

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 P.M.

DECEMBER 16, 2010

MEMBERS PRESENT: Donald Coker, Acting Chairman; Eric Spear, City Council Representative; John Rice; Anthony Blenkinsop; MaryLiz Geffert; Cindy Hayden, Deputy City Manager; Richard Hopley, Building Inspector; and William Gladhill, Alternate

MEMBERS EXCUSED: John Ricci, Chairman; Paige Roberts, Vice Chairman; and Norman Patenaude, Alternate

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the November 18, 2010 Planning Board Meeting – Unanimously approved.

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II. PUBLIC HEARINGS

*The Board's action in these matters 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.*

A. The application of **Northern New England Telephone Operations, LLC, Owner**, and **Verizon Wireless, Applicant**, for property located at **56 Islington Street**, requesting Amended Site Plan Approval for the installation of an emergency back-up generator, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 126, Lot 23 and lies within the Central Business B (CBB) District and the Historic District.

The Chair read the notice into the record.

Ms. Geffert recused herself.

SPEAKING TO THE APPLICATION:

Attorney Tom Hildreth, of the McLane Law Firm, appeared along with Chip Fredette of Verizon Wireless and Doug Sheadel, sound engineer with Modeling Specialties. Attorney Hildreth stated they had come before the Board in 1997 for this project for a wireless antenna, an equipment shelter on the back, and installation of the outside power generator. They installed all of those improvements except the generator. Attorney Hildreth noted that in 1997 they reported 36 million subscribers of wireless services in America and as of last week there were 298 million.

Attorney Hildreth stated this was a small application. They appeared before TAC, who made a favorable recommendation with stipulations, two of which are largely complied with. They received HDC approval last week. There is a chain link fence which will surround the generator and the fence will have vinyl slats and a sound absorbent and sound deflecting material inside it. Modeling Specialties prepared a report which includes a brief analysis of its predicted calculation of the noise level at the closest property boundary to the east which will be below the limits of daytime operation that the City allows. TAC had recommended that they do a field test when the unit is installed which they are happy to do.

Attorney Hildreth indicated that the wireless antennae are powered by standard household current from the street. Inside the equipment shelter are racks of back up batteries which will give 8 hours of life when the primary power is lost. After the batteries are exhausted the generator will kick in for 72 hours of continued operation. It will only be operated in an emergency situation except for ½ hour each week for maintenance testing purposes which will be within daytime hours of the city limits.

Deputy City Manager Hayden understood that they looked at both diesel and natural gas and she asked if it was their preference to use diesel because they want to make sure the generator works in emergency conditions. Attorney Hildreth responded their standard deployment is a diesel generator. Often times they don't have gas available and it requires a tank. They also feel that diesel is slightly more reliable. They did not investigate the piping underground but it would be a more invasive installation to dig up the piping and hook up to gas. Deputy City Manager Hayden asked what the diesel fumes would be comparable to. Attorney Hildreth stated the size of the generator is a standard home sized back up generator. They have point source limitations under State Environmental Regulations that they are way below in terms of pollution. Deputy City Manager Hayden asked about noise attenuation. Attorney Hildreth indicated that Mr. Sheadel's report has a table that shows the closest two sensitive property line receptors that are 26' to the east and 75' to the west. With the three levels of sound control devices they employ, the security fence with solid slats and the blanket material that will absorb and deflect sound, they will operate at 56 dBA at the eastern property line and 53 dBA at the west property line where 60 is the daytime limit. The previous figures they submitted were before they engaged Mr. Sheadel and they didn't add the final layer of sound control material.

Deputy City Manager Hayden asked if that monitoring was specific to this site or just generic. Doug Sheadel, of Modeling Specialties, explained that because they are 30' from the hard surface it doubles the distance from the nearby property line. The wall will reflect sound but because of the large flat surface the sound will primarily be reflected towards State Street and not toward the property line. The generator itself was previously estimated at 62 dBA but he was not involved in the first numbers provided. He stated the generator is extremely well mitigated where exhaust and radiator air is blown

out the bottom and through a cowling which is lined with absorbing material. As a result, this generator produces 62 dBA at 72 feet per the manufacturer's specifications. They had to consider other options to further reduce that sound. The fence will be a security enclosure and it extends from the existing fence line and pops out around the generator. Because the generator is diesel it is on top of the fuel tank, rather than being low to the ground. The top of the generator is 10' – 11' above ground. The engine is the size of a diesel pickup truck and as it operates most sound from the unit will go through the cowling and out the top. They have added a 2' higher barrier over the generator assuming that all of the sound is coming out of the top and doing the calculation over the barrier to the nearest property line, it produces 56 dBA from the top of the generator.

Mr. Taintor compared the table in Mr. Sheadel's report and the plan and noted the generator is 4' from the equipment shed and the equipment shed is between the generator and the west property line. He asked Mr. Sheadel to explain the small difference between the dBA at the east property line with no obstruction in the way and the west property line which is three times the distance away with a building in the way. Mr. Sheadel explained that sound decreases with increased distance, it drops about 6 dBA for every doubling of distance. Inside the blanket is a vinyl material that is a substantial shield and it absorbs the sound impacting the barrier and it is 2' above the generator. Therefore, the sound going to the nearest neighbor at 25' is blocked directly and some sound going vertically will get re-directed and sent to the property line, but it will be much less. The part that is gone amounts to the additional distance to the other property line. With the generator on top of the oil tank, it is at the top of the building so the existing shelter will not create any barrier to the sound.

Mr. Coker asked what they will do to mitigate the sound if the estimates are low and it is 62 dBA instead of 56 dBA. Mr. Sheadel responded that if they have underestimated this sound, the logical and straight forward solution would be to raise the fence by a foot. Also a short extension on the top of the shelter would mitigate the levels.

Attorney Hildreth wanted to register a reservation of rights. They will happily abide by the TAC stipulation of conducting a field measured test from live operation but, for the record, he wanted to reserve his right to challenge the application of the noise ordinance to this device on the basis that it is an emergency generator and those are exempt from the noise limitations. He has also had discussions with staff regarding his position that emergency generators are exempt from the noise ordinance which is why Mr. Sheadel's report only addresses the scheduled weekly operation and not the actual times it is operating as an emergency generator, although the ordinance does not make that distinction. There is also a list of exemptions from the noise ordinance which include maintenance activities which are conducted between 9:00 a.m. –7:00 p.m. He wondered if it would be more clearly agreed upon maintenance if they had a field technician who came out every week to do maintenance and they happen to conduct that maintenance on an automatic pre-programmed basis. Attorney Hildreth was not quarrelling with the TAC condition and he was confident they will pass the sound test with flying colors but he would be remiss if he didn't state, for the record, a different way to look at this.

Mr. Coker suggested that they may want to discuss this with the City's Legal Department. Attorney Hildreth felt that, as a result of discussions with Mr. Taintor, it is a revision that the staff is already working on.

Mr. Taintor clarified that he would not say they are revising the ordinance but there were many issues with generators and they have taken the position that the regular exercising does not fall under any of the exemptions.

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 two recommended stipulations regarding a sound test being performed with a City representative present after installation and that testing shall be coordinated if there are multiple generators on site.

Deputy City Manager Hayden made a motion to grant all waivers requested by the applicant. Mr. Rice seconded the motion.

The motion to grant waivers from the following sections passed unanimously:

- 2.4.4.3(a) Plans should show the existing conditions, including:
Surveyed plan of the site showing existing natural and built features, zoning boundaries and Base Flood Elevations (BFE) data, as required
- 2.4.4.3(b) Plans should show the buildings and structures, including:
Total floor area and number of usable floors
- 2.4.4.3(c) Plans should show the access and circulation, including:
The location and width of accessways within the site, the location of curbing, right-of-ways, edge of pavement and sidewalks
- 2.4.4.3(d) Plans should show the parking layout
- 2.4.4.3(g) Plans should include the size, type, and location of all above ground and underground public service connections and private service connections; including gas lines, power lines, telephone lines, other communication lines and fire alarm connections
- 2.4.4.3(i) Plans should show the stormwater management system
- 2.4.4.3(j) Plans should show the outdoor lighting at the Property
- 2.4.4.3(k) Plans should show the landscaping at the Property
- 2.4.4.3(l) Plans should show the contours and elevations at the Property
- 2.4.4.3(m) Plans should state the type, extent and location of open space
- 2.4.4.3(o) Plans should state the location of snow storage

Deputy City Manager Hayden wanted the record to show that while she understands the applicant wants to reserve the right to challenge the noise ordinance, the fact is they have an application before them which the Board will be voting on. If the Board did not feel that the noise ordinance applied then they would not be voting tonight. Anyone has the right to challenge anything but regarding this particular application she would like to see if there is consensus on the Board that this does in fact apply. This is not maintenance but it is testing of an emergency generator and, while it is operating during an emergency the noise ordinance does not apply, it is her feeling that weekly testing falls under the noise ordinance and that is why they are here tonight.

Mr. Coker summarized that she is saying that the weekly testing is not maintenance. The Board agreed.

Mr. Rice did not find the ½ hour weekly testing excessive or unreasonable. Mr. Hopley agreed but does not consider this maintenance and in the field they call it “exercising” as they turn it on and keep it running on generator power while the testing takes place followed by a shut off and cool down period.

Mr. Coker drives a diesel car and changes the oil every 3,000 miles and considers that maintenance. He agrees with Deputy City Manager Hayden’s observation and the rest of the Board.

Mr. Taintor stated this is coming before them because they are having so many emergency generator applications come in. When the ordinance was written there were not very many; however, since the last ice storm they have had many applications filed and they are going into very dense and tight locations. That is why the City is concerned about managing them.

Mr. Blenkinsop appreciates that the applicant will do testing at a least bothersome time but asked if the City has any control within the window of 7:00 a.m. – 7:00 p.m.. Deputy City Manager Hayden did not believe the City had any control over the testing times. Mr. Hopley added that the building permits now put a note on each permit the window of when the testing is allowed, which he believes is weekdays from 7:00 a.m. – 6:00 p.m. and that is shall not exceed 60 dBA. There have not been any complaints yet but it will be interesting to see what happens after the first major outage. It could be loud.

The motion to approve amended Site Plan approval passed unanimously with the following stipulations:

1. A sound test shall be performed with a City representative present after installation to make sure it meets the ordinance regulations; and, if it does not meet the regulations, the applicant shall be required to do additional sound attenuation.
2. Testing shall be coordinated if there are multiple external generators on site.

III. CITY COUNCIL REFERRALS/REQUESTS

*The Board’s action in these matters 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.*

A. Request from Parade Office, LLC, for Footing Easements, Cornice Easement, and Amended Private Street Easement, for property located at 99 Hanover Street.

Ms. Geffert recused herself.

Tim Levine, of Parade Office LLC, stated he was present to request action by the Board for easements which are administrative in nature for footing and roof/cornice encroachments into public property

along Hanover Street and also minor modifications made to the Portwalk Place private street adjacent to the new hotel.

Mr. Taintor advised the Board that staff has worked with the applicant, reviewed the easements and negotiated to get the details absolutely clear. The cornice and footing easements are very minor easements where the building meets the zoning requirement allowing buildings to be built up to the property line but the cornices will extend a few inches over the public way and the footings will extend in three areas under the sidewalk. The Private Street Agreement requires amendment as a result of changes which were approved through the Planning Board Site Plan process over the past year or so. Adjustments to the sidewalks in front of the Residence Inn and the layout of the Municipal parking lot were made which resulted in changes to the street that do not exactly match what was previously approved. Again, these are minor and reflect approvals that have been made by all relevant boards. Mr. Taintor stated that staff recommends that the Board vote to recommend approval.

Deputy City Manager Hayden felt they should broaden the motion to say that “the City” approve rather than “the City Council”.

Deputy City Manager Hayden made a motion to recommend that the City approve the requested Footing Easements and Cornice Easement as shown on the “Footing Encroachment Plan” (Sheet 1 of 2) and “Cornice Encroachment Plan” (Sheet 2 of 2) dated November 18, 2010 and to recommend that the City approve the revised configuration of the private street easement, access easements and sidewalk easements on Portwalk Place, as shown on the “Easement and License Plan” (Sheet C-3A) dated November 12, 2010.

Mr. Blenkinsop seconded the motion.

The motion passed unanimously.

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IV. NEW BUSINESS

A. Request from Catherine Whelan, for property located at 660 Middle Street, for an amendment to Subdivision Approval granted on June 17, 2010 (Stipulation #2).

Mr. Taintor stated this is an issue that had come up recently. The Board has a practice of requiring the deeds associated with approved subdivision plans be recorded at same time as the subdivision plat to assure that the City’s records are accurate and that any potential purchasers of any lots shown on the plans have full information about the lots configuration. That is very important in a lot line relocation plan but this requirement is not important in the case of a true subdivision where they are creating new lots. In many cases, someone may not actually sell the lots for years later. They have determined that the stipulation they have had is not necessary for true subdivisions but they should retain it for lot line relocations. They are recommending that they amend this subdivision approval by deleting the stipulation that required the recording of deeds along with the plat.

Ms. Geffert made a motion to amend the subdivision approval granted on June 17, 2010, by removing the following stipulation:

2. 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.

Mr. Rice seconded the motion.

The motion passed unanimously.

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V. PLANNING DIRECTOR’S REPORT

A. Downtown Parking Strategies – Update.

Mr. Taintor reminded the Board of the report prepared by the Downtown Parking Focus Group earlier this year and indicated that the report has been discussed at many levels throughout the City. Their recommended approach is to pull together an omnibus report to coordinate with various boards and committees. They have decided to put together a staff report in mid-January and then schedule a work session before the January Planning Board meeting to discuss that report. Some items are under the Planning Board jurisdiction but some things are not Planning Board related. They would have the Planning Board, Economic Development Committee and the Parking Committee review the report. They would present the Staff Report to the City Council and the City Council would then perhaps refer it to the Planning Board for actual zoning changes.

Ms. Geffert noted that when they had the meeting with the BOA, Ms. Rousseau was raising the concern that they were not sufficiently solicitous of business interests when they made significant changes to the Zoning Ordinance that affected them. She wants to make sure they encourage the business community to participate in this. She knows they already have but, for the record, she wants to makes sure they are taking action so they can say to Ms. Rousseau they have done it.

Mr. Taintor also advised the Board that they were potentially looking at another zoning amendment for January relative to the Gateway zoning district. They currently have the Service Credit Union project before them and one feature of the Gateway Planned Development option is that they meet specific sustainability standards; however, not all areas of the Gateway District are amenable to that particular certification, although other LEED and Smartgrowth certification mechanisms would be appropriate. They are looking at providing more flexibility to have different ways to achieve the sustainability standard.

Mr. Coker asked exactly what he meant by “amenable to sustainability standards”. Mr. Taintor explained that there are aspects of that standard that require more density than they have in some areas of that district. It’s not the business as much as the site. It works closer to town but as you move away from the center it doesn’t work as well.

Mr. Taintor also referred the Board to the “Status of Major Development Projects” memo which was included in the Board packet. They were asked by the City Council to provide a report of what was going on for development in the City and they are going to try to keep them apprised of projects in

town. They will note that several projects are moving to the next step within the next few weeks so that they will be able to start construction in January.

Mr. Coker asked Councilor Spear why this information was important to the City Council. Councilor Spear explained that their constituents ask questions and they are supposed to know the answers so the report helps them. Secondly, in trying to develop budgets, these new developments can influence their decision.

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VI. ADJOURNMENT

A motion to adjourn at 7:47 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 20, 2011.