

March 7, 2012

**Newburyport City Council Planning and Development Subcommittee  
Newburyport Planning Board  
Joint Public Hearing  
Newburyport City Hall**

The meeting was called to order at 6:35 PM.

**1. Roll Call**

**In attendance:** Dan Bowie, Anne Gardner, Jim McCarthy and Bonnie Sontag. At 6:57, Sue Grolnic arrived.

**Absent:** Henry Coe, Paul Dahn and Don Walters

In attendance for the City Council Planning & Development Committee: Barry Connell

Absent: Kathleen O'Connor Ives and Brian Derrivan.

Also in attendance: Andrew Port, Planning Office and Anthony Komornick, Merrimack Valley Planning Commission (MVPC)

Chairman Bowie opened the Planning Board meeting and announced that regular Planning Board business would be carried out at the end of the meeting.

**2. New Business**

**a) Joint Public Hearing with the City Council Planning & Development Committee on proposed zoning amendments**

- i. Section III – Amend zoning map to move two parcels located at 81-83 Storey Avenue from the R2 district to the B1 district.

Councilor Barry Connell, Chairman of the Planning & Development Committee, introduced another opportunity to discuss the rezoning before the public. Next Tuesday night at 7 pm the City Council will vote on this issue again. A Planning Board member said the Board must make another recommendation to the Committee, which cannot be voted on without five Planning Board members present. The next opportunity to vote on a recommendation would be March 21<sup>st</sup>. Chairman Connell said his subcommittee could still act between the 21<sup>st</sup> and the 27<sup>th</sup>.

Tropic Star attorney, Jeff Roelofs, said the Planning Board doesn't have a quorum to open a joint hearing. Andrew Port, Planning Office, said the discussion could go forward. Andrew summarized the zoning change before the Committee as the rezoning of two, small residential parcels under an acre that will not be well invested in the future given their location in the center of a business district. The city loses a development plan with ancillary benefits if the rezoning is not approved. Benefits of this plan include just under 20 acres of open space and needed improvements to Storey Avenue streetscaping --

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sidewalks, trees and parking in the rear. Another building, set back with parking facing the street, is not beneficial to this location, nor is an additional curb cut. Rezoning allows the curb cut to move further away from the intersection. Traffic changes proposed by the developer are another benefit. A \$15,000 set-aside for maintenance of the open space is another benefit. The project should not be put on hold until Woodman Way traffic issues are solved with Mass DOT; that's clearly a separate issue. This particular piece of Woodman property will not be subject to a 40B development if we can maintain the open space.

Attorney Roelofs addressed public misconceptions. First, if the rezoning is voted down, building the CVS will proceed anyway, and in a much more constrained environment with less flexibility for positioning the building and driveway. Attorney Roelofs showed a conceptual plan if rezoning doesn't pass of the more constrained CVS and a smaller bank building. Parking would be up front and the access driveway is closer to the Low Street intersection on land already zoned for business. Commitments by the Woodman's to maintain deed restrictions that exclude fast food, auto repair, and gas stations go away if the rezoning doesn't pass.

Second, Mass DOT would not necessarily make traffic improvements if the rezoning doesn't pass. DOT responds to applications, and Tropic Star will submit an application with the project, once the rezoning passes. Otherwise, it's unlikely DOT would come in to study, evaluate, and move forward with traffic mitigation efforts. A proposal for development initiates the application process.

Third, there has been considerable master planning in this area, with this particular Woodman parcel as the focus, going back to 2001. The Master Plan states a need to revisit zoning lines in this area to reduce incompatibilities. The Atria development severed these two parcels from the rest of the residential area. Unlike other houses in the residential area, these two properties face Storey Avenue. The Open Space Plan references this exact area to be secured for open space congruent with any development. The zoning bylaw itself supports the rezoning of these parcels. The R2 zone is described as local streets and two-family houses, which does not describe this area. These two properties fit the description of the B1 zone.

Fourth, any councilor with a "no" vote is not taking a neutral position. A "no" vote is an affirmative, decisive action in this context and determines how the Woodman parcels will be developed. Benefits such as deed restrictions are lost. The development will go forward constrained. If you rezone, we will make every effort to work out terms and cross easements to gain access to Low Street to alleviate some traffic concerns to help local residents. We've connected with Low Street property owners and plan to meet with them next week.

Jeffrey Dirk, Vanasse Associates, Tropic Star traffic expert, has been in consultation with the DOT. He met with the district office reviewing the project, the access permit people, and the state traffic engineer. In an email the engineer reaffirmed that their review of this plan supports the center turn lane as appropriate, useful and beneficial.

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Councilor O'Connell asked the Planning Board if they had a copy of the email. A member said it was circulated late today. Councilor O'Connell asked the Planning Office if a proposal of this scale would trigger complicated MEPA tests. Andrew Port said no.

Attorney Roelofs pointed out that Tony Komornick, Merrimack Valley Planning Commission, was present if there were questions for him.

At 6:57 PM member Sue Grolnic arrived. The public hearing closed briefly to address other new business in order not to keep applicants waiting unnecessarily long time.

**b) Kenneth Labrecque, 3 Parker Street and CML Nominee Trusts c/o Lisa L. Mead, Esq. 1-3 Parker Street VI.C Special Permit**

A member read the public notice. Attorney Lisa Mead spoke on behalf of the applicant and requested a continuance due to the lack of Planning Board members.

Jim McCarthy made a motion to move the application to the April 4, 2012 meeting. Sue Grolnic seconded the motion. The motion passed unanimously.

**Motion approved.**

**Votes Cast:**

Dan Bowie: approve  
Anne Gardner: approve  
Sue Grolnic: approve  
Jim McCarthy: approve  
Bonnie Sontag: approve

**c) Resumed Discussion of the Joint Public Hearing with the City Council Planning & Development Committee on proposed zoning amendments**

- i. Section III – Amend zoning map to move two parcels located at 81-83 Storey Avenue from the R2 district to the B1 district

The Public Hearing was re-opened.

Elaine Lewis, Storey Avenue, asked Tropic Star attorney Roelofs if he had said it didn't matter what the City Council voted, even if they voted no? Attorney Roelofs clarified that a "no" vote would not be a neutral vote; a super majority was required; and every vote mattered. The resident asked if Tropic Star had been in touch with Lenny at Mass DOT? Councilor O'Connell responded that Lenny worked in state Senator Baddour's office and was not a DOT staffer. Lenny is responsible for feeding comments from constituents in this area back to the DOT. The resident asked Attorney Roelofs if the permit to build the CVS was secured? Attorney Roelofs said they would not apply for permits during the design phase where everything was still conceptual. The design

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would be affected by the rezoning vote. After the vote, he'd apply for permits. Tropic Star would go to Mass DOT for a permit; the DOT review would be extensive. The resident spoke against a center turning lane and was upset about the January public hearing where she thought Andrew Port said nobody had a right to have a home in this location. Andrew apologized to the resident.

Councilor O'Connell reminded the audience that he is looking for new testimony.

Karen Hudner, 24 Merrill Street, asked why it was important to have the CVS building located back from the street when every other entity along the street has their parking close to the street. Andrew Port, Planning Office, explained that Storey Avenue does not represent Newburyport. A parking lot close to the street is a less desirable streetscape because it looks like a strip mall. People like density, with buildings, rather than parking lots, next to the street. This proposal improves the Storey Avenue streetscape and we encourage all buildings in this area to move closer together, put their parking in the rear, and focus more on the pedestrian.

The resident, in response to earlier Tropic Star comments, said the DOT would come in regardless of rezoning because there is a development proposal.

Councilor O'Connell said it is helpful to have money to make changes that are a public benefit. The councilor said, of the 35,000 daily car count, almost 10,000 have been diverted from the Hines Bridge -- a similar traffic problem back when the Chain Bridge was closed. About 10,000 cars will go back over the Hines Bridge in mid-July. We will continue to inform the DOT of our traffic signal issues and about the 104 signs we want reduced, but in fact, the traffic problem will ease. Continuing to solicit DOT participation cannot alter the fact that they have worse traffic situations to address in bigger communities who are putting money on the table to help pay for a solution.

Dennis Crimmins, attorney from Parker Scheer, LLP, representing David Kaplan, Port Plaza Shopping Center, said he didn't attend prior hearings. The difficulties of traffic concerns, the unclear status of access from Low Street, signalizing issues, and other significant developments in this area are all issues with many ambiguities that concern him. He had never seen a CVS that looked like the rendering. He asked if he was being shown something that was not going to be produced?

Councilor O'Connell asked Attorney Crimmins to put his formal comments and testimony in writing and submit it to him before next Tuesday. Andrew Port, Planning Office, said a free standing sign like what is shown on the rendering must go before the Zoning Board of Appeals, but he has every indication that the building shown is what will be built. Andrew said the design approval is in our control. Councilor O'Connell said the Tripartite Agreement with the Woodman Trust and Tropic Star would clarify some issues; Attorney Crimmins should read it. A Planning Board member said Crimmins might also read the traffic analysis.

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Mary Haslinger, 299 High Street, asked Andrew Port to clarify statements referring to the disposition of residential property compared to commercial property along Storey Avenue. Is the residential complex on Woodman Way zoned business or residential? Andrew said it was zoned for business. The resident asked how the area behind Woodman Way, further to the north, was zoned. Andrew said it was zoned residential. The resident asked how the area on the opposite side of Storey Avenue, behind 7-11, where square brick residential rental buildings on Low street intermingle with businesses. Andrew said it is zoned for business; the business district ends at the Woodman Farm Stand. The resident wanted to know why the city allowed commercially zoned property to be developed as residential? Andrew said it's not unusual to have this mix near a highway. When these buildings were built, standards were different than today. Councilor O'Connell conceded the resident made a good point and wondered where in the whole scheme of development those buildings occurred? A Planning Board member said the developments predated his time but it was striking how little detail existed in earlier Zoning Ordinances. Our ordinances have grown since the 1970s. Andrew added that regulations have changed incrementally over time.

Joe Texiera, Conservation Commission Chairman, 44 Low Street, asked if the wetlands delineation on the parcel being offered for open space is an estimate or actual? Jeffrey Gove, Tropic Star principal, said the actual zoning line has not been surveyed because it's too early in the project to spend \$20,000. The actual wetlands are flagged and have been picked up by GPS. Councilor O'Connell said proper wetlands delineation is a fair concern. We don't know if the maps we have today fairly represent the wetlands today.

Larry McCavitt, Madison Street, asked what the sequence of events from this point forward would be. Councilor O'Connell recapped from the end of the last hearing, saying he had the option of reporting out and taking two votes in one night, one for the Planning Committee and one for the full Council. He didn't want people to feel the council and committee were acting in haste. Re-hearing the issue in front of the Planning Board again tonight was the course he chose. The Planning Board will give his committee a recommendation tonight. We will bring the issue before the full Council on March 27. We have another Planning Committee meeting on March 13 at 6:30 PM.

Public comment was closed.

A Planning Board member said, from a planning standpoint alone, irrespective of this or any other project, the rezoning makes sense. We're dealing with two orphaned parcels in an area of incompatible uses. The people in these properties do not enjoy living in this area. Tidying up districts that need it is exactly what the Master Plan asks us to do. The plan that's being presented offers even more reason to recommend the rezoning, specifically because of how much is being offered. Another member agreed.

Anne Gardner made a motion to recommend amending the zoning map to move two parcels located at 81-83 Storey Avenue from the R2 district to the B1 district.

Bonnie Sontag seconded the motion.

The motion passed unanimously.

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**Votes Cast:**

Dan Bowie: approve  
Jim McCarthy: approve  
Anne Gardner: approve  
Sue Grolnic: approve  
Bonnie Sontag: approve

A member said, in the broader picture, this is the gateway to Newburyport. It's always hard to combine residential and commercial. My vision is for a much softer entrance to the city. The best possible outcome is that someone buys the two parcels and plants only trees. The worst outcomes are that it doesn't get rezoned, or someone buys it and builds a strip mall, or Tropic Star gets a better offer from the Shell Station, or a car dealer and another fast food place goes in. That side of Storey Avenue is choppy because each business has separate in and out curb cuts. Our best negotiating position, with the best level of control is this plan. It's a spark and an opportunity to achieve our vision.

Councilor Barry Connell made a motion to adjourn the Joint Public Hearing.

**During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.**

**3. General Business**

**a) Approval of the minutes**

**Minutes of February 15, 2012 Meeting**

Jim McCarthy made a motion to approve the minutes as submitted.  
Sue Grolnic seconded the motion.  
The motion passed unanimously.

**Minutes approved**

**Minutes of January 18, 2012 Meeting**

Anne Gardner made a motion to approve the minutes  
Bonnie Sontag seconded the motion  
The motion passed unanimously.

**Minutes approved**

**4. Resuming New Business**

**d) Sewer Commission**

**157 Water Street**

**Wastewater Treatment Facility Landscaping and Fencing Plan Submission Required as a Condition of Site Plan Approval, dtd 1/6/2010**

Project Manager Peter Hartford and Landscape Architect Bob Uhlig presented the landscaping and fencing plan for Phase II at 115 -157 Water Street. They want to start in a month or two. Mr. Uhlig presented planting plans for along the Clipper City Rail Trail, encompassing the whole river's edge of the Waste Water treatment plant – now overgrown with invasive plants. The fence and invasives will be mechanically removed at the same time in order to create a gateway to the riverside where the future beginning of the Rail Trail will be. Mr. Uhlig will combine plantings by grouping indigenous plants, evergreens and deciduous trees, mixing taller and lower plants, native grasses and flowering species. Mr. Uhlig will over-seed to make sure the plantings establish.

Redoing the fence line at the end of Phase II includes new black vinyl chain link fence that wraps around the facility. The fence becomes a solid board fence for privacy as it approaches neighboring homes. The gate will be replaced with vinyl slats so you can't see through it from the street when you're driving by. Mr. Hartford said he was looking at solid cellular fencing. The abutting houses have a higher first floor, so they'll be looking down into the treatment plant. We've talked to the neighbors; no one has yet made any negative comments. The whole area around the perimeter will be used for construction staging, where the fence is now, so we'll put the entire fence in at the end of the project.

City Project Manager Geordie Vining is still developing a plan for the Rail Trail; he likes a later stage planting so that the opportunity to tweak the plan can be contingent with final plans for the Rail Trail.

A member asked whether the plan would have a uniform look. Mr. Hartford said "yes," but noted that some residents already have fences. The member asked about maintenance of the plantings. Mr. Uhlig said the plants are as low maintenance as possible; he wants a commitment from the DPS to maintain the plantings, since they're the larger entity. Andrew Port said that would be consistent with the Rail Trail maintenance process. Another member asked if fencing on the Merrimack River side would go sooner. Peter said "no." The Contract II schedule is for 18 months. If we start in April of this year, the plants will go in the fall of 2013. Once we're that far along, I might wait until spring 2013 to plant. Another member asked if abutters knew about the plans and Mr. Hartford said "yes."

Mr. Hartford said Mr. Vining envisioned a sculpture where the plan now shows plantings. When Mr. Vining's conceptual plan is finished, Mr. Uhlig will make adjustments to mesh the two plans. We want to come up with a plan that suits everyone's needs.

A member asked if there would be any soil improvements? Mr. Uhlig said they would excavate 18 inches of soil to amend it with compost. A member asked how the fencing

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joined-up? Mr. Hartford described fencing that comes off the back on one end and off the front on the other end.

Another member said these plans are being filed as required by the site plan review. The Planning Department may review these in the future to make sure that everything goes according to the filed plans.

Anne Gardner made a motion to accept the Wastewater Treatment Facility Landscaping and Fencing Plan Submission Required as a Condition of Site Plan Approval, dtd 1/6/2010  
Jim McCarthy seconded the motion.  
The motion passed unanimously.

### **Motion Approved**

#### **Votes Cast:**

Dan Bowie: approve  
Anne Gardner: approve  
Sue Grolnic: approve  
Jim McCarthy: approve  
Bonnie Sontag: approve

- d) MIRRA Co. c/o Millennium Engineering, Inc.  
255 Low Street  
Modification of Approved Site Plan, dtd 9/5/2007

Brian Murray, Millennium Engineering, Inc., cited the plan's approval in August 2007 for retail and office space next door to Guiseppi's. New owners want to change the building to office space exclusively. The primary adjustments are detailed. There is now more room in back for parking. **The whole building has shifted two feet forward** and the height of the first floor is raised 18 inches. The previous plan had a step down into a well along the building front; now the building front is level with the sidewalk.

Sidewalks are modified from a substandard 3 feet wide to 5 feet wide. The sidewalks in back are up to 6 feet wide. The modification for office parking is increased space with employee parking in a stacked parking area.

The old plan used retention ponds in the bottom right corner of the site. Design modifications show an underground storm water system using pretreatment with proper storage so it functions the same way as the retention ponds would.

Overall, there are a lot of little adjustments that support the primary changes. Mr. Murray has hurried to get the changes to the Board in hopes of securing an approval tonight. His goal is to get construction underway for a prospective tenant as soon as possible. Original plans were submitted on February 29th.

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Comments from Phil Christiansen, the City's peer reviewer, have been received; he has no issues with the technical end but he has not completed his review of the storm water management report. Andrew Port read a letter from Mr. Christiansen confirming the statement. Mr. Murray is confident the adjustments he made to the plan will gain Mr. Christiansen's acceptance. Mr. Murray seeks a modification to an approved design this evening: modified use, adjustments to the parking plan, and adjustments to storm water management.

A member asked the board if these were minor or major modifications? One member said the plan would look significantly different. Another member asked why there was no access on the street side? Another member said #9 on the engineering report talks about dealing with landscaping in the future and that's probably going to be a bigger discussion that needs to be sorted out. Another member did not feel favorable about stacked parking. A member stated these are more than minor modifications.

The footprint of the building is not changing, but the building is taller. A sign that shows the approved building has been on display for four years; now it's going to look different. The landscaping will also be different if the parking is expanded. A member took issue with the absence of a front door. The drawing shows a sidewalk in the front of the building.

A 20-foot strip of grass to the property line is still there. Mr. Murray said they have the required offset to the property lines. There's an easement line for potential future access purposes. The area within the easement could become state highway. We did not encroach on that area any more than we had to; that's why you see the sidewalk the way it is.

One member said this was a major modification and asked if a public hearing was needed? Another member said people would be surprised with the changes because of what they have seen on the sign for four years. It behooves us to give people a chance to hear about the changes. If there were to be a Low Street access from the Tropic Star development, what would the relationship be to this development? The Board studied the mylar.

Mr. Murray confirmed that changes in storm water management were related to achieving more parking spaces. Board members recalled the 2007 storm water management plan as impressive. A member wanted to know if there were other ways to approach the storm water and parking needs. Mr. Murray said parking increased in the retention pond area. Andrew Port asked if additional asphalt was now needed? Mr. Murray didn't have the numbers because it wasn't required for this meeting.

Andrew Port said the underground system was less desirable unless you needed to fit more into the lot overall. He said the plan was maxed-out as it was; now you're trying to fit in more. He asked if there was a way to fit everything in, make the drainage a little better, and eliminate the stacked parking? Is there a consideration for trying to get more property from Woodman at the back? Mr. Murray said he had not tried to gain more space in the back of the property. Lou Minicucci, MINCO Corp., one of the developers, spoke up to say he looked at the property out back and it's all wet. He tried to work with developer Tropic Star without

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success. Andrew said usually each parking space needs to be accessed on it's own. The rationale for the underground storm water treatment seems to be additional parking.

Mr. Minicucci explained that Anna Jaques Hospital had two or three doctors hoping to move into the building in September. Hoping to get the project done for that tenant, Mr. Minicucci would rather not go through a public hearing. Additional parking is not worth the loss of time; he can revert to the original parking plan and keep the retention ponds. A member commented that 44 parking spaces were required, the plan proposes 56 spaces and if you do away with 12 spaces, would that remove the stacking? Mr. Minicucci said he'd go back to the original parking, storm water management and impervious area.

A member asked why there was no entryway on the street side. Mr. Minicucci asked if it was an aesthetic issue? The member responded that the goal is to make the whole area more pedestrian-friendly. Pedestrians should not have to go around to the back of the building to enter. Mr. Minicucci said the building is accessible from either side, per the drawing; side entrances are about 25 feet from the sidewalks. The member observed the street side as nothing but a large, solid wall. Mr. Murray said it's very close to the easement. The member said nothing was being built inside the easement. Another member said creating a building entrance in the center would create a friendly face that is actually usable. The front entry design should mirror the recessed entrance at the back.

Another member said a building's front door should be a few steps above the street. Mr. Murray said the arcade is gone because it's no longer retail space. Andrew Port showed previous plan drawings. A member said the overwhelming message is that we want people to walk, not drive. Maritime Landing is across the street. Right now, it's pedestrian hostile setting. We want to change the area to be more like a campus than a freeway. Members said putting a door on the front would be right at the sidewalk. Are you raising the building to be at the grade of the road? Mr. Murray responded that the grade would be the street level at the front of the building. A member asked if there was anything more that could soften both sides of the building. Mr. Murray said he could submit a site plan with landscaping. A member said the original plan had four trees in front; this drawing has the sidewalk up against the front of the building. Mr. Murray said the current rendering is correct. A member said we're assuming that the landscape plan approved before can be implemented? Mr. Murray said he could do that.

Gregory Smith, GSD Associates, LLC, suggested a modification that only moved the building 2 feet forward, raised the building up 18 inches and put a door on the front in order to get an approval tonight. Christiansen and Sergei haven't reviewed the storm water, but they won't need to if we go back to the original. Andrew Port said, typically, we need a plan that shows exactly what you want to do. You can't execute field changes without the Board's approval. A member added that we don't have a drawing with a proposed entrance on the street side. The renderings need to be included as part of our consideration.

Are we using the same materials? Hardy plank is in the specifications. Another member said he was fine with digging the hole two feet forward and 18 inches higher, but wants building elevation drawn in, with the real façade, showing where the actual sidewalk is, where the real

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trees will be and the real drainage being used. The footprint has not changed. Other members concurred about wanting the revised plans.

One member suggested a control, after the hole is dug. Bernard Christopher, Great Woods Post & Bean Co., Inc., said they have only a foundation permit. Another member said when somebody opens a file in five years they should see a plan for exactly what was approved. Chairman Bowie wants a revised plan showing a center entry, the location of sidewalks, and plantings. We've gone back to the original parking and storm water, so that's not part of the approval. A member commented that Mr. Christiansen needed to be informed that the storm water management system is not changing.

Further review of this site plan modification was continued to the next Planning Board meeting scheduled for March 21.

#### **5. Planning Office/Subcommittees/Discussion**

#### **6. Adjournment**

Jim McCarthy made a motion to adjourn.

Bonnie seconded the motion.

Motion approved unanimously.

Meeting adjourned at 9: 15 P.M.

Respectfully submitted, Linda Guthrie, Note Taker