

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

JANUARY 4, 2005

A meeting of the Planning and Economic Development Committee was held on Tuesday, January 4, 2005 at 7:03 p.m. in the Aldermanic Chamber.

Chairman David Rootovich presided.

Members of the Committee present: Alderman Richard LaRose, Vice Chair  
Alderman Kathryn D. Vitale  
Alderman Robert G. Shaw, Jr.

Members Not in Attendance: Alderman David MacLaughlin

Also in Attendance: Alderman-at-Large Brian S. McCarthy  
Roger Houston, Director/Manager  
Jay Minkarah, Economic Development Director  
Bette Lasky, Chairman, Nashua City Planning Board  
Mike Lowe, Liaison, Nashua City Planning Board  
Kathryn Nelson, Chairman, Conservation Comm. (@ 7:45)  
Richard Kane, Flatley Co.  
Neil Barrett  
Larry Lesieur, Maynard & Lesieur

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Chairman Rootovich

Alderman MacLaughlin called me earlier today. He is still at work.

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COMMUNICATIONS - None

UNFINISHED BUSINESS – RESOLUTIONS

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UNFINISHED BUSINESS – ORDINANCES

MOTION BY ALDERMAN LAROSE TO TAKE FROM THE TABLE O-04-19  
MOTION CARRIED

o-04-19

Endorser: Alderman-at-Large Brian S. McCarthy  
AMENDING THE PLANNING AND ZONING ORDINANCES OF THE  
CITY OF NASHUA IN THEIR ENTIRETY

Discussion Topics Include: Article V. Development Standards, Division 5,  
Conservation Regulations

Chairman Rootovich

This evening we will continue on page 275, Division 5, Conservation Regulations. I did invite, Kathy Nelson, the Chair of the Conservation Commission. She is currently in a meeting. She said she will be over here at the conclusion of her meeting. I would expect her a little later on. Mr. Houston do you have any opening remarks or Mr. Minkarah? I guess my first question is are there any substantial changes?

Roger Houston

These sections, although it is entitled Conservation Regulations, are primarily items that are – most of them are required anyway as part of the subdivision requirements in terms of showing the grades, the slopes, etc. so the Planning Board can take that under consideration if they feel that they want to save a particular clump of trees or an area needs to be preserved because of the slope or the topography. I know the committee spent a lot of time on this one. I don't know if any of the committee members want to jump in on this one, but that is what the committee came up with.

Jay Minkarah

I can tell that the committee spent some time on this just by the crossouts and the additions. I guess I feel overall that these are very important sections when it comes to site design, subdivisions, and site plans – designing those plans around and with sensitivity to existing natural features and I think other features as well – historic features of the properties – I think this is critical to good design, for this community to develop as well and developing in a way that reflects and respects the unique characteristics of the community. Most of my comments are going to be focused towards that and actually probably suggesting that we add some things to this.

Chairman Rootovich

We will start – is there anything with respect to Division 5, Conservation Regulations starting with 16-500 going through 16-552? Are there any questions, comments, concerns or suggestions?

Jay Minkarah

Along those lines, as I look through this when I first looked at this area of applicability I was a bit concerned that it was uncertain when these regulations require it. If you look at the first

sentence it says “This section applies to any application for subdivision, or to site plan approval where the Planning Board determines that sensitive natural features as described in subsection (b)(1) are present...” it kind of left me to wonder well if I am an applicant how do I know whether or not I need to show these features on the site. Then as I look through it I guess I asked myself the reverse question – under what circumstances wouldn’t we want an applicant to show these types of features on an existing conditions plan. I toss that out for general discussion, but if you notice the next section on Conservation Area Monumentation under applicability it says “This section applies to any development subject to an application for subdivision or site plan

approval.” I just wonder if we might consider making these requirements applicable to all site plans for subdivision except as shown below (d) within the downtown zoning district, and I would probably add minor subdivisions. Other than that I am just not sure when we wouldn’t want to show these features.

### Roger Houston

I don’t procedurally have a problem with that. I think it says what it says – it does provide a waiver by the Board. If someone feels that they shouldn’t show something the Board can consider that separately that these should be requirements to preserve those features in the city that are worth preserving and enhance the community.

I had a change on 16-552 – it is just not Conservation Area Monumentation it is also Common Open Space Monumentation. I know we have had problems in the past with some cluster subdivisions where we have the common open space or even open space that might be open to the general public, and not having it marked as such – sometimes it creates a problem with some owners that live next to it trying to take it as their own essentially or trying to protect it and trying to keep people off of it. That is why that provision is in there. I think it needs to be clear in the title.

### Mike Lowe

I think we should do the reverse and do it the other way around as he suggested. That is good design work. If you go over and look at some of the places that have been clear-cut – one on Spit Brook Road where they just absolutely just cleared out the bankings and left very little trees or anything. If you look at the one that goes up the side of the hill there further on there I guess it is the East Dunstable Road the one that is up on the hill they tore out the whole side of the hill there and left nothing.

They don’t seem to make the house fit the land they would rather make the land fit the house. I don’t think it is good engineering or good landscape design. I think if we had more of that we would have a better city.

### Chairman Rootovich

A good example is Middle Dunstable Road – that is a good example. I don't think they left a tree in there. It is like a volcano went off there isn't one tree or shrub in that whole area up there as far as you can see.

Alderman Vitale

Another prime example go to Majestic Heights and go past that. You wouldn't even recognize it is the same piece of property as it started out.

Mike Lowe

I would rather see instead of 10" on a tree I would rather see 8".

Neil Barrett

I understand the examples you have used and why this section is in here. The first question I have is one of the questions you asked was is there anything new here – is this currently required in the current site plan of subdivision regulations – this sensitive site features?

Roger Houston

The title Sensitive Site Features is not included in the current regulations, but the requirements in terms of showing the grading of the trees, vegetation, existing conditions information is there. This explains it a little better and makes it clearer.

Neil Barrett

Into this level of detail?

Roger Houston

Right.

Neil Barrett

My second comment would be the concern is what is that going to do to the cost of development, the cost of bringing a plan before the Planning Board – I think everybody is aware Nashua has a housing affordability issue, and I think any additional costs of development of land is going to be passed along to the prospective buyer. In the interpretation of you need to be using slopes and so on and so forth I think that if I lived across the street from a vacant parcel of land that was beautiful and I liked that view and the person that owns that land comes in to do a subdivision and that ruins my view of the property across the street does the people in the community have the right to say no you shouldn't be able to develop the land because it is a

community resource, it is a unique view, so on and so forth?

### Alderman Vitale

Regarding your cost of development, I heard a speaker ... tape inaudible – speaker away from microphone ... he was going over the cost of development and how you can have environmental type landscaping where you fit your buildings to the current landscape typography versus clear cutting and completely regarding the whole property. At that time, he showed that there really was not a remarkable difference in costs of development and sometimes when there is a complete regarding of the property it in fact has costs down the road where water and everything else keeps wanting to go back to the original, and there are other costs associated with the development when it is completely redone that you might not have if the development follows the original typography of the land. He showed at that time numerous commercial developments/residential developments that the increased cost is not so much that it wasn't a benefit to everybody around to follow good design.

### Neil Barrett

I guess my comment would be that – similar to what the legislature does up in Concord, when they are considering legislation for a good part of the town particularly if it is spending – they do a cost analysis of what it will cost to put a program in place and what the impact will be on the individuals. I don't disagree with the goals I am just concerned with who will be making the decisions and is that going to deny someone development rights.

### Richard Kane

I don't really have major problems with the idea and the intent of this. Really in most cases such as the site plans you have to do typographic information, you have to do vegetation, tree cover and what have you. I am a little bit concerned about – I have a 180-acre site I would hate to go in for a little 10-acre development and have to do an inventory of every tree on my site. I would hope that the Planning Board would give me some waiver on that, but the one issue I think that I would like to just address is the 10% slope. I really think that is too low. You can do public roads in the city at 10%. I really don't think anyone's definition of steep slope would include 10%. The only reason I raise the issue is because then as you read further in the regulations you have to try and preserve these areas and work around these areas because these are considered sensitive areas. Well if a road is 10% I think it is hard to say that is steep slope. Southern Conservation Service, which is probably one of the most recognized soil identification agencies typically use like 25% as steep slope areas. If you want to do 15-20% I might agree with that, but 10% I think is much too low a threshold for concern about the impact.

### Alderman Vitale

I wonder if the 10% slope or the slope also that there would be other considerations besides just the slope – maybe types of soils that are in that area, how much water flows through that area

and that type of thing wouldn't affect development of that slope area – different soils when they are disturbed shift, move, wash away more than other types of soils. If we were going to change the slope that maybe we look at if slopes could be affected by soil types and such.

Richard Kane

I think you are using a number of triggers in here. You are using soil classifications as a factor also. My only concern is that if you say automatically 10% -- any slope that exceeds 10% is in fact a sensitive environmental area and that is the sole criteria, which is the way this is written, then I think you are being a little too controlling in that area. Again I don't have a problem saying when you get into what I would consider the steepest slope areas of 15-25% that those areas become a much greater concern.

Chairman Rootovich

Could somebody give me a visual – say two streets – Browning Ave.?

Richard Kane

Browning is 10%, Library Hill I believe is 9.2% if I remember.

Mike Lowe

Majestic Heights is 10%.

Alderman Vitale

I would rather air on the side of caution and stay with the 10%. You always have the ability to go in and ask for a variance.

Richard Kane

As a developer anytime I ask for a variance I usually have to end up giving up something in exchange for that so when you set those thresholds too low I really do become at the mercy. If I have a good Planning Board that is fine. If I have a bad Planning Board that is not so fine. Boards change; staff changes over a period of time. I am concerned that simply from 10.1% that alone triggers me into the area – if it is a combination of factors I don't have a problem with that.

Roger Houston

I do know that the committee did discuss this at length, and this was their recommendation the 10%, and I think some of the examples as Alderman Vitale mentioned were Majestic Heights and a few others where there were problems. We don't have that many more site left to develop

in the community. We have obviously and that will be probably park/industrial area – I would assume that Mr. Kane who he represents, the Flatley Companies, then we have a few other larger parcels left in the city, but very few. The idea of the 10% I think is what the committee felt. I am giving you their viewpoint on this. It is showing that area as 10%. There is caution. I know that we recognize that caution in that one subdivision information was given to everyone, but they felt because you could build a street on that then it must be okay to do the rest of the stuff on there as well, which was not the case.

Sometimes when you try to work around these features you need to know where they are, and this 10% is a number I think that works. I think this is a Planning Board that has been reasonable in its allocation of any kind of sensitive features whether it needs to be worked around or included in the development project.

### Chairman Rootovich

Going back to the example off Middle Dunstable Road, that development, there seems to be consistent large erosion problems up there where when you drive by it is massive amount of earth that are constantly being moved down to the bottom of the hill.

### Roger Houston

That was one where the Zoning Board of Adjustment granted a cluster and a variance on the – I know staff had serious concerns with that project. When we did the master plan analysis on that we felt it was an R40 zone – I think R40 or R18 or some combination. It should have been pretty much left alone or a few homes because of the steepness of the slopes, but we didn't have any kind of provision in our ordinances to protect in that situation. In fact, speaking of variances, there was a case where you had an application of that and the board made that decision – it wasn't the Planning Board it was the Zoning Board of Adjustment.

### Chairman Rootovich

It has caused problems for the neighbors out there. It has really turned into quite a problem over there.

### Roger Houston

It is. The fact of the matter is that it has been under different ownerships over the years too. Finally I think it is going to be put together and hopefully something growing on that slope.

### Mike Lowe

The 10% on the slope for traffic for streets is a state regulation. Actually the amount recommended is 6-8% because we went over that 2-3 times. It came up with Majestic Heights

and we had to give a variance for it. The other one on Middle Dunstable Road we didn't really want to approve it at the Planning Board, but we didn't have a choice because of the fact that the Zoning Board did approve it. We can't turn it down if the Zoning Board allows them to have a variance. If they didn't have a variance saying that is how they can do it. We can't overrule the ZBA.

Chairman Rootovich

Are there any further comments?

Alderman Shaw

On 16-552, I had a question first as to do we actually require this kind of demarcation currently with any of the conservation areas? I guess for example I don't recall seeing any evidence of that for example in Maple Wood at this point in time, and I would have thought that is an area that there would be some markings. My other question is perhaps maybe it is because if I read the (b)(2) it is not clear to me that there is necessarily any requirement for more than one marker for any one site or plot and it actually could be a very large plot and could have multiple entrances and borders. I am wondering it seems like there is some indication that it might be that it would be defined from the approved subdivision or site plan, but I guess I have some concerns about the way this is worded at the moment.

Roger Houston

Yes, the Conservation Commission unfortunately their markers were not – that process wasn't available when Maple Wood went through, but it is there for Gagnon Farms and they have the process to allow for the wetlands buffers to be marked. It is a composite post with their markers and they have a lot of different markers, and we are doing that in all of the subdivisions and making that a part of the approval process now by stipulation. That is working now, but it wasn't for Maple Wood unfortunately.

Alderman Vitale

What they have developed is a couple of plaques – I believe they are like 4" or 5" by 3 or 4" and they are meant to be put on a granite post or like a treks post – something that won't deteriorate and is to be marked at the border so when somebody comes in to build something or lots of times they will ask them to put these on the properties. Habitat for Humanity has a house that they built and they requested one to be put up there because they were encroaching on the conservation area there. They do ask that they be put up at different times when they come before the Conservation Commission and they do want to put them where they would be appropriate.

Mike Lowe

Through the Chair to Mr. Houston – 16-121 is that in the current ordinance? 16-121 isn't even in here.

Roger Houston

16-121 I think ...

Chairman Rootovich

552 section b paragraph 1.

Roger Houston

I will have to check that one out. That is on the record so...

Mike Lowe

It is not there.

Chairman Rootovich

Good work Mr. Lowe.

Jay Minkarah

More specific ones on 16-551, but just to follow up on Alderman Shaw's comments, we might consider also putting underneath there at the bounds because just one for each individual lot might not be sufficient to really define the area. Back to 16-551 under © Incentives, the first one under (1) "the Planning Board can grant a full or partial waiver from the minimum lot size requirements " as an incentive. We might want to consider adding minimum lot size and dimensional requirements of 16-27 – sometimes I think there are dimensional issues or setback issues that might be more significant than the lot size in avoiding things such as sensitive natural feature.

In the second line although I think it is probably implied, we might just add under (2) "Sensitive site features may be included as part of the parks and open spaces required..." we might consider amending that to say sensitive site features may be included as part of the parks, open space, landscaping or buffers required.

Alderman Shaw

Just for clarification it does appear in 16-39 is a section for planned residential development on page 85.

Chairman Rootovich

Is there anything further with respect to 16-550, 16-551 and 16-552?

Alderman Shaw

As long as we are doing cleanup – it looks like the wetlands thing is actually – at least if the Table of Contents is correct, it is Article III, Division 10 not Division 9 on page 209.

Chairman Rootovich

Good proofreading Alderman Shaw. It is 10.

Bette Lasky

I am not sure that in 16-551 (c)(2) if that refers to Article V, Division 6 – “Sensitive site features may be included as part of the parks and open space required for subdivision or site plan approval where permitted by Article V, Division 6.” That is grading and removal of soil – I don’t know if that...

Chairman Rootovich

Mrs. Lasky where are you getting that?

Bette Lasky

Page 276 right above the line 16-552 right above that. It refers to Article V, Division 6. I am not sure if that – it doesn’t make any sense. I am not quite sure where it refers to.

Alderman Shaw

It almost appears that this whole section did not get updated with the new references. The Conservation subdivisions one is correct.

Chairman Rootovich

There are a few things to correct. Is there anything further?

Bette Lasky

I would just like to know what the consensus is with respect to the 10% slope. Do we want to reach consensus on that? How do you want to proceed?

Chairman Rootovich

What is the committee's recommendation?

Alderman LaRose

I would go with the 15%.

Alderman Vitale

I would stay with the 10%.

Alderman Shaw

I would stay with the 10%.

Chairman Rootovich

I would be willing to go with the 15% as well.

Mike Lowe

Go with the 10% with a variance to 15%.

Bette Lasky

I don't think we look in that particularly in a vacuum. In other words, to say – I know there should be more numbers collective although I believe a range could be selected. When you are dealing with a site where there are only 10% slopes it makes a difference than if you are dealing with a site that varies. If you don't watch out for all of those you let the whole piece of property go – that is the way I look at it. I think that if there is a way that we can ...

Chairman Rootovich

I am curious how the City Engineer feels about this. Have we asked them at all Roger?

Roger Houston

The City Engineer, Eric Teitelman, was on the committee and I think they agreed with this number. Obviously he is not the City Engineer anymore so I assume that number is – no engineer likes to see a 10% road unless it is really low volume and a short distance. That was my opinion that they inputted into this process. I sat on the committee and this was the committee's decision.

Chairman Rootovich

Since the committee is pretty much split – Alderman MacLaughlin is not here this evening, but it is something I think will take some further – hear from the consultants – it is something we definitely have to take a look at down the road.

Bette Lasky

Not yet?

Chairman Rootovich

No.

Jay Minkarah

I guess when I read it I didn't read this as being conclusive. I didn't read this as suggesting that if you have 10% slopes you can't use them it is saying that you have to identify them and if you impact them you should show how you will mitigate that. I think it follows very much what you were just saying that it is something that you look at as a part of the overall site development. I am not sure it is saying you can't use property that has more than a 10% slope.

Chairman Rootovich

Point well taken. Is there anything further? Division 6, Grading and Removal of Soil – 16-560, 16-561 – any comments or concerns?

Jay Minkarah

Generally although I don't have some specific wording – I thought there probably could be a few more specifics in here. For specific comments on my part, under 16-560 (c) we just might want to check whether we can hold a performance bond for taxes. I am not sure if we can do that, but that is just something we ought to check on.

This is kind of a more general comment, but if you are scraping down to clay and gravel you are not going to be able to move 4" of loam. I assume what we mean is restore. Also just commenting on the performance bond issue generally I don't see it anywhere in here and maybe I missed it, but I think generally when you do an excavation you should have a restoration plan and you should be restoring it as per the restoration plan and the performance plan should be based on an estimate at the cost of that restoration. I was a little concerned with (b) looking at just the flat \$100 per acre didn't seem to me to be really based on anything. Generally I think – although I don't think it is a big issue really in Nashua realistically, but if you are going to have an excavation maybe you should have a restoration plan and that should be the basis of

determining what is required after you have completed your excavation and what is used as the basis of estimating the bond.

Alderman Shaw

Maybe somebody can help me out on this because I don't recall now, but do we have other places where we specifically documented similar kinds of dollar figures like this because one of the concerns I have is that by setting the \$500 amount here then we are also locked into that. What if in terms of that \$500 really something more appropriate might be \$1,000 or \$1,500 in 5-10 years. I don't recall how we have other fees – if they are documented within here or if they are specified outside of here?

Chairman Rootovich

I don't remember anything specific.

Jay Minkarah

No. I will take a look at it.

Alderman Vitale

You are asking about how the fees are going to be updated in the future if costs increase and that type of thing is that what you are asking?

Alderman Shaw

And whether we have other fees specifically cited within this document or if they are mostly set elsewhere already in the ordinances. I couldn't recall from what we have gone through before.

Roger Houston

All of the fees are established by ordinance relating to Planning in this book including application fees are all done by ordinance. This is the same – almost the exact same language in the existing provision, which is Article V Removal of Loam, Clay, and Sod and Sand. There haven't been a lot of changes to this. I think what happened is the committee and the consultant looked at it and just left it alone because this is not something – I can't ever recall this provision being used in the City of Nashua in my tenure with the City. We have had some gravel extraction plans, which are under a different section of the ordinance. This has just never – most of our excavations are in concert with some sort of development proposal it is not just purely for the sake of grading and removal of the soil.

Chairman Rootovich

Is it just me or is everybody else on the same page 279 in their book?

Jay Minkarah

Mine comes after page 284.

Alderman Shaw

Does that already specify in the ordinance this bonding amount per acre?

Roger Houston

Yeah. It is \$500 per acre. It is the exact same language. That is something maybe we should have the consultant look at that and give some opinions on that. If I recall the committee looked at this and this is one of the sections that is currently at the very beginning of Chapter 16 of the Nashua Revised Ordinances. It is not in the subdivision order, the site planning or the

zoning ordinance portions of the ordinance. It is a provision that is in there it just hasn't been used very frequently – maybe in Nashua's earlier days it was used, but as I say we haven't used it.

Alderman Vitale

When we have fees such as this and I know a couple of the other places how are we alerted to update those fees? Does staff mention it to somebody on the Board of Aldermen and therefore an ordinance is prepared? How are those updated and is it regularly done?

Chairman Rootovich

I can answer part of that – we had a comprehensive fee study analysis done in 1994, which looked at the entire fee structure across the city in every division, and those were revised back then. Since that time we have revised some of the fees with respect to Roger's department. Was that in the last year or two Roger?

Roger Houston

I think it was 2 years ago.

Chairman Rootovich

We did change quite a bit of those fees. With respect to the rest of these it has been 1994 since we changed them. It took us a year to go through all of those with a separate committee.

Alderman Shaw

I guess I would ask then if we would take this back to the consultant also to consider whether or not unless from a consistency or an ability to keep things up to date if we are better off not having the dollar amount specified here and just have it cited as specified by the NROs so that if we do revise those fees we don't have to come back and revise it here or else if we are specifying all those fee amounts within this document that we need to keep things equal between the two. Typically that gets to be a difficulty with documentation when you start trying to keep things consistent across multiple documents.

Chairman Rootovich

Good point Alderman Shaw. Is there anything further?

Larry Lesieur

Unless it is just on my copy, does 16-560 have two Cs? We should probably change the second c to a d and the d to e.

Chairman Rootovich

Is there anything further? We will go to page 279, which is after page 284, which is Division 7 – Landscaping then go back to the original 280, which is after 278. Division 7 – Landscaping – with respect to landscaping and applicability and 571- screening and buffers – again that continues after that on page 280. Are there any comments?

Roger Houston

A general comment – I know Mr. Richard Sawyer in my department did look at this. He is a landscape architect, and he looked at this section very closely and there are a lot of strikeouts and edits in it, and he worked with the committee and we feel this section is in reasonable shape other than the fact that for some reason or other page 279 is out of place.

Chairman Rootovich

Mr. Houston is there any new language that has been added into this section here?

Roger Houston

The tables are new. A lot of what is in this is – there is not a lot of change from a lot of the language is in the existing ordinances. There is some without getting into details there are changes, but they are minor changes.

Neil Barrett

What are the existing buffers in the current zoning ordinance between the different zones and the residential zones? Is it this complex or are the tables 571 1 and 2 or is there a standard buffer between unknown residential and residential zone? Is there a change there?

Roger Houston

The existing – there again it would take me a while to go back on this one in the existing ordinance between residential and say a business zone is 25 feet. The existing ordinance is somewhat confusing in how it is written – it is in two different sections in the ordinance; one is in the zoning code and others in the site planning. It is primarily there needs to be a buffer between residential and commercial. Residential and residential there is not as much in the way of buffering, and in fact very little in a buffer.

You really have to take a case example and go through this and apply it to make a decision as to what you have or what you need.

Richard Kane

When the business community reviewed this provision there was concern expressed relative to the drafting of the language and how it might impact development particularly within redevelopment of properties within the downtown or inner city area. Currently many of the buffer requirements particularly in the inner city area is only about a 10-foot requirement. This provision as it is written says that any time I go in for an application for subdivision, site plan or building permit I have to comply with these setback requirements. Think about the businesses and industries that exist within the downtown area; many of them are right within 10 feet of the property line. If I went before the Building Department for an electrical permit the way this ordinance is drafted I would have to have my building comply with the setback requirements of I think between industrial and residential it is like 40 feet. That just doesn't make sense. I think what we have suggested is that for new buildings or substantial remodeling of 50% or more that this provision and these buffers apply, but for simple building permit or minor lot line relocation you are creating I think unreasonable hardships and costs in time delays if people go before Planning or Zoning boards for waivers of these setback requirements.

The difference between the existing ordinance and the proposal – it says at any time that you apply for a building permit and if I want to do a little entry foyer onto an industrial building or I happen to be on Mason Street and it is next to a house or a residential neighborhood, the densities in the downtown area are just so tight that these requirements don't make sense. We agree with the concept, we don't have a problem with the setbacks perse if you relate to new construction or substantial remodeling or renovation or rebuilding, but I think we have to grant waivers or exclude building permits or minor lot line relocations or minor additions.

Chairman Rootovich

Roger can that be done administratively?

Roger Houston

Basically that is how we would handle this as it is now. Obviously it would have to fall in the jurisdiction. If it was a building permit that came in through the door and a land use change or a major change to the site plan that required that applicant that is applying for the building permit to go to the Planning Board they would be sent, and if it did not it wouldn't – we would not normally require someone as part of electrical permit wouldn't require a land use permit as Mr. Kane just stated. It would just be signed off by the Building Department and moved forward. I don't see this as being a big issue. Usually a building permit is a kicker or land use permit whatever you want to refer to here it is a combination permit that we have and unless it invokes the jurisdiction of the board it wouldn't apply and we wouldn't make – if you are remodeling on the inside of your building usually changes to especially an existing site plan – that is the way I would read this particular provision here – if the committee feels it would like to have some more clarification on that we can certainly put that in there.

Richard Kane

I think when I was Planning Director many decades ago and I thought I was going to be here forever and people would say well what happens with your interpretation when you leave, and my comment was well I am never going to leave. Obviously I did. I get concerned when it is individual interpretation because people change, interpretations change over a period of time. I think this is something that is fairly easily corrected by just some language changes, and I would hope that your consultant when he looks at it can make those changes. Again a building permit it is nice to say well that is not what the intent was, but in many cases it is very easy to clarify within the language what the intent is so that someone doesn't get caught in the future. That is all we are requesting. I don't think it is an unreasonable request. I think it is just something when it is a drafting issue that needs to be looked at.

Chairman Rootovich

Mr. Houston is it an issue adding language in here that would address Mr. Kane's concerns?

Roger Houston

We will look into seeing how we can do that to maybe solve those concerns. I mean the building permit is generally waived – when something is caught that requires an approval by the Board that someone didn't know about that is usually caught at the time of the building permit so that is why usually you include that provision in there. We can look at some language here or some other way of expressing that, which may solve Mr. Kane's problem.

Chairman Rootovich

Before I acknowledge anybody else I just want to recognize the members of the Conservation Commission this evening. Welcome. It is great to see you. Kathy if you want to come up and comment we already went through the Conservation Regulations. I don't know if you had an opportunity to look at them or if you have any comments you would like to share with the committee before we continue I would like to give you that opportunity.

Kathryn Nelson

I will update you. Since we met with you last we actually took in discussion and discussed in further detail with Jay – I think Jay had a point regarding the wetland buffer that we were looking to change on other wetlands, and based on Jay's comments what we did was that we actually reduced – we changed the other wetlands over 9,000 sq. ft. would be afforded the 40 foot buffer and other wetlands that are 3,000 – 9,000 sq. ft. would have the 20 foot buffer, and then wetlands that are smaller than the 3,000 ft. would not be given a buffer. I think Jay presented some good practical arguments of why that would be mainly – it seemed to make a lot of sense that some of the smaller wetlands might be the backyard wetlands that people may not even realize are wetlands and we are not looking to have additional violations where people are putting sheds or things like that out in their backyard and not realizing that there is an additional 20 foot buffer to those wetlands.

We made those changes and then we are trying to do our homework here with the original intent was pretty much to just try to clarify the language. We met with Corporation Counsel, David Connell, to just take a look and see if he had any overall changes to this. We have continued to get some feedback from the planners. They are mostly housekeeping type issues; wording – just from their perspective anything that could confuse an application or provide something that really isn't clear so really from the copy that you saw before that is really the only thing that has changed.

One thing we would like to get maybe a little bit of feedback from you tonight is the thinking is that we put quite a bit of energy and we have gotten the momentum and have tried to keep the ball rolling on coming up with a document that works. We were wondering whether it may make sense considering that we feel like we will have a copy that was ready to be presented to you in its final form by the end of the month – whether that made sense to present that as a separate change and update to the wetlands ordinance.

Chairman Rootovich

It would be greatly appreciated.

Kathryn Nelson

I think that is how we would move forward. If there are any other questions you may have tonight.

Mike Lowe

We want to make sure she references the pages in here so that we can...

Chairman Rootovich

That is kind of important that you do that for us – the pages with respect to the document we have here.

Kathryn Nelson

Unfortunately what you don't have and I just got notice of this meeting a couple of days ago so unfortunately we didn't have a chance to get anything out to you in a packet so what I have here represents what I just spoke to you about the change that were made from the comments that we received from you guys the last time. We don't have a copy of this and I apologize for that, but I could read this...

Chairman Rootovich

Could you submit a copy by our next meeting so that we can accept that as a formal communication on file and give it to the consultant along with the other documents we have?

Kathryn Nelson

Definitely.

Chairman Rootovich

Is there anything further from any other member of the Conservation Commission?

Kathryn Nelson

Thank you for your time. We appreciate it.

Chairman Rootovich

Thank you for your time.

Larry Lesieur

This was something that concerned me regarding the tables 571-1 on page 280 and 571-2 because using a real world example as I always like to do, I will use our business. We have two warehouses on Elm Street and we have buildings on West Hollis, and we are basically abutting

RC zones. Right now the existing buffer is 10 feet. Our buildings are old and down the road we will want to eventually tear most of them down and redevelop. The problem is with all of the other regulations that we are talking about in downtown in terms of where we have to put the buildings, how much parking, how much shrubbery - how this affects us is basically all of our properties would have to have a 20 foot buffer in the back instead of a 10 foot. Ten extra feet doesn't sound like a lot, but when you start adding 10 more feet to 10 feet so you have to go 20 feet behind where our buildings are now as a new buffer to redevelop the properties you have lost 20 feet - you had to lose 10 anyway, but now you are losing 10 more feet. Then under the downtown district you have to kind of put your building on the sidewalk, but you still have to meet all of these other regulations for trees, shrubs, parking - what it will do is have kind of a chilling affect on us wanting to redevelop the properties.

Down the road I don't know where we are going, but I would expect that we want to redevelop these properties probably in the next ten years into something else. On Elm Street they are not zoned for warehouses now they are just the properties are 80-100 years old and they are great, great grandfathered. I guess the point is we have a lot of relatives that will want a piece of the pie and they think we have something real big here - well when they get done with regulations like this what will we really have left for land to actually develop? What are we going to be able to build on those properties? Obviously the thing that I think the city wants is things like elderly housing and things like that, which maybe we will do.

What I guess I am saying is something like this in the downtown limits our options even more and I think it may also have a little bit of a chilling affect on some other downtown properties that really can't be fixed, but really need to be raised and redeveloped. I guess that was my concern when I saw this. I understand maybe we need the 20 feet because insurance companies don't want your buildings too close to houses so I know there are some other reasons. I guess I am just saying let's just really think about this regarding the downtown because we want to spruce up our downtown and we want to redevelop some buildings like the old machine shop next to the post office, but if we put too many of these buffers and too many regulations are we going to chilly affect of saying well we better just leave what we have and not redevelop because then we have to meet the zoning requirements and now we have to meet all of these additional regulations including the 20 foot buffer instead of 10. I guess that is just kind of my concern is let's I hope we really think it out and say is this really what we want to do downtown. That is all.

Jay Minkarah

I think under applicability you have to exempt the downtown districts because pretty clearly the downtown districts simply can't meet these requirements. Where we want buildings to be abutting the sidewalk we can't have for example a perimeter landscape between the site and public right of way. That is impossible. I think pretty clearly what we are looking for are really what would be more conventional neighborhoods and shopping districts. Under applicability I would suggest exempting the downtown districts as well as the mixed use districts generally because if you will not both the D and the MU districts what we are talking about is separating blocks and commercial industrial districts from residential district and again pretty obviously if

you are in a mixed use district those uses are mixed. I think if we exempt the D and the MU districts we take care of the issue of the impact to downtown development.

Going back to Mr. Kane's point, which I agree with also what we are looking at is really development that invokes subdivision and site plan review and you can change that pretty simply by just saying this article applies to any application for subdivision or site plan approval. That is under 16-578. That makes it clear. Review of building permits is a trigger and that is where you catch whether something needs further review, but it is not the trigger that requires the additional landscaping. I think that is a pretty simple fix.

Just a general I found that other than the page numbers shifting I found it a little bit confusing and I wasn't sure why – as I went through the section we have Division 7 – Landscaping, which started on 279 and we kind of go through landscaping and I noticed on page 282 that all of the references to the tree species and shrub species that we were looking for were struck and I thought that was odd, but then as you continue through the section next you get on page 285 surface parking lots. Then you go down on 286 ... tape flipped ... design requirements. Now on page 290 I found the trees and the shrubs again and I just wondered if it wouldn't be a little bit clearer if we just took all of the sections on landscaping and put them together in one section so that the landscaping requirements that started on page 279 kind of continued through. To me it was a little bit easier if we lumped them all together.

#### Chairman Rootovich

I would take that one further and also get all of the parking lot language together. You have 574 and you have parking dimensions in 583, which continues – they do have a lot in common so I would put both of those in the same area.

#### Mike Lowe

571-2 section (3) 400 sq. ft. – maybe my math is wrong, but it says 400 sq. ft. required buffer and then it says trees shall be 35 to 45 feet apart. If you do the 400 sq. ft. that is 20 feet – the two numbers don't give.

#### Alderman Shaw

The only way I see that to work is if I took 4, 400 sq. ft. lots each 20 x 20 and each one of those requires one tree about the only way you can meet the 35 to 45 is to place every tree on the four corners of that 1,600 sq. ft., which then wouldn't really be practical because you are talking about trees here that are defined to have wide spread 35 ft. so there is a way to solve it, but it isn't a practical way so I think the numbers just look like they don't really necessarily work out. Maybe and especially perhaps in a smaller lot. I think it needs to be examined a little closer.

#### Chairman Rootovich

Is there anything further? Moving on to 572 – Screening of Service or Storage Areas and 573 – Additional Screening Requirements for Industrial and Business Uses – are there any questions? Moving ahead to page 285, 16-574 – Surface Parking Lots – any questions?

Neil Barrett

I have old notes, and I am trying to see whether or not they are still applicable because there have been some changes to the ordinance.

Chairman Rootovich

What section are you talking about?

Neil Barrett

Section 16-574 – Surface Parking Lots – one note that I have heard says omitting 5% of the parking lot shall be landscaped. I don't see that in this document. Was that something that was changed from the document that first came out?

Roger Houston

There have been about 5 or 6 reiterations. I don't remember if that was or was not – it has been over 2 years since this document was produced. I don't remember whether that 5% that was in there before or was taken out or what. I don't see it here.

Generally speaking when we get a site plan we get a landscape plan with it that is usually drawn up by the engineering firm or a landscape consultant and they use – it is a design and they put in species and plantings and that gets reviewed. We review it to these standards. If the standards need to be waived that could be entertained by the Planning Board in this particular code. In existing code there is no waivers.

Neil Barrett

If you can indulge me and allow me to go through a couple of these questions hopefully they can be answered. One comment is one tree is required for every 10 parking spaces. Is this still a requirement in the existing document?

Roger Houston

I believe that is in existing code. It is in our existing ordinances today.

Neil Barrett

As far as the landscaping if you could clarify for me where the medians are going to fall as far as

between isles and parking spaces – I am looking at the page 286 section (b) of the exhibit there – how is that going to impact such things as snowplowing, maintenance, the ability of the trees to flourish?

Roger Houston

I know there was a lot of work spent on this particular provision. I know the consultant hired a nationally recommended firm, HNTB and LBR to look at this issue. This is also a lot of these issues we had a lot of discussions several months ago I believe on the spacing of the isles – should it be every 8 feet, 10 feet or 12 feet – I think the committee went with 10 feet. There was some discussion that it should be more because it would cost more to snowplow the parking lot. I am still not really sure what direction the committee wants to go with that. The committee went with the middle of the road on that based on national standards. I did check with a snow contractor about the cost issue because you are doing a width of an area you snowplow through, depending on the shape of the parking lot, and we are talking about a new parking lot that is being designed as part of a new development or a redevelopment of a site. If you have 90 feet that is far in excess of any city street that we have here to snowplow through. It is not a question about the snowplow maneuverability it is about the construction of islands. Most snow removal contractors either offered to put – they charge you to put stakes in the parking lot and that is the only difference in the cost – whether they do the stakes in the parking lot or whether the owners put the stakes in the parking lot. You can have the same stakes and put them in. That is a cost differential. This is a contractor that does a lot of work around the city so I assume that he wouldn't have misrepresented things to me.

That is an issue – whatever the committee wants to go with on that. There is certainly a waiver provision if the Planning Board wants to feel the particular situation it should be 9 or 10 or 12 or 13 if it is a large parking lot well then they can look at the landscape design and make that determination.

Neil Barrett

I think that addresses the questions. I think I found the section that it does apply to, which is on page 285, which is the interior landscaping, which has the figure that I did reference on top of page 286 and I think that those were the concerns that if you are breaking up a large surface parking lot and a heavy snow just getting some momentum in working in and out of parking spaces where in between the islands may be very difficult as far as creating a series of small piles in the parking lot as opposed to large piles at the edge of the parking lot. Those were a couple of the concerns.

Chairman Rootovich

Is there anything further?

Mike Lowe

What I was going to say was I think it depends on where the parking lot is and what kind of parking lot it is. If it is a parking lot for a large supermarket it is completely different than a parking lot for say a store. Two places where you run into a conflict is in the parking lots for food and those sort of things and the one for medicine. Those are the two places where you run into a problem mainly because they never have enough handicapped spots. If you put these mediums in there you have no place to sort of run the people around.

Chairman Rootovich

There isn't enough parking period.

Mike Lowe

There isn't enough parking. You think some stores have enough parking and some don't. I think it is more because the Planning Board insists on it or I do anyway that they increase at any medical facility or any food facility that they increase the number of parking spaces. That is one of my main concerns. I see that in this too.

Chairman Rootovich

Is there anything further?

Neil Barrett

One quick question – if there is an existing property where there is a renovation or addition or reconstruction say for example the Nashua Mall where several of the buildings were torn down and new buildings put up, would the entire site in parking lots have to meet the new standards or would they be grandfathered?

Chairman Rootovich

It is my understanding they would have to meet the new standards.

Roger Houston

It depends on the extent of the renovation. The existing mall is not developed under today's standards when that was redeveloped because there are certain grandfathered rights that go with existing buildings and how it is done so it is not an easy – your question is not easy to answer. In that particular case they couldn't meet the standards and still maintain the number of parking stalls within the site. The Planning Board worked with them to get maybe some larger caliber trees, the site engineer to improve the looks of the site, and do some creative designs on that to make it work and work well. That is one case in point on the redevelopment that you

have to work with the developer on what is there and existing. It is not just applying the new regulations.

### Richard Kane

Again on the interpretation, I would like to see some language in there that would recognize that these standards can be or should be reasonably modified for minor remodeling of existing facilities. If you had to have every 10<sup>th</sup> space had to become an island you have reduced your parking by 11%. Every 10<sup>th</sup> space disappears. I also know the city has concerns about not building too many parking spaces because we don't want to have more asphalt than we need. When you are talking about existing shopping centers and our malls that the Flatley Company owns and spent a considerable amount of money retrofitting from a mall to a power center if we had had to comply with these requirements we would have had to literally reduce ... tape inaudible – speaker away from microphone... Again I believe trigger is a building permit being issues so again I see you going in for a very minor building permit and that could in fact trigger this. Depending on the interpretation of whomever the administrator is at that point in time as to whether my entire parking lot now ... tape inaudible ... or somewhere along the way there is some modification made. Again I suggest that you look at how this applies to existing facilities versus new facilities. I don't have a problem ... tape inaudible... I do have a problem with that it could in fact be ... tape inaudible ... put in writing right into the ordinance that is the intent so that a future Planning Director or Planning Board who was not involved in this process understands that was the intent rather than reading the language, which says oops to get a building permit you need to automatically comply with all of these new regulations. Thank you.

### Alderman Shaw

Basically since all of these sections do come under the Division 7 that starts on page 279 I think again it comes back to the same point about the applicability and looking at how we define something that this doesn't do that automatic trigger whether it is an extremely small project or something very large. It seems like we are only just seeing yet another example of why we need to look at something that I think provides for that reasonable language up front. I think it is important for us to think about trying to take the subjectivity out of it if we can.

### Chairman Rootovich

Mr. Houston I know I am jumping ahead, but are the tables on page 297 is that all new or is that in existing zoning book?

### Roger Houston

Most of this is new. Some of the figures may be the same, but some of the standards may be the same as existing code, but this is one of the biggest complaints we had on existing code that the parking standards were not – didn't fit the use or the uses weren't explanatory enough. The

consultant did look at this and he applied what he considered parking standards that were acceptable to this part of the country or national standards when those weren't available and used these in this table. This is a complete expansion of that. There are some changes that are highlighted here by the committee.

### Chairman Rootovich

Dry cleaning and laundry would seem to me to be a business with a high turnover of people coming in and out and requires one for every 5 and tattoo parlors 1 every 3.

Is there anything further with 16-574 or 16-575? Moving ahead to 16-576 – Subdivision Areas and 16-577 – Protection During Construction – any questions? Moving ahead to 16-578 – Maintenance Requirements – any questions? The only concern I have with that is again the enforcement issue.

### Alderman LaRose

Sometimes when somebody comes in and they build a new place and they put in some landscaping some guys take care of it and some guys don't. I don't know if there is a way that you can force them to take care of it. Sometimes I think – for instance when I was an Alderman in the '80s I had a guy on Amherst Street who had a business and he didn't put in the landscaping that he was supposed to put in and then after a period of time after he opened his business he wanted to do something so he came to get a permit and he was told you didn't do the landscaping. He called me up and so I went with him to the Planning Department. We kind of negotiated something because he just had a little strip and to me it didn't make much sense to put in grass and all that. It would look a lot better if you put in some bark mulch and some nice rocks that have sort of a design to it and probably a shrub here and there versus across the street where they had a real wide area from the street to the building that they had a real nice lawn – that made sense to put in a lawn there.

I guess sometimes you have places that have to put in a small lawn or something and they just don't take care of it and sometimes it is probably better if you allow them to put in bark mulch and hopefully every year they will put some fresh bark mulch in. I certainly like to see a well landscaped area, but I think we have to use common sense on how much they have to put in depending on what it is.

### Alderman Shaw

I do agree that it seems like it is really not very practical to define these as requirements and especially when there is really no enforcement. What I would think we might want to consider is it appears to me that perhaps only item (c) might be a requirement regarding meeting the American Standards for Nursery Stock and a ton of planting and for one year there after and perhaps define everything else as recommendations or good practice or something like that. As

much as much of this stuff would be desirable and preferable I don't see how we can define it as requirement unless we are going to have the ability to enforce it. It seems to be guidelines.

Roger Houston

I think the purpose of this section would help in those situations where we do get a complaint or it is noticeable that something needs to be maintained or isn't being maintained then we can go to this section as well as the site plan and the city can enforce on it. We have an enforcement department so it may not happen overnight, but we can go after the site plan if it is not being enforced on. Certainly we have done that in the past. It is not just landscaping sometimes it is potholes in the parking lot or sinking parking lots. We have had a number of those that we have enforced on and rectified over the course of every year.

Neil Barrett

I apologize – you asked if there were any comments on 16-576 – I just had a question on the practical implications of that requirement that would every tree need to be identified on a large parcel as to whether or not it would be taken down or to be saved or...

Chairman Rootovich

Anything over 4".

Neil Barrett

If I have a 6 acre lot ...

Chairman Rootovich

I am only saying that because Mr. Kane is out there with that big property – 180 acres.

Neil Barrett

I guess is that micromanaging down to the level of detail that if you have a – I can understand that if there is a very old, large tree that is clearly identifiable, but if you have normal lot do you have to identify every single tree on that lot?

Alderman McCarthy

What section is that?

Chairman Rootovich

Page 289, Section 16-579 – Landscape Design.

Neil Barrett

Page 287.

Alderman McCarthy

I guess I am just citing from recent experience with this section – this is a darn good idea on behalf of the landowner to do. We have a situation with a piece of property that has come into city ownership after having had some tree cutting done on it where frankly if you let the guy go and there is no responsibility the landowner will get taken to the cleaners over the trees. The guy who is doing the cutting will cut down everything he can possibly pull out of it. Us requiring that get done is not actually a bad idea. If you don't want trees cut you should make sure they understand what was marked and what wasn't. Frankly that is not burdensome to the landowner it is something the landowner is going to want to do anyway and he will understand that afterwards if he didn't understand it beforehand.

Chairman Rootovich

Just taking the Flatley land, 180 acres, how do you identify or mark that many trees?

Alderman McCarthy

It is real easy. The forestry comes in and identifies the tree, takes a can of spray paint, puts a mark up on the top of the tree and a mark down on the base and after they are done you go through and make sure that all of the stumps are ones that have the paint mark on them so that the ones that you didn't want cut didn't get cut. This is done all the time for forest management. It is absolutely essential to do if you want the result to be what anybody had in mind beforehand.

Neil Barrett

I would ask that if Mr. Kane had any thoughts that he come forward. I have limited experience in this area. These are some questions that were raised by the Chamber's committee. Having more experience both on the public and private sector sides I think I will defer to Mr. Kane.

Richard Kane

I have been fortunate to work for two developers who I think are pretty sensitive to trying to maintain trees on sites. It really is a problem. I don't disagree with Brian's concern that you have to mark the trees. We literally would go out and we would rivet off groups of trees that we would want to save because when the equipment guys are in there it is very easy to cut a few extra down. I will also tell you that when you are working on a site particularly when you look at the land that is undeveloped that is left in the city it tends to be the more difficult land. When you

are working on individual house lots and you are not sure ahead of time what house is going to go on there – how big, what the dimensions are going to be, etc., you have to end up cutting trees simply in order to make the grades work from lot to lot that you maybe didn't anticipate when you first started. The thing that bothers me most about the section, 16-576, is (6) which says "A site inspection by the Administrative Officer of trees marked for saving, cutting or clearcutting is required prior to cutting of the lot." There is no way your staff will be out there every time – I have a 50 lot subdivision are you going to come out every time before I can cut a tree? I just think that is unworkable.

I don't disagree that there are some problems with saving the tree. Brian I am not going to hire a forester to go in there and mark trees ahead of time and put marks on the top and the bottom. I am going to identify in my site plan process that is submitted to the staff a grading plan, they will show areas where I will try and save trees, I won't tell you that I may not lose a tree because either the roots get exposed when you are cutting, and I think too the site plan process can do a lot of that. I get concerned when we start micromanaging that I have to have someone from the city come out before I cut a tree. Remember this provision applies to building permits of any type. If I have and it requires I believe in some cases landscape plans and tree management plans – I don't want to see someone doing a shed, which requires a building permit, having to go through this process. I don't think that is the intent, but as it is written it is in fact a requirement. Again this is one of those issues where I think you have to be careful as to what you are doing. I don't think any one of us has a problem with the regulations as they apply to new and large-scale developments. I think you have to be careful that you don't overburden the little guy who is the mom and pop operation or make the ordinance so difficult to enforce that it simply becomes ignored by everybody.

### Alderman McCarthy

I wasn't necessarily implying that you would have a forester do it as a developer, but somebody is going to mark them and someone else is going to cut them. You sort of need to do that or many more of them will get cut than you had in mind particularly if you are doing a subdivision and there are particular trees that you want to save because they are nice to the landscaping those will be the same ones that appeal to the guy who is cutting the wood because they will be the big hard woods that he can make a premium on when he cuts them down. I am less concerned about how we reach agreement on which trees stay and which trees go than I am on making sure that what is there after the cutting is done represents the agreement between the owner and the city when the site plan was filed or the building permit was pulled or whatever and make sure that the process is done in such a way that the result is what we think it will be. It is very hard to fix it after it is done. It takes 100 years to fix that problem once it has been done wrong.

### Richard Kane

I think we agree in philosophy and I do agree it takes work and effort to do it I just think the mechanics of how this thing is set up so that it works in a reasonable fashion needs to be

addressed.

### Roger Houston

We have discussed this in the past, number 6 that may work well for the large projects where you have one logger that is coming in to cut the trees or the developer. We have discussed perhaps maybe having and I think it was a local engineering firm that recommended this alternative is to have the professional site engineer to certify or flag the location and have them mark clearly the areas that are not to be disturbed on the site. Unfortunately especially when you are dealing with a larger site where is it on the site plan and where is this clump and having that certified engineer locate those trees and identify them and fence them off or identify them in some way to prevent that – there are bulldozers that scrape zones, there are loggers that come in that they are there when the developer isn't there and the landowner isn't there and they take whatever they want. The important thing is to make sure that those areas are protected and that they are mapped on the site in the field. That seems to be where the biggest problem is and that flagging disappearing through the process.

I am a little leery about number 6 simply because I would think that the area that would have to be marked by – we have a pre-construction conference where this is supposed to occur now and all of the parties that are a part of the development are supposed to be a part of that process. We make sure that they are all working from the same set of plans. I think if the site engineer is involved in this process and the site engineer is required to certify these areas and mark them in the field then we should have less of a problem.

### Chairman Rootovich

Is there anything further?

### Jay Minkarah

Just as a general comment I am not so sure it is such a problem. If I am understanding this correctly these are not areas that are designated as common open space and these are not areas that are designated as conservation areas because those as we know have to be specifically bounded. What we are really talking about are areas outside of those two areas where during the initial construction process will want to minimize cutting. I am not even sure you have to go so far as to have an engineer certify it to that level of specificity when you are talking about trees where I would assume is after the development process the homeowner would be in fact free to remove. I am not sure it is something that has to be that ironclad and surveyed as is the case for the conservation land.

If I am wrong then that is something that we need to clarify because if we have wooded areas that it is our intention to always remain wooded that the future homeowner cannot cut the trees then those should be in the conservation area and they should be marked as conservation areas.

Just to give some more specific comments I wanted to go back to the earlier question of do you mark every tree on the site – under (3) you might just want to say trees or tree line boundaries to be protected because obviously if you have a large wooded area that you are not going to go into you are just going to mark the boundary.

### Alderman McCarthy

I don't disagree with that, but the question is one of in many cases preserving for the homeowner the right to decide whether to cut the tree down or not. What we have seen in some larger subdivisions, actually the one that Alderman Shaw lives in, is that because of the terrain on the site and the way it was developed the site was almost entirely clearcut prior to development in order to get the grades in. Could it have been developed without clearcutting the entire site I don't know I suspect large areas of it could have been. It was certainly more convenient to simply clearcut and grade and then reloom. The net result is something completely different than what might have come out of a somewhat more sensitive approach to maintaining trees around the graded areas.

### Jay Minkarah

I just want to go back to the earlier point that I think affects this, but it also affects a couple of other sections on maintenance – going back to the question of the landscaped areas, which is something that I know in years past I struggled with enforcing is extremely difficult, but something that I didn't raise earlier, but could have – I assumed that we thought about this when we looked at the plant species, but it is certainly important in a landscape regulation to emphasize 1) minimizing your clearings and cutting of natural areas obviously because that is fewer landscaped areas that you have to maintain, but when you are replanting areas we should definitely be making sure that we are emphasizing native species where possible because they are far more likely to adapt to the existing environment and drought resistant and if necessary salt tolerant plant species. We should always be looking for those. We should always be looking for the most low maintenance landscaping option we can. Where that is not feasible certainly we should be looking at irrigation systems. There is no question of the things like grass strips in otherwise heavily paved areas – those aren't going to survive. That is going to be a landscaping problem. That is definitely something that we certainly want to emphasize if not in words here then at least in practice.

### Alderman Vitale

I agree with what Mr. Minkarah said. If you go back and look at some developments that were done like late '50s early '60s where all of the trees were taken out and you didn't leave any trees there that were different age groups and that type of thing you will find that those might be the streets where disease is taking place of trees or all of the trees mature at the same time and therefore die at the same time. When it is possible it is nice to leave some so you have a variety of ages on your trees and it is another reason to pay attention to what trees are on the property.

Chairman Rootovich

Is there anything further?

Neil Barrett

Are we still considering section 16-578? Okay. I think this may have been mentioned, but I will just mention it again. What is the impact on the individual property owner – thinking more residential – enforcement if someone lets their lawn go – they buy in a subdivision, the developer puts in a nice well intended landscaping plan in and the person is not as talented or diligent – what would be the process of addressing that situation?

Chairman Rootovich

I will let Roger respond, but it depends on the severity of the case. We do have code enforcement. To me the other issue that would take precedence and priority is the house that is currently on is it Lund Road – next to Fairgrounds we are talking about?

Roger Houston

That is a different issue.

Chairman Rootovich

That is where code enforcement should be spending their time not whether somebody's lawn is burnt or not.

Neil Barrett

As written that is – section (a) “Maintenance of landscaping. The owners and their agents” – someone is a subsequent owner when they buy the lot. That was just a practical question. I don't think the city has the staff to be ...

Chairman Rootovich

I would say that is the answer. It is not enforceable at this time unless somebody corrects me.

Roger Houston

If we received a complaint certainly we would act on it. Site plans are enforceable. You are required to maintain your site as approved including maintenance. That is in existing code. We have in some situations have gone after some property owners that haven't maintained their

properties when we have received complaints whether it be pot holes in the parking lot or they be dead landscaping or other issues – it could be building maintenance issues or something like that or housing code violations.

Chairman Rootovich

I think he is specifically talking about landscaping issues correct?

Neil Barrett

Correct.

Chairman Rootovich

Again I don't know how you would – try to enforce it and the gentleman says I got laid off a month ago and I can't afford fertilizer and water what do you do? The enforcement issue is just –

Alderman McCarthy

Are we referring to 15-578? That only applies to commercial areas.

Richard Kane

The individual homeowners don't have a landscape plan that you can enforce. Just to show I can work on both sides of this fence – I do think maintenance of the landscaping is critical and a good developer or a good landowner under a site plan you will never have to worry about, but the guy that is not a good developer or landowner you only will have it if you have the enforcement power and agreed it is one of those situations where you will only do it on a complaint, but you ought to have the mechanism. You required it as a part of the site plan approval process and it ought to be enforceable. Whether you enforce it or not is another issue, but if you don't have that enforcement power then really what you are saying is go do whatever you want, and I don't think that – I think we have come a long way in the city in doing landscaping. I actually have the first landscaping standards in the city many years ago when I was still here and I think – I drive around this community and I am always very proud of the commercial and retail developments because I think our landscaping requirements compared to what I see in most communities far exceed what can be found elsewhere.

Bette Lasky

I couldn't agree more with Mr. Kane. ... tape inaudible – speaker away from microphone ... If they are enforced on a regular basis they will do it, but when there is somebody that is flagrantly violating this I believe it would be enforced and you need something that can do that.

Neil Barrett

Just a point of clarification – I think Mr. Kane mentioned that this is only applicable to commercial. The first sentence says apply to commercial subdivisions – I am assuming that is protects the residential subdivision and subsequent owners after the developer. That is where the basis of my questioning was. That is an enforcement issue. This is more a point of clarification. I am not trying to make a big issue of this.

Alderman McCarthy

It may need to be clarified, but I suspect that why subdivision is in there is that it implies to the subdivision during the process not to the resulting lots after they have been transferred if they are residential, but that the developer is responsible for delivering the landscaping to the eventual homeowner in reasonable condition.

Jay Minkarah

You also may have a condominium development that would be residential, but would have a landscaping plan requirement. In that case you would have common maintenances. I think individual single-family home lots is where you wouldn't see a landscaping plan.

Chairman Rootovich

Is there anything further? Moving on to 16-579 – Landscaping Design – are there any questions?

Mike Lowe

Whatever happened to apple trees, locust trees and willow trees? Might as well throw it in what ever happened to roses? There are no roses in there, no apples trees, no locust trees or willow trees. Locust and Willow are native to our area. They are junk trees, but they are good trees too – they do hold the soil quite well. For some reason or another European large is singled out as the biggest or the best – as the largest type.

Alderman McCarthy

I actually had a concern from reading this section, which is I don't – it is not clear to me that what is in 579-1 is the only set of trees that are allowed. It is examples that lead you into believe there is some flexibility, but reading the rest of it I don't – if it is in here I don't see it – there is no ban in invasive species in terms of trees that are not permitted.

Roger Houston

I know under 16-579 (a) (1) it says “Examples of permitted trees and shrubs are set forth in the

Tables 579-1 and 579-2, below. The Administrative Officer may permit substitutions based on the recommendation of the qualified landscape professional preparing the plan.” These are just examples. Why European Large is in larger type there I can only suspect that maybe that was meant to come out and instead of a strikeout – because I don’t think a European Large is native. I have seen them around town, but I am not sure. I would have to ask Mr. Sawyer why that is like that.

Bette Lasky

To go further on 16-579 (1), “In addition, if a listed species is being invaded, or infested by fungi, ... a substitution may be recommended.” I think it should go beyond may and make it shall be recommended. That is a disaster waiting to happen.

Alderman Vitale

– The original table that was current invasive species should that be mentioned in there that they are not – would we always catch that? Do we know what the current invasive species are? If somebody gives a landscaping design we go through that?

Bette Lasky

Yeah.

Chairman Rootovich

I think it is handled at the administrative level with the design.

Bette Lasky

The other thing is I tend to think we all know who the consultant was and where he was from and this is taken from – I don’t think it was necessarily made to be indigenous to New England. We may want to change that or not, but it is as Alderman McCarthy said, examples. There may be in this book, things that we want to make so it is a little more applicable to New England. In general I don’t think it is meant to exclude anything. I think it is just a list that was used. It may not be the best one for New England.

Neil Barrett

Under 16-579 Section (a) – Generally (5) “All required landscaping shall be provided with either and underground sprinkler system; or an outside hose attachment.”, I think that Alderman Rootovich made the comment of confusion of the section prior to this starting on page 279 and blending into this section here where it says landscaping and landscape design – the question or concern is regarding in parking lots landscaped islands where there are trees required – would

that be underground sprinkling – what is the current requirement and what is the additional cost to if you are going to be creating significantly more landscaped islands in a parking lot? What would be the cost of putting in that or maintaining those landscaped islands as opposed to trees that are drought resistant or could handle just natural rain?

Does this requirement apply to landscaped islands in parking lots?

Roger Houston

Normally and this refers to a landscape professional – most of the site plans that are done are done by professional landscapers. They recommend species on islands. If a species obviously if you put a willow in the middle of a parking lot it will not survive unless you irrigate it and give it lots of water because it is a water loving tree. A certified landscape architect will know that and not put the willow tree in the middle of a parking lot or if he does he will put irrigation with it. You mix your irrigations – that is a design decision that is made by a professional at the time. The city staff just – the planners check the plans that are submitted to us – they are stamped by a registered landscape architect and professional engineers so the issue of some are landscaped and irrigated and others aren't depending on the situation.

Neil Barrett

I guess it comes back to a comment Mr. Kane made a couple of times is that is the way you are currently doing it, but as far as having all of the required landscaping with the new required landscaped islands would have to provide for either one of them. I think that currently you are using the discretion of the Planning Board and the planning staff to allow certain landscaped islands not to have that because the goal of the landscaped islands can be achieved otherwise, but there is no discretion as written here. That would be my reading of it as written.

Roger Houston

Anything in this section can be waived by the Planning Board under the advise of either staff or if a professional is preparing the design – most developers today irrigate their landscaped islands because it is cheaper for them in the long run to have it irrigated and they run the lines before they pave the parking lot. In some situations, it may be different – it is a design situation. I am not sure you want to try to legislate every situation.

In most cases, it will be irrigated. In a small case where it is a very small user and they have a hose and go out and water their landscaping that works too.

Alderman Shaw

I would like to follow up on Mrs. Lasky's comment and just if we could request of the consultant to just review these lists for applicability to New England. I don't know if that was already going to happen, but I think it is worthwhile to try to have the list as appropriate as we can up front

rather than getting into well here are all of these others that normally could have or should have been included.

Roger Houston

I made a note here to have Mr. Sawyer in my office look at these. It is my understanding that he did look at these and these are species – they were crossed out earlier that we will refocus on those and get back to the committee.

Chairman Rootovich

Is there anything further? It is my intention to bring Division 8 up at our next meeting. I do have a couple of things under discussion that I would like to review with the committee to give them an update on what is going on with something.

NEW BUSINESS – RESOLUTIONS - None

NEW BUSINESS – ORDINANCES - None

DISCUSSION

-  
Chairman Rootovich

Our current consultant that we were going to use to put a matrix together and give us some advise – I discussed this with President McCarthy as well and Mr. Houston is aware of it, has currently moved. The company has moved to California. The specific consultant who put this together is not going with the company. Because of extenuating circumstances, one being insurance and things like that, we felt it better that we should look outside. One of the individuals that we are thinking about is the Nashua Regional Planning Commission to take this on as a project and present us with the same feedback, suggested language, matrix as opposed to our current consulting company, which would require us going back to the Finance Committee with another Resolution for the current funds that we have expended in this company to go to the next company.

Bette Lasky

Do you have any idea how much ... tape inaudible ...

Roger Houston

I don't think – it really depends on the Finance Committee and Aldermen how quickly it can approve any contract. I think we can get one from the NRPC fairly quickly. We have worked with them before so that shouldn't be an issue. I spoke with Mr. Roger Hunt just before the holidays and he was going to work with me. I will be calling him this week and try to get a

contract and get it before the Finance Committee and move on it as quickly as we can. I hesitate to say how quick will be quick depending on the decisions that have to be made by others.

Bette Lasky

In the interest of time I think that the NRPC is probably most familiar with what is going on. If the one that worked on it before is not available then for another company to get up to speed or even another individual from that company to get up to speed it seems to me would be I don't know about expensive I can't speak to that, but certainly timewise it would probably be more appropriate to have someone local ... tape inaudible...

Chairman Rootovich

The only thing is we could have him here and we need him during our meetings as well to help us if there are any questions. That is a positive too rather than somebody out in the Midwest.

I will keep the committee abreast of that particular situation. We did get a communication from them that wasn't too enthusiastic. I guess that was from the consultant and a sign of things to come. We just found that out. I think it is better that we hire somebody locally and go on from there. I think the product that we will see will be just as good. Again we do have the opportunity to have that individual(s) come before the committee as well. I think that is a plus overall. I would ask that the committee would support that endeavor as we go forward to the Finance Committee and beyond.

Alderman McCarthy

The actual hourly rate that we would pay to NRPC is substantially lower than we would have paid the consultant, which allows us to purchase a lot more time to work on the issues. I think the majority of the issues that we have identified to date are all fairly simple things that will take – there will be a lot of mechanical work, but we're not – I don't think we are paying for the same kind of heavy lifting on the ordinance itself that we were when we got the draft done. I am actually fairly comfortable with – even before this development I was fairly comfortable with doing that from a standpoint of what we will get for what it will cost us.

Bette Lasky

... tape inaudible ...

Chairman Rootovich

We will let you know. I am on the Finance Committee as well as Alderman Vitale so we will be there – Alderman Shaw as well.

Mike Lowe

Do we have this all on disk where it is right now?

... tape ended ...

Roger Houston

It is on the city's web site at gonashua.com. Yes it is in electronic form that is how we produced this. We were very careful that we did get all of that from the consultant before the first contract when we had all of this put together.

One other thing you might want to mention I have had some concerns about when are these PEDC meetings and they are also listed on the city's web site, gonashua.com under Board of Aldermen, under agendas – the specific agendas can be accessed on the Friday before the meeting and the general meetings are under that web site as well to determine when they are. Generally they are on under the first and third Tuesday's of every month, but not always.

Chairman Rootovich

There are some exceptions this year due to conflicts with budget and other situations.

Alderman LaRose

Have we paid any money to the consultant for the second portion of this?

Roger Houston

I have a bill – we sent him to review quite a few of the minutes and asked him to spend some time – I think the bill is around \$1,200 to date from him. That is the only expense we have had into that at the moment.

Alderman LaRose

He hasn't done very many updates from all of the meetings we have had?

Chairman Rootovich

He has basically read the minutes of the first probably 6 meetings and any other associated documents and notes that Mr. Houston has sent him.

Roger Houston

It is 6 hours at \$200 an hour.

Alderman LaRose

So they are bailing out on the contract?

Roger Houston

It is not fair to say that they are necessarily bailing out. One of the two of the groups would maybe like to continue the contract, but it would mean us renegotiating the contract. We have not received written confirmation of that at this point in time. I expect that soon in the mail. In any event I think we wanted to go and work with – the little cleanup items in this code don't require an attorney to spend \$200 an hour to do or as Alderman McCarthy said a lot of these items are cleanup items to be done.

Alderman LaRose

I guess my next question is why did we go that route in the first place? Is it because he was the original...

Chairman Rootovich

He was the individual who put this document together, and at that time we felt that was the individual we should go to.

Alderman McCarthy

We had been through an extensive search process to find a consultant to do this. We have actually done that twice. We did it once about 6-8 years ago in an aborted start and we did it again this time. We actually in independent interview processes selected the same consultant in both cases as being the top of the heap, and so I think there was an intent when we started to do the review of making sure that we kept the same consultant because one of the concerns we have always had with the zoning ordinances, and Mr. Kane I think will bare this out, is that as you do piecemeal revisions to them they get to a point where what is over here doesn't match what is over here simply because nobody keeps all the details in their head. The original intent was we ought to keep the guy who understands where everything is doing it because that is when you are the least likely to change something over here and forget there is a related detail over here. As we have gone along I have to say I think the amount of fairly small change that we are going to make has been a lot more than I would have expected it to be. There are a lot of details that have come up that we will want changed and I don't think they are separate from that problem.

There is a fairly small set of things that are more global issues and those I think we want to see where those work out and figure out what to do with those, but I think that changing – when we

first approached Mr. White about extending the contract to do this work there wasn't any issue with his availability. There now is an issue with his availability and we think the volume of work that has to be done just for the mechanical changes is significantly larger than we originally thought it was. I think changing it now with what we know based on these meetings to date makes some amount of sense in terms of the value we will get in the end product.

Chairman Rootovich

Is there any further discussion?

ADJOURNMENT

MOTION BY ALDERMAN LAROSE TO ADJOURN  
MOTION CARRIED

The meeting was declared adjourned at 9:12 p.m.

Alderman Kathryn D. Vitale  
Committee Clerk