

**Planning Board
August 16, 2017**

The meeting was called to order at 7:02 PM.

1. Roll Call

In attendance for the Planning Board: James Brugger, Anne Gardner, Joe Lamb, Jim McCarthy, Leah McGavern, Bonnie Sontag, Andrew Shapiro, and Mary Jo Verde.

Absent for the Planning Board: Don Walters

In attendance for the Planning & Development Subcommittee and Committee of the Whole: Ed Cameron, Jared Eigerman, Bob Cronin, Greg Earls, Charles Tontar, and Sharif Zeid

Absent for the Planning & Development Subcommittee: Barry Connell

Andrew Port, Director of Planning and Development, was also present

2. Joint Public Hearing with the City Council's Planning & Development Subcommittee and Committee of the Whole on Proposed Zoning Changes

Councilor Cameron called the Planning & Development Subcommittee meeting to order. Chairman McCarthy said the amendments were substantive and would likely require more research and discussion before voting could take place.

a) Amend Section V-D to allow Professional/Social Service/Office (#416) and Corporate Headquarters (#612) by right within the I2

Chairman McCarthy said there were only two I2 zones in the City. He considered not allowing multi-family dwellings in the I2. Councilor Tontar, the amendment's sponsor, said the amendment was initiated by a request from The Kane Company to develop the Mersen property. Neighbors objected to apartments and condos but not to professional buildings and corporate headquarters. Councilor Cameron was comfortable with a professional buildings and headquarters, but did not want Newburyport to become completely unbuildable for rental housing. Two board members agreed. Multi-family dwellings by special permit could provide the board with needed flexibility. Chairman McCarthy said it would be hard to block an application for a large apartment building that was inappropriate for the neighborhood.

Public comment open.

Rob Germinara, 2 Ashland Street, supported rezoning that did not allow multi-family dwellings. The parking lot across from Mersen had unresolved flooding issues.

Lisa Mead, Mead, Talerman & Costa, LLC, 30 Green Street, on behalf of the property owners, said the only proposal was to allow corporate headquarters and professional offices. A search for tenants for the empty building was underway.

Jane Snow, 9 Coffin Street, said the single way out of Coffin Street often had a five-minute wait to exit. The pedestrian signal also created traffic back-ups. The parking lot, lit 24/7, spilled light unpleasantly throughout the Coffin Street neighborhood. The parking lot was too wet to build on.

Public comment closed.

Chairman McCarthy said without proper amendment language, if the Kane Company sold the property tomorrow, new owners could submit a large apartment complex proposal. He recommended more research and discussion.

b) Amend Section V-E to allow Hotel/Inn (#105), Lodging House (#106), Bed and Breakfast (#110), and short-term residential rental units changes

Councilor Tontar read a letter from a resident living next to an Airbnb in a four-unit condo. The letter addressed noise, strangers in the driveway, and litter. He received a wealth of feedback from residents on the proposed amendment that included concerns about the commercial use of Airbnbs in R2 or R3 for bachelor parties and weddings. Airbnbs reduced affordable housing, did not pay lodging taxes, or have inspections, or meet regulations required for Bed and Breakfasts (B&Bs). State representative Aaron Michlewitz's house bill had a good set of regulations, but would not be out of committee any time soon. Communities all over the state were grappling with the issue. Newburyport's B&B regulations were inconsistent. Resident feedback supported Airbnbs that generated income to help them stay in Newburyport or cover vacation expenses. It was important to restrict commercial uses in residential areas and to be fair to traditional B&Bs. A decision was needed on whether to allow Airbnbs or not.

Chairman McCarthy said the City required a certain amount of activity to function rather than be 100% single-family homes. Effectively regulated Airbnbs would not deter a hotel proposal. The board would need a working group to understand the regulatory scope. Members suggested a separate ordinance rather than tweaking existing use descriptions, as well as obtaining information from the other communities. Chairman McCarthy did not know whether any counter suits had been filed as a result of Airbnb regulations.

Councilor Tontar said applying current zoning for enforcement had been challenging and that was a significant problem. The B&B ordinance required owner occupancy, a common entrance, five to 10 units, a license, and thousands of dollars a year in compliance costs. Members asked if the City had taken action on the complaints? Councilor Tontar said the building commissioner had sent cease and desist letters. One recipient hosted weddings and responded that upcoming events were already booked and the use was not commercial because no fees were involved. Councilor Cameron agreed a small working group could better address the complex issue. Cambridge's proposed ordinance could be examined.

Councilor Eigerman said his research determined that Airbnb was not a listed use under existing code. Plum Island was not applicable. Under MA law, if a use was not listed it was illegal. Hotel or inn uses were not permitted in any residential district. It was tenuous that Airbnbs were legal at all. The building commissioner could use his discretion. The Airbnb website site showed about 40 advertised year round, not seasonally, in Newburyport, representing 40 units not being rented

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Was a zoning or a business ordinance best? The state house was looking at tax income. Business licensing and fire alarm issues were not handled by zoning. San Francisco Airbnbs were an accessory use to a residential use. Owner occupancy could presumably result in less disruptive parties. The City did not want to capture residents who rented their homes while on vacation. San Francisco imposed a 30-day limit to define short-term rentals. Preserving rental units made regulation essential.

Councilor Zeid said the City had relaxed some uses in the use table. What was the logic behind the proposed changes? Noise and trash were police issues. The City needed appropriate enforcement tools. The response of 'weddings were already booked' was unacceptable relative to a cease and desist order. Parking was another issue. Councilor Tontar said neighbors would have a chance to comment if Airbnbs were legalized by special permit.

Public comment open.

Rob Germinara, 2 Ashland Street, knew of a Kent Street address experiencing conflict with three units used exclusively for Airbnbs. Unit owners said it was cheaper to pay the \$10 condo fine than to forgo the Airbnb rate. Three affordable units were gone as a result.

Al Clifford, 45 Green Street, owned the Clark Currier and Compass Rose Inns. The purpose of zoning was to promote safety, preserve property values, and protect suitability of uses. The B&B ordinance described the use as a transient rooming business. There was no ability to vet a B&B customer the way rentals screened for suitability. Airbnbs in residential districts were a disruptive, 24/7 business given the unpredictable nature of dealing with the public. Proposing no review in R3 was unacceptable. Property values were negatively impacted. Legal Airbnbs provided no services to residents and neighborhoods and was at their expense. It would be an untenable precedent to allow Airbnbs in R1, R2, or R3.

Tom Kolterjahn, 64 Federal Street, co-president, Newburyport Preservation Trust (NPT), said unregulated Airbnbs destabilized neighborhoods and contributed to loss of affordable housing.

A Forrester Street resident said an Airbnb in a historical home on her street did not have owner occupancy and created parking problems in an area already strained by Professional Building parking. Loud parties were stressful for neighbors.

Jim McCauley, 27 Storeybrook Drive, said the issue warranted further discussion, a sense of urgency, and a substantive regulation. He owned investment property and saw how Airbnbs changed the dynamic by destabilizing neighborhoods and driving property values up in bidding wars by people who wanted to run an Airbnbs as a business. Airbnbs were bad for parking and infrastructure because the City gained nothing. New Hampshire had a 9½ % tax on short-term rentals under 30 days. NED's proposal included a number of units with lofts for short-term rentals that could be used for Airbnbs. That changed the conversation about Waterfront West.

Rita Mihalek, 53 Warren Street, was had been the only owner/resident in a five-unit condo she sold on Charter Street last year. The rest of the units were Airbnbs that caused upkeep, noise, and garbage problems. The irritations affected her quality of life. She found a buyer, but the bank

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said the number of owner/residents affected her ability to get a mortgage. She was lucky to have finessed that difficult issue. Neighborhoods were deteriorating as a result of Airbnbs.

Jeanette Isabella, 1 Lime Street, said an Airbnb across the street created added cars and noise. What if someone was hurt? She wanted the public to know the issue was not only about taxes for the City and reflected concerns about quality of life for residents.

Bob Cronin, Councilor, 126 Merrimac Street, said his 63-unit condo that had identified and shut down two or three Airbnbs. His constituents were crying for help with the Kent Street Airbnb. A regulation that could be enforced would protect the quality of life. He disagreed that Airbnbs added to the vibrancy of the community.

Stephanie Niketic, 93 High Street, asked if the City enforce the illegality of existing Airbnbs until a regulation was in place? Director Port said the building commissioner would make the determination. She wanted Airbnbs reported and residents informed that it was illegal.

Public comment closed.

Councilor Eigerman said the irony of VRBO and Airbnb were discrimination problems and civil rights violations.

c) Amend Section VI-A to allow Agricultural/Conservation Zoning district dimensional changes

Chairman McCarthy initiated the amendment because of concerns about disfiguring High Street in a way similar to the Wine property. He was concerned about Hale Street where a 60-acre parcel could be carved into 3-acre lots the City would have to service with infrastructure. It was not possible to keep up with current fixed infrastructure costs, making it necessary to apply for state money. The City needed increased revenue and limited fixed expenses. The goal was to limit what could be done with large parcels on the outskirts by limiting the size of lots that could be created. A couple of hundred acres existed on Hale Street for potential development.

Councilor Eigerman had researched other communities. The Midwest required 25-acre parcels. He proposed 10-acre parcels with 1% lot coverage. Members suggested maximum lot coverage of 3%, or 3,000 square feet, to allow for a farmhouse and three out buildings.

Public comment open.

Al Clifford, 45 Green Street, asked at what point was zoning excessive?

Public comment closed.

Chairman McCarthy said it would be difficult to move other land uses, such as cemeteries, into Ag/Con. Councilor Eigerman agreed with 3% lot coverage. Director Port said the Planning Office recommended adoption.

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James Brugger made a motion to recommend adoption of the amendment to Section VI-A incorporating the change in lot coverage to 3%. Mary Jo Verde seconded the motion and six members voted in favor. Anne Gardner abstained.

Jared Eigerman made a motion to recommend approval of the amendment to Section VI-A incorporating the change in lot coverage to 3%. Ed Cameron seconded the motion and all members voted in favor.

d) Amend the Zoning Map such that all parcels located within the areas shown on the map have their designation changed from R3 to R2

Councilor Zeid, a co-sponsor with Councilors Tontar and Cronin, said the amendment addresses infill that he interpreted as additional units, but a clearer definition would be useful. Infill had resulted in more expensive units rather than more affordable housing. Parking for additional units was nonexistent. Curb cuts eliminated street parking. Infill typically maximized lot coverage, causing loss of trees and green space. It was best to remove zoning for infill. There was no consensus on changing R3 to R2 and applying R3 dimensional controls for a two- or multi-family structure. The proposed would use R3 dimensional controls for a two-family structure on Salem Street. He acknowledged the unintended impact on the existing R2.

Chairman McCarthy said when zoning shifted, developers shifted to get around the new zoning. The amendment would force a builder to erect a larger house on a lot with a historic house that could be split into two lots. A builder could tear down three houses, create two lots, and build two larger houses. Changing dimensional controls in R2 would make most of R2 non-conforming. Members said it lowered building standards. Councilor Zeid said the idea was to present a balanced proposal that showed an interest in adding to housing stock. He agreed with using existing R2 dimensional controls, but current dimensional controls were a mess. Chairman McCarthy said that was the reason the ZBA struggled. Trying to manage an historic village through zoning was problematic because the City was a hodge-podge of sizes.

Councilor Cronin said an infill project in his ward resulted in two curb cuts, two driveways, loss of green space and street parking. Both driveways were empty because both cars parked on the street. The City could not regulate the quality of life impact of infill that was key-holed into tight spaces. Councilor Tontar said complaints in his ward were about the loss of open space and increased density, both of which changed the feel and design of neighborhoods. Residents wanted to maintain neighborhood green space and trees and concerned that Wards 3 and 4 would become as dense as Wards 1 and 2, where density was intentionally planned.

Chairman McCarthy continually heard about losing green space and would address lot coverage.

Public comment open.

Judy Tymon, 39 Lime Street, chair, Affordable Housing Trust (AHT), said down zoning affected affordable housing. She wanted to be included in any future discussions.

Jane Snow, 9 Coffin Street, was frustrated that zoning regulations were waived every time a new house was built. Neighborhoods with infill were a mess. Making exceptions for infill projects left neighbors with no recourse except court. She wanted existing regulations enforced.

Tom Kolterjahn, 64 Federal Street, co-president, NPT, said the historic village was inundated with infill. The only tool was zoning and the proposed was a step in the right direction. Small historic houses disappeared every year when their sizes doubled to create expensive homes that negatively impacted affordable housing and destroyed historic neighborhoods.

Public comment closed.

Councilor Zeid asked what data was needed to go forward with analysis? How many lots in R2 would be affected by changing dimensional controls? Director Port said he would look within the districts to show how many lots would become non-conforming. There was opposition to changing R2 dimensional controls to current R3 controls, which could result in a single type of development. Chairman McCarthy agreed to examine the effect of R3 controls on R2.

e) Amendment to add Inclusionary Affordable Housing

Councilor Eigerman said he and Councilor Cronin co-sponsored the amendment in a stand-alone, six-page section that prescribed a rule in order to avoid ad hoc discussions when affordable housing was at issue. Boston's affordable housing rules were 13% on site, 18% off site, or pay your way out of it. He proposed thresholds requiring 10 units or more to have 10% and six or more units needing zoning relief to have 12%. Fractional units would round up to the next highest number. There would be no buyout option. Five or fewer units would pay a pro-rated fee to the AHT Fund. Affordable units would be threaded throughout the project to ensure they were comparable in size. Using Essex County incomes may be aggressive.

Members liked it and raised the issue of developer incentives needed for inclusionary zoning, such as reduced onsite parking or a density bonus to encourage affordable unit development. There was concern about the prospect of litigation without incentives. The 'under six units' fee structure should be a formula based on market demand and unit price. The AMI should be changed to Boston rather than Essex County.

Susanne Cameron, AHT member, said median income for the whole area was the same. The 80% threshold for affordable housing was a family income of \$82,750 at the top end. The Department of Housing and Urban Development defined the AMI identically from Boston to New Hampshire. Councilor Cameron said the MA Department of Housing and Community Development could provide clarity on requirements for the state's subsidized housing inventory. AHT Chairman Judy Tymon said regulations required using the index. Any other index or standard was not permitted for inclusion on the state inventory.

Chairman McCarthy said consistency was needed across V.I.C and open space ordinances.

Public comment open.

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Councilor Zeid asked about triggers for projects fewer than six units and whether a deed restriction could be required to comply for off-site affordable housing? Councilor Eigerman said a project that required a special permit or variance would pay a pro rata share of a \$15,000 fee. Judy Tymon, 39 Lime Street, Chair, AHT, said a meeting to determine final language had not yet occurred. There should be discussion on developer's incentives to avoid litigation. What about development that would change from residential to non-residential? The AHT would like to participate in any future discussions and review the formulas.

Councilor Zeid asked what kind of data could support affordable housing? Director Port said trended data existed on the loss of affordable housing and on the types of approved projects with affordable units.

Members said in order to achieve 10% affordable housing in a reasonable amount of time the goal would have to change to 20%. Affordability thresholds for home ownership were lower than rental thresholds. Could the thresholds be evened for a more balanced AMI? AHT Chairman Tymon said there was much more at stake than the 10% number. Newburyport was not an inclusive, diverse community, which made the community less stable.

Public comment closed.

Chairman McCarthy said the amendments raised complex issues requiring more data and analysis. The board would consider public comment before making recommendations.

Andrew Shapiro made a motion to continue the amendment to Section V-D to September 6. Leah McGavern seconded the motion and all members voted in favor.

Leah McGavern made a motion to move the other amendments to October 4. Anne Gardner seconded the motion and all members voted in favor.

Motions Approved.

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) 92R Merrimac Street – Application Completeness Vote (2017-SPR-05)

Director Port said the application was inadequate to proceed as a formal hearing. Too many materials were missing. He recommended an informal discussion. Two different zoning districts were involved. The applicant requested using the Waterfront West overlay district. A variance for the reduction in lot size was needed before the board could address the matter. Chairman McCarthy said there was a significant difference in what was allowed under the base zoning

versus the overlay zoning. The methodology chosen was consequential and involved whether to ask for a ZBA variance. The clock started ticking when the application was voted complete. Bonnie Sontag made a motion to disapprove the Application Completeness. Andrew Shapiro seconded the motion and all members voted in favor.

Motion Approved.

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.

Lou Minicucci, MINCO, 231 Sutton Street, North Andover, had presented details to the ZBA two weeks ago. The ZBA agreed something should be done with the former 1930s auto repair building on the 25,000 square foot property. The Newburyport Historical Commission gave permission to tear the building down because it lacked historical significance. The first floor would have to be raised five feet, which would make the building out of scale with the underlying zoning. The overlay district would allow something similar to Horton's Yard, a three-to-four story building with a lot of brick. The plan was now 29 units in three stories with some garden-style apartments and on site parking for 1.5 cars per unit. The bigger issue related to working collaboratively with the board and the ZBA. ZBA approval was needed, but if they disagreed with the board's recommendations, a disjointed process would result.

Chairman McCarthy wanted to understand the methodology. It was necessary to read the Waterfront West overlay district to determine whether the board could grant the special permit. Director Port said the applicant could come before the board once variances for dimension and the overlay zoning were filed. Members asked if the proposed density was allowed under the overlay zoning? Mr. Minicucci said he used the maximum density allowed with 10% for affordable units. Chairman McCarthy said over 20 units required a special permit from the ZBA. Members said the proposal exceeded the overlay district's 40-foot height restriction. Approval would set a precedent for NED to use. The proposal could not be considered in a vacuum from NED. Director Port agreed. Members noted that intersections were already failing in the area. Director Port said failing traffic conditions were seasonal and would not be affected much by the proposal. Chairman McCarthy said the board should provide input and a recommendation on whether to grant the variance before the ZBA voted. Members asked if it was possible to make enough adjustments in the permitting process to approve the proposal under the Waterfront West overlay? As the closest abutter to Route 1, the property was exceptional and could be reviewed on its own merit. Director Port said the size, scale, massing, architecture, and benefit to the community were more important than the process. The applicant needed clear feedback and should share any revisions resulting from the board's previous comments. Members said the proposed deviated from the Waterfront West overlay on height, coverage, and frontage. The architecture was pleasing. The overlay did not consider the flood plain.

Greg Smith, architect, GSD Associates, North Andover, said the project was currently 45 feet high but there were still grading issues. Height was not finalized and perhaps it could be 40 feet.

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Height was calculated to the top of the brick roof. Parapets screening mechanicals were not included in height calculations.

Chairman McCarthy asked the board to consider the proposal under the Waterfront West proposed zoning.

Mary Jo Verde made a motion to continue the application completeness vote to September 6. James Brugger seconded the motion and all members voted in favor.

Motion Approved.

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.

4. Public Hearings

- a) ***Berkeley Investments c/o Lisa Mead, Esq.
260, 268-270, 275-276 Merrimac Street
Special Permit Amendment (2007-SP-03d)
Continued from 6/21/17***

Attorney Mead requested to continue to September 6 due to unresolved issues.

Andrew Shapiro made a motion to continue the Special Permit Amendment to 9/6/17. James Brugger seconded the motion and all members voted in favor.

Motion Approved.

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.

- b) ***Evergreen Commons LLC
18 Boyd Drive and 5 Brown Avenue
Definitive Subdivision (2017-DEF-01)
WRPD Special Permit (2017-SP-05)
Continued from 7/5/17***

Chairman McCarthy read of a list of questions requiring answers from the City's technical consultants before the board could make a decision. The seasonal high ground water number was still in question.

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On the OSRD Definitive Plan: 1) Does the submitted definitive plan meet the requirements of the OSRD SP issued by the Board? 2) Were there specific design requirements for stormwater handling in the Zone II? Does the applicant meet the Zone II standards? Are there any improvements to the stormwater design possible? 3) He was concerned about the capacity for major flood events and the “bottom of the bowl” filling up and overwhelming the system. Did the ILSF have sufficient capacity? 4) Were the basement elevations set appropriately given the special permit requirements, the depicted ILSF, and seasonal high water? 5) Were there different grades of wastewater sewer pipe? What grade do we have? What was the recommendation?

On the WRPD Special Permit: 1) XIX-I (6) requires “any use that will render impervious more than 5,000 square feet of a residential lot or 10,000 square feet of a non-residential lot. A system for groundwater recharge shall be provided which does not degrade ground or surface water quality.” Does the applicant’s design meet this requirement? 2) XIX-I (8) requires “any new stormwater runoff shall be set back from the receiving water a minimum of 100 feet, and shall include best management practices appropriate to the site. Existing and replacement discharges shall be set back from the receiving water when either the site stormwater drainage system is changed or the discharge is increased. The best management practices shall be designed so as to maximize infiltration and minimize erosion, and to mitigate water quality impacts, including those due to total suspended solids and oil and grease. This applies to stormwater runoff from all impervious surfaces, including roads and parking lots.” Does the applicant’s design meet this requirement?

On the Risk Assessment Conclusion: In addition to CSI, the applicant’s expert who determined “No Risk” for the initial testing protocol, as required by the OSRD special permit, to be present and the equivalent expertise from AECOM to confirm this risk assessment.

Attorney Mead said a new draft of the Homeowners’ Association documents with changes the board had recommended had been submitted. The Conservation Commission had not finished their review. Chairman McCarthy said the public wanted the City to protect its future water supply. The issue contending the groundwater elevation calculation of arose late. Both teams needed to go back and resolve it. Attorney Mead said all questions asked by the board had been answered. Heightened numbers from May and June 2006 were noted on Friday. The information from Director Port went to Doug Gove at AECOM. Steve Sawyer and Jay Billings looked at the issue. The applicant’s team received the information on August 10, but resident Peter Hatcher had pointed out the issue previously.

Steve Sawyer, DCI, 68 Pleasant Street, said the ILSF was calculated per DEP regulations. He calculated a volume of water and an area for that water to pool. He used soil mottling for the stormwater systems and observation wells. He averaged the seasonal high and used 52 feet as seasonal high ground water number. The lowest basement elevation was 56.6 feet. The wells showed 49-51 feet in May, or 90% of the nearest USGS well. This spring was a seasonal high. He was not sure how the spike DCI learned about on Friday could occur here. AECOM reported a June 22, 2006 elevation of 60.4 feet. The golf course was in full operation on that date rather than looking like a lake. He was not sure how to apply the number. A photograph of the golf course on that date was shown with standing water from run off that had continued to drain. The groundwater had to be lower or the bowl would have continued to fill instead of draining. DCI

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did not think 60.4 feet ever happened. Chairman McCarthy asked if the bowl was big enough to handle the rain without water going into residential basements while the bowl was draining? Mr. Sawyer said the peer review agreed with his original submission.

Phil Christiansen, a City peer review consultant, CSI, 160 Summer Street, Haverhill, said from data collected on site, the soil mottling and soil collected on the site was correct. He needed to figure out how the data submitted Friday could be correct. The 60-foot elevation recorded by the Water Department seemed odd based on his knowledge of the site. Analyzing the data already in hand and determining how the well related to the site would help identify other factors that could cause water to be higher at that well than on the rest of the site and why the Water Department thought their data was correct as it applied to the site. Director Port wanted to make sure additional consultant assistance was available between now and the next meeting. The second issue was how to modify the plans to address concerns about the ground water elevation. It made sense to get consultancy services initiated immediately.

Jay Billings, Northeast Geoscience, 97 Walnut Street, Clinton, had received the water data on Friday. Observation well #6 (OB #6) recorded an abnormally high groundwater elevation. At 60 feet, the green area in the photo displayed should have been partially submerged, but water never reached the elevation level that was recorded at OB #6. AECOM added one foot to the seasonal high groundwater. He displayed trended data showing Newburyport wells with pronounced spikes as compared to the USGS wells in Newbury. There was a downward trend in the Newburyport wells' data not reflected in the USGS wells. Something odd was occurring. OB # 6 showed a 6.8-foot rise in response to the 2006 Mother's Day storm and lesser spikes a few feet up and down that all puzzled him because other wells did not show the same fluctuation. The Briggs Avenue stormwater drained toward OB #6. He believed flow reversals were occurring that caused groundwater mounds to form at OB #6. The OB #6 data created a change in the whole flow system. He was not sure that data could be used for the development. The client did not want high water conditions to flood basements. Should the design be based on seasonal high water or the Mother's Day storm? Members said some houses were more at risk than others. Mr. Billings said the water level was 56.1 feet above mean sea level at Evergreen after the Mother's Day storm. A mean high water level was determined through soil mottling and actual well data from the historic record of the USGS wells. Attorney Mead said Mr. Sawyer had designed for a higher number than was required.

Mr. Christiansen asked Mr. Sawyer a number of questions. DCI's data confirmed that the groundwater level was higher by one foot than what soil mottling showed. Chairman McCarthy asked an engineering practice existed for working with spikes as shown in the Water Department records? Mr. Christiansen wanted to check the data and hear from AECOM. Members asked if the clogged drain at the bottom of Laurel would go to OB #6 when unclogged? Mr. Sawyer said there was no connection.

Doug Gove, a City peer review consultant, AECOM, 250 Apollo Drive, Chelmsford, had been reviewing pump test data and the performance of City wells when they came across the unusual data. Precipitation was 10-20 inches above normal from 2005 to 2011. A similar spike occurred in 2010. A spike occurring two times in four years meant something unusual was happening. OB #4 spiked also, further reinforcing the notion that something was going on. The lowest ground water level in the past 17 years was recorded last spring.

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Director Port asked if it were possible the area would continue to flood and that past floods may not have mottled the soils? Could floods be occurring on a regular basis? Would that interfere with construction? Mr. Christiansen said soil mottling would demonstrate if flooding happened frequently. Chairman McCarthy said he did not want water flowing into front yards to take chemicals back into the bowl. Was the bowl big enough? Mr. Christiansen said it was a good number. Mr. Sawyer said he pulled elevation 54 right up to the pond to have a bigger area to fill. The proposed elevation was still below the existing number because of the constructed stormwater wetlands and the ILSF. His starting groundwater elevation number was 52 feet. Mr. Christiansen said if 52 feet was incorrect, the ISLF was incorrect. He would review the additional well data and try to correlate it better himself. Chairman McCarthy was concerned about reaching agreement on the groundwater number. Attorney Mead said there was a standard for the design that had been achieved. Mr. Christiansen said he needed to determine what the blip meant. There were a lot of elevations around 55 feet that were reflective of the site, but soil mottling on the site indicated the highest groundwater number was 52 feet.

Director Port made a procedural request for the board to authorize queuing up additional consulting services in case CSI needed support. He had reached out to Woodward and Curran with the list of questions to make sure the project was conditioned properly to protect the groundwater supply. Chairman McCarthy said the teams all had a responsibility to hire whomever they needed. He asked Mr. Christiansen to work through the list of questions to see if he could answer them relative to requirements under the special permit. Mr. Christiansen said any good engineer would design better than regulations when working with data like this. He believed Mr. Sawyer had done that. Attorney Mead was interested in ensuring a proper process.

Six different architectural designs presented by architect Scott Brown, 29 Water Street, showed traditional 1¾ stories and a single story styles, all different and with common design themes and geometry. Common elements included front porches, set back garages, six-over-one windows, and cement clapboard. He showed an image of a gambrel roof design on a lot similar to lots 20-24 where grading dropped the most. Three designs with the largest scale and massing would go on Boyd Drive. Color choices would be submitted to the board.

Chairman McCarthy said the initial chemical test performed by the applicant determined there was no risk. Mr. Gove confirmed the assessment of “No Risk” for the first test. Sculpted curbing was part of the OSRD approval. Questions #2 and #3 in the OSRD Definitive Plan and the Risk Assessment Conclusion question had been answered. DPS Director Anthony Furnari disapproved the 15-foot easement approved by Jon Eric White, City engineer. Attorney Mead said a past conversation had determined that sloped curbing was better for the road width. Director Port said the board had DPS feedback that vertical curbing was better. There was also DPS feedback on LED lights.

Peter Hatcher, 15 Boyd Drive, said residents believed the data from OB #6 would flood every basement in the plan. The 56 readings that exceeded 52 feet did not represent a spike, but a pattern. Peer review comments from the Conservation Commission were not available yet. Mr. Christiansen asked if Boyd Drive residents had water in their basements as a result of the 2006 flood? Mr. Hatcher did not know.

Public comment closed.

Anne Gardner made a motion to authorize the Planning Office to arrange additional services in case they were needed. Leah McGavern seconded the motion and all members voted in favor.

Mary Jo Verde made a motion to continue to September 20. Leah McGavern seconded the motion and all members voted in favor.

Motions Approved.

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**c) Atria Management Company, LLC
77R, 85, and 85R Storey Avenue
Major Site Plan Review (2017-SPR-04)**

Michael Waleryszak, Atria Development Planning Director, Atria Senior Living, described Atria as the fourth largest senior residence management company and service provider in the US. Sixty-five percent of the residents were from the communities where Atria's were located. The proposed expansion would service independent and assisted living, and memory care. The City's Atria was full and had turned away three families this week.

Attorney Jeff Roelofs, 30 Green Street, said the proposal enlarged Atria from 80 to 129 units behind CVS in a way that presented a consistent building design. The project was not highly visible from the street. Access to the City's trail would be relocated and trail improvements made. There were stormwater management and landscaping plans. They would go before the ZBA for a variance for the B1 zone, a use special permit, and amendments for prior approvals. The design provided full access around the building for fire trucks. He responded to all of CSI's comments and submitted revised plans. Three comments yet to be addressed were: 1) Fulfilling CSI's request for an additional test pit during the site work as a condition; 2) drainage network profiles, not required by regulations, would be available in a few days; and 3) a waiver request for the wall from six to 10 feet. He displayed a sketch of the relocated trail access.

Peter Schmidt, EGA Architects, 1 Vernon Street, said the addition used the same exterior design, materials, and windows as the current building. Some balconies were added to break up the façade, which was further differentiated where parts of the building turned corners. The footprint was 17,000 square feet. The height was lower than the gas station. Some interior features would be renovated. Memory units were supported by gardens. The addition included a gurney-sized elevator and differently sized units. Stormwater went into a gutter and a rainwater system.

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Rick Friberg, engineer, TEC, 65 Glen Street, Lawrence, said the proposed met all City and DEP requirements. He showed images of new parking spaces, a fire truck turnaround larger than the circle, access for the trail connection, new impervious areas, and stormwater systems. Underground chambers would catch all rooftop runoff. Both underground systems discharged to a bio-retention area. The stormwater systems at the Shell station and CVS would enter and be treated again. A lot of grading would occur. He showed the location of the proposed 10-foot wall to create a good transition between the mid-level and the underground level.

Paul Finger, landscape architect, PFA, Inc., 14 Spring Street, Waltham, said landscaping would reflect what residents were used to in their own homes. He described landscaping around two courtyard outdoor gathering spots and gardens that had seasonal variety and birdhouses, screening for the adjacent commercial property, and plantings along the parking lot and path to the open space trail. A planting list had been submitted.

Attorney Roelofs said traffic volume was low and no deficiencies were identified. A revised stormwater report based on peer review comments was submitted today. He reiterated three open issues. If conditions changed for the test pit, they would return to the board. There was a lighting plan. The Conservation Commission did a site walk and recommended, as did CSI, more shrub plantings. Plans were changed accordingly. The fire access around the building was also a walkway made of porous surface gravel with a roadway surface underneath. There was no formal walkway around the building today. Members asked if the trail to the conservation land was currently used? Jim Mitchell, Tropic Star, said it was challenging to get there today. He was working with Jerry Mullen. Signs recently added should help.

Public comment open.

Justin Dutcher, 7 Morin Road, said he and his neighbors had concerns about trouble that occurred on the trail behind their neighborhood. Another trail with visible parking was good.

Public comment closed.

Chairman McCarthy was waiting for the results sent to CSI. Director Port would gather input from CSI on the test pit waiver condition before the board responded.

Anne Gardner made a motion to continue the Major Site Plan review to September 6. James Brugger seconded the motion and all members voted in favor.

Motion Approved.

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.

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- a) The minutes of 7/19/17 were approved as amended. James Brugger made a motion to approve the minutes. Bonnie Sontag seconded the motion and all members voted in favor.

Motion Approved.

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.

b) 50-58 Middle Street – Approval Not Required (2017-ANR-10)

Bonnie Sontag made a motion to endorse the ANR. Andrew Shapiro seconded the motion and all members voted in favor.

Motion Approved.

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.

c) 437 Merrimac Street – Approval Not Required (2017-ANR-11)

Anne Gardner made a motion to endorse the ANR. Andrew Shapiro seconded the motion and all members voted in favor.

Motion Approved.

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.

5. Adjournment

Andrew Shapiro made a motion to adjourn. Mary Jo Verde seconded the motion and all members voted in favor.

The meeting adjourned at 11:53 PM.

Respectfully submitted -- Linda Guthrie