

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

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

7:00 P.M.

SEPTEMBER 18, 2008

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

MEMBERS EXCUSED: N/A

ALSO PRESENT: David M. Holden, Planning Director;
Lucy Tillman, Chief Planner
Robert Sullivan, City Attorney

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6:30 – 7:30 pm WORK SESSION on Draft Zoning Ordinance Uses, Definitions and other related matters

Chairman Ricci turned the meeting over to David Holden who handed out the new meeting schedule for the remainder of the year. It is an intensive schedule but he hoped that everyone would be able to attend most of the meetings.

Chairman Ricci welcomed the newest Planning Board member, Anthony Blenkinsop, and Attorney Sullivan issued the oath of office.

Deputy City Manager stated that, for the record, she was not present last month but she stated that she watched the entire meeting on video. She was left with the question on the Borthwick Forrest proposal of whether the active proposal on the table was the new proposal from last week or whether it is the proposal that staff has been working on for the past 18 month. It appeared to her that the newest proposal was the only proposal on the table. Chairman Ricci asked Attorney McNeill to comment on that. Attorney McNeill stated, in part, it was a proposal to address the affordability issue. There were many other components that relate to density, the composition of the parcel, the breakdown between assisted living and other components. In the past they had addressed other issues and he has never considered this as an either/or issue. Deputy City Manager Hayden confirmed that this was an addition to the previous proposal. Attorney McNeill confirmed it was an idea to add to the mix.

Chairman Ricci asked for a Board discussion on this. He asked Mr. Taintor if he had any input. Mr. Taintor referred to the Memorandum they had received from the Planning Staff last week as there was some confusion on where they stood with working on the ordinance on senior housing. They included the previous development proposal for the senior housing overlay district. He pointed out an error in the Memorandum which indicated it was submitted in March but it actually was submitted in

November of 2007. There is the zoning which the applicant submitted, there is some separate design standards (non-zoning), the draft ordinance that staff has been working on and the intent of the previous work sessions was to try to answer some of the questions about affordability. They talked a lot about that in the July and August Work Sessions but they have not answered those questions. The final piece is the re-typed proposal from last time. Basically this is intended to bring them up to date. It raises some questions and issues and they still have the outstanding issue of affordability. They need to discuss where they are and what questions they have.

Deputy City Manager Hayden felt that to carve this off in meaningful pieces, maybe they could give some direction to the \$10,000 per unit. The City Attorney has weighed in very clearly on the legalities of this. She felt it would be in the Board's interest, and the applicant's interest, to settle that item one way or the other. It is unfortunate the Board did not have that proposal ahead of time as they spent a lot of time talking about it but had had no time to review it. She has a lot of faith in the City Attorney and there is no security for this. She did not fault the applicant and it has nothing to do with trust of this developer, but, if you don't have some security for getting the \$4 million, they may never get it and the City has been there before and they created the case law on that issue.

Chairman Ricci asked City Attorney Sullivan if he had any additional information for the Board. City Attorney Sullivan explained his interpretation to the Board. The adoption of the Zoning ordinance is regulated by State Statute. Zoning is required to be done by "planning science". There have to be reasons related to land use. Because of that, cities and towns cannot sell zoning in turn for a payment of money. In the Schlesinger case, it was a developer who was offering the money and it could not be used to support zoning adoption. When this came up last month, any time zoning and money comes together in the same conversation he felt there is a problem. The limited exception would be where it could be shown, on a scientific basis, that the adoption of a particular zoning amendment actually had a demonstrable, provable and measurable monetary effect on some element of land use regulation that the city is allowed to consider. That is not this situation. An example is if a zoning regulation was going to lead to an increase number of children in schools then the amount of money to educate those children might be something the city or town might collect for. But, to simply say, as was said here, to simply say for each unit they will give the City \$10,000 and they can use it any way they want is the sale of zoning that is prohibited by the laws.

Mr. Coker asked City Attorney Sullivan to make a distinction between impact fees and the \$10,000 per unit. Deputy City Attorney Sullivan indicated he could but he was not sure it was a distinction. Impact fees are specifically authorized by statute. In order to implement impact fees, the municipalities have to enact an impact ordinance, which the City of Portsmouth has done. However, once again, the impact fees that not simply numbers thrown on the table or pulled from a hat. The impact fees are what the City tells the developer they need to give them and is not the developer saying they will give them a certain amount of money. There has to be a demonstrable, scientific rational nexus or connection between the money that is being exacted and the proposal being put forth by the developer. Mr. Coker felt that it was implied in that that the developer will give them X amount of money, or the City won't do what they want them to do. He is trying to draw a distinction between the two and maybe it's a distinction without a difference. City Attorney Sullivan stated that the only difference he can see is the impact fee is the City telling the developer to pay but here the developer is saying they will pay. Again, Mr. Coker asked what was the difference? City Attorney Sullivan indicated he was saying that there is not all that much of a difference.

Mr. Coviello felt they were concerned with two points. They want to come up with something being equivalent to something like City Attorney Sullivan's point about school children. He felt there is evidence that a family of four has much more buying power in a community than senior citizens so they could say there was an economic impact. Secondly, how do they enforce this in later years. He suggested they forget about the later years and just figure out cost for the first year and after that they are free and clear. City Attorney Sullivan felt, if they could come up with the scientific basis to say

this is the impact dollars on education. If they could make that, and collect whatever the municipality felt was appropriate in the first round, it would be acceptable.

Deputy City Manager Hayden felt that another issue is that they cannot do it to a parcel or a project. That was one of the issues with the Mariner's Village project. Mr. Holden added that zoning is supposed to apply to all properties in the zone. Mr. Coker asked where else is the overlay district going to apply? Mr. Taintor indicated that the first the original proposal is for an overlay district for those specific parcels. The second proposal is for a use that is permitted in the Office Research district within a certain radius of a hospital. They handed out a map at the July meeting which showed the radius.

Deputy City Manager Hayden explained that this is why she wanted to clarify this at the beginning. Mr. Coker stated that he read over the Schlesinger case numerous times and he doesn't see any way that this new proposal can fly. Deputy City Manager Hayden strongly concurred.

Getting back to Mr. Coker's question, Mr. Taintor indicated this could apply along Borthwick Avenue, not as far as Route 33 or Route One. There are 3-4 large parcels on Borthwick Avenue that this would apply to.

Mr. Taintor added that one of the things about impact fees is they are unlike this proposal wherein this proposal had to do with a money consideration for a zoning change but impact fees assume that the zoning is already there and there is a Capital Improvement Plan in place that the City has defined what its future infrastructure needs will be and can calculate how much a particular development, which is already zoned for that use, will demand of that infrastructure. Mr. Coker felt that "already zoned" was the key word.

Deputy City Manager Hayden felt that where they started with this proposal was a developer saying they wanted a high density residential development here and the Board's primary interest was building affordability into it. There may or may not still be affordability built into the newest proposal. They are proposing getting a pile of money and using it somewhere else. She felt they needed to go back to the roots of this as this is a very complex proposal. There is a reason why they are taking their time and they need to examine their original premise. It is zoned for something now. It is zoned for Office Research and residential is being proposed there. Does this Board feel that residential use of that property a good idea, with the money off the table.

Mr. Coviello didn't think they have lost their original proposal. The applicant came in and said this is a difficult lot for them to make work with affordable housing on it so let's do what the State laws have allowed them to do and create an affordable housing fund. He interpreted City Attorney Sullivan's memo to say that they can't just say they can only give us money, but they can say that they can either provide affordable housing units or in lieu of that they can provide some money into the fund. He doesn't see a big distinction except someone could put affordable housing here or someone could put affordable housing somewhere else. Mr. Coviello would not mind residential on this property. This parcel was originally proposed for residential but, for whatever reason, that died. He is getting the feeling that because it died, they can't talk about it again.

Chairman Ricci felt that they need to give some clear direction to this Board. He sees both sides of it. Based on City Attorney Sullivan's memo, he is a little concerned. Mr. Coker stated he was more than a little bit concerned. He felt it was a clear case of contract zoning. The State Legislation creating the Affordable Housing Committee may survive a challenge but he cannot shake the feeling that he does not want to go any further with this new proposal. He wants to continue with their affordable housing component. He's sorry it has taken 17 months but it is a complicated issue.

Deputy City Manager Hayden was not sorry it is taking 17 months. This is a huge deal and could have a big impact as there are a lot of complex issues.

Mr. Taintor followed up regarding the Housing Commission, there are so many different pieces of this, they may not be talking about the same fundamental issues. The point was made the City can already accept funding money for a housing trust fund. The City already has a housing trust fund and the City does not need this new legislation to do that but it just creates a different body to oversee that. That is not the fundamental part of this proposal and nor is the payment of money but it clouds the issue as it makes it a contract zoning question. If residential is allowed then what type of housing should be allowed. He felt their first question is whether they want to continue to promote this as an Office Research District or do they want to encourage residential development, which currently has a stronger market. Once they have made that decision, then they go to all of the subsidiary questions which are of how dense, what type of housing, etc. The basic question is residential or office research?

Mr. Coker pointed out that Mr. Taintor said residential is a stronger market. Mr. Taintor explained that his interpretation is that because Office Research has not developed there and there have been a couple of different residential proposals, therefore there is a stronger market for at least a certain density of residential. Mr. Rice felt that in the affordable price ranges there is a very strong market for commercial property. One thing that struck him was that haven't the demographic studies projected limited population growth in the future of Portsmouth? Do they want to make an irreversible move towards re-zoning this land. When they were looking at this in the early summer, they were talking about the rail heads that were there and thinking of a transportation hub, and he commented at the time that he liked some sort of residential component so that people could jump on the train and go to Boston or wherever.

Deputy City Manager Hayden felt those all went back to her original question of whether this should be Office Research or residential. The goal of this Board is the public good and long term land use. The goal of for profit developers is to make money. She is assuming if Office Research was a better bang for the buck for that parcel, they would have seen that parcel developed as Office Research. Since people keep coming up with mixed use and residential, probably residential is where the money is in this town. Deputy City Manager Hayden did a little research on anytime you have a hospital, the type of demand for medical office research seems to be huge. Early on in this process she heard the Board consistently saying they were only interested in residential if they could include some affordable housing.

Chairman Ricci agreed with Deputy City Manager Hayden. The question is whether they want Office Research or residential. Mr. Coviello felt that the City has more people working here than they could possibly house. This sounds like a good way to help the residential market. Maybe Portsmouth is not supposed to have population growth because there is no land to build on.

Mr. Coker indicated that at the early part of this process he recalls the applicant saying "by right" they can build three office buildings to employ people at fairly good salaries. Tax revenue to the City was \$146,000 on three office buildings. If they were to go to the residential buildings it would be \$1.4 million tax revenue so there is an obvious benefit to the City. He is not sure he agrees with Mr. Coviello. Residential may not be the best use for this land. Maybe the jobs are more important than the residential. He has always said that affordable housing in Portsmouth is a dream as the land in Portsmouth is too valuable to build affordable housing on. He believed the answer was to build affordable housing out in Farmington and Milton and literally bus people into Portsmouth and Pease. He would be adverse to change this to residential if they took a vote tonight.

Deputy City Manager Hayden agreed that the reason they are not projected to grow is they don't have any land. The likelihood if 200, 400, 600 units of workforce housing was being proposed, the Board would probably say it was great but it is not being proposed as they would need huge subsidies. She is not faulting the developer for not proposing workforce housing. Also, \$4 million may sound like a lot of money but it is not that much money. The City gave a 99 year lease to the Portsmouth Housing Authority for the Lafayette School building and land basically for free. Even given no land or building

cost, it is costing \$2.6 million to redevelop that building for 10 units of housing. So, \$4 million is not enough to make a dent in her opinion for workforce housing.

Mr. Coviello doesn't agree that creating more jobs with no place for them to live. They have to start going towards the model of denser population centers.

Attorney McNeill asked if they were going to have a chance to speak. Chairman Ricci indicated they would if time permits after the Planning Board feels comfortable with the direction they want to take.

Chairman Ricci stated he could get on both sides of this. It is complex and difficult. If they can get through their discussions, they will revisit it at 7:30 at the regular meeting. They had another 15 minutes or so.

Mr. Coker wanted the Board to remember that Portsmouth has more than its share of affordable and senior housing than any other community in the region. Deputy City Manager Hayden confirmed that as a percentage and she clarified that is for subsidized housing. They have a lot of housing for people earning less than 80% of median but they are missing moderate income housing. Mr. Coker confirmed that the surrounding communities do not have as much of that kind of housing as we do. He just wanted the Board to remember that the City is doing their part towards housing.

Chairman Ricci felt it went back to Tony's point that they just don't have the housing. Mr. Holden felt that the issue is whether this is a way to provide it. Mr. Coviello felt they need to decide residential or not. Deputy City Manager Hayden added another layer of clarity by asking who is the residential for? Is it for younger worker bees or retired people? No one would ever build housing for a single family as it just isn't viable.

Chairman Ricci gave the applicant a few minutes to speak. Attorney Malcolm McNeill and Mark Stebbins joined the Work Session.

Attorney McNeill stated that the reason they attempted to utilize the \$10,000 is because the sole issue that has presented itself repeatedly which has been unresolved has been the issue of affordability. They wanted to propose an alternative which they still feel will work. They looked carefully at the package that was supplied to the Board and they believe that the ordinance which the Board has proposed can work. The work done by the Board's consultant had adopted many of the same proposals, there are some components that require further work but the ultimate issue of affordability requires some additional work but is something they feel they can talk about with the Board. When they got the packet on Tuesday and looked at it, there is some tweaking here and they have to address affordability but they felt it could work. On the ultimate decision making part, if a part of the Board's consideration is whether the proposal is something they are comfortable with, with modifications, they are reasonably comfortable with it as long as they can work further on defining affordability. Through this process, that has been the sticking point and they are committed to find a resolution to it but they also believe this is the best use for the land.

Mr. Coker asked Attorney McNeill to define best use of the land. Attorney McNeill responded that when Mr. Coviello spoke of a previous proposal for residential use of this property and wondered if there should be further discussion, the problem with the Chinburg proposal was that during the process of the Master Plan, one proposal of the Master Plan was that this property required further study. It didn't say whether residential was good or bad. It was the only section of the City where they said that. The only considerations that have come forward for this space are either for a continuation of Office Research or the consideration of their plan. They have attempted to draft an ordinance and have come to a conclusion that if they are inclined to come to a conclusion that residential use is acceptable, they can work with the City's draft subject to some modification. The residential component was never foreclosed by the Master Plan and in his view, the Master Plan said they should do just what they have done here, and that is consideration of alternatives for this site.

Mr. Rice asked for an explanation of the origin of the \$10,000 component. Mr. Stebbins indicated that they went back through all of the tapes and one issue that came up was whether workforce housing should be added to this project as well as affordable elderly housing. There was another big discussion about how will they be able to make sure Portsmouth people are going to be able to take advantage of this affordable/workforce housing. In their mind, if that was in their hands, they would not be able to control who moves in. If it's affordable, it has to be available for people from any town. However, if they put those funds in the hands of Portsmouth, they could put it in a fund to use for affordable housing. In their mind they were not trying to buy the zoning, they thought why not take the money and give it to the City and the City can do whatever they want with it. In the rezoning they can either say they create affordable housing or they can make "X" payments to a City fund for affordable housing. They did not see that any differently than impact parking fees downtown, where if they can't provide the parking, they can buy the space. They thought it was a nice way to package this up and put it in the City's hands. They are not trying to be the big, bad developer who is trying to buy their way through this proposal.

Chairman Ricci thanked Attorney McNeill and Mr. Stebbins for their input.

Deputy City Manager Hayden was not trying to say they are the big, bad developer. She was just listening to the City Attorney when he said there would be problems implementing this. Mr. Coker disagreed. It got his attention when City Attorney Sullivan came out of his chair. The key concept is that the zoning already exists but how would the public see the payments from the developer. He cannot support that in any way, shape or form.

Mr. Coviello did not look at the draft ordinance that was provided to them as he did not believe that was what they would be talking about tonight so he would need a little more time to prepare.

Chairman Ricci asked City Attorney Sullivan about the quasi impact fee for affordable housing. City Attorney Sullivan listened to the explanation of where the \$10,000 came from very closely because that is a very key question. He thinks the explanation that they heard is a really sound business analysis of the situation but cities and towns are not private businesses and are not even closely as free to wheel and deal. What he thought was most important was the \$10,000 comes from what the developer was willing to spend. That is a good business analysis. However, that does not establish any connection with the amount of money needed to accomplish a legitimate municipal purpose. His feeling is that the opinion which he gave the Board and the parallels to the Schlesinger case are very accurate.

Chairman Ricci concluded the Work Session and indicated they will take this up at tonight's regular meeting.

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Chairman Ricci welcomed the newest Planning Board member, Anthony Blenkinsop.
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Chairman Ricci recognized Jerry Hejtmanek, a former Planning Board member who served from 2003 – 2008 and as Vice-Chairman from 2006 to 2008. Mr. Hejtmanek was recently sworn in as a City Councilor for the City. Chairman Ricci thanked him for his years of service and presented him with a gift from the Board.

Councilor Hejtmanek indicated that he joined the Planning Board in 2003, he got involved in the Portsmouth Listens and Master Plan process to try to develop ideas on how the City should develop. Through the Site Review process in the following years they tried to encourage developers to implement some of the Master Plan ideas and, finally, through the Zoning Re-Write, it has been a

pleasure for him, along with a lot of hard work. He learned a lot from the Planning Board members and he thanked the Board for their help and for their years of dedication to the City.

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the June 5, 2008 Planning Board Work Session – Unanimously approved with one correction. (Councilor Dwyer identified as Deputy City Manager);
 2. Approval of Minutes from the June 12, 2008 Planning Board Work Session – Unanimously approved.
 3. Approval of Minutes from the August 28, 2008 Planning Board Meeting – Unanimously approved.
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II. DISCUSSION RELATED TO WORK SESSION: Planning Board discussion of Senior Housing Overlay Proposal.

Mr. Holden stated that they added this to the agenda for a formal discussion. They handed out the meeting schedule for the rest of 2008 at the work session. They are meeting a minimum of at least 2 meetings per month.

Deputy City Manager Hayden felt that in terms of going forward with Borthwick, she sees one option that they can continue to work on the draft ordinance as they have done for the last 18 months. She have two concerns about that being that the applicant has expressed they want to bring this to conclusion and, related to that, the second item is that they have a very full plate. They have to decide how much time they have to spend on this. The developer said that the sticking point was affordability but she feels there are other points that they just haven't focused on yet, such as density or site access. A second option is that they have been doing this study for the past 18 months. The master plan says they will study the best use of this parcel. That is not what they really have done. They have actually studied a proposal for re-zoning that came to them. They have an option of doing a study which they have not done, or they could decide to do nothing further at this time.

Mr. Coker stated for the record, he asked the Chair to note his complete agreement with Deputy City Manager Hayden. He feels it is time. He likes the idea and regrets it has taken as long as it has but this is a dramatic change and that sort of decision should not be arrived at lightly. He would not be adverse to at least discussing a study. He is very concerned about the demographic impact if it were to be developed as a senior housing facility.

Chairman Ricci stated he would like some clear direction for this Board, for the applicant and for the Planning Department. When they leave here tonight, they have a very busy October, November and December and after tonight they should take a three month sabbatical, but they need clear direction on whether it warrants interest as a residential piece or not and what are their concerns.

Mr. Coker asked if one was to do a study, what would they study?

Mr. Coviello thought he heard from the board that the whole option of the \$10,000 fee is not going to move forward and that the applicant seems to have some minor work to do to where they are favorable to the proposed zoning change. He proposes that they take the next month to read it over, have the applicant meet with staff to see what minor tweaking they want to do and come back in another month or two for a work session.

Councilor Dwyer was not at the work session but she read all of the materials and she felt that when they put that much work into something that is this complex there is a certain amount of momentum and learning and they should continue to build on that. Otherwise, they essentially start all over again. They lose track of the kinds of conclusions they come to together and end up going backwards. It feels they shouldn't with any kind of zoning as complex as it is, do a lot of stops and starts. They should see it through.

Chairman Ricci felt that the first thing they need to know is whether they want to consider this or stay with the Office Research? If they want residential, they need to get the applicant with staff to move forward.

Deputy City Manager Hayden, in response to Mr. Coker's question about studies, one study would be what is the highest and best use from a business perspective. With the hospital, in the future will there be the same demand in 10-15 years and they will have no land. They had a lot of discussion about whether it should be Office Research or residential. She is not sure what other Board members need to help them with that.

Chairman Ricci asked if it made sense to generate that and take time to review it. Deputy City Manager Hayden felt that one good approach, in all fairness to the applicant, is maybe they don't spend a lot of Board time on this as they have to get the zoning re write done. She does not want the Board to make a snap decision and she felt this has been a very good discussion and they should come back at the next work session to answer those questions. She strongly believes there is a significant amount of work to be done on this ordinance to make everyone happy.

Mr. Coker had a question directed to the Department. He asked if it would be fair to say that Office Research zoning has not lived up to its potential? Mr. Holden didn't believe there was that much land but the Master Plan indicated that the Office Research district needs to be looked to determine what the proper limitations should be, what the requirements should be and what the uses should be. They will be looking at that shortly as they progress through the zoning ordinance. The next section they will be reviewing is the table of uses. He thinks the big issues isn't just residential but he picked up it is not just residential, it is affordability. Attorney McNeill would agree they are not going to see single family houses or duplexes but rather they will see high density of a very particular type of housing. Mr. Coker felt they were faced with a fundamental policy decision and he doesn't think they are at that point.

Deputy City Manager Hayden felt they are at the point to make a fundamental policy recommendation to the City Council which will make a fundamental policy decision. She suggested as an option, they go away with a home work assignment to review what the working draft is. There are gaps in it and the Board has not had a consensus and is unclear on what they want. Mr. Taintor has it laid out very nicely and they should think of how they want to address those things. Secondly, they should think about this long discussion they have had about OR/residential. Then, they should think about if there is additional information that they want.

Councilor Dwyer thought that was fine and it doesn't have to take very long. She has seen at least two studies that have come before this Board of office research needs and long term projections in the area. She believed one was presented at the Economic Development Commission and one might have been done by the applicant for this project, or other related project. That work is out there and they don't have to do their own study. She believed there was a 20 year study of projecting their OR needs, which were pretty minimal given the excess of space that they have now in OR. She understands they are talking about a particular location too but she believes those studies should be part of their homework. Whenever they talk about OR they have to remember that Pease is part of Portsmouth.

Deputy City Manager Hayden asked if they would like a motion? Chairman Ricci confirmed he would like a motion with a nod of the heads for general consensus that the Board feel they should move

forward in this direction. He felt it was important that they send a message that they do have homework to do but they are all in agreement that they would like to learn more about this.

Deputy City Manager Hayden felt this was a good clarifying discussion tonight. Their role is very different than developer. Their goals are to look at the long term interests of the city and how it develops. She would propose that they go off and think about this, what they really think the City needs long term, and on October 16th, in an hour long work session before their Planning Board meeting, they have this discussion and give direction. That was her non-motion.

Mr. Coker felt it would be good to give them a home work assignment. He would like to see the OR study.

Chairman Ricci was interested in learning more about this. They need to build more momentum and do their homework. Councilor Dwyer cannot be present on October 16th and she would like to be able to attend.

Mr. Holden thought the discussion they are talking about, Board members are adept at reading through their materials, probably at the next regular meeting an hour work session should be sufficient. Deputy City Manager Hayden reminded him that Councilor Dwyer could not attend. Mr. Holden suggested October 23rd for one hour.

No vote was required and there was a general consensus of the Board. The next work session on this will be on October 23, 2008 from 6:30 – 7:30 pm.

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III. PUBLIC HEARINGS

A. The application of **Stephen J. Little, Owner**, for property located at **2 Moebus Terrace** and **Donald H. Sargent Living Trust, Owner**, for property located at 33 Pleasant Point Drive, wherein Final Subdivision approval (Lot Line Revision) is requested between two lots having the following: Lot 25 as shown on Assessor Plan 207 increasing in area from 22,783 ± s.f. to 28,427 ± s.f., with 113.63' ± of continuous street frontage on Moebus Terrace and Lot 26 as shown on Assessor Plan 207 decreasing in area from 27,912 ± s.f. to 22,268 ± s.f. and with 322.58' ± of continuous street frontage on Pleasant Point Drive, 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 25 and 26. (Plat plan is on file in the Planning Department Office and is identified as Plan #03-01-08). *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.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech addressed the Board on behalf of Mr. Little and Mr. Sargent. The Board granted preliminary approval several months ago and the only condition was that Note #9 be added to the plan. Both lots will meet all requirements of the Zoning Ordinance. It is basically a land swap between two abutting neighbors and both parties are in favor of it and it makes the layout of the lots more compatible with general planning principals.

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. Rice made a motion to approve final subdivision approval with the stipulations recommended by the Department. Mr. Coviello seconded the motion.

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

- 1) That the subdivision plan and the deed shall be filed at the Rockingham County Superior Court concurrently and within one year;
- 2) That electronic data suitable for updating the City’s assessing records shall be submitted to the Department of Public Works for their review and approval.

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Chairman Ricci recused himself from this hearing as he is a direct abutter. Vice Chairman Roberts conducted the hearing.

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 August 28, 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.)*

Attorney Peter Loughlin appeared with Michael Brown, property owner, and Dennis Moulton, project civil engineer. He explained that this site used to be the former Poco Diablo’s restaurant and the smaller lot used to be Sheppard’s Antiques. Mike Brown purchased the small lot and cleaned it up and very much improved the area. This project is an example of the planning process working. It has been a long arduous process to get here tonight for the applicant. They appeared before five TAC hearings and the project has evolved throughout that period. A site visit was also conducted with TAC members. Eventually at the September 2nd TAC meeting there was an unanimous vote to recommend approval to this Board.

Dennis Moulton, of MSC Engineers, stated that the plan showed the existing site as it stands right now. They have the existing building being used by Old Tex Mex with the paved parking access off of Lafayette Road for 54 vehicles. The second property has a residential building and the two lots are going to be combined. The property line to the back goes around a pocket wetlands and back out to Lafayette Road. The combined area of the two lots is almost 2 acres and is in a SRA zone. They are proposing in terms of improvements an expansion of the current uses which is offices and storage of construction vehicles and materials. The intent is to create separate bays to be rented out to contractors. The total area of the proposed extension is 4,250 s.f. with a 1,400 s.f. mezzanine. They will construct paved parking to the rear and side and will end up with 58 total parking spaces on the lot which is more than what is required under the current Zoning Ordinance. In order to do this construction they had to receive variances for use because it is in a single residence A district, a front yard setback variance as there is a 105’ front yard set back to Lafayette Road and a variance on the side yard for pavement within 50’ of a residential property. Additionally, they are eliminating the current pavement coming off Lafayette for the residential unit and it will be planted with loam and seed. A fence will also be installed across the opening with sign posts on it for no parking signs to prevent people from trying to use that area as parking for the house.

Lighting will be provided by two light packs in the rear for security lighting. They also have a full mounted light pole which is shielded and they are adding a full mounted light at the entrance. At a site

walk with David Desfosses he found the lighting on site was generally adequate but he requested that one light.

Another issue was drainage. The proposal is to conduct the drainage from the proposed new parking to a drainage treatment bay which is basically a shallow bay with riprap overflow outlet. It is designed for infiltration and sediment treatment. Flows for larger storms would flow into the existing pocket wetland. To mitigate increases in flows to the abutter, they proposed a berm with a riprap outlet. This has the effect of creating a secondary detention area for larger volume storms. They have analyzed this area up to a 100 year storm and they discovered that the amount of stormwater that is actually flowing towards the Wren's Next is actually reduced by the proposed construction.

The only other issues that he wanted to mention was that they relocated one handicapped parking space which made more sense as there is a ramp entering the building close to the building. Per Portsmouth requirements, the water service for the residence will be cut off and water service will be provided from the main building into the residence and the new sewer lateral will be constructed from residence out to Lafayette Road.

Mr. Moulton felt that summed up the improvements on the site.

Mr. Rice noted that one stipulation was the development of a CMMP and he asked if that was included in their construction sequence and erosion protection notes? Mr. Moulton explained that the CMMP is a document that is prepared after they receive Planning Board approval and is a document that outlines the hours of construction, where the entrances are, when deliveries will be made for construction and items of that nature and it is reviewed by the Legal Department and approved by the City Manager. Mr. Rice asked if that came after the Planning Board approval? Mr. Holden confirmed that it was approved after the Planning Board's approval.

Mr. Coker noted that Mr. Moulton talked about the drainage on the southerly end of the parking lot but he didn't mention the northerly side. Mr. Moulton explained that on the northerly part will continue to sheet flow across the parking lot and flows off site. They took the drain leaders that flow through a drain pipe that outlets near the edge of the wetland. They will capture that and put it into a closed drainage pipe that will come out into the treatment bay. Due to the topography it is extremely flat and it is not possible to work with that area to try and get any of those flows into a treatment situation. In order to get water to flow they would have to raise the pavement considerably. Mr. Coker was concerned even though the wetland isn't jurisdictional they should still pay attention to it. They are saying the flow is east to west and it flows off site. Mr. Moulton responded that there are a couple of low spots where it flows off the edge of pavement and he doesn't believe they have done topography far enough out to figure out exactly where it ends up but he imagined it pretty much flow over and to the abutting property.

Councilor Dwyer asked if they already have their open space coverage variance? Attorney Loughlin confirmed they have that. The reason for that was because it is zoned Single Residence, although there are five properties and three of them are commercial so it is a bit of an anomaly. If it was zoned business they would not have required the variance, but, they did require it and they did receive it.

Councilor Dwyer asked if requirements relating to landscaping relate to this property? She noted they are removing several trees to build the warehouse and she doesn't see anything being added. Mr. Moulton indicated that that issue did not come up in TAC but the property owner has certainly made an effort to landscape the front and would probably be willing to add trees. Councilor Dwyer felt it was important in light of the Route One Master Plan so she will make that a stipulation.

Mr. Coviello asked if they were still planning to remove the garage door from the residence on the side facing Route One? Mr. Moulton confirmed that they were. Mr. Coviello asked if they would mind if that was a stipulation or put on the plans. Mr. Moulton confirmed that would be fine. Mr. Coviello

also requested that the dumpster enclosure is fenced in, full 6' height. Mr. Moulton confirmed that was on the plan. Mr. Coviello referred to Councilor Dwyer's comments and read from the Site Review Regulations, Section 3-C that "structures visible from a public street shall be partially screened with flowering or evergreen shrubs.".. He asked if the new construction on the south end of the property would include some shrubs. Mr. Moulton again confirmed that would be no problem and added that the applicant has made significant improvements to the aesthetic qualities of the site. Mr. Coviello pointed out that they can't deviate from what is in the ordinance.

Mr. Coviello asked how do they resolve Section C.2 where it says parking lots shall be interrupted by shade trees and landscaping no more than 150' of continuous asphalt? Mr. Moulton admitted that he had not thought about it for the existing parking. Mr. Holden added that this is an existing parking lot that was not expanded but the applicant appears to be willing to work on it. Mr. Coviello confirmed that they are fine with that. Michael Brown, property owner, stated that he plans to continue with the landscaping so it will look very similar to what is already there and they may add some trees in front of the building.

Mr. Coker asked if they had any discussions with their abutter, the Ricci family at 225 Banfield Road about run off onto that land? Mr. Moulton confirmed that they had quite a bit of discussion with the owners, mostly having to do with the run off caused by their new construction and how that flows onto the abutting land without the berm. The reason they created that berm is because it would flow in that direction. In discussions with them, they preferred a solution that would allow the stormwater to be managed on site as much as possible and to allow it to flow in the direction that it currently flows, which is, for the most part, the Wren's Nest. Mr. Coker asked what prevents them from handling the stormwater run off from the northerly side of the parking lot. Mr. Moulton stated it was lack of room. The property line is up to the edge of pavement. Mr. Coker asked if they couldn't redirect it somewhere? Mr. Moulton stated that is where the grading issue comes in because there is so very little room at the edge of the parking lot that it would be impossible to grade any type of swale or ditch along there that could conduct water to some sort of treatment. Mr. Coker asked if they could build a drainage run off straight out to the Route One sewers. Mr. Moulton stated that they would never get approval from NHDOT to add drainage in that manner. Mr. Coker asked, for the record, if they had settled those conversations with the abutter to their satisfaction. Mr. Moulton believed they had and Mr. Ricci was present who could speak to that. Mr. Holden stated that this was a TAC issue and this is a significant improvement, the stormwater is being handled on site and it is getting additional treatment it never would have had prior to this project so the net aspect is that this is a net improvement to the site and there is no impact to the abutting property now.

Mr. Hopley asked if the two story detached structure is currently a single family home and is it going to remain that except the garage is going to be abandoned and modified? Mr. Brown confirmed that the garage will have windows and will be used as storage but not livable space. Mr. Hopley stated that he sees some potential building code issues and he is going to need some engineering beyond Mr. Moulton on the addition and how it relates to the existing structure. There are some interesting challenges here but he may have some construction features that he has not overcome. Mr. Brown stated they are working with an architect.

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.

Ricci, of 225 Banfield Road, spoke as an abutter. He confirmed that they had 3-4 meetings with Michael Brown and Dennis Moulton. He is very happy about how this worked out and the property in general is a huge increase in treatment and it is a much better design than what exists there today.

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 made a motion to approve site review approval with stipulations including a CMMP, that the dumpster enclosure shall include a full height fence and that the garage door shall be removed from the single residence and replaced with a solid wall. Deputy City Manager Hayden seconded the motion and requested an additional stipulation that the applicant shall work with Ms. Tillman on the Landscaping Plan.

The motion to approve site review approval passed unanimously with the following stipulations:

- 1) That a Construction Management and Mitigation Plan (CMMP) shall be prepared by the Applicant and then submitted for review and approval by City Staff prior to the issuance of a building permit;
- 2) That the dumpster enclosure shall include a full height fence;
- 3) That the garage door shall be removed from the single residence and replaced with a solid wall;
- 4) That the applicant shall submit a Landscaping Plan to Ms. Tillman of the Planning Department, for her review and approval.

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C. 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 August 28, 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.)*

D. 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 August 28, 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:

Jeff Johnston appeared on behalf of the applicant, Parade Office, LLC. They are requesting Site Plan approval for Lots 1 & 2. They are fully committed to developing the Portwalk project, however, since there have been tremendous changes in the real estate and financing markets and by subdividing the project they are able to finance and develop each building individually. He turned the hearing over to Gregg Mikolaities, of Appledore Engineering.

Mr. Mikolaities stated that they started this process in June when they submitted subdivision plans and individual site review plans for Lots 1 and 2. They received favorable recommendations from both TAC and T&S. They had 14 stipulations from TAC and at the July Planning Board meeting they had a lengthy discussion on how they addressed those 14 stipulations and they discussed the three lot subdivision. That same night preliminary subdivision approval was granted and then final subdivision approval was granted last month. On the Site Review Plan Lot 1 is the hotel lot and Lot 2 is the residential lot. This is basically the same plan that was before the Board in 2007 when they had a very lengthy review so he did not want to repeat that. There were a number of stipulations which they have been working with City staff on. Tonight there are five additional subdivision stipulations from the subdivision approval which they are also addressing with staff. He is happy to go into more detail but they have probably heard it 3-4 times by now.

Chairman Ricci felt they could just have questions from the Board.

Mr. Coviello asked why the private street between Lots 1 & # and Lot 3 would have a different pavement schedule? Mr. Mikolaities explained that half of the street is going to have a parking garage underneath of it.

Councilor Dwyer stated that at the last meeting the Board's questions were about what would happen with Lot 3 during the time that Lot 1 & Lot 2 were being construction. She asked him to review the disposition of Lot 3 as they stage this out. Mr. Mikolaities stated that as part of the stipulations on the August 29th letter from August 28th meeting, stipulation 5 says that the restoration of proposed Lot 3 shall occur no later than 6 months after the issuance of a C.O. for proposed Lot 1 and proposed Lot 2. That is how they covered Lot 3. He displayed the plan about the green space and explained that if in fact Lot 3 gets delayed, they will see the same street trees that were approved as part of the master plan and the lot will be loamed and seeded.

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

Sharon Somers, Attorney with Donahue Tucker and Ciandella, addressed the Board on behalf of The Hill Condominium Association. She indicated that they were actively participating in the review process over this last year and they have met with the applicant several times regarding the revised plans. She indicated they have resolved any outstanding issues and they have no objections to these amendments.

Stephen Scott, 377 Richards Avenue, works downtown on Daniel Street. He spoke in favor of the subdivision. He knows it is difficult to take on a large project and it makes sense to phase it out so that they can separately finance it.

Leann Spees, 1443 Ocean Boulevard, Rye, is Vice President and Regional Manager of the First National Bank of Ipswich, located on Hanover Street, adjacent to the site. She expressed their support for the proposal submitted by Parade Office, LLC. Cathartes Private Investments is their landlord and they are located in the bottom of the Hilton Garden Inn building. They support this project as it is well designed, will bring new vitality to the northern tier and more businesses, residents and visitors into the City as well as expanding the commercial tax base. Given the current uncertainties in the current market, they feel it is prudent to build the project in phases.

Arthur Deracasani, 77 Hanover Street condominium owner. He was very much in favor of this project and this is the best way to complete this development, especially in light of the current market. He encouraged the Board to approve the plan.

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

Chairman Ricci recognized two pieces of correspondence in favor of the project from Cindy Winthrop of Coldwell Banker, and Pete and Nancy Winthrop.

Motion on Item C.

Mr. Coviello made a motion to approve with the stipulations in the Department Memorandum. Deputy City Manager Hayden seconded the motion.

Mr. Coker indicated he was not criticizing the applicant but he wanted to point out that working within the parking credit that exists now there will be a hotel of 128 keys, a restaurant, retail and meeting space with total parking required of 213 and because of the City's terribly broken regulations they only have to provide 36 parking spaces. He asked Councilor Dwyer to try and fix that.

The motion to grant Site Review approval passed unanimously with the following stipulations:

- 1) That the pavement markings shall be revised on Deer Street to reflect existing conditions;
- 2) That a Construction Management & Mitigation Plan shall be prepared by the applicant, for review and approval by the City;
- 3) That a report on traffic impacts on the revised plan shall be prepared for review and approval by the City Traffic Engineer;
- 4) That the applicant shall receive approval from the Traffic & Safety Committee prior to the Planning Board meeting;
- 5) That all stipulations from the original approval dated July 31, 2007 shall continue to apply;
- 6) That the automatic emergency notification system shall be separated for each individual lot;
- 7) That an easement will be required for the sewer to cross over to another lot;
- 8) That Preliminary and Final Subdivision approval shall be granted by the Planning Board prior to Site Review approval;
- 9) That the Historic District Commission shall be allowed to consider any exterior changes;
- 10) That pavement delineation for Maplewood Avenue and Deer Street shall be added to Sheet C-5;
- 11) That the valet parking spaces shall be labeled on the Site Plans as non-conforming parking spaces;
- 12) That a revised marking plan shall be provided to the City Traffic Engineer, for her review and approval;
- 13) That Sheet C-6A shall be revised to correctly label the proposed stairs;
- 14) That the Landscaping Plan shall reflect a variety of tree species;

Motion on Item D.

Before making his motion, Mr. Coviello asked if the alternates had anything to add.

Ms. Geffert was concerned about the roadway that goes in between but it is only on half of the lot and she asked if there was a license or easement between Lots #1 and #2 and Lot #3 so that the roadway goes in place and there are no problems if one lot is sold. Mr. Holden confirmed that the key component is the subdivision plan and that requires those requirements that need to be completed before a building permit could be issued and that addressed the private road, the construction thereof and the management of it.

Mr. Coviello made a motion to approve with the stipulations in the Department Memorandum. Deputy City Manager Hayden seconded the motion.

The motion to grant Site Review approval passed unanimously with the following stipulations:

- 1) That the pavement markings shall be revised on Deer Street to reflect existing conditions;
- 2) That a Construction Management & Mitigation Plan shall be prepared by the applicant, for review and approval by the City;
- 3) That a report on traffic impacts on the revised plan shall be prepared for review and approval by the City Traffic Engineer;
- 4) That the applicant shall receive approval from the Traffic & Safety Committee prior to the Planning Board meeting;
- 5) That all stipulations from the original approval dated July 31, 2007 shall continue to apply;
- 6) That the automatic emergency notification system shall be separated for each individual lot;
- 7) That an easement will be required for the sewer to cross over to another lot;
- 8) That Preliminary and Final Subdivision approval shall be granted by the Planning Board prior to Site Review approval;
- 9) That the Historic District Commission shall be allowed to consider any exterior changes;
- 10) That pavement delineation for Maplewood Avenue and Deer Street shall be added to Sheet C-5;
- 11) That the valet parking spaces shall be labeled on the Site Plans as non-conforming parking spaces;
- 12) That a revised marking plan shall be provided to the City Traffic Engineer, for her review and approval;
- 13) That Sheet C-6A shall be revised to correctly label the proposed stairs;
- 14) That the Landscaping Plan shall reflect a variety of tree species;

.....

E. The application of **Saco Avenue Professional Building, Inc., Owner**, for property located at **125 Brewery Lane**, for a third additional one year extension of Site Review Approval which was granted by the Planning Board on October 20, 2005, to construct a 4-story, 64' x 240', 15,500 ± s.f., 48-unit residential building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 154 as Lot 2 and lies within a Business 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.

Mr. Holden advised the Board that TAC reviewed this and they have reviewed it many times. Each time the plans have been further refined. The Department recommends it should be approved but they would like to go over the conditions so they can rid the list of some that are duplicates and others that have been completed. He also indicated that the applicant has worked diligently with the City to get this approved.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, was present along with Christopher Keenan, legal council. The last time this was approved was in November of 2007 and the Board added four stipulations on that approval. The first stipulation regarded Dark Sky Lighting and the fixtures are shoe box down pointing fixtures which are dark sky compliant. The second stipulation was that they meet with DPW regarding the lighting on Chevrolet Avenue. The plans show four additional street lights along Chevrolet Avenue. The third stipulation was taken care of with a note regarding the speed humps. The fourth stipulation was that the three way stop at Brewery Lane and the Plaza 800 site remain as a three way stop and that is what you see on the plans. They went back to the TAC and they added four

additional stipulations for consideration. The first was that they go back to T&S for a renewed approval. The T&S met on September 11th and approved the plan subject to two conditions. One that the parallel space option along Brewery Lane was the preferred option. Mr. Chagnon handed out a copy of that plan. They proposed two proposals and this is the option that was recommended. They also asked that they ask the owners of Plaza 800 if they could install a fourth stop sign at that intersection. Currently there is a stop bar at the end of the traffic aisle but not a sign. They don't have a problem with that but it can't be a condition as they don't own the Plaza 800 property. The TAC asked for an annotated set of plans for staff to review and eliminate stipulations that were taken care of. Another condition was that they show the fire alarm on the plan. Lastly, they requested a CMMP.

Mr. Coviello noted at the three way intersection there should be a stop bar and there only appears to be one line of the stop bar. It shows the proposed stop sign but not a stop bar. Mr. Chagnon stated they are shown on Sheet C-2 as they are existing so the stop bars are shown.

Ms. Geffert asked what is the actual plan to develop this site? Are they planning to proceed? Mr. Chagnon stated that the issue with this site is there is currently a City sewer that is located underneath the area where they want to put the proposed building. The sewer needs to be removed before the project can be built. Mr. Holden added there has been a dispute on who is responsible for the delays. He asked Mr. Chagnon to do a general overlay for the new Planning Board members.

Mr. Chagnon indicated this is the culmination of a mixed use project. The proposal before them is the construction of a third building. There are currently three buildings and one will be removed. This will be entirely residential consisting of 47 units. It would follow the ordinance requirements of two thirds, one third floor ratios between the residential and the office. One front two buildings are currently office use and will remain that way. The side is at the grade of Plaza 800. There would be a large open area you would travel down to the City yard area to a lower grade. The building would have access with two driveways and would have below grade parking. There would be general re-striping and re-pavement. The sewer proposal would bring separated stormwater and sewer down the center of the site and connect to the existing trunk line from the Essex Avenue neighborhood. Plaza 800 would be relocated across the lot and would connect to that line.

Chairman Ricci asked if they would have separate water and sewer? Mr. Chagnon confirmed it was stormwater and sewerage and it is combined now. That is why the City has a keen interest in doing work on the site. Rather than move the combined sewer they would like to see the right thing done.

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 reported on the status of past conditions. Most of the outstanding stipulations require close communicatin between the applicant and City Staff.

TAC stipulations: A, B, and C are complete.

Also satisfied: 1, 3, 4, 9, 12, 14, 16, 17, 21, 22, 24, 25.

Most of the remaining stipulations the applicant has submitted their materials and need to review it with City Staff. The follow stipulations remain outstanding: 2, 5,6,7,8,10, 11, 13,15,18,19, 20, 23, 26-33 and D.

Mr. Coviello made a motion to approve with above stipulations. Mr. Rice seconded the motion.

The motion to approve a third request for a one year extension passed unanimously with the following stipulations:

Stipulations from the September 2 2008 Technical Advisory Committee Meeting:

- 1) That a Construction Management & Mitigation Plan (CMMP) shall be prepared by the applicant for review and approval by City staff prior to the issuance of a building permit;

Stipulations from the November 15, 2007 Planning Board Meeting:

- 2) That the Applicant shall met with DPW and the Planning Department regarding lighting along Chevrolet Avenue;

Stipulations from the October 30, 2007 Technical Advisory Committee Meeting:

- 3) That the applicant shall work with Communications Supervisor Gil Emery to have a Motorola carrier conduct a survey to ascertain whether there is coverage for a frequency inside the building and, if not, that a repeater be installed inside the building.
- 4) That the applicant shall work with the City's Legal and Planning Departments to prepare a Construction Management and Mitigation Plan and a meeting should be held to discuss timing and phasing of projects;
- 5) That a number of catch basins shown on the main line should be put off the main line for stormwater treatment purposes, and revised on the Site Plans prior to the Planning Board meeting;
- 6) That the notes on the Site Plans that refer to easements for maintaining the water lines and sewer lines, should identify that as a private line;
- 7) That the applicant shall work with Deb Finnigan, City Traffic Engineer, prior to the Planning Board meeting regarding the ADA compliance crosswalks, the parking spaces in conflict with the sidewalks and a 12" crossbar on Chevrolet Avenue;
- 8) That a Knox Box shall be required and added to the Site Plans;

Stipulations from the November 17, 2005 Planning Board Meeting:

- 9) That a traffic impact assessment in the amount of \$25,000 has been agreed upon by the applicant and the Department of Public Works and said fee must be paid into the City prior the issuance of a building permit;
- 10) That all proposed lighting shall be Dark Sky Friendly and so noted on the Site Plans;
- 11) That the two steps at the intersection of Brewery Lane and Plaza 800 shall be reviewed by the City Inspection Department, Planning Department and Legal Department for a determine of what is reasonable and appropriate;
- 12) That the Department of Public Works shall review the parking spaces on Brewery Lane and make a decision on what will be allowed;
- 13) That the dumpster shall be enlarged to include recycling bins;

Stipulations from the October 4, 2005 Technical Advisory Committee Meeting:

- 14) That the Landscape Plan be reviewed and approved by the Planning Department;

Stipulations from the August 30, 2005 Technical Advisory Committee Meeting:

- 15) That the bumpouts on the curbing shall have tipdowns on them and noted on all appropriate sheets of the Site Plans;

- 16) That the drainage plan should be redesigned so that the City can connect into an extended Jewell Court drainage system and said plan must be reviewed and approved by the City;
- 17) That a written agreement be prepared between the applicant and Plaza 800 regarding the proposed crosswalks which cross on to abutter property and said Agreement shall be reviewed and approved by the City Attorney;

Stipulations from the August 2, 2005 Technical Advisory Committee Meeting:

- 18) That the Sewer Construction Agreement be approved by DPW and the Legal Department;
- 19) That a sidewalk easement from Chevrolet Avenue to Brewery Lane be provided for review and approval by DPW and the Legal Department;
- 20) That dye tests be completed on site to provide information regarding sewer pipes and said information should be noted on the Site Plans;
- 21) That drainage and sewer easements shall be provided for review and approval by the City Legal Department;
- 22) That the proposed utility work in the conservation easement shall be reviewed and approved by DPW;

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F. The application of **Tidewatch Condominium Association, Owners**, for property located at **579 Sagamore Avenue**, wherein Site Review approval is requested to install a new drainage system around units 61-67, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 223 as Lot 30 and lies within the Single Residence A 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:

Bruce Crawford, of Ambit Engineering, presented. Also present was Joe Bean, President of the Tidewatch Condominium Association. Mr. Crawford explained that they were retained to help with a severe drainage problem in three of their buildings. They were getting water in these basements for several years. After hydrogeological studies, they determined that they need to install an underdrain system which is the design shown on their plan. They have submitted their plan for bids and they hope to get started on construction in the fall.

As part of that permitting process, the Planing Department asked them to look at the impacts to adjacent areas. They did an extensive study and they determined that there is no impact or increase in flow. They were asked to meet with abutters to discuss this. They conducted a meeting with abutters on site and they reviewed the study. That weekend it rained and they had a 25 year storm. On the following Monday they found an old ditch on Tidewatch property that was apparently designed to take most of the flow from Tidewatch property down to Sagamore Creek. Since they discovered the ditch they figured out the intent was to keep a little bit of flow in the brook and most of the flow would go the other way. They were in the process of filing a permit with DES to bring the ditch back to it's original intent as it is currently full of rocks and debris. By doing that they will divert even more water away form the private property. Even though their study showed there wasn't an impact, this will certainly alleviate any concerns. They have discussed this with the abutters and they are very happy about it.

Mr. Coviello asked if they discussed the ditch with the Conservation Commission? Mr. Crawford indicated they discussed it with the Environmental Planner that is on the TAC Committee. Mr. Holden

confirmed that if it has to go to the Conservation Commission for a State Permit, the Conservation Commission will be involved in it. It would be a State permit and not a Cit Permit.

Chairman Ricci asked if in the drainage analysis there was a hydrocad attachment that he didn't see attached. His question is whether they modeled this for a 50 or 100 year event? Mr. Crawford confirmed they modeled it for a 25 year storm. With the work that they are proposing, a 100 year storm will be much better than it has been as they are trying to split the flow two-thirds, keeping it on Tidewatch property and one-third into the little brook, where as now it all goes through the little brook. The culvert is about half full for a 25 year storm event. Mr. Crawford stated that the City requirements are for a 25 year storm and the State is a 10 year storm. However, the changes would not be any different for a 50 or 100 year storm s the peak increase would not be any greater. Chairman Ricci acknowledged that the City regulations are 25 but he felt he would be remiss if he was doing this and not look at a 50 or 100 that they seem to get every other year. Mr. Crawford confirmed that there was so much capacity in that pipe that a 100 year storm would still have capacity.

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 reason TAC made the stipulation is because the abutters were at the meeting and they were very interested in what this would do and TAC encouraged the discussion. Mr. Holden felt that the applicant is stepping forward to address a long standing problem. The only thing he would recommend is to add one condition that Dave Allen review the revised plan. If he doesn't have a problem then the Department is certainly satisfied. Deputy City Manager Hayden asked if the abutter meeting has already been done? Mr. Holden confirmed that was correct but the plan has changed so Mr. Allen should review it.

Deputy City Manager Hayden made a motion to approve with final review and approval by David Allen. Vice chairman Roberts seconded the motion.

The motion passed unanimously with the following stipulation:

- 1) That David Allen, Deputy Director of Public Works, shall review and approve the revised Site Plan;

.....

G. The application of **NiSource/Granite State Gas, Applicant**, for property located in the **NHDOT Right-of-Way off of Route 33 at the Portsmouth/Greenland City line**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* for the relocation and improvement of the gas pipeline due to the Route 33 and Ocean Road construction project, all within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 280 as Lot 2 and lies within an Industrial 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:

James Gove, of Gove Environmental Services, appeared on behalf of the applicant. The temporary impacts to the inland wetland buffer is caused by the widening of Route 33 in Greenland and the actual area they are talking about is right on the Portsmouth/Greenland line. They have a direct wetland

impact which is temporary in nature, as well as buffer impacts on either side of Route 33. The reason is because the gas pipeline has to be moved outside where it is currently located as the pavement would go over the top of the gas line which is unacceptable from a safety standpoint. The pipeline has to be moved outside where the pavement is and by moving outside it means a temporary wetland impact. In essence the project is in the public interest as it is needed to maintain the gas supply along this roadway. The impacts have been minimized by limiting the work to only the area needed and to be restored after the work is done. Based on the current location and access, there is no alternative to this.

Chairman Ricci asked if on projects like this do they go out and do a final inspection. Mr. Gove confirmed that they do and this is also part of a dredge and fill application which will require monitoring.

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 a Conditional Use Permit. Deputy City Manager Hayden seconded the motion.

The motion to approve a Conditional Use permit passed unanimously.

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H. A compliance hearing shall be held to determine whether **150 Greenleaf Avenue Realty Trust, James G. Boyle, Trustee, owner**, for property located at **150 Greenleaf Avenue**, has complied with their Site Review approval granted on August 21, 2008 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; *(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:

Bernard Pelech, Esq., appeared on behalf of the applicant. He indicated that this compliance hearing was a result of their approval at last month's meeting. Stipulation 29 required the applicant to meet with City Staff and one member of the Planning Board to work out an acceptable Landscape Plan. That meeting occurred with staff and Mr. Coviello. A number of concepts were discussed and a conceptual idea was agreed upon which created three irregularly shaped planting beds along the Route One. They agreed to prepare a plan along that concept. They agreed upon the rough dimensions of the landscaped areas, the number of plants and shrubs to be in each area and the plan before them reflects that conceptual agreement showing three 30' x 19' irregularly shaped islands including 8 shrubs each and other plantings, including annuals and perennials with a wood chip covering. They believe they have complied with Stipulation 29.

Secondly he would like to address the letter he received this evening submitted by Attorney Griffin. Attorney Griffin based his opposition to this plan and suggested the Board deny the plan, based entirely on what he considers a failure to deal with Section 10-503 of the Zoning Ordinance. Attorney Pelech read that section to the Board and feels it does not apply to this hearing. "The landscaping requirements are required for all new buildings, new structures, as well as additions greater than 25% of the floor area". Attorney Pelech indicated they are actually reducing their floor area. They agree it

is subject to review of the City's Site Review Regulations but they do not agree that it is subject to Section 10-503. They feel that Stipulation 29 has been met. They had a good meeting and their plan is a result of that meeting. He indicated that Dennis Moulton and Mr. Boyle were also present.

Deputy City Manager Hayden referred to the landscaping key, it says there is a total of four rhododendrons and six upright junipers. Mr. Moulton indicated that he did not have a chance to update that table. The plantings in those three areas are called out separately on the plan. Deputy City Manager Hayden asked to back up a little bit and she asked if the three planting beds are 30' x 19' or were they 30" x 19"? Mr. Moulton confirmed they were 30' x 19'. Deputy City Manager Hayden asked how many plants will be in each bed? Mr. Moulton confirmed there would be at least 8 shrubs in each planting bed and a mixture of yew, juniper, azalea, rhododendron or similar shrubs. In addition to that there would be complimentary perennial and annual plantings. At the July meeting, Deputy City Manager Hayden indicated it was said that trees were looked at but there were no low canopy trees. She asked if they had consulted a Landscape Architect who provided input on trees in terms of reviewing trees that might be appropriate for this site? Mr. Moulton confirmed that they did not consult with a Landscape Architect.

Mr. Coviello talked about the meeting that they had. It centered around the Site Review Regulations and Section C, Screening and Landscaping section. This section allows either trees or shrubs and the applicant wanted to use shrubs. Rather than having a shrub spaced at 30' from center, which they thought would be a little strange, they suggested taking the clear distance from the existing tree area on the north section of the property, divide that by 30' and that would determine the number of plantings and they spread them out into beds. They didn't want it to be too tight and they didn't want to stuff 8 plants into a small area so they came up with the planting bed size of roughly 20' x 30'. It was a give and take and they basically tried to stay under Section C where they do allow either one. Along the Greenleaf Avenue side, Deb Finnigan stated that she wanted to keep that free for visibility for traffic turning and entering.

Deputy City Manager Hayden asked about the tree count on the August landscaping plan it said there was a total of 10 trees and on the newly submitted plan for September it says 8 trees, which is 2 less trees. Mr. Moulton explained that on the previous plan there were two birch trees proposed along Route One By-Pass and they were replaced with the landscape areas.

Chairman Ricci asked if they discussed the terminology "complimentary plantings of perennials and annual beds will be mulched" and did they define what that means? Mr. Coviello responded that it was his understanding that the 24 shrubs meet the ordinance and complimentary is up to the property owner.

Mr. Coker had a question for City Attorney Sullivan. Attorney Pelech made reference to the wording in Section 10-503, and he said that in the general business, etc., all new buildings and structures. Mr. Coker was curious of Attorney Sullivan's reading of that. Attorney Sullivan first indicated that he had not seen Attorney Griffin's letter and he had not reviewed this matter prior to being in attendance this evening so he is doing the best he can under those limitations. He said he agreed with Attorney Pelech and the reason is the source of the Planning Board's authority to make this decision on landscaping is the Site Review Regulations. This is a portion of the Zoning Ordinance which is incorporated by reference in the Site Review Regulations but the Site Review Regulations discussion of landscaping is actually broader than this and he felt they have a lot of authority and they are not strictly limited to following the provision in the Zoning Ordinance. With that in mind, the very strict reading of this that would apply to every building is not parallel to their authority under the Site Review Regulations which are broader. They do not have to do exactly that it says, they can approve basically whatever the Board feels is reasonable landscaping.

Mr. Coker asked for a definition of the term principal right of way. Attorney Sullivan stated that David Holden has analyzed this in more detail in the recent past. Mr. Holden stated that it has

generally been interpreted that the principal right of way is the principal street and it is not necessary confined by access and egress. Their review of that site is the principal street U.S. Route One By-Pass but it is also, to some degree, Greenleaf. Mr. Holden felt that the record of the Board is its review of the Route One By Pass side as the principal street. Mr. Coke asked if the regulations for their Site Review and Article V Performance standards would apply to the Route One side of that building. Mr. Holden confirmed that is what he just said. Mr. Coker asked Mr. Coviello if that was taken into consideration at their meeting? Mr. Coviello confirmed that it was and he is confused by his questioning as he felt he addressed that earlier. That issue did not even come to a debate as they considered both sides. They did as much as they could with Greenleaf Avenue before the Traffic Engineer stated she didn't want any more landscaping. It is very clear in the Site Review Regulations that it was either shrubs or trees and they picked shrubs. Mr. Coker asked Mr. Coviello if he felt it was satisfactory? Mr. Coviello stated he came away feeling they have work to do on their Landscaping Ordinance but that they meet the Ordinance as written. Deputy City Manager Hayden commented, as a follow up, "parking lots being screened by shade trees "or" shrubs", doesn't mean the applicant necessarily gets to decide whether they are shade trees or shrubs although it sounds like that was his assumption.

Attorney Sullivan felt that the bottom line is to apply the Site Review Regulations and the board has the authority to require a landscaping plan that meets their requirements.

Mr. Coviello was trying to balance the goal of their ordinance, the needs of the applicant and an imperfect ordinance. They site an arborist that doesn't exist. He felt it was a good compromise.

Deputy City Manager Hayden asked the Planning Director to characterize that meeting as well as he was in attendance. Mr. Holden felt the committee did the best that they could. He felt this process was the most difficult landscaping plan he had ever done. He does not believe it should be a two way street and he believes the landscaping says the "or" is very fundamental. Given the charge from this Board, the Committee did the best they could. Therefore this is before them and the reason it is a compliance hearing is for this Board to collectively determine whether or not this landscaping plan meets their approval.

Deputy City Manager Hayden stated, for the record, that although she was not at the last meeting she did fully watch the tape of this hearing and she asked if anyone had any concerns about her voting on this matter. There were no objections.

Deputy City Manager Hayden's concern is that she hears the City Attorney says the Board has the latitude to ask for trees if they want trees. The second item that she finds very surprising is that this plan would have gotten approved previously but for the landscaping and they still haven't consulted with a landscaping architect. She remembers hearing that their concern was visibility for their business which is very understandable. She also remembers hearing that there were no trees yet she now she hears there is no landscape architect involved. There are other options such as high canopy trees, there area columnar trees, or they can group trees in areas. Councilor Dwyer brought up on another project that there is a whole regional approach to improve the Route One bypass. Deputy City Manager Hayden stated that it doesn't seem to her, given the other businesses that have developed there with trees out front, that they couldn't have some trees along that major corridor. She is not suggesting a wall of trees, not evergreens but some high canopy trees or an elm trees for example. She looks at this as a missed opportunity. She had read the regulations thoroughly and has listened to the City Attorney tonight and she thought they have the option to require trees here. She would have approved this last time but for trees. She stated that she continue to have grave concerns.

Mr. Coviello was not given those instructions at the meeting. He read "or" to mean that they had a choice. He learned from Attorney Sullivan tonight that it is a Planning Board choice and not an applicant choice. So, he learned something from Attorney Sullivan again.

Deputy City Manager Hayden felt they could end up setting a precedent for the next applicant that doesn't want to put trees in. This is their chance to add trees to Route One. They need to decide whether they want to see trees. She does not feel great about the fact that there aren't any trees but more importantly it has been all about landscaping for several months and yet they receive another landscaping plan that is very vague on what the plantings are going to be and it is incorrectly called out in the landscaping key. She asked the Board to think about an area that is 19' x 30' and it will only have eight shrubs in it. It will have annuals of some type but that is not detailed.

Attorney Pelech stated he was concerned by the statements of Miss Hayden who said she would approve this but for the landscape plan. He stated they approved this last month and they are only present for the landscaping plan. He did not want any misunderstanding. Mr. Holden believed that Deputy City Manager Hayden's comments are correct in that there were 30 stipulations, the 29th stipulation has been satisfied by the committee meeting and the only condition that is before this Board is #15, that the landscaping plan will be approved by the Planning Board with increased tree planting along Route One. The sole thing that the Board is doing is determining where or not this site Plan complies with condition 15. Attorney Pelech stated that he just didn't want anyone on the Board or in the audience to think they were voting on the Site Plan. They are voting on the Landscape Plan.

Mr. Coker asked Mr. Coviello to clarify with the wording in #15 "with increased tree planting along Route One". Mr. Holden indicated that that stipulation was made at the July 17th meeting and was not removed. The stipulation made at the August 28th meeting was #29 which was that the applicant met with a committee and report back to the Planning Board. Mr. Holden's point was that #15 was still outstanding.

Mr. Coviello felt he could help to clarify the issue. If it had been up to him, he would line this site with trees and you would not see a single car from the roadway. He read the regulations and interpreted it to mean that the applicant had a choice and that is different than what Attorney Sullivan has said tonight. He felt their ordinance isn't clear. Mr. Coker stated that Stipulation #15 is part of the official record and his question is did they accomplish increased tree planting along Route One? Mr. Coviello confirmed that they did not increase any tree planting along Route One.

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

Jim Boyle, owner of property, thanked the Board for giving up their time. He stated that they all agreed this was the way to do it. He purposely wants his cars to be displayed and he read that as trees or shrubs. He disagrees with Cindy Hayden as he is the tax payer and this Board is for him and it is up to him to decide whether he wants trees or bushes. They all agreed to go with the bushes and thought this was over. And now they want him to hire an architect due to overzealous enforcement of City staff. He felt this has gone out of control and they have met every single regulation. Mr. Boyle indicated he would like to get this approved or denied tonight so that he can get back to work and get this project finished. As bad as it looks now, it still looks better than it ever did for the past 25 years and they will be very satisfied when he finishes the project. His dealership breaks every record for customer satisfaction. This site will be a show place.

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. Coker asked to clarify Mr. Boyle's remark. With all due respect to the applicant, this is not about the applicant. This Board is about the Zoning Ordinance and that is what they work by. It is not about Mr. Boyle's application. All of the Board members are charged with doing the best job they can given the rules. They don't have room in most cases to make value judgments and very rarely can they make

a set of judgments. With all due respect, this is not about Mr. Boyle and he takes great offense at Mr. Boyle's remarks. They all work very hard on this Board and they try to do the best they can.

Mr. Blenkinsop stated that he was not a member when this was discussed but he was in attendance in the audience and he asked if anyone had an objection to him voting. No one objected.

Mr. Coker stated he will not be supporting this as stipulation #15, which is part of the record, states "with increased tree planting along Route One". They did not have increased tree planting along Route One so he cannot support it.

Mr. Hopley agrees with Mr. Coker but he asked if there is a conflict with that and stipulation #29 where they appointed a member to meet with the applicant.

Mr. Coker did not see a conflict.

Mr. Holden explained that stipulation #29 was the way they chose to address the lack of compliance on #15 but they left #15 in place. If they want to approve the landscaping plan before them they might want to strike #15 and then approve #29. Stipulation #29 is complete because they had the meeting and the plan is before them. There is no internal consistency. What they are looking at is the Board very deliberately looking at landscaping plans, indicating what it is they would like to see, putting a decision off so they can review an improved plan. Is the final plan before them meet their test so that they can approve it under their Site Review Regulations?

Mr. Coviello made motion for approval for the purpose of discussion. Mr. Holden asked him to be specific. He wanted to make a motion to approve the compliance with #29 and striking #15 and approve the landscaping plan before them tonight. Deputy City Manager Hayden asked if he wanted to accept the landscaping plan exactly as it is? Mr. Coviello added with the correct quantities revised on the landscape key. Deputy City Manager Hayden felt the plan was vague.

Mr. Rice seconded the motion.

Mr. Coviello understands the charge that was given to him under #29. His opinion is that they have every right to ask for #15 but he doesn't believe it is in their site review standards and he feels they have met Section C. of the Site Review standards. He believes there is a lot of vagueness in this section and therefore a lot of unknowns on the plan because, by de facto, they have given them the ability to be vague but the numbers are there and he does not see how they can deny it.

Councilor Dwyer agrees with Mr. Coviello in that she believes by the interpretation that she had until hearing Attorney Sullivan tonight, they have minimally met what she has been reading the ordinances to require. She stressed it is minimal but that is over the bar and she is big on consistency. Earlier this evening it wasn't hard to approve a project on Route One that had nothing by way of shrubs and trees. She believes Mr. Boyle is trying to make it look really good although she would use trees and she would be more inclined to be attracted to it with trees, but different people feel differently about that. She believes it minimally meets what the Board has required.

Deputy City Manager Hayden stated that Tex Mex received a stipulation that they had to provide a Landscaping Plan to staff. Councilor Dwyer felt she has much less control over that than she does with this. Mr. Holden added that on Tex Mex there was going to be a water garden in the front and that caused a lot of problems with their drainage and that is why they were willing to add landscaping. That plan spent three to four meetings with TAC and that was one of the issues.

Mr. Coker repeated that he will not be supporting the motion. He appreciates all of Mr. Coviello's work but #29 was charged and what is really important is what is on the record. Mr. Coviello was charged with coming up with something and agreeing on a landscaping plan and report back their

findings. Mr. Coker doesn't agree because of #15. It didn't come back that way so he is following the stipulation which was not met.

Mr. Hopley agreed with Mr. Coker. He was disappointed with Mr. Boyle as he thought he was coming up to the podium to offer up some trees but instead he got lectured on how the Board works for him. He obviously doesn't understand the charge of this Board as Mr. Coker has reminded him. He will not be supporting this.

Deputy City Manager Hayden stated she will not be voting in favor of it as she thinks the job of this Board is to make sure that drainage works, that there isn't any light pollution, make sure that they provide a better community and soften the edges of some these, still recognizing that businesses want to be seen, but they want tree lined streets and she believes there is a way to accomplish that. She will not be voting for it. She believes they have the authority to ask for trees along this major way.

Mr. Hopley did some rough calculations and there is approximately 175' and 125' between the plantings which creates plenty of visibility between the plants. He doesn't think a minimal amount of trees will affect any display.

Mr. Coviello felt it was important to review #29 one more time before the vote. He thought there was a conflict between #15 and #29 and he referred to the third sentence of #29, "provide representation of either trees, bushes or shrubs at 30' spaces. Mr. Coker in return pointed out that #15 says "increased tree planting".

Ms. Roberts felt strongly about voting in favor and believed the applicant has made an effort to work on this over the past few months. She believes Mr. Coviello made headway on #29 and they have to move forward on this.

Mr. Rice was conflicted between #15 & #29. There is enough of an element of a doubt that he agreed with Ms. Roberts although he would prefer to have seen a plan with more trees rather than less trees.

Mr. Blenkinsop recognized the conflict between #15 & #19. What he was left with was whether it was the intention of the Board to deal with the conflict of #15 by making #29. He agrees with the City Attorney's interpretation that the power is with the Board but he ultimately felt that in setting forth #29 the Board made a determination that it was an "or" and the parties got together in good faith and came to an agreement. He will vote in favor.

Chairman Ricci stated that he will begrudgingly support this motion. He asked if the applicant could possibly add some trees. This Board is committed to this community and they have been for a long time and he knows that Mr. Boyle is committed to his business as well. He felt this was a good start and he thought maybe they could add some trees along the way to help beautify it. He doesn't think it's an expense issue but if they were situated in such a way that half a dozen clumps of trees would add a great deal. He felt that the trees would be a nice olive branch to offer.

Mr. Coviello repeated his motion to approve compliance with stipulation #29 and striking stipulation #15 and approving the landscaping plan before them tonight with a corrected Landscape Key.

A roll call vote was taken:

Mr. Coviello - yes
Councilor Dwyer - yes
Mr. Blenkinsop - yes
Mr. Coker - no
Mr. Rice - yes
Vice Chairman Roberts - yes

Mr. Hopley - no
Deputy City Manager Hayden - no
Chairman Ricci - yes

The motion passed with a 6-3 vote, with Mr. Coker, Mr. Hopley and Deputy City Manager Hayden voting in the negative.

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IV. NEW BUSINESS

A. Proposed Drainage Easement Over Property Located at 246 Jones Avenue to Replace Existing City Drainage Culvert on Jones Avenue;

Mr. Holden stated there is a culvert on Jones Avenue that has deteriorated and they need an easement. The Legal Department and DPW have come up with an easement and they look for approval from the Board. It will go to the City Council for a recommendation.

Deputy City Manager Hayden made a motion to favorably recommend this easement for adoption to the City Council. Mr. Rice seconded the motion.

The motion to favorably recommend this easement for adoption to the City Council passed unanimously.

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V. AMENDED SITE PLAN REVIEW

A. Request of Anthony DiLorenzo, Owner, for property located at 68 State Street, for amended Site Review approval to have the gas service come from Court Street rather than from State Street;

Mr. Holden stated that the Department has approved this as a minor amendment. Given the way the streets have been paved and the gas lines installed, Mr. Parkinson, Director of Public Works, indicates this was the preferable way for doing this. It is a change in the Site Plan and the Department recommends that it be done. This is informational unless someone has a problem with it.

Vice Chairman Roberts assumed this doesn't mean digging up Court Street? Mr. Holden responded that it doesn't involved digging up all of it but it may mean ramming something in underneath. There were problems with scheduling and it involved all of DPW and the applicant meeting on this and this was the best resolution that seemed most appropriate.

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NON AGENDA ITEM:

Mr. Holden stated that that the Meadowbrook project is rapidly moving forward towards getting a building permit. One stipulation was about the landscaping plan and that the Trees and Greenery Committee look at it. The Trees and Greenery Committee does not have jurisdiction over private properties so the Department would recommend that they allow this to be done in the traditional way with approval by the Planning Department and DPW. He indicated that a consensus is fine.

No one had any objections to this.
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Chairman Ricci advised the Board that on Saturday they are celebrating the East Coast Greenway and they are having a ride from Hampton down to Strawberry Banke.

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VI. ADJOURNMENT

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

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on October 16, 2008.