

The regular monthly meeting of the City Planning Board was held on November 16, 2011, in the City Council Chambers, in the Municipal Complex, at 37 Green Street, at 7:00 p.m.

Present at the meeting were Members Drypolcher, Regan, Lavers, Hicks, Foss, Smith Meyer, Gross, Swope, Kenison, and City Council Representative Shurtleff. City Planner McPherson, Mr. Henninger, Ms. Hebert, and Ms. Muir of the City's Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:00 p.m., a quorum was present. The Chair called the meeting to order and seated Alternate Kenison for Member Hicks, who arrived at 7:10 p.m.

## **APPLICATIONS**

### **Minor Subdivisions**

- 1. Application by 12 Chenell Drive, LLC, for approval of a subdivision by virtue of conversion to a condominium for property located at 12 Chenell Drive. (2011-0043)**

#### **Determination of Completeness**

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

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

#### **Public Hearing**

Ms. Hebert reported that the applicant is proposing to convert the existing light industrial building at 12 Chenell Drive to two condominium units. The property is located in the Industrial District. Comments have been transmitted to the applicant from the Planning and Engineering Divisions, and the applicant has been asked to add one additional handicapped parking space for access to Unit 12A. She stated that revised plans have been submitted showing limited common areas for the condominiums at the vicinity of the loading dock at the rear of the building for each respective unit. The building will have one water meter, and the condominium association will assume the responsibility of the water billing.

Mr. Gross asked if the building was currently occupied. Ms. Hebert responded that one unit is in the process of being fit up.

Maria Dolder, the attorney for the applicant, was present on behalf of the applicant. She stated that everything that was represented is accurate. Ms. Dolder stated that the applicant is looking to convert this building into two condominium units. In response to Mr. Gross' question, Ms. Dolder responded that the Community Action Program is located in one half of the building, and the other half is used for cold storage.

Jim McCarthy of McCarthy properties responded that the building has always been two units.

### Deliberations and Action

Mr. Swope moved to grant conditional final subdivision approval for the condominium conversion of 12 Chenell Drive, LLC, at 12 Chenell Drive, as prepared by Promised Land Surveying, LLC, subject to the following standard conditions:

#### Standard Conditions:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings and condominium documents to address the concerns, minor corrections, and omissions noted by City staff.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the handicap parking space for Unit 12A shall be identified with a sign and appropriate pavement markings.

Mr. Lavers seconded the motion. Motion carried.

- 2. Application by James and Carolyn Triacca, for approval of a subdivision of property and a Conditional Use Permit pursuant to Section 28-5-46 Single Family Dwellings in a Standard (Noncluster) Subdivision, located at 262 Hopkinton Road. (2011-0044)**

#### Determination of Completeness

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

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

#### Public Hearing

Ms. Hebert reported that the applicants, James and Carolyn Triacca, are the owners of a 25.92-acre parcel at 262 Hopkinton Road. The property is adjacent to Dimond Hill Farm. The Triaccas, together with the City of Concord and the Five Rivers Conservation Trust, are proposing to subdivide a two-acre parcel for the existing house and related improvements, and the remaining 23.92 acres would be conveyed to the City as open space. A conservation easement would also be conveyed to the Five Rivers Conservation Trust on the open space parcel.

Ms. Hebert explained that the applicant has also applied for a Conditional Use Permit to allow for the development of a conventional subdivision in the Open Space Residential District, with the condition that a comparable amount of open space be protected on the property by deed or easement as would otherwise be required by the Cluster Development standards, which require that 60 percent of the lot area (15.55 acres) be set aside as open space. The proposal is to set aside 23.92 acres, or 92.2 percent, as permanently protected open space.

Ms. Hebert stated that the application includes a waiver request to Section 15.03 (4) of the City of Concord Subdivision Regulations not to show the topography in the 23.92 acre parcel. The City's GIS System has been reviewed and there is extensive road frontage and open fields along Hopkinton Road, and the Planning staff is confident that the open space parcel satisfies the City's zoning requirements for the open space requirement in the Cluster Subdivision standards.

Ms. Herbert reported that the subdivision is configured to provide adequate building setbacks for the existing house and related improvements; however the location of the house within the front setback is a pre-existing non-conforming condition. Hopkinton Road is a State route, and a new driveway to the open space parcel will require a NH Department of Transportation (NHDOT) driveway permit.

Ms. Hebert explained that the two-acre parcel will need NH Department of Environmental Services (NHDES) subdivision approval from the Subsurface Systems Bureau for the existing septic system. The open space parcel exceeds the lot size requirements for NHDES subdivision approval and will also be restricted from future development with a conservation easement.

Mr. Gross asked why the open space parcel would be conveyed to the City and then the conservation easement be conveyed to Five Rivers Conservation Trust. Ms. Hebert responded that this has to do with the grant funding for the land, which requires an easement be placed on the property. Mr. Gross asked who will be responsible for patrolling the easement and making sure that the property is conserved. Ms. Hebert replied that the Five Rivers Conservation Trust would be responsible for maintaining the easement.

Ms. Foss asked whether the Farm and Ranchland grant funding requires that the easement includes some reference to maintaining agricultural lands in agricultural uses. Ms. Hebert responded in the affirmative and stated that more specifically the grant requires the protection of the prime agricultural soils. Ms. Hebert stated that currently the management of Dimond Hill Farms leases the fields, and the fields are in agricultural use now. Ms. Foss asked whether the easement requires continued agricultural use in the future. Ms. Hebert stated that the policy is to lease the land to another farming entity.

Mr. Kenison asked whether Dimond Hill Farm is currently under a conservation easement. Ms. Hebert stated that there is an easement with the Five Rivers Conservation Trust. She stated that these properties will be abutting, and that the stewardship is with the same entity.

Mark Sargent of Richard Bartlett and Associates was present on behalf of the applicant. Mr. Sargent stated the State subdivision approval has been received, and the applicant has applied for a State driveway permit.

#### Deliberations and Action

Mr. Swope moved to grant a waiver to Section 15.03(4) of the City of Concord Subdivision Regulations to not show the existing topographic conditions of the larger open space parcel. There is no new

construction proposed, and the open space parcel satisfies the zoning requirement for buildable land within the proposed open space parcel. Ms. Foss seconded the motion. Motion carried.

Mr. Swope moved to approve the Conditional Use Permit pursuant to Article 28-5-46 of the Zoning Ordinance; Conditional Use Permit required for the approval of a conventional subdivision within the Open Space Residential District. The subdivision is proposing to conserve approximately 92.2 percent of the original lot as open space, and there is not new residential construction proposed. Ms. Foss seconded the motion. Motion carried.

Mr. Swope moved to grant conditional final subdivision approval for the "Resubdivision Plat of the land of James & Carolyn Triacca" as prepared by Richard D. Bartlett & Associates, subject to the following standard conditions:

Standard Conditions:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City Staff.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following State and Federal permits shall be obtained and copies provided to the Planning Division:
  - a. NH Department of Transportation Driveway Permit for access to the open space parcel
  - b. NH Department of Environmental Services, Water Supply and Pollution Control Division, subdivision approval for on-site septic systems.
3. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement documents, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, shall be provided to the Planning Division:
  - a. Conveyance of a Conservation Easement to the Five Rivers Conservation Trust for the 23.92 acre parcel.

Mr. Gross seconded the motion. Motion carried.

**3. Application by William Young, for approval of a subdivision of property located at 82 Hoit Road. (2011-0045)**

Determination of Completeness

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

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

Public Hearing

Ms. Hebert reported that the proposal is to subdivide an existing parcel of land at 82 Hoit Road, on which there is an existing single family residence, to create one additional residential building lot. The

property is located in the Medium Density Residential District, without access to City water and sewer. The nearest City water and sewer in this portion of the Medium Density Residential District would be on Sewalls Falls Road near the Concord Monitor property. She stated that in this district without sewer the minimum required lot size would be 40,000 square feet.

Ms. Hebert explained that the project conforms to all the requirements of the City of Concord Subdivision Regulations and the Zoning Ordinance. She stated that the two properties would be served by private well and septic. The existing well on the property will be utilized by the new residence (lot # 1) and a new well will be drilled to serve the existing house on lot # 2. A portion of the 75-foot protective well radius for the existing well crosses onto lot # 2. One of the conditions of approval will be the conveyance of a well easement for the benefit of the new lot #1.

Ms. Hebert stated that there is an existing shed and garage located within the side setbacks of both lot # 1 and lot #2, and as a condition of approval, these structures would need be removed or relocated.

Ms. Hebert reported that Hayward Brook flows to the south of the lot, along the rear property boundary. A portion of the property is located within the 100 year flood plain of Hayward Brook and the Flood Hazard District. The land within the 75-foot setback of Hayward Brook is also located in the Shoreland Protection Overlay District. There are no impacts proposed to either the Shoreland Protection District or the Flood Hazard District. She explained that the proposed residential lots will require NHDES subdivision approval for the existing and proposed subsurface.

Mr. Gross asked whether the area is within the Urban Growth Boundary. Ms. Hebert stated that the properties are just inside the Urban Growth Boundary, but because the properties are located thousands of feet from City water and sewer, the applicant would not need to extend the water and sewer.

Mr. Gross asked whether, under the City's newly revised Subdivision Regulations, the new buildings would need to have sprinklers, because the area is not served by fire suppression. Ms. Hebert responded that there is some conflicting legislation that states Planning Boards cannot require the installation of sprinkler systems in one- or two-family dwelling units. There is also a Senate bill that states the City may enforce regulations that are currently on the books, but the thinking is that the House bill that was passed prohibits Planning Boards from requiring sprinkler systems without grandfathering.

Ms. Foss stated that it was unusual for such a substantial portion of a well head radius to be on adjacent property. She stated that the Planning Board has a process for marking wetland buffers, and is wondering if it would be worth considering some way of denoting the radius on the ground. She is concerned about future ownership of the properties. Chair Drypolcher stated that there is a requirement that the wellhead radius is made part of the deed. Ms. Hebert stated that because the wellhead radius is circular, it would be difficult to mark.

Tim Bernier, of T.F. Bernier, Inc., was present on behalf of the applicant. He stated that the well belongs to the dominate tenant, and the 75 foot radius can be measured from the existing wellhead. He stated that there are only a few things that cannot be done within the radius, such as installing a septic system, which would require State septic approval which require showing all wells within 75 feet of the septic system. He stated that the plans show the wellhead radius graphically, but also defined the area mathematically.

### Deliberations and Action

Ms. Smith Meyer moved to grant final subdivision approval for the Minor Subdivision application of William Young, as prepared by T.F. Bernier, Inc., subject to the following standard conditions:

#### Standard Conditions:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City staff.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the existing garage and shed shall be razed or relocated as noted on the plan.
3. Traffic, recreation, and school impact fees shall be assessed for any construction on the new lots contained within this approved subdivision. 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 1, School Facilities Impact Fee per Variable Unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, transportation Facilities Impact Fee per Variable Unit.
  - a. School Facilities – Single Family Residence
  - b. Recreational Facilities – Single Family Residence
  - c. Transportation Facilities – Single Family Residence
4. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following State permit shall be obtained and copies provided to the Planning Division:
  - a. NHDES Water Division, Subsurface Systems Bureau subdivision approval for subsurface disposal systems.
5. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement document, in a form acceptable to the City Solicitor and suitable for recording at the Merrimack County Registry of Deeds, will be provided to the Planning Division:
  - a. Agreement to convey a well easement for the benefit of lot # 1.

Mr. Shurtleff seconded the motion. Motion carried.

### Conditional Use Permit and Minor Site Plan Applications

4. **Application by Daval Realty Associates, LP for Banks Chevrolet-Cadillac, Inc., for a Conditional Use Permit pursuant to Section 28-7-11(f) Driveway Separation Alternatives – 3(d) and revisions to a previously approved site plan at 137 Manchester Street. (2010-0031)**

Mr. Henninger reported that the applicant's attorney, Richard Uchida, submitted a letter requesting that the application be tabled until the Planning Board's regular December meeting.

Mr. Swope moved to table the application to the December meeting. Mr. Gross seconded the motion. Motion carried.

### Architectural Design Review

5. **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.**

- **Associated Enterprises, Inc. [The Nutrition Station]** for an awning sign at **138 North Main Street**
- **Bekdash Temple** for one freestanding sign at **189 Pembroke Road**
- **Brand Central Station** for a new affixed sign at **254 Sheep Davis Road**
- **Concord Christian Academy** for revisions to an existing freestanding sign at **37 Regional Drive**
- **DEW Properties, LLC**, for the **4 Crescent Street Professional Complex** for one freestanding sign at **4 Crescent Street**
- **Duprey Center, LLC**, for **Greater Concord Chamber of Commerce** for a new affixed sign at **49 South Main Street**
- **Duprey Center, LLC**, for **League of NH Craftsmen** for a new affixed sign at **49 South Main Street**
- **McDonald & Kanyuk, PLLC, Attorneys at Law** for two panels on an existing freestanding sign at **89 North State Street**
- **Men's Wearhouse** for an affixed sign at **62 D'Amante Drive**
- **North Star Holdings, LLC**, for a new freestanding sign at **10 Green Street**
- **Outfitters Thrift Store** for a revision to an existing freestanding sign and a new hanging sign at **20 ½ South Main Street**

- **Slot Car Corner** for a new affixed sign at **322 Village Street**

Public Hearings and Deliberations and Action on all Sign Applications

The Chair opened the public hearings on all the above sign applications.

- **Associated Enterprises, Inc. [The Nutrition Station]** for an awning sign at **138 North Main Street**

Mr. Henninger reported that this application is for an awning sign at 138 North Main Street. He stated that the applicant submitted a revised graphic for the awning sign, changing the color of the awning from blue to green. The awning graphic was described to the Architectural Design Review Committee (ADRC) last week, and the Committee recommended approval as submitted. Mr. Henninger stated that since the ADRC approval, the applicant changed the awning color from blue to green, and also stated that the new color is typical of Main Street.

Mr. Swope moved to approve the application as revised. Mr. Gross seconded. Motion carried.

- **Bektash Temple** for one freestanding sign at **189 Pembroke Road**

Mr. Henninger explained that this application had been tabled for several months, and that a revised application has been received. The recommendation of the ADRC is to approve subject to three stipulations: 1). To provide a contrasting background for the “Bektash Shriners” on the top portion of the sign to distinguish from the variable message component of the sign; 2). To conform to the Zoning regulations that the sign conform to the five foot setback from the property line; and, 3). To provide landscaping at the base of the sign.

Chair Drypolcher asked whether the applicant was happy with the stipulations. Mr. Henninger stated that the applicant was not present and has not been present for several months. Chair Drypolcher asked whether the applicant was aware of the stipulations. Mr. Henninger stated that he did not believe the applicant was aware of the stipulations.

Mr. Swope moved approval of the application with the stipulations of the ADRC. Mr. Gross seconded the motion.

Mr. Gross stated that he is confused with going ahead and imposing these conditions, when the applicant has been absent from not only the ADRC proceedings, but also from tonight’s Planning Board proceedings. He wonders whether the application should remain on the table. If the conditions turn out to be unlivable to the applicant, the applicant will come back and complain to the Planning Board. Mr. Swope stated that if the conditions are agreeable to the applicant, the applicant will be able to proceed with getting their sign installed. If not, they will come back to the Planning Board. If we table the application right now, the applicant will have to come back.

Motion carried.

- **Brand Central Station** for a new affixed sign at **254 Sheep Davis Road**

Mr. Henninger reported that the applicant is requesting a new affixed sign at 254 Sheep Davis Road. He stated that the ADRC recommends approval of the sign as submitted.

Mr. Gross moved to approve the application as submitted. Mr. Swope seconded. Motion carried.

- **Concord Christian Academy** for revisions to an existing freestanding sign at **37 Regional Drive**

Mr. Henninger stated two months ago, the applicant's agent came forward saying that what was submitted was not what they wanted to proceed with, and the ADRC asked for revised drawings, and have still not received any revised drawings. He stated the sign company has recently been sold and was not sure what was happening.

Mr. Swope moved to table the application. Ms. Smith Meyer seconded the motion. Motion carried.

- **DEW Properties, LLC**, for the **4 Crescent Street Professional Complex** for one freestanding sign at **4 Crescent Street**

Mr. Henninger reported that the application was for one freestanding sign at 4 Crescent Street. He stated that the ADRC recommended approval of the sign; however, they recommended that the sign be relocated from the location shown on the application, which was intended to be a pedestrian kiosk, to the main entrance on Canal Street. The applicant was to provide a revised layout drawing showing the revised location and how the sign will be integrated into the landscape plan. This revised layout drawing has not yet been received. Mr. Henninger's suggestion was that approval for the sign be granted with the condition that the sign be relocated to the main entrance on Canal Street and be integrated into the landscape plan. He reiterated that the ADRC recommend approval of the graphics of the sign as submitted.

Mr. Gross stated that he was concerned that the process is falling apart. Mr. Shurtleff stated that Mr. Gross raised a good point.

Mr. Gross asked whether the applicant was present at the ADRC meeting. Mr. Henninger stated that the applicant's agent was present and the relocation was discussed at that time. The agent was planning to discuss the relocation with the applicant. Mr. Henninger stated that he was not aware of the results of that discussion, as no further information has been received by the Planning staff.

Mr. Gross stated that his issue is that there is no indication as to whether these proposals are acceptable, and no one shows up to tell the Planning Board. He questioned whether the Planning Board should work to approve something, when they don't know if it is acceptable to the applicant. The Chair stated that the applicants should have a vested interest, but it doesn't appear to be the point. Mr. Shurtleff agrees with the points made by Mr. Gross, but that the tenants are moved in and operating in

the building. He feels there may be some confusion with people trying to find the tenants and thinks that the sooner the sign can be installed, the better.

Mr. Swope moved approval of the sign with the condition that the sign be moved to the main entrance at Canal Street and that the sign is incorporated into the landscape plans. Ms. Foss seconded the motion. Motion carried.

Mr. Henninger commented that the sign company is usually very responsive and it is unusual not to have received revised drawings. Ms. Hebert stated that there is a financial guarantee for the pedestrian kiosk sign which is to be located at the corner of Canal and Crescent Streets.

- **Duprey Center, LLC**, for the **Greater Concord Chamber of Commerce** for a new affixed sign at **49 South Main Street** and for the **League of NH Craftsmen** for a new affixed sign at **49 South Main Street**

Chair Drypolcher suggested hearing the applications for both the Chamber of Commerce and the League of NH Craftsmen together.

Mr. Henninger stated that these two etched signs above the storefronts are part of what will be a Master Sign Plan application for the entire building; however, all the other signs have other issues. Currently, there is one tenant occupying the space and the other space is being readied for the second tenant. He stated that the ADRC recommended approval of both signs as submitted.

Ms. Smith Meyer asked whether the building # "49" was part of the sign package. Mr. Henninger stated that because the size of the "49" was below the threshold for a building number sign, the Planning Board did not have to approve.

Mr. Swope moved to approve the two etched signs as submitted. Ms. Smith Meyer seconded the motion. Motion carried.

- **McDonald & Kanyuk, PLLC, Attorneys at Law** for two panels on an existing freestanding sign at **89 North State Street**

Mr. Henninger reported that the application is actually for two panels in an existing freestanding sign. He stated that the ADRC recommends approval with the revised graphics.

Mr. Gross moved to approve the sign with the revised graphics. Ms. Smith Meyer seconded the motion. Motion carried.

- **Men's Wearhouse** for an affixed sign at **62 D'Amante Drive**

Mr. Henninger explained that the Planning Board, last month, approved an affixed sign that says "Men's Wearhouse" and an affixed sign with the corporate symbol facing D'Amante Drive. He stated that applicant is allowed three affixed signs, and the applicant is within the number of square footage

allowed for signage. This application is for a new affixed sign with the corporate logo, facing Michaels on the east side. He stated that the ADRC recommended approval as submitted.

Mr. Swope moved to approve the sign as submitted. Mr. Regan seconded the motion. Motion carried.

- **North Star Holdings, LLC**, for a new freestanding sign at **10 Green Street**

Mr. Henninger reported that the application is for a new freestanding sign at 10 Green Street. The ADRC recommends approval as submitted.

Mr. Gross moved approval of the sign as submitted. Mr. Shurtleff seconded the motion. Motion carried.

- **Outfitters Thrift Store** for a revision to an existing freestanding sign and a new hanging sign at **20 ½ South Main Street**

Mr. Henninger stated that the request was to reface an existing freestanding sign on South Main Street, as well as to install a new hanging sign in the alley between 20 ½ South Main Street and the old Concord Theatre. The proposed hanging sign is currently located at Bicentennial Square, and the applicant is proposing to relocate it to the side entrance of 20 ½ South Main Street. He stated that the recommendation of the ADRC is to approve the refacing of the sign as submitted with the recommendation that the variable message sign have a black background with white lettering. He stated that the sign is internally illuminated, and is an existing sign cabinet and therefore grandfathered.

Mr. Gross asked whether this is the same sign that has an indication that the office space for the Red River Theatre is located in this area. Mr. Henninger responded in the affirmative and stated that there was a suggestion that the applicant may want to consider that the changeable copy sign be used to identify other tenants in the building. Mr. Henninger stated that it is the intent for the changeable copy sign to be used by Outfitters Thrift Store.

Mr. Swope moved approval of the sign as submitted with the condition that the variable message sign have a black background with white lettering. Ms. Smith Meyer seconded the motion. Motion carried.

- **Slot Car Corner** for a new affixed sign at **322 Village Street**

Mr. Henninger explained that this application is for a new sign to be affixed on existing brackets, which are located on the canopy above the first floor of this multi-story building. He stated that the ADRC recommended approval of the sign as submitted, with the condition that the black border of the sign be one-half inch wide.

Mr. Swope moved to approve the sign as submitted, with the condition that the black border of the sign be one-half inch wide. Mr. Shurtleff seconded the motion. Motion carried.

**6. Consideration of a Master Sign Plan for Duprey Center, LLC, to be located at 49 South Main Street. (2011-0047)**

Public Hearing

Mr. Henninger reported that the ADRC reviewed the Master Sign Plan application and had no concerns with the design of the graphics, but it was recognized at that time that the banner signs proposed on the four light poles would require a license from the City Council; an application has not yet been submitted for this license. Additionally, the freestanding sign requires both a license and a variance because the freestanding sign straddles the property line. The widened sidewalk is designed with street furniture closer to the parking area and roadway, while the pedestrian walkway is designed for nearer to and between the buildings. The freestanding sign is proposed to be located in the area which is encumbered with the signs, light poles, trees, fire hydrant, etc.

Mr. Henninger explained that one item that was discussed by the ADRC was that instead of the granite base shown for the freestanding sign, it was suggested by the ADRC that a tree well be utilized, which could be landscaped with annuals.

Mr. Henninger stated that the freestanding sign does comply with the Zoning Ordinance except for the placement of the sign, which if the sign were placed according to the ordinance's five-foot setback from the property line, it would be against the building.

Mr. Henninger also reported that there is a major public policy issue with the use of banners for private advertising. He stated that this is a real concern for City staff because of the precedent this would set all along Main Street.

Mr. Henninger explained that the Master Sign Plan was being submitted to the Planning Board without a recommendation from the ADRC, so that the Planning Board is able to hear testimony from the applicant, and the applicant can obtain more direction from the Board regarding the public policy issue.

Ms. Smith Meyer asked where on Main Street is there a freestanding sign in front of a building. Mr. Henninger replied that at the Red River Theatre; however, it is set back from the sidewalk. Mr. Henninger stated that in the Central Business Performance District there are no freestanding signs. The Capitol Center for the Arts, the Women's Health Center, Crown & Zellers, and 46 South Main Street all have freestanding signs, but they are located in the Urban Commercial District, and none of these freestanding signs are in the public right of way.

Richard Uchida, attorney for the applicant, was present representing the applicant. Mr. Uchida stated that he is in agreement that the banner signs would need licenses from the City Council. He reported that the applicant will be seeking a license for the freestanding sign that is proposed on the sidewalk. Moving the sign against the building will hinder the sign's visibility and will block some pedestrian traffic in that area. He understands that a variance is needed for that sign because of its location.

### Deliberations and Action

Ms. Smith Meyer stated that there is a problem when the parts of the sign package are to be dealt with at a later time, when it has to do with the building. One of the comments, made by the applicant during the ADRC meeting, was that the setback of the building from the build to line caused problems with the signage. She stated that it was the applicant who asked for a variance to not build to the build-to line, and now because the applicant did not build to the build-to line, the applicant is now representing that this is an issue for the signage. Ms. Smith Meyer stated she has a problem with the freestanding sign's location, because for all practical purposes it is almost like a sandwich board found on Main Street, which are located within the right of way, but are temporary. She stated that this would set a precedent for Main Street, where in reality this is one of those building where people are going to be looking for 49 South Main Street, more than for a particular tenant, similar to Eagle Square where a person would look for Eagle Square, then look for the directory on the buildings. She feels that it clutters the streetscape, and sets a precedent which she feels uncomfortable suggesting that the Planning Board is okay with this.

Mr. Gross agrees with Ms. Smith Meyer and added that he feels that this is a beautiful building, but the front of it will be cluttered and the proposed freestanding sign doesn't look good, in addition there are all these other problems with the banners and the need for a variance.

Mr. Gross moved to deny the Master Sign Plan application in its present form. Ms. Smith Meyer seconded the motion. Motion carried.

### **7. Consideration of an application for building plans and signage for renovations at Applebee's at 260 Loudon Road. (2011-0036)**

#### Public Hearing

Mr. Henninger reported that this application is for revisions to the façade of the building and signage. He stated that the brick face would remain the same as will the metal awning on the east side; the lighting, signage, and the awnings over the windows will change. There is a tower being added to the northeast corner of the building at the entrance. The recommendation of the ADRC is to approve as submitted. Mr. Henninger stated that the apples are not part of the recommended approval by the ADRC, as the apple symbols would have to be considered part of the signage and would have exceeded the Zoning requirements.

### Deliberations and Action

Mr. Swope moved approval of the application as submitted, without the apple symbols on the awnings. Mr. Gross seconded the motion. Motion carried.

### Master Plan Amendment

**8. Public hearing in consideration of a City Council referral of a request by Interchange Development, LLC, to relax development constraints for a parcel located at the intersection of Whitney Road and Hoit Road.**

Public Hearing

Ms. Foss stated that she would like to recuse herself from the hearing. The Chair seated Alternate Kenison for Member Foss.

Mr. Henninger reported that Attorney Richard Uchida, attorney for Interchange Development, LLC, has requested the relaxation of covenants and restrictions placed on the property at the northeast corner of Whitney Road and Hoit Road (US-4). The request would allow the development of a 25,000 to 35,000 square foot retail grocery store, where a maximum of 8,000 square feet per use is allowed and would allow for a maximum of 75,000 square feet of commercial development, where a maximum of 50,000 square feet is now permitted.

The area in question was part of the Whitney Road Industrial Park, which was first developed in the late 1980's. Whitney Road was constructed at that time and water and sewer services were extended by the City across the Merrimack River to serve the park. The first development in the park was the Wheelabrator Waste to Energy facility followed a decade later by two other industrial buildings. Whitney Road is planned to extend southerly following an existing city water main to Sewalls Falls Road at the Concord Monitor. The Concord Regional Solid Waste Resource Recovery Cooperative will commence construction shortly on a new facility southerly of Wheelabrator facility. This significant new development will require an extension of Whitney Road southerly along with municipal sewer service. This industrial park is one of the few remaining industrially zoned areas suitable for new large scale industrial development in the City of Concord. The area is also one of a few industrial sites ready to be developed with rail access.

This 9.4 acre area within the industrial park was rezoned in 2008, from IN – Industrial to CU – Urban Commercial subject to voluntary covenants limiting the size and amount of retail development to be constructed. The rezoning was recommended for approval by the Planning Board subject to the restrictive covenants which were subsequently recorded.

The site is undeveloped, but has been recently cleared, re-graded, and wetlands along Whitney Road have been filled under a state permit.

The Master Plan 2030 envisioned a site for small scale, convenience type retail facilities at the intersection of Whitney Road and Hoit Road (US 4). In the preparation of the Master Plan 2030, it was observed that there was not a single existing or planned convenience retail facility in Northeast Concord. The nearest convenience retail was located in East Concord and in the villages of Penacook and Boscawen on the west side of the Merrimack River.

The site proposed for rezoning is 9.4 acres as opposed to the original Master Plan concept of about five acres. The 2008 site analysis reveals the proposed rezoning incorporates 6.9 acres of buildable area, which is still larger than the original five acres (gross area) in the Master Plan, but the applicant indicates that the location of the wetlands and buffers will create inherent inefficiencies for site development.

The Chair asked for clarification regarding the staff report. He stated that in one section, the report refers to 9.4 acres, and in another section, the report refers to 6.9 acres. Mr. Henninger explained that the 9.4 is the total area of the site, while the 6.9 acres refers to the buildable area of the site. He further stated that the Master Plan recommends a maximum size for a neighborhood commercial be about five acres.

The Chair also asked about a section of the staff report that states "Please note the buildable area appears to have been increased based on the Wetland Dredge and Fill permit issued for this property." He asked about the wetlands which were an impediment to the development, for which the applicants requested a covenant. The Chair stated that it doesn't appear that the wetlands are an issue now. Mr. Henninger explained that part of the justification for the larger area to be rezoned was that some of the land closest to the intersection was actually wetlands and it would limit the amount of development on the smaller parcel currently owned by Interchange Development, LLC. That parcel is a little less than four acres and the remainder of the area which is zoned Urban Commercial today is owned by Susan Whitney. That was part of the discussion at the time of why a larger area should be rezoned to Commercial. The Chair commented that now the applicants have that and more because they received the dredge and fill permit. Mr. Henninger responded that there is a swale mitigation area the size of which has not been surveyed to know how much more buildable area has been created.

Ms. Smith Meyer stated that she remembers there would only be a convenience store on the site, because of the site constraints and intent. Mr. Henninger stated that the rezoning was for only a piece of the whole area, but he remembers the discussion was for a convenience store and additional retail space; however, nothing was concrete at the time for the additional retail space. Mr. Gross stated that nothing was concrete. The Chair stated that the scale came from the covenants. Ms. Smith Meyer said that the applicants represented that the zoning change was to accommodate the scale of a convenience store.

Richard Uchida, attorney for the applicants, was present on behalf of the applicants. He stated that the applicants are before the Planning Board for a recommendation to City Council by the Planning Board to relax two of the covenants in the declaration of covenants that was placed on this property as part of the rezoning that occurred in 2008. The two covenants were to remove the cap on the 8,000 square foot limit per use, and the limitation of total development on the site to 50,000 square feet. The applicants are requesting that these two covenants be removed. He stated that the impact of the removal of these particular covenants means that the underlying Urban Commercial Zone would govern the size of the facilities on that particular site. With regard to that particular site, 75,000 square feet of development could occur in the Urban Commercial district. Mr. Uchida wanted to stress that there are

other aspects of the covenant that remain in place. There are aspects of the covenants that deal with certain types of uses that cannot go on that site, a number of those uses deal with such things as automotive repair, etc. Mr. Uchida provided a list of the covenants to the Planning Board members. The use covenants still will remain in place, it is simply the two covenants dealing with the total amount of development on the site and the amount of square footage of a particular use that the applicants are asking for relaxation.

Laurie Rauseo, the applicant, provided a PowerPoint presentation to the Planning Board members. The text of which follows:

“Good evening members of the Planning Board, Planning Staff, Councilor Shurtleff, and members of the public. My name is Laurie Rauseo and sitting next to me is my husband, David. We have a brief PowerPoint presentation during which we plan to tell you who we are, what we are proposing, and why we think the Board ought to recommend approval to the City Council.

David and I live in Canterbury, about 4 miles from Exit 17. We have two children who attend Bishop Brady in Concord. We are both self-employed. I am a traffic engineer who has appeared before this Board on other projects. David is a commercial real estate appraiser and property manager. We are also commercial property owners and small business owners in Concord.

Nearly 10 years we started looking for a commercial property to purchase and we found one very close to home. It had been sitting vacant for years and was showing signs of neglect and abuse. It was owned by the federal government and generating zero property taxes. It was a big building, 76000 square feet, and while many businesses and individuals toured the property, it was David and I who eventually bought it in 2005. We worked very hard to clean up the property, divide the space, advertise and bring tenants to the building. We renamed the former O.D. Hopkins building as Concord Crossing. Today, Concord Crossing at 2 Whitney Road is the third highest commercial property taxpayer in the Penacook tax district. We are very proud of the results of our efforts. Concord Crossing is home to 13 tenants, many of which have relocated here from other towns.

We are also small business owners in that we built and own Concord Sports Center, also located at Concord Crossing. Concord Sports Center provides indoor turf fields and batting cages used by many area schools, teams and organizations. Through CSC, we regularly give back to the community through donations of field time and gift certificates for fund raising efforts. We are very proud of our manager Bryan Caruso, and love to see all the children and families that enjoy visiting Concord Sports Center from around the region.

We spend much of our time at 2 Whitney Road and for several years, we have had requests for commercial services from our tenants, Concord Sports Center customers, and travelers from the interstate. We decided that Exit 17 needed the services expected at an interstate interchange, especially since Route 4 carries nearly 20,000 cars a day. We also recognized the need to have a plan to provide more space to industrial tenants since Concord Crossing was filling up.

We entered into a long-term purchase agreement with the owner of land adjacent to and across from Concord Crossing on Whitney Road. In 2008, the City rezoned 10 acres at Route 4 and Whitney Road. In the past few years, we have been seeking tenants for the site under the zoning and covenant restrictions that limit the uses to 8,000 square feet. We secured permits to relocate a drainage swale at the corner of Route 4 and Whitney Road and are working towards submitting plans for a gas station at the corner.

This is one of the plans we developed to work within the constraints of the covenants. This concept plan shows a total of 50,000 square feet and a series of stores that fit under the 8,000 square foot limit imposed by the covenants. When we met with Concord's Economic Development Advisory Council (EDAC), the discussion focused on how this plan might be detrimental to the redevelopment of Penacook Village because it could become an attractive alternative to the small businesses that are typically found in a village setting. All of these uses are allowed in this zone and with the covenants in place today.

We have also been following the City's efforts to attract a supermarket in Penacook Village and when the City moved forward with medical offices on the 4 Crescent street site, we wondered if the Whitney Road commercial land would be an alternative location for a supermarket.

We researched the need for a supermarket, talked to supermarket operators, collected traffic data and other demographics. As one of the many people in this room that have to travel 10 or more miles each way to a supermarket, this map highlights what we already know. This area needs a supermarket. We have a supermarket expert here tonight to discuss how the Exit 17 site meets the requirements of grocery store operators.

Before submitting our request to the City Council, we presented the idea to a forum hosted by the Penacook Village Association. We have attended several PVA meetings and PVA business meetings to understand the concerns and goals of the community. We determined that a small to medium sized supermarket would be appropriate for this site along with other tenants that provide goods and services not generally found nearby but desired by the neighborhood and region. This conceptual plan includes a 33,000 square foot supermarket. At 33,000 square feet, it is not proposed to be a superstore; instead it is a moderate sized store similar to the Hannaford in Northwood. The plan also include an auto parts store, a state liquor store, a fast-food restaurant, a gas station/convenience store and associated diesel fueling area to service the many trucks on Whitney Road, Route 4 and I-93. The total build out would not exceed 75,000 square feet. This 10 acre site is currently zoned Urban Commercial and allows for all the uses shown on this plan. However, covenants restrict the building of the larger stores, especially the supermarket and that is why we are here tonight.

As you may know, we have been discussing this proposal for several months. In that time, we have heard concerns that this project may turn Exit 17 into Exit 20 in Tilton. We have examined this issue and believe that this won't happen for at least three reasons:

1. the area is too constrained by existing zoning,

- a. the CU zone is surrounded by industrial zoned land, wetlands, Route 4 and Whitney Road
  - b. As shown on the chart, the commercial zone that exists in Concord is 10 acres as compared with 236 acres of commercially developed land in Tilton.
2. limited frontage,
    - a. The Concord site has less than  $\frac{1}{4}$  mile of frontage on Route 4 while Tilton commercial properties are spread along  $3\frac{1}{2}$  miles of busy road frontage
  3. limited right of way access,
    - a. The Concord site and all properties between the interstate and the Route 3 signal over two miles away have no direct access to Route 4. In Tilton, the commercial district has over 36 individual driveways along two major state highways to encourage development.

As a result of these factors, Tilton has over 1.2 million square feet of retail development near Exit 20 while in comparison the Concord site would be limited to 75,000 square feet. There is a better comparison in the Concord area and it is found at Exit 9 off I-89 in Warner. Warner has 52 acres of commercial land fronting on about  $\frac{1}{2}$  mile of Route 103 highway where 95,000 square feet of commercial uses are located.

Warner's gateway commercial district at Exit 9 has a supermarket, gas stations and minor retail development to serve Warner and surrounding towns. Residents of Warner also have a thriving downtown village business district with small shops, cafes, and services such as medical offices. With us tonight is Mr. J.D. Colcord, a former Merrimack County Commissioner, a former selectman in Warner, and an alternate on the Warner Planning Board. Mr. Colcord will speak later about the Warner experience and planning efforts to have a commercial zone and a business zone that complement each other in a defined trade area that helps Warner residents to stay local for all their shopping needs.

The proposal to bring a supermarket to Exit 17 would be similar to the Warner experience by creating a trade area including Penacook Village as a village business district paired with the highway commercial district at Exit 17. We believe that a supermarket at Exit 17 will keep shoppers local instead of traveling to Fort Eddy Road and Loudon Road.

We cannot forget to mention the potential tax impact of this proposal to the Penacook tax district which is part of the Merrimack Valley School District. Much of the Whitney Road property is in Current Use and paying minimal property taxes. We have estimated that the commercial plan proposed will generate nearly 12 million dollars of assessed valuation. At the current tax rate, the total property taxes generated are estimated at \$315,000 annually. The property would become the second largest taxpayer in the district.

To build awareness of the project, we started a Facebook page on which 1500 fans have since registered. Our Facebook fans have been posting comments for months and many of those were included in the packet to the Planning Board. Those who have concerns about the project have been allowed to comment on the page and as a result, there have been thoughtful exchanges of pros and cons. We believe the Facebook fans are a representative sample of our support and we have determined that about 75% of Facebook supporters are residents of Concord or Penacook. We think this statistic shows the potential benefit of this supermarket location to residents not only in Penacook and West Concord but also to residents of East Concord, Boscawen, Canterbury, Loudon, Salisbury, Webster and so on.

In summary, we believe this proposal is the right project for this location, we believe it will serve to improve access to fresh groceries for Concord residents and the region, we believe it will create needed jobs and will significantly contribute to the Penacook tax base. We ask that the Planning Board send a positive recommendation to the City Council. We wish to thank everyone who came out to the meeting tonight and thank the Planning Board for their time and consideration.”

John McQueeney, President of Retail Specialist, LLC, a company that does development consulting, was present on behalf of the applicants.

Mr. McQueeney provided the Board with an outline of his experience. He explained that he was asked by Mr. Rauseo to look at his location and provide his impression. He was provided with the traffic volumes in the area. He stated that he visited other sites in the area from Tilton, NH to south Concord, looking at the entire market place. He explained that typically population, access, and competition are the three areas that need to be studied. He compared the Exit 17 area with Penacook Village and the Thirty Pines area. His conclusion was that the site at Exit 17 had much more going for it long-term. He discussed the lack of competition in the area as opposed to the Fort Eddy Road area. Mr. McQueeney stated that most people shop at larger supermarkets is for pricing and convenience. The location at Exit 17 offers mostly convenience. He stated that from the point of view of traffic, the Exit 17 site is the premier location. Supermarkets are attracted to these types of locations because the traffic is already in the area. He stated that supermarkets consider the cost of building a new supermarket, which is more than \$170 per square foot. Supermarkets look for the traffic volume the supermarket would generate in order to pay for the costs associated with land acquisition, building and equipment costs, permitting, etc. Mr. McQueeney feels that the Village of Penacook is too limited, as many people feel the traffic is too congested. He discussed that most people travel to supermarkets by vehicle as opposed to walking. He said that Fisherville Road's limitation is the speed of traffic in the area, which would not be conducive to a supermarket. His conclusion is that the Exit 17 area is the best of the three areas. In order to get a supermarket built, all the permitting and zoning must be already in place. He feels that the covenants are a zoning restriction that would preclude supermarkets from even looking at the site. If Concord wants to see a supermarket in the area, the place that would be the best would be the Exit 17 area.

Mr. Gross stated that the proposal is for a 33,000 square foot supermarket at this location, which is not considered a full-size supermarket. Mr. McQueeney stated that different companies have different prototypes -- Market Basket's full-size supermarket is 75,000 square feet, other companies' full-size supermarkets are 65,000 square feet. He said that one of the things that supermarket companies have found is that the 65,000 square foot stores are too big and do not generate the volume necessary for success. Some of the supermarket companies are reconsidering what their stores should look like and have new prototypes coming out. He stated that some of the traditional big stores that are found in this marketplace are in the 30 – 40,000 square foot range and are dependent on whether they will host a pharmacy onsite as well as other additional department within those stores. He thinks it is a developing kind of thing in terms of what the prototypes will be down the road.

Mr. Gross asked Mr. McQueeney about whether he thought Market Basket in the Capital Shopping Center purchased the store from Stop N Shop in order to stop any other supermarket from going into the space. Mr. McQueeney said that it was sort of a package deal, from when Stop N Shop was in control of Fort Eddy Road with the Bradlees store. He thinks that was when Stop N Shop was getting out of New Hampshire.

Mr. Gross asked what would happen if a 33,000 square foot supermarket is built at Exit 17, and in the near future, the supermarket finds this particular store is not economically successful, and that the store is not generating the volume needed to support the infrastructure. The supermarket company then decides that they want to expand to a 55,000 or 60,000 square foot store, which is more in line with the industry standard, and comes back to the City. Mr. McQueeney replied that from an economic development point of view, it would be a good thing to bring additional tax revenue for the town budget, and in many cases, the towns would change the zoning. He stated that in many towns the zoning was restrictive, then as the people got used to these types of sites over the years, the town has then decided that the thing to do to get additional revenue is to increase the floor area ratio. From the point of view of economic development, Mr. McQueeney believe it makes sense to try to get the maximum; if you are going to have a center there, you might as well get the maximum revenue out of it. Mr. Gross thanked Mr. McQueeney for his explanation.

The Chair asked Mr. McQueeney if the trend with supermarkets is to go with a smaller footprint. Mr. McQueeney responded that many supermarkets are looking at smaller prototypes. He stated that it is easier to build a big store from the beginning, and normally any limitations are those of the site. Mr. McQueeney stated that if the City is going to have this development at Exit 17, the City should try to get the maximum out of it, and from the developer's point of view, the developer needs to have the opportunity to fully develop the property. The City needs to get rid of these covenants to allow the developers to be able to look for interested supermarkets. One of the things that the developer has to do is to find tenants that are financially viable.

The Chair asked what supermarket names are more associated with a store of 33,000 square feet. Mr. McQueeney stated that Stop N Shop for example has a 38,000 prototype; Hannaford's has a prototype

of approximately the same size. There are companies out there that have the same size prototype; it is not their typical store though. The Chair said that everything Mr. McQueeney has said regarding this development has some salient points to what the developers would like to do, but to put the entire thing back into perspective, the City is looking at the entire City and not just one developer who would like to enhance the value of their property. Mr. McQueeney said that one of the things that people look at is the desires of the people who live in the community, and for the developer to try and get the best supermarket for the community. Additionally, the area has been targeted by the City for economic development to raise additional tax revenue for the community. This development would assist the City in getting the most tax revenue, the most jobs, etc.

Mr. Lavers asked Mr. McQueeney about his take of the viability of a shopping center shown on the concept plan with covenants in place and the viability without an anchor tenant. Mr. McQueeney said that with the covenants in place, he doesn't see it as a financeable project.

Mr. Uchida stated that he wanted to talk about the Master Plan considerations in terms of the applicant's request. He believes that there are four strong reasons to support this request. The Master Plan and the land use strategy support this request, and that it makes good planning sense. If you look at the land use section of the Master Plan, it recognizes that there are a number of nonresidential commercial land use categories. The current Master Plan envisions the commercial portion of the Whitney Road area should be zoned Neighborhood Commercial. This particular piece of property is located at one of just seven major arterial streets in the City of Concord, as identified in the transportation section of the Master Plan. It is adjacent to the State interstate highway system; it sits at one of the entrances to the City, and is recognized as a road serving not only City residents but also residents in the region to the north, west, and east of Exit 17. With those particular features, the Master Plan would dictate that the type of land use category that this land would be in is either Regional Commercial, which is the gateway district, or the General Commercial district, or the new Highway Commercial district, which was just created by the City. All three of those district talk about the importance of designating certain land characteristics, such as is found at the property at Exit 17, as a higher level of commercial activity, given the proximity to the interstate, the major arterial highway, etc. In this particular instance, the point is that this land should be treated in a manner consistent with the Master Plan land use characteristics and any three of the districts he named previously, would otherwise permit the kind of development that the applicant is proposing, but for those covenants. Again, the first reason to support this change is that the Master Plan themes and strategies support this request.

Mr. Uchida stated that the second major reason why the applicants believe this request should be supported by the Planning Board is the current zoning and the covenants that are attached run counter to what the City wants to do, or at least what the applicants believe the City wants to do. The Master Plan describes the commercial use of this site as a neighborhood commercial land use site. According to the Master Plan, a neighborhood commercial land use site presumes that you have a residential neighborhood around a commercial node of up to 5,000 square feet to help serve those residents in the small neighborhood. In 2008, the Master Plan recognized that there was very low residential density

around Exit 17, and beyond that there was industrial land that had not yet been developed, and second and most importantly, that category was put in the Master Plan to protect the Village. It was done with great deference to the future development of the Village, including a supermarket in the Village area. He stated that this particular area serves more than just the residences in the immediate northwest Concord area and just over the line in Canterbury. The location is regional in nature for precisely the reasons that Mr. McQueeney just spoke about, which is the type and volume of traffic that serves the Exit 17 interchange and travels past the site. Mr. Uchida also stated that what has been learned as possible development proposals have been entertained is that these covenants do not protect the Village at all. In fact, there is a small incentive to create a little village on the site of Exit 17. Mr. Uchida stated that the applicants should be commended for resisting plans to create a competing village of small retail stores on this site. His second point is that if the protection of the Village development is important and critical, and should be, then the covenants that are place right now serve as a disincentive for that goal, and the covenants ought to be relaxed to provide incentive to create a more complimentary development to the Village.

Mr. Uchida stated that the third reason that the covenants should be relaxed is that things have changed since the rezoning four years ago. The covenants were created to provide the opportunity to obtain a supermarket for the Village, this has not happened and Mr. McQueeney has said that it would be a while before that would happen, given both the population center and the amount of traffic that runs through the Penacook area. At the same time what is being learned, is that there is a lot of interest in this corridor for a supermarket going forward and being successful. The reality of the matter is that if we don't do it here in Concord, it will likely be done up the road, where there are some other sites in other municipalities that have this same traffic and the same impacts that this particular site has. He would think that the City of Concord would rather take advantage of this particular opportunity.

Mr. Uchida stated that the final reason is that the applicants believe that if done properly, everyone can win. The applicants are envisioning a small little trade area at the top of this industrially zoned area to the south. In addition to what this proposal creates, there will be complimentary kinds of services downtown in the Village of Penacook. Mr. Uchida stated that a similar situation was created successfully in Warner, NH.

Mr. Uchida stated that the Report to the Planning Board from the Transportation Policy Advisory Committee (TPAC), which recommends against the relaxation of the covenant, cites in the Comprehensive Transportation Policy of the City which was adopted by City Council in January 2010 that growth ought to be accompanied by intermodal transportation opportunity, such as bicycle, pedestrian, etc. He thinks that the TPAC report ignores is the second principle or policy, which is that along major collector and arterial street networks you want to develop, implement, and maintain appropriate measures that encourage through travel. While TPAC cited the first part of the Comprehensive Transportation Policy, with all due respect, Mr. Uchida believes they overlooked the second policy that is embodied in that particular document. The fact of the matter is that the river cuts this particular parcel off from the Village of Penacook. The new round-about has not included any improvements such as

sidewalks, bicycle paths, or pedestrian travel to encourage travel along the Route 4 area out to the Exit 17 site. If the transportation policy of the City is that they want the villages to be multi-modal, and they don't want a village to spring up at Exit 17, then the City should be relaxing the covenants to allow for a more regional trade area.

Mr. Gross stated that Mr. Uchida mentioned that the City of Concord should take advantage of this opportunity because some other town may, if Concord doesn't. Mr. Gross asked Mr. Uchida whether he was aware that the Town of Boscawen sent the Concord Planning Board a letter saying that this is a development of regional impact, and that the Town of Boscawen opposes that.

Mr. Gross said that he has been sitting here feeling "had." When the Planning Board recommended that City Council rezone this parcel to make it possible for any commercial activity to occur there, we did so on the basis that this would be limited commercial development. Now the applicant is back and the Planning Board is told that now that this is commercially zoned, the Board must follow with what the Master Plan says, and removes the covenants. The applicant, when requesting the rezoning a couple years ago, voluntarily added the covenants, but now those covenants are not working for them, so let's just get rid of them. Mr. Gross said that the Planning Board assumed they were dealing in good faith with the situation, in which there was going to be limited development.

Mr. Uchida apologized for any bad feelings regarding this request to relax the covenants. He said that as can be seen from the Declaration of Covenants, there has always been an opportunity to seek relief if there was justification for such relief, and in fact, those covenants are only there for a period of thirty years. The principle issue is the rezoning and the limited commercial use. The reason why the limited commercial use provision was put into the covenant was the fear that what would be done in the Exit 17 area would compete with the Village of Penacook. When the document was negotiated with the City for the set of covenants, the applicant was aware of and concerned about the impact of any development in the area on the Village of Penacook. Because of all the other considerations in the Master Plan, this area should be zoned in a commercial zone that is more aggressive than a neighborhood commercial zone or the urban commercial zone with the covenants on it. What has been learned in the last four years is that these covenants create the incentive for the developers to find businesses, because the businesses have to be limited in size, to find businesses similar to the ones that are currently in downtown Penacook. That is the model that will work in order for the site to be developed in the way that the covenant envisions. Honoring the covenant will cause more harm to the Village of Penacook.

Ms. Smith Meyer stated that most of those on the Planning Board now were involved with the Master Plan process, and it was a grueling process. She said that at the time that the applicant came to obtain rezoning, it seems that the applicant was using the argument for the rezoning that they are now saying make no sense. One of the reasons that the rezoning was approved was because in the Master Plan the neighborhood commercial district are characterized by their small scale, generally two to five acres in size, their compactness, and their location within an established and developing residential areas. Granted, it is very low density there. The Master Plan points out that this area would be worthy of a

small convenience store type of commercial area. At the time when the applicants asked for the rezoning, it was not easy for the Planning Board to recommend, but the Planning Board did recommend the rezoning because it was consistent with the Master Plan. Never was an Exit 17 large commercial development part of the City's Master Plan. Ms. Smith Meyer believes that what was good four years ago should still be good. The argument about the grocery store, if it had been made four years ago, the rezoning may never have happened.

Mr. Uchida agrees with Ms. Smith Meyer, and stated that the reason that it wouldn't have happened was because everyone was holding out hope at the time that a grocery store of this nature would go into the Village of Penacook, and therefore, the same type of opportunity should not be created at the Exit 17 site. What has been learned in the past four years is that the Penacook area won't get that grocery store anytime soon.

Ms. Smith Meyer stated that some people have not given up on a grocery store in Penacook, and it is still part of the Master Plan, and it is the job of the Planning Board to respect the Master Plan. It is not as if the Master Plan was done ten years ago.

Mr. Uchida stated that he understands Ms. Smith Meyer's points. He stated that there are two points he would like to make with respect with that. First of all, it needs to be remembers why that provision was in the Master Plan. If you remember at the time that we were doing this work, this particular Master Plan had not yet been adopted. It was in draft form in that particular time, and the provision was created to fit what was going to be developed in that area. When we sat with the City staff, and the Master Plan was being crafted, this paragraph was inserted in to match what it was that the applicant was trying to do at this particular site. In fact, the previous Master Plan envisioned a much more aggressive commercial and industrial development at this particular location on the site. The applicants back away from that stating that the applicants did not think that was what the City envisioned, which would be something more protective of the village, and that paragraph as a result was put into the Master Plan. With that said, Mr. Uchida stated that he thinks that things have changed over the years, and would argue that the Master Plan is not an immutable document that doesn't recognize changes that occur. In fact, the City has amended the Master Plan on a couple of occasions in the past few years where the City has recognized the need, and he is simply saying tonight that the need is there.

Mr. Shurtleff thanked everyone for being at the hearing. He stated that in a letter to the Planning Board, dated October 18<sup>th</sup> from Mr. Uchida, on page 2, paragraph 2, Mr. Uchida makes reference to the members of the Penacook Village Association express support for the relaxation of the covenants. As a member of the board of the Penacook Village Association, Mr. Shurtleff asked whether Mr. Uchida was aware that the Penacook Village Association has not taken any position on this Exit 17 proposal. Mr. Uchida stated that the reason he used the word members was because he understood that some members have expressed support, but that Mr. Shurtleff is exactly correct in stating that the Penacook Village Association as a whole and the institution as a whole has not. Mr. Shurtleff stated that just for the record, there are members of the Penacook Village Association who have expressed opposition to

the lifting of the covenants, as well as some who have expressed support. Mr. Shurtleff stated that the Penacook Village Association has stayed neutral on this issue. Mr. Uchida stated that it was his understanding as well, and to the extent that Mr. Shurtleff believes that Mr. Uchida mischaracterized the situation, he apologizes for that. Mr. Shurtleff said that he just wanted to clear the record.

Mr. Kenison explained that he has a concern about the applicants relying on changed circumstances as a basis for changing this, because if the situation is different now than it was four years ago, and changed circumstances is a justification for relaxing these covenants, he has not really heard anything that says 33,000 square feet is a current prototype for a supermarket. He said that it seems that this is a slippery slope that Mr. Gross referred to earlier that if you relax the covenants because this will work, but there is no assurance that if the covenants are relaxed that the argument in four years hence will be this store isn't big enough to justify what is needed, this has to be relaxed further. Mr. Kenison does see it as a slippery slope argument and it is troubling to him, because it doesn't really satisfy the argument. Mr. Uchida wanted to be sure that Mr. Kenison understands the nature of the applicants' request, as he is not sure that it came out as clearly as it could have been made. Mr. Uchida stated that what the applicant is asking to do is to lift the 8,000 square foot per use covenant, which would go away entirely. And the 50,000 square foot covenant, in terms of total development on the site, would mean that that underlying zone, the Urban Commercial zone density provision would govern. What that says is the 75,000 square feet of total development. What the applicants are saying is that based on the interest that has been expressed to the applicants, it seems that a 33,000 to 35,000 square foot grocery store is what will work at this particular site. The applicants are not asking to change the covenant to say 33,000 to 35,000 square foot grocery store. Mr. Kenison stated that Mr. Uchida has articulated his point very well, which is that the applicants have presented a plan and what the applicants are really saying is that as long as we stay within 75,000 square feet, that is the ceiling, so that this building here maybe 45,000 square feet as opposed to 30,000 to 33,000. That is still to be determined as long as the 75,000 square footage of the site isn't exceeded. Mr. Uchida responded that in Mr. Kenison's hypothetical example, that would be correct.

The Chair stated when Mr. Uchida said that things have changed and that is the reason that the applicants are back before the Planning Board to ask for this change, Mr. Drypolcher agrees that things have changed, but it is also from his perspective, that the Planning Board needs to be more cautious because of what Mr. Kenison has said, that with this 75,000 square foot total build, there is no guarantee that it will even be a grocery store. The Chair stated that he is a little reluctant to make this change. Mr. Uchida stated that this is why the applicants have tried to outline for the Planning Board how that Master Plan themes, strategies, and considerations make sense for this request. With regard to the commitment to the grocery store, Mr. Uchida feels that it would be more appropriately answered by the Rauseos.

Mr. Colcord from Warner was present on behalf of the applicant. Mr. Colcord stated that he was on the Board of Selectmen in the Town of Warner for 13 years and was there when the Demoulas family decided that they wanted to build a supermarket in Warner. They purchased some land at Exit 9 and

proceeded to build a 60,000 square foot supermarket. The big concern in Warner was that they didn't want to spoil the rural character of the main street. They were concerned that the main street would be abandoned because of the construction. They found that they were wrong, this grocery store has done nothing but help the main street area, all the small shops and businesses that are located on Main Street are thriving. The town has had some businesses come and go, but most of them have all done very, very well. Mr. Rauseo had asked to speak with Mr. Colcord to find out what the experience in Warner was.

Mr. Gross asked Mr. Colcord if there was a market at Exit 9 prior. Mr. Colcord responded that there was a small market in town which didn't serve the needs of the town very well, as everyone came into Concord. Hannaford Brothers purchased this market as well as others that were owned by the same family. The town thought that when they built the supermarket at Exit 9, that is was crazy; however, it has proven to be one of Market Basket's best stores, and it has been a boon to the Town of Warner, not only as far as the tax base is concerned, but it has also helped considerably with the businesses thriving on Main Street. There has not been the big traffic problem they thought they would have. It has been a good experience for the town. Mr. Gross recalls that the Town of Warner is served not only by Exit 9, but also Exit 8 on Interstate 89. Mr. Colcord explained that Exits 7, 8, and 9 are all Warner exits and this is the only exit on I-89, from Concord to Lebanon that allows you to get off and get coffee, etc. The same is also true at Exit 17, where the applicants are looking to develop.

The Chair stated that he would open this part of the hearing to the general public who wish to speak. He stated that there would be ground rules: each individual will be given five minutes to speak, and anyone who follows someone and says the same thing will be cut off and the Chair stated that no applause or booing would be allowed.

Republican Seth Cohn represents Merrimack 6 and previously lived on Fisherville Road. He is also an alternate on the Canterbury Planning Board. He is in support of lifting the covenants. The feedback that he has received from his constituents has been overwhelmingly positive; they see a need for the supermarket. He believes that by not lifting the covenants, the level of convenience store that would be allowed would only serve to compete with the level of convenience stores currently at Exit 18, as well as in Boscawen and Penacook. He doesn't believe that would serve the public good. He did have one constituent say that wouldn't that been great if a Market Basket could go in there, and he replied that there was a Market Basket in Tilton and two in Concord, and that it is rather unlikely that another Market Basket would go in. The constituent responded that as long as what supermarket would go in would be of a large enough size that it becomes worthwhile to go to, because they are looking at traveling ten miles each way. That is true within that entire stretch of area. The opportunity is there. With the current development that has happened on the tannery site, it appears that there will not be a grocery store in Penacook. During informal discussions with the Planning Board in Canterbury, a development over the line in Canterbury would be approved for the tax revenues and commercial development. He is enthusiastic about this and feels it serves the public and he would encourage the Planning Board to lift the covenants. The Rauseos have shown that they are members of the community

in more ways than one, and believe the public support would turn against them if a supermarket didn't go in this area.

Alan Hershlag stated that he lives in Concord in the area of Penacook. He wanted to clear up something that the gentleman from Warner stated regarding the small market that was in the Town of Warner. He stated that this store was closed prior to the Market Basket. He felt that it might have been an impetus to the Town of Warner. Prior to speaking with the Planning Board this evening, Mr. Hershlag stated that he has spoken to a number of members of the City Administration, including the two Deputy City Assistant Managers, the City Engineer, a member of the Planning Department, as well as being in contact with a number of Planning Board members. He wanted to speak about the misconceptions about the developments in downtown Penacook, which he supports. He does not support the removal of the covenants. First he hears about the issues of traffic and how many cars go past Exit 17 and how many cars drive through downtown Penacook. He stated that he has some traffic studies that contain different numbers than what has been heard this evening, and that he has heard different numbers from what he has. To him, what hasn't been shown from a traffic report is what would be anticipated, what would the traffic count be based on the number of people who live in Wards 1 and 2, and Boscawen, if a grocery store of 35,000 square feet was built in downtown Penacook. That is what we don't have and what we should have, if this decision is going to be considered. Further, Mr. Hershlag stated that it is important to the implications on Fisherville Road. Currently, in talking with our City Engineer, Route 3, Village Street going into downtown Penacook, could handle triple the amount of traffic that currently goes through that area and that is without road improvements that are planned to occur in the next year or two. The volume of traffic won't necessarily increase, but the level of service and the traffic flows will. Anyone who thinks that downtown Penacook can't handle the traffic of the 35,000 square foot grocery store that is not what he is hearing from the City Administration. Mr. Hershlag also believes that there is a misperception among a significant number of those who support a grocery store at Exit 17 over the downtown area; he feels that they have been led to believe that a downtown grocery store would not be a full-service grocery store, which would offer good selections at reasonable prices, but would resemble a Thirty Pines. Nothing can be further from the truth. All the proposals for a grocery store for the downtown have been for a store at least as large as the Market Basket off of Storrs Street, and the majority of those proposals are for a store 20-40 percent larger than the Storrs Street Market Basket. The economic impact for a store going in at Exit 17 to the entire community should be the focus, not just one section of the community and not just the short-term gain of another development of a big box store development. And it has been heard tonight based on the Planning Board's questioning, that if the covenants are removed, the opportunity for the applicants to build 15 5,000 square foot retail stores or one 75,000 square foot retail store, or any combination thereof. There are no guarantees once those covenants are removed. Mr. Hershlag stated that if downtown Penacook is given the opportunity to continue to redevelop, there will be additional tax dollars for the City. It is important to understand that the downtown's redevelopment will not impact the further development of the industrially zoned parcels on Whitney Road, or interfere with small retail convenience store development at the site; however, if a grocery store is developed on Exit 17, the Exit

17 site will be a stake in the heart of many of the businesses in the downtown and foreclose further redevelopment in the downtown for the years to come. The financial implication is that the downtown will not be generating tax revenues if the grocery store is built on Exit 17, but if a grocery store is built in Penacook, the downtown will steadily increase the amount of taxes they pay, and to continue additional spinoff development and the development of the parcels on Whitney Road will not be affected by the downtown's redevelopment. A win-win for the City is having both areas generating taxable income for the community.

Maura Adams, who has lived and worked in Concord for six years and has lived in Penacook for four years on Elm Street, stated that her husband and she moved to Penacook largely because of the village character, really liked the rural nature off of Exit 17, and felt like that downtown had a great deal of promise. They had heard about a market and downtown revitalization efforts that have been happening in the last four years. It may be a gradual change, but they have seen greater activity and they still have a lot of hope for the downtown. She would like to have on the record that the very vision, very core of the Master Plan is that new non-residential development is well designed, minimizes its impact on the community, its neighbors, and the environments, and enhances the quality of life in Concord, and additionally, the opportunity for moving around the City without the use of a car increases. She doesn't think that putting a development at Exit 17 is going to help anyone who is going to move around without a vehicle. The Master Plan also states that the City should maximize the reuse and redevelopment of land and buildings, in preference to new development and greenfield development. It also states that the City can conserve the tax base by discouraging sprawl and that the City retain and encourage the expansion of existing local businesses, and again, that the City reduces the dependence on automobiles for travel. She explained that if the City relaxes these covenants, it goes against a great many things in the Master Plan; the City will disappoint a lot of people who came to and stay in Penacook with the confidence that it will become a better community. And frankly, the attorney's comments that the applicants are trying to create a village at Exit 17 with a strip mall and a big box retail grocery store, it is insulting to the people who have made Penacook an actual village, a historic village with real people with real shops and real local owners. And for them to say that a strip mall and big box development is a village is just out of line. Ms. Adams provided the Planning Board with a petition signed by 60 people within the past few days.

Jen Coffee, representative from Merrimack District 6, stated that what she thinks is important for people to hear what she has heard from her constituents. As she lives in Andover, in order to go grocery shopping, with 20 feet of snow on the ground, ice all over the place, and road wires down, was not easy. It is a difficult trek at 22 miles into Concord, or to try and traverse into Franklin. To have the convenience of a grocery store, especially for the older folks that live in her area, they have a lot of elder population in Salisbury and Andover, to have the convenience of having a full grocery store instead of a small convenience store, will be an impact for both convenience as well as gas usage, saving mileage on vehicles. We are all trying to pinch pennies; we all know that the economic times have changed. She would ask the City to consider the here and now, if you have a business, people who have land that they

want to develop, that will bring more people into the area, enhance the businesses in our area, the convenience store, the gas stations, the local restaurants will see more activity because there is a reason to go to that area. The jobs that will come in are essential, there are not that many jobs in the area, you have to travel. The ability to have more jobs in that area is something she doesn't think any of us should be turning a blind eye to. It is difficult in this day and age to get a job. She has spoken to people who have put 100 applications in and have not received one call. To see these jobs come in is essential for our community, for all of our communities. She said that this is just about Penacook, and she believes that this would actually enhance the village. If she could go to the grocery store locally, she is more likely to go to a local store that has the little things that I want, the unique items that I want, rather than traverse the 22 miles into Concord and bringing all of my business there. She does go to doctors in Penacook, she does occasionally go to those stores, but when it is major shopping day in her family, when they have to go get all the groceries, we pretty much are going to go to one location. It would be a lot nicer to have it closer to home and she knows that she is not alone in that thought process. She's seen the comments on Facebook; she's talked with the people in her area, people like the idea of having something closer than just a convenience store. Convenience stores are great when you need a gallon of milk, not so great when you want everything that you need for dinner. To have that available, to have the jobs available, the economy would grow in that area. The taxes that will come in, it just brings a positive-ness to the area. To wonder what the "what if" would be in four years if they decide they want to expand, they would have to come back and the Planning Board could say no. To wonder "what if" the grocery store doesn't end up coming in if the covenant is lifted, well guess what, they have to come to you and get permission and you can say no. The people have said they want a supermarket; it will be up to the Planning Board to ensure that is what goes there.

Linda Bloomburg, of Elm Street, Concord, stated she travels 100 miles each day to work round trip and to have a grocery store nearby would be awesome. It is one half hour for her to go to Fort Eddy Road to go to the grocery store and another half hour back. She works ten hour shifts so that she is looking at a 12-hour day, so she can't travel to Concord on her work days, she doesn't have time, and she doesn't have enough time to sleep. This development would also bring jobs and revenue, convenience, and more money in people's pockets with less gas, less on vehicle maintenance, and it makes sense. She has been in the area since 1986, after leaving the military, and she has been hearing since that time that there would be a grocery store in the area. She hasn't seen it yet and she is going to retire in eight years and would like to have one before she retires. She watches her ex-mother-in-law truck down from Webster to go to Concord once a week, because she couldn't afford more than once a week to the grocery store. There are a lot of people who need to go to the grocery store more than once a week. From her experience, her father went every day to the grocery as well. To have something close, she believes makes common sense and everyone she has spoken to wants a grocery store. She knows people in Webster, Boscawen, and Hopkinton who would all come to a grocery store at Exit 17, and she thinks it is a great revenue source for the City of Concord. To pass that up, she thinks is a huge mistake.

Jessica Body, a resident of Boscawen, stated she is in support of the relaxation of the covenants. Her concern is about the letter that was sent in by the Town of Boscawen. She was not sure who signed the letter, but to her knowledge, there has not been any public hearing or meeting regards to what the Town of Boscawen's position is on this supermarket proposal. She doesn't believe that that letter is a fair representation of the residents in Boscawen.

Brian Adams, a resident of Penacook Village, who works for a local construction company as a building analyst and project manager stated that his company does a lot of deliberate design and the company tries not to focus on redundant development. He feels that is what is occurring at Exit 17, and would like the Planning Board to recommend to the City Council that the covenants not be relaxed. He said that a thriving village creates local jobs and keeps the money in the local economy. When larger development is brought in, that money tends to leave the economy and it leaves people in the local area with \$9.00 per hour jobs.

Rick Jacques, a resident of Penacook and the President of the Penacook Historic Society, read a letter from the "Board of Directors of the Penacook Historic Society, at their regular monthly meeting, of the 6<sup>th</sup> September 2011, voted unanimously to support retention of the building size and total gross floor area covenants on the property at the intersection of Route 4 and Whitney Road." Mr. Jacques also made a note as well for the record that Planning Board member Steve Shurtleff, who also serves on the Board of the Penacook Historic Society, was not present at this meeting.

Carol Foss, a resident of 26 Penacook Street, stated that she is a Penacook native and resident in Penacook Village. Ms. Foss read a prepared statement to the Board. "I come before you tonight as a native and resident of Penacook Village. My roots in this community reach back seven generations to European settlement in the mid-1700s. My current involvement in civic affairs, however, concerns the welfare of present and future generations. With this welfare in mind, I urge the Planning Board to recommend that the City Council retain the current covenants on the property at the intersection of Route 4 and Whitney Road.

For much of my lifetime, Penacook residents have felt like second class citizens of Concord, and there have even been mutterings about secession from time to time. In recent years, our Village has seen increased attention and investment from City Administration, for which we are extremely grateful. The efforts of Matt Walsh with respect to the Tannery site, the new medical offices on Canal Street, and continuing emphasis on downtown revitalization have awakened a long-dormant pride in Penacook. Over the past decade, the citizens and leaders of Concord have given thoughtful consideration to the future development of our City as manifested by the 20/20 Vision, the Master Plan, and the Comprehensive Transportation Policy. These documents encourage walkable villages, with commercial development accessible to pedestrians and public transportation. Development of a commercial node at Exit 17 is not consistent with these documents.

The Master Plan and Zoning Ordinance call for industrial development in this part of the City, with an opportunity for small-scale, convenience retail that supports the industrial development. The proposed gas station, convenience store, and associated services, for which the original zoning change was requested, meet the intent of the Master Plan. The covenants in place support the intent of the Master Plan. Lifting the covenants would violate that intent.

The minutes of the Planning Board meeting of February 20, 2008, when the zoning change was originally considered, state that “the petitioner understood the City’s concern that it not create opportunities for large retail developers to locate at the site and would prefer to send that type of growth toward downtown Penacook. That testimony was an important factor in the decision to recommend the zoning change. It is not in the public interest to lift the covenants now.

As tonight’s testimony demonstrates, our community is not of one mind with regard to the matter at hand. There are many who feel strongly that Penacook has waited long enough for a grocery store and opportunity has arisen to provide one, so what’s the hold-up here, let’s build it already. There are others who feel equally strongly that commercial development to which no one can safely walk and which is distant from public transportation routes is a giant step in the wrong direction.

I would like to see a local grocery store as much as the next person, but I want to see one that serves the community directly, that complements existing commercial areas that encourages efficient use of time, energy, and land. In the long-term interest of the City and the Village, we need to give current revitalization efforts an opportunity to fill the existing commercial areas available in Penacook.

Thank you for your consideration, and your continuing efforts on behalf of sound municipal planning in Concord.”

Jason Longo, a resident of River Road in Penacook, stated he would like to see more sustainable walking and biking communities. He would ask who really does walk to a grocery store. Groceries are heavy, it is just not feasible. Everyone drives to the grocery store, unless it is literally next door. He stated that his father manages some elderly housing in Haverill, Massachusetts, and it works for the elderly home that is right next to Market Basket, because they are allowed to take the carts back. Other than that, it doesn’t work; he can’t see how it works, so let’s get something where there is a developer ready to do this now, so we don’t have to drive ten miles each way.

Ben Nadeau, a pharmacist at the Village Pharmacy in Penacook Village, stated that he doesn’t agree that the Warner example is a solid one; he believes that the Warner Market Basket works because it is a Market Basket and that is what a lot of people in this area need right now in the economic times. Secondly, there was nothing in that area, and folks had to drive into Concord from the Warner area, which is a lot further than a drive from the Penacook, Boscawen area into Concord, so he doesn’t think that the need is necessary there as badly as it was in Warner. Also, he stated that Mr. Rauseo had come to the pharmacy at one point to discuss the issues and what he had indicated was that the likely type of grocery store going in at Exit 17 would be a Harvest Market, which Mr. Nadeau believes would not be an

appropriate type of supermarket for the Penacook Area. It is typically found in Wolfeboro, Bedford, more white-collar areas. The Penacook area is filled with hardworking blue collar workers, who, he doesn't think would benefit from a Harvest Market being there. In relation to what the last speaker had indicated as far as transportation is concerned, Mr. Nadeau is not seeing anyone walking with grocery bags to the bus stop at the pharmacy. He sees people getting off the bus all day long, carrying grocery bags. There is no bus route that will travel to this new area at Exit 17. There are a lot of people who rely on public transportation, so he thinks that should be taken into consideration when making this decision. Most people who he has spoken with at the Pharmacy have indicated a desire for a grocery store, but once they find out that it will not be a Market Basket, they really don't have too much of an interest in it being there. They would rather have it be at the tannery site. He stated that his belief is that Penacook deserves a supermarket, but he believes it needs to be done in the right area and that Exit 17 spot is not the right area. He believes that the tannery site, with a little bit more research, would be a better option.

Mr. Nadeau provided written testimony from Terri Culijat, a resident from Elm Street in Penacook, for the Planning Board.

John Lawrence, who lives in Penacook now and formerly lived in Concord, stated that he doesn't know the machination of zoning law and appeal and modification, but he sees a lot of blatant opportunity behind this plot that is under discussion tonight, and in his 54 years, he has seen a little turn into a lot, with the snowball effect and with one appeal to make adjustments for a vision is good, and then as the years roll by, there can be more and more and more. It makes him just wonder what else may lay in store 15 to 20 years down the road for Penacook Village, if this can of worms gets opened. Not to take away from the Rauseos commitment and good they have done for the greater Concord area, he thinks that is commendable, but he is just not sure that this is the best fit for that area. He has concerns about what comes after that. From a pragmatic point of view with that plant next door, there is a god-awful stench that comes out of that stack and he can't imagine wondering around in a retail environment having to smell that when he is picking up his food. That is just a personal thing that no one else mentioned before, but boy, it can be rugged. He doesn't know if that is going to serve the greater need of the community in the long run.

Sumner Gorman, who lives in Borough Road in Penacook, has been in the area for about 37 or 38 years, tends to agree with the majority of people who have made comments about the store being in Penacook and, with the lack of transportation, to walk to the store from Penacook or Boscawen, where right now you can take the bus into Concord and pick up your groceries and come back. He tends to agree with the slippery slope and that once you take the covenant away that people could just build as much as they want and when stores get big, they have a tendency to absorb everything at the expense of all the other stores around them.

Roger Hawk, a resident of Concord, stated that he thinks the Planning Board remembers very well the hundreds, if not thousands, of hours that went into the creation of the current Master Plan. There is a

lot of discussion about Penacook Village and Exit 17, and one of the things that he has a lot of concern about is not just what is being proposed right now, but what will happen in five, ten, or 20 years from now, if you open up the potential for full-scale commercial development at Exit 17. He could easily envision one future growth scenario that turns the Exit 17 area, probably not into Exit 20 which is probably overkill given the geography and what is available to work with at Exit 17, but he thinks that there are future growth scenarios that are very plausible in the Exit 17 area that could show expanded commercial activity if this is allowed to go through. As the speakers for the developers have said, all the characteristics for commercial activity exist. You have traffic volumes, you have a reasonable site, and you have easy access to the highway in a lot of underserved areas to the north and west of this location. If the City is inclined to favorably act on this requested change, he would suggest the Planning Board go back and take a close, careful look at a neighborhood plan for this area; look very closely at the Whitney Road area, look closely at how that relates to Route 4 as it goes into Boscawen, and the ramifications for Penacook Village. There has been enough discussion that has been produced during the current Master Plan adoption to create the scheme that is currently on the books and he thinks that before the Planning Board changes that, you have another full public discussion, more than what is here this evening, about pros and cons of different alternatives. Thank you.

Alan Hershlag returned to the podium. He stated that he had one quick point to make. He understands that Mr. Uchida spent some time talking about the goals of the Master Plan. In Section G, under Economic Development policies and recommendations, the first thing that the Master Plan talks about is to promote the redevelopment of the opportunity corridor in the downtown of Concord and Penacook, as the highest priority of economic development initiative, with the greatest potential return to the tax base of the City.

Mr. Uchida stated that the applicants had tried their best to make sense at the end of the day in the context of the Master Plan, and they have tried to lay out those considerations that the applicants think the Planning Board ought to look at under the Master Plan that make sense for this particular site, at this particular time. He stated that the concerns of those who live in Penacook and the fear that there may be some destruction of that village if the applicants proceed, which is why the applicants brought in testimony from those who could provide you with a similarly situated experience, especially in Warner, where both the downtown and the supermarket have managed to survive. Primarily because the store is next to the interstate, and primarily because there are not lots of other support services nearby unless you move into Warner, which is very similar to the Penacook area. If you don't go to Penacook Village for those support services that are not located at the interstate, you would have to go all the way to Concord or all the way to Tilton. He urges the Planning Board to think about the fact that this is an opportunity to grow Penacook. He realizes that that is contrary to what some of the folks have told you this evening, but he thinks if you look at the way at which a similar community has developed and thrived, it seems to make sense. At the end of the day, that is what this is all about, to try to create a proposal that makes sense, given the Master Plan, given the growth trends that have been experienced in this area in the past, and given what has changed, or at least what he believes has changed in the last

four years. Concerns have been heard about the use of this area for something other than a grocery store, and he would like Laurie to address that because she has been receiving that question from others, and for her to address any other issues that she may want to speak to.

Laurie Rauseo stated that she would like to address Mr. Gross' comment about feeling had. She is very sorry that he feels that way, because in no way does she want him to feel that way. They came before you in good faith four years ago with a plan, we can certainly go back to that plan, if the Board and City Council so chooses. They are trying to bring services to the neighborhood. The reason this came about was because it didn't appear as though a supermarket was going to go into Penacook, and living so close to the exit and understanding personally how that feels to have to travel so far, they thought it would be an opportunity. To the extent that they have some ulterior motive to build something else, there is no ulterior motive. There is a reason for the buttons, there is a reason for the Facebook page, and it is what they are proposing. She is sure that the 1,500 hundred people will come and get her at her house, if that is not what they end up doing if the covenants are lifted. This is what we are proposing, if that is not what the City wants, then that is not what will happen, and she has said that all along. Again, she is sorry for any misunderstanding, they are just trying to bring the best project they can for the entire neighborhood and the region.

The Chair thanked everyone for their input and stated that the Board appreciated the public concern and interest in this issue and that the Board understands that there are heartfelt reasons for wanting to express them tonight. The hearing was closed at 10:13 p.m.

#### Deliberations and Action on the Master Plan Amendment

Mr. Gross thanked Ms. Rauseo, stating that he appreciated what she just said, and he accepts her assurance that they proceeded in good faith before and that they are continuing to do that now. He stated that he will put that issue completely out of his mind as he tries to resolve what is before the Board.

Mr. Gross explained that the final decision is not the Planning Board's, but that the Board was asked for a recommendation by the City Council and that is what this public hearing is about tonight. He pities the audience and the applicants as they will probably have to go through this all again when this issue comes before the City Council. It seems to Mr. Gross that this proposal places in clear view the tensions that are in Concord between what we say we want, which is more intense neighborhood development, more development that is people-sized, more development that will enhance walking and bicycling. This has been said over and over again and it is noted throughout the Master Plan process. On the other hand what this proposal represents is the very thing that we've said we don't want in Concord, which is automobile-based, interstate-based, transient commercial development. We have said that we don't want that, and perhaps he is short-circuiting something, but he thinks that is what we had in mind. Mr. Gross stated that this may be a very good opportunity for someone to put a major supermarket in the area, and yes it may be convenient for folks from Andover and other places for folks who have to work

for a living and commute long distances, and they go by an exit and stop at the supermarket. His feeling is that the Planning Board made a decision in working through the 20/20 visioning process, proceeding with the Master Plan, that this is not what we wanted to encourage. He is of the view, right now, that if we were to recommend to the City Council that they relinquish these covenants, it would run counter to the whole underlying concept of land use planning in Concord at the present time. It may well be that what the Planning Board has in mind is visionary and will never work, and that too is involved here. Why is it that Penacook Village has not been able to attract a supermarket is it because our vision is crazy and it does not address markets in a way that would attract that kind of investment. He doesn't know what the answer is, because he is not up-to-date on the efforts that may have been made to bring a grocery store to Penacook Village. He guesses that for the present time, he wishes that the City would continue those efforts, and if it turns out that the efforts are in vain, then maybe it will say to the Board that our whole concept underlying the City's approach to land use regulation in Concord, doesn't work. It may be true, but for the moment, Mr. Gross doesn't think it is true, no one has demonstrated to him that it doesn't work. He hopes that Penacook Village can demonstrate once again that the concept of village and walkability and less reliance on transport by the automobile does work. He thinks that is why that having worked this through out loud, he would vote to recommend against relaxing the covenants.

Mr. Gross moved to adopt the recommendation of the Planning staff and transmit those recommendations to the City Council, stating that the relaxing of the deed restrictions and covenants as requested by Interchange Development, LLC, would be inconsistent with the City of Concord Master Plan 2030 and may adversely impact the development and redevelopment of retail properties in Penacook Village and along Fisherville Road.

Ms. Smith Meyer seconded the motion.

Mr. Swope stated that he plans to support the motion and agrees with much of what Mr. Gross said. He said that some of the arguments that he heard tonight regarding why the covenants should be relaxed, it would be equally good to say that the Planning Board went too far when we made the covenants. This would be giving up on the idea of the walkable village and going against the recommendations of the transportation committee, the Planning staff, and the letter from the Boscawen Planning Board. He plans to vote for the motion.

Mr. Shurtleff stated that he has represented Penacook for seven years as a state representative and Concord City Councilor, and as he looks out at the audience this evening, he just doesn't see people interested in an issue at Exit 17, and he sees his friends and his neighbors. He doesn't think he has had any decision that has been more difficult than this one. Over the past year, he has gotten to know the Rauseos and he considers them friends. They have done a lot for the Village of Penacook and have been very involved in the Penacook Village Association among other things. He sees people out in the audience this evening wearing green buttons who he respects and whose opinions mean a great deal to him, but he will be supporting the motion. He thinks Penacook is going through a renaissance. We have seen the new medical facility constructed, and they are working on Phase 2 of that project, building a

laboratory. There has been interest in the Rivco property and in two more years the Route 3 Corridor project will be completed which will improve transportation to Penacook. The tannery site will be developed, a lot is happening. He stated that if he had any sense, he would have called in sick this evening, but he has no sense apparently, and he will support the motion, and believes that at this time, it is in the best interest of the City of Concord.

The Chair stated that he wanted to mention to people that the reason there is a Planning Board and Planning Division in cities, is for the very purpose of planning and trying to look ahead, not one year or two years or three years. The Master Plan is completed every ten years and is used for those who come after this Board to understand what the goals are. One would think that planning boards shouldn't be bombarded with three year adjustments to the Master Plan. He knows that the grocery store issue has been around a lot longer than the Master Plan, but the vision needs to be kept along with the walkable community, public transportation that can service the people who don't have driver's licenses or can't drive, in order to keep things close by to where they live. To a fault, that will create neglect for towns that surround Concord who count on Concord to provide some of the necessities that they wouldn't see in their own communities because the populations of those communities are small. But that doesn't stop the Planning Board from looking ahead with the vision. He said that he has been around long enough to see efforts to try and change things too soon, and it backfires. He doesn't want this to get out of hand. Like Mr. Swope, he agrees that if the Planning Board had had the short-term vision to see that this would come back to haunt the Planning Board, they perhaps would have left the area industrially zoned. That would be a scenario that would create jobs as well. With that said, the Chair asked if anyone else wanted to comment.

Mr. Hicks stated that this is a difficult issue, but where he is with it is the constant request to change the City's zoning, and it is becoming very frustrating when the Board makes a decision on zoning and then is asked to change that decision, which seems to be happening every other month or so. He feels that perhaps the best comment of the night was the comment to go back and look at the Master Plan and revisit that section to be clearer on what is being done, so that as the Planning Board moves forward, there is a better understanding of why those decisions were ultimately made in the first place. He is conflicted on the vote, but for that reason alone, he is going to vote in favor of the motion, because he doesn't like to constantly keep changing the zoning in Concord.

Mr. Lavers stated that he is of a similar opinion to Mr. Hicks, in that he is in support of the motion and being new to the Planning Board he has a great deal of respect for the opinions and experiences that the Board had when putting together the Master Plan. After hearing this debate tonight and expecting further debates about this property to come, he wishes that the zoning had never been changed at this site. He believes that the die was cast for a continued debate over what is an appropriate commercial use of this site. He thinks that the Planning Board will have this issue to revisit every few years, but is hesitate to support the motion tonight, as some have tried to frame this debate as being about development or no development. That is not the case. The Planning Board is deciding what could be a viable development for this property. With the covenants in place and with the expert that was heard

from tonight, with his 30 plus years in advising commercial tenants, Mr. Lavers doesn't see that this proposal is viable for that small space without an anchor and at some point, he understands that there is a need to respect the desire to enhance the Penacook Village area and he has a great deal of respect for that, but at some point it has to be realized that perfect might not be possible, and that sometimes pretty good is a decent option. He is looking forward to more years on this Board and more debates similar tonight, because the die was cast, the urban commercial designation is on this site and the Planning Board will continue to listen to people's ideas about what can and cannot go on this site, and what is needed to do to make proposed development viable. He stated that he will support the motion.

Mr. Regan stated that he intends to support the motion. He stated that it might be harder for him to do because in some ways he doesn't have the history that some of the members of the Board do. He stated that he is motivated by what the right thing to do for Penacook is, but is aware that there are diverse opinions of what is the right thing to do for Penacook. He does respect the planning process that has brought us to this point and admires what has been done to the property to date. He feels it is not compelling to go against all the work that has preceded the Board to date.

Motion carried unanimously.

### **Site Plan Regulation Amendments**

#### **9. Consideration of an update to the City of Concord Site Plan Regulations – Public Hearing Draft – October 19, 2011.**

##### **Public Hearing**

The Chair opened the hearing. He stated that City Planner, Gloria McPherson, requested that they meet to discuss the vision of the Planning Board. The Chair stated that he doesn't feel qualified to speak for the entire board in this instance, so suggested that the conversation take place with the entire Planning Board. He stated that the Site Plan Regulation amendments also need to be heard, so he suggests that a separate meeting be held to take up these two items. The dates of November 30<sup>th</sup> and December 7<sup>th</sup> were suggested, and an email will be sent to the Planning Board by the Planning staff confirming one of the two dates.

##### **Deliberations and Action**

Mr. Gross moved to table this hearing until the next scheduled Planning Board meeting. Ms. Smith Meyer seconded the motion. Motion carried.

**REGULAR MEETING**

**10. Consideration of the minutes of the Planning Board meeting for October 19, 2011.**

Mr. Swope moved to approve the minutes of the Planning Board meeting for October 19, 2011, as written and Mr. Lavers seconded the motion. Motion carried.

**New Business**

**11. Consideration of a request by the City of Concord Engineering Division to discontinue a portion of Broken Bridge Road as a public highway and to accept a new section of Broken Bridge Road as a City-maintained public highway near the intersection of Manchester Street and Integra Drive.**

Mr. Henninger stated that this item is on the City Council's December agenda, and that the Planning staff's recommendation is for the Planning Board to support the discontinuance of the northerly end of Broken Bridge Road at its intersection with Manchester Street, effective upon the completion and acceptance of a realigned section of Broken Bridge Road and its new intersection with Integra Drive.

Mr. Swope moved to recommend to City Council to approve the discontinuance of the northerly end of Broken Bridge Road and the acceptance of a realigned section of Broken Bridge Road.

Mr. Gross seconded the motion. Motion carried.

**12. Consideration of a request by P & M Realty of Concord, LLC, and Concord Power and Steam for a waiver of the Site Plan Review Regulations to permit an additional one-year extension of site plan approval and conditional use permits for the development of a steam and power plant off Langdon Avenue and South Main Street. (2008-007)**

The Chair stated that a one-year extension is being requested. Mr. Swope stated that extensions are normally granted for the first request, and then the request is more closely looked at the second time around. The Chair stated that this was the second request for an extension, but is within the Planning Board's guidelines.

Mr. Swope moved to grant a waiver of the Site Plan Review Regulations for a one-year extension of site plan approval, architectural design review approval, and three Conditional Use Permits for P & M Realty of Concord LLC and Concord Power and Steam LLC, until December 17, 2012. All conditions of the original approval will remain in full force and effect.

Mr. Hicks seconded the motion. Motion carried.

**13. Recommendation to City Council on the disposition of two tax-deeded properties:**

- Single family residence at **109 Fisherville Road**
- Single family residence at **8 Bradley Street**

Mr. Henninger stated that these two tax deeded properties are single family residences, one in a commercial district and the other in a neighborhood. The Fisherville Road property was checked to see if there was any viability for the City's Human Services Department to be relocated there. There wasn't any interest in that property by the Human Services director or the City's Administration.

Mr. Hicks moved to recommend to the City Council to offer these two single family residences for sale and returned to the City's tax base, as there is no public purpose in retaining either property.

Mr. Gross seconded the motion. Motion carried.

### Old Business

#### **14. Consideration of a Development of Regional Impact in the Town of Pembroke for a Major Site Plan and Special Use Permit – Aquifer for F. L. Merrill Construction, Inc., at 773-778 Silver Hills Drive. (2011-0040)**

Mr. Henninger said that City staff and the City's groundwater consultant has met with the applicant and that new plans have been received, and although feedback from the General Services Department has not yet been received, it is Mr. Henninger's opinion that the project will be able to proceed with the revised plans. If Mr. Henninger receives a favorable response from the General Services Department, stating that they do not expect a negative impact on the City's wellhead protection area, the Planning staff would like to have the ability to convey the Board's acceptance at the Pembroke Planning Board meeting next week.

The Chair asked if members of the Planning Board had any objections. Hearing none, the Chair authorized the Planning staff to convey the Board's acceptance of the project.

#### **15. Any other business which may legally come before the Planning Board.**

The Chair stated that Mr. Gross wishes to address the members of the Planning Board. Mr. Gross stated that he is planning on going south for four months beginning in January 2012. He doesn't feel it is fair for him to continue on the Board if he is going to miss four meetings in a row. He stated that he spoke with the City Manager regarding this and suggested that it was probably time for him to retire and for the City Manager to designate a new designee, as Mr. Gross serves as the City Manager's designee and serves at the pleasure of the City Manager. He thinks it is important that the City Manager has a designee on the Planning Board. Mr. Gross stated that his personal plans have become incompatible with serving as the City Manager's designee, and feels that it would be unfair not only to the City Manager, but to the Planning Board members as well to have a seat vacant, as the seat cannot be filled with an alternate. Mr. Gross' last meeting will be the regularly scheduled meeting in December. Mr. Gross said that he was sad to leave and thanked the Planning Board for their courtesy to him.

The Chair thanked Mr. Gross for his time on the Planning Board and stated that he has been a stalwart, a good and steady influence on the Planning Board's decision making.

There was no further business to come before the Planning Board, and the meeting adjourned at 10:40 p.m.

A TRUE RECORD ATTEST:

Gloria McPherson  
Clerk

djm