

**ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
February 22, 2005**

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 22, 2005 at 6:30 p.m. in the Auditorium at City Hall.

Tom Jenkins conducted the hearing.

Members present were: Tom Jenkins, Chair
Susan Douglas, Clerk
Jay Coffey
Don Berthiaume
Richard Rondeau
Jeff Anderson

Also present: Carter Falk, Deputy Planning Manager/Zoning

Mr. Jenkins said in hearing tonight's cases the Board would be looking for evidence on the following points of law as established under the City of Nashua Zoning Ordinance and empowered to it under the State of New Hampshire enabling legislation.

For variances in the ordinance the following conditions must be met:

(1) A zoning restriction as applied to your property interferes with reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others.

(2) The spirit and intent of the ordinance must not be broken by granting the variance.

(3) Granting the variance will not adversely affect other property in the district.

(4) Granting the variance must be of benefit to the general public and not solely the individual.

(5) Not to grant the variance would result in an injustice.

For special exceptions designated by the ordinance, the following must be met:

(1) The use requested must be listed in the Table of Use Regulations as a special exception in the district for which the application is made or is an existing non-conforming use for which a request to expand is being in accordance with Subchapter 13 of the Nashua Revised Ordinances.

(2) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

(3) The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety, or the general welfare.

(4) Any special regulations for the use set forth in other sections of the zoning ordinance are fulfilled.

(5) The requested use will not impair the integrity or character of the district or adjoining zones nor be detrimental to the health, morals or welfare of the residents of Nashua.

He said the order of receiving testimony will be in the following manner: Testimony will be heard from the applicant seeking the adjustment. The applicant will have fifteen minutes to address the five points of law just described. The Board will not consider in their decision any information which does not address those points.

The timing light on display will shine green until there is one minute remaining at which time the amber light will come on. When the light turns red, the speaker must stop testifying. The Board may then ask questions of the applicant.

After the presentation the Board will then take testimony from those in favor of the application and then from those in opposition.

He said each speaker will be allowed five minutes to address the Board. The timing light will show a green light until one minute is remaining. The amber light will be on during the last minute and the speaker must stop when the light turns red.

He said speakers are asked to confine their comments only to the new points of information or may simply state that they agree with the previous speaker. Speakers will come forward to the microphone and state their name and address for the record. All testimony given this evening is understood to be given under oath as in a court of law.

At the end of all testimony in opposition, the applicant will have five minutes to address any points raised in opposition. After this testimony one (only one) person from those in opposition will be given five minutes to address the applicant's rebuttal. No new testimony may be given and only someone who spoke in opposition may provide rebuttal testimony.

He said should the applicant or any of the public in opposition feel an unjust or unlawful decision was made may request a rehearing of the Board within 30 days of the decision. Contact the Office of Zoning for further details about the process. If

any person or party is not granted a rehearing or still feels that an unjust or unlawful decision has been rendered by the Board you may appeal the case to the New Hampshire Superior Court. Three affirmative votes of the Board are needed for the granting of a variance or a special exception.

1. Walter W. & David Anderson, Trustees, (Owners) 539 Amherst Street (Sheet H Lot 88) requesting the following variances: 1) to exceed maximum number of ground signs per premises, one allowed, one existing - one additional 50 square foot ground sign proposed; and 2) to encroach 20 feet into the 20 foot required front yard setback for proposed ground sign. HB Zone.

Voting On This Case:

Tom Jenkins
Susan Douglas
Jay Coffey
Don Berthiaume
Jeffrey Anderson

No One came forward to make a presentation. This case had been tabled from previous meeting.

MOTION by Mr. Jenkins to deny the request to exceed the maximum number of ground signs at 539 Amherst Street. He said it is unjust to permit the second sign because it is in sight of the Mobil sign next door and also to deny the encroachment of 20' into the 20' required front yard setback, as there is no need for an additional ground sign. It is out of character with the rest of Amherst Street.

SECONDED by Mr. Coffey.

MOTION CARRIED 4-1, Mrs. Douglas opposed.

2. Durette Realty Trust (Owner) 20 Smithfield Terrace (Sheet 56 Lot 139) requesting the following variances: 1) to encroach 6 feet into the 25 foot rear yard setback; and 2) to exceed maximum building area, 20% allowed, 21.3% requested - to construct an 8'x14' home addition. RA Zone.

Voting on This Case:

Tom Jenkins
Susan Douglas
Jay Coffey
Don Berthiaume
Jeffrey Anderson

Leon & Nancy Durette, 20 Smithfield Terrace. Mrs. Durette read from her application. She said the land use is diminished by the setback requirement because it is a corner lot. This is a basic standard addition for the use of the home. The abutter to the left will not be encroached upon. The home behind their lot sits about 60' from the lot line.

Mr. Jenkins asked how long they have owned their home.

Mr. Durette said three plus years.

Mr. Jenkins said this is in a cluster development. Since they are on a corner lot there are two front yard setbacks. If the addition were being placed to the side versus the rear of the house they would actually be encroaching into the side yard setback, which would be a hardship because of the 25' setback and that is what they have. He said they don't have a hardship in the rear.

He said there is a deck in the rear. He asked the height of the deck.

Mrs. Durette said it is two steps up.

Mr. Jenkins said the deck is already encroaching into the rear yard setback. He asked if they have talked to the neighbors who

live behind them.

Mrs. Durette said they have. She said that neighbor's house sits way back 50' - 60', maybe more. She said this really doesn't affect this neighbor.

She said the location they have chosen to expand is where the living room is. She said the house has four bedrooms, but the living space is minimal. They are trying to get more living room space. It is basically 14'X14'.

Mr. Berthiaume asked if they realized that the house was this small when they looked at the house.

Mr. Durette said the house was not finished at that time.

She said they looked at the house next door, which had furniture in it, but didn't have a lot of the items you accumulate over time and it looked generous at the time. When they moved into their home they found that it was a little small. She said they can't have a TV in the living room because there is no wall space. There's a fireplace and windows on both sides and a stairway on the other side.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Berthiaume & Mr. Coffey expressed the fact that the lots are small and if the Board were to approve an addition it would mean overriding the concept of a cluster development.

Mrs. Douglas said she didn't have a problem with it. She said the abutting property is large and the distance is so great from the structure to the property line. She said they are only exceeding the maximum building area by 1.3%, which she thinks is

very minimal.

MOTION by Mr. Coffey to deny the request to construct an 8'X14' addition by encroaching 6' into the 25' rear yard setback and exceeding the maximum building area, 20% allowed - 21.3% proposed at 20 Smithfield Terrace. Hardship has not been proven.

SECONDED by Mr. Berthiaume.

MOTION CARRIED 4-1, Mrs. Douglas opposed.

3. Mark W. & Audrey J. Garneau (Owners) 6 Joffre Street (Sheet 122 Lot 320) requesting the following variances: 1) to encroach 5 feet into the 25 foot front yard setback; and 2) to encroach 5 feet into the 10 foot right side yard setback - to construct a second story dormer. RA Zone.

Voting on This Case:

Tom Jenkins
Susan Douglas
Jay Coffey
Don Berthiaume
Jeffrey Anderson

Mark & Audrey Garneau, 6 Joffrey Street. Mr. Garneau said the request is being made to increase the living area of the second floor. It will be a dormer to be built straight up from an existing structure. He said it isn't going to encroach any further or closer to the property line. He said this request does not interfere or violate the spirit and intent of the zoning ordinance.

He said upon completion of the project, it will increase the value of the property, which will also increase the value of the surrounding homes.

Mr. Jenkins asked if the foundation of the structure is being changed.

Mr. Garneau said it isn't going to be changed.

Mr. Jenkins asked how far the foundation is from the property line.

Mr. Garneau said 5'.

Mr. Jenkins said basically the house pre-dates zoning due to the age of the home.

Mr. Garneau said it was built in 1915.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Jenkins to grant the variances: 1) to encroach 5' into the 25' front yard setback 2) to encroach 5' into the 10' right side yard setback to construct a second-story dormer at 6 Joffre Street. The house currently does not meet the setbacks because it is non-conforming. The spirit and intent of the variance are met by granting the variances. It does not adversely affect the property values of surrounding parcels. It is not contrary to the public benefit. Substantial justice will be met by granting the variances.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

4. Nashua Pastoral Care Center, Inc. (Owner) 12-14 C Street (Sheet 40 Lot 9) requesting special exception to expand a non-conforming use by adding a 727 square foot single-story addition to an existing 4-unit multi-family

building. GI Zone.

Voting on This Case:

Tom Jenkins

Susan Douglas

Jay Coffey

Don Berthiaume

Jeffrey Anderson

Gordon Leedy, Planner/Vanasse, Hangen & Brustlin. Mr. Leedy said the applicant is seeking a special exception pursuant to Section 16-208 (a)(1) relative to the expansion of an existing non-conforming use.

He said essentially they want to construct a 727 square foot addition to an existing four-unit residential structure. He said the neighborhood is largely residential in use and in character, although it is zoned industrial. He said surrounding this building on all but one side, are residential uses and similar structures. The addition would be in keeping with the character of the neighborhood. The size of the enlarged structure is in keeping with the scale of the existing neighborhood and its structures.

He said this will be a one-story addition that will be located to the rear of the existing building. It will be of similar materials to the existing building. It will have no undue impact on the character of the existing neighborhood. There are no additional units proposed as a part of this request so there is no real expansion of use. There won't be any significant impact on city utilities or on the transportation system or any other aspect of the neighborhood. It's going to be served by public water and sewer.

He presented pictures of the existing building to the Board. He said this is actually a double lot that goes through from "C" to "D". He said from the C Street frontage view it is a typical New Englander, probably built around the turn of the century. He said the D Street view shows screening for the yard. He said

the shed will be relocated.

Mr. Jenkins asked if the oak tree is going to be removed.

Mr. Leedy said they are proposing to keep the oak tree.

Mr. Jenkins asked what the addition is going to be used for.

Mr. Leedy said it is an expansion of the two ground floor units that are there today. It will be for additional bedrooms and a laundry facility.

Mr. Jenkins asked how long Nashua Pastoral Care owned the property.

A female (not identified) said since 1994.

Mr. Coffey asked if there is going to be more parking.

Mr. Leedy said the parking will be the same.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Berthiaume to grant the special exception to expand a non-conforming use by adding a 727 square foot single-story addition to an existing four-unit multi-family building at 12-14 C Street. The use is listed in Section 16-208 (a)(1). It will not create undue traffic congestion or unduly impair pedestrian safety or overload public water, drainage or sewer or other municipal systems. Special regulations are fulfilled. It will not impair the integrity or be out of character with the neighborhood.

SECONDED by Mr. Coffey

MOTION CARRIED UNANIMOUSLY

5. Jeffrey M. Hirsch (Owner) 550 Amherst Street (Sheet H Lots 181, 184 & 646) requesting the following: 1) special exception to allow site grading within the critical wetland buffer of Round Pond; and 2) variance to allow light trespass to exceed 0.2 footcandles at internal property boundary lines. GB Zone. (Postponed to 3/8/05)

6. Sandy A. Fabre & Olga A. Gombins (Owners) 32 Wilder Street (Sheet 96 Lot 71) requesting use variance to allow a day care with 17 children. RB Zone.

Voting on This Case:

Tom Jenkins
Susan Douglas
Jay Coffey
Don Berthiaume
Jeffrey Anderson

Olga Gombins, 32 Wilder Street. Mrs. Gombins passed around some material to the Board. Mrs. Gombins said she has twelve children in her care - differing ages. At this point in time she has only two children after school.

Mr. Jenkins said Mrs. Gombins was before the Board 8/13/02 and at that time was granted a major home occupation for six children. She came back to the Board in November 2004 and was granted a variance to increase the maximum building area. He said basically she is here asking to increase the home occupation from 300 square feet to 657 square feet. He said basically the 657 square feet that she is requesting is pretty much the entire first floor of the house.

Mrs. Gombins agreed to this information.

Mr. Jenkins said that the Board sees the testimonials and they are sure she does a wonderful job taking care of the children. He said they understand that the State has given her permission to take care of seventeen children in her home. He said the problem is that Nashua's ordinances state you may use 300 square feet for a major home occupation and what she is asking for is double what the law allows.

He said she is located within a RB Zoning district - a neighborhood zone - a residential neighborhood and she is asking that she be allowed to run a commercial business within a neighborhood of residential homes.

He said the house is on a corner lot and there is a small front yard. He couldn't foresee anyone having seventeen children in a small residential home on Wilder Street with a very small front yard. Safety is a concern. Traffic is a concern. There would be seventeen children being dropped off and seventeen being picked up. He asked what the hardship is.

Mrs. Gombins didn't answer this question.

Mr. Jenkins said he thinks what she needs to do is rent a commercial place somewhere because she is running a commercial business in a residential neighborhood. He said if she were the neighbor next door and trying to live in your home and there were seventeen children being watched next door he wasn't sure she would like it if you were just a regular neighbor. He said it's not fair to the rest of the neighborhood. He said it impacts the property values of the rest of the neighborhood. It impacts the traffic for the rest of the neighborhood. He said there isn't any hardship.

Mrs. Gombins said she has never had a problem around her neighborhood.

Mr. Jenkins said he is sure she does a wonderful job. He said the fact is that she is running a commercial business in a residential neighborhood and there is no basis for a hardship.

Mr. Jenkins said when Mrs. Gombins was before the Board in November he pointed out that she had three or four signs on her building. He said she still has these signs. He pointed out she is permitted one small sign of two square feet. He said she is running a commercial business.

Mrs. Gombins asked how many children she is supposed to have.

Mr. Jenkins said she has been before the Board in August 2002 and been granted a home occupation for six children. He said he doesn't see this number increasing.

Mrs. Gombins asked if the Board could approve ten children.

Mr. Jenkins said he guessed that they could approve for less than what the request is asking for, but he would not change the square footage of what she has already been granted. He said the other members could do what they wanted, but he was going to leave it the way it is.

Mrs. Gombins again asked how many children she can have.

Mr. Jenkins said the Board isn't going to take away what she was granted in August 2002.

Mr. Coffey commented that this is a commercial operation being run out of a residential area.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Jenkins to deny the use variance to allow a day care center with seventeen children at 32 Wilder Street. He said the zoning restriction does not interfere with the

reasonable use of the property. The Board has already approved a daycare operation on 8/13/02. It would not be within the spirit and intent of the ordinance to grant. It will adversely affect the surrounding property values.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

1. AS-VR Realty, LLC (Owner) Wal-Mart Real Estate Business Trust (Applicant) 420 Amherst Street (Sheet H Lot 485) requesting the following: 1) use variance to expand a nonconforming use to permit a retail establishment selling general merchandise along with associated and customary uses such as, but not limited to, the following: food, automotive services, personal services (i.e. bank and other financial services, hairdressing, optical, pharmacy, etc.) bakery, garden center and various other consumer goods and services; 2) variance to allow site development within the conservation zone; and 3) special exception for working and filling within an other wetland and wetland buffer and a prime wetland buffer for redevelopment. AI Zone.

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Voting on This Case:

Tom Jenkins
Susan Douglas
Jay Coffey
Donald Berthiaume
Jeffrey Anderson

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Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier said Atty. Prolman (his partner), James Petropulos and Paul Hayner from Hayner/Swanson, Verne Lacosa and Gary McNaught were also present tonight to answer questions the Board might have. Atty. Prolman passed around some material to the Board.

He said at the present time there is a building of approximately 80,000 square feet on the site in question. This building

currently houses "Building 19 & a fraction." They are proposing the construction of a one-story, 186,000 square foot retail center.

He asked the Board to check that it has the minutes of the previous meetings relative to this site as well as all of the testimony and reports that were given to Nashua Conservation Commission.

Mr. Jenkins confirmed that the Board has all this material.

Atty. Prunier said they have spent approximately two years showing the Conservation Commission what they can do with this particular site to avoid any problems with the wetlands so that when the construction is finished, the water coming off of the site is cleaner than it is at the present time with less velocity.

He said they feel that the current variances allow them to use the retail center for what they propose to do. He referred the Board to the decisions of the previous meetings and the letters that were handed out to the Board. He said there is a letter from Michael Yeomans that indicates there would be no limitation in floor size. He said in 1995 Atty. Morgan Hollis came to the Board for a building of 157,000 square feet plus another 28,000 square feet of planning ??? area and the request was granted.

Mr. Jenkins said the Board has the minutes from the previous meetings, but they don't have any of the actual plans that were submitted for the proposed structure(s). Permits were never pulled.

Atty. Prunier said on at least three different occasions this property has been granted a variance for retail use of various large sizes.

He said they feel that the request complies with what has previously been proposed for the site and that it is a reasonable use of the property. It has always been used as retail.

He said it will not adversely affect any of their abutters. He said in the packet that was handed out there is a letter from Mr. Bramley, an appraiser. It covers his knowledge of this particular piece of property and states that there would be no adverse impacts.

He said the use will not be contrary to the spirit of the ordinance as the court found and the other Boards found that there were similar uses in the surrounding areas and that these uses were not incompatible with the other uses that are presently existing on that site.

Atty. Prunier said the special exception is listed in the Table of Use Regulations. It will not create undue traffic congestion or unduly impair pedestrian safety. He referred the Board to the letters from Vanasse Hangen, the consultant to the City, regarding Option #18. He said the City has accepted that. It will widen Amherst Street. Wal-Mart will incur an expense of two million dollars to do this work.

He said the requested use will not overload any public water, drainage or water supply system. He referred the Board to the letters from James Petropulos, Hayner/Swanson and Donald Ware, Pennichuck Water Company. He asked the Board to note the section of the letter that states "Pennichuck has no objection to the proposed project based on the facts delineated above. Pennichuck believes that the existence of pavement within the 75' setback zone is offset by the overall improvements to the existing site that will result in: increased rates of infiltration, decreased rates of peak runoff, enhanced treatment of the storm water leaving the site, implementation of proper snow handling and disposal plan, implementation of a storm water management plan - including parking lot sweeping, catch basin cleaning and maintenance of the storm water treatment system."

He said the letter from Pennichuck is very important in helping the Board make its determination as this is an impartial third

party reviewing the plans and specifications.

He said there are special conditions that apply to this case. He said the proposed use and its intendment impacts cannot reasonably be avoided. Further mitigation parcels have been proposed both on and off-site. These have been accepted.

He said they have proven to the Nashua Conservation Commission that they have taken the least damaging route and that it is the best practical alternative available.

He said the overall impact of encroaching into the wetland and buffer areas are necessary, but said encroachment is outweighed by the benefits being derived.

He said there is no significant impact on the aquifer habitat of rare and endangered species will result.

He said adequate erosion and control methods have been incorporated into the plan.

He said the requested use will not impair the integrity or be out of character with the district.

Atty. Prunier said the Conservation Commission gave this project a favorable recommendation with twenty-three conditions. He said most of the conditions had to do with changes on the plan, but they did make some substantive recommendations that the applicant has agreed to abide by. He went to the stage and showed the Board the proposed plan with the ponds on them. He said this is not what is out there today. He said Bob Prokop will be testifying to explain what is being done with the ponds in order to make them effective.

He pointed out that in addition to the ponds being enhanced the building has been moved further away from where it stands presently and moved more of the building out of the 75' conservation area. They are making the site less of a problem than what exists at the present time.

Jim Petropulos, Professional Engineer, Hayner/Swanson Inc., 3 Congress Street, Nashua, NH. Mr. Petropulos said his firm is the site engineer for the project.

He said with reference to the special exception to allow work within the wetland and wetland buffer, .74 acres are intended to be impacted. He referred to the plan that was on display as he spoke. He said the .74 acres consist of an existing water course on the property. There were two ponds that were built as part of the "Kealy Farms" project that are near the entrance. He referred to them as the lower pond and the upper pond. He said the .74 acre impact is to facilitate a new wetland that is to be constructed a bit further to the northeast. He said the newer wetland and the enlarged wetland will create a better wetland complex in front of the property.

He pointed out the plan of the site as it exists today. He said the former "Kealy Farms Supermarket" was built circa 1980. It consists of an entrance off of Amherst Street with approximately 500 parking spaces. It also has two of the aforementioned ponds. He said the ponds take storm water from the front parking lot and the "Building 19" building discharges its roof water directly to **Lyle ???** brook.

He displayed a map that showed the watershed. He indicated the location of the site and the location of Amherst Street. There are about 65 acres of development that contribute to the water course. It includes Kessler Farms Condominiums, Somerset Apartments, Waterford Place Condominiums, and a handful of commercial sites located on Amherst Street. These were developed prior to the technologies that exist today. The rainwater is dumped into the water course and that's what feeds the two wetlands and ultimately flows into Birch Pond, which is also a man-made wetland.

He said with the redevelopment of the site they are proposing a storm water system that has two pieces to it. The major parking areas will be captured with curbs and catch basins and outletted into a constructed wetland. He said Mr. Prokop will provide information about what a constructed wetland is and the benefits

of such a wetland. He said the water will receive proper treatment and go into the lower pond. They are providing a combination of detaining the lower and upper pond. He said they purposely undersized the pipe so flow can't get through in a quick manner.

He said the expansion and reconstruction of the upper wetland will treat all the water coming off the 67 acres that currently goes through pretty much untreated through the system.

He pointed out an orange shaded triangle on the plan. He said it is a recharge component of the storm water system. It will take the roof drainage and provide storage, almost like a leach field for storm water. It gives the opportunity to recharge this property, which is in the Water Supply Protection District.

Mr. Petropulos said the enlargement, the reconstruction, the detention and the recharge serve to not adversely impact any flooding downstream. He said there are about four acres of new asphalt on the new development compared to the existing condition. He said with regard to quality, there will be two Vortechnic devices that are treatment chambers beneath the parking lot that remove suspended solids from the runoff.

He said in the conservation zone there is a 150' zone from the wetland and also a 75' zone. In that 75' the code doesn't want to see any development for new sites and from 75' to 150' you can pave as long as the storm water management is outside that zone. For redeveloped sites it's a little different. For these sites it states to do the best you can.

He referred to the existing site plan. He said a portion of the existing building is within the conservation zone. He indicated the gray areas show portions of the site that are pavement that is in the 75' setback. He said the proposed redevelopment has a portion of the building within the 150' buffer, but it's approximately 1100 square feet less than the existing condition. Within the 75' buffer they have about 6000 square feet less of pavement.

Mr. Jenkins asked how many parking spaces there are in the 75' buffer.

Mr. Petropulos said approximately fifty-five.

Mr. Berthiaume asked if the site weren't going to be developed this extensively how much of the work would be required.

Mr. Petropulos said probably not a whole lot. He said as you face the Building 19 site there is an area extended off to the west that was probably anticipated for future development. Somebody could probably come in for site plan approval and work that area and not touch the parking and the same condition with the ponds would exist as it does now with the water just shooting through the system into Birch Pond.

Mr. Berthiaume asked if the water quality now isn't that good.

Mr. Petropulos said quantitatively and qualitatively water leaving the site will be better after the redevelopment than the current condition.

Bob Prokop, NH Certified Wetland Scientist, Wetland Consulting Service, 15 Bisson Lane, Merrimack, MA. Mr. Prokop said there are wetlands along the southwestern side of the existing Building 19 site, primarily Boire Brook. It flows effectively to the east and eventually into Birch Pond. Boire Brook has been considered the most significant wetland on the parcel. No impacts are proposed to anything along Boire Brook. As part of the redevelopment of the site, there is going to be an expansion of what currently amounts to a minimal buffer zone - an area that ranges roughly from 10' to maybe a maximum of 30' along the brook. That will be expanded to have an undisturbed buffer zone that ranges anywhere from 40' to over 75' as a result of the redevelopment of the site.

He said in addition, along the northeastern end of the site there are two sedimentation ponds that were constructed during the original construction of the site. They are separated by the access road onto the parcel. Both of them were man-made.

He said they were likely dredged out of an original wetland that existed there to provide some storm water management for the site.

He said there are 65 acres of developed land further to the northwest that flows onto the site and into these ponds. Virtually all the runoff that enters the site is untreated. All these areas that have been developed discharge their runoff into various swales, ditches, etc. that ultimately flow under Amherst Street through a 36" culvert into a small intermittent stream that flows into the first of the two sedimentation basins. The water that enters the site from areas upslope of Amherst Street is basically untreated so any sediment or pollutants contained in the runoff flow directly into the stream. The stream on the parcel is approximately four to six feet wide and maybe 8" deep. It flows right down into the first pond.

He said over time the first sedimentation pond is slowly filling up with sediments. He said he doesn't know how deep it was when it was originally constructed, but right now it's a fairly small pond and under current conditions it's going to slowly build up with more sediment over time. The water overflows through an 8'X3' box culvert into the second sedimentation pond and eventually seeps through a rip rapped bank into Birch Pond. He said he calls the second pond a "golf course" pond. It's primarily open water bordered by steep banks. There are virtually no wetlands surrounding the pond and there is a large "lawn area" to the east of the pond. Aesthetically it's a deep pond with steep banks with some minor shrub vegetation around the perimeter. There is very limited wildlife habitat.

He said under the current project, the proposal is to fill approximately .74 acres (about 32,000 square feet) of wetland, which includes the first sedimentation pond and some of the wetlands that border the pond and the stream that discharges into the first basin. To reduce the impacts of filling this wetland they are proposing to build two series of what is known as storm water wetlands. Storm water wetlands are wetlands specifically built primarily to treat urban pollutants. Once the storm water wetlands are constructed there will be cleaner

water leaving the site than what currently exists.

Mr. Prokop said to achieve this they are proposing a number of specific design features in the new wetlands that will provide better treatment for water quality and improve wildlife habitat.

He said the two new areas of wetland - one just east of the sedimentation pond that is being filled and a second series of wetlands just east of the other sedimentation basin in an area that now exists basically as lawn.

He said one of the functions of a wetland is to act as a filter. There isn't much filtering going on at the present time. The two existing ponds can detain water, but they don't really treat much water beyond trapping some of the sediment that is slowly building up in the first pond. In addition to the proposed ponds, they are also proposing a series of shallow and deep marsh areas contained within the pond. The shallow and deep marsh areas are going to create a dense mat of vegetation which will act as a big filter to try to trap sediment and suspended solids and pollutants as they pass through both series of wetlands before they discharge. They are proposing something on the nature of 10,000 marsh plants.

He said to provide better habitat value, in addition to the marsh vegetation, they are going to plant approximately 1100 trees and shrubs in and around the created wetlands to effectively make new wildlife habitat. To create good wildlife habitat you want to have as many different habitat types as possible and you want them intermingled amongst each other. Some wildlife might prefer open water. Some wildlife might like shallow marshes. Some might like forested areas. They will have a wide diversity of habitat types present on the site. Under the existing conditions, they basically have an open water pond and a little bit of forested areas along the fringe of the existing pond on the northwest side of the site.

Mr. Prokop said while they are proposing to fill .74 acres of wetland, which currently provide minimal treatment, they are going to ultimately create .77 acres of new wetlands so there

will be a .03 acre increase in the amount of wetland on the site after development. They will be creating a functionally superior wetlands than what is already on the site.

Mr. Jenkins asked if they would be creating parking spaces on the part of the wetlands that is being filled.

Mr. Prokop said this is correct.

Mr. Jenkins said in the Master's Report that came back from the court it said that the area contained "pipestone soil." He asked Mr. Prokop to address this.

Mr. Prokop said he can't talk about areas that have already been paved. There are areas along the west side of the existing building that is an open area.

Mr. Jenkins asked if the existing parking lot will remain paved.

Mr. Prokop said it will and it will be expanded.

Mr. Jenkins asked what area they are going to increase up to 5' in height.

Mr. Prokop said he may ultimately have to defer to the engineers. He pointed out the area on the plan. He said some areas will be raised 5' and other areas will be raised significantly less.

Mr. Jenkins said he is still trying to understand the soil conditions that were referred to in the Masters Report. He said the "pipestone soil" isn't able to carry a dense load.

Mr. Prokop said when the original site was developed, much of the area that the building was on is what is called "pipestone soil." He said this type of soil is what they typically call somewhat poorly drained soil. The water table could be upwards within 15" of the soil surface. Sometimes it is wetland and sometimes it isn't. The soil condition is something Wal-Mart is having to deal with.

Mr. Anderson asked if the parking lot currently drains into the upper and lower pond.

Mr. Prokop said this is correct. He said it sheet flows into them. There are actually sections that flow into directly into Boire Brook.

Mr. Anderson asked if the flow from Amherst Street flows into the upper pond and wetlands.

Mr. Prokop said Amherst Street will continue to flow through the upper pond and lower pond. It will flow through in a convoluted fashion through the first series of wetlands, travel across the access road into another series of wetlands in a convoluted fashion and then enter the second pond.

Mr. Anderson asked if the parking lot drains into the second section.

Mr. Prokop said the parking lot will first pass through a Vortechnic unit, which will remove the bulk of the sediments. This will help clean the water first and then it will discharge into the beginning of the second wetland where it will pass through and be treated and discharged. The first series of wetland will primarily treat the Amherst Street runoff and the second series of wetlands will basically treat the runoff from the parking lot.

Mr. Anderson asked about the Vortechnic unit.

Mr. Prokop said it works with centrifugal action where larger particles and floatable materials are actually trapped in the unit itself so the water that discharges is clear of the larger pieces of debris and the heavier particles. These units have to be cleaned out periodically on a regular maintenance schedule.

Mr. Jenkins asked if there is going to be a retaining wall in

the rear of the site.

Mr. Prokop said there is. He said there will be 30' or more of re-vegetated buffer zone bordering the stream. Some of this area currently exists as pavement and other developed parts of Building 19.

Mr. Berthiaume asked what impact soil type has on the quality of the wetland.

Mr. Prokop said for soils to function for pollution abatement, it's largely a function of the organic content in the soils. The organics have absorption sites on them where small particles, pollutants, heavy metals, and hydrocarbons can attach to them. The more organic material you have in the soil, the better it is for pollution abatement.

He said in the existing conditions they basically have a pond so there is polluted water flowing into standing water that holds it and then it flows into the next pond. Anything that is dissolved in the water continues to flow through the water. Nothing is filtered out. When it is passed through organic soils and when there is dense vegetation, such as marsh vegetation. Ultraviolet light can eventually break these materials down and then they filter out into the soil.

He said they don't really have a lot of organic soils that are treating the runoff that goes to the site now because it is mostly open water. When they build the series of marshes at different elevations, the water will be passing through shallow areas where there is more contact time with the soils and the plants and other areas where there is open water. They are creating variable conditions that can treat the water in different fashions.

Mr. Anderson asked what keeps the new areas from filling up with sediment.

Mr. Prokop said at the entrance to the ponds there are fore bays. There is a fore bay proposed at the beginning of the first

pond and a fore bay is going to be constructed at the beginning of the second series of ponds. These are sometimes called plunge pools. The purpose of these areas is to act as an energy dissipater so when water rushes into standing water, it slows down. When it slows down it drops its sediment load. These areas are located so that as needed they can be dredged out to remove accumulating sediment, a feature that doesn't exist now.

Mr. Jenkins asked who is going to monitor this.

Mr. Prokop said this is something Wal-Mart would do. He said he believes it is one of the conditions imposed by the Conservation Commission.

Vern Kokosa , Professional Engineer, Geotechnical Engineer, Civil Engineer - Principal - Sanborn Head & Associates.

Mr. Kokosa said the site soils are conducive to single-story slab on-grade construction, much like the existing building. A multi-story building would be very difficult.

Mr. Jenkins said that Mr. Kokosa' report says there will be 70,000 cubic feet of fill. He asked where this is proposed to go.

Mr. Kokosa said most of the fill is outside the building area and in the proposed parking areas. He pointed out the areas on the plan.

Jim Petropulos. Mr. Petropulos said he noticed the number 70,000 cubic yards of import has been in publications. He said he believes that number is from the original application from two years ago, which required filling of the lower pond. He said the site parking areas range from 2' - 5' in height. That is the bulk of the fill.

He said the building will be placed on the soils. There is some loam and debris and some organics that need to be pulled out and disposed of.

Mr. Jenkins asked how many cubic yards of fill will be needed.

Mr. Petropulos said he believes it is more on the order of 30,000 - 40,000 cubic yards.

Mr. Jenkins asked how many yards the average truck carries.

Mr. Petropulos said 10 - 14.

Verne Kokosa. Mr. Kokosa presented a map published in 1987 by the U.S. Geologic Survey. He said it illustrates the limits of the Pennichuck aquifer. He showed the location of the site on the map. He said the Pennichuck aquifer extends northwest to northeast. He pointed out the locations of the Everett Turnpike, Exit 6 & Exit 7, Somerset Apartments, Route 101A, Amherst, Hollis, Merrimack & Nashua. He said the main body of the Pennichuck aquifer is underneath land that is controlled by the Airport Authority. It extends down toward the fish hatchery area near Exit 6. The site itself is on the fringes, on the very edge of the aquifer. The sand naturally pinches out that way. The bedrock rises up to the surface and it becomes the hillside at Somerset Apartments. The more productive parts of the aquifer are really underneath the Airport.

He said the re-design of the detention basins is being done in a way so that the water levels in the existing ponds basically remain the same as they are today. As Mr. Prokop stated, the water quality will be improved by the Vortech units and the other proposed improvements. In addition, the Nashua Conservation Commission has added a stipulation concerning the monitoring of the surface water quality. This means collecting surface water samples at four locations on the site - the water coming onto the site from the off-site properties, in the upper and lower basins and down in Birch Pond. The water will be analyzed for a list of parameters.

He said an infiltration gallery is proposed on the south side of the store. He said they think that infiltration and storm water on this site is technically feasible. They think they can achieve the amount of the volume of recharge required by the

ordinance. Most of the water will come from the proposed building. He said the computations from Mr. Petropulos' office show that about 78% of the water that enters the infiltration gallery will be roof drainage with the remainder coming from parking areas. All the water entering the infiltration galleries will pass through one of the Vortechnic units.

He said his office has done a series of test borings, done some monitoring, put in ground wells, and measured ground water levels. He said the existing site has been filled a few feet, but underneath that there is a sand layer that is continuous from this area to Birch Pond. He showed the area where the ground water generally flows. The water will be recharged and then flow towards Birch Pond. The volume of water required to be recharged per ordinance is roughly 57,500 cubic feet. The existing design for the infiltration galleries shown on the plan recharges more than that - roughly 61,000 cubic feet of water. The rate the water goes out the bottom does not affect the design capacity.

Atty. Gerald Prunier. Atty. Prunier said there was a question about how the site would be policed. He said the Conservation Commission has retained jurisdiction by the testing they want done. The City of Nashua also will have a maintenance plan on file and a report has to be filed every year with the City.

He said they have shown that the building and some of the impervious areas have been moved further away from Lyle Brook. They have tried to make an improvement to the ponds in the front of the site.

He referred the Board to the letters from Mr. Kokosa and Mr. Petropulos regarding drainage. He said they both agreed that this will not cause any downstream flooding and that there will be less water going off of the site after the construction than presently exists.

Mr. Jenkins said the site is basically non-conforming. It was

developed prior to the Wetlands Ordinance. The proposal is to make it a little more conforming, but not completely non-conforming.

Atty. Prunier agreed with these statements.

Mr. Jenkins asked if they are proposing to improve Amherst Street.

Atty. Prunier said there are reports in the Board's packets. He said they are proposing widening both sides of Amherst Street from the light at Somerset Plaza all the way past the Blushing Rose. He said the City of Nashua requested that VHB review their consultant's plans. They preferred option #18 and the City has agreed. Wal-Mart has agreed to make these improvements at an estimated cost of a couple of million dollars.

Gary McNaughton, Registered Professional Engineer, McMahon Associates. He said there are quite a few deficiencies on Amherst Street. There are D's, E's and F's in the corridor during peak hours.

Mr. Jenkins asked if Amherst Street would be graded as a level of service "F" at this time.

Mr. McNaughton said at certain locations it is.

Mr. Jenkins asked about the location primarily in front of Building 19 and into the site.

Mr. McNaughton said it is probably an "E/F."

Mr. Jenkins said asked if this will change with the proposed new road improvements.

Mr. McNaughton said it will. He said they are planning a substantial amount of mitigation that will bring it into level of service "B."

Mr. Jenkins asked if this will be for a five year term or for

what period of time.

Mr. McNaughton said they have looked at various scenarios that go from existing conditions, 2010 and the final scenario they look at is the 2014 projection. He said they will still be operating at acceptable levels of service at that driveway.

Mr. Jenkins asked how many trips per day they anticipate.

Mr. McNaughton said they actually counted the existing site. The existing site is under-producing for what you would expect for a comparable retail use. Based on the existing volumes and the projections for this site, they would see about 3700 new trips on a daily basis. On the PM peak and the Saturday peak it means about 460 and 480 trips respectively. Each trip is one car coming in as a trip and one car going out is a trip.

Mr. Rondeau asked what Mr. McNaughton meant by under-producing.

Mr. McNaughton said the level of service at the site driveway is not predominately a factor of the side street volume. It's predominately a factor of constraints of capacity on 101A. The Building 19 site itself is producing less traffic than if it were the average 83,000 square foot retail building.

Mr. Coffey asked how the traffic at Target on Amherst Street compares with the proposed traffic for this site.

Mr. McNaughton said Target is a slightly smaller building so it would be a lower traffic volume than what they are proposing - maybe on the order of half.

Mr. Jenkins said in the report they received it states that 29% of the traffic is coming from the west. That would leave 71% coming from the east. He asked where these numbers come from.

Mr. McNaughton said in their original study they had projected a slightly more even distribution. They went back through the review process with the City with VHB and with Nashua Regional Planning Commission and looked at a number of factors that would

result in the trip distribution of 29%/71%. It was agreed on by all the different engineers that were involved.

Mr. Jenkins said that in the Nashua Conservation report it states that the Wal-Mart in Amherst generates 20% coming from the Nashua area and the other 80% he assumes would be coming from Milford, Brookline, Hollis, Amherst, and Merrimack. He said he finds it peculiar that only 20% is coming from Nashua.

Mr. McNaughton said they had 71% coming and going from the Somerset Parkway area. At this point he apparently showed a chart as he referenced a figure that illustrated the percentage of the overall site traffic that comes and goes from each of the approaches within their study area. He said 26% of it is coming on Amherst Street from beyond the Townsend West/Sunapee Street intersection. Roughly 22% of it is coming on the Somerset Parkway beyond the Kessler Farm Drive intersection. The remaining 33% is coming from 101A further south of the site.

Mr. Berthiaume asked about rate of increase in the traffic.

Mr. McNaughton said the existing Building 19 generates about 119 trips during the weekday afternoon peak hour. The Wal-Mart is projected to generate about 460 trips during that afternoon peak hour. On Saturday Building 19 is doing a slightly higher volume - about 216 new vehicles during the peak hour and Wal-Mart will be doing about 480.

Mr. Berthiaume asked if they took into account the people who might want to bypass going down Amherst Street because of the increase in traffic, take Thornton Road and then head down Tinker Road.

Mr. McNaughton said there are no projections for diversions of traffic from delays. They have proposed fairly extensive mitigation to alleviate a lot of the increases in delay that you see, particularly at the site drive at the Townsend West intersection.

SPEAKING IN FAVOR

Ned Gordon, Manager AS-VR Realty. Mr. Gordon said the Gordon family would retain ownership of this parcel and lease it to Wal-Mart. He said he has heard of some doubt as to how the site would be managed in the future and he can only point to their record, having developed in Nashua since 1966.

He said it was obvious the diligence that Wal-Mart has put into this project. They have provided much data. The Conservation Commission process was a lengthy one. He thinks they did a great job and that Wal-Mart did a great job.

He said the difference between this application and one that would be done completely by right would not require zoning relief is not a lot. He asked that they take into account the millions of dollars that are going to be spent treating water, the majority of which isn't even generated from the site as well as treating traffic on Amherst Street, which also doesn't necessarily relate to this site. This is going to produce huge benefits to the surrounding area.

Mr. Gordon said they have made no pretense over the years of anything other than developing the site to its potential. He said if you look in the zoning file there are numerous requests before the Zoning Board for variances to increase the use. They have shown the Zoning Board and the Planning Board full build-out of the site in the past. He said they were involved when the Wetlands Protection Ordinance came out. He said they walked away from that process comfortable that their site was not to be treated in the more restrictive part of the ordinance.

Linda Bretz, 6 Tomulonis Drive, Nashua. Mrs. Bretz said she is speaking as a member of the Nashua Conservation Commission. She said if the Board votes to accept the Wal-Mart proposal, that they adopt each of the twenty-three stipulations to protect the environment.

She said she is not necessarily for this project. There are two other Wal-Mart stores nearby. Wal-Mart's environmental record includes the payment of millions of dollars in environmental

finances over the past few years. This can be interpreted as Wal-Mart's not too hidden feelings about environmental protection. The site is a very wet area, perhaps the wettest on Amherst Street and Building 19 seems to fit the site.

However, being a member of the Conservation Commission, legally she can't vote against an application based on whether she is going to shop there or personally care for it's reputation or think it's other stores are too close. The Commission can only consider the wetland impacts to the site. They do not look at traffic. They look at the details of the application and rely on consultants and in this case there were many. They didn't always agree. They usually require some sort of mitigation in exchange for the impact. She said she is one of the four members of the Commission who voted to recommend approval of the Wal-Mart application based on the inclusion of the twenty-three stipulations. She said that the Zoning Board can accept or reject the Commission's recommendations. If they do accept the Wal-Mart application she urged the Board to accept the Commission's twenty-three stipulations. They are stipulations their Board felt would protect the environment from some of the impacts of this massive building.

She said Wal-Mart's first plan was a typical Super Wal-Mart rubber stamp. This building looks like every other Super Wal-Mart layout. She said they sought to change that with a number of suggestions. They said building a multi-level store doesn't work in this country. They said building a multi-level parking lot would cost \$15,000 per square space and they would have to charge it back to the local consumer. Their initial engineer showed little regard for the Board's concerns and made few, if any, adjustments to their plan.

She said their second plan was significantly improved. They went back to the drawing board with a different engineering firm. Although the rubber stamp building footprint remains, several environmentally conscientious changes were made. Parking was pulled back to code, keeping them completely out of one of the wetlands. Aquifer impacts were dramatically minimized to the point where both hydro geologists agreed there would be no long

term impacts to the aquifer. They scaled back impact to the rear wetland. There are two Vortechnic units that should treat the gasoline and parking lot runoff creating a net improvement over the non-existent treatment that currently exists. She said this was a selling point to her. She said Don Ware, Pennichuck Water, wrote a letter confirming that the drinking water should not be negatively affected.

She said the converted runoff from Amherst Street will be treated via a created wetland vegetated to mimic more natural marsh. This marsh will help with wildlife.

Mrs. Bretz said as mitigation they offered two off-site additional unspoiled pieces of property totaling 26.5 acres contiguous to other City-owned land. These areas offer superb protection to wildlife, wildlife that they won't find on Amherst Street.

She said many of them have read in the Telegraph that the owner of this property intends to maximize profit of this parcel. This most likely means that if Wal-Mart doesn't go in here, he will continue to market the property until he finds another entity that will. While they might like to think that anything could be an improvement over Wal-Mart, the truth is that it may not be. She said the Conservation Commission has been weakened due to the loss of three very vocal and very influential members. She said the Commission rejected the plan with the extreme impacts. The vote was close. They accepted the second plan with lesser impacts and the vote was close again. She said there is a possibility that Wal-Mart's plan may be as good as it gets.

Mr. Jenkins asked Mrs. Bretz if she voted in favor of this project.

Mrs. Bretz said the first time she did not, but the second time she did.

Mr. Jenkins asked Mrs. Bretz if the water quality will be improved when the site is completed.

Mrs. Bretz said if it goes according to the plan.

Mr. Jenkins said the Commission has worked for two years with Wal-Mart and looked at the engineering reports and studies and presentations. The Zoning Board looks to the Conservation Commission as a guide. He asked the name of the engineer the Conservation Commission hired and what his finding was.

Mrs. Bretz said Mr. Jack McKenna. She said he was hired to look at the aquifer impacts. His finding was that there would not be a detrimental affect to long term aquifer impacts. She said he landed up doing more engineering beyond that. She said other commissioners who will be speaking against this will probably address those findings.

Mr. Rondeau asked about where the two parcels are that were given as wetlands mitigation.

Mrs. Bretz said they are nowhere near this site. One is by Bloods Road Crossing. All the area around it is City owned. The second piece is more in the northwest quadrant on Old Ridge Road. She said this is also owned by the City. This will be a boon to the wildlife in the areas where there is still a lot of wildlife.

Mr. Jenkins said they have some E Mails that were received in favor of the request. He mentioned the names that he could discern from the E Mails.

SPEAKING IN OPPOSITION

Mr. Jenkins showed a packet of petitions that were submitted in opposition to the proposed project (from the Building 19 store). He said he is not going to read off every name (due to the volume).

Caroline Choate, 59 Cheyenne Drive. Mrs. Choate asked that the Board listen to the common sense objections that many of the people speaking in opposition regarding the Wal-Mart proposal

and its impact on the wetland.

Mr. Jenkins interrupted Mrs. Choate to advise her that the Zoning Board considers the five points of law and that is what they base their decision on.

Mrs. Choate asked that the Board re-affirm that their participation will count for something so that they won't go home feeling absolutely bereft of control over their own destiny. She said the Zoning Board voted in favor of the Riverwalk proposal despite the Conservation Commission's recommendation against it. Likewise it is within the Zoning Board's authority not to accept the Conservation Commission's recommendation on the Wal-Mart proposal. It was not an easy decision for the Conservation Commission to make. They put twenty-three stipulations on it and that itself is a testament to the complexity of the project.

She said she asked several Conservation Commission members if the Wal-Mart proposal is better technically than what currently exists and she was told it is. When she asked if the proposal was the best it could be she was told it is not - the only way for it to be better would be without any impact to the wetlands.

She said she saw many times tonight how it will be better. She has seen the efforts that have been made to make it better. She said she wished they could galvanize the community to make it better by themselves with or without Wal-Mart. Surrounding towns are spending millions they don't have to protect open space. She asked the Board to vote against the proposal so that with the help of grants, donations, etc. so that this can be properly treated and it can be saved as one of the City's wetlands.

Charles Friou, 14 Althea Lane. Mr. Friou said he is the moderator of the Citizens Action for Southern New Hampshire. He asked the Board to deny the application because they believe it is inconsistent with the site and with the law. He said he would not read his total statement, but would leave it with the Board. He wanted to call on some of the members who have

prepared testimony or statements and have tried to avoid duplication. He said he asked them that if there is some duplication to skip that part and go on.

He said denying the application will not cause a hardship for the owner of the property. He said the hardship issued was addressed by the court and in the Board's 1988 and 1995 deliberations over this same site.

He said the approval of the variance would break the spirit and intent of the ordinance and violate the limitations inherent in the court decision and in the prior decisions of the Zoning Board.

He said it will break the spirit and intent if approved as a redevelopment rather than a new development. He said there are statues in the City code that require a different approach to a development as a new development than as a redevelopment. He said the fact is that this is a new development. They are going to wipe out what's there and build it up new. Everything that is outside of the original footprint is new. The application should be considered as a new development and not as a redevelopment.

He said an approval of the application will adversely affect the public good because of the traffic and the pollutants that will reach the water because the Vortech unit won't take care of everything.

He said an approval will adversely affect the City because the ordinance talks about retaining trees in the Water Protection Zone and apparently they will be gone.

He said it will adversely affect the public good. There is no need for Wal-Mart or any other big box store to exceed the footprint of the existing building and parking lot on the site. It can be done by putting parking underneath and if that isn't possible, the reduction of about 10% of the footprint would achieve a product that would not impact upon the wetlands that this does.

Suzanne Harvey, 8 Crawford Lane, Nashua. Mrs. Harvey said she is one of Ward 2 State Representatives. She said the idea of construction plans that call for increasing the land fill over the wetlands site - fill that would increase the number of parking spaces - is unacceptable. More cars on the lot means more chemical spillage into the aquifer. She said as mentioned in the newspaper, the current plans might differ by 35' for a more protective buffer for the wetlands. She said a 14,000 square foot downsizing to the building plans would also successfully address important concerns. As it stands now the plan that calls for a larger footprint seems more like a development project rather than a redevelopment.

She said she is in favor of free enterprise accompanied by intelligent managed growth. She said she fully supports a healthy economy for New Hampshire and Nashua, but not at the expense of the water they drink and an ambitious drive to cover the City with more asphalt and more traffic.

She said if the current plans do not address the concerns of the independent consultant's report to the Conservation Commission, a report that's just the proposed storm water plans could cause flooding, erosion, and possible water quality problems, the Board should not rubber-stamp the project.

She asked how many years it would take the new shrubs that were addressed tonight to reach a filtering capacity. She said it won't happen overnight. She said there is no need to rush a vote until they have adequate information. She asked that the Board respect Nashua's residents and not compromise a water supply and already distressed wetlands.

Rena Claffey, 32 Deerhaven Drive. Mrs. Claffey said she is not an environmental expert, just a Nashua resident who is concerned about clean water. She said she became aware of this issue due to her involvement with Citizens Action of Southern New Hampshire.

She said one of the requirements for a special exception is that

the applicant must prove that the project will not be detrimental to the health, morals or welfare of the residents of Nashua. She indicated Wal-Mart's plans will be detrimental to the health and welfare of Nashua residents, first because the site chosen by Wal-Mart is on wetlands that flow into the City's water supply and secondly because Wal-Mart's record of EPA violations shows that it cannot be trusted to protect the water.

She said the site in question is physically connected to the Pennichuck Water Supply with streams feeding into Birch and than Harris Pond, one of the City's reservoirs. The Nashua Conservation Commission walked the site in 2001 and concluded that the stream and wetlands are associated with the prime and therefore require a 75' buffer. Wal-Mart's plan only provides a 40' buffer, almost half the requirement necessary.

She said Wal-Mart plans for a much larger footprint than the existing facility. She thinks Mr. Petropulos said there would be four new acres of asphalt. This pavement requires filling of over an acre of wetland and protective buffer. The wetland laws are in place for a reason because wetlands are important to the ecosystem. There are instances in which filling for development is wanted. In this case it is not. Filling wetlands in a prime water supply area is foolhardy.

Mrs. Claffey said that anyone who has shopped at Building 19 knows that the lot is surrounded by water. The water table is very high. The lot has been designed to ensure limited environmental impact due to requirements from local Boards.

She said the Telegraph recently pointed out in the early 80's, the Zoning Board denied a request by Kealy Farms to build on the site. The ruling was overturned by the court, but the court recognized the sensitivity of the site and required that the parking lot be limited to 500 spaces. The Wal-Mart proposal calls for 740 spaces.

She said Wal-Mart has shown blatant disregard for Federal Clean Water laws. She said they have heard from the proponents for Wal-Mart about how great their storm water plan is. She said

they have to look at Wal-Mart's record on storm water management before they approve the proposal. She said they have violated Federal Clean Water/storm water runoff protection across the country, resulting in settlements with the EPA - one in 2001 and one in 2004. She said last March the EPA settled with Wal-Mart for shoddy oversight of storm water runoff by contractors at twenty-four construction sites in California, Colorado, Delaware, Michigan, New Jersey, South Dakota, Tennessee, Texas and Utah. That's before the stores were even built. At least two states - Connecticut and Pennsylvania - have taken Wal-Mart to court for violating State water laws after the stores were up and running.

She said a slim majority of the members of the Conservation Commission decided to approve the project before the Board tonight. They approved the project with twenty-three stipulations. She asked if they could trust a corporation with this record of violating Federal and State environmental laws to meet the local Conservation Commission's requirements. The site is too sensitive to risk gambling on a corporation with a track record of environmental violations.

Laura Cane, 7 Silva Drive, Nashua. Ms. Cane said she has been out of work for almost fifteen months. She said she has a Master's Degree in Business Administration that she spent \$40,000 getting from Rivier College. On the best possible day of its life Wal-Mart does not have a job that can afford her \$40,000 education.

Mr. Jenkins asked Ms. Cane to address the five points of law, not about the economy.

Ms. Cane she did not believe that Wal-Mart will address the traffic and parking problems they will create. She said she didn't believe they will overload the municipal police system because of the amount of theft in the average Wal-Mart store.

She said her biggest issue is why they have to build on this site as opposed to an empty building on Colisium Avenue, which has been empty for some time.

Josselyn Desimone, 7 Lynn Street. She introduced a young man who was going to help her with a demonstration she wished to perform for the Board to address Points #3 & #5 of the variance as well as a point from the special exception, all of which point to public health and safety.

She proceeded to perform her demonstration. She had a container that represented the parking lot in which she added anti-freeze, transmission oil, gasoline, fertilizer (Wal-Mart is going to have a garden supply center) and road salt. She said other things that she was not adding, are mercury and lead, chromium, copper, zinc, and cadmium - all of which come out of car exhausts and come off of the brake pads and vehicles' tires on a giant parking lot. She then added "rain" to the mixture. She had another container that represented the pond and the mixture was poured into this container. She then showed this to the audience and the Board and asked if they would want to drink the result and if they honestly believed that fish and aquatic life would survive in it. She said if this went through a Vortechnic chamber, which is essentially a blender, it wouldn't be any better. She said big parking lots create big pollution and even after they've been mitigated they are not a benefit to the community.

William Bonness ???, 3 East Brook Road, Nashua. Mr. Bonness said he is a concerned citizen of Nashua as well as a member of the Citizens Action for Southern New Hampshire. He said the ordinance indicates the following condition (among the five) must be met in order for a variance to be granted. Number 4 is that granting the variance must be of benefit to the general public and not solely the individual. In addition, for a special exception to be granted the following must be met - the requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare.

He said there is a letter from Hydroterra & Mr. McKenna which he

urged the Board to read. He said it indicates that he did not approve of the plan. He said Mr. McKenna expresses concerns regarding water quality, particularly dissolved chemicals such as petroleum compounds related to automobile parking **downstream in** Birch Pond and Boire Brook. The question of whether the applicant's proposal will protect the purity of the water needs to be clearly and adequately answered. Naturally Wal-Mart's proponents state that it is clearly answered, but Mr. McKenna who is an expert disagrees with this.

He then quoted a section from the Nashua Master Plan. "The Pennichuck Brook system is beginning to suffer eutrophication. Extensive residential, commercial and industrial development in Nashua and elsewhere in the Pennichuck Watershed has degraded the water quality of the Pennichuck Brook system, largely due to non-point source pollution, urban runoff from impervious sources such as roads and parking lots. Impervious surfaces prevent the natural recharge of groundwater and increase the amount of ?? Storm water unfiltered storm water reaching the ponds and brook. Total imperviousness of the entire watershed is estimated at 15% and studies indicate that water quality degradation begins to occur at approximately at 10% imperviousness. In Nashua the Boar Brook sub watershed, which includes the Nashua Airport and much of the Route 101A commercial corridor is estimated to be 36% impervious. In order to minimize future water degradation, it is vital that land use decisions in the watershed recognize the connection between land use and water quality."

Mr. Bonness said the present store is approximately two acres and the parking lot is approximately two acres. There are vegetated buffer zones for the water to run into. The proposal has twice that - a four acre store and four acres of parking. There is no reason that the present footprint can't be maintained.

Paul Johnson, Browning Avenue. Mr. Johnson said he is also with the Citizens Action for Southern New Hampshire. He said they have not heard how many automobile visits a day will be visiting the site. He said the application leaves that whole page blank, including the number of daily and weekly visits to the premises

from customers, clients, vendors, etc.

Mr. Jenkins said this can be answered in rebuttal testimony.

Mr. Johnson asked what is the percentage of efficiency improvement in their water treatment. He said it is his understanding that the water treatment standards are based on acres of parking and inches of rainwater and that runoff is runoff. He said in reality if this site delivers five to ten times the vehicle traffic per day, it will deliver five to ten times pollution into the polluted runoff. If the facility is twice as efficient, which seems unlikely, they would still be delivering 2 ½ - 5 times much pollution in the outfall.

He proceeded to explain the problem with the traffic when people take the exit to Spit Brook Road, make a right at the bottom of Spit Brook and there is a left turn lane into the first shopping center and there isn't enough storage for the vehicles. Vehicles back up and block travel lanes. Then the people have to stop and wait or swerve around. It stores about four cars per light cycle.

He produced a plan of Amherst Street showing the lanes into the site. He said the Wal-Mart plan does not address the issue of storage and can't address that on the west bound traffic, which is 70+% of their traffic. Three-hundred and sixty feet of left turn lane and 25' per car means there is storage for fourteen to fifteen cars in that intersection. There is only another 300' for vehicles coming out of Somerset Parkway to cut across lanes of traffic and get in line. When the light changes, vehicles going straight are also going to get in there. This will be a broken intersection. He said the only way to address it is to make long light cycles to flush it out, which will stop the traffic in the other direction. This is going to be just like Daniel Webster Highway.

Mr. Johnson said he doesn't oppose Wal-Mart. If this were Lowe's, Sears, or any other big box retailer that was trying to build on the City's water supply he would be equally concerned. This is a matter of public safety. He asked the Board to follow

the example that was set 23 years or so ago the Board's forbears and vote against retail development of this site.

John Panny, 1 Aberdeen Lane, Nashua. Mr. Panny said he is going to be making comments based on observations at the present site and the Wal-Mart site in Amherst, NH as well as the Nashua Master Plan and the Route 101A Corridor Master Plan dated in 2002.

He said the 2000 Master Plan, Section 9 Page 51 states "the lower overall density of development in the A1 zone may be desirable from a land use and traffic generation standpoint - a point to remember when considering recommending future use of the Amherst Street corridor." He said that the Saturday mid-day traffic, and the AM & PM rush hour at the Somerset Parkway intersection is rated as an F for those three periods according to this report. This means that the traffic is greater than which can be transversed in the area.

He said other recommendations in the report were to widen the corridor from Burger King north to the Blushing Rose. The estimated cost at that time was five million dollars. He said the applicant talked about two million dollars tonight. The question is who picks up the other three million dollars or whatever the true amount is in today's dollars.

Mr. Panny said the northern side of 101A is built out. There are parking lots and stores built right out to the highway. On the southern side there are telephone poles. To widen the road, these have to be torn out.

He said there is also talk about putting the ponds closer to 101. There is a slope. There is an erosion problem that is going to occur. Even though they can put trees, the first couple of years there are significant rains there is going to be a question.

He said another primary consideration or the order ??? report was access management. He said the current Wal-Mart store in Amherst has two primary entrances. The proposed store has one.

He said there is a major problem with this.

He said he counted 345 parking spaces at the Building 19 site. The proposed Wal-Mart store has 475 parking spaces on the right hand side with an additional 359 on the other side, for a total of 834 spaces. He said everyone is aware of what the Wal-Mart superstore takes in traffic wise. He said throw that traffic onto Amherst Street for the proposed store at Christmas time, any time after Veteran's Day, and there will be gridlock. There is a very short light cycle going into Building 19 right now and if the time is lengthened, somebody's going to have to pay.

He said a review of the Corridor Master Plan, per Map 4, shows an area of poor drainage. Looking at the plan and how Wal-Mart pushes snow aside to the outside of the parking lot, they are looking at 25% of it being on the water side.

He said something that hasn't been brought up tonight is the negative effect on other businesses. K Mart is across the street. He posed the question if they will be interested in keeping two stores in town in Wal-Mart moves in or if Market Basket will keep three stores on Amherst Street. He asked if they could risk another dead shopping center. He wondered if anyone would want to move into the retail center that was built at the former location of the Covered Bridge.

Mr. Panny said there was testimony that there was going to be a retaining wall at the back of the building. If this is done, there will be weep holes in the wall and the water will run through untreated.

Sara Osborne, 6 Sagamore Road. Ms. Osborne said that until December she was a member of the Conservation Commission. She said she heard testimony on this project for two years. She voted in the negative the first time. In December, before she left the committee (she did not ask for re-appointment to the Board), the project was tabled. After that it was given a favorable recommendation, but if she had been on the committee her vote would still have been a negative one.

She said she has worked for over twenty years in the construction field for industrial buildings and for building management and renovations. She said Wal-Mart does not need a store of this size. She asked them several times to take a look at proposing a two-story building. They have built two-story buildings in other cities. If they did this they could be totally out of the wetlands.

She said the report of the consultant that the Conservation Commission hired very clearly states that there will be overflow.

Cynthia Overby, 520 Broad Street. Mrs. Overby said she is a member of the Audubon Society and approximately two years ago she did a species study with Ralph Andrews at the site. She said there are migrating and local birds that nest in the wooded area next to the building. It is a highly desirable habitat area. She said they identified birds such as yellow throat wobblers, catbird, wood thrush, fly catcher, king bird and others. The pond adjacent to this area (she showed the location of the pond on the plan) is inhabited by turtle and various other amphibians and aquatic creatures.

She said along the back side of the property many species have been spotted such as deer, fox, etc. It is a forested wetland also to be impacted. Since Building 19 is not that invasive wildlife seems to roam freely here.

She said there is a stream that runs alongside the property. She showed its location to the Board that meets up with the large wetland pond. She said there is an undisturbed wetland next to the pond. There is a culvert that comes from Amherst Street and water travels through the wetland as well as water from the stream and surrounding parking lots. She said they spotted a yearling red tail hawk in this wetland. No doubt the parents have new offspring this year. This species has chosen this as habitat (front wetland). Also, in this wetland pond they have spotted a beaver population and a large mature turtle as well as other amphibians that have been spotted by employees and customers. Even some fish have been spotted.

Mrs. Overby pointed out the other pond is being fed by the larger pond. She said water is not going through the culvert, but is bubbling up underneath it. In this area a large congregation of water fowl can be seen. This site has been chosen by many species as preferred nesting site for raising offspring and they return annually.

She said the applicant is asking for a use variance to expand a non-conforming use to permit such things as automotive services and a garden center. In 1995 a stipulation was placed on the front lots to remain open and not be improved and for the ponds to remain. In 1976 it was noted that because of the aquifers beneath the site, that is was useful only for industrial use.

She said there can be no safety precaution taken to prevent automotive seepage from the repair auto portion. The careless conduct of the other Wal-Mart's leaving open bags of gardening materials outside should be cause for concern. The mistake was made many years ago in allowing the development of this area.

She said although the application was given a favorable recommendation by the Conservation Commission, she believes the vote was compromised. She said the issue of the Conservation Commission must address the protection of Nashua's wetlands at the highest degree. The Wetlands Ordinance establishes a 75' buffer and this has been breached.

She said Conservation Commission has not allowed the building of a wetland in 17 years. The large wetland is a working functioning wetland. Water is filtering through it, cleaning it and sending it to the watershed. The applicant wants to fill it and replace it with a shallow detention pond/swirl basin that must be maintained forever. This is a grave mistake.

She said the proposed pond would be heated from lack of mature trees. Algae blooms would then occur. Next to this large pond is an undisturbed wetland. The pond is a "dig out" that nature has reclaimed. The plan is only theory. They know that wetlands filter impurities.

She said the existing front is fill and she did not hear anything about boring results from that fill. She said this is important because of past contaminated fill.

Mrs. Overby said that she doesn't have anything against Wal-Mart. She feels that their plans are too invasive for this property. The impact to the local water is detrimental to the health of Nashua's citizens and other communities. The other Wal-Marts are in rather remote retail areas. This is not the best use of this property.

Bill Keller, 16 Woodland Drive, Nashua. Mr. Keller said that he is a civil engineer and has worked in heavy civil construction industry for over twenty years.

He said he has reviewed the most recent set of the proposed site plan and the hydrologic reports. He said the existing Building 19 site contains approximately eight acres of impervious surface, including 1.7 acres of building and then the paved lots and roadways.

He said the storm water runoff flows in many directions from these paved areas to bordering woods and grasses that appear to have adapted to the dispersed flows. He said he did not see any erosion when he visited the site.

He said the proposed Wal-Mart site contains approximately sixteen acres of impervious surface, including a 4.27 acre building that could double the volume of storm water runoff reaching Birch Pond from this site.

He said in contrast with the existing site topography, the storm water runoff from the proposed site will ultimately be directed to basin #2 - the lower pond. All the runoff from the site goes to one spot. An attempt is going to be made by Wal-Mart to simulate the existing wetlands and bordering vegetation by reconfiguring basins #1 & #2 with four bays and channels that provide varying topography and vegetation to treat site runoff prior to entering Birch Pond. He said this system can only handle low flow conditions.

He said as stated in the SES analysis of two through fifty year storm events, the significant runoff volumes which raise water levels in both basins, entirely submerges the four bay and channel zones. Therefore they cannot function. The generated storm water runoff will not receive any natural filtration or cleansing when needed most prior to running into Birch Pond. Those ponds raise well above the elevation shown on the drawings and the flow is strictly stream flow at that point - no filtration.

He said another water quality concern that he has relates to salt. He said he hasn't seen whether salt will be used or not on this site. If so, it will introduce directly into the water supply more than double the amount currently experienced from the site.

He said on the quantatative side, while peak runoff flow volumes from certain storm events have been discussed, he asked if any consideration has been given to what affects the continuous high rate of discharge from basin #2 may have downstream. He said they have basically choked the flow that they have generated by putting in a 2' diameter pipe. The flow is now coming at a steady rate and at a fairly high velocity through the pipe to Birch Pond for a much longer duration.

He asked if a proper study has been performed to determine the time of concentration of rainfall for other tributaries and in-flow sources feeding critical locations downstream that in addition to this sites prolonged discharge, could promote flooding and/or erosion. All the SES flow analysis relating to the storage capacity of basin #2 and the associated discharge through the 2' diameter outlet pipe appear to have been calculated with existing baseline parameters set at a minimum. By this he means that the recharge galleries seem to be empty and pond levels are static.

He said while many storms are likely to begin with these conditions, it is also reasonable to begin with less than optimal conditions. He believed that flow analysis should be

performed with the recharge galleries at 50%, 75% and 100% full in conjunction with the basins starting at 25%, 50% and perhaps 75% full to better understand the potential to exceed each basin's storage capacity. He posed the question if it was acceptable to allow construction of the proposed site if over-topping of the berm can occur. He asked why there is no analysis of a 100 year storm event.

He said he doesn't believe enough information has been generated and fully disclosed by the applicant to formulate an informed decision as to whether the proposed site development may pose unacceptable risks to Nashua's water supply.

He said the purpose of the land use code is to increase protection for the brook, including its ponds, wetlands and tributaries is. The proposed project appears to conflict with the intent of these regulations as it remains unclear whether the purity of the water exiting the site will be diminished through point source treatment and its design doesn't maintain the filtration and purification function of the land even to standards as they currently exist.

Katherine Nelson, 4 Massasoit Road, Nashua. Mrs. Nelson said that Jack McKenna wanted to be present tonight, but he had business out of town and could not attend. He is planning on testifying at the DES public hearing on March 29.

Mrs. Nelson said the Board is listening to conflicting information. She asked that they seriously listen to what the previous speaker had to say because he seemed to have a good grasp on the technical calculations that were put forth on the Wal-Mart plan. She said she agreed with everything he had to say.

She said that she didn't think Wal-Mart's consultants have not correctly characterized the hydrology of the existing site. What you leave out of the plan for calculations are just as important as what you put in. When you make certain assumptions and put those assumptions as a data into a model, sometimes what comes out of that model is entirely different than somebody else

that is making different assumptions.

She said one thing they do know about the site is that the groundwater is persistently high year round. She said they heard about the pipestone soils. There also is well information that demonstrates that. The groundwater is probably between about 1' - 3' below the grade at this site.

She said currently groundwater is dispersed on the site. Some goes into the forested wetland. Some goes to the existing buffers. She said no evidence was presented that she thought reliably could demonstrate the water quality will be improved on the site by the plan being presented by Wal-Mart.

She said from a physical examination of the site it doesn't appear to be any existing extreme water quality issues. There doesn't seem to be anything going on in the pond. The only thing you could do would be to do some testing. Then you could start with something and then go from there.

Mrs. Nelson asked why the McKenna report and the calculations done by the previous speaker are different. She said Wal-Mart's made the assumption that the pond and the hydrology in the area were starting from a static condition so that basically their assumption is that they could treat the additional storm water that was going to come from the increased parking lot and building. They were assuming that the pond and stream would be dry, but they aren't going to be. She said the pond was dug into ground water.

She was involved with this case for a long time (as a [former] conservation member) and she believes there are reasonable options that have not been discussed or provided by the applicant. She said there can be some development/redevelopment on the site. If they put a detention pond away from the stream and didn't fill the pond and did a more conventional detention basin like you see on other developments that might be one reasonable alternative.

Mr. Jenkins said there was a conservation member who testified

in favor of the proposal. A majority of the conservation members believed the reports from the Wal-Mart engineers versus the McKenna report. He asked about this.

Mrs. Nelson said the Hydroterra report was very technical. It speaks of hydracids modeling which she is familiar. She said Jackie (Trainer) is also familiar with it. It came in about two to four days prior to the vote and the commission did not have a lot of time to take a look at that report.

She said Mr. McKenna sent her an Email afterwards stating that he wished that he had some time to present the information to the commission in a less technical manner so that they could actually understand what was actually going on at the site.

Mr. Berthiaume asked how long Mrs. Nelson served on the Conservation Commission.

Mrs. Nelson said twelve years. She said Linda, Sara and herself have had probably the longest terms serving on the Conservation Commission.

Jacqueline Trainer, 70 Conant Road. Mrs. Trainer said she felt that the plan that came to the Conservation Commission wasn't good enough, that it wasn't finished, that they didn't know the constraints of their site - that they could have come back with just a little bit better of an idea.

She said the use proposed could reasonably be avoided by avoiding the filling of the wetlands by reducing the buildings size by 14,000 square feet. This would reduce the required parking to 744 spaces, thus eliminating 68. By reducing the square footage of the building just this small portion they could avoid filling the wetlands and it would have made a lot better plan to vote on.

Sue Newman, 25 Charlotte Avenue. Mrs. Newman said she is not officially part of any official group or the Conservation Commission. She said she has lived in Nashua since 1981 so she has seen Kessler Farm get developed and Amherst Street get

developed so she knows what the traffic is like. She never thought this would come to this point, given the fact that there is a Wal-Mart Superstore roughly 4 ½ miles down the road.

She said this site is not appropriate for a store this big. If they want to put something else there, keep the footprint that is there right now. A superstore is the wrong way to go for Nashua.

She encouraged the Board to think about what one of the previous speakers said about common sense when it comes to this project.

She mentioned that she was in the community of Port St. Lucie, Florida in January. It's a very fast growing community and quite spread out. There are two super Wal-Marts there, one in the east part of town and one in the west part of town. The community can well support these two stores. They are approximately 12-15 miles apart. She said there were two other grocery stores nearby while she was there, Winn-Dixie and Albertson's. In the three weeks she was there she was shopping at the Albertson's grocery store and a note appeared that they would be closing. In the paper the other day she noticed that Winn-Dixie is filing for bankruptcy. The only common denominator she can come up with is Wal-Mart.

Nancy Zlotek, 42 Vespa Lane. Mrs. Zlotek has been at her residence for 33 years and owned a business at 493 Amherst Street for 23 years.

She said that one of the items the Board has to consider in its deliberations is whether the project would cause undue traffic congestion. She said the traffic has been addressed on both sides. She said her concern is that when you increase traffic to the point this will you force people to seek alternate routes. Being a resident in the area and traveling this road daily, several times a day, she knows the first route people will go to is Manchester Street/Tinker Road up to Continental Boulevard route. As the Board knows this road has had an increase in

housing development all along it. Certainly the residents would not want to see an increase in traffic on that road. The road is not wide enough to take it anyway.

She said the City has talked about widening the access road between Tinker Road and Somerset Boulevard. It goes by the U.S. Postal Service. It had been used by many people who live in that area and having it closed was a bit of a hardship. The reason for widening it is for safety reasons. If that opens up, it will take a lot of traffic off of 101A and put it on that road so they can avoid the congestion on 101A. That road also goes past Pennichuck Middle School and if they are going to divert traffic over there than there's going to be a problem in the morning with all of the traffic that goes in and out of that school.

She said the Board also has to consider whether the proposal will be detrimental to the health and welfare of the residents of Nashua. When you increase traffic to that volume and you cause a traffic nightmare you increase road rage. That leads to increased traffic accidents and unnecessary violence. She said this needs to be addressed before the Board grants any kind of variance.

She said to grant this request is a hardship to the business owners and the residents of this area.

David Levine, Forge Drive, Nashua. Mr. Levine said there is a truck path somehow around the back of the Wal-Mart building. If you look at the truck path and take a rigid object such as a trailer on an 18-wheeler, it doesn't look like it will fit. This means it's a very tight fit and the trucks will be hitting the retaining wall. If they hit the retaining wall some of it will be lost and there goes some of the containment system.

He said they have been told that there are going to be between 400 - 500 trips a day into Wal-Mart. He asked why there are 740 parking spaces if there are only 400 cars a day.

He said they are talking about building a new wetland. He asked

if they have talked about mosquitoes.

He said they have talked about the Vortechnic devices. He said if he remembers physics, a Vortex device requires that there be some pressure differential between input and output. If the parking lot thickness is sufficient to support a car it's going to be down a foot and the water table is all of 15". He asked how they were going to get sufficient ??? across the Vortex device to make it function properly.

Peter Nelson, 4 Massasoit Rd., Nashua. Mr. Nelson said that he has both an undergraduate and graduate degrees in Planning.

He said in order to receive a special exception under the Wetlands Ordinance, there is criteria for approval under Section 16-575. The first of that criteria is that the use or activity proposed and its intendment impacts cannot be reasonably avoided. He said this hasn't been demonstrated by the proposed plan. The owner currently has reasonable use of the property as a result of previous permits that allowed the development at that site. Unlimited expansion, making a previously non-conforming use more non-conforming is not reasonable for this site.

He said the evidence presented in the Hydroterra report documents the expected impacts associated with the proposed project. This includes impacts that will cause flooding and water quality pollution. The .74 acres of wetlands proposed to be filled is a natural drainage channel with flows entering Boire Stream and Pennichuck Brook. Pennichuck Brook is part of the City's drinking water supply.

He said the fact that the site contains sensitive wetland and water base features was established in previous Superior Court findings in 1983, the ZBA and prior Conservation Commission meetings. The opinion that the surface water in this area flows to Pennichuck Brook was affirmed twice by the Zoning Board - in the Acura Dealer site (NR 1449 approved in May 2002) and in the

Townsend West site.

He said the site is surrounded by drainage channels that flow to Pennichuck Brook. It overlays the Pennichuck aquifer and it has persistent year-round high ground water which has been intercepted by the creation of the ponds. The ponds contain both ground water and surface water flows. The proposal does not demonstrate avoidance of site features that currently provide both storm water treatment and flood water attenuation. Placing a large storm water detention basin within a natural drainage system that is a tributary to Pennichuck Brook and encroaching into that stream's protective buffer can and should be avoided.

He said the cumulative affects of allowing other land owners in Pennichuck Watershed to use hydrologically associated streams for storm water treatment would cause considerable damage to the City's water supply.

He said what is proposed for this project attempts to recharge a portion of the storm water on the site. It does not provide for adequate retention time in constructed storm water wetlands prior to discharging into surface waters.

He said the ground water flows have not been adequately quantified according to the Hydroterra report. The Wal-Mart proposal assigns static conditions to the ponds that is technically incorrect. The ponds receive constant ground water flows. Storm water will never have a chance to be treated or controlled because the ponds are constantly being filled by ground water. Polluted runoff from the parking lots will flow almost immediately to Boire stream and cause further erosion and degrading water quality. He said the Hydroterra report uses more reliable and correct site characterization data that quantifies and demonstrates that the proposal will result in both water quality and quantity problems and that other alternatives should be considered.

Mr. Nelson said other reasonable alternatives the Board should consider are:

1. Reducing the size of the building and parking lot and a plan that correctly quantifies and addresses the site characteristics and constraints.

He said the proposed plan has addressed only some of the water quality and quantity impacts, but has not gone far enough to avoid pollution and flooding.

2. Better evaluation by a hydrology model such as hydracids using correct assumptions of data to characterize existing hydrology.

He said this would demonstrate the realistic relationship between ground water and surface water to assure that the proposed plan adequately controls and treats runoff prior to discharge into the drainage channels.

3. Quantify both ground water and surface water flows in order to establish reliable data on volumes of storm water that can be recharged at this site.

He said data presented by Hydroterra demonstrates that recharge of the aquifer will not be achieved with the proposed plan.

He said it has not been demonstrated that the least damaging route and methodology have been selected and that what's being proposed is the best practicable alternative available.

He said is also has not been demonstrated that reasonable and acceptable impact mitigation procedures have been incorporated where necessary and appropriate to minimize wetland loss and

degradation.

He said it has not been demonstrated that the overall impact of encroaching into the buffer areas is necessary for productive use of adjoining buildable land is outweighed by the benefits thereby derived.

He said it has not been demonstrated that there will be no significant impact on the aquatic habitat of rare and endangered species.

At the request of the Chair Mr. Nelson provided his presentation as he had mentioned during his presentation that there were some detailed questions that he was leaving out.

Georgie Hippauf, Browning Avenue. Mrs. Hippauf said the four or five professionals here tonight were referred to as proponents. She said they are indeed proponents as they are hired hands. The opponents are intelligent, conscientious, tax-paying voters. She said she hoped the Board's judgment will be as carefully deliberative as has been those of her fellow citizens.

SPEAKING IN FAVOR - REBUTTAL

Atty. Gerald Prunier. Atty. Prunier said there was a question by Mr. Friou about the 1100 trees. These are in the pond area. There are probably another 1000+ trees in the buffer areas.

He said someone mentioned parking limitations. He said there is no limitation on the parking spaces that can be at this site. The only thing the Master's report said is that the plan showed 500 parking spaces.

He said parking lot pollution was talked about. They have it now and it is not treated. There is more pollution now than there will be under the proposed plan.

He said reference has been made to Mr. McKenna's letter. He said at the January 18 meeting Mr. McKenna was asked if he had read the drainage report from Hayner/Swanson. His answer was

"no." He asked how Mr. McKenna could make his calculations. He referred the Board to the letters that had been passed around earlier to the Board, specifically #2 & #3 from Hayner/Swanson and Sandborn, Head, & Associates that answer Mr. McKenna's questions concerning flooding downstream. He said that there could be some flooding downstream - not that there would be. He asked how Mr. McKenna could make that decision when he didn't even read the drainage reports. He said the proposed plan has over 40% open space. Not many retail buildings have that around this area.

He said that there was a question about snow. One of the requirements of the Conservation Commission is that they have an area for the storing of snow. This is shown on the plan.

He said automotive repairs were a concern of the Conservation Commission. They asked the applicant to go into great detail on how this would be managed and they explained how this aspect of the project would be handled.

Atty. Prunier said they have tried to make this site more compliant with the present wetlands ordinances. The present building was constructed prior to any wetlands ordinance.

Mr. Jenkins said that there was a question about the number of trips per day.

Atty. Prunier said the answer - 400+ was for the peak hour, not for the day. He said it's probably more like 1200 per day. Someone from the audience said 3700. There was further talk in the audience (could not be heard) and then somebody said 9000 trips per day.

Mr. Jenkins asked about the use of salt.

Atty. Prunier said it is not allowed in the Watershed Protection Area.

Mr. Jenkins asked how the parking lot would be treated.

Atty. Prunier said it would have to be done with sand.

SPEAKING IN OPPOSITION - REBUTTAL

Paul Johnson. Mr. Johnson said the current property owner bought the property having to know the property was severely constrained. Wal-Mart cannot be harmed because they don't have a stake in this property. They don't own the property. They also won't have a stake in the environmental consequences. They don't have any actual tie to the land in the community. He said Mr. Gordon is a nice gentleman, but he won't be around forever and what is decided tonight and built here will be.

He said Wal-Mart doesn't have a hardship. They would like to build here and be able to sandwich "Target" between their stores. They can build anywhere and there won't be a "blip" on their bottom line.

He said the site has a current tenant. The owner can dress up the property and make some improvements to make it look nicer if he wants to. He can develop in the same footprint and he doesn't think there would be a problem with that.

Mr. Johnson said in 1982 this Board's predecessors voted against retail development of the site. This was before people knew about wetlands and impervious runoff and the other things that people are now aware of. There was no Water Supply Protection District. There didn't have to be because it wasn't a problem.

He said now the City is at 36% impervious cover. The Center for Watershed Protection says that a parking lot, particularly a retail parking lot, is the worst possible use to have in a watershed - to say nothing of on top of running water.

He said the applicant cannot reasonably demonstrate hardship in this case. On the other hand, the City of Nashua and people in the meeting room may suffer tremendous hardship if this is approved, both in terms of their inability to get from point A to point B due to the traffic situation and also in terms of the protection and safety of the water supply.

He said the City has gone out on a limb with taxpayer money and votes to look at taking ownership of the water utility on the basis that the watershed and water supply are a public trust and need to be protected for all time. That commitment is called into serious question if the Board votes to allow a massive redevelopment.

He said the letter from Don Ware, Pennichuck Water, was based on Wal-Mart's data and Wal-Mart's data is biased. He said the Board is hearing primarily one side. Wal-Mart has the money - the infinite resources and the infinite time. He said the people in opposition had a couple of weeks to learn about this stuff. He said he walked from Townsend West all the way down to the U.S. Post Office on Saturday, walked the site and took some photographs. He said if the Board has to err, than he believes they have to err on the side of the public good and public safety.

Mr. Berthiaume said there are many issues. Overall he is not in favor of the proposal. He thinks traffic will be a big issue. The fact that they have proposed road improvements says that what they want will create more traffic.

Mr. Anderson said ... **unintelligible**... He said on the surface it appears to be an improvement over what is there now. He said he isn't sure that he would prefer to look at ... **unintelligible**...

Mr. Coffey said the concern he has is reasonableness. When the court first looked at this they ultimately ruled that some retail of the property is a reasonable use. He said what they are seeing now is that it has gone beyond what is reasonable for this particular piece of property.

He said the property has inherent limitations to it from an environmental point of view. Then you add the congestion that exists on the street itself and the number of trips - 9,000 cars a day is astronomical. This goes by reasonableness.

He posed the question: What is the hardship.

Mr. Rondeau said he also questions the reasonableness of the proposal. He posed the question of whether the encroachment into the wetlands and the changing of the wetlands could be reasonably avoided.

He said the second issue that is on his mind is the increased traffic. He said he travels Amherst Street quite a bit. He said there was a statement that the site currently is under-producing and the level of service is "F." He said this is unacceptable in his view. It is very difficult to get from one end of Amherst Street to the other. Even with whatever road improvements they can do, the traffic is going to be such that it will be a detriment to the public benefit.

Mrs. Douglas said she does not believe the request is in the public interest either. One is the issue of traffic congestion and the other is the environmental component, which includes water, wetlands, and the habitat. She said she could not support this request.

Mr. Jenkins said in 1982 the court allowed retail use on the site. At that time there was no wetland ordinance. Since that time the City does have a wetlands ordinance. Because of this and because of the buffers that go along with that ordinance, this is not reconstruction - it is new construction and therefore there is no hardship.

MOTION by Mr. Jenkins to deny the request for a special exception for working and filling within an other wetland and wetland buffer and a prime wetland buffer for redevelopment at 420 Amherst Street. He said this is primarily a new development because the footprint is being removed and changed. The wetlands ordinance came into play in 1991, after the construction of the existing building. The use is listed in the Table of Uses, Section 16-575. It will create traffic, which is more than reasonable for this site. The existing traffic has a level of service "F" and with the new improvements it might bring it up to a "D." He said the traffic study that was

presented was complicated and was not very clear. They had to present several plans to the City for review and the City chose Option #18, but he felt that the proposed traffic improvements for a short stretch of road isn't sufficient for this proposed development. It will be detrimental to the health and welfare of the residents of Nashua.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Jenkins to deny the variance to allow site development within the conservation zone at 420 Amherst Street. If the size of the building were reduced there would be no problem. The building footprint is too large for the lot and the required parking for a building of this size means that they cannot be within the wetland setback. It is not within the spirit and intent of the ordinance.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Jenkins to deny the use variance to expand a nonconforming use to permit a retail establishment at 420 Amherst Street. This doesn't have to be a non-conforming use variance because they could move the building and make it conforming and use would be reasonable. No hardship was proven.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

Request for Rehearing

None

Minutes

1/25/05

MOTION by Mr. Berthiaume to approve the minutes of 1/25/05 and place them on file.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

Regional Impact

The Board did not find any items of regional impact on the next agenda.

ADJOURNMENT

Mr. Jenkins called the meeting closed at 10:30PM

Susan Douglas
Clerk

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Taped