



***Non-public session in accordance with RSA 91-A: 3, II (d)
to discuss property acquisition to be held at 6:30 p.m.***

City Council Meeting
Minutes
February 13, 2012
City Council Chambers
7:00 p.m.

1. The Mayor called the meeting to order at 7:00 p.m.
2. Invocation by Reverend Jason Wells, Grace Episcopal Church.
3. Pledge of Allegiance.
4. Roll Call. Councilors Bennett, Blanchard, Bouchard, Mayor Bouley, Councilors Coen, DelloIacono, Grady, Kretovic, McClure, Nyhan, Patten, St. Hilaire, Shurtleff and Werner were present. Councilor Keach arrived late.
5. Approval of the January 9, 2012 meeting minutes.

Action: Councilor St. Hilaire moved approval of the January 9, 2012 meeting minutes. Councilor Kretovic referenced page 7, public testimony for item J, indicating that the last name of the gentleman that appeared before the Council is “Jordis”. The motion to approve the minutes, as amended, passed with no dissenting votes.

6. Mayor Bouley presented a resolution in recognition of the services of Councilor William Stetson. (1-43)
7. Agenda overview by the Mayor.

- Consent Agenda Items -

Councilor St. Hilaire moved approval of the consent agenda. The motion was duly seconded and passed with no dissenting votes.

Referral to Legal and Community Development – Code Administration

8. Proposed beekeeping ordinance for City Council consideration from Nicholas Wallner, Concord resident.

Referral to Legal Department

9. Communication from TFM Civil Engineers, on behalf of their client Holly Carlson, asking that City Council reconsider an amendment to an electronic changeable sign ordinance for the City of Concord.

Referral to the Parking Committee

10. Communication from occupants of the SMILE building on South Main Street requesting City Council consider changing five metered spaces directly in front of their building to 15 minute, short term parking spaces.

Referral to General Services and the Legal Department

11. Communications from Bonnie Larochelle and third graders from the Kimball School expressing their concerns about sidewalk conditions in the winter as well as suggesting the City implement a policy mandating citizens keep the sidewalks in front of their properties clear of snow during winter months.

Items Tabled for a March 12, 2012 Public Hearing

12. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 15, Licensing and Regulation of Businesses, Trades and Occupations, Article 15-2 Pawnbrokers; together with report from the Deputy City Solicitor in response to a communication from Richard Guignard, Coins & Treasures, 25 South Street, noting his disapproval of the license fee approved within Ordinance No. 2806 regarding pawnbrokers/second hand dealers. (3-13)
13. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 1, Government Organization, by amending Article 1-5, Fees, Fines, and Penalties, Schedule I; together with report from the Police Department in response to a communication from Richard Guignard, Coins & Treasures, 25 South Street, noting his disapproval of the license fee approved within Ordinance No. 2806 regarding pawnbrokers/second hand dealers. (3-13)
14. Resolution to appropriate the sum of \$200,000 and authorize the issuance of bonds and notes for construction engineering services for phase one of liquid stream odor control improvements at the Hall Street Wastewater Treatment Plant, CIP #89; together with report from General Services.
15. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-4, Development Design Standards; together with report from Code Enforcement.
16. Ordinance amending the Code of Ordinances, Title II, Traffic Code; Chapter 18, Parking; Article 18-1, Stopping, Standing, and Parking; Section 18-1-6, Parking Prohibited at All Times in Designated Places, Schedule I; Section 18-1-8 Parking

Time Limited in Designated Spaces, Schedule III; and Section 18-3-4, Location of Parking Meters, Schedule X; Storrs Street; together with a report from the Traffic Engineer.

17. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 17, Vehicles and Traffic; Article 17-4, Operation of Motor Vehicles; Section 17-4-1, Stop Required Before Entering a Through Street; Section 17-4-1(a); Schedule V, Stop Intersections; School Street at N. Fruit Street; together with report from the Traffic Operations Committee in response to a communication from Alex de Nesnera, 2 Fogg Street, requesting City Council consider the removal of two stop signs on School Street, at the intersection of North Fruit and School Streets. (3-12)

18. Resolution to appropriate the sum of \$30,000 for the purchase and installation of seven self-operable lifts to be located at each of the community's seven swimming pools; together with report from General Services.

From the City Manager

19. Positive Citizen Comments.

20. Council meeting date calendar.

Consent Reports

21. Appropriation Transfer Report: January 2012.

22. 2012-2013 City Council Priorities Report from the City Manager.

23. Fiscal policy statement report from the Deputy City Manager - Finance.

24. Financial Statement from the Deputy City Manager – Finance.

25. Comprehensive Annual Financial Report (CAFR).

26. City of Concord, FY2011 Management Letter.

27. Diminimus gifts and donations report from the Library Director requesting authorization to accept monetary gifts totaling \$3,399 as provided for under the preauthorization granted by City Council.

28. Report from the City Planner in response to a communication from Councilor Shurtleff requesting that the area of Stickney Hill Road beginning at Millstone Drive and then west to the Hopkinton town line be rezoned as a Historic District. (12-9)

29. Status report from the City Manager – sidewalk performer (Busker) pilot program. (8-39)

30. Quarterly Current Use Change Tax Status report from the Director of Real Estate Assessments.
31. Overall Economic Development Performance (OEDP) Annual Report.
32. Semi-Annual Report of Contracted Solid Waste and Recycling Services.
33. Pay As You Throw Quarterly Status Report.
34. Report from the City Planner regarding updated zoning maps.
35. Report from the Planning Board recommending City Council authorize the City Manager to release and accept easements related to the conditionally approved subdivision application of Scott Bussiere, and to accept 40.72 acres of land for open space purposes.
36. Report from Planning recommending City Council authorize the City Manager to enter into a boundary line agreement with Elizabeth Bradley and the Shirley & Regina Potter Irrevocable Trust for property owned by the City northerly of Oak Hill Road; the boundary line agreement will correct a surveying error on a the subdivision plat of Elizabeth Bradley.
37. Report from the City Engineer recommending that the City Manager be authorized to apply for US Department of Transportation, Federal Highway Administration, Transportation Investment Generating Economic Recovery grant program funds.

Consent Resolutions

38. Resolution authorizing the City Manager by way of the Police Department to submit an application to the New Hampshire Department of Justice as outlined in its current grant program for the purpose of participating in the enforcing underage drinking laws program; together with report from the Police Department.
39. Resolution in recognition of the services of Fire Lieutenant Gary French.

Consent Communications

Appointments

40. City Manager's proposed reappointment to the Zoning Board of Adjustment.
Robert Harrison

From the Mayor

*****End of Consent Agenda*****

41. **February 13, 2012 Public Hearings**

- A. Ordinance amending the Code of Ordinances, Title II, Traffic Code; Chapter 18, Parking; Article 18-1, Stopping, Standing, and Parking; Section 18-1-8, Parking Time is Limited in Designated Places, Schedule III, Dixon Avenue; together with report from the Parking Committee. (1-16)

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- B. Ordinance amending the Code of Ordinances, Title II, Traffic Code; Chapter 18, Parking; Article 18-1, Stopping, Standing, and Parking; Section 18-1-6, Parking Prohibited at All Times in Designated Places, Schedule I, Jackson Street; together with report from the Parking Committee. (1-17)

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing.

Public Testimony

Roy Schweiker noted that he feels that this may not be the only place in the city this issue exists in which the signing of parking spaces is different than what the ordinance says. He indicated that he has an issue with North State Street in which the consultant recommended that a “no parking” zone be extended and the City Council voted to extend it, but not as far as the consultant wanted, and the city has never moved the sign from where it sets. He suggested that a police officer assigned to a sector, compare ordinances against signage on any given street.

There being no additional public testimony, the Mayor closed the hearing.

- C. Ordinance amending the Code of Ordinances, Title IV, Subdivision Code; Chapter 29.2, Public Capital Facilities Impact Fees Ordinance; Section 29.2-1-2, Assessment and Collection; together with report from the Planning Board. (1-18)

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- D. Resolution to appropriate the sum of \$1,480,000 and authorize the issuance of bonds and notes for design and construction of a new municipal office building at

10 Prince Street; together with report from the Assistant for Special Projects. (1-19) (*Public testimony from Carol Bagan received; not previously distributed*)

Action: Matt Walsh, Assistant for Special Projects, provided a brief overview explaining that the existing structure that is currently there would be demolished and the building would be replaced and tentatively would be designed to house the city's Human Services Department as well as the city's Personnel Department. He noted that if this was to move forward, the city is poised to engage an architectural engineering firm this week to start the design process and staff is also prepared to file the required paperwork with the code offices to start the 49 day demolition process. Because of the tightness of time, staff has negotiated with the state and have reached an agreement principle to extend the city's lease with 247-249 Pleasant Street where the current Human Services Department is located from October 2, 2012 to February 1, 2013. He added that staff anticipates that the project would start construction approximately July 1st and be completed shortly after the new year for 2013.

City Manager Tom Aspell added that there is a complicated piece indicating that the city has learned that the Prosecutor's Office, located in Concord District Court, needs to relocate from there with the added challenge of finding property and space for those eight individuals in the Prosecutor's Office. Given this information and the proposal for this building, he suggested that they hold off and allow staff to look at properties around the city to see if there is a determination of if they can solve, maybe with one swoop, both of these properties. Mr. Aspell indicated that Council still needs to hold a public hearing because it was advertised and then he would come back and report to the Council next month.

Mayor Bouley opened the public hearing.

Public Testimony

Roy Schweiker noted his agreement with the City Manager with the postponement of this hearing. He suggested that the city, on a temporary basis at least, take advantage of some of the low cost space available in downtown.

There being no further public testimony, the Mayor closed the hearing.

- E. Resolution determining the proposed project has a Public Benefit and approving an application by the Concord Area Trust for Community Housing (CATCH) for Community Revitalization Tax Relief Incentive - RSA 79-E, for rehabilitation of a commercial condominium at 1-5 South Main Street; together with report from the Deputy City Manager – Development. (1-20) (*Public testimony received*)

Action: Mayor Bouley asked whether there would be any objection to holding public hearings E and F at the same time. There was no Council objection.

Carlos Baia, Deputy City Manager-Development, noted that in light of the fire over the weekend at the property in question the applicants, Concord Area Trust for Community Housing, respectively request that action on this item be tabled because of the damage to the facility, the scope of their project is likely to change, the numbers likely changing as well.

City Manager Aspell provided an overview of the process for tabling and a future public hearing if amounts are changed.

Mayor Bouley opened the public hearings for items E and F.

Public Testimony

Rosemary Heard, President and CEO of CATCH, distributed handouts to the Council explaining that although they had a tragedy over the weekend she wanted to assure everybody that this project is going to move forward as planned. She explained that she is in the process of regrouping with their insurance company in which will take a while to determine the extent of the damage and how that works with the layout of the project and the financing of the project. She asked that Council defer a decision this evening to the next meeting.

Mayor Bouley questioned whether they would have an answer prior to the next Council meeting. Ms. Heard responded that she is hopeful of that explaining that this, obviously, will set them back a month or more on their development schedule. Ms. Heard added her sincere thanks to the Concord Fire Department and all the surrounding fire departments that assisted.

There being no further public testimony, the Mayor recessed the public hearing for items E and F.

- F. Resolution determining the proposed project has a Public Benefit and approving an application by the Concord Area Trust for Community Housing (CATCH) for Community Revitalization Tax Relief Incentive - RSA 79-E, for substantial rehabilitation of a residential apartment building at 3 South Main Street; together with report from the Deputy City Manager – Development. (1-21)

Action: Public hearing for this item taken with item E. Public hearing on this item recessed.

- G. Resolution rescinding resolution #8472 and to authorize the City Manager to submit an application in an amount of up to \$500,000 and to accept and appropriate grant proceeds of up to \$500,000 in Community Development Block Grant Funds on behalf of the Friendly Kitchen, as well as readopt the City's Housing and Community Development Plan (Revised September 2003), including

the displacement and relocation policy statement and procedures; together with report from the Assistant for Special Projects. (1-22)

Action: Matthew Walsh, Assistant for Special Projects, provided an overview of the Community Development Block Grant (“CDBG”) program and this particular grant application. Mr. Walsh noted that Community Development Block Grant funds are available to municipalities for economic development, public facility and housing rehabilitation projects, as well as feasibility studies that primarily benefit low and moderate income persons. He further explained that the City of Concord is eligible to apply for \$500,000 each calendar year for public facility/housing rehabilitation and economic development projects. However, the City is only eligible for up to \$12,000 annually for feasibility study grants. Mr. Walsh added that the NH Community Development Finance Authority maintains an emergency reserve fund of CDBG money in the amount of \$500,000 annually which is awarded on a first come / first served basis. Communities less than 10,000 in population are eligible for up to \$350,000 in Emergency CDBG. However, municipalities larger than 10,000 (including Concord at 43,000 people) are eligible for up to \$500,000 year in Emergency CDBG funds. Mr. Walsh reminded the City Council that in June 2011, the City passed Resolution #8472 authorized application for up to \$500,000 in CDBG funds to help rebuild the Friendly Kitchen’s fire damaged Montgomery Street facility. However, after the application was filed, the Friendly Kitchen decided to ultimately abandon the Montgomery Street location for a new facility to be built at 2 South Commercial Street. Because of this change, the NH Community Development Finance Authority determined that a new public hearing was required as Resolution # 8472 was specific to rebuilding at the Montgomery Street location. Mr. Walsh noted that the purpose of this Community Development Block Grant funding request is to authorize the City of Concord to apply for CDBG funds on behalf of Friendly Kitchen for up to \$500,000 in order to support construction of a new facility at 2 South Commercial St, Concord (formerly known as the Ferns Gas Station & Car Wash Property). The resolution also authorizes the acceptance and appropriation of such funds if awarded. In addition, the purpose of this public hearing is to also secure public testimony concerning the City’s Housing and Community Development Plan as well as its Residential Anti-displacement and Relocation Assistance Plan, which will be specifically re-adopted by the City as part of the approval of the resolution authorizing the City to apply for these CDBG funds. Mr. Walsh stated that this particular CDBG project conforms to the goals and objectives of the City’s Housing and Community Development Plan. Relative to the Residential Anti-displacement and Relocation Assistance Plan, Mr. Walsh stated that while this particular CDBG sponsored project does not involve any displacement or relocation of persons or businesses, if the City were to undertake a CDBG project which involved displacement or relocation they would follow this plan. The City – and the Friendly Kitchen as its sub-grantee – would be required to comply with the Uniform Relocation Act. Mr. Walsh then asked the City Council to open the public hearing on the City’s application for

Community Development Block Grant funds to assist with reconstruction of the Friendly Kitchen as well as re-adoption of the City's Housing and Community Development Plan and Residential Anti-displacement and Relocation Assistance Plan. Mr. Walsh noted that Phil Wallingford, President of the Friendly Kitchen Board of Directors was present in the audience and would likely speak to the application.

The Mayor opened the public hearing.

Public Testimony

Phil Wallingford, President of the Friendly Kitchen Board of Directors, addressed the City Council. He thanked the City Council for its support of the Kitchen's efforts to rebuild and provided a basic status report for the project. He noted that it's the Board's hope to open the new facility by the end of 2012. He also noted that the cost and scope of the project have grown and the Board is poised to commence a formal capital campaign in the near future.

Roy Schweiker encouraged Council to support this noting that the Friendly Kitchen is a very desirable part of the community and deserves all the help they can get. He encouraged that city to work with them to think a little bit bigger and add a "living room" where people can wait inside instead of waiting outside. He further suggested maybe finding a little space for an office for some of the community agencies that help people so that people can get help in a single area.

There being no further public testimony, the Mayor closed the hearing.

- H. Resolution appropriating the sum of \$7,000 from the Episcopal Church, Diocese of New Hampshire; together with report from the City Manager. (1-23)

Action: Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- I. Resolution authorizing the City Manager to enter into a purchase and sales agreement for the acquisition of real estate located at #9 South Commercial Street, Map 55 Block 6 Lot 2; together with report from the Assistant for Special Projects. (1Sus2)

Action: Mayor Bouley asked whether Council had any objections to opening the public hearings for I, J and K together. There was no Council objection.

Matt Walsh, Assistant for Special Projects, explained that these are all related to the same purpose which is to acquire this 1.61 acre parcel, to demolish the buildings that are on the property and land bank the property to use as future right of way for a new roadway to be built sometime in the future to connect Storrs Street to Constitution Avenue and South Commercial Street. He further provided an overview of these items as contained within his report.

Mayor Bouley opened the public hearings for items I, J and K.

Public Testimony

Roy Schweiker noted that he is unsure whether purchasing this building is a good idea or not but feels that the building could be temporarily utilized for office space for the Human Services Department. He further noted that if the city is going to buy this, they should tell people that this is tax money that is being spent there. He indicated that staff is saying that because they are taking this out of the TIF district it's not going to cost the taxpayers anything.

Mayor Bouley invited Mr. Schweiker to visit the Human Services Department to see the kind of space that they need to be in explaining that they cannot just be relocated to another space without special requirements. The Mayor asked if Mr. Schweiker feels that it's appropriate to make the connection between the downtown and the area Horseshoe Pond. Mr. Schweiker pointed out that this parcel is adjacent to the new Friendly Kitchen and it may be an ideal place for the city's Human Services Department assuming that the structural issues of the building could be worked out. Responding to the Mayor's second question, Mr. Schweiker indicated that it's probably a good idea but is not sure whether this is the way to do it.

Mr. Aspell pointed out that the city needs to have this property to make that connection.

There being no further public testimony, the Mayor closed the hearings for items I, J and K.

- J. Resolution to amend and restate the Development Program and Financing Plan for the North End Opportunity Corridor Tax Increment Finance (NEOCTIF) District. (1Sus3)

Action: Public hearing for this item taken with item I.

- K. Resolution to appropriate the sum of \$230,000 from the North End Opportunity Corridor Tax Increment Finance District for the purpose of acquiring real estate located at #9 South Commercial Street and related costs associated therewith. (1Sus4)

Action: Public hearing for this item taken with item I.

January 9, 2012 Public Hearing Action

42. Resolution adopting an amended and restated Development Program and Financing Plan for the Sears Block Tax Increment Finance District. (12Sus4) (*January 2012 public hearing; action needs to be taken in February due to requirement under RSA 162-K whereby a final vote on a TIF amendment must be delayed by 15 days after public hearing is held*)

Action: Councilor St. Hilaire moved approval. The motion was duly seconded and passed with one dissenting votes.

February 13, 2012 Public Hearing Action

43. Ordinance amending the Code of Ordinances, Title II, Traffic Code; Chapter 18, Parking; Article 18-1, Stopping, Standing, and Parking; Section 18-1-8, Parking Time is Limited in Designated Places, Schedule III, Dixon Avenue; together with report from the Parking Committee. (1-16)

Action: Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes.

44. Ordinance amending the Code of Ordinances, Title II, Traffic Code; Chapter 18, Parking; Article 18-1, Stopping, Standing, and Parking; Section 18-1-6, Parking Prohibited at All Times in Designated Places, Schedule I, Jackson Street; together with report from the Parking Committee. (1-17)

Action: Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes.

45. Ordinance amending the Code of Ordinances, Title IV, Subdivision Code; Chapter 29.2, Public Capital Facilities Impact Fees Ordinance; Section 29.2-1-2, Assessment and Collection; together with report from the Planning Board. (1-18)

Action: Councilor Grady moved approval. The motion was duly seconded and passed with one dissenting vote.

46. Resolution to appropriate the sum of \$1,480,000 and authorize the issuance of bonds and notes for design and construction of a new municipal office building at 10 Prince Street; together with report from the Assistant for Special Projects. (1-19) (***Public testimony from Carol Bagan received, not previously distributed***)

Action: Councilor Shurtleff moved to table this item. The motion to table was duly seconded and passed with no dissenting votes.

47. Resolution determining the proposed project has a Public Benefit and approving an application by the Concord Area Trust for Community Housing (CATCH) for Community Revitalization Tax Relief Incentive - RSA 79-E, for rehabilitation of a commercial condominium at 1-5 South Main Street; together with report from the Deputy City Manager – Development. (1-20) *(Public testimony received)*

Action: No action taken. Public hearing on this item was recessed.

48. Resolution determining the proposed project has a Public Benefit and approving an application by the Concord Area Trust for Community Housing (CATCH) for Community Revitalization Tax Relief Incentive - RSA 79-E, for substantial rehabilitation of a residential apartment building at 3 South Main Street; together with report from the Deputy City Manager – Development. (1-21)

Action: No action taken. Public hearing on this item was recessed.

49. Resolution rescinding resolution #8472 and to authorize the City Manager to submit an application in an amount of up to \$500,000 and to accept and appropriate grant proceeds of up to \$500,000 in Community Development Block Grant Funds on behalf of the Friendly Kitchen, as well as readopt the City's Housing and Community Development Plan (Revised September 2003), including the displacement and relocation policy statement and procedures; together with report from the Assistant for Special Projects. (1-22)

Action: Councilor St. Hilaire moved approval. The motion was duly seconded and passed, 15 to 0, on a roll call vote with Councilors Bennett, Blanchard, Bouchard, Mayor Bouley, Councilors Coen, DelloIacono, Grady, Keach, Kretovic, McClure, Nyhan, Patten, St. Hilaire, Shurtleff and Werner voting yes.

50. Resolution appropriating the sum of \$7,000 from the Episcopal Church, Diocese of New Hampshire; together with report from the City Manager. (1-23)

Action: Councilor Nyhan moved approval. The motion was duly seconded.

Councilor St. Hilaire thanked the Episcopal Church for making this generous donation in which many others benefit from.

The motion to approve passed 15 to 0 on a roll call vote with Councilors Bennett, Blanchard, Bouchard, Mayor Bouley, Councilors Coen, DelloIacono, Grady, Keach, Kretovic, McClure, Nyhan, Patten, St. Hilaire, Shurtleff and Werner voting yes.

51. Resolution authorizing the City Manager to enter into a purchase and sales agreement for the acquisition of real estate located at #9 South Commercial Street, Map 55 Block 6 Lot 2; together with report from the Assistant for Special Projects. (1Sus2)

Action: Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes.

52. Resolution to amend and restate the Development Program and Financing Plan for the North End Opportunity Corridor Tax Increment Finance (NEOCTIF) District. (1Sus3)

Action: Matt Walsh, Assistant for Special Projects, explained that there are requirements under RSA 162-K:4 which would prohibit Council from voting on items 52 and 53 tonight. He asked that Council not take a vote on items 52 and 53 until the March Council meeting.

No action taken. Action to be taken at the March Council meeting.

53. Resolution to appropriate the sum of \$230,000 from the North End Opportunity Corridor Tax Increment Finance District for the purpose of acquiring real estate located at #9 South Commercial Street and related costs associated therewith. (1Sus4)

Action: No action taken. Action to be taken at the March Council meeting.

Unfinished Business

54. Ordinance amending the Code of Ordinance, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses; Section 28-2-3, The Zoning Map; together with report from the Planning Board in response to a communication from Richard Uchida, on behalf of his client Delta Dental Plan of New Hampshire, Inc., asking the City consider rezoning a parcel of land at 107 Commercial Street from Open Space Residential (RO) to Institutional (IS) Zoning. (6Sus3) (10-11) (11-41) (12-41H; 12-49) *(Additional communication from Richard Uchida submitted within the October 11, 2011 Council packets) (Communication from the Conservation Commission submitted within the November 14, 2011 Council packets) (Additional communications from Richard Uchida and the Greater Concord Chamber of Commerce submitted)(Referred back to the Planning Board at the 12/12/2011 City Council meeting)(Report from the Planning Board; together with communication from the Economic Development Advisory Committee and a communication from Richard Uchida on behalf of Delta Dental Plan of New Hampshire)*

Action: Councilor Coen moved to take this item off the table. The motion was duly seconded and passed with no dissenting votes.

Councilor Keach moved to adopt the zoning variance. The motion was duly seconded.

Councilor Kretovic indicated that a number of the members of the Planning Board were very specific with this rezoning request that, along with it, came a request not to

approve the rezoning until after the conservation easement secured a grantee. She asked Councilor Keach to consider modifying his motion to accommodate the request.

Councilor Coen noted that he had the opportunity to follow the Planning Board's last meeting on this and found that it's win-win situation: through this project the tax revenue is going to greatly increase for the city; they get a gift of conservation land; the conservation land is going to be maintained. He indicated that one of the issues that two abutters had in the past was the flooding in that area due to the lack of maintenance on the brook. He thought it was interesting that one of the issues that the Conservation Commission stated originally was that they were concerned about continuing flooding on that property because of the lack of maintenance on the brook and at the last Planning Board meeting they reversed themselves and said their concern was that if they clean up the brook and reduce the flooding it could potentially have an adverse effect on the downstream of the Merrimack River. He noted that he feels that they did a flip flop on the biggest reasons for not granting this. He stated that when the commission mentioned this, they did not give any facts that this indeed could happen. He stated that he is very much for this indicating that the city wins financially and wins what they are trying to do for the city in preserving conservation land.

Councilor McClure defended the Conservation Commission indicating that they were talking about the fact that woody debris in a stream is actually ecologically beneficial for the stream and for the surrounding vegetation and surrounding eco-system. She stated that they didn't flip-flop and were simply adding that point that the idea of having a pristinely cleaned out stream is not necessarily consistent with protection of the resource. She added that flooding is beneficial to farmland explaining that flood plain land is very rich and provides good soils for hay and crops. She stated that she opposes the rezoning and that it's important to note that the Planning Board did not come out in favor of this, their motion failed. She added that there was not overwhelming support for this rezoning on the part of the Planning Board and there is no support for the rezoning on the part of the Conservation Commission. Councilor McClure indicated that the basis for their opposition boils down to the fact that conservation easements are wonderful but on this piece of property there is really nothing that can happen on this property that would be contrary to its current state. She noted that for them to support this rezoning when the Planning Board hasn't supported it and the Conservation Commission opposes it, it sets a bad precedent for the Council.

Councilor St. Hilaire stated that he will be voting for this explaining that a conservation easement will guarantee that nothing will be changed about that property although the argument is that nothing can happen on it now but that is only because of the zoning regulations which can change and may change this evening. He stated that by Council approving this, they guarantee that a conservation easement will be placed on it and nothing will be happening with that piece of property. He noted that he feels that it's a good use of the property and feels that Delta Dental has

been a good neighbor and a good partner for the city and that there is no reason to doubt that they won't put an easement on there.

Councilor Shurtleff noted his agreements with the points Councilor McClure raised. He pointed out that the Conservation Commission has looked at this issue twice and twice they have told Council that it's not appropriate. He stated that the Planning Board had initially voted against creating this request and at the last meeting they tied 4 to 4 on the question and therefore made no recommendation. He stated that he feels that the Conservation Commission remained consistent with their earlier position and that he has grave concerns about this request. He stated that Council sends requests to boards or commissions, they look to them for guidance and information and feels that these boards and commissions do a wonderful job in advising Council and further feels that what the Conservation Commission has given in this instance is solid advice and he is going to vote no on the motion.

Councilor Keach stated that he will be voting in favor of this. He stated that the Planning Board has their scope of responsibility and looks at items in a narrow fashion; the Conservation Commission has their charge and also looks at things in a fairly narrow scope. He stated that, as a Council, it's their obligation to look at the broader picture and consider the request in an overall context and not in a silo; taking all the perspectives and rendering a judgment. He noted that he feels that Delta Dental will do what they say they are going to do.

Mayor Bouley added that Council does hear from a lot of different committees and that this particular project has been brought forth through a few boards/committees. He pointed out that city staff and administration supports this item; EDAC is also in support of this item; that they originally received a communication from the Heritage Commission with concerns but they have yet determined that they have no concerns and that the building is not of a historic value. The Mayor stated that the Conservation Commission continues to have concerns and the Planning Board doesn't have an overwhelming opposition to this project since they voted 4 to 4, a tie, which means there are an equal number of people for this as well as against it. He noted that he has reviewed this, listened to the discussions and is personally comfortable with this change.

City Manager Aspell indicated that Commercial Street, in which the city built and provided all the utilities for and the taxpayers paid for, is available on-site so he doesn't have the concern that if an entity of any type was to go in there that there would be increased contamination based on the lack of utilities. He stated that the existing home is already previously disturbed, the wetland area, from a perspective of flood stage capacity, something can be designed so that they are not negatively impacting the flood storage. He stated that the city is fortunate to have an entity such as Delta Dental proposing a project here and that the city should grasp it. Lastly, Mr. Aspell indicated that you cannot do contract zoning in New Hampshire, you cannot condition a zoning change upon something that somebody will give you in exchange such as a conservation easement. He stated that he has full confidence in the

Planning Board that if Council were to rezone this property this evening, that they would hold Delta Dental or any subsequent owner to securing the conservation easement on that property and not make an approval on that property until they secure it as such. He stated that his recommendation is to rezone the property.

Councilor Keach's motion passed 12 to 3 on a roll call vote with Councilors Nyhan, Patten, St. Hilaire, Werner, Bennett, Blanchard, Mayor Bouley, Councilors Coen, DelloIacono, Grady, Keach and Kretovic voting yes. Councilors McClure, Shurtleff and Bouchard voted no.

Comments, Requests by Mayor, City Councilors

Councilor Bouchard indicated that the new Parks and Recreation brochures will be out this week and will be available at the Green Street Community Center, City Hall, the Library and the Parks and Recreation Office. Referencing item 31, Councilor Bouchard pointed out that it does show that the Heights is outstanding and moving along as part of being very important to the tax base of the city. Councilor Bouchard indicated that there will be voting on HB 1305 that would make the pole tax exempt from the property tax. Mr. Aspell indicated that this bill would give an exemption to telecommunication companies regarding wooden telephone poles and what that would mean to the city if this passes, is that \$5.5 million in value would be removed from the tax rolls and would impact the city in the amount of \$140,000 in taxes annually. He asked that Council allow him to contact the Concord Delegation tomorrow to explain the City Council's position on this is in opposition of bill 1305. It was agreed that the City Manager be directed to contact the delegation in opposition of this proposed bill.

Councilor St. Hilaire noted that the Executive Council submitted their ten year transportation plan to the Governor's office which included the Sewalls Falls Bridge project. He indicated that came out of the Governor's office with a timeline still on track for 2014 and that the plan is in the legislature.

Councilor Patten noted the loss of Sheldon Tucker, former employee of the fire department. Councilor Patten congratulated Chris Brown on his Black Ice Hockey Tournament. He commended the Concord Fire Department on their efforts in regards to the fire over the weekend.

Referencing the Black Ice Hockey Tournament, Councilor Coen noted that what impressed him was the cooperation that he saw between the private sector and the City of Concord's Recreation Department.

Mayor Bouley thanked the Recreation Department for the job they did with the Black Ice Hockey Tournament. He commended the fire department for doing a great job in saving the building. Mayor Bouley publicly announced one committee membership this evening, the Rules Committee. He indicated that Councilor St. Hilaire will be chairing this committee and other members include: Councilors Blanchard, Bennett, Grady and Nyhan.

After a brief recess, Mayor Bouley remembered Sheldon Tucker's calls to him and noted that he is a true loss to the community.

Mayor Bouley distributed a resolution to City Council: a resolution disapproving the proposed reapportionment of Ward Five within the City of Concord. He indicated that he checked with the City Solicitor and was informed that because this is simply a resolution amongst the Councilors, there is no need to hold a public hearing. He stated that it is similar to asking the City Manager to contact the city delegation in opposition to a bill. He noted that he felt that it was important, to go on record, as to if they want to go in opposition to the proposed reapportionment of ward lines with Ward Five going to Hopkinton. Mayor Bouley noted that Concord has a population of 43,000 people and are entitled to 13 representatives and it is his feeling that with being associated with the town of Hopkinton, for the first time Concord will not have all those 13 representatives.

Councilor Shurtleff noted that he feels that this is a shame that this happened to Concord in regards to redistricting and pointed out that this has also happened to Franklin who is being paired with Northfield and Hill. In regards to Hopkinton and Concord, he pointed out there are two different school districts; one's a town and one's a city; Hopkinton has a population of 5,900 and Ward Five is 4,320. He noted that he could see where Hopkinton would dominate that district and the people in Ward Five would lose a representative. He asked the Council to approve this resolution.

Councilor Bouchard echoed Councilor Shurtleff's comments and feels that Ward Five would end up losing a representative. She thanked the Mayor for bringing this forward and letting the city's concerns be known.

Councilor Shurtleff noted that the City of Concord was created in 1854 and looking back in the old legislative red books; he could find no time in the history of Concord in which they ever shared a representative with any other communities.

Councilor Shurtleff moved to adopt the resolution. The motion was duly seconded and passed with no dissenting votes.

Adjournment

The time being 8:40 p.m., Councilor Bouchard moved to adjourn the meeting. The motion was duly seconded and passed with no dissenting votes.

A true copy; I attest:

*Michelle Mulholland
Deputy City Clerk*