

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

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

7:00 P.M.

DECEMBER 6, 2007

MEMBERS PRESENT: Jerry Hejtmanek, Vice-Chairman; M. Christine Dwyer, City Council Representative; Donald Coker; Anthony Coviello John Rice; Paige Roberts; Cindy Hayden, Deputy City Manager; and MaryLiz Geffert, Alternate

MEMBERS EXCUSED: John Ricci, Chairman; Richard A. Hopley, Building Inspector;

ALSO PRESENT: David M. Holden, Planning Director;
Lucy E. Tillman, Planner I

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I. WORK SESSION

1. A work session 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 work session is to allow the Board to discuss this proposal further with the applicant. Time permitting there may be some limited public comment. Relevant materials are available for public inspection in the Planning Department; *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.* (This Work Session was postponed from the November 29, 2007 Planning Board Work Session)

Vice Chairman Hejtmanek read the notice into the record.

Mr. Holden pointed out that the applicant handed out some information for the Board members.

Mr. Coker issued a challenge to the Board to take it to the level of a policy debate. We know why the Zoning Ordinance exists and he encouraged the most appropriate use of land and to improve the quality of life for all residents of Portsmouth. The Master Plan is their guiding document. To understand what an overlay district is, he had a long conversation with the City Attorney and it made more sense to him. It creates a new district and puts conditions on the overlay. One of his concerns was public benefit but that is only part of this equation. It is not a valid reason alone and creating a larger and profitable project is not a valid reason either. He asked if this was sound planning for this City, to create an overlay district to allow this to exist. This is the only last major undeveloped land in this City. He urged everyone to review the Master Plan, the vision, priorities for action, resource protection and sustainability, land use, housing, transportation, natural resources and open space. He asked for a policy debate and to take each component for each scenario. Is this City better off with this project or without this project and that is where his focus will be.

Mr. Rice indicated that he is a rookie on the Planning Board so he re-familiarized himself with the Master Plan and he was struck by the absence of language about elderly housing. One thing that hasn't been mentioned, on pages 26 & 27, was the hope of a rail head coming to Portsmouth, particularly in this area and leaving the door open to have that happen and how incompatible residential use would near the rail. He could see elderly residents becoming upset with the noise. Or, they may consider it a very convenient thing, being able to jump on a train to Boston. He found a lot of conflicting material in the Master Plan.

Councilor Dwyer agreed that Mr. Rice makes a good point. The Master Plan is very light on the need for housing issues. She didn't think it meant that the need for elderly housing is not described in the Master Plan but the Master Plan simply did not take it on. Mr. Rice added that it does talk about work force housing. Vice Chairman Hejtmanek, who sat in on a study group, indicated that all interest centered in on addressing work force housing. Councilor Dwyer felt that they haven't fully addressed the whole need of affordable housing as they haven't done much planning around the issue of housing. She doesn't think they can generalize too much regarding this particularly project. She felt it makes it hard for them to engage how Mr. Rice wants them to around housing because their Master Plan has not given them a good agenda to be able to follow it as it relates to this project.

Deputy City Manager Hayden felt different about the Master Plan. When they had the housing study circle she heard they needed work force housing. She didn't hear that they needed places for their parents to live or when they get older. She didn't think the need was identified and, in fact, people have said that they are doing fine with senior housing as there is financing for that.

Following up on Councilor Dwyer's remarks, their goal is written out in a statement at the beginning of the Housing Section on page 31 of the Master Plan. "Portsmouth is a regional job center within a high cost housing market area in which the affordable housing supply is not keeping pace with economic growth." However, as you look at the goals, H.1. through H.4. (Maintain and expand the existing range of housing options in order to sustain neighborhoods and to accommodate households with varying needs; Provide housing opportunities for employees of local businesses; Achieve a coordinated and balanced regional approach to meeting shared housing needs; and Preserve the City's affordable housing supply). Mr. Coker saw three of those four applying directly to this request. Although it is not specific to senior housing, it does give the general goal of where the City needs to go with housing. He disagrees and feels the Master Plan is much clearer and does give them a direction.

Councilor Dwyer agrees it gives them a direction. What was not done was a kind of analysis that is about the demographic changes they are having, the kind of housing stock that would transfer over, the proportion of housing they have that is within the \$250,000 range. That level was not done that would push them to have a debate to go beyond the level that this is at. They do not have clear direction on how to look at the housing needs.

Mr. Coviello was troubled by this one. In the beginning he felt they should do a total analysis of the site and developers always seem to be one step ahead of them. What they are deciding here is will they have elderly housing or offices. They will never get a chance to do anything else. The question is which one of the two meets the Master Plan goals. Offices is not a Master Plan goal but housing is. This only serves to open up housing elsewhere. Vice Chairman Hejtmanek indicated that the Master Plan indicated that they wanted to study this area for re-zoning. Mr. Coviello thought they would never get the chance. He would love to have a clean canvas concerning this property.

Mr. Coker followed up on comments made by Mr. Coviello and Councilor Dwyer. He feels they can have the debate. Option A, Attorney McNeill said they could by a matter of right put office research in. How many jobs would that create and what kind of jobs vs. a housing development which would also create jobs but what kind of jobs? The quality of jobs will be higher in OR than in a housing development. He asked if that was something they want in this City?

Councilor Dwyer felt that was a really good point. If she were to think of this property having affordable work force housing, for middle aged to elderly, 80% - 120% median income, it would be hard for anyone to say that wasn't what they need. That is what the Master Plan says they need. If they really thought this was for people in their middle years, still working, in the 60 - 70 year range, many would feel very positively disposed to it because an affordable housing crisis is as much for middle aged people as it is for younger people. That is the challenge she is having. This would meet the criteria for many people from 55 - 75 who are working and in 80 - 120 percent income level, if they could afford.

Mr. Hejtmanek felt there was an assumption in the argument that this is affordable and Mr. Coker makes an interesting argument about creating lower paying jobs which will compound their affordability housing problem.

Deputy City Manager Hayden noted that the way they have their draft ordinance is that 10 percent of the units would be affordable to people who could sell their house for 90% of the median price. The cap on the amount of monthly income on the fees is 40%. That is the kind of data the Board is looking at. They have given some of that information but it hasn't been all packaged together.

Mr. Coviello stated that they also have to consider the neighborhood. He doesn't see them moving forward with either project without access to Islington Street. He felt there is a big chance of access to Islington Street. Traffic impact should enter into their consideration. He also felt they could get a lot out of the developer.

Ms. Paige followed up with and agreed with Councilor Dwyer's points that she is happy to engage in a policy discussion to the extent that they have the facts but ultimately it comes down to the crux of age, diversity and affordability. If some of these numbers were different, the age brought down and the 10% affordability brought up, maybe there would be some more comfort with this. She felt those are the big challenges.

Mr. Coker responded to the comment that the developer must designate 10% of all units as affordable. The term affordable shall mean that units shall sell for no more than 90% of the price of the median value home in Portsmouth. They want to make sure it is an apples to apples comparison. This will not be a traditional 100' by 100' lot with a home on it. It will be a higher density development so comparing the price may not be an accurate comparison. Councilor Dwyer felt that is why the interest and need data is key and the demand as it relates to this broader population that they are talking about. Who wants to come into this and is the desire there for enough people locally, if the numbers work, to make that trade. Mr. Coker said if the applicant is saying that to address their concerns about affordable housing, they are proposing to sell units for no more than 90% of the price of the median value home. This could conceptually be a garden apartment vs. a single family home in the Woodlands. That may not be a real number as inherently the kind of unit this would be, selling for 90% value of a home, may not be a real comparison.

Deputy City Manager Hayden felt it was not so much a case of whether people locally want to live there but rather whether they can afford to live there. They have in the back of their mind that local people cannot afford this. 50% would make them feel better. This is a very important tract of land as it is the last big tract of land in town and they know how badly they need workforce housing. Looking through her housing files, she saw concerns that housing has all gone to elderly and they do not have any worker bees for the City.

Vice Chairman Hejtmanek thought it seemed difficult to assess whether it is for Portsmouth residents as they don't have enough data. There are numerous numbers that they need to review.

Ms. Paige agreed with Mr. Coker about the issue of apples to apples. They don't have enough data to know. They need to figure out how to compare them. It's another key piece of data they need.

Councilor Dwyer agreed that in the absence of having a comprehensive elderly housing policy, it is difficult to hold one parcel responsible for the sins of the past. The City has not been successful in addressing housing in many attempts. That doesn't mean it can all get forwarded to one project.

Deputy City Manager Hayden found it interesting that there is one way in for residential but in the comparison is says they would have two different roads and one off of Islington Street if it was OR. She doesn't know if that is true or not or what is driving that.

Mr. Coker felt they were making great progress. He absolutely agreed with Councilor Dwyer. Workforce housing is not on the table at all tonight. They have identified the first area they have to focus on which is affordability. They need more data. The second area is to look at the quality of jobs that would come with OR, assuming something would be built, vs if Borthwick Forrest was built. He is assuming if they have OR they would have office space and medical offices which are higher paying jobs. The Borthwick Forrest project would be lower paying jobs, service jobs, cooking, landscaping, and personal care attendants. Regarding what would be good for their City would be the higher quality jobs. They may wish to look at the jobs for this facility. Deputy City Manager Hayden made a great point that is says for OR they will access from Borthwick and Islington Street but Mr. Coker asked who authorized that? If traffic is going to dump out onto Islington Street and overload the street, that would be a legal supportable reason to deny a project. The quality and type of jobs created in the two different scenarios would be his next concern.

Mr. Holden stated, regarding traffic, they would have to assume there was a certain amount of traffic for each use. Traffic to Islington Street is a site review issue and not important at this phase. They are saying this is how they see it however the City may not buy into it.

Mr. Rice asked if there have been any new studies on hydrology or water impacts. Deputy City Manager Hayden indicated they did do a preliminary study.

Ms. Roberts stated that even though they are not thinking about street directions, one of the points really highlighted during the Master Plan process was sustainability. It is something they should always be keeping in mind. How does quality of job relate to sustainability? If a project results in lower paying jobs, with their housing situation, the people in those service positions may not be able to live in the City so people would be coming from too far away. That may be an appendix to job quality.

Mr. Coviello felt that a lot of people are making assumptions of their personal view. He is not sure an elderly care facility would have lesser paying jobs than an office building. He also brought up access to Islington Street and wouldn't the impact be part of their consideration? Mr. Holden confirmed that if they were in Site Review it would be. In site review they would have the ability to have them maintain the same level of service. What the City's long term vision of this property is is their job.

Councilor Dwyer felt that if office research brought higher salaries, then Pease would have had more of an impact. She does not believe it is a fair assumption that OR would bring higher salary jobs. Portwalk has talked about the recruitment they are doing for businesses.

Mr. Coker agreed with Councilor Dwyer. He noted on the Comparison of Significant Zoning Issues which was handed out tonight by Borthwick Forrest, it does say in OR job creation would be 750 employees and Borthwick Village would be 80 employees. He bet if they looked at OR vs. this, that office based jobs will be of a higher pay and skill level than what would be created at Borthwick Village. He would look at OR and say "thumbs up" regarding quantity of jobs. The quality of jobs is the question.

Mr. Coviello would look at 750 additional cars going into Route 33 everyday.

Mr. Holden stated that the Tradeport has been quite an impact. The City has become a major employment force. They want to look at the median income in surrounding communities. The commute is far more than it ever used to be. Portsmouth housing is 50% renter and 50% owners.

Deputy City Manager Hayden looked back at the information presented previously which said 2,500 s.f. per unit and it was 2,000 s.f. last week. Using her numbers, she got a density of 816 units. She was curious about the build out. Attorney McNeill confirmed that 482 is the build out. Mr. Holden felt that means in the proposal the density could be increased and they wouldn't have any issue.

Mr. Coviello mentioned that in one proceeding, they mentioned this was not Riverwoods. Not the look or how it operates? Deputy City Manager Hayden felt that they meant it was the level of service because Riverwood is a full continuum of care facility. Attorney McNeill confirmed that Deputy City Manager Hayden's answer was correct. Mr. Stebbins stated the quality. They will also be trying to attract a much younger crowd than Riverwoods. It is not the nursing home feeling. Their goal is to bring the age down by 5 to 10 years. They would like to see people moving in while in their 60's.

Mr. Rice asked if there was any on site for assistance? Mr. Stebbins confirmed people can get in their own unit and only as a last resort do they have to leave their unit. At Riverwoods, you get to a certain level and you have to move to assisted living. Assisted living will take care of 90% of their needs. The nursing home will be used primarily for rehab. Ms. Geffert asked if assisted living is on site? Mr. Stebbins confirmed it was.

Mr. Coviello felt it seems that when they have the nursing care the average age is 83. You can also tell that Mr. Stebbins does the marketing for Riverwoods but it does seem to be a gentler site.

Mr. Coker had a question for the applicant. Somewhere they make reference in the Master Plan to younger people providing an environment for them to come to Portsmouth. Why not 50 rather than 62? Attorney McNeill indicated that was discrimination. Age 55, 62 and 65 are the categories they can limit this to. It would be just like discriminating on race. Mr. Coker asked why not waive age requirement at all. Attorney McNeill indicated that the first time he came before the Board for this site with the Chinberg proposal to rezone to Business and have 2/3 residential housing and 1/3 business, it was not well received. They also provided space for artisans. The developer sold the project as it was not well received. Their decision has to be made in economic and zoning reality and he felt that his handout was helpful to them. Since 2004 the Planning Director has insisted this should be OR and he has not waived. Attorney Malcolm felt they had to take on the zoning and convince the Board. There cannot be affordable housing on this parcel. The land is too expensive. There are no government subsidies to support affordable housing on this site. It seems like this kind of comparison for a unique use that they thought demographically would work in the community. The best way of providing for affordable housing in Portsmouth is to approve this project. The people who will occupy these units will leave their houses. Affordable housing will not be built on this site. There is a better opportunity to create affordable housing where houses are vacated. The site is zoned for offices and the Planning Department has talked about offices for years. The Vice Chairman indicated that the applicant should only answer the questions and let the Board resume their work session forum. Mr. Holden also indicated that if the Board allows Attorney McNeill to make a presentation that goes further than the question then this must be open to the public.

Mr. Coker's question was why not eliminate the age restriction altogether. Deputy City Manager Hayden asked to go back to their work session forum and work amongst themselves.

Mr. Coker didn't hear Attorney McNeill's answer so Mr. Holden confirmed that the law prohibits them from doing it as it would be discrimination. If they were going to do it the only ages they could do it were 55, 62 and 65.

Deputy City Manager Hayden wanted to clarify her concern. She thinks the Board really needs to rehash their issues. She is not advocating that they rezone this for affordable housing. Her only point was that this would be so easy if that was what they were proposing. She felt zoning is all about surrounding compatible land uses. She also thought that maybe John Rice and M. L. Geffert might not have the original booklet that the proponents handed out.

Mr. Holden assumed they will have at least one more public session on this. This is the Board's work session to move the ball forward.

Mr. Coviello thought it sounds like some people would be in favor if the housing costs were more flexible. He wanted to ask the question if those are rigid numbers. Councilor Dwyer thought they asked that last time and the criteria was part of the contract criteria and it was up for discussion. Vice Chairman Hejtmanek heard the same thing.

Ms. Geffert commended everyone on the Board for thinking the proposal through and what is best for the community. From a zoning perspective, she felt it was a very interesting overlay district zoning proposal. It would be the only area in the City that would have an affordability requirement. It would move the Zoning Ordinance forward in a positive direction, per the Master Plan.

Dwyer agreed with Ms. Geffert. She stated that a roadblock that may not be fair is if tomorrow everyone who had a median income house moved into this project, the workers from the project would not be able to afford those houses. They have not thought of other ways to get people into those houses. But, that is not this property's burden. That doesn't take away from worrying about the other things but even if their assumption about turn over is true, that creates open housing but not for who they are looking for affordability housing for. Mr. Coker indicated that Attorney McNeill stated "economic and zoning reality"

Ms. Geffert asked if they were able to include rental units for workers in the overlay? Councilor Dwyer felt that potentially that is what the 10% affordability could turn into. Mr. Coker added that as a practical matter, people could not afford the 10%. He would like to shift gears again and look at the comparison of Zoning Ordinance issues. They do not have a specific handle on traffic. OR will be more research than Borthwick Village. Deputy City Manager Hayden indicated that it would be peak vs. spread out. Mr. Coker referred to traffic issues on Islington Street and the Board can say they would have to stagger their starting hours. Mr. Holden indicated they would lack the authority to do that. Mr. Coker reviewed the Comparison of Significant Zoning Issues which Attorney McNeill handed out to the Board that evening.

Mr. Coker thought that the big one for him is the environmental impact. To see how an environmental wetland can be destroyed in 30 years, take a walk around the site. The environmental impact of this would be huge.

Mr. Coviello was looking at the property with a large recreation area and he would like to see something for true recreation for the City which would bring younger people next to older people.

Councilor Dwyer believed at the last meeting, in response to a question, there was a suggestion that additional financial data would be shared with them regarding needs assessment. Mr. Holden talked to the applicant and they asked the Board to be as specific as possible about what they would like. Councilor Dwyer acknowledged that in his presentation last week, Mr. Stebbins indicated there was data that really convinced him of the finances and the portion of income it would take for people to live there. They have been interested for several meetings of the estimated costs of assisted living services that would be added to the monthly fee. She would call a "demand assessment" or how do they know the profile of people who say they are interested? The kind of information that would help counter the reaction to their data that was collected in the northern Massachusetts area, rather than Portsmouth and surrounding areas. Vice Chairman Hejtmanek added that he would like to see what

the purchase price and monthly fees would be for the 3 different size units and additional fees for assisted living. He would like the median income of people in Portsmouth over 62. He also wants to know how affordable this is for people in Portsmouth. Deputy City Manager Hayden asked them to do the median income of people over 62 that live in owner occupied housing. Mr. Holden asked how the sale of the units would be marketed after someone buys one back.

Ms. Roberts referred to Councilor Dwyer's point about market analysis or what the likelihood of buyers was. She was interested in who can afford this. Councilor Dwyer felt that both, who can afford it and who wants to afford it, are important.

Ms. Geffert felt it would largely be people from out of town and perhaps the parents of residents of Portsmouth.

Councilor Dwyer brought up a new topic. She asked about the enforceability of the contract and the challenge or burden of monitoring. The appeal is the specificity but the other side is how that gets managed. Maybe some examples of how that works at other places. Mr. Holden felt that a document would be helpful. Deputy City Manager Hayden suggested inviting Bob Sullivan to next meeting.

Mr. Coker referred to page 2 of handout "Comparison of Significant Zoning Issues", under parking there is more parking required for Office Research and significantly more impervious surface. Mr. Coker indicated they can control that. Mr. Holden also addressed a concern that the department had that this is going under the term of elderly housing and they keep hearing it getting broadened. If it is an elderly housing, it is subject to the one parking space per unit. He doesn't for a moment believe that every unit will have but one car. Rather he believes each unit will have more than one car. They perhaps should be treated as a hybrid. Parking is a continued concern. Elderly housing is 1, a dwelling unit is 1 ½ and there is a good discussion of whether 1 ½ is even appropriate for residential units today. Mr. Coviello stated these will be grandparents with family visiting. Mr. Coker felt that the City Attorney may want to weigh in on the legal definition of elderly housing. Mr. Holden did was not hearing this project as totally elderly housing. Mr. Coker felt that 62 was usually elderly.

Mr. Coker continued reviewing the handout. He mentioned architectural. They have purview on that. The Board also has purview on lighting and landscaping. He was not sure he buys all of the arguments for OR. The one that holds his attention is job creation - 750 vs. 80. That can have a significant impact on this city. The other side of that is income and tax revenue. He would like to see more verification of the tax revenue. Deputy City Manager Hayden agreed. She would like back up data.

Ms. Paige asked if it was appropriate to ask for more data on type of jobs in their facility. Mr. Coker asked how do they know who will be moving into the office space? Mr. Holden indicated that there are two office structures on Borthwick Avenue that were built as business offices which are now almost exclusively medical offices.

Mr. Coker indicated that the claim is being made that there will be 750 jobs created over 10 years. What kind of jobs are those? Deputy City Manager Hayden felt more meaningful information would be to see what jobs are coming to Portsmouth.

Ms. Geffert indicated that they have land on Borthwick Avenue in a hospital area and she asked if this is the best use for the land? Also, this overlay proposal includes the possibility of working with the Portsmouth Senior Center and maybe they need to talk to those agencies. If they are bringing the community in, there will probably be inadequate parking and they would need to look at that.

Mr. Coker felt, in summary, he does not know how he feels about this. They have made progress but they have a long way to go. More information is being required. Affordability, jobs, environmental, enforceability and tax revenue breakdown are some of his concerns. Deputy City Manager Hayden asked about future medical office needs for the hospital corridor.

Mr. Coviello felt that a lot of good has come from the analysis of supply and demand. If the demand was medical office right now, they would be proposing medical office and if the demand was housing, they would be proposing housing. If they increase the supply of housing then that should naturally lower the cost. Mr. Coker doesn't feel that it is an either/or proposition. If they can make that a profitable venture either way, they would go with the most profitable.

Deputy City Manager Hayden felt that their problem is they need to look down the road. The hospital is doing huge expansions so they need to investigate that. She hears the Board being uncertain of how they feel. Mr. Rice felt there may be overwhelmingly powerful reasons why it is zoned OR. Looking at demographics of that location, if they have OR they would have to supply those offices. If they are looking at passenger lines and a terminal that would be important and that is one whole aspect that would have to be overlooked with this proposal.

Ms. Geffert felt it might be good to have a very specific plan going forward for the applicant and the public. Vice Chairman Hejtmanek felt they need another work session in the future to allow the applicant to come back and address their questions and concerns.

Mr. Holden indicated that the next available work session would be January 25, 2008. He will determine room availability and email the Board.

Councilor Dwyer felt they should think about the supply of people who will be needed to fill expanded hospital services and all the high end retail that the City has approved.

Mr. Coviello made a motion to postpone this matter to the January 24, 2008 meeting. Deputy City Manager Hayden seconded the motion.

The motion passed unanimously.

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II. ADJOURNMENT

A motion to adjourn at 8:40 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 24, 2008.