

**MINUTES  
OF  
REGULAR MEETING**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 P.M.**

**JULY 16, 2009**

**MEMBERS PRESENT:** John Ricci, Chairman; Donald Coker; Anthony Coviello; John Rice; Anthony Blenkinsop; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; and MaryLiz Geffert, Alternate and Norman Patenaude, Alternate

**MEMBERS EXCUSED:** M. Christine Dwyer, City Council Representative and Paige Roberts, Vice Chairman

**ALSO PRESENT:** Rick Taintor, Planning Director;

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6:00 – 7:00 pm – Non Meeting with Counsel was held

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**I. APPROVAL OF MINUTES**

1. Approval of Minutes from the June 11, 2009 Planning Board Work Session – Unanimously approved.
  2. Approval of Minutes from the June 18, 2009 Planning Board Meeting – Unanimously approved.
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Mr. Rice made a motion to move Section II, Planning Director's Report, to the end of the agenda. Mr. Coviello seconded the motion. The motion passed unanimously.

**III. PUBLIC HEARINGS**

A. The application of **Madison Town houses, LLC, Owner**, for property located at **5, 7, 11 and 13 Old Parish Way (formerly 66 Madison Street)**, wherein amended Site Review approval is requested for revisions to Units 8 – 11 to include interior garages, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 147 as Lots 1-1, 1-2 and 1-3 and lies within the Apartment District. (This application was postponed from the June 18, 2009 Planning Board Meeting). *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, addressed the Board. This matter was tabled last month so that the applicant could meet with the City to work out an agreement on a time frame and he read from City Attorney Sullivan's letter, confirming that agreement. It indicates that all work shall be substantially completed by 12/31/09 and, if the terms of the agreement are not met, all funds held by Provident Bank regarding the Site Review Agreement can be collected by the City. Signatures are needed on the Agreement to finalize it.

Mr. Coker asked how the term "substantially completed" was defined? Attorney Chris Keenan took part in the negotiations and it was at his request to add substantially in case weather might prevent them from completing a detail. It means that the building would look complete.

Mr. Blenkinsop asked if their approval could be contingent upon the signed agreement and Attorney Keenan was agreeable to that.

Mr. Coviello asked for some examples of what substantially means. Attorney Keenan confirmed that site work is already substantially completed and this would deal with the exterior of the buildings, which is not normally covered under Site Review, but due to extenuating circumstances, they are agreeing to this. Attorney Keenan explained that the average person would look at the building and think it was complete.

Chairman Ricci asked if this would this mean they could get a Certificate of Occupancy? Mr. Hopley felt they are gearing more towards the exterior being complete rather than the interior as they may want to keep some floor areas open for potential buyers to work out. Attorney Keenan stated this was an amendment to an existing Site Review Agreement so site work is already covered. Mr. Blenkinsop wanted to make sure it was the City, and not the applicant, that made the determination of whether the work was substantially complete. Attorney Keenan confirmed that was the case.

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**

Deputy City Manager Hayden credited City staff and the applicant with trying to address the neighbor's concerns. She made a motion to approve with the eight TAC stipulations and a 9<sup>th</sup> stipulation being the letter from City Attorney Sullivan to Attorney Keenan, dated July 14, 2009 which included the Amendment to Site Review Agreement, with four conditions. Mr. Patenaude seconded the motion.

Ms. Geffert commended the City and the applicant for working on this and coming to this agreement.

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

**Stipulations from the June 2, 2009 Technical Advisory Committee Meeting:**

- 1) That the patios shown on the Site Plans with a dashed line shall be labeled appropriately;
- 2) That the line on the Site Plan for the retaining wall shall be lightened up and re-labeled as "previously approved";
- 3) That the applicant shall add dimensions on the pavement that is to be removed and the pavement that is to remain so that the appropriate amount is removed;
- 4) That the material for the walkways shall be labeled on the Site Plans;

- 5) That the site shall be completely stabilized within 30 days of the date of commencement of any work on the site based on this approval;
- 6) That erosion control measures shall be installed as part of this approval and shown on the Site Plans;
- 7) That the revised Site Plans shall be reviewed by David Desfosses prior to the Planning Board meeting;
- 8) That elevations shall be provided to the Planning Board.

**Stipulation from the July 16, 2009 Planning Board Meeting:**

- 9) The applicant and the financial institution holding the letter of credit on this project shall enter into an agreement with the City which provides that:
  - a) All exterior work on buildings contemplated to be constructed during the project will be substantially completed by December 31, 2009;
  - b) All site work contemplated by any approval from the Planning Board shall be completed by December 31, 2009;
  - c) In the event that either of the above obligations is not completed by December 31, 2009 all funds held under a letter of credit for the project will be available to the City for completion of these obligations; and
  - d) The applicant's obligations to complete work by December 31, 2009 shall be subject to normal force majeure.

Chairman Ricci recused himself from this hearing. Mr. Coker assumed the Chair for this application.

B. The application of **Daniel and Elizabeth Detolla, Owners**, for property located at **116 Odiorne Point Road** and **Steven and Gail Goldberg, Owners**, for property located at **271 Gosport Road**, wherein Preliminary and Final Subdivision Approval is requested for a lot line revision between two lots as follows: Lot 10-7 as shown on Assessor Plan 224 currently consists of 47,157 ± s.f. and shall remain 47,157 ± s.f. with continuous street frontage on Odiorne Point Road and Lot 10-8 as shown on Assessor Plan 224 currently consists of 50,843 ± s.f. and shall remain 50,843 ± s.f. with continuous street frontage on Gosport Road. Said properties lie within a Single Residence A (SRA) District where a minimum area of 43,560 s.f. is required. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

Mr. Coker read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, appeared for the applicants. Mr. Detolla was also present. This application was for the relocation of a lot line between two lots in the Tucker's Cove subdivision. The Detolla property has frontage on Odiorne Point Road and the Goldberg property has frontage on Gosport Road. The dividing lot line is a single straight line and they would like to move that line and put a kink in it to provide space to move a shed and a swing set. Both lots will remain conforming.

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 as presented with the Department's recommendations. Deputy City Manager Hayden seconded the motion.

Mr. Geffert stated that she did not have an issue with this as the lots were sufficiently big, but they are taking a regular lot line and kinking it and she doesn't want this to be a precedent. She asked Mr. Taintor if they have to show the driveway on both lots? Mr. Taintor didn't feel it was necessary in this case.

The motion to grant Preliminary and Final Subdivision approval passed unanimously with the following stipulations:

- 1) The final plat and all resulting deeds shall be filed concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department;
- 2) Property monuments shall be set as required by DPW prior to the filing of the plat; and
- 3) GIS data shall be provided to DPW in the form as required by the City.

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C. The application of **51 Islington Street, LLC, Owner**, for property located at **51 Islington Street**, wherein Site Review approval is requested to construct one 4-story, 7,718  $\pm$  s.f. residential building and one 5-story 11,995  $\pm$  s.f. mixed use building, after demolition of the existing building, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 126 as Lot 33 and lies within the Historic District A and Central Business B Districts; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

Mr. Coviello recused himself from this application.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Mr. Chagnon, of Ambit Engineering, presented to the Board on behalf of the applicant. Also present were Attorney Paul McEachern and owner Steve Kelm. The architect was expected soon. This building is the Kline's Furniture building and this project is the redevelopment of this building. His submission included a 20 page Site Plan set and a Planning Board application package which contained application support materials and project renderings. Enclosed was a project drainage analysis as they realized the existing site run off was connected to the City's sewer system and other run off flowed significant distances in gutters along adjacent streets to off site drainage basins. Working with DPW they created a drainage connection system (Sheets C6 & 7) connecting the site to adjacent City infrastructure which will handle run off from this site as well as future City usage and it will improve neighborhood drainage.

The next section was the traffic section. Don Rhoades, project traffic engineer, worked with the City's traffic engineer to outline a scope of work for this study. Intersections from Brewster Street to Maplewood Avenue were included, proposed traffic from the Portwalk and Westin Hotel projects were provided as well as typical growth of background traffic. The site is surrounded by 4 different streets. The report concluded that traffic impact would be slight and roadway improvements beyond the immediate vicinity would not be warranted. In the course of the City's review, it was determined that an alternative traffic pattern was warranted so an additional report was prepared by Mr. Rhoades. City Staff determined that to change Parker Street from a one way street from Islington Street to Hanover Street to a two way street between Islington Street and Tanner Court would be preferred. The Traffic & Safety Committee concurred with that decision and recommended that the City DPW look at the

option of Tanner Court being one way so that parking could be added. They believe this project does not impact traffic capacity or operations in the neighborhood. They are proposing improvements and widening Parker Street and Tanner Court.

Mr. Chagnon discussed parking. The project is in the Central Business District and they comply with the City's ordinance even if they didn't provide any parking. They will provide some on site parking and pay a parking impact fee. Currently the existing building could be used for a more intense use which would have a potentially bigger impact on parking in the area. Their plans call for 52 residential dwelling units in two buildings and 10,100 s.f. of retail space. They have tried to provide as much parking on site as possible, including an underground garage with a ramp off Parker Street. Since their original proposal which was approved by the HDC, the front building has been reduced in size as requested by TAC. They will pay their impact parking fee based on the creation of 29 spaces in the underground garage. As part of Mr. Rhoades parking impact analysis, they reviewed the amount of parking available in the vicinity and came up with 60 spaces available in the neighborhood. Mr. Chagnon handed out a comparison of parked cars vs. available spaces in the City. These counts were taken on July 10<sup>th</sup> and 12<sup>th</sup>. They also did a Saturday analysis which is a little different and shows a steady rise during the day. He found that the parking on Hanover Street, which is resident only, does not change throughout the day. In conclusion, they feel there is parking available to support this project.

The rest of the packet included technical items. There was an open space exhibit showing planted landscaping and they have over 6% of open space, not including walkways. If they added in the walkways, the open space would be up to 15%. They did not include the street level open space over the parking garage. He reminded the Board that land is also being given to the City for street widening. The project is well within the City open space requirement.

Also included was information on utility availability, landscaping and sewer.

Mr. Chagnon turned the presentation over to Jen Ramsey, of Somma Studios, to talk about the HDC procedure.

Ms. Ramsey stated that was a two part proposal. One part was the demolition of the existing building and the second part was the construction of two new structures. She displayed renderings of the proposed buildings. The process started in December of 2007 and they received their HDC approval in early 2009. Their buildings did not maximize the site or require variances. They included sidewalks, tree lined streets, common green spaces and space to live and thrive in and the general massing of the two structures was recognized as appropriate by the HDC. The buildings are shorter than the Keefe House across the street. The rear building was built to be sympathetic to the neighbors. Their original parking proposal located vehicles at grade and underneath the building. With the encouragement of the HDC they put all parking below grade. TAC requested the buildings be slightly smaller to accommodate streets and wider sidewalks. They could have constructed a much larger site, leaving just 5% open space. Much of their 35% open space has been given back to the City. Their buildings could have been taller. They are proposing a building that is well within the required setbacks. This was a collaborative process with the HDC and they received a successful approval.

Ms. Geffert asked about the connector between the two rear buildings. Ms. Ramsey stated it was a pedestrian passageway. They are condo flats and the owners go through the walkway to their flats.

Mr. Coker pointed out that Mr. Chagnon stated there was 15% open space and Ms. Ramsey stated there was 35% open space. Mr. Ramsey explained her number included the landscaping, sidewalks and streets. Mr. Chagnon's 15% uses the definition in the Zoning Ordinance.

Mr. Chagnon concluded that the site development will bring significant improvements to this area. He reviewed the Site Plan with the Board and pointed out the front sidewalks and street trees. He pointed

out the sidewalk down Tanner Street, along Tanner Court and down Parker Street so the site will be pedestrian friendly. He pointed out the proposed transformer, they will be tapping off the gas and water from Tanner Street and Parker Street. The new sewer and drainage going down Tanner will continue down Islington to Bridge Street.

The project will provide significant improvements, sidewalks, new utilities, new sewer line, new diversion to sewer, improved drainage and jobs and tax revenue. All TAC recommendations have been included in the Plan Set.

Attorney Paul McEachern handed out a document explaining the phasing schedule. Due to the economic circumstances, they created this timeline and are prepared to have suitable language in the Site Review Agreement. The applicant, for development and neighborhood reasons, intends to start construction of the Tanner Court building which will enhance the neighborhood. The Islington Street building would be second. This project will bring in tax revenue of \$400,000 per year. He stated that Portsmouth has become a very desirable place to live so there will be a demand for the residential units. They are anxious to get underway.

Deputy City Manager Hayden noted there had been a lot of discussion about Stipulation #10 dealing with the sequencing plan at TAC about "phasing" and the interim parking on the front of the site. She asked Attorney McEachern to address that. Her concern was if they approved this knowing the back would be built with an interim parking area in the front, what is to say the front building would ever get built? Mr. Chagnon confirmed they submitted a time line tonight and they spoke to staff about this and it is absolutely essential that they build the back building first. An interim parking plan was requested at the June 17<sup>th</sup> TAC meeting. They had been talking about this at the May TAC meeting, and the Committee asked them to think about what they could do about parking in the interim after the first building went up and before the parking garage was built below. That plan frames what might happen. They would like to start the front building right away and not even have to create the parking area. As the interim parking might be there for 2,3, or 4 years, Deputy City Manager Hayden asked if the traffic flow through the parking area was included in the traffic study and what happens with traffic during the interim plan. Mr. Chagnon noted that the plan shows a hatched area in the east side that says "remove existing pavement" that has parking in it and they originally brought their entrance in off Tanner Street for the temporary parking area. However TAC wanted them to build Parker Street two way to 24' so you now see a parking area that connects to Parker Street and the traffic analysis was based on the full build-out. Deputy City Manager Hayden felt it was unusual for them to be reviewing two site plans, one with two buildings in the rear and one with buildings in the back and the front. She asked where the first phase ends. Mr. Chagnon stated they would build the back building, the ramp, the retaining wall for the ramp, and the north foundation wall of the front building as there is a structural reason to do that. That way, when they start to get people in the back building they do not have to disturb that area and it will be solid and ready to go. All excavation work will be south of that wall. For the total site, they would have to pay a parking impact fee based on 12 spaces. Parking spaces would be unavailable for 4-6 months.

Mr. Hopley felt that the fire services are confusing on Plan C-4 & 5. Mr. Chagnon confirmed that they were asked to service all water from Tanner Street. There are two fire services and one domestic. There will be one master meter off Parker Street and the developer will decide if he wants to sub meter.

Mr. Coker asked why it was essential to build the back building first. Mr. Chagnon stated it was for economic reasons as well as reasons related to the neighborhood.

Mr. Blenkinsop felt that the 4-6 months between the time they demo the temporary parking and the availability of underground parking was incredibly ambitious. He also asked about any concerns about people parking in an underground structure while a four story structure was being built above it? Mr. Chagnon stated there would be a lot of concerns but they will permit it. Mr. Blenkinsop asked what

the 52 residential units would do to their parking analysis? Mr. Chagnon felt that 18 -20% of owners may not even have a car and the retail space and residential spaces will have opposing load times. On the retail side, the maximum demand would be approximately 14 spaces with one hour turn over and 7 spaces with a one half hour turn over. Mr. Blenkinsop indicated that he resided in that neighborhood for four years and stated it was often difficult to find parking on those streets.

Mr. Rice felt if they are going to be constructing the Islington Street building in 2012 or later, they are going to have a vast expanse of pavement visible from Islington Street and he asked if that would call for screening until they start construction. Mr. Chagnon had no problem with that condition.

Deputy City Manager Hayden asked about the time line in reference to Stipulation #10. Their response was to refer them to Sheet D-4 for parking, layout and utility notes and that the one page schedule that Attorney McEachern handed out tonight was supposed to address that sequencing. This was extensively discussed at TAC and she didn't see how they addressed it. Mr. Chagnon explained that this project does not support itself without the off site improvements so they have to do sewer, drainage and utilities. They will get all of that work done first. The plans stated they will do all of the infrastructure improvements. They will put in the curb, finish paving Tanner Street with the construction of the back building and they will do a 1 ½ overlay on Tanner Street. They will widen Parker Street and reconstruct the whole street as part of the first phase. Spot grades will remain the same and will be able to flow down to a new catch basin. On the Parker Street side he included spot grades that blend in and flow down Parker Street to Islington. TAC did not have the revised plan so they wanted them to present a more structured approach and address their concerns.

Deputy City Manager Hayden asked if they had addressed the other 11 stipulations? Mr. Chagnon indicated that the Board needs to make a recommendation to the City Council on Stipulation #11. They decided they would propose that the land under the newly constructed streets to the curb would be transferred to the City in fee and easements would be granted to the sidewalks.

Chairman Ricci asked if they looked at any pervious surfaces? Mr. Chagnon felt they had a good amount of landscaping that opens things up. The only surface that is paved is the heated ramp so there really wasn't much they could do with that technology.

Deputy City Manager Hayden noted that Stipulation #12 stated that the revised site plans are subject to HDC review. She asked if the HDC saw the interim parking lot out front? Ms. Ramsey confirmed that the HDC approved this as one entire project but they understood they were looking to economically go in phases and they did see a plan with temporary parking on the Islington Street side.

Ms. Geffert suggested space for bicycle parking outside on the plans. Mr. Chagnon pointed out two bicycle racks on C2 in the concrete area. Also on D-5 in the underground garage level they also dedicated some area to bicycles. Another stipulation is the two way circulation on Parker Street which will also have to go to the City Council and they would ask for consideration of that tonight to save time.

Ms. Geffert noted the trash removal was underneath and she asked if it was adequate for both buildings? Mr. Chagnon confirmed pick up frequency will be based on usage.

Don Rhoades, Traffic Consultant, was introduced. Deputy City Manager Hayden indicated that the numbers from the handout compared to what was provided in their packet don't seem to be the same. Mr. Rhoades was at a disadvantage as he did not prepare the table in the handout. She asked what the difference was between the parking count summary and the parking analysis. Mr. Rhoades indicated that the difference is that one chart is showing occupied spaces and one is showing unoccupied spaces. A discussion compared the two different documents. When this project is constructed, Deputy City Manager Hayden envisioned tenants driving around to find the best parking place they can find. She asked if he assessed how much driving around would be required to find a parking space. Mr. Rhoades

stated that the traffic study was done one year ago and there were more spaces in the garage. They assumed all residential trips would be in the garage and commercial would be spread out but the highest concentration of spaces would be the Bridge Street lot.

Deputy City Manager Hayden noted that in the Traffic Report they indicated that the specific occupants of the retail spaces were unknown so a representative composite generation rate of four trips per 1,000 s.f. was used, however, if a restaurant use went in the trip generations would be one or two higher, depending on the type of restaurant. A representative composite generation rate is used when they don't know exactly what types of retail uses will go in. They looked at the range of numbers and went on the high side.

Deputy City Manager Hayden asked about the utilization of the garage and who can park there. Attorney McEachern stated they are private parking spaces for the residents of the units with a limited common area.

Chairman Ricci opened the public hearing and called for public speakers.

Phyllis Harberson, 20 Islington Street. She was concerned because the parking was congested, they can't count on the Bridge Street parking lot and employees will require 8 hours of parking. The reality is most tenants will have two cars and parking in Portsmouth is very difficult. She wished that further thought would be given to the parking situation.

Mr. Coker explained that the developer has met the regulations for the City regarding parking. Unfortunately those regulations are "broken" and need to be changed. The City is looking at those regulations and hopefully changes will be made. Chairman Ricci confirmed that parking is being reviewed by the City.

Patrick Haugh, 18 Congress Street. He felt this would be a positive project for Portsmouth and a positive project for the neighborhood.

Steve Fowle, 9 Tanner Court, directly opposite Phase 1 of the project. He felt Mr. Coker had a good point and, assuming all the numbers add up on the parking study, the applicant has met the regulations but it just doesn't make sense. The parking has been tolerable for a while because the previous owner allowed parking on this lot, which created a false sense of adequate parking in that area. They will go from an artificially good situation to a considerable worse parking situation, given that the requirements have been met. He wishes there was something the City could do about the parking rather than just say there is nothing they can do.

Chairman Ricci felt it was a very interesting point that people from the neighborhood had been parking on the Kline's lot, which they are no longer able to do.

Martin Burns, 288 Hanover Street. Parking is an issue for him because the tenants will be residents of Portsmouth and will start parking on Hanover Street. The police may come by Hanover Street once a month to ticket so people will take the ticket rather than drive around. Kline's was kind enough to let people park on their lot. He also pointed out that Tanner Court has no parking on their street at all.

Jeff Sabin, 33 Holmes Court. He was present as the Property Manager for the Hill Hanover Group, which is directly adjacent to this project. He expressed their support for this project and felt this is an important first step in the redevelopment of the Islington Street corridor. This is not an easy project but something is going to be built here. Parking has been an issue for a very long time and sooner or later the City will have to address a new parking garage. Over the past year, the applicant has asked for their input and allowed them to see what he is doing and they have appreciated that. Commercial tenants don't really care what happens to their property at night but having residential units as part of the project will bring about a positive effect. This will bring jobs and increased values in the area.



Steve Fowle, second time speaker. He neglected to say he spoke to Mr. Kelm the other day and he indicated he would be willing to include 4 parking spaces on the south side of Tanner Court. He hoped those 4 parking spaces were included as part of the final project.

Phyllis Harberson, second time speaker. She asked if parking regulations changed in the interim, would that open up the opportunity of increased parking for this project? She also asked about the underground parking. Chairman Ricci confirmed that the parking regulations that were in effect at the time of the filing of the building permit application will apply to this project.

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

### **DISCUSSION AND DECISION OF THE BOARD**

Mr. Rice made a motion to approve, for the purpose of discussion, with the 12 stipulations and a 13<sup>th</sup> that an interim landscaping plan to screen the new parking area from Islington Street be submitted and approved by the Planning Department. Mr. Patenaude seconded the motion.

Deputy City Manager Hayden stated, for discussion, that she would request a CMMP as a stipulation.

Deputy City Manager Hayden felt that the sequencing presents great concerns as, at a minimum, they have to provide 29 covered spaces to meet the zoning requirement but the interim parking plan will only be in effect for a while and there are not 29 spaces, so she does not know how they can approve it as it does not meet the zoning requirements for parking if those spaces go away for a period of time. On the plus side, it is a nice looking building and will enhance the neighborhood. If they had the 29 covered parking spaces, they would meet zoning. Per the Site Review regulations, specifically evaluation criteria item j, the Board can look at impact on parking and traffic congestion in a neighborhood. She would want to see more information regarding Stipulation #10 and she does not feel comfortable with just leaving it open, subject to the approval of Public Works. Also, she would like more information on traffic impacts to the neighborhood and what happens when tenants drive around looking for parking spaces. The parking numbers from Mr. Rhoades probably did not reflect that people were parking in the Kline's off street parking lot. She would like to see an independent review of parking and traffic based on the fully built as well as the interim parking plan. She could not vote for it tonight because short of not issuing CO's until the whole site was built, they would not have any leverage to hang their hats on. She is not doubting the developer, she is doubting the economy. She doesn't want a surface parking lot when they are trying to improve the streetscape.

Ms. Geffert has concerns about phasing. It was presented tonight as being out 7 years in terms of completion and she was shocked. She understands construction schedules but that is too long. She asked if the only way to bifurcate Site Review is with subdivided lots? Mr. Taintor confirmed that nothing can be done to bifurcated Site Review other than subdivision.

Mr. Coker was troubled with this as it is the fundamental beginning of the Islington Street corridor. He is sure the downtown is expanding and soon there will be no downtown parking. The applicant has met their regulations as they exist however by meeting those they actually provide a mechanism for denying the application because anyone can reasonably say that the traffic and parking will increase. He is not comfortable with adding to the congestion that is already there. He doesn't know what the answer is but he is not comfortable with the parking situation as it is.

Deputy City Manager Hayden strongly disagreed that this meets the parking requirements. The parking credit, where you get a 3-1 credit for covered spaces, allows for only 29 spaces but the interim plan, which may be all that is ever built, are not covered spaces. Also, those spaces are going to go

away for a period of time. She would ask for an independent parking study. As presented tonight, she does not feel that they meet the zoning requirements.

Chairman Ricci asked if they need underground parking vents? Mr. Hopley felt there would be an exiting issue if the availability of the garage happened as quickly as has been discussed. Chairman Ricci agreed with Deputy City Manager Hayden and was uncomfortable with the application as presented. Mr. Coker also agreed. He also referred to Sheet C2, under notes where it has the parking calculations. They have listed a carpet store but how can they know that? Mr. Coker assumed the Department has reviewed these calculations but now he's not sure and is getting less and less comfortable.

Chairman Ricci felt they need to either amend the motion or table it. Chairman Ricci's concerns were that the traffic study did not take into account the Kline's parking and that the Board should explore a temporary certificate of occupancy for the underground parking garage. Mr. Coker wanted to make sure the parking calculations are done with phasing in mind. Were the parking calculation made with the entire project in mind and how does the phasing change that. Mr. Hopley added that Tanner Court is slated to be 2-way and with the street section the way it is, Tanner Court would not provide any parking. If it were one way, east to west, they could provide parking on one side.

Mr. Chagnon stated that they support the notion that Tanner Court should be made one way, allowing parallel parking spaces, but it is not their choice to propose that and it would be up to the City. The Traffic & Safety Committee approved the plan. Also, the Zoning Ordinance has the parking threshold and this site has a parking threshold of 90.4 spaces so they don't have a problem with 24 units creating the need for a parking impact fee and they won't even get to a parking impact fee with the first building.

Mr. Rice made a motion to postpone to the next regular meeting of the Planning Board. Mr. Patenaude seconded the motion.

The motion to postpone passed unanimously.

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D. The Portsmouth Planning Board, acting pursuant to NH RSA 12-G:13 and Chapter 400 of the Pease Development Authority Site Review Regulations, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following: The application of **Pease Development Authority, Applicant**, for property located at **200 Grafton Drive**, wherein site review approval is requested to replace an existing clubhouse with a new 7,200 s.f. (footprint) clubhouse, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 345 as Lot 1 and lies within the Natural Resource Protection District; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

Chairman Ricci and Mr. Coviello recused themselves from this application.

The Chair read the notice into the record.

# **SPEAKING TO THE APPLICATION:**

Jim Spaulding, of HL Turner Group, representing the Pease Development Authority, presented. Also present were Maria Stowell, of the PDA and Scott DeVito, Golf Course Manager. The PDA was proposing to replace the existing golf course clubhouse and golf cart facility with a new 7200 s.f. golf course clubhouse and the golf course cart maintenance and storage facility will be in the basement.

The existing clubhouse is partially in the footprint of the new one and it will be demolished. The facility is currently heavily used and the use is not expected to increase. The golf course is being used to its maximum on a sunny day so no increase in parking is planned.

The existing Conditions Plan shows the existing club house, Country Club Lane from Grafton Road, the runway for the airport, paved surface parking and more parking on gravel and broken pavement to accommodate up to 300 cars. The cart storage facility is to the west of the clubhouse with an outdoor storage section. The existing drainage is overland flow. The soils are excessive sands and gravel, or a Hinkley soil with a very deep water table.

The Grading and Utility Plan also shows the Site facilities. The existing building is in the same area as the proposed building. There is an existing tent platform out front which is being moved to the back. The golf cart storage area is gone and will be replaced with a putting green. They are adding new walks and a serpentine pad for access to the basement for the golf carts. They are tying into the sewer system by gravity and they are bringing in domestic water and a fire service into the building. The existing transformer and telephone will be brought in underground to the building. Storm drainage will be a combination of overland flow and some hard pipe drainage to the west of the site, which runs out to the golf course. There is no increase in the impervious area. The volume of run off does not substantially change. With the closed drainage system they are picking up the lower level below grade cart storage and drip and foundation drains along the building. They are designing part as an infiltration system. They are not showing a dumpster as all trash is trucked off by staff to the maintenance building down the road where they have a dumpster and trash collection.

On the Landscape Plan they tried to maintain the existing trees along the front of the property. They have a number of plantings around the building and it will look quite nice.

The only additional proposed lighting is building mounted lights around the entrances and exits and bollard lights along the walks.

They appeared before TAC on June 30<sup>th</sup> and received a recommendation for approval with 4 stipulations. They added a note on the plan reflecting that they plan to truck trash off site to the dumpster. The sewer pump station is to be closed to DES standards and he added a note on C-1 to address that. They added a note to the plans that the sprinkler system will be design built. Lastly, representatives of DPW were to review and approve utilities prior to the Planning Board meeting and a plan was delivered to DPW but nothing was heard back.

Mr. Blenkinsop asked that they be more specific about the dumpster they will be using.

Mr. Hopley asked about commercial cooking in the new building and if there had been any discussion at TAC on how grease will be handled or a 1,000 gallon grease trap?. Mr. Spaulding stated there was a separator for the kitchen. Mr. DeVito stated they will only have a two basket single unit fryalator in the kitchen. Mr. Hopley indicated that the City has a tremendous problem with grease as a whole and they have been trying to attack the problem at the source, or at the commercial kitchens. They will probably end up with more fixtures in the kitchen so there are many points in commercial kitchens where grease enters the system. He was surprised not to see that on the plans.

Deputy City Manager Hayden asked that they were only having wall mounted new lights? Mr. Spaulding confirmed that was correct, along with bollard lights. He believed those were Dark Sky Friendly. Deputy City Manager Hayden asked for a note on the plans confirming they are Dark Sky Friendly.

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

Deputy City Manager Hayden made a motion to approve with the added stipulation that the lighting be Dark Sky Friendly. Mr. Hopley stipulated that DPW should review to make sure the grease impact would fall under their standard guidelines for kitchens and grease traps, to make sure they don't need it.

Mr. Taintor noted that TAC Stipulation #1 can be eliminated. Mr. Blenkinsop requested more specifics on where the dumpster is that they currently use so that it is clear. They can add a note to the plans.

Mr. Hopley seconded the motion.

Ms. Geffert asked if they wanted a detail of the Dark Sky Friendly lights. Deputy City Manager felt either a note on the plan or a detail is fine.

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

- 1) The location of the existing dumpster shall be indicated on the Site Plans;
- 2) The sewer pump station shall be closed in accordance with DES standards and noted on the Site Plans;
- 3) Representatives of DPW shall review the revised Site Plans when the utilities are finalized;
- 4) All lights shall be Dark Sky Friendly and a note or detail for the wall mounted fixtures shall be added to the Site Plans;
- 5) DPW shall review the plans to assess the need of a 1,000 gallon grease interceptor.

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E. The application of **Clear Channel Broadcasting, Inc., Owner**, and **Flo TV Inc., f/k/a, Mediaflo USA, Inc., Applicant**, for property located at **815 Lafayette Road**, wherein Site Review approval is requested to construct a broadcast antenna on an existing guyed tower and to install a 10' x 11' s.f. equipment shelter within the existing compound, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 245 as Lot 3 and lies within the General Business District; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

## SPEAKING TO THE APPLICATION:

Joshua Delman, of Flo TV, stated they are a provider of wireless telecommunication services to Portsmouth and NH. They partner with AT&T and Verizon and provide wireless TV service to handsets. They are proposing to mount a 12' antennae at an elevation of 301' on the existing pole. The existing height of the guide tower is 492' so they will not extend over the tower. Cable will run down vertically to a compound area and an unmanned equipment shelter. That will require expansion of that existing compound of 26' x 40' feet. They received TAC approval on June 30, 2009.

Mr. Coviello asked if there were any frequency conflicts and Mr. Delman confirmed that no interference was created, as well as no radiation concerns and it meet all of the requirements of the FCC.

Mr. Hopley noted that the tower is already endowed with many towers and he asked if a structural analysis had been done. Mr. Delman confirmed that it had and he would provide the Inspection Department with a copy of the study.

Deputy City Manager Hayden confirmed the City's Environmental Planner reviewed this application for wetland disturbance and he determined that no Conditional Use Permit was required. Also, she noted that a Professional Engineer had stamped the plans, so both TAC stipulations have been satisfied.

Mr. Coviello assumed it was lighted for FAA regulations for flight path. Mr. Delman advised him that it is not taller than the tower, which is already marked and lit.

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. Hopley made a motion to grant Site Review approval. Ms. Geffert seconded the motion.

The motion to grant Site Review approval passed unanimously.

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A 5 MINUTE RECESS WAS TAKEN

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F. A public hearing is convened to solicit public comment on a proposed Zoning Ordinance amendment to allow Continuing Care Retirement Community by Conditional Use Permit in the Office Research District. *(The Board action in this matter has been deemed to be legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

Mr. Coker stepped down from this hearing.

Chairman Ricci turned the hearing over to Rick Taintor. He explained that this was referred from the City Council on March 5, 2007 and the Planning Board has met numerous times and, along with the Planning Staff, have developed a series of draft ordinances to reflect the Boards comments and concerns. On June 18, 2009, the Planning Board requested some revisions and requested that a public hearing be scheduled. He explained there are three possible courses of action:

1. Vote to recommend that the City Council approve the draft zoning amendment (with or without further revisions);
2. Vote to recommend that the City Council not approve the draft zoning amendment;
3. To incorporate the draft zoning amendment into the draft revised Zoning Ordinance and consider it as part of the broader zoning revision package.

Mr. Taintor then provided a brief powerpoint presentation about the development proposal from Borthwick Village. This is an internal parcel and zoned Office Research. The draft ordinance starts with definitions of the Continuing Care Retirement Community and three different types of dwelling units that must be included: Independent Living Unit, Assistant Living Unit and Skilled Nursing Unit. This would be allowed by the ordinance by Conditional Use Permit from the Planning Board. Site

requirements are that it must be located in an OR district, within ½ mile of hospital, on at least 35 acres and have 100' of frontage on public street. The ordinance has density requirements including amount of developable land area and open space requirements. Buildings have maximum allowed heights and 50 percent of building perimeters must be habitable space. Building setbacks are 50' and 100' from a residential district boundary. Parking must have 40% below the buildings and there must be two separate access points to existing public streets with specific requirements. Assisting living and nursing care units shall be developed at a rate at least proportionate to the build out numbers to make sure those units are actually provided.

Chairman Ricci opened the public hearing and called for public speakers.

Paul Mannle, 1490 Islington Street. He felt it was unfair that abutters did not get notification of this hearing as it is quite obviously site specific. He felt this draft goes against the Master Plan and as no comprehensive study has been done. He felt it was spot zoning to help a developer.

Ralph DiBernardo, 1374 Islington Street, speaking for himself and his wife. He was surprised they did not receive abutter notices as it is quite site specific. He asked why Mr. Coker recused himself. Chairman Ricci stated that Mr. Coker had a conflict of interest. Mr. DiBernardo was speaking against the proposal. After attending all presentations over the past years, he and his wife do not believe it is to the benefit to the community. It will be unaffordable to the Portsmouth community. The zoning proposal is for the benefit of the developer and things keep changing. From the beginning they were assured there would be no connection to Islington Street yet tonight it specifies an Islington Street entrance.

Lenore Bronson, 828 Woodbury Avenue. She found a definition on a website of spot zoning and she felt this was exactly that. She felt this benefits one property owner rather than carrying out an objective of the Master Plan. She didn't realize the facility would have to accommodate those unable to care for themselves. Both of her parents were in local nursing home facilities and those facilities are required to provide care with Medicaid funds and she wondered how that fit into this. Also, she felt this requires an infrastructure burden for the City.

Richard Rash, 1507 Islington Street, next to WBBX entrance. He was disappointed that no abutter notice was sent out. He was also disappointed with the language change regarding 2 exits. He had been assured last year that WBBX would be for emergency only.

Paul Mannle, 2<sup>nd</sup> time speaker. He felt that adding this definition to the OR District sets a dangerous precedent for spot zoning. What will prevent another developer from coming in and requesting spot zoning and suing if he doesn't get it. He feels a comprehensive study should be done of this area by the City.

Ralph DiBernardo, 2<sup>nd</sup> time speaker. He asked the Board, if they vote in favor, to explain the great public benefit to the City of Portsmouth.

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

Mr. Coviello stated that a major concern to him was why wouldn't abutters be notified? Mr. Taintor explained this is a matter of interpretation. This does not apply to only one or two parcels but he felt spot zoning is for a very small area rather than a large area. There are few parcels but they comprise a very large land area. There are other areas, such as around Bartlett Street, which is a limited area but consists of many lots. Mr. Taintor stated that they do not consider this spot zoning.

Mr. Coviello asked about the possibility of having a second hearing after posting signs. Deputy City Manager Hayden felt they have to be careful about legal precedents about postings. The RDI-PUD

applied pretty broadly to the community and not just at Atlantic Heights. The issue of spot zoning is not a new issue being raised tonight and the City Attorney has expressed that he does not think this is spot zoning. It is always great to have more people turn out rather than less but they have to be careful about who they notify. It has been in the press a lot but she was not sure 200' abutter notices would bring 200 people. Mr. Taintor felt that in looking at the map, if they treated it as site specific, there would only be about 6-7 houses on Islington Street being notified.

Mr. Coviello asked who will be paying the taxes on the property? Chairman Ricci confirmed that the owner of the complex would pay the taxes.

Chairman Ricci referred to the staff report and indicated they had several possible courses of action.

Mr. Blenkinsop felt that #3 made the most sense to him. He made a motion to vote to incorporate the draft zoning amendment into the draft revised Zoning Ordinance and consider it as part of the broader zoning revision package, which would enable further public comment. Mr. Rice seconded the motion.

Deputy City Manager Hayden reiterated that this is not the last time people can come out to speak on this. If it became part of the overall Zoning Ordinance review, there will be three additional public hearings where the public will be able to speak. She felt Mr. DiBernardo asked a fair question about public benefit. In the Master Plan they said they want a diversity of housing in the community. There are a fair number of people in this Community that want this type of housing. They have parents in Riverwood or far away and she believes it meets the community benefit. Something is going to go in that area of the City and given the value of the property, because it is hard to down-zone property, by right they could build an office complex. With this approach, they have far more control over site features.

Mr. Coviello agreed with Deputy City Manager Hayden. He also wanted to explain where the requirement of two access points came from. The first time this proposal came before them the developer proposed one access point and City staff confirmed they would need two for police and fire needs. This isn't something the developer or the Board pushed for but rather this is what City personnel have requested. Another public benefit is the amount of open space that this development will have and it will also free up housing in the City. Putting in an office facility would only create a greater housing demand.

Deputy City Manager Hayden felt Mr. Coviello did a good job explaining the history of the two access points. It is driven by public safety and getting emergency vehicles in and out during any conditions.

Mr. Rice felt good about the addition of the buffer zone and height restrictions.

Chairman Ricci was glad that the neighbors came out and felt that the Board has done a lot of heavy lifting. He felt that this application has far less impervious areas than office buildings and traffic would be less. Lastly, the open space is better hydraulically and you get better drainage.

Ms. Geffert felt that the conclusion is that WBBX Road will enable that community to be part of that neighborhood and will allow the neighborhood to have access to the open space and that creates an integrated community.

Mr. Coviello added that, as written, this is a conditional use which has a higher standard than site review. Also, the issue of taxes never entered his mind and they just don't think that way on the Planning Board. They are more concerned with technical issues.

The motion to incorporate the draft zoning amendment into the draft revised Zoning Ordinance and consider it as part of the broader zoning revision package passed unanimously.

Mr. Taintor confirmed that they will recodify the existing draft so that it will fit into the new draft revised Zoning Ordinance and then post it on the website along with the rest of revised Zoning Ordinance and will be discussed at their public hearing next week, on July 23<sup>rd</sup>.

#### IV. CITY COUNCIL REFERRALS/REQUESTS

A. Request from Mario Giberti requesting to purchase City-owned land located adjacent to 16 Barberry Lane; (This matter was postponed from the June 18, 2009 Planning Board Meeting); *(The Board action in this matter has been deemed to be legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Mr. Taintor stated this was a very small lot that was taken for taxes and the City has owned it for a number of years. Mr. Gilberti came to the City in 2004 and 2006 to build a 2 car garage and his request was denied both times. The lot is assessed at \$11,700 which would generate \$200/year in property taxes which is not significant. The surrounding land is zoned SRB and OR and the land is tucked between two branches of the railroad. Last time it was recommended to be used for recreation and the Master Plan recommends pocket parks. What was intriguing was the underutilization of the railroad corridors and there is talk about putting trails along the railroads so it seems that this lot would be good to preserve for providing parking for people getting on the rail trail. The Mayor's Blue Ribbon Committee for Building Re-Use guidelines recommends a ground lease rather than the sale of City land. It is also important to note you would have to go through a competitive bidding process for this land. The Department's recommendation is that the City retain long term ownership of the lot for potential future recreational use, use for a neighborhood park or a connection with recreational use with the rail corridors, and if the City would want to dispose of it, it should only be done with a ground lease for interim use for passive purposes and that no structures shall be permitted on the lot.

Deputy City Manager Hayden felt that Mr. Taintor did an outstanding job lining this out. She likes the recommendation and felt it was consistent with City owned buildings. Her concern about selling this lot so they can build something is that someone is going to come along and think they can build a house but she really thinks they should reserve it for future use by the City.

Deputy City Manager Hayden made a motion to recommend approval to the City Council as follows:

- 1) The City should retain long-term ownership of the subject lot for potential future recreational use, either as a neighborhood park or in connection with recreational use of the rail corridors;
- 2) If the Council determines that private use is appropriate, disposition should be through a ground lease and only for passive uses, including landscaping. No structures should be permitted on the lot. Lease payments should be based on the equivalent tax revenue based on assessed valuation.

Ms. Geffert seconded the motion.

Mr. Coviello agreed with the motion and wished the City could sell some lots but the risks probably outweigh the benefits so it's probably prudent to have this policy as recommended.

The motion passed unanimously.

B. Request from Robert Sevigny, Applicant, for property located at 36 Market Street, to install a projecting sign and a retractable awning; *(The Board action in this matter has been deemed to be*



*legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Mr. Taintor stated this was a typical projecting sign. They are relocating an existing sign from 31 Market Street across the street to 36 Market Street. It complies with all zoning requirements. The Department's recommendation is that this be granted subject to the three standard conditions.

Deputy City Manager Hayden made a motion to recommend to the City Council grant approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.

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B. Request from Deb Orlando, Applicant, for property located at 222 State Street, to install a projecting sign; *(The Board action in this matter has been deemed to be legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Mr. Taintor stated this sign request was very similar. It was not clear from request that the horizontal extension of the sign complied with the Zoning Ordinance so the Department recommends approval subject to confirmation in advance by the Planning Department that the sign will not extend closer than the curb than 2'.

Mr. Coviello made a motion to recommend to the City Council that they grant approval of a revocable municipal license, subject to confirmation that the sign will not extend closer to the curb than 2 feet, and subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.

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## **II. PLANNING DIRECTOR'S REPORT**

C. Seacoast Foundation for Health – 100 Campus Drive: Administrative approval of amendment to site review approval (parking lot lights);

TAC reviewed this request for three pole mounted lights in the new parking lot, which were Dark Sky Friendly, and the Planning Director approved it administratively.

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D. Bed Bath & Beyond, Inc. – Spaulding Turnpike/100 Durgin Lane: Administrative approval of extension of Site Review Agreement;

This is a case, because of the economy, where things did not move as quickly as the developer would like so this is an administrative approval of an 18 month extension of the Site Review Agreement.

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E. Market Square kiosk: Administrative amendment to Planning Board recommendation;

Mr. Taintor clarified that the kiosk is on public property and HDC approval is not required so he amended the recommendation to the City Council to reflect that.

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F. Work session on Zoning Map changes;

Mr. Taintor suggested to the Board that they have a work session regarding possible changes to the Zoning Map at the beginning of the regular August meeting. It was thought they could start their work session at 7:00 as they are not expecting a heavy agenda.

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G. Planning Board Memorandum format changes;

Mr. Taintor pointed out that TAC minutes are now being printed out separately rather than in the Memorandum. This will be placed at the end of the Agenda next month.

Mr. Coviello did not like the minutes being separate. Deputy City Manager Hayden really liked it and would like to try it for awhile.

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**V. ADJOURNMENT**

A motion to adjourn at 10:55 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 August 20, 2009.