

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

**7:00 P.M.**

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

**MAY 25, 2006**

**MEMBERS PRESENT:** John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Jerry Hejtmanek, Vice-Chairman; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; Raymond Will; Donald Coker; George Savramis; Anthony Coviello; and alternate Paige Roberts

**MEMBERS EXCUSED:** Timothy Fortier

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

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**I. PUBLIC HEARINGS**

Chairman Ricci indicated that he would be stepping down from this hearing as he had a conflict. Vice Chairman Hejtmanek would conduct the hearing.

Acting Chair Hejtmanek indicated that there was one agenda item for the evening that was a referral from the City Council to the Planning Board. There were four proposed amendments to the Zoning Ordinance and Zoning Map. Their purpose this evening was to solicit public comment to assist in the Planning Board's report to the City Council. The final action lies with the City Council. He indicated that he would read the notice into the record. He would then ask Mr. Holden to brief the Board and then presentations would be made. He would then open it up for questions from the Board and then he would open it up for public comment.

Acting Chair Hejtmanek read the notice into the record.

A. A public meeting is convened to consider four amendments to the Zoning Map and Zoning Ordinance as follows: 1) to re-zone land identified as Map 118, Lot 28, Map 128, Lot 12 and Map 125, Lot 21, located off of Green Street, Russell Street and Maplewood Avenue from Central Business A (CBA) to Central Business B (CBB); 2) that a hotel convention center and related uses with an occupancy of more than 500 people shall be permitted in the CBB District; 3) an amendment to the parking ordinance which amends the requirement that parking facilities shall be under common ownership with the principal use as long as certain requirements are satisfied; and 4) an amendment to provide for intermodal transportation credits for the CBA and CBB Districts for municipally-owned, covered parking facilities. Said properties are shown on Assessor Plan 118 as Lot 28, Assessor Plan 128 as Lot 12 and Assessor Plan 125 as Lot 21 and lie within a Central Business A, Historic District A and Downtown Overlay Districts. (A complete copy of the zoning amendments are available for review at the Portsmouth Planning Department.)

Mr. Holden explained how the Board processed referrals from the City Council. The Board has for sometime had an administrative zoning process in place. The applicant is required to submit information that justifies grounds for their request, called the Informational Report, which was

received in April. The Board acknowledged receipt of that in April and directed the Planning Department to prepare a report based on that report and to schedule a public meeting on this matter at the May Planning Board meeting. In that process, they met and worked with a variety of municipal officials and worked to present the information that was before them. The Department believes that the Board has all of the information that they require and it is appropriate at this time to convene a public meeting. It was also important to emphasize that this is one step in a process that has many more steps to proceed. The referral came to this Board from the City Council so the action that this Board takes will form a recommendation or report that goes back to the City Council. The City Council will then decide how best to respond to the information that it receives. As required by NH RSA's, if these amendments should move forward, the City Council would have to schedule three public meetings and they would conduct a public hearing on it which would occur at the second reading. Then, assuming there was an adoption of the proposed amendments, more steps would then entail. First, the applications would have to be submitted and the applicant would be required to appear before the Historic District Commission for a Certificate of Appropriateness. Other applications would be required to appear before the Planning Board's Technical Advisory Committee and also to appear before the Planning Board as part of a Site Review process. It is also likely that as part of any Site Review process it would be reviewed by the Traffic & Safety Committee and to effect some of the goals of the joint development agreement there would also be the requirement of a subdivision which would bring it back to the Planning Board once again. Mr. Holden indicated that some staff that assisted in the preparation of the Re-Zoning Report who were not present this evening were Ellen Tully of the Welfare Department, Silke Psula of the Department of Public Works, Russ Wilson, of the Recreation Department and Steve Griswold from the Fire Department. Due to the nature of this request, some City staff was requested to be present, including Steve Parkinson, Director of Public Works, Robert Sullivan, City Attorney, Steve Achilles, Fire Chief, David Allen, Deputy Director of Public Works, Len DiSesa, Deputy Police Chief, Nancy Carmer, Program Manager for Economic Development, Lucy Tillman, Chief Planner and Peter Britz, Environmental Planner. Due to the very high likelihood of litigation, staff was involved in preparing this report so they could constitute a record should it be needed. Hence, it is more thorough than any other re-zoning report that has been provided to the Board.

Mr. Holden indicated that this request is unusual because it also involved a public private partnership. This partnership is demonstrated throughout the Informational Report submitted by the Applicant as well as by the draft Re-Zoning Report which the Board has. Additional copies of either report are available to Board members in the Planning Department.

Mr. Holden stated that the partnership part of this is implemented largely through the Joint Development Agreement. This Applicant's Informational Report includes exhibits and memorandums from City Departments depicting what, if any, impacts this proposal would have on City Municipal systems. The draft Re-Zoning Report largely confirms those findings that were submitted. Due to the litigation, they have provided to the Board an addendum that includes the Joint Development Agreement as well as a Memorandum from the City Attorney. They have submitted this as an addendum to counter potential misinformation.

Mr. Holden moved to the principal findings the Department offers in its' draft report. What is before the Board is four zoning amendments. Collectively, these serve to implement the initial Memorandum of Understanding and the subsequent Joint Development Agreement. Among the objectives of the Joint Development Agreement it represents the public private partnership, is to encourage the development of projects along with their associated economic benefit within an area that has been identified as the Northern Tier. It is felt that such efforts will benefit the entire downtown by nature to the entire City. Included as well in this public partnership is to secure the completion of a publicly owned and covered parking facility of at least 657 vehicular parking spaces. Another goal is to have a net increase in the number of available hotel rooms within the downtown business district along with supporting banquet, exhibit/conference and meeting spaces. He also indicated that the Joint Development Agreement stated conclusively that absent a conference facility there are no rights to the parking facility for HarborCorp, LLC. Since June of 1998 much effort has been expended on the part of the City, the City Council, the Economic Development Commission and by this Board in pursuit of

the aforementioned objectives. These efforts have included numerous economic analyses of various options, parking and site feasibility studies, a Northern Tier report, sustained land use planning culminating in a new Master Plan, and also Hospitality Resolutions, Inc., who has served as the City's consultant in this process and have helped guide the City's actions.

From a historic perspective, Mr. Holden stated that the Northern Tier has been in transition for some time. The area has historically had an industrial and residential character that included marine related activities, including ship building, related fishery uses and, before urban renewal, a vibrant ethnic neighborhood. Other uses included warehousing, lumber processing and distribution, and numerous freight rail operations. Over time, as the economics changed, these uses have largely ceased. Following urban renewal many vacant land parcels were created, some of which have now been developed and some of which remain as large vehicular parking lots. To remind us, these sites include the former Glazier and Fox Hardware shop at the foot of the Vaughan Mall, the Parade Mall, The Hill, the Portsmouth Herald, and of course the long vacant Urban Renewal Parcels 1 and 2 of the 1980's or where the Sheraton Conference Center and parking lot now stands. Past Zoning Maps document these trends. Over time there has been an on-going decrease in industrial zoned acreage and a corresponding increase in area zoned for the Central Business District.

Over time the Central Business District itself has evolved. It has had a variety of height requirements. In 1976 a lot with 10,000 s.f. in area had a height limitation of 50 feet while a larger lot had a maximum limitation of twelve stories and a floor area ratio of 2 or less. Only in 1982 was a lot greater than 10,000 s.f. restricted to a height of 60 feet or a floor area ratio of 2. That height differentiation of 50 and 60 feet is carried into today's Ordinance, with 50' applying to the Central Business A District and 60' applying to the Central Business B District.

The Department finds that the project conforms to the present and the immediate past Master Plan. Under the current Master Plan Land Use Goal 1 was to maintain and enhance the downtown's historic role as a commercial, social, civic and cultural center. Goal Economic Development 2 was to maintain and enhance the vitality and attractiveness of the downtown (Central Business District), and service local needs as well as visitors. Goal Transportation 6 was to develop a downtown parking system that provides adequate, safe, and convenient parking facilities to support downtown vitality and broader community goals. Goal Transportation 8 was to continue to meet Portsmouth's long-term transportation infrastructure needs. Cultural Resources Goal 6 was to market Portsmouth as a business and cultural destination. Mr. Holden compared the City's former Master Plan, effective through 2005, which recognized certain characteristics for a central business district designation that included the following: Two Central Business designations, CBA and CBB, are proposed, which will increase flexibility in controlling development in the CB District. The CBA designation is for areas that are located either on or immediately adjacent to the waterfront. The other designation, CBB, is for the remaining CB District area and areas where it should expand.

Mr. Holden stated that the Department submitted that the proposed amendments should be considered in their context. One amendment is for the changing of some lots from CBA to CBB. The primary distinction between the two is the 10 foot height difference. Therefore, as the change is for height, the corresponding analysis could be limited to what benefits and impacts arise from the allowing of 10 feet in additional height. Or, the construction of a new 50' structure is subject to the Site Review process before this Board. So, if this request is approved, a 60' structure is subject to Site Review for the same 50' plus the newly allowed 10'. Both CBA and CBB allow for the same type of uses.

Another amendment seeks to have uses, which are allowed by Special Exception, be treated instead as a permitted use. While arguments can be offered both pro and con, it is correct that any new facility will require approval from this Planning Board. Therefore, the Board should consider how and why this matter is before you. It is part of a partnership and follows a series of on-going efforts that have evolved since 1998.

The remaining amendments are needed to effectuate the partnership. When the present Zoning Ordinance was drafted, it did not contemplate a partnership where, for example, a hotel and public

parking facility would be constructed. These amendments arise from issues caused by implementing the partnership. The change from CBA to CBB is limited in nature and does not constitute spot zoning, as the exhibits show. The district change would not negatively impact the existing uses as these are conforming regardless of the district. The rail line right-of-way would serve as an appropriate district boundary between CBA and CBB districts. The Department finds that there is sufficient information before the Board on which to base a recommendation back to the Council.

Mr. Holden stated that, assuming the Board is satisfied with the information they have at their disposal, then the Board should consider the following recommendations back to the City Council:

To favorably recommend all zoning amendments to the City Council as this proposal is in conformance with the City's Master Plan and is supported by a variety of reports, studies and initiatives, which have been conducted by a variety of City Boards and Commissions.

That the Board adopts this draft Re-zoning Report as the Board's formal report, along with any modifications and additions that they deem appropriate, including the addendum that provided the Joint Development Agreement; and

That this record should be conveyed to the Council.

Attorney Malcolm McNeill appeared on behalf of HarborCorp, LLC, with regard to the four part zoning proposal. He felt that Mr. Holden accurately represented what was being proposed. He felt this was the most exhaustive review that the City has ever conducted and he commended the Department. He realized that what he presented may be viewed with skepticism and biased because of who he works for so he first wanted to read comments from three who are not part of the development team, as to why the City should adopt the recommendation. He first introduced Steve Griswold, the developer of the Sheraton and the principal of the organization, Nancy Ludwig, Architect, and Don Peterson, who was present to speak to the building. Russ Thibeault was present from Applied Economic Research to speak to the economic benefits. Jeffrey Derke was present from Vanesse and Associates as their traffic expert to speak to some of the public safety issues. Peter Knight from Stanhold Group was also present to review the possible effect of those additional 10' in this re-zoning. To assist with their presentation they had a scale model that was before them. They will show that the new Westin Hotel and Conference Center is actually lower than the Sheraton. The Sheraton is located in the CBB district and all of this property is located in the CBB district. The Hilton Hotel was bound by the 60' zoning limit that they are asking the Board to consider. The Portsmouth Herald property is under agreement and there are a number of buildings which separate the proposed parking garage from the water, that have been there for a long time. They will distinguish how this area of CBA is different from the other CBA districts in the City.

Attorney McNeill referred to a letter dated May 18<sup>th</sup> from 976 Realty Trust, signed in part by Ocean Properties' attorney, addressing opposition to this rezoning proposal. He pointed out that the 976 Realty Trust is currently suing the City over a bonding resolution passed by the Council in December which will fund the purchase of the parking garage. It is their allegation that the bonding does not serve the public purpose and he suspects they will say the same this evening. This is all despite the vote of the Council, the materials which were provided by the City Manager and they will also say that this proposal only serves HarborCorp. The City responded to those allegations and Attorney McNeill read from that document, which showed the evolution of this area and this development and City's justification for their support and why the petition should be dismissed. In today's Portsmouth Herald the editorial encouraged the rezoning requests and stated that this was just the beginning of a process. The Herald concluded their editorial as follows: "Don't let those who care so much about their personal and corporate profits that they would undermine a project that would immeasurably benefit the City either through phony telephone polls or by turning a public hearing into an event aimed at undermining this project while muddying the waters."

Attorney McNeill then addressed the report that was the most comprehensive rezoning report that he has ever seen. It considers the extended past history of the site, it reviews every component the land

use criteria related to the development of the site. In order to reach the conclusions that are contained in the report, every member of the City administration that has jurisdiction in those areas were consulted. HarborCorp had to fill out a 20 page questionnaire. It also recognized that there will be further review before the HDC and the Planning Board but it clearly concludes that the infrastructure is there to service the project and there is reasonable consistency between past zoning, present zoning, Master Plans, studies and the public purposes of the City of Portsmouth. Therefore, when the Planning Department comes to the conclusion to favorably recommend all zoning amendments to the City Council as this proposal is in conformance with the City's Master Plan and supported by a variety of reports, he suggests that this will survive any scrutiny.

Attorney McNeill indicated that there are two types of zoning issues. The first request relates from changing the white area on the model from CBA to CBB. The only difference is a 10' difference between the zones. In terms of uses, there are some differences in the CBA district that relate to water uses and that is because the CBA was presumed to be on the water. As such, they are only talking about 10'.

Regarding the second use and variance proposal, they are asking that they permit a parking center for over 500 people as a matter of right rather than requiring a Special Exception. This will facilitate the Joint Development Agreement but it won't change to any mark degree the scope of review in considering the function center. The third and fourth zoning changes relate solely to the parking issue that relates to the fact that as a result of the City's bonding, it is necessary that the City own the parking garage. The existing zoning requires that there be a principal and accessory use relationship between buildings in this district to achieve the parking requirements in the district. It doesn't change the number of parking spaces or how they are designed but indicates that this building can be owned differently.

Attorney McNeill indicated that they felt the rezoning changes could stand on their own however they felt that full disclosure was necessary and is why they are proceeding in this manner. In the rezoning report there is a chart of the area that is proposed to be rezoned and it is marked in red. The area is approximately 2 acres in size. He provided the Board with a blow up of the Zoning Map of the area that they are seeking to have rezoned. He indicated that the City usually uses physical boundaries, streets, railroads or water for zoning boundaries. The section which they propose to re-zone is bound on three sides by roads, Maplewood Avenue, Deer Street and Russell Street and an active railroad line. The area does not touch water and is not directly on the water. What separates this area from the water is a number of buildings. This is barely distinguishable from the remainder of the CBA district which starts in the area of Pier II, Harborplace, various condos along the river, the roadways to the rear and restaurants along the tugboats, which are all clearly water related. The areas to the rear were required to have slightly higher height requirements to permit infill with regard to business. The area which they are asking to be rezoned is all conducive to the Planning Director's conclusion that this is not spot zoning. Looking at the criteria that was considered in 1995 when this area was rezoned, which is Exhibit 14, it read "The CBA designation is for areas that are located either on or immediately adjacent to the waterfront. The other designation CBB is for remaining CBD, the old classification, where it should be expanded into." Attorney McNeill felt that this parcel of land should probably have been zoned CBB then as it fits all of the characteristics of the CBB district. He also went on to read that "this area is suitable for controlled development activity", which is what they are now seeking. The CBA area is a very small area. Around the tugboat area is a very narrow area with buildings on the waterfront and it only changes when you get into the vicinity where they are proposing a zoning change. They believe those are significant factors that were possibly overlooked in 1995 which should not be overlooked in 2006.

The only significant difference between the CBA and CBB district relates to 10' in height. The issues that has to be asked in the context of this building in this location is whether 10' makes a difference and is it a material factor in this location? The other thing that is important to note is that the Sheraton Hotel is higher than the Westin. Initially it was their concern that the building needs to be 72' high. They have lowered the building to 60' or less. Also, they did a comparison of where the actual height was and the existing Sheraton, using the current method of measuring, is 66.6' and the proposed

conference center and garage is 59.01'. The hotel conference center utilizing hotel regulation calculations is 57.18'. The highest part of the combined utilization of the combined structures is the parking garage, not the hotel, and this is necessary to achieve the parking that is necessary. Therefore, there is a reasonable relationship between the structures and the surrounding properties.

This will not eliminate the HDC review of this project. After the HDC they would proceed to the Planning Board and deal with various site review issues. The parking issues are very simplistic. Based on past experience, Ocean Properties will legally challenge everything that they do regarding this project and they have already started that by suing the City on the bonding resolution. With that in mind to consider the best options to defend against a law suit, and to get this project built, they concluded that a rezoning endorsed by the Planning Board and enacted by the elected representatives of the City Council would have the best chance of success on appeal. Rather than seeking regulatory relief with a different legal review standard, they felt this public, open legislative action would be the best way to achieve the goals of the Joint Development Agreement. They accept the legitimacy and concerns of the Portsmouth Advocates over design issues and they will work with them during the HDC process. They also accept the concerns of others, including Councilor Ferrini, regarding pedestrian access and linkage with other areas in the downtown. They do not acknowledge the concerns of Ocean Properties. Ocean Properties has tried for years to crush and defeat competition. The Ramsey Hotel at the corner of Kearsarge and Market Street has been in litigation at their behest for 15 years. They tried to defeat the Hilton Hotel on Commerce Way for an excess of one year before the Supreme Court threw them out of court, indicating that they had no standing to bring the law suit in the first place. Now Ocean Properties is suing the City over a bonding resolution, which will cost the City money and powers to defend. Most recently, which should cause the Board to question the legitimacy of any information that is brought to them tonight by Ocean Properties was push polling.

Attorney McNeill talked about HarborCorp and their reputation and what they have done in this City. HarborCorp has developed the Sheraton and repaid it's previous loan early. They have been a good corporate citizen and work to consult and not to confront, since 1998. They need this relief to make this project work. They need this height and cannot do this project at 50'. They believe that Ocean Properties' only complaint is that their alleged competitor who has worked with this project for 8 years, is doing the project and they are not.

Steve Griswold, of HarborCorp, LLC, addressed the Board. He felt that the history speaks to why they were here. This particular area was developed through urban renewal in the 60's. The City, for many years, worked to develop a planning perspective for that urban renewal plan. The Sheraton entered into a partnership with the City in the 1980's. The City asked them to put in a 75 room hotel and they agreed to sell the land at under market rate to try to get them to do this. Everyone worked together and he was very proud of what they were able to do. They developed one half of the parcel for what is now a 180 room hotel, 40 condominiums and taxes that are well into the \$600,000 range. This Board was very involved in the process of how they were able to carry that through. Unfortunately, this venture is being dogged by a competitor that intends to delay this project. When they finished the development several years ago, it was built in a zone that allowed for 60'. They had approvals to build an office building and a big parking garage however they sat down with the City and had discussions about where they wanted to develop and expand. They decided at the time that it would be better to hold off on the office building to see how things developed. When Yoken's closed, the need for a new conference center was discussed. That is how the concept for the size of the hotel, conference center and parking garage came about. They have come full circle and have signed a partnership with the City, very similar with what they did in the 1980's. He talked about an editorial in the Portsmouth Herald which complimented Steve Griswold and his development team because they built what they said they would do. In return, HarborCorp wanted to thank all of the Boards, the Planning Board, the BOA, the City Council and the HDC, for their part in making this as good as it can be and make it the vision that they all thought it would be when they started. He hopes to work with all of the Boards so that he can see another one of those editorials.

Don Peterson n and Nancy Ludwig, of the ICON Architecture Team, were present. Mr. Peterson addressed the Board. He indicated the last time he was before this Board was in 1984, working on the

Sheraton Harborside project. He was glad to work with them again and they are working with the same principals on the development team. The components of their program are five. The principal component of this project is a 1,000 s.f. single conference room plus an additional six complimentary conference rooms that equal approximately 7,500 s.f. Additionally, the ancillary support services and to compliment that conference facility is a full service Westin hotel, to work in concert with the existing Sheraton. There are 21 penthouse luxury condominiums, to be used as rental units in the Westin Hotel complex. A major component is the parking facility, for a total of 766 cars in two locations. 82 cars will be under the hotel and owned by the hotel. The remainder, or 684 spaces, will be owned by the City. This package not only came from the Northern Tier Study but also feedback that they have received locally. They sacrificed parking spaces to provide for retail along Deer Street, at the request of the City as it assisted with the streetscape and the circulation from the downtown. They are very proud of the Sheraton Hotel and feel that they will again give the City a first class product.

Nancy Ludwig, the project architect, spoke to the Board and referred to the model. She outlined the basic site parameters. It is a very narrow site extending down to Green Street, narrowing to 50'. The site does broaden along Deer Street and she pointed that out to show how the components have been designed and to show that it was the only way it could be done. Starting with the garage, because they only have a dimension of 120' necessary to accommodate a 2 tiered garage, which allows them to enter the garage off of Deer Street and come up around the circulate through the levels. Adjacent to the garage, is the main component of the conference facility which will be able to handle a much bigger conference than is presently able to be handled at the Sheraton. The room count is not arbitrary because it is based upon Westin standards. The large component of the exhibit is visible from Deer Street and will have windows, providing a break in mass between the garage and what becomes the major part of the hotel block. There are rooms facing Russell Street which will create a roof terrace. They have had a number of conversations with the HDC. They have made changes and they look forward to additional comment on design as they proceed forward. Some issues that have been refined are a shortening of the hotel block to hold the building back beyond Green Street. They will take advantage of a roof garden as well as the expression of a drop off area on Russell Street that actually tucks back into the building. They successfully designed the site so that service could come off of Deer Street to a loading facility which would be hidden from the street. She shared some images of the structure with the Board and again mentioned that the facility is lower than the top of the Sheraton.

Don Peterson stated that the program has stayed constant even though the design has changed. They reduced the height to minimum dimensions that would be workable. From the peak of the Sheraton Hotel to the highest point of the new Westin Hotel there is a 9 ½' difference. Along Russell Street that dimension decreases and is typically 16' so they are 16' lower for all intents and purposes than the highest point of the Sheraton Hotel. They cannot make this any smaller. They feel the scale is appropriate.

Russ Thibeault, President of Applied Economics Research, who performed the economic impact analysis that was presented to the City Council was asked to reiterate his conclusions for the Board. In 1964 he was a Planning intern in the Planning Department and he found it very enjoyable. He has about 35 years of economic consulting experience in 30 different states. He has moved back to NH and established his firm. His firm has been doing yearly reports for the Pease International Tradeport and they have just been retained to analysis the economic impact of the Harborview Resort Hotel in Wakefield, a multi-million dollar expansion. He interviewed the developer of this project, interviewed City staff, analyzed comparable facilities and what their impact has been in their settings, examined national impact studies of conference hotels, looked at regional economic impact studies for tourism and calibrated an economic model to examine what this will do. His goal is to give the type of insight he would like if he were on the other side of the table. Tourism is a big deal in the seacoast economy, generating about \$1 billion in the seacoast region. Expenditures on lodging have doubled since 1994. The tourism industry in the seacoast generates 25,000 – 30,000 jobs. The Seacoast currently lacks a competitive facility since Yoken's closed. Any native regional group that wants a conference for more than 500 people have to go outside of the region. There are places in Atkinson, Guilford, Bartlett and all of the larger Cities that can accommodate them. His major conclusions regarding the numbers that

this facility will support and generate are that it will support about 144,000 visitor days, 77,000 of which will be overnight visitors, 67,000 day trippers, 330 permanent jobs, 200 of which will be on site and 130 which will be supported in the broader Seacoast region. Over 400 construction jobs during the construction phase, \$7 million in wages, \$700,000 in property taxes and the only thing that he updated since his 2004 analysis was the property tax impact considering new information which was provided so it's closer to \$1 million rather than the \$700,000. \$16 million in area spending which will support smaller businesses in downtown Portsmouth. The City of Portsmouth retained an economic consultant to also analyze the impact of the facility and came to the same conclusions that he did.

Lastly, Mr. Thibeault spoke to intangibles that go beyond the numbers. He felt that downtown Portsmouth was the envy of northern New England communities because of its downtown vitality. The proposal implements the Northern Tier strategy and supports additional public parking and allows larger groups to remain in the Seacoast and primarily for the City to realize the economic benefits of an unrealized opportunity of a larger conference hotel.

Jeffrey Durke, an Associate of Vanesse & Associates, stated that he was a Traffic Engineer and Transportation Planner. He stated that they prepared a detailed traffic study for the project, in accordance with the City standards and by working with the City staff to find areas to look at impacts not only for vehicular activity but to look at how traffic flows in the area. Their study consisted of roadways surrounding the site, Market, Deer, Russell and Maplewood, and they looked at traffic patterns and what the impact would be. They reviewed their conclusions with the City traffic engineers and their result was that there would be no detriment to public safety or welfare.

Mr. Durke indicated that their improvements were geared to address three areas. They dealt with the traffic operations in these intersections to make sure that motorist delays and queuing would not be exasperated by the traffic from this project. They also looked at pedestrian circulation and activity and whether it would be safe to cross these roadways. They looked at public transportation. One of the most significant points of transportation infrastructure which would be part of this project would be the realignment of Russell Street so that they would have 90 degree intersections, also allowing pedestrians to cross in a safer manner. They would also reconstruct the sidewalks along Russell, Deer and Maplewood Avenue so that they are wider and built to City standards. The parking garage entrance and the pick up and drop off area on Russell Street will be pedestrian friendly. They are making improvements to Deer Street including pavement markings and signage improvements to have the traffic flow better and provide information to motorists. They will make timing changes at the Maplewood intersection to accommodate both pedestrians and bicycles. There will be a Coast bus stop right in front of the site on Russell Street and they will work with Coast on that.

Peter Knight, Commercial Director of the Stanhope Appraisal Group, of Portsmouth, introduced himself as an appraiser who concentrates in commercial properties, complex residential, industrial and special use properties. He has been appraising properties in downtown Portsmouth for 10 years and he has completed two evaluation studies in the Northern Tier in the past 12 months. He was present on behalf of the applicant to address two specific points, both dealing with potential diminution of value of surrounding properties. Mr. Knight addressed the question of if they build a 60' hotel rather than a 50' hotel and whether they potentially diminish property values that are in the vicinity of the development. He thoroughly inspected the site, reviewed the plans and specs, and did an extensive walking tour of the area, specifically looking at properties that were in close proximity of the development. The subject site was surrounded by the CBB zone on three sides and all the land parcels have a height restriction of 60'. He looked at all of the surrounding properties and grouped them into properties that could potentially be diminished in value and those that could not be. He first addressed the area just north of the train track which is in a stage of transition to a much more intense use. The Portsmouth Herald site and the site on the corner of Raynes and Maplewood are both being redeveloped. They both have a view of the South Mill Pond and they are primarily commercial and industrial in nature. He asked if they are there for a significant view amenity for the town and he determined that the answer was no. No properties in that area would be diminished in value by building a hotel at 60' rather than 50'.



Mr. Knight next looked at Deer Street and he looked as far as the Market Street intersection to the Maplewood intersection. There is the existing Sheraton, residential and retail condominiums and commercial uses on the other side of the street. All uses would not be able to see the proposed structure so in his opinion, the difference in height would not diminish their property values. The last group of properties he looked at were across Deer Street that would look out at the new proposed hotel. Those properties currently now have a view of the Hilton Garden Hotel which is 60' so they are already impacted. It is his opinion that the addition of a second hotel of 60' in height would not be a diminution in their property values. Generally, in the grand scheme of things, building the hotel, either 50' or 60', will actually improve property values in all areas and the one that will be most dramatic is the Northern Tier. It is his opinion, based upon reviewing this project, knowing the city and knowing the Northern Tier area and seeing this happen in other areas, that is what is going to happen here. This hotel is going to bring everyone else's property values up. The Northern Tier is a very valuable resource to the City that is significantly underdeveloped.

Mr. Knight felt that another area where they are going to see property values rise is the retail corridor along Deer Street. For a number of years that corridor was not seen as a vibrant retail corridor by merchants of the downtown area and that is starting to change with the additional buildings being built. The hotel/conference center will bring more foot traffic over to the Deer Street area and will raise property values. Therefore, if the applicant builds a 60' hotel rather than a 50' hotel, it is his expert opinion that there would be no diminution of property values in the area.

The second item that Mr. Knight was asked to deal with was the issue of whether there is a diminution of property values if they build a hotel with a function room in excess of 500 people as opposed to a function room with less than 500 people. In a project of this scope, and you drive by a function room for 500 or less, the question is whether the physicality of the building that effects the surrounding is neighbors is any different. It is his opinion that it won't be. They will still build the same square footage. The City has several tests for Special Exceptions that they like to see addressed, which he will touch upon. The City looks at parking, access, odor, smoke, gas, other pollutants, noise, glare, heat, vibrations, etc. A function room is entirely enclosed so the question is if you increase the size of the function room to accommodate over 500 people, do they create any more of the characteristics then they would if the function room was less than 500 people. The key items are odor, gas, dust and pollution, noise, glare, heat and outdoor storage. The difference would not create a significant difference in his opinion. Therefore, it is his opinion that there is no diminution in values of surrounding properties.

Attorney McNeill indicated that concluded their professional presentations. He stated that the bottom line is that to deliver the benefits which they addressed in length today, they need to build a Westin Hotel with 207 hotel rooms and over 20 condominiums and that cannot be built at 50'. They need the ability to build at 60' to perform this task.

Acting Chairman Hejtmanek thanked Attorney McNeill for their presentation and felt the model and the drawings were particularly helpful. He then called for speakers from the public.

Dana Levenson, Chairperson of the City Economic Development Commission, was present with Vice Chairman Everett Eaton. Mr. Levenson felt it was important to address the Board about the economic importance of this project. Since January of 2004 the EDC has worked diligently with the City Manager, City staff and representatives of HarborCorp to explore a public/private partnership. The Joint Development Agreement approved in 2005 was the result of those efforts and it is the opinion of the EDC that no other project before them could be more significant to the long term vitality and economic prosperity to our community than this proposed conference center and parking garage. He identified some of the major benefits of this project. There will be over \$700,000 or much higher in additional tax revenues, \$16 million in annual spillover spending, replacement of market share and related business loss with the closing of Yokens. Without a conference center, they remain the only major market in NH that cannot accommodate a group meeting of 500 or more which is a serious loss for the community. The location in the heart of the Central Business District would promote activity in the fall and spring. The EDC would much rather have the conference center in the business district

rather than somewhere else in the Seacoast area. Another benefit is a 657 parking space garage funded through a lease with HarborCorp., improvements in the streetscape in the Northern Tier at intersections with improved lighting, sidewalks, and pedestrians traffic improvements. The project is projected to create 300 sustained jobs with \$7 million wage impact. This is an anchor project to the Northern Tier. This is what the EDC is anxious to see happen and they feel it is important to promote this. They ask only that they give positive weight to the economic impacts and that they act favorably on the zoning proposals so that it can move forward to the Council. They felt it was important to have as part of their recommendation an independent consultant acting as a third party to review the development and the projections and confirm the economic impacts that he spoke about this evening. He introduced Bob Crawford of Hospitality Resolutions who was engaged by the City as an independent consultant.

Mr. Crawford indicated that they do about 35-40 hospitality studies, including impact studies, every year. He assured them that he wanted to revisit two of the conclusions that they have independently assessed. The first is that they reviewed the economics of this project on behalf of the City. He reminded the group that they said this project would provide sufficient returns to finance the project. Changing the components on this project would change the economics and put the financing at risk. The City will get significant benefits from increasing tourism dollars. Everyone is competing to attract tourism dollars and this area has all of the attributes to do that.

Acting Chairman Hejtmanek opened the hearing up for questions from the Board.

Raymond Will asked Attorney McNeill about the intermodal transportation credits and he was assuming this was similar to the \$500 per space credit and now that the parking garage was being built these credit would be available with this project? Attorney McNeill responded that the primary purpose was due to the fact that the ownership between the hotel and the parking garage are separate. Mr. Will asked how the intermodal credits fit into it? Attorney McNeill stated it attempts to emulate the credits that previously existed under the previous classification. Mr. Will indicated it was \$1,200 per space now.

Mr. Will's second question was regarding occupancy vs. units. In the proposal it is occupancy of more than 500 people shall be permitted in the CBB district but it phrases it as hotel convention center and related uses. He asked how much of that is occupancy or a convention center similar to Yokens having events vs. actual units of the hotel and condominiums. Attorney McNeill stated it related to the function component. Functions of greater than 500 require a Special Function and less than that do not.

Mr. Will's third question was to the Department. The zoning change is requesting that this occupancy be allowed in the CBB district to apply to any other conference center or hotel posed in the Business District? Mr. Holden confirmed that it would apply to any other property in the district that met all of the requirements.

Mr. Will raised a concern with "across the street" zoning changes. In reference to the Ramsey hotel project, that was an example. In this transition area of the City, his biggest concern is with the potential of "across the street" zoning. What is to stop the new owners or redevelopers of the present Portsmouth Herald building to come forward and request a zoning change as well? His concern is if they change this zoning, what is to stop other buildings that are 60' in height to be requested a change. Attorney McNeill felt that the most important question of any zoning relief question is looking carefully at the property being effected. This is a very unique piece of property. It will be across the street from an existing hotel and the lot is a unique shape. He feels that this property clearly fits within the CBB district. Attorney McNeill assumed that they would do their job again should another property also request a rezoning. Mr. Will was concerned that this happened with the Ramsey hotel and they lost at the Supreme Court. Attorney McNeill felt that the series of cases regarding the Ramsey Hotel were very confusing and this case is far more straightforward.

Mr. Will asked why not apply for a Special Exception rather than a zoning change? Attorney McNeill felt that they could not presume anything other than litigation in this case. The longer answer is that

almost all of the criteria for a Special Exception are similar to the Site Review standards. Mr. Will felt it would be fairly straightforward and would not effect the rest of the district. Attorney McNeill felt it would have the effect of being a separate process and separate appeal process. If the Northern Tier study recommend a Conference Center for this area and it is recommended that it would be in the City's interest that there would be a conference center and if there was a desire of the City to expedite this process in a process that legally sticks, then this is the best way to do it.

Donald Coker asked about spot zoning and he felt one could argue that a re-zoning request for a specific project could be construed as spot zoning. The key is a public benefit and for his concerns he has to be comfortable before he makes a recommendation to the public benefit. He asked about the parking garage numbers which have variously been stated at 600 cars and 700 cars. He asked what is the total number of cars that will park in the garage as proposed today. Attorney McNeill indicated it was 657. Mr. Coker referred to Section 2 of the Memo of Understanding, Exhibit 5, the City would make available to HarborCorp approximately 324 parking spaces for conference center attendees. The City would make an additional 275 parking spaces available totalling 600 spaces that would go to HarborCorp. Attorney McNeill clarified that would be under certain circumstances. Of the 657 spaces designed in the garage, 82 are designed under the Westin shopping center. There are 325 spaces that will be leased to the Hotel which are non specified spaces. The other spaces may be available under circumstances of functional use but it is anticipated based on all of the studies that they have done that there will be the availability for public use considerable volume of spaces. There is a chicken and egg situation. This is the land that is ideally suited for a conference center in downtown Portsmouth and parking is required. The hotel has to be of sufficient size to support the function center and there has to be enough parking in the parking facility to accommodate a reasonable use of the function center. The combination of all of the benefits that flow from the conference and the parking that will be available based on studies by the City is what resulted in the City Council voting for the Joint Development Agreement.

Mr. Griswold responded to the 275 spaces. They will only have availability to those so many times during the year or roughly 10% of the time. Everyday of the week they will not get those spaces.

Acting Chairman Hejtmanek opened the public hearing.

Martin Cameron, of 169 Ocean Road. This zoning change was being requested to accommodate the hotel and not the benefit of the City. If the conference center were not going to be built then it would not be requested. However, if a variance was granted it would set a precedent for any other development. New retail shops would compete with the retail stores that already exist in Portsmouth. He thinks the retail establishments downtown should be worried about this development. Coming down the Market Street Extension the Sheraton hotel blocks the entire view of the City. This will stretch that out and block out everything else. He believes the City should abandon the partnership and concentrate on the McIntyre Building.

Robert Padian, of Cabot Street. He did not see the necessity for any changes to facilitate one developer's project. If the model represents what they are intending, he felt it was a massive solid wall and it is not particularly attractive either. It will produce low-paying jobs which is not a benefit. People will still be unable to afford to live in the city. The parking garage would make more sense if someone would look at how much revenue the City will get from it? He questioned whether the City needs a conference center and if they need a hotel next to it? If they can't make a go of it at 50' then they should leave it the way it is. He asked the Board to reject the requests.

Ralph DiBernatto, of Islington Street. He thanked the Board for their time. He attested to the controversy that goes with the Northern Tier. He saw the urban renewal and the dust bowl that existed for 30-40 years. He felt it was time to move on and make use of this land. They have a chance to be part of a new history. The Sheraton became the anchor of the modern development and has been a good neighbor. He felt this was a good use for the land. He was in support of the zoning amendments. He ended by saying that if anyone had the nerve to come forward tonight with the results of a poll that he participated in from a company that said they were from Denver, Colorado, it was the most biased

poll of half truths that he has ever participated in. If that poll was presented to the Board, he would encourage them to request the text so that they can see how biased and tainted the poll was.

Bill St. Laurent, of 53 Colonial Drive. He felt they should get the mutual agreement that the City has made out of their mind because people are thinking that the City has already okayed it. That is putting the cart before the horse. The zoning is asking for an additional 10' but it is a massive project that extends from one street to the other. People coming into the City from Market Street will see this massive building. He doesn't understand why they can't build it at 50'. He also feels that if someone comes in across the street to build a 60' building, this project will oppose it. This will mushroom into a huge project. He doesn't believe a conference center belongs downtown. He was annoyed that the applicants were speaking badly about Ocean Properties as he feels it is their right to speak.

Christine Mayeux, of 64 Bridge Street. She is a downtown business and homeowner. She feels that the applicant is attempting to maximize every cubic inch of this property. If this project is going to be a lighting rod for new development in downtown Portsmouth then she would ask them to stop or at least slow it down and consider the consequences. This is about unrestricted growth, displacement and ignoring many of the goals in the Northern Tier study and the Master Plan. They are asking for relief from the safeguards presently in place by the City. They will be able to circumvent height restrictions as well as the parking impact fee. She does not believe that large developers should be given special considerations. She did not believe that a conference center was a matter of right. Portsmouth is arguably the most beautiful place to live but that is largely due to the current size, scale and character of Portsmouth. She urged the Board to send a message to the City Council by denying the zoning changes.

Anthony Soletta, Islington Street, business owner in Portsmouth. He passed out Petitions for the Board to review. He felt there would be positive effects if the zoning changes were approved. There would be new parking spaces, improved vitality in the downtown area and it would enhance the appeal as Portsmouth as a designation. The rezoning will just revert to the previous CBB district, which allowed a 60' building. Without the requested zoning changes for this project, the citizens of Portsmouth and businesses will miss out on increased revenues and increased parking.

Angela Carter, Deer Street, appeared as an abutter. She does not see anything but good things happening from the rezoning and development of this project. There will be much needed parking and a beautiful conference center that is much needed. She supports the rezoning.

Kelly Wayland, 30 Willow Lane, supported the rezoning effort. She believes this project is a benefit to the City. This will help to support the downtown merchants and businesses.

Deborah Bouchard Smith, 298 Myrtle Avenue, spoke in favor of the zoning amendments. She was a lifelong resident of Portsmouth and a 10 year resident of the Northern Tier and has a business on Deer Street. She was a meeting and event planner and has utilized all of the facilities in the area. She feels that the north end has been caught in a time warp. She felt the rezoning makes sense. A new hotel is good for business owners. It will bring new revenue to the City and this will lessen the tax burden on the City and the residents. She encouraged the City Boards to recommend the zoning amendments.

Paul Ford, 123 Wibird Street, was a lifelong resident of the city and a small business owner downtown. He spoke in favor of the HarborCorp development and saw it as an incredible opportunity.

Shawn Tenant, business owner at 2800 Lafayette Road. He spoke in support and felt it was an economic opportunity for the City. He also felt that Mr. Griswold has worked with the City for a long time and had done a good job and felt that he should be rewarded for keeping his word. They are only talking about 10' and on a large scale it would not be noticed by the average person.

Julie Jaques, 110 Court Street. She felt that 10' would create a big difference and all people will see is brick and concrete and it will block the beautiful views of the City. She felt the only one benefiting from this project is the developer. She also felt the parking garage would not solve any problems and

would not benefit the City. This would be a massive over-development and she was also concerned about the impact of the bond on the City.

Elissa Margolin, 110 Wibird Street. She opposed the conference center. She felt the schools are in disrepair. She felt the Board needs to look at the bigger picture. Their tax dollars should not be used for this project.

Tom Pace, 419 Richards Avenue. He was concerned about the process and that this should be a zoning variance request. He felt the additional 10' was a concern and the building was massive and the 10' made a big difference. He was concerned the rezoning would apply to any future projects in the same district. The intermodal transportation credits would cost the City considerable money and he sees no reason to exempt them. He would like to see an evaluation of exactly what it is going to cost the City to build this. He does not believe this is consistent with the Master Plan, which encourages other transportation other than automobiles.

Harold Ecker, 422 Banfield Road. His wife was a past event planner and he explained what was involved in event planning. He supports the hotel but felt it should be built within the height limitations. He suggested they should address the air rights over the parking garage. He also suggested that conference attendees would do all of their shopping inside the hotel. He asked who would own all of the retail shops on the lower level?

Manny Chavez, Pine Street. He felt the reason that Portsmouth was a good place to live because it was simple. He asked why should they complicate it? He asked what was in it for people like him who are on fixed income, to alleviate their taxes? He asked what the City is going to do so that the taxes will stop going up.

Attorney John Ryan, representing Dover Realty Trust, 10A Market Wharf Condominium, a residential unit which is across the street from this project. They sent a letter to the Board dated May 18<sup>th</sup>. They first became aware of variances which had been filed with the BOA but there were never any hearings. Someone on behalf of the Joint Partnership decided that was not the best way to proceed. Attorney Ryan feels that they didn't trust the BOA and the HDC and decided to avoid those Boards. He submitted documents which he felt supported this. He did not believe that the rezoning proposals appear anywhere in the Master Plan and the Northern Tier Study is not part of the Master Plan, and he felt that was a legal problem. The additional 10' would only benefit the 21 condominiums and the hotel has represented that they can't build without the condos but that only deals with the hotel's financing and that has no relevance to the rezoning proposal. He felt that the public should be given the opportunity to study the reports and plans so that they can analyze the proposal on their own. The HDC should also have input regarding the rezoning request. He asked that they be given time to review all of the studies and reports and take some time to look at this and decide whether the zoning proposals are in the public interest.

Rich Hayes, CEO of Ocean Properties. He felt this is the best of times for hotels and in their opinion, this project could go forward as a 207 room Westin hotel without the condominiums. They object to the use of public funds for private uses. He doesn't believe the parking is adequate for the development. They object to last minute plans and model. They object to an additional 10' which will increase the mass and scale. They acknowledge that they are a competitor but this project can be done with private funds and the City does not have to support this garage. He felt this was just a shortcut and they do not want to go through the process. They are not against the conference center or the Westin but they are against the height change and the use of public funds for private uses.

Paul Sorley, 60 Market Street, owner of the Gaslight Restaurant and Chairman of the Downtown Business Association. He discussed the economic cycle of downtown. Over time they are seeing greater peaks and valleys. Tourism is a given in the summer but winter is very slow. They are seeing less people than they used to as a lot of people are travelling to Dover. If they are to see any type of growth in the area it will come from the people who patronize the hotels. Most of the downtown merchants support this project to help support their off season.

Attorney Thomas Keane, representing 976 Realty Trust, an affiliate of Ocean Properties. They have been very involved over the debate of this project. He felt their obligation was to determine whether the zoning amendments would result in a public benefit. The 10' only grants the developer the right to build the condominiums and they would have very little public benefit. The BOA granted a variance in 1985 for parking spaces. Combined with the proposed development, the net result would be a deficit of 422 spaces, if the Sheraton uses all of the parking spaces in the garage. He asked where the public benefit was. He stated that good partnerships benefit both partners. He stated that the economic impact was based on the fact that there will be 400 hotel rooms in the Sheraton but there is no condition that they keep the Sheraton as an existing hotel. Mr. Griswold could turn around and convert the Sheraton into condominiums. That would result in no public benefit. At the very minimum, the development agreement should have a condition requiring the Sheraton to keep it a full service hotel so that the economic impact that is being proposed will actually result. There is also no obligation in the agreement to build the Westin. There is nothing wrong with the process as it stands and there is no reason to short circuit it.

Carol Johnson, 401 The Hill, spoke as an abutter to the project. She could argue both sides of this proposal. She believes the City clearly needs development but her biggest concern is traffic. Deer Street is close to a failing intersection and she is concerned about how they are going to get everyone in and out of the streets as they exist now. She also felt that they should go through the regular process. She is not opposed to the convention center but they should go through the BOA and the HDC rather than making a special exception for this project.

Acting Chairman Hetjmanek acknowledged a letter that the Board received from Catherine Jarvis who supported the zoning amendments. He then called for any further first time speakers. Seeing none, he asked for second time speakers.

Paul Young, 33 Deer Street, owner of three businesses in Portsmouth. He spoke as a tax payer and an abutter to this project. He felt that the majority of the people in this City will see a strong benefit from this project. The room appears to be pretty well split for and against. He heard Ocean Properties say that the project needs to be smaller, which is not true. In November, the same gentlemen spoke before the City Council and said that the conference center was way too small. They also talk about public monies not being used in projects such as this yet they are currently involved in projects that are completely subsidized with parking lots. He was enthused about the meeting and had not planned to speak but he felt they had to separate the legitimate concerns and public benefit. The height was originally 60' and it was changed to 50' and no one even knows why so he believes it's time to change it back.

Bill St. Laurent, felt that the higher the building, the bigger the City fire trucks are going to have to be. That would lead to a bigger fire station, and on and on. That is why he does not see a public benefit.

Peter Knight, of Stanhope Appraisal Group, clarified that his study only considered the Westin Hotel impacts and not the Sheraton Hotel so the figures reflect only the Westin Hotel.

Acting Chairman Hetjmanek called for second time speakers. Seeing none, he called for third time speakers.

Attorney Keane wanted to make two quick points. First, if the existing Sheraton is no longer a hotel, it does not have the tourist industry to generate the economic benefit downtown. There is no market of their size that has a 400 room hotel that is successful in the US that they know of. It is difficult for them to understand how a hotel of that size will be successful in this community. Ocean Properties has a great deal of hotel development and each of their projects is subjected to public scrutiny and debate. In Salt Lake City, they made Ocean Properties bring in an exact façade of the hotel for the public to examine. That is something that the Planning Board should consider.

Mr. Griswold feels that the majority of Mr. Keane's claims are outrageous. There is no present or future intent to close the Sheraton. That would not be cost feasible. Also, to claim that there are no 400 room successful hotels in the US is also incorrect.

Seeing no further speakers, the Chair closed the public meeting.

(A brief recess was taken.)

Deputy City Manager Hayden felt this is a key policy decision for the city and she wanted to remind her fellow Board members that there might be some confusion that they were talking about four zoning changes, they will be making a recommendation to the City Council and public input will also happen there. They are not the Historic District Commission and she felt there was some confusion about that. This project would go to the HDC and they are not reviewing architectural plans this evening. They are also not doing site review tonight. Tonight they are focusing on the proposed zoning amendments. The staff has done a great job in providing very good input. She sees almost all of the columns having no impact or potential benefits, with traffic being the only one where mitigation is required. She is trying to focus on CBA and CBB. This is an area of transition and the rail line is very good dividing line. Staff, as well as proponents of the zoning changes, have made a very good case with CBA focused on the waterfront district and the lower heights and why 60' makes sense from that perspective. From an economic impact, the EDC Chairman has spoken to that as well as the City's independent consultant. Therefore, Deputy City Manager Hayden asked the Board to leave out HDC and Site Review items and things that are City Council purview and asked them to focus on their job, which is to make a recommendation to the Council on the zoning. She further stated that items 3 and 4 were strictly housekeeping items and they would have no consequential impact on anything and only address the zoning ordinance which never contemplated the public coming into a partnership with a private entity.

Mr. Will referred to Item 4 and parking impact fees. It was his understanding that assuming that in the future they had to pay back the \$1,200 per parking space fee, because it was municipally owned and it is covered, they would get to pay \$1,200 for three spaces, not one. He asked if that was correct?

Mr. Holden responded that if this was a private facility, they have the same opportunity for the parking ratio of 3 to 1. This allows that ratio to also be considered in situations where there is a public private partnership. These items are housekeeping because the ordinance does not recognize a public private partnership of this scope. Therefore, what is being allowed under item 4 is the same thing that is allowed today for any private development.

Mr. Will asked if this meant that there was no special treatment?

Mr. Holden confirmed that there was no special treatment. They have to comply with municipal ordinances and regulations. And, parking is a municipal ordinance.

Mr. Coviello asked about the Special Exception being covered under Site Review? His ultimate question was why do they have a Special Exception process?

Mr. Holden stated that to go to the BOA for a Special Exception, which means that use is allowed but only under the granting of a Special Exception, the BOA has to consider the standards that Attorney McNeill listed. In terms of the Site Review process, many of those same standards are also done by this Board. The Special Exception allows for the same consideration but it is done by the BOA whereas in Site Review they are looking at the same thing.

Mr. Coviello didn't understand why a Special Exception existed.

Mr. Holden indicated that they are doing it when it comes to them but this request is to remove the Special Exception so that it is more directly with the Board. Or, in another case, there could be a dual

review. The Special Exception was done to recognize a use that could be done in the district but required additional review by the BOA.

Deputy City Manager Hayden was not sure that Mr. Coviello was familiar with the Special Exception and asked the City to help address that.

City Attorney Robert Sullivan addressed the Board and stated that one of the primary purposes of the Zoning Ordinance was to regulate uses. The current ordinance divides the City into districts and some uses are permitted and others are not permitted. Permitted uses do not require approval from the BOA and only have to get a building permit. Those that are not permitted typically have to go to the BOA for a variance, which is the most common form of relief. The legal test to get a variance is very complex and is a fairly high standard. A class of use was created called Special Exception for uses that are permitted by the Ordinance but are permitted under safe guard conditions. When the BOA hears a Special Exception case, they do not have the hurdle of a variance and it is easier to get BOA approval.

Mr. Coviello asked if it was Attorney Sullivan's opinion that there was redundancy in the Zoning Ordinance and why did they have Special Exceptions?

Attorney Sullivan explained that the conditions that have to be met to grant a Special Exception are part of the Zoning Ordinance. That process, in Portsmouth, to adopt a zoning provision, needs to be followed to create a Special Exception condition and the Planning Board offers their advice and recommendation to the City Council. Then the City Council decided, for example, to adopt a zoning provision that would create that Special Exception condition. And that is what is happening here. The Planning Board is offering its' advice and recommendation to the City Council on this particular Special Exception.

Mr. Holden added that when the Board is sitting as the Site Review Committee, they are often times looking at the same things that are covered by the Special Exception.

Attorney Sullivan clarified the same kind of conditions.

Mr. Will indicated it was his understanding that the difference between Site Review and a Special Exception is that a Special Exception is very specific to use where Site Review is not. It is already assumed that when that project is before the Board, it is a permitted use and not required to add any other stipulations. In fact, someone could be issued a Special Exception but denied on the basis of Site Review.

Attorney Sullivan stated that an example of a Planning Board action that is quite close to a Special Exception is a Conditional Use Permit.

Mr. Coker thanked Deputy City Manager Hayden for her comments regarding their purpose. He felt their issue boiled down to public benefit. He didn't believe the applicant was asking for anything unusual that they hadn't seen before. When he came in this evening, there was a Memorandum from the City of Portsmouth Legal Department dated May 25, 2006 on his desk and behind it was the Joint Development Agreement. It was the first time that he had seen that document. In order for him to be comfortable with the public benefit, he needs to be clear about the terms and conditions of the parking garage. He asked if this parking garage cost the City of Portsmouth anything?

Attorney Sullivan stated that the fact that there were a dozen city officials in the room is a guarantee that the garage will cost the City something. And, dealing with the number of lawsuits they will have to deal with will also cost the City something. However, the garage will not cost the City \$15 million that it would take to construct it. That money is going to be paid by HarborCorp through it's parking lease. The parking lease rate has been calculated to make the bond payments, with some adjustments from other parking revenue.



Mr. Coker asked if the cash flow pays the debt service and takes care of the bond. What about maintenance?

City Manager Bohenko indicated that all of this information has been in the public domain for the past three months. There were a number of proformas that were done. Each one took into account certain aspects of the cash flow. One talked about the leases that HarborCorp will pay for the City. (Mr. Holden confirmed that the proformas were not provided to the Board). If you take 40% of the usage of the garage and if HarborCorp pays their lease in accordance with the Joint Development Agreement, in addition to the leases for the retail, there is a cash flow that comes from that. They believe the parking garage will break even and that is based on a conservative number. And the City will then have two parking garages.

Mr. Coker asked about the timetable for regulatory approvals for Plan A and Plan B and asked who drafted the document?

Mr. Holden indicated that document was presented to the City by Attorney McNeill.

Mr. Coviello was in agreement that the area should have been zoned CBB but he was not prepared to approve the Special Exception. He was not convinced that there wasn't something lost by sending this applicant and future applicants to the BOA.

Mr. Will asked if they would be voting on each issue separately?

Deputy City Manager Hayden felt the Board should consider them all at once and have one motion for all four amendments.

Mr. Holden again attempted to clarify the Special Exception for Mr. Coviello. The Zoning Ordinance deals with use and the Zoning Ordinance is administered by City officials and where there are appeals or other actions it goes to the BOA. It is a self contained policy manual that tells you how to deal with uses, dimensional requirements, etc. Some projects come under the review of the Planning Board, also under NH Statutes, and you are also granted some authorities, such as Site Review Criteria, Subdivision Regulations, Capital Plan and official map. These are all things that the Council has given you the authority to prepare, approve, maintain and run. Therefore, revisions to the Site Review Regulations are done internally. The City was one of the first to do Site Review Regulations and it has evolved to the Technical Advisory Committee making recommendations to them. When the Planning Board did its review of what was going to go under the Land Use, it is very similar to some of the same issues that might be covered under the BOA. It could very well be an overlay but one is coming from the Zoning Ordinance and the other is coming by way of the Site Review criteria. Those are two reviews but not duplicative. In terms of the Site Review and the downtown, these issues will be before the Board because of their scope.

**Mr. Will made a motion to separate the four zoning change requests. Mr. Coviello seconded the motion.**

**The motion passed with Deputy City Manager Hayden and Mr. Hopley voting in the negative.**

**Mr. Will made a motion to not favorably recommend Item #1 to re-zone the land from CBA to CBB. The motion was seconded by Mr. Savramis.**

Mr. Will felt there was a big difference between Special Exception and Site Review. It is his opinion that if they have a project in front of them, they cannot alter the height of a building. Height is approved by zoning itself. The actual permitted use is enumerated in the Zoning Ordinance of 60' or more. This applicant can appear before the Board of Adjustment for the same project and request the Special Exception. It is his fear that if they grant the zoning request and then go to Site Review, they will not be able to reduce the height of the building.

Deputy City Manager was not sure what Special Exceptions had to do with rezoning the land from CBA to CBB. They are talking about a zone change and moving the zone line from where it is now.

Mr. Will indicated that he stands corrected and he has different concerns there.

Deputy City Manager Hayden stated that they have a motion on the floor which is about item 1, changing CBA to CBB.

Mr. Holden clarified that the motion was to deny. Mr. Will confirmed that the proposal was to change the zoning from CBA to CBB and his motion is to not favorably recommend this to the City Council. He is not convinced that if a building is built to this scale, across the track people will not think the same thing. The height requirements are different for CBA and CBB. They would be setting a precedent.

Deputy City Manager Hayden did not see where this was a precedent at all. This was a very unique parcel of land and the staff and the applicant provided some very convincing information. She did not believe what was before them was what was on the other side of the tracks. What is before them is one parcel without any precedent. They have a parcel of land that is proposed to be rezoned and argument has been made that that this will have tremendous economic benefit to the City. She agrees with that. Whether sometime in the future they have requests for rezoning other parcels in the CBA, that is not before them this evening. The only difference between CBA and CBB is a 10' difference.

Mr. Will stated that he has a lot of respect for the applicant for presenting this unique project but it is just that very thing. Parcels of land are meant to be brought before the BOA.

Mr. Coker disagreed with Mr. Will. The argument has been made very strongly this evening for the change. There has been sufficient evidence put forth and testimony that makes the argument that there is adequate public benefit to change the zoning.

Mr. Hopley also indicated that he would be opposing the motion. He felt this particular parcel of land should be rezoned.

Mr. Coviello also indicated his opposition to the motion. He felt there were two issues. One was that some of them didn't like the height that was allowed in CBB. Even though it is very obvious that this property should be CBB. They are going in the back door. They don't like the height so lets keep it CBA, which is not right. If they want to change height requirements then they should do that through their zoning review that is going on now.

Mr. Savramis indicated that he would support the motion. He felt it should go before the BOA and he did not feel this was the proper place to review a project of this size.

Mr. Holden pointed out that this request was appropriately and properly before them. The issue is not whether it should go before the BOA but rather whether or not the height is appropriate for that property.

Deputy City Manager Hayden stated this was a land use planning issue. This is exactly what this Board is all about.

Ms. Roberts echoed Mr. Coviello's comments. If they need to address building height then they should do that through the zoning review and not through this back door system.

Deputy City Manager Hayden asked that the motion be read again so that members were clear on what they were voting for.

Acting Chair Hetjmanek indicated that the motion is not to recommend rezoning from CBA to CBB. If you vote yes, you will not recommend the change and if you vote no you will be recommending the change.

**A roll call vote was taken. The motion failed with Mr. Coviello, Councilor Dwyer, Ms. Roberts, Mr. Hejtmanek, Ms. Hayden, Mr. Hopley and Mr. Coker voting in the negative. A positive motion was required.**

Mr. Coviello made a motion to make a favorable recommendation to rezone the land from CBA to CBB. Mr. Hopley seconded the motion.

**The motion to favorably recommend #1 to the City Council passed with Mr. Will and Mr. Savramis voting in the negative.**

Deputy City Manager Hayden made a motion for a favorable recommendation to the City Council on items #3 & #4 as she believes these are both housekeeping items and do not effect what the proponents may or may not pay in terms of parking. Mr. Coviello seconded the motion.

Mr. Will indicated that he supported items #3 and #4.

**The motion to favorably recommend Items #3 and #4 passed unanimously.**

Mr. Hopley made a motion to favorably recommend Item #2 to the City Council on the basis that he believes this is a total package that should be included together. Deputy City Manager Hayden seconded the motion.

Mr. Coker had a problem with this because of the language which indicates the capacity could exceed 500 with no limitation on how many would be allowed. He doesn't have a problem with that being a Special Exception.

Mr. Holden indicated that as that larger number goes up, the other requirements of the ordinance would pertain, such as parking, height requirement and open space. The ordinance is crafted so that other requirements come in.

Mr. Hopley agreed that it would require a huge lot size to accommodate all of the city regulations.

Mr. Coker understood that to mean that there are other factors balancing the number.

Deputy City Manager Hayden again felt that this item belonged with this Board as it was a land use issue. This is such an important issue and should be before this Board and not the BOA.

Councilor Dwyer felt they appear qualitatively different. She appreciates the land use issue but this actually changes the ordinance when we are currently changing our Zoning Ordinance. She doesn't understand the reasoning.

Deputy City Manager Hayden felt it was the same as she indicated to Mr. Coker, this is a case where the CBB is a very small downtown area and in order to have another project that would involve this much land to create a similar project probably would never happen.

Mr. Holden felt that was exactly right. For this use to be there, the places can almost all be named and they are all the former urban renewal places. The economic development is what holds this together.

Councilor Dwyer stated that that reasoning doesn't make sense to her. The reasoning that it's not likely to happen doesn't fit with the type of decision making they are being asked to do. There is a conceptual reason why there is a Special Exception, not related to it's likely to happen.

Deputy City Manager Hayden felt that with any regulations, they evolve and change. If they were looking at this permitted use, applying across all districts, she would have a huge problem with that. However, the CBB is a tiny area and so many conditions would have to be in place that there is a 1 in 1,000,000 chance that those conditions could be in place to have somebody come forward and request that again.

Mr. Coviello asked then why not just keep it in there as another check in the system.

Mr. Will could see a couple of parcels in the Northern Tier that could be new convention centers as well. His concern is other potential parcels in the CBB being used as convention centers. He would have to vote against the motion.

Mr. Coker felt that the arguments are well placed and points are well taken. It seems to him that, if they do not send #2 forward, he assumes the only BOA activity that would have to go forward would be to get a Special Exception for this.

Mr. Holden indicated that was correct. He also indicated that much of what he saw in the Rezoning Report and the Informational Report, some of this is driven by the threat of litigation. It has taken a long time to get this convention center moving so he does not see another one coming in the near future. This one dates back to 1996.

Mr. Coker indicated that the Parade Mall was CBB which would allow for a convention center.

Deputy City Manager Hayden wanted to clarify that they were just making a recommendation to the City Council.

Acting Chairman Hetjmanek repeated the motion to favorably recommend Item #2 to the City Council.

**The motion failed with Mr. Coviello, Councilor Dwyer, Ms. Roberts, Mr. Savramis, Mr. Will and Mr. Coker voting in the negative.**

Mr. Holden asked the Board if there was a consensus to forward the materials that they have on to the City Council, meaning the draft Re-Zoning Report with the changes they have made. It was agreed that there was.

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**V. ADJOURNMENT**

A motion to adjourn at 11:40pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse  
Acting Secretary for the Planning Board

These minutes were approved at the June 22, 2006 Planning Board Meeting.