be put into that agenda, the administrative ruling agenda, so half of the review items that normally the ZBA looks at will be handled by a 5-10 minute meeting. I believe that was the intent the way this was left. We should check it just to make sure.

Karen Berchtold

I just actually wanted to clarify what the new version is consistent with the June version, but not ...

Chairman Rootovich

The June version of what – the draft?

Karen Berchtold

Of the draft.

Chairman Rootovich

Correct it is.

Mark Fougere

To clarify again the concern is that the existing ordinance that is in effect today would allow the city's administrative officer – the zoning administrator is empower to waive the buffer area regulation and to administratively grant a special exception permit for necessary wetland buffer encroachments. This would have to do with lots of record or non-conforming lots of record. The new regulation proposed both in the new version of the wetland ordinance outlined today and in June send you to the Zoning Board. That is a significant change from what the process is now.

Chairman Rootovich

Are there any further comments?

Roger Houston

We currently haven't had too many requests for that sort of activity. Usually we refer that to the Conservation Commission anyway for their comments. I can't recall maybe one if any – I am trying to think there might have been once place where that issue came up since the original ordinance was adopted, and I can't think of any. I have one that sticks out that might have been years ago. Katherine do you remember?

Katherine Hersh

I can think of one. It is the one where Pine and Nowell come around the corner that little lot right there. That is the only one I can think of.

Kathryn Nelson

The only other one that may fit in this category is that a lot of times staff may recommend someone come to us as a heads up that there is major activity happening near a sensitive area or whatever. Generally that is what it is – more to just run it by us and see if we have any comments. We understand the comments may not be binding, but if we have some information that could help them in terms of trying to minimize that usually is the case. I am not quite sure if that might fit into that category.

Chairman Rootovich

Are there any further comments?

Roger Houston

I think that generally since it hasn't really been a common occurrence and it is probably better that the board or an impartial board reviews these versus an individual or staff in that respect that it should be done by a board that is appointed for that purpose and not staff.

Chairman Rootovich

Further comments? Moving on to section 16-275 – Wetland Buffer Monumentation – any comments? The new section is 577.

Kathryn Nelson

The intent behind this was that what we found over the years is that it is extremely difficult to enforce a lot of the points of the ordinance without having some kind of marker to mark a buffer. For instance someone may take a look and say there is an encroachment in a wetland and without actually being able to and a lot of time we refer them to Laura Games and in many cases if you don't know where the buffer is visually on the ground it is a very easy thing to do if you see a small marker and we have a brochure now that basically goes over taking a place and sticking a metal marker on it and mark the ground – it is a very easy reference and I think this speaks to the part of the section in our ordinance that says there shouldn't be any undue expenses to the city as a result of activities within wetlands. Basically this is a simple on the ground way to see whether there have been any encroachments or violations that may have occurred. That is really the intent on it. We have discussed this at the association of conservation commissions when we attend in Concord and I can tell you the use of wetland buffer monumentation throughout the state has really picked up. It is just kind of an easy to apply common sense way of being able to tell where the buffer is and where it isn't.

Katherine Hersh

A lot of this we are already doing anyway with the Conservation Commission. One of the other advantages to that is that when properties change hands then the new person knows from the start where that buffer and wetland is. Often times people move into a new piece of property and they aren't aware.

Chairman Rootovich

Further comments?

Jay Minkarah

I see the value particularly for monumentation particularly for more significant developments. For very minor types of building permit applications such as putting on a deck or an above ground pool would the commission be agreeable to a waiver provision for that requirement? The costs can be pretty high for hiring a wetland scientist and a surveyor.

Kathryn Nelson

I guess I would just defer to usually that again would depend on the site itself. If it is an area that just didn't warrant – if there is a very definitive line – as Kathy said the worst thing is if somebody new comes in and they don't know and then they – we don't want violations. It is a horrible situation to have to deal with when someone didn't know and they put something in. I could certainly see putting in some kind of waiver language if it could be reviewed by the commission. We always take into consideration – we don't these things to look ugly, we always try to recommend so that they will settle on the landscape so that they don't become either a nuisance in terms of snowfall or they just look ugly. I think that would work if we had the right language.

Mark Fougere

I would concur with that comment that there should be some sort of waiver provision. If there is no waiver then they would have to go to the Zoning Board for a variance. I think it would be reasonable something like this if it is a small addition to a home it could be a few thousand dollars to get a soil scientist out there and then hire a surveyor to come out and mark the buffer. If there is a provision to get out of that when it is reasonable.

Chairman Rootovich

Anything further? On to section 16-276 – Trees unlawfully cut or damaged within a wetland buffer – any questions?

Mike Lowe

I agree with everything except the word damaged because it doesn't define it. It says trees that have been damaged or unlawfully removed. Does that mean by a person or by damage by wind? You have to define it. The lifespan can be 30 years and it will drop down and into the wetlands. Does that mean the guy whose land it is on has to go out and remove that tree and then plant another one? That is the reason why I brought it up.

Sean Duffy

Some language of damaged other than by nature. I think that is pretty straightforward.

Kathryn Nelson

When you see a crack – you can pretty easily tell if a tree has fallen or been taken down by an ax or a beaver. Those are pretty distinct marking.

Chairman Rootovich

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Any further questions? There being none are there any comments from anybody from the audience on anything with respect to the section we have reviewed tonight? Are there any comments by members of the committee?

Next week on the 7th we will be discussing the D districts D1, D2, and D3, which consist of the downtown area. We have a special guest that will be here. The individual is the one that did the downtown ...

Katherine Hersh

The downtown master plan. Urban Design Associates.

Chairman Rootovich

I would encourage everybody to attend. This is the one that probably got the most controversy at this time not only to the business leaders but everybody else in the city – developers, downtown business owners. I would encourage the Chamber to alert their members that we will be discussing that next week and encourage them to come and listen and participate.

Christopher Hodgdon

I am wondering if the Conservation Commission will provide a version of their recommendation that is underlined to include new language or changes similar to what the last draft has. I think that would be helpful.

Katherine Hersh

We can do that. Based on the current ordinances to the draft that the Conservation Commission is proposing is that what you are saying?

Christopher Hodgdon

I am more interested in how it relates to the last draft.

Katherine Hersh

Instead of what we currently have? Wouldn't you want to know the difference between what we currently have and what the changes would be in the end?

Christopher Hodgdon

That is not too hard to identify because we have already looked at the existing ordinance and the draft.

Katherine Hersh

Okay.

Christopher Hodgdon

We have reviewed the changes from what is in place now and what is proposed in the binder so how is this different than that version.

Katherine Hersh

Okay.

Christopher Hodgdon

I asked for underlines because that is the way the June draft noted changes from the earlier draft.

Katherine Hersh

I just wanted to be clear on what I was going from what to what.

Christopher Hodgdon

My other question is one of process and procedure. This is a piece of legislation that is pending. This is going to replace language that is in legislation to require someone to vote of the sub-committee?

Chairman Rootovich

These would be amendments to this draft. This committee would vote on and ...

Christopher Hodgdon

Earlier it asked whether or not these were the working language of the draft. I thought the answer was yes, but this is being treated as a comment from the Conservation Committee?

Chairman Rootovich

This is how I see it. This is the working document. These are language changes they would like to see – amendments made to this draft. A member of the committee would make those necessary amendments at a later date from this committee. I don't see us replacing it I look at it as language changes – it could be the entire document or 90% of the document whatever the committee decides – we would make those proposed changes to this draft.

Katherine Hersh

Next week when Mr. Carter comes I have asked him and I just wanted to make sure that

everybody is aware of this and if people have comments then that would be fine I would take them into consideration or whatever you want to do, but I have asked him if he would come and do a presentation – basically do the downtown master plan presentation. It would help to kind of set the basic stage for why the ordinance was written the way it was.

Chairman Rootovich

Great.

Christopher Hodgdon

Earlier on in the process we skipped over 16-37 – Water Supply Protection District because it seemed to be similar in nature to the discussion tonight. It is page 80 of the June draft. I don't know whether you want to...

Chairman Rootovich

We will discuss that at a later date.

Christopher Hodgdon

I do know that there is a property owner in the audience who thought – I had assumed hoped to comment on it. I don't know whether it would be appropriated for them to comment now since they are here.

Chairman Rootovich

If the individual in the audience wants to make a statement to the committee it will be on the record and we will consider that at our meeting where we do discuss this. If you wish to comment now I ask that you come to the microphone.

Paul Kerouac, 593/605/607/611 & 613 ½ Amherst Street

I would like notification when the committee will be considering the new ordinance to add an additional 75 feet buffer to the existing buffer.

Chairman Rootovich

I can answer that question now. My intention is to address this section on the 21st.

Paul Kerouac

On the 21st of September?

Chairman Rootovich

That is correct.

Paul Kerouac

This proposed ordinance has impacted my land. There was a comment made by Kathy Nelson that the committee does not have the ability to make a buildable lot unbuildable. This is not true with the first 75-foot ordinance nor will it be true with the additional 75-foot ordinance.

Chairman Rootovich

I just want to say we already discussed this section by the way Mr. Hodgdon. We did go through this. This was our very first meeting that we had.

Christopher Hodgdon

I thought so.

Alderman McCarthy

Can I ask for clarification as to what language adds an additional 75 feet to the existing buffers?

Paul Kerouac

I don't know where it is.

Chairman Rootovich

I don't see it in here.

Christopher Hodgdon

I will refer to (b) boundaries - #3 – there shall exist a conservation zone within the water supply protection district which shall consist of all land areas located in 300 feet of the annual high water mark, the supply pond, Bowers Pond, Whole Pond, Harris Pond, and Pennichuck Pond and all areas located within 150 feet horizontally of all water bodies that are connected via surface water to the aforementioned ponds and the wetlands associated with these water bodies. The Conservation Zone shall be delineated on the map. Then if you turn the page at the very top it says under uses in the conservation zone (1) unless permitted by the article all uses are prohibited in the conservation zone. Articles that maintain existing uses associated with municipal water supply and treatment are allowed in the conservation zone.

Chairman Rootovich

I believe Jay you had some proposed language to change that as well. You were supposed to give us that in writing. I think you are still working on that.

Jay Minkarah

I did the first day.

Alderman McCarthy

May I ask Mr. Houston is there any difference between the language in those two paragraphs that were just read and the existing zoning ordinances?

Roger Houston

I was looking at both of those as he was reading them. They appear to be identical.

Alderman McCarthy

So there is no proposal to change any buffers around the water supply protection district in the proposed new draft of the ordinance.

Roger Houston

That is correct.

Mike Lowe

Those are the same restrictions that were put on by the board. That is a state regulation that says that. When Pennichuck was allowed to develop their land that was the restrictions that were put on them. Those are exactly the same restrictions.

Neil Barrett

The buffer has not changed. The uses within the buffer have changed from the .. I was not available at the first meeting when this was addressed and I was not aware that it would be addressed at the first meeting otherwise I would have submitted written testimony or contacted Mr. Hodgdon. It is written right now the water supply protection district ordinance on page 1236 of the existing zoning ordinance under section 16-655 – uses in the conservation zone – there is a 4th paragraph and the fourth paragraph starts – parking lots and sidewalks may encroach up to 75 feet within the conservation zone provided that the following criteria are met – when Mr. Kerouac said that the zone or the buffer was being expanded he was essentially saying that the

ability for parking in roadways within the second 75 feet that ability was being removed and that is an extension of the no build from 75 feet to 150 feet. In the proposed copy of the ordinance I have, it does not have that language. That language was removed.

Alderman McCarthy

Thank you for clarifying that. I just want to point out now that I see what the difference is – yes that was removed and the reason it was removed is that since the water supply protection district passed virtually every application we have seen that comes in uses that provision to put parking lots in the first 75 feet and then asks for a waiver of the requirements to get that additional 75 foot buffer, and that is why it was removed because we can't make that piece work right. The intent was we wanted to put parking lots there if that could guarantee that we can get out of the buffer infiltration to increase groundwater supply. That has not worked. The very first application that came in put a parking lot into the 75-foot buffer and then asked for a variance to be able to put the detention pond within 10 feet of the outlet to the wetland.

Katherine Hersh

The other unintended result of that provision that was removed is that in order to meet the ordinance if you put the parking within that outside 75 feet you need to fix that away from the wetland in order – If you are going to get your drainage to be beyond the 150 feet. What happens is you end up putting this big retaining wall up in order to get the height – to get the parking lot to pitch away from the wetlands. It didn't do what was originally hoped that it would do.

Neil Barrett

I think that first off the fact that this just one example illustrates that there are very few properties that are impacted actually with the new ordinance. There is only one undeveloped lot and that is Mr. Kerouac's property. The second issue is that if you look at the purpose of the section the byproduct of the report is two topics; water filtration and ground water retention – we then went over retention levels. I think that the buffer zone has become the goal in and of itself. It is actually one of many methodologies. If you look at how Amherst Street so developed – if you look at the CVS site and other sites there are ways of achieving the goal particularly as outlined in the report being the purpose. The purpose of the ordinance is ground water levels and filtration. I think that there are issues with this the way it is written. Because of water flow – water naturally flows towards a water body. If you want to change the course of that water and create a perfect buffer zone you have two goals that are working against each other.

I guess the other issue is that on a site plan issue that the Planning Board and the Zoning Board have the ability to be able to look at what is being proposed. There are several properties along Amherst Street that have underground water filtration systems and those would be addressed at the site plan issue. I think that to remove the second 75 feet or to expand the 75 feet no build

zone to 150 no build zone would be a taking in my opinion and you could contact city counsel on that.

The second thing is that there is an attempt to remove this proposed language from the existing ordinance to the proposed ordinance. There was an independent ordinance submitted last year by Alderman McCarthy and that was voted on not favorably by the Planning Board. I think if you look at the testimony back when the Watershed Protection District Ordinance was being adopted a buffer zone is one of many methodologies – you have to look at typography, vegetation and all of those individual site plan issues. There is no one simply easy answer to this and I think it should go back to the main purpose of this ordinance, which is to protect the Pennichuck water supply and groundwater levels and filtration. I think that on an individual site plan issue there are ways of achieving that. If there was one variance granted I think that the Planning Board will look at that experience and not make the same mistake. To say that 150-foot no build buffer is the sole solution to accomplishing the goals puts an unfair burden on Mr. Kerouac, and I think that you would be removing essentially making his lot an unbuildable lot to any great extent. He is currently being assessed at almost \$500,000 an acre on land that this ordinance is proposing to remove any use of.

Katherine Hersh

I would like to re-emphasize that this is our drinking water supply. This is a rare and precious commodity that we don't have any other – this is our drinking water supply. All you have to do is look at Pennichuck Watershed's management plan, which was done by CEI and it talks about impervious surfaces. There have been report after report and study after study throughout this country about impervious surface and the impact of the impervious surface, the percentage of impervious surface on the amount of groundwater and the impacts the degradation on a drinking water supply. We are maxed. We are maxed with that. When you continue to allow impervious surfaces, which is what this is all about, what we are talking about, we continue to degrade our drinking water supply. It is the only one we have. There isn't another one that we can connect to when we are done with this one. It is the only one we have.

Christopher Hodgdon

I would like to point out that I think that there are a number of accepted technologies that allow you to have parking facility and still allow water to percolate down into the groundwater system. There are a number of technologies you can apply that achieve that goal. I think specifying that there is only one and there is one that is preferred I think unreasonably puts a burden on people. I don't see any reason why we can't at least recognize that there are other ways to achieve this goal other than just simply carving out more land that is not usable.

Alderman McCarthy

The base flow of Pennichuck Brook has gone from 16 million gallons a day to 6. I don't know where these technologies are that are working because they are not working there.

Chairman Rootovich

I don't want to get into a debate back and forth about the technology. That is not what we are talking about here.

Paul Kerouac

The amount of water that is used by the City of Nashua – the water supply that comes through Pennichuck Water Works, is mainly acquired through the Merrimack River and not through the Pennichuck Brook. It is not our only source of water.

Sean Duffy

As a resident of Nashua, homeowner not a commercial person owning this property – I look at this also as a water supply issue. It is a priceless piece of conservation zone only. It has minimal affect, but when we are taking water out of the Merrimack River and pumping it into the pond systems and such at a significant level that tells me as just a little guy, one of the 86,000 homeowners, we have to find some water and protect it. I understand the issue, but you really have to protect it. Once it is gone it will cost a lot more money.

Alderman McCarthy

It is true that we get a lot of our drinking water from the Merrimack pumped up into the ponds now instead. Of course today ... tape flipped ... planning on our part.

Katherine Hersh

I think the fact that we are depending so much on the Merrimack River for our drinking water supply is scary because we don't have control over who is pulling water out of that. We don't have control over how much water is in that Merrimack River. The State Legislature does. The political body does. Some day when we go to turn on those pumps there isn't going to be the water there to do that. This is a very precious resource that we should not be fooling around with.

Paul Kerouac

I agree with Mrs. Hersh. The fact is we do not control the Merrimack River the State does, but we also do not control the north side of the Pennichuck River nor do we control Hollis or Amherst or Milford or Peterborough or all of the other communities. We don't control any of that as well. This legislation will impact 1 commercial property on Amherst Street that is mine. This is clearly a taking of the property. How is this legislation going to benefit the City of Nashua?

Neil Barrett

I agree with Alderman McCarthy that groundwater levels have dropped. Filtration has been an issue. That was clearly stated in the report that was prepared for Pennichuck. To say that this ordinance will accomplish anything that the Pennichuck Brook Watershed is essentially all but developed except for one three acre lot owned by Mr. Kerouac. If you really look at the issue every single parcel outside of his has been developed. If things were put into affect in 1970 we wouldn't be having this discussion about groundwater levels. The horse is out of the barn and he is three miles down the street. If you look at the impervious surfaces in the shopping centers, the industrial areas, and all that, and the City once again purchased I believe 200 acres of land to prevent that development off Northwest Boulevard. I think that if you were to look at the impact on the groundwater – once again this is a site plan issue – right now according to the Watershed Protection District Ordinance the pre-development and post-development runoff and storm water detention has to be the same. The issue becomes are there other ways of achieving the two main goals of this ordinance as outlined in the Pennichuck report, which is groundwater retention and filtration. I think that if you look at that and look at one three acre site out of the thousands of acres that have already been developed that caused part of this problem I think that you have to consider the alternatives as some balance between the greater good for the community, and I think Mr. Kerouac will be the first person to tell you that he believes in the protection of the water supply. I think everybody in this room – I think that none of us are here saying that it is not a fragile resource. I think the goal is to accomplish those goals – groundwater retention, filtration, and the buffer is not the goal itself. It is one of many methodologies. Thank you.

Christopher Hodgdon

I would like to mostly echo Mr. Barrett's comments. I would like to say that I think that the assumption that there is only one answer to this issue, which is what is represented here in the draft is unreasonable and I also think it is unfair to say well the amount of water in the system has decreased and therefore the technology doesn't exist out there moving forward to mitigate that. I also think that is an unfair characterization. It is certainly the case that the development that has occurred in that watershed during the last 200 years has had an impact on the amount of water and the levels of groundwater in the watershed, however, we are not talking about development processes that were instituted 50 or 10 years ago we are talking about that there are ways to achieve the same goals without having 150 foot no build provision in the land use code. I think I will close by saying I think that 10 minutes ago we were under the assumption that there was no change in this document from the current document that is in force and we are now 10-15 minutes into the discussion where the no build provision is doubled. I think that once again illustrates either the confusion or lack of understanding concerning some of the provisions of this document and what the implications are.

Katherine Hersh

For next week, which is a discussion on downtown, I am wondering if maybe the Chair would be

willing to send an invitation to the Great American Downtown and to John Mitterholzer to participate in this discussion with us and also to the members of the Board of Directors. I think it would be helpful to have them here to talk about that and understand what their positions are.

Chairman Rootovich

I agree. I will do that. Mr. Kerouac I believe you had the floor prior to the ...

Paul Kerouac

I happen to live in Milford, NH and I dug a conservation pond. Mr. Fougere has prior knowledge of when he was the board here has prior knowledge of when he was working for the Town of Milford, which is a three acre pond, which feeds the Pennichuck Brook. I have added three acres of watershed – open water and preserved it 14 years as a conservation pond. I am very serious about protecting the water. I have dedicated my whole life to the horticulture industry. This ordinance only singles me out as a commercial property owner and has no benefit for the watershed whatsoever. Thank you.

Neil Barrett

Just to restate that there was an independent ordinance introduced last year that went before the Planning & Economic Development Committee, received a lot of comment, and then was presented before the Planning Board and was not reviewed favorably by the Planning Board. It was basically this sort of provision to remove the 75 feet. Mr. Kerouac thought that this topic and I had thought this topic because as Kathy Hersh is aware I have been following wetland issues in Nashua for quite a while and I thought that this issue was addressed and been discussed and felt that there were alternative ways and that the concerns of Alderman McCarthy and Mrs. Hersh can be addressed at the site plan level regarding the pre and post development storm water levels, the alternative technologies and methodologies. Once again the alternative technologies were not mandated. The post and pre development standards are relatively new. If they were implemented quite a while ago those issues would have been addressed.

Alderman McCarthy

I just want to clarify that with regard to the pre and post development storm water runoff rates; they have nothing to do with protection of groundwater. They have to do with precluding flooding downstream by making sure that there is not storm surges that are larger than what used to be there. Let me tell you what happens when we do development. Where you used to have a site where you would get an inch of rain in 24 hours and some amount of water would wash off the site over the next 24 hours and then the rest of it would seep into the ground, what we do now is we detain that entire flow and we meter out how fast it runs off so it doesn't run off any faster. It runs off longer so after 48 hours all of that water, half of which used to be in the groundwater and migrate to the brook over 6 months has been dumped into the brook and is well on its way to the Atlantic Ocean instead of our water supply. That is the basic problem that

we are trying address. It is not in any way addressed in fact it is aggravated by the pre and post development storm water runoff standard.

Chairman Rootovich

Are there any further comments? Is there any further discussion? We are not voting on this tonight Mr. Kerouac by the way. Your comments will be taken on the record and into consideration. Hopefully we can take a hard look at it.

Paul Kerouac

Thank you.

Chairman Rootovich

Is there anything further?

UNFINISHED BUSINESS - None

NEW BUSINESS - None

HELD IN COMMITTEE

o-04-19

Endorser: Alderman-at-Large Brian S. McCarthy
AMENDING THE PLANNING AND ZONING ORDINANCES OF THE
CITY OF NASHUA IN THEIR ENTIRETY

DISCUSSION

ADJOURNMENT

MOTION BY ALDERMAN LAROSE TO ADJOURN
MOTION CARRIED

The meeting was declared adjourned at 9:10 p.m.

Alderman Kathryn D. Vitale
Committee Clerk