



***Non-public session in accordance with RSA 91-A: 3, II (d)
to discuss property acquisition to be held at 6:30 p.m.***

City Council Meeting
Minutes
December 12, 2011
City Council Chambers
7:00 p.m.

1. The Mayor called the meeting to order at 7:00 p.m.
2. Invocation by Pastor Rich Roberge, Christ the King Church.
3. Pledge of Allegiance.
4. Roll Call. Councilors Bennett, Blanchard, Bouchard, Mayor Bouley, Councilors Coen, DelloIacono, Grady, Keach, McClure, Nyhan, St. Hilaire, Shurtleff, Stetson and Werner were present. Councilor Patten was excused.
5. Approval of the November 14, 2011 meeting minutes.

Action: Councilor Grady moved approval of the November 14, 2011 meeting minutes. The motion was duly seconded and passed with no dissenting votes.

6. Mayor Bouley presented a resolution proclaiming December 2011 as Capital Region Food Program Month. (11-31)
7. Agenda overview by the Mayor.

- Consent Agenda Items -

Note: Items listed as pulled from the consent agenda will be discussed at the end of the meeting following unfinished business.

Action: City Manager Tom Aspell explained that he requested to remove item 13 because the City Council has had a tradition in which they begin the public hearing on-site for discontinuances of roads. He explained that it is not required by law to do so and asked that Council discontinue that tradition and not meet out on Manchester Street and that they have the public hearing in Council Chambers. He asked that Council set item 13 for a public hearing to be located at Council Chambers instead of out on Broken Bridge Road.

Councilor Coen asked that item 29 be pulled from the consent agenda.

Councilor Nyhan moved approval of the consent agenda, as amended, with the public hearing for item 13 being held in Council Chambers in January and with item 29 removed from the consent agenda. The motion was duly seconded and passed with one dissenting vote.

Referral to the Transportation Policy Advisory Committee

8. Communication from Jim Baer requesting the City of Concord consider publishing a pamphlet to clearly outline bicycle safety laws, rules and regulations.

Referral to Community Development and the Planning Board

9. Communication from Councilor Shurtleff requesting that the area of Stickney Hill Road beginning at Millstone Drive and then west to the Hopkinton town line be rezoned as a Historic District.

Items Tabled for an January 9, 2012 Public Hearing

10. Ordinance amending the Code of Ordinances, Title V, Administrative Code; Chapter 30, Administrative Code, Finance Department; together with report from the Deputy City Manager – Finance.
11. Ordinance amending the Code of Ordinances, Title V, Administrative Code, Chapter 35, Classification and Compensation Plan; Schedule D of Article 35-2, Class Specification Index, Human Resources Program Administrator/Assistant Human Resources Director; together with report from the Director of Human Resources and Labor Relations.
12. Ordinance amending the Code of Ordinances, Title V, Administrative Code, Chapter 35, Classification and Compensation Plan; Schedule D of Article 35-2, Class Specification Index, Safety and Training Coordinator.
13. Resolution relative to the public highway discontinuance of a portion of Broken Bridge Road in Concord, New Hampshire; together with reports from the City Engineer and the Planning Board. (*Pulled from consent by City Administration*)

Action: This item placed back on the consent agenda. Public hearing for this item to be held in Council Chambers in January.

14. Resolution accepting a grant from the NH Office of Energy and Planning State Energy Program and appropriating the sum of \$27,000 to fund the incremental cost of two Ford Transit Connect Vans converted to run exclusively on compressed natural gas; together with report from the General Services Department.

From the City Manager

15. Positive Citizen Comments.

16. Council meeting date calendar.

Consent Reports

17. Appropriation Transfer Report: November 2011.

18. Diminimus gifts and donations report from the Recreation Department requesting authorization to accept monetary gifts totaling \$1,108 as provided for under the preauthorization granted by City Council.

19. Diminimus gifts and donations report from the General Services Department requesting authorization to accept monetary gifts totaling \$115 as provided for under the preauthorization granted by City Council.

20. Reports from to the Legal Department and Parks and Recreation Director in response to a communication from Louis Manias in regards to an agreement between Concord American Little League and Concord American Softball and the potential lease issues with two fields within the City of Concord. (9Sus2)

21. North End Opportunity Corridor Tax Increment Finance District (NEOCTIF) Annual Report.

22. Report from Parks and Recreation Director regarding Winter Carnival Week in January 2012.

23. Report from the City Engineer recommending that the relocated section of Airport Road be accepted as a City maintained public highway.

24. Report from the City Engineer recommending that the relocated section of Broken Bridge Road be accepted as a City maintained public highway.

25. Concord Area Transit (CAT) 1st Quarter Progress Report from the Public Transportation Committee.

26. Report from the Traffic Operations Committee recommending that the posted speed limit signs on Penacook Street (in Penacook) be changed from 35 mph to 30 mph.

27. Report from the Deputy City Manager – Finance regarding the certificate of achievement for excellence in financial reporting award from National GFOA for the City's Comprehensive Annual Finance Report (CAFR) for the fiscal year ending June 30, 2010.

28. Report from the Deputy City Manager – Finance announcing the City's third place award for Excellence in Annual Reports for the fiscal year ending June 30, 2010 given by the New Hampshire Local Government Center.

29. City Engineer's report on the status of repairs at the Sewalls Falls Bridge, CIP #22.

Action: This item was removed for discussion at the end of the agenda.

30. Quarterly Pay as You Throw Status Report from the General Services Director.
31. Status of pending court cases and recently resolved cases report from the Legal Department.
32. Tax deeded property, 109 Fisherville Road and 8 Bradley Street, report from the Assistant for Special Projects.
33. Report from the City Manager recommending City Council accept the withdrawal request by Richard Uchida on behalf of his client, Interchange Development, LLC as it relates to property at the intersection of Whitney and Hoit Roads; together with communications from the Planning Board the Economic Development Advisory Committee and the public.

Consent Resolutions

34. Resolution authorizing the City Manager to accept a conservation easement associated with the conditionally approved Site Plan Application of the Concord Regional Solid Waste / Resource Recovery Cooperative off of Whitney Road; together with report from the Planning Board.
35. Resolution appropriating up to the sum of \$1,228,000 from Assigned Fund Balance as a transfer to trust fund reserves as listed herein. Funding for this appropriation shall be entirely from FY2011 assigned fund balance; together with report from the Fiscal Policy Advisory Committee.
36. Resolution establishing a new trust fund reserve to offset future spikes in the price or use of fuel at the Hutchins Street Water Plant, and appropriate \$100,000 from assigned fund balance as a transfer to trust fund reserve as identified herein. Funding for this appropriation shall be entirely from FY2011 assigned fund balance.
37. Resolution appropriating \$108,000 from trust fund reserves as a supplemental appropriation to the city's general fund for the purpose of building and infrastructure improvements, fire hazmat equipment and personnel education and training. Funding for this appropriation shall be entirely from trust fund reserve accounts identified herein.
38. Resolution authorizing the City Manager to enter into an Easement Modification Agreement concerning easements located on property at 5 & 11 Canal Street, Penacook; together with a report from the Assistant for Special Projects

Consent Communications

39. Street closure request from Chris Brown, New Hampshire Distributors, for the Black Ice Pond Hockey Tournament to be held in January 2012.
40. Street closure request for a neighborhood party to be held on Saturday, January 28, 2012.

From the Mayor

*****End of Consent Agenda*****

41. December 12, 2011 Public Hearings

- A. Resolution authorizing the City Manager to continue implementation of the Community Development Revolving Loan Fund Program, Fund 2701, and appropriating the sum of \$134,700; together with report from the Community Development Advisory Committee. (11-13)

Action: There being no Council objection, the titles for items A and B were read together.

City Manager Tom Aspell provided a brief overview of items A and B.

Mayor Bouley opened the public hearings for items A and B. There being no public testimony, the Mayor closed the hearings.

- B. Resolution appropriating the sum of \$2,170 from the Grant Repayment Account to be utilized in the Community Development Advisory Committee Emergency Grant Account; together with report from the Community Development Advisory Committee. (11-14)

Action: Public hearing for this item taken with item A.

- C. Resolution appropriating the sum of \$12,000 from Trust Fund Reserves as a supplemental appropriation to the city's General Fund for the purpose of developing and implementing a marketing plan for the new Parks and Recreation Department; together with report from the Recreation Director. (11-15)

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- D. Ordinance amending the Code of Ordinances, Title V, Administrative Code; Chapter 34 Personnel Rules and Regulations, Article 34-11-2, Sick Leave; together with report from the Director of Human Resources and Labor Relations. (11-16)

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- E. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; together with report from Code Administration. (11-17)

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- F. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses; rezoning a portion of the parcel at 181 North Main Street (Tax Map 55, Block 3, Lot 15) from Downtown Residential (RD) District to the Urban Commercial (CU) District so the entire parcel is located within the Urban Commercial (CU) District and rezoning the parcel at 177 North Main Street (Tax Map 55, Block 3, Lot 14) from the Downtown Residential (RD) District to the Urban Commercial (CU) District; together with report from the Planning Board. (11-18)

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- G. Ordinance amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28- 5, Supplemental Standards, by adding a new section 28-5-50, Keeping of Chickens as Pets Accessory to a Residential Use and amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses, Section 28-2-4(k), Table of Accessory Uses by adding a new Accessory to a Principal Residential Use, Use A-11, "Keeping of chickens", subject to the Supplemental Standards of Section 28-5-50, as Permitted (P) and amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-5, Supplemental Standards, Section 28-5-33, Keeping of Pets and amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-5, Supplemental Standards, Section 28-5-33, Keeping of Pets, Subsection (b), Keeping of Household Pets; together with reports from Code Administration and the Planning Board. (11-19) *(Public testimony received)* **(Additional public testimony received)**

Action: City Manager Tom Aspell provided a brief overview.

Referencing the enforcement being complaint driven, Councilor Coen questioned that once the complaint is filed what is the next step, who would enforce the ordinance. Mr. Aspell responded that it would be the health department. Councilor Coen noted his concern is who is responsible for the follow through. Mr. Aspell indicated that what they traditionally try to do, whether its health items or animals, is to work with the owners to see if there is a way to remedy the situation and absent this, then staff would take action. Councilor Coen asked how the city would know who the owners are if the chickens are on the loose. Mr. Aspell responded that they would not be able to track a chicken to its rightful owner adding that generally he thinks that there wouldn't be enough in a particular neighborhood where people wouldn't be able to figure out where it came from.

Councilor DelloIacono asked for clarification as to whether this was for single family residences only. Mr. Aspell responded that to be correct.

Councilor Bouchard indicated that a condo association could approve the homeowners to have chickens. Mr. Aspell clarified that there are some places within the community in which there are single family homes that are located on condominium properties and a condo association could approve chickens. He added that they would not be approved in a multi-tenant building.

Mayor Bouley opened the public hearing.

Public Testimony

Stacey Brown, Ward Four resident, spoke in favor of the ordinance. She noted that she has a request to change it to modify it from how it's currently proposed to not be located within 30 feet of any lot line. She indicated that she is currently on the corner of two streets and would be tough for her pointing out that the South Portland urban chicken ordinance allows for corner property owners to notify abutting property owners if they have a hen house that's located less than 20 feet of their property and asked Council to take this into consideration.

Referencing Ms. Brown growing up on a farm, Councilor Grady indicated that she has heard concerns with smell that comes from chickens and asked Ms. Brown to comment on this. Ms. Brown stated that chickens do not have the same odor of other farm animals and don't produce any more waste than a medium to large sized dog. She further stated that it's all dependent upon the owner and how they take care of their animals.

Councilor Nyhan noted that his personal experience is that chickens do smell and is one of his primary concerns. Referencing people keeping the waste and using it as fertilizer, he commented that it doesn't sway any concerns that he has relative to the odors. Ms. Brown explained that the small farm that she grew up on had 25 to 30 chickens and the hen house was cleaned once a week and there wasn't an odor issue but it would smell if one walked into the hen house. She pointed out that the ordinance is only talking about five and does not see this as being an issue.

Councilor Keach asked why chickens get special consideration questioning in regards to other farm animals. He noted that farms are on farms and there is a reason people live in cities. He asked where does it stop. Ms. Brown responded that she is not interested in the work that is entailed with raising cows but chickens are easy, low maintenance and quiet. She stated that she has no interest in pursuing other farm animals because she doesn't want that lifestyle.

Councilor Werner asked if Ms. Brown has any knowledge of the experience of other communities over a period of time with this kind of ordinance, particularly around the smell issue in terms of complaints and how other communities have fared with it. Ms. Brown

replied that she has researched a little of the South Portland community and they found that it wasn't an issue and is dependent upon the owner and how they maintain the animals.

Jennifer Kretovic indicated that she is the former Director of Concord 20/20 and explained the Concord 20/20 partnered with the city when they were looking at public input to revisions to the zoning ordinances and it was from the public sessions in which she met a number of enthusiastic residents that were interested in having the city adopt an urban chicken policy. She noted that those opposed to backyard chickens typically have some common concerns, especially in regards to smell. She reiterated that it's not any different with dogs and cats and is directly related to how people take care of those chickens. Other concerns were in regards to: salmonella which is a low public health risk in which 1 in 20,000 is infected and the risk is greater in other foods; avian flu has never been found in North America and chickens are not migratory birds; predators but the construction of the hen house, as outlined within the ordinance, does provide for adequate fencing; the appearance of the hen house. Ms. Kretovic added that reducing the carbon footprint of food by optimizing the relationship between the transportation and the efficiency of local production is just one more step to a sustainable Concord. In closing, she asked that Council accept this proposed ordinance.

Councilor Shurtleff questioned whether there was a penalty provision to this ordinance. Craig Walker, Zoning Administrator, responded that it would have the standard provisions as provided by state RSA, a violation of a local ordinance as punishable by up to \$275 per day for each day of violation exists after the date of notification.

Councilor Blanchard asked whether Ms. Kretovic knew anything of the success of the ordinance in South Portland. Ms. Kretovic responded that she is unfamiliar with South Portland but noted that it's commonly being asked about cities all across the country pointing out that there are 25 cities that have taken this up earlier this year and to the best of her knowledge, all of them have passed it in some form or another.

Laura Morrison, Concord resident and President of Capital City Organic Gardeners, noted that she feels that the proposed ordinance is very reasonable and makes sense. She stated that prohibiting owners from selling their eggs or meat ensures that the homeowner will be raising the chickens for their own consumption and that they will be mindful about the cleanliness and health of their chickens. She indicated that if the proposed ordinance is approved, the organization would be interested in working with the city to serve as a liaison to the public.

There being no further public testimony, the Mayor closed the hearing.

- H. Ordinance amending the Code of Ordinance, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses; Section 28-2-3, The Zoning Map; together with report from the Planning Board in response to a communication from Richard Uchida, on behalf of his client Delta Dental Plan of New Hampshire, Inc., asking the City consider rezoning a parcel of land at 107 Commercial Street from Open Space

Residential (RO) to Institutional (IS) Zoning. (6Sus3) (10-11) (11-41) *(Additional communication from Richard Uchida submitted within the October 11, 2011 Council packets) (Communication from the Conservation Commission submitted within the November 14, 2011 Council packets) (Additional communications from Richard Uchida and the Greater Concord Chamber of Commerce submitted)*

Action: Carlos Baia, Deputy City Manager-Development, provided an overview.

Councilor DelloIacono asked what portion of the land is going to be placed into easement. Steve Henninger, Assistant City Planner, pointed out the area on the map provided in Council Chambers.

Councilor Keach noted that as he understands, the existing lot is zoned as residential. Mr. Henninger responded yes, RO Residential Open Space. Councilor Keach asked if, as it exists, potentially somebody could come in, buy that piece of lot and build multiple houses on that lot. Mr. Henninger replied that to be true explaining that the principle use in the RO District is single family residences on a two acre lot. He added that such things as a ball field, a special exception for a veterinary clinic and agricultural uses could be undertaken on this property. Councilor Keach questioned a veterinary clinic being placed on this property as it is currently zoned. Mr. Walker responded that one could with a special exception adding that the property is located in a flood plain and any commercial use such as a veterinary clinic would have to be built with the first floor elevation at the base flood elevation. Councilor Keach asked if it was safe to say any use other than what exists there now would require some variance or exception. Mr. Walker responded yes.

Councilor McClure asked staff to explain the state laws and regulations that control flood plain development and shore land protection. Mr. Henninger explained that the state does not regulate flood plains and that it is up to the local governments to regulate these developments. He noted that this is located in the flood hazard district. He added that this affected location is not in a state shore land protection district but is in a city shore land protection district and the uses are restricted within the shore land protection up to 250 feet and prohibits salt sheds, gasoline storage facilities, and other uses that wouldn't be allowed here in any case.

Councilor Nyhan indicated that if this were to be developed, there's a proposed conservation easement on it and in looking at the open space master plan this is something that the Conservation Commission has targeted for an easement. He questioned why the Conservation Commission is not interested in rezoning the property if it would come with that easement. Councilor McClure replied that the Conservation Commission felt that there were adequate protections for this parcel because of all the wetland and that it was in the RO District that the road was a suitable boundary and that it was important to maintain zoning boundaries and residential use was a less intrusive use than something that could be possible in an institutional use.

Mayor Bouley questioned why this is good or why is this bad public policy to make this change. He further questioned as to why is it a good idea to put a commercial structure in

this area. Is it the best place for this and would it be better downtown. Mr. Baia noted that one of the comments from staff when they looked at this issue was that right now with a home there and if a seller were to sell it with another homeowner coming in there really wouldn't be a large level of control as to what the homeowner could do with the property. He indicated that from one perspective if this is rezoned for commercial use that would have a site plan associated with it and a conservation easement, one could make the argument that that there is a higher level of control because there is a conservation easement that will be monitored and a site plan that can be controlled and if the site plan is violated, there are zoning mechanisms and enforcement mechanisms that can be integrated to that. He added that there is some tax base growth to this concept and as far as vacancy rates in downtown, he believes they is somewhere between 15 and 16 percent and it would be great to have a presence downtown for such a corporation but not sure if that is in the plans.

The Mayor opened the public hearing.

Public Testimony

Richard Uchida, Orr and Reno, indicated that they are only seeking to rezone only half of the upland portion of this parcel and the remainder of the land, approximately 85 percent, would remain open and protected in an easement. He highlighted some of the characteristics of the property and noted that over the last six months they revised their thinking substantially because of their awareness of the environmental sensitivities of the area. He indicated that they don't share the opinion that the development of the upland will automatically result in the deterioration or detriment to the natural resources in the area but do agree that any development that occurs on this site needs to be done in a responsible manner and feels that their proposal results in a more responsible situation than exists today.

Chris Nadeau, Nobis Engineering, noted that from an engineering perspective there would be more control over the development of the property if it's something that goes through the Planning Board as opposed to a residential use if it is rezoned.

Mr. Uchida added that what they wanted to do is to demonstrate that the presumption that any redevelopment on that side of the street would lead to the detriment to the natural resources of that area was not an appropriate presumption to make. He noted that there are ways in which this site will be developed with appropriate protections and appropriate safeguards that would not lead to that conclusion. Mr. Uchida stated that 85 percent of the land would be placed in a conservation easement after purchasing the property. He noted that in doing so, they join the other parcels that are out there that are currently protected or are held publicly. He explained that one thing that this easement does that's not usual in most conservation easements is that they are obligated under the easement to revegetate the 75 foot buffer along Wattanummon Brook and the 50 foot buffer along the wetlands to the southern side of the property. Mayor Bouley questioned as what it entails to revegetate that area. Mr. Uchida explained that a lot of the lawn and the grass area goes right through that area and, in some instances, the brook and so what the zoning ordinance anticipates is that you would put back in native non-invasive trees, shrubs and plants that would re-establish a wooded buffer between the wetland and the developed portion of the property. He stated

that it doesn't exist today and the homeowner is not under any obligation to re-create that buffer today under the existing zoning. He added that would provide approximately 1,300 feet of protection along Wattanummon Brook. He addressed one other feature of the conservation easement, flooding, noting that flooding occurs in the areas west of the site and have discerned that some of the flooding has occurred because of obstructions in Wattanummon Brook. He explained that one of the other uncommon features of this easement is an obligation on their part to maintain the flow in that brook and remove the impediments that are downstream of that brook which causes a back-up of flooding into that particular area. In conclusion, Mr. Uchida indicated that the site can be developed without adversely affecting natural resources and the proposal is consistent with the spirit and intent of the master plan.

Thomas Raffio, President and CEO of Delta Dental, noted that he feels that this is one of the rare situations in which you can truly have a win, win, win because it is truly best for the environment, for the taxpayer via increased tax revenue, for the citizens because of the conservation easement, and for the Angwin family. He explained that Delta Dental has always been a good steward of their land and feels that their plans speak to the fact that they are serious stewards of the land. He stated that they need to expand their campus in order to address their changing business model as a result of healthcare reform noting that they like their campus area and have a cultural affinity to staying in that area so for them downtown isn't an option. He indicated that they would love to stay in Concord but definitely need more campus space. He added that they have listened to the Planning Board, their neighbors and the environmentalists. He asked that Council vote in the affirmative because he feels that it does make good public policy sense and makes great common sense as well.

Councilor Blanchard asked whether the other land abutting this property is agricultural land. Mr. Uchida responded that the Morrill property to the south and the west is agricultural and is protected by a conservation easement and the Brochu property to the north is a mix of agricultural and horticultural.

Mayor Bouley thanked them for putting together the questions and answers page. Referencing page 1 which references that Delta Dental does not have a plan to develop the parcel for two to three years and questioned why are they coming before the Council now to ask for the rezoning. Mr. Raffio responded that depending on where healthcare reforms goes they may need it sooner than the three year period and noted that that they want to start being stewards of that land. Mr. Uchida added that the parcel is available now and it makes sense to make the investment in that parcel and know that ultimately it is zoned in a way that it can be utilized by Delta Dental. Mayor Bouley indicated his questions are not meant to be hostile in any way saying that Delta Dental is an incredible employer in this community, are one of the kindest corporate entities in this community and should be commended and thanked them for everything they do. The Mayor noted that one of the items written about is not being able to develop the soccer fields behind Delta One and as to why the city schedules times. He asked whether they could develop that area questioning why they could not use the soccer fields. Mr. Raffio replied that he was spending too much time scheduling the soccer fields and asked Concord Recreation and Concord Express to work out the scheduling. He noted that because it has lights, it's used constantly and even with the fields

at NHTI, the younger teams are using the field. He indicated that the pre-approval on the building would actually be on the other side facing to Delta Dental but it would not be what they want and would definitely change the culture of the company. Mayor Bouley stated that one of the items he really focused on was the public policy piece and has heard from quite a few landlords and building owners' downtown who are desperate for tenants. He referenced tenants in Delta Two and asked why Delta Dental couldn't use what they already have and have some of the other organizations relocate to some of the landlords downtown who are desperate for tenants. Mr. Raffio explained that many of the tenants on the second floor of Two Delta are not for profit organizations that have a very limited budget and they give them a significantly reduced rate. He noted that these organizations also use the various conference rooms located on the second floor. Referencing the third floor, he indicated that this is taken up by Combined Services, Inc., one of their subsidiaries, and the law firm located there has a long term lease. Mr. Raffio stated that what they want is the ability to have a wellness facility with the feel of an off-site retreat so Two Delta is not an option because they don't want to give up the conference room space that many non-profits use without being charged.

Councilor Keach indicated that he is a supporter of this change and thinks that public policy is important and it is the function of the Council to establish this. He stated that he also worries that sometimes Council and City Administration can drift over to getting involved in a company's strategic decisions. He questioned whether Mr. Raffio feels that Council is crossing the line and getting involved in things like strategic decisions that really is his purview and the city shouldn't be involved in. Mr. Raffio responded that he feels that all of the questions are fair and they are doing their due diligence but feels that it's important for him to be very clear that they do need more space and wants to protect their campus.

Mayor Bouley stated that he has no desire to step into Mr. Raffio's corporate structuring internally but Delta Dental is asking the community to make a change in zoning and to do that, it has effects on others. He indicated that Concord Hospital has chosen a different path pointing out that Concord Hospital has grown and they chose to invest in the city's downtown. He asked how Delta Dental has chosen a different path than another employer like Concord Hospital. Mr. Raffio responded that they have all 200 employees right there and can have all employee meetings at the Two Delta conference center. The model is to have everyone on one close knit campus. Mr. Uchida pointed out that their investment decision was made awhile back and they were the key to getting that opportunity corridor kicked off and their investment decision was to become that sort of the northern anchor to that investment that the city made in that opportunity corridor.

Councilor Nyhan noted that some of the issues that he raised last month speaks to some of the flooding that takes place in this particular area. He asked what type of preparation has to take place to prepare for building. Mr. Nadeau explained that the existing building would be demolished, they would put up erosion controls to ensure that nothing leaves the site. He stated that there are many engineering controls that they can put into the site to control the run off from the site that will protect the site once the site is developed. Councilor Nyhan noted his concerns with building in a wet area and that larger, heavier buildings require

stronger footings. Mr. Nadeau responded that it's high and dry and although they haven't done any subsurface investigations it looks like its stable soil.

Referencing Mr. Uchida's letter, City Manager Aspell noted that it states that the parcel's value will increase substantially providing a measurable benefit to the city's tax base. He asked if they envision the uses in this property to be taxable permanently questioning whether this is in the tax increment financing district. He explained that in the tax increment financing district one is required by covenant to pay full taxes. Mr. Raffio responded that they will pay the taxes noting that this can be part of the agreement to assure that the city receives the full taxes.

William Veroneau spoke in favor of this proposal. He explained that back in 1997 Mr. Raffio committed to the city to start a process that would open up the opportunity corridor which resulted in the Horseshoe Pond district which has been extremely favorable to the city. He noted that he feels that this project deserves the support of the Council.

Tim Sink, Greater Concord Chamber of Commerce, indicated that he had sent a letter to the Council asking them to approve this zoning change. He noted that he feels that this is a good thing for the city and feels that Delta Dental will go the extra mile to make sure that they build in such a way that the brooks will be protected, the pond will be protected and 85 percent of that property will be committed to open space in perpetuity. He indicated that all the property within the immediate vicinity is commercial in nature so he feels that a zoning change is in no way inconsistent with the character of the neighborhood.

Kevin Curdie noted that his main concern is the impact in the area and hopes that any decision made there in regards to development would not impact the wildlife. He complimented Delta Dental for being a great member of the community and they have done a lot for the community.

There being no further public testimony, the Mayor closed the hearing.

December 12, 2011 Public Hearing Action

42. Resolution authorizing the City Manager to continue implementation of the Community Development Revolving Loan Fund Program, Fund 2701, and appropriating the sum of \$134,700; together with report from the Community Development Advisory Committee. (11-13)

Action: Councilor St. Hilaire moved approval. The motion was duly seconded and passed with no dissenting votes.

43. Resolution appropriating the sum of \$2,170 from the Grant Repayment Account to be utilized in the Community Development Advisory Committee Emergency Grant Account; together with report from the Community Development Advisory Committee. (11-14)

Action: Councilor St. Hilaire moved approval. The motion was duly seconded and passed with no dissenting votes.

44. Resolution appropriating the sum of \$12,000 from Trust Fund Reserves as a supplemental appropriation to the city's General Fund for the purpose of developing and implementing a marketing plan for the new Parks and Recreation Department; together with report from the Recreation Director. (11-15)

Action: Councilor Nyhan moved approval. The motion was duly seconded and passed 14 to 0 on a roll call vote with Councilors Bennett, Blanchard, Bouchard, Mayor Bouley, Councilors Coen, DelloIacono, Grady, Keach, McClure, Nyhan, St. Hilaire, Shurtleff, Stetson and Werner voting yes.

45. Ordinance amending the Code of Ordinances, Title V, Administrative Code; Chapter 34 Personnel Rules and Regulations, Article 34-11-2, Sick Leave; together with report from the Director of Human Resources and Labor Relations. (11-16)

Action: Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes.

46. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; together with report from Code Administration. (11-17)

Action: Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes.

47. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses; rezoning a portion of the parcel at 181 North Main Street (Tax Map 55, Block 3, Lot 15) from Downtown Residential (RD) District to the Urban Commercial (CU) District) so the entire parcel is located within the Urban Commercial (CU) District and rezoning the parcel at 177 North Main Street (Tax Map 55, Block 3, Lot 14) from the Downtown Residential (RD) District to the Urban Commercial (CU) District; together with report from the Planning Board. (11-18)

Action: Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes.

48. Ordinance amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28- 5, Supplemental Standards, by adding a new section 28-5-50, Keeping of Chickens as Pets Accessory to a Residential Use and amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses, Section 28-2-4(k), Table of Accessory Uses by adding a new Accessory to a Principal Residential Use, Use A-11, "Keeping of chickens", subject to the Supplemental Standards of Section 28-5-50, as Permitted (P) and amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-5, Supplemental Standards, Section 28-5-33,

Keeping of Pets and amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-5, Supplemental Standards, Section 28-5-33, Keeping of Pets, Subsection (b), Keeping of Household Pets; together with reports from Code Administration and the Planning Board. (11-19) (*Public testimony received*) (***Additional public testimony received***)

Action: Councilor Grady moved approval. The motion was duly seconded.

Councilor Werner indicated that he will be voting in favor of this proposal noting that he feels that people that take the time to invest in a chicken coop and the investment of time and money will more likely than not spend a great deal of time maintaining their chicken coop and property. He stated that he feels that encouraging sustainable agriculture in this way is a positive thing and urged Council to vote in favor of this.

Councilor DelloIacono moved to amend the motion and add a \$25.00 permit fee to build a chicken coop. The motion was duly seconded.

Councilor Stetson asked whether there would need to be a building permit for a chicken coop and therefore a fee would be involved. Carlos Baia, Deputy City Manager-Development, responded that staff purposely left out permits in the effort to maintain the bureaucracy as low as possible in this process and not to tie up staff with issuing building permits for a hen house. He added that he doesn't foresee staff going out, as they would a building permit, and inspecting the structure.

Councilor Grady questioned whether it would be similar to getting a permit for a dog. Mr. Baia responded that it could be.

Councilor Bouchard indicated that she will be voting against the \$25.00 permit noting that she feels that it's a lot of work for the staff and doesn't see the purpose of the permit.

Councilor Stetson added that there would be an enforcement issue in which someone gets a permit for a coop and another person doesn't.

Councilor DelloIacono pointed out that a permit fee would give the city data information as to how many coops are within the city. He indicated that there are going to be issues in which some people have four chickens while another person has twelve in which it's still going to be an enforcement issue either way. He stated that he doesn't feel that a permit fee would add any extra burden on city staff as far as enforcement.

The amendment to add a \$25.00 permit fee failed on a voice vote.

Councilor Coen noted he is not clear as to why they need an ordinance in the first place because the problem with an ordinance for chickens is how does one enforce it. He added that he doesn't feel that there should be a limit to the quantity of chickens someone has. Craig Walker, Zoning Administrator, explained that under the current ordinance, chickens are only permitted

to be kept on a lot of one acre or greater so anybody living on a lot less than an acre cannot keep chickens on their property.

Councilor Nyhan stated that his primary concern is in regards to the smell and from public testimony this evening he has heard that there are ways to mitigate those smells. He feels that the individuals who testified and would have paid to have a permit would take care of their chickens. He noted that he feels that the people that are going to have them anyway are going to do it whether there is an ordinance or not. He feels that the value of the ordinance is that it does allow the city an enforcement mechanism. He noted that he will be supporting the motion with the caveat that this does come back to the Council, done as a pilot. He proposed changing this from eighteen months to 21 months so there is two summer seasons as a baseline for experience.

Councilor Nyhan moved that this be a 21 month pilot that requires a Council vote to keep the ordinance in effect. The motion was duly seconded.

Councilor McClure asked if the time period of 18 months was within the ordinance or within the staff report. Mayor Bouley clarified that it's included within the recommendation from the Planning Board. He noted that he is not going to entertain the amendment for the number of months because it is simply the recommendation of the Planning Board. He indicated that if the ordinance is adopted and then Council wants to make changes, in terms of recommendations, they can be entertained afterwards. Mayor Bouley stated that they are currently dealing with the main motion of adopting the ordinance.

Councilor Bouchard noted that she has had experiences with chickens and stated that the coops do not smell if taken care of properly. She feels that this is a good ordinance and a good place to start.

Councilor Grady stated that she has heard from a number of residents in the downtown area who were in support of this ordinance with the overall theme of people just wanting to promote healthy eating and a healthy environment. She noted her support of the ordinance.

City Manager Aspell pointed out that Ms. Brown, during the public hearing, made a request for consideration in regards to corner lots being twenty feet instead of thirty feet.

Councilor Bennett voiced his concerns about bringing this item back and wants to ensure that it does come back before the Council. Mr. Aspell explained that the City Clerk maintains a three year planning schedule for the agendas and assured Council that this will be brought forth after the period designated.

The motion to approve passed 10 to 4 on a roll call vote with Councilors Stetson, Werner, Blanchard, Bouchard, Mayor Bouley, Grady, Keach, McClure, Nyhan and Shurtleff voting yes. Councilors Bennett, Coen, DelloIacono and St. Hilaire voted no.

Councilor Nyhan moved to revise the recommendation that this comes back before Council in 21 months instead of 18 months. The motion was duly seconded and passed with one dissenting votes.

49. Ordinance amending the Code of Ordinance, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses; Section 28-2-3, The Zoning Map; together with report from the Planning Board in response to a communication from Richard Uchida, on behalf of his client Delta Dental Plan of New Hampshire, Inc., asking the City consider rezoning a parcel of land at 107 Commercial Street from Open Space Residential (RO) to Institutional (IS) Zoning. (6Sus3) (10-11) (11-41) *(Additional communication from Richard Uchida submitted within the October 11, 2011 Council packets)* *(Communication from the Conservation Commission submitted within the November 14, 2011 Council packets)* *(Additional communication from Richard Uchida submitted)*) *(Additional communications from Richard Uchida and the Greater Concord Chamber of Commerce submitted)*

Action: Councilor Shurtleff moved that this item be referred back to the Planning Board for reconsideration. The motion was duly seconded.

Councilor Shurtleff spoke to his motion indicating that, based on the information received this evening regarding the TIF District, the environmental impacts and the urban growth zone, he feels that this is information that the Planning Board did not receive and it would be beneficial if they had a chance to look at this one more time.

Councilor McClure asked what is it that Council is asking the Planning Board to reconsider. Councilor Shurtleff explained that it would be to reconsider their previous unanimous vote in opposition to granting the change in zoning. Councilor McClure asked why questioning as to what is the new information that they would have. Councilor Shurtleff responded that it's based on new information that Mr. Uchida and Mr. Raffio presented to Council this evening which is information that was not presented to the Planning Board. He indicated that he feels that it would be information that would be beneficial to the Planning Board to have a chance to look at to see if they want to change their previous vote.

Councilor Keach noted his support of the motion. He stated that he feels that Council was provided information this evening that probably would have been more appropriately provided to the Planning Board in terms of the use of the building, the look of the building, etc.

Councilor McClure stated that she will be voting against the motion indicating that having sat on the Planning Board that evening, their deliberations had to do with whether or not this proposed rezoning supported the master plan and did not consider any of the proposals of the building because they are really irrelevant to the decision about the rezoning. She added that it also looked seriously at the Conservation Commission recommendation in spite of the fact that the staff report actually was in support of the rezoning. She indicated that the Planning Board was really clear on what their deliberations were and what their decision was.

Councilor Blanchard indicated that she will be voting against the motion.

Councilor Nyhan questioned whether the Conservation Commission had actually submitted a report or just provided verbal testimony to the Planning Board. Councilor McClure replied that she believes that they submitted a report or minutes. Councilor Nyhan indicated that he was a little bit surprised with the Planning Board's recommendation and asked whether they could submit a report as part of that review process stating that he would like to see more analysis relative to the easement. Councilor McClure noted that the Planning Board considered the easement proposal but felt that there were sufficient protections in the zoning itself and there is no guarantee that that easement has an organization or entity ready and willing to accept it. Councilor Nyhan indicated that that is another thing that they can talk about and look at as to how that stewardship easement would work. Councilor McClure noted that she feels that it's not pertinent to the issue at hand.

The motion to refer this item back to the Planning Board for reconsideration passed on a voice vote.

Appointments by the Mayor

Reports

50. Report from the Assistant for Special Projects concerning building options for city owned property at 10 Prince Street.

Action: City Manager Aspell indicated that staff has provided information requested at the last meeting regarding options 1, 2, 5A and 5B.

Matt Walsh, Assistant for Special Projects, provided an overview of his report to Council.

Councilor McClure questioned whether some of the amounts had changed asking whether staff was getting a more precise estimate. Mr. Walsh responded in the amounts previously he never included the previous land costs. Referencing the last table, Mr. Walsh indicated that table did not have, for example, total project costs because he didn't include the \$200,000 for the land and the due diligence.

Referencing option 5B, Councilor Coen asked whether the Human Services Department would occupy the one floor. Mr. Walsh responded that they would occupy at least the main floor and maybe a little bit of the second floor. Councilor Coen questioned whether there was a need for occupancy on the second floor from another department that could utilize that space. Mr. Walsh indicated that they do. City Manager Aspell there is an identified need for Human Resources and Information Technology space and he would end up taking a look at either one of these and relocating them so that they have room. Councilor Coen stated that he feels that option 5B makes more sense financially than the other options.

Councilor Blanchard noted that none of the cost estimates take in consideration the alternative idea of moving Code Administration and putting the Human Services Department there. Mr. Walsh indicated that within the report there were some very preliminary thinking about possible

ways of reshuffling here at the complex. He added that there would be a cost to renovate the Code space into space that would be suitable for another department. Councilor Blanchard asked whether it would be feasible to keep the building and renovate the present building. Mr. Aspell questioned whether she was referring to the existing building on Prince Street. Councilor Blanchard indicated that to be correct. Mr. Aspell explained that it could but that the costs would be essentially the same but there would be less usable space and wouldn't be as efficient as it would be with a new layout. Councilor Blanchard inquired as to how serious the parking problem is and whether the library has an opinion of the proposed options. She referenced a letter from a resident who is concerned about the library; the parking problems with the library and the costs associated with this project.

Councilor St. Hilaire noted that this whole issue as to what to do with a small piece of property should be a simple issue but he is having a hard time grasping because there are so many moving parts. He asked whether it would be prudent to get either a staff recommendation or a sub-committee together to think about the master plan further asking whether it made sense to do something like this and whether there is enough time to do something like this. Councilor St. Hilaire indicated that he would feel more comfortable talking about all the issues and having a master game plan before investing \$1.2 million. Mr. Aspell indicated that Council could take that approach but the city would be required to lease space because there is a rush in regards to the lease. He stated that the city would have to lease space, a mid-term lease, then look at the entire campus site which would trigger a whole series of expenses which are very expensive. He went into a detailed description of what this process involves. Councilor St. Hilaire noted that the explanation is somewhat helpful because it ties in all the pieces in which Council doesn't think about on a daily basis but the city staff does. He stated that in the future it might be prudent for them to decide are they going to do something in the future about a certain facility and, if so, what year do they put it out into just so that there is a game plan as to what they know what to do with their valuable resources.

Councilor Blanchard inquired whether a leasing situation would allow time to do better planning. Mr. Aspell stated that it would but it may be the most costly option.

Councilor Coen moved to proceed with option 5B. The motion was duly seconded.

Councilor DelloIacono made the motion to move Human Services to where Code Administration currently is and to put Code Administration into the new Prince Street building. He asked whether that was for the \$5,000 to \$6,000 figure within the report. Mr. Walsh stated that the \$5,000 to \$6,000 figure would be just to look at it quickly with an architect and come up with some budgetary numbers. Councilor DelloIacono withdrew his motion.

Councilor Nyhan indicated that he is generally supportive of the idea of creating a new building space and questioned as to the current annual operating costs of Human Services relative to this particular piece. Mr. Walsh replied that his recollection for the cost of maintenance right now is less expensive than what is before Council for a few reasons including the space that they are in currently is smaller than what they are going to be moving into. Councilor Nyhan asked what is the incremental cost of this project; where do the revenues come from that is paying for this.

Mr. Walsh responded that the incremental costs for option 5B, is approximately \$135,000 to \$140,000. Referencing upcoming budgets, Councilor Nyhan indicated that this will be an additional expense that they are not currently incurring and would be contemplating relative to target tax rates. Mr. Aspell indicated that they have had a very advantageous situation for eleven to twelve years in which they paid nothing and made minimal investments and will now have real office space that they will have to maintain.

Councilor St. Hilaire indicated that he still has questions at this point but stated that he is going to support this motion for several reasons: there is a significant cost to leasing and they do need to do something with Human Services; they are going to have a public hearing on this and between now and then others may provide other alternatives that could be considered.

Councilor Shurtleff stated that he will be voting for the motion but doing so very reluctantly. He explained that he is voting for it because he realizes the time constraint but this would entail the demolition of another 19th Century building and feels that tearing down a building of that age is a negative for the whole cityscape.

Councilor Blanchard indicated that she is very conflicted on this because of the time constraint and feeling that they are rushing into this. She stated that she will be reluctantly be voting in favor of the motion.

The motion to proceed with option 5B passed with no dissenting votes.

Comments, Requests by Mayor, City Councilors

Councilor Coen thanked Councilor Keach for the poinsettias on the Council tables.

Councilor Shurtleff indicated that he attended the 156th NH Police Standards and Training graduation ceremony on December 2nd. He stated that out of the 39 officers graduating that evening, two were Concord Police Officers. He further stated that there were two very prestigious awards given out that evening in which both were awarded to William Carroll from the Concord Police Department. He noted that the Academy Commandant had said that the other Concord Police Officer could have easily won those two awards as well because the academy staff found him just as competent as Officer Carroll.

Councilor Bennett pointed out that earlier this evening he voted no on the consent agenda for a removal of an item by Councilor Coen noting that he didn't do it because he didn't feel that it was the right thing to do but did it because there are rules and Council made a rule change that they would not allow items to be pulled from the consent agenda after noon time on Monday. He stated that if they are going to have rules that they should abide by them. Councilor McClure noted that her understanding was that it was advised that if they could let people know they would but they were never told that they were prohibited from pulling something off.

Mayor Bouley reminded everyone of the upcoming January 10th Primary Election.

Mayor Bouley indicated that in the past as a meeting of the new Council they have met the first week but since they are in a Presidential Primary cycle he asked that Council consider waiting until

the January 9th meeting. For full disclosure, he indicated that they did have a discussion as to whether or not to meet on January 9th because of the Primary being the next day and the Clerk's Office will be very busy but the charter is very clear that they have to meet on that day. He indicated that the first meeting will be on January 9th in which they will be doing the swearing ins and then go into the agenda. He asked whether January 30th would work as the Council's Priority Agenda Setting meeting. Several Councilors indicated that they will not be able to attend on that date. The Mayor indicated that he will come up with some more dates and they can discuss on the 9th. Lastly, the Mayor extended a personal thank you to Councilor Stetson stating that it has been a real privilege to serve with him and thanked him for what he has done for the community. He added that Councilor Stetson has made this community a better place to live and has done incredible constituent service work.

Comments, Requests by the City Manager

Mr. Aspell acknowledged that the Government Finance Officers Association of the US and Canada has presented a certificate of achievement for excellence in financial reporting to the City of Concord. He presented the certificate on behalf of the Finance Department, the Fiscal Policy Advisory Committee chaired by Councilor Bennett and the Council. He stated that he believes that they are the community with the longest standing number of these in a row in the entire state.

Consideration of items pulled from the consent agenda for discussion

Item 29 has been pulled from the consent agenda to be discussed following unfinished business items on the agenda.

29. City Engineer's report on the status of repairs at the Sewalls Falls Bridge, CIP #22.

Action: Councilor Coen indicated that the reason that he pulled this item to receive an update from staff and the safety aspect of it.

City Engineer Ed Roberge explained that there are ongoing inspections where the bridge is critically red listed. He indicated that the DOT performs semi-annually inspections and as a result of an inspections done early November, there is some structural repairs that were suggested to be done as soon as possible. He noted that as of last Friday, the date commitments haven't been set yet but as soon as he knows he will pass that information along.

Councilor Coen moved acceptance of the report. The motion was duly seconded.

Councilor St. Hilaire indicated that last time they were here some questions were directed about the ten year transportation plan and indicated that they had finalized that and given it over to the Governor's Office which will then go to the legislature but the bridge replacement was pushed back to 2016 and was moved up ahead to 2014. He thanked everyone who helped him out with this including the Mayor, Councilor Blanchard and representative Councilor Bouchard.

The Mayor thanked Councilor St. Hilaire for his efforts noting that it wasn't an easy task with all the projects being very competitive. He pointed out that he feels that Councilor St. Hilaire

may be being a little humble explaining that it is his understanding that it's not just on the 2014 list but is on the "ready list" and by being on this list, means that you don't go through this all again but when the funds come up they go. Councilor St. Hilaire indicated that he is being cautious so that this may be true but doesn't know what's going to happen when it goes to Governor's Office and the legislature.

The motion to approve passed with no dissenting votes.

Consideration of Suspense Items

Councilor Nyhan moved to suspend the rules and take up the suspense items not previously advertised. The motion was duly seconded and passed with no dissenting votes.

Items Tabled for an January 9, 2012 Public Hearing

12 Sus1 Resolution authorizing the City Manager to enter into a development agreement concerning redevelopment of real estate located at #43 and #45 South Main Street; together with report from the Assistant for Special Projects.

Action: There being no Council objection, the titles were read for suspense items 1 through 5 were read together.

Councilor Nyhan moved to set suspense items 1 through 5 for January 9, 2012 public hearings. The motion was duly seconded and passed with no dissenting votes.

12 Sus2 Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 29, Subdivision Code; Chapter 29-2, Public Capital Facilities Impact Fees Ordinance.

Action: Item set for a January 9, 2012 public hearing.

12 Sus3 Resolution authorizing the issuance of bonds and notes in order to refinance the sum of approximately \$2,600,000 in Tax Exempt Bonds previously issued in 2005 and 2007 for the construction of the Capital Commons Municipal Parking Garage and related improvements to taxable status.

Action: Item set for a January 9, 2012 public hearing.

12 Sus4 Resolution adopting an amended and restated Development Program and Financing Plan for the Sears Block Tax Increment Finance District. (*Action needs to be taken in February due to requirement under RSA 162-K whereby a final vote on a TIF amendment must be delayed by 15 days after public hearing is held*)

Action: Item set for a January 9, 2012 public hearing.

12 Sus5 Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 6, Recreation, Article 6-1, Rules and Regulations for Parks; together with report from the Parks and Recreation Director. *(Not previously distributed)*

Action: Item set for a January 9, 2012 public hearing.

Adjournment

The time being 10:42, Councilor Stetson moved to adjourn the meeting. The motion was duly seconded and passed with no dissenting votes.

A true copy; I attest:

*Michelle Mulholland
Deputy City Clerk*