

A special meeting of the City Planning Board was held on November 8, 2006 in the City Council Chambers at the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher (who as Chair presided), Dolcino, Gross, McClure, McGonagle, Merrill, Meyer, Swope, and Alternate Member Kenison. Messrs. Woodward and Henninger, and Ms. Osgood of the City Planning Division were also present, as were Roger Hawk, Director of Community Development, Kenneth Lurvey, Business Development Coordinator, Matthew Walsh, Community Development Project Manager, and Laura Aibel, the City's Associate Engineer.

At 7:06 PM a quorum was present and the Chair called the meeting to order and seated Mr. Kenison for absent Member Foss.

### **Amendments to the Master Plan**

1. Public Hearing for the purpose of considering amendments to the Master Plan involving revisions to the Land Use Policies regarding residential development as contained in the Land Use Chapter.

#### **Public Hearing**

Mr. Woodward explained that the intent was not to discuss changes to the Zoning Ordinance this evening, only amendments to the Master Plan. The Master Plan policies, if adopted by the Board, will then provide the policy basis for consideration of changes to the Zoning Ordinance.

He explained that the Planning Board is in the process of updating the City's Master Plan that was adopted in December 1993. The 1993 Master Plan included the Urban Growth Boundary (UGB), an innovative anti-sprawl policy that has guided the City's land use regulatory changes. The UGB defines the limits of urban development within the City such that the land inside the UGB is served by City water and sewer utilities, there is an extensive transportation network, and the City will continue to focus its investment in such infrastructure in this area. The most intensive residential development as well as the vast majority of the City's economic development have occurred and are planned for the area inside the UGB.

In contrast, the area outside of the UGB is rural in nature, having no utility services and thereby making any development dependent on wells and subsurface disposal systems. The transportation infrastructure is much more limited in this area. The land outside the UGB also embraces most of the City's environmentally sensitive land including floodplains, wetlands, water resources, steep slopes, and prime farmlands. Low density residential development together with agricultural and recreational uses have occurred and are planned for the area outside the UGB.

He reported that the Urban Growth Boundary is intended to be perpetuated in the updated Master Plan.

He reported that, despite the City's commitment to provide funding to the Conservation Commission to acquire land and conservation easements, the actual protection of open space remains a challenge given the extensive geography of the City and the range of important natural resources to protect. In order to further provide for the protection of open space, the Planning Board has reviewed the benefits of cluster subdivisions in contrast to conventional subdivisions in the area outside of the Urban Growth Boundary. Since the adoption of a revised Zoning Ordinance in November 2001, 27 subdivision applications have been or are being considered, occupying 2.25 square miles of land on which 322 new lots or units have been or are being proposed, and 545 acres (0.85 square miles) have been or are to be set aside as permanent open space. The gross average density for all 27 subdivisions is one unit or lot per 4.49 acres, and 1.7 acres of open space has been protected for each lot or unit. While the majority of open space has been set aside under the requirements of the cluster development regulations, some has been protected as part of mitigation requirements related to NHDES Wetland permits, and in a few cases, land has been deeded or conservation easements have been given by the applicants. The eight cluster subdivision applications have yielded protected open space at the rate of 2.48 acres per lot or unit, with 68% of the gross subdivision tract areas being protected. In contrast, the 19 standard or conventional subdivisions yielded 0.52 acres per lot or unit of protected open space, with only 9% of the gross subdivision tract areas being protected.

Mr. Woodward reported that RSA 674:21, which enabled cluster development, was amended in 2004 when the language was modified from giving municipalities the right to allow cluster developments as an option, to granting municipalities the right to require cluster developments "when supported by the master plan". Essentially, standard or conventional subdivisions, where the entire premises is divided into lots, would no longer be permitted, and cluster subdivisions, where a certain amount of open space is set aside and not divided into house lots, would be the only land subdivision option permitted in this area.

He reported that, in addition to mandating cluster subdivisions as a technique for protecting open space, the Board has spent considerable time reviewing the open space benefits of a transfer of developments rights (TDR) system. Transferring development rights involves an identified source or donor area from which the development rights are taken, as well as an identified recipient area or an area to which rights are transferred. Mechanisms have to be defined for acquiring the development rights, valuing these rights, and for utilizing them. Finally, the transfer system has to make sense within the overall Land Use Plan for the City. The benefit for open space purposes is that the land from which development rights have been transferred becomes protected open space.

In this context in which a transfer of development rights system is contemplated, the transfer of rights would be from the area outside of the UGB, which would be the donor area. The development rights would be valued on the basis of allowable density in units per acre, and the mechanism for acquisition of the development rights would simply be the purchase of a parcel or a conservation easement on a parcel.

An area inside the UGB would be the recipient area which requires choosing specific districts and types of developments wherein the transferred dwelling units can be utilized and establishing maximum density limits over and above the standard limits. Some areas inside the UGB are already set at relatively higher density limits and transferring more units to those areas would either require lowering the current densities so that the transferred units would restore the formerly allowed density, or in the alternative, accepting a density higher than what is currently allowed. The land area available in these areas is not extensive, with infill development being the primary new development option (vs. redevelopment). The largest amount of developable land inside the Urban Growth Boundary is in the areas classified as medium density which also are limited to the lowest densities in the area inside the UGB and are the least intensively utilized. It is in these areas that the transferred units could be most easily absorbed by raising the allowable densities by one or two units per acre.

As part of the Master Plan update process, the Planning Board held a hearing on the Opportunity Corridor Plan and agreed to include within the Master Plan, economic development and mixed land use initiatives for the Opportunity Corridor together with the exploration of additional residential density in the Opportunity Corridor. The Board also agreed to commission a design concept for a mixed use, high density village in the southerly end of the Corridor.

He reported that a number of ideas and concepts for residential development within the Urban Growth Boundary have emerged from the Master Plan process and are of interest to the Planning Board. They include the promotion of the infill of urban residential development in existing villages and neighborhoods in traditional forms and densities that mimic the traditional older neighborhoods of the City. The City's older neighborhoods contain mixtures of housing types that are predominantly single family homes, and two-family or duplex dwellings, but contain some structures that were designed as or have been converted to contain three and four dwelling units. These dwelling units are framed in traditional architectural designs and located on variable sized lots in grid block patterns. The densities range from five to more than ten units per acre.

Another idea for further exploration is the retention of the concept but not any specific locations of new villages, by defining a new village in terms of performance standards, to be implemented if the opportunity arises. The Master Plan process included development of prototypical village designs in several locations which ultimately were not deemed to be appropriate. However, the concept of a new village was considered to have merit.

All of these concepts are viewed as anti-sprawl measures which would provide opportunity for affordable as well as workforce housing within Concord's neighborhood and village structure.

Based upon the professional analyses and studies, workshops, hearings, and discussion, the Planning Board has now scheduled a public hearing on the following proposed amendments to the Master Plan.

1. The maximum density of residential development outside the Urban Growth Boundary shall be one unit per four acres

He reported that in the land area outside the Urban Growth Boundary, the density of residential development should be limited to one dwelling unit per four acres, or 0.25 units per acre, with provision for adequate buildable land area to support a subsurface disposal system and a water supply well to serve each dwelling unit, as well as adequate buildable land area for the principal residential structure together with permissible accessory buildings and related improvements.

The 1993 Master Plan contained this land use policy on which the Planning Board based its recommendation for the 2001 rezoning of the City to establish a density of one dwelling unit per four acres in the area outside the Urban Growth Boundary. However, this recommendation was rejected by the City Council in adopting the revised Zoning Ordinance. The Board is proposing to perpetuate this land use policy statement. However, this policy statement is integrally related to the policy statement related to mandating cluster subdivisions, and it is deemed essential that these policy statements both be adopted and be implemented together.

2. Subdivisions outside of the Urban Growth Boundary shall be accomplished only in a cluster subdivision format

Mr. Woodward explained that, under this policy, in the land area outside the Urban Growth Boundary, residential development should be accomplished only in a cluster subdivision format and should no longer be permitted in a conventional subdivision format.

In exercising the provisions of the revised statute, the Planning Board is considering options for applying this policy to major subdivisions which are those with four or more lots or those that contain new streets. Alternatively, this could be made applicable to all subdivisions including those considered to be minor with three or fewer lots on existing frontage. In the latter case, the dwelling units might be proximately sited on standard sized lots, with a common conservation easement encumbering portions of all lots. Mandatory clustering will require changes to the design standards for cluster subdivisions including particularly the deletion of a threshold for a minimum tract size as a qualifying requirement.

3. A Transfer of Development Rights (TDR) system shall be established for conveyance of residential development rights from outside to inside of the Urban Growth Boundary

Under this policy, a Transfer of Development Rights (TDR) system should be implemented to provide an option for the conveyance of the residential development capacity of a parcel or portion thereof, as measured in potentially permissible dwelling units on a per acre basis, from the area outside of the Urban Growth Boundary (UGB) to those areas within the UGB designated for medium density residential development. The mechanism for acquisition of the development rights would simply be the purchase of a parcel or a conservation easement on a parcel. The development rights transferred

to inside the UGB should be allowed to be used to increase the density in the medium density residential areas by up to two additional dwelling units per acre over and above the density otherwise permitted.

4. New development design standards shall be promulgated for utilizing the transferred rights within the Urban Growth Boundary

He reported that new development design standards should be promulgated for cluster subdivisions and for the introduction of a traditional neighborhood development option for those areas within the UGB designated for medium density residential land use to ensure that there is an appropriate development format which will be available and appropriate to incorporate the transferred development rights. The traditional neighborhood format should also be made available for infill development in existing neighborhoods at density levels comparable to those now available under the prevailing land use regulations.

5. As an option in the TDR system, a development rights transfer fee shall be established for acquisition of development rights in lieu of direct purchase of said rights

He noted that, as an option within the Transfer of Development Rights system, a development rights transfer fee should be implemented whereby a fee would be paid in lieu of the actual direct purchase of the development rights by a developer, and the fee would be deposited in the City's Conservation Fund to be used to acquire the development rights from land outside of the UGB. The fee would have to be set by appraisal and be updated or increased annually in accordance with further appraisals or recognized indices.

The value of having the development rights transfer fee is that it would address situations wherein there might be a limited amount of land for sale outside the Urban Growth Boundary at any given time from which development rights could be purchased and would otherwise inhibit or curtail the transfer of development process. By having an appropriately established transfer fee and a process for the proceeds to be deposited in the Conservation Fund, the Conservation Commission could then use these deposits to acquire parcels at times when the real estate market has more options, or to negotiate for parcels that are not on the market.

Mr. Gross asked if transferable development rights would be available to someone choosing to construct a cluster development outside the UGB. Mr. Woodward responded that the rights would arise when the property owner decides not to develop and uses the mechanism to provide the rights for transfer.

Fred Richards, member of the Heritage Commission and the Architectural Design Review Committee, reported that the Heritage Commission supported the concept in general, with some minor tweaks that they would like to see in the approach. They encouraged the Board to consider including in the policy the ability, when development is proposed to occur on a parcel with historical elements, to incorporate those elements into the open space buffer.

He also noted that they agreed with the need for development design standards. They felt there were good environmental and energy conservation reasons for encouraging the higher density mixed use neighborhoods.

Mr. McGonagle asked if the Heritage Commission was encouraging the preservation of such things as the traditional farm fields and stone walls and Mr. Richards responded that they were.

John Langill, 33 Thackeray Road, president of Cherry Hill Homes, was present on behalf of the Concord Homebuilders and Remodelers Association. He reported that transferable development rights programs have been around since the early 1900s. Since that time very few communities have adopted these programs because they are problematic. People do not like to learn that the density in their neighborhoods has increased, and administration is very heavy in costs. A lot of these programs have been abandoned by municipalities and they have gone to rezoning because it is easier to manage. He was concerned about the City's willingness to downzone the RO Zoning District and recommended that the Planning Board set the TDR program aside. The price of building lots will increase and only wealthy people will be able to live in the RO Zoning District so this will be exclusionary.

Since 1992 the price of constructing a house has doubled and the price of land has gone up four times. Mr. Langill felt the reason for the price of land going up is government regulation. In light of the shortage of workforce housing they do not think it would be prudent to downzone the RO zone alone. With a TDR program it would be fine but rezoning alone would not be prudent. Homebuilders are very much in favor of preservation. They recognize that natural resources have to be preserved. Homebuilders enjoy the outdoors so they understand and appreciate conservation. They suggest taking a look at two-acre zoning and the current cluster regulations and rework those to reach the same goal. The builders are opposed to the broad brush conservation proposed by down zoning. Down zoning means loss of revenue from the current use penalty. They would rather see the Board put efforts to conserve rather than broad brush. The City needs a housing commission set up to look at TDR and make certain it is implemented properly. They feel the village concept is a great idea. For the TDR to work the receiving area needs to have the demand. The Board needs to look at the downtown area to see how workforce housing can be provided in that area.

Mr. Swope asked about the builder's problem with four-acre zoning and Mr. Langill responded that it seemed to conserve land but access will need to be provided to the open space being preserved. The City doesn't have an ordinance that provides for other than single-family residents. Diversity is needed, as well as a balance between development and conservation, and between high-end homes and workforce housing and low-income housing.

Ms. McClure asked what Mr. Langill felt were the pluses and minuses about TDR. He responded that the concept is a great idea but implementation is difficult. The Board needs to identify the part of the city that can support the higher density this will create, and to figure out what to do with the land on which the development rights have been

preserved. He also noted that there had been a number of legal challenges in other municipalities that have tried TDR.

In answer to a question by Ms. McClure, Mr. Langill discussed the increased cost of lots due to government regulation. He used as examples the growth management ordinance in outlying towns and the adoption a few years ago of wetland setbacks.

Timothy Bernier, president of TF Bernier, reported that about four years ago, after the zoning ordinance was revised, he noticed some issues among his clients with how land was being developed in the city. Workforce housing was becoming a problem for his non-residential clients. As a result, he became very concerned about workforce housing and became active in trying to create that kind of housing. He researched what was driving up prices in the city. He got involved with several groups - the Concord Business Group, Concord Homebuilders, and the State Homebuilders Association as examples. What has come out of that is agreement that when density is reduced, housing costs are increased. Regulation is so complex that it has increased costs. There was a real concern among his clients and their abutters that the city was in a development boom and developing too fast. He felt there were flaws in the cluster ordinance. Over the last 18 years there has been a steady but not unusual pace of building permits issued in Concord for new units. The cause of the problem is the density issue. In cluster developments construction is forced into the middle of the lot and that creates small parcels of open space. Everybody he has discussed this with agrees that the City needs to work harder to provide mid-cost housing for residents. Going to four-acre zoning will increase housing costs because of the reduced density. By creating four-acre zoning the Planning Board will create desirability and those lots will be available only to the most wealthy. The issue with the cluster ordinance is that it requires too much infrastructure. This will just continue the sprawl in the RO Zoning District. The average lot in the city consumes 4.4 acres with two-acre zoning. If that goes up to four-acre zoning, that means a larger amount of land will be consumed.

Mr. Bernier expressed concern about expediting the Master Plan amendment to circumvent proper discussion in order to allow for the quick adoption of the zoning ordinance amendments. Much of the open space that is created under the current ordinance is already protected land. Clusters are not producing open space as required under the ordinance.

He was concerned about the proposal for mandatory cluster developments in two-thirds of the city and felt that this ordinance would be susceptible to legal challenge. The Board needs to consider that this is an elitist proposal to increase the cost of housing in Concord. The village concept is good and the City needs to expand infrastructure to support that. The City will need to provide a receiving area if the TDR is going to work, and to include some incentives in the UGB to create higher density housing in that area. There is not a lot of redevelopable land within the UGB.

Don Bealko, officer and owner of Rivco and Chair of the Homebuilders and Remodelers Association of New Hampshire, expressed concern as an employer about the cost of housing in the area. He reported that the median cost of housing in the area has nearly

doubled in the last few years. They want to make sure that there are elements of workforce housing in the area.

He spoke on behalf of the Association's Public Policy Committee for Public Housing to promote the policy of balanced growth and to support the village concept and mixed use neighborhoods. More and more housing has been developed outside Concord which is creating some of the sprawl and traffic congestion. His employees are finding it increasingly expensive to live in the area. Large lot zoning drives housing costs up and drives people from the area. The village concept provides opportunities for affordability and range of uses.

In answer to questions from Mr. Gross, Mr. Bealko indicated that even at the two-acre zoning level now the City is not addressing workforce housing. The issue of workforce housing is a problem for economic development of the city because new companies won't want to come to an area where they cannot find employees, and prospective employees are not available because they cannot find affordable housing.

Mr. Merrill noted that there seemed to be a fixation about the increase to four-acre zoning but there are two other components to this proposal and one of the very important components to him is the transfer of development rights. He also felt that regulation was taking a hit regarding the increase in cost of housing but there are a lot of other factors in the increase including the increased cost of materials.

John Hoit, resident of the city, indicated that no one really understands this proposal. He does not understand what is meant by mandated cluster development or the transfer of development rights. His recommendation is that the community needs to be better educated and provided with more detail. This lack of understanding is creating hysteria. Mr. Swope responded that the purpose of this hearing is to air broad concepts and to educate people. Mr. Gross further responded by explaining the history of the UGB and related zoning since the 1993 Master Plan.

Mr. Hoit indicated that he was concerned about the details of the transfer of development rights.

Mr. McGonagle explained that the Planning Board is trying to get input relating to a policy issue before working on the details that will be reflected in the Zoning Ordinance.

Claudia Walker expressed concern about rezoning two-thirds of the city without a very good grip on the situation. An unintended consequence of rezoning outside the UGB is the possibility that even the property inside the UGB can become more expensive. This real estate market has died; it has totally come to a halt. This is a time to take a breather, take some leadership and look more closely at the UGB. She felt the City's biggest problem now is the lack of workforce housing.

Mr. McGonagle felt there was confusion about what the Planning Board is doing tonight. All of the components need to be considered as a whole. The four-acre zoning

is being testified to as a stand-alone item and needs to be taken as just one component of the entire package.

Ms. McClure mentioned that the village concept keeps coming up in testimony and noted that in previous discussion about the Master Plan at earlier meetings that concept has been soundly rejected because of the outcry against it.

Matt Holland, resident near Turtle Pond, indicated that the people he has talked to in his neighborhood feel that Concord should not grow any more. They moved to their homes because of the lack of density. When big developments are constructed in these rural areas, it actually decreases the value of the homes that are already there. The people who live in Concord have made the decision to own property here and the Planning Board should consider those interests more than those of people who don't already live here. He encouraged the Board to understand that there are many people in the city who do not want the growth in their neighborhoods and don't take away from those people the environment they chose to live in.

Jessie Osborne, State Representative from Concord explained she sits on the legislative committee that oversees State regulations for cities and towns. She did not think the RSA intended exclusion of any other type of development than mandatory cluster zoning. She felt they did not intend for it to be a blanket requirement in a particular zoning district.

Kenneth Lurvey, Business Development Coordinator for the City, indicated he had taken this to EDAC last week and advised them of the hearing. He wondered what increasing to four-acre zoning really accomplished. He was concerned about the incentive being offered for TDR. He did not think a developer would see the economic benefit as proposed. He suggested creating a village center in the Opportunity Corridor or the Garvins Falls area since the utilities are already in place. He also mentioned that the City has created TIFs in other areas to make an area developable and suggested that might be an incentive for development along with other methods such as cleaning up a property and partnering with other agencies.

Carol Hargrove, Concord resident, felt the City should very carefully watch its growth, given the number of growth management ordinances in place in surrounding communities. With larger lot sizes, fewer trees will come down and there will be less displacement of wild animals. The Board should also talk about maintaining and respecting the land.

Tim Sink, Executive Director of the Chamber of Commerce and resident in the UGB, indicated the Chamber had developed a report about some alternatives. He was concerned about rezoning to four acres in the entire RO district. He felt a less broad brush approach was needed. He also hoped the idea of a village concept does not come off the table.

Ron Wareing, Penacook resident, spoke against the four-acre zoning concept. With the current two-acre zoning there is a good mixed use, with some clusters and some traditional subdivision.

At 9:43 PM, there was no one else wishing to speak and the Chair declared the hearing closed.

Mr. Woodward reminded members that there were also written communications to the Board to be considered.

Mr. Gross asked what it would take to follow up on the concern about blanket four-acre zoning in the RO District as well as blanket clustering in the RO District, specifically with respect to what the Board really wants to preserve regarding sensitive properties and focus on areas where the City would get best benefit from mandatory clustering.

Mr. Woodward reminded the Board that several months ago he had raised the issue of a combination of two an four acre zoning outside the UGB and offered the Board several options for this but the Board decided to stay with the four-acre density.

Mr. Swope also suggested getting a group together to study how to make the current cluster ordinance more workable. He suggested that the Board get a couple of developers together and hear from them what they think the problems are with cluster zoning and what prevents them from using that concept.

Mr. Kenison discussed the concept of allowing a mix of cluster development with mixed use and expressed surprise that he had not heard about that in testimony.

Ms. Meyer asked where there were realistic areas for the higher density developments that could be constructed for workforce housing.

Mr. McGonagle asked if the Planning Board could build into the TDR further incentives for providing workforce housing.

Mr. McGonagle suggested that before doing any kind of inventory to answer Mr. Gross's questions, the Board would need to determine criteria that could distinguish between the two sides of the question.

There was no further business to come before the Board and the meeting adjourned at 10:19 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

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