

MINUTES OF A CITY COUNCIL SPECIAL PERMIT HEARING HELD ON APRIL 24, 2012, DOC. #18, A PETITION FROM STEPHEN DEFEQ/BRADFORD UNLIMITED CORP. REQUESTING SPECIAL PERMIT FOR A CLUSTER RESIDENTIAL DEVELOPMENT & APPLICATION FOR WAIVER OF AFFORDABLE HOUSING COMPONENT OFF ROSEMONT STREET, ASSESSOR'S MAP 636, BLOCK 1, LOT 10 & A PORTION OF MAP 651, BLOCK 610, LOT 18

SUBJECT: DOC. #18 - Petition from Stephen Defeo/Bradford Unlimited Corp. requesting special permit for a cluster residential development & application for waiver of affordable housing component off Rosemont Street, Assessor's Map 636, Block 1, Lot 10 & a portion of Map 651, Block 610, Lot 18.

Present: President John Michitson, Councillor Robert H. Scatamacchia, Councillor Michael Hart, Councillor William H. Ryan, Councillor Sven Amirian, Councillor Michael McGonagle, Councillor William J. Macek., Councillor Colin LePage and Councillor Mary Ellen Daly O'Brien.

City Clerk Margaret Toomey: A hearing will be held on Document #18 – A Petition has been received from Stephen Defeo/Bradford Unlimited Corporation requesting a special permit for a cluster residential development. An application for a waiver of affordable housing component off Rosemont Street, Assessor's Map 636, Block 1, Lot 10 and a portion of Map 651, Block 610, and Lot 18. A related conditional favorable recommendation has been received from the Planning Board and the Planning Director.

President Michitson: Opened the hearing.

Attorney Robert Hart: My name is Attorney Robert Harb. I am here with the applicant Stephen Defeo president of Bradford Unlimited Corp. who has done other projects in the town that you may be familiar with and he also completed another cluster development. With us also is two of the owners of the property. Both of the owners are here to show their support, of course, for the program. We have been working with Mr. Pillsbury for a number of years on this site to try to find something that would fit in the site. We went thru Mr. Pillsbury with a number of different ideas. Zoning, rezoning, what would be the best applicable type of a development here. We actually concluded that the best development would be a single family cluster development because of the proximity of this property to the Little River. Also because of the ecological outlay of the property and what it's near. We looked at the neighborhood and we saw next to us was Alvanos Drive. Alvanos Drive is almost essentially all single families except in the front for a portion there's some duplexes. There were a couple of duplexes recently built on Rosemont Street but essentially we are on a single family development. We decided with Mr. Pillsbury this would be the best appropriate use of this property. That was single family development but in a cluster development so we could keep the open space and help the City preserve open space especially near the Little River but also to enable the property to be best used. This development as big as it is, over 15 acres, only has six house lots. That leads us, at the end of my presentation to talk about the waiver of affordable housing. We are not a large development. We have a very small roadway going in. It's less than 400'. We are trying to preserve the wetlands. We've worked with Conservation. One of the amended plans the Council got was showing some new trail easements. We are trying to create a trail. Behind this property, our surveyor Chris Sparanges joins us. He's got a plan up. Behind the property there is another parcel of land that we offered, we have segregated and it is also near the River and offered to donate that to the City if they want that. It's not part of the 15 acres, it's separate. We have asked the City. We have segregated that. We already put a no build covenant on that property as requested by the Conservation Commission. It's not technically part of this petition but it's related to the petition because it's all the same developer and we want to preserve that wetlands and preserve access to the river. It is a requirement of Chapter 255, we do have the approval of the Conservation Commission. We went with them for a determination and

Rob Moore's letter is in your file and in your package. I am just going to very quickly run thru the requirements of the cluster development to refresh your memory. Then I am going to ask Mr. Sparanges to talk about the actual usage, the development, the drainage, things that he has done with the actual on site work which you can see as laid out in the green on his map. We need more than 15 acres of land. We have that. It has to be an allowed use. Single family is. The requirements of the lots have to meet the RH district requirements. They do. The plan is conforming with the Master Plan. We are on public water and public sewer. Originally you will see in your notes and in the letters from the departments, originally the wastewater department asked us to put in a major pump system in to supply the whole development. Through negotiations and discussions with them and the fact that that would also run some burden on the town, we now have their letter that says five individual pumps within the houses and one will be on gravity of the six. There will be no additional cost to the City. It's not a system the City has to maintain or worry about. Each house will have a pump in the house and one of them, one of the six will be gravity fed. That's the benefit. It doesn't cost the City anything and will be on public water and public sewer. Because of the issues I know some the Councillors have and I do too about pump stations, there's another lift station in the area that needed some work. You will see in the letter from the Wastewater Department, at the Planning Board definitive plan hearing, an amount will be set per lot for the developer to donate as off-site improvements to help the neighbors in their system which we are not tied into and have nothing to do with it. As a result of the developer meeting with the neighbors after the Planning Board meeting and talking to the City departments, that's in the City's letter from Wastewater and that amount and how that's going to entail will come out at the definitive plan hearing. We eliminated the issue for the City to maintain another pump system. We meet all the requirements of open space and wetlands that are set forth in 255. We are going to install street signs. We are going to install lighting. Essentially, as Mr. Sparanges has put in his application, we meet all the requirements of the special permit ordinance for this development. You will see later on that the Planning Director and the Planning Board was in favor of it subject to us meeting the conditions of the City departments which we agreed to. You'll see we have Conservation's approval and I think that's very important since we are near the Little River. I'd like to ask Mr. Sparanges talk to you about the actual lay out of the development, how it was set about. And you can see the green on the plans and I know the plans you have may not be green, they are the same plans.

For the record, my name is Chris Sparanges. I am a registered professional engineer in the Commonwealth of Massachusetts with offices in Middleton, Massachusetts. Instead of walking back and forth, I am going to try and hold up the plan here and point at it as we move along. As Attorney Harb has explained, he has basically given you a good outline of the proposed development. The parcel of land that comprises the 15.5 acres includes the colored portion of the plan, which is where the development or cluster is concentrated. The remaining land extends to the rear of the property and along the Little River and then back out to Rosemont Street. The frontage of the property lies along Rosemont Street. This is the location off Rosemont Street where we are proposing to construct this roadway which is approximately 362 feet long, right along the outer curve of Rosemont Street. As I will explain in a little bit more detail later, this allows us a unique opportunity to be able to take advantage of the shape of Rosemont Street in that vehicles exiting our proposed roadway, have a quite a bit of site distance in each direction. We will go into that in a little bit more detail when I talk about traffic, and traffic impacts and mitigation that we proposed. Of the 15.5 acres, 3.5 acres is proposed as open space, the remaining development is contained within the 12 acre parcel. Some of the major land features of the property, again the north arrow is pointing towards me, in this direction, to the west, we are bounded by the Little River which flows to the south in that direction. In addition, we have Alvanos Drive which is located to our east and that is shown in a little bit more detail if you were to look up at the locus map in the upper left hand corner of our plan. Alvanos Drive is a U shaped roadway with two accesses onto Rosemont Street. The closest one to our property is in this vicinity here and then it loops around in this fashion. The homes along Alvanos Drive are single family homes. There are also single family homes along Rosemont Street to the north and west, homes accessing Rosemont Street and the rear of these lots back up to our property along this existing

property line. Additional prominent site features include a Tennessee Gas Pipeline which runs thru the neighborhood here. The folks living along Alvanos Drive are familiar with the location of the gas line. It comes thru our property, it comes thru the subject property in this fashion here. I will just draw a line along the center line of the gas easement. Tennessee Gas has an easement that runs thru our property in that fashion. Looking at the proposed site, in terms of topography, the way the land slopes and from a drainage standpoint, we are obviously within the watershed of the Little River. In this general neighborhood including our property, Alvanos Drive and other properties in the area, eventually all of this property slopes off and drains to the Little River. More specific to our property, Rosemont Street sits up a little higher than us, once you step off onto the subject property, the slope of the land drops off down to this green line that we've highlighted here in a lighter shade of green. This is the limit of the bordering vegetated wetland that was flagged by a wetland scientist. It represents the limit of the wetland vegetation on the property. This wetland system is part of the watershed to the Little River. Another prominent feature of course of the Little River, we know that there's a floodplain associated with the Little River. The FEMA flood maps identify that elevation as elevation 32. We also have that line shown on our drawing in a darker dashed line in this fashion. There is also a secondary wetlands systems that comes onto our property slightly. To the north of our property the elevation is even higher than us and higher than Rosemont Street. Behind on the homes, on the north side of Rosemont Street, there is a very large wetland system that drains across and under Rosemont Street thru and existing 12 inch culvert that crosses Rosemont Street and comes onto the subject project at this location here. As part of the project, we are proposing to extend that pipe approximately 50 feet, to allow us to construct the roadway. This pipe will be extending in the same exact size that exists now and where it discharges is an existing brook, if you will. In terms of wetland resources, it is considered an intermittent stream because it dries out regularly during the course of the year. This small brook feeds a small wetlands system that is located in this area here and then the brook continues thru this property and then onto the river eventually. As Attorney Harb has mentioned already, we've walked the property with Rob Moore from the Conservation Commission office. We've walked the wetland line, taking a look at these wetland resources. The other we've looked at with Rob Moore are access points to the open space that we've proposed as part of this development. One of the reasons we went to the Conservation Commission was to introduce them to the project and not only seek their recommendation, but also to explain to them what we were proposing to do and terms of how close we were planning on working near the wetland. If we are successful here before the City Council with the Special Permit application we will be continuing with the project in the form of a definitive plan filing with the Planning Board and a notice of intent filing with the Conservation Commission because we are proposing work within 100 feet of the wetland line and this brook that I have described here. At the Conservation Commission meeting members of the Commission expressed a willingness to work with us after we explained the nature of the project and the amount of open space that was going to be generated as part of the project. Moving on to the proposed development and its nature as a cluster subdivision, what we've been able to do is create an open space parcel that can be accessed from the proposed roadway at a couple of different locations. We've proposed a series of trails, some of which exist today and some that will be blazed as part of the project. They are shown in the yellow. If you were to travel beyond this 15.5 acre parcel to the south, you would come onto abutting property that Attorney Harb referred to earlier as property that has been identified as additional land that will be deeded to an entity; whether it's the City or in care of the Conservation Commission or some other open space entity if it's not given to one of those entities it will be held in a way that will protect the open space beyond the completion of the project. Looking at this larger scale plan, this is the proposed development parcel, the 15.5 acres. This lot 10D highlighted in green, represents an additional 39 acres within the watershed of the Little River that Mr. Defeo is proposing to include as part of the project and part of open space at a future date. We've gone to some level of effort with Rob Moore from the Conservation Commission to try to identify access points to get out to the back parcel. In that back parcel there are bodies of water in low lying areas that were created many years ago as part of an effort. This property was mined for clay and the creation of bricks. There are various water bodies and trail systems that snake throughout that back piece in addition to this piece as well. What we did, we created an access point from the proposed

subdivision along what we are calling lot 6 that will access the open space in this fashion. Rob Moore and I came out here back in December and we were able to walk out to this area here. This is all upland, in this part here, this is open space. We were able to follow the Little River along this yellow line. We got to about here and it was a little bit difficult for us to pass. We were able to cut thru the property here and intersect an existing trail that runs thru the property and out to the open space in back. So the second access point that we've identified for the open space is down at the end of the proposed cul de sac at this location. This will allow folks to enjoy access during those times of the year where it's not too flooded near the edge of the river to enjoy that open space. Some more specific information about storm water management for the proposed roadway system, it is a relatively short roadway at about 362 feet long. We are proposing a series of catch basins that will collect storm water run off from the paved surface of the roadway and direct it to a storm water management area. The storm water management design will be in accordance with the Planning Board rules and regs. Because we are doing work within 100feet of a wetland, we also have to meet DEP storm water management regulations and there are forms that are filled out as part of that process with the Conservation Commission where we as engineers have to certify to certain storm water management standards among them, ensuring that there will be no off site flooding impacts. That we won't be increasing the peak rate of run off among others. As I mentioned earlier, we will be filing a notice of intent application with these drainage calculations with the Conservation Commission and for review by the City Engineer. Because the roadway is relatively short, the drainage design is rather simple. We will be able to control that storm water run off from the roadway with this systems. We are also making an effort to ensure that we honor the existing grading scheme and that is making sure that we are not directing an additional runoff in this direction which is to the east towards the homes along Alvanos Drive and the existing condition, very little water flows in this direction as I mentioned earlier. The flow of water is in this direction, heading perpendicular towards the wetland line and we are going to try and honor that as part of our grading scheme. At our Planning Board hearing we heard from various residents from the nearby area regarding concerns about storm water and traffic concerns along Rosemont Street. One of the recommendations that came out of our Planning Board meeting was that we address traffic concerns that were brought up regarding accessing Rosemont Street for safety reasons. Following that meeting, we scheduled a site visit with the City Engineer John Pettis and Officer Ed Watson from the Haverhill Police Department. Mr. Paul Jessel was also present for our site visit. What we did is we came out to take a look at the existing and available site distance in each direction along Rosemont Street. At that time, Officer Watson identified a couple of areas where some vegetation removal, some key or strategic vegetation removal could improve upon site distance at our intersection. What Officer Watson was most concerned about was folks travelling west bound, let's say from Main Street which is down in this direction, heading this way, let's say waiting to take a left turn onto Perl's Way. The concern was making sure that folks that were travelling behind that vehicle would be able to see that vehicle and similarly, folks traveling in this direction, from Merrill heading towards Main Street, would be able to see this car sitting here waiting to take a left hand turn. We identified some vegetation and identified some areas for mitigation. There was a letter generated by Mr. Pettis, an amount of money, I believe it was a per lot cost, that was agreed upon, to be donated for traffic mitigation and those letters are in your file. I mentioned earlier that we were able to, and we really didn't have much of a choice, our frontage along Rosemont is at this particular location on Rosemont Street. One of the interesting this that we are going to be able to take advantage of, something I mentioned earlier, and that is the proposed roadway is located on the outside of the curve of Rosemont Street. That allows folks coming out of the proposed roadway looking in each direction coming out of Rosemont Street, it offers them a nice clear view. Greater than 500 feet in each direction and this direction all the way to the intersection of Merrill Avenue and quite for a distance further in this direction towards Main Street. When we were out at the site during our site visit when I discussed with Officer Watson (change of tape) these in and out patterns even though there won't be that many because we only have six homes, this traffic pattern does lend itself to slowing cars down somewhat on Rosemont Street because it's another intersection. Folks travelling in this direction will have no choice but to slow down to observe folks that are sitting here waiting to take a left hand turn and folks coming in this direction when they see someone

trying to turn into the proposed project. Following our traffic meeting on site Mr. Defeo also organized a neighborhood meeting following our Planning Board meeting which I attended along with Mr. Defeo and the owner of the property, one of the co-executors of the estate, Mr. Steven Duffy. Several residents from Alvanos Drive attended the meeting and we were able to explain at greater length some of the things that I've discussed tonight. We felt that it was a pretty productive meeting and think we had about seven or eight folks come out for that meeting. That concludes my formal presentation on engineering aspects associated with the project.

President Michitson: Is there anyone else here that would like to speak in favor?

Attorney Harb: I just need to cover one more issue which is that affordable housing so that we can finish our presentation. We expect momentarily Andrew Herlihy to come in and give us a letter. I talked to him earlier this evening. You may have noticed, and he's here. I was asked to make sure that the Planning Director and the Community Development Director was not opposing our requested waiver. I understand they don't. Mr. Herlihy is here to confirm that. Maybe I'll ask him to come up and just talk about that and then I'll go over why we think the waiver is important.

Andrew Herlihy: I am Andrew Herlihy. I am the Community Development Division Director for the City. Like I said, I had another meeting upstairs. I will be providing the Council with a letter stating our support of this affordability waiver. I also want to add that the Planning Director does support this proposal. He is one of my bosses. I don't have much to add on this in terms of any planning issues that you heard. That is not been something that I have been involved with. I am here to comment on the affordability waiver issue. Last time I spoke at this podium before this board, what is Herlihy doing? Wasn't he here last time defending keeping an affordability waiver intact talking about all kinds of dire consequences if we did that. There is a big big difference here and I just want to explain that to the Council. I was last at this podium speaking about the need not to waive an affordability restriction for a property on Washington Street if you recall. There's a big difference between that and this proposal. That proposal was what is classified as a HOME assisted unit. The Housing Investment Partnership Program which actually goes by the nickname HOME program, that unit on Washington Street for example and other units throughout the City are HOME assisted units. There are affordability restrictions in place and if you waive them it's at the City's peril and we end having to pay back the federal government. That is not not the case with this proposal. There is no HOME money involved in the developer's proposal, if there were, it would be a different story, there is not. So there is no federal or state repayment penalties at play here if we waive this affordability restriction. Secondly, this case brings up an interesting point that we will be addressing over the course of the year hopefully we may bring back the housing partnership or something of that nature to look at this issue. The City bylaw in this case says that if you build a cluster development that requires a special permit, such as this, that there has to be a unit that is deemed affordable. The City has determined before, not the state, not the feds, the City has determined that needs to be 50% of what's called the maximum HOME value. We are not using any HOME funds in this particular case. Actually there's no connection with this project and anything to do with HOME except for the fact that the City, like a lot of communities and states across the country, uses the HOME figures. There's housing figures that the HOME program uses and these are carried over into other programs and used as housing standards that determine affordability throughout the nation. They are done in this case, for Essex County and the like. Now the figures themselves are an issue because the feds have frozen the figures at 2008 figures before the housing collapse occurred. So there is some debate as to whether the HOME figures really are truly an affordable housing figure anymore in this market. The City's determination that an affordable unit is 50% of this HOME figure which is given by the feds annually for Essex County, that determination was a City determination somewhat arbitrarily produced about 10 or 12 years ago. It's probably in need of some revision. Other communities don't do that. They don't use that metric. They don't use that figure. They don't come up with 50% of the HOME value. Most communities don't do that. We need to look at how we do that in the future. In this case, the City is on track. We are over 9% in

closing on getting to our 10% affordability figure. We anticipate being able to do that with some larger projects that are coming in. Not every large project that you've heard about but some. We don't see much of a need in this case, the loss of this one unit as an affordable unit in theory is not going to be a big deal for the City. We support having these at market rate. It probably will be selling, given the market, probably at a figure very close to what the HOME program values. We consider to be close to a affordable standard anyway. There is not much to be gained by putting this burden on this developer. It is a policy that we really need to look at and update. I look forward to coming before this body sometime later this year and working with the Planning Director to update that figure. I wanted to explain the discrepancy. How could I be up here one time saying that we have to keep an affordability restriction in place and come here again and saying we don't need to. They are two separate animals here. There isn't much relevance with one to the other. I just wanted to make that clear.

Attorney Harb: As Mr. Herlihy said, just to give you an overview. The average sale price of the units which are very small single family units maybe 16-1700 square feet, is going to be at 82% of that HOME figure, which is below the HOME maximum figure. It's not the 50% but as he said it's an arbitrary 50%. The developer with all that you've heard about the off site improvements and the development costs and the donations to different departments what they requested, plus the Fire Department has asked him to put sprinkler systems in all houses and it's only a six small family development. As we said in our application, he can't afford to do the development if he has to sell one house, even one out of six, that only leaves him five. There's not enough in the economy to make it work. So we ask you for that waiver. It's not going to hurt the City as you heard Mr. Herlihy say. You are almost at the 10%. It's only one unit. The other units will be selling to first time home owners really at the price that he intends to market it at. We feel we have met all the requirements of the zoning ordinance. We've met all the requirements of the departments. You have letters from the Engineering department which indirectly includes the Police department with the office's involvement. You have water and waste. You have Conservation. You have Fire which asks for sprinklers which the developer is fine with that. The amount of money that Mr. Pettis had suggested for this traffic mitigation was \$600 and that's also in agreement with the developer. That's per unit. That's \$3600. I know some of the neighbors are here to talk to you about traffic and signage. I can tell you I spoke today to Mr. Pettis who also spoke to Ed Watson, the police officer. He suggested we are going to be putting aside the \$3600 for him to use for mitigation. That we simply tell you that he suggested let him take care of any signage or whatever. It'll come out of that amount of money. They'll do what they think is needed out there. As you heard the surveyor say, the road is going to slow down traffic. The additional money to help the signal on Main Street. You see in the letter. It's an old system he tells me because I remember it was there forever, and they haven't upgraded the computer box or the little black box that works it. They will be able to better adjust traffic coming in and out. I know I sit there for a while sometimes. That's why he asks for this money and to trim trees and things like that. We think we can meet the requirements and we've been very responsive to the neighbor's request. We ask your approval of the special permit.

President Michitson: Is there anyone else in favor that would like to speak? Anyone else in favor? Anyone else in favor? (There was no one.) Is there any one opposed that would like to speak?

My name is Steven Johnston and I live at 67 Rosemont Street. The property that you are talking about tonight is diagonally across from my driveway. So far, I've spoke to Mr. Defeo on a few occasions about what he is doing. I don't necessarily oppose what he is doing. But from what I have seen with living there for 30 years, signage does not do it. I have a sign right out in front of my house, it say dangerous curve. And then on the end by Merrill Ave. there's a sign that says dangerous curve. That does not deter anybody from slowing down. I retired from teaching in 2008 October, that night somebody came around that curve and wiped out my truck. My truck was 25 feet off the road. They kept coming right around and right in. To this point today, many people will try to pass you, I'll be taking a left into my driveway and people are still trying to pass you on the left. As far as vegetation, removing it, you can see. The only time

that you can't see is when the political signs are put along the corner there. I can't see getting out my driveway. We need more than just signage. I would like to see some sort of a blinking light. A road that is going in there is not going to slow traffic down. The other concern I have is what they were talking about all this wetlands. There's a swamp that ends at my property and goes half way up Rosemont Street. The natural drain cuts right thru my property and goes underneath Rosemont Street and down. If they are going to start working or playing with the wetlands, there's a good chance they may do something that could back it up. Right now there's very little water because of the fact that very little snow and no rain. On a normal year there is water trickling thru there. Only once in thirty years that we've lived we've only flooded out. So people start playing with the development and start playing with that wetlands it's liable to back that water up and then I'm going to have water in my cellar. That's all I have to say.

President Michitson: Is there anyone else that is opposed that would like to speak? Asked three times. (There was no one.) Next step is to offer a five minute rebuttal.

Attorney Harb: This is a pipe, you'll see on your plans, that enters in and that was discussed with the Conservation Commission. As you heard the surveyor say, we are below grade so the water is not going to go that way, it's going to go towards the Little River with the detention ponds. That's going to come about in the full definitive plan and the full order of conditions from Conservation. I would like to suggest there shouldn't be any issue of it backing up. In fact we are going to be able to keep the pipes clean and empty. They are going to take care of that. With regards to the blinking light, I did discuss with Mr. Pettis whether or not he thought a blinking light there would be appropriate. He actually told me no. He says tell the Council you have my \$3600, I will take care of things.

President Michitson: The opposition now has a chance for a five minute rebuttal. Seeing none, I now close the hearing. What is your wish?

Councillor Hart: I think it would be wise of us to address the issue of the affordability first with the understanding if the special permit is granted, that I would like to move that we waive the affordable housing requirement.

President Michitson: Motion by Councillor Hart, seconded by Councillor Macek. Any discussion?

Councillor Daly O'Brien: It's my memory that when we, I don't even believe I was on the Council then, I believe that some of these affordable housing rules were put into place when there was an abundance of building going on in Haverhill and we didn't have a stock of lower income units to offset and it was also something the state was really pushing down a lot of communities throats to make sure that we had a better balance between the affordable housing and the regular buildings there were being put up. There was an abundance of building going on. I think we've inherited some of these rules. What I often tell people, when we talk about what we do here on a Tuesday night, one of the things we do is when something needs to be looked at from a different point of view, there are no rules that are written in stone. Everything has flexibility in order for a business or a project to succeed. I think that as a Council we try to look for things in a positive side, is this good for Haverhill and will this make a difference. I think this is a nice project. It's not 15 houses, it's not 30 houses. It's a much lower 6 house project. A cluster development which we have encouraged. I think the times have changed and rather than throw out all the rules, that we should at least grant them a waiver and I am in favor of that.

Councillor Hart: Mr. Herlihy, the way the affordability ordinance currently works, is if there's a special permit for multifamily, is it 10% of the housing has to be affordable and that is 50% of the number. Mr. Herlihy – correct.

Councillor Hart: I talked with Mr. Pillsbury and I know you just basically said the same thing, the formula itself really needs to be amended. I think sooner versus later. I really think you have to because we are starting to see some activity out there. There's one earlier tonight that's going to have a problem with that probably. We are probably going to be back looking for a waiver. We should really be addressing that because it's just not fair the way it is right now. It's overly aggressive in many ways and it works very unfairly in a situation like this. Because, if I am correct, what happens here is he is only building six units. He is not building ten. One out of six is like 16% of his development then has to become affordable and that really takes a big bite out of his profit. If you are fewer than 10 units, that 10% figure works very unfairly towards you. In this particular case that's a good example of what's happening with this not to mention that we really should be looking at the size of the developments that this becomes applicable for and what the percentage should be. Right now that 50% is a lot for 10% of the units. I talked with Mr. Pillsbury, in many communities, it's like 80% or something of that nature that they go for as affordable. We have to look at what is affordable. What do we mean by it. Who are we helping with it. I'm not sure that we've had many of these that this formula has been applied to. Do we put ongoing deed restrictions or covenants on the deeds that would require the future sales to also be affordable. Do those go on these deeds to you know?

Mr. Herlihy: For a period of time, yes.

Councillor Hart: They really should because somebody could just flip it and take advantage of it and make a profit of it at the developer's expense. Just a lot of things have to be looked at. I would urge that you, I know you guys are busy with a lot of things, but it you could just focus some time to look at this thing and get it done before things are to heat up again and we are facing this thing every time we have a special permit multi-family come in front of us.

Mr. Herlihy: Thank you Councilor Hart. Those are excellent points. As Councillor Daly O'Brien pointed out, I believe this provision went in the City code back in I think '99, if you recall then, that was just a white hot real estate market and the economy was just cracking. A lot of our rules as it applies to housing kind of based on a different time that where we actually are. As soon as we get thru the budget, we plan to go in and attack those bylaws. There is a need for affordable housing. There is a need to continue to develop it. To risk a project with six houses, to say one of them has to be affordable, and really screw up the whole math of the project, for that kind of a gain, one unit doesn't always make a lot of sense. We need to go about the development of our affordable housing and I think in a smarter way and it's something and it's something we want to try and do.

President Michitson: Thank you Councillor Hart. That was a very good suggestion.

Councillor Macek: Attorney Harb if I could ask a question regarding the wetland area. Is it in the special permit? Would we be approving the acceptance of the land by the City tonight or is it something (cut off)

Attorney Harb: No, that decision is made at the time of the definitive plan whether this open space here would go to the City or the Greenbelt Association let's say or the Conservation Commission. The other piece is not part of the special permit. It was an offer from the developer. You are not making a decision tonight to take or not take that piece. You're only decision tonight is to approve the special permit. Our zoning ordinance only gives us three choices for the open space. It goes to the City, the owners or an unincorporated association or corporation of non profit of the owners or another entity. We did another that wasn't a special permit with the developer down by the river by Bradford and we gave that piece to the Essex County Greenbelt Association cause the City Conservation said no why don't you give it to them because they have other pieces here. It made sense. You are not making the decision. This vote has nothing to do whether that parcel goes to the City or some other entity.

President Michitson: Is there any further discussion on the waiver? Madame Clerk, please call the roll.

City Clerk Toomey: Councillor Scatamacchia-yes, Councillor Hart-yes, Councillor Ryan-yes, Councillor Amirian-yes, Councillor McGonagle-yes, Councillor-Macek-yes, Councillor LePage-yes, Councillor Daly O'Brien-yes, President Michitson-yes, 9 yeas, 0 nays.

President Michitson: That waiver passes.

Councillor Hart: I'd like to make a motion that we approve the special permit.

President Michitson: Motion by Councillor Hart, seconded by Councillor Macek. Any further discussion?

Councillor Hart: Attorney Harb, just curious. The way you've configured it on the plan I have, shows that there two of the six lots have over five acres. Is that correct? Attorney Harb: Yes. They are large lots but they are also going to be burdened with I believe some trails going through them and other things. Yes, they are large lots.

Councillor Hart: What was the reason for that? It seems like it's all wetlands, correct? Attorney Harb: I don't want to say all wetlands because he had to meet a wetlands percentage in order to qualify for a special permit so we divided it up. We divided it into the different spaces because of that reason and we can't have nonbuildable lots within the special permit. It was actually asked of us at one point, can we carve out a bigger area and make it nonbuidable but we couldn't do that. We had to meet the requirements. It was requirement purposes to make them large.

Councillor Hart: I figured that is why you did it but that raises a question to me. First of all, with the open space as you've dedicated as open space, is somewhat other than getting in, once you get into that 3.5 acres of open space you can't get out of there without going over lot 6 to get to the trails. That's how it has to work otherwise you are kind of stuck.

Attorney Harb: The plan, which is kind of uniquely drawn for this particular space, there's a walking path contiguous band entitles around the whole development so theoretically you can come in on the right hand side, walk all the way around the development and walk all the way out open space land.

Councillor Hart: I was just curious as to how you are going to make this accessible to people for passive recreation, enjoying nature or whatever. Because they are going to have to be walking over individual lots to do this or they are going to have to be restricted to a path. I don't know what you are going to do to in terms of how you are going to make a reservation in the deed of an easement for the public to be able to use this land which requires them because the way you have set up lot 5 and 6 to walk over people's land.

Attorney Harb: I will let the surveyor talk about that. My memory is there is a path which we worked out with the Planning Director that goes all the way around the subdivision so I don't really think Attorney

Councillor Hart you need to go over somebody's land in order to actually go around the entire property. It looks like a double line (cut off). The path at the end of the cul de sac goes right over the lots. It goes over both lots 5 and 6.

Attorney Harb: That's an additional path that Conservation asked us to add in there. If you look on the left hand side in the open space in the front as Mr. Sparanges is holding up, you can come in here, go all the way around here.

Councillor Hart: But are people going to be limited to doing that and that only. Is that what your reservation, your easement is going to say? I'm curious as to how you are going to do this. Making it accessible and yet not burdening lot 5 and 6. Certainly they don't want people walking thru their yard which is going to be much smaller than the five acre lot that they have. But how do you accomplish both?

Attorney Harb: We don't accomplish not impeding 5 and 6 the way Conservation Commission asked us to do the access easements. Yes, they will be impacted which is a reason they are larger. Also, a reason why we couldn't do the affordable because they are not going to sell for much money because they will be impacted by these accesses. What we tried to do, as I mentioned, way in the back is that other piece which is not part of the development, you can see on the yellow line here how the trails. Conservation asked us to tie it in. If the City does decide it wants that land, then the paths and everything would go thru to that extra land out back. But over here they get access to the river and that's why he had us make this bigger.

Councillor Hart: Again, my question is, when you make the reservation just to be able to use certain trails?.

Attorney Harb: My understanding of the ordinance is that it doesn't require, depends on who gets the open space. It doesn't require we make the trails to everybody to come. We are working this out with Conservation to see who wants the land and then that would make a difference who is coming, who is not coming. The ordinance for cluster development doesn't say you have to leave open space for the world to go into.

Councillor Hart: I understand that. You don't have to. But you are sort of promising that part of the pitch tonight.

Attorney Harb: We are promising that you get access to the river and the land out back we are going to give if the City wants, it they can have it. Mr. Moore hasn't told us yet whether the Conservation Commission wants it, whether the City of Haverhill wants it or they'd rather just have it with the Greenbelt. We are amenable to anything that we are told that somebody would like us to do.

Councillor Hart: I think I am getting an answer but it is not clear. People will be restricted pretty much on 5 and 6 to use the trails to get to the other land.

Attorney Harb: Yes, that's why they are burdened, just those trails.

Councillor Hart: They are only burdened with the trails on the plan? Attorney Harb: Right.

Councillor Hart: How many acres in the back? Another 39. Where does that have frontage?

Attorney Harb: It doesn't. Its land locked. It's a non buildable lot set out by Planning as a non buildable lot. You can see it here it's fairly large in the green. Way out back.

Councillor Hart: Is that all undeveloped.

Attorney Harb: Is already has a no build restriction on it because when we did the plan for Planning Rob Moore and Conservation asked us to put on a very lengthy no build covenant that goes on who know how far which he had approved prior before because we've done this with Mr. Moore before. It's already burdened by a covenant. It can never be built on. It's just sitting there. It's a question who wants it.

Councillor Hart: What's out there? What can people do if they get out there? Say the City did take it.

Chris Sparanges: There are actually bodies of water. Let me flip over to an aerial picture that I have. You can't see very clearly on this plan. The subdivision is super imposed on this aerial. Here is Rosemont Street. You can see the Little River. It's in the same orientation north is this way. You can see the outskirts of that water body that we talked about. If you look really close, some of the lighter colors here, that snake thru the parcel is the existing trail system and it wraps around those water bodies. It's kind of interesting. Rob and I didn't spend a lot of time out by the water body but we did follow the trail until we crossed over at this point here and it was obvious that it continued. As I said, Rob and I spent quite a bit of time trying to nail down these access easements so they covered that existing trail system. That's what Rob didn't want to give up as part of the larger scope of this open space.

Councillor Macek: Along the same lines that Councillor Hart was just talking about, the 10 foot wide access easement strip that does cross at the end of the cul de sac appears to be crossing on the plan an infiltration basin and the proposed sediment traps. Are you going to be able to actually do that?

Chris Sparanges: That short answer is yes. We reviewed this with Rob Moore as well. Our intent, that's a two part storm water management area. If you look at the plan there's a smaller basin and then there's a berm that goes across that separates the two parts. That berm would be where the access would be.

Councillor Macek: Mr. President at the appropriate time I would also like to move to amend the special permit motion so that it contains conditions as proposed by our Economic and Development Director Mr. Pillsbury.

President Michitson: Motion by Councillor Macek seconded by Councillor Daly O'Brien. Any discussion?

Councillor Macek: Could I define that a little more. I'd like to reflect the April 20, 2012 letter regarding this special permit on Rosemont Street for six lots. I would like the motion to reflect all of his proposed conditions and stipulations along with the recommendation that are contained in the letter.

President Michitson: That's already been seconded and further discussion. Madame Clerk please call the roll.

City Clerk Toomey: Councillor Scatamacchia-yes, Councillor Hart-yes, Councillor Ryan-yes, Councillor Amirian-yes, Councillor McGonagle-yes, Councillor-Macek-yes, Councillor LePage-yes, Councillor Daly O'Brien-yes, President Michitson-yes, 9 yeas, 0 nays.

President Michitson: That passes. That's the amendment. Now back to the amended document.

President Michitson: Is there a motion. Motion by Councillor Ryan and seconded by Councillor Macek. Any discussion? Madame Clerk please call the roll.

City Clerk Toomey: Councillor Scatamacchia-yes, Councillor Hart-yes, Councillor Ryan-yes, Councillor Amirian-yes, Councillor McGonagle-yes, Councillor-Macek-yes, Councillor LePage-yes, Councillor Daly O'Brien-yes, President Michitson-yes, 9 yeas, 0 nays.

President Michitson: That passes.

Respectfully submitted,

May 7, 2012

Barbara S. Arthur
Administrative Assistant
Haverhill City Council

REASON FOR VOTE - DOCUMENT # 18

In granting the special permit, those members voting in favor found that the application fulfills all of the general conditions contained in Chapter 255-76 of the Haverhill Zoning Ordinance.

President Michitson: I voted in favor because the proposal meets City requirements.

Councillor Scatamacchia: I voted in favor because it will benefit the neighborhood.

Councillor Hart: I voted in favor because it met all statutory requirements.

Councillor Ryan: I voted in favor because the project is in the best interest of the City of Haverhill.

Councillor Amirian: Based on the recommendations of the Economic Development Director and Planning Board, and communication from our Environmental Health Technician, I believe that the proposed development does not pose a threat to our wetlands nor does it adversely affect any abutter and that the project is in the best interest of the City.

Councillor McGonagle: I voted in favor of the Rosemont Street special permit based upon the favorable recommendation of the Planning Board and the Economic and Planning Director.

Councillor Macek: I voted to grant the Special Permit as I believe the project will be a positive addition to the housing stock for the City and in keeping with our zoning and Master Plan ideals.

Councillor LePage: I voted in favor of the special permit because I believe it complies with all zoning requirements.

Councillor Daly O'Brien: I voted yes for this permit because it is a positive project. The applicant/developer has met all the conditions as recommended by the City departments and it balances the density of residential homes with open space.