

A recessed meeting of the City Planning Board was held on January 08, 2003 in the lobby of the City Auditorium on Prince Street at 7:00 PM.

Present at the meeting were Members Drypolcher (who as Chair presided), Swope, Walker, Gross, McGonagle, Golde, and Alternate Member Foss. Messrs. Woodward and Pollock of the City Planning Division were also present.

At 7:05 PM a quorum was present and the Chair called the meeting to order. He explained that the purpose of the meeting was to complete the agenda of the Board's regular meeting of December 18, 2002.

The Board then considered applications on which public hearings had previously been held.

Determination of Impact Fee

11. Further consideration of a request for review of the determination of the **Transportation Facilities Impact Fee** for **Domino's Pizza** at **202 North Main Street** on which a hearing was previously held.

Mr. Woodward reminded the Board that the hearing on this request had been held in December, and the matter had been tabled for the Planning Division to provide additional information to the Board on the relationship of the transportation impact fee and the trip generation characteristics. He further noted that the applicant had requested that this item not be further considered at this meeting, but that consideration be deferred until the next regular meeting on January 15, 2003. The Board agreed to honor the applicant's request. The Clerk asked if the Board found the report submitted by the Planning Division concerning trip generation characteristics to be adequate for its further deliberations on this matter, or if the Board wished any further information from the Division. After brief discussion, the Board agreed that it did not require any further information from the Planning Division at this time.

Master Plan

12. Further consideration of a zoning amendment to implement the recently adopted **Master Plan amendment** relative to land southerly of Chenell Drive and westerly of Route 106

Mr. Woodward reminded the Board that after the adoption of a Master Plan amendment for the area southerly of Chennell Drive on December 18, 2002, the Board had 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 (IN) 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 then 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.

After hearing Mr. Woodward's summary of the Board's prior actions and deliberations, the Board then gave further consideration to this matter. The Planning Division had provided a draft ordinance addressing both the amendment to the Zoning Map as well as the changes in the text of the Zoning Ordinance. The map amendment would establish a new OFP District which included the so-called East Development Zone or DZ-5 southerly to the top of the bluff over the Soucook River. The proposed OFP District would also include the former City borrow pit which has frontage on the westerly side of Route 106, as well as the majority of the property owned by Manchester Sand, Gravel, and Cement Company on the east side of Route 106. The area proposed to be added to DZ-5 in the new OFP District is all currently zoned IN, is undeveloped with structures or pavement, and has been, or is currently being used, for earth material removal. In discussion, it was noted that the area added to DZ-5 would provide an opportunity to create a district of higher quality development at the southeasterly entry to the City on Route 106. It was further noted that the more extensive rezoning would prevent any assertion of spot zoning.

The amendments to the text of the Zoning Ordinance would permit manufacturing as a principal use in the OFP District, as well as establish supplemental standards relative to appearance of buildings that would house such manufacturing uses in order to minimize the potential negative impacts on the value of other existing and potential developments in the OFP District. The supplemental standards would require a high quality exterior design for buildings housing manufacturing uses and would specify acceptable construction materials for the building exterior. In addition, the standards would require concealment of mechanical equipment and appurtenances used in for operations or maintenance, whether such equipment is mounted on the roof, walls, or on the ground. Views of a proposed manufacturing facility will be considered from the perspective of adjacent properties in order to minimize any visual impacts to these properties.

Members of the Board suggested that some additional exterior construction materials would be acceptable to include in the proposed ordinance. There also was concern expressed about the types of hazardous materials that manufacturing uses could introduce to an area adjacent to a river and on an aquifer.

Representatives of Capital Regional Development Council (CRDC) including Executive Director Niel Cannon and legal counsel, James Raymond, were present and recognized by the Chairman of the Board. These representatives of CRDC offered suggestions for modifying the language of the proposed ordinance with regard to the exterior construction materials, and further suggested a restriction on uses which utilized process water or generated effluent from processing.

After further discussion, it was moved by Mr. Gross, seconded by Mr. Golde, and voted unanimously by the Board to direct the Clerk to further amend the draft ordinance to allow additional exterior finishes under Section 28-5-45(b), and to create a new Section 28-5-45(c) directed at ensuring the cleanliness of permitted manufacturing uses. The Clerk was further directed to forward the draft ordinance amending both the map and text of the Zoning Ordinance to the City Council to allow for the setting of a public hearing on the same, and to provide copies of the draft ordinance to the Board for further consideration at their next regular meeting so that the Board might provide further comment thereon to the City Council.

Minutes

Mr. Gross moved approval of the minutes of the meeting of November 20, 2002 as submitted. Ms. Foss seconded. Motion carried.

2. Further consideration of applications for approval of developments on which public hearings have previously been held:
 - a. Application by **REI Service Corporation** for approval of a subdivision of property located at **Mulberry, Marion and Eldridge Streets**.

Mr. Woodward reported that materials had just been received from the applicants relative to studies conducted concerning the potential impacts of the adjacent solid waste landfill including recommendations for remedial actions associated with the same. This information will be forwarded to the Board with a recommendation from the Planning Division that a hearing be set thereon for the regular Board meeting in February.

- b. Application by **Yukon Realty Investment LP** for preliminary approval of a subdivision of property at **108 Manchester Street**.

Mr. Woodward provided a status report on the Major Subdivision application of Yukon Realty. He indicated that the Planning Division had been working with the applicant and that this application would be back in front of the Board in the coming months.

Mr. Woodward reminded the Board that the application involved a 30 acre parcel on the southerly side of Manchester Street opposite the intersection of Old Suncook Road. The application contemplates a 4-lot subdivision as Phase 1 which includes the construction of approximately 1,000' of new city street terminating in a temporary hammerhead turnaround. The street is intended to be extended southerly in a second Phase to reach the southerly property line. This subdivision and the related new street will establish the entry to the Garvins Falls area that was the focus of the 1997 Master Plan amendment.

A hearing was held by the Board on May 15, 2002, and the application was tabled pending completion and consideration of the traffic study, further consideration of rezoning issues, and the receipt of revised plans that address a number of technical comments, particularly with regard to the design details of the new street and its intersection with Manchester Street and Old Suncook Road.

Since the hearing, substantial additional effort has been made with regard to this application, as follows:

1. A traffic study has been completed by the applicant and reviewed by the City's traffic consultant.
2. Design standards for the new entry road from Manchester Street have been discussed and the focus of these discussions is the number and length of turning lanes approaching Manchester Street.
3. Determining a location of the future right-of-way from the new subdivision road westerly to Garvins Falls Road has caused the City to engage in discussion the owners of Concord

Kia, Forest Street Realty, LLC, who are the abutters to the west of Yukon Realty, and who own property on which the new right-of-way would be located all the way from the Yukon parcel through to Garvins Falls Road.

4. Given the use variance granted by the ZBA to Concord Kia on the adjacent parcel which extended 175 feet into the OFP District, together with the City's intent to establish the new connector road to Garvins Falls Road which will parallel Manchester Street, a proposal for an amended zoning boundary to coincide with this future street appears to be reasonable and a likely outcome in conjunction with this application.
5. A review of the water system needs of the subdivision has been completed by the City's water system consultant, and the City is also undertaking a new study of the future water system needs for the entire Garvins Falls area.

Mr. Woodward indicated that when this application is ready to come back before the Board, it will be scheduled for another hearing given the level of new information that has been added to the application. The Board received the status report from the Clerk and took no action on the application.

- c. Application by **Thomas Zalenski** for approval of revisions to a previously approved subdivision of property at **59 Cemetery Street**.

The Board then considered the request of Thomas Zalenski for release of requirements and conditions of approval established by the Board on January 16, 2002 for the subdivision of his property at 59 Cemetery Street. Specifically, he asked that the Board "consider removing the catch basin, drop inlet, sidewalk, and curbing" as conditions of approval because the cost of these improvements has made the subdivision "no longer feasible to accomplish".

The Board received a report from the Community Development Department indicating that the cost of these improvements would be in the range of \$15,000 and that the gross total market value of the two new developable lots is between \$105,000 and \$125,000. The report also noted that the drainage improvements are needed to address an existing drainage problem; the widening of Cemetery Street is part of a long term plan to widen and upgrade Cemetery Street; and the expansion of the sidewalk system is consistent with the requirements of the Subdivision Regulations, and particularly appropriate in East Concord Village within walking distance to Eastman School.

Written communications from two abutters were also received urging the retention of the requirements for drainage improvements, in light of the extent of existing drainage problems. Members of the Board recalled that there had been testimony about drainage concerns at the original public hearing on this subdivision. They further noted that the other required improvements were necessary and appropriate. Accordingly, Mr. Swope moved, Mr. Golde seconded, and the Board voted unanimously to deny the request for release of the requirements and conditions of approval of January 16, 2002 for this subdivision.

CITY COUNCIL REFERRALS

3. Consideration of communication from Councilor Bart requesting a formal report regarding what, if any, options residents have when they feel that a member of city staff has not followed or properly informed them about a zoning ordinance appeals process (#11-1).

Mr. Woodward explained that this matter related to a court case that had been filed in relation to applications to the Planning Board by the Greek Orthodox Community Church. The City Council had referred Councilor Bart's request to the Community Development Department as well as the Planning Board, and the Code Administrator had prepared an administrative response to the City Council. The Code Administrator's report had addressed both the history of the case as well as the changes in the new Zoning Ordinance that would preclude such circumstances from occurring. Mr. Woodward asked the Board if they wished to send a separate response to the City Council, or augment the Code Administrator's report in any way. After discussion, the Board agreed to accept the Code Administrator's report as presented and place it on file.

OLD BUSINESS

6. Further consideration of a zoning amendment to implement the recent Master Plan amendment in the area of Washington Street in Penacook (#12-1).

Mr. Woodward reviewed the background of this matter for the Board. The genesis of this issue dates back to the Community Zoning Advisory Committee (CZAC) which found several locations where it recommended that a change in the Master Plan be considered by the Planning Board, with related revisions to the Zoning Ordinance to follow. With the work on a new Master Plan is getting underway, the Planning Board had set aside these recommendations from CZAC for consideration in the context of the master planning process. However, the owners of the Hoyt Electrical Instrument Company, which is one of the locations that had been recommended by CZAC for a Master Plan amendment, asked that an amendment be considered as soon as possible, and should the Master Plan be so amended, that changes then be prepared to the Zoning Ordinance to effectuate the amended Master Plan. The request was related to land adjacent to Washington and Meter Streets in Penacook Village.

The Planning Board had then proceeded to consider an amendment to the Master Plan in this area, and after a Public Hearing on October 16, 2002, the Board adopted an amendment to the Master Plan in the area of Washington and Meter Streets in Penacook. The Board then requested that the Planning Division prepare an ordinance that would amend the Zoning Ordinance in a manner that would effectuate the Master Plan amendment.

At the Board's regular meeting of November 20, 2002, the Planning Division presented a draft ordinance which the Board tabled after hearing from Tim Hoyt of Hoyt Electrical Instrument Company. Mr. Hoyt indicated that his company had been approached by a neighboring landowner on Washington Street about acquiring some of the Hoyt property, and that the change in use of this land might affect the proposed zoning boundaries. Given that the proposed zoning amendment mirrored the Master Plan amendment, the Board voted to table the action on the proposed ordinance in order to allow the Planning Division to meet with Mr. Hoyt to further review the matter and come back with recommendations as necessary relative to the Master Plan and Zoning Ordinance amendments.

Mr. Woodward reported that subsequent to the November 20, 2002 meeting, the City Planner and the Code Administrator met with Mr. Hoyt and the adjacent landowner to discuss the contemplated uses of the property and the implications for the proposed amendment to the Zoning Ordinance. The assembled parties concluded that the recently adopted Master Plan amendment and the proposed zoning amendment were indeed appropriate for the contemplated uses of the premises and that no further changes need to be considered.

After discussion, Mr. Gross moved, Ms. Walker seconded, and the Board voted unanimously to recommend that the City Council adopt the proposed Ordinance amending the Zoning Map that would implement a recently adopted amendment to the Master Plan in the area of Washington and Meter Streets in Penacook. The Zoning Map amendment would convert an existing Industrial (IN) District to a Downtown Residential (RD) District and an Urban Commercial (CU) District.

NEW BUSINESS

7. Consideration of a request to set a public hearing for amendments to the Board's Subdivision Regulations and Site Plan Review Regulations (#12-2).

Mr. Woodward explained the background of this request from the Planning Division. He noted that the application fee schedules of the Subdivision and Site Plan Review Regulations have not been amended since 1995. In 1998, the Board's consideration of new fee schedules was terminated at the request of the City Administration. Recent budgetary concerns have led to a review for both budget reductions and revenue enhancements, and the latter has led to the consideration of increases in application fees.

Mr. Woodward further noted that both the Subdivision and Site Plan Review Regulations currently require that legal notices be sent by certified mail with a return receipt requested. However, the relevant statute, RSA 676:4 I(d), was amended some time ago to eliminate the requirement for a return receipt. Therefore, the Board was being asked to consider the elimination of the requirement for the return receipt for legal notices.

While application fee increases of 2% per year could be justified by inflation alone, the City Council's Fiscal Policy Committee is recommending fee increases of no more than 10% in the case of other development related fees charged by other City departments. While the application fees charged in conjunction with the Subdivision and Site Plan Review Regulations are set by the Planning Board, the Planning Division is recommending that the increases in fees be generally consistent with increases in fees charged by other divisions within the Community Development Department.

As another means of measuring the reasonableness of the fee increases, a survey was conducted of the application fees charged by five other New Hampshire cities as well as its largest town. The survey revealed that Concord's Subdivision and Site Plan application fees are currently less than those charged by Manchester, Nashua, Keene, and Dover; are very similar to those charged by Portsmouth; and are substantially more than those charged by the Town of Salem. An increase of 10% in Concord's fees would still leave the City's application fees below those of Manchester, Nashua, Keene, and Dover.

Two of the proposed fee changes that are not consistent with the 10% increase relate to conditional use permits (CUPs) in general and to CUPs for wireless telecommunication facilities in particular. The CUP fees had been established a year ago at the same rate as fees for Architectural Design Review (ADR), but a CUP application involves the certified mailing of notices, an expense not incurred with ADR applications. The fee for CUPs is proposed to be increased to the base fee used for subdivisions and site plans. The fee for a CUP for wireless

telecommunication facilities is proposed to be set at a flat fee of \$500 in recognition of the statutory requirement (RSA 12-K:7) to notify all municipalities within a 20-mile radius, the minimal floor area if any of associated buildings, and the general focus on design review vs. site plan review.

With regard to the issue of the requirements for the mailing of notices, the elimination of the requirement for a return receipt for legal notices will not only reduce mailing costs, but more importantly, eliminate a time consuming administrative procedure.

After discussion, the Mr. Swope moved, Ms. Foss seconded, and the Board voted unanimously to schedule a public hearing at the regular meeting of the Board on February 19, 2003, relative to the proposed amendments to the Subdivision and Site Plan Review Regulations in respect to application fees and the requirements for the mailing of notices.

8. Consideration of a sketch plan for a development which will later become the subject of a formal application:
 - a. **Leigh and Cora Welcome Trust** for approval of a resubdivision and cluster subdivision of property on **Josiah Bartlett Road**.

Robert Baskerville of Bedford Engineering was present for the applicants and displayed a graphic of the latest concept for a cluster development. The plan called for a new cul-de-sac street of 1,000 feet in length with a number of the lots at the end having shared driveways. Because of the wetland area that divides the buildable areas of the parcel into one adjacent to Josiah Bartlett Road, and another around the end of the cul-de-sac, the road frontage along the area of the wetland was shown as being connected to developable lot areas in a “porkchop” design. The wetlands and the northwesterly portion of the parcel are proposed to be kept as common open space which would be accessible to the public via a common driveway at the end of the cul-de-sac. This common driveway leads to an old woods road that continues northwesterly into the Broken Ground area.

The Board expressed concern about the length of the common driveways beyond the end of the 1,000-foot road, citing Fire Marshal Troxler’s discussion with the Board about accessibility for fire and emergency personnel and the maximum length of dead-end streets. Mr. Baskerville indicated that the new Fire Marshal Kelly has written a letter indicating that the distance was acceptable as long as the houses had individual sprinkler systems installed. Mr. Woodward found a copy of the letter in the file for the Board. The Board recalled that a major aspect of the former Fire Marshal was length of access for emergency medical services personnel, the calls for which were much more frequent than those for fire suppression.

The Board also expressed concern about the “porkchop” design, noting that for this particular cluster development it appeared to make sense, given that there were no real opportunities for new road connections to property on either side of the parcel, and that it was backed up to Broken Ground which was planned for permanent open space. It was the sense of the Board that the “porkchop” configuration might be acceptable in cluster developments where it resulted in open space protection, but not under other circumstances.

The Board indicated to Mr. Baskerville that he could proceed with the next stage of the cluster development application based on the concept presented. However, the Board requested the Planning Division to engage the Fire Marshal in discussions on the appropriate overall length of streets and driveways, to develop guidelines for the use of the "porkchop" design in subdivisions, and to return to the Board with recommendations on these matters for the Board's consideration and action before these issues become a matter of widespread contention in subsequent applications.

INFORMATIONAL ITEMS

11. Informational materials relative to the Master Plan, including 2 RFPs, copy of memo to City Council on Committees, copy of email from Planning Board Chair, and recommendations by Carol Foss (#12-3).

Mr. Woodward reviewed the materials on the Master Plan that had been forwarded to the Board. He noted that only two recommendations for membership on the Housing and Transportation Committees had been received to date. He asked if there were any comments on the RFPs and none were offered. He also indicated that he had been trying to meet with the liaison from Concord 20/20 and a representative from NHDOT in order to finalize arrangements for the public participation and facilitation consultant. The Board took no actions on this matter.

12. Copy of memorandum to the City Council regarding litigation relative to the Richmond case (#12-4).

The Board had received a copy of a report to the Mayor and City Council filed by the Clerk at the Board's direction relative to the City Council's request to have representatives of the Planning Board meet with the Council relative to the Richmond Case. Board members inquired as to the status of the remand of the case to the Board by the Superior Court. Mr. Woodward indicated that he and the City Solicitor were engaged in discussions with special counsel, Peter Loughlin, relative to the details of a response to the applicant's last communication.

There was no further business to come before the Board and the meeting adjourned at 9:15 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk