

A recessed meeting of the City Planning Board was held on November 29, 2006 in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher (who as Chair presided), Dolcino, Foss, McGonagle, McClure, Merrill, Meyer (who arrived at 7:15 PM), Swope, and Alternate Member Kenison (who was not seated). Messrs. Woodward and Henninger, and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:09 PM a quorum was present and the Chair called the meeting to order.

APPLICATIONS

1. Further consideration of applications for approval of a development on which a public hearing has previously been held:
 - a. Application by **Jeannette M. Cate, Lucille P. Bollinger Trust, Robert & Lucille Bollinger Trustees, and Mark and Carolyn Blasko** for approval of a cluster subdivision of property on **Portsmouth Street and Curtisville Road**.

The Chair announced that the applicant's agent had requested postponement of consideration of the application for Whispering Heights.

- b. Application by **2 Pillsbury Street LLC** for approval of a subdivision by virtue of conversion to condominium of property at **2 Pillsbury Street**.

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

(Ms. Meyer arrived at 7:15 PM.)

Mr. Henninger explained that the applicant has previously received approval for seventeen condominium units in the former Blue Cross Blue Shield building. The Board also approved the creation of three additional condominium units in October but tabled action on the creation of a limited common area at the northwest corner of the building for a proposed generator for the sixth floor unit proposed to be occupied by NH Public Radio. The Board tabled action on this portion of the application to allow the applicant to submit details of the design of the generator and a noise analysis of the generator for review by City staff. The Board directed both the applicant and City staff to address the echo effect of the generator noise bouncing off the building and creating a nuisance in the residential neighborhood to the north.

He reported that the applicant has now proposed the relocation of the generator to the concrete slab already existing at the northeast corner of the building at the mechanical equipment area. A screen for this area is proposed in addition to the existing landscaping.

Christopher Carley, architect from CN Carley Associates, was recognized to answer questions on behalf of the applicant relative to the noise concerns expressed by the Board at an earlier meeting relative to the generator. He explained the current plan is to relocate the generator they currently have at their existing facility. The new location will have a larger vegetative buffer.

Mr. Carley introduced Vic Reno, from Reno Engineering, who explained the studies he had done about noise for this generator. He explained that his studies had been done in the decibel levels in the "a" scale, the scale used for human hearing. He explained they had turned on the generator at the current location and found it produced 81-82 decibels within three feet, 76-77 decibels within ten feet, and 65-66 decibels at fifty feet. The existing generator has a sound attenuating enclosure. He then measured distances at the proposed site, and found that it is 110 feet from the proposed pad site to the sidewalk in front of the nearest residences and 90 feet to South Main Street. This generator will be "exercised" about once a month for about 45-60 minutes and they expect to do that at a time that would be least disruptive to the neighborhood. He explained that ambient sound during the day on the sidewalk along the Allison Street residences is about 61-62 decibels. By way of comparison, he explained that a very quiet classroom is at 45 decibels, a very noisy office would be about 60 decibels, and a noisy vehicle going by will produce about 74-75 decibels. He explained that since there is a vegetative buffer at the new site, that will reduce the noise even more.

Mr. McGonagle asked about the impact of the generator noise on the second and third floors of adjacent homes. Mr. Reno responded that the crown of the trees along Allison Street will impede most of the sound on the upper floors of these nearby homes.

Ms. Dolcino asked how the noise would be heard by the people inside the building at 2 Pillsbury Street. Mr. Reno responded that the building is at least 50 feet away from the generator. Mr. Carley indicated that the current users do not have a problem with the noise of the existing HVAC equipment so he did not expect they would have a problem with the noise from the generator.

Mr. McGonagle asked if this would be covered by the City's noise ordinance and Mr. Henninger responded that there are regulations varying by the times of day.

Mr. McGonagle moved approval subject to the following conditions:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City staff.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the proposed screening plan for the mechanical equipment area shall be approved by the City Planner.
3. Prior to the completion of the installation of the generator, the approved screening plan shall be in place.

4. The applicant is urged to conduct testing during the day when the noise produced by the generator would be during the noisiest part of the day and mix in with the ambient noise, consistent with the City's noise ordinance.

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

Architectural Design Review

2. Plans related to an application by **Fellowship Housing Opportunities, Inc.** at **34-36 Pleasant Street.**

Public Hearing

Mr. Henninger explained this proposal for a façade renovation in conjunction with interior renovations at the northeast corner of Pleasant and North State Streets. He reported that they propose two new windows and a new door to replace existing doors on the North State Street façade. He explained that the ground floor façade changes on the North State Street side were related to the construction of a handicap accessible residential unit at grade. He reported that the entire brick façade will be cleaned and commercial storefronts will be added along Pleasant Street and a portion of North State Street which will restore many of the original features of the building. On the upper stories they are cleaning the brick and replacing the windows and trim in kind. Aside from the handicapped unit, the ground floor will be used for offices for Fellowship Housing. Lighting and signage at both entrances to identify the residential components will be submitted at a later date. He reported that the Design Review Committee had requested that signage and lighting be distinctive for the upper story residential uses.

He reported the Design Review Committee had reviewed the building plans and recommended approval as submitted.

Attorney Richard Uchida and Page Cannon, from Fellowship House, were present on behalf of the applicant to answer questions from the Board.

There was no one present who wished to speak for or against this application and the Chair declared the hearing closed at 7:40 PM.

Deliberations and Action

Mr. Swope moved approval as submitted and Mr. McGonagle seconded. Motion carried.

CITY COUNCIL REFERRALS

3. Consideration of a communication from the Capital Regional Development Council requesting that current **zoning** be changed from Office Park Performance (OFP) to Industrial (IN) for vacant parcels within the **Airport Business Park.**

Mr. Woodward explained that CRDC has forwarded a request to the City Council for a rezoning of the remaining undeveloped land on Henniker Street and Antrim Avenue from the current Office Park Performance District to the Industrial District. CRDC indicates that it has a significant demand for warehouse/distribution facilities but an insignificant demand for office use due to the presence of power transmission lines and adjacent bulk fuel storage tanks.

He explained that the Planning Board amended the Master Plan in December 2002 and changed an area referred to as the East Development Zone, or DZ-5, at the top of the bluff that is north of the Soucook River and west of Route 106, which had been classified Conservation Open Space to an Industrial land use classification. The Board then recommended a revision to the Zoning Map to convert land in the RO District to an Office Park Performance District, including the DZ-5 property, the former City sand pit on the west side of Route 106, and the active gravel pit owned by Manchester Sand and Gravel on the east side of Route 106.

He reported that after the adoption of the Master Plan amendment, when the Board first considered an amendment to the Zoning Ordinance in order to implement the Master Plan amendment, the Board had expressed concern about a proposal to rezone the area to an Industrial District and to eliminate one of the supplemental standards for offices as principal uses in the IN District. The Board was reluctant to recommend a reduction in these standards that were intended to ensure that any offices to be constructed in IN Districts would require an investment that would provide a valuable addition to the City's tax base. An alternative to the rezoning to an IN District was discussed by the Board. The alternative considered by the Board was to rezone the area to an OFP District and to allow manufacturing as a principal use subject to supplemental standards relative to the appearance of the buildings, in order to minimize the potential negative impacts on the value of other existing and potential developments in the OFP District.

He reported that the Board also at that time recommended an amendment to the text of the Zoning Ordinance to allow manufacturing as a permitted use in the OFP District subject to supplemental standards that required a high quality exterior design for buildings housing manufacturing uses and specified acceptable construction materials for the building exterior. The proposed standards also required concealment of mechanical equipment and appurtenances used for operations or maintenance, whether such equipment is mounted on the roof, walls, or on the ground. Views of a proposed manufacturing facility were to be considered from the perspective of adjacent properties in order to minimize any visual impacts to these properties. A final section of the supplemental standards addressed the use and handling of regulated chemicals as part of a manufacturing use. The building design standards were viewed by the Board as minimizing any potential negative impacts of a manufacturing use on the value of other existing and potential developments in this OFP District, and the standards for regulated chemicals and discharges were directed toward protection of the aquifer.

He explained that in 2003, CRDC applied for approval of a major subdivision of the site that has since been developed as Henniker Street and Antrim Avenue southerly of Chenell Drive. The City participated in financing utility extensions for this

development as a tax base expansion initiative. The first of the eight new lots was developed in 2004 for a manufacturing use at the southwest corner of Chenell Drive and Henniker Street. Another manufacturing use is preparing to apply for approvals on another of the new Henniker Street lots. A lot in the OFP at 44 Chenell Drive received approvals in 2006 for an office/manufacturing use, and the parcel at 1 Henniker Street, at the southeast corner of Chenell and Henniker, which had remained in an IN District, was approved in 2006 for an office building and a warehouse.

Mr. Woodward explained that, as was discussed extensively during the recent review of the NHDOT Fueling Facility on Route 106, the entire area is in the Soucook River aquifer and DZ-5 is within a wellhead protection area for the Town of Pembroke's water supply. The Board has received a separate referral from the City Council for consideration of an aquifer protection ordinance for the City as a whole, and the City's water supply consultants have recommended protection of aquifers to preserve options for the future public or private use of the same. An aquifer protection ordinance presents a complex issue for the City as the aquifers generally follow and surround the major rivers within Concord including the Merrimack, the Contoocook, the Soucook, and the Turkey, and the land uses generally prohibited or restricted in an aquifer protection ordinance are those that already exist in these areas. These land uses include those with underground storage of petroleum products, as well as bulk fuel storage; automotive repair shops; dry cleaning plants; junk yards, recycling, and salvage yards; outdoor storage of materials from which chemicals may leach into the ground; and other uses similar in nature to those prohibited in the current Shoreland Protection District. In Concord, for those areas that are substantially developed inside the Urban Growth Boundary (UGB), an aquifer protection ordinance may have to focus on leak detection and spill containment, and other such management practices for uses already in existence, as well as phase-out of certain non-conforming uses. Undeveloped areas both inside and outside of the UGB can more easily comply with the standards of an aquifer protection ordinance, and this site falls within that category.

He explained that, while both the IN District and the OFP District are intended to foster economic development, the OFP was proposed in 2003 as it imposed some higher standards for development that in turn would yield a greater return to the tax base. The OFP District is focused on offices, laboratories, research, manufacturing, and ancillary uses which do not include outdoor storage. The IN District allows less intensive uses of property because of the allowance of outdoor storage as well as sales of construction materials and equipment. Uses in the IN District also allow for less investment in building construction for uses such as automotive repair, freight terminals, and construction trade shops.

He explained that the concern in this particular area is that the surroundings, and perhaps the current market conditions, are not producing the investor interest in this site as an OFP District. The challenge, if this area is to be converted to an IN District, is to limit the extent of low intensity site usage as well as potential environmental hazards, and to maximize the investment in the buildings and taxable improvements.

He reported that, in order to address the environmental and economic development concerns, CRDC has proposed a set of covenants which offer certain environmental

protections as well as limitations on uses that are both environmentally problematic and economically underproductive. The draft covenants contain standards for the storage and handling of toxic and hazardous substances, a list of prohibited uses, and a limitation on the lot area devoted to outdoor storage in relation to building floor area at a ratio of 1.3 to 1. It should be understood that when CRDC sells a lot, the buyer is committed to making a substantial investment in improvements in a specified period of time or the lot will revert to CRDC. The investment requirement ensures that the initial construction includes a building or structure.

Mr. McGonagle expressed his concern about allowing any kind of development in the aquifer area. He acknowledged that there were already uses such as bulk fuel storage and gas stations in the aquifer area but felt that further development of that sort needed to be curtailed.

Mr. Woodward noted that Capital Regional Development Council proposes covenants, some of which would control the types of uses the property would support.

Mr. Swope asked if the 1.3 to 1.0 ratio included parking and Mr. Woodward responded that it was the ratio between any uncovered outdoor storage and building floor area. He also noted that the City also has regulations relative to impervious surfaces.

Mr. Swope also had questions relative to the chemicals excluded and Mr. Woodward indicated he would defer to Code and Fire to advise as to suitability.

Mr. Merrill asked whether enforcement over the covenants could be guaranteed. Mr. Woodward responded that the City would have to be a party to any enforcement of restrictions.

Mr. Drypolcher was concerned about the issue of this parcel having been rezoned before to accommodate a development that did not work out. He was not certain the City should get into a position where it takes actions in a reactionary mode just because the economy is cyclical. He respected the fact that Capital Regional Development Council is trying to do something good for the city in making use of the land but if the City has invested money in sewer and water for this property, it would seem reasonable to try to bring in a user that will create jobs for the city. He also noted that there were a number of nice-looking buildings in this area that could be located next to a very basic building. He felt bad that the property owners that have spent time and effort to construct a nice building have to look at a less attractive building.

Mr. Swope suggested that if the Planning Board schedules a public hearing for this rezoning request, the Town of Pembroke should be notified.

The Chair invited testimony from Niel Cannon, Executive Director of Capital Regional Development Council, and Peter Phipps from their real estate operation, who were in the audience. Mr. Cannon discussed the aquifer. He indicated they have no intention of doing anything but what is right. They came up with the covenants to protect the aquifer absent an ordinance. They used these particular covenants because they specifically speak to regulation of certain chemicals.

On the issue of serial rezoning, Mr. Cannon pointed out what they had done in that area. He explained that even their manufacturing buildings are of a design that is high quality. They are trying to allow some outdoor storage but in a limited way. CRDC is very interested in enhancing the tax base but the market is telling them that they have had a lot of demand for warehouse distribution in this economy. Because their site is surrounded by high voltage power lines and other geographic problems, they are limited to what can be constructed. They feel that if the outdoor storage is properly screened, the proposed 1.3 to 1.0 ratio makes sense for outdoor storage.

Mr. Swope suggested that if this goes to public hearing, that Capital Regional Development Council should have some graphics showing their intentions.

Mr. Drypolcher asked Mr. Phipps to discuss the chemicals listed as exclusions in the covenants. Mr. Phipps responded that they found those references in their research regarding what has worked with ordinances from other communities.

Ms. McClure asked what they expected this would do to traffic, particularly truck traffic. Mr. Cannon responded that the specific company they are talking with right now would be using I-393 and Route 106. He reminded Ms. McClure that they would also be paying impact fees. He also reminded the Board that this is only a 16-acre area.

Mr. McGonagle noted that the IN Zoning District allows a lot of other uses - more than the warehousing use that Mr. Cannon proposes. He felt that the fact that there are inappropriate uses now existing in the aquifer does not mean that the City cannot limit those uses in the future. Mr. Cannon responded that that was the purpose of the proposed covenants. They really did not want to allow many of those IN uses in this area. He felt that office buildings are not likely in this area.

In answer to the question regarding traffic, Mr. Woodward noted that at the time of the subdivision application for this property, there was a traffic study done which was then reviewed by the City's consultant. At that time it was determined that Antrim Avenue could be widened as well as extended to Route 106.

Ms. McClure commented that irrigation systems do not protect the aquifer and the City should be requiring more responsible landscaping to conserve water.

Mr. Swope moved to set this for public hearing at the next regular meeting and to notify the Town of Pembroke. Ms. McClure seconded. Motion carried.

MASTER PLAN

- An Ordinance amending the Zoning Ordinance to establish a **4-acre density** and provide for **mandatory cluster development** in the Open Space Residential (RO) District

Mr. Woodward reported that the City Administration, on behalf of the City Council, requested that the Planning Division prepare an ordinance that will effectuate a four-

acre density in the Open Space Residential Zoning District, and provide for mandatory cluster development in the RO District. The Planning Division now sought the review and commentary of the Planning Board on a draft of the Ordinance and incorporated their comments.

He explained that the draft ordinance shifts the minimum lot size and density in the RO District from one unit per two acres to one unit per four acres. The related Cluster Development standards in the RO District are changed to reflect those that are now in effect for the Penacook Lake Watershed Protection District. The draft ordinance includes the following features:

1. The mandatory cluster is made applicable to all subdivisions so that a two lot subdivision would occur on a minimum of eight acres which becomes the minimum tract size for a cluster (and which would result in at least 5.6 acres of open space being protected and the dwellings with septic systems and wells being located on the 2.4 acres or 1.2 acres per unit).
2. The perimeter buffer requirement is reduced to 50 feet as opposed to the standard 100 feet for four or fewer lots and where the cluster is less than 20 acres in size in order to establish reasonable feasibility for conventional lots. Five lots would require at least 20 acres to develop a cluster and that is the current minimum tract size, so the 100-foot buffer is left in place at that threshold.
3. A new use category is added to the Table of Uses that reads, "single family dwellings in a standard (non-cluster) subdivision" and is allowed by right in other districts but only by Conditional Use Permit in the RO District subject to new supplemental standards.
4. The new supplemental standards for a standard (non-cluster) subdivision in the RO District provide two options for standard subdivisions. Both options call for provision of the same amount of open space that would otherwise be required under the Cluster Development section of the Ordinance, either on the property to be subdivided, or on another parcel in the RO District. The primary parcel would then either be partially or totally subdivided in a conventional manner. The perimeter buffer would be eliminated under these options.
5. The dimensional standards for the contiguous buildable open space are proposed to be amended to address the circumstances that came to light in the Whispering Heights case wherein it was not feasible to comply with the literal requirements of the Ordinance. The proposal is for a limit on the expanding perimeter of the contiguous buildable open space of 450 feet and a tandem provision to allow, by Conditional Use Permit, the contiguous buildable open space to be located in multiple areas of five or more acres each. An example of these minimum standards is a tract of 72 acres that would yield a minimum requirement of about 10 acres of contiguous buildable open space which could be provided in two five-acre segments upon granting of a conditional use permit.

Mr. Swope asked how much developable land is available in the area shown on the map for two-acre zoning. Mr. Woodward responded he did not know but could find out.

Mr. McGonagle expressed concern about losing connectivity between open space parcels if it is allowed to be broken down into smaller units as proposed. He was worried about the possibility of losing the ability of wildlife to move from one place to another. He questioned how to make ways to be sure that when connectivity is possible, it is maintained. He felt language should be added requiring maintenance of connectivity among the parcels of open space.

Mr. Henninger suggested offering an option of allowing an inclusion of up to 5% of the requisite contiguous open space area to be non-buildable land such as wetlands or steep slopes to reflect the realities of the City's natural landscape.

The Planning Division was asked to look at the language to allow some flexibility. Members suggested that open space standards are important but the Planning Board should be allowed some flexibility in certain instances. Mr. Woodward indicated that a conditional use permit might be used for this purpose.

Mr. Swope felt that going to a combination two and four acre zoning districts might make sense.

Mr. Kenison noted that this started out as a three-point proposal and he asked if any thought had been given to what the impact of a two and four acre combination would be on that three-part package. He asked if this system has any impact in planning for the implementation of the Transfer of Development Rights program. Mr. Woodward felt it probably would not have much impact. Mr. Kenison again referred to the three-part proposal and indicated he hoped that it would continue as a three-part proposal.

Mr. McGonagle did not feel the City Council motivation for considering four acre zoning with mandatory cluster should influence the Planning Board to drop the three-part proposal.

Ms. Foss noted there had been a natural resources analysis done for CTAP and she hoped that it would be taken into account as this proposal works its way through the process.

Mr. McGonagle wanted to be sure that the Planning Board took the opportunity to remind the City Council that its tentative support of this ordinance as an interim measure did not reduce the Board's commitment to exploration of, and eventual incorporation into the Master Plan, a program of Transfer of Development Rights. He was not willing to give up on the three-part proposal at this time.

Ms. Dolcino commented on the proposal regarding contiguous buildable land area and suggested that rather than giving a blanket approval for segmentation of open space that there be a provision for a Conditional Use Permit instead.

Mr. Swope moved that the Planning Board pass along its comments on a draft

ordinance that establishes a four-acre density and provides for mandatory cluster development in the Open Space Residential (RO) District. He further moved that the Board recommend the incorporation of a Conditional Use Permit for providing flexibility in segmenting the required contiguous buildable open space, and the addition of a requirement for connectivity where segmentation is allowed. He also moved that the Planning Board express support of the draft ordinance and indicate that the presentation of this draft ordinance does not reduce the Board's commitment to the exploration of a Transfer of Development Rights program and the incorporation of the same in the Master Plan. Mr. Merrill seconded. Motion carried.

Mr. Woodward then asked for guidance about whether to pursue the two and four acre zoning. He was instructed to do so.

Ms. McClure also felt it would be important to make certain while further exploring the TDR proposal that there is enough land in recipient areas for this to work.

The Clerk reported that consultants will be available to make presentations at the Board's recessed meeting on January 3, 2007 relative to the Transportation Section of the Master Plan and about the South End Opportunity Corridor.

There was no further business to come before the Board and the meeting adjourned at 9:45 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

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