

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

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:00 P.M.

OCTOBER 25, 2007

MEMBERS PRESENT: John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Donald Coker; John Rice; Paige Roberts; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; and MaryLiz Geffert, Alternate

MEMBERS EXCUSED: Jerry Hejtmanek, Vice-Chairman; Anthony Coviello and Timothy Fortier, Alternate

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

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Chairman Ricci asked for motion to take Items I & II out of order. Deputy City Manager Hayden made a motion to take Items I and II out of order. Mr. Rice seconded the motion. The motion passed unanimously.

I. WORK SESSION

A. A work session on **Borthwick Forrest** (formerly known as Islington Woods), regarding two proposed zoning amendments to facilitate the development of an elderly congregate care facility. This work session will be followed by a public hearing.

II. PUBLIC HEARING

1. A public hearing is convened to consider the request of **Borthwick Forrest, LLC**, (Formerly known as Islington Woods) for two proposed zoning amendments to the city's 1995 Zoning Ordinance, as amended, to facilitate the development of an Elderly Congregate Care Facility. Amendments would include adding a definition for Elderly Congregate Care Facility and a revision to the Table of Use section to permit Elderly Congregate Care Facility by Special Exception. The purpose of this hearing is to solicit public comment on this request. Relevant materials are available for public inspection in the Planning Department.

Mr. Hopley made a motion to postpone Items I and II to a time uncertain.

Deputy City Manager Hayden seconded the motion.

The motion to postpone the work session and public hearing on Borthwick Forrest passed unanimously.

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6:00 – 7:30 Work Session – Site Review Regulations

Chairman Ricci then went back to continue the Board's review of the Site Review Regulations which the Board started on October 4th. The work session was turned over to Rick Taintor, where they started at page 31. Also with Mr. Taintor was Juliet Walker.

Ms. Roberts had some issues. Under the Purpose Section 6.1, she wanted to emphasize sustainability in there and add something about native plants or non invasive species. She also would like to discourage the use of fertilizers or other chemicals.

Councilor Dwyer agreed with Ms. Roberts. They ought to say something about landscaping that one purposes is related to stormwater and they should reference the section on water quality.

Deputy City Manager Hayden noted the raingarden reference. She wondered if there was some way to have a definition of a rain garden. Mr. Taintor also noted they have that in the stormwater management section.

Councilor Dwyer had issues that they may want to add in some other place. Should they have anything connected/referenced to the Conservation Commission or Historic District Commission in any of the Articles? Mr. Holden felt that would be a little difficult because those are zoning requirements and this is from a site plan perspective. Councilor Dwyer was referring to the one about buffers and wetlands, and it doesn't even mention that they have a Conservation Commission. Later on they mention lighting features in the Historic District that might require attention to that but they are not connected to their other commissions. Mr. Holden indicated that the way they normally work is if it has a relevance to a committee then they have their input. If they are going to incorporate other agencies, it gets difficult and prolongs the process. Deputy City Manager Hayden confirmed it is done under certain applications but not under Site Review. Chairman Ricci thought that would be sending them backwards. Councilor Dwyer was talking about how this fits in the larger picture. Deputy City Manager suggested maybe something they could attach that explains what the other committees do, although it would not be part of Site Review.

Mr. Coker had a broad question, keeping in mind the unintended consequences of things, when they say things like street trees shall be planted at a minimum rate of one tree per 30 lineal feet. Why do they put themselves in a box? Where do they have some flexibility for some site specific issues? Could this go to the BOA for a variance? Mr. Holden confirmed it could not go to the BOA. Mr. Taintor confirmed that the Planning Board can waive and it is in Section 2, page 16.

Ms. Walker indicated that they have tried to balance the specifics with some sort of performance standards.

Mr. Holden felt that on page 32, Section 6.3.1. That "developments" should be added to non residential.

Councilor Dwyer noted on 6.3.5. it says they would removing existing non-native invasive plant species but does not say they would not allow invasive. It should say they also do not allow invasive. Ms. Walker believed that was included somewhere. Invasive can mean non-native but it also means a very aggressive plant.

Mr. Holden felt they needed to identify where the list is. Ms. Tillman suggested referring to the State's requirements. Chairman Ricci felt they could put it at the end.

Mr. Holden indicated that TAC often says they should protect vegetation by putting up a snow fence. Do they have this covered? Ms. Walker confirmed that was included.

Deputy City Manager Hayden referred to page 35, Item 6, and asked if that was a complete sentence? Ms. Walker confirmed it should be a comma.

Councilor Dwyer referred to page 34. The front yard landscaping doesn't seem to follow and she wondered if something was missing? Mr. Taintor confirmed he would double check that. Chairman Ricci pointed out a spelling typo.

Councilor Dwyer noted that later on they talk about different ways to place trees so massing might not be the only way for a particular design. Maybe that is already taken care of.

Deputy City Manager Hayden asked what do they mean by maximum effect? She felt they may want to make it clearer.

Mr. Holden referred to 6.4.i.2 and indicated that mechanical installations can be quite massive. Maybe this needs to be defined a little bit better. Mr. Hopley added that HVCA condensers can be scattered around the yard and there is no mechanical design at the time of site review. Deputy City Manager Hayden asked if that was under their purview under site review and should they force the issue sooner by adding mechanicals to site plans? Mr. Hopley stated that generators are becoming more and more common. Chairman Ricci suggested that they should proposed condenser locations and if they were changed they would have to be coordinated with the Inspection Department. Ms. Roberts stated that the HDC often reviews those items. Deputy City Manager Hayden said they are saying they have to screen but maybe they need to be screened with something other than vegetative. Maybe they should be fenced in. Ms. Walker noted there are also screening requirements in the waste storage.

Mr. Coker felt that it is not uncommon for applicants to say one thing and do another. What is the mechanism to enforce or urge compliance? Mr. Holden confirmed the City has a bond and ultimately they can sue. Mr. Hopley stated that the bond is a very good tool as money always gets peoples attention.

Councilor Dwyer felt there should be a place where the bond requirement would be referenced in this document. Mr. Holden stated that this document empowers the preparation of the Site Review Agreement and Bond. Councilor Dwyer felt that might be helpful so that people know it is required.

Ms. Roberts referred to page 31 "Purpose". She was thinking about screening and she is thinking about this huge fur tree in her yard and her neighbor says it is her air conditioning. Maybe they could include something about using landscaping as conservation methods. Ms. Walker indicated they will try to figure out how to incorporate that in.

On page 35, Councilor Dwyer referred to 6.5.1.a. and felt there might be a better way to say that. The concept is the mixed species. Ms. Walker indicated their concern was about it being seasonal rather than year round. Councilor Dwyer felt maybe they should talk about, at some time, what they would want for landscaping in Central Business. Mr. Holden felt her point was well taken.

Deputy City Manager Hayden asked how they would think about addressing the CBA? Ms. Walker thought they might want to have a separate section.

Mr. Holden referred to 6.5.1.b. and felt they could probably write this a little differently, referring to the minimum of 6' from the tree canopy to the ground. Obviously the trees are going to grow and maybe they should allow for that. Ms. Walker noted they meant it had to be at least 6' from the ground. Deputy City Manager Hayden stated the lingo is not clear and needs to be re-written. The trees that have a lower branching structure should be taken into consideration. Ms. Walker indicated they will add a few bullets and improve that.

Mr. Holden referred to page 36, Screening, and noted they had eliminated the problem with different sizes of fences.

Ms. Geffert asked how they will be enforced. Mr. Holden stated with a bond and a final inspection and also the assumption that people have good intentions to finish their project properly.

Ms. Tillman noted on Page 10 it talks about the Site Review Agreement and the surety bond. Deputy City Manager Hayden added that the very last page indicates how that surety gets released.

Mr. Coker asked, in the spirit of enforcement, after the fact, how to they monitor irrigation? Mr. Holden confirmed they are required to keep their items in mechanical operating condition. Mr. Holden also added that neighbors help with enforcement. Councilor Dwyer felt this is where the point of native species should come up as they will reduce their need for irrigation. Chairman Ricci asked if they might have put wetland species in the wrong area? Deputy City Manager Hayden asked if they should be more aware of irrigation? Where does it go? Mr. Holden confirmed that whole section comes from SMART.

Chairman Ricci asked to have the required hours of construction on site plans.

Mr. Rice talked about screening, page 36, 6.7.c.v. Trees used for screening. Why wouldn't they allow evergreens such as spruce to be involved in screening as they are very dense. Mr. Taintor indicated that the point is that it is a hedge not a tree. Mr. Rice asked if those should be used by themselves or with landscaping? Ms. Tillman explained that it gives a menu of things you can choose from. Deputy City Manager Hayden felt it was a good idea to add it.

Councilor Dwyer referred to irrigation and natives, and suggested that they gather low impact features all in one place so that they can keep track of the low impact features they have built in. Ms. Walker suggested rather than a separate section, they could try to highlight them as well. Deputy City Manager Hayden asked if she meant on individual site plans? Councilor Dwyer indicated no, only to see if they have made process in bringing low impact concepts. Deputy City Manager Hayden felt it

would be a good idea to note on site plans any green measures they are using. Mr. Taintor indicated that they now have the neighborhood LEED checklist.

Ms. Geffert felt they could add a sustainability site review criteria section. Deputy City Manager Hayden felt that would be hard to enforce. The checklist is a good way to solve it. Ms. Geffert felt there must be some way to encourage sustainability in the site review process. Chairman Ricci felt just making people aware of it is helpful.

Mr. Holden referred to 36.1.a. felt they could possibly define what a buffer strip would be with a width or a length? On d, could they just delete “that are fed by groundwater” and on e they may want to add statutes and ordinance. Ms. Geffert suggested that they say standards.

On Page 39, 7.2.01 2.a, regarding an undisturbed buffer, that seems to go in the face of their wetland regulations for encroaching on the buffer. Mr. Holden felt that perhaps calling it an undisturbed they should just say it is regulated under Article VI.

Ms. Roberts referred to 7.2 Stormwater Management and wanted to make sure they are encouraging pervious surfaces for run off. Ms. Geffert noted it is included in 7.7, under impervious surfaces.

Mr. Hopley asked about page 39, 7.2.01.2.c. Flood plains. Mr. Taintor thought this was defined by the district? Mr. Hopley indicated that is not a prohibition from constructing in that zone. He asked if this was a conflict? Mr. Taintor agreed it was and it should come out or reference the flood plains section.

Deputy City Manager Hayden referred to 7.2.01.2 should say in addition, not additions. On Stormwater Management and impervious surfaces, 7.2.01 is really about anything coming off of the site so they don't have to get into talking about anything impervious. Mr. Taintor indicted that they were talking about taking the first part of impervious and putting it in front of Article 7, Quantity and quality.

Councilor Dwyer noted that 7.2.01.2.a should also include the upcoming vernal pools protection, when it gets worked out.

Ms. Roberts asked below that, add “native” in there for all stormwater treatment areas. Chairman Ricci felt non invasive was the key word and not native.

Mr. Holden moved to Section d, salt storage areas covered by a building or a tarp? Deputy City Manager Hayden asked for guidance so that no salt shall run off the site. Mr. Taintor suggested removing “whenever possible”. Deputy City Manager Hayden added that someone might have salt in barrels and that would be okay.

Mr. Holden felt that snow storage areas should be required on page 40. Chairman Ricci also noted that all snow storage should be removed from on site.

Deputy City Manager Hayden thought she understood but now was not sure about snow storage melting and run off. Do they need to definite a treatment process? Ms. Walker asked if they should

define what comes out of the treatment area? Chairman Ricci felt that snow is a tricky thing but he would rather deal with the 360 days of the year and not when snow melts on one or two days. Mr. Holden stated they should encourage removal where a site is bad.

Mr. Coker referred to page 40, j., biological and chemical properties of the receiving waters shall not be degraded by the stormwater runoff from the development site. This section would require them to come up with a fool proof stormwater run off, which doesn't exist. Mr. Hopley agreed they are attempting to implement something that can't happen. Ms. Walker indicated they will revise that. Chairman Ricci stated that every storm is ½" of rain and those you want to retain. After that it doesn't really matter. Mr. Taintor thought they could give themselves that and include a waiver. Mr. Coker asked why not 1"? Chairman Ricci thought that would make too big of a hole. Anything over 1" is volume. He would use ½" storm event in the regulations.

Chairman Ricci felt that on section g, they should do 2, 10 and 100 storm events. Ms. Walker confirmed that this was a lengthy discussion with DPW. Chairman Ricci indicated he would like to have them tell him why. He felt 25 and 50 were insignificant.

Ms. Roberts referred to page 40, section l, what do they mean by upgrade? Mr. Taintor confirmed it should say degrade.

On Page 41, Mr. Coker referred to where it said "disturbed areas idle for more than 30 days" and asked it that meant no construction going on and why 30 days? Chairman Ricci felt if it is open there is probably erosion control and 30 days is standard. Mr. Coker asked if to stabilize means to plant grass? Chairman Ricci reiterated that 30 days is standard and he felt that was good.

On Section 7.3.1.a, Mr. Holden asked if they just want to resurface it? Mr. Taintor agreed, if they are not changing the surface of the lot. Deputy City Manager Hayden asked if this only applies when they are subdividing? Mr. Holden confirmed that none of these would come up for subdividing. There was a discussion about the requirements for resurfacing a parking lot to repair where there was not any treatment. Deputy City Manager Hayden asked how often does this type of work come up? Ms. Tillman responded not that often but when it does it's usually a big one. Mr. Hopley indicated he would be very leery about requirements for re-paving. Erosion control is probably going to go below grade. Mr. Coker remembers K-Mart wanted to do something and their lot drains completely into a wetland. Chairman Ricci thought if they are going to reclaim or dig up part of the surface, they would have to be reviewed. Just re-paving would not apply. Deputy City Manager Hayden felt if they haven't done something that triggers Site Review, then this wouldn't even apply. Mr. Taintor suggested taking out some wording to clarify. Ms. Walker thought they could better define reconstruction.

On Page 43, Councilor Dwyer asked where does the 20% come from? Ms. Walker explained it is a typical threshold. Mr. Taintor confirmed it is defined by DES.

On Page 44, Ms. Geffert referred to the impervious surfaces purpose section. 7.7.02.1, do they want to encourage environmental roofing and pavers. Councilor Dwyer thought they are also making sure the word impervious is modified and everything that goes along with it.

On Page 45 Mr. Holden suggested rather than demand, replace the word with require.

On Page 46, section 8.1.4, Mr. Hopley felt that HVCA generators should be more specific.

On Page 47, Mr. Holden stated that they don't have a lot of experience on off site sewerage. They do have a procedure to go on site to check and he felt that should be continued. Deputy City Manager Hayden pointed out that they have included the code that they have to meet. Mr. Hopley asked if this was accurate? Ms. Walker indicated that she will double check. Mr. Taintor suggested adding another paragraph which allows the City to review if they so choose.

On page 47, section 8.2.3, Mr. Coker felt that "may" implies that there may be a building without any water. Councilor Dwyer pointed out that the PSNH warehouse was a building with no water service. Ms. Geffert felt there was enough in there to catch anyone who may choose not to have water on his property. In #4, where did "20 gallons" come from? Ms. Walker confirmed that it comes from their existing regulations. Deputy City Manager Hayden felt they are separate points. Ms. Walker stated it was intended to leave it up to the Planning Board on whether they would require water. Mr. Hopley could not think of many facilities that would not need water. If the building was intended for occupancy then it would require water. Deputy City Manager Hayden requested that they check with David Allen.

Mr. Hopley noted a typo in Section 8.3.01, where it reads better "sewer mains or lines". It should be plural.

On Page 48, Mr. Hopley asked if they have talked to Peter Rice for 8.3.04? Ms. Walker confirmed, yes, this came from a meeting with him. Councilor Dwyer asked if the Sewer ordinance include the site plan aspect of requiring for future use? Deputy City Manager Hayden was quite confident that they have that covered now with the sewer ordinance.

Mr. Holden asked if section 9.2.2 on solid waste was specific enough? Ms. Walker stated that is the standard. They can add more if desired.

Ms. Roberts asked if they were encouraging composting? Councilor Dwyer asked about recycling too.

On Section 9.2.2., Chairman Ricci asked to just delete "of sound construction".

On section 9.2.5., Mr. Holden asked about the last sentence where it said yard inlet. Ms Walker indicated they would change the wording. They are also saying it should be at least 20' from a property line so maybe they should separate them.

Mr. Coker stated he would like to see something saying that the hours of pick up will conform to city hours of operation. Deputy City Manager Hayden thought it might change so they shouldn't be so specific. Mr. Holden suggested doing the same as they did with the hours of construction. They will run it by legal. At the Parade Mall they went to great lengths to get a letter from them that they would conform to certain hours. Mr. Taintor felt that it applies to various sections so maybe they could come up with a list.

Mr. Coker referred to storage containers in section 9.2. All solid waste pick up shall conform to the City Ordinance. Mr. Taintor noted it is a non-zoning item.

Deputy City Manager Hayden asked where did the 20' come from regarding waste containers? She felt that 20' is a fair amount in some of their small areas. Ms. Walker indicated they need to investigate more of a range.

Councilor Dwyer went to Page 50, Sustainability. She felt language could be friendlier towards recycling. Deputy City Manager Hayden asked how do they encourage recycling and set aside some space. Ms. Walker thought they should provide sufficient space for recycling next to trash container. Mr. Coker thought they could just say encourage the applicant to set aside space for recycling. Deputy City Manager Hayden suggested consulting with the City recycling coordinator, Silke Psula.

On Page 52, Mr. Coker did not see a reference to Dark Sky Friendly. Deputy City Manager Hayden confirmed it is in the Zoning Ordinance. Mr. Holden thought they could maybe put a note in parentheses (Dark Sky Lighting).

In #3, Ms. Roberts asked what do they mean by temporary? Ms. Walker confirmed they will have a definition.

On Page 53, Fire Protection, Mr. Holden asked what if they end with requirements of the Fire Department. Mr. Hopley wondered, looking at all items, how they relate to Site Review. Mr. Holden felt they go under impacts. One impact is the effect on municipal services. Ms. Walker stated that Deputy Fire Chief Steve Griswold reviewed them. He didn't necessarily think they were all necessary but he didn't think they had to be removed. Deputy City Manager Hayden suggested having Mr. Hopley talk to Steve Griswold and discuss.

Chairman Ricci asked about fire hydrants and a minimum 8" main. Mr. Hopley confirmed there is a minimum standard.

On Page 56, Maintenance and Inspection. It was suggested that there should be stipulations at Site Review for maintenance work as reported to DPW and it should be included in the Regulations. Deputy City Manager Hayden explained that this section is to allow the City to hire someone to do an inspection, at the applicant's expense. She felt they should think about that one a little more. Mr. Hopley suggested that they should also keep in mind that the property ownership may change. Chairman Ricci felt there should be some common ground.

Mr. Coker went back to page 56, Maintenance & Inspection, and asked about the status? Deputy City Manager Hayden confirmed they will review it more with Staff.

Deputy City Manager Hayden felt they might as well define sustainability. Ms. Walker felt that might be difficult. Deputy City Manager Hayden agreed and it was decided not to include that.

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III. ADJOURNMENT

A motion to adjourn at 8:50 pm 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 by the Planning Board on February 21, 2008.