

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

**7:00 P.M.**

**CITY COUNCIL CHAMBERS  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**MARCH 17, 2005**

**MEMBERS PRESENT:** Kenneth Smith, Chairman; Thomas Ferrini, City Council Representative; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; John Sullivan; Raymond Will; Donald Coker; George Savramis; John Ricci and Alternate Jerry Hejtmanek

**MEMBERS EXCUSED:**

**ALSO PRESENT:** David M. Holden, Planning Director; and, Lucy E. Tillman, Planner I

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Work session on Site Lighting. Mr. Holden introduced David Desfosses of the City Public Works Department and Dennis Moulton of AMES-MSA Engineering Firm. Ken Sweeney of Charron, Inc. met with them last Friday and quite a bit of information was discussed. An excellent packet was distributed to the Board members which also included some websites that would provide information. Mr. Desfosses recommended mounting heights (not pole heights) should be no more than 20'. Glow and glare are important. Lights are now manufactured that do not have any glare. The extra expense for this type of light is worthwhile to the City. Downtown uses cast iron lights, used to light the sidewalks, not the streets. They should start specifying when and where they should use different lights and they need to regulate the glow rate. The poles need to be in scale with the building.

Mr. Moulton indicated that lighting was not usually a high priority for his clients. He felt they would be more receptive to regulations that allowed them some flexibility. He would be in favor of this criteria as he would be able to show his clients up front what the costs would be.

Mr. Desfosses stated that the Dark Sky Organization has a list of lights that they approve which might be a good guideline for the City to use.

Mr. Sullivan indicated that different facilities have different lighting requirements.

Mr. Desfosses stated they are not looking at less lights but, rather, better lights. Future discussions will be necessary to decide exactly what type of lights they want and how to change the Site Review Regulations.

Chairman Smith asked about enforcement. Mr. Desfosses indicated that he checks the sites for compliance. Mr. Holden indicated there was a property that was currently in violation that Jason Page was working with.

Mr. Ricci asked if there were some lights in surrounding towns that they could go look at. Mr. Desfosses indicated he would look into that.

Deputy City Manager Hayden suggested asking other towns what their regulations were so they could review them.

Chairman Smith asked if a draft could be prepared for the Board's review.

**I. APPROVAL OF MINUTES**

1. Minutes from the February 17, 2005 Planning Board Meeting – Unanimously approved.

**II. PUBLIC HEARINGS**

A. The application of **145 Heritage Avenue Properties, LLC, Owner, and Carlisle Capital Corporation, Applicant**, for property located at **280 Heritage Avenue**, wherein site plan approval is requested for the construction of three buildings as follows: 1) a 120' x 130' 1-story industrial building with 15,600 ± s.f.; 1) a 210' x 140' 1-story industrial building with 29,400 ± s.f., and 3) a 30' x 90' 2-story garage with 2,700 ± s.f., with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 284 as Lot 7 and lies within an Industrial district. (This application was tabled at the February 17, 2005 Planning Board Meeting)

The Chair read the notice into the record.

Mr. Hopley made a motion to take the application off of the table. Deputy City Manger Hayden seconded. The motion passed unanimously.

**SPEAKING TO THE APPLICATION:**

Peter Weeks addressed the Board on behalf of Carlisle Capital Corporation. Since the last meeting, Dennis Moulton had met with the City and answered all questions from the previous meeting and made all of the requested changes.

Dennis Moulton, of AMES MSC, stated that they met with Planning and Public Works staff on issues of concern. They made several changes to the plans. There was a suggestion that they provide an outlet to the rear detention area, which he added to the plans. That would balance what was flowing out from the existing condition. It outlets to a treatment swale and the flow volume and velocity met treatment criteria. To make the outlet work, the pavement elevations are 1' higher.

There were concerns about onsite erosion control issues. They provided a stormwater erosion plan with their plan of treatment to address that. Another issue was the inlet grade capacity for inlet #2 which Mr. Moulton looked at and it turned out that it did not increase in size.

Treatment on site was an issue at the last meeting. Mr. Moulton indicated that the EPA rules were applied and it provided four times those standards. The detention time is a significant factor because sediments have time to drop out of the stormwater. This additional detention time provides sufficient treatment to the stormwater.

Chairman Smith asked about lighting. Mr. Moulton said they would look at that and will confirm that they meet the Dark Sky criteria and zero lot line spillage.

Mr. Coker asked about the treatment swale and the treatment pond. Did they have a maintenance schedule?

Mr. Moulton indicated that they don't have one drawn up but could do so and will provide it to the Public Works Department.

Mr. Coker asked that that be made a stipulation.

Mr. Ricci indicated he would like to see the grate calculations. He indicated one of his concerns was the depth of the detention area versus the groundwater at the site. He didn't see that on the plans.

Mr. Moulton indicated that the previous concern was that the detention pond bottom had an elevation of 47' and the wetlands was at 48'. Now that they have raised the bottom of the detention basin to 48' that should no longer be a concern. By raising the pond bottom, the clay liner is no longer needed to prevent groundwater migration. Thus, the pond does not need to be over-excavated to install the clay liner. Any groundwater encountered during the excavation will be pumped to a sedimentation basin for treatment.

David Allen, Deputy Director of the Department of Public Works spoke regarding the outlet on the pond that crosses the road. The obstruction was a water line. He indicated that Public Works will take care of issue and the applicant will contribute towards the cost. Once taken care of, this will resolve the issue from that particular detention pond.

Mr. Ricci asked if they had looked at the run off, pre-development, down Heritage and Banfield Roads.

Mr. Allen indicated that they had and this area worked fine in a 10 year storm. The developer put together a design based on a 25 year storm so that they would be able to up grade in the future. Mr. Allen was comfortable with the plan.

Mr. Ecker, of Banfield Road, spoke to the petition. He was concerned about drainage due to the soil and asked if anyone had done a test pit. He also wanted to make sure they were putting in a large enough berm so that the water doesn't overflow.

Mr. Weeks indicated that Mr. Ecker's questions had been looked at quite extensively with the engineer and the City. This will improve the situation and will not over tax the area.

Chairman Smith asked Mr. Moulton if he could address some of these issues.

Mr. Moulton indicated that test pits had been done and there were several excavations. They found no clay but what they found was mostly sandy gravel. It seemed to be good materials where they were excavating. There is EPA involvement and they are required to file a notice of intent as to its location and they have to verify that a stormwater pollution plan has been provided. Regarding the drainage system and the design, Mr. Moulton indicated that the ponds are not designed to infiltrate much water but if they do, then it's all the better. The pond is designed to contain a 50 year storm. Mr. Moulton went on to describe the stormwater drainage system. He felt it was a responsible design and will be providing a higher level of treatment. They have provided a better design knowing the concerns of Board and the run off to Great Bog.

Chairman Smith asked if there will there be an improvement in terms of water flow?

Mr. Moulton indicated there will be less flow to the rear and the sides of property and an increase on Heritage Avenue. This will still be workable in a 10 year storm. Overall, yes there will be an improvement and he sees benefits.

Mr. Sullivan asked about the drainage areas. He understood that the system they are installing is designed to take care of the property that is being developed and wanted to confirm that they were not incorporating the drainage and brook that comes along the back of Water Country and underneath Banfield Road, into the Great Bog.

Mr. Moulton indicated that they were trying to avoid any contribution to that at all. Their system is designed to flow at such a slow rate that it meets the treatment criteria of Best Management Practices.

Mr. Will asked what effect of a 100 year storm would be?

Mr. Moulton indicated the water would be a little big higher in the pond. When it got within 10” of the top of the berm, they would have flow out back to the treatment swale. The flow would not be at a high velocity but basically when water starts to recede it acts just like a 10 year storm. Most treatment is taken care of in the first inch.

Mr. Will asked how many 100 year storms have they had in the past 50 years.

General consensus was that there had been two storms.

Mr. Moulton indicated there was a 1% chance of a 100 year storm event.

Mr. Ricci asked when the test pits were done and what was the seasonal high water table at that time?

Dick Johnson, of Pinewood Construction, discussed the test pits that were done.

Harold Ecker asked if they could put a provision in that with a big storm when it flows over it would be addressed by the City?

Mr. Holden confirmed that they are only required to look at a certain year storm and a 100 year storm is not in the regulations. This project is required to meet the specifications of the City Engineer and there is no obligation to go any further beyond that.

The Chair asked if there was anyone else present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

## **DISCUSSION AND DECISION**

Mr. Holden indicated that the Department continues to recommend approval. TAC looked this several times in terms of the drainage and the Deputy Director of Public Works, who is technically responsible or the review of the stormwater, reviewed it and was comfortable with it. The last approach, which addressed the elevation issues, went far beyond the regulation requirements. The applicant is working with city and helping with existing conditions.

Councilor Ferrini made a motion to approve with stipulations. Deputy City Manager Hayden seconded.

Mr. Coker asked that a stipulation be added regarding the maintenance schedule on the treatment swale and detention pond and that it be provided to the Public Works Department.

Mr. Will stated he leaned heavily on Mr. Ricci’s opinion and Mr. Ricci indicated that he felt much better with this proposal.

Mr. Ricci asked that the site plans reference the erosions control measures provided to the Planning Board.

Chairman Smith asked that they use the Dark Sky Friendly guidelines.

The motion to approve with stipulations passed unanimously.

### **Stipulations from the January 4, 2005 TAC Meeting:**

- 1) That a report by an independent wetland scientist be provided to the Planning Board;
- 2) That the elevations in the treatment area need to be addressed;

- 3) That the applicant work with DPW to determine a fair share cost mechanism for repairing the culvert at the corner of Banfield and Heritage and the culvert is to be upgraded before accepting any flow from this development;
- 4) That the driveway be relocated to the other side of the lot;
- 5) That the Heritage Avenue/Route 1 intersection be evaluated, subject to the cost of re-striping the Heritage approach to the Heritage/Route One intersection to extend the storage capacity of the approach lines;
- 6) That only one water meter per lot is allowed and the plans should reflect the connection from the first building to the second building
- 7) That the stray water line coming off of the fire line should be eliminated;
- 8) That the water service must be either 2” or 4” pipe;
- 9) That a standard “No Trucks” sign be added to the entrance;
- 10) That a Masterbox and a Knox Box be added to the plans;
- 11) That the size of the smaller wetland be added to the plans;
- 12) That plantings and landscape treatment be added along the edge of the detention pond in the rear of the property.

**Stipulations from the February 1, 2005 TAC meeting:**

- 13) That the applicant receive a favorable motion from the Traffic & Safety Committee regarding the sub-standard width of the driveway;
- 14) That the handicapped parking spaces for building #2, on the south side, should be rotated so the spaces can be used without backing up;
- 15) That the trees along the front of the lot be evaluated for more appropriate species;
- 16) That the applicant contact DPW for an erosion inspection prior to disturbing the site, after the clearing is done;
- 17) That the Landscaping Plan shall be subject to approval by the Planning Department;
- 18) That a note be added to the plans that if a variance is requested regarding parking requirements, it is not the intent of the TAC Committee or the Planning Board to use this approval to favorably grant said variance;
- 19) That the figures for the closed drainage system be provided to DPW prior to final approval;
- 20) That the Site Plan Cover Sheet be changed from “Construction Plans” to “Site Plans”;
- 21) That each page of the Site Plans reflect the new address of 280 Heritage Avenue;
- 22) That a new Site Review application be submitted, reflecting three buildings;
- 23) That Sheet C-4 of the Site Plans clarify that the garage is a total of 2,700 s.f.;

**Stipulations from the March 17, 2005 Planning Board meeting:**

- 24) That a maintenance schedule for the treatment swales and detention ponds be provided to David Desfosses of the DPW;
- 25) That a note be added to the Site Plans, referencing the erosion control measures that were provided to the Planning Board for the March 17, 2005 Meeting;
- 26) That Dark Sky Friendly guidelines be followed for site lighting.

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B. The application of **Engel Family Trust, Owner, and API of New Hampshire, Applicant**, for property located at **50 Campus Drive**, wherein site plan approval is requested to construct a 108.4' x 111', 12,032 ± s.f. 1-story addition to an existing structure, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 267 as Lot 23

and lies within an Industrial district. (This application was tabled at the February 17, 2005 Planning Board Meeting)

The Chair read the notice into the record.

Deputy City Manager Hayden made a motion to take the application off of the table. Mr. Will seconded. The motion passed unanimously.

**SPEAKING TO THE APPLICATION:**

Attorney Pelech indicated that a Conditional Use application was pending. They hope to appear before the Conservation Commission in April. They hope to be back before the Planning Board for their April 21<sup>st</sup> meeting.

Mr. Holden asked Attorney Pelech is he objected to the Department notifying abutters of the next hearing as this has been tabled for quite a while.

Attorney Pelech did not object to that.

The Chair asked if anyone was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

**DISCUSSION AND DECISION**

Mr. Will moved to table this matter to the April meeting. Mr. Sullivan seconded. The motion to table passed unanimously

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C. The application of **Moray, LLC, Owner**, for property located at **235 Commerce Way**, wherein site plan approval is requested to construct a 170' x 150' (irregular) 26,422 ± s.f. 3-story office building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 216 as Lot 1-8B and lies within the Office Research/Mariner's Village district. (This application was tabled at the February 17, 2005 Planning Board Meeting)

D. The application of **Moray, LLC, Owner** for property located at **235 Commerce Way** and **Brora, LLC, Owner**, for property off **Portsmouth Boulevard** wherein Final Approval is requested for a lot line relocation whereby property located at 235 Commerce Way would have a lot area of 247,954 ± s.f. and 646.56' of street frontage and property located off Portsmouth Boulevard would have a lot area of 239,040 ± s.f. and 433.91' of street frontage, in a district where a minimum lot area of 3 acres and 300' of street frontage is required. Said properties are located in an Office Research/Mariner's Village district and are shown on Assessor Plan 213 as Lot 11 and Assessor Plan 216 as Lot 1-8B. (This application was tabled at the February 17, 2005 Planning Board Meeting)

The Chair read both notices into the record.

Mr. Will made a motion to take the applications off of the table. Mr. Sullivan seconded. The motion passed unanimously.

Mr. Holden indicated the Department was working with AMES MSC . He recommended tabling this matter to a time uncertain so that abutters will be notified when this comes forward again.

Mr. Will made a motion to table both applications. Mr. Hopley seconded. The motion to table both applications passed unanimously.

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E. The application of **Michael R. Clark, Owner**, for property located at **325 Little Harbor Road** where Preliminary and Final Subdivision approval is requested to subdivide one lot into two lots with the following: Lot 1 having 180,000 ± s.f. (4.2 acres) and 154.43 feet of continuous street frontage on Little Harbor Road and Lot 2 having 279,000 ± s.f. (6.4 acres) and 151.38 feet of continuous street frontage on Little Harbor Road, and lying in a zone where a minimum lot area of 1 acre and 150' of continuous street frontage is required. Said property is shown on Assessor Plan 204 as Lot 5 and lies within a Single Residence A district. (This application was tabled at the February 17, 2005 Planning Board Meeting)

The Chair read the notice into the record.

Mr. Will made a motion to take the application off of the table. Deputy City Manager Hayden seconded. The motion passed unanimously.

There being no one present to address the application Mr. Will made a motion to table this matter until the end of the public hearings. Deputy City Manager Hayden seconded. The motion passed unanimously.

This matter was brought forward again after the public hearing on 66 Madison Street.

Mr. Will made a motion to take the application off of the table. Mr. Savramis seconded. The motion passed unanimously.

**SPEAKING TO THE APPLICATION:**

Attorney Pelech has been working with Attorney Sullivan and Mr. Holden to come up with a solution to this very unique problem. Mr. Holden's memo outlines the progress that they have made. They recognize that Belle Isle shall remain as one lot and the land side would be subdivided into 2 lots which would remain and not be further subdivided. This will be stipulated with deed restrictions that the two front lots not be subdivided. The issue regarding the roadway going to the island because it is not a city street has been resolved and they are continuing to work with Attorney Sullivan on that.

Attorney Pelech would like to see preliminary approval granted with the 9 recommended stipulations. They may take some time, especially meeting with the Conservation Commission, but they would be able to come back in a couple of months. The roadway situation would be similar to the roadway at Currier's Cove.

Chairman Smith asked if they had spoken with the Mouflouzie family?

Attorney Pelech indicated they would be willing to accept a stipulation of a 50' no cut green buffer between the properties. This is agreeable to both Mr. Mouflouzie and Mr. Clark.

Mr. Coker indicated that there would be no further subdivisions of any of the three lots and this condition goes with the property. How could one get relief if one was so inclined?

Attorney Pelech indicated they would have to start by coming before this Board to get the restriction changed.

The Chair asked if anyone was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

DISCUSSION AND DECISION

Mr. Will asked if there was a stipulation that they couldn't subdivide the property, couldn't they get relief to subdivide again by coming back to this Board, wouldn't it make more sense just to not request anything? He didn't see how this was making it harder for someone to subdivide again.

Chairman Smith said this would be put in the deed and it also will be in City records where the intent was. They also would probably not get that relief from this Board.

Mr. Coker agrees with Mr. Will. He is concerned about the future. Can they do more as a Board to assure that there is no future development?

Chairman Smith indicated there was probably not any more they could do.

Mr. Holden confirmed that the deed restriction is the key element. Also, it is a private road with no city services so it would trigger city review and past files would reveal these conditions.

Mr. Will made a motion to approve preliminary approval with the 9 stipulations. Mr. Savramis seconded. Also included was a stipulation regarding the 50' no cut green buffer on one side (Mouflouzie land).

The motion passed unanimously.

Stipulations were as follows:

1. That the development restriction language shall be reviewed and approved as to content and form by the Planning and Legal Departments;
2. That the language shall be added to the recorded subdivision plat and deed for each of the three lots;
3. That the Plat and deeds shall identify the responsible parties for the installation and maintenance of the private road and all utilities;
4. That NH DES Subdivision Approval for these septic systems be demonstrated and recorded on the plat;
5. That the applicant shall demonstrate to the City Attorney's satisfaction whether or not consideration/approval is required from the Board of Adjustment so as to complete the consideration of this application;
6. As appropriate, approval of this application by the Board of Adjustment;
7. That a recommendation shall be provided to the Board regarding the appropriate width/construction details for the proposed private road with such recommendation being provided by the Fire and Public Works Departments;
8. That as City conservation land abuts this parcel, that the applicant meet with the Conservation Commission to solicit their comments on this proposal and review its impacts and benefits to the City parcel;
9. That when the aforementioned conditions are satisfied that an application shall be submitted for Final Subdivision Approval.

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F. The Portsmouth Planning Board, acting pursuant to NH RSA 12-G:13 and Chapter 500 of the Pease Development Authority Subdivision Regulations, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following: The application of **General Services Administration, New England Region, Applicant**, for property located at **254 Corporate Drive** wherein Preliminary and Final Subdivision approval is requested with the following: Lot 0000 having an area of 30.18 ± acres and with continuous street frontage off Corporate Drive; and the remaining land area being decreased by 30.18 ± acres and constituting a portion of the Tradeport; and, lying in a zone where a minimum lot area of 5.0 acres and 200' of continuous street frontage is



required. Said properties are located in an Airport Business Commercial district and are shown on Assessor Plan 315, as Lot 0004. (Plat plans are on file in the Planning Department Office and are identified as #02-01-05).

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Mr. Holden indicated that GSA was working with the Tradeport and issues were still being resolved. There was a request to table this matter to the April meeting.

Mr. Will made a motion to table to April. Deputy City Manager Hayden seconded. The motion to table passed unanimously.

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G. This is a request for a renewal of a previous subdivision approval for property located **66 Madison Street** wherein Final Subdivision Approval is requested to subdivide two lots into three lots with the following: Lot 1 having a lot area of 14,087 s.f. and continuous street frontage off Lovell and Madison Streets; Lot 2 having a lot area of 13,060 s.f. and continuous street frontage off Madison Street; Lot 3 having an area of 14,039 s.f. and continuous street frontage off Lovell Street; and, lying in a zone where a minimum lot area of 3,500 s.f. and 70' of continuous street frontage is required. An existing structure located on lots 1 and 3 is proposed for removal. Said properties are located in an Apartment district and are shown on Assessor Plan 147 as Lots 001-001 and 001-000.

The Chair read the notice into the record.

Mr. Holden indicated that this is a relatively unique request. The approval expired after one year so a public hearing is now required and the Board needs to make the same finding. The original conditions should be imposed again.

**SPEAKING TO THE APPLICATION:**

Chris Keenan, Esq., confirmed what Mr. Holden stated. When his client purchased the property they were led to believe that everything had been done by the previous owners. As it turned out, the mylar got hung up between the surveyors office and the Planning Department. When they went to pull their building permit, this was brought to their attention.

Chairman Smith asked if there were any stipulations on this?

Attorney Keenan stated that the granite markers need to be set.

Mr. Coker asked for clarification. Mr. Holden indicated that had been no substantial changes but Mr. Coker wanted to clarify if there had been any changes?

Attorney Keenan confirmed that there were no changes.

Mr. Holden confirmed that there were no changes.

The Chair asked if anyone was present from the public, wishing to speak to, for, or against the petition.

Sarah O'Callahan, of 209 Cass Street, has concerns about drainage. Her neighbor abuts 66 Madison Street and since the pool has been removed, the neighbor has been pumping all of the time. The city has done some work at 66 Madison Street but the problem has not gotten any better. Another neighbor, Ms. Greenwold is also pumping more than before. The area is very fragile regarding water and it needs to be watched. In 2002 Peter Rice spoke about the sewer and water pipes he said the

problem is choke pipes under Papa Wheelie's Bike Shop and until that is fixed they will continue to have problems. She feels the problem is getting worse.

Mr. Will stated that he wrote the minutes that she referred to at a neighborhood meeting but discussion was general so he will not reclude himself.

Mr. Holden indicated that Site Review addressed drainage and construction will start to address those problems. Drainage was a separate action, under Site Review, and that was the hearing where Peter Rice and David Allen addressed the Board. The improvements won't be done by subdivision but rather by the construction of the units that haven't started yet.

Chairman Smith stated that the Board put the CIP together and one area has always been to repair that area. The Schultz property development was to go in and clean up the lines but that development never took place so it is back in the City's CIP plan. This is a sensitive area and they have been watching it.

Councilor Ferrini encouraged her to attend the City Council meeting next Monday to address drainage problems in neighborhood.

Tim Parker, 183 Cass Street, felt there was a drainage problem in the neighborhood. He distributed pictures of a storm in 2001. They are still waiting for improvements to the drainage problem.

Dorothy Kearstead, of 50 Lovell Street, stated that the property was sold and nothing was in the paper. The pool was drained for the first time in three years on the evening of the 4<sup>th</sup> of July right on the lawn. The following weekend they removed the pool. That was when her cellar filled up.

Mr. Coker thought drainage improvements were to be made by the City.

Mr. Holden said the applicant is doing improvements and that will improve the area. The prior owners were cited in violation of various city ordinances. This is a new owner who is trying to move forward and improve the site.

Councilor Ferrini could not recall if they were given a time certain of when the City would do whatever has to happen at Islington Street for sewer improvements.

Chairman Smith recalled that they were in the engineering stage and then had to go through CIP stage to get the monies.

Councilor Ferrini is comfortable voting but wants to be certain where they are in the CIP for when the work will be done and he feels the residents need to know.

Mr. Holden responded that they can't holdup a subdivision because of what the City is not doing. This does not effect subdivision approval. They could have public works provide a time line and bring it up next week if that would address their concern.

Councilor Ferrini agreed they were not related and was therefore inclined to vote for the subdivision approval.

Deputy City Manager Hayden agreed that this is separate matter and not under the purview of subdivision approval. The neighborhood concerns are on the CIP improvements at City Council on Monday night and that is the best forum to address the city improvements.

Mr. Will confirmed that in order to get to site review approval they first have to approve the subdivision.

The Chair called again for any public speakers. Seeing no one rise, the public hearing was closed.

**DISCUSSION AND DECISION**

Councilor Ferrini moved to approve. Mr. Sullivan seconded. The motion to approve passed unanimously.

Chairman Smith encouraged the residents to come to the City Council Meeting on Monday relative to the CIP.

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**III. CITY COUNCIL REFERRALS/REQUESTS**

- 1. Letter from Attorney Peter Saari proposing to give the alleyway in the rear of the Wenberry Property running from Fleet Street to Haven Court to the City; (This matter was tabled at the February 17, 2005 Planning Board Meeting)

Mr. Will made a motion to take the request off the table. Deputy City Manager Hayden seconded.

Mr. Holden stated this was tabled because the City had an enforcement action. Since then, they have been in discussions with them and the issue is being resolved with City. A Memo was handed out for the Board's review. The alleyway is parallel to Gilley's and was used for changing of horses before going into the stables. The owner is willing to give the land to the City. Staff advised that the City should seek to acquire the property in this area, especially next to the parking garage. However there is liability included with this. DPW recommended this should not be used for pedestrian use. It is recommend that the City acquire this land but it not be used for a pedestrian way until it is brought up to City standards and inclusion in a future CIP.

Chairman Smith confirmed that it is blocked off by jersey barriers.

Mr. Coker asked how prevent pedestrians going through the alleyway as people could just climb over the barriers.

Chairman Smith indicated the City could only make their best attempt.

Mr. Holden stated it would be fenced off.

Councilor Ferrini made a motion to recommend acceptance to the City Council, with the stipulation that the alleyway not be used for pedestrian use. Mr. Sullivan seconded. The motion passed unanimously.

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- 2. Re-Zoning request for property located Off Mirona Road from Industrial (I) to General Business (GD);

Mr. Holden indicated that the Department Memorandum spoke to this matter, the Board looked at this as part of the Master Plan process as a change in the Land Use Map and the Board recommended that this change be made. This is now a City Council referral. At the request of the Chair, a zoning matrix was prepared by the Planning Department and quite a bit of time was spent on that. The only issues that rose for concern were the slope, erosion, soil suitability, solid waste & stormwater, traffic and those issues would largely be approached as part of site review process. The Department finds that this conforms to the existing Master Plan and recommends that they maintain their current recommendation.

Attorney Malcolm McNeill, representing Michael Realty Trust who owns the majority of site subject to the proposal, addressed the Board. Portsmouth Computer Group, who is across the street from this land is agreeable to rezoning, and is the only other property owner in this section. Both property owners are in favor of the zoning change. Michael Realty is also owner of the previous Yoken's site as well as the Champagne property. There is a continuity of properties and the only parcel not owned by Michael Realty Trust is Portsmouth Computer Group.

Mr. Sullivan indicated that if any land was owned by the McLeods then he would have to recuse himself.

Attorney McNeill concurred with Mr. Holden. He has spoken to this matter before and has previously supplied them with exhibits and did not feel it was necessary to revisit it.

Mr. Ricci recused himself.

Attorney Robert Ciandella, Esq., spoke on behalf of Market Basket, an abutter to the Yoken's property and the subject parcel. He submitted a letter at the beginning of the meeting. His first issue was the issue of rezoning, driven by the specter of the development of Yoken's. The second issue is the fact that the established process of this Board has not been followed. The rezoning is driven by the redevelopment of Yoken's and 9 of 10 of their recommendations to the City Council for changes to the Land Use Map suggest more review. This is the only one that they recommended rezoning. The Planning Board has an established process and Attorney Ciandella feels that process was not followed in this case. Market Basket does not feel they should recommend the re-zoning and they don't believe this is isolated industrial land as across the street is a large area of industrial land. There are no changes in existing conditions that would justify the re-zoning. At the very least he felt they should follow their own process. Lastly, Attorney Ciandella asked what the rush was? They don't even know what the redevelopment will be.

Attorney McNeill handed out some exhibits. Attorney McNeill responded to the circumstances that drive this rezoning change. He appeared on two occasions when the City Consultant was present. There is no greater intensive study than during the Master Plan process. The parcel is less than 4 acres and is almost all owned by the same owner. There are no industrial uses in the zone. Attorney McNeill felt this is currently spot zoning and he felt they should "un-spot" it. All property owners support the change. Demoulas objects because they believe there will be a competitive business on the site and Attorney McNeill did not feel that was appropriate under the circumstances. They have followed the Master Plan process and feel the rezoning would facilitate the use of the property. It should be brought back to a reality-based zoning. He recommended that they follow the advice of Mr. Holden and their previous Master Plan vote.

Attorney Ciandella felt they were following the proper process and who his client may be is irrelevant and the Board was capable of evaluating the merits. There was a reference to Mr. Holden's comments where this area was previously zoned differently and they did not see where this was zoned differently than Industrial. They participated in the Yoken's subdivision and raised valid access issues. The Board agreed with one of their concerns and required cross easements as a result.

Chairman Smith indicated that the matrix that they prepared was the same process as any other recommendation.

Mr. Holden agreed with Attorney McNeill, that this Board went through a Master Plan process and it was a major undertaking. A review of the matrix confirms where they are at. His recollection was that zoning changes were made to Henry Berounsky's property and it has changed back and forth a number of times. Also, Mirona Road was the town dump at onetime.

Chairman Smith confirmed that they would not go through a rezoning without going through the matrix process.

Mr. Will commented that they did go through most of the other rezoning requests quicker than they may have in the past. Mr. Will would be more comfortable with more detail outside the Master Plan process than a general matrix process. He would be more comfortable if this were tabled.

Deputy City Manager Hayden commented on the Master Plan recommendations. There were 10 future land use changes and 9 were more specific. She pointed out that many requests never even made it into the Master Plan because it was so clear they were spot zoning. Her recollection of the Mirona Road request was this it was so clear to the Board that it should be rezoned that there was very little need for discussion .

Deputy City Manager Hayden made a motion to recommend approval. Mr. Hopley seconded.

Mr. Coker was troubled by this. He believes the process serves a purpose to flesh out the kind of issues that are on a quick path that they don't see. Mr. Holden and the Department have gone through the matrix but the Board has not and he felt the Board needs to look at that. He has never seen the matrix. This was the only rezoning that they recommended going forward with. Many of the rezoning recommendations stated that they should "consider" or "review". He indicated that they move slowly for a reason. He is arguing for the process and the integrity of the process.

Mr. Will also had traffic and parking concerns as those of an industrial park are very different and this is providing another access for traffic to Mirona Road. This parcel can do well as Industrial land and he doesn't see why they should change it to General Business. There would be adverse effects due to traffic.

Chairman Smith confirmed that, as their Chairman, he always makes sure that the process is followed and the matrix is followed. He will also make sure that the system stays in place.

The motion to recommend approval passed with Mr. Coker and Mr. Will voting in the negative.

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- 3. Re-Zoning request to permit a 100-foot setback for a hotel where a 175-foot setback is presently required;

The Board indicated this was not a master plan process so the Department is recommending that they direct that a matrix be prepared so that they can act on it. Hopefully the materials will be before them at the April meeting and then can decide whether to hold a public meeting on it.

Deputy City Manager Hayden made a motion to prepare a matrix and revisit it at the April meeting. Councilor Ferrini seconded.

The motion passed unanimously.

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- 4. Request to place temporary signage at Leary Field for the 2005 baseball season;

Chairman Smith stepped down as his son just joined the Little League. Vice Chairman Ricci chaired the hearing.

Mr. Holden reminded the Board that they discussed this last month. A recommendation was made that it be tabled to April to allow for a discussion on signs in general with city staff and John Burke present.

Councilor Ferrini made a motion to table to the April meeting. Mr. Sullivan seconded.

The motion to table passed unanimously.

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**IV. NEW BUSINESS**

**A. Subdivision request for 53 Saratoga Way and 140 Concord Way;**

Mr. Holden briefed the Board on this item.

There is a section of Atlantic Heights in a 1919 subdivision plan which must be honored. Owners must advise Board of their intention to subdivide their lots. Mr. Holden certified that it meets all requirements of the Zoning Ordinance.

Mr. Coker asked about what the zoning requirements were.

Mr. Holden indicated that there is a specific section that references this area that references the 1919 subdivision plan. (Article III)

The Board acknowledged this request.

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**B. Request for One Year Extension for Site Plan Approval for property located at 1574 – 1600 Woodbury Avenue;**

**C. Request for an Extension of Subdivision approval for property located at 1574-1600 Woodbury Avenue;**

Mr. Holden stated that the Site Plan Approval request was a timely request and was their first extension. Therefore, this extension is automatic.

The request for an extension of the subdivision approval is unlike the Madison Street request as the mylar was signed with an easement condition outstanding. The Department created a catch 22 with that stipulation because an easement cannot be granted to the same party so there must be a buyer. Before the property could close, the year had passed. Because the mylar was signed, they just want the Board to know the circumstances.

Attorney Pelech explained how the catch 22 situation is created. Until the property is conveyed to another party, the easement cannot be recorded. They are scheduled to close on the property tomorrow, the mylar will be recorded in the morning and the Easement will be recorded in the afternoon.

Deputy City Manager Hayden made a motion to grant an extension of the Site Review approval. Mr. Sullivan seconded. The motion passed with Mr. Will voting in the negative, as he voted in the negative at the original hearing.

Mr. Will made a motion to allow the Department to record the subdivision mylar at the Registry of Deeds. Mr. Hopley seconded. The motion passed unanimously.

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**V. WORK SESSION – Wal-Mart for Property located at 2460 Lafayette Road**

Mr. Holden indicated that the only significant issue is traffic. This application is still with TAC but it was thought that it would be a good idea to introduce the Board to the project.

Attorney Pelech stated that this project has gone through more scrutiny than any other project in the history of Portsmouth. They have had ten meetings with the Department of Public Works, the Traffic & Safety Committee, TAC meetings and now a Planning Board work session. This project will be very fruitful for the City. They are converting a Walmart to a Super Walmart. One thing they have done is agree to voluntarily submit to elevation plans. The catch basins in the parking lot now flow underground, they are installing 6' sidewalks through parking lot with 4 way stop signs. The City has held them to a higher standard and they are okay with that. Traffic has been an on going issue. They met with NHDOT and the City and it was decided that, rather than spend money on more traffic studies, they suggested putting it towards roadway improvements. The city wants traffic off Banfield and back on Route One. Walmart's impact was relatively minor but they have agreed to contribute \$1/2 million on top of the States contribution. The City is satisfied that the contribution is sufficient and the State is as well. They are awaiting a report from the State on how soon these improvements can be done.

Paul Hayner, of Hayner & Swanson, reviewed the plans with the Board. He pointed out the existing building of 124,000 s.f. and is a general merchandise Walmart which is expanding to a 191,000 s.f. super center. The expansion includes a grocery store, a vestibule area, a gardening center expansion and other miscellaneous uses. Jokers is being demolished and replaced with parking. They exceed the parking requirements. The main entrance is off of Lafayette Road. They are providing sidewalks on site for safety. Coast Bus Company will have a bus stop at the front entrance. They meet all dimensional requirements. The impervious area has increased by 6%. All utilities have been worked out with staff. The drainage has been improved and there is no increase in run-off. Lighting has been reduced from 38' poles to 28' poles, and the wattage from 1000 to 400 watt fixtures. The fixtures are flat lens and full cut off approved and are neighborhood friendly fixtures.

Chairman Smith asked about the expansion of the building for parking. Are all of the spaces required? His concern is that some Super WalMarts have gas stations in them as well and he didn't know if a gas station was being proposed later on and if a parking problem with arise as a result of that.

Mr. Hayner was not aware of any further phase that included a gas station.

Mr. Coker clarified that they were attempting to get traffic off of Banfield Road? He asked because they indicated there would be a rear entrance off of Constitution Drive.

Mr. Hayner indicated that was an existing driveway used by truck drivers.

Attorney Pelech-stated that John Burke felt Banfield traffic was becoming heavy because people were avoiding Route One and the intersection at Constitution and Route One. This was to encourage people to use Route 1 rather than Banfield.

Giles Ham, of Vanasse and Associates, responded that to improve travel on Route One, they will be upgrading the signals. The back entrance is used by about 20% of the current traffic? Rather than do another traffic study, they did record trip generations. It showed that the 1993 traffic projections are higher than current trip generation. They would rather spend the money on roadway plans and improvements. There will be a report provided to the Board at their formal presentation. They worked on providing a survey along Route One and prepared three plans towards improvements that are needed today. Mr. Ham reviewed the three different plans with the Board. The first plan extends the right hand turn lane. The second plan was north of WalMart near Southgate Plaza, where they have signalized Constitution Avenue and widened the road. There is a very tight area near the cemetery. The third plan shows a wider cross section by relocating the red brick building.

Mr. Sullivan asked about the sidewalks that go through the parking lot and whether they were raised.

Mr. Hayner confirmed that they were raised with occasional ramps to access the parking lot for carts, etc.

Mr. Sullivan asked if the roadways go across the sidewalk?

Mr. Hayner indicated there is a four way cross section and a three way cross section.

Mr. Sullivan was concerned about ladies with small children. He also hopes they will be adding shrubbery at the entrance on Route One as it is pretty barren at the moment.

Mr. Sullivan also pointed out to Attorney Pelech that it has been the practice of Walmart to bring in tractor trailer boxes and just drop them in the parking lot, especially during the springtime when they normally bring in plants, etc. He has seen as many as 15 out there. He hopes with the extra loading berths they will have enough space to eliminate that.

Attorney Pelech indicated that the additional loading berths will hopefully take care of that.

Attorney Pelech also stated that they have agreed to improve the lighting and to loop the water line from the deadend of Post Road through the Dunkin Donuts lot and along their property line and all the way back out, they have given the City an easement so that it will be a City water line now and that will improve flow in the area. He felt this project was almost ready to come before the Board.

Chairman Smith mentioned that they would be looking for snow storage, motorcycle pads, recycling dumpsters, bicycles, and a covered bus station.

Attorney Pelech indicated that Coast did not want a covered shelter.

Attorney Sullivan asked if they were going to remove the traffic light at Shaw's or will they be synchronized?

Attorney Pelech indicated that the signal will be modified and synchronized.

Mr. Ricci would like the Site Plans provided to the Board as soon as possible.

Mr. Holden confirmed that the primary issue is traffic and how to identify the Route One project on a specific timetable. All parties are working together to assure that a defined date will be worked out. The choke point has required some detailed engineering and the applicant has provided detailed survey plans. The State is using those in their review.

The Chair thanked the applicants for their presentation.

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The election of a Planning Board representation for the Historic District Commission was held.

Deputy City Manager Hayden recommend Chairman Smith. Mr. Hopley seconded. The motion passed unanimously.

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Mr. Sullivan had a question with regard to their plans and asked if it would be possible to have an additional sheet added to their plans which would include things such as the maintenance of grease traps, oil separators, swales, etc. so that the applicant will have a plan that will be recorded forever. He asked that Mr. Holden give it some thought.



Mr. Holden indicated that can be put on the site plan and that would be used to make sure that a site is in compliance.

Chairman Smith reminded the Board of next week's meeting which will start at 6:30 p.m.

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**VI. ADJOURNMENT**

A motion to adjourn at 10:00 pm was made and seconded and passed unanimously.

Respectfully submitted,

Jane M. Shouse  
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on April 21, 2005.