

A recessed meeting of the City Planning Board was held on March 29, 2006 in the Second Floor Conference Room at City Hall at 41 Green Street at 7:00 PM.

Present at the meeting were Members Drypolcher (who as Chair presided), Dolcino, Gross, McClure, Merrill, and Alternate Member McGonagle (who was seated for absent Member Blanchette). Messrs. Woodward and Henninger of the City Planning Division were also present. Mr. Pollock and Ms. Seifried of the City Planning Division joined the meeting while in progress as did City Engineer Roberge.

At 7:03 PM a quorum was present, the Chair called the meeting to order and seated Alternate Member McGonagle for absent Member Blanchette.

### **MASTER PLAN DISCUSSION**

The Board's Clerk provided a report to the Board that reviewed the past history of the process, problems encountered particularly with the traffic model, and the current status and activities. The key aspects in completing the Master Plan were seen as decisions related to transportation planning which is based on the tentative land use choices made by the Board, completion of draft sections of the plan and review of the same by the Board, publication and public hearings on a draft plan, final revisions and a final hearing, as necessary. A point for discussion was the matter of transportation planning and the extent to which the Board wished to solicit more public commentary thereon prior to finalizing a draft transportation section.

The City's transportation planning consultant, Martin Kennedy of Vanasse Hangen Brustlin (VHB), was present to update the Board on the analysis he had made of the model output generated from the Board's land use decisions. The consultant led the Board through a review of the impacts of growth on the capacity of key streets in the City, focusing on those for which capacity is necessary, and those where more capacity would be detrimental. The use of the model was discussed in terms of testing certain new transportation links as well as testing the widening of certain existing streets.

Mr. Kennedy noted that adding capacity to arterial streets was important in terms of getting traffic entering Concord from adjacent communities or from the Interstate system to destinations in Concord such as employment, retail, or service centers. He indicated that it was equally important that capacity not be added to streets that were intended to serve neighborhoods or link neighborhoods as additional capacity attracts more traffic to locations where it is not wanted. In this latter case, if capacity is not added, congestion will increase, and become a deterrent to drivers seeking to short-cut through neighborhoods. Fisherville and Mountain Roads were noted as examples of streets where capacity should not be added as this would only draw more traffic that should be commuting into Concord on I-93. Safety, efficiency, access management, and connectivity should be the focus on local streets, but not expanded capacity.

Mr. Kennedy indicated however that capacity should be added to locations including Clinton Street from I-89 to Langley Parkway, and to the Interstate system itself, particularly I-93 and I-393. Consideration of a connection from the intersection of I-93

and I-89 northeasterly across Garvins Falls to Route 106, or easterly of 106 to I-393, is important for Concord as otherwise, more capacity will be needed on the central artery of I-93. He also expressed the view that the Northwest Bypass will be very important as a local arterial street to deliver traffic to destinations and draw traffic away from local streets.

Mr. Kennedy also spoke of the need for good pedestrian improvements in the Downtown area as there will be no ability to add any traffic capacity and traffic signals will meter the vehicular traffic.

(Ms. McClure left the meeting at 7:40 PM)

The Clerk noted that 20 years ago, the City was prepared to address congestion on Fisherville Road by adding capacity in the form of two more lanes, which would have been physically devastating to West Concord and Penacook and only served to draw even more traffic. The current Fisherville Road Corridor study is looking at safety improvements such as traffic signals, and only adding a third lane as a center turn lane at intersections, not creating any additional capacity to attract more traffic.

The Board expressed the concern that the modeling and the related analysis of the results needed to reach a level that proved to the Board that the tentative land use decisions that they had made were indeed viable. While it was understood that regional traffic consumed the majority of the traffic capacity of Concord's street, the Board wanted to understand the impacts of Concord's own growth on its street capacities, and that it was important to take the time to gain all of this information before the Board presents it to the public.

The Board's Clerk indicated to the Board that certain information will be available in mid-April on the Fishersville Road corridor from the use of the model with the Board's land use assumptions, that modeling work was going to take place shortly on the area around Concord Hospital including modeling of the full Northwest Bypass, and the modeling of a connector from I-89 to route 106 is included in the NHDOT modeling effort as part of the I-93 study.

The Board generally agreed with the approach of having more public input on the transportation planning but was not prepared to do this hastily. The general concept of draft sections being presented for the Board's review prior to preparing a full draft was also acceptable, followed by public hearings on the plan as a whole. While the Clerk had suggested the fall as a time for the hearings on the draft plan, the Board remained concerned with corroborating the results of the traffic modeling and analysis with its land use choices, and expressed the concern about a possible need to adjust the land use decisions if the traffic analysis revealed unacceptable results.

## **APPLICATIONS**

### **Minor Subdivisions**

1. Application by **John and Helen Robinson** for approval of a subdivision of property at **60 Pembroke Road.** (#2005-68)

The Clerk reported that the applicant had asked for postponement of consideration of this application. The Board agreed to this request and the Chair announced that no consideration would be given to, nor would a hearing be held this evening on this application.

2. Application by **James & Susan Sebold and Shawmut Holdings LLC** for approval of a resubdivision and subdivision of property at **263 & 265 South Street and 10 Heather Lane.** (#2006-23)

The Clerk reported that the applicant had asked for postponement of consideration of this application. The Board agreed to this request and the Chair announced that no consideration would be given to, nor would a hearing be held this evening on this application.

3. Application by **Tanguay Homes LLC** for approval of a subdivision by virtue of conversion to condominium of property at **382 North State Street.** (#2006-25)

#### Determination of Completeness

Mr. Henninger reported all required materials had been submitted and the application was complete and ready for public hearing.

Mr. Merrill moved and Mr. McGonagle seconded that the Planning Board determine this application to be complete and proceed with the public hearing. Motion carried.

#### Public Hearing

Mr. Henninger explained this application to establish as a condominium the 79 townhouse units and the historic Abbott House that were previously granted a conditional Site Plan approval by the Board on March 2, 2005. The development is located on a 15.3 acre parcel on the east side of North State Street opposite Abbottville Road and the granite quarries. Common facilities will consist of a community building and related parking, a tennis court and a putting green.

He reported that the applicant has obtained a demolition permit for the outbuildings and a portion of the attached "L" or barn structure to the rear of the Abbott House, and has fenced the site as well as applied for a building permit. The Planning Division has provided comments to the applicant on the proposed subdivision plan, and the Planning Division and the Legal Department have provided comments on the proposed Condominium Declaration and Bylaws. Conditional final approval is being recommended this evening for this application to establish the development as a condominium.

There was no one wishing to speak for or against the application and the Chair declared the hearing closed at 8:45 PM.

Deliberations and Action on Application

Mr. McGonagle moved approval subject to the following 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.

**Special Conditions:**

2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall submit condominium documents to the Planning Division for review and approval by the City Planner and the City Solicitor.

Ms. Dolcino seconded. Motion carried.

(Ms. McClure rejoined the meeting at 8:50 PM)

4. Application by **Todd A. Trento & Amy Wagner Trento and Juniper Fells LLC** for approval of a revision to a previously approved subdivision of property at **151 Snow Pond Road.** (#2006-24)

Determination of Completeness

Mr. Pollock reported all required materials had been submitted and the application was complete and ready for public hearing.

Mr. McGonagle moved and Mr. Gross seconded that the Planning Board determine this application to be complete and proceed with the public hearing. Motion carried.

Public Hearing

Mr. Pollock explained this application for revisions to a previously approved subdivision at 151 Snow Pond Road. This lot, which was Lot #9 in Phase 1 of Juniper Fells, is located on the west side of the proposed Windchime Drive, a cul-de-sac to be constructed as part of Juniper Fells Phase 3. The applicants are proposing to construct a driveway along the centerline of the proposed Windchime Drive in an easement provided by Juniper Fells LLC, with the driveway easement proposed to expire upon the acceptance of Windchime Drive by the City.

This lot was one of four in Phase 1 of Juniper Fells that was required to submit a site layout and grading plan for the driveway and house foundation for approval by the City Planner and City Engineer, prior to any building permit being issued. At that time, the driveway was presumed to be accessed from Snow Pond Road.

It was reported that discussions with the City Solicitor had revealed that the driveway easement must expire upon the recording of a subdivision plat for Juniper Fells Phase 3 or other successor subdivision for the premises which displays a right-of-way for a public street in the location of the proposed Windchime Drive. The expiration of the driveway easement upon acceptance of the street by the City, as proposed by the applicants, would allow the driveway easement to gain precedence over the City's right-of-way easement after the layout (which occurs with the recording of the plat).

There was no one wishing to speak for or against the application and the Chair declared the hearing closed at 8:55 PM.

#### Deliberations and Action on Application

Mr. Merrill moved approval subject to the following conditions:

1. Prior to the issuance of any building permits for any construction activity on this lot, the applicant shall revise the plan to address the minor corrections and omissions noted by City staff.
2. Prior to the issuance of a issuance of any building permits for construction activity on this lot, the following easement document, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:
  - a. A deed of easement for the driveway to pass over the right-of-way of the proposed Windchime Drive to reach Snow Pond Road, said easement containing a specific provision that the driveway easement shall terminate upon the recording of a subdivision plat displaying a public street right-of-way for the area occupied by the driveway easement.
3. Prior to the issuance of a issuance of any building permits for construction activity on this lot, the applicant shall provide a financial guarantee for all improvements within the public way of Snow Pond Road, said guarantee to be in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.

Mr. McGonagle seconded. Motion carried.

#### Conditional Use Permits

5. Application by **Sprint Spectrum on behalf of Cingular Wireless** for consideration of Conditional Use Permit pursuant to Section 28-5-23, Wireless Telecommunications Equipment, for property at **217 Fisherville Road**. (#2005-95)

#### Determination of Completeness

Mr. Pollock reported all required materials had been submitted and the application was complete and ready for public hearing.

Mr. Gross moved that the Planning Board determine this application to be complete.  
Mr. Merrill seconded. Motion carried.

#### Public Hearing

Mr. Pollock explained that the applicant is seeking a Conditional Use Permit under terms of Section 28-5-23, Wireless Telecommunications Equipment, of the Concord Zoning Ordinance for the for the installation of antennas by Cingular Wireless on an existing Sprint telecommunications tower located on land owned by ADN Realty Trust & ABS Realty Trust, at 217 Fisherville Road. The installation will include the removal and replacement of two existing antennas with two new antennas. He reported that at their meeting of December 13, 2005, the Design Review Committee recommended approval of the installation of the antennas subject to the antennas being painted to match the tower.

Sean Conway from Tower Resource Management was present on behalf of Cingular Wireless to answer questions from the Board. There was no one else wishing to speak for or against the application and the Chair declared the hearing closed at 8:59 PM.

#### Deliberations and Action on Application

Mr. Gross asked if it was necessary for the Board to have to consider this type of application involving replacement antennas on existing towers. The Clerk explained that under the terms of the Zoning Ordinance, that a Conditional Use Permit application was required. The Board asked that, when time permitted, consideration be given to amending the Ordinance to provide an administrative review of these cases if appropriate under State and federal law.

Mr. Gross moved to grant a Conditional Use Permit under terms of Section 28-5-23, Wireless Telecommunications Equipment, of the City of Concord Zoning Ordinance subject to the following conditions:

1. In accordance with the provisions of Section 28-5-23 of the Zoning Ordinance, the permit shall be valid for a period of three years from the date of the vote of the Board; and
2. The applicant shall provide the requisite financial guarantee under the terms of Section 28-5-23(i) of the City Zoning Ordinance. The financial guarantee shall be in an amount as approved by the City Engineer and in a form acceptable to the City Solicitor. The term of the guarantee shall extend one year past the period of validity of the permit.

Mr. Merrill seconded. Motion carried.

Mr. Gross moved to grant conditional approval of the proposed design of the

telecommunications equipment pursuant to Section 28-9-4(f), Architectural Design Review, of the Concord Zoning Ordinance, subject to the antennas being painted to match the tower.

Mr. Merrill seconded. Motion carried.

### Architectural Design Review

6. Building plans related to an application by **Ciborowski Realty Trust at 70 North Main Street.**

### Public Hearing

Mr. Henninger explained this proposal for façade improvements to the store front at 70 North Main Street which had previously housed the Radio Shack. He reported the Design Review Committee had not been presented with the plans for the proposed façade improvements.

There were no questions or comments from the Board. There was no one wishing to speak for or against the application and the Chair declared the hearing closed at 9:05 PM.

### Deliberations and Action on Application

Mr. Gross moved that the Board grant Architectural Design Review Approval for revisions to the first floor of 70 North Main Street subject to the condition that the details of colors and materials for the exterior façade be approved by the Architectural Design Review Committee prior to their installation. Mr. McGonagle seconded. Motion carried.

## **REGULAR MEETING**

### Annual Organizational Meeting

- A. Election of Vice Chair for 2006

Mr. Drypolcher reminded the Board that there had been a question about an ex-officio member serving as Vice Chair given that the Vice Chair does chair meetings in the absence of the Chair or on those occasions when the Chair must recuse himself. He indicated that the City Solicitor has advised that it is not appropriate for the Vice Chair to be an ex-officio member for just those reasons. He further indicated that Mr. Gross had declined to accept such a nomination, and there was a nomination for John Swope for another term as Vice Chair that was on the table. There were no other nominations.

Mr. McGonagle moved that nominations be closed and the Clerk be instructed to cast one ballot for John Swope for Vice Chair for 2005. Mr. Gross seconded. Motion carried.

- B. Appointment of representative to the **Heritage Commission**

As no one had volunteered to represent the Planning Board on the Heritage Commission, the Chair indicated that he intended to ask members of the Board if they would be willing to share the duties of this position. Therefore, discussion was postponed.

C. Appointment of representatives to the **Central New Hampshire Regional Planning Commission**

The Chair reported that he intended to ask the current representatives, Mr. Swope and Ms. Foss, if they would be interested in continuing to represent the Board on the Commission. Therefore, discussion was postponed.

1. Further consideration of applications for approval of developments on which public hearings have previously been held:
  - a. Application by **HT Properties** for approval of a site plan of property at **232 & 234 Loudon Road.** (#2005-64)

Mr. Woodward reviewed the history of this application starting with variances, a Site Plan approval, and a license granted to Douglas Ryan in 2004 to convert the automobile sales business to a transmission repair facility as well as to re-organize the parking, driveways, and circulation on the site. The current owner now proposes to change one of the uses on the site from a pawn shop to a Valvoline automobile lubrication service business. The westerly portion of the existing building now occupied by the pawn shop is to be removed and replaced by a separate building housing Valvoline. The remainder of the existing building will continue to house the AAMCO transmission repair business. AAMCO has occupied 560 square feet more than what was previously approved and has installed two additional service bays beyond the four approved as part of the previous application.

Mr. Woodward reported that all prior code violations had been addressed and he reminded the Board that the applicant had paid a fine and had additional fines suspended for one year on the condition of no additional code violations. He indicated that the Code Administrator had confirmed that there were no new violations, and therefore, this application was in order for action by the Board this evening.

Mr. McGonagle moved to grant conditional approval of the proposed design of the pursuant to Section 28-9-4(f), Architectural Design Review, of the Concord Zoning Ordinance, subject to the recommendations of the Design Review Committee, as follows:

1. the base of the freestanding sign being black instead of the red and that the same colors be used for the directional signs, and
2. the external stairwell of the Valvoline building being moved inside.

Mr. Merrill seconded. Motion carried.

Mr. Gross moved to recommend to the City Council that the Council grant a request from Attorney Dolder for a re-issuance of the license to the current property owner for landscaping in the public rights-of-way of Loudon Road and Branch Turnpike.

Mr. McGonagle seconded. Motion carried.

Mr. Merrill moved to grant conditional final Major Site Plan Approval subject to the following conditions:

1. Prior to the Certificate of Approval being signed by the Planning Board Chair and Clerk, approvals of construction drawings for on-site and off-site improvements shall be obtained from the Engineering and Planning Divisions.
  2. No construction activity in a City street or on public utilities may commence prior to a pre-construction conference.
  3. Prior to the Certificate of Approval being signed by the Planning Board Chair and Clerk, a license shall be obtained from the City Council for landscaping to be installed in the right-of-way of both Loudon Road and Branch Turnpike.
  4. Prior to the Certificate of Approval being signed by the Planning Board Chair and Clerk, the applicant shall address the corrections and omissions noted by the City staff and the plans shall be revised to incorporate those correction as well as the following specific items:
    - a. Response to the satisfaction of the City Engineer to all comments from the Engineering Services Division dated February 21, 2006; and
  5. Transportation Facilities Impact Fees shall be assessed for the change of uses within the limits of the approved site plan including the change from retail space to a quick lubrication vehicle business, and expansion of the automotive care center. 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 the attached Impact Fee worksheet.
- b. Application by the **Edward J. Sullivan Family Trust** for preliminary approval of a cluster subdivision of property at **105 Manor Road. (#2005-67)**

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

Mr. Henninger reminded the Board that this application is intended to create a “no lot” cluster subdivision of 63 units on an 87.47 acre parcel north of Manor Road and east of Abbott Road. The development will be located on top of the bluff above the Lower Oxbow Pond of the Merrimack River. The majority of the open space is located on the bluff and on a low plain below the bluff. The site has approximately 1,250’ of frontage on the Lower Oxbow Pond.

Mr. Henninger reminded the Board that at the regular meeting on February 15, 2006, they had closed the public hearing on this application. A hearing was held on the proposed roundabout for the Manor Road/ Abbott Road intersection on March 15, 2006, but despite the extensive notification by mail and in the newspaper, no public testimony was offered or received.

He reviewed the key aspects of the project and indicated that the Planning Division was recommending that a requested waiver to the Subdivision Regulations be granted and that conditional preliminary approval be granted to the subdivision application.

Mr. Gross moved that a waiver be granted to Section 9.04(3)(p), Common Private Drive, for the width of the common private drive and the size of the turnaround required for driveways to units 48 & 49, units 46 & 47, units 18 & 19, units 20 & 21, and units 24 & 25. In granting the waiver the Board made the following findings in support of the request: the common private drives are very short; each unit will have a turnaround suitable for a passenger vehicle; each common private drive only serves two (2) units; the close proximity of the units to the main subdivision streets allows the Fire Department to access the units for fire fighting purposes from the main subdivision street instead of the common driveways; the availability of municipal water supply to and within the subdivision; and the desirability of limiting the amount of impervious surface pavement near the Merrimack River bluff.

Mr. McGonagle seconded the motion. The motion carried with Mr. Merrill abstaining from the discussion and vote.

Mr. Gross moved Preliminary Subdivision Approval subject to the following conditions, with Special Condition #15 being revised so as to be required prior to consideration of a final approval by the Board:

**Standard Conditions**

1. 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 Environmental Services Site Specific Permit (RSA 485-A:17)
  - b) NH Department of Environmental Services Water Quality and Sewer Discharge Permits
2. 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.
3. Prior to the final plat being signed by the Planning Board Chair and Clerk, approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions.

4. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant will provide to the City Solicitor a financial guarantee for all public improvements in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.
5. 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, will be provided to the Planning Division:
  - c) An open space agreement for the project open space including the perimeter buffers on top of the bluff.
  - d) Conservation Deed(s) and/or easement(s) for the Merrimack River bluffs and the open space areas below the bluff.
6. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall obtain approval of private utility plans from Unitil (Concord Electric) and Verizon.
7. Prior to the release of a financial guarantee for any public improvement, an as built plan shall be provided to the City Engineer in form and content acceptable to the City Engineer.
8. Traffic, recreation and school impact fees shall be assessed for any construction on 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. Table 3: Transportation Facilities - Single Family Residence

### **Special Conditions**

9. Prior to the issuance of a Certificate of Occupancy for the 1<sup>st</sup> unit, a sidewalk shall be constructed along Manor Road from Willard Street west to the Abbott Road intersection.
10. Prior to the issuance of a Certificate of Occupancy for the 1<sup>st</sup> unit, the intersection of Sewalls Falls Road and Manor Road shall be realigned to a conventional T intersection without the west bound slip ramp configuration.

11. Prior to the issuance of a Certificate of Occupancy for the 26<sup>nd</sup> unit in the development, a roundabout shall be designed and constructed at the intersection of Manor Road and Abbott Road, including sidewalks within the intersection.
12. Prior to the issuance of a Certificate of Occupancy for the 45<sup>th</sup> unit, the common recreation areas shall be complete.
13. If the following improvement is added to the City Capital Improvement Program (CIP), it shall be deemed to be eligible for credits against the assessed traffic impact fees. The procedures for determining the eligibility and the calculation of the credit 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.
  - a. The roundabout at the intersection of Abbott & Manor Road.
14. One home will be demolished for the westernmost entrance at 95 Manor Road on lot 76C-1-7. The applicants are proposing to replace this unit with a new single family residence on a lot to be created east of this drive. Once the unit is demolished the new single family residence on the new lot will receive credit against the Transportation Facilities Impact Fee (100%), Recreation Facilities Impact Fee (612 square feet at \$0.39 per square foot), and School Facilities Impact Fee (612 square feet at \$0.84 per square foot).
15. Prior to the final plat being submitted the applicant shall design the proposed trail system within the open space. The applicant shall work with the Conservation Commission in the design of the proposed trail system.
16. No clearing, grading or development on the site may occur until final subdivision approval is granted.
17. Phase 1 approval, consisting of no more than 26 units, shall be valid for a two (2) year period commencing from the date of Planning Board action. Phase 2 approval, consisting of another 19 units, shall be valid for a four (4) year period commencing from the date of Planning Board action provided Phase 1 has commenced within two (2) years of Planning Board approval. Phase 3 approval for the remaining units shall be valid for an additional two (2) year period provided that Phase 1 & Phase 2 site improvements have been completed.

Mr. McGonagle seconded the motion. The motion carried with Mr. Merrill abstaining from the discussion and vote.

- c. Application by **Vinewood Development Co. LLC** for approval of subdivision of property at **28 Thayer Pond Road. (#2006-01)**

Ms. Seifried explained this application which is to combine two (2) existing parcels and create two lots of 42,850 square feet and 12,590 square feet with frontage for both on Thayer Pond Road. An existing house will be located on the larger lot. She reminded

the Board that at the February 22, 2006 meeting of the Planning Board, the application was tabled to allow time for review of the drainage and grading plans by the Engineering Division and for the applicant to submit information from the Merrimack County Registry of Deeds regarding the release of Covenants by Pine Tree Builders for the property. The Engineering Department has reviewed the drainage report and has hosted a meeting with the applicant and abutters to discuss the revised drainage report. The applicant has suggested that he would be willing to include a deed restriction or covenant regarding the maintenance of the "rain gardens" as well as to provide an appropriate financial guarantee to restore and resolve any drainage issues that might occur as a result of the construction of the new house.

Ms. Seifried indicated that the recommendation from the Planning Division was to grant conditional final approval with several standard and special conditions, the latter to include the following: (1) The new lot must contain a deed restriction or covenant with respect to the maintenance and continuing viability of the "rain gardens" on either side of the proposed house which shall grant the abutters the right to enforce said covenant or restriction, and shall grant the city the right but not the obligation to enforce the covenants or restriction. A draft of the deed restriction or covenant shall be submitted for approval by the City Solicitor and recorded with the plat; (2) A bond or financial guarantee must be submitted by the applicant to restore and resolve any drainage issues that may occur as a result of the construction of the house. The bond or guarantee shall have a term that runs for two years from the date of issuance of a certificate of occupancy; (3) During the construction phase, tree clearing will be limited for the purpose of construction of the new single family residence. Mature trees within 15 feet of the rear property line will be protected from damage and destruction; AND (4) During the construction phase, erosion protection measures will be installed to prevent runoff to abutting properties. Said erosion protection measures shall be to the satisfaction of the City Engineer.

Mr. Gross asked for a description of the "rain gardens" and Jennifer McCourt, consultant to the applicant was recognized and provided the Board with the requested information. Mr. McGonagle asked the City Engineer if he was satisfied with the design of the drainage system and Mr. Roberge indicated that he was. The Chairman further questioned Ms. McCourt and expressed concern over the long term viability of such a drainage system. He also questioned the City Engineer on the City's ability to intervene in the event the system failed to function properly. Mr. Roberge indicated that the City would have a bond to ensure the viability of the system and if necessary, would draw on the bond to enter the premises to correct problems. The Board expressed concern about the City being able to police such matters with existing staffing levels.

The Chairman spoke of his concerns about this kind of drainage issue, comparing it to problems that he had encountered at his own home with runoff from an adjacent subdivision. He expressed interest in the case law cited in a communication from the abutters as providing a basis for denial of this application.

Mr. Merrill indicated that while it is a difficult lot, the drainage proposal meets the criteria of the Regulations, and the issue seems to be one of providing an adequate guarantee. The Clerk indicated that he had proposed a period of two years after the

issuance of a Certificate of Occupancy for a bond to remain in effect, assuming that the site would be stabilized and a variety of rain events would be encountered during that time. Mr. McGonagle indicated that a period of five years would be more appropriate.

Mr. McGonagle moved to grant conditional final subdivision approval subject to the conditions as recommended by the Planning Division with the exception of the length of the term of the bond which was to be increased to five years, and for certain wording changes suggested by the Clerk. Mr. Merrill seconded.

Ms. McClure stated that she would not support the motion as she remained unconvinced that the development of this lot will not cause problems to the abutting properties. Ms. Dolcino sought clarification of the City's right to enter the site if there was no easement to the City. Mr. Roberge noted that the bond would contain wording to allow entry to the premises as long as the bond was in effect.

The Chair called for a vote based on a show of hands and the motion failed on a tie vote.

Ms. McClure then moved to deny the application indicating that she was not convinced of the adequacy of the design of the proposed drainage system or the measures proposed to guarantee performance of the system once constructed. Ms. Dolcino seconded.

The Clerk asked that action on this matter be deferred to allow him to confer with the City Solicitor relative to the case law cited by the abutters, and to explore options available to the Board to establish appropriate conditions of approval.

Mr. Gross then moved that action be tabled on the application in order for the Clerk to confer with, and seek the advice of, the City Solicitor relative to the case law cited by the abutters, as well as to review the options available to the Board in establishing conditions to ensure the performance of the drainage system.

The motion was seconded by Mr. McGonagle. Motion carried.

#### CITY COUNCIL REFERRALS

2. Consideration of communication from Hebert & Uchida on behalf of **HT Properties LLC** relative to **re-issuance of a landscaping license** for property at **232 & 234 Loudon Road**.

The Chair reminded the Board that this matter had been considered as part of the Site Plan application by the same applicant.

3. Consideration of petition from **Francine Philippe** and others for consideration of a **growth moratorium** or limitation on the number of building permits.

The Planning Board then considered the request of the petitioners relative to a growth moratorium or limitation on the number of building permits (i.e. a growth management ordinance). Ms. Philippe et al also wanted to have further consideration of the revisions

to the Zoning Ordinance in the Broken Ground area on which the Board had held a public hearing on January 11, 2006. The Board had voted to table that matter and to advise the City Council of many different concerns that were expressed at the public hearing and the need for these to be considered by the Board as part of the overall Master Plan process. The petitioners have subsequently amended the focus of their interest to that area of the City outside of the Urban Growth Boundary.

The Planning Division had provided the Board with the materials that had been assembled when the Board last gave consideration to a growth management ordinance in October 2004. At that time the Board had identified the impact of growth on traffic in the City and on the capacity of the Merrimack Valley School District (MVSD) as two areas that might justify consideration of a growth management ordinance. Subsequently, the Community Development Department's new permit tracking software was been utilized to obtain data on the number of new residential building permits issued in the MVSD over the past five years which amounted to 99 single family homes and 20 multi-family dwelling units. Recently, the Community Development Director and City Planner met with the Superintendent of the MVSD to discuss recent enrollment projections by MVSD, school capacities, building permit data, and future growth projections. The discussion confirmed that no capacity was added to the middle and high schools in the current construction projects as the enrollments at these schools have been stable and are not expected to change (keeping in mind that four neighboring towns send students to these schools.) The new Penacook Elementary School has a capacity of 450 and is now at about 83% of capacity which includes a small number of non-Penacook students.

With regard to the impacts of growth on traffic in the City, in late 2005, the traffic model was run "in reverse" to discern the sources of traffic in Concord during a weekday PM peak hour. It appears that Concord residents generate slightly less than 40% of the trips, while non-residents generate more than 60% of the trips. The City's traffic consultant has advised that to the extent Concord reduces future trip generation from within the City, that the available capacity will be quickly consumed by trips generated from outside of Concord.

The Board also considered a record of the past 46 years of residential building permits by housing type as well as a graphic display of the same which indicates that the decade of 2000 to 2009 will sustain housing growth at a level above that of the 1960s and 1990s but below that of the 1970s and well below the peak decade of the 1980s. The Planning Division also presented a map indicating the past five years of major subdivisions that have been approved or are under consideration in the area outside of the Urban Growth Boundary. Twenty subdivision applications have been or are being considered, two of which had multiple phases, and six of which were cluster developments with common open space. The average density is in the range of one unit per 4 acres.

The Planning Division proposed to the Board that the land use in the area outside of the Urban Growth Boundary (UGB) be given consideration as either an amendment to the current Master Plan, or a partial adoption of the new Master Plan. The area outside the UGB represents about two-thirds of the City's land area which will not be served by utility systems, is accessed by a rural road system, and the primary land use is rural

residential throughout the area. The current Master Plan effort is headed in the direction of a density of one unit per four acres or a combination of some four-acre and some two acre minimum lot sizes with mandatory cluster development for major subdivisions.

The Board discussed growth management ordinances and growth moratoria, and generally, although not unanimously, felt that the lack of capacity of a major capital facility or system such as schools or water supply, that would otherwise provide a legal basis for growth management, was not extant. The Board also debated whether to recommend that the City Council simply consider adopting a four-acre minimum lot size as the Board had recommended for the Zoning Ordinance revision in 2001. The discussion turned to the changes that have occurred since 2001, and the desire to utilize the more recent statutory provisions for mandating cluster development. The Board also noted its tentative Master Plan decisions to promote a transfer of development rights from outside the UGB to inside the UGB, and to thereby promote higher density villages and foster affordable, workforce housing therein.

After discussion, Mr. Merrill moved to request that the Planning Division to review and report back to the Board on land use strategies and regulatory options for the area outside of the Urban Growth Boundary, including particularly the consideration of a density of one unit per four acres, and the introduction of mandatory cluster subdivision standards to the land use regulations for this area. Ms. McClure seconded. Motion carried.

(Mr. McGonagle left the meeting at 11:10 PM).

#### NEW BUSINESS

4. Consideration of request by Town Line Trail Dusters Snowmobile Club to present a proposal for a **recreational bridge** to be constructed **over the Contoocook River** from Lehtinen Park to Mast Yard and the related recreational use of these City properties. [Board voted on March 15, 2006, to set aside up to 20 minutes to discuss this.]

As part of its standard review of proposed changes and improvements to the City's parks, the Planning Board considered the request of the Town Line Trail Dusters Snowmobile Club to present a proposal for a recreational bridge to be constructed over the Contoocook River from Lehtinen Park to Mast Yard and the related recreational use of these City properties for trails leading to the bridge. In the case of snowmobile use, the trails will link with a significant system of trails to the north and form an important connection that will eventually link to other protected City open space.

The Board had received substantial information from David Murray who also addressed the Board. It was noted that the City's administrative staff is engaged in the review of such matters as the structural stability and durability, life-safety aspects, and insurance and liability. The Planning Board confined its review to the appropriateness of the proposed improvements for these City properties and the recreational uses that would become available as a result of the improvements.

After discussion, Ms. McClure moved that the Board express its endorsement of the proposed recreational bridge over the Contoocook River and the related recreational trail as an important and valuable addition to the City's parklands and to the recreational opportunities available to Concord citizens. Mr. Gross seconded. Motion carried.

5. Consideration of communication from TF Bernier on behalf of **Norman Fauteux** for **clarification** of the Board's conditions of subdivision approval of application #2006-17 at 115 Appleton Street.

Mr. Woodward explained that two letters have been received from the agent for Norman Fauteux requesting clarification of two of the conditions of approval granted by the Board on February 22, 2006 for a minor subdivision at 115 Appleton Street. The conditions related to the timing of the establishment of individual driveways to each of the lots and the display of the wetland buffers on the plat, as follows:

- The plat shall be modified to show the individual driveways as originally approved for this parcel on April 20, 2005, and prior to the recording of this plat, the driveway to Lot #1 shall be constructed in accordance with said plat.
- 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...[and one of these was "wetlands and wetland buffers need to be shown on both lots."]

The applicant's concern with the first condition is that he may choose not to develop the second lot and therefore would like to defer the construction of the second individual drive until such time as a building permit is sought for the lot, and then the second driveway would have to be constructed prior to the issuance of such a permit. In the interim, the current common drive that was constructed into Lot #2 to serve both lots, would continue to pass through Lot #2 but serve only the house on Lot #1. Both letters indicate that the common driveway, as constructed into Lot #2, "is in full compliance with the City regulations" and will not be in violation of city regulations "unless it serves more than a single residence". The Clerk noted that the flaws in this argument are several, the first being that the common drive is defined as a shared means of access to *lots* not *residences*, and of course that the driveway was built in direct contradiction of the subdivision approval granted by the Board and recorded plat for this property which is in and of itself a violation of the Subdivision Regulations. The Clerk noted, however, that it does not seem unreasonable to allow the access to Lot #1 to be gained via the common drive until such time as a building permit is sought for Lot #2. The plat would need to be appropriately annotated to ensure that a future owner would be aware of such a requirement. With regard to the display of wetlands on the plat, the same wetlands as were displayed on the Benson plat should also be shown on the Fauteux plat.

After discussion Mr. Merrill moved that the Board clarify its intent for two conditions of approval of the subdivision application granted on February 22, 2006, as follows:

1. The driveway to Lot #1 as originally shown on the recorded plat for Ben D. Benson (2005-14) shall be constructed prior to the issuance of a building permit for construction on Lot #2, the driveway shall be shown on the plat, and the plat shall be annotated as follows: "The driveway to Lot #1 shown hereon was approved by the Concord Planning Board on April 20, 2005, see plan reference #2. This driveway shall be constructed prior to the issuance of a building permit for construction on Lot #2. The existing driveway shall not be utilized to provide access to more than one residence. A request for a waiver to allow a single common driveway serving both lots was denied by the Concord Planning Board on April 20, 2006."
2. The delineated wetlands and the requisite buffers as displayed on the recorded plat for Ben D. Benson (2005-14) shall be displayed on the plat for this application.

Mr. Gross seconded. Motion carried.

At 11:25 the Board voted to go into executive session in order to receive and discuss information related to ongoing litigation.

The Board came out of Executive Session at 11:34 PM.

There being no further business to come before the Board, the meeting was adjourned at 11:35 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk