The regular monthly meeting of the City Planning Board was held on August 19, 2009 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, Gross, Harrington, Meyer, and Shurtleff (representing the City Council). Mr. Woodward, Mr. Henninger and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:00 PM a quorum was present, and the Chair called the meeting to order.

The Chair announced that the applicants for Item #3 (**26 Centre Street LLC** for approval of a site plan of property located at **26 & 26 ½ Centre Street** in the Civic Performance District) had asked that their public hearing be postponed until September 16, 2009 in order to allow for consideration by the Board of a related Conditional Use Permit application.

APPLICATIONS

Minor Subdivisions

1. Application by **Elizabeth K. Bradley** for approval of a subdivision of property located at **197 Oak Hill Road.** This application was made under the terms of Article 28-7, Cluster Development, of the Zoning Ordinance. Along with the subdivision application is a request for a Conditional Use Permit pursuant to Section 28-4-3(d), Conditional Use Permit Required for Certain Disturbance of Wetland Buffers, of the Zoning Ordinance.

Determination of Completeness

Mr. Woodward explained this proposal to subdivide an existing parcel into two lots under the Cluster Development regulations, with the proposed lot on which the existing house is located having an area of 18.80 acres and a proposed new lot having an area of 19.45 acres.

He reported this application was complete and ready for public hearing.

Mr. Gross moved that the Planning Board determine this application to be complete and open the public hearing. Ms. Foss seconded. Motion carried.

Public Hearing

Mr. Woodward explained that the Bradley property is comprised of 38.25 acres with one existing residence located on the northerly side of Oak Hill Road, opposite the easterly end of Turtle Pond. The applicant proposes to subdivide the parcel into two lots under the Cluster Development regulations, with the proposed lot on which the existing house is located having an area of 18.80 acres and a new lot having an area of 19.45 acres. A portion of the proposed driveway to serve the new lot will cross through a portion of the

lot being retained with the existing home. The required open space will be an open space easement consisting of 22.98 acres encumbering 60% of the original parcel and located on the northerly portion of the proposed lots. This easement is proposed to be conveyed to the Conservation Commission. The City's existing open space and trail system on Oak Hill is separated by one lot on both the west and north from this proposed easement.

There are several accessory structures on the property that will be removed as they are either on or adjacent to the proposed property line between the two lots.

He reported that the minimum contiguous useable area rectangle for the proposed new Lot 2 contains some 15% slope which is not allowable pursuant to Section 9.03(3)(b)(i) of the Subdivision Regulations. The applicant has submitted a grading plan to reduce the slopes to less than 15%.

He reported that the applicant had also requested a Conditional Use Permit pursuant to Section 28-4-3(d), Disturbance to a Wetland Buffer, of the Zoning Ordinance, as well as permit from the NH Wetland Board to allow the driveway for the new lot to cross a linear wetland to reach the new building site. The grade of the driveway to serve new Lot 2 has been designed not to exceed the maximum allowable grade 10%.

Mr. Woodward reported that the applicant has also requested waivers to the following sections of the Subdivision Regulations:

1. Section 8.04(2)(b)(iv) to allow the existing natural features including wetlands and wetland flagging to be shown on just the portion of the parcel where the driveways and improvements will be located, and not on the portion of the parcel that will be dedicated as permanent open space, as there will be no activity on the open space portion which will disturb the wetlands or natural features.
2. Section 8.01(3)(e)(ii & iv), to allow for the location plan to be shown at a scale of 1"=800' where 1"=400' is required and to allow it to be portrayed without showing the nearest intersection. The request is made in recognition of the large size of the parcel and neighboring parcels, as well as the distance to the nearest intersection (5000 feet away).
3. Section 8.04(2)(b)(x), to allow the topographic conditions to be displayed at an assumed datum in lieu of the U.S. Coast and Geodetic Survey sea level datum as there is no reasonably proximate benchmark.
4. Section 9.03(3)(b)(i), to recognize that on Lot 1, the existing house is in a non-conforming location with regard to the perimeter buffer and therefore the useable area rectangle requirement cannot be met.

He reported that the Conservation Commission had reviewed the layout of the subdivision and proposed open space and found the open space layout to be acceptable and a conservation easement appropriate to protect the side slopes of Oak Hill, consistent with the future open space plan in the Conservation and Open Space Section of Master Plan 2030. The Conservation Commission had also reviewed the request for

the Conditional Use Permit for disturbance of a wetland buffer at their meeting on August 12, 2009. The disturbance is related to a proposed driveway crossing of a linear seasonal flowage and the Commission had found the crossing to be acceptable.

Mr. Woodward also mentioned that the Fire Department typically requests that the Planning Board require the installation of a residential sprinkler system in any new residential construction in rural subdivisions. The Board has generally taken the position in a single lot situation that it would not require a sprinkler system but does require them in a major subdivision.

Mr. Woodward noted that the Planning Board had also received an email from David and Trisha Moore, 189 Oak Hill Road, who indicated they have given the right to speak on their behalf to their neighbor Mr. Ingham since they would not be able to attend this evening's hearing. He also noted that Mr. Ingham has a deeded right to a well on the Bradley property.

David Collier from Richard D. Bartlett & Associates was present on behalf of the applicant to answer questions from the Board.

Bill Ingham, an abutter who was also speaking on behalf of the Moores, explained that he did not object to the subdivision but had a concern related to the proposed conservation easement. He explained that behind both abutters' lots is a very steep ravine that would not be part of the proposed conservation easement. He suggested changing the boundaries of the conservation easement in order to place it behind their lots so as to protect those two existing lots forever from further development.

Mr. Gross asked Mr. Woodward how possible it would be to further subdivide the proposed lot to the rear of the abutting residences. Mr. Woodward responded that there is not enough frontage on that lot for further subdivision and the steep slopes would also preclude the construction of a driveway to any additional homes. He felt further subdivision of that lot, while not necessarily impossible, would be unlikely.

There was no one else who wished to speak for or against this application and the Chair declared the hearing closed at 7:24 PM.

<u>Deliberations and Action on Application</u>

Mr. Gross moved that the Planning Board grant a Conditional Use Permit pursuant to Section 28-4-3(d), Disturbance to a Wetland Buffer, of the Zoning Ordinance, to allow for disturbance of the wetland buffers for a driveway crossing of a wetland in order to provide access to the house site on the new lot. It was noted that the Conservation Commission had no objection to the impact to the buffer and that it was the minimum impact necessary to allow for reasonable access to the lot. Mr. Harrington seconded. Motion carried.

Ms. Meyer moved that the Planning Board grant the following waivers to the Subdivision Regulations:

1. Section 8.04(2)(b)(iv), to allow the existing natural features including wetlands and wetland flagging to be shown on just that portion of the parcel where the driveways and improvements will be located, and not on the portion that will be dedicated as permanent open space. This waiver is granted as there will be no activity on the open space portion which will disturb the wetlands or natural features.
2. Section 8.01(3)(e)(ii & iv), to allow for the location plan to be shown at a scale of 1″=800′ where 1″=400′ is required and to allow it to be portrayed without showing the nearest intersection. This waiver is granted in recognition of the large size of the parcel and neighboring parcels, as well as the distance to the nearest intersection (5000 feet away).
3. Section 8.04(2)(b)(x), to allow the topography to be displayed at an assumed datum in lieu of the U.S. Coast and Geodetic Survey sea level datum. This waiver was granted as there is no reasonably proximate benchmark.
4. Section 9.03(3)(b)(i), to allow Lot 1 to not comply with the useable area rectangle requirement in recognition that the existing house is in a non-conforming location with regard to the perimeter buffer.

Mr. Gross seconded. Motion carried.

Ms. Meyer moved that the Planning Board grant final subdivision approval subject to the following standard and special conditions:

Standard Conditions:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City staff.

2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following State and federal permits shall be obtained and copies provided to the Planning Division:

    a. NH Wetland Bureau Dredge and Fill Permit for alteration of wetlands.

4. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following legal documents, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:

    a. An agreement to convey an easement for the benefit of Lot 2 for the driveway to pass over and through Lot 1 in order to provide access to Lot 2, including the maintenance and operation for the same; and

    b. Conveyance of a conservation easement for the 22.98 acres of open space land identified on the plat.

5. Traffic, recreation and school impact fees shall be assessed for any construction on the new lot contained within this subdivision. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, Transportation Facilities Impact Fee per Variable Unit.

    a. School Facilities – Single Family Residence
    b. Recreational Facilities – Single Family Residence
    c. Transportation Facilities - Single Family Residence

Special Conditions:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the boundary of the conservation easement shall be marked with bounds, conservation discs, and blazed with paint.

2. The wetland buffers shall be clearly and permanently marked before, during, and after construction; building permits will not be issued until the buffers are marked.

3. Prior to the final plat being signed by the Planning Board Chair and Clerk, the accessory structures to be removed from the property as noted on the plat shall be removed, or a financial guarantee to ensure the removal shall be provided to the City in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.

Mr. Gross seconded. Motion carried.

2. Application by **Joseph J. Fitzgerald & Raina J. Eckhardt** for approval of a subdivision of property located at **89 Appleton Street**. Along with this application are requests for a Conditional Use Permits pursuant to Section 28-5-46, Single Family Dwellings in a Standard (non-cluster) Subdivision, and Section 28-4-3(d), Conditional Use Permit Required for Certain Disturbance of Wetland Buffers, of the Zoning Ordinance. **(#2008-41)**

Determination of Completeness

Mr. Henninger explained this proposal to subdivide an existing parcel into two lots between Appleton Street and Turtle Pond in East Concord.

He reported this application was complete and ready for public hearing.

Mr. Gross moved that the Planning Board determine this application to be complete and open the public hearing. Ms. Meyer seconded. Motion carried.

Public Hearing

Mr. Henninger explained that Joseph Fitzgerald & Raina Eckhardt propose to subdivide an existing parcel into two lots between Appleton Street and Turtle Pond in East Concord. One lot of 2.36 acres with an existing home is proposed, and a second lot of 8.85 acres is proposed with an open space easement of 6.95 acres. The property abuts both Turtle Pond and Mill Brook.

They have also requested Conditional Use Permits to allow a conventional subdivision in the Open Space Residential District and for disturbances to Wetland Buffers. A wetland buffer impact of 1,400 square feet is proposed at the intersection of the driveway to the new lot with Appleton Street. A wetland buffer impact of 1,340 square feet is also proposed for a six foot wide gravel access proposed to Turtle Pond. A portion of the Turtle Pond frontage, and the entire proposed gravel access is outside the proposed conservation easement. The Conservation Commission has met several times to discuss this application and has recommended that the Planning Board approve both wetland buffer impacts. The 1,400 ft wetland buffer area impact is the minimum necessary to construct the access drive without substantial modification of the existing terrain, and to provide sight distance at the driveway entry. An untouched buffer area of no less than 20 feet remains between the wetland and the proposed limits of disturbance.

He reported that the 6.73 acre open space easement is proposed with two sub-areas with different restrictions. A typical conservation easement is proposed adjacent to Turtle Pond and Mill Brook with clearing and disturbances strictly regulated, and an agricultural easement is proposed north of the driveway to the new lot where no building is allowed, but clearing, and the raising of crops, and the pasturing of animals is allowed. The agricultural area is currently an open field. The Conservation Commission discussed the proposed conservation easement and concurred with the location of the easement.

He reported that the Fire Department had reviewed the plan and found it acceptable but has requested that the Planning Board require installation of a residential sprinkler system in the new home due to the remoteness, access and lack of an adequate water supply. He reported that the Planning Board has not required residential sprinkler systems for minor subdivisions with frontage on an existing residential street.

Alden Beauchemin from Keyland Enterprises was present with Raina Eckhardt to answer questions from the Board.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:36 PM.

Deliberations and Action on Application

Mr. Gross moved that the Planning Board grant a Conditional Use Permit for a conventional subdivision pursuant to Article 28-5-46 of the City's Zoning Ordinance. Ms. Meyer seconded. Motion carried.

Ms. Meyer moved that the Planning Board grant a Conditional Use Permit for disturbances to a wetland buffer pursuant to Article 28-4-3(d) of the City's Zoning Ordinance for a 1,400 square foot impact to a wetland buffer for the access drive to 83 Appleton Street, and 1,340 square feet of impact to a wetland buffer for a six foot gravel trail to a proposed dock site on Turtle Pond. Ms. Dolcino seconded. Motion carried.

Ms. Meyer moved that the Planning Board grant final subdivision approval for a "Subdivision Plan prepared for the Fitzgerald Family – Tax Map# 118, Block # 2, Lot# 3, 89 Appleton Street, Concord" subject to the following conditions.

Standard Conditions

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City staff.

2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement document, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:

    a. Conservation and Agricultural Easement for Open Space

3. Traffic, recreation and school impact fees shall be assessed for any construction on lots contained within this approved subdivision. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, Transportation Facilities Impact Fee per Variable Unit.

    a. School Facilities – Single Family Residence
    b. Recreational Facilities – Single Family Residence
    c. Transportation Facilities - Single Family Residence

Special Conditions

4. Prior to the final plat being signed by the Planning Board Chair and Clerk, the boundary of the conservation easement shall be marked with bounds, conservation discs, and blazed with paint.

5. The wetland buffers shall be clearly and permanently marked before, during, and after construction; building permits will not be issued until the buffers are marked.

Ms. Dolcino seconded. Motion carried.

Minor Site Plans and Conditional Use Permit Applications

3. Application by **26 Centre Street LLC** for approval of a site plan of property located at **26 & 26 ½ Centre Street** in the Civic Performance (CVP) District. **(#2009-18)**

The Chair reminded the Board and members of the public that this public hearing had been postponed at the request of the applicant.

4. Application by the **Warren H. Watts Revocable Trust** for approval of a site plan of property at **26 Beacon Street.**

Determination of Completeness

Mr. Henninger explained this proposal to convert an existing attached barn to a third residential unit and to construct a parking lot for six cars and improve an existing driveway.

He reported this application was complete and ready for public hearing.

Mr. Gross moved that the Planning Board determine this application to be complete and open the public hearing. Ms. Meyer seconded. Motion carried.

Public Hearing

Mr. Henninger explained this proposal to convert an existing attached barn to a third residential unit and to construct a parking lot for six cars and improve an existing driveway. The existing duplex has recently been renovated and the applicant intends for the new unit to match the colors, materials and utilize the same architectural details used in the recent renovation.

He reported that the Zoning Board of Adjustment granted an Area Variance to Article 28-5-3, Conversion of a Residential Building, of the Zoning Ordinance, to permit the creation of a third unit on a lot of 9,808 square feet when a lot size of 10,000 square feet is required; an Area Variance to Article 28-7-7(g), Driveway Widths, of the Zoning Ordinance, to permit a driveway connecting a parking lot to the street of 12 feet in width when a 24-foot width is required; and an Area Variance to Article 28-4-1(h), Table of Dimensional Regulations, of the Zoning Ordinance, to permit a total lot coverage of 53% where a maximum lot coverage of 50% is permitted.

He reported that the applicant will use the existing 12-foot wide curb cut and will pave the drive to the six car parking lot to the rear of the building. A drainage plan prepared by an engineer proposes an infiltration system which will contain the 25 year storm event so that the rate of flow off-site will be the same as pre-existing conditions.

Mr. Henninger reported that the Architectural Design Review Committee had reviewed the site and building plans, and recommended approval with a change by the owner to the front entry door to the third unit, which will have nine panels of glass to match the other existing doors, instead of the solid door shown.

He reported that three trees are required under the terms of the Zoning Ordinance. Two existing trees next to the parking lot are to be preserved, and a new maple tree will be planted in the front yard.

Mr. Gross asked for a description of the proposed infiltration system and Ms. Aibel explained that there will be a small yard drain into which the water from the parking area and driveway will flow. The runoff will then go into four-inch slotted PVC and infiltrate into the surrounding stone and then into the surrounding soil which is very permeable. The purpose is to maintain the pre-development runoff in the post-development conditions. There is no need to pre-treat the runoff in this case.

Mr. Harrington asked if there was any plan for snow removal. Ms. Aibel responded that the City has a standard policy that the applicant either show a plan for snow storage or commit to removing it from the site.

Ms. Meyer discussed the proposed landscape plan and indicated there should be two additional shade trees in the rear of the property in light of the fact that the existing maple tree could die because of the construction taking place around it and the arborvitae is not a good shade tree.

Christopher Carley from CN Carley Associates and Warren Watts were present to answer questions from the Board.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:54 PM.

Deliberations and Action on Application

Ms. Meyer moved that the Planning Board grant Architectural Design Review approval for a proposed residential development at 26 Beacon Street subject to the stipulation that the front entry door to the third unit will have nine panels of glass instead of the solid door shown. Ms. Dolcino seconded. Motion carried.

Ms. Meyer moved that the Planning Board grant conditional Site Plan approval for a proposed residential development at 26 Beacon Street subject to the following standard conditions:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions. No construction activity may commence prior to the preconstruction conference.

2. Traffic, recreation and school impact fees shall be assessed for any construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, Transportation Facilities Impact Fee per Variable Unit.

    a. School Facilities – Multi-unit/Apartment (1 new unit)
    b. Recreational Facilities – Multi-unit/Apartment (1 new unit)
    c. Transportation Facilities - Multi-unit/Apartment (1 new unit)

2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the site plan shall be revised to add two (2) new shade trees acceptable to the City Planner, which will be planted around the perimeter of the new six-space parking lot.

Mr. Shurtleff seconded and asked if there was space in the back to plant the two additional trees. Mr. Henninger responded that there is a five or six foot strip between the parking area and the fence along three sides of the back parking area. There is not a large strip in which to plant but it can be done.

Motion carried.

Architectural Design Review

5. Applications by the following for approval of signs at the following locations under the provisions of Section 28-9-4(f), Architectural Design Review, of the Code of Ordinances.

- **Beijing & Tokyo Chinese & Japanese Cuisine Sushi Bar Lounge** at 61 South Main Street (new awning with 2 signs & 1 freestanding sign)
- **Carlson's Motor Sales** at 13 Manchester Street (1 freestanding)
- **Lincare Concord** at 219 Fisherville Road (1 affixed and 1 panel in freestanding sign)

The Chair opened the hearings on all of the above signs.

- **Beijing & Tokyo Chinese & Japanese Cuisine Sushi Bar Lounge** at 61 South Main Street (new awning with 2 signs & 1 freestanding sign)

Mr. Henninger explained this proposal for a new awning system at this existing business. This will be a red awning internally illuminated around the edge. The shape of the awning will remain the same but the message will be reduced to conform with the Zoning Ordinance. They also propose to replace the panel in the existing free standing sign which is set back behind the right-of-way line and is only visible from the south.

He reported that the Design Review Committee had found the design and placement of the new awning system and freestanding sign to be appropriate for the location and use, and recommended approval as submitted.

There was no one present on behalf of the applicant.

Mr. Gross moved approval as submitted and Mr. Shurtleff seconded. Motion carried.

- **Carlson's Motor Sales** at 13 Manchester Street (1 freestanding)
-

Mr. Henninger explained this proposal for a replacement panel in an existing freestanding sign.

He reported that the Design Review Committee had found the design and placement of the replacement panel to be appropriate for the location and use, and recommended approval as submitted.

Mr. Gross recalled that the electronic message center sign is now a non-conforming sign and was installed after the City passed an ordinance prohibiting this type of signage, and asked if this was an opportunity to amortize the electronic sign that is now non-conforming.

Mr. Henninger explained the history of the placement of the sign. He explained that they had received approval for a time and temperature sign. Subsequently, the applicant and their sign company indicated they felt the City's ordinance was unconstitutional and began using the electronic message area as a changeable message board. Five or six of these signs appeared in the city at that time and the City reacted by eliminating the provision allowing time and temperature portions. Litigation took place and the City prevailed. They have now reverted to time and temperature only and are not using the changeable message that is currently prohibited.

Mr. Gross asked if Carlson's is limited to time and temperature only and he was told that they are limited to time and temperature.

There was no one present on behalf of the applicant.

Mr. Gross moved approval as submitted and Mr. Shurtleff seconded. Motion carried.

- **Lincare Concord** at 219 Fisherville Road (1 affixed and 1 panel in freestanding sign)

Mr. Henninger explained this proposal for a replacement panel in an existing freestanding sign.

He reported that the Design Review Committee had found the design and placement of the replacement panel to be appropriate for the location and use, and recommended approval as submitted.

There was no one present on behalf of the applicant.

Mr. Gross moved approval as submitted and Mr. Shurtleff seconded. Motion carried.

6. Application by **Shaheen and Gordon, PA,** for approval of landscape and site improvements to the rear entry on Low Avenue on the property at **107 Storrs Street**. **(#2009-32)**

Public Hearing

Mr. Henninger explained this proposal for updates to the façade of the existing office building. He explained that they propose to add brick facing over the existing concrete wall with vertical granite elements, and raise the wall to create a planter using a membrane system over the existing concrete platform. The brick will match the brick to the existing material as closely as possible. They will remove the concrete stairs and ramp at the entrance and replace them with granite steps. A granite patio will be constructed at grade where the ramp was located and will be marked with posts and chains. A small blue canopy matching their Storrs Street entrance will be added over the entry door. A signage package will be submitted at a later date for review.

He reported that the Design Review Committee had recommended approval as submitted provided that they submit detailed drawings showing colors, dimensions, and materials. The Committee noted that the applicant's proposal is a significant improvement over existing conditions.

Rob Pinto from J. H. Spain was present on behalf of the applicant to answer questions from the Board.

Mr. Gross moved approval as submitted and Ms. Foss seconded. Motion carried.

REGULAR MEETING

Minutes

Mr. Gross moved approval of the minutes of the meeting of July 15, 2009 as submitted. Mr. Shurtleff seconded. Motion carried.

8. Further consideration of applications for approval of developments on which public hearings have previously been held:

   a. Application by **Tropic Star on behalf of Burger King Corporation**, **the Hall 2001 Family Revocable Trust, Jean B. Chase, and Dale G. Fifield** for approval of a site plan of property at **36 Burns Avenue, 9 East Side Drive, and 155 and 157 Loudon Road.** Along with this application is a request for a Conditional Use Permit pursuant to Section 28-7-11(b), Construction of Fewer Parking Spaces, and Section 28-7-11(f), Driveway Separation Alternatives, of the Zoning Ordinance. **(#2009-04)**

Mr. Henninger explained this proposal to demolish an existing auto service building at 155 Loudon Road and an existing Burger King Restaurant at 157 Loudon Road and construct a new 13,225 square foot CVS Pharmacy and a new 2,598 square foot Burger King. A drive-up window is proposed for Burger King and for CVS. A total of 101 new parking spaces are proposed. A Conditional Use Permit has been requested to increase the number of parking spaces to be deferred from seven spaces to twelve parking spaces. A Conditional Use Permit has also been requested to allow two driveways on Loudon Road where one is allowed and to allow spacing between driveways of 150 feet and 40 feet where 200 feet is required. The applicant has also requested a Conditional Use Permit for spacing between driveways for the relocated entrance on East Side Drive. The existing driveway is proposed to be shifted 30 feet northward, away from the Loudon Road intersection, but is only separated by 110 feet from the Loudon Road intersection and 130 feet from the Burns Avenue intersection.

He reported that the Planning Board, at its regular meeting on May 20, 2009, opened the public hearing on the site plan, accepted testimony, closed the public hearing, and tabled action on the application. The Planning Board, at its regular meetings on June 17, 2009 and July 15, 2009, after extensive consideration of revised access plans, and after hearing additional testimony from City staff and the applicant's agents, again voted to table action on this application to allow the applicant to revise the site plan drawing set based on the new circulation and access scheme presented to the Board on July 15, 2009.

He reported that the applicants have revised the grading, drainage, lighting and landscaping plans in conformity with the site circulation plan.

He reported that the applicants have asked that the Planning Board not act on signage this evening. Sign applications will be submitted as a separate package by both CVS and Burger King at a later date.

Attorney Richard Uchida was present on behalf of the applicant to answer questions from the Board.

Ms. Meyer expressed concerns about whether there was enough space in the landscape island at the East Side Drive/Loudon Road intersection for the proposed sidewalk along

with all of the utility equipment that is located at that corner. She was assured by Mr. Henninger and Mr. Uchida that there would be space.

Members expressed concern about the final plans not having received a formal final recommendation from the Design Review Committee.

Wayne Morrill from Jones and Beach explained that they had returned to the Design Review Committee in May with all the changes recommended earlier by the Committee.

The Chairman expressed concern that no formal recommendation was reported in the Design Review Committee minutes.

Mr. Woodward suggested that the Board grant Architectural Design Review approval subject to the final review and approval by the Design Review Committee. If for some reason the Committee and the applicant could not agree on a condition of the Committee's action, then the applicant could return to the Board for further consideration.

Mr. Gross moved that the Planning Board grant Architectural Design Review approval for the site plan, landscaping plan, and building elevations for a proposed development by Tropic Star Development, LLC at 155 and 157 Loudon Road, excluding any signage on the site at this time and subject to a final review and approval by the Design Review Committee. Ms. Dolcino seconded.

Mr. Gross noted that it has been a struggle to somehow arrive at a situation where the applicants can do what they would like to do at that very busy corner and do it safely. In order to avoid expanding a danger to the intersection, this plan has become more restrictive in its design. That is appropriate in terms of limiting danger to the public but what is not appropriate is that members of the public might become frustrated in accessing the site. However, he saw that that was a problem for the applicants to resolve. He did not see the logic for a drive-up window for the CVS, given the information that these types of drive-up windows are not well used. That appeared to be the biggest difficulty with the crowding on the site and made it more difficult for the design team. He felt it was time for the Board to move on with action on this application.

While the applicant had requested postponement of action on signage, Board members discussed the proposed signage for the development, particularly illuminated signage and its effect on the neighboring residences.

After discussion, Mr. Gross amended his motion to specifically exclude approval of lighting on the canopy area and the westerly wall of the CVS building along with the entire signage package.

Ms. Foss seconded. Motion carried, 6-1, with Mr. Harrington voting against.

Mr. Gross moved that the Planning Board grant a Conditional Use Permit pursuant to Article 28-7-11 (f) Driveway Separation Alternatives for a proposed Tropic Star Development, LLC at 155 and 157 Loudon Road subject to the following conditions:

1. The East Side Drive driveway access shall be restricted to right in and right out, and left turn in only. This will reduce the likelihood that traffic entering and exiting this driveway will adversely impact the intersection of Loudon Road and East Side Drive. The median in this access drive shall be a full raised island with sloped granite curbing.

2. The project driveway's intersection with East Side Drive shall be monitored beginning six months after both the Burger King and CVS proposed for the site are open for business and then annually for three years thereafter. The monitoring plan shall be approved by the Clerk of the Board and the City Engineer prior to the start of demolition, and shall, at a minimum, consist of turning movement counts during the weekday PM peak hour and the Saturday peak hour, accident data and evaluation of each accident, and the length of the queue during peak hours on East Side Drive. A pre-build baseline survey shall be completed with the same parameters.

3. If, in the opinion of the City Engineer and Clerk of the Board, a safety problem exists at the project's driveway on East Side Drive or the increased turning movements at this driveway adversely impact traffic at the intersection of East Side Drive and Loudon Road, or adversely impact traffic flow on East Side Drive, improvements shall be installed along East Side Drive from Loudon Road extending approximately 200 feet north of the intersection of Loudon Road. A design shall be prepared at the direction of the City for said improvements and shall be approved by the City Engineer and Clerk of the Planning Board prior to the issuance of any building permit.

4. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), a design for the improvements to East Side Drive, an engineer's construction cost estimate, and a financial guarantee acceptable to the City Engineer shall be provided. The financial guarantee shall remain in place for a four year period after both the Burger King and CVS proposed for the site are open for business.

Mr. Drypolcher seconded.

Mr. Shurtleff explained he would vote against this motion because he is concerned about children travelling to Dame School with all of this traffic. He felt the applicants are trying to fit too much on the site. He was concerned about public safety.

Mr. Harrington reported he shared Mr. Shurtleff's concerns. He also noted, in addition to the school, there is a major recreation area, Keach Park, which is nearby and that is heavily used. A lot of people use this intersection because of the residential nature of the abutting properties. He was not convinced this design adequately provided for the

safety of the residents. He also did not feel the restaurant across the street had been adequately considered in this traffic design.

Motion carried, 4-3, with Ms. Foss, Mr. Shurtleff, and Mr. Harrington voting against.

Mr. Gross moved that the Planning Board grant a Conditional Use Permit pursuant to Article 28-7-11 (b), Construction of Fewer Parking Spaces, of the Zoning Ordinance, to construct 89 parking spaces where 101 spaces are required for Tropic Star Development, LLC at 155 and 157 Loudon Road. The CUP site plan shows the location of the twelve spaces to be constructed if the Zoning Administrator determines that parking demand warrants the additional spaces. Ms. Foss seconded. Motion carried.

Mr. Gross moved that the Planning Board grant conditional site plan approval for a proposal by Tropic Star Development, LLC at 155 and 157 Loudon Road subject to the following standard and special conditions:

Standard Conditions

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions. No construction activity may commence prior to the preconstruction conference.

2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall obtain approval of private utility plans from Unitil, Fairpoint Communications and National Grid.

3. Traffic impact fees shall be assessed for any non-residential construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 3, Transportation Facilities Impact Fee per Variable Unit.

   a. Transportation Facilities - Retail (5,001 SF to 100,000 SF)
   b. Transportation Facilities – Fast Food Restaurant w/drive-thru
   (A worksheet provides for credits for existing site uses)

4. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant will provide to the City Solicitor a financial guarantee for all public improvements in an amount approved by the City Engineer and in a form acceptable to the City Solicitor.

5. No certificate of occupancy for any building or use shall be issued until all public improvements have been substantially completed to the satisfaction of the City Engineer.

6. Prior to the release of a financial guarantee for any public improvement, an as-built plan shall be provided to the City Engineer in a form and content acceptable to the City Engineer.

7. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following easement documents, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division.

    a. A deed of easement for an additional five feet of right-of-way along the East Side Drive frontage of the residential lot at 42 Burns Avenue (114D-3-8).

Special Conditions

8. The East Side Drive driveway access shall be restricted to right in and right out and to left turn in only. This will reduce the likelihood that traffic entering and exiting this driveway will adversely impact the intersection of Loudon Road and East Side Drive. The median in this access drive shall be a full raised island with sloped granite curbing.

9. The project driveway on East Side Drive shall be monitored beginning six months after both the Burger King and CVS proposed for the site are open for business and then annually for three years thereafter. The monitoring plan shall be approved by the Clerk of the Board and the City Engineer prior to the start of demolition, and shall, at a minimum, consist of turning movement counts during the weekday PM peak hour and the Saturday peak hour, accident data and evaluation of each accident, and the length of the queue during peak hours on East Side Drive. A pre-build baseline survey shall be completed with the same parameters.

10. If, in the opinion of the City Engineer and Clerk of the Board, a safety problem exists at the project's driveway on East Side Drive or the increased turning movements at this driveway adversely impact traffic at the intersection of East Side Drive and Loudon Road, or adversely impact traffic flow on East Side Drive, improvements shall be installed along East Side Drive from Loudon Road extending approximately 200 feet north of the intersection of Loudon Road. A design shall be prepared at the direction of the City for said improvements and shall be approved by the City Engineer and Clerk of the Planning Board prior to the issuance of any building permit.

11. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), a design for the improvements to East Side Drive, an engineer's construction cost estimate, and a financial guarantee acceptable to the City Engineer shall be provided. The financial guarantee shall remain in place for a four year period after both the Burger King and CVS proposed for the site are open for business.

12. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), an agreement to allow for the interconnection of the Tropic Star Development parking lot with the abutters to the west (parcel 114D-3-11) shall be submitted acceptable to the City Planner. The agreement needs the flexibility to locate the interconnection where all parties can agree including the tenants, the landowners and the City Planning Board.

13. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the companion subdivision creating this development parcel shall be recorded in the Merrimack County Registry of Deeds.

14. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall submit an application for a voluntary merger of the properties at 155 and 157 Loudon Road, 36 Burns Avenue, and 9 East Side Drive, and said voluntary merger shall be recorded at the Merrimack County Registry of Deeds prior to the recording of the companion subdivision and resubdivision of these properties.

Ms. Meyer seconded. Motion carried, 4-3, with Ms. Foss, Mr. Shurtleff and Mr. Harrington voting against.

The Chair clarified for the applicant that the Planning Board still need review and approve the plan for the canopy lighting and westerly wall lighting as well as signage, providing the Design Review Committee approves the remainder of the site and building plans.

b. Revocation of the recorded plat of a major subdivision of property of **Scott Bussiere** on **Graham Road**. **(#2003-37)**

Mr. Woodward explained that the Planning Board, at a meeting on April 15, 2009, considered a report from the Planning Division concerning the revocation of the recorded plat of the Emerald Abode Subdivision based on a failure to achieve substantial completion and to attain a vested status pursuant to RSA 674:39 against changes in ordinances and regulations. As the site is in the Residential Open Space Zoning District, compliance with the Cluster Development standards, as amended in March of 2007, is now mandatory. The Board voted to find that the Emerald Abode Subdivision had failed to achieve substantial completion within four years of the date of

approval and therefore had failed to become vested pursuant to RSA 674:39, and must comply with changes to the City's Zoning Ordinance adopted on March 12, 2007. The Board then set a public hearing for May 20, 2009, for the consideration of revocation of approval.

At the hearing on May 20, 2009, the applicant testified that he was planning to submit an application to amend the plat so as to comply with the City's cluster development regulations, and that he would do so within the next 60 days. The Board then voted to stay its action for a period of ninety days to direct the Clerk to file the declaration of revocation at the Merrimack County Registry of Deeds, based on the applicant's representations relative to the filing of an application within sixty days to bring the Emerald Abode Subdivision into compliance with the City's Zoning Ordinance, and subject to the submittal of a written instrument from the property owner agreeing to not convey any lots in reliance on the currently recorded plat during the 90-day period of time. The Board further noted that in the event an application for approval of a revised and compliant plat is not submitted within 60 days, the revocation shall be placed on the Board's agenda to complete its action to revoke the recorded plat of the Emerald Abode Subdivision.

He reported that the applicant has submitted a request for a further stay of the revocation while he prepares a revised plat for submittal. The delay relates to a need to obtain a new Alteration of Terrain Permit from NH Department of Environmental Services which adopted new regulations that became effective earlier this year.

Mr. Gross moved that the Planning Board grant an extension of the stay of the revocation of the plat of the Emerald Abode Subdivision, which was recorded in the Merrimack County Registry of Deeds as Plan #18068 on August 31, 2006, under the title of, "Julie Drive Subdivision prepared for Emerald Abode LLC". If a revised plat is not submitted on or before December 18, 2009, which is the application deadline for the January 20, 2010 meeting, then the Clerk shall provide written notice of the revocation to the owner and file a declaration of revocation at the Merrimack County Registry of Deeds after 30 days following the written notification.

Ms. Dolcino seconded. Motion carried.

9. Request for an extension of the period of validity of the conditional approvals of the Minor Subdivision Application of **Sandy Brook Corporation, Dwight Keeler, and Leslie Keeler,** as well as the Major Subdivision Application of **the Sandy Brook Corporation** known as the **Glen Ellen Cluster Subdivision, both at 153 Hoit Road. (#2008-08 and #2008-21)**

Mr. Woodward explained that Woodland Design Group, Inc. has forwarded requests for extensions of the conditional subdivision approvals of the above referenced applications seeking to extend the period of validity for both through August 20, 2010.

He explained that the Planning Board, at a meeting on August 20, 2008, granted conditional final approval of the minor subdivision application of Sandy Brook Corporation, Dwight Keeler, and Leslie Keeler, as well as the major subdivision application of the Sandy Brook Corporation known as the Glen Ellen Cluster Subdivision, both at 153 Hoit Road. The original approvals were valid for a period of one year.

He explained that any extensions of a final subdivision approval may be granted by the Board as a waiver of the Subdivision Regulations, and the Board has often granted one-year extensions, but has generally required that an applicant present requests for anything more than that at the end of the one year extension. The Board has evaluated the request at that time to determine if conditions related to the subdivision have changed or otherwise warrant another one-year extension. If conditions have changed, the Board has denied the waiver for a further extension, and after several extensions, the Board has also indicated to applicants that a requested extension will be the final one as the passage of time alone creates an issue in terms of new abutters having no recorded plat as a means of learning of the existence of the application and the pending change in their neighborhood.

In this case, there are no changes in zoning or other regulations which might otherwise warrant denial of an extension. In addition, the applicants have indicated that economic conditions have prevented them from initiating the construction of the improvements.

Mr. Gross moved that the Planning Board grant a waiver of the Subdivision Regulations for a one-year extension for these applications, extending the period of validity through August 20, 2010, and indicate that all conditions of the original subdivision approvals shall remain in full force and effect. Ms. Foss seconded. Motion carried.

10. Request by **Forest Street Realty** for an extension of the period of validity of a conditionally approved Site Plan of property at **94 Manchester Street**. **(#2002-05 & #2004-29)**

Mr. Woodward explained that the applicant's attorney has forwarded a request for an extension of the approval of the above referenced application seeking validity through August 26, 2010.

He reported that the Planning Board granted major site plan approval to Forest Street Realty on April 17, 2002, for a building addition and outside sales and display area for an auto dealership. On November 19, 2003, the Board extended that approval until April 17, 2005. Subsequent to that action, Forest Street Realty filed a revised application that was considered by the Board on April 21, 2004, which created a two-phase development plan with each phase being valid for two years, starting at the time that permits were issued for Phase 1. Phase 1 permits were issued on August 26, 2004 for an expanded service area. The period of validity for Phase 2, which is for a new showroom and sales facility, began on August 26, 2006, and would have expired on August 26, 2008, but the Board granted a one year extension of Phase 2 through August 26, 2009.

He explained that any extensions of a final approval may be granted by the Board as a waiver of the Site Plan Review Regulations, and the Board has often granted one-year extensions, but has generally required that an applicant present requests for anything more than that at the end of the one year extension. The Board has evaluated the request at that time to determine if conditions related to the site plan have changed or otherwise warrant another one-year extension. If conditions have changed, the Board has denied the waiver for a further extension, and after several extensions, the Board has also indicated to applicants that a requested extension will be the final one as the passage of time alone creates an issue in terms of new abutters having no means of learning of the existence of the application and the pending change in their neighborhood.

At present, there are no changes in zoning or other regulations which might otherwise warrant denial of an extension, and economic conditions have made it difficult for many projects to proceed. However, the Alteration of Terrain permit previously issued by NH Department of Environmental Services for the second phase has lapsed and the applicant is seeking to obtain a new permit.

Mr. Gross moved that the Planning Board grant a waiver of the Site Plan Review Regulations for a one-year extension for Phase 2 of this application subject to receipt of an Alteration of Terrain permit from NH Department of Environmental Services, and indicate that all conditions of the original site plan approval shall remain in full force and effect. Ms. Foss seconded. Motion carried.

City Council Referrals

11. Consideration of a request from John Jordan for a **rezoning of 51 Tanner Street in Penacook**, from an Urban Commercial (CU) to a Central Business Performance (CBP) District.

Mr. Henninger explained that the City Council received a communication from John Jordan, Principal of the John S. Jordan Design PLLC requesting the rezoning of a parcel at 51 Tanner Street to Central Business Performance (CBP) District from Urban Commercial (CU) District. The property contains an old industrial building which is in the process of being converted from its historic commercial warehouse use to a residence/professional office. Permits have been issued for plumbing and electrical improvements and a new concrete first floor has been poured, an exterior foundation for a new stairway to the second floor has been built, and an overhead door on the west side of the building is being replaced with a passage door. The building is currently unoccupied and further repair work is underway. No development proposals for the lot in question have been submitted or approved for the site. The City Council has referred this petition to the City Planning Board and to the Economic Development Advisory Committee (EDAC).

He reported that the lot in question is approximately 0.26 acres in size. It is located between Tanner Street and the Penacook Riverside Park which surrounds it on three sides. The majority of the lot is a grassed area east of the single building on the

property. The existing wood and brick two-story structure contains a total of 2,200 square feet. Two short gravel drives are located on each side of the building off of Tanner Street. The land use to the north and west is a public park and on the same property is a municipal parking lot which is available on a first come first serve basis at no charge. Entrance to the public parking area and some private parking is located on the east side of the site. The abutting land use to the south is a single family residence and a four unit multi-family conversion on a large lot with an unimproved gravel parking area.

He reported that the applicant has not stated any reason for the rezoning request other than his statement that the CBP District jogs around the property. This statement is in error. The CBP District does not directly abut this lot and this parcel is located in the center of a CU District along Tanner Street.

The 2030 Master Plan has identified this area as Downtown Commercial. It includes the downtown commercial core of Penacook and areas south, east and west of the core commercial establishments along Village Street. While the Master Plan specifically calls out the area in the southern portion of Penacook Village to be treated differently than the central core of downtown, the areas within the Downtown Commercial Land Use Category located east and west of Village Street are in many ways similar. These properties are not traditional urban core uses, and are located on larger lots that form a transition from the urban core to the residential areas to the east and west of downtown Penacook.

He reported that the existing zoning of 51 Tanner Street allows for a broad range of uses including commercial, office, and institutional uses along with attached and multi-family dwellings. The existing lot is large enough to construct a sufficient number of parking spaces to support most allowable uses on site and is large enough to allow for a building addition within the allowable setbacks. Available public parking is immediately adjacent to the site to accommodate any short term parking demand. If the property was rezoned the City would inherit the responsibility to provide parking for this property. At present there is a surplus of municipal parking in Penacook Village. Over time, as the village redevelops and occupancy improves in the village, the City, with a larger CBP District, would incur costs to provide additional parking.

He reported that EDAC had submitted a recommendation to the City Council that the rezoning request be granted inasmuch as the petitioner's mixed use proposal would be a significant improvement to the location. EDAC also noted that the property in question is not immediately adjacent to the CBP district but is separated from it by City property on three sides and suggested that the City Council consider the City property for rezoning from CU to CBP along with the subject parcel.

Mr. Gross asked what the petitioner would gain in developability of this property if this was rezoned. Mr. Henninger responded that the major effect would be that the petitioner would not need to provide any parking whatsoever for this parcel. However, there is room to expand this building without any relief from the Zoning Board of Adjustment and there is adequate capacity for on-site parking on this parcel.

He reported that the petitioner had noted in the request submitted to the City Council for the rezoning of this property that he intended to renovate the building into a multi-use facility that would include a small residential unit, his architectural studio, and possibly a small shop.

Mr. Shurtleff suggested that perhaps the petitioner had requested this rezoning to facilitate utilization of funding under RSA-79E.

Mr. Shurtleff moved to table action on this request and request that the petitioner submit a more definitive explanation of his reasons for requesting the rezoning. Ms. Foss seconded. Motion carried.

New Business

12. Consideration of an **amendment to the Zoning Ordinance to address Small Wind Energy Systems** pursuant to recent statutory changes.

Mr. Henninger explained that the Planning Board, at its July 15, 2009 meeting, discussed a report from the Planning Division and a proposed amendment to the Zoning Ordinance for Small Wind Energy Systems. The Planning Board had tabled action on the proposed amendment and asked for additional information on sound levels, ice throw, and the types and sizes of available small wind generation systems.

He reported that the draft ordinance was based on a model ordinance published by the NH Office of Energy and Planning, and was prepared in cooperation with the City Solicitor's office in a format suitable for adoption. Pursuant to the provisions of the statute, the Code Administrator would be responsible for administering the ordinance including notifying abutters, and issuing permits for Small Wind Energy Systems. Standards are established for setbacks, clearing, access restrictions, visual impact, noise, signage, shadow flicker, and height of above tree canopy.

He explained that roof top wind energy systems, such as recently approved at the new office building at the end of Break of Day Drive, will still be considered under the Zoning Ordinance as appurtenant building features such as chimneys, telecommunication equipment, and steeples, and will not be governed by this ordinance. Large Wind Energy Systems, which are those with a rated capacity of over 100 kilowatt capacity, will be classified as essential public utilities and will be regulated like any other utility facility.

He explained that residential wind systems are generally run between 1.5 kilowatts (KW) and 10 kilowatts. While facilities up to 100 kilowatts rated capacity are still defined as small wind energy facilities, they are much larger than what would be utilized for a residence, and are usually these are associated with institutions, commercial or industrial uses, or large scale agricultural operations. However, many of the non-residential applications are also 10 KW or less as well, with the smallest units, known as "micro" units (rated at 20-500 watts), used in a variety of application such as

charging batteries for recreational vehicles and sailboats. The US Department of Energy notes that the typical small wind systems are designed for rural applications on lots that area a minimum of one (1) acre in size.

Technical innovation is resulting in new, low wind velocity, rooftop mounted systems coming onto the market. This innovation may likely be more applicable in Concord than the typical tower mounted wind turbine envisioned in the statute.

Mr. Henninger explained that RSA 674:63 prohibits setting a noise level limit lower than 55 decibels, as measured at the site property line. The Office of Energy and Planning's model Small Wind Energy Systems ordinance recommends setting a maximum noise level of 60 decibels. The sound level drops significantly with distance. Sound pressure levels (decibels) at 25 feet from a turbine will drop by a factor of four at 50 feet and a factor of 16 at a distance of 100 feet. The wind energy industry recommends a sound level of 60 decibels at the property line. A number of sources have listed a 60 decibel level as either the sound level in a large store or office, a TV set at 1 meter, or a conversation. Sound levels in the normal residence are between 40 to 50 decibels and the World Health Organization recommends sound levels of 45 decibels or below for night time sleeping.

RSA 674:63 is silent on sound level impacts beyond the property line. A lower level would be appropriate at the closest operable window(s) on abutting residential property of either 55 decibels, or the sound levels contained in Article 13-6, Noise, of the City's Code of Ordinances, which ever is less. Article 13-6 applies to all sound levels city wide and has reduced sound levels from 7:00 PM to 7:00 AM.

He also reported that, for Small Wind Energy Systems, ice being cast off of turbine blades does not appear to be a serious issue. The Michigan Land Use Guidelines for Siting Wind Energy Systems prepared by Michigan State University, February 2007, evaluates the risks with ice fall as follows.

> "Fortunately, experience shows that property damage or personal injury from ice throw is very limited. It is a matter of basic physics that ice buildup significantly and negatively affects the aerodynamics of windfoils. Ice-laden blades do not spin very fast, if they spin at all. The range of ice throw (distance from the tower) is determined largely by blade speed. Scientific models and practical experience both tell us that the greatest risks from ice or any other falling material are within one blade diameter of the tower base (MacQueen, 1983; Fox, 2004). Local officials can rely on the laws of physics — small particles and thin sheets of ice are more likely than large, heavy chunks to be thrown from rapidly spinning blades. Off-site risks appear to be quite low. There are no recorded injuries to passersby or neighbors from wind energy systems."

Shadow flicker is also seen as a non-issue with small scale wind turbines according to the American Wind Energy System Association due to the higher turbine speed and the much smaller blade size for small scale turbines. The State of Michigan only recommends a shadow flicker analysis for utility scale turbines.

Mr. Gross moved that the Planning Board recommend to the City Council that the draft ordinance modifying the City's Zoning Ordinance be adopted in order to allow for the regulation of Small Wind Energy Systems. Mr. Harrington seconded. Motion carried.

INFORMATION

- Copy of a letter to the Pembroke Planning Board from the Planning Division relative to a review of **a Development of Regional Impact on North Pembroke Road in Pembroke** across from the City's wellfield

Mr. Woodward reported that City Planning and Engineering staffs had reviewed an application for proposed commercial development on North Pembroke Road in Pembroke which had been forwarded to the City's attention as a Development of Regional Impact by the Pembroke Planning Board. The staff had identified the following regional issues related to the proposed development:

1. Well head protection for the City's well field across North Pembroke Road from the development in Pembroke;
2. Municipal water and sewer service to the commercial/industrial park;
3. Suitability of the North Pembroke Road bridge over the Soucook River for existing and proposed commercial and industrial development; and
4. Traffic impacts on the intersection of North Pembroke Road and NH 106 from future development in the Silver Hill Industrial Park.

He explained that the Planning Division had communicated to the Pembroke Planning Board that this proposed development is within the NHDES defined wellhead protection area of Concord's well field on North Pembroke Road. The City asked for rigorous enforcement of the terms of Pembroke's Aquifer Conservation District and vigilance in the uses allowed in the Silver Hill Business Park in order to protect the long-term viability of both the City's and the Town of Pembroke's well fields along the Soucook River. Of particular concern to the City is a proposed construction business which would include the storage and repair of construction vehicles and related equipment, and the proposed manufacturing facility.

He reported that the lot proposed for subdivision is located in the Shoreland Protection Buffer along the Soucook River. This development should be required to obtain an Alteration of Terrain Permit from the NH Department of Environmental Services. This permit and associated review will allow for both water quality and quantity issues to be addressed as part of the subdivision process. In order to protect groundwater quality it was also recommended that development in this area be connected to a municipal sewerage system.

He reported that the primary access to this proposed use is by way of North Pembroke Road/Pembroke Road at Route 106. The North Pembroke Road bridge is substandard in terms of load carrying capacity, bridge deck width, bridge rail barrier systems, and approach geometry on both the Concord and Pembroke approaches. The City has

suggested that the Town of Pembroke consider adoption of an impact fee system or other type of funding mechanism that assists in the construction of needed highway improvements in Concord and Pembroke, such as the North Pembroke Road bridge, which are created by new development and which are not the responsibility of the NH Department of Transportation.

City staff also suggested that a traffic study of the North Pembroke Road/Pembroke Road intersection with NH 106 should be commissioned to determine if any changes will be necessary in regard to signal timing or geometry at this intersection resulting from this proposed development. Development in Pembroke utilizes this intersection without any mitigation for the traffic impacts associated with development accessing this intersection.

Mr. Gross noted that it might be time for Concord to remind Pembroke that Concord has been very accommodating in listening to Pembroke's concerns and taking actions related to their concerns. He felt that the City of Concord is entitled to reciprocity, given Concord's responsiveness to their concerns.

Staff was directed to determine the status of this application and to report back to the Planning Board to what degree Pembroke has responded to Concord's concerns.

Mr. Woodward announced the resignation of Joel Harrington who is moving out of the City. The Chair thanked Mr. Harrington for his service to the City.

There was no further business to come before the Board and the meeting adjourned at 10:15 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

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