

**Leicester Planning Board Meeting Minutes
November 6, 2007**

MEMBERS PRESENT: Debra Friedman, Sharon Nist, William Wright, John McNaboe and Jason Grimshaw

ASSOCIATE MEMBERS: Scott Broskey

MEMBERS ABSENT:

IN ATTENDANCE: Michelle Buck, Town Planner and Barbara Knox, Board Secretary

MEETING DATE: November 6, 2007

MEETING TIME: 6:00 pm, Master Plan Committee / 7:00pm, Planning Board

AGENDA:

- 6:00 PM Master Plan Committee

- 7:00 PM Public Application:
Request for Endorsement of Definitive Plan (Pondview)
- 7:15 PM Public Application
Extension Request (Kindred Hospital)
- 7:30PM Public Hearing:
Grandview Shoppes of Leicester, Inc. (Special Permit/Site Plan Review)
- 8:00PM Continued Public Hearing:
Hammond Street Extension
- 8:45PM Public Application:
ANR Plan, Pine Ave., (Canning)
- 9:00PM Approval of Minutes:
10/2/07
10/16/07
- 9:15PM Town Planner Report

John McNaboe opened the meeting at 6:00 pm

Master Plan Committee:

Members present: Sharon Nist, Jason Grimshaw, Scott Broskey, Jim Gonyea, David Connolly, Tom Wood, Laurence Todd, Glenda Williamson and Debra Friedman arriving at 6:25PM

Members not present: Darlene O'Connor, Diana Provencher

In attendance: Russ Harris, William Wright, John McNaboe

Appointments/Organization of Committee

Ms. Buck said the Planning Board will need to appoint the members that were not in attendance at the last Master Plan meeting. New Members to appoint: Tom Lauder, At Large, High School Principal and Kurt Parliment, At Large, Moose Hill Water Commission.

MOTION: Ms Nist moved to appoint Tom Lauder and Kurt Parliment to the Master Plan Committee

SECONDED: Mr. Broskey – Discussion: None - Vote: UNANIMOUS

Nomination of Chairman:

MOTION: Ms. Nist moved to nominate Debra Freidman as Chairman to the Master Plan Committee

SECONDED: Mr. Grimshaw – Discussion: None - Vote: UNANIMOUS

Update on Status of Economic Development Element:

Ms. Buck said the Town received a Technical Assistance Grant from Central Mass Regional Planning Commission (CMRPC), for them to assist the Master Plan Committee in preparation of the Economic Development Chapter of the Master Plan. The CMRPC representative is Rosemary Scrivens.

Ms. Buck said she and Ms. Scrivens have been working on this element together and one of the things they are preparing for is the upcoming Economic Development Public Meeting that is scheduled for November 28th at 7PM to be held in Meeting Room 3.

Ms. Buck submitted copies of the public meeting announcements to the committee members to place around town, to get the word out to the public. Ms. Buck said she will be preparing a press release, e-mailing this announcement to the members of the Leicester Business Association and putting it on the web and LCAC. She will also be meeting with Ms. Scrivens to put together a plan of action for that meeting.

Master Plan Survey Options:

Ms. Buck said at the last meeting some options on putting together a survey were discussed and since that time, she has done some research on survey options and what it would cost.

The initial thought was to try and have a survey mailed with the Town Census, but that required the approval of the Board of Registrars. The Board of Registrars voted against allowing a survey to be included. Members of the Board of Registrars felt, based on past experiences, people would only respond to one or the other and not both, which leads to confusion.

Another option was inserting a survey in the Spencer New Leader. This option is the most affordable. To insert an 8 ½ x 11 double sided sheet would only cost \$160.00 and the newspaper goes to every household in Leicester. They would also do stapled pages and the cost would still be under \$300.00.

One member had indicated doing a direct mailing to every household; because it was felt people would be more likely to respond to the survey. The exact cost for a direct mailing has not been figured out, but she has spoken with the Town Clerk, because that office does direct mailing to households. It costs that office approximately \$1,300, but they hire an outside firm to do the printing, stuffing and postage.

Mr. McNaboe said generally when a direct mailing is done; the return is around 2 to 3%. Ms. Nist asked about a bulk mailing rate. Mr. McNaboe said the bulk rate would apply to a mailing of over 600.

Ms. Buck said she would like to have the survey available on line, because it is nice to have that option. From recent experience with the Open Space Plan, the tabulation is easier. There are tabulation software programs available on line; the most recommended is called Survey Monkey.

Ms. Buck recommended going with the Spencer New Leader and combine that with an on line survey, because it would be more cost effective.

Mr. Todd asked why a survey is needed. Ms. Buck said to try and get an idea of what the residents want for the future of Leicester.

Mr. Wood asked if there is a limitation to the funding or is there outside funding for this. Ms. Buck said there is no outside funding; there are some funds left over from a donation made to the Town from Wal-Mart, which paid for the Open Space Plan & the Route 9 Corridor Study.

The Planning Board has some funds available in their printing budget and consultant budget, but the Master Plan Committee may want to consider going to Town Meeting in the spring and requesting for additional funding. There is enough money right now to deal with the survey, at whatever option is chosen, but would like to try and keep the cost down.

Ms. Williamson asked if the survey could be put on both sides of 8 ½ x 11 paper. Ms. Buck said she didn't think so; it would probably have to be more than one page.

Mr. McNaboe suggested leaving surveys, with a reply box, at the area restaurants. Mr. Grimshaw said if the committee is looking for legitimate returns, it is an expensive option, but would be more efficient, is a direct mailing. Ms. Nist suggested putting the notice on bright colored paper and inserts it in the newspaper. Mr. Parliment said the Art Counsel did a survey on the Common during concerts and it was tough to get people to fill out the surveys. Mr. Connelly suggested putting surveys at Wal-Mart. Ms. Friedman said most people won't take the time to fill it out. Mr. Connelly said the people who are interested will fill it out. Mr. Wright said even though inserting it in the newspaper is more cost effective, how many people will actually take the time to look. Mr. Broskey suggested going door to door.

Mr. McNaboe said there are approximately 6,000 registered voters in Town and a really high voting turn out is 3,000. There are only 150 people who come to the Town Meeting, unless something is really controversial, you might get 175 people. Mr. McNaboe said if a general mailing is done, it will use a lot of the money. He suggested trying to keep the cost down, because it will be the same people who will fill them out.

Ms. Friedman asked how many would need to be mailed. Ms. Buck said the mailing list from the Town Clerk's Office is a little over 4,000 households. That is not just registered voters, it is all the households. The Town Clerk's Office had not gotten back to her with a final cost on a mailing, because they hire out for the printing and stuffing. Ms. Friedman asked if there was a price for printing. Ms. Buck said around \$1,000.

Ms. Nist asked if the stuffing could be done by Community Service through the High School. Mr. Lauder said yes it could be arranged.

Mr. Lauder said they have always found paper surveys work best and if it is inserted in the newspaper, the survey can be made so that when it's folded, there is a return address side.

Ms. Friedman said if the survey is inserted in the newspaper, to include it the same week that a story is written in the New Leader on Economic Development.

Mr. Grimshaw asked how soon a decision needs to be made. Ms. Buck said a decision does not need to be made now. She will work on a sample survey; get it to the members for their review before the next meeting. She would like to try and get the public survey out by late January.

Mr. Todd asked when the next meeting will be scheduled. Ms. Buck said possibly December 4th. Mr. Todd said wanting to do something with this survey by January, will only give the committee one meeting to make a decision. Ms. Buck said there will be two, counting the January meeting.

Next Steps

Ms. Buck said the next meeting will be scheduled for December 4th at 6PM. Before that meeting, she will mail a sample survey out to the members for review and put together a work task list focusing on the Economic Development Chapter of the Master Plan.

MOTION: Ms. Nist moved to adjourn

SECONDED: Mr. Grimshaw – Discussion: None – Vote: UNANIMOUS

Planning Board Meeting

Ms. Friedman called the meeting to order at 7:00pm

Public Application:

Request for Endorsement of Definitive Plan (Pondview)

Ms. Buck said this is a project that was approved 2-years ago and there was a delay in having the plans signed. The Board signed the plans in February 2007; the plans should have been recorded immediately. The applicant attempted to record them last month and the Registry wouldn't accept the plans. New plans were submitted and she has not been able to determine if what has been submitted is consistent with what the Board voted on in 2005.

The Board has three options: 1) they can postpone action and try to figure out the plans and sign them later; 2) they can rescind approval, under the local subdivision regulations, for failure to record within 6-months of endorsement and 3) the Board can hold another public hearing to modify approval.

Ms. Buck's recommendation to the Board is to hold another public hearing to modify their original approval. That would allow the Board to modify the conditions of approval related to deadlines for constructions, so it would be tied to a new date. It would also eliminate confusion over what set of plans to go by. If the plans are not exactly what the Board voted on two years, then a new vote could be taken to clean up that issue. Ms. Buck said she discussed that option with Town Counsel and Counsel felt it would be a good option under the current circumstances.

Mr. McNaboe asked if the applicant had both sets of plans that the Board can review to see if they are the same.

Mr. Water Jabs, representing the applicant, said this is a project that has been held up over 2-years by the Leicester Conservation Commission. When the original application was submitted to Conservation, it was for 6-lots. The Conservation Commission refused to take action and refused to close the meeting. Eventually, they had to demand that they close the meeting. Conservation closed the meeting and denied the permit. That decision was appealed to DEP and the appeal was granted in April of 2007 and appellant appeal period expired in May 2007.

Massachusetts has a set of laws that state, when a subdivision receives an approval and there was a practical, legal impediment, which includes an appeal from another Board, it tolls all time periods. Mr. Jabs submitted copies of a brief memo that states his legal opinion. He said the problem has not been that they have been remiss, but that they have not had permission; they have a legal impediment pursuant to the law. The memo states a land court case specifically on this issue back in 2002. The applicant's legal position is not that they haven't complied with the law, but that they have a legal impediment.

Ms. Friedman said if on December 22nd the applicant received a letter stating that approval would be rescinded if plans were not submitted for endorsement, was there a response made to

the Planning Board regarding that letter. Ms. Buck said she would have to look through the file to see if they responded in writing, but she did hear from the applicant verbally and did not recall any discussion related to Conservation Commission's delay.

Ms. Friedman said at that time, was that the outstanding issue. Mr. Jabs said they are not required to apprise the Board of what is going on with other Boards. The law does not require that they discuss what is going on with the Conservation Commission.

Behind the scenes, what happened was, the engineer who was originally involved in this, produced a Xerox copy on the Mylar. When the plans were presented earlier this year by Al-Safa the Registrar refused to record the document. Mr. Jabs said he has sent letters to the engineer asking him to revise these plans and make them proper. The problems with these plans are, when you Xerox them, the print is raised. When you raise the print and they are stored in the Registry, it blurs and stains the plans and then they can't be accessed.

Mr. Vigliotti, the Registrar of Deeds, refused to take the plans. They have tried to work around that and have had several meetings with Mr. Vigliotti. Finally, Mr. Vigliotti phoned the engineer of this project and told him that if he did not revise these plans, according to the list of revisions, in order to make them recordable, he would not record any future plans with the Registrar until such time.

Mr. Jabs said this problem has been directly related to the engineer who is not cooperating. The revised plans before the Board are exactly the same plans that the applicant asked to have approved originally, with only those changes the Registrar of Deeds has demanded they put on the plan. The applicant has had the plans revised to make sure that they will comply with Registry standards and that is what is before the Board now.

The applicant has a sale pending on this property and they are trying to get it closed and approved. They are not asking for the Board to approve anything different, just to approve plans that now comply with the Registry.

Mr. McNaboe asked if the Planning Office received correspondence from Mr. Vigliotti's office. Ms. Buck said she did speak with him on the phone before the revised plans were received.

Mr. Jabs said Mr. Vigliotti understood their circumstance and said he would record these plans if the following was done: 1) was to post a \$500 bond and 2) bring a set of plans that are not raised print with the necessary changes.

Mr. Vigliotti called the Planning Office to talk about the issue, but then other errors were found upon review. Ms. Buck said Mr. Vigliotti told her that the plans the Board saw in February could not be recorded and new plans were needed. She told Mr. Vigliotti that the Board would have to decide what to do after new plans were received.

Mr. Ali said there were a few problems with the plan; 1) there was no property owners name, 2) the margin was not adequate and 3) the print was raised.

Mr. McNaboe asked if those were the plans the Board signed. Ms. Buck said yes, but not all of the pages, which is part of the problem.

One question she has is, how or why did the Conservation process stop the applicant from bringing the plans to the Board for endorsement; that is normally done right away.

Mr. Jabs said the engineer would not cooperate and they were unable to get their plans.

Mr. McNaboe said the main problem is with this engineer and not by this Board. Mr. Jabs said the problem is, the Registry would only take the plans from that engineer, because that is what the approval was.

In the normal process, subdivisions don't usually get recorded, while there is a pending Conservation Commission issue. If the Conservation Commission denies a lot, then it has to go back to the Planning Board to get it revised.

Mr. McNaboe asked if there was legal action being taken against the engineer. Mr. Jabs said he is unable to answer due to Attorney/Client rights.

Ms. Buck said even after the Board signed the Mylar's in February, there have been no attempts to record them until now. Mr. Jabs said the plans wouldn't get recorded until after the decision from DEP. They are stuck, because this had to go through DEP and the appeal. They didn't know what would come out of that appeal and what lots will be buildable. For all intent and purposes, a paper subdivision is useless because it needs both Boards' permission.

That is why the current law says this is tolled and then the tolling period the Board gave them was 2-years to do everything. Six months and two years ago, the tolling period would have begun May 15th, which is why they are trying to do it now and arrange it, because that is where the tolling period starts to break and that is exactly what they are trying to do, is comply with the tolling period. Mr. Jabs said they have been stuck, because they can't record, can't build, they can't do anything, because Conservation Commission refused to vote. He actually looked at the initial meeting with Conservation Commission and it was in 2004. That is how long they sat on these plans for the applicant.

Mr. Ali said Conservation took a year and a half to come to a decision.

Mr. Jabs said there is a sale pending and they are not trying to build anything different that what was originally asked. He would like to try and convince the Board to vote tonight. If there are not changes to the plan & the documents signed; then the Town Planner or whoever, can look at the plans and verify that there are no significant changes in the plan; other than those issues that are required upon recording with the Registry.

There were a number of changes related to the recording: margins, proper names, proper addresses and dates. The box of no appeal is hand written and that can not be hand written, according to the Registry requirements. Ms. Buck said that was handwritten because the engineer left it off the plan and the Board asked for him to handwrite it in.

Ms. Friedman said the appeal period ended on May 15th and the applicant had to opportunity to come to record these plans right after and now this is brought to the Board and needs to be done right away. Mr. Jabs said they were unaware initially that there was a problem with the plan.

Ms. Friedman said when the appeal period was over on May 15th, there was no effort made at that point to record the plans. Mr. Jabs said the first time they were made aware of the problems, was when they went to record the plans at the beginning of August. At that point, they tried to get in touch with the engineer to make the changes.

Ms. Friedman asked why they waited until the beginning of August to file the plan. If this had started in 2004 before Conservation Commission and the appeal period was over on May 15th and all that had to be done was to record the plan and then start construction, why wasn't this done on May 16th? Mr. Jabs said because they were not going to start construction, there was no construction pending.

Ms. Friedman asked why is it so important now, where as, on May 16th it wasn't. Mr. Jabs said it is important right now, because there is a sale pending and the 6 month period, based on tolling, is coming to the end of the deadline. They have been working on this since August to try and resolve the issues with the Registry and the engineer.

Ms. Friedman said you are saying how long this has taken and now the Board is being pushed because this project is right up against the deadline. Mr. Jabs said they are not asking the Board to approve anything different.

Ms. Friedman said she doesn't know that. She would like Town Counsel to look at the brief submitted which states the land court case, because she is not willing to go on anything, as far as approval, until Counsel has the chance to look at that brief and come back with an opinion. She also wants the Town Engineer to have the opportunity to look over the plans and make sure that nothing was changed on it.

Ms. Buck agreed and said there are discrepancies in the plan; there seems to be a mismatch to what the Planning Board has on file and what the Town Engineer has on file.

Mr. Ali said even when the Board signed the plans; the Town Engineer still has the final say.

Ms. Buck said there isn't an issue of the notations on the plan that comply with the Registry requirements. The concern is that the Board does not have a copy of all the pages that were signed in February and the applicant can't find them, also there are differences in the detail sheets; they don't match. Maybe everything can get resolved, but it was impossible to do that by the end of this meeting.

Ms. Buck said she agrees with Ms. Friedman and the Board should have this reviewed with Town Counsel, in terms of applicability of the tolling period on the Conservation matter and then they can decide what to do.

Mr. McNaboe said the best the Board can do right now, is to have Town Counsel review the brief.

Mr. Jabs said if the Board is just going to amend the dates, the brief becomes irrelevant.

Mr. McNaboe said when case law is presented to the Board; it immediately is forward to Town Counsel for opinion.

Mr. Jabs said he understands that, but for all intents and purposes, if a resolution is coming out, he will withdraw the brief. There is no need for the Town to spend legal money, given the budget restraints. The only reason he submitted the brief, is because it reserves his right for an appeal, if something is not worked out. They are not asking to build anything different from the original submittal. They would like to try and find the best and quickest way to resolve this issue.

Ms. Buck said she still would like the opinion of Town Counsel. Given the amount of time involved, her preference is to revisit this issue through a hearing process. If for some reason it shouldn't, because of the tolling period, then the Board will have to make the best of it.

Ms. Friedman said she would like to make sure that all of the discrepancies are corrected. Mr. Wright agreed and said there is the need to have Attorney Cove and Quinn Engineering review the material, so this can come to a close.

Mr. McNaboe said if there are any mistakes made, they will be compounded by the Board acting on this tonight. Mr. Grimshaw, Mr. Broskey and Ms. Nist agreed.

Mr. Ali said he had left the plans with Quinn Engineering and Ms. Buck, but they did not have time to review them before tonight's meeting. He felt, once Kevin Quinn and Ms. Buck review the plans, the problems will be resolved. Ms. Friedman said it might very well be, but the Board does not have time to do this now.

The Board does understand that the applicant is under time constraints, but if the plans were filed right after the appeal period was over, there would have been 3 to 4 more months for review. There was time to do the filing and now, the Board should not have to feel pressured to make a decision tonight. It's unfortunate that the applicant has a sale pending, but the Board needs to look at the best interest of the Town, not necessarily the best interest of the developer. Ms. Friedman said this discussion will need to be continued to December 4th and hopefully, give everyone enough time.

Mr. Jabs asked if the process through Town Counsel could be done expeditiously, it would be appreciated.

Ms. Friedman continued this discussion to December 4th at 8:30PM.

Public Application:

Extension Request, (Kindred Hospital)

Ms. Buck said this project was approved by the Board in the spring (2007). Because there is no occupancy permit for parking lots, the Board considered a variety of options to figure out how to ensure completion on this project.

While the Board had considered requiring a bond for all the work upfront, instead of that, there was a deadline to complete all of the work. This deadline was November 1, 2007 and if the work could not be done by that time, the applicant was to request an extension and submit a performance guarantee to ensure the completion. The decision was based on the fact that the intent was to construct over the course of the summer and have it all completed prior to winter.

The applicant has now requested a continuance and also asked the Board to waive the surety requirement. Ms. Buck said she feels it is important to have some kind of surety, particularly for the landscaping, because we are dealing with a winter season now, which wasn't an issue when the Board approved this. The Board had thought everything would have been done during the planting season.

She has made the applicant aware of this. The applicant contacted her over the summer, letting her know that they would not be meeting the deadline and she advised them to submit a request for an extension. She was contacted again in early October and once again she explained the conditions, explained the requirement for the Bond, and that the Board was only having one meeting in October prior to their deadline. That request was not received prior to the October meeting; the request was received last week.

Mr. David Dunlap, Architect for the project and associate with Robert Murphy. He said that they apologize for not meeting the deadline and that was because they did not receive the approval to put the project out to bid until it was too late. They now have a contractor ready to go and would like to request for an extension. If a Bond is needed, they would need to know what amount is required.

Ms. Buck said she does not have a number to give and had asked the applicant to submit their estimate for the work and the Board would evaluate that number. Mr. Dunlap said they had

figured the landscaping would be around \$9,000 and will put up a Bond for \$20,000, if that is acceptable to the Board.

Mr. McNaboe asked is there any of the work that they need to be specifically doing. Ms. Buck said there has been no work started.

Mr. McNaboe said it has been lumbered, because some of the trees are down. Mr. Dunlap said if it has, it must have been done by the previous owner.

Ms. Buck said \$20,000 should be sufficient for the landscaping and asked what the applicant is proposing to use for surety, will it be a cash deposit or a Bond.

Mr. Dunlap asked what the Board preferred. Ms. Buck said cash would be easier. Mr. Dunlap agreed to a cash Bond and apologized to the Board for the hold up.

Ms. Buck said she had not prepared a Performance Agreement, because she had not heard back from the applicant. Ms. Friedman said the Board can take a vote tonight and come by the office to sign the agreement when it's ready.

Mr. Dunlap said another issue came up and asked for some direction from the Board. Does the applicant need to get a building permit and how much does that permit cost. They have talked with the Building Inspector, who referred them back to the Planning Board.

Ms. Buck said she does not believe they were referred to the Planning Board related to the building permit; the applicant was referred to the Planning Office because the Building Inspector always checks with this office to see if there are any pre-construction requirements and there were and this was one of them. She does not recall if a building permit is required, but recommended the applicant check with the Building Inspector again.

Ms. Buck said if this issue is resolved and the Bond is received quickly, she will send a memo to the Building Inspector informing him that the Planning Board does not have a problem with commencement of construction.

MOTION: Mr. McNaboe moved to approve the extension request for Kindred Healthcare for construction commencement for the parking lot to July 1, 2008 with a \$20,000 cash Bond.

SECONDED: Mr. Wright – Discussion: none

Vote: UNANIMOUS

Public Hearing:

Grandview Shoppes of Leicester, Inc. (Special Permit/Site Plan Review)

Ms. Friedman opened the hearing at 7:40PM. Ms. Friedman read the Notice into the record.

Mr. William Murray of PLACES Site Consultants, Inc. made the presentation. Mr. Murray said he has submitted this application on behalf of Grandview Shoppes of Leicester. This is located on 8.7-acres of land on the westerly side of Huntoon Memorial Highway, Route 56, Leicester, Ma. and is next to the Grandview Estates over 55 residential developments.

It will be 400-feet back from Huntoon Memorial Highway in the Residential-Industrial-Business (RIB) Zone and beyond that is the Residential A (RA) District. To the north of the site is a commercial building, to the west and to north is a church and some residential development along Pleasant Street; to the south is Grandview Estates and to the east is some undeveloped land and some residential development on the opposite of Huntoon Memorial Highway.

Mr. Murray submitted a corrected Project Narrative stating, the residential buildings are proposed to be 3-stories and no height greater than 45-feet. This has already gone before the Zoning Board of Appeals on October 29th and continued to December 10th.

This will be two-multi family residential dwellings; the larger one holds 30-units and the smaller one hold 12-units. There is 15,750-sf of retail, office and restaurant. The restaurant will seat 105 and the rest is anticipated retail on the first floor and office on the second floor. All of the buildings will be accessible and will meet all accessibility codes. The entire project will consist of for sale components, so that it will all be condominiums or for sale based on individual units and not intended for rent.

The design shows two principal means of access and egress. The northerly entrance will be principally used by the residential users. Both of the entrances will require wetlands alterations and they have a meeting set with Conservation Commission tomorrow night. Both entrances are intended to be two-way, with the southerly entrance having a dedicated north turn and dedicated south turn lane. The entire site is accessible for fire apparatus to reach 3 to 4 sides of the building at any point in time.

Sidewalks are proposed throughout the entire project and any sidewalk that directly abuts a roadway will have a 6-inch tall curb to berm, elsewhere, they will have Cape Cod berm.

Parking calculations are provided on the front cover sheet; there will be 2 spaces per 1 residential unit; 1 space per 3 seats in the restaurant and retail is 1 space per 400sf.

They will serve bio-units for the sewer districts and there will be a pump station located on the site. They have initiated the process with the sewer district, but are still incomplete. The pump station is over-designed to serve this site and a potential development across the street, which is not part of this application and will stand on its own. It will be required to have a generator, so that it can support itself. It will pumps by a force main all the way down to the front of Grandview Estates. The maintenance will be reviewed through the sewer district and will be the responsibility of a combined condominium type unit contract and will need to be in place prior to occupancy, to DEP standard criteria.

There is currently and existing 8-inch cast iron water main that passes through the site and to go off the site it is unable to be found. They have been coordinating with the water district to tap into that water line and discontinue it and replace it with a 10-inch main that will increase the capacity of the system.

Mr. McNaboe asked if that main feeds the industrial site to the right hand side of this project. Mr. Murray said yes and the water district is requiring that they rework that system to make sure that the industrial site will have the water they need. Right now that site only has a domestic supply for fire protection; the Grandview Shoppes buildings will be completely sprinkled with 6-inch fire lines going to each and every building.

Mr. Murray said they are proposing irrigation just for the dominant areas of the site; the front of the retail buildings and in the court yards in front of the buildings. Everywhere else will be left for natural indigenous vegetation.

The drainage system is complex, because this is a fairly steeply sloped site, which has been address in the submission documents. They will be doing a combination of the low grade storage infiltration and drainage basins. One basin in particular, will receive some of the stormwater that is below the parking. The drainage calculations demonstrate that they have a decrease in the peak rate of runoff in compliance with stormwater quality standards.

The site will be served by the basic utilities; telephone, electric, etc. They noted on the narrative that trash removal areas were shown on the plan and they were not, which was his mistake. He knows that they will need to make some small revisions to the plan and will note the trash removal areas as well.

This is a fairly difficult site to work, because you come off of Huntoon Memorial Highway, down to the wetlands and back up in a series of steep plateaus that goes through the site. They will require some 13-feet of cut in the general vicinity and then 15-feet of fill will be required as well. Elevation to the site starts at a 5% grade that climbs up to the parking levels. The isle behind the retail space is lower by 8-feet than the first floor and will have the ability to have a walk out basement. That basement will not be intended for anything other than general storage and not part of the commercial retail or office space. Because of the grade, they have done some deep test holes on the site to identify how deep the soils are and what they might run into. They anticipate running into some ledge down around the 8 or 9 foot levels.

There will be a substantial retaining wall all the way around the entire site. It is a net importer of additional material and most of that is structure fill and goes below the retaining wall.

They submitted as part of their application an erosion sedimentation profile, which identifies, before, during and after, how they will control the erosion from the site.

They have submitted a drainage & operation maintenance plan showing how that kind of system should be utilized.

They have filed 3 separate filings with the Conservation Commission. They have locked in the wetlands on this site and where they are shown on the plan is where they will be. They can not change them and Con Com can't change them. They also filed to lock in wetlands off site and filed for off site extension for sewer and water along Huntoon Memorial Highway.

Huntoon Memorial Highway is planned to be completely resurfaced this spring and they are trying to make sure to coincide with that activity.

Architecturally, they've submitted revised information showing 3-stories, not 4 and an architectural narrative.

The intent of the landscape plan is to use a lot of the natural material, especially around the wetland edge; then using indigenous and highlighting plants throughout the site, so there will be an interest on contrast in color, texture and flowers throughout the entire growing season.

A detailed sheet on site lighting was submitted. The site lighting being proposing are 16-foot tall 250 watt metal highlight lights. All the lights being used are all forward throw and downcast; there will be no upward lighting anywhere, except on the fountain as a light feature.

Mr. McNaboe asked if the lighting can be adjusted after the fact, if the lighting is found to be intrusive to the neighbors. Mr. Murray said no, the only thing that could be adjusted would be the wattage of the bulb. Since the lights are forward throw, it doesn't shine backwards, it will shine forward. Until you get within a 30% degree angle of the light fixture, the bulb can't be seen. It will give good area of light throughout the entire facility. They anticipate that every third light will remain on in the common areas and two out of every three lights will stay off after a timer. They will also have light sensor for on, to accommodate Mother Nature and a timer for off. The retail office buildings and some of the other buildings, will have outside socket lighting set into the ceiling that will unable to be seen, unless standing directly under it.

The Building Inspector informed them that the proposed sign was too big for that zone and they will have to modify it or apply for a special permit from the Zoning Board of Appeals. The applicant intends to modify the sign to the zoning requirements.

Mr. Murray reviewed the Variance request from the Zoning Board of Appeals. They are applying for a Variance from the Phase Growth Bylaw. The Zoning Board received a letter from the Planning Board that recommended no variance be granted. The applicant followed up with a letter to the Town Planner and Building Inspector, which was specifically requested by the Zoning Board of Appeals.

The letter to the Building Inspector was addressed in two ways; it is the applicant's position that to comply with the Zoning Bylaw, based upon occupancy, a variance is required. The strict wording of the bylaw doesn't allow general interpretation; it is either granted by dwelling units or grants it by some other criteria and by some other criteria is not adhering to the letter of the bylaw.

They were also asked by the Chairman of the Zoning Board of Appeals; if it is the Building Inspector's opinion that if it is not listed in the bylaw as a use subject to, he would therefore subject to it.

There was a similar letter sent to the Town Planner, where they restate their position that regardless of whether they do occupancy or not, they will still need a variance from the Phase Growth Bylaw.

Mr. Murray said a multi-family residential structure can't be built in distinct occupancy phases, because to grant a building permit for a multi-family residential structure, all the light safety criteria has to be installed. Even if it is done floor by floor and occupy as you go; as you move through the building in the time periods required, the light safety features will have to be changed. A sprinkler that is set for a residential unit is not the same sprinkler that can be used for a wide open space. In addition, it is burdensome on any resident to have a one or two year delay between phase one and phase two and it will cause substantial hardship on the applicant to not be able to build that building out, in the alternative from leaving an empty shell.

Mr. Murray said they submitted a general construction phasing, where it is their intent, the entire site can be built in 3 to 4 years. The construction series would be to initiate access into the site and initiate construction of the retail office building and at the same time initiate the off site and on site utility extensions and connections. As soon as the foundation and off site work

is done, the infrastructure or general grading for the site will be initiated, which will allow to establish platforms to build the buildings.

Mr. Murray said that he did forward some additional information to the Planning Office today informing Ms. Buck that they have retained the services of a traffic engineering consultant. They sent him their preliminary traffic study and asked how the Board would like to proceed.

Ms. Friedman suggested having the applicant review the other Board comments received.

Mr. Murray said the Board of Health advised them that if a restaurant is being proposed, that establishment will need to apply to the Board of Health for a permit.

Comments from the Police Department are with issues on traffic and the traffic concerns will be addressed with the traffic report. The Police Chief recommends a turning lane into the site and that is the only acceleration and deceleration being proposed. Also, the Chief recommended altering the second entrance to right turn only on exiting the site and on entering the site, a left turn only.

Mr. McNaboe said the Highway Department's comments had a notation referring to the major road work in the spring of 2008 on Route 56. Mr. Murray said they are aware of that and will be coordinating all their activities around that and they have already permitted with the Conservation Commission for the off site work.

Mr. Murray said the police department has asked to have a radio repeater on site. Mr. McNaboe asked what a radio repeater is. Mr. Murray said a radio repeater is something for police departments. In certain sections of Town there are dead spots and what a radio repeater does, is receive the signal, amplifies it and sends it back.

Comments received from the Oxford/Rochdale Sewer District states the project will require a sewer extension permit and they have found out that it will not require a DEP sewer extension permit (because of recent changes in DEP policy); just simply require a permit from the sewer district.

Comments received from the Building Inspector states that parking spaces should be 10 x 20 and he will correct that on the plan. They will be modifying the sign and the buildings will not be higher than 35-feet.

Prior to this submittal, copies of the plan were given to the fire department and the applicants have not yet received a response back. Mr. Murray said he will contact the fire department and coordinate with them whatever their requirements are.

Mr. Murray asked how much of Quinn Engineering comments the Board would like addressed tonight or would it be preferred to address the comments directly with Quinn Engineering.

Ms. Buck said a lot of Quinn's comments can be addressed directly with him. She has a couple of additional questions regarding the landscape buffer. There is actually another landscaping requirement applicable, which may already be met, but wants to highlight it. In that district there is supposed to be a 20-foot greenery all the way around and there is one spot in question.

Ms. Buck said this district is required to comply with the Highway Business-1 standards and in that district, access drives are allowed in a landscape buffer. The other requirement states that a lot in BR-1 and RIB shall not contain more than 2/3 impervious and not less than 1/3 for greenery. The greenery must sustain 20-feet from the boundary of the lot.

Mr. Murray said there is all natural vegetation and the landscaping requirement would be met. Along the front is where the bylaw would apply.

Ms. Buck said the issue is on the front; the Board typically allows existing vegetation to serve in place of plantings, although there is a specific requirement for trees. If along the front is just low brush, trees will be required; one tree every 40-feet.

Ms. Buck asked what the status is on water connection. Mr. Murray said they have met with the Water Department many times and have yet to get anything in writing from them in response. They have confirmed with the water department that they are below the impact level on the elevation and will have sufficient domestic water and sewer flows. He will contact the Water Department requesting they respond in writing.

Ms. Buck asked how far the parking goes into the RA District. Mr. Murray said approximately 66-feet.

Mr. Broskey asked about the catch basins. Mr Murray said there are multiple catch basins. Quinn Engineering comments referred to the plan showing rear crossing sidewalks and what that means, if one catch basin ever fails, it overflows the sidewalk into another catch basin.

Ms. Buck asked if the applicant had any additional documentation about how they arrived at the number of parking spaces being made available, because it is low in terms of parking required. Mr. Murray said that won't be a problem. It is now encourage in some communities to reduce the size of the number of parking spaces on paved surfaces and that is what they are trying to accomplish.

Ms. Buck said as for the Phased Growth, this Board has jurisdiction over issuing development schedules. While there is clearly some difficulty with the bylaw as written, with multi-family, it was never intended that multi-family be exempt. Just because multi-family is listed as a permissible use (by special permit), doesn't make it exempt from the bylaw. Single family is a permitted use by right that has to comply. She will be discussing this more with the Building Inspector to figure out how best to approach the issue. Ms. Buck said she feels it still can be accomplished, simply with a Condition of Approval on the Special Permit, but if the applicant prefers to have it go through a variance, then that's their decision.

Mr. Murray said they also say in their application to the Zoning Board that they also felt just submitting a Finding of Facts might be sufficient to address it, prior to the submission to Counsel. They do feel that multi-family structure project, they are allowed 20% a year and it would take 5 ½ years to build out, which is a substantial hardship. This unique type of building is designed specifically for this unique type of setting. The applicant does feel that tying this to occupancy isn't what is intended in the bylaw; it is inappropriate and not fair for this kind of project. Maybe phasing by structure would be a fair way to do this and having a delay between phase one and two. But 5 ½ years to build two buildings that will require a single building permit each; you don't issue a building permit for a dwelling unit inside a multi-family structure. Building permits being based upon dwelling units just doesn't work.

Ms. Friedman said the Board realizes that it is just two buildings, but it is also the number of units within the building. The reason the Town has a Phased Growth Bylaw, is to protect the Town and to make sure that the Town isn't burdened. The developer might be burdened, but the Board wants to make sure the Town isn't burdened, because all of these units can very well have children in them. Having more children entering the school system, within one year, in a small a town like Leicester, will burden the Town.

Mr. Murray said they have designed the units along the comments of the Planning Board and the Zoning Board, where the floor plan in these units will have one large bedroom and a small supplementary bedroom, with the intent of keeping single family empty nests.

Ms. Nist asked if there was a topographic map of the area with the submittal. Mr. Murray said yes.

Ms. Buck asked if the applicant had something other than what was submitted, for showing what the buildings will look like. Mr. Murray said no. Ms. Buck said the Board needs to have elevation plans submitted showing what the buildings will look like and color, etc.

Ms. Friedman opened the hearing for public comments.

Mr. Paul Morris said he owns the commercial building to the north of this property and asked if there is going to be any buffers between properties. He has no objection to this project, but if there are going to be children living there, will be some kind of fence to keep them from wandering onto his property.

Mr. Murray said there will be a retaining wall and where it slopes 5 to 6 feet to the roadway, they are proposing trees along that line.

Mr. Morris said he has big equipment and trucks that sit on his lot and trees will not keep the children from wandering onto his lot. Also, once people have moved into the residential units, will there be a complaint every time he starts up his equipment at 6AM; this is a commercial building with a commercial business. Mr. McNaboe said that all can be addressed in the Order of Conditions.

Ms. Friedman asked for any further comments, questions or concerns; hearing none, asked for a motion to continue this hearing to December 4, 2007 at 8PM.

MOTION: Mr. McNaboe moved to continue this hearing to December 4th at 8PM

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

Ms. Buck said one other thing needed from the applicant is an extension request on the Site Plan Review deadline to issue a decision. Mr. Murray submitted an extension request to issue a decision on Site Plan Review (deadline extended to 90 days from continued hearing of 12/4/2007; to 3/8/2008).

Continued Public Hearing:

Hammond Street Extension (Rob McNeil)

Ms. Friedman said a request has been received from the applicant for a continuance.

MOTION: Mr. McNaboe moved to continue this public hearing to December 4th at 7:30PM

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

Public Application:

ANR Plan, Pine Ave., (Canning)

Ms. Buck said this is taking one big lot, splitting it into two. One of the lots has an existing house; both lots are in excess of 80,000 square feet, with 200-feet of frontage and this will be creating one new building lot.

MOTION: Mr. McNaboe moved to approve the ANR Plan for Pine Ave.

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

Town Planner Report:

Street lights

Ms. Buck said there are now three developments wanting to install street lights: Oakridge Estates, Brookside Estates and Grandview Estates.

She was contacted by the developer of Brookside Estates, Mike Konan, and he wants to install the streetlights this week. National Grid is refusing to install the streets lights because they do not have a letter on file stating the Town will take responsibility for them. In this particular case, Mr. Konan didn't take advantage of the window of time in which to call National Grid after approval and if he had, there wouldn't be an issue. In November of 2003, Mr. Konan stated that there is no further documentation needed from the Board to get National Grid get install street lights. Mr. Konan had 4-years to get those lights installed; now he wants the lights put in this week and it is holding up the sidewalk installation.

Ms. Friedman asked if Mr. Konan is blaming this on the Board. Ms. Buck said he has put the Board in an impossible position, because she really does not want to delay the installation of the sidewalks. She said Mr. Konan has left this question for the Board; do they want the sidewalks installed without the street lights? Mr. McNaboe said no.

Ms. Buck said because the Selectmen are don't want to commit to paying for any new street lights, it is now actively interfering with the completion on projects.

Mr. McNaboe said Mr. Konan should have already had the streets lights installed and he is trying to put the blame on someone else. Mr. McNaboe suggested having Mr. Konan go to the Board of Selectmen with this issue.

Mr. Wright suggested having all three developers get together and meet before the Selectmen on the street light issue with National Grid.

Ms. Buck said Grandview Estates issue isn't with installation; they want to change the lighting and asked the Board if this would be considered a minor construction change. The street lights are shown on the original plan; Grandview is requesting to change the type of street light. The Grandview request will be discussed at a future Board meeting.

Tracy Estates/Whittemore Estates

Ms. Buck said this in regards to road acceptance. Mr. LaFlash is upset because he feels the Town is not acting fast enough to approve these roads. She has informed Mr. LaFlash that because there will not be a Fall Town Meeting, his request for road acceptance will be addressed for the Annual Town Meeting in the spring. Mr. LaFlash was not satisfied with that response and complained to the Town Administrator and Board of Selectmen.

Ms. Buck said the Town Administrator and Selectmen requested to have the Town Engineer inspect the roads in Tracy Estates and Whittemore Estates and to submit a report ASAP. She didn't understand the urgency, because the Town can't take them over until after approval at Town Meeting and there will not be one until spring, but did agree to schedule an inspection.

Ms. Buck said Mr. LaFlash also wanted 3 lots released in Whittemore Estates, but did not submit anything in writing until the day after the agenda closed.

11/20/07 PB Meeting

The Board members agreed to cancel November 20th meeting due to scheduling conflicts.

Approval of Minutes:

10/2/07

MOTION: Mr. Wright moved to approve the minutes of October 2, 2007

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

10/16/07

MOTION: Mr. Wright moved to approve the minutes of October 16, 2007

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

MOTION: Ms. Nist moved to adjourn meeting.

SECONDED: Mr. McNaboe – Discussion: None

Vote: UNANIMOUS

Meeting adjourned at 9:15PM

Respectfully submitted:

Barbara Knox