

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

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

7:30 P.M.

DECEMBER 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; and Norman Patenaude, Alternate

MEMBERS EXCUSED: MaryLiz Geffert, Alternate

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

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Chairman Ricci called the work session to order

6:30 – 7:30 pm WORK SESSION on Draft Zoning Ordinance

Rick Taintor handed out a status up-date for the Board. He reviewed the list with the Board and invited comments. There are three pages summarizing where they are in the development of the ordinance and the last page is some highlights and key policy issues that they still need to decide. They also need to think about work sessions and how they are going to wrap it up after the new year.

Mr. Taintor went down the list. There were 15 Articles in Zoning Ordinance.

Article I, Purpose and Introduction. This is a description of the purpose and introduction that has not been changed much at all.

Article 2, Administration. This deals with how permits are handed out, etc. This did not have any major changes.

Article 3, Nonconforming, Uses, Structures and Lots. Again, this section did not have any major changes.

Article 4, Establishment of Districts and Use Regulations. This gets to the meat of it and they had four work sessions on the use regulations. Some sections are almost complete. Establishment of the Districts is just a list of the districts and describes where they are. That is pretty much up to date. As they changed some districts they have to make some updates to bring it up to conformance but those are just technical changes. District Location and Boundaries will be looked for zoning boundaries on Lafayette Road, they may consolidate zoning along Islington Street, and there may be some other areas that they need to revise. In terms of Overlay Districts they changed OR/MV to Osprey Landing Overlay District which deals with ownership and rental units and affordability restriction to implement the court decisions that were agreed to by the City. It is major in terms of the complexity of the current

ordinance and making it much simpler but at this point it is just looking at map references and getting it pinned down. The section on introducing what the use regulations are is complete. Most changes they talked about have been made with a few things they haven't quite figured out in terms of issues that the Board asked them to look at but they are pretty close on that table and that was a lot of work. They didn't make any changes of substance dealing with Pease, Airport Districts or Conservation Districts. They are very close on the use regulations but there are a lot of little technical loose ends to wrap up.

Article 5, Supplemental Use Standards, still needs a lot of work. They pulled a lot of things from the Table of Use regulations, like hours of operation and special regulations dealing with the campus area and special regulations for motor vehicle uses, and they need to review them and make sure they all still make sense. Sexually Oriented Businesses was not changed as it was felt that the City was protected by the language that we had. They want to do a little more work on the Telecommunication Facilities. There was a draft of that but it is just dealing with the technical details.

Article 6, Overlay and Special Districts. There were no changes from the current ordinance in the Flood Plain District. The City has to adopt this in order to be eligible for the Federal Flood Insurance program. FEMA regulates the language that must be used.

Historic District. In 2008 they only met with the HDC once but they met with them a couple of times in 2007. They have made all of those changes. There were issues outstanding regarding materials and colors and that sort of thing.

Osprey Landing Overlay District. They have simplified that quite a bit and the language is complete. They have reviewed it with the attorney for the developer and NH Housing. The current Zoning Ordinance refers to some old map number so they will update that.

Airport Approach Overlay District. This is something that the City has to adopt for FAA regulations. They simplified it quite a bit and it is complete.

Dimensional and Intensity Standards. There are many changes in progress in this section. They talked about the Business Corridor District and they want to think carefully what standards they want to use for mixed use development, including housing and commercial together to revitalize those areas.

Environmental Protection Standards. They had two work sessions this year. One with the Conservation Commission. The wetlands were revised quite a bit and that is complete except for a few minor changes that the Conservation Commission requested.

Earth Products Removal and Placement Section is complete.

Site Development Standards. Revisions are still in progress. They have completed the loading section, the landscaping and screening section and a lot crosses over to the Site Plan Review Regulations. The outdoor lighting section requires final revisions.

Signs. They had four meetings on signs and as of the last meeting they had many changes to incorporate. That will be a big effort in the next few weeks.

Also, related to that, they are looking at sign districts.

Performance standards. They only had one work session. They moved three sections (Landscaping, screening and exterior lighting) to Article IX and into the Site Plan Review. They pulled out a number of other sections that didn't belong there and this is now a much smaller section. They are still reviewing some items.

Flexible Development – PUDs. The general open space PUD and the RDI-PUD for affordable housing do not have any substance changes.

Impact Fees. They made one small change and they recognize that future revisions will be considered. The City tends to negotiate contributions rather than impose impact fees.

Article 14, Miscellaneous Provisions. No changes were made.

Definitions. They had two meetings and they are updating that along with other sections of the ordinance.

That is the status of where they are. The big things that are left are dimensional and intensity and the supplemental regulations of signs.

There are some outstanding policy issues that they need to think about. They talked about off street parking in the Central Business District. They looked at residential vs. non-residential and restaurants vs. other non-residential. There are a number of ways to look at that and the City has been using a particular process for a number of years so they want to be careful how they change that. If they reduce parking requirements to a level that is consistent with the level of what is actually being provided as developments come through and make their payments under the existing system, that there is enough funding going into the City to help construct alternative public facilities. There is a connection between zoning and public financing. If they reduce the zoning requirements they want to make sure that funding is available to actually construct municipal facilities as needed.

The next big outstanding policy issue which will merit a full work session is the business corridor on Lafayette Road. The General Business and Office Research strip and there are some pockets of MRB and some residential pockets that aren't used residentially. They may want to make the district deeper in some locations to encourage the redevelopment in some areas to encourage redevelopment in some areas. The location is the first thing and the second is how much intensity do they want and how it that related to uses. If they have one set of intensity regulations for the general business uses that they have now and then allow more development is people add residential of a mixed use development. Then, what is the right mix? Some ordinances specify that residential can be not more than 75% of the development t or not more than 67% or 50%. They have a similar type of thing in their business district. They also need to develop site and building design standards so that if they do get a redevelopment you encourage a very high quality of design. The intent of this is to give an incentive to come in and redevelop an older site in such a way that they would improve the quality of design and perhaps try affordable or moderate cost housing in the City.

They want to look at the Islington Street Corridor for Zoning Map changes. There are a number of re-zoning requests that have come in from owners of specific parcels over the past years that have been held in abeyance while they have been reviewing the Zoning Ordinance so they need to go back and look at those.

Other areas that need to be considered for some type of re-zoning or those that they may not think are appropriate and other major issues that need to be discussed as they wrap up this process.

Councilor Dwyer asked about the Atlantic Heights overlay concept that they came to the Board and proposed. Mr. Taintor felt the Board left it with them to think about some things and get back to the Board. Deputy City Manager Hayden suggested revisiting that in a future work session. Maybe they should devote ½ of a work session and invite them to come with a very specific agenda of what the Board is looking for. When they came before the Board there was a difference of opinion on what they wanted. Councilor Dwyer agreed. Mr. Hopley asked if it was a case of what the people that came wanted vs. what the majority of the neighborhood might want? Councilor Dwyer remembered that some of the key people were not able to attend that night and they were going to go back and have a

discussion but the Board hasn't received anything back so this would be their opportunity. Deputy City Manager Hayden felt they should reach out to them and see if they can get a resolution. Chairman Ricci felt that was a good point.

Councilor Dwyer asked about impact fees. They put a recommendation in the Housing Plan that they consider the relationship of Economic Development to housing as the potential of exploration of an impact fee. She knows that is a lot of work and she realizes it may be too early to put something in the Zoning Ordinance, but she certainly wanted to mark that they have had that discussion. Attorney Sullivan is part of it and, more and more, his point is that as long as you have a logical through line for what the connection is, you can do an impact fee. She felt it was something they should at least have a discussion about. Deputy City Manager Hayden agreed and felt that if they had a meeting where they talked about that and provided a copy of that to the Board.

Councilor Dwyer referred to the conversation that Mr. Coviello brought up before regarding the enforcement and other processes for enforcement. Whether this is the opportunity or not, as a City Councilor she realizes that there is an active attempt to do enforcement, but how they want to memorialize that in the Zoning Ordinance or how do they want to step it up. Councilor Dwyer felt that the sign enforcement is out of control but there are other things as well. Deputy City Manager Hayden felt it might be useful to have it as an agenda item on how the City does enforcement and that will help them decide if there is something they should be doing differently at the regulatory level or whether it is a staffing issue. Deputy City Manager Hayden clarified that she was not proposing a work session for each of these items. Chairman Ricci suggested using place holders for some of them.

Chairman Ricci summarized that they will have 3-4 future meetings in January and February and Mr. Taintor handed out a schedule. Mr. Taintor was not available on 1/27 but otherwise he is free. Councilor Dwyer pointed out that January 8th is a Council Budget meeting so that evening doesn't work. After discussion of possible meeting agendas, Mr. Holden indicated he will clean up the schedule and send it out by email.

Deputy City Manager felt that the other issues that Councilor Dwyer raised about enforcement, housing impact fees, they can figure out the best place to work those in. Mr. Taintor did not believe they would be able to work them into the current revisions but maybe they should plan in the spring to have a short work session before a Planning Board meeting. Deputy City Manager Hayden felt they should put them in as Agenda items. Enforcement is a lot about people not knowing what they do for enforcement and that can be a brief presentation by staff. The Housing Report has a number of recommendations that this Board would be interested in, most of which they are already working on. So, the Housing Impact Fees and enforcement will find an Agenda place, possibly something before the regular meeting on the 19th. Chairman Ricci agreed with that. Mr. Holden felt they should have one final meeting to review the document in its entirety to wrap everything up. Deputy City Manager Hayden assured them that would be part of the process.

Councilor Dwyer believed the Council was having a Housing Workshop on the 26th so the time of this would work.

Deputy City Manager Hayden asked about Zoning Map changes. Mr. Taintor indicated there is the discussion about the Historic District boundaries but he has not been involved in that. Deputy City Manager Hayden was referring to the areas discussed in the front of the Master Plan. Mr. Taintor responded that they have talked about a lot of them. The OR is a big area to be addressed by the Business Corridor District. The big one is the North Mill Pond. Deputy City Manager Hayden felt another big one was the southern part of Route One near the town line. Mr. Taintor confirmed that could be part of the Business Corridor District. Mr. Holden indicated they have received a lot of individual requests that they should go through one by one. Mr. Taintor saw the big map changes to come out of this project will be the Business Corridor along Lafayette Road, the changes along Islington Street (pulling back the Central Business District and consolidating that all so that they don't

have a lot of choppy districts) and changing the Mariner’s Village District to just the Osprey Landing District. Then there is the other big issues of where lots do not meet the zoning which is probably a future project.

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I. APPROVAL OF MINUTES

- 1. Approval of Minutes from the November 13, 2008 Planning Board Work Session – Unanimously approved.
- 2. Approval of Minutes from the November 20, 2008 Planning Board Meeting – These minutes were not available at the time of the meeting.

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II. NEW BUSINESS

A. Request to Re-Examine Site Review Approval granted to 150 Greenleaf Avenue Realty Trust on September 18, 2008;

Rick Hopley recused himself from the proceeding.

Chairman Ricci turned the hearing over to David Holden. Mr. Holden indicated that this was a somewhat unusual request but it is covered under the way they do their business. This is a request to re examine a site review approval. The sole decision that the Board is making is whether it wants to go forward and consider this matter further or just set it aside and take no action on it. There is literally no debate or involvement of the public at this point. The recommendation is whether or not they are going to direct the Planning Department to do something with this matter, either to put it aside or to schedule it for another agenda. The City Attorney is present if they have questions but this is largely the process that is used by the Board of Adjustment, for example, on a re-hearing. This is not the forum for the actual discussion. It is only whether or not they wish to proceed further or to dispose of the matter tonight. Chairman Ricci assumed that everyone had read their packets as there was a lot of information contained in it.

Mr. Coker asked for clarification. He understood Mr. Holden to say that there would be no debate on this tonight? Mr. Holden responded that the Board members can discuss it but they can’t ask for something from someone, they have to rely on what is before them. Mr. Coker stated this was just for the Board to discuss among themselves. Mr. Holden added that there should not be too much discussion but just whether they want to move forward. If there is going to be a discussion then that should be at another meeting. Deputy City Manager Hayden assumed that by his statement of whether the Board wants to get involved means whether or not they want to take another look at the Site Plan? Mr. Holden confirmed that was correct. Councilor Dwyer asked to hear from the City Attorney on how their involvement would relate to the matter pending before the Board of Adjustment.

City Attorney Robert Sullivan indicated that though both the petition before the Planning Board right now and the issue that has gone before the Board of Adjustment both relate to the wall, or portal or sign, that has been erected in front of Portsmouth Toyota. They are separate actions on separate tracks. The Board of Adjustment action essentially is going to question whether or not the Chief Building Inspector and Attorney Sullivan were correct in certain rulings and opinions that they offered during the building permit process by which the wall, or portal, or sign, became erected. The Board of Adjustment action has already been the subject of a Superior Court appeal last week in which Judge Nadeau has indicated that she is going to write an opinion that will define the scope of whatever is going to happen in front of the Zoning Board. One possibility is that she will say that nothing should

happen in front of the Zoning Board. All counsel for the parties in the case have agreed that they will await the Court opinion and if the Judge says that the appeal should go forward on the issue of whether the building permit properly issued, and that is the ultimate question, then the Board of Adjustment will hear whatever the Court directs that it should hear on January 20th. Site Review approval which issued from this Board, and the Site Review process, really ends after the Planning Board has made its decision with a Site Review Agreement that is entered into between the parties and in this case it would be between the City and Toyota. The Site Review Agreement essentially says that they promise to build what the Planning Board approved, comply with all ordinances, complete the work in 18 months and it is bonded so that if they don't keep those promises then the City has recourse. As of yet, the City has not reached the Site Review Agreement stage with Toyota. That is a more of a form document that issues from the Planning Department although sometimes there are small changes made to the document. It is then signed by the City and the developer and once that Site Review Agreement is signed then a building permit can be issued. At that stage, in his opinion, the Site Review stage is over and another process begins. Although there are some similar facts, what is happening before the Board of Adjustment and what is happening here are actually separate actions aimed at separate land use approvals.

Mr. Coviello asked, for the benefit of the public, could Attorney Sullivan explain how they got here as they may not understand the role of the Planning Board and where their roles are defined between the buildings and the lot. City Attorney Sullivan stated that the role of the Planning Department and the Board of Adjustment, in viewing any proposal and including the Toyota proposal, is essentially to assure compliance with the City's zoning laws. In other words, is an automobile dealership a permitted use in the location where they wish to do it, do they have the proper setbacks and numerous items under the Zoning Ordinance. The decisions of the Chief Building Inspector and Attorney Sullivan, which are being appealed, concern zoning issues and those zoning issues will be decided, if at all, by the Board of Adjustment. The Planning Board has two major functions in land use regulations. The first is that the Planning Board regulates subdivisions of land. In some areas of the State, subdivisions are the major thing that Planning Boards do as they have big pieces of undeveloped land and how that land gets divided up is the big local land use issue. Portsmouth, which has virtually no undeveloped land, concerns itself more with the second major item that Planning Boards do and that is Site Review approval. In any municipalities that have adopted Site Review, whenever anyone wishes to develop land for either a non-residential use or a multi family use then the State Statutes require that they go to the Planning Board and get subdivision (sic) approval before they can do those things. In the early days, the traditional criteria under which Site Review decisions were made were traffic circulation and drainage. Over the course of time, what Planning Boards do at the Site Review stage has really expanded and become much more complex, moving it to environmental issues and, in some communities, design review issues. They are very heavily involved in traffic issues, even off site. It is this second function, the Site Review function, which Portsmouth Toyota came to the Board and, after a deliberate process of some complexity, ultimately secured Site Review approval. With the Site Review approval and the Site Review Agreement, which he mentioned earlier, Portsmouth Toyota would be able to get a building permit to conduct its exterior expansion.

Mr. Coveillo was trying to clear things up as much as possible for everybody and one is that normally a site plan would show site lighting and the issue of concern is the lighting. He would have to go back and look at the plans but he did not believe that the wall was shown. City Attorney Sullivan confirmed that the site was not characterized as site lighting by the developer and were the developer here today, he would tell you today that it is not site lighting.

Councilor Dwyer asked Attorney Sullivan if, because the Site Review Agreement has not been signed yet, essentially the site review process is still in play? Attorney Sullivan responded that although what is happening now with the petition before them being extremely unusual and he actually never recalls seeing a petition like it, what Councilor Dwyer stated is his view. If the Site Review Agreement was signed and in place, he believes that what he would be saying now would be that the Board does not have any authority to look at Site Review again. But, as he views it, that is not the case and until they

have the Site Review Agreement in place the process is still ongoing. Councilor Dwyer asked, given that assumption, is the proper approach up to the Planning Department rather than a Board to take whatever actions are necessary or is it appropriate for the Board? Attorney Sullivan stated that in the normal Site Review situation at this stage of the process, actions taken prior to the execution of the Site Review Agreement are actions taken by the Planning Department. In a rare situation a question comes up before the Site Review Agreement is signed as to what the Planning Board intended to accomplish and there have been situations where they have come back to the Planning Board at that stage and asked what they meant.

Mr. Holden advised the public that the Board had just been hand delivered two communications from Attorney John Kuzinevich regarding this matter. He assumed the Board members should have them so they are stamping them in and distributing them to the Board.

Attorney Sullivan continued, with that in mind, by way of clarification, it appears to him that the Planning Board has three choices in front of it. He thought it was two until the letters arrived. The Planning Board could make the determination not to become involved in this matter and an appropriate motion would be to accept Attorney Griffin's letter and place it on file. The Planning Board could decide that it does wish to get into the issues raised by Attorney Griffin, in which case the appropriate motion would be to pick another evening, notify all of the parties that they are going to hear whatever anyone is going to say that night about the issues raised in Attorney Griffin's letter. Thirdly, now that a packet has been delivered to them which they are not going to have sufficient time to study and read, it appears there is a third choice which they might make to simply defer selecting between choices one and two to another night so that they can read what they have been presented with.

Mr. Coker stated that their rules require timely submission of materials. He doesn't even see this letter being considered this evening as it was not submitted within their own rules and regulations. Therefore, as far as he is concerned at this moment, the letter doesn't even exist. He believes this is a "no brainer" to him. He will defer for a moment saying what he needs to say to let the Board go ahead and discuss this matter but he felt this one was pretty clear to him.

Chairman Ricci asked if there were any further questions for City Attorney Sullivan? Seeing none, he thanked Attorney Sullivan. Chairman Ricci indicated that this is just a Board matter. There is no public comment or public hearing.

Mr. Coker volunteered to start things off. He stated that he believes this Board has an obligation, for many, many reasons, to direct the Planning Department to place this application on hold until the Boards' action in this matter is completed. Chairman Ricci asked Mr. Coker if he was forming a motion and, if so, he asked him to make the motion so that the Board could have discussion on it.

Mr. Coker moved that they direct the Planning Department to place this application on hold until the Board's action in this matter is completed.

Councilor Dwyer seconded the motion.

Chairman Ricci called for discussion on the motion.

Mr. Coker stated that this was a "no brainer". He didn't know how to put it more simply. The applicant's attorney looked all of them in the eye when Mr. Coker asked the very direct question "Will any lighting spill off the property" and the applicant's attorney said "no". There are errors of commission and errors of omission and he felt, in this case, there was a lot that was omitted from the process, from the plans, from the drawings, and from the discussion. It reminds him of a magician and he is doing something with one hand so you don't see what he going on with the other hand. That wall was part of a building and when you look at the facts of the matter, and drive by there with your own eyes, he doesn't know what the legal definition of a sign is but it is kind of like the definition of art and

pornography. You can't define it but you sure know what it looks like when you see it. As far as he is concerned, this is a "no brainer".

Councilor Dwyer agreed with Mr. Coker's sentiment. She did not think they would be doing their job with the number of times they have discussed enforcement and their discouragement with enforcement. They just talked about it half an hour ago at their work session. It seemed to her, and as Mr. Coker said, when folks appear before them repeatedly and give them their word on things, it is hard if they let these things go by. Having asked the specific questions and she felt it was well documented that a number of members of the Board asked questions about glare, light and representation of what signage would be there. Clearly the intention was not to tell the Board directly what was happening. She thought they needed to put it on hold.

There was no further discussion on the Motion. The Chair called for the vote.

The motion to direct the Planning Department to place this application on hold until the Board's action in this matter is completed passed unanimously.

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III. PUBLIC HEARINGS

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

Chairman Ricci recused himself even though this is judicial in nature.

Acting Vice Chairman Coviello read the notice into the record and opened the public hearing.

Attorney Malcolm McNeill appeared on behalf of the applicant. Also present was Mark Stebbins, one of the principals of the project, Michael Kane, an involved party and Maura Fitzpatrick, part of the Development Team. Attorney McNeill was happy to be here to present a summary of all of the evidence that they have heard over a prolonged period of time and to answer all of their questions and move towards closure. This has received a great deal of long standing attention from the Board.

He started out with some comments that were not his. The first one was "What is at stake is fundamentally Portsmouth's perception of its future and how that perception should frame this analysis of how best to develop this site." That is taken from the re-zoning report of the Planning Department, dated August 10, 2007 as part of the matrix document.

"The Planning Board should carry out a comprehensive planning study of the existing office research district between Islington Street and Borthwick Avenue to determine the appropriate long range policy and zoning for this area." This is from the Portsmouth Master Plan, Page 28.

"The real question is 'Why is the Borthwick Village Plan compatible with Portsmouth's long term vision for the best use of this property?'," comment of David Holden as two previous Planning Board work shops.

In terms of the Board's examination of those issues for the last year and one half they have done it deliberately, with great care and sensitivity to those particular questions. Additionally, the issues with

regard to this project were complex because of the unique character of the proposal. Issues such as demographics, work force housing, affordability, uniqueness of the property, how units were to be owned, offered and conveyed, how they were going to be disbursed. All matters were difficult to understand but in the context of one of the few areas of the City that is available for significant innovative development. In his experience before the Board, he could not remember when 37 1.2 acres of land and the use proposed on it has received the same amount of intense and thorough review. It is also important to note that no matter what they do tonight, the public review of this project doesn't end tonight at all. If they favorably recommend to the City Council, the ordinance needs to be drafted and approved by the Board. Then the political and land use planning issues that are reserved for the City Council have to be acted upon. Then, most importantly, if they pass the re-zoning, it comes back to the Planning Board again for site review approval. The ultimate layout, including the lighting, roads, drainage and other matters, would be back again. The issue tonight is whether this project will be recommended for a re-zoning revision or whether this process is going to stop.

To prepare for this meeting they have reviewed all minutes back to 2007. There have been meetings and work shops by this Board. They know how hard they have worked on their zoning update and they believe the Board understands what they are proposing. The issue at this stage is not a lack of knowledge but rather a lack of a decision.

They could have brought in many, many people to speak on behalf of this project tonight. They did not want to make a contrived presentation. Many people have spoken regarding this project and he made a list for the Board. He also provided a list of all experts that addressed the Board in during this process. For all of the time the project has been before the Board, if they made a list of all people who have spoken against this project, there is only one. Mr. Coker has referred to this project as one of the largest to ever come before the City. People on Islington Street are concerned but they will not be using their street as a primary access. The other gentlemen who they anticipate will speak tonight in opposition has indicated some concerns regarding traffic and other matters, which they think are legitimate concerns at any public hearing.

The process has come to an either/or decision for this site. One course of action is to continue the OR zoning and there has also been discussion with regard to that. There has also been discussion, by them, to advance their proposal. But any type of argument for any other type of use for this property has not occurred. In terms of considering that argument, the institution that is located closest to this site, who you would expect to say they have other long term intents for this land is the hospital. Deputy City Manager Hayden felt they should look at what they have done in Concord on "medical mile". Attorney McNeill stated that they provided a document from the President of the Hospital in support of the development. The Vice President of Development appeared at a meeting and voiced those comments. No other developer has come forward and stated this land should be saved for medical office use.

The City's Economic Development Committee (EDC) recently requested a study from Berg Consulting which indicated that the City has a 15 – 20 year supply of available office space. In February of this year, that same consultant did a report earlier for the applicant which said the same thing. If there is no office demand and no vocal opposition to this project, they believe their proposal creates a viable alternative which is only being restrained by a lack of resolution of their issues.

Some of the information they handed out is new and some isn't. Most information was before the Board in Feb of 2008. At the end of that evening, this was the motion made: "Deputy City Manager Hayden made a motion to direct staff to work with the applicant based on the input received, particularly this evening, to come back to the Board with a draft ordinance". In September of this year a draft ordinance came forward. Attorney McNeil indicated they were willing to work with the Department on that ordinance, that in their view was authorized by the unanimous vote of this Board in February. They are looking for a renewal of that motion, to work with the City's consultant to draft an ordinance that would work for this project.

Attorney McNeill turned to the comments included in the report.

Mr. Coveillo has been concerned about demographics and Attorney McNeill believed based on their study that 1/3 of the Borthwick Village population will come from Portsmouth, 1/3 will come from Strafford, Rockingham and Hillsborough Counties and 1/3 will come from a longer distance, however, most residents will have a relationship with someone in the immediate area. At Riverwoods in Exeter, some residents may have had a relationship with Exeter Academy or UNH. In their case, they may have had a relationship with Pease Airforce Base. There has been a concern that if people his age and older, 62 plus, and the project they are proposing is 410 independent units, 70 assisted living units for people 62 years and over. If all of the 600 residents at Borthwick Village were to vote, their votes would represent a little less than 3% of the registered 18,900 voters in Portsmouth. From their review of surrounding communities, most particularly Exeter, there is no compelling evidence that older residents vote as a block or have a disproportionate effect on municipal programs as evidenced by the municipal development that has occurred in Exeter since Riverwood has been there. Regarding land use alternatives, the Berg report is clear that there is no demand for office use. Mr. Coker continually speaks about jobs. Attorney McNeil stated they have a project that will supply housing and in the latter of 2008 will create jobs and construction activity. Office buildings are not going to be built if there is no demand. Portsmouth Hospital would be the first that should speak out to save the space yet they have been supporters from the beginning.

Attorney McNeill stated they have provided evidence regarding the difference in taxation. Gross taxes for offices would be \$360,000. Gross taxes for Borthwick Village approach \$2,000,000. The proposed development would have a limited impact on municipal infrastructure and the property would not require a new middle school. If this project goes forward, funds will be available for the City. With regard to the demand for this project, Councilor Dwyer indicates that lower income seniors are adequately taken care of by the City and the city has taken a leadership role with regard to assuring the availability to seniors earning less than 50% of the median family income. In October, Councilor Dwyer reaffirmed the City's record with regard to that type of housing. Seniors who do not qualify for subsidized housing do not have the residential options such as Borthwick. At previous meetings, some Board members have clearly said that Borthwick Village is only for rich people but its seemed that has case a shadow on some of the considerations of this project. They added to the back of their exhibit package assessment data from the City with regard to the range of assessed value of homes in this community. High value is \$6 million and the low of \$106,200. Median single family home values range from \$342,000 to \$297,000. In terms of their proposed rates, they run between \$270,000 - \$450,000 which is in the perimeters that they are speaking of reasonableness and not for rich people. These fees are commensurate with other facilities. The Riverwood project has recently expanded and 80% of the new un-built units are sold. The Board had concern that when market conditions change, that the developer will come forward and wish to have the age restriction removed. They wish to agree to a condition that the age restriction will not be removed. Similarly, the types of communities referred to in the Wall Street article that was provided to the Board deals with Florida. If this project happens, Michael Kane and Chris Dwyer will not have to drive to Exeter to see their parents. During the course of this project, the subject of affordable and workforce housing have come up. They have closely examined the report of the Blue Ribbon Committee. Attorney McNeil does not feel this is an appropriate place for workforce or affordable housing and is born out by the report. Units of affordable housing will best be achieved in small increments through redevelopment of existing sites and infill developments. The fiscal impacts generated by this project could easily be used for other programs.

Attorney McNeill addressed neighborhood impacts. Borthwick Village will be a relatively self sustaining facility with no adverse effects on surrounding properties. It will be well buffered. Traffic will be generated only during off peak hours and only one major access will be required. Office Research may require two significant access points. This project will involve appropriate buffering. There will be consistency with the Master Plan, which specifically stated this area should be studied.

The applicant would consider Mass Transport, public transport and buses. The Master Plan also has a provision that says the project promotes new development that provides positive fiscal benefits to the City and minimizes demands for new infrastructure and services. This project fits exactly with that criteria.

There is a proposal in the Master Plan that says the project uses innovative zoning measures to encourage desired uses and achieve public benefits. This form of housing will be a public benefit as the people will support other public benefits in the community. The zoning proposal by the City's consultant, provides and represents a reasonable step in defining the specifics of the zone and they believe they should and can work with them and their consultant to finalize an ordinance that is mutually acceptable to the applicant and to the City. It will consider compatible uses, creative recreation, they will work with Senior organizations with regard to their input and they will consider public transport and other options with regard to this site. Importantly, the density for Borthwick Village is reasonably consistent with high density residential PUD uses already in the City's ordinance.

Attorney McNeil discussed environmental impacts. There were five studies submitted with regard to this project: traffic, density issues, drainage issues, fiscal impact and general civil engineering issues. In comparing all of those reports with a permitted office use, those consultants came to the following conclusions: 1) the proposed use would maintain a larger wildlife habitat than an office project; 2) the proposed use would provide a larger area for recreation; 3) the proposed use would have 3.3 acres less pavement than an office facility and would have fewer parking spaces.

Attorney McNeill addressed architectural impacts. This project would have a creative architectural design that would be attractive and consistent with adjacent residential properties. It has to be attractive from a marketing perspective. It must be handicapped accessible and marketable. The project would provide a transition from OR on Borthwick Avenue and residential on Islington Street. It would have less lighting and adverse impacts than an office project and they would have an integrated landscape system.

Attorney McNeill indicated that after all of this time and consideration which the Board was kind enough to give to them, on a project they really believe in which they believe will make a difference in this community, they want the Board to give them a chance by recommending by vote that the city consultant work with them to draft an ordinance to facilitate this use and then recommend it to the City Council. The Council will then go through it's process and if they are in favor of this project, then the Board can help them design this project at Site Review. They hope they have given the Board everything they have asked for and we hope they feel they have tried to be responsive. They would like to get a vote and know where this is going. If they make the same vote that they did in February 2008, that would be fine with them.

Mr. Stebbins was present for technical questions. If there are people this evening from Massachusetts speaking about other projects that Mr. Stebbins has been involved in, they feel it has no relevance to a zoning consideration that has been before them and he stands before them with regard to his experience with Mr. Stebbins regarding the appropriateness of his conduct as it has been undertaken in New Hampshire and his intentions are clear with regard to this project.

Acting Chairman Coviello opened the public hearing and they will deal with technical questions later. He mentioned that even the applicant has brought up what the Board would consider some site review issues. Tonight's meeting is not about site review and although they may be tempted to talk about site access or number of units, none of that is actually know at this point. They have a good faith proposal put before them but that has not been reviewed by any Department staff for other than a zoning change.

John Jackson, 128 Portland Street, South, Berwick, Maine, is the Business Manager of Carpenters Local 118 who represents NH. He is a resident of South Berwick but he was born in Portsmouth and

spent most of this life here. H moved a few years ago when it became difficult to find affordable housing in Portsmouth. He presented a petition signed by residents of Portsmouth. It read: "To the Planning Board. We resolutely oppose the request of developers to re-zone the area beside Islington and Borthwick Avenue to permit the redevelopment of a large elderly congregate care facility. Located close to Portsmouth Regional Hospital, the area should remain zoning Office Research. The primary focus of development in this area should be creating long term well paying jobs. Efforts should be intensified to attract medical research and affiliated employment to the area because they create the kinds of jobs the City needs. We are also deeply concerned with the exclusivity of the proposed facility. According to the City's Planning Department in an August 27, 2007 Memorandum, the development is exclusive applying primarily to a select group of households with incomes of \$100,000 or more which would exclude most people from Portsmouth." He felt the two key points in this issue are the jobs and this land could be used to attract medical jobs. The second issue is exclusivity. He remembers when Pease moved out and there was a proposal for affordable housing at Pease but it was felt they should use that properly to attract business and put people to work. The same argument should be used for this piece of property and should be used to benefit the largest number of people in Portsmouth rather than just a few. The petition was presented to the Chairman.

Ralph DiBernardo, 1374 Islington Street. He and his wife have attended almost all meetings for this project. They have heard nothing that convinces them that this is appropriate for a zoning change. It is only before them because the developer has a project that needs the re-zoning and not that it is in the best interest of Portsmouth. His biggest concern is that if the developer is able to develop the undeveloped land that abuts this property, this project could expand to 800 or 1,000 units. That scares the heck out of them. There is no doubt in this mind that they will connect to Islington at some point, regardless of what the developer says. The developer has stated that he has no interest in connecting to Islington Street but the neighborhood has come to refer to the reference that if it is an office park there is the threat of traffic from Islington Street. The view of City Hall appears to be that the project wouldn't be functional if it wasn't connected to Islington Street. Mr. DiBernardo stated that testimony of experts all spoke in favor and were all representing the developer. People speaking against it were only representing themselves. An expert from UNH testified that this project would widen the gap of younger residents. Mr. DiBernardo was very concerned about the tax structure and asked that the City look into that. He would expect Portsmouth Hospital would be in favor of the project as they will have a new large clientele right across the street. He assumes the City has not done any comparable studies of the developer's studies. There was reference to residents being able to visit their parents but where will they visit them when they become ill? Riverwoods is set up for nursing. In summary, he opposes the zoning change.

Christina Sante Fe, 39 Beechstone. She is a resident of Portsmouth, a recent graduate in the medical field and she would like to start her life and start a family in Portsmouth but she struggles to do that financially. She felt this land should be used for it's zoned purpose or for affordable housing.

Jose Volara, 185 Richards Avenue and a member of the Union. He opposes this project as it is making housing for elderly of over \$100,000 which is not affordable and it is closing down research and jobs for the future.

Ray Santangelo, 20 Taylor Lane. He just moved from Texas. Elderly people do get a discount on taxes and he disagreed with Attorney McNeill's tax figure as they don't even know how many units they will be proposing. Texas is a state that has a lot of jobs because they make a lot of jobs and that brings a lot of kids. Kids are their future, not the elderly. This City is full of elderly. His wife was born and raised here. He felt they need to look to the future.

Bob Burley, 11 Grove Street, Kennebunk. He has been representing the employees of Portsmouth shipyard. The biggest problem for young people coming into the shipyard is trying to find affordable housing. Guys come into apprentice classes and they live in their cars because they can't afford

anything else. Workforce housing is identified as the biggest local need. They do not need to find more places for the rich to live.

Victor Kelly, Kittery. He has a step-son who works for the town. Affordable housing is a problem and getting to Portsmouth Hospital in a hurry because of traffic is also a problem. What they need to do is an independent study and have them look at the traffic flow. He has nothing against senior citizens but they can be dangerous drivers. City workers cannot afford to get their own place. Jobs created by developing this project will be short term and once the project is over the jobs are gone. If they put a medical research building on the property, they will have long term jobs.

Arthur DiSimone, 186 Leslie Drive. What guarantee does the City have if this project goes under? Will the City suffer the consequences? He would also like to ask the developer if the people employed there are going to retire at \$100,000 per year.

Paul Manel, 1490 Islington Street. The Master Plan, page 26, addresses this very area. It is Land Use 7.6 and the bottomline recommendation is to conduct a comprehensive planning study to address environmental, municipal water supply, passenger rail service, office campus development and traffic access. This has not been done. The studies done by the developer is not what this is referring to. The City needs to do the study. Presentations by the developer have been great and the five studies they have done paint the office research in a very bland, poor light whereas the congregate care facility will be nice and pretty. They can make the office wonderful if they want to. This proposal is not about affordable housing or a congregate care facility but rather it is about money and to maximum profit for the developer. It doesn't seem right when the City is facing a \$40 million middle school and a new sewer treatment plant. If they sell all units, that is \$165 million that he can sell every 10 years. This is about changing zoning to maximum the developer's profit.

Arlene Sante Fe, of Massachusetts, Mother of Christina Sante Fe who spoke earlier. Her daughter is very shy and it took a huge amount of courage for her to speak tonight. Some points that are important, along with her being proud because Christina passed her national boards yesterday in the medical field, she is now looking for an apartment along with all other costs and she would love to live in Portsmouth. They should consider whether this is best for the people who live here now or best for someone who can move here and live at Borthwick Village. Her concern would be for the current residents.

Richard Cronish, from Newton, Massachusetts, age 62. He is a retired faculty member from the University of Massachusetts after 34 years, he has a PhD from the University of Wisconsin with expertise in the areas of development, social and economic in particular. He has served with non-profits on affordable housing and also served as chairman of a bank and therefore has a lot of experience in giving encouragement of affordability housing. He has also served as a President of a foundation that funds medical research so he has some sense of the need for medical research. In looking at the matrix, he finds an extraordinary discrepancy between evaluation of the project by the developer as well as the Planning Department, and how the two groups evaluate the project. They need independent agents to evaluate these issues. They need studies on traffic issues, environmental impact and traffic as a whole as these are critical issues. Accordingly to the material they see that in Portsmouth there are only 177 households headed by someone over 70 years of age with income greater than \$100,000. It is obvious the occupants of this development will come from outside Portsmouth. This does not speak to the critical issue of housing. Land is a scarce resource. It's proximity to the hospital encourages employment and housing should speak to the need of the community. The zoning change requires some demonstration of public benefit and that is the key issue.

Attorney McNeill asked if Mr. Cronish was paid to be there tonight by the union? Mr. Coviello indicated that question was not appropriate.

Acting Chairman Coviello opened the hearing up to second time speakers.

Attorney McNeill reiterated that if this zoning were to stay the same, absolutely no housing would be permitted on this site. Prior to this proposal he represented another developer who attempted to put in artist space and other types of modest types of housing in combination with office use which this Planning Board did not support. The proposal was to change the zoning to Business zoning where 2/3 could be housing related activity and 1/3 could be business related. If the zoning were to remain the same, none of the affordable housing issues discussed tonight would occur on this site. Secondly, in terms of this site being appropriate for affordable housing, they believe the report issued by the City would not support this as an appropriate site. What it is an appropriate site for is a generator of the funds to support affordable housing. Mr. DiBernardo states this has many development problems with regard to municipal wells, wetlands, and other components. They feel what they are proposing is limited by the general character of the site. In terms of the tax assessment for this site, if this is a profit making entity, the tax analysis was done by a firm that works for many municipalities. With regard to a progressive care, assisted living is provided at this site. This is not the same as Riverwoods but this is not a separate facility that is solely housing for the elderly as it has different components to it. In terms of Islington Street they have expressed their intent not to access to that street. There was nothing else they could do but to bring experts before them and provide studies to support their development. With regard to the \$100,000 figure, with regard to median and mean income, they believe they are in the ballpark. They have sensitively to many of the arguments made tonight but in terms of the issues of affordability, that is not an issue of this place and this site is not appropriate for a general housing project. In terms of advancing something that has the public benefit, they feel they have tried to delineate the reasons for public benefit.

Attorney McNeill stated that Mr. Stebbins has had issues with the Carpenters Union with regard to the Hilton Inn and he asked the Board to carefully consider their motive. Acting Chairman Coviello stated it would be inappropriate for them to ask any one about their motive.

Ray Santangelo, second time speaker. He stated he was not speaking for a Union but rather he was here for the good of the City. He is not present because of a Union. Children are their future and he felt it was time to move forward.

Victor Kelly, stated the reason he was there was because he has a 25 year old step-son who can't afford a place to live. This is his back yard and this is where he spends all of his money so he has something to say about this project.

Joseph Donahue, Legislative Director of the Regional Council of Carpenters, 18 Garvin Road, Derry NH. He is speaking on behalf of the 3,000 Union carpenters who live in the seacoast area. He was offended by things that were said about the Hilton Garden Inn. The U. S. Labor Department issues a press release that started at the Hilton Garden project in Portsmouth. Acting Chairman Coviello asked him to speak to this project. Mr. Holden counseled him to speak to the re-zoning request. The Board is being asked to make a decision tonight but he does not know if that will be done. He would encourage him to submit what he has now as the Board may make a decision tonight. However there may be future forums available to submit materials.

Ray Santangelo, 20 Taylor Lane. Portsmouth will be a great place to live. They need to create jobs. The housing they are proposing does not create jobs. What happens when someone passes on that lives there? And, if they rezone that parcel, where does it stop? Will the next guy want to rezone and will it be the same developer again? He felt the Board needed to really think about this.

Attorney McNeill spoke to the issue of jobs. They hope this will be a \$130 million project for a need that is in demand now. In terms of creating jobs and demand for the use, this is far more likely to create jobs that are being represented than the uses that are permitted here based on the studies which have been submitted to the City's own committee. ...

Paul Manel, 1490 Islington Street. He again submits that the study referenced in the Master Plan has not been done so any recommendation to the City Council is premature. The public benefit to this project is possible but not a sure thing. The alternatives to this parcel are unknown as there has never been a comprehensive study done. The Islington Woods proposal was basically a shopping mall with condos. Prior to that was a proposal for 18 houses. This is changing zoning to maximize profit. Also, in deference to Attorney McNeill, this is a public hearing and anyone can speak.

William Gladhill, 8 Barberry Lane, member of the Economic Development Committee and the Blue Ribbon Committee on Housing. Seeing this project, he felt it would be important to do a full comprehensive study to see what is best for this parcel of land. He has learned that studies can make a difference and he would like to see that happen.

Seeing no further third time speakers, Acting Chairman Coviello closed the public hearing.

Mr. Holden indicated this was a good time for the Board to have a discussion but ultimately they are asked to make a recommendation to the City Council. As their staff, he would point out that it is very hard to separate out the chicken and the egg. The issue is rezoning but they have to look at things that are prescribed to a specific project. The more they separate them, the better off they are. Site related issues are not under consideration tonight.

Mr. Coker felt the purpose of tonight is a public hearing so what compels them tonight to make a vote up or down? Mr. Coviello stated they don't have to but the applicant has asked them to and the Department feels they are ready. Mr. Holden confirmed that the applicant has encouraged them to review their prior actions and to encourage work on a proposal before them and that they move forward with this. Mr. Coker asked whether they should be making a decision to vote up or down to recommend to the City Council. He doesn't want to waste their time or the applicant's time. The applicant has asked them many times to get on with this. He is more than willing to do that this evening but wants to make sure the Board feels the same.

Deputy City Manager Hayden suggested that they see where the discussion goes before they respond to that. At the October 3rd Work Session they ended the meeting with the key issues that were before the Board, by Rick Taintor. The key issues are do they want this to be an employment and economic center, ie Office Research, or do they want it to be residential. If residential, do they want it to be age restricted or not age restricted residential. Third, with regard to affordability, what do they want to trade off. How much density do they want to look at for getting some level of affordable units. The information that was presented tonight for the demographics is slightly different because they are looking at different towns, but her notes from the June 2007 analysis was between 35 – 46 units available to those making between \$50,000 - \$100,000 and there would be a demand for 24 – 30 units for people making over \$100,000. If 10% of those as affordable, or 6-7 of total units, would be in demand for Portsmouth and Rye residents making less than \$100,000. What they are saying tonight is that 1/3 of the population of Borthwick will come from the Portsmouth, Greenland, Newington vicinity so they are looking at a larger area. Those are the issues they were wrestling with. Mr. Coker asked, in the spirit of discussion, the affordable housing issue is totally irrelevant at this moment. He has been struggling with this for a long time and the numbers are changing. He heard a low of \$360,000 this evening for office research vs. \$2 million for tax revenue to the City if it is built out as proposed. He remembers the numbers being \$146,000 vs. \$1.4 million so those numbers have changed. One speaker hit it on the nose. The single sole issue is that their Master Plan said that we as a community have directed through the Master Plan to do a comprehensive study on this area and that has not been done. If it were to stay at OR it was stated there is a 10 – 15 supply of OR. Their job is to look down the road 5, 10 or 20 years. As he always says, unintended consequences could be what they do with this property today, they cannot go back. If this property is rezoned, they cannot go back. Just because this proposal is presented, they do not have to approve it. He does not believe this proposal is in the best interest of the City and he does not support it. Deputy City Manager Hayden added that the

Chinburg proposal, Islington Woods, has been referred to incorrectly by saying that the Board did not support it. This Board never took any action on that proposal and the proposal was withdrawn. The Board may have said things that weren't supportive of it but it was withdrawn.

Councilor Dwyer wanted to clarify a technical detail. The legal description that was advertised for this hearing says that the request is to add a definition and revising the table of uses to allow by special exception elderly congregate care. The applicant and others have referred to the request to move forward by drawing up an ordinance to work with the applicant. Does drawing up the ordinance mean the change by special exception of the table of uses? Mr. Holden stated that his interpretation is that the Council has given them a task for a report back. The original conveyance to this Board conveyed the applicant's proposal and this Board directed staff to work with its consultant to develop a new proposal. The Board is able to do a report on the original or to take up the one that was before them in the work session and the applicant taking up the latter. Deputy City Manager Hayden further explained that this has evolved. It became clear that the original request was not going to cut the mustard. The legal notice is technically what the request was but the Board can make any recommendation back to the City Council that they want. Councilor Dwyer confirmed that clarified the matter for her.

Councilor Dwyer felt that the comprehensive study plea is interesting. There have been a number of studies that have been done in different ways as well as actions that lead them to a narrow path on this parcel. Long before she was a City Council members or a Planning Board member she followed the Islington Woods for the possibility of low to moderate income housing for artists. She knows how much the Board and Council were against that project and she was disappointing. As chairman of the affordable housing committee she knows how easy it is to use the guise of affordable housing and have no intention of affordable housing and letting it slip away. It is a big blanket that gets thrown on many issues. She knows the parcel was not technically rejected by this Board but it was rejected by officials in many ways as a place for modest income housing. Surprisingly, about preserving OR, because of the success of Pease they have not been able to make their OR spaces work. They have discussed why they need to re-zone some OR because they are not working. She goes to EDC meetings and other people have reported that what they don't need is more office space. She is not sure as a City Councilor she wants to do a comprehensive study to see what else this parcel should be used for. If it doesn't fit any other zoning district, there are only so many options. She felt there are reasons why they haven't done a separate comprehensive study.

Deputy City Manager Hayden felt that one thing Councilor Dwyer said ties into an issue she is trying to decide on. What the City doesn't need is more office, but when? Maybe not right now and Mr. Coker was addressing that in his long range statement, and the Board needs to think about that. Councilor Dwyer noted that this Board has approved additional office space that has not been built. This is not the only OR space this is not being built. Maybe 50 years from now they will need OR but they have to add up the knowledge they have of this particular parcel.

Mr. Blenkinsop focused in on one issue, getting past the idea of OR or residential, if they break it down and say residential, he has a problem saying it should be residential but only for a certain group of people, 55 and over. As a Planning Board or as a City they should not say they are special and different and he has a very hard time justifying that.

Mr. Coker indicated that of course Portsmouth Hospital supports the project. It is a built in customer base. The applicant represented that the age restriction will not change. There is no such thing as a guarantee that the age restriction will stay there. He is focusing on public benefit which is for all citizens of the City. The only public benefit that he sees is the tax revenue and he sees that as a very dangerous road to go down. Just because a proposal comes up in front of them, they do not have to act on it. He is not going to be supporting a recommendation to the City Council. He urges the Board to look ahead, past where they are going to put their mother or father or receive tax revenue but rather what will it look like in 10-15 years from now, when Pease will be built out.

Mr. Holden, recognizing Mr. Coker's remarks, reminded the Board that economics is part of the Master Plan. The tax impact analysis is appropriate. In terms of studies, since it was OR, if there was an allowed use to come in, they cannot make a conclusion until they look at the impacts. To say there Office Research would have certain impacts and residential would have certain impacts, the Board would have to look at those no made what the project is. That brings it back to the issue of what is the best zone for the City, weighing all of the aspects that go into making that decision, including economics.

Mr. Coker asked Mr. Holden along time ago, whether is was a done deal that there would be two entrances and exits is that was Office Research and the answer was no.

Deputy City Manager Hayden replied to public benefit. They talked about the nursing home bed component, assistant living and then what. If this truly were a continuum of care model, would that be a public benefit? The Board could recommend back to the Council that they do not want age restricted housing or they don't want just independent living but if it was a continuum of care type zoning district, maybe that would be the public benefit they are looking for.

Mr. Coker stated that the public benefit does not mean to him a small subset of the public. Someone that walks in with \$450,000 with a \$2,000 + monthly fee is not a public benefit, even if they get continuing care. A public benefit is sewerage or baseball fields. These are people that can afford those things.

Mr. Rice asked if an applicant were going for a special exception would studies be required? Mr. Holden indicated that if the original applicant's proposal were before them, the Department. would recommend that you recommend it be denied because it is too simple for too complex of a project. When they go through site review those things will be there. Mr. Rice felt there are compelling arguments on both sides and he feels there would be jobs created in an immediate situation with the proposed project and some lingering jobs thereafter. There would be positive impacts on the environment and more tax revenue. What many have wrestled with is the age restricted component and whether it is to the greater good. When making a zoning change for age restricted, it doesn't strike him as for the greater good.

Councilor Dwyer stated, for full discloser, that she was not a member of this population when they started this issue but she is now eligible for this. As a City Councilor she may hear from a wider spectrum of people, she wanted to make sure as they think about housing and age restricted. There are a number of people who are interested in living in an age restricted development. Their interest is to make sure there is a wide range of housing available to Portsmouth. The age restricted housing is a personal choice for individuals, some of whom would be choosing the assisted living. Housing for disabled is also offered as a choice. She sees it as an offering to the citizens. They can think of that issue separate from others. She also thinks it is important to accept the accepted definition of public benefit in the Master Plan. They are not about something that serves 99% of the people but are economic benefits, job related, social, or environmental. They would want to make sure as they approve the site, with a special exception, that other recreational or other benefits would come with the property. They don't want to distract themselves from the key issue by making customized definitions based on a personal opinion.

Deputy City Manager Hayden stated that in the past, if there was no affordability component in this proposal, they were not interested in pursuing this, and tonight she sees them stepping back from that component She asked how important was affordability right now?

Councilor Dwyer went back to their lat work session. Deputy City Manager Hayden and others were getting confused about affordability and this is not an affordability project. She thought her arguments were very convincing. They should be looking at the merits of this project for this parcel and its

purposes and they shouldn't be trying to make it something that it isn't. She felt they were all convincing last time that it should decouple that issue. She thought they had all agree last time that they had been there, done that, and they need to move on.

Mr. Patenaude wanted to look at the bigger picture. He grew up in Berlin and his folks still live there in a big 4 bedroom home with no place to go unless they move out of the community. He moved to Concord and lived there for many years and they voted to allow a project like this for people who wanted to downsize and had a little cash. That made available small homes and that was the public benefit in his opinion. That provided small homes and apartments for young people. He feels this will trickle down for everyone as they climb up the financial ladder.

Deputy City Manager Hayden asked what the development was called in Concord? Mr. Patenaude indicated it was on East side Drive. Deputy City Manager Hayden confirmed that is Havenwood and is a full continuum of care.

Mr. Coker remembers the request to re-zone Mike's Marina, many years ago, and the public benefit was a big issue. While Councilor Dwyer is absolutely right, you can very clearly define areas of public benefit, the degree to which the public benefits is the determination that the Board makes. That is where he respectively disagrees as he doesn't see a tremendous amount of public benefit except for the tax dollar benefit to the City, but that is not enough for him. He will not be supporting this if they come to a motion.

Acting Chairman Coviello asked for a motion. He asked if they should break it up into pieces? Do they want it to be an employment economic area or a residential area? If they decide that they want it to be residential, then they can further that discussion. People have some strong opinions but no motion? Mr. Patenaude was unsure how to word their motion. Mr. Rice would like to be flexible and that is part of the dilemma.

Mr. Holden stated that the applicant has made a proposal on how to move this forward and they are willing to work on the proposed zoning proposal.

Mr. Hopley asked if moving it forward could include some issues such as age restricted or continuum care?

Mr. Holden responded that everything was on the table but the motion is basically if they want to go forward on what they have worked on or have they gone so far that they can make a decision and report back?

Councilor Dwyer felt that several months ago the Board voted to move forward to have the Department work towards options for this parcel. They haven't withdrawn that or overturn it so she is confused along with what Mr. Hopley is saying. What is different now and why aren't they moving forward?

Mr. Holden explained that they had a draft proposal but there was no consensus on the Board of what to do with it. The applicant is now indicating they are willing to work on it but they need the Board to move forward. The Board is able to change its direction very easily. They need direction from the Board as to where they want to go on this. The issue is still what is this land suitable for?

Mr. Coker made a motion that this Board recommend to the City Council that no action be taken. That two proposed zoning amendments not be recommended to move forward. Deputy City Manager Hayden seconded the motion for discussion.

Mr. Coker felt they have already had discussion. They don't know what the best use is at this moment, therefore, he felt it is prudent for this Board to not recommend to the City Council. He reminded the

board, in the Smuttynose example, the City Council overruled the Planning Board recommendation and they can and probably will do the same thing again.

Deputy City Manager Hayden felt this has had such a long evolution and it has been somewhat of a moving target, they did go forward and prepare the draft ordinance and the applicant said they thought with some tweaking they would be satisfied with that ordinance. But, the Board became very mired in a lot of difficult issues in that ordinance, a lot to do with affordability. One issue that is not a small issue is density. The applicant said they thought they had resolved everything except some tweaking and Deputy City Manager Hayden remembers disagreeing as they still had parking and density which were huge issues. They could go back to working on the ordinance but, if they have moved away from affordability, she felt that density is a huge and that has not been discussed. A smaller development would have been an easier decision for the Board. It is good that the Board has taken all this time and it is not a black and white issue.

Councilor Dwyer felt that the Board knows how to talk their way through the issue of density and she felt Deputy City Manager's description was helpful. One of the reasons they go back and forth is because so much time has gone by. She proposes they pick up with the ordinance, understanding they have items to solve bigger than tweaking, such as density.

Acting Chairman Coviello stated there was already a motion on the floor.

Mr. Coker reminded the Board they are not talking site review, traffic or density. They are asked to adopt zoning amendments. He urged the Board to not move forward with this. Once this goes up or down then it is off the table and they can then move forward.

Deputy City Manager Hayden felt the motion, as currently stated, left everyone to wonder what would be next? The original recommendation from the City Council is so far removed from where they have come. If the motion was that the Board did not recommend to the Council rezoning this from anything but OR, or basically not rezoning it at this time, that would be clearer. Mr. Coker's proposal, because it has such a long history, would leave everyone wondering what was next?

Mr. Coker was happy to withdraw and rephrase the motion to make it very clear.

Acting Chairman Coviello suggested that one issue is the idea of passing an ordinance with discrimination in it (age related). He asked if anywhere in the City do they have a problem with that? Mr. Holden confirmed that legally they can do it. Mr. Blenkinsop reiterated that personally he doesn't know if he supports the idea of designating part of the City for 55 years and older. Acting Chairman Coviello added that he used a harsh word by saying it was discrimination and he apologized.

Deputy City Manager Hayden commented that Page 27 of the Master Plan, about extensive studies, does not have a time frame on it. It was not a high priority. They have an applicant that wants to figure out sooner rather than later what they want to do there. They just worked out their work sessions for the next two months for the zoning re-write and they will then start their public hearings. She wanted to point out that work on this project will be pushed out for months.

Mr. Coker felt that this has been a moving target since they started and that is not their fault. They have had numbers of variations and it is not fair for him to say it has been 1 ½ years and the applicant wants to move forward. They need a clear proposal in front of them and they have never had that. He proposes a motion that they recommend to the City Council that they not adopt the two proposed zoning amendments.

Mr. Holden believed the suggested was that there be no change to the Office Research zoning of this parcel. Mr. Coker rephrased his motion: That there be no change to the Office Research zoning of this parcel. Deputy City Manager Hayden seconded.

Councilor Dwyer felt that the reason the project has morphed is because they have asked questions and that is the process. She felt they have gone too far before doing some basic things.

Deputy City Manager Hayden stated if the Board had just decided to work on this part of town and study it and be on their own time frame, it would be a whole different process and it would evolve in a different way. This makes it a very different process and adds the time pressures.

Mr. Blenkinsop understood that they have been asked to make this change to allow for an elderly congregate care facility which has the age restricted component to it. He understands Mr. Coker's motion that they would not make that recommendation. Is that correct? Mr. Coker stated it is status quo and stays where it is.

Roll Call Vote on Motion:

Mr. Patenaude – No
Councilor Dwyer – No
Mr. Blenkinsop – Yes
Deputy City Manager Hayden – Yes
Mr. Hopley – Yes
Mr. Rice – No
Mr. Coker – Yes
Acting Vice Chairman Coviello – No

Vote 4 yes, 4 no. Motion fails.

Attorney McNeill felt it was clear at the commencement of this action there was a two phase proposal that morphed into a proposal from them to continue to act on the vote they took in February to continue to work on rezoning the proposal prepared by the City consultant. They spoke at that meeting and indicated they supported it but the Chairman said he hasn't had time to study the ordinance. In October, that draft was not the focus of their meeting. What he said at the September meeting was that all of the issues raised by Mr. Taintor, which have been spoken to by Miss Hayden tonight about density, age restriction or not and the others that were not filled in with regard to his intent to follow through were all legitimate issues. In terms of flushing out where this actually ends up, he felt they should follow their consultant's advice, work on what he has drafted, answer those questions and then determine what he thinks is appropriate based on the vote that they took. He is asking that because they haven't had a change to review items, that will help them flush out the issues for them. Then they can take a real vote. That is what they are asking for.

Mr. Coker was confused over Attorney McNeill's comment "Then we can take a real vote". He asked what did they just do? Mr. Holden stated that it didn't pass and it didn't fail. Mr. Coker confirmed it was real vote and they are moving forward. He is asking this Board not to move forward quickly.

Councilor Dwyer felt they are a land use Board and they need to take action. She made a motion to pick up where they were, ask the Planning Department to work to bring them an ordinance that would pick up with the issues that were on the table before, including resolving issues such as density, that would talk about the uses of this parcel. Deputy City Manager Hayden seconded the motion.

Deputy City Manager Hayden felt that, if that motion were to pass, the Department would bring back the same ordinance from the September meeting as there were issues that never were resolved. Her concern is that the Board has very important work in other areas and she does not want to see the Board sidetracked by spending the time necessary to resolve these issues.

Mr. Coker indicated that her motion does not speak to the City Council in any recommendation at this point? Councilor Dwyer stated that the ultimate disposition of their work is to the City Council. Mr. Coker asked if it would be another vote to recommend it? The motion is just to work with another document and bring it back to this Board. Councilor Dwyer agreed with that. They are not making a recommendation to the City Council at this point as they don't have one.

Mr. Rice supported the motion. In reviewing the Master Plan and the Islington Street/Borthwick corridor, it was no wonder that the vote came out 4-4. People who are discussing this parcel couldn't come to a conclusion when they were discussing it and at the end recommend this comprehensive study. He felt somewhere along the line an independent study would be very helpful to all of them. Deputy City Manager Hayden felt as they have been all over the place, it will take a significant amount of time. She does not feel this is a priority for the Board or the city and they are being driven by an applicant who it is a high priority for. That is an influencing factor. They could bring it up in the future and postpone to a date certain. Is that a legitimate action? Mr. Holden confirmed that the motion could be amended to include that and they could have a vote on the amendment.

Councilor Dwyer felt it's possible to have multiple priorities at the same time. This Board took up zoning items that are much lower priorities than this. Priorities are not just who got there first. She doesn't feel that is a reason to delay this. This has significant economic benefit.

Mr. Blenkinsop understood the motion that they are moving to ask the Planning Department to bring an ordinance that resolves the issues.

Mr. Holden confirmed that they have an ordinance that the City consultant and the Department has worked on and they will bring it back for the Boards' review. Mr. Blenkinsop asked if, at that time, they would have the opportunity to either make this recommendation to the City Council or not? Mr. Holden confirmed they could vote to something different with the ordinance so there are several options. Mr. Coviello confirmed that there was an ordinance written by Mr. Taintor and at the same meeting the applicant brought up the idea of what the Board perceived as a drastically changed ordinance which was the \$10,000 incentive proposal so they never really came back with any conclusions on it.

Mr. Holden was not looking for an amendment on time but they have mapped out where they will be through March with their work sessions so they will not be able to work on this between now and March. Their current schedule is very aggressive.

Acting Chairman Coviello requested a roll call vote. Ms. Shouse read back the motion for the Board. Mr. Holden believed that they clarified that to mean that it would be the ordinance that was presented to the Board back in October.

- Mr. Patenaude – Yes
- Councilor Dwyer – Yes
- Mr. Blenkinsop – Yes
- Deputy City Manager Hayden – Yes
- Mr. Hopley – Yes
- Mr. Rice – Yes
- Mr. Coker – No.
- Acting Vice Chairman Coviello – Yes

Motion passed with a 7-1 vote.

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B. The application of **LBJ Properties, LLC, Owner** for properties located at **22 and 26 Market Square** and **First State Investors 5200, LLC (Bank of America), Owner** for property located off **Daniel Street**, wherein Site Review approval is requested to construct an open rear egress stair and to combine utilities as a result of lot consolidation, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Plan 107 as Lots 0030, 0030-0001, and 0027 and lie within the Central Business B (CBB) district, Downtown Overlay District (DOD) and Historic District A.

The Chair read the notice into the record.

Mr. Coveillo recused himself from this application.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, presented on behalf of the owner and applicant. Also present was Fred Schultz, Project Manager, and Steve McHenry, Project Architect. Their site issue was a set of egress stairs on the back of the building. This is a re-use of 22 & 26 Market Square to restaurant and commercial office. They have the plan set before them which includes a Survey Plan and a Site Plan showing the lay out of the egress stairs. The Utility Plan shows the water and sewer connections. Lastly, there are two architectural plans showing the dimensions of the space and the egress stair detail and pictures of the existing facades. This project received approval at the December 9th TAC meeting subject to 156 stipulations.

One issue was whether or not they would have to do any work on the gas line to upgrade the building. They handed out a Memorandum which indicated that they would not have to do any gas work as the existing gas services are adequate. Another big concern was the proximity of the work to the Market Square area and one stipulation was that they put a sewer manhole in the existing sewer line which comes out of #22 and connects to the sewer at the intersection of Daniel, Market and Pleasant Street. The DPW wanted them to put in a sewer manhole to provide for better access to that sewer. The detail shows a clean out which was the preferred method for providing that access for future cleaning due to the potential disturbance of brick in Market Square. If they approve the stipulations from TAC, the wording in stipulation #1 should be changed to a sewer cleanout as that is what DPW wanted.

He indicated he could answer any questions the Board may have.

Mr. Hopley asked about the status of Note 6 and the request for the waiver for the grease trap? Mr. Chagnon confirmed that request had not been submitted yet. Mr. Holden stated that, by way of further answer, that Peter Rice is involved in the final analysis of that. Mr. Hopley asked because if Peter Rice says no, then what are the options? Mr. Chagnon confirmed that the design has been submitted to DPW. Mr. Holden asked Mr. Chagnon to go into a little more detail as he was very specific at TAC and it is a particular type of trap that he is being asked to look at. Mr. Chagnon confirmed that the grease trap will need a waiver of the building code as it will be internal to the structure. He would defer to Mr. Schultz for the details. Mr. Schultz stated that as they are unable to put an exterior grease trap in, they must put in an automatic self cleaning grease trap inside the facility which is what they plan to install.

Mr. Coker asked, given their discussions about signs, Note 10 on C-1 says that any use of the flagpole could be interpreted as a sign and he was just curious why that was there. Mr. Chagnon stated there is an existing flag pole on the building and it came up at TAC whether that would be used. They would like to keep it there and the note is there because if they use it for something other than a flag it would be considered a sign.

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 sit review approval with the TAC stipulations, as amended. Mr. Blenkinsop seconded the motion.

Mr. Hopley asked that an additional Stipulation #14 be the consolidation of the lots.

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

Stipulations from the December 9, 2008 Technical Advisory Committee Meeting:

- 1) That there will be a sewer cleanout installed in front of 22 Market Square with a new sewer lateral going into the building so that there are no bends and turns to go into the manhole. The purpose of the manhole is to clean the line in case they have a grease problem with the restaurant;
- 2) That the two existing water services shall be cut and capped at the corporation;
- 3) That the sewer going out the back alley shall be cut immediately outside the curb line and capped, understanding there are still some active lines in the area and they would not want to prohibit those from being used;
- 4) That the roof cleanout from Map 107 Lot 28 needs a viable way to clean out the roof drain with equipment as it is in the stair area;
- 5) That the Typical Pipe Trench detail shall be upgraded to show 4" of hot top;
- 6) That everywhere there is disturbance of a brick area, the contractor shall hand remove the bricks, save them and reinstall them as there are no bricks available that would match;
- 7) That all brick repairs are subject to review and approval by DPW;
- 8) That the water shutoffs shall be shown along the curb line on Pleasant Street for the two water services that will be installed, in accordance with Water Division specifications.
- 9) That all utility terminations shall be shown on the Site Plans;
- 10) That a Construction Management & Mitigation Plan (CMMP) shall be prepared by the applicant, for review and approval by the City, prior to the issuance of a building permit;
- 11) That the Traffic Letter from Jeffrey Dirk, of Vanasse & Associates, dated December 4, 2008, shall include the backup calculations for the Planning Board and for the record;
- 12) That the City Attorney shall review the proposed use of the alleyway for utilities as to content and form to determine whether the intent of the letter is met;
- 13) That all utilities shall be underground;

Stipulations from the December 18, 2008 Planning Board Meetings:

- 14) That prior to the issuance of a Building Permit, that the two lots shall be merged/consolidated into one lot and such consolidation shall be approved as to content and form by the Planning Department and recorded in the Rockingham Registry of Deeds.

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IV. CITY COUNCIL REFERRALS/REQUESTS

A. Request that a downtown street be named after the City's second Poet Laureate, Robert Dunn and permission to plant an apple tree on the grounds of the Public Library;

Mr. Holden confirmed that the Board has the Department's recommendation on this matter. Essentially it is to concur with the planting of an apple tree subject to the Trees and Greenery Committee's concurrence. IN terms of the naming of a street name, their suggestion is that the name

be reviewed by the EOC and more than likely it will not sound similar to any existing street, it will be added to the list of accepted street names and hopefully they will see it at some point.

Mr. Hopley made a motion to approve the Department’s recommendation. Deputy City Manager Hayden seconded the motion.

The motion passed unanimously, as follows:

- that an appropriate tree should be planted on the grounds of the Library subject to receiving approval or favorable comments by the Tree’s and Greenery Committee;
- that the use of Robert Dunn’s name should be reviewed for possible street naming use by the Police Department’s dispatch center; and,
- if Robert Dunn is found appropriate that it shall be added to the EOC’s list of approved street names.

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V. ADJOURNMENT

A motion to adjourn at 10:40 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 January 15, 2009.