

The regular monthly meeting of the City Planning Board was held on March 16, 2011, in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher, Swope, Foss, Gross, Hicks, Meyer, and McClure (Alternate City Council representative, who arrived at 7:05 PM and was seated). Messrs. Woodward and Henninger, Ms. Hebert and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:00 PM a quorum was present, the Chair called the meeting to order.

## APPLICATIONS

### Review of Governmental Land Uses Pursuant to RSA 674:54

1. The **State of New Hampshire** proposes to revise the parking layout on Railroad Street, adjacent to the Graphic Services Building at **12 Hills Avenue. (#2010-41)**

#### Public Hearing

Mr. Woodward explained that the State of New Hampshire proposes to revise the layout of the parking spaces along Railroad Street, which is a City street southerly of Hills Avenue and which connects to Storrs Street. The Board had reviewed proposed renovations to the building at 12 Hills Avenue in October 2010 and requested that the State submit plans for their proposed parking revisions for review by the Board. The building renovations included a new stair tower which encroached into the Railroad Street right-of-way, and for which the State sought and received a license from the City Council for the encroachment. However, the license required that for all improvements including the parking layout, the State obtain City approvals prior to the initiation of any construction on the site.

(Ms. McClure arrived at 7:05 PM and was seated.)

Currently there are seven metered, parallel parking spaces on the east side of the street and twenty head-in, 90° spaces on the west side of the street up against the building wall. The latter spaces are used by State employees inasmuch as part of the land on which the spaces are located belongs in part to the State. Traffic flow is two-way and there are several loading docks interspersed with the parking spaces along the side of the State's building.

He reported that the State had submitted four scenarios for parking revisions. Three of the options would change Railroad Street to a one-way traffic flow while the fourth, the State's preferred option, would maintain two-way traffic. However, the State's preferred option would eliminate all of the City's metered parking spaces. The loss of the City's parking spaces was of concern to the City. With the new development just to the south along Theatre Street adding to demand and at the same time utilizing more of what has been available in the City's parking garage to the north, these parking spaces

will be increasingly important. A design where the State spaces are re-striped at an angle with one way traffic flow should allow retention of more of the City's parallel metered spaces.

There are refuse bins located along Railroad Street which also need to be accommodated and for which it would be beneficial to the downtown to have sited in a less obtrusive location.

Mr. Woodward reported that a revised layout was submitted earlier that day and City staff had not had an opportunity to review it. He reported that the revised layout preserves the two-way traffic flow and retains the City's seven metered parking spaces along the east side of Railroad Street, although one space appears to be located such that the maneuvering of a vehicle delivering to the State's property would encroach on the space. However, this layout closely approximates the way the spaces and the loading activities exist today and have existed for years. He also indicated that one staff comment he did receive was that the expanded sidewalk at the corner of Hills Avenue and Railroad Street adjacent to the proposed handicapped parking spaces should be constructed of concrete as opposed to asphalt.

Mike Connor, Director of Plant and Properties, and Mark Nogueira, Administrator of the Bureau of Public Works Design & Construction, both from the NH Department of Administrative Services, were present to answer questions from the Board.

Mr. Nogueira explained that the proposed alternative relative to truck access is the least objectionable option. None of the options they looked at were ideal. Trucks currently are able to maneuver to the loading docks without incident and the State proposes to continue that practice. They have also added two handicapped parking spaces.

Ms. Meyer asked if they would be open to the suggestion that a street tree be planted. Mr. Nogueira responded that he felt they could plant something in the island.

There was no one else who wished to speak for or against this proposal and the Chair declared the hearing closed at 7:18 PM.

#### Deliberations and Action

Mr. Henninger reported on the discussion at the City's Parking Committee meeting last month and indicated it was the Committee's preference to keep things as close to the existing conditions as possible.

Mr. Gross moved that the Planning Board indicate to the State of New Hampshire, the City Council, and the City Manager that the Board found the parking layout as revised to be acceptable, and further voted to make the following recommendations for additional revisions to the plan:

1. The refuse bins should be moved out of the Railroad Street right-of-way onto State property, preferably to the south side of the building at 12 Hills Avenue so

that they are not visually intrusive; and

2. The expanded sidewalk at the corner of Hills Avenue and Railroad Street adjacent to the proposed handicapped parking spaces should be constructed of concrete as opposed to asphalt, and a street tree should be included within this area.

Mr. Swope seconded. Motion carried.

### Minor Subdivisions

2. Application by **P & M Realty of Concord LLC** for approval of a subdivision of by virtue of creation of a land condominium on property located at **South Main Street and Langdon Avenue. (#2011-09)**

### Determination of Completeness

Mr. Henninger explained this proposal to create a condominium with two land units on a 35.93 acre property with frontage at two locations on South Main Street and along Langdon Avenue.

He reported that the application is complete and ready for public hearing.

Mr. Gross moved that the Planning Board determine the application to be complete and open the public hearing. Mr. Swope seconded. Motion carried.

### Public Hearing

Mr. Henninger explained this proposal to create a condominium with two land units on a 35.93 acre property with frontage at two locations on South Main Street and along Langdon Avenue. Land Unit 1 containing 1.50 acres is proposed at the northwest corner of the property at the intersection of Langdon Avenue and South Main Street. A 1.17-acre common area is proposed for that portion of Langdon Avenue controlled by the applicant and a portion of a future common private drive identified as Steam Street. The remaining 33.26 acres is included in Land Unit 2. This unit will contain the approved but not yet constructed Concord Steam co-generation facility. A Limited Common Area (Conservation Easement) is proposed to encumber 13.54 acres consisting of a portion of the South End Marsh, leaving 19.72 acres for future development of which 0.42 acres along South Main Street is separated from the main development site off Langdon Avenue by the proposed conservation easement. The draft condominium documents indicate that up to six future land units may be subdivided from Land Unit 2.

He reported that a site plan for Lot 1 has been submitted for Evolution Rock and Fitness LLC, and is on the Planning Board agenda for determination of completeness later this evening. If determined complete a hearing will be held on the site plan application on April 20, 2011.

He reported that Lot 2 previously received site plan approval from the Planning Board for a co-generation facility for Concord Steam with a drainage easement for the City's 36-inch diameter storm drain across the property, a conservation easement for the portion of the South End Marsh located on this site, and an agreement to convey an easement for Langdon Avenue as a future City Street. These easements need to be included and executed as part of this subdivision.

In addition, City staff has recommended a general utility easement be conveyed to the City over Common Area A, including that portion of Langdon Avenue controlled by the applicant. This would help address issues with many public and private utilities which exist in this area. A number of utility lines do not have defined easements or, where easements are defined, the actual improvements may be partially outside the defined easement area. It will likely be a number of years before the City will be in a position to accept Langdon Avenue as a City street. The general utility easement would facilitate any utility work which might need to be undertaken in the interim period before Langdon Avenue is reconstructed and becomes a municipal street.

Mr. Henninger reported that the Conservation Commission reviewed the proposed conservation easement and provided a number of comments on the conservation easement language which need to be addressed by the applicant. The Commission also requested information on any Brownfield studies and requested that the debris or materials dumped within the Conservation Easement be removed and the disturbed areas re-vegetated. The Commission also noted that the proposed trails are not shown nor is access to the trail network provided through lot 2. The Commission will formally consider this project at their next meeting on April 13, 2011.

Mr. Drypolcher asked for an explanation of the concern relative to the extension of approval of variances by the Zoning Board of Adjustment. Mr. Henninger explained that the property owner had received a number of variances for the construction of the Concord Steam facility. They are now reaching the end of their approval period, having received the maximum number of extensions allowed in the Zoning Ordinance.

Timothy Golde from Golde Planning and Design Consultants was present on behalf of the applicants to answer questions from the Board.

At 7:37 PM there was no one else who wished to speak for or against this application and Mr. Gross moved that the Planning Board recess the public hearing on this application to the Board's regular meeting on April 20, 2011. This will provide time for concerns expressed by City staff and the Conservation Commission to be addressed by the applicant, and will allow this application to be considered simultaneously with the site plan application for Evolution Rock and Fitness LLC as proposed on Land Unit 1. Ms. Meyer seconded. Motion carried.

### Major Subdivisions

3. Application by **R.J. Moreau Communities Inc.** for approval of a subdivision of property located westerly of **Emily Way and Kyle Road**. Along with this

application is a request for a Conditional Use Permit pursuant to Section 28-4-3(d), Disturbance to a Wetland Buffer, of the Zoning Ordinance. (#2011-07)

### Public Hearing

Ms. Hebert explained this proposal to create 22 new single family residential lots, and reserve one 77.38-acre parcel for future development. The applicant has submitted an application for a Conditional Use Permit for impacts to a wetland buffer. There is a small area of wetland buffer impact caused by the grading associated with the roadway construction. The impact is necessary in order for the proposed roadway to connect with the adjacent condominium development known as The Vineyards.

She reported that the applicant has submitted a waiver request to Sections 16.01(4) and 16.03(4) of the Subdivision Regulations to not include the contour lines at 2-foot intervals and the existing wetland boundary on proposed Lot 117. There is no development proposed at this time on Lot 117 as this is the 77.83-acre remainder lot reserved for a future phase.

The applicant has also requested a waiver to Section 13.01(8) to not provide a traffic study. The proposed subdivision is estimated to generate 211 new vehicle trip ends per day. The Subdivision Regulations require a traffic study when a project is expected to generate greater than 20 peak hour vehicle trip ends or more than 200 vehicle trip ends per day. The applicant believes that the study is unnecessary because the project will be connecting Emily Way and Kyle Road to Cabernet Drive, which will provide residents with more options for entering and exiting the project. They also feel the project will benefit from a number of traffic improvements that were funded and built during the construction of The Vineyards. Although these improvements will benefit the future residents of the Vintage Estates subdivision, they cannot be applied as a credit for off site improvements constructed for this development.

Ms. Hebert reported that the Merrimack Valley School District/Concord School District dividing line crosses through the property. The proposed subdivision has been designed so that all of the proposed lots fall within the Merrimack Valley School District. However, small portions of Lots 115 and 116 are located in the Concord School District. The plan will need to include a provision restricting the construction of houses to the portion of the lot that lies within the Merrimack Valley School District.

She reported that the Planning Board reviewed and approved a companion subdivision on August 18, 2010. The minor subdivision adjusted the lot line between The Vineyards of Concord property and the property to the north, to create the 88.25-acre parcel which consists of the project area for this subdivision application. The minor subdivision will need to be recorded as a condition of approval for the Vineyards Estates subdivision.

She reported that the project involved extending a new road from the terminus of the roundabout at the Emily Way/Ty Lane intersection approximately 1,000 feet to intersect with a 200-foot extension of Kyle Road at a proposed new roundabout. The new road would continue through the roundabout to connect with Cabernet Drive, which is a

private road within The Vineyards development. The right-of-way for the public street terminates at proposed Lot 117 and an existing access easement crosses through proposed Lot 117 to connect with Cabernet Drive. Overall, the project would involve the construction of approximately 1,600 linear feet of new road.

The section of public road southerly of the proposed roundabout would be difficult for the General Services Department to safely maintain during the winter months, because there is no place for the trucks to turn around. R.J. Moreau Communities would like to plow this short section of road, in conjunction with the winter maintenance of the access easement to Cabernet Drive. A recommended condition of approval will be for the City to enter into a maintenance agreement with R.J. Moreau Communities for the plowing of this short section of road. The City Council will need to approve the maintenance agreement.

She reported that the subdivision plan includes the layout of approximately 140 feet of right-of-way for a future extension of Kyle Road in a westerly direction, into the 77-acre parcel reserved for future development of Lot 117. The mapped line of a future street connecting Bog Road to Kyle Road has been shown on the plan. This was approved by the Planning Board in 2009 during the review of a rezoning request. The proposed extension of Kyle Road and the construction of the roundabout are consistent with the mapped line of a future street.

Ms. Hebert explained that a number of traffic improvements were implemented during the construction of the Sandwood Crossing project and the Vineyards of Concord, including sidewalk improvements along Bog Road and improvements to the intersection of Bog Road with Fisherville Road and Borough Road with Fisherville Road. However, the proposed subdivision will increase traffic through the Alice Drive neighborhood. The Engineering Division has determined that the existing roundabouts at the Alice Drive/Kyle Road and Alice Drive/Emily Way intersections are not functioning properly. The roundabouts were constructed under an earlier standard, with a smaller diameter for the inside landscaped island and do not slow traffic as intended. Cars tend to drive straight through the intersection creating a dangerous situation for the neighborhood. The Engineering Division has recommended modifying the roundabout to enlarge the diameter of the center landscape island. The applicant has indicated his willingness to contribute funds for the improvement of the roundabout at the Alice Drive/Kyle Road intersection as part of this application, and to contribute additional funds for the Alice Drive/Emily Way roundabout during the next phase of construction.

She reported that a water study analysis had been prepared to determine whether the proposed subdivision would be adequately served by the City's public water system. The study indicated that the homes would have inadequate water pressure on the second floor under certain scenarios of peak water use. There is an adequate supply of water to serve the neighborhood but, due to pressure loss through the city's standard back flow prevention check valves, the water pressure on the second floor would be below the recommended 30 to 50 PSI. The water pressure deficiencies can be overcome

with a combination of increased pipe size and installation of pumps for each dwelling unit.

Proposed Lots 95 and 96 will be served by a private sewer force main system located outside of the City's right-of-way. The subdivision plan includes a note stating that the City will not be responsible for the maintenance of the force main system.

She reported that the stormwater treatment involves the construction of a closed drainage system draining into a wetland with an extended detention treatment pond which will hold water for a longer period of time following a rain event. This allows pollutants to settle out of the water, providing treatment before discharging into the existing storm drain system on Emily Way, which discharges into the existing detention pond within the Sandwood Crossing development. The drainage plan also includes the construction of a pocket pond and treatment swale on proposed Lot 117.

She reported that the applicant had agreed to provide a "no cut" vegetative buffer behind the proposed lots on the east side of Vintage Row to protect the properties along Ty Lane from stormwater run off.

She reported that the applicant has been asked to provide the location of the existing wells on the adjacent properties, if they are located within 100 feet of the project boundary. The area within the NH Department of Environmental Services 75-foot protective well radius for private wells is included in the City's Aquifer Protection District, and the extent to which a neighboring well's protective radius may cross into the project area needs to be identified. The homes on Blueberry Lane have private wells and the Sandwood Crossing development caused a private dug well to fail in this neighborhood. City staff would like to prevent this from happening again, therefore, the position and existing condition of these wells needs to be provided.

Section 28.04(6) of the Subdivision Regulations requires the planting of one street tree for every 30 feet of road frontage. The plans submitted have omitted the street trees, but the applicant has indicated they are in the process of preparing the landscape plan by a New Hampshire licensed landscape architect. Tree and/or shrub plantings should also be included around the proposed detention pond.

Ms. Hebert reported that the applicant had asked if the required street trees could be planted in an easement within 10 feet of the edge of the right-of-way. The City's standard cross section for a Residential Urban Street includes a 5-foot grass strip and street tree plantings within this grass panel. Section 28.04(6) allows the applicant to plant the trees in a 10-foot easement with the approval of the Planning Board. The City's typical cross-section was drafted incorrectly and includes the placement of the gas utility within the grass strip. The gas main can easily be moved to another location within the right-of-way to accommodate the tree planting.

She reported that the Conservation Commission had reviewed the proposed wetland buffer impacts and did not object to the Conditional Use Permit request, but did

recommend that the applicant consider moving the proposed future access road northerly to avoid wetland impacts during the second phase of construction.

Ms. Foss noted that, jurisdictional wetland or not, the extent of ponding raises a lot of red flags about how this development will impact the flow of water. Ms. Hebert indicated that City staff had also been concerned about the water, but inspectors from City Engineering had been out on the site during construction of the existing homes and had not observed standing water.

Mark Vanson from Bedford Design Consultants and Reggie Moreau as applicant were present to answer questions from the Board.

Mr. Vanson explained that the ponding seems to be an oddity because he had made a number of visits to the area over the last few years and had never observed any standing water. There are no emergent wetland plants. The proposed utilities are fairly shallow. He felt their particular proposal would not lower the groundwater. They do not feel they are proposing any adverse impact to existing wells in the neighborhood.

Ray Gordon, resident of 25 Ty Lane at the north end of the development, explained that this would be a great addition to the neighborhood and would fit in with the existing character of the neighborhood. He liked that it will be single family homes and won't increase traffic in the neighborhood. However, his concern was about the standing water. He explained that he walks through the area shown on the aerial photograph as being wet and it is wet every spring. It takes weeks to drain in the spring. He does not remember seeing water in the summer or fall. He wanted to be sure he did not get more water in his yard than he currently gets. He explained he does get some water for a couple of weeks each year. As long as the tree line is protected, he felt it would probably prevent further water flow to his yard. He also asked if this development will affect the water pressure in the existing homes.

Mr. Woodward asked if he had water pressure problems presently and Mr. Gordon responded that he did not and he did not want any in the future. Mr. Woodward responded that they may not be at quite the same elevation as the new development.

Mr. Moreau explained that conditions in the neighborhood will be the same as they are now. There are no water volume issues, as the City's water tank is already there. They plan to increase the size of the water line to each house and to install booster pumps in these homes. They have also tried to address concerns mentioned by the abutter regarding standing water in the back yard.

At 8:15 PM there was no one else who wished to speak for or against this application and Mr. Swope moved that the Planning Board recess this hearing pending response by the applicant to the concerns of the City staff and to provide additional time to research the location and existing condition of the private wells on Blueberry Lane. Mr. Gross seconded.

Ms. Hebert noted that the applicant needed direction from the Board relative to placement of street trees. Ms. Meyer felt that they should be in the landscape strip between the curb and the sidewalk. Members agreed.

Ms. McClure asked what recourse homeowners had if there was damage to adjacent wells. Ms. Hebert responded that in the Sandwood Crossing situation, the City coordinated the extension of municipal water to those property owners affected by the new construction, but it is really a civil matter.

Ms. Foss asked if there were other instances where there are detention facilities on an actual lot. She felt it was unusual to have one on an easement on a proposed lot and asked if it was an acceptable situation. Ms. Hebert responded that there are instances where drainage easements are on a private lot. These drainage easements would be to the City so it would become a matter of City maintenance.

Ms. McClure suggested including direction to staff to review water shown on the aerial. Mr. Henninger responded that the water table in that area is relatively high and that some of the situation was caused by an earlier developer stripping the topsoil.

Motion to recess the hearing carried.

#### **Minor Site Plan and Conditional Use Permit Applications**

4. Application by **St. Paul's School on behalf of Florida Tower Partners LLC** for a conditional use permit pursuant to Section 28-5-23, Wireless Telecommunications Equipment, of the Concord Zoning Ordinance, on **Silk Farm Road on the campus of St. Paul's School at 325 Pleasant Street. (#2010-42)**

(Ms. Foss recused herself and left the table.)

#### **Determination of Completeness**

Mr. Woodward reminded the Board that this application had been determined incomplete in November. At that time, the Planning Board requested that additional information be submitted to support the application, and further requested that a third party expert be hired to review the Conditional Use Permit application and Radio Frequency Study. The FCC issued an Order defining a reasonable time period that land use boards need to act on an application for a new wireless tower, creating a "shot-clock" for applications. Boards need to act within 90 days for applications for new antennas (co-location) and within 150 days for the construction of a new tower. The Order also created a deadline for land use boards to request additional information. Any additional information to make the application complete needs to be requested within 30 days of the receipt of the application. In terms of the Federal Communications Act and its 150 day maximum review period from the time of submittal, the FCC has clarified that if an application is determined to be incomplete, the clock is stopped. When the application is determined to be complete, the clock will re-start. Mr.

Woodward noted that if the Board determines the application complete, then this will be the 31<sup>st</sup> day of the 150-day review period.

Ms. Hebert explained this proposal to construct a monopine wireless telecommunications tower. Florida Tower Partners would lease a 10,000 square-foot area off of Silk Farm Road on the St. Paul's School campus at 325 Pleasant Street. The additional information requested by the Board has been provided and the City has contracted with IDK Communications to provide a third party review of the application. The cost of the review will be paid for by the applicant; pursuant to RSA 676:4-b.

She reported that the application is complete and ready for public hearing.

Mr. Gross moved that the Planning Board determine the application to be complete and open the public hearing. Mr. Swope seconded. Motion carried with Ms. Foss abstaining from discussion and vote.

#### Public Hearing

Ms. Hebert explained this proposal to construct a monopine wireless telecommunications tower. Florida Tower Partners would lease a 10,000 square-foot area off Silk Farm Road on the St. Paul's School campus at 325 Pleasant Street. The site is currently undeveloped with an open area that is maintained as a hay field. The proposal includes a 100-foot x 100-foot fenced enclosure for the proposed tower and associated equipment storage shelters and utilities.

She explained that, pursuant to Article 28-5-23(b)(1) of the City's Zoning Ordinance, the installation of a wireless telecommunications facility requires a Conditional Use Permit from the Planning Board as well as Architectural Design Review of the proposed installation. The requirements of the application include the items specified in Article 28-5-23, as well as the items required for a site plan application.

The applicant included several waiver requests to the site plan regulations; however, the installation of the wireless telecommunication structure is reviewed by the Planning Board as a CUP. Although the CUP is reviewed in accordance with the Site Plan Regulations with regard to content and procedure; the Board does not typically grant waivers unless a Site Plan application is required. Article 28-5-23 is part of the Zoning Ordinance and the Board cannot waive any items of the Zoning Ordinance.

She reported that the Zoning Board of Adjustment granted a variance to Article 28-5-23, Wireless Telecommunications Equipment, Section (h)(1), to permit a tower height of up to 170 feet where the height limitations would only permit a tower with a maximum height of 97 feet.

She reported that Florida Tower Partners plans to lease one antenna to AT&T and the tower would have five additional opportunities for other carriers to co-locate so that the tower would be able to accommodate six telecommunication carriers. This satisfies the

City's requirement to maximize the opportunities for co-location, in theory minimizing the need for additional towers.

She reported that the 100-foot x 100-foot leased area will be enclosed with a 6-foot high chain link fence topped with barbed wire. Within the fenced compound, AT& T will construct an 11.5-foot x 20-foot equipment shelter at the base of the tower. Space has also been reserved for additional carriers to install small equipment shelters or cabinets.

Ms. Hebert reported that the applicant has submitted Sheet Z7, entitled Elevation View and Details, which provides a generic sketch of a monopine and states that the proposed Florida Tower Partners 170 foot monopine is to be designed by others. The applicant has also provided photographs of a monopine tower and utility structure.

She reported that, although Silk Farm Road is a discontinued street, the City had retained a pedestrian, bicycle, and emergency access easement along the roadway. The applicant needs to provide sufficient landscaping to screen the 100-foot x 100-foot compound from trail users. The applicant has provided a plan illustrating evergreen trees surrounding the perimeter of the compound, but does not indicate the type or size of trees proposed.

In support of the Florida Towers application, AT&T has provided a Radio Frequency Study to demonstrate the need for the tower and also to confirm that there are no other existing structures that would provide adequate AT&T coverage to the targeted service area. The study also reviewed five alternative locations for the construction of a new tower. These locations included possible sites for new tower installations as well as opportunities to co-locate on an existing tower or structure. The report includes a series of maps illustrating AT&T coverage under the various scenarios for service, including the alternative locations and alternative heights of the tower at Silk Farm Road. AT&T has determined that there are gaps in its service to the west of Fruit Street and along Route 202, I-89 and Route 13 in Concord. There are also gaps in service at the St. Paul's School campus and Concord Hospital. The RF Frequency report concluded that there were no existing towers or structures that would be suitable to fill in the AT&T service gaps, and also concluded that the proposed tower height of 170 feet is necessary to provide in-building coverage at Concord Hospital.

Ms. Hebert explained that the Planning Division has contracted with IDK Communications to provide a third party expert review of the Radio Frequency Report and Conditional Use Permit application. The cost of the review will be paid for by the applicant; pursuant to RSA 676:4-b.

She reported that Ivan Pagacik, of IDK Communications is in the process of reviewing the application and anticipates completing the analysis the week of March 21<sup>st</sup>. In the interim he has presented two observations for the Board to review including moving the tower location away from I-89 towards the existing maintenance facility at St. Paul's School and asking Concord Hospital if they would allow the utilization of an indoor bi-directional amplifier system with distributed antennas to serve the hospital campus or

the provision of a site at the hospital campus to use together with the site at Silk Farm Road.

Ms. Hebert reported that the City has learned that Concord Hospital is in the process of finalizing an agreement with AT&T to facilitate service within the main hospital building. The hospital allows for indoor amplifier systems. The hospital offered this option to providers in the past several years and two other providers have taken advantage of this. AT&T has only recently decided to expand their service at the hospital in this manner. The applicant has indicated that the proposed tower is necessary to provide coverage to the entire hospital campus, and the proposed system at the hospital will only provide service inside the main hospital building.

She reported that the applicant has also provided a Visual Resource Evaluation Report summarizing the results of balloon tests conducted on July 27, 2010 and December 16, 2010. The photographic log notes eleven locations where the tower was partially visible. The Report includes photo simulations of a monopine tower at the various locations where the balloon was visible. City staff also took photographs of the balloon in July and December, and noted that the balloon was also visible from various locations on I-89, Langley Parkway, Concord Hospital, and Clinton Street. She reported that the applicant had also provided photo simulations of a non-stealth monopole tower, one of standard design, and one referred to as a low profile tower.

Ms. Hebert reported that the Architectural Design Review Committee had reviewed the application and advised the applicant that they would prefer to see a stealth monopole structure similar to the stealth monopole towers the Planning Board has previously approved on Integra Drive and Industrial Park Drive. This type of tower places the antenna equipment inside the tower, and does not have cages of equipment on the exterior of the pole. The Design Review Committee also requested plans detailing the proposed tower, equipment structure, fencing, and landscaping to screen the facility from Silk Farm Road.

Randy Howse from Florida Tower Partners was present on behalf of the applicant and introduced Kevin Breuer from AT&T.

Mr. Breuer explained the coverage available and the coverage AT&T needed in this area, as well as what would be gained with this installation, particularly as it would affect Concord Hospital. He noted that it was not just the hospital that they were trying to serve. Lowering the height of the tower would mean losing coverage along Route 202 and some of the hospital campus. I-89 and most of the St. Paul's School campus would probably not suffer. Coverage of I-89 is an important consideration in this proposal. This tower should take care of Concord's service problems along I-89.

Mr. Howse introduced Shannon McManus from KJK Wireless who indicated they have approached the hospital a number of times and were advised that it is not an option to install a tower on their property.

Ms. Meyer asked what coverage they have in this area and Mr. Breuer provided maps showing existing coverage as well as coverage with a tower height of 147 feet and a tower at a height of 167 feet.

Mr. Howse indicated that AT&T is upgrading the main building at the hospital campus with an in-building system but is not providing any improvement of service to the other buildings on the campus.

Mr. Breuer explained that their signal does not travel as far as the other carriers because they have a limitation in their license from the FCC to 1900 megahertz.

Mr. Swope did not feel the difference between a tower of 150 feet and one of 170 feet was significant. He also felt that if the hospital was not willing to support towers on their property, then he did not see why the Planning Board should work hard to provide coverage to the campus.

Mr. Woodward reported on his conversation with a vice president of Concord Hospital, who explained that they have historically not been interested in being a setting for a full-fledged commercial telecommunications system on their property. He then started the conversation with the hospital about allowing the utilization of an indoor bi-directional amplifier system with distributed antennas to serve the hospital campus, and was given hope that that might be an option they would be willing to pursue that.

Mr. Hicks asked if the tower was decreased in height by twenty feet, would that then mean looking at additional tower locations because there would be fewer opportunities for collocations. Mr. Breuer responded that would be the case.

Mr. Gross asked if there is any reduction in technical effectiveness with a stealth monopole over the monopine tower. Mr. Breuer responded that they would need more space within the stealth pole in order to do what they would otherwise be able to do with the other styles of towers.

Mr. Gross was of the opinion that there is no appearance advantage visually to the monopine installation over other designs. It does not usually blend into the surrounding forest any better than the other towers.

Mr. Howse indicated that they have offered to change their design from the monopine to the low profile monopole.

John Favreau from Infinigy Engineering reported that he had recently had a conversation with the State Historic Preservation Office regarding the option of changing from the monopine design to a low profile monopole and learned that the low profile monopole would be their preference.

Mr. Howse reported that the variance granted by the Zoning Board of Adjustment was granted based on the monopine design. The applicants did not want to go back through the approval process with the Zoning Board to get that changed. Otherwise, he

indicated that they were happy to use the low profile monopole. He also noted that the tower will be visible from some spots on I-89. Cutting off 20 feet will not change the visual impact very much but it will affect the collocation opportunities.

Ms. McClure asked if they had an economically viable project at 150 feet and Mr. Howse responded they would but it would not maximize service to residents of Concord. They have Zoning Board of Adjustment approval at the 167 foot height.

Mr. Woodward introduced Ivan Pagacik from IDK Communications who was contracted on the Board's behalf to review the application by Florida Tower Partners and the associated engineering by AT&T for a wireless site at St. Paul's School. Mr. Pagacik explained that they had requested additional information for their review and they had recently received that information. Consequently, they had not completed their analysis but expected it to be complete in another week. In the meantime, he reported they had made the following observations:

1. In looking at the proposed area for the tower and its viewshed impact, moving the tower further away from I-89 toward the existing maintenance area at St. Paul's might be a better option.
2. One of the areas of concern identified in the applicant's analysis is Concord Hospital and its in-building coverage. He had suggested that the applicant look at either utilizing an indoor bi-directional amplifier system with distributed antennas to service Concord Hospital or the possibility of using a site at Concord Hospital in conjunction with the proposed location. This would allow for a lower antenna height at the proposed location as indicated on the coverage analysis plots depicting the other targeted areas, as well as improved in-building coverage in the general area of Concord Hospital.

In answer to a question by Mr. Drypolcher, Mr. Pagacik explained the scope of analysis included validating coverage, making a recommendation relative to tower height, reviewing gaps in existing coverage as well as the alternate sites the applicant had evaluated, and the level of coverage of those sites.

Mr. Drypolcher noted that the Planning Board had received a letter from the New Hampshire Audubon Society in which they indicated that they would prefer a stealth monopole over the monopine or the standard monopole.

At 9:44 PM, Mr. Swope moved that the Planning Board recess the hearing to April 20, 2011, to allow time for its expert consultant, IDK Communications, to complete the review of the Conditional Use Permit application and Radio Frequency Study, and to allow the applicant the opportunity to contact the administration of Concord Hospital to discuss the possibilities of locating an antenna on a building on the hospital campus which would provide for AT&T wireless telecommunication service on the campus outside of the hospital building itself. Mr. Gross seconded, and suggested that the Planning Board offer the assistance of the City Planner to convene the parties and

facilitate the discussions. Motion carried with Ms. Foss abstaining from discussion and vote.

### Major Site Plan Applications

5. Application by **Concord Hospital Inc.** for a site plan of property located at **250 Pleasant Street. (#2011-11)**

#### Determination of Completeness

Mr. Henninger explained this proposal to construct two additions to Concord Hospital, adding a total of 10,096 square feet of new hospital space in the rear of the main hospital building in the service area.

He reported that the application was complete and ready to be scheduled for public hearing.

Ms. Foss moved that the Planning Board determine this application to be complete and schedule a public hearing for the Board's regular meeting on April 20, 2011. Mr. Gross seconded. Motion carried.

6. Application of **Milano Real Estate Associates LLC** for a site plan of property located at **313-317 Loudon Road**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-4-3(d), Disturbance to a Wetland Buffer, of the Zoning Ordinance. **(#2011-04)**

#### Public Hearing

Mr. Henninger explained this proposal to construct an 11,650 square-foot multi-tenant retail building on the last vacant lot at the Milano-Vincenza commercial condominium development behind the Newick's restaurant on Loudon Road. In 2006, the Planning Board approved a smaller, 10,600 square-foot retail building at the same location. The applicant is planning to construct 9,850 square feet initially, but will be completing all site improvements except for the building pad for a planned 1,800 square foot future addition. The development also would include the reconstruction and expansion of a parking area to the west of Newick's. A Conditional Use Permit application to disturb 4,783 square feet of wetland buffer has been submitted for the expansion of the parking area.

He reported that all utilities were in place and stubbed to the site. The project drainage system has been designed for the overall development and has been constructed. Only a few catch basins need to be constructed or relocated to complete the drainage system. A traffic study was previously provided for the overall development, and offsite improvements have been completed to address access issues along Loudon Road. No new curb cuts or driveways will be required. All access will be from the internal access road leading to traffic signals adjacent to Jared's on the west and to Ruby Tuesday on the east.

He explained that when this application was originally approved and the site cleared and graded, the required wetland buffer on the west side of the site was 30 feet in width. Today, the wetland buffer requirement is 50 feet in width. The applicant has requested a Conditional Use Permit to disturb 4,783 square feet of wetland buffer to construct a driveway around the side of the proposed building. The amount of disturbed area, though in a different location, is roughly equivalent to what would have occurred under the original application. The area proposed to be altered was originally a farm field and was re-contoured when the first phase of this project was constructed in the 1990's.

Mr. Henninger reported that the Conservation Commission reviewed the Conditional Use Permit application to disturb 4,783 square feet of wetland buffer. The applicant had submitted a planting plan for restoring the wetland buffer, and the Conservation Commission recommended approval of the Conditional Use Permit with the modification that the planting plan be diversified to enhance the habitat for birds and wildlife.

He reported that a major concern from the perspective of the neighborhood along the northerly side of Old Loudon Road has been the screening of mechanical equipment, loading areas, and lighting. The applicant proposes to screen all roof top equipment and provide all lights with full cutoff fixtures. The applicant has revised the lighting plan to eliminate the two pole lights behind the building next to Old Loudon Road with two wall packs. The most current lighting plan still shows the two free standing lights. The rear of the building is being painted a dark tan to reduce the reflectivity of the affixed lighting.

The proposal results in an increase of 7,729 square feet of impervious area over what was originally approved by the Planning Board. The site drainage system was designed for a greater amount of impervious surface than what was approved in 2006 by the Board. The Engineering Division has found the drainage design to be acceptable. The only new drainage improvements required are the construction of catch basins and extensions of existing drain lines to reach the catch basins.

He reported that, at the request of abutters and City staff, additional evergreen trees will be added to the rear buffer and a number of the ornamental trees at the front of the new building are to be converted to shade trees. City staff has recommended that additional landscaping and/or fencing be set aside in the project budget to cover any supplemental plantings which may be required once the construction is complete, in order to mitigate the impacts to the residential abutters on the north side of Old Loudon Road. The homes across Old Loudon Road are higher in elevation than this site and look down onto the commercial properties along Loudon Road.

Mr. Henninger reported that the Architectural Design Review Committee had reviewed the revised architectural elevations and site plan and recommended approval subject to the changes to the landscape plan to substitute shade trees for about half of the ornamental trees in the front of the building as noted by City staff and to provide additional evergreen trees in the Old Loudon Road Residential District buffer.

He reported that plans for project signage have not yet been submitted for review.

Mr. Gross raised the question of noise from delivery trucks as well as from rubbish removal and asked whether the proposed buffer would be effective. Ms. Meyer agreed with the concern and suggested that there be some restrictions about rubbish removal and delivery times. She felt that was more of an impact than the visual concerns, especially in the summer.

Matt Peterson from Hillside Design was present on behalf of the applicant and explained the prospective tenant has a local presence and has one truck that services all the stores in New Hampshire. That truck now delivers to the Concord store once a week, on Monday afternoon. He reported the applicant will be willing to place time constraints for waste removal.

Michael D'Amante from Milano Real Estate Associates was also present but did not speak.

Bob Haverty, of 321 Loudon Road, spoke in favor of the application.

There was no one else who wished to speak for or against this application and the Chair declared the hearing closed at 10:19 PM.

Deliberations and Action on Applications  
Deliberations and Action on Architectural Design Review

Mr. Gross moved that the Planning Board grant Architectural Design Review approval of modifications to the site at 313 and 317 Loudon Road and for a new retail building at 313 Loudon Road, subject to the following condition:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of revisions to the landscape plan as recommended by the Architectural Design Review Committee and the Conservation Commission shall be obtained from the Clerk of the Board.

Mr. Swope seconded. Motion carried.

Mr. Gross moved that the Planning Board grant the Conditional Use Permit subject to condition that the applicant shall provide additional landscaping as may be needed to implement the landscape buffer along Old Loudon Road to the satisfaction of the Clerk of the Board. The applicant will consult with the immediate residential abutters on the north side of Old Loudon Road for their recommendations. The City Planner shall consider the recommendations of the abutters prior to requiring any additional buffer plantings or fencing along the Residential District Buffer along Old Loudon Road. Mr. Swope seconded. Motion carried.

Mr. Gross moved that the Planning Board grant conditional site plan approval of modifications to the site at 313 and 317 Loudon Road and for a new retail building at 313 Loudon Road, subject to the following standard and special conditions, with an additional special condition as noted:

#### Standard Conditions

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions. No construction activity may commence prior to the preconstruction conference.
2. Traffic impact fees shall be assessed for any construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 3, Transportation Facilities Impact Fee per Variable Unit.
  - a. Transportation Facilities - Retail (5,001 SF to 100,000 SF)

#### Special Conditions

3. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of revisions to the landscape plan as recommended by the Architectural Design Review Committee and the Conservation Commission shall be obtained from the Clerk of the Board.
4. Prior to the issuance of a certificate of occupancy, the applicant shall provide additional landscaping as may be needed to implement the landscape buffer along Old Loudon Road to the satisfaction of the Clerk of the Board. The applicant will consult with the immediate residential abutters on the north side of Old Loudon Road for their recommendations. The City Planner shall consider the recommendations of the abutters prior to requiring any additional buffer plantings or fencing along the Residential District Buffer along Old Loudon Road.
5. Deliveries and dumpster servicing shall take occur between the hours of 7:00 AM and 7:00 PM, and in compliance with Article 13-6, Noise, of the City of Concord Code of Ordinances..

Ms. Foss seconded. Motion carried.

7. Application by **P & M Realty of Concord LLC on behalf of Evolution Rock and Fitness LLC** for a site plan of property located at the corner of **South Main Street and Langdon Avenue**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-7-11(b), Construction of Fewer Parking Spaces, of the Zoning Ordinance. (#2011-10)

#### Determination of Completeness

Mr. Henninger explained this proposal to construct a 13,032 square foot indoor competitive rock climbing facility and fitness center on a 1.50-acre proposed condominium land unit at the corner of South Main Street and Langdon Avenue.

He reported this application was complete and ready to be scheduled for public hearing.

Mr. Gross moved that the Planning Board determine this application to be complete and schedule a public hearing on April 20, 2011. Mr. Swope seconded. Motion carried.

8. Application of **Public Service Company of New Hampshire (PSNH)** for a site plan of property located at the end of **Farmwood Road**. Along with this application are requests for Conditional Use Permits pursuant to Section 28-2-4(j) Table of Principal Uses, Use K-11, Essential Public Utilities and Appurtenances, and 28-4-3(d) Disturbance to a Wetland Buffer, of the Zoning Ordinance. (#2011-06)

#### Public Hearing

(Mr. Swope recused himself and left the table.)

Ms. Hebert explained this proposal to expand the existing gravel substation yard at the end of Farmwood Road by 16,550 square feet. The proposal involves relocating the existing fence approximately 60 feet to the north. The gravel yard area would increase from 91,300 square feet to 107,850 square feet. A similar expansion was approved by the Planning Board in 2006, which expanded the substation yard approximately 60 feet to the east. The larger yard will allow for the installation of additional capacitor banks.

She reported that a Conditional Use Permit is required for the expansion of the use pursuant to Article 28-2-4(j), Table of Principal Uses, Principal Use K-11, essential public utilities and appurtenances, of the Zoning Ordinance. PSNH states in its application that the expansion is necessary to better serve their customers.

She reported that the applicant had also applied for a Conditional Use Permit to impact 19,000 square feet of wetland buffer area at the end of Farmwood Road. The proposal would involve filling 6,600 square feet of scrub-shrub emergent wetland on the northern perimeter of the substation yard. The wetland buffer impacts also include the construction of a small stormwater detention pond along the northern edge of the substation yard. The applicant has received approval from the NH Department of Environmental Services for the Wetlands Dredge and Fill Permit to disturb 6,600 square feet of wetland area.

She reported that the project has been classified as a Major Site Plan because the proposed increase in impervious surface exceeds 10,000 square feet inasmuch as the proposal includes 16,550 square feet of new impervious surface.

She explained that Snow Pond Brook Outlet is located to the south of the gravel yard, and the stream is included in the Shoreland Overlay Protection District which has a 75-foot protective buffer. The proposed expansion does not encroach into this setback.

Ms. Hebert reported that the Conservation Commission had discussed the proposed impacts to the wetland buffer and wetlands and did not object to the project.

Amy Sanders from CLD Consulting Engineers was present to answer questions from the Board on behalf of the applicant.

There was no one else who wished to speak for or against the application and the Chair declared the hearing closed at 10:28 PM.

#### Deliberations and Action on Application

Mr. Gross moved that the Planning Board approve the Conditional Use Permit pursuant to Article 28-2-4(j), Table of Principal Uses, Principal Use K-11, essential public utilities and appurtenances, of the Zoning Ordinance to permit the expansion of the use. The proposed expansion is necessary to better serve the PSNH customers in Concord. Ms. Meyer seconded. Motion carried with Mr. Swope abstaining from discussion and vote.

Mr. Gross moved that the Planning Board approve the Conditional Use Permit pursuant to Article 28-4-3(d) of the Zoning Ordinance to permit impacts to 19,000 square feet of wetland buffer area at the end of Farmwood Road. The buffer impacts are necessary to provide for the expansion of the substation and construction of a small detention pond. Ms. Meyer seconded. Motion carried with Mr. Swope abstaining from discussion and vote.

Mr. Gross moved that the Planning Board grant conditional Site Plan approval for the site plan application of Public Service Company of New Hampshire as submitted by CLD Engineers, subject to the following standard conditions:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of construction drawings for all private and public improvements shall be obtained from the Engineering and Planning Divisions. The applicant shall revise the plans to address minor corrections and omissions as noted by staff. No construction activity may commence prior to the preconstruction conference.
2. The wetland buffers shall be clearly and permanently marked before, during, and after construction of the sites.

Ms. Meyer seconded. Motion carried with Mr. Swope abstaining from discussion and vote.

### Architectural Design Review

9. Consideration of an application by the **16 Foundry Street Condominium Association** for approval of a revision to the Master Signage Plan at **16 Foundry Street** in the Foundry Business Center. (**#2011-03**)
10. Applications by the following for approval of signs at the following locations under the provisions of Section 28-9-4(f), Architectural Design Review, of the Code of Ordinances.
  - **Concord Pediatric Dentistry** for one new affixed sign at **16 Foundry Street**

### Public Hearings

Mr. Henninger explained that the applicant, Concord Pediatric Dentistry, submitted an amendment to a previously approved Master Sign Plan for the Foundry Business Center. Last year the Planning Board approved a revised master sign plan for this three-building complex that included two freestanding monument signs, eight affixed signs, three building address signs, one directional monument sign, and one freestanding directory monument sign for 16 Foundry Street. Concord Pediatric Dentistry has requested that one additional sign be added to the northwest corner of the first floor of 16 Foundry Street to identify their business. The applicant has advised that clients cannot see the monument directory from the turn to access the building. They commented that new clients often end up driving around the site looking for their office.

He reported that the Architectural Design Review Committee had reviewed the proposed master sign plan amendment and the proposed new affixed sign, and recommended approval as submitted.

There was no one present on behalf of the applicant.

Mr. Gross moved that the Planning Board grant approval of a revision to the Master Signage Plan to add an affixed sign for Concord Pediatric Dentistry at the Foundry Business Center at 16 Foundry Street, as submitted by the applicant pursuant to Article 28-6-5 Master Signage Plan of the Zoning Ordinance. Mr. Swope seconded. Motion carried.

Mr. Gross moved that the Planning Board grant Architectural Design approval for one new affixed sign at 16 Foundry Street for Concord Pediatric Dentistry as submitted by the applicant. Ms. Foss seconded. Motion carried.

### **New Business**

15. Request for a one year extension of the period of validity of the conditional approval of the Major Site Plan and Conditional Use Permit applications of the **LAT Holding Company LLC and ZED Properties LLC at 20 Break 'O Day Drive. (#2008-62)**

Mr. Woodward explained that the applicant's agent had forwarded a request for a one-year extension of the approval of the above referenced applications, seeking validity through April 15, 2012.

He explained that the Planning Board granted Major Site Plan approval to LAT Holding Company LLC on April 15, 2009, to construct a 44,215 square-foot office building on a 5.25-acre site at 20 Break 'O Day Drive. In related actions, the Board also granted approval to Conditional Use Permits pursuant to Section 28-7-11(b), Construction of fewer parking spaces; pursuant to Section 28-7-11(d), Additional Compact Parking Spaces; and a third pursuant to Section 28-4-3(d), Disturbance of Wetland Buffers, of the Concord Zoning Ordinance. The Board also granted waivers to Sections 8.04, Sanitary Sewer Disposal, and 8.05, Water Supply, of the Site Plan Regulations, and granted approval pursuant to Section 28-9-4 Architectural Design Review, of the Concord Zoning Ordinance. These approvals will expire on April 15, 2011 unless the Board grants the waiver for an extension.

He reported that any extensions of a final approval may be granted by the Board as a waiver of the Site Plan Review Regulations, and the Board has often granted one-year extensions, but has generally required that an applicant present requests for anything more than that at the end of the one year extension. The Board has evaluated the request at that time to determine if conditions related to the site plan have changed or otherwise warrant another one-year extension. If conditions have changed, the Board has denied the waiver for a further extension, and after several extensions, the Board has also indicated to applicants that a requested extension will be the final one as the passage of time alone creates an issue in terms of new abutters having no means of learning of the existence of the application and the pending change in their neighborhood.

He reported that in this case, the applicants indicate that the delay in exercising their conditional Site Plan and Conditional Use Permit approvals relates to the "economic and lending climates". They believe that they will be in a position to proceed with the project once the economy improves.

In April, 2010, the applicants received a one-year extension from the Zoning Board of Adjustment for the period of validity of variances originally granted on April 2, 2008, and which were precedent to the Planning Board vote on April 15, 2009. However, the one year extension is set to expire on April 2, 2011, and cannot be renewed again under the terms of the Zoning Ordinance. The applicant is in the process of filing new variance requests which will be heard by the Zoning Board on April 6, 2011. The original variances allowed for the development of the site without municipal water and sewer, and granted a reduction in the rear yard setback. If the ZBA does not grant these variances again, then the Planning Board will not be able to grant an extension of its approvals as the site plan will no longer be in conformance with the Zoning Ordinance.

Mr. Swope moved that the Planning Board table action on the request for an extension of the Site Plan and Conditional Use Permit applications until the Board's regular meeting in April, at which time the results of the Zoning Board of Adjustment actions on the new variance applications should be available. Mr. Gross seconded. Motion carried.

16. Consideration of a hearing notice from the Pembroke Planning Board relative to a Development of Regional Impact for a proposed asphalt plant on **Ricker Road in Pembroke by Continental Paving Inc.** On March 22, 2011, the Pembroke Planning Board will consider applications for a Major Site Plan, and a Special Use Permit in the Aquifer Conservation Overlay District

Mr. Woodward explained that the City has been notified of a public hearing by the Pembroke Planning Board on a Development of Regional Impact in conjunction with an application for Site Plan approval by Continental Paving, Inc. to permit an asphalt plant in the Town of Pembroke's C-1 Commercial/Light Industrial District as well as the Aquifer Conservation and Shoreland Protection Overlay Districts, on property located at Ricker Road. The site is the location of an existing asphalt plant which was acquired by Continental Paving, Inc. in April of 2010, and the new plant would be constructed adjacent to the existing plant. The public hearing on this application has been scheduled for March 22, 2011.

He reported that the Planning Board had previously opposed an application for a Special Exception by Continental Paving, Inc. to construct an asphalt plant adjacent to the City's wellfield in a gravel pit off North Pembroke Road in Pembroke. The Pembroke Zoning Board of Adjustment eventually denied the Special Exception and Continental Paving has filed suit against the Town to reverse that decision. The City of Concord has been granted the status of an intervener in that case in support of the Pembroke ZBA's decision, as it safeguards the City's wellfield against potential contamination from the operation of an asphalt plant. The proposed site was located in the City's wellhead protection area as defined by the New Hampshire Department of Environmental Services, and the land in Concord immediately across the river from the wellfield is included in Concord's recently adopted Aquifer Protection District.

He reported that Town officials from Pembroke have advised that it is their understanding that approval of the current application for the asphalt plant on Ricker Road will not result in withdrawal of the suit. The applicant's agent has indicated that once approvals are obtained, equipment for this site will be brought up from Continental's plant in Litchfield and the plant will be placed in operation.

During the review process for the Special Exception application at the North Pembroke Road site, the applicant indicated that if the plant were not allowed on the site of the gravel pit adjacent to Concord's wellfield, then the current plant on Ricker Road would be expanded, and the material excavated from the Pembroke site would be trucked out through the Concord gravel pit to the Ricker Road plant, and asphalt deliveries would be made from that plant. While the former Concord Sand and Gravel site on the Concord side of the Soucook River had been used to haul earth materials from the

Pembroke gravel pit via a private bridge connection, the Concord Zoning Administrator had determined that the use of the driveway, together with trucking from an asphalt plant on the Pembroke side, would require the issuance of variances from the Concord Zoning Board of Adjustment to allow the driveway and the traffic related to the asphalt plant to pass through land in Concord's Gateway Performance District to reach Route 106 in Concord.

Mr. Woodward reported that, in recommending to the Pembroke Zoning Board that the Special Exception for the asphalt plant be denied, the Concord Planning Board indicated that their concern was specific to the wellhead protection area for the City's wellfield, and that the Ricker Road site is remote from the City's wellhead protection area and as such, represented a less threatening location for the asphalt plant relative to the safety of the wellfield and its water quality.

He explained that the current application under consideration by the Pembroke Planning Board is for a new asphalt plant to be located on the same site as, and northeast of, the existing asphalt plant, and to be accessed via the same driveway to Ricker Road. A portion of the proposed driveway which connects the existing plant to the new plant is located in the Shoreland Protection setback from the Soucook River which is the westerly boundary of the site. The Pembroke/Loudon townline forms the northerly boundary of the property. The site had been used as a sand and gravel operation, and the proposed plant is indicated to occupy nine acres of the former gravel pit. The plant will include four 30,000 gallon liquid asphalt tanks, one 20,000 gallon #2 fuel oil tank, and one 20,000 gallon spec oil tank, with all tanks being located above ground in a concrete containment area. A spill prevention and countermeasure plan is being prepared.

He reported that a traffic study was prepared to analyze the impact of the new plant on adjacent highways indicating that the majority of the trips will be headed west to Routes I-393, 106, and I-93. The existing plant operates Monday through Friday from 6:30 and to 6:30 PM and Saturdays from 6:30 AM to 3:30 PM. They would like to operate the proposed plant for those same hours but in addition, be allowed to operate both facilities at night when demand warrants such, including the option to operate around the clock. They anticipate night operations to occur 75 days per year with 24-hour operation on 50 days. The asphalt business season is April to November. The operation will be run by a generator for several years which will create noise, and they have designed the site with a looped circulation to minimize the noise associated with back-up beepers.

Mr. Woodward explained that the asphalt plant, as proposed to be located on Ricker Road, is outside of the City's wellhead protection area. It is within the same aquifer and upstream of both the City's and the Town's water supplies. However, the Pembroke Waterworks is engaged in the review process with that in mind. The site on Ricker Road is a far better location for the trucking of asphalt to the company's customers than the gravel pit adjacent to the City's wells.

He reported that two properties in Concord lie directly across the Soucook River from the plant site. These include a 26-acre parcel with fields associated with the dairy farm on Josiah Bartlett Road owned by Bartlett Family Trust, and a 32-acre tract of undeveloped land owned by A. D. Moore Holdings Realty LLC of Bedford, NH. The nearest homes in Concord are on Josiah Bartlett Road, west of Route 106, which are located at a ground elevation of about 370 feet, while the asphalt plant will be at an elevation of about 345 feet. While this residential neighborhood is about 2000 feet away from the plant site, the noise from the generator, truck engines and back-up beepers may echo through the neighborhood, especially during night time operations which are proposed for 75 days per paving season or the 50 days of round the clock operation.

Mr. Gross suggested bringing to the attention of the residents of Josiah Bartlett Road the notice of the public hearing. Mr. Woodward responded that he had talked with a resident of that road on another matter and mentioned this to him. The resident indicated he would pass the information along to his neighbors.

Ms. McClure asked if trucks would use Manchester Street to access the site. Mr. Woodward responded that he expected they would use I-393 or Route 106 but did not think they would use Manchester Street to get to I-93.

Mr. Gross moved that the Planning Board express to the Pembroke Planning Board that the Concord Planning Board appreciated the opportunity to consider this Development of Regional Impact, and that the Board offered the following specific comments:

1. The Board supports the initiative of the Pembroke Waterworks to have an environmental engineer review the proposal given that it is located within the Town's Aquifer Conservation District adjacent to the Soucook River, northerly of the public water supply wellfields of the City of Concord and the Town of Pembroke.
2. The Board is concerned about the impact of noise, particularly from night time operations, given that the sound of the generator, truck traffic, and back-up beepers can echo across the Soucook River valley and become intrusive to the residents of the neighborhood along Josiah Bartlett Road.
3. This site is outside of the City's wellhead protection area and therefore does not represent a direct and immediate threat to the City's public water supply.
4. This site offers a far superior distribution point for the asphalt to be trucked to the applicant's customers as compared to the gravel pit on North Pembroke Road, as previously proposed by the applicant.

Mr. Swope seconded. Motion carried.

17. Consideration of the release of a financial guarantee held in conjunction with a deferred parking agreement which was a condition of the approval for **Lowe's** on the property of M & G Equities at **90 Fort Eddy Road. (#2004-50)**

Mr. Henninger explained that the Planning Board granted a Conditional Use Permit on January 4, 2006, to allow the Construction of Fewer Spaces pursuant to Section 28-7-11(b) for Lowe's Home Improvement Center on property owned by M & G Equities and Demoulas Super Markets, Inc., subject to the following conditions:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), a financial guarantee shall be provided that will insure the construction of the deferred parking space including the garage structure. Said guarantee shall be maintained for a minimum of a four year period or until the proposed Lowe's use is discontinued as a "Home Improvement Superstore - ITE Land Use Code 862". Two to three years after the Lowe's store opens the applicant shall commence a parking study acceptable to the Clerk of the Planning Board and present said study to the Planning Board before the fourth anniversary of the opening of Lowe's. If the Board determines that additional parking is not warranted at that time, no further financial guarantees for the parking structure will be required.
2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall submit an agreement to maintain a guarantee to provide the required parking spaces, if ordered by the Code Administrator, and to acknowledge this condition in a written form that is enforceable as a bond, with undertakings for payment of legal costs to the City for enforcement, and a confession of judgment.

He reported that in 2006 the applicant completed a 138,134 square foot Lowe's with an additional 31,714 square feet in the outdoor garden center. Part of the garden center is enclosed and part is unenclosed. The applicant prepared and received approval for a Deferred Parking Financial Guarantee Agreement which was recorded in the Merrimack County Registry of Deeds, and a bond in the amount of \$2,747,000 was provided to the City to financially guarantee the construction of the parking garage. A post opening parking study coinciding with the peak parking demand for home improvement superstores was provided by Tetra Tech Rizzo on June 8, 2007. The Assistant City Planner did note a slightly higher parking utilization on Saturdays in June of 2007, but noted that the parking lot was far from full. This observation remains unchanged in the 3 ½ years subsequent to the parking study. It has been observed that parking for the retail center anchored by the Market Basket grocery store often overflows into the Lowe's portion of the site, but overall the total utilization of this shared parking lot does not warrant the construction of any additional parking.

He reported that the applicant had requested formal release of the \$2,700,000 financial guarantee under the terms of Condition 1 above. On February 23, 2011, the City received notice that the bonding agent had elected to cancel the bond in accordance with the terms of said bond. The applicant, Lowes, is desirous to remove this item from its books.

Mr. Gross moved that the Planning Board acknowledge receipt of the parking study in June of 2007 and determine that additional parking for the Lowe's store at 90 Fort Eddy Road is not warranted at this time. Mr. Swope seconded. Motion carried.

The Chair reminded members of the special meeting on March 30, 2011 to continue the review of the draft Site Plan Regulations, and consideration of any other business which may legally come before the Board.

Minutes

Mr. Swope moved approval of the minutes of the meetings of February 16, 2011 and February 23, 2011 as submitted. Mr. Gross seconded. Motion carried.

There was no further business to come before the Board and the meeting adjourned at 10:55 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

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