

**MINUTES OF
JOINT WORK SESSION**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 P.M.

APRIL 24, 2008

**PLANNING BOARD
MEMBERS PRESENT:**

John Ricci, Chairman; Jerry Hejtmanek, Vice-Chairman; Donald Coker; Paige Roberts; John Rice; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector;

MEMBERS EXCUSED:

M. Christine Dwyer, City Council Representative; Anthony Coviello; MaryLiz Geffert, Alternate and Norman Patenaude, Alternate;

**HISTORIC DISTRICT
COMMISSION
MEMBERS PRESENT:**

Sandra Dika, Chairman; Richard Katz, Vice Chairman; Elena Maltese, Joe Almeida, Alternate;

MEMBERS EXCUSED:

Eric Spear, City Council Representative; John Wyckoff, Tracy Kozak, George Melchor, Alternate

ALSO PRESENT:

David M. Holden, Planning Director; Lucy Tillman, Chief Planner; Roger Clum, Assistant Building Inspector; Robert Sullivan, City Attorney and Rick Taintor, City Zoning Ordinance Consultant

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The Planning Board and Historic District Commission members introduced themselves to the public.

Chairman Ricci explained there was one main item on the agenda, being revisions to the draft Historic District Regulations and proposed changes to the HDC boundaries.

Chairman Ricci suggested going through all items and then going back to items that may take more discussion as Rick Taintor will be working on a revised draft for future review by the HDC. He turned the meeting over to Rick Taintor.

I. DRAFT REVISED ZONING ORDINANCE

A. Revisions to draft Historic District Regulations (Article X in existing ordinance);

Mr. Taintor's draft incorporated 1-2 meetings he has had with the HDC and he tried to clean up the existing ordinance and there is still more to do. He asked to hit a few key items first. One item is the issue of criteria of demolition of buildings in the HDC. They have the ability to

review buildings and the ability to issue a notice of disapproval but the criteria is not clear. It seems that the key issues are to get a delay on demolition for review and to consider other alternatives. They will look at some other models to see what they can adopt into these regulations in achieving a delay and documenting the historic/architectural significance of building and adding criteria for the Commission to make it's decisions. A second area, on page 106, are additional items listed as exemptions. There is a conflict in the wording between the Zoning Ordinance and the City Ordinance and State law. The City's ordinance talks about a Certificate of Approval and the Zoning Ordinance talks about a Certificate of Appropriateness. They will want to talk about the additions he has added make sense. There are some general questions towards the end of the section dealing with time sequences. So, those are the major items and he would recommend going through the draft page by page for comments.

Mr. Holden added that in working with Mr. Taintor, he understood that the HDC was reasonably satisfied with their criteria, objectives and the working of the ordinance so they can pay more attention to the finer details. He felt that Mr. Taintor had done a very good job of keeping the intent of the ordinance but presenting a much more user friendly and a much more straight forward basis. Most of what was in the existing ordinance is still contained in the proposed draft.

Page 104, Section 10.621.40. Mr. Rice referred to demolition, new construction or additions. He felt that paragraph was vague. Mr. Taintor agreed. What they should do is replace the second sentence with certain activities are exempt from Commission review under 10.63.20. Mr. Rice agreed.

Chairman Ricci asked if there was a definition of mass? Chairman Dika indicated they had that discussion and it has to do with a bulk whereas scale may talk about height and width. Mass deals with how it is envisioned, not just it's measurements. Chairman Ricci asked if volume was a good word to describe it. Mr. Taintor will look at that. Attorney Sullivan felt that 100 Market Street was an example of when mass was a topic of discussion.

Page 105, Section 10.622. Mr. Taintor crossed out the third paragraph because it conflicts with the City Ordinance dealing with rules and regulations of the Commission. Therefore the sentence regarding a conflict of interest can be moved up to the first section, where it is now, and eliminate 622.20 and 622.30 as they are redundant. The City Ordinance deals with how the Commission is composed and what its duties are. They will preserve the cross reference to the City Ordinance.

Mr. Coker asked for an example of where tension exists. Mr. Holden responded Luka's. Supreme Court, Superior Court, BOA sued, Planning Board sued and City Council was involved. Mr. Holden noted that unlike any other board, the HDC is encouraged to work with the applicant.

Section 10.623 Scope of Review. Mr. Taintor indicated that the existing ordinance deals with minor and major applications. It became clear that what is called a minor project is something that is exempt from HDC review and a major project is subject to HDC review. They clarified that and they talk about what they want to take away from the HDC purview.

Mr. Rice brought up satellite dish receivers. When they are very obvious to the naked eye in the HDC they are very jarring and create a cross purpose. He felt those should be in the purview. Mr. Taintor felt that an issue is an exemption under the Telecommunication Act and they are supposed to be allowed as a matter of right. They might be able to require screening. Mr. Holden added that if they screen it, they would have to have a clear path to the sky. He turned this around and asked Mr. Rice how much of a problem has this been? Mr. Taintor felt this could be an issue if people are switching from cable to direct tv in large mass in the downtown

and you had dishes outside their windows. Chairman Dika felt that was a problem and she asked for some language they would use to prevent them from being placed on the front of buildings. Mr. Taintor did not believe they could do that if someone had a unit facing the street and was not facing a side street s they would have to have it outside their window. Mr. Rice added that a satellite dish does not do a very good job of preserving the character of the area.

Mr. Coker asked for clarification regarding exterior painting without regard to color. Mr. Holden confirmed it was not under the purview of the HDC. In the past the HDC wanted to regulate color which is why this is written and the big misconception was that the HDC did regulate color. Mr. Taintor felt maybe they could clarify the wording.

Mr. Hopley referred to #11 on page 106 and suggested changing “certifies” to “documented”.

Chairman Rika referred to #9. Their discussion was that they would include masonry, bishop or blue stone chimney caps as well as how it is written. The minutes were incorrect. Chairman Dika asked for the following wording: “Masonry, bishops or blue stone chimney caps are preferred,” and then use Mr. Taintor’s wording. They are mentioning this alternative as they can’t prevent it but they are trying to regulate them with room to deal with modern situations.

Ms. Maltese mentioned that when they discussed #1 without regard to color, that was with regard to painting and not suddenly stating that the HDC doesn’t oversee all painting. Her point was she was not sure whether by clarifying this they would state the HDC does not deal with color and she wanted to make sure that was not a simplification. Mr. Taintor asked if there was any other feature other than painting and repainting where they might change the color? Attorney Sullivan felt that if there is this much debate then it has to be clarified. Mr. Taintor felt maybe they needed to keep them in the same paragraph if we do think of another way to do it. Chairman Ricci asked if they could redraft it and send it out for review? Mr. Taintor just wanted to determine the intent of the committee. If the intent is any type of exterior maintenance is allowed without regard to changing the color so they are allowed to re-point bricks with a different color mason? Ms. Maltese clarified that it is her understanding that it means if some one is going to do general maintenance and the maintenance they are going to do is painting, the change of paint color does not come up for review before the HDC. Vice Chairman Hejtmanek suggested simply putting in a statement that the HDC does not review paint color. Mr. Taintor felt they should break out paint as a separate paragraph. Mr. Holden added that bishop caps or ventilation equipment may be an exception to color. Mr. Taintor will work on it. Chairman Dika felt what you don’t want to get involved with is if some one changes a mortar color or a brick color.

They next discussed flagpoles. Mr. Holden indicated that the ordinance does not say anything about flagpoles however they have had disputes between neighbors. The issue is whether the City wants to get involved in regulating flagpoles? Chairman Ricci asked if that was another enforcement nightmare? Mr. Holden felt that when they receive a complaint about the sound of a flapping flag, then he would agree. Attorney Sullivan confirmed you can’t regulate the sound of the flag. Mr. Holden doesn’t see where the commission wants to regulate flagpoles. Mr. Coker asked if the ordinance has a height limitation. Ms. Maltese thought that is based on the lot and not on the scale of the house. Mr. Coker felt the height and noise are both covered in different section of the ordinance. Mr. Melchior asked if someone use this to get around the sign ordinance. Attorney Sullivan stated that happened in Tilton. The court ruled that the City could regulate the height of the pole but they could not regulate what type of flag was being flown. Attorney Sullivan felt he could call a flagpole a structure so it was covered under the ZO, but they could not regulate what type of flag was flown. Mr. Melchior thought they could add that if they were going to advertise with the flagpole it would be regulated. Attorney Sullivan felt it would be tough to regulate that. Chairman Ricci felt it was fine to exempt it here. Ms. Maltese asked about the historic character of the historic district and she is nervous about suddenly

having flagpoles in front of every house on South Street. Mr. Taintor asked if this would be an issue with setbacks from the street? Mr. Holden indicated they do not normally see them. What they see are the ones that someone has called and asked if permission was given to put the flagpole up and as they have a permissive ordinance it is a very difficult question to answer. Deputy City Manager Hayden suggested taking it off the exemption list and asked if that would give them more control. Attorney Sullivan confirmed they would then be able to regular them. Chairman Dika explained this came up because they have never had an application but they keep appearing. Chairman Ricci suggested they just take it out and that seemed to be the general consensus.

Ms. Roberts raised the issue of how they handle cases where an application has gone ahead and made a change without HDC approval. She doesn't see any way to address that. Mr. Taintor stated they would be in violation of the Zoning Ordinance. Attorney Sullivan explained they would have 4 options. They rely for the most part on Superior Court injunctions but, as a practical matter, they usually give them the chance to go before the Board to rectify the violation. Ms. Roberts knew of a case where they replaced windows with no approval. Mr. Taintor noted in that case it is hard to document what was there before they did the work.

Chairman Dika indicated they have been discussing gutters and downspouts and she doesn't see it in here. Mr. Holden stated that they agreed to disagree on that. Mr. Taintor stated there will be further discussion. Mr. Almeida was going to get some information for the Commission. Mr. Holden suggested they would want to encourage the movement towards a particular gutter. Maybe the exemption they want is if they are proposing a particular gutter you don't have it. Chairman Dika agreed.

Page 107, Section 10.624. Application procedure. Mr. Taintor understood that they wanted an increase in the threshold of costs from \$25,000 to \$50,000. Mr. Hopley asked about 10.624.21, in the first sentence "only" could be omitted. In 10.625.10, the last sentence "at the next" could be added or otherwise it's endless. Ms. Maltese felt they may not automatically get postponed to the next meeting. It was a consensus to keep it as is.

Page 107, Section 10.624.10. Ms. Roberts noted regarding application submissions that it is important to get all materials from the applicant in sufficient time before the meeting. She doesn't see a filing deadline for materials to give the Commission enough time to review. Mr. Holden confirmed that the language in the Site Review regulations would probably work.

Mr. Taintor noted that in the current regulations, a site visit is listed as part of the public hearing and he has taken it out of the public hearing which means they do not have to take testimony at the site visit. Otherwise this is mostly very close to the existing regulations. Just today they talked about under site visit there maybe some extra ordinary cost and they should add that any expense is the responsibility of the ordinance.

In the last paragraph on page 108, Mr. Taintor suggests eliminating that as it is redundant. Mr. Rice indicated that, under work sessions, they went through this 8 years ago. Section 625.21, Applicants are encouraged to request a work session and he suggested adding that applicants are "strongly" encouraged when work exceeds \$25,000. Even though the ordinance suggested that, they didn't because they wanted to move right along. Chairman Dika prefaced that the HDC has undergone many changes and one discussion has been how much of our institutional knowledge they lost. Mr. Rice has 26 years of institutional knowledge, Ms. Roberts has a few years and Jerry Hejtmanek is full of institutional knowledge as well. Even though they may disagree with the HDC it's nice to hear their thoughts. Chairman Ricci asked if they could take the dollar amount out? Mr. Rice felt it is needed and worked well over the years. Mr. Holden pointed out that .25 was the one to really give the Commission the real ammunition. That allows them to go into a work session anytime they want to. Mr. Rice felt it was a red flag to any applicant. He

wants to “strongly encourage” a work session. Ms. Maltese would go to the \$50,000 as there was a long discussion between the HDC about \$25,000 and \$50,000. Mr. Almeida agreed with Mr. Rice. The Board may have the power to break into a work session at any time but the applicant would prepare in a very different way. They might not be prepared to have a work session at that point or even to make changes. He felt the more they can do to convince people that the work session is the way to go. Deputy City Manager Hayden felt it tells them before they spend a lot of money they should come and talk to the City. Mr. Taintor asked about wording as they both say “strongly” and it sounds repetitive to him. Ms. Maltese suggested saying that the applicant can always request a work session with the Commission to explore design elements and applicants are encouraged to request a work session above “X” amount. It was the consensus to go with “strongly”. Deputy City Manager Hayden asked what they are getting at with the first sentence? A simple project would not require a work session. Ms. Maltese explained that is why the applicant were always strongly advised to. Mr. Almeida explained that this was discussed because they were trying to make it easier for the applicant. They could stop a hearing if they knew they were going in the wrong direction and break into a work session but this works in a different way. Both are good. Mr. Taintor asked if they wanted “Applicants can always” and then “applicants are strongly encouraged. Mr. Rice again strongly recommended that they keep the \$25,000 threshold.

Mr. Hopley understood that they were going to take out .44 and leave .45 in. He asked if they conflict with .43 as in .43 they are saying they shall direct questions or comments solely towards the applicant or City Officials and now they are going to allow the public to talk so it looks like everyone can talk on the site walk. Mr. Taintor felt that was a good question. These are the existing rules. Deputy City Manager indicated it is not for the general public. .45 indicates it is questions and comments by the applicant. Mr. Hopley pointed out it also says for abutters and the public. Deputy City Manager Hayden felt maybe it should just be the applicant. Mr. Coker felt if a site walk is a public meeting then they are limiting the scope of what can and cannot happen at a public meeting. Attorney Sullivan stated that some kinds of meetings are hearings and he felt Mr. Hopley’s point is correct and they need to clear that up. Is it a good idea to allow more of a discussion on site? He indicated they can do it either way they want. Ms. Roberts recalled serving on the Commission and they did not allow the public to interact on the site visit unlike a Planning Board Site Walk that she went on. Mr. Holden explained that the way it was intended to work was during the site visit the applicant would be presenting the project to the Commission and .45 was meant that if something had to be identified the Chair would be the one to allow the comment to be made so they would point out something that they could not point out at the hearing but it was very limited. This was a much more prevalent problem many years ago than it has been recently. Chairman Ricci felt that the public could always comment at the public hearing anyways. He would take “public comment” out if Attorney Sullivan did not have an issue with it. Attorney Sullivan agreed it should come out and it would be a more orderly way to go about business.

Page 109, Section 10.625.50. Notices for public hearings and work sessions. Mr. Almeida asked if they notify abutters of work sessions? Mr. Holden confirmed that they are but they are not required. It is a courtesy notice so there is no defect if they don’t do it. It is a staff policy. Mr. Taintor went back to page 108, the 3rd paragraph under work sessions, it says a notice of a work session shall be advertised the same as a public hearing. Mr. Holden clarified that was different from notifying abutters. Mr. Coker asked if a pattern of notifying abutters for work sessions be setting a precedent? Attorney Sullivan responded that it is something that would have to be explained if someone raised that issue. The obligation is notice for public hearings. As a matter of policy, even though it is not required, we try to let people know, which is hard. Mr. Holden said it was similar to the signs that they post signs which are not required to but it is just another way of getting the information out. Attorney Sullivan added that notifying abutters is a big deal as they have to find out who they are, prepare them and send them out and there is a cost associated with it. The HDC has people coming back for numerous work sessions or

hearings so they could have those notices going out many times. He was not sure they wanted to put that burden on staff that is already stretched very thin. But to answer Mr. Coker's question, it does set a precedent in a way and he could see it coming up.

Page 109, Section 10.625.50 Review Factors. Mr. Hopley went to Section 10.625.60, Review Criteria. He noted in the first line that the Commission will review an application for "major" projects. Mr. Taintor indicated he would take care of that.

Ms. Roberts referred to the review criteria. She always felt there was some need for some sort of manual or written educational document. She would like to see it include illustrated examples. She felt it still seems like a fairly complicated process. Chairman Dika stated they can't wait to get through the ordinance to take on something like that. She felt it may be tricky. There was some sort of a manual but it created a problem. She asked if someone might be able to uncover a copy of that so they could take a look at it in preparation of doing something. Attorney Sullivan asked if this was something that was not part of the ordinance? Chairman Dike confirmed it would be something separate. Mr. Rice believes that was done 2-3 years ago. They might want to check with the advocates. Mr. Almeida is putting some drawings and attachments together.

Mr. Taintor referred to (4) of the review criteria, which raises what happens when sustainability and preservation come to the same place and they start talking about solar panels and wind turbines and passive solar. This is an area that could very well be an area of conflict between the HDC objectives. Mr. Rice felt the new library was the newest example of that. The HDC came up with a more compatible design. The design of the new library was driven by the LEED regulations. Mr. Rice felt that there are times when sustainability and LEED certification of being green butts up against the need for preserving character and a sense of place. Chairman Ricci agreed that would be more prominent as the years go by. Ms. Maltese added they did have an applicant with a ton of integrated technologies for sustainability which were all appropriate for the HDC. She thought in today's world the HDC should be able to make it all work. Chairman Dika added that they have had a couple of cases with solar panels and sustainable practices and they have worked very well with them. They are aware and they have a young intelligent group of people that can work with them.

Page 110, Section 10.626. Decision by the Commission. Ms. Maltese explained that the HDC had a long discussion as there are decisions made at times where a Certificate of In-Appropriateness could be done because it doesn't actually set a precedent. In cases of wheelchair ramps going on homes for families to still use their homes could be removed when a new owner moved in. In a situation it is not historically appropriate but they grant it because of its need. That is used in other HDC's and it is a very powerful tool in certain situations to allow for something without setting a precedent that these are now accepted designs. Chairman Dike was having a little problem with the language of a Certificate of In-Appropriateness and she thought they might be able to come up with something else. Attorney Sullivan advised that the State law says they will file a Certificate of approval or a notice of disapproval within 45 days after filing the application. They could say we issued this Certificate of Approval subject to the following conditions, which might be that the person needs it and it is still a Certificate of Appropriateness. Mr. Holden asked if they would have to agree to remove it? Attorney Sullivan confirmed they would and they could make that a condition. Mr. Holden asked what would happen if the applicant did not want to agree to that condition? Attorney Sullivan felt they wouldn't let them build it then. Ms. Maltese thought maybe an ADA accessible ramp was not the best example but it's more along the lines of saying it is solely for this applicant and it is a non-precedent setting. Attorney Sullivan stated that the general test on whether the conditions are valid conditions or not is if they reasonably relate to the scope of their review criteria. The scope of review would have to be based on something in the ordinance. Mr. Taintor felt it was covered in the ordinance already. He felt it was even better to switch to approval rather than appropriateness because they do not have to say it was an appropriate architectural design.

Chairman Dike added that some Commissions have hardship approvals but they have to judge their approval on the specifics of the building and that does not allow them any room for making a judgment on an elderly person who has a financial hardship. But, she understands that another can of worms.

Page 111, Section 10.626.20. Partial Approval. Mr. Hopley commented on point 23 and asked if it would be appropriate to have some language concerning that the applicant proceeds as their own risk. Mr. Almeida understood through past discussions that under no circumstances were they to grant partial approval. Ms. Maltese confirmed they have stopped after discussion with Legal. Mr. Holden felt, if you read the process, it is actually more onerous than being approved. Attorney Sullivan confirmed that partial approvals are not a state issue. They have to balance the ability to enforce the ordinance against the practical effects of people trying to do a project. He felt the language is good. Deputy City Manager Hayden felt the footnote that goes with the existing ordinance was confusing, Footnote 28 reads "Short of prohibiting partial approvals, this section controls partial approvals by recommending against them and by allowing their use in narrow instances." Ms. Maltese stated that was specifically what they discussed with Legal. Mr. Hopley assumed that they do not need "at their own risk". Attorney Sullivan felt it was still probably a good idea. Mr. Almeida felt they would have to define it even further because if they are constructing a building on Market Street where they are proceeding at their own risk by putting the public in danger, is that what they need to do?. Attorney Sullivan agreed that to proceed at their own risk they would still have to comply with all other conditions of approval. Mr. Holden added that Staff would probably recommend against the partial approval also.

Page 111, Section 10.626.30 Time Period for Review. Mr. Taintor explained this is all per State law. They will make adjustments to the appeals section to make it clearer.

Page 112, Section 10.627.10. Mr. Coker asked read from the section: "Within 20 days of the decision of the Commission, an aggrieved party who shall be an abutter, the applicant or any party shall apply to the Commission for a re-hearing". He asked if that literally means anyone? Mr. Taintor confirmed that is the regulations. Mr. Holden asked how effective would a person's appeal be if they were from another state or some other distant area? They cannot limit who can make an appeal. Mr. Coker felt that literally opened it up to the homeless guy at Crossroads House that didn't like the decision. Mr. Holden replied, tongue in cheek, it allows Mr. Coker, as the representative of the Downtown Business Association to appear at the hearings even though he is not an abutter. Mr. Almeida felt, if this is something that can't be changed because of State law then that is one thing. Mr. Taintor confirmed it was a Portsmouth regulation. Ms. Maltese asked if it could be limited to a Portsmouth resident. Mr. Holden felt it was more trouble to exclude somebody than it is to allow them to actually speak. Ms. Roberts doesn't remember it being much of an issue. Chairman Dika felt it has become an issue now and they are concerned about the fact that once this party, who may not have a direct interest in the situation, asked for a re-hearing, all wheels stop for an additional review and the applicant loses a couple of months of work. Mr. Taintor felt there were several phases. The first is appealing with a rehearing to the commission and the Commission has to act within 30 days. The next step is under Section 627.20, which is also any party aggrieved can appeal to the BOA. . Third step is appearing before the BOA. He felt, conceivably, they could start narrowing the process down and say the third step is limited to a party that is aggrieved. Ms. Maltese felt a 30 day delay could be a huge problem for a homeowner. Mr. Almeida felt someone could be 20-30 days into construction when the appeal could be filed. He felt this still needs to be revisited. Mr. Holden felt they were going after the time periods. They have had this discussion many times and in Portsmouth it has been fairly general to allow any person, which is not new, but what they may have is somebody that is abusing it but that is not the process that is at fault but rather is something else and there may not be a cure here. Every action is appeal able to the Supreme Court. Deputy City Manager Hayden asked if they have had a problem with this? Chairman Dika responded that they have. Mr. Hopley referred to Luca's where they issued a permit and they started building at their own

risk. Attorney Sullivan indicated that in that case the City Council gave a license to build over the City sidewalk and suit was filed. The City Council also removed the property from the HDC to get around it. Mr. Holden added that the HDC also reviewed it prior to come of these action and it failed by one vote, which they then started getting it removed from the district. Deputy City Manager asked if the advocates used this clause in the ordinance to do that or was it something else? Attorney Sullivan read the decision fairly recently and the big issue was whether it was an appropriate legislative decision to do this for that reason. Deputy City Manager Hayden then asked if there are other options beside this paragraph to go after a project if someone felt very aggrieved. Attorney Sullivan confirmed that was correct. They have the situation where parties remote from the project files an appeal. They would rather have someone file an appeal at the early stages before final approvals. They would rather have someone file an appeal at the early stages, before the final approval, have the effect of maintaining the status quo. Once the final approvals have been given, then appeals after that do nothing. That is when someone could build their project at their own risk, pending appeal. Ms. Maltese agrees that this is good wording, it may be a person causing the problem and not the actual writing. Unfortunately, there is a concern that this may be a continuing problem. They are set up to protect fellow residents of Portsmouth and they need to protect them. Mr. Taintor asked Attorney Sullivan if the provision for rehearing before the Commission and then only after that, going to the BOA, is the provision for State law. Attorney Sullivan's only clarification with State law recently is when the HDC is finally done and the appeal goes to the BOA that is an automatic appeal and is not treated like re-hearing. The BOA does not decide whether they accept the appeal or not. He thinks it is a good idea to require someone, before appealing any further, to come back to the HDC so that they have a valid issue. Chairman Dika asked, if they are appealing on purely frivolous grounds, there isn't any way to screen this? Mr. Taintor pointed out that the HDC decides whether or not to hear the appeal. Mr. Holden added they could also create the record to show exactly what is going on so that the next group is instructed as to what the real issue is. They have a marvelous opportunity to tighten the case. They have a problem when an applicant cannot afford that luxury. The Commission can actually do something very positive either by granting the rehearing to establish the record or just by denying it and establishing a record so that it goes to the BOA and they can then sustain the HDC action. Mr. Coker felt the allegedly aggrieved party could file suit. Attorney Sullivan felt, when they do that now, they have a much better record. Mr. Holden explained it is a legal process and did not know if this group could change that. Attorney Sullivan felt they could shorten the appeal periods by saying they don't have to apply for a rehearing before the HDC and they could go directly to the BOA. Whether that is a good policy is another question and he personally does not support it. Chairman Ricci asked if that would take away any chance to negotiate? Attorney Sullivan would agree with that. However, more often than not, the HDC does work things out. Mr. Holden pointed out that if the appeal is automatic to the BOA, they have already cut out 30 days. The BOA would have to decide whether they wanted to hear the appeal so there would another 30 days before they head it. Mr. Holden felt that 7 Islington St was a good example. They went over the record and there was a balancing out between the applicant and the Commission. Chairman Dika stated she does not want to give up on it as it is such an injustice to the applicants. But, they are spending a lot of time on it and there may not be an easy resolution.

Page 112, Section 10.628. Enforcement and Appeals of Administrative Decision. Mr. Taintor indicated this is just general enforcement, nothing particular about the HDC.

Page 113, Section 10.629. Review of Permit Applications Within the District. Mr. Taintor indicated this was almost not a regulation but it was suggested they take out the wording "on an annual basis".

Page 111, Section 10.626.30, third paragraph from the bottom. Attorney Sullivan read "The Commission shall issue its findings to the Code Official within 30 days of receiving a complete

application, including all appropriate fees” but then it reads “The Commission shall file a Certificate of Approval or a Notice of Disapproval within 45 days ..”. Mr. Taintor felt that was a good question and they need to change the 45 days to 30 days. Attorney Sullivan would rather have them take out the Code Official regulation (Section 10.626.21) and leave in the following paragraph (Section 10.626.32)

Mr. Rice referred to the section which talks about the rules of the City regarding commissions and their make up. He asked if it also talked about election of officers? Mr. Taintor confirmed it does.

B. Joint discussion on changes to Historic District boundaries.

Maps were handed out for the members to use as a guide. Mr. Holden indicated that this represents several work sessions with the Commission and it is the first attempt at what will become part of the zoning ordinance. This is their discussion piece and they are sharing it with the Planning Board for their comments. The HDC will continue to work on it. They had five areas that they had interest in.

Area 1, is the area down by the Sports Page and includes the old Lucas and the former Shaines & McEachern building and properties on Bridge Street. The HDC felt unanimously that Area 1 was a proper extension of the Historic District to regain those properties, either that at one time were in the HDC and also to smooth off the boundary which they felt was very important which was Bridge Street by sending it down further towards Hanover Street.

Area 2 was the extension from Dover Street and down from Salem Street on both side of Islington ,down to Jewel Court and up to Brewery Lane and down to Islington Street. There was a lot of discussion on this. There was not a strong consensus that it should be extended that far but there were a lot of pros and cons. There seemed to be some general idea that Islington Street should be extended slightly if for no other reason then to smooth off the existing boundaries with more discussion about extending it down to Bartlett Street.

Area 3 has general Commission support. The Commission found a great deal of interest in the way that the district was applied on Islington Street. It is one lot deep on both sides of the street which made it generally easy to enforce and also tended to directly regulate the view corridor. On Middle Street however the area had traditionally been a buffer of 100’ on each side and it created problems as it would dissect lots. The Commission asked for, and this map shows, is the district being one lot deep on both sides of Middle Street.

Area 4 is really the extension down to and including the intersection of US Route 1, Lafayette Road, Middle Road and South Street. The Commission is still trying to figure out what the best approach is. Some discussion is that if it isn’t in a district than it should have some design control. There were also some arguments as to why it should be included in the district. There is not a general consensus on Area 4.

Area 5 is the one that is giving the Commission the most work out. Many commissioners believe South Street should be included in the district and this tends to show it one lot deep which creates issues with municipal properties, cemeteries and large lots. There has been some good discussion on this and there is more discussion on whether this should be another design review area subject to something other than the HDC

Mr. Holden felt areas 5, 4, and 2 are still being discussed to some degree. Areas 1 and 3 there was a general consensus on. Also, the commission was also considering other areas for either historic district or design review, such as Atlantic Heights.

Chairman Dike stated that they have only just gotten into this. They asked the City to give them an explanation of overlay districts and how that might apply to some of these areas. They talked about the Victorian area down South Street and Miller Street and what might be appropriate. Their feelings are that the corridors along Middle and Islington have been a great benefit to those areas and have evolved because of that protection. They wondered if that type of protection might benefit some other areas as well. The two areas that Mr. Holden mentioned have complete consensus. There is a split in the thinking and they are still evolving. This evening they have the Planning Board and they are interested in their comments.

Mr. Coker asked what the logic is in extending South Street down to Lafayette Road. When he thinks HDC, he thinks South End. Chairman Dika explained that things don't have to be old to be important. The HDC is not a colonial district and their understanding of the Historic District is far broader in scope than that. Ms. Maltese felt it is not whether it is historic or not. There is a lot of historic character. The discussion is that they have entryways to the HDC and South Street was a corridor and entryway to the historic district. Mr. Coker asked if they have poled the residents to see how they feel about this? Chairman Dike confirmed that they have not as they are still discussing it. Mr. Coker felt it made more sense coming down Middle Street as there are some turn of the century grand Victorians. He also asked about design review vs. historic district and he asked them to elaborate a bit on design review. Chairman Dike felt they couldn't because they are waiting for the City to advise them. Mr. Holden stated it was one of the Board's goals in the Master Plan. What the Commission is trying to say is that they see areas that need something but they fall apart in their consensus when they say does it need the district or should it be something else to recognize its' special characteristics that need to be preserved. The disagreement is more about how to promote them or protect them.

Mr. Almeida added to Ms. Maltese's comments that the only way to justify all of the Commissioners was if it was a corridor. If it's not a corridor then the same logic falls apart. Vice Chairman Hejtmanek said that he looks as a corridor into the City would be Miller Avenue which has much more interesting architecture. And that comes from South Street into the City. Mr. Maltese stated the HDC discussed Miller Avenue but as it is a connector of corridors it wasn't appropriate. They would then get into some gray area about should they start adding other connectors too? Mr. Holden mentioned that the HDC was interested in getting traffic counts. If you talk to people on South Street they will say they are definitely an entrance. Mr. Taintor felt it might be better to call it something like a scenic corridor rather than the HDC. Mr. Almeida thought they should weigh in with the residents.

Vice Chairman Katz spoke about Area 4. He is in favor of extending it to South Street. The current HDC limits area very arbitrary. It seems there is a logical progression to end the HDC at South Street as they then have the office park and an entirely different type of situation. He also didn't want to ignore the Lafayette School. He would certainly like to see that site brought under their jurisdiction. He has talked to some people in the area as it is his neighborhood and he hasn't had any violent objections to this idea. Chairman Ricci would agree with Vice Chairman Katz. He thinks the HDC is prominent and "scenic" is a good word. His impression is Court Street is nice and it's not so much the houses. Maybe they could give it a different name. Mr. Coker referred to the Dunkin Donuts proposal a few years back on Islington Street to tear down the building next door. He can understand that better than a more traditional historic district so their point is well taken. He suggests that in the public hearings this will be very interesting and he does not see the public willingly subjecting themselves to more regulations about what they can do with their private property. Chairman Ricci felt that by calling it something different the public may buy into it. Mr. Holden felt that maybe the HDC should have a public hearing on this. Deputy City Manager Hayden asked which one they would do that on? She did not feel that if they invited everyone to a public hearing without the Board being unanimous, they might

want to rethink that. She suggested being cautious about that approach. They might want to work on how to protect the homes on the different streets.

Chairman Ricci confirmed that everyone is in agreement on Areas 1 and 3.

Mr. Almeida was not in agreement with Vice Chairman Katz. However he went to Area 4 and took a look and he now agrees with him. Extending the area down to South Street now makes sense to him. Mr. Coker pointed out a ranch house on Middle Street and how would that fit in? Ms. Maltese asked him to think of preservation in terms of structures over 50 years old. The 1960's had a very specific architecture and it was brought into a more historic architecture. Just because there is a 1960's house, it doesn't mean they should stop the historic district there. Mr. Holden also pointed out that the district does not say they are freezing the City at a certain time. This is not Williamsburg but rather it is an evolving community. They are not freezing the entire City in colonial times. Deputy City Manager Hayden added when the HDC was originally formed was a lot of homework done on the buildings? Mr. Holden stated it was around 1975. Ms. Roberts did not believe there was a lot by lot or building by building survey of the entire district. Deputy City Manager Hayden felt it would be good to get public input but they should not go out proposing these areas. They want to have a discussion and get some ideas on the table.

Mr. Rice wanted to comment on the underlying philosophy about preserving these areas. He submitted that Richards, Miller, and Lincoln are important boulevards with a special character in the City and he doesn't understand why they are not protected in some way. They have seen, over the past 5 or 6 years, the character of those neighborhoods eroding and he thinks it is sad. When he thinks of Portsmouth and the special character and sense of place of the town, he thinks of Richards, Miller and Lincoln and the pleasant sensation that he is going to get when he drives down and sees that consistency of architecture that is every bit as important as what is going on in the South End. He asks why that has been overlooked year after year and they keep losing bits of it. Ms. Roberts felt they are in agreement with areas 1 & 3 so maybe they can bring that forward and do some more work on the other areas. They should get away from the concept of the district and concentrate on a form of protection in corridors and other areas. The concept of "scenic" brings to mind Little Harbor Road. To what extent do they want to open up the issue of protection but that is a huge amount of work to do that. That might possibly involve getting a grant and getting some type of architectural survey. Mr. Holden felt they should keep in mind what the Commission is doing. She may be recommending things other than the district but he felt they should be concentrating their attention on what they feel is appropriate in the district. That is a particular level of control that they are looking at. Ms. Roberts felt in the larger context, such as Atlantic Heights, they will talk about things like scenic. Mr. Taintor felt it seems having this on a map by itself is leading in a certain direction. They may want to consider the neighborhoods and see which areas are more deserving of protection and what does that mean? Deputy City Manager Hayden suggested the group was not at a point to make a decision so maybe they should come back at a later date.

Chairman Dika made a comment concerning the corridors. Not every house along the corridor is historical or of architectural significance however without any type of protection, that means somebody could build an addition within the zoning regulations that would be very obnoxious to the surrounding houses. There have been some additions along Islington Street, where they were very simple square houses where additions were added that totally distorted that section of the road, where other people who lived a block away had been coming for design review and did beautiful additions to their property. Without any design review along these corridors, people may meet the zoning regulations but may very well distort the way that section looks. Mr. Coker felt that one could reasonably argue that the zoning regulations are doing their job and he would have huge concerns with design review.

Chairman Ricci again summarized that areas 1&3 are in consensus and the others areas need more work.

Chairman Ricci thanked the Historic Commission Members for their time and efforts.

Chairman Ricci advised the Board members that the New Hampshire Comprehensive Shoreland Protection Act is having a workshop for local officials Monday May 5th at the Brentwood Community Center.

The Annual Meeting of the Rockingham County Planning Commission is Thursday, June 12th at 6:00 pm at the Atkinson Resort and Country Club, guest speaker is John Sununu Sr.

Mr. Holden reminded the Board that they are meeting next Thursday jointly with the Conservation Commission to discuss three conditional use proposals.

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II. ADJOURNMENT

A motion to adjourn at 9:05 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 June 19, 2008.