

A special meeting of the City Planning Board was held on January 11, 2006 in the City Council Chambers at the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher (who arrived at 7:06 PM and presided), Blanchette, Dolcino, Gross, McClure, Merrill, Meyer, Swope (who as Vice Chair opened the meeting), and Alternate Members Kenison and McGonagle. Messrs. Woodward and Henninger, and Ms. Osgood of the City Planning Division were also present.

At 7:04 PM a quorum was present and the Vice-Chair called the meeting to order. He seated Alternate Member Kenison for Member Foss who was not expected. Mr. McGonagle remained, participated in discussion, but did not vote.

PUBLIC HEARINGS

1. Consideration of an amendment to the City's Zoning Ordinance establishing a new **Broken Ground Natural Resource Protection (BG) District** as an overlay district for the existing Open Space Residential (RO) District in the area of Broken Ground.

(Mr. Drypolcher arrived at 7:06 PM and presided as Chair.)

Mr. Woodward explained that, at its recessed meeting on November 30, 2005, the Planning Board set a public hearing on an amendment to the City's Zoning Ordinance establishing a new Broken Ground Natural Resource Protection (BG) District as an overlay district for the existing Open Space Residential (RO) District in the area of Broken Ground. The Board also requested the Planning Division to prepare recommendations as to the disposition of the City's current land use regulations governing development in the Broken Ground area, and to include any concepts and directions that have emerged from the current Master Planning efforts with regard to the Broken Ground area as well as the other land outside of the Urban Growth Boundary.

He explained that the proposed amendment arose from a communication from Francine Philippe who requested amendments to the dimensional regulations for the Open Space Residential (RO) District and the standards for cluster developments within the RO Districts. Specifically, she asked that the minimum lot size in the RO District be reduced from two acres to four acres, and that the cluster development standards in the RO District be revised to lower the maximum density from 0.5 units per acre of buildable land to 0.2 units per acre of buildable land, and an increase in the minimum percentage of common open space from 60% to 70%. The request of Ms. Philippe related to the Broken Ground area and the City Council voted to have an ordinance prepared to effectuate these changes in the Broken Ground area, to set a public hearing on this ordinance by the Council at its February 2006 meeting, and to refer the matter to the Planning Board for a report.

The proposed amendment was apparently intended to affect the application of Jeanette Cate and the Bollinger Family Trust for a cluster development to be known as Whispering Heights. Ensuing litigation has resulted in a Court Order from the Merrimack County Superior Court declaring the application to be complete in advance of the posting of the Council's public hearing by the City Clerk, thereby vesting the application under the current Zoning Ordinance.

He explained that, in the fall of 2005, Ms. Philippe and others had requested that the Conservation Commission explore the possibility of acquiring the Cate and Bollinger properties for open space. The Chairman of the Commission met with the developers to discuss this and was given prices that related to the land with a development approval in place, as well as a price for the land after infrastructure improvements were completed. The bottom line was that the costs were beyond what the Commission could afford even if they committed all of the remaining balance in the Conservation Fund. The rezoning request followed that exploration of acquisition.

The RO Zoning District derives from the Residential Open Space (ROS) land use category in the 1993 Master Plan. The Cate and Bollinger properties were included in the ROS category but the Cate property was indicated as a site for an Urban Reserve. The Urban Reserve category was created to reserve certain lands for conversion to more intensive use for which a general direction was given, but the specifics were to be developed at a time after the adoption of the Master Plan. The Cate land was a portion of the residual of the ill-fated Broken Ground Development Corporation proposal, and it was seen as having potential for an office park development.

In 1993 into early 1994, an attempt was made to plan an office park by CRDC, with the Forest Society partnering in the proposed protection of Broken Ground. This initiative failed and the Broken Ground land was sold at auction in April 1994 to William Hoag of Hampton, NH. The Cates had foreclosed on their land in December 1993 to regain control of it.

He explained that, in the early review of the current development proposal for the Cate and Bollinger lands, it was learned that the municipal water system cannot serve the majority of this property despite the presence of the adjacent Broken Ground water tank as the land rises above the level at which water can be supplied under required pressures. The municipal sewer system could serve this land but the system is currently located well beyond the 1500-foot distance wherein the Board's regulations require an extension. Therefore, the Cate and Bollinger proposal has proceeded under the RO District standards with wells and septic systems to be employed.

In the development of a draft Zoning Ordinance, the Community Zoning Advisory Committee (CZAC) proposed the Open Space Residential (RO) District in order to implement the Master Plan. The proposed minimum lot size was set at two acres but the minimum lot size had to be all buildable acreage, which presumed lots larger than two acres, and likely at least four total acres, would need to be created in order to meet the two-acre buildable area requirement. The Planning Board changed the recommended dimensional standards by removing the requirement for the minimum lot size to be comprised of buildable acreage, and inserted a column in the Table of Dimensional Regulations to indicate the amount of buildable acreage that had to be included in the minimum lot size. The Board then raised the RO District minimum lot size to four acres, but proposed a 20,000 square-foot minimum buildable area within that. The City Council reduced the RO District minimum lot size back to the two acres as proposed by CZAC but did not restore the CZAC requirement for the entire minimum lot to be buildable acreage. The Planning Board's buildable acreage column was left in place. The Council did add an overlay district for the Penacook Lake Watershed that establishes a

minimum lot size of four acres in that area, and set cluster development standards of 0.25 units per acre of buildable land with a requirement for a minimum of 70% open space.

He reported that the RO District as adopted covers essentially the area outside of the Urban Growth Boundary which is about two-thirds of the City's land area. As the Zoning Ordinance has been in effect for four years, the doubling of the minimum lot size, while consistent with the Master Plan, would represent a significant impact to property owners around the City in the RO District, particularly those who have purchased lots in subdivisions created in the past four years wherein the lots would become non-conforming. Within Broken Ground itself, other than the pending Cate Bollinger application, very little development has occurred since the founding of the City in 1726. Residences have been constructed along the south side of Oak Hill Road, at the end of Appleton Street, the end of Curtisville Road, and along the northwesterly side of Josiah Bartlett Road, and some of these house lots will become non-conforming. The only major subdivisions with new roads that were ever developed in this area are on Josiah Bartlett where Ked and Welcome Drives were constructed since 2000. While the lots on Ked Drive will become non-conforming with regard to lot size, the lots on Welcome Drive were created as part of a cluster development and as such the lots may be individually conforming in lot size while the development as a whole may become non-conforming with regard to the percentage of open space and total number of lots. A reduction in the area covered by the proposed BG District, particularly by creating a setback along the south side of Oak Hill Road, and deepening the setback along Josiah Bartlett Road, would help to minimize the non-conformities created.

While the four-acre minimum lot size in the area outside of the UGB has continued to be an assumption in the current overall Master Planning effort, there does need to be recognition of the amount of development that has been approved and occurred on two-acre lots under the current RO District that was adopted by the City Council. However, most of that development has occurred along the City's rural roadways and has been limited to a great degree by the 1000-foot cul-de-sac regulation. The large open space areas of the City have generally not been penetrated by extensive road systems. An option that could be pursued would be to expand the proposed overlay district now proposed for Broken Ground and that was created for Penacook Lake, to embrace the lands identified for protection in the 1993 Open Space Section of the Master Plan as augmented by areas identified in the current Master Planning efforts. These areas include among other the Penacook Lake Watershed, Broken Ground, Oak Hill, the Mast Yard-Broad Cove-Horse Hill, the Great Bog, the Merrimack River Floodplain, and portions of the Turkey River watershed. The overlay could simply be renamed the Natural Resource Protection District and embrace Broken Ground and Penacook Lake as well.

In the current Master Plan efforts, several relevant concepts have emerged, at least one of which could be incorporated in the current regulations in concert with a Natural Resource Protection District; that being the requirement for mandatory cluster development in this district as well as in the remainder of the RO District not overlain by the Natural Resource Protection District. This means that for major subdivisions in which new streets are to be constructed, conventional subdivisions would not be allowed. The other concept of relevance is the exchange or transfer of development rights from the land outside the UGB to land inside the UGB. This is something that cannot just be added to a Natural Resource Protection District and will need additional effort to integrate into the Zoning Ordinance.

Mr. Gross asked the effect of creating a Natural Resource Protection Overlay District in the Broken Ground area. Would it require four-acre minimum lot size? Mr. Woodward responded in the affirmative. Mr. Gross then asked if there was any proposal to change cluster development standards and Mr. Woodward responded that the density would remain the same whether cluster or standard subdivision is proposed for a particular parcel. The proposed overlay district would require at least four acres with at least a half acre buildable for each lot.

Mr. McGonagle asked the impact of a zoning change putting a property into non-conforming use status and Mr. Woodward explained it might affect a property owner's ability to subdivide a parcel. Setbacks would not be likely to be onerous nor would frontage requirements.

Mr. McGonagle asked the legal status of the development application as of now. Mr. Woodward responded that the City Council voted Monday night to rescind the public hearing previously scheduled for February. The City Solicitor is exploring what that means to the application. Right now, because of the Court's action, the Planning Board has a public hearing scheduled for next week and it is not likely that will change.

The Chair opened the hearing to public comments and informed the audience that he will limit everyone to four minutes with the opportunity to speak a second time after all other testimony but for a shorter period of time. He also indicated that he would prefer to not hear repeated testimony if possible.

Gail Page spoke in support of the proposed zoning change. Her wish was that if four-acre cluster zoning is adopted for the Broken Ground area, then the same could be adopted for what is left of open space in Concord. She talked about what she saw as an alarming change in the city that she has been living in for thirty years. One of the things that attracted her to Concord was its manageable size, its small town feel and the presence of woodlands within easy reach from her home. New housing numbers are significantly on the rise. Most of the new construction has taken place on the periphery of the city in what was once woodland. More cars driving from the outskirts means a decline in air quality. She discussed her concerns with the environment in the state and the central part of the state in particular, citing the emissions from the Bow power plant as an example. She felt the city was growing in a topsy turvey manner without adherence to the Master Plan. She felt this zoning change would be a means to encourage less development and a conscious setting aside of open space both at Broken Ground and in other remaining woodlands. Ideally, the City would purchase either the land or a conservation easement on what open space now exists to assure citizens that the reason they moved here remains a reality.

Andrea Kelleher spoke in favor of the proposed zoning amendment. She reported she has been a resident of the city for nearly twelve years after having living in other states. When her family settled in Concord, she knew they had found something special. It is a community of people who care about one another and the area they live in. They know that civic growth and change is necessary in order for the city's health to continue to prosper. However, if we do not stop and better define what is acceptable and manageable growth, we are going to lose the very qualities that make this such a wonderful place to live. She asked the Board to consider a healthy rate of growth for Concord when assessing proposed zoning changes so that we can all continue to be the very special city that we are.

Laurie Rardin spoke in support of the zoning amendment as a means to ensure that protection of open space in Concord is given the priority the citizens have called for as the city grows into its future. She felt urban sprawl should be discouraged by focusing development within the limits of the Urban Growth Boundary. Development should be concentrated near the city center where services and transportation can be provided at the lowest cost. Undeveloped land is cheaper in the long run if it remains undeveloped. Studies have shown that residential developments frequently cost much more than they generate in tax revenues. Residential development must include consideration of the ability of local schools to absorb the new students who will need education. New homes in Broken Ground will mean building new schools which will increase the tax burden. She asked if the Board will be considering Smart Growth Principles as part of the revision process for the Master Plan, and whether the Board had considered using the GIS mapping tool "3I Solutions" as a way to assist with planning for development. She also asked once the Master Plan is adopted, whether the processes, policies and recommendations it brings forth will be followed consistently to ensure that Concord embarks on a pattern of growth that ensures the characteristics which make it unique will be protected for future generations to enjoy. She hoped that many of the people here at the hearing this evening would get more involved to ensure that the plan for future growth and development represents not only the voices of a few that make themselves heard but also the voices of the soft-spoken majority who care about protecting the city's character and who care about protecting the community and open space that makes Concord their home.

Mr. Gross reminded Ms. Rardin that the proposal tonight is specifically for the change of lot size and not a general discussion of the Master Plan. He asked what specifically she felt was important about this proposal. She responded that she feels this is the best available opportunity we have at this time to protect open space.

Francine Philippe, a 28-year resident of East Concord, spoke about growth in Concord and the protection of what open space we now have. She spoke in favor of the zoning proposal. She explained that when they began this movement for a zoning amendment, they were looking for a fair way of addressing the issue of rapid growth and the development of open space in Concord and made a proposal for this zoning change for the entire city. They were advised to focus on the Broken Ground. They were speaking for residents all over the city and for preserving open space in general. Broken Ground is a significant natural resource in the city. The diversity of habitat in the Broken Ground is significant, it is unbroken and has not been fragmented by road and development nor has it been cleared for farming or occupied by humans at any time in history. The wetlands in this five square mile area are significant not just in their numbers but in the fact that this is a wetland system. Our wetlands continue to need protection and preservation. Due to the variety of habitats, the diversity of wildlife in the Broken Ground is significant. The wildlife corridor should not be interrupted with haphazard development. She referred to a number of places in the existing Master Plan that refer to the need to preserve open space. We need to create an environment in the city that we can all live with.

Ms. Phillippe presented the Board with a petition signed by 636 residents, about two-thirds of which live in East Concord and the remainder from the rest of the city.

Mr. Gross asked if Ms. Phillippe knew why the City Council had acted as it did in 2001 when it adopted the new zoning ordinance. She responded that she had hoped the Planning Board would answer that question.

Allan Herschlag, resident of West Village, reported he felt he was the only person in the room who had testified before the City Council against the current zoning ordinance. He mentioned all the projects he felt the Planning Board had approved inappropriately because the zoning ordinance allowed them even though they were not appropriate. The City's refusal to draft an interim growth ordinance has brought us to this point tonight. He recommended that the zoning ordinance clearly codify the Master Plan. If it is decided that there are areas where limited development can occur, open space should be accessible to the public, costs should be carefully scrutinized, and it must be clustered to have the smallest public impact on the parcel.

Mr. McGonagle asked whether Mr. Herschlag advised that the Planning Board should support or not support the proposal. Mr. Herschlag responded he is not in support of the current amendment before the Planning Board.

John Langill, 33 Thackeray Road and president of Cherry Hill Homes, spoke in opposition to the change in zoning. He concurred with the importance of preservation of open space. However the recommended change in the density requirements is also a form of growth restriction and is not in the best interest of the residents of Concord. He felt the proposed change in zoning would add 10% more open space while reducing the total number of housing units by almost 50%. He asked that the Board consider not only the balance between housing and open space but also the creation of balanced housing, such as the creation of workforce and affordable housing. He suggested that the recommended changes to the zoning ordinance in addition to the recent acquisition by the City of conservation easement on large parcels of land including Dimond Hill, Ross View Farm and Gold Star Sod Farm tilt the scales too far in favor of preservation. All of the growth restriction in the region is artificially raising the cost of homes. He reported he cannot produce a house for under \$369,000 on the lots recently created off Little Pond Road and he has spent a lot of time trying to lower that cost. The recommended changes will add to the problem. Zoning restrictions will drive residents out of the area. Although changing the density requirements in the RO District does help preservation of open space, there have been no incentives supported by the City to balance this preservation with the creation of additional affordable or workforce housing units. Lowering the density requirement just adds to the problem of affordable housing.

Bill Hoag, owner of about 1000 acres in the Broken Ground, felt he is probably the single most impacted person by the proposal. He felt something should be done before the City takes action. An economic study should be undertaken. He has paid taxes regularly on property that he has expected would be two-acre zoning. He noted that earlier testimony indicated that people bought homes in an area of two-acre zoning. He could not understand why that would not be appropriate for them now. He doubted that any of the speakers this evening lives on a four-acre parcel. If you go from two acres to four acres, is it easier to trespass on four acres than on two acres? There are very few examples of four-acre zoning in the United States. Going to four-acre lots is a subtle way of squeezing out affordable housing for the working class. If the reason is for conservation, he understood that the State of New Hampshire gave the City 80

acres of land in Broken Ground about 18 months ago for conservation purposes and nothing is being done with it. There are other options for containing growth than rezoning to four acres.

Bill Rhodes, 16 year resident of Concord, mentioned a number of newspaper articles relative to workforce housing and concerns about how this would affect work force housing. He was against this proposal.

Mr. Gross asked Mr. Rhodes how he felt the zoning change would relate to the question of workforce housing. He responded that going to four acres would just make house lots more expensive.

Gary Milbury, Josiah Bartlett Road, spoke against this zoning change. Four acre zoning will cut the value of his property way down.

Attorney Susan Duprey, representing Whispering Heights which has a plan before the Planning Board, and also a 22 year resident of the City, spoke against the proposal. On 275 acres they can get 89 lots. Under today's ordinance that is about three acres per lot. This is not an appropriate time for the City to be considering this proposed change and not appropriate to be discussed until after the development project is acted upon by the Planning Board. The Master Plan is 12 years old and in those 12 years we have not adopted what is in the Master Plan. Four years ago there was the review to change zoning from two to four acres. There should be some security for landowners about what is going to go on with their property. That is unfair to landowners. The purpose of zoning is to give people security about what is going to happen with their land. Ordinances in the City should not be bounced back and forth and it is not fair or appropriate for the City to be doing this. Some of the testimony tonight verges on the possibility of "taking" of land. The Broken Ground is a piece of a bigger discussion and the City needs to take more time to figure that out. City ordinances require a lot of analysis to be undertaken before adoption, including economic analysis. She asked that the Planning Board indicate to the City Council that the timing is not appropriate, the changes are overly restrictive and not fair to people, this is rushed and deserves more scrutiny than can be given at this time.

Attorney Richard Uchida, representing Jeannette Cate, one of the owners in the Broken Ground area,, spoke in opposition to the zoning change. In addition to doubling lot size, this harms property owners who have tried to develop this property in compliance with the zoning ordinance. One of the interesting impacts is the presumption that every bit of this area needs to be preserved because there are areas of natural resources that need to be protected. Even if the project does not impact natural resources, the property owner has no options the way the ordinance is written. There are no assurances that the land as developed will be open to the public. In fact, there is an incentive to build high end homes and cut off open space, and there is no basis for the Planning Board to deny an application like that. It does not provide any incentive to create open space to allow resources to be preserved. Ordinances need to be flexible in providing benefits and incentives.

Mr. McGonagle mentioned that one of the options offered by the Board's Clerk was to only allow cluster developments and he asked for Mr. Uchida's comments on that suggestion. Mr. Uchida responded that right now there is no way to ensure a recreational asset. The cluster development does help in setting aside large parcels of open space but there is more to it than to

just set aside open space for the sake of setting aside open space. The City needs to plan for the open space.

Bob Johnson, Oak Hill Road resident for 36 years, felt this proposed zoning has not been thought through enough. It does not really speak to the goal that the City intends for the Broken Ground area. Purchasing the property is a much more fair way of dealing with open space than enacting this poorly thought out proposal as presented tonight. This is not the way to go about preserving land in the Broken Ground area. The Broken Ground area is perhaps one of the most pristine areas south to the State border and it is sad that the City has not purchased it yet. This is not consistent with the Open Space Plan or the Master Plan for the City and does not achieve what the City wants for the Broken Ground.

Allan Herschlag was again recognized and indicated that while he does not support this proposal, he also does not support development of the Broken Ground. Creating four acre lots would do nothing to encourage public access to the open space. The City has a responsibility to compensate property owners at fair market value.

There was no one else wishing to speak for or against this proposal for amendment to the Zoning Ordinance and the Chair declared the hearing closed at 8:47 PM.

The Chair noted that reference had been made to notices mailed to residents in the neighborhood. He explained that the Planning Board had published a legal notice in the newspaper about this evening's hearing. Any notices received in the mail or individually by residents or property owners had been done privately.

Mr. Gross clarified that the referral from the City Council is a request for a recommendation regarding the proposed rezoning. Mr. Woodward answered in the affirmative and also explained that the Planning Board was originally under a deadline because the City Council had set a public hearing for February 13, 2006. The City Council has now rescinded its vote for the public hearing so there is not the same urgency to forward a recommendation.

Mr. Gross asked if that meant that if the Planning Board felt it would like to take some more time to consider alternatives to this proposal, it would be appropriate. Mr. Woodward indicated that it would seem that the Planning Board could communicate to the City Council that it would like to take the time to pursue options.

Ms. McClure explained that it was apparent to the City Council that this rezoning request should not be clouded by the application but a larger issue should be considered. In rescinding its vote on the public hearing, the City Council wanted to provide the opportunity for full discussion.

Mr. McGonagle felt the City Council was asking the Planning Board to presuppose the outcome of the Master Plan revision. He felt this was jumping the gun. These are all serious issues that the Planning Board has been talking about a lot during the Master Plan update. He would not like to see the Planning Board pull something out of the Master Plan when it should be part of the process.

Mr. Swope agreed with Mr. McGonagle. This is a complex issue. The idea of trying to preserve open space and control growth outside the Urban Growth Boundary is admirable. But if the City is going to do that it has to give the developer incentives and place more restrictions in order to make open space more useable. The City needs to increase density requirements within the Urban Growth Boundary in order to compensate. He did not think the Planning Board should take action on this at this time.

Mr. Drypolcher felt that there is a definite frustration in the city as far as the speed at which these things move along. It is frustrating to him as well. He agreed with doing this as part of the Master Plan but even when that is done, zoning could be years off unless the Board moved quickly and judiciously. He wanted to see the process move forward as quickly as possible.

Mr. Merrill, as a new member of the Board, echoed the Chair's frustration. He was very concerned about tonight's testimony. He was in no way prepared to move forward with a recommendation to City Council at this time.

Mr. Blanchette shared the Chair's frustration about the length of time it takes to update the Master Plan. He felt the Board should take a little more time to consider this issue because it is a global issue that needs careful consideration.

Mr. McGonagle indicated that the Board's reticence should not be read by the public as a lack of interest. These are all concerns that members are all very concerned about. He encouraged everyone to become interested in the Master Plan process. This is why the process and all of the meetings and considerations have been occurring and why they are so important.

Mr. Swope felt the Planning Board should advise the City Council that many different concerns that were expressed tonight needed to be considered as part of the overall Master Plan and will be taken into consideration. He indicated that there have been a number of meetings held over the last couple of years and urged everyone to attend future meetings.

Ms. Dolcino asked the time frame to consider this if it is tabled this evening. The Chair responded that once the Master Plan is adopted the Zoning Ordinance is reviewed to see what needs to be done to make it comply with the Master Plan.

Mr. Meyer noted that the Planning Board had the wherewithal, in reviewing the development project, to be creative within the confines of the Zoning Ordinance to end up with a development that responds to the concerns within the existing regulations.

Mr. Swope moved to table action on the request and to issue a report to the City Council that the Planning Board feels the arguments are valid arguments that should be discussed as part of the Master Plan process. Merrill seconded. Motion carried with Mr. McGonagle not voting.

2. Consideration of an amendment to the City's Zoning Ordinance to rezone the properties at **42, 44, 46 and 52 Shawmut Street** from the current Neighborhood Residential (RN) District to a combination of a **Single Family (RS) Residential District and an Open Space Residential (RO) District** such that the lots at 42, 44, and 46 Shawmut Street as well as the

portion of 52 Shawmut Street with street frontage would be included in the RS District, and the balance of the backland at 52 Shawmut Street would be placed in the RO District.

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

Mr. Woodward explained that, at its recessed meeting on November 30, 2005, the Planning Board set a public hearing on the request of Mr. and Mrs. Hildreth et al relative to the land owned by Robert Nichols on the southerly side of Shawmut Street, opposite Randolph Road and including part of Mill Brook ravine. The land is currently in a Neighborhood Residential (RN) District and the petitioners have requested that it be rezoned such that the three lots fronting Shawmut Street (#42, 44, & 46) be included in the Single Family (RS) Residential District, and the balance of the land at 52 Shawmut Street be placed in the Open Space (RO) District.

He reported that Mr. Nichols acquired four parcels totaling 19.28 acres of land on Shawmut Street in 1990 when the prior Zoning Ordinance was in effect. The frontage was in an Urban Residential (RB) District and the balance was in an Agricultural Residential (RE) District. The land was rezoned in its entirety to be included in the RN District as part of the new Zoning Ordinance that took effect on November 29, 2001. In October 2005, Mr. Nichols filed for a Pre-application Design Review of a proposed development of 84 attached dwellings which was on the Board's agenda of its recessed meeting on January 4, 2006.

He reported that the 1993 Master Plan for this site indicated a Medium Density Residential (RM) land use classification from Shawmut Street south to a point in the property that followed the top of a bluff line above Mill Brook. The bluffs and Mill Brook ravine were included in a Rural/Open Space (ROS) land use category. The Medium Density Residential category indicated that it would include single and multi-family residential development with a maximum density of six units per acre, with municipal water and sewer required, and a maximum lot coverage of 40%. The High Density Residential (RH) land use category was intended to support densities in the range of six to fourteen units per acre with municipal water and sewer required; while the ROS category was intended to support single family homes at a density of 0.25 units per acre without municipal utilities, with a slightly higher density for cluster subdivisions.

He reported that the current Master Planning effort has been focused on higher densities in villages and, as was recently set forth in the Board's tentative land use decisions, the higher density in the villages is to be offset by a reduction in development potential outside of the Urban Growth Boundary. In this context, the RH category would not be inappropriate, but the mechanism for the transfer of density from the rural areas has not been established.

Mr. Woodward reported that the first maps produced by the Community Zoning Advisory Committee (CZAC) in December 1999 during the Citywide rezoning process included the Nichols land in the RN District from Shawmut Street southerly to the bluff line, with the bluff and Mill Brook ravine in the RO District. Mr. Nichols submitted a request to CZAC relative to the expansion of the RN District on his land. CZAC requested a review of the topography along the Mill Brook ravine. Ultimately, CZAC did not change its recommendation for the zoning boundary and passed the proposed Ordinance on to the Planning Board in mid-2000.

The Planning Board made no further change to this particular area of the Zoning Map and passed it on to the City Council in early 2001. The Council held a public hearing on October 18, 2001 with the Zoning Map displaying the boundary as proposed by CZAC and endorsed by the Planning Board. Mr. Nichols appeared at the hearing and asked that the entirety of his property be included in the RN District given that buffers and protections for bluffs, wetlands, and streams had been built into the Ordinance. The Council granted his request, and actually included a portion of the next neighboring parcel to the east so that the RN boundary line ran easterly along the neighboring property line to Batchelder Mill Road and northerly along the road to Cemetery Street. The City Council included this expansion of the RN District in its final adoption hearing on November 29, 2005.

The Nichols land does have municipal water and sewer available to it in the area at the top of the bluff, south of Shawmut Street and as such should not be downzoned to an RO District in that area. Land that is not subject to environmental constraints and within the water and sewer service area is considered to be within the Urban Growth Boundary and capable of development at densities greater than those allowed in the RO District. The area below the bluff and in the Mill Brook ravine was previously recommended to be zoned RO, although Mr. Nichols statements to the Council were correct that wetland and bluff buffers had been added as well as a Shoreland Protection and Flood Hazard District that affect the most southerly portion of his lot.

The Zoning Ordinance has now been in effect for four years, and consideration must be given to the surrounding district pattern and concerns about spot zoning. The closest RS District, as requested by the petitioners for the three Nichols lots on Shawmut Street, lies north of Cemetery Street and is not adjacent to these parcels. To create an RS District on a portion of the Nichols land would raise the specter of spot zoning and would render the lots along Shawmut Street non-conforming in terms of lot size. The primary principal use for these lots if developed independently would be single family homes.

The Medium Density Residential (RM) District is located adjacent to the RN District along Shawmut Street east of Batchelder Mill Road and continuing easterly and northerly along Appleton Street and Oak Hill Road. The southerly portion of the Nichols land, together with the neighboring lot on Batchelder Mill Road, could be joined to the RM District thereby avoiding the spot zoning issue. The RM Zoning District also comports with the standards for the RM land use category of the Master Plan in terms of density. While PUD's are allowed in the RM, they are limited to a maximum of five units per buildable acre and PUD's no longer allow multi-family dwellings except for those designated for the elderly.

Mr. Gross asked questions clarifying the existing zoning and resulting densities in each of the zoning districts in the neighborhood. He also asked the impacts on the property under the proposal as well as the alternative suggested by staff.

Mr. Merrill asked about existing densities in the built-out RN District abutting the subject parcel. On a quick look Mr. Woodward responded that it would have been less dense. Mr. Merrill felt ten units per buildable acre was pretty dense.

Ms. Dolcino asked which of the proposals was most in keeping with the Master Plan and Mr. Woodward responded that the alternative suggested by staff probably would be.

Peter Hildreth spoke as one of the petitioners and indicated that their intent was that zoning of the lots along Shawmut Street is continuous. It was not meant to spot zone the property on Shawmut Street. They are asking for this rezoning because the current zoning district is not appropriate for the neighborhood. The Master Plan says specifically that some types of construction are not allowed. They are asking that what the Master Plan said and what fits in the neighborhood is what it should be zoned. The passage of time does not mean that the current zoning ordinance is now appropriate. He is just asking for fairness for the neighborhood.

Mr. McGonagle asked Mr. Hildreth if he would find the staff alternative appropriate and Mr. Hildreth responded that he agreed that it would because it fits the Master Plan.

David Aliberti, 48 Shawmut Street, supported the zoning changes proposed. He does not believe the RN zoning is consistent with preservation of conservation land even with the protections built in. RN zoning in this area would allow for such density that there would not be any recreational areas for the residents. This conservation area is not a park. The brook poses a danger to small children and others. The topography is rough. This is not consistent with building high density dwellings in that area. He felt the RO District matches the neighborhood best adjacent to environmentally sensitive land. The intent of Master Plans is obvious. Existing lots along Shawmut Street are RM zoning and there has not been any development in that area that has been this dense. He believed that we need to preserve conservation land.

Howard Nowell, 78 Shawmut Street, indicated he has been familiar with this area since the late 1950s and has watched the changes to the neighborhood since then. That whole street consists of single family homes. It is a good area because it is on a bluff and on municipal water and sewer. He is in favor of the proposed zoning change. At the foot of the hill on Shawmut Street there are 28 different traffic movements with only four stop signs. The first thing that should be done is to solve that situation before anything else is done. The historic Batchelder property does not deserve to have 84 units backed up against it.

Attorney James Raymond and Robert Nichols were recognized. Mr. Raymond first clarified that CZAC recommended RN zoning. The only change by the City Council was to extend RN to the bottom of the lots because of the bluff setback and wetland setback which prevented development. He discussed the background of the Zoning Ordinance update for this property. The Master Plan is not intended to be a zoning ordinance. It is supposed to set general development guidelines but not specific guidelines. He felt the paragraph discussed earlier in the Master Plan is an improper provision because it is too specific to this property. He felt this was an illegal provision. Almost all of the lots in the area would not qualify under RS. All of these neighborhoods were developed taking advantage of the RN zone which is what the Nichols property was zoned. A new idea in planning concepts is smart growth and allowing more dense development. To rezone this to less dense development is inconsistent with the adopted Master Plan. This is the kind of area for this type of use. From a zoning standpoint

they do not think it is appropriate to change zoning because it would not be consistent with what has gone on before.

Mr. Nichols explained that he felt the extended zoning line created by the City Council in 2001 was a natural line. He has had the right since 1932 to construct townhouses on that lot. The 2001 zoning change brought in three new buffers that are not in the 1993 Master Plan. Before 2001 you could build up to a delineated wetland. Now it is 50 feet from the bluff and Shoreland protection needs to be a 75 foot setback. The 1993 Master Plan allowed construction up to the Shoreland if there was sewer. What he is trying to do is to construct high-end townhouses comparable to the neighboring housing in the \$350,000 - 400,000 range to allow empty nesters and others to have housing in a nice residential neighborhood. There are sidewalks all the way to the site now and it is near the Interstate. This is an excellent area for multi-family housing. He does not know of any other area that allows high-end housing like this. Concord does not have the kind of housing he will propose.

David Coeyman, 35-year resident of the neighborhood, explained that when he bought his house in 1985 he asked about zoning and he was told that it was not likely that sewer would ever be extended there. He reported he did not wish to develop his land. He had always felt protected by the fact that this area could not have sewer brought to it, but now that it has been determined that sewer can be gravity fed to the area, he is facing the possibility of having a backyard of 25 multi-family homes. The density proposed by the RN is inappropriate for that piece of land and he would like a compromise. He also asked that the line continue to Bachelder Mill Road. He asked that density for that piece of land be reduced.

Linda Hutton, 24 Shawmut Street, asked that the Planning Board give consideration to the area all the way down Shawmut Street to the intersection and felt that would give the Board a much more clear picture of the neighborhood.

Elizabeth Muzzey, 27 Shawmut Street, spoke in support of the amendment. These are mostly single family homes on lots ranging from about one quarter acre to one acre in size. This is a long-established pattern of development. Equally important is the presence of Mill Brook and other natural features to the south. The Master Plan recognizes and protects this, as did the Zoning Ordinance until 2001. She felt spot zoning could be justified based on its effects on the community. This will be a radical change that triples the density and the need for city services and infrastructure and that will harm the environment. She asked that the Planning Board be consistent with the Master Plan and other planning efforts to avoid a non-conformity on Shawmut Street that would tax the city's infrastructure and to protect the long-established neighborhood and its natural environment.

Howard Nowell was again recognized and noted that most of the village was single family and not multi-family. The village should remain that way.

Mr. Nichols was again recognized and again indicated that many people in Concord had told him they would like townhouses. He does not know of any other parcel in Concord of that size that would accommodate a high-priced townhouse of any significant numbers.

At 10:52 PM there was no one else wishing to speak for or against this amendment to the Zoning Ordinance and the Chair declared the hearing closed.

Mr. Gross felt that the product that emerged from the City Council in 2001 was not as reflective of the Master Plan as it might have been. At the same time, the specific proposal by the petitioners is not reflective of what the Master Plan recommendations were. He felt the Board should recommend to the City Council the best land use regulations that we can. He does not think he would vote for the petition but also would not vote to leave the zoning as it is now. He would like to see a way in which the Board can recommend to the City Council something that more appropriately reflects the Master Plan and suggested something that more closely resembles the alternative zoning proposal suggested by staff. He suggested recommending the alternative zoning amendment rather than the proposed petition or leaving things the way they are.

Mr. McGonagle noted that Messrs. Nichols and Raymond were using the phrase multi-family and he noticed that multi-family is only allowed in the RD District. What is allowed in RN is attached dwellings. He asked the difference in definition between multi-family and attached dwellings. Mr. Woodward responded that attached dwellings can be attached side by side and multi-family can be stacked.

Mr. McGonagle asked if the alternative zoning proposal would be more consistent with the Master Plan but more restrictive than what was recommended by CZAC and Mr. Woodward responded that that was correct.

Mr. Swope moved that the Planning Board recommend to the City Council that the zoning boundaries be at the top of the bluff and the land above the top of the bluff following topography be zoned RM with the exclusion of the Coeyman corner lot by drawing the line straight across. Mr. Gross seconded and modified the motion to ask that staff present the Board with a proposed map for action at the next meeting.

Messrs. Swope and Gross restated the motion to read that the Planning Board tentatively recommend this to the City Council and request staff to produce a final map reflecting this description.

Motion carried with Mr. Blanchette abstaining from discussion and vote and Mr. McGonagle not voting because he was not seated.

3. Consideration of an **amendment to the Master Plan** originally adopted in December of 1993 involving revisions to the Generalized Land Use Map and the Land Use Plan for Northwest Concord whereby land south of **McGuire Street**, easterly of a former railroad right-of-way running parallel to North State Street, and westerly of the Merrimack River, now classified as Industrial Park (IP), would be designated as Residential/Office/Institutional (ROI).

Mr. Henninger explained a communication from Mr. Redden containing a proposal to rezone a parcel owned by Mr. Redden from Industrial District (IN) to either Opportunity Corridor Performance District (OCP) or Institutional District (IS). In addition, the petition includes a request to rezone a parcel with frontage on North State Street also owned by Mr. Redden from

Urban Transitional District (UT) to either Opportunity Corridor Performance District (OCP) or Institutional District (IS). The proposed petition is not consistent with the adopted 1993 Land Use Plan. However, the location, existing uses and opportunities for redevelopment lead us to consider amending the Land Use Plan at this location.

This site is split diagonally along the bluff line of the Merrimack River with land below the bluff being entirely within the 100 year floodplain of the Merrimack River and almost entirely consisting of wetlands. The land on top of the bluff is bounded on the west by the old B & M Concord to Claremont rail line which, while not formally abandoned, is no longer functional. The land to the east and south consists of undeveloped steep slopes and wetlands. The land to the north is owned by Unital and is both their regional maintenance facility and local offices. Access to the site is off the end of McGuire Street by way of a common drive shared with the Unital Corporation.

He explained that the property was once the site of the Rock of Ages Granite Company's factory for cutting and fashioning dimensional granite and stone. Once the manufacturing use was discontinued, the site had intermittent occupancy for industrial and warehousing activities and some small office tenants. For many years maintenance had been deferred on the facility. As a result, a portion of the main factory building was no longer appropriate for occupancy and was demolished in the 1990's.

Mr. Redden's tenants over the last five years have obtained variances for a number of non-industrial uses including a dance studio, pet grooming facility and daycare, spa sales and service, and a medical office facility. The site has limited paved parking, does not have any parking lot landscaping, nor compliant drainage facilities required today for a commercial facility. A complete site plan application to address these shortcomings has not yet been submitted but is under development.

The small parcel on North State Street is bounded by the same railroad right-of-way to the east, Blossom Cemetery across North State Street and residences to the north and south. A variance was granted by the Zoning Board of Adjustment for an off-site sign for the Smokestack Center on this property several years ago.

The site has access to US-3 North State Street by way of an unsignalized intersection at McGuire Street. The fourth leg of this intersection, opposite McGuire Street, is the main entrance to the NH State Prison. The Transportation Improvement Plan included in the adopted Year 2010 Master Plan recommends the signalization of this intersection. However, this improvement is in the unfunded sixth year of the City's Capital Improvement Program.

This site sits above the Merrimack River and its floodplain has one of the premier views of the river and its undeveloped floodplain to be found in the city. This area of Concord is no longer ideally suited for modern industry due to its size, location and the obsolete industrial buildings remaining on site. The site's hidden location does not lend the project to retail uses and the great views from the site would present an opportunity for uses which are more valuable than warehousing and storage activities.

The Year 2010 Master Plan categorizes an area between the Merrimack River bluff and the

railroad track as Industrial Park (IP) east of North State Street along with several properties on the south side of McGuire Street. The area in the early 1990's was made up of industrial uses at the Smokestack Center, the Unitil office/maintenance facility, an industrial printing use south of McGuire Street, and a vacant State property. The area extends north across several ravines to the Hood Dairy processing facility on North State Street.

He reported that the adopted Master Plan envisioned the long term redevelopment potential of this area as a mixed use area.

Mr. Henninger reported that the applicant has requested a zoning change to either Institutional District (IS) or Opportunity Corridor District (OCP). The comparable Land Use classification for the IS Zoning is the Institutional (INS) Land Use Category. There is no directly comparable Land Use Category to OCP District. However, the OCP District has been used most commonly in areas categorized as Urban Commercial (CU) in the current Land Use Plan.

This area has the potential to be classified either Residential Office Institutional (ROI) or Institutional (INS). A commercial land use category would encourage the creation of strip commercial development on a congested corridor consisting of very small lots which would adversely impact the already constrained capacity of North State Street due to increased traffic and high turning movements resulting from commercial development.

It is recommended that the Planning Board consider amending the Land Use Plan in the area south of McGuire Street between the Merrimack River Bluff from Industrial (IP) to Residential Office Institutional (ROI). This would be an extension of the existing ROI category along North State Street from Rumford north to just south of McGuire Street.

The impact of a full scale conversion of the Smokestack Center from industrial/warehouse uses to a mixed use office and professional and business service facility would not be insignificant. The area is currently poorly served by the existing McGuire Street intersection. Signalization of this intersection is likely warranted at this time. The primary users accessing this intersection are Unitil, the NH State Prison and the Smokestack Center. One additional vacant property is owned by the State to the north of the Unitil property and a small industrial/warehouse building south of McGuire Street is currently a maintenance/distribution center occupied by a sporting goods company.

Mr. Gross asked what could go into that area if this were changed. Mr. Henninger responded that this site would be an ideal mixed use residential/office area and a possible location for a restaurant. The site is only about 50% developed today so there is opportunity.

Mr. Blanchette felt this made sense. He felt this was consistent with some Master Plan discussions to which he was party.

The Chair asked why the zoning change was being requested and Mr. Henninger responded that they wanted to reduce the number of visits they were making to the Zoning Board of Adjustment for variances and were also having trouble finding tenants to comply with the Zoning Ordinance.

At 11:25 PM there was no one else wishing to speak for or against this amendment and the Chair declared the hearing closed.

Mr. Swope moved approval of a Land Use Amendment as part of the adopted Land Use Plan to extend the Land Use Category (ROI) eastward to include that portion of parcel 80-1-4 within the Urban Growth Boundary currently designated Industrial Park (IP). Mr. Blanchette seconded. Motion carried.

Mr. Swope moved to recommend to the City Council that they rezone that portion of parcel 80-1-4 on top of the Merrimack River Bluff to the compatible Institutional (IS) Zoning District. Mr. Kenison seconded. Motion carried.

There was no further business to come before the Board and the meeting adjourned at 11:27 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk