

City of Concord Planning Board
December 19, 2018
Minutes

The regular monthly meeting of the City Planning Board was held on December 19, 2018, in City Council Chambers, in the Municipal Complex, at 37 Green Street, at 7:00 p.m.

1. Call to Order

Chairman Woodfin called the meeting to order at 7:00 pm. Planning Staff present included Heather Shank (City Planner), Beth Fenstermacher (Assistant City Planner), Sam Durfee (Senior Planner), and Lisa Fellows-Weaver (Administrative Specialist). Engineering Staff present included Bryant Anderson (Associate Engineer).

2. Roll Call

Present: 8 – Chairman Richard Woodfin, Councilor Byron Champlin, Teresa Rosenberger, (Ex-Officio for City Manager), Vice-Chair Carol Foss, Members Matthew Hicks, Alternate Chiara Dolcino, and Alternate Frank Kenison. Chairman Woodfin introduced and welcomed new member Erle Pierce to the Planning Board.

Absent: 3 – Susanne Smith-Meyer, David Fox, and John Regan.

3. Approval of November 19, 2018 Planning Board Meeting Minutes

On a motion made by Mr. Hicks, and seconded by Ms. Foss, the Board voted unanimously to approve the minutes for November 19, 2018, as written.

4. Planning Board Chair Overview

Chairman Woodfin announced that items 8-12 are being suggested to be tabled until further notice. On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to table items 8, 9, 10, 11, and 12, until further notice. Chairman Woodfin stated that as a result of the motion, these projects will require re-notification to all abutters.

Chairman Woodfin announced item 13 is a work session for the Board only and no public testimony will be taken at this time.

5. Design Review Applications by Consent

The Board voted unanimously to approve the sign applications for 5A, 5B, and 5C by consent, subject to the recommendations of the Architectural Design Review Committee (ADR) as noted below.

5A. Strive Indoor Cycling - Pointe Barre Studio, on behalf of Plan B Properties, LLC, requests ADR approval to install a new projecting sign and a new window sign at 10 Hills Avenue in the Central Business Performance (CBP) District.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to approve the sign application, as submitted, by consent.

5B. Paull Nails, on behalf of 31 South Main Acquisition, LLC, requests ADR approval to install a new wall sign at 31A. S. Main Street in the Central Business Performance (CBP) District.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to approve the sign application by consent, subject to the conditions that the background be revised to a slightly darker color, and revised plans to be submitted to the Planning Division.

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5C. Comfort Inn, on behalf of Duprey Company, LLC, requests ADR approval to replace a panel in an existing freestanding sign at 71 Hall Street in the Opportunity Corridor Performance (OCP) District.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to approve the design as submitted by consent.

Public Hearings

6. Site Plan & Subdivision Applications

6A. T. F. Bernier, on behalf of Delfausse Family Revocable Trust of 2016, requests Minor Subdivision approval for a 2-lot subdivision at 224 Little Pond Road in the Residential Open Space (RO) District.

On a motion made by Mr. Kenison, and seconded by Councilor Champlin, the Board voted unanimously to determine the application complete and open the public hearing.

Tim Bernier of T.F. Bernier represented the application. He explained that the applicant is proposing to subdivide a 14.32 acre lot into 2 lots consisting of 4.26 acres and 10.06 acres at 224 Little Pond Road in the Open Space Residential (RO) District and Penacook Lake Watershed Protection (WS) Overlay District. The new lot, consisting of 4.26 acres, will include the existing house, driveway, septic and well, and will end up with the most frontage. The larger lot will remain vacant and is proposed for a single family residential use in the future.

Mr. Bernier stated that a request for a waiver for overhead utilities for the existing house was not provided in the submission; however, is being requested. He added that the State subdivision has been filed and no response has been received to date.

Ms. Fenstermacher stated that the staff supports the waiver request as it is cost prohibitive for the older home and there is no construction occurring at this time. She added that a note will need to be added to the plan stating that the utilities shall be buried for any new future development. In addition, should the existing house be demolished, utilities would be required to be buried at the time of building anything new.

There being no further comments from staff or members of the public, the Chair closed the public hearing.

On a motion made by Ms. Foss, and seconded by Councilor Champlin, the Board voted unanimously to **grant the requested waiver from the Subdivision Regulations**, utilizing the criteria from RSA 674:36(II)(n)(2): Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

- Section 26.02(1) Non-Municipal Utilities Design Standards to not place existing utilities underground for the existing house. The utilities shall be buried for any new future development only.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to **grant Minor Subdivision approval** for a 2 lot subdivision at 224 Little Pond Road, subject to the following precedent and subsequent conditions noted below:

- (a) Precedent Conditions - to be fulfilled within one (1) year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk and issuance of any building permits, unless otherwise specified:

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- (1) Address Engineering Review Comments to the satisfaction of the Engineering Division.
 - (2) Address Technical Review Comments to the satisfaction of the Planning Division.
 - (3) Monumentation for the new lot lines shall be set.
 - (4) Prior to the final plat being signed by the Planning Board Chair and Clerk, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) and tax maps. The information shall be submitted in accordance with Section 12.09 of the Subdivision Regulations.
 - (5) The Licensed Land Surveyor and Wetland Scientist shall sign and seal final plans and mylars.
 - (6) The Applicant shall deliver to Planning, two plan sets and one (1) mylar(s) for endorsement by the Planning Board Chairman & Clerk and recording at the Registry of Deeds.
 - (7) Applicant shall submit two checks for recording the plan at the Merrimack County Registry of Deeds (including a separate check in the amount of \$25.00 for the LCHIP fee). Both checks are to be made payable to the Merrimack County Registry of Deeds.
- (b) Subsequent condition – to be fulfilled as specified:
- (1) Prior to the issuance of any building permits for new construction, wetland buffers shall be marked in accordance with Section 28.07 of the Subdivision Regulations.

6B. Richard D. Bartlett & Assoc. LLC, on behalf of DEW Crescent Street Properties, LLC, requests Minor Subdivision and Comprehensive Development Plan approval for a 2-unit condominium conversion at 4 Crescent Street in the Opportunity Corridor Performance (OCP) District.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to determine the application complete and open the public hearing.

Mark Sargent, of Richard D. Bartlett & Assoc. LLC, represented the application. Mr. Sargent explained that the applicant is proposing to convert an existing 14,988 sf commercial building into 2 condominiums with an exterior common area and no limited common areas at 4 Crescent Street in the Opportunity Corridor Performance (OCP) District. He stated that the property is 2.11 acres with an existing, single-story, commercial building. No new building is proposed.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to **grant Comprehensive Development Plan approval** for the condominium conversion of 2 commercial units with common areas.

There being no further comments from staff or members of the public, the Chair closed the public hearing.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to **grant Minor Subdivision approval** for the condominium conversion at 4 Crescent Street, subject to the following precedent conditions to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, unless otherwise specified:

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1. Address Planning Review Comments to the satisfaction of the Planning Division.
2. Address Engineering Review Comments to the satisfaction of the Engineering Division.
3. Address forthcoming Assessing Review Comments to the satisfaction of the City Assessor.
4. Condominium documents, including declaration of condominium and by-laws, to be reviewed and approved by the City Solicitor, City Assessor, and Clerk of the Board.
5. The Licensed Land Surveyor shall sign and seal final plans and mylars. The floor plans may be signed and stamped by a NH Licensed Architect.
6. The Applicant shall deliver to Planning, two plan sets and one mylar(s) of the site plan and floor plans for endorsement by the Planning Board Chairman & Clerk and recording at the Registry of Deeds.
7. Prior to the final plat being signed by the Planning Board Chair and Clerk, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) tax maps. The information shall be submitted in accordance with Section 12.09 of the Subdivision Regulations.
8. Applicant shall submit two checks for recording the plan at the Merrimack County Registry of Deeds (including a separate check in the amount of \$25.00 for the LCHIP fee). Both checks are to be made payable to the Merrimack County Registry of Deeds.

6C. Interchange Development and Bradley Whitney & Jennifer Habel request Minor Subdivision and Comprehensive Development Plan approval for a lot line adjustment at 1 Whitney Road in the gateway Performance (GWP) District.

On a motion made by Mr. Kenison, and seconded by Ms. Foss, the Board voted unanimously to determine the application complete and open the public hearing.

Ms. Fenstermacher provided an update of the project. She stated that the application is for a lot line adjustment in a Performance District; therefore, an approval of a Comprehensive Development Plan (CDP) is required. She indicated that staff and the Applicant agree that the CDP needs further work; however, staff does not want to hold up the lot line adjustment and is requesting that the CDP be approved with several conditions to address intersection improvements, access, building placement, circulation, and that the CDP will be updated as the project moves forward. The regulations require that the applicant show that the site can handle the proposal, which they have. She added that a waiver has been requested from Section 12.08(3) to not provide topography for the entirety of Lot 6 and staff supports the waiver.

Laurie Rauseo represented the application. She provided an overview of the project noting the location of the property and the current surrounding businesses. She explained that the lot line adjustment will convey 9.768 acres from lot 6 to lot 5, which extends the lot line to the east. She stated that the lots could stay separate; however, the intent is to merge the lot and do a full condominium subdivision in the future. She added that they agree with all staff comments and all changes have been made as staff recommended.

There being no further comments from staff or members of the public, the Chair closed the public hearing.

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On a motion made by Councilor Champlin, and seconded by Mr. Hicks, the Board voted unanimously to **grant Comprehensive Development Plan approval** for the subdivision associated with a commercial and industrial redevelopment subject to the following conditions:

1. Improvements for the intersection of Whitney Road and Hoit Road to be addressed to the satisfaction of NHDOT and the City, including completion of any traffic related studies needed and design of off-site improvements. The off-site improvements shall be designed prior to, or as part of, the Phase 1 site plan application.
2. Applicant shall continue to work with Planning and Engineering staff to address the site layout, including circulation and the location of driveways and buildings, as part of the Site Plan application process.
3. Applicant shall submit an amended CDP with revised phasing timelines and layout changes for approval as part of future site plan applications.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to **grant the request for the waiver** to Section 12.08(3) to not provide topography for the entirety of Lot 6, utilizing the criteria from RSA 674:36(II)(N)(2): Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

On a motion made by Mr. Kenison, and seconded by Mr. Pierce, the Board voted unanimously to **grant the request for Minor Subdivision approval** for the lot line adjustment at 1 Whitney Road, subject to the following precedent conditions to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk and issuance of any building permit, unless otherwise specified:

1. Address Engineering Review Comments to the satisfaction of the Engineering Division.
2. Address Technical Review Comments to the satisfaction of the Planning Division.
3. Digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) and tax maps. The information shall be submitted in accordance with Section 12.09 of the Subdivision Regulations.
4. Monumentation for new lot lines shall be set.
5. The Licensed Land Surveyor and Wetland Scientist shall sign and seal final plans and mylars.
6. The Applicant shall deliver to Planning, two plan sets and one (1) mylar(s) for endorsement by the Planning Board Chairman & Clerk and recording at the Registry of Deeds.
7. Applicant shall submit two checks for recording the plan at the Merrimack County Registry of Deeds (including a separate check in the amount of \$25.00 for the LCHIP fee). Both checks are to be made payable to the Merrimack County Registry of Deeds.

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6D. TF Moran, on behalf of Capital Hotel Company VI, LLC, requesting Minor Subdivision approval for a two-unit condominium at 406 South Main Street in the General Commercial District.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to determine the application complete and open the public hearing.

Nicholas Golon, of TF Moran, represented the application. He explained that the subdivision project is a portion of a forthcoming larger development project. The lot is 2.4 acres. The proposal is for a 2 unit condominium site plan for a proposed hotel and restaurant.

There being no further comments from staff or members of the public, the Chair closed the public hearing.

Mr. Durfee stated that there are several waivers requested, all of which staff supports since all required information is provided on the associate Major Site Plan application. He noted that revised plans have been submitted that address all staff comments.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to **grant the following waivers** to the Subdivision Regulations utilizing the criteria from RSA 674:36(II)(n)(2): Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations:

- (a) Section 12.04 Location Plan
- (b) Section 12.08(3) Topography
- (c) Section 12.08(4) Soils
- (d) Section 15.03(13) Water Infrastructure
- (e) Section 15.03(15) Non-Municipal Utilities

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to grant approval for the minor subdivision subject to the following conditions to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, unless otherwise specified:

- 1) Address Engineering Review Comments dated December 7, 2018 to the satisfaction of the Engineering Services Division.
- 2) Any waivers granted by the Planning Board will need to be noted on the subdivision plat.
- 3) A digital copy of the condominium documents shall be provided to the Planning Department for review.
- 4) Prior to the final plat being signed by the Planning Board Chair and Clerk, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) tax maps. The information shall be submitted in accordance with Section 12.09 of the Subdivision Regulations.
- 5) Applicant shall submit two checks for recording the plan at the Merrimack County Registry of Deeds (including a separate check in the amount of \$25.00 for the LCHIP fee). Both checks are to be made payable to the Merrimack County Registry of Deeds.

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- 6) The Applicant shall deliver to Planning, one plan set and mylar(s) for endorsement by the Planning Board Chairman & Clerk and recording at the Registry of Deeds.

6E. TF Moran, on behalf of Capital Hotel Company VI, LLC, requesting Major Site Plan approval for the redevelopment of 406 South Main Street in the General Commercial District to construct a 4-story, 82-room hotel with associated access, parking, drainage and utility improvements in the .

On a motion made by Councilor Champlin, and seconded by Mr. Hicks, the Board voted unanimously to determine the application complete.

Mr. Durfee explained that the applicant has requested a waiver for the Board to hold the public hearing in the same meeting as the determination of completeness. Originally, staff did not support granting the waiver due to the requirement of an ADA compliant sidewalk connecting the sidewalk along South Main Street with the building entrance. Updated plans have since been provided showing an ADA accessible walkway. He noted that the application was presented to the Architectural Design Review Committee, prior to the Board determining completeness. However, staff expressed concern with the Board setting the precedent of allowing major site plans to go through the review process in one month instead of the required two.

Ms. Dolcino asked whether the public hearing had been properly noticed. Ms. Shank stated that the legal notice did go out. She noted that there is usually language at the bottom of the legal notice explaining that the Board does not take any public testimony on any noticed Major Site Plan or Major Subdivision applications at the meeting and if the application is determined complete by the Planning Board, public testimony will be taken during the public hearing at the following month's Planning Board meeting. She noted that the verbiage was removed on this legal notice, pending the decision of the Board relative to the applicant's waiver request.

Mr. Woodfin expressed concern with opening the public portion for this application. Mr. Pierce asked what the purpose is for the waiver. Mr. Woodfin replied that he believed that the applicant would like to get the process going for the development. Ms. Foss stated that granting the waiver may not gain the applicant anything. Ms. Shank stated that the Board has granted this waiver in the past; however, usually for smaller projects. Mr. Hicks stated that there are circumstances that make this site different. It was noted that this is a prominent site for the City and the Board should be cautious regarding sites of high visibility.

Ms. Rosenberger asked about the applicant's appeal process. Ms. Shank stated that the appeal process is for abutters and is a process that goes through the Superior Court.

A motion was made by Councilor Champlin, and seconded by Mr. Hicks, the Board voted 4/4, (In Favor: BC, RW, MH, and FK) (Opposed: CD, EP, TR, and CF) to grant the waiver request to Section 6.03(2)(c). The motion failed due to a tie vote.

Mr. Golon and Mr. Duprey spoke to their reasoning for requesting the waiver.

The hearing was set for January 16, 2019.

7. Amendments

7A. Proposed Ordinance Amendment to Section 29.2-1-2(b), Computation of the Amount of Impact Fee, updating the variable unit rate for Transportation, and Recreation Facilities in accordance with the annual inflationary rate.

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Mr. Durfee explained that this item is brought to the Board annually for review. He stated that the Board needs to determine whether to recommend an inflationary adjustment to the City Council to amend the impact fee table for Chapter 29.2, Public Capital Facilities Impact Fee Ordinance, to reflect an adjusted schedule of fees. Although Council amended the ordinance to allow an automatic waiver for non-residential transportation impact fees, the Board needs to recommend to Council whether or not to update the unit rates to be consistent with the inflation of costs. The inflationary adjustment is recommended to keep pace with inflation for all categories in the event that the non-residential fees become active in the future. Staff recommended that, if the Board wants to keep pace with the increasing costs of construction, they should increase the Transportation Facility Impact Fee Table by 11.45%, to reflect the rate of inflation for highway construction costs from July 2015 to December 2018 and increasing the Recreation Facility Impact Fee Table by 8.78% to reflect inflation from July 2014 to July 2018. Alternatively, staff recommended the Board recommend an increase in the rate by a lesser amount, or to maintain the current rate, for the purpose of incentivizing greater residential development.

Carlos Baia, Deputy City Manager, addressed the Board to give a summary of how impact fees are used. He noted that impact fees are one of many funding sources for the City along with capital closeouts, donations, and debt financing. He explained the original adoption of the impact fees was back in 2001 when the economy was better. The fees were used to regulate growth and take advantage of the growth for infrastructure, transportation for schools and recreation. He explained that the funds are not used for operational costs or maintenance but are used for expanded capacity. They are used for one of the City's four quadrants based on a specific project or a specific use. The funds are drawn down as the projects are completed. Mr. Baia mentioned a few of the City's larger projects that have been paid for using impact fees; Sewalls Falls, Main Street, and Langley Park. He stated that school impacts were eliminated; there are waivers for downtown housing, and non-residential construction. He continued to state that without impact fees the City is putting the burden on the tax payers. He noted that at this time the City does not have the intensity of development as in the past, and that Council may want to incentivize growth. He stated that this is an annual adjustment and it is important for the fee structure to remain in the event all fees become active again. The funds are not a surplus, they are just unallocated until a project comes along that can utilize them, and the funds depend on the private sector for construction. He noted that there were prior amendments passed reducing fees for single family homes by assessing the fee based on the number of units versus square footage. .

Mr. Baia stated that planning staff has always recommended in the past that the Board recommend to Council to keep up with the inflation rate. Planning Board has in the past recommended the increase and City Council has not made any changes.

The public hearing was opened, and with no additional comments, the Chair closed the public hearing.

On a motion made by Councilor Champlin, and seconded by Ms. Rosenberger, the Board voted 7/1, (Opposed: RW) to **recommend no changes** to the fees that are currently being collected of the Public Capital Facilities Impact Fee Ordinance, Section 29.2-1-2(b).

- 7B. Proposed Ordinance Amendment to the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, pertaining to the Flood Hazard Overlay (FH) District, to change the

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regulatory standards for designating special flood hazard areas in the City from the Army Corps of Engineers maps to the most updated FEMA maps.

Ms. Shank explained that the proposal is to amend the flood ordinance to eliminate references to the Army Corps of Engineers flood maps and reference only the Federal Emergency Management Agency (FEMA) flood insurance maps and the supporting data. She stated that the process is for the Planning Board to review the proposed ordinance revisions and recommend any amendments to Council.

Ms. Shank explained how the floodway is referenced in the Code. She stated that although the FEMA map is not as restrictive as the Army Corp of Engineers, the data from the Army Corp is 40-50 years old and was not generated with the most recent technology. She stated that the FEMA maps consist of less area in the floodway; the floodway is mostly restricted to the water course. Areas that will no longer be designated as floodway under the Army Corps maps will have less development restrictions under the FEMA maps under the 100-year or 500-year floodplain designations. Ms. Fenstermacher stated that this change only applies to the Merrimack River; all other areas will stay the same. Mr. Anderson stated that the Army Corps maps do not get updated and there is no updated model for any analysis, unlike FEMA maps which are updated approximately every 10 years. The last FEMA update was in 2010.

The public hearing was opened, and with no additional comments, the Chair closed the public hearing.

On a motion made by Mr. Hicks, and seconded by Ms. Foss, the Board voted unanimously to recommend that Council approve the amendment to change the regulatory standards for designating special flood hazard areas in the City from the Army Corps of Engineers maps to the most updated FEMA maps.

Other Business

13. Solar Ordinance Amendment Workshop

Ms. Fenstermacher gave a presentation explaining the proposed amendments to the ordinance to address solar collection systems, and to explain the public process to date. She stated that model ordinances from the NH Sustainable Energy Association and other municipalities in the region were reviewed to establish a draft. She presented the proposed permitted uses for each district, setbacks and buffer requirements, and displayed a table and graphic example showing the proposed allowable solar land coverage for each district. Photos of other communities were shown depicting different capacities; and examples of building and ground mounted systems already installed within the City. She also discussed how the proposal incentivizes community, or group net metering, developments, which benefit residential and commercial properties in the City that may not be able to produce energy on their own properties.

Mr. Hicks commented on the public opinion regarding aesthetics. He noted that coverage of solar installations will develop over time and there may be a desire for more panels in the future. He questioned whether there should be a limit to the coverage. Ms. Fenstermacher replied that staff is looking into municipal aggregation which would allow the City to act as a utility clearing house for residential and commercial properties to purchase renewable electricity produced in the City to meet 100% renewable energy goals. Until that is established, staff would like to see commercial installations limited so that the energy is not being sold out of state. She added that solar technology will evolve in the future so there may be fewer solar panels required to produce more energy, and we can anticipate more ordinance revisions as technology changes.

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Councilor Champlin commented that staff has really done a great job to create a balance with interest for the City to be perceived as more energy efficient and at the same time making judicious choices regarding density and still maintaining open space in Concord; it is important to make a balanced decision.

Ms. Fenstermacher stated the next steps and she anticipates that there will be a Planning Board public hearing in January or February.

14. Tablet Policy

Copies of the iPad policy were distributed and signed by members who wanted to take their iPad home.

Adjournment

At the request of Chair Woodfin, Councilor Champlin made a motion to adjourn at 9:38 p.m., seconded by Ms. Foss. Motion carried unanimously.

A TRUE RECORD ATTEST:

Lisa Fellows-Weaver,
Administrative Specialist