

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

**CONFERENCE ROOM B
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:00 P.M.

AUGUST 28, 2008

MEMBERS PRESENT: John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Donald Coker; Anthony Coviello; Paige Roberts; John Rice; Richard A. Hopley, Building Inspector; and Norman Patenaude, Alternate

MEMBERS EXCUSED: Cindy Hayden, Deputy City Manager and MaryLiz Geffert, Alternate

ALSO PRESENT: David M. Holden, Planning Director;
Peter Britz, Environmental Planner
Robert Sullivan, City Attorney

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6:00 – 7:30 PM WORK SESSION - Draft Senior Housing Ordinance

Chairman Ricci welcomed everyone to the work session on the Draft Senior Housing Ordinance and indicated that they would have the Board discuss this from 6:00 pm – 6:40 pm, the applicant has some comments which he can make from 6:40 pm -7:20 pm and the work session will convene so that they can start their regular meeting at 7:30 pm. He turned the Work Session over to David Holden for a brief overview.

Mr. Holden stated that last month the Board asked for another Work Session and input from the proponents requesting this zoning change. Staff has endeavored to do that and Mr. Taintor will review where they left it. An agenda was handed out with the item the Board was looking for more information on. Attorney McNeill and proponents were present, anxious to speak as well.

Rick Taintor provided an outline because there were a number of issues in July and a wide variety of view. The question of what types of housing should be included in Senior Housing, there was a question of tenure and whether they cared about whether the units were owned or rented. There were question about what they meant by housing affordability in terms of household incomes. There was a question of what type of unit percentages they would want. Do they want workforce housing, non senior or age restricted? The scale of the housing development and the density and there were questions about community benefits. His purpose is not to provide more information but to organize it better for them.

Chairman Ricci indicated they would start with Senior housing parameters. Mr. Taintor stated that they talked about the exhibits that had been provided and what they could mean by senior housing. One question was raised about what happens when people are no longer able to stay in assisted living and have to move into nursing care? The concern was that we were not doing anything for those

people and only supporting people who were fairly healthy. Mr. Coker raised the question about ownership vs. rental. They are assuming people would have a large amount of cash from selling out their homes when buying into a development and whether that changed how they looked at this.

Mr. Rice asked for clarification on the mix of support levels. Mr. Taintor explained the first would be 90% of units were independent living and 10% would be assistant living but then there was the question of whether they would want nursing in there. Those were just proposals.

Mr. Taintor felt they would need some guidance if they were going to be writing an ordinance. The next question was an area where there were several points of view which was who are they trying to provide affordable housing for? Was affordable housing one of their goals for a senior housing development. Are they looking to have relatively low income people provided for or a mix of upper and moderate income or a mix of unrestricted senior housing but to have some work force housing. They gave examples of how to define housing affordability and what that meant in terms of income levels.

Mr. Rice asked, when they talk about senior independent and assisted living projects, it must also have a work force housing component? Mr. Taintor responded that was not his proposal but it was a proposal that was brought up.

Councilor Dwyer thought they were thinking along the community benefit line rather than the target percent line. The spirit of the discussion was that somehow, someday when they are adding senior housing they need to have some mitigation of some type to help them deal with the workforce issue. She does not feel this only applies to senior housing but it is a way they have to think about a lot of different things. It feels like it shouldn't belong as part of the definition but it should be part of the menu of community benefit. Mr. Taintor felt this was mitigation in the sense they are creating a demand they mitigate the demand. There was a question about including this in all types of developments rather than just senior housing. They happen to be looking at senior housing right now which is why it came up. Mr. Taintor felt there were two fundamental questions that are underneath all of these little details. One is the question of bringing in concentrations of seniors and what does that do to the voting blocks in the community, etc. Second is the question of whether affordable housing specific to senior housing or is it broader than what they are looking at? Are they just thinking of it now because this is the first big development coming in. Mr. Coker felt that the issue of affordable housing has kicked around for years but the City has never taken the specified step to develop affordable house per se as land is too valuable to put affordable housing on it. If this is one way to get a component of affordable housing then he would be for it. He would define affordable housing as not only median income but a lower income or percentage of median income. But, he is still stuck on the ownership/rental issue. He thought they had a lot of questions about what was affordability. Mr. Taintor felt it was a general definition, which is what is less costly. The technical definition, used by federal agencies, is a certain percentage, usually around 28% - 34% of your income spent on housing, including utilities. In the case of an owner occupied house it is principal interest and taxes and for a renter it is rent and utilities. The question is then 30% of whose income? You don't know what affordable is until you define who you are trying to target. Mr. Coker asked City Attorney Sullivan when an applicant comes to the Planning Board and is requesting a zoning change, are they under any obligation to approve it? He asked if an applicant meets all of the criteria for a "whatever it is" in come other area then they must give the applicant the request. Is there a similar thing on just a zoning change? Attorney Sullivan explained that of the items that come before the Planning Board are either subdivision or site plan review issues and the Board is acting in a quasi judicial capacity, their legal responsibility is to apply previously adopted criteria and if an application satisfies the criteria their legal obligation is to grant it. Occasionally something like Borthwick Forrest comes in and that is actually a request of the City Council that they consider amending the Zoning Ordinance to accommodate something being requested. The matter comes to the Planning Board because the City Ordinance says that before the City Council acts on a zoning amendment, it must refer it to the Planning Board for their advisory opinion. Both the City Council and the Planning Board are not

acting in a quasi judicial capacity but acting in an judicial capacity which gives you a much broader scope and it allows them to utilize criteria of their own development. There is no rigid set of principals they must follow. The only test is that they act in a reasonable fashion. In all the years he has represented the City of Nashua and Portsmouth the courts have deferred to the decisions of the City Council on these legislative questions every time except one and that was the Ramsey Hotel project and frankly he thought the Court was wrong in that case. Therefore, the bottom line is they have a lot of latitude, are not bound by any set of criteria and the City Council is under the exact same situation in terms of their obligations.

Councilor Dwyer felt, given the demographic profile of our State, they need to act on having some definitions related to senior housing. One way or the other they have to tackle what senior housing is. She wanted to raise the point about affordability. Of all the issues before them, she felt for herself this is one she got clearer on at the last presentation considering what makes sense for affordability. Affordability for seniors being such a different concept than what they have when they talk about affordability at other age levels that she has come to the conclusion that it can only mean below market, rather than below income because of the issues related to income, higher percentage spent for housing by seniors related to the sale of property. It is just a very different issue than all of the other things they apply when they apply the typical terms of affordability for work force. She also says that for new zoning for senior housing because they have so much housing devoted to low income seniors. That is a pocket they have taken care of and they will continue to take care of that. What they haven't taken care of is the below market piece. Mr. Coker agreed with Councilor Dwyer, however this kind of development has a demographic impact on this community. From the City's perspective there may be benefits in tax revenues with one model vs. another. The impact of this is what he is concerned about. He doesn't see this as affordable housing and the people who live there are not low income. They may sell their home and use the money to buy in and then have monthly maintenance which they pay for. To suddenly drop 600 older people into this community where people are very politically active will have a significant impact on the community. He looks at this as an unintended consequence. He is not convinced that this idea of senior housing will not have a serious impact on this community.

Mr. Coviello felt they were going in several different directions. He respects trying to get affordability inside this zoning change but he can't describe why. He is never comfortable forcing affordable house into zoning where at the end of the day it is not naturally affordable. Affordable housing should come from a density bonus where they do not need the hand of government stepping in to physically alter the price of things. They started an affordable housing zoning amendment and they should finish that. He would like to wipe the affordable housing off the place and just work on senior house. He would talk about affordable senior housing as part of it. They need to narrow this down.

Councilor Dwyer stated that is why she likes the idea of affordability being thought of as part of a community benefit because then they can get to it in a lot of different ways.

Mr. Coviello asked if she was talking about a menu of community benefits? Councilor Dwyer thought there were an infinite number of creative ways to think of it. State law has given the City the charge as a City dealing with affordability. They have to do it in some places. She agreed that this is the largest housing development to come before them. If they are not wrestling with it related to it, they are loosing the opportunity to do what they have been legislatively told they have to do. A menu based approach would allow other ways of thinking, mitigation, building somewhere else, subsidizing something else, or a variety of other way. They are not going to get anywhere with a density bonus. They just don't have the right land availability to get where they need to get with the density bonus.

Chairman Ricci stated his concern is the demographics changing drastically. He goes back to if his parents leave their home, what type of home are they leaving? Does that then open up a house in a reasonable neighborhood to allow a first time home buyer to be able to buy a house? Mr. Coker's

concern to him may give an opportunity for a young family to come in because the elderly are moving within their own town. That may be more a hope than the reality.

Mr. Coker asked what the average price of a house in Portsmouth? Mr. Rice stated it would be in the high \$300's. Chairman Ricci asked what was the average price of a house in Elwyn Park? Mr. Rice agreed it would be much lower. Chairman Ricci did not believe everyone would be coming from the high \$300 - \$500's. It would be his hope that it would be an elderly couple who bought their home in the 1960's. He likes Councilor Dwyer's approach of almost enforceability of having a menu. He is also concerned about the demographics and on the flip side, what other benefits may be created by this?

Councilor Dwyer stated that Chairman Ricci mentioned something that she had not thought about, that probably the community that is most progressive on housing and affordable house is Exeter and that is the place that had the big influx of the people the board does not want. Mr. Coker asked her to define who were the people that they don't want. Councilor Dwyer indicated that he was afraid of people who will sway the politics. Exeter has done the more progressive developments and it is the community that got the big influence of the wealthy people. They have not pushed them in a conservative do nothing direction but rather they are doing things more creatively than anyone. That has had to have a much bigger percentage on their town than it would on us. It is interesting that has happened. Mr. Coker felt the question would be where would these people come from? There were representations that most of the people would sell their homes in Portsmouth and move into the development. He is still concerned about an influx of well-to-do elderly. Exeter has always been a wealthy community. Chairman Ricci indicated that Exeter is a very stratified community. What benefits will that bring to the City? He felt a form based approach with a menu would work.

Mr. Coviello felt that every developer that comes before them, they advertise the age lower than the reality. People moving in will be late 70's and they are not going to move into a new community and they are not going to change the community. Mr. Coker felt when a community is designated as a desirable place to live, they will come from all over the country. Mr. Coviello did not believe they would at that age.

Mr. Taintor felt there is not a strong direction here for who we are targeting to. They are talking about possibly some type of affordability but not targeting a certain income level. Ms. Roberts was concerned about down below the median income area but he was not sure he was hearing that strong sense now. Councilor Dwyer felt that could be part of a menu. Mr. Taintor felt you have to know your goal before you make a menu. Councilor Dwyer felt they could mix proportionality with community benefit and play that in different ways. She doesn't think this is formula and the menu has to be scaleable and that affordability is one of those mixes within a menu.

Mr. Coviello felt that senior housing is no benefit but they then say they have to provide a benefit, such as having to donate money to their senior housing program, they will provide 10% of the units as affordable senior housing, they will provide 5% of the units as work force housing. That is what he is looking at as a menu. Mr. Taintor understands that concept but not know what they are valuing he doesn't know who they are targeting. The menu idea is nice but you have to know what your goal is and what they are looking for in terms of depth of subsidy. Without more than that, there has to be some sort of community benefit.

Councilor Dwyer mentioned the high end. They need 2 workers for everyone over age 62. She doesn't see how otherwise they can think about it. If they are thinking about housing, what are they trying to support.

Chairman Ricci liked the community benefit but his biggest concern is the demographic change so he would ask if they have a community benefit, would it be possible to have a benefit towards a fund that goes towards funding younger people. The yin is the demographics of this and the yang is a benefit

that goes towards younger couples. If they are getting older, have this community provide a subsidy of however they want to spin it, towards the others.

Mr. Coker still wanted to center on ownership vs. renter. He also reminded the Board that this is Office Research and they could build offices if they want and produce quite a few jobs, which is a pretty strong impact as well.

Mr. Coviello asked what was Mr. Coker's hang up about lease vs. ownership? Mr. Coker didn't believe it was a hang up but rather was a concern. There is a sense of ownership and price, there are tax benefits that accrue to the owner and he just want to understand the financial model. Someone is asking us to change the nature of our community and before he says "sure", he wants to know more about the financial side of this.

Chairman Ricci invited Attorney McNeill to join the work session. He personally felt it had been a very stratified process and that there were 18 different items they should be reviewing.

Attorney McNeill stated that they agree. There is the alphabet soup of defining elderly housing, work force housing and the ultimate issue of affordability. They have listened very closely and reviewed all prior minutes and they have reviewed recent legislation that goes into effect on September 15th which they think will facilitate a program that they would like to suggest. The program addresses affordability, work force housing and affordability. He indicated he would speak briefly to the background of what they have been through and they will talk about the new legislation and the proposal that they have. This particular piece of land has been under consideration by the Planning Board since 2005 and the original referral to them occurred 17 months ago. There have been five public sessions. They had presumed on February 14, 2008 that most issues had reached reasonable resolution. They were fully committed to drafting an ordinance but that was deemed to be inappropriate. They also presumed they would have drafting done based on the February meeting. When they came back in July, from their perspective, they felt they were back to ground zero. They had a lot of helpful discussions to move towards drafting an ordinance. The salient issues that require attention are as follows: They propose 412 independent units. The affordability of assisted living units and they propose 70 units. Whether a proponent for work force housing would be a component of the rezoning plan, and the way they are going to propose it, it would. What criteria should be used for the criteria affordable? The way they are proposing it, they don't have to reach that questions. But they will be able to on their own. What form of ownership will be utilized for the units? They propose to do this the same way they have from the onset. The owners will own the project and enter into agreements with people who will occupy the premises for a period of time and pay the monthly fee. What would be the cost of monthly payments and what repayments will be paid to occupants when they leave? They discussed this at great length previously and that is the model they wish to utilize. Demograph issues relating to the provision of housing for large numbers of older citizens. Mr. Coker, Mr. Coviello and Chairman Ricci have addressed that. He believes Councilor Dwyer's comment regarding Exeter is exemplary. The last meeting he attended in Exeter was held at the new Exeter High School which is about the most fantastic educational institutional in this area that was recently built after Riverwoods and other types of work force housing program. To assume there is a sudden turn in the demeanor of a community because there is an allocation to this type of housing, they should look to the Exeter example.

Attorney McNeill continued with the consideration of the general availability of workforce in elderly housing in Portsmouth. They know the lower tier of housing has been addressed to some degree and will continue to be and always will be. The fiscal impact of the project as compared with permitted uses, they have done previous graphs and they believe they will project \$1.7 million with a bottom line net revenue to the City. Discussion of basic infrastructure issues have been part of the discussion, but not much. As such, they believe those can be effectively addressed. Whether a zoning change should be specific to this site or apply to other sections of the community. They are proposing it applies to this site because there was concern that this would jump around the community. They are proposing a

very simplistic approach which is that a private developer will do a private project. That project will be assessed substantial fees that will be placed into a housing commission fund that has been established by the Legislature that the City can use and adopt in Portsmouth for work force and affordable housing. Mr. Stebbins will explain the process they are contemplating, the amount of money that will be generated, and the bottom line is they can do subsidies for this project, any place in town, for work force housing or affordable housing, and they will generate over \$4 million at the beginning and continue to generate money thereafter.

Mark Stebbins stated that one of the issues was not only the enforceability but they had a lot of discussions of how can they make sure their affordable units for Portsmouth people. Mr. Stebbins stated they cannot limit it to Portsmouth people as that would be discriminatory housing. They also asked how they can deal with the workforce housing issue. How can they make sure if they have 10% affordable, how can they make sure they are affordable to Portsmouth people. They wrestled with that also. How can they deal with the workforce issue in Portsmouth and how do they enforce it? What brought this out at the last meeting by Mr. Coviello is it should just be market rate because how can they deal with it otherwise. Their thought is to just make every unit that is occupied or changes occupancy, they will give \$10,000 to a fund that could be designated for workforce or affordable housing. Then it can be for Portsmouth people. This would be a rolling fund. There are 412 independent living units. This would not be for the assisted living units as they do not make any money on them. Every time one of the independent living units changes occupancy, there would be another \$10,000. Going back to the ownership model, this is the same ownership model that is at Riverwoods. It is a long term lease and when they leave and release it to someone else, they get a percentage of their money back. In Hanover, after seven years, you don't get any of your money back. At Riverwoods, they get 90% of their money back. They would have an annual audit and reconcile the money they paid in.

Attorney McNeill stated that the Legislature has facilitated this. There has been a new enactment with regard to communities recognizing their obligation as to workforce and affordable housing. He brought a relevant section which he felt helps in this case. The legislature has established what are called Housing Commissions which are locally controlled. He referred the Board to pages 4 and which read:

- a.) Conduct a housing needs assessment, which may be done in cooperation with the regional housing needs assessment compiled by the regional planning commission under RSA 36:47 II.5.
 - b.) Conduct activities to recognize, promote, enhance, and encourage the development of housing, particularly affordable and work force housing.
 - c.) Assist the Planning Board, as requested, in the development and review of those sections of the master plan which address housing, and those sections of the zoning ordinance, subdivision regulations, and site plan regulations that address housing or otherwise have the potential to affect the cost of availability of housing.
 - h.) Receive gifts of money and property, both real and personal, in the name of the city or town, to assist in carrying out the purpose of this section.
- II. The commission may acquire real property, in the name of the town or city, subject to the approval of the local governing body. ...

Attorney McNeill stated that the developer does what he does best, which is private development, but establishes a huge body of money to be used be utilized subject to the termination of the city alone wherever in the community it wishes, subject to verifiable contributions without any enforcement overlay other than an audit.

City Attorney Sullivan asked, based upon what they just said, do they suggest that they just discontinue everything they have done up to this moment because it doesn't go in that direction? The City has a lot of time and effort into something completely different. Attorney McNeill proposed, if they find this concept acceptable, they work to draft an ordinance that would facilitate the density and other controls, the ability to produce a project of this size to produce these funds. In other words, if they accept the threshold concept, then they facilitate the development of the site to be able to accommodate this. Attorney Sullivan asked his question in a different way. He asked if the proponents have any interest in the approach the Planning Board has been engaged in for this period of time or do they wish the City to change its direction completely? Attorney McNeill did not believe it was a yes or no question. He is suggesting that they believe what they are proposing is entirely responsive to what has been discussed for 17 months. City Attorney Sullivan was not saying that it wasn't but he asked if they notice the difference between what they said and what was talked about for an hour and one half this evening. Attorney McNeill added that it had also been talked about for 17 months. Their suggestion is to work to facilitate a development that will provide for this result and that would be their goal. If they found this proposal with the housing commission is acceptable then we would ask the staff to come up with an ordinance to permit the type of development that would result in what they are seeking. Mr. Stebbins confirmed that this is a different direction to accomplish the same thing. Attorney Sullivan indicated that they will stop spinning their wheels on all of the other items if they have no interest in it. Mr. Stebbins felt this simplifies the situation and they would rather go with the simpler situation and the City would be in control of the destiny. City Attorney Sullivan asked how they would secure the payment of these monies in view of change of ownership, bankruptcies, etc. Mr. Stebbins confirmed that is something they would have to discuss. Attorney McNeill stated it was a condition of approval that every time a unit is transferred. City Attorney Sullivan asked how do they know the money would appear?

Michael Kane stated that every time they put a tenant into a building they would have to get a Certificate of Occupancy (CO) and they could put the same restriction on this. In this zone, if you want to change the resident you have to go to the Building Inspector and get a CO. City Attorney Sullivan agreed that might be a way to trigger a payment but he's actually looking at something different. What if there is a bankruptcy, the buildings gets sold and they are dealing with a whole new owner. Attorney McNeill stated they would be bound by the same conditions. If this development turns over to a third party it will be burdened by a restriction in the ordinance. City Attorney Sullivan asked if they would secure the restrictions with a mortgage on the property to the City? Mr. Kane did not believe they could do that. Mr. Stebbins indicated that they haven't thought of this yet and he agrees with City Attorney Sullivan that something has to happen and some mechanism has to secure the payment. If this is a concept that the Planning Board and or the City Council likes, they can figure those points out. City Attorney Sullivan confirmed those were his questions.

Mr. Coviello asked if Exeter receives payment? Mr. Stebbins confirmed they just get property taxes. Mr. Coviello asked what the average stay of a resident. Mr. Stebbins indicated it was around every 7 years. Mr. Holden asked if they are talking about Riverwoods or another affordable units? Mr. Stebbins stated they were talking about a Riverwoods type project. Mr. Coviello assumed they were talking about \$4 million every 7 to 10 years would be more conservative.

Councilor Dwyer wondered if there would be perceived value in making this one or a set of menu options and maybe making this one of the preferred options. She would ask whether that strengthens what they have as a Zoning Ordinance and whether that would strengthen what they are trying to do as a model. City Attorney Sullivan felt if this is the way the developer wants to go and they are not interested in what they talked about earlier, the most efficient thing is if the Planning Board wants to recommend to the City Council to go in this direction. If the answer is no, then the whole process should be discontinued but if the answer is yes, then they should go forward the tonight's proposal. Councilor Dwyer was interested in the developer's response.

Mr. Coker noted that 17 months may seem like forever to a developer but this is the largest housing proposal in the history of Portsmouth. He always said you don't want to watch making laws. They are basically making policy here. He is stunned and he does not like this pressure and he is not sure what the answer is. He doesn't like saying that everything they have discussed has all changed and they have a new option that they want them to accept.

Chairman Ricci asked if they could allocate the menu money to anything they deem? It is his assumption that what someone buys an independent living unit, it is not deeded to them. This property will have one deed? Mr. Stebbins confirmed that was correct. Attorney McNeill added that the enforceability issue has been an issue all along. The simplistic way is that leases are not going to be recordable. How many developers come before them and say the City can audit their books? Chairman Ricci felt it goes back to enforceability. Attorney McNeill stated it was an accounting exercise. Chairman Ricci understands that but this is something that is difficult to enforce. Attorney McNeill did not believe it would be difficult to enforce. It seemed like there were two goals in his view. One was to provide consideration of affordability and also to consider the workforce housing component. They felt this took the alphabet soup difficulty out of all the different components of this and placed the disposition of the funds beyond their reach where the City could make the most appropriate determination.

Mr. Coviello was having a different opinion from what he was hearing from the other Board members. Before their presentation he had suggested that they make a contribution into a fund and now that is exactly what they are doing. He felt this perfect with everyone working towards the same goal. He understands that the legislation just happened but he does not see anybody in the wrong here and instead sees everyone working towards the same goal. He is very excited by it. Attorney McNeill stated the important point is that they do not want to sign tonight either. The conundrum was there was a common goal but it seemed to be difficult to get there. The legislature says communities have to provide for affordable housing and they provide a vehicle controlled by the local authorities for funding, advise and control.

Mr. Coker asked Attorney McNeill if he had anything to do with the drafting of this legislation? Attorney McNeill confirmed he did not and he did not testify. But he would testify in favor of it.

Councilor Dwyer stated that the Housing Commission concept is just one tiny portion of a series of related bills that were in last year and had many, many advocates because of a big crisis in the State. Although she doesn't see a reason not to do it, this is only one way to do this and they already have a fund in place where this money could go into for first time home buyers. She doesn't want them to get distracted in the legislation. The more important part to her in the legislation is that it requires all municipalities to take action and more responsibility for housing.

Mr. Coviello asked City Attorney Sullivan is this was spot zoning? City Attorney Sullivan was glad he asked that because any time you co-mingle payments of money and zoning you have a real potential legal problem. Buying contract zoning is illegal. What is being suggested tonight is if the City allows them to put in 412 independent living units, just earlier today described today by Rick as basically 400 apartments, they will give the City money. If you take away the affordability obligation, they will give you money to get affordability somewhere else. At the time Mariner's Village was re-developed in which the developer offered to give the City money in order to have a certain number of units and, in fact, signed a promissory note to that effect. The developer eventually refused to pay on the note, the City sued to recover and the Court ruled that they could not collect the money as they couldn't pay for re-zoning. Therefore he is concerned about the basic premise of this proposal.

Ms. Roberts indicated that they need some time to think about this. She felt the other side of the coin is her concern about the whole age demographic and she has no idea of any legal way to address that. Peter Fransaze has again come out in the paper that they are facing real challenges. She is concerned

that they are building a huge number of units for seniors when the City clearly needs families and she felt that is going in the wrong direction. That continues to be a concern for her.

Councilor Dwyer indicated to Ms. Roberts that they did discuss the age issue before she arrived. Councilor Dwyer indicated that the reason she asked City Attorney Sullivan the question that she did about whether it makes sense to try this as a menu of which this is one menu, also raises for her that the potential for thinking of other parts of the City where smaller age related developments, this may not be the only part in the City. They are not going to have big developments for the most part so her question is whether the zoning itself applies to more parcels. As one of the people in that demographic, they are getting older and they can't do anything about it. There are already a lot of older people in the community already. If this was 45 units rather than 400 units would they be looking at it differently.

City Attorney Sullivan felt if they like this idea then they have array of options of which way to go. Obviously, the risk he is suggesting are smaller if it is a smaller project.

Mr. Taintor referred to City Attorney Sullivan's question regarding connecting payments to zoning. One way that a lot of communities do it is as an option. They are talking about a density bonus for the site. They could require 10% affordable housing but as an option they can make a payment in lieu. That is only for the initial payment and he was concerned about the long term payment. He was not sure this would be a gift if it was part of a zoning decision.

The other item he wanted to comment on was the seniors in Lexington, MA has an unusual zoning ordinance. These 412 units are really just apartments. They could just have a density of people. If they want to allow residential development, it might be that 400 elderly units is the same as 200 apartments. Chairman Ricci stated that would be a back ended way of maintaining their menu. Mr. Taintor confirmed it would just be a different mix of people.

Mr. Coker addressed spot zoning. A few years back Mike's Marina wanted to re-zoning and the issue of spot zoning came up and he educated himself on that. He felt the key is that there is this legislation and a clearly defined public benefit. City Attorney Sullivan wouldn't word it that way. He does not automatically think this is spot zoning. It is a large area and consistent with things in the Master Plan.

Councilor Dwyer did some quick math. What percentage of what our deficit in terms of affordable housing does this add, and she thinks it is about 8 – 10%. Thinking about what they give for hometown buyers to bring that down to an affordable range that is reasonable within the 30 – 35% of median income. Figuring that gives them about 80 of those opportunity each time \$4 million turns over. What would this help us do with our deficit? How much would that contribute to what they are not doing.

Chairman Ricci concluded the work session at 7:20. They received a lot of information tonight. Mr. Taintor suggested putting this into a menu-type which makes it enforceable. They need to digest this and look it over. He applauds them for thinking outside the box. They need to work with Staff and in a month they should be able to have another work session.

Mr. Holden confirmed they already have a work session scheduled in September to work with the Board on the Zoning Ordinance. They should pick special date in October. Chairman Ricci wants to set a date and he directed Staff to work on a work session date.

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I. APPROVAL OF MINUTES

- A. Minutes from the July 17, 2008 Planning Board Meeting – Unanimously approved.

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II. ELECTION

A. Election of Vice Chairman;

Mr. Hopley nominated Paige Roberts. Mr. Coviello seconded them motion.

Mr. Rice made a motion to close nominations. Councilor Dwyer seconded the motion.
The motion to close nominations passed unanimously.

The motion to elect Paige Roberts as Vice-Chairman passed unanimously.
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Chairman Ricci advised the Board there were four items he would like to take out of order so they can be postponed. Mr. Rice made a motion to take these items out of order. Mr. Coviello seconded the motion. The motion passed unanimously.
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III. PUBLIC HEARINGS

B. The application of **Old Tex Mex, LLC, Owner**, for property located at **3510 and 3518 Lafayette Road**, wherein Site Review approval is requested to construct a 4,275 ± s.f. warehouse building with a 1,400 ± s.f. mezzanine office, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 297 as Lots 7 and 8 and lies within the Single Residence A district; This matter was postponed at the July 17, 2008 Planning Board Meeting. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

Mr. Coker made a motion to postpone this application to the September 18th Planning Board meeting. Mr. Coviello seconded the motion.

The motion to postpone to the September 18th Planning Board Meeting passed unanimously.
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D. The application of **Parade Office, LLC, Owner**, for property located at **195 Hanover Street (as proposed subdivided Lot 1)**, wherein Site Review approval is requested to construct a 25,270 ± s.f. 5-story building, consisting of a 128-key hotel, 7,500 ± s.f. of retail and 2,500 ± s.f. of restaurant, after the demolition of the existing building, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 125 as Lot 1 and lies within the Central Business B District, the Historic District A and the Downtown Overlay District (DOD); This matter was postponed at the July 17, 2008 Planning Board Meeting. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

E. The application of **Parade Office, LLC, Owner**, for property located at **195 Hanover Street (as proposed subdivided Lot 2)**, wherein Site Review approval is requested to construct a 10,850 ± s.f. 5-story building, consisting of 10,000 ± s.f. of retail and 36 dwelling units, after the demolition of the existing building, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 125 as Lot 1 and lies within the Central Business B District, the Historic District A and the Downtown Overlay District (DOD); This matter was postponed at the July 17, 2008 Planning Board Meeting. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notices into the record.

Mr. Coker made a motion to postpone these applications to the September 18th Planning Board meeting. Mr. Coviello seconded the motion.

The motion to postpone the two applications to the September 18th Planning Board Meeting passed unanimously.

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H. The application of **Aquila Chase and Marcia N. Chase, Owners**, for property located at **71 Baycliff Road** and **Stephen J. Little and Rosemarie Golini, Owners**, for property located at **82 Driftwood Lane**, wherein Final Subdivision approval (Lot Line Revision) is requested between two lots having the following: Lot 42 as shown on Assessor Plan 207 decreasing in area from 24,695 ± s.f. to 24,618 ± s.f., with 71.20' ± of continuous street frontage on Driftwood Lane and Lot 46 as shown on Assessor Plan 207 increasing in area from 12,203 ± s.f. to 12,280 ± s.f. and with 27.75' ± of continuous street frontage on Baycliff Road, and lying in a zone where a minimum lot area of 15,000 s.f. and 100' of street frontage is required. Said properties are located in a Single Residence B district and are shown on Assessor Plan 207 as Lots 42 and 46. (Plat plan is on file in the Planning Department Office and is identified as Plan #02-02-08). *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

Mr. Holden requested that this application be postponed to the November meeting or an earlier meeting with abutter notification.

Mr. Hopley made a motion to postpone this application to the November Planning Board meeting, or earlier with abutter notification. Mr. Coviello seconded the motion.

The motion to postpone to the November Planning Board Meeting, or earlier with abutter notification, passed unanimously.

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A. The application of **City of Portsmouth, Owner**, for property located at **3000 Lafayette Road**, wherein Site Review approval is requested to construct a 13,260 s.f. footprint Fire Station, after the demolition of existing buildings, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 292 as Lot 12 and lies within the General Business and proposed Municipal District; This matter was postponed at the July 17, 2008 Planning Board Meeting. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Steve Parkinson, Director of Public Works, addressed the Board and indicated this was an exciting project for the City and the Fire Department. It is for the replacement of the current Fire Station II at 2700 Lafayette Road to a new facility at 3000 Lafayette Road, at the corner of Ocean Road.

He first reviewed some of the history of this project so that the board has an understanding of how they arrived at this point in time. Situated along the southern portion of Route 1, Station II was constructed in 1967 to protect the growing residential and commercial occupancies of the southern area of the City. When this station was built it was considered a rural station and was staffed with one engine. Since that time the area has been extensively populated with residential, commercial and industrial facilities. The station has served the needs of the City for over 40 years but it can no longer do so. Due to changes in fire fighter equipment, especially the size of the vehicles, training requirements, health and safety rule and regulations dealing with the living conditions and separation of the occupants from the fire engine, along with deficiencies of the current facility, necessitated the investment into a new facility. In the fall of 2005 the City Council established the Fire Station Building Committee. After creating the committee, the City advertised an RP for the design services of the new station and in June of 2006 they selected Winterstreet Architects of Salem, Mass, to be the designer of the new station to be constructed on the existing site of Station II at 2700 Lafayette Road. Although not the ideal site, it would accommodate the basic requirements. It would not accommodate drive through bays which necessitated the backing of fire apparatus from Heritage Avenue into the station, it provided minimum parking to accommodate the fire fighters and shift change and not a lot for the public, existing marginal access to Route One and Heritage would remain with no room for future expansion. As the design progressed, they discovered 3000 Lafayette Road had been advertised for rent. After numerous calls with the owner, he agreed he would sell the property but only to the City of Portsmouth to be used for a fire station.

Mr. Parkinson stated that the City purchased the property in August of 2008. Their design team switched focus to the new site which created an opportunity to correct deficiencies that were inherent to the former site at 2700 Lafayette Road. Drive thru bays could now be provided in the new site, eliminating the need to back vehicles in from the Street. Safe access could be granted to Ocean Road and Lafayette Road. Plenty of parking could be provided for the firefighters on duty, the visiting fire fighters who might be there for training in the new training facility that is being incorporated into this facility. Because the lot is 2 ½ acres vs. less than 1 acre, room for expansion in the future is available. TAC has approved the project with stipulations at their August 5th meeting. As with the new library, the City will be designing and constructing this building to attain a silver LEED certification. They have contracted with a construction and management firm to oversee the construction of the facility and work with their architectural firm and design team to create an economical, efficient facility. He introduced Paul Grant of Winter Street Architects to review the design of the facility as well as the site improvements.

Paul Grant was present with their associate and David Emanuel. Mr. Grant indicated that the site provides ample area to site the building and allow for safe egress and access to the site. The apparatus bay in on the right and the central spine housing, administrative facilities and housing above and a training facility to the left. They have the tower with support facilities off of the apparatus bay that is a drive through facility. To the left of this are support facilities and to the left of that is further offices.

Mr. Grant demonstrated how the site works. To the left of the administrative offices is a training room. They will use the tower for a dual purpose training facility for situational training. The training room to the left is for academic training. It also serves a dual purpose as a meeting room. You enter from Ocean Road in the back and visitor and staff parking is to the left of the building. They kept the

apparatus bay a distance from the intersection and provides green space and the monument that currently exists at Station II. So, they have a soft corner, entry to the rear of the site, parking that is screened by vegetation and landscaping, separate access and control of the training facilities in case it is used after hours, it will have it's own egress. It has service facilities such as a kitchenette but the rest of the building is secure from the public. They have parking along the back, ample screening and dense vegetation along the back and they have done the same with a swale and vegetation for the neighbor to the right. The building sits very nicely on the site with it's perception from the road as being park-like.

Mr. Grant addressed elevations. The building is composed of red brick and metal siding with glazing around the overhead doors. Natural light is one of the strong points for the LEED Silver building. They used brick to echo the historic nature of the City. It is a modern building in a semi-industrial area yet it connects to Portsmouth's downtown. The hose tower is about 38' to the top of the building and about 24' to the top of the apparatus bay. He felt that Dave Emanuel can talk about the technical aspects of the site.

David Emanuel, PE, of Stratham spoke next. The traffic pattern for the project consists of access from Ocean Road, fire apparatus will go through the building and exit via Lafayette Road. NHDOT is currently reviewing a request for a pre-emption system, with flashing lights or an opticomm, like the City uses in other part of town, to control the Ocean Road/Lafayette Road intersection. The State of NH has given them a verbal conditional approval regarding the approval or endorsement of lighting controls for the intersection and a variance for the driveway throat which is a little wider than normal,

Mr. Emanuel referred to drainage for the site and indicated that the high point is along the Suzanne Drive subdivision, in particular on the Ocean Road side. All existing stormwater run off runs down Lafayette Road and into two catch basins. Those two catch basins run into one stormwater management line that runs along Lafayette Road, which is a State drainage line. Their design retains water on the site predominantly in two different directions and they can store several inches in the lawn before it empties into the State catch basin. They have created a landscaped buffer swale along the dry cleaner side of the site to slow the water down. The water from the new site which has some more impervious that the existing site will discharge to the same two points at a slower rate or an et decrease in stormwater. They have one pond outlet structure that will be easy to maintain in the swale and one proposed catch basin from the apron so the pavement from the front doorstep where the trucks come out will run down Lafayette Road into a low point. It is important to realize that the NHDOT is asking for a 12' land dedication along Lafayette Road as in the mid-80's they took a chunk of this site and right now in 2008 they are expecting another 12' for future widening of Lafayette Road.

The lighting was done by RDK Engineers from Andover and they are Dark Sky compliant LEED design. The drawing shows the fixtures and fixture values but they don't show the rings. It was an over sight and the dispersion rings were added to the drawing to help them detect a net zero at the property line. This is important because of the residential area behind the project. Care was taken with the lighting.

Mr. Coviello noted there was a concern about the mast arm being on State property. Mr. Emanuel indicated that NHDOT did not feel it was a concern. They are working with Steve Pernaw to revise it but that was not on the list of things that should be revised or changed at this time. Mr. Emanuel noted the Mr. Coviello was talking about a proposed new signal line before the driveway and it will have a red traffic signal on it so when emergency apparatus trip the signal devise, traffic will be stopped on both sides.

Mr. Coviello asked if there as been newer technology with this system? It seems that whenever he comes to an intersection where there is a fire stop at the lights, the time it takes for the vehicles to leave the building seems to be phased exactly with the time it would have been with a green light. So you

end up getting double queues of cars. Mr. Emanuel understood what he was saying but he cannot answer the question. He can get back to him however.

Chief LeClair stated there are two ways to set those lights up. One way is from the transmitters on engines, which is what Mr. Coviello was talking about and by the time they get out, it has cycled through. The other way is when you trip it there is a 45 second delay which they can set for that they can hit, get in the truck and then it stops the traffic. That way the lights will keep going and then they will cycle back. This system cleans the queue on Lafayette by the time they pull out onto the road in the truck.

Mr. Coviello asked if there are there sidewalks? Mr. Emanuel confirmed there are sidewalks in most of the areas shown. They start at Ocean Road and wrap around and stop at the face of the building for the driveway. They will continue the sidewalk another 25' up to the new driveway entrance. Another DOT stipulation is to sign a maintenance agreement with the State for the maintenance of the sidewalk.

Councilor Dwyer asked if there was any unusual runoff because it is a fire station? Mr. Emanuel confirmed that most of the apparatus is parked inside and there is a separate floor drainage system that goes into a tank with an oil separator before it is discharged in the stormwater management system.

Chairman Ricci noted that they are going for LEED Certification and asked if there was any consideration given for porous pavement for the residential parking on the left side? Mr. Emanuel confirmed that they looked at two different types. Because of the small size of the lot and the maintenance, they were discouraged and were encouraged to make up the LEED point in other areas. It was discussed at Pre-TAC as well as TAC but he could not give the specifics. Chairman Ricci indicated that he had just installed a piece of porous pavement out on the end of Highliner Avenue, off of Borthwick, and they should check it out.

Chairman Ricci asked where do they show erosion control and silt fence? Mr. Emanuel stated they are shown on Sheet C-3, Grading and Drainage Plan. They are along the driveway entrance and the silt fence is called out right around the front of the property. Chairman Ricci didn't see any haybales called out for bottom of line swale? He asked if they have any concerns with that before it is vegetated about it eroding away? Mr. Emanuel did not feel that was a problem. On their detail plan they showed a typical stop but they did not call it out on that plan. Chairman Ricci asked if they had done the drainage calculations for the 100 year storm? He knows it's not required and they did the 50 year storm but he likes to ask. Mr. Emanuel was not positive if they were in the most recent study. They have excess capacity so it wouldn't be any different than a 50 year storm. They were very challenged because the elevation only drops a couple of feet. If they received a significant storm it would wash down Lafayette Road as it does today.

Mr. Coviello referred to the Landscaping Plan. Mr. Emanuel stated that the Landscaping Plan was L-1 and was part of the architectural submission. Mr. Coviello asked about planting details? Mr. Emanuel confirmed they had the three details that are shown on that drawing for a typical tree and shrub. They did show a rain garden detail on the civil drainage drawings. Mr. Coviello asked if the roof is going to be a white roof? Mr. Emanuel confirmed it was going to be a white roof.

Councilor Dwyer asked about parking and the calculations for parking and maybe it would help to talk about the functions of the training room. Is that a room that is used for outside functions or strictly used by Fire Department?

Chief LeClair explained that they wanted to have a large enough parking lot, without using up a lot of green space, to hold 50 people. Right now they do not have the parking or facility downtown. This adds a facility that could be used for a training room and also doubles as an emergency operations center for the City to get them out of downtown and there is a radio room in the front of this facility for that purpose for a secondary dispatch. They will use it for training, aerial regional meetings and it

could also be used for community purposes if someone were interested. It has it's own bathrooms and kitchenette. They try to accommodate a large number of people. At any time, the rear parking will be half empty. Councilor Dwyer asked about some of the rolling vehicles that they have and whether they would be parking in some of those spaces. Chief LeClair confirmed that all apparatus and equipment will be inside under cover.

Chairman Ricci asked Mr. Emanuel about the TAC stipulations and to confirm for the record which ones had been addressed.

Mr. Emanuel confirmed that on August 5th the TAC meeting listed 27 stipulations and they were numerous as a number were related to NHDOT driveway, drainage and pre-emption lighting. They could not be completely addressed as, in the interest of cost savings, they did not revise those drawings before they had Planning Board feedback. Therefore, #9, #13 - #21, #24 and #25 are all related to NHDOT and they have not been addressed. The only other item was #22 which requires a Construction Management & Mitigation Plan. All other items have been resolved with City staff.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Coviello made a motion to approve with the 27 TAC stipulations to allow City Staff to confirm which are completed. Mr. Patenaude seconded the motion.

The motion to approve passed unanimously with the following stipulations:

Stipulations from the August 5, 2008 Technical Advisory Committee Meeting:

- 1.) That an executive summary to the drainage study shall be prepared for review by DPW so that it is easier to read;
- 2.) That the applicant shall review and make certain that they took into account the abutters roof (dry cleaners) when they sized the outlet structure for the catch basin in front of the fire station;
- 3.) That the applicant shall list the mounting heights for the luminars on the Site Plans;
- 4.) That the water main extension that will run along the front of the project shall be a 10" water service, rather than the 12" water service shown on the Site Plans;
- 5.) That the water service shall end with a gate valve so they can extend it later if needed, and shall be noted on the Site Plans;
- 6.) That the 1 1/2" water line going out the intersection, right before the water gate valve, should be tapped into the 10" water main;
- 7.) That the 8" fire service entering the property shall have a gate valve for the hydrant and a gate valve for the fire service right before it enters the building (so that either one can be turned off without effecting the other for repairs or maintenance), and shall be noted on the Site Plans;
- 8.) That the domestic water service shall be tapped on the downtown side of the fire service, and shall be noted on the Site Plans;
- 9.) That the applicant shall provide the City with a letter of concurrence from NHDOT on the Stormwater Plan;
- 10.) That the Landscape Plan shall be reviewed for any conflicts with the drainage swale in the back of the property;
- 11.) That Note 12 on Sheet C-5 (Site Utility Plan) shall include wording at the end as follows: "and NH Water Well Board Requirements";
- 12.) That Note 1 on Sheet C-4 shall include the record number;
- 13.) That the mast arm shown on the Site Plan shall be outside the new DOT right of way line;

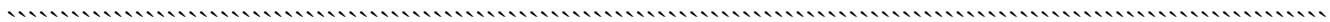
- 14.) That the applicant shall review any conflicts with the proposed or existing utilities with the proposed conduit from the mast arm next to the firehouse;
- 15.) That the Fire Chief shall determine whether a signal pre-emption button shall be included inside the building and shall be noted on the Site Plans;
- 16.) That the applicant shall obtain specifications for the fire equipment for approval by NHDOT and the City;
- 17.) That the face sequence diagram shall be revised to represent what is actually shown on the Site Plan;
- 18.) That an additional pre-emption strobe shall be placed on the Longmeadow Road mast arm;
- 19.) That the note referring to the pre-emption receivers shall be changed to indicate that they should be put on the mast arms rather than the signal poles;
- 20.) That the proposed fire signal head shall have 12” lenses and so noted on the Site Plans;
- 21.) That the Applicant’s traffic engineer shall confirm why the phases were changed on the signal and as a result the controller will need to be changed;
- 22.) That a Construction Management & Mitigation Plan shall be prepared by the Applicant for review and approval by the City, prior to the issuance of a building permit, to include protection of the catch basins in and around the site;
- 23.) That the parking spaces shall be 9’ wide and so noted on the Site Plans;
- 24.) That the driveway permit shall be approved by NHDOT prior to the commencement of any construction;
- 25.) That the pre-emption plan shall be approved by NHDOT and DPW prior to the commencement of any construction;
- 26.) That the applicant shall work with the Police Department Communications Center to conduct a site survey regarding radio communications;
- 27.) That all underground utilities shall be clearly identified on the Site Plans;

Mr. Holden advised the Board members that they have in front of them Exhibit 3, which comes from their original referral back to the City Council on the recommendation to secure the new site. They are asking whether the Board would like to make a recommendation to the City Council of two things. One, that when the new Fire Station is occupied, that they find the existing station to be surplus unless there is a municipal department that has an interest. Two, that the zoning for the property should change from Municipal to the surrounding zone which is General Business. Because of the time lines, this is intended to give guidance to the City Council.

Mr. Coker asked Mr. Holden to define “surplus” and clarify whether it means for sale, rent or lease? Mr. Holden confirmed the disposition would be up to the Council but effectively there is not Municipal purpose to be served by it unless there is another department that identifies it. He would anticipate that the Council would actively market it but that would be up to the Council.

Mr. Coviello made a motion that, that when the new Fire Station is occupied, that they find the existing station to be surplus unless there is a municipal department that has an interest. Secondly, that the zoning for the property shall change from Municipal to the surrounding zone which is General Business. Mr. Rice seconded the motion.

Motion passed unanimously.



C. The application of **Parade Office, LLC, Owner**, of property located at **195 Hanover Street** wherein Final Subdivision Approval is requested to subdivide one lot into three lots with the following: Proposed Lot 1 having 64,941 ± s.f. (1.49 ± acres); Proposed Lot 2 having 26,585 ± s.f.(0.61 ± acres); and Proposed Lot 3 having 83,863 ± s.f. (1.93 ± acres); and lying in a zone where a minimum lot area of 1,000 s.f. is required. Said property is shown on Assessor Plan 125 as Lot 1 and lies within the Central Business B District (CBB), Historic District A and the Downtown Overlay

District (DOD); *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Jeff Johnston, of Parade Office LLC, was present to request final subdivision approval. This will allow them to start the Portwalk project and demolish the Parade Office Mall. They have postponed the site review applications so they can submit a plan for Lot #3 to address the concerns about what it would look like in the event the development is delayed. As a preview, they will be submitting a Site Review application for Lot # 3 that provides for attractive green space with finished sidewalks and street trees. They hope that this will alleviate the Board's concern. Mr. Johnston reiterated that they are fully committed to developing the Portwalk Master Plan as originally proposed. In the event the development of Lot 3 is delayed, they are as concerned as anyone regarding its appearance as it will be across the street from their new hotel and their new residential and retail buildings. He understood the Planning Board's concerns for what the lot will look like as the gateway to the City and they completely share those concerns as it will be the gateway to their project. To reiterate, Mr. Johnston explained that the reason they are proceeding on the subdivision plan is to give them the opportunity to develop the hotel and residential building in spite of a challenging financial market.

Mr. Johnston indicated there were other concerns raised by the Planning Board and members of the public during the last meeting about blasting and parking at the Hilton Garden Inn. They met with that individual and discussed both of those issues. There will be much less blasting than the pervious plan and the City has strict regulations on blasting which they will adhere to.

Parking at the Hilton is 100% valet and hotel parking is mostly at night which gives them many options to park cars. They would not move forward if it were to hurt their existing asset.

Mr. Johnston thanked the Board for their time and introduced Gregg Mikolaities of Appledore Engineering.

Mr. Mikolaities stated that they were last before the Board on July 17th when they granted Preliminary subdivision approval with five stipulations. He confirmed that Lot #1 is the hotel, Lot #2 is residential and Lot #3 is the office building. It is a 4.03 acre lot and the lots and buildings meet all zoning requirement. He addressed the five stipulations.

- 1) That the applicant, Planning Department and Legal Department shall work together to submit an acceptable approach to the lot line issue as part of the final subdivision approval; That is agreed. There has been a dialogue going on and Mr. Holden may have some additional stipulations to expand that
- 2) That the plat plan shall indicate the subject property is in the Downtown Overlay District (DOD); That is done on the revised plan as Note 1.
- 3) The property monuments shall be placed per the requirements of DPW; Agreed.
- 4) The applicant shall submit electronic data to DPW suitable for updating City Assessing records. Done.
- 5) That when the aforementioned conditions have been completed, the applicant shall filed a final subdivision application. That is obviously done.

Mr. Mikolaities confirmed that tonight they were present just for the three lot subdivision. He displayed a plan showing what Lot 3 would look like with grass and street trees. That concludes their presentation and they will be back for Site Review for Lots 1,2 and 3.

Chairman Ricci recognized two pieces of correspondence from Sharon Cuddy from Donahoe, Tucker and Ciandelli, on behalf of the Hill Condo Association dated today regarding the Site Review applications being withdrawn today.

Ms. Roberts asked them to comment on the Department Memorandum regarding conversations and meetings between the applicant, Planning Department and Legal Department. She was wondering the status of the additional stipulations regarding demolition and posting of a bond.

Mr. Holden volunteered to give a brief overview and Attorney McEachern could confirm. What the Board intended to do with the first stipulation was to assure there would be a discussion on how this area would be developed. Part of the problem was that a lot line ran through a structure and there needed to be a way of doing it. Staff came up with what it thought was an innovative way but it was too complicated. Attorney McEachern suggested they recommend a third condition that the Parade Mall building be demolished which assures it will be done and that everything is in place before the Plat plan is recorded to effectively create the three lots. If the Board makes it a condition, proof is when the building is taken down. The proof of the condition that there is a private street agreement, which is significant, is when the Council acknowledges it and approves it. All other conditions have been satisfied.

Attorney McEachern confirmed that Mr. Holden accurately stated what happened.

Mr. Coviello asked where was the teeth to make sure Lot 3 remains green if nothing gets built there? Mr. Holden responded that when they certify that the building has been demolished, that includes the restoration of Lot 3. He suggested that the Board may want to make it a condition upon that particular exhibit.

Attorney McEachern clarified that during construction of Lots 1 & 2, Lot 3 will be the staging area and will be grass when Lots 1 and 2 are complete.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Holden explained the importance of the condition that the City Council be involved in the private Street Agreement. By bringing all three lots in for site review, they are all brought together by the street agreement. They can either bond the street or construct the street and then create the lots. This mechanism insures the street is constructed in the manner it is intended. It is very important to the subdivision approval, subject to #1 & #2 and #3 that the Parade Mall building be demolished.

Mr. Coviello made a motion to approve with the two stipulations in the Department Memo, #3 (above) and #4^h that the restoration of the Lot 3 occur upon the completion of Lots 1 & 2. Mr. Hopley seconded the motion.

Chairman Ricci asked if they need to define “completion” of the two buildings? Mr. Coviello suggested upon receiving Certificates of Occupancy? Chairman Ricci felt that makes sense. Mr. Hopley added they will have to demobilize and clean it up and more than likely when the building takes occupancy there will still be equipment and materials over there. Attorney McEachern suggested within 6 months of the CO. Mr. Coviello agreed that was acceptable.

The motion to approve final subdivision approval passed unanimously with the following stipulations:

1. Approval by the City Council of the private street agreement and all related public/private utilities, authorities and services;
2. That the Plat plan shall indicate the subject properties are in the Downtown Overlay District;
3. That property monuments shall be placed per the requirements of the Department of Public Works;
4. That the applicant shall submit electronic data to the Department of Public Works, suitable for updating the City's Assessing Records, and
5. That the restoration of proposed Lot #3 shall occur no later than 6 months after the issuance of a CO;

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F. The application of **150 Greenleaf Avenue Realty Trust, James G. Boyle, Trustee, owner**, for property located at **150 Greenleaf Avenue**, wherein Site Review approval is requested to revise parking and drainage and add a new parking area and a drainage treatment area, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 243 as Lot 67 and lies within the General Business district; This matter was postponed at the July 17, 2008 Planning Board Meeting. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech, on behalf of the applicant, addressed the Board. Also present were Dennis Moulton, the Site Engineer from MSC, James Boyle, principal of 150 Greenleaf Avenue, Corporate Council John Kuzinevich, Jim Gove, their environmental expert and hopefully they are expecting Steve Pernaw, their traffic expert.

They have been before TAC on three occasions, resulting in a favorable recommendation. They have appeared before the T & S Committee again with a favorable recommendation. They have been before the Planning Board once previously and were tabled for additional information which he believes they have provided. With that being said, he turned the meeting over to Dennis Moulton who will go through the project. There was a lengthy presentation at the last meeting and they will go through the items that were of concern at that meeting.

Chairman Ricci clarified that the hearing was postponed at the last meeting and not tabled. Attorney Pelech agreed that was correct.

Mr. Moulton stated that this is a project that has been before this Board previously. The property is located at the corner of the Route One By-Pass and Greenleaf Avenue. It was previously a technical college as well as office and other various uses since being purchased by Mr. Boyle and converted to an auto dealership.

The proposal boils down to an expansion of pavement on the site. He displayed the current configuration of the parking and the darker shading showed the expansion of the parking. For the most part, the parking expansion is happening to the north and east along the By-Pass area. They had a number of issues that needed to be resolved. Many were additional notes and clarifications on the plans. They have addressed stipulations #3 - #11, #16 -#20, #22, #23, #25 and #29 with notes on the plans. That brings them down to a lesser number of items to concentrate on.

Mr. Moulton addressed drainage performed by Dr. Roseen at UNH. At the last meeting the specific concern of the Board was the presence of ground water test pits done in the northern gravel wetland on

site. They submitted revised plans and a letter to Dr. Roseen requesting that he evaluate the condition and determine whether it has any significant impact to the design or any significant impact to the function of the stormwater system. Late today they received an email with an attached letter from Dr. Roseen which he passed out. Dr. Roseen has basically said that he reviewed the plans, the plans are in conformance with the design criteria that he would prefer to see for the gravel wetlands and also that he has looked at the function of the gravel wetland and sedimentation bay in terms of high ground water and has determined that it would not be an issue of the functionality of the gravel wetland but that the only additional measure he would consider in terms of construction of the gravel wetland is soil compaction of the sediment forebay to slow down the infiltration of high ground water into the sedimentation bay.

The second item, Stipulations #21 and #22, is the issue of when the lights would be switched to night study lighting levels and the plans have been changed so that note does reflect that the lights will be dimmed to the night study levels at 10:00 pm so that issue is fully addressed.

Stipulation #12 still needs to be addressed as it is for a Construction Management & Mitigation Plan. That will be prepared by Attorney Pelech for review by the City.

Stipulation #14 had to do with signs meeting the City Sign Ordinance. The Applicant has agreed to this. There are on going discussions regarding signs which will be successfully resolved.

Stipulation #15, the Landscape Plan, he skipped over for the moment.

Stipulation #24 was the requirement that light levels be measured post construction and they have agreed to that..

Stipulation #26 required that Dr. Roseen provide inspections of the gravel wetlands prior to back filling and they have agreed to that and have added a note to Sheet 6.

Stipulation #27 was that the maintenance plan for the gravel wetlands should be added to the Site Plans for review and approval by David Allen. The maintenance plan has been added to the site plans but he was not sure whether David Allen has reviewed it yet but they will continue to work towards that. He does not anticipate any additional issues in light of Dr. Roseen's review.

That left Stipulation #15 which is the Landscape Plan. Mr. Moulton indicated that they met with City Staff last week to discuss the landscape plan and review tree plantings and what exists on site and what has died on site. They provided a colorized plan which shows the existing trees of good health on site and the trees that need to be replaced. They have a number of plantings which are new for the site. In discussions, this is the direction they were asked to go in. Their expectation last time was for additional plantings along the Route One By-Pass. He would represent that auto dealerships are a different beast than other uses. Their display area is their lot. You don't see dealerships with tress plantings as they try to maximize visibility. It would be similar to the Board asking the businesses on Market Street to add plantings to block their windows.

Mr. Moulton confirmed that is how they have addressed the stipulations.

Chairman Ricci stated that one of his concerns from last month has been further brought to light. For the record, the northerly detention where they have the wetland gravel, he had a concern with a couple drainage pipes and that the water table that would fill up decrease their capacity. When he reads Dr Roseen's letter he elaborates and says "considering the drainage and water table. Wet ponds are commonly built below the water table." Chairman Ricci felt his comments seem to be reconfirmed by Dr. Roseen's about those two drainage basins. He assumes when they ran their drainage calculations, they assumed the drainage pipes were full when they ran them. Mr. Moulton stated he did not. Chairman Ricci felt, in his opinion, that still had not been addressed. He also thinks they have a nice

opportunity along the By-Pass where their cars are probably 2-3' about the grass swale, they have an opportunity to beautify the front area with landscaping. He would like them to address the drainage but he is going to keep it on the record that he feels this, at some point, may become an issue. Chairman Ricci asked if Mr. Moulton wanted to address it or not.

Mr. Moulton indicated he would like to address that. He had a lengthy phone call with Dr. Roseen that morning in which they discussed that specific item at great length. He explained Chairman Ricci's exact concerns were. Dr. Roseen called him back after reviewing the plans and report and he said what would basically happen was if water leached into that sedimentation bay, it would exit through the outlet pipe of the sedimentation bay and it would not have any significant depth in the sedimentation bay. What you would end up with would be a wet bottom of the bay which he said would not impact functionality of the sedimentation bay. Chairman Ricci asked about the drainage leading to the bay. He believes it is a fact that their ground water is going to be above the invert pipe. That has not been addressed in the Dr.'s letter and he will leave it that he has issues with that. Mr. Moulton's stamp is on the plan. Mr. Moulton stated that he stands by the plan.

Councilor Dwyer stated that the City's performance standards are very clear about landscaping. They do exempt for Central Business A & B, saying the requirements are recommendations, meaning it is not a recommendation for General Business. It is so interesting that they use the Market Street comparison because many Market Street stores have complimented the City for the trees planted as it enhances their store fronts. Councilor Dwyer asked what other kinds of landscaping considerations did they consider? Attorney Pelech stated that Mr. Boyle agrees with Chairman Ricci. They don't have any problem with putting in small clusters of low landscaping as long as it does not interfere with the drainage swale. They can work something out that is acceptable.

Mr. Coviello asked about trees where the trunk is high enough so they don't get the site blockage. Attorney Pelech stated if they could find such a thing, they would consider that. Mr. Coviello asked about the issue with the gravel wetland and if they are installing the soil liner that Dr. Roseen references? Mr. Moulton confirmed they are and they will add it to the plan.

Mr. Coker asked Chairman Ricci, as a construction expert and professional engineer, whether it was his contention that this high water table will impede the function of the gravel wetland? Chairman Ricci confirmed that he has concerns. He is not saying it will or won't but it appears to fly in the face of conventional engineering. At this point, he is just putting it on the record and as long as they have brought it to their attention, he has done his job. Mr. Coker cited the regulations for drainage which says if the site development lacks adequate stormwater sewers or provisions for surface drainage such that adjoining properties may be damaged by displacement or run off of water." It says lacks adequate stormwater sewers. He is not a construction expert and he defers to Chairman Ricci's opinion. Chairman Ricci stated he is going to assume that these drawings have been reviewed and they have a stamp on them that it is a difference of opinion but it should not hold things up.

Attorney Pelech agreed with Chairman Ricci. The City's independent engineer has reviewed it and does not feel there is a problem. The Chair has expressed his concerns. If there is a problem down the road, the Planning Board and the City can ask the applicant to address it.

The Chair called for public speakers.

Charlie Griffin, representing Judy Griffin, of 210 Hillside Drive, in trust. He has three exhibits which he passed out. As reflected in the minutes of last month, he spoke at great length about traffic and the overall impact to abutting properties. He reminded the Board that they sit in a quasi judicial capacity and they need to make sure every "t" has been crossed and "i" has been dotted. He referred to the landscaping plan. His Exhibit #1 was from the Site Review Regulations and he read "The Site Review Regulations in not way relieve a developer from compliance of the Zoning Ordinance." And "No Site Plan will be approved unless it complies in every respect with every pertinent ordinance and

regulations.” His Exhibit #2 is the excerpt from the Zoning Ordinance that talks about landscaping, which Councilor Dwyer referenced, and he emphasized that it requires a tree lined landscape area abutting the principal right of way, consisting of a mixture of deciduous and conifer trees a minimum of 2” in caliber calculated at a minimum rate of one tree for 30’ of linear property frontage adjoining a public way. He reviewed the landscape plan which was in the Planning Department file yesterday morning. The site review regulations are quite clear, that no site plan will be approved unless it complies in every respect with all pertinent ordinances and regulations. He did not believe there was any flexibility in that requirement. He believed this property has about 800’ of frontage along Route One and that would mean about 26 – 27 trees. The applicant is not eager to do that as it would block the view of his cars, nothing says automobile dealerships are exempt. Since this landscaping plan does not comply he does not believe they can approve this application. He feels the plan must be disapproved under Site Review Criteria b. as it does not comply with all City ordinances.

John Kuzinevich, Corporate Counsel for Mr. Boyle, addressed the landscaping issue and landscaping ordinance. They are not asking for a variance in terms of planting trees along the right of way because the ordinance itself, Section 10 503-A-1, only requires trees to be planted every 30’ along the principal right of way and it specifically addressed corner lots and only requires either the principal right of way, or if the applicant wants, in conjunction with the City Arborist, on the secondary right of way. Their driveway entrance is on Greenleaf and their legal frontage for development of the lot is on Greenleaf and Greenleaf is the principal right of way. They have landscaped that with trees approximately every 30’ except where they interfere with site distances for the safety of traffic. Therefore, Attorney Kuzinevich felt that in that sense they have fully complied with the landscape ordinance. The only requirement along Route One would be in the general section of the ordinance for internal buffering and screening to make a site aesthetically pleasing and that is why they have tried to work with the City in terms of improving what their first landscape plan was. They have a question about exactly what it means to be pleasing as people have far different interpretations and that is why they want to work with Staff to put in some low lying landscaping that meets the intent, tried to landscape and takes advantage of the opportunity. However, they also need to be mindful of the water that comes across Route One onto the Toyota property and the drainage swale that exists as they do not want to lose the ability to properly maintain that and lose the flow of water that isn’t even generated on their site. Secondly the City has an easement from the intersection, which he believes runs 180’ in parallel with underground drainage piping installed by the City. They don’t want to plant landscaping that is a danger to the City’s underground piping. They have looked at the overall site and they have complied fully with the planting trees in all areas where there is going to be customer parking and employees parking and the islands in front of the building. The Board had pictures which they provided showing this is a heavily “treed” site. The only functional side for display purposes is the Route One By-Pass. They are not trying to violate any Zoning Ordinance which would cause this plan to be disapproved and they are asking to fine tune it with staff.

Councilor Dwyer stated she was not a lawyer so it probably just depends on the interpretation of the second phrase of the ordinance, “The trees to be planted every 30’ along the principal right of way or along additional rights of way as determined by the City Arborist”. She wanted to make it clear that the second phrase is what he is referring to in terms of working with the staff. That is the City Arborist determines that it is appropriate to do so then they could choose to do the additional rights of way. She asked if that was the correct interpretation? Attorney Kuzinevich did not agree with that and stated that they believe that gives the applicant the choice to pick one right of way or the other and it was the City Arborist who would say if the applicant chose to landscape the secondary right of way, the City Arborist would have the ability of whether that was appropriate or not. But, this is mute because the City does not have an arborist so that this whole section of the ordinance cannot come into play. Councilor Dwyer responded that the City has an entire Committee of people who are functioning in place of an arborist. Mr. Holden stated it is appropriate for the Board to look at Article V and he felt they should use it as guidance. There may not be a distinct City Arborist but the condition was that the landscaping plan shall be approved by the Planning Board with increased tree planting along Route One. He suggested using Article V for guidance for whether they feel 15 has been done. If there is a

need for an interpretation of the Zoning Ordinance, the proper Board would be the Board of Adjustment. He indicated that he felt Councilor Dwyer was correct and he would add that reading the other sentences in that section gives a pretty clear intent that there is a great deal of flexibility in there and that flexibility is addressed also by the way they put a condition, which is condition 15 in this case.

Chairman Ricci thought the Board had agreed that Mr. Boyle has indicated that he will work with staff on Route One Plantings? Attorney Kuzinevich agreed and indicated he would not have even gotten up except for Attorney Griffin stating that as a matter of law they couldn't approve this plan because of a violation.

Mr. Coker heard that Route One was not their principal right of way and City Attorney Sullivan was present so he would ask his opinion if that is a reasonable thing to further the discussion as to whether or not there should be additional language. Mr. Holden asked him to direct the question to him and he responded that Route One is a principal street and also Greenleaf Avenue is a principal street. There is more than one lot for frontage. Mr. Coker felt the question as presented by the Attorney is that they don't really need to worry about Route One because that is not their principal right of way. In response, Mr. Holden referred him to the Boards condition #15 which states that that Landscaping Plan shall be approved by the Planning Board with increased tree planting along Route One.

Chairman Ricci felt they were all saying the same things and all dancing around the same fire. Mr. Coviello called a point of order and asked if they were still in a public hearing and whether they should be having this debate now. Chairman Ricci agreed they probably should not be having the debate at this point.

Attorney Griffin, second time speaker, regarding the principal right of way, he asked the board not to confuse the street address of the property with the principal right of way. He finds it hard to believe that Mr. Boyle would have bought this property because there was a nice little outlet on Greenleaf Avenue. It was clearly the Route One By Pass and the view that adds presence to the dealership. That is the way it is laid out and that is the way the additions are going. He is also concerned about the idea that the applicant will work with staff because, once again, the Ordinance is pretty clear that they have to have the plan in place. He doesn't think there is any flexibility with that section of the Ordinance.

Attorney Pelech stated that they do not have any access to the Route One By Pass, their frontage is 150 Greenleaf Avenue. They met with the City on more than one occasion and they said to City staff that the ordinance says they have to work with the City Arborist and they were advised that the City doesn't have a City Arborist and they were asked to work with staff. They worked with David Holden and various staff members and put together a revised landscaping plan. They have offered this evening to embellish the plan provided it is to their choosing reasonable and it does not block the visibility of the product they are trying to display. They do not have a problem with low landscaping, berms, rocks, woodchips, etc. If somebody replacing the City Arborist says they need two more trees, they will consider that but they need somebody to work with because the City does not have an Arborist. They feel they can work with any committee or individuals which they have done to this point. Unfortunately the ordinance says they have to work with this person but this person doesn't exist. They are willing to work with the City and that is the most that this Board can ask.

Jim Boyle, owner of the property, stated that the Board received pictures in their packets, he had better copies on photographic paper which he distributed for their review. Mr. Moulton had originally shown the plot plan and the dark section is the only part of the property that they are touching at all. The building never left the footprint since 1965. There are not changes to the Greenleaf side of the property. They are just adding extra plantings. His photographs show numerous planting on the property and he has several acres of woods. They are not trying to get out of anything. What they are trying to do it make sure the place looks great and do the landscaping that will make it look good, maintain some of the historic value because he has pictures of 1939 that shows a big front lawn on it. It looks the same today as it did in 1939. They are putting sprinklers in the front lawn and they will

have gardens. He had mentioned to the City that he doesn't want to put items on the palm and be held to it all the time. They want this place to be nice and if it is inviting, customer will come. Everywhere they call a customer impact area will be well landscaped, lit and clean. He thought the pictures may help them get a better idea of the site.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Coviello referred to a section of the Site Plan Review Regulations that has not been brought up yet was screening and landscaping, section C., page 9. They talked about item 2 at previous meetings where parking lots shall be interrupted by shade trees and it seemed to be implicit in their discussion that this is not a parking lot but rather is a product storage area. However, Mr. Coviello does not believe the plan that they have meets the criteria of this section. He understands the applicant is willing to work with somebody but the plan they have does not meet their current Site Review Regulations and he does not know where to go from here. Mr. Coker felt that, unless the applicant is willing to comply with their regulations, they have no choice but to turn the applicant down. They are bound by their regulations.

Mr. Hopley indicated that he didn't disagree with all of this but they have approved projects in the past pending the applicants working with City Staff? Mr. Coviello agreed but they asked them at the last meeting to do that and they have come back with two trees that do not meet the Zoning Ordinance.

Ms. Roberts felt that a tabling motion would be appropriate. There is obviously some difficulty in terms of working together and she thought it needs to come back to them again. She agrees with Mr. Hopley that it is fairly routine for us to pass this on to Staff, but in a lot of those cases it never comes back and it seems in this case it needs to come back.

Mr. Coker felt before making the tabling motion, he had a couple of questions which he was not able to ask before. There are some issues that he is still concerned about, one is the leaking sewer referred to earlier and two, he reads their regulations regarding wetlands, Article VI, Inland Wetlands Protection lays out those areas that have a 100' buffer and he understands that has been taken care of in this case, however it does not preclude them from with sensitive to non-jurisdictional wetlands. He is concerned about a snow storage area on the edge of the wetland. He is concerned about the run off right into the wetlands. Also, Mr. Desfosses identified and talked about a stream on the property that he would like to know more about. These give him great pause for concern.

Chairman Ricci agreed with Rick Hopley but there seems to be a disconnect between actually sitting down and having the meeting. They seem to have agreed to landscape what they want them to landscape but they haven't show it to them yet. His opinion is to postpone this and he would ask if Councilor Dwyer might want to sit in on the meeting as this is a gateway to the City. He acknowledges that the staff always does a great job with this but he wouldn't mind sitting in on one of the landscape meetings. Councilor Dwyer stated she was inclined to agree with Rick Hopley for consistency purposes and she would take the advice of staff, she has heard the willingness to move forward with staff on this, she felt there might be an alternate way to assure the board. She's not sure it's enough to hold up moving forward with this. She would ask staff if they think this is different from other issues in which they have approved something and given staff the authority to let them know when the stipulation has been met or whether this is qualitatively different.

Mr. Holden felt that she asked a difficult question. Staff has met with the applicant and representatives and they have made progress. They had stated this plan is meager and they added two trees. Article V gives guidance. If it is an interpretation of the Zoning Ordinance, someone can bring an administrative appeal before the BOA. They have been trying to have the Planning Board approve it. This is not the

normal way that they handle landscaping plans. He doesn't think they have had one where they haven't been able to reach an agreement. For an example, Cross Roads is building a major addition on a much smaller lot and they have some 150 trees and shrubs planned. The Zoning Ordinance and Site Review Regulations give guidance and ultimately the regulations are the Board. Ultimately the Zoning Ordinance is the Board of Adjustment and staff is certainly willing to work with the applicant. The Chair may have a good suggestion that a Planning Board member join them in that meeting. Staff is not trying to bring this to a Board of Adjustment action at all but Stipulation 15, in reference to what the Planning Board felt was happening, you decided to retain control and approve the Landscaping Plan.

Mr. Coker asked about snow storage and if that was a valid concern? Mr. Holden felt his question was appropriate however he pointed out that there are no jurisdictional wetlands due to the Court finding. Mr. Coker understood that. Mr. Holden felt his question was appropriate in terms of run off and potential impact.

Chairman Ricci allowed his permission to have the applicant address that.

Mr. Moulton asked Mr. Coker to restate the question. Mr. Coker was sure he was familiar with Article IV, Inland Wetlands Protection. Under definitions there is one for inland wetlands and inland wetlands protection district. There is no question this is not jurisdictional wetlands. But, that does not free the applicant from being sensitive to what wetlands exist. David Desfosses identified what he called a stream. It is not on any of the plans. He tried to go find it but he was not dressed appropriately. His question is, given the fact that in his opinion wetlands, whether jurisdictional or not, they have an obligation to be sensitive to the wetlands. Their Sheet 4 shows a sizeable snow storage area abutting the wetlands. That is not a good thing. Mr. Moulton responded they can certainly pull that in closer to the pavement. The edge of pavement was originally designed to avoid going into a buffer that the Courts have decided doesn't exist. They can draw that snow storage in as close as possible to the edge of pavement. Mr. Coker asked about trucking it off site rather than put it where the ingredients in the snow, ie oil, gasoline, that would melt and get into the wetlands? Mr. Moulton would have to speak with Mr. Boyle on that. They have located it in a place that is as far away from the wetlands as possible on the site. Mr. Coker asked about moving the snow storage to somewhere that it doesn't flow into the wetlands. Mr. Moulton felt that the only place they could put it is next to the gravel wetland if it would get any treatment at all. He would be concerned that that the chlorides would affect the plantings in the gravel wetlands which are necessary for the true function which is to filter out suspended solids, heavy metals and so forth from the stormwater. He was not sure how they could accomplish that. He is hearing that his primary concern was the salt run off. Mr. Coker was concerned about everything, sediment, salt, oils coming off the cars. Mr. Coker felt that the obvious answer would be to truck it off site. He would be far more supportive of this application if that snow storage was not up against the wetland and he will leave it at that.

Attorney Kuzinevich stated that this caught everyone unexpected. He doesn't see the criteria in the Site Review Regulations that would allow denial for snow storage location. Secondly it is taking out of perspective that the site receives all of the run off from Route One and that is why they have spent a lot of extra money to provide treatment for water. All water from Route One and all abutters and parking lot is currently untreated. They are improving water quality immensely as they have been asked to design something for substantial treatment of the water going into the wetlands. Even taking into account the snow storage, they are creating a far better environmental situation. Mr. Coker agreed and they should be commended for it but why would they override and diminish those improvements by putting this snow on the edge of the wetland.

Chairman Ricci offered a middle suggestion of pulling the snow storage back towards the pavement and possibly grade half to go in each gravel wetland. He understands Mr. Coker's concern but his concern is that people seem to think snow gets trucked off site but to where? How treated is it when it gets trucked off site? He would like to see the storage pulled back with a couple of little swales so that

when it melts it goes in each gravel wetland and gets some treatment. Mr. Coker agreed and indicated that he suggested something like that. Mr. Moulton briefly talked to Jim Gove about his opinion on how that would effect the gravel wetland and he felt the wetland would be able to handle it and he understands from Dr. Rosen's research so there are salts and other items in the rain water. What they would do is grade the area and pull the snow storage as close as they can to the parking lot, grade it so the run off actually comes back onto the pavement and into the closed drainage system and into the gravel wetlands. Mr. Coker asked if they would find that acceptable for a stipulation? Mr. Moulton agreed. Chairman Ricci would be happy with having it go right through and keeping it off the pavement. Mr. Moulton stated they could swale it along the pavement. Chairman Ricci felt a note on the drawing would take care of that.

Mr. Coviello did not want to step on the Chairman's toes but he asked if they should reopen the public hearing as the applicant has had a chance to speak?

Chairman Ricci agreed they can. He reopened the public hearing for final comments.

Attorney Pelech embellished Attorney Kuzinevich's comments. Through this site passes all run off from Route One By pass from Borthwick Avenue and maybe Coakley Road on both sides as there are culverts under the road onto their property. There is also a culvert that runs underneath Greenleaf Avenue that picks up all drainage from the By Pass on the Portsmouth Dodge side of the intersection and, in addition to that, all the streets from Middle Road run untreated onto their property. Mr. Desfosses has absolutely no credentials to call anything a stream. They presented two expert witnesses in the Superior Court. The Superior Court found that there was no stream. There was a manmade drainage ditch and the NH Supreme Court upheld that decision. There is no stream on the property. David Desfosses does not have any credentials to call anything a stream. They have Mr. Gove was present who testified at Superior Court and he will tell you that there is no stream on the property.

Attorney Griffin referred to the discussion on the landscaping plan. There has been an ongoing attempt between City Staff, in the absence of a City Arborist, and the applicant, to get this landscaping plan in compliance and this has happened several times and it is still not in compliance. His question, in fairness to the abutters and public, how many bites from the apple does the applicant get? It seems the requirements are pretty clear. He does not feel they are doing their job if they somehow approve this tonight with the stipulation that somehow they will get this landscaping plan worked out. He is dubious that it will get worked out. If the applicant is really serious about complying with the Landscaping Plan then the Board should table it and let them do that. They have seen this 2-3 times and he has been involved in the process through TAC and the pattern here is one that he has seen before which is we will see what we can submit and if the Boards want more they will have to extract it from them. Attorney Griffin reminded them that Mr. Holden has stated that this landscaping plan is different than others. It is a special situation and need to be handled differently.

Attorney Kuzinevich stated they are still willing to work with the appropriate person as a condition of approval as there is some confusion with their regulations. There was some confusion earlier about screening and landscaping #6. They are concerned there have been a number of court decisions factoring into this and the amount of time that has gone on. He would like to see the Board approve with conditions or deny with specific reasons, but not table or postpone them.

Attorney Pelech stated that he has been appearing before the Board for over 30 years and he agreed with Mr. Hopley that in the majority of the cases in which he has appeared before this Board for Site Review, there has been a contingency that the applicant meet with the City Arborist, who for many years was Ms. Strauss, and he has sat down with her many times and they would work out a landscape plan that was satisfactory to her. He has also done that with Lucy Tillman on many occasions. In the majority of cases, that is how it is handled. There is an approval granted conditioned upon working with staff on a satisfactory landscape plan. Mr. Hopley is absolutely right and he has probably been here as long as Attorney Pelech has. Mr. Hopley asked if that interaction had already taken place on

this project? Attorney Pelech stated on one occasion the applicant met with Mr. Holden and Ms. Tillman. Mr. Holden stated they have had staff meetings on several occasions. Attorney Pelech confirmed they have had several staff meetings and they are willing to do that again.

Mr. Coker asked them to briefly address the leaking sewer that allegedly goes across the property? Attorney Pelech did not believe it was germane to this hearing. Attorney Kuzinevich stated they are waiting for a report from their expert on design and what should be done. It is an issue that must be addressed with the City Legal Department.

The Chair called for public speakers. Seeing no one rise, he closed the public hearing.

Mr. Hopley asked staff if there was a way of checks and balances to satisfy the staff as far as landscaping? Mr. Holden responded that the way the condition is written is so that they will review and approve the final plan because Staff has not been able, to date, to accomplish that goal. He did indicate they are working with them and the landscaping plan does improve. If this had been simple, it probably would have followed the normal route. He encourages the Board, as part of site review, that they keep this condition. If they want a Board member to participate that is one option, and they are glad to work with the applicant as long as possible and if they want to make a condition that they come and indicate the status, that is also fine. Mr. Hopley felt it was the sense of the Board that they want to see the results given the history. Councilor Dwyer's sense was that this is not something to be worked out but is something to be complied with and reviewed. She is not sure what the appropriate motion is and on that they need advice. She is certain that this is different from other times when they have 90% done. They need this to be complied with because it is very clear. Mr. Hopley's line of questioning to Attorney Pelech was trying to extract whether this had been attempted. Councilor Dwyer did not hear them say they are ready to comply with this and that is what she thinks is holding this up. She felt the hard thing is to know what the motion should be. It is not a little detail to be worked out. It's the agreement to comply with it and to bring back the plan that complies with it.

Chairman Ricci suggested based upon City Staff and the applicant agreeing on a plan, correct? Council Dwyer agreed but added that it was not a "hanging detail". Because it is to comply with something they have, it is the Planning Board as opposed to working out a "hanging detail". It is different and that is why she is sensing this quality of difference. What is different between this one and the typical one is that they are not 98% there with just a little detail to be worked out. They need the plan that complies with their standard.

Mr. Coviello made a motion to approve with the 28 stipulations, an additional stipulation that the applicant, staff and at least one member of the Planning Board shall meet to agree upon the Landscaping along Route One and Greenland Avenue and the applicant should provide representation of either trees, bushes or shrubs at a 20' to 30' spacing per the requirements with a report back of the findings of that meeting to the Planning Board. Mr. Hopley seconded the motion and he quoted the requirement was from the Zoning Ordinance, Article V, Section 10-503 which is titled "Landscaping". Mr. Coviello added the Site Review Regulations under Screening and Landscaping, C-4, Parking Lot Visible from Public Streets should be screened with shade trees or shrubs 20' to 30' spacing.

Chairman Ricci called for discussion on the motion.

Mr. Coker requested an additional stipulation about the re-doing of the snow storage area.

Chairman Ricci stated that he doesn't have concerns. The applicant has said they are willing to work with us. He felt there is middle ground. The site is heavily wooded in the back. It shouldn't be a monumental task and he will support the motion.

Mr. Coviello asked if they needed to choose a representative now? Chairman Ricci suggested leaving that open in case they set a date and time and a member can't make it.

Mr. Coker asked to clarify the wording on the snow storage stipulation. Chairman Ricci stated that the snow storage be pulled back closer to the pavements and it be graded equally to both wetland detention basins. Meaning half goes one way and half goes that way so that it won't overload the system.

The motion to approve passed unanimously with the following stipulations:

Stipulations from the July 1, 2008 Technical Advisory Committee Meeting (as amended):

- 1) That the applicant and Dr. Roseen shall have final concurrence in writing on the design of the gravel wetland, prior to Planning Board approval;
- 2) That a note shall be added to the Site Plans that all exterior lights shall be dimmed to the night study levels by 10:00 pm;
- 3) That Note 8 on Sheet C-3 shall be removed from the Site Plans;
- 4) That the sign details shall be revised, for approval by the City Traffic Engineer and in conformance with the Zoning Ordinance;
- 5) That all grass areas shall be noted on the Site Plans to avoid the possibility of cars parking on them;
- 6) That all pavement areas shall be clearly marked on the Site Plans as overlay or reclamation areas;
- 7) That the applicant shall communicate to the Planning Board that there will be no invasive species or dead trees on the site;
- 8) That a note shall be added to the Site Plans that light poles shall be no more than 20' from the ground;
- 9) That the applicant shall provide the Planning Board with a full description of how the 554 parking spaces will be utilized;
- 10) That the poles from the wetland and/or wetland buffer shall be removed, with all necessary approvals, prior to the return of the Site Review Bond;
- 11) That a note shall be added to the Site Plans that no outdoor public address system shall be used;
- 12) That a Construction Management & Mitigation Plan (CMMP) shall be prepared by the applicant, for review and approval by the City.

Stipulations made at the July 17, 2008 Planning Board Meeting:

- 13) That Dr. Roseen, in his written letter, shall evaluate the catch basin elevations (see Stipulations #1);
- 14) That any new signs shall meet the City Sign Ordinance;
- 15) That the Landscaping Plan shall be approved by the Planning Board, with increased tree planting along Route One;
- 16) That a note shall be added to the Site Plans that there shall be no parking on grass anywhere on the site;
- 17) That the sewer line note #8 shall be added to the Site Plans;
- 18) That the gravel wetland dimensions shall be added to the Site Plans;
- 19) That all vehicle storage spaces shall be striped for a maximum of 416 display vehicle spaces;
- 20) That a sheet shall be added to the Site Plans for the night study lighting plan, in addition to the normal lighting plan;
- 21) That there shall be no change to the 10:00 pm cut off for dimming lights to the night study levels (see Stipulation #2);
- 22) That the dimensions of the paved areas shall be added to the Site Plans;
- 23) That the parking count information which was provided by Attorney Pelech in his email to David Holden shall be added to the Site Plans;
- 24) That the light levels, post construction, shall meet the night study levels as proposed, before the release of the Site Review Bond;

- 25) That the Landscaping Plan shall include a planting detail;
- 26) That a special inspection shall be made by Dr. Roseen of the subsurface section prior to having it back filled;
- 27) That a Maintenance Plan for the gravel wetland shall be added to the Site Plans, for review and approval by David Allen;
- 28) That a maintenance report of the gravel wetland shall be provided to DPW semi-annually (twice a year);

Stipulations made at the August 28, 2008 Planning Board Meeting:

- 29) That the Applicant, Staff and at least one member of the Planning Board shall meet to agree upon the Landscaping along Route One and Greenland Avenue and the applicant shall provide representation of either trees, bushes or shrubs at a 20' to 30' spacing per the Site Review Regulations and the Zoning Ordinance, with a report back of the findings of that meeting to the Planning Board; and
- 30) That the snow storage shall be pulled back closer to the pavements and shall be graded equally to both wetland detention basins.

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John Rice excused himself from the meeting.

G. The application of **Atlantic Point Builders, LLC, Owners**, for property located at **13, 20, 25, 33, 44 and 57 Albacore Way**, wherein an amendment to Site Review approval granted on March 16, 2006 is requested to revise slope grading and a retaining wall at the intersection of Albacore Way and Saratoga Way, with related paving, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Plan 212 as Lot 123 and lies within a General Residence B District; This matter was postponed at the July 17, 2008 Planning Board Meeting. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Dennis Moulton, of MSC Engineers, addressed the Board and gave a brief overview. This was a previously approved subdivision in the Atlantic Heights neighborhood. An issue came up with grading on Albacore Way closest to Saratoga. Upon field inspection it was determined that the slopes required a retaining wall to allow for grading. They came up with a plan with DPW and Steve Parkinson for a retaining wall along the back edge completely in the right of way. It would be owned by the City of Portsmouth and under their jurisdiction. They have designed a retaining wall with a railing for safety purposes. The wall is in place and was done by Mr. Sullivan, owner, based on the approval they received from DPW staff. They were then advised they needed Planning Board approval.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Coviello made a motion to approve the amendment. He looked at the site and felt the black vinyl fence was appropriate and that plantings were not necessary. Mr. Hopley seconded the motion.

The motion to amendment Site Review approval passed unanimously.

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Chairman Ricci stepped down from this application. Newly elected Vice Chairman Roberts chaired the hearing.

I. The application of **Seacoast Trust LLP, Owner**, for property located at **150 Route One Bypass**, wherein Site Review approval is requested to construct a 5,208 s.f. one-story addition to an existing building, relocate a storage shed, and add two parking spaces to an existing parking area, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 231as Lot 58 and lies within a Single Residence B (SRB) District. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Peter Weeks appeared on behalf of Seacoast Trust LLP. He stated this is the Sports Medicine facility on Route One. It used to be the original home of the Portsmouth Rehabilitation Center. In 2002 they had this exact same project approved, the parking lot improvements were done but the addition was never done. They have received BOA approval for the addition and two new parking spaces and the relocation of the storage shed. They went through TAC and they received a recommendation of approval. They have complied with the eight stipulations by added notes to the Site Plans.

Councilor Dwyer has hobbled into that building many times and felt there should be more handicapped parking spaces. Mr. Weeks responded that the City determined how many handicapped parking spaces are required. They now have the covered portico entrance so people can be dropped off.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Holden indicated that the Department has worked with the applicant very closely and recommend approval but the parking note for the coach needs to be deleted from the plan.

Mr. Coviello made a motion to approve with the eight TAC stipulations and a 9th to delete the coach note from the plan. Mr. Coker seconded the motion.

The motion to approve passed unanimously with the following stipulations:

Stipulations from the August 5, 2008 Technical Advisory Committee Meeting:

- 1.) That the arborvitaes along the southwest side of the property shall be removed from the Existing Conditions Plan;
- 2.) That the Site Plans should reflect a sidewalk and entrance walk into the new addition where it currently says "remove curb and pavement";
- 3.) That the "No Parking" sign shall be removed from the Site Plan in front of the proposed addition;
- 4.) That a painted crosswalk from the north parking lot to the existing building shall be added to the Site Plan;
- 5.) That a stop line shall be added to the Site Plan at the end of the driveway, 4' from the road, or adjacent to the stop sign;

- 6.) That a Construction Management & Mitigation Plan shall be prepared by the Applicant and approved by the City, prior to the issuance of a building permit;
- 7.) That the water line should come straight out of the building and turn once it comes out the foundation, rather than having it turn underneath the building, and be so noted on the Site Plan;
- 8.) That the stipulations from the February 21, 2002 approval shall be incorporated as part of this Site Review approval, and are as follows:
 - a.) That the water meter be relocated to where the existing water line enters the new foundation;
 - b.) That if a fire service is needed, the applicant shall acquire the necessary easements over private property for the fire service to come in from Hillside Drive;
 - c.) That in terms of site lighting, all lighting shall be down-shielded, including the PSNH light; and
 - d.) That the site plan indicate a “no parking:” sign in an appropriate location to ensure direct vehicular access to a public way.

Stipulation from the August 28, 2008 Planning Board Meeting:

- 9) That the Parking Notes on the Site Plan shall be amended to delete any reference to a portable coach;

IV. NEW BUSINESS

A. Request of **The Meadowbrook Inn Corporation, Owner**, for property located at **549 Route One By-Pass** (Traffic Circle) for a one year extension of Conditional Use Approval originally granted on September 6, 2007;

Mr. Holden noted that no one was present to address this however it is a timely request for a one year extension so the Department would recommend approval.

Mr. Hopley made a motion to approve a one year extension of Conditional Use approval. Ms. Roberts seconded the motion.

The motion to grant a one year extension of Conditional Use Approval passed unanimously.

B. The request of **HarborCorp, LLC, Owner**, for property located **off Deer Street, Green Street, Russell Street and Maplewood Avenue** for a one year extension of Final Subdivision Approval originally granted on August 16, 2007;

Mr. Holden advised the Board that this is being provided as an informational item. The request may not conform to our Subdivision Rules and Regulations and being timely so the Department would recommend that they acknowledge it and place it in the file.

Mr. Coker made a motion to acknowledge this request and place it in the file. Mr. Coviello seconded the motion.

The motion passed unanimously.

V. OLD BUSINESS

A. Appointment of Planning Board Representative to the Historic District Commission;

Mr. Coker nominated Paige Roberts. Mr. Hopley seconded the motion.

The motion to appoint Paige Roberts to be the HDC Representative passed unanimously.

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VI. AMENDED SITE PLAN REVIEW

A. Request of **Bed Bath & Beyond, Owner**, for property located at **100 Durgin Lane** for amended Site Review Approval received on May 17, 2007, to remove three parking spaces to save a tree in the area of the three parking spaces;

Mr. Holden indicated that the Department has met with the applicant and they can enhance the landscaping in the area by doing this amendment. The Department approved this administratively and the Board concurred.

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Mr. Holden indicated that they need the Board to schedule a Work Session on September 25th. They will be picking up the Zoning Ordinance and working on that and the next section will probably be Article IX which is signs. Chairman Ricci asked to 6:30 pm. The room is already reserved. Mr. Holden asked if it would be appropriate for staff to work with the Chair to work on a date for the Senior Housing Overlay? The Board felt that was appropriate.

Mr. Holden asked if the Chair wanted to designate a Planning Board member to work on the Landscaping Plan? Chairman Ricci felt they were not going to do that until they set the date of the meeting. He felt they should designate Councilor Dwyer as first choice and Mr. Coviello as back up.

Councilor Dwyer asked for advance notice on future meetings. Mr. Holden confirmed we took a hiatus over the summer so this is the first time they are starting to schedule. They will send a notice out as each one comes up, especially when they get the October schedule. Councilor Dwyer asked if they could plan things in advance. She has already given away all of those Thursdays. Chairman Ricci thought they were looking at the 1st and 3rd Thursdays of the month and the 4th Thursday is back up for the regular meeting. This would be for October, November and December.

Both Councilor Dwyer and Mr. Coviello are not available on September 25th. Mr. Holden felt they had enough to keep going. Chairman Ricci agreed and indicate they will make sure they get any correspondence.

Councilor Dwyer advised the Board that on October 9th will be the time that the Rockingham Planning Commission will be trying to get Planning Boards and other officials together to deal with the new NH Housing Legislation.

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VII. ADJOURNMENT

A motion to adjourn at 10:05 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 at the September 18, 2008 Planning Board meeting.