

**6:00 P.M. SITE WALK GRAVES LOT OFF WENTWORTH ROAD (MEET ACROSS FROM  
BG'S RESTAURANT)  
7:00 P.M. WORK SESSION, ROOM 320, PLANNING DEPT. CONF. ROOM, RE: PAPER  
STREETS**

**REGULAR MEETING  
PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**7:30 P.M. CITY COUNCIL CHAMBERS JULY 19, 2001  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**MEMBERS PRESENT: ARTHUR PARROTT, CHAIRMAN; KEN SMITH, VICE-  
CHAIRMAN; RICHARD A. HOPLEY, BUILDING INSPECTOR;  
NOELE CLEWS, CITY COUNCIL REPRESENTATIVE;  
JOHN SULLIVAN; FAYE GOLDBERG; AND DONALD COKER,  
ALTERNATE**

**MEMBERS ABSENT: PAIGE ROBERTS, ALTERNATE; RAY WILL; AND,  
THADDEUS J. "TED" JANKOWSKI, DEPUTY CITY MANAGER**

**ALSO PRESENT: DAVID M. HOLDEN, PLANNING DIRECTOR; AND,  
LUCY E. TILLMAN, PLANNER 1**

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**I. OLD BUSINESS**

A. The application of **John W. Bosa** for property located at **248 Peverly Hill Road** wherein Preliminary and Final Approval is requested for the creation of four lots from an existing lot. Proposed Lot 1 would contain the existing buildings, have a lot area of 18,019 s.f. ± and adequate continuous frontage off Peverly Hill Road and a proposed cul-de-sac. Proposed Lot 2 would have a lot area of 16,553 s.f. ± and adequate continuous frontage off a proposed cul-de-sac. Proposed Lot 3 would have a lot area of 45,285 s.f. ± and adequate continuous frontage off a proposed cul-de-sac. Proposed Lot 4 would have a lot area of 63,309 s.f. ± and adequate continuous frontage off a proposed cul-de-sac. Included on the subdivision plan is a lot to the rear of 248 Peverly Hill Road which is proposed to be deeded to the City of Portsmouth. Said property is shown on Assessor Plan 243 as Lots 54 and 43 and lies within a Single Residence B district. **(This application was tabled to this meeting from the Board's June 28, 2001, meeting. The Public Hearing was closed.)**

Mr. Smith moved to take the application off the table. Mr. Sullivan seconded the motion. The motion passed unanimously.

**SPEAKING TO THE APPLICATION:**

Mr. Holden addressed the outstanding issues; one of them being the City Council referral regarding the issue of Moffatt and other paper streets. The second issue is the actual subdivision application.

On the paper street issue, Mr. Holden commented that Attorney Pelech had presented his client's case. Mr. Holden went on to refer to the City Council's policy on paper streets and the work session which was held immediately prior to the meeting. He went on to refer to the department's memo and read therefrom:

1. That it (the City Council) not relinquish its rights in this or any other paper street depicted on the previously recorded subdivision plan;

2. That this action is intended to preserve whatever interests the public may have in these;
3. That the City recognizes a judicial recourse, which, if taken, will address what public rights may exist and afford any interested parties an opportunity to participate.

The Chair referred to a Resolution passed by the City Council on October 16, 2000 with respect to the acceptance of paper streets.

Mr. Holden interjected that the issue of paper streets should be resolved first; then the subdivision application could be considered. He stated that it is possible that landlocked lots could be created; but reiterated that the issue of paper streets needs to be addressed. Mr. Sullivan commented that he had asked a similar question of Attorney Pelech at a previous meeting and that Attorney Pelech had indicated that no lots would be landlocked if the subdivision was approved.

The Chair interjected that the plan submitted to the Board indicates areas from the paper streets. He again referenced the City Council resolution on paper streets. It was his opinion that the Board could not deal with a subdivision that indicates land designated as paper streets.

Mr. Coker referred to page 4 of the department's recommendation and so moved. Ms. Goldberg seconded the motion. (This motion dealt with the issue of paper streets.)

Ms. Clews commented that if the Council upholds the Board's recommendation, then the applicant would have to come back with a new plan that would not include paper streets. The Chair responded by stating that the applicant's attorney had indicated that he was prepared to do so. Mr. Holden indicated that the Board is giving direction to the Council; that the direction the Council takes would open up avenues to the applicant who could come in with a revised plan.

The motion passed unanimously.

Mr. Holden interjected that the department's memo raised a number of concerns in addition to paper streets; such as, the configuration of the proposed lots; possible problems with the *Zoning Ordinance* and the existing duplex; and, the building envelope of Lot 4. Ms. Tillman explained that the buffer is not taken from the property line of the lot; that the applicant is using a portion of a paper street as building envelope area. Attorney Pelech responded by stating that they would still have a buildable lot without using the area from the paper street; that they were taking the position that abutting property owners own to the middle of the street.

Mr. Coker inquired as to the wetlands delineation. Mr. Holden informed Mr. Coker that the soils scientist was present at the last meeting (Mr. Coker was absent); that the City's Environmental Planner had gone out to the site; that a determination had been made that the wetland is not jurisdictional. Mr. Holden went on to state that the department is satisfied adding that the issue should be eliminated from the Board's consideration.

Mr. Holden stated that the department is looking for guidance from the Board on actual lot configuration and whether the number of lots exceeds the capacity of the land. He explained that he is looking for guidance so that he can work with the applicant.

The Chair commented that valid issues have been raised in the department's memo; more specifically, page 5.

Mr. Hopley moved to table the application (subdivision) as outlined in the department's memo (referring to the four points on top of page seven). Mr. Sullivan seconded the motion. The motion passed unanimously.

B The application of **Anthony Giovannettone** for property located off **Lang Road** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to allow the construction of a two-story 28' x 65' building upon a paved accessway within an Inland Wetlands Protection District Buffer Zone. Said property is shown on Assessor Plan 286 as Lot 22A and lies within a General Business district. **(This application was tabled to this meeting from the Board's June 28, 2001, meeting. The Public Hearing remains closed.)**

Let the record show that Messrs. Coker and Hopley stepped down from sitting on this application.

Mr. Holden recommended that the application be taken off the table and be retabled; that the department and applicant are making progress in identifying what needs to be done.

Mr. Smith so moved; that is, that the application be taken off the table and be retabled to the August 16<sup>th</sup> meeting of the Board. Mr. Sullivan seconded the motion. The motion passed unanimously.

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C. Request to purchase City-owned land off McNabb Court **(This Agenda item was tabled at the Board's June 28, 2001, meeting to this meeting.)**

Mr. Smith moved that this agenda item be taken off the table. Mr. Sullivan seconded the motion which passed unanimously.

Mr. Holden reported that it is the department's recommendation that the Board recommend to the City Council that the City retain its rights in the street. Mr. Holden explained that McNabb Court is a City street; that portions of it are not developed; that City crews stockpile snow on the unpaved portion. Most properties in the area have access/egress off Elwyn Avenue. There are only a few properties actually located on McNabb Court itself.

The Chair stated that the area in question is a small amount of land; that there are several issues with respect to the City relinquishing its interest in this particular land. It was his opinion that it would be unwise for the City to do so.

Mr. Coker asked for clarification in that it was his thought that when one relinquishes a paper street, that the street is cut down the middle and split between the two property owners. The Chair spoke to 20 years adverse possession adding that the Planning Board makes a recommendation to the City Council; that the applicants are able to appeal to the Council if they so choose.

Mr. Sullivan moved the department's recommendation. Ms. Clews seconded the motion which passed unanimously.

Messrs. Sullivan and Holden had a discussion as to whether the paper street actually goes out to South Street with Mr. Sullivan making reference to the department's memo; specifically, where it mentions a grassy area with access out to South Street. However, it was Mr. Holden's belief that the paper street did not extend out to South Street and that his words were a matter of interpretation.

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D. Amended Site Plan review – 127 Parrott Avenue **(This Agenda item was tabled at the Board’s June 28, 2001, meeting to this meeting.)**

Mr. Holden asked that this agenda item be tabled to the Board’s August meeting at which time, the Executive Director of the Portsmouth Housing Authority, Ted Connors, would be present. Mr. Smith so moved. Mr. Sullivan seconded the motion which passed unanimously. Mr. Holden commented that the department sees a conflict where the emergency access is blocked by parking spaces.

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**II. PUBLIC HEARINGS**

A. The application of Bruce R. Graves and Joanne R. Graves, owners, and **Edmund J. Mulcahy**, applicant, for property located off **Wentworth Road** wherein Preliminary Approval is requested for a lot line relocation wherein 2,921 s.f. ± of area would be conveyed from the Graves lot to a lot owned by the Mulcahys located in Rye, New Hampshire. The Graves lot would have a resulting lot area of 2,883 s.f. ±. Said property is shown on Assessor Plan R-1 as Lot 16 and lies within the Waterfront Business district. Plat plans are recorded as 2.2-00 in the Planning Department office. **(The Planning Board tabled this application indefinitely at its March 16, 2000, meeting. The Public Hearing remains open.)**

Mr. Smith moved to take the application off the table. Mr. Hopley seconded the motion which passed unanimously.

J. Corey Colwell addressed the Board informing them that Attorney Gary Holmes was seated in the audience and was present on behalf of Messrs. Mulcahy and Graves. Mr. Colwell spoke to a 12 to 13 acre parcel owned by Mr. Mulcahy. The issue is the construction of a leach field by Mr. Graves over Mr. Mulcahy’s right-of-way. Adequate access no longer exists through that right-of-way.

Subsequently, the parties agreed to a lot line relocation. Primary access would still be through Rye via Wentworth Road. The lot line relocation would provide a secondary access only. It would provide an area for a private driveway and would replace the right-of-way which is no longer useable. Mr. Colwell explained that the swap between the two lots is equal; thus, no Board of Adjustment action is necessary.

Mr. Sullivan spoke to the site walk that occurred earlier in the evening and the driveway which comes out on the Rye line. Mr. Colwell explained that the proposed driveway would only be 25’ wide; that 50’ is needed for a public right-of-way.

After hearing further testimony from Mr. Colwell and Attorney Holmes, the Chair commented that the Board could not understand the gist of the request. Mr. Colwell responded by stating that there is no hidden issue. The question was asked how many lots could be created (in Rye) with Mr. Colwell responding by stating that he did not know; that there are wetlands to be considered – maybe ten lots. He went on to reiterate that a public road could never be built there; only a private access to possibly one lot.

Mr. Coker commented that he could not see the logic in the request whatsoever and that he would not support it.

Mr. Smith felt that the request should be tabled to a time uncertain to allow for the parties to work together.

Attorney J. P. Nadeau addressed the Board stating that he represented Witch Cove Properties, LLC. He went on to state that he is all for trying to work things out. He informed the Board that Mr. Graves began

constructing the septic system in question without a permit from the Town of Rye. He suggested that the requested property line adjustment is really a subdivision request.

Attorney Nadeau felt there were a lot of serious questions to be concerned with; such as, the filling of the quarry and a final plan for the development of this 12 acre parcel. He suggested that perhaps the Board should wait until somebody buys the property and the Board knows what is planned for that parcel of land.

Mr. Smith reiterated his previous motion to table the request to allow the City and all parties concerned to talk this over and work it out. The motion was seconded. Mr. Sullivan felt that the applicant should work with the Town of Rye and complete the concept with the Town of Rye. Mr. Holden stated that the Town of Rye would receive a copy of the Letter of Decision and that the department would continue to work with them. The motion passed with one vote in opposition; that being Mr. Coker's (6-1).

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B. The application of **Michael Iafolla** for property located off **Regina Road** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to allow the construction of a single-family home within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 225 as Lot 28 and lies within a Single Residence A district.

Mr. Holden reported that the attorney and engineer representing Mr. Iafolla were not able to be present for the meeting and had requested that the application be tabled to the Board's August 16<sup>th</sup> meeting.

Mr. Smith so moved. Mr. Sullivan seconded the motion. The Chair noted that the Public Hearing had been advertised and inquired if anybody was present to speak. No one rose to speak. The motion passed unanimously.

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C. The application of the **Temple of Israel** for property located off **Banfield Road** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(A) of the *Zoning Ordinance* to allow the expansion of the existing Temple of Israel cemetery to include 130' ± of access roadway and 25,501 s.f. ± of gravesite area with necessary utilities. Said property is shown on Assessor Plan 256 as Lot 2-1 and lies within a Single Residence A district.

Let the record show that Ms. Goldberg recused herself from sitting on this application.

**SPEAKING TO THE APPLICATION:**

Mr. Holden reported that the department has worked with the Temple and with Corey Colwell of Millette, Sprague & Colwell. He reminded the Board that it had granted a Conditional Use Permit on a previous occasion; however, the Temple has come up with a less intrusive plan and the department has encouraged them to follow through with that proposal. Mr. Holden felt that the proposal before the Board would have less of an impact on the environment.

J. Corey Colwell of Millette, Sprague & Colwell addressed the Board and stated that he was present on behalf of the Temple of Israel. He stated that earlier this year, more specifically; on January 18, 2001, the Board approved a Conditional Use Permit. That plan indicated a 560' roadway with access off of Banfield Road. However, due to construction costs and environmental concerns, a much lesser roadway 100' in length is now being proposed. Any impervious material will be no closer than the previous approval.

The Chair asked if anything had been done on the previous approval with the response being in the negative. In response to a question from Mr. Smith, Mr. Colwell explained that the proposal would accommodate the needs of the Temple for the next 100 to 150 years.

There being no further speakers, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Sullivan moved approval of the Conditional Use Permit. Mr. Smith seconded the motion. The motion passed unanimously.

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D. The application of **Message Center Management, Inc.** for property located at **680 Peverly Hill Road** wherein site plan approval is requested for the installation of a telecommunications facility consisting of a 195' high self-supporting lattice tower with a 12' x 24' equipment shelter with associated site improvements. Three future equipment shelters are indicated on the site plan. Said property is shown on Assessor Plan 254 as Lot 8 and lies within a Municipal district.

**SPEAKING TO THE APPLICATION:**

Richard Quintal of Message Center Management addressed the Board and stated that in 1999, they entered into an agreement with the City to manage certain properties for telecommunications sites. He went on to stated that they are seeking approval of a site plan to install a 195' tower which would have room for four or five carriers with space being set aside for the City of Portsmouth. Public safety and other facilities will be able to use that tower.

The Chair inquired as to who would be the owner of the tower. Mr. Quintal responded by stating that the tower would be owned by Message Center Information with the City receiving revenue. FAA approval is not required.

Mr. Sullivan inquired as to how much of the tower would be visible from a house in Elwyn Park. He went on to state that he has some concerns about the people on Lafayette Road adding that they have to look out their windows. Mr. Holden interjected that the Public Works Facility is located in the Municipal district; that telecommunications facilities are allowed provided the City Council approves. Mr. Sullivan retorted that the Board has to live with those people adding that they have had to put up with a lot. Mr. Quintal pointed out that the tower would not be lighted adding that 80' would be his guess.

Ms. Clews inquired as to the life of the tower and whether it would wear out. Jim Sperry of BL Companies, the engineering design firm, addressed the Board. The site will be a 70' x 80' leased area in the rear of the Public Works site. The tower will be enclosed by a chain link fence with an access gate. The tower structure will be directly in the center of the compound. Electricity will be brought in underneath the road from the pole across the street. Four equipment shelters are indicated on the plan – ten to eleven feet in height with external air conditioning units. A detail has been added to the plan regarding the depth of the utilities. The fire alarm system will be connected to the municipal system. They have talked with David Desfosses about the drainage system.. There will be a sign on the compound itself regarding emergency contact. Note #4 on the plan indicates that the area will be leased with no intention of subdividing.

Mr. Smith inquired as to emergency generators with the response being that there will be no emergency generators; that the equipment shelters will have battery backup. Any other installations would require further approval from the Board. The question was asked about the sound levels from the air conditioning

units with the response being that they are not loud. The question was asked as to any other noises with the response being that any noise would be like a humming sound.

Mr. Sullivan inquired as to AM/FM transmissions with the response from Mr. Quintal being that the transmissions are digital and would not interfere with the neighborhood.

The Chair inquired as to snow removal with Mr. Quintal explaining that the Department of Public Works plows that entire area out in the back. Inside the fence, the snow would be removed manually with hand shovels.

The question was asked about soil tests with the response being that investigations would take place next week. The Chair stated that the area had been very heavily used for a long time; that he was surprised the application was before the Board without that investigation having taken place.

With respect to the interference issues, it was noted that FCC regulations provide for no interference.

The State Engineer for the project addressed the Board and explained what would happen if the tower should collapse. He also spoke to the design of the tower regarding high winds; such as, 95 to 100 mph winds.

The question was asked as to who would ensure that the tower is maintained properly. Mr. Quintal stated that since Message Center would be the ones maintaining the site, they would be the ones. The question was also asked if the tower was geared toward this part of the country with regard to icing situations. The response was that the tower was designed to meet conditions for a 50 year storm.

Mr. Smith inquired as to what assurances the City would have with regard to maintenance with the response being the yearly report to the City. Discussion ensued on '96 BOCA requirements; specifically, seismic load. The statement was made that the tower is expected to last at least fifty years.

Mr. Coker inquired if a visual study had been done with the response being in the negative. Mr. Sullivan interjected that the area is primarily an industrial area. The question was asked if the neighbors knew what was going on with department staff explaining the notification procedure (200' radius). Ms. Goldberg pointed out that the use is an allowed use.

Mr. Holden reminded the Board that they are reviewing the site aspects; that the City Council handles policy issues; that the tower will be located within a Municipal district; that a contract has been negotiated with the City; that the proposal serves a municipal purpose and a public purpose.

There being no further speakers, the Public Hearing was closed.

#### **DISCUSSION AND DECISION OF THE BOARD**

Mr. Smith moved to approve the site plan with stipulations. Ms. Clews seconded the motion. The motion passed unanimously.

Stipulations:

#### **From the Technical Advisory Committee:**

1. That a note be added to the plan indicating the depth of the conduits;
2. That the fire alarm system be tied into the municipal system;

- 3. That the stormwater design be reviewed with David Desfosses, Engineering Technician, with the Public Works Department;
- 4. That the site plan clarify where the compound will be located;
- 5. That evidence be submitted that FAA approval has been received for the project;
- 6. That information be submitted on the wind load design;
- 7. That information be submitted as to what can be anticipated should the tower collapse;
- 8. That information be submitted as to what the public can do should they experience interference from the tower; such as, a contact person;
- 9. That the intent of the "proposed lease parcel" be clarified; that is, an explanation that the intent is not to subdivide.

**From the Planning Board:**

- 1. That periodic maintenance reports be submitted to the City; specifically, the City Engineer's office; and,
- 2. That any substantial changes to the site plan would require further review by the Planning Board.

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E. The Portsmouth Planning Board, acting pursuant to NH RSA 12-G:10, II and Chapter 400 of the Pease Development Authority Site Review Regulations, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following: The application of **222 International LP** for property located at **195 New Hampshire Avenue** wherein site plan approval is requested for a one-story 25' x 107' addition to an existing building with associated site improvements. Said property is shown on Assessor Plan 299 and lies within the Pease Industrial district.

**SPEAKING TO THE APPLICATION**

Michael Peloso spoke to the Board on behalf of Two International Group. The proposal calls for a 2,675 s.f. addition to the existing building to be utilized by AT&T Fibreoptics. The 25' x 107' addition will be to the back side of the building. The addition will be block with frost walls. Standby generators will be located on site. One to six employees will be on site daily. Curbing will be installed to the back side of the building. A loading driveway will be provided.

The 750 watt standby generator will be contained inside its own vault. The fuel storage will be contained in a double wall tank with the second tank having an alarm system. The decibel level will be at 60 or 70.

The proposed impervious area was recently reduced (parking area); therefore, there will be less stormwater runoff from the site.

Mr. Smith inquired as to air conditioning units. Mr. Peloso explained that the units would be located within the building where the use requires relatively low temperatures and low humidity. Discussion ensued about the location of the generator and associated screening. Mr. Peloso referred to some landscaping.

There being no further speakers, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Smith moved to recommend approval of the site plan to the Pease Development Authority Board of Directors. Mr. Coker seconded the motion. The motion passed unanimously.



**III. CITY COUNCIL REFERRALS/REQUESTS**

A. Letter from Richard Quintal Message Center Management, Inc. requesting permission to erect a 195' telecommunications tower at the Public Works Facility

Mr. Holden commented that the Board had already dealt with this item in approving the site plan. No further action was necessary. The City Council would be informed of the Board's action.

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**IV. NEW BUSINESS**

A. Impact fees

Mr. Holden distributed a *draft* ordinance on impact fees referring to decisions handed down in recent Court cases. The department has arrived at some proposals in conjunction with the *Site Review Regulations*. He suggested a work session be scheduled for next month with a second work session to be scheduled, if appropriate.

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**V. AMENDED SITE PLAN REVIEW**

No amended site plans were presented for review at this meeting.

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**VI. ADJOURNMENT**

There being no further business to come before the meeting, the meeting was adjourned at approximately 10:05 p.m.

Respectfully submitted,

Barbara B. Driscoll  
Acting Secretary

These minutes were approved by the Planning Board at its \_\_\_\_\_, 2001, meeting.