

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

JUNE 16, 2011

MEMBERS PRESENT: John Ricci, Chairman; Paige Roberts, Vice Chairman; Donald Coker; John Rice; Anthony Blenkinsop; Cindy Hayden, Deputy City Manager; and Richard Hopley, Building Inspector; and Norman Patenaude, Alternate; and William Gladhill, Alternate

MEMBERS EXCUSED: Eric Spear, City Council Representative and MaryLiz Geffert

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

- 1. Approval of Minutes from the April 21, 2011 Planning Board Meeting – Unanimously approved.

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II. PUBLIC HEARINGS – OLD BUSINESS

The Board’s 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.

A. The application of **Henry and Jaqueline Brandt, Owners**, for property located at **37 Wholey Way** and **Salmon Falls Holding, LLC, Owners**, for property located **off Echo Avenue**, wherein Preliminary and Final Subdivision Approval (Lot Line Revisions) are requested between two lots as follows: Lot 64 as shown on Assessor Map 237 increasing in area from 2,728 ±s.f. to 15,056 ± s.f. with 241.28’ ± of continuous street frontage on Echo Avenue and Wholey Way and Lot 76 as shown on Assessor Map 237 decreasing in area from 43,703 ± s.f. to 31,375 ± s.f. with 200.89’ ± of continuous street frontage on Wholey Way. Said properties are located in a Single Residence B district and are shown on Assessor Map 237 as Lots 64 and 76. This application was previously denied by the Planning Board; however, the Rockingham County Superior Court subsequently reversed the Board’s decision and remanded the matter “for consideration of the wetlands issue and any other concerns not addressed” in the Board’s decision. (This application was postponed at the May 19, 2011 Planning Board Meeting)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech appeared on behalf of the applicant, Henry Brandt. He indicated that he has had discussions with Rick Taintor and because of the Department Memorandum pointing out deficiencies in the original plan from 2008, they submitted a new plan two days ago. Mr. Taintor advised him that he would be requesting that it be postponed to give the Board members an opportunity to review the new plan. Therefore, Attorney Pelech asked that this matter be continued to the July meeting.

Mr. Blenkinsop made a motion to postpone to July Planning Board meeting. Mr. Patenaude seconded the motion.

The motion to postpone the Subdivision application to the July Planning Board meeting passed unanimously.

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III. PUBLIC HEARINGS – NEW BUSINESS

*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 **The City of Portsmouth School Department, Owner**, for property located at **50 Andrew Jarvis Drive**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, including the demolition of existing bleachers and replacement with a new aluminum 123’ x 29’ bleacher section, to be placed on existing crushed stone/gravel with added stone dust. Said property is shown on Assessor Map 229 as Lot 3 and lies within the Municipal (M) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Ken Linchey, Facility Director for the Portsmouth School Department, addressed the Board. He was looking for approval to remove the existing 30 year old bleachers and replace them with a new set. The new set will have a steel frame with aluminum decking. The new bleachers will be smaller than the existing ones, and 6’ further from the wetlands, so the wetland impact will be reduced.

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 grant Conditional Use Permit approval as requested. Mr. Blenkinsop seconded the motion. The motion to grant Conditional Use Permit approval passed unanimously.

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B. The application of **The City of Portsmouth School Department, Owner**, for property located at **50 Andrew Jarvis Drive**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, including the construction of a rain garden. Said property is shown on Assessor Map 229 as Lot 3 and lies within the Municipal (M) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Deirdre Barrett, Chairman of the Science Department at the Portsmouth High School, was present along with Eco Club students Veronica, Chloe and Tanner.

Veronica stated they were present on behalf of the Environmental Change Organization of the Portsmouth High School, commonly know as ECO. Their goal is to increase awareness of sustainability in the community. At the high school they have increased recycling efforts, installed compost bins, reduced electricity by installing light switch covers to use less lights and the school has received an energy star award for their efforts. They are working on a solar panel project and are planning a 5K road race to help raise money for the solar panels. Their current project is to install a rain garden at the school.

Chloe explained that a rain garden is a depression in the ground filled with rocks and various native plants that help filter water prior to it running off into the local watershed, Sagamore Creek. They applied for a grant offered by the UNH Piscataqua Regional Estuaries Project and received \$10,800. These funds are being put towards the construction of their rain garden.

Tanner stated that the site for the rain garden was determined as a result of multiple meetings with the City Environmental Planner, the Civil Engineer, a representative of the City Public Works Department and Kevin Linchey of Portsmouth High School. They selected a location at the bottom of the slope, near the driveway, going past the football field. The rain garden’s overall function will be sediment filtration and nutrient retention. They will be planting native plants in the depression to help with these functions. They hope to have the rain garden installed as soon as possible so that students can help with the planting next week. Altus Engineering designed the rain garden, DPW will be digging the hole and TerraFirma Architect Landscape designed the layout. They invited everyone to come and watch the installation. He indicated Eric Weinrieb, of Altus Engineering, was present to answer technical questions.

Mr. Coker asked if the rain garden was sized to take roof runoff. Mr. Weinrieb clarified that it is not taking roof runoff. He explained that the watershed on the south side of the high school in the expansion area is primarily lawn area and the loop driveway. As everything drains to a single catch basin, goes to the closed drainage and discharged between the baseball field and the football field, it was easy to select this location. They designed the rain garden for a 10-year storm and water quality volume for a 1” storm event and there is an overflow structure inside. They designed it so they could

monitor the storm water at the catch basin so that as it is coming in they know it is pre-treated and they have a monitoring station in the underdrain system. The overflow runs right back to the catch basin.

Ms. Roberts asked what type of maintenance is required and how that will work. Mr. Weinrieb responded that they need to cut out and remove the dead vegetation at the end of the season. On a periodic basis the media needs to be replenished. After a storm event, if it doesn't drain out after 72 hours, then the media has become plugged and it would need to be replaced. It should last for several years. They have a hood on the catch basin so that should capture a lot of the sediment.

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 approve. Mr. Blenkinsop seconded the motion.

The motion to grant Conditional Use Permit Approval passed unanimously.

Chairman Ricci asked if they would keep the Board apprised of construction so that they might be able to visit the site and also to give them a follow up report in a year to let them know the results. Ms. Barrett stated that they need to write a report as part of the grant so they will provide the Board with a copy of that.

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C. The application of **Comcast of Maine/NH, Inc., Owner, and The City of Portsmouth, Applicant**, for property located at **180 Greenleaf Avenue**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for temporary work within an inland wetland buffer, including the replacement of three culverts and a headwall. Said property is shown on Assessor Map 243 as Lot 67-1 and lies within the Gateway (GW) District.

Deputy City Manager Hayden recused herself from this application.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

David Allen, Deputy Director of Public Works, was present with Gregg Mikolaities, of Appledore Engineering. Mr. Allen explained this was a Conditional Use Permit application for maintenance of municipal culverts. This work will take place on the Comcast property within a municipal easement on culverts that carry the stream through and underneath an existing sanitary sewer line. The sewer line was installed in 1967 and part of that construction included maintaining stream flow underneath the sewer line. There are currently three 12" corrugated metal pipes that carry the flow. Several years ago it was brought to the City's attention that the rubble stone headwall around the area had issues and was in failure so in 2008 the city received a permit by notification and repaired the headwall. Once that was repaired, there were still issues with the pipes. Last year they tried to clean them out and

found they were beyond their useful life and really needed replacement. It appeared they had less than half of the original carrying capacity.

As a result, Mr. Allen stated the City began planning for a replacement in kind of the three 12” culverts. Appledore Engineering was retained and as they went through the permitting process they met with DES and were advised that because it was a full time stream they needed to have a natural bottomed culvert. They went from their three 12” culverts to an elliptical culvert which essentially provides the natural bottom that DES is looking for. It will be buried about 1’ in the ground and will carry the stream underneath the sewer line. The other issue that came up as part of this was a letter which the City received from the DES Dam Bureau stating that the sewer line berm was a dam because it was higher than 6’ and impounded a certain amount of water. To answer that, the City hired a licensed land surveyor and they show that, although it is close, it is below the 6’ elevation criteria. That is being addressed with the Bureau and the City does not believe it is an issue.

Gregg Mikolaities, of Appledore Engineering, stated that their scope was to look at designs for replacement of the three 12” pipes. The initial design was to replace the headwall with three 12” pipes, but this was changed to the elliptical design based on DES requirements. Because they are in the buffer they appeared before the Conservation Commission on July 9th and received a unanimous recommendation for approval for a Conditional Use Permit. They also received unanimous approval from the Conservation Commission because they will have temporary wetland impact of about 200 s.f. (150 s.f. on the inlet side and 50 s.f. on the outlet side). Mr. Mikolaities indicated that all they are requesting approval for tonight is Conditional Use approval to replace three culverts that have reached their design life. There is no requirement for Site Plan Review. The three culverts are on Comcast property and the application is from Comcast.

Mr. Mikolaities reviewed the five criteria for Conditional Use Permit approval in accordance with 10.1017.50 of the Zoning Ordinance.

1. The land is reasonably suited to the use, activity or alteration: This area has been previously disturbed for the installation of the City’s sewer line and associated drainage work. This proposal is simply a replacement of existing culverts past their design life.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration: Because of the wetlands on both sides of the sewer easement, everything is in the buffer so there is no way to avoid the buffer. They are again replacing in kind, in the same trench and same location, to minimize the disturbance.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties: Because the culverts are crushed, buried and not functioning as they were designed to, the replacement will improve the flows in the area and improve the drainage situation. Again, the impact to the wetlands is 200 s.f. and that is temporary.
4. Alteration of the natural vegetative state of managed woodland will occur only to the extent necessary to achieve construction goals: Work will be completed in the location of the existing culverts. Wetland impacts will be minimal and temporary. They are also proposing new headwalls at the inlet and outlet sides that they feel will be an improvement and will help stabilize the area.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section: Again, the wetland impacts are 200 s.f., the culvert

will be embedded as recommended by DES and the Conservation Commission has already reviewed this project and voted to unanimously recommend approval. In closing, it will be an improvement over the existing conditions.

Mr. Coker asked if the existing culverts were three 12". Mr. Mikolaities confirmed that was correct. Mr. Coker felt it appeared that one of the 12" could not be found or it was plugged. Mr. Mikolaities indicated it may never have even been installed. The best information is that there are three culverts there. Mr. Coker asked if the one that is being proposed will improve the flow of the water through that area. Mr. Mikolaities confirmed it will. Right now the three culverts are acting as half of a culvert, as a result of them being clogged and buried. Mr. Coker felt it was very simple and he agreed it was an improvement.

Chairman Ricci asked about the duration of construction. Mr. Mikolaities stated they will do it in a dry period and it will take about two weeks. Chairman Ricci noted they have a dewatering system set up so he assumed it will be July or August. Mr. Mikolaities confirmed the system was there if needed.

Ms. Roberts asked what the natural design life of these culverts are. Mr. Mikolaities stated these are past their normal life and it looks like there may have been truck traffic over them. This replacement should last a minimum of 50 years.

Chairman Ricci opened public hearing and called for speakers.

John Kuzinevich, Attorney for Jim Boyle, Trustee for 150 Greenland Avenue Realty Trust, Portsmouth Toyota, addressed the Board. Mr. Boyle owns the abutting property to this construction. Attorney Kuzinevich stated that with the design that is proposed, in every major storm, it will flood the back third of Mr. Boyle's property. He displayed an aerial photo that was taken when the three culverts were functioning. He pointed out the sewer line that crosses and comes down into the woods. The City does not have a drainage or sewer easement on Mr. Boyle's property and that matter is being heard in Rockingham County Superior Court as they believe the City is a trespasser. This design keeps the status quo and does not solve the problem of the city illegally backing water onto the property. Attorney Kuzinevich did not feel that the Comcast property was suitable for this use because the impact of the use is not confined to their property.

Attorney Kuzenivich felt that the City has been very dishonest in this whole process. He believed this culvert was consciously designed to back water onto the property because the size was limited by other culverts on Greenleaf Avenue that the City does not want to rebuild. Attorney Kuzinevich felt it was clear that economic reasons alone are not a ground for granting a Conditional Use Permit. The City is not trying to not address the water problem which it created by the sewer line and is attempting to save money by not having to do additional work on the Greenleaf Avenue culverts. He felt this was inconsistent with what it told the court and that it was inconsistent with the Zoning Ordinance. The burden of proof for a Conditional Use is on the City. Attorney Kuzenivich felt the first thing they have to show is that they have a legal right to do what they are proposing to do. He did not believe the City would allow any other subdivision to back water onto someone else's property. They think there is another culvert in failure which is also the City's responsibility and none of the figures take that culvert into account. He also did not believe the whole project took into account Mr. Boyle's pending court case as he believes the Court will ultimately tell the City to get rid of the sewer line and make it a

free flowing stream with a far different design. Regarding the technical compliance of the submission, he was only shown today that a plan was submitted showing the property lines. It looks like the area of work will be done 1 ½ feet from Mr. Boyle's property and he doesn't see how it can be done without going on to Mr. Boyle's property.

Attorney Kuzenivich believes the Board should use its powers to have the City hire an independent wetland scientist/engineer to review this Conditional Use application to review the entire water problem. They were required to hire an independent engineer for their Site Review Approval and they came away with some good suggestions for pervious pavement. He will rest on his letter and Bruce Scamman's comments regarding the technical issues.

Attorney Kuzenivich stated they are referring to the fundamental issues of legality, honesty, the right to use someone else's property, the right to protect property owners, the fact that the land is not suitable as it harms them and it is not suitable because the Comcast property is not large enough and it does not meet the conditions because there are alternatives. Their pending Site Plan before the Board has the sewer line in an entirely different location which Mr. Boyle was willing to offer the City in settlement negotiations. The whole area could be improved for both the City, Comcast and Mr. Boyle by having an overall approach but it was not correct to say there was no alternative when they were the ones who proposed it.

Bruce Scamman, of Emmanuel Engineering, addressed the Board on behalf of 150 Greenleaf Avenue Realty Trust. Mr. Scamman confirmed that they received drawings a little over a week ago along with the drainage study to determine whether water will back up onto Mr. Boyle's property. They have several concerns which they outlined in a letter which was handed out to the Board members.

Mr. Scamman stated their first concern was the water backing up. The Appledore design shows 8.9 acre feet of water stored above the culvert. He asked why the City can't open up the 1943 ditch. Part of his packet handed out to the Planning Board members included plans of the Metcalf & Eddy Plan that was done for the City in 1965 which designed the sewer system for this site with drainage going back to the Essex Road pond. They designed the 3' diameter pipe that went to the rear of Mr. Boyle's property to by-pass any of the current drainage issues. There was a plan done by RC Nelson that designed 4 12" diameter culverts. All of the design work is based on 3 culverts so they don't know for sure whether there are three or four. The headwall has collapsed so they believe there is a fourth pipe. They feel the initial design of having three pipes is flawed. A four-pipe system, per the Nelson plan, would be 34.16% larger than the proposed elliptical pipe.

He felt there were discrepancies with some of the calculations from Appledore Engineering. Instead of an elliptical pipe buried half way, they analyzed a box culvert. They researched all of the calculations through the American Concrete Pipe Association, Publication 37. They have met with DOT and DOT is very concerned with water backing up under the Route One By-Pass as it will add tail water on the pipe going underneath by not allowing the free flow of water. Water will release faster to their site as designed in the Drainage Study. He believed that a lot of things are undersized or will be releasing water faster and they are concerned about the cumulative release at the end.

Mr. Scamman stated they used the Appledore plans to calculate an additional 40 acres of flow that goes down to the dam in two additional areas. He looked in the catch basin on the south side of Greenleaf Avenue and has watched the water flow across Greenleaf Avenue and then across the Route

One By-Pass which is about 20 acres of densely populated City housing which is not included in the calculations. Also that the ponding area that goes out beyond the paper street (Joseph Street) has a dam. He believes without the storage area, that water will be dammed up and increase the elevation of the water at the culverts. The Green Book of Best Management Practices, also called The Stormwater Management and Erosion Sediment Control Handbook for Urban and Development Areas in New Hampshire, requires that all ponds and retention basins have an emergency spillway and there is no emergency spillway designed for this.

Mr. Scamman stated they believe there will be permanent wetland impact and they do not believe this system will do any good because they are replacing in kind. They were at a meeting a few months ago with the Feds and the State and they said if they were going to have stormwater back up then they need to have an easement to it. Therefore, this would go against what the applicant is saying, although they are not present to state that for the record.

In conclusion, Mr. Scammon felt that the releasing of water faster and the undersizing of pipes is going to back the water up. This is not designed to handle the amount of water upstream and it is not designed to show what water is actually coming downstream from the structures upstream. The structure itself is not designed appropriately and the calculations are incorrect. He believes there will be water backing up and it becomes a situation where the dam needs to be protected for the safety of all those around. It also says that if the dam is on your property then you are responsible and the dam is on Mr. Boyle's property.

Mr. Coker asked about the meeting that was held where the easement for backing up water was discussed. Mr. Scammon stated that was a meeting set up with Alternation of Terrain, with Craig Renney, the Wetland Bureau was involved and the Dam Bureau was involved, the EPA was invited, the City was there, totalling approximately 25 people. Mr. Coker referred to Mr. Scamman's statement that someone at the meeting made the declaration that there needed to be an easement of backing up of water and Mr. Coker asked where that was documented. He asked if there were minutes or a recording of the meeting.

Attorney Kuzinevich believed it was Dori Wiggin of DES that made that statement. It was an informal work session and it was not recorded and there may have been sketchy minutes. Mr. Coker repeated his question of whether there was a record of the meeting. Attorney Kuzinevich believed there were sketchy minutes and there was an attendance list that circulated. Mr. Coker indicated that was not his question and he would let it go at that.

Mr. Coker asked about the statement that DOT expressed a concern about this also. He asked if they have an opinion letter or a document that states that.

Mr. Scamman stated he had a meeting with Kevin Russell from DOT and they walked along the Route One By-Pass and discussed the culverts that run underneath the By-Pass. The elevation of the water as designed by Appledore reaches an elevation 23.48 and the invert of the 30" pipe that runs out there is at elevation 20 so there will be 3' of head slowing the water down.

Mr. Coker indicated that was all well and good but his question is whether there is a record of the meeting. Mr. Scamman stated there was not a record of the meeting.

Mr. Coker also asked about Mr. Scamman's letter which stated that the design was for four pipes and the question is whether there are two pipes or three pipes. Mr. Coker doesn't know the answer to that but he will take Appledore's word for it, and they say this is an improvement. Keeping it simple, the design is for four pipes, and design does not necessarily mean it was built that way, and if Appledore says this is an improvement, he tended to believe them.

Mr. Scammon stated that he was concerned because they are designing something that is in failure already and he doesn't understand why the City would approve something that was in design failure. There has been a lot of development since the 1960's and they are causing water to flow down and it will bottleneck.

Mr. Coker stated that he does expert witness testimony in lawsuits and there are always disagreements on experts.

Mr. Coker referred to Mr. Scamman's letter of June 8th and he was confused as to why Mr. Scamman was concerned about making sure that Board members with an interest in the subject property or abutting property are excused from voting on the project. Mr. Coker asked if that was usual and customary for an engineering firm to delve into that area and make a recommendation to someone.

Mr. Scamman stated there were abutters on the Conservation Commission and the letter was to express Mr. Boyle's concerns about the application being heard by those Conservation Commission. Mr. Coker was confused as to why an engineering firm would be cognizant of members of a particular board that would have an interest one way or the other.

Attorney Kuzinevich wanted to clarify any confusion over the number of pipes. The 1967 design was for 4 pipes, when Mr. Boyle purchased his property they could see 3 pipes, over the past year the third pipe has been crushed and disappeared and it now appears that there are two functioning pipes. What they see is not indicative of what is there. They do not believe anyone will know if this is a replacement in kind until the excavation is done. They are also concerned because there is no contingency plan to size the new culvert to the original design, although they still do not think that is enough.

Mr. Scamman referred to Federal Register Docket 1926.652 for trenches. There are three possibilities to be able to open up and the first is if you have an open trench you need 1 ½' of horizontal to 1' of vertical excavation. You can have an engineered trench opening, meaning you have to design it with a sheet pile or a trench box. To dig this headwall as designed, by his calculations, they will be going over the property line to install it.

James Boyle, owner of 150 Greenleaf Avenue, referred to the aerial photo that was displayed and stated the photo was taken a few days after it rained. Two members of the Conservation Commission live downstream and they are very concerned about it. When Mr. Boyle's engineer was walking to see where the water goes, the Conservation Commission members saw them and told them to stay off of their property. Mr. Boyle referred to his Toyota dealership which he called the finest, most environmental building in the City where they now have a 1,500' asbestos sewer pipe creating the dam that is the subject of tonight's drainage problem. He asked the Board members what they would do if

this was in their back yard and he assumed they wouldn't be too happy about it. This is a big deal and it needs to be fixed right the first time.

Mr. Mikolaities stated that nothing that Attorney Kuzinevich or Mr. Scamman brought up is relevant tonight. They are present to replace the three culverts that have failed. What happened in 1943 and 1967 do not matter tonight. They are simply looking for a Conditional Use Permit to replace three existing 12" corrugated metal pipes that have reached their design life. He is not representing anything else.

Mr. Coker asked, to keep it simple, if it was his contention that this is an improvement over the current situation.

Mr. Mikolaities confirmed that was his contention.

Mr. Boyle stated they are stabbing him in the back and he would like to see it fixed correctly.

Chairman Ricci called for second time speakers and third time speakers. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Coker made a motion to grant Conditional Use Permit approval as requested. Mr. Blenkinsop seconded the motion.

Mr. Coker felt that Mr. Mikolaities' point was well taken. This is strictly for a Conditional Use Permit and while there may or may not be other issues, their vote tonight is a very narrow issue.

Mr. Hopley agreed with Mr. Coker that this is only a Conditional Use Permit application.

Mr. Blenkinsop also agreed it was a narrow issue.

The motion to grant Conditional Use Permit approval passed unanimously.

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D. The application of the **Isabelle Hodgson Trust, Owners, and Pease Development Authority, Applicant**, for property located off Greenland Road, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland, including 485 s.f. of wetland impact for fill to accommodate an embankment for a multi-use path. Said property is shown on Assessor Map 279 as Lot 9 and lies within the Natural Resource Protection (NRP) District.

Mr. Blenkinsop recused himself from this application.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Roch Larochelle, of CMA Engineers, was present along with Maria Stowell, of the Pease Development Authority. Mr. Larochelle explained that this project began with a Transportation Enhancement application to the Department of Transportation in 2003. These funds are Federal funds with 80% provided through Federal Highway and 20% provided through the applicant, Pease Development Authority. This application was for the design and construction of a multiuse path 1.7 miles long. It begins at the intersection of Corporate Drive and extends along Grafton Drive and Route 33 and terminates on Greenland Road. The project is intended to be about 10’ – 12’ wide with two-way traffic for cyclists, pedestrians and runners, and it will be constructed of porous asphalt. This segment is also part of the Great Bay Bicycle Route. They have been under design since 2009 and have gone through several approvals with DOT; they have met with the Army Corps of Engineers, the EPA and DES; and their approval on the engineering design was granted earlier in 2011 along with the approval of the environmental document.

Mr. Larochelle indicated that the majority of the project falls within the right of way on Pease except for this subject parcel. There are wetland impacts associated with the project, a portion of which fall along Isabelle Hodgson’s property. The multi-use path goes behind the guardrail on Route 33 within the State right-of-way. What impacts this property are slope impacts associated with getting the slope work down to the land. That results in 485 s.f. of wetland impact on Isabelle Hodgson’s property.

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 grant Conditional Use Permit approval. Mr. Coker seconded the motion.

Mr. Hopley stated that, as a cyclist, he felt this is a wonderful project and he hopes they plan a center line. Mr. Larochelle confirmed there will be a center line on the path.

The motion to grant Conditional Use Permit approval passed unanimously.

Chairman Ricci also stated it was a wonderful project.

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E. The application of **Stephen and Karin Bardollar, Owners**, for property located at **120 Ridges Court**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer, including the removal of riprap and constructing a stone retaining wall as part of site landscaping. Said property is shown on Assessor Map 207 as Lot 61 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Malcolm McNeill appeared on behalf of the Barndollars. Attorney McNeill stated that most of the parcel is within the tidal water buffer. There is an existing wall, riprap and another wall close to the boathouse. They supplemented their request to include a shed and a clothesline, and those items went before the Conservation Commission and DES and are included in the recommendation from the Planning Department.

Attorney McNeill indicated they are seeking a Conditional Use Permit to add a wall along the shorefront. On October 15, 2010 the applicant went to the Conservation Commission for a Standard Dredge and Fill application to extend the wall, remove the riprap, do some landscaping and retain the clothesline and the shed. That hearing resulted in a partial recommendation of the shed and clothesline but not the stone wall. They supported the landscape plan. The applicant then went to DES for the same relief and DES approved the entire plan on December 16, 2010. On June 13, 2011 the applicant went back to the Conservation Commission for the Conditional Use Permit with the exact same plan as the one approved by DES. At the June 13th Conservation Commission meeting they voted to recommend approval with a condition that the wall be shortened on the west side by not less than 14.5' and they have revised their plan accordingly. The recommendation from the Planning Department was to grant the Conditional Use Permit with conditions regarding the wall, clothesline and shed. Attorney McNeill stated that the existing shed and clothesline were previously established without permits and there has been discussion with the City to resolve that issue and that is also why they have included those items as part of their Conditional Use Permit application.

Mark Jacobs, Certified Wetland and Soil Scientist, spoke on behalf of the applicant. Mr. Jacobs indicated that significant portions of this application involve re-landscaping the property to provide more sustainable landscape with less maintenance as most of the property falls within the tidal buffer zone. Part of the landscape proposal included the installation or extension of two existing retaining walls, totaling 90' and the original proposal was to extend a second wall an additional 64'. They also propose to remove an area of riprap to control some shoreline erosion and attempt to restore the saltmarsh vegetation community that existed prior to the installation of the riprap. The wall would be right up against the highest observable tide line. Mr. Jacobs prepared a saltmarsh revegetation program and a functional wetland evaluation using the highway methodology. It identifies the four functions and values that wetlands commonly provide as shoreline stabilization, recreation functions, shellfish habitat and nutrient export. The conclusion of the functional evaluation is that the removal of the riprap and wall replacement and restoration of the saltmarsh community would either impose no additional impact to the site or it would improve the existing situation.

Mr. Jacobs reviewed the five criteria for Conditional Use Permit approval.

1. The land is reasonably suited to the use, activity or alteration. This property is zoned for residential and the property has been used for residential for quite some time. Landscaping for beautification is an activity consistent with residential land use.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration. As Attorney McNeill pointed out, the vast majority of the property falls within the 100' tidal buffer zone.

3. There will be no adverse impact on the wetland functional values of the site or surrounding properties. The work is confined to previously altered buffer zone and the work will improve the overall existing condition. Per the Wetland Functional Evaluation, the project either does not harm or improves the functions and values of the wetland and the surrounding area.
4. Alteration of the natural vegetative state of managed woodland will occur only to the extent necessary to achieve construction goals. There are no areas of natural vegetative state in the area of the proposed work. The existing vegetation above the existing retaining wall consists of managed turf with some shrub plantings that are salt tolerant and low maintenance.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section. Two sections of the retaining wall already exist and this proposal merely seeks to extend that wall; however, the revised plan has been shortened by 14.5 feet. The project does not propose to fill any wetland or create any new upland. The removal of the riprap, extensions of the wall and restoration of the riprap area with the saltmarsh community will have less overall impact than leaving the riprap in place.

Mr. Rice felt there must have been some sort of erosion problem when the riprap went in and he asked why taking the riprap out is a more effective way to control erosion. Mr. Jacobs indicated he was not involved in that and doesn't know the full history but riprap is the easy way out and that is why it was chosen at the time. Since 1994 DES has had a change of heart and they no longer approve or encourage a hard armored technique and prefer shoreline stabilization with vegetation. This would be a significant benefit.

Deputy City Manager Hayden noted the plan says that a revegetation document is to be provided. Mr. Jacobs believed it was part of the packet. The initial focal point of the work will be the revegetation. They will access the site with a small piece of machinery and work their way down. They propose to gently remove the riprap. Some work will be done by hand. After the stone is removed they will monitor the area through several tidal cycles to better tweak the plant installation. They propose 350 clumps of *Spartina Alterniflora*, or smooth cordgrass, which will be installed on one-foot centers, planted by hand. The plan also calls for long term monitoring for the next two years with reports to DES and the Conservation Commission.

Deputy City Manager Hayden asked if they could also include the Board to review that report so that they can monitor it over time as well. Mr. Jacobs said that was fine.

For the sake of discussion only, Mr. Coker asked what the criteria was to determine if this is working. Mr. Jacobs stated standard protocol with DES is the requirement to have 75% revegetation within the first 2 years. If at the end of 2 years it is deemed they have not met that standard, they would propose remedial methods be implemented.

Mr. Taintor referred to a document in the Department file that went back to October that says within 30 days of completion of the work an initial status report including photographs will be prepared and submitted to the wetlands bureau and the Portsmouth Conservation Commission, and that subsequent follow up reports are also required.

Mr. Hopley could not find any dimensions for the wall on the plans and he wondered how the person building the wall would know how to achieve the shape shown. Mr. Jacobs responded that, due to the

sensitive nature of the site, the project engineer has been requested to do a construction layout ahead of time to show where the wall will be going. There is enough control on the site so that the contractor can complete it. Mr. Hopley felt those measurements should be on the plan they are approving.

Mr. Hopley referred to the cross section on the plan where the top of wall is indicated to be between 18" & 24" wide and the base is indicated to be 2'0" with a considerable angle. He asked if the 2' at the bottom is an accurate number. Mr. Jacobs advised Mr. Hopley that the slope is somewhat exaggerated just to squeeze it onto the plan.

John Chagnon, of Ambit Engineering, stated that the angle on the back is whatever the stone mason would need to achieve the stability and it is not that tall. The intention is that the cap would not be much more than 18" at the top.

Mr. Blenkinsop referred to the photos from May 10, 2011 of the riprap. He asked if the top, left picture is existing wall which extends down. Mr. Jacobs confirmed the proposed wall would drop down with the topography moving towards the west.

Mr. Blenkinsop asked if the plantings will go on the left area of that photograph. Mr. Jacobs confirmed the saltmarsh restoration will replace the riprap except the small portion that will be replaced by the wall. Mr. Blenkinsop asked if they have any State approvals to do work in this area. Mr. Jacobs stated they have a State permit which was issued in December 2010 from DES.

Mr. Taintor wanted to clarify that they are looking at two plans with different dates. The C-2 Plan, Permit Application Plan, has a revision date of June 9th and the clothesline and shed are on C-1 that only has a revision date of August 24, 2010. Mr. Coker confirmed the final revised retaining wall is on the plan revised June 9, 2011 on the August 20, 2010 Plan.

Mr. Chagnon advised the Board that he did the work in 1994 for the previous owner who put the riprap in. He handed out photographs referring to that. The issue at that time was that the lot was eroding into the tidal area and the pictures show that it was mud all the way out. The riprap allowed the area to stabilize and the saltmarsh grass to come back. The riprap did stop the erosion which allowed the grass to come back and this plan would extend it even further.

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 Conditional Use Permit approval with the two stipulations from the Department Memorandum, a third stipulation that the existing riprap area be restored per the revegetation program dated October 2010, a fourth stipulation that they delete from Sheet C-2 the words "to be submitted" after "see revegetation program document", and a fifth stipulation to add a north arrow to the plan. Mr. Hopley seconded the motion and asked that they add all layout information to the plan so someone knows where the wall is going and how long it should be and that they indeed do have 14.5' left over. There should be some direction on the plan for the person who is going to build it. Deputy City Manager Hayden was agreeable to that stipulation.

Mr. Hopley asked if DES needs to see a revised plan showing the shorter wall. Mr. Taintor was not sure. He also understood from the presentation that the wall may move slightly based on what happens with the revegetation. Mr. Jacobs confirmed that the wall will not be moving but it will be 14.5’ shorter than what DES approved. Traditionally when you are doing less work than what is approved they do not require a revised plan.

The motion to grant Conditional Use Permit approval passed unanimously with the following stipulations:

1. The new wall shall be as shown on Sheet C2 – NHDES Permit Application Plan, as revised 6/9/11, and shall be no higher than the existing wall.
2. The existing shed and new clothesline shall be as shown on Sheet C1 – Existing Conditions Site Plan, as revised 8/24/10.
3. The existing riprap area shall be restored per the revegetation program dated October 2010.
4. On Sheet C2, the words “to be submitted” should be deleted after “Remove existing rip rap and restore to original grade (see revegetation program document”
5. Add a North arrow to the Site Plan.
6. Provide the lineal dimension of the part of the wall that goes along the riprap, provide an angle turn to show the direction that the wall is heading and provide the length of that arm of the wall.

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F. The application of **Pease Development Authority, Owner, and Freedom Bay Ring Communications, LLC, Applicant**, for property located at **359 Corporate Drive**, for Conditional Use Permit Approval under Section 304-A of the Pease Development Authority Zoning Ordinance for work within an inland wetland buffer, including 4,000 ± s.f. of restoration to the wetland buffer. Said property is shown on Assessor Map 316 as Lot 1 and lies within the Industrial District.

Mr. Blenkinsop recused himself.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Maria Stowell, of the Pease Development Authority, was present along with Barry Keith, the wetland scientist retained by Freedom Bay Ring. Ms. Stowell indicated that because this is the first Conditional Use Permit they are seeing for a Pease property under the Pease Zoning Ordinance, she wanted to explain the process. The PDA has honored a wetland buffer for a number of years as landlord. In 2008 the PDA Board adopted a wetland ordinance and it is part of their land use controls. They borrowed heavily from the City’s ordinance so it is very similar. One significant difference is that rather than having a blanket 100’ buffer, their buffers range from 25’ to 100’ depending on the functions and values assessment that they did on all of the wetlands. The process is similar to Site Review applications where the City makes a recommendation back to the PDA Board. Their decision

becomes final within 14 days unless there is a request for an appeal. If there was an appeal, the City would be invited to that hearing.

Ms. Stowell stated that Bay Ring was before the Board in 2009 and received approval for an expansion of an existing building. The work was adjacent to a wetland with a 50' buffer. The design plans maintained the buffer and there was to be no impact on the buffer but the work didn't get started until one year later. The PDA would do periodic inspections and during the winter they noticed that the buffer didn't look right and in the spring they contacted the tenant and it was determined that there was encroachment into the buffer. The Conservation Commission has reviewed the Restoration Plan which was prepared by Barry Keith and made a favorable recommendation to this Board.

Barry Keith introduced himself as the Certified Wetland Scientist representing Bay Ring who had asked him to do an inspection of the site to determine the nature and extent of the impacts to the 50' buffer. He determined the naturally forested buffer was impacted in two locations. The smaller area consists of 800 s.f. and the larger area consists of 3,200 s.f. for a total of 4,000 s.f. of impact to the buffer. Those two areas were stumped and re-graded and reseeded by the contractor. To re-establish a forested buffer they are proposing a planting of 36 naturally occurring trees and shrubs that will be placed throughout the area. They appeared before the Conservation Commission on June 8th and they received an unanimous recommendation of approval with two conditions which have been added to the plan that the Planning Board received. The first condition was that they wanted them to oversee the grassed area with a conservation mix to get a better grass growth in the core area and the second condition was to implement a monitoring plan.

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 Conditional Use Permit approval with the two recommended conditions. Mr. Patenaude seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously with the following stipulations:

1. The applicant shall broadcast a native seed mix between plantings to fill in the open areas so as to deter the growth of invasive species.
2. The applicant shall prepare an annual monitoring report consistent with the State wetland restoration monitoring requirements (see N.H. Code of Administrative Rules, Env-Wt 806.02).

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Mr. Rice made a motion to read Item G & H together. Deputy City Manager Hayden seconded the motion. The motion passed unanimously.

G. The application of **The Kane RDII, LLC, Applicant**, for property located at **162 Corporate Drive**, for Conditional Use Permit Approval under Section 304-A of the Pease Development Authority Zoning Ordinance for work within an inland buffer, including the removal of 80 trees and dense shrubs between Corporate Drive and the building; for enhancements along Corporate Drive; and the planting of 42 trees in the parking lot area. Said property is shown on Assessor Map 313 as Lot 1 and lies within the PDA Business and Commercial District.

H. The application of **The Kane Company RDII, LLC, Applicant**, for property located at **162 Corporate Drive**, requesting amended Site Plan approval for the removal of trees and dense shrubs between Corporate Drive and the building; for mitigation enhancements along Corporate Drive; and to plant 42 trees in the parking lot area, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 313 as Lot 1 and lies within the PDA Business and Commercial District.

Mr. Blenkinsop recused himself.

The Chair read the notices into the record.

SPEAKING TO THE APPLICATION:

Gregg Mikolaities, of Appledore Engineering, appeared on behalf of The Kane Company. Also present were John Kane, from The Kane Company, Jim Gove, Certified Wetland Scientist, and Maria Stowell of the PDA. Mr. Mikolaities displayed an aerial of the site and explained that the property was part of a Flextronics campus that was originally constructed, consisting of 3 buildings. The campus has since evolved and there are now different tenants in each building. The third building has been empty since it was built and the biggest drawback to leasing it is the lack of visibility. Mr. Mikolaities stated that they went before the PDA Board of Directors and received approval to cut down 80 trees and do buffer and wetland enhancements. They appeared before TAC and received a 6-1 vote to recommend approval with Peter Britz voting against it. Being pro-active, they went to see Mr. Britz and asked how they could make this work. The first concern was the impact on the wetlands and the second concern was that they were only concentrating on one area, rather than the entire lot, so they revised their plan. They are now proposing to remove 35 trees in the front and plant 35 new trees further back on the site along with 350 buffer plantings. They will remove 7,000 s.f. of invasive species and add 48,000 s.f. of meadow where currently there is grass. Their ultimate goal is visibility.

Jim Gove, of Gove Environmental Services, addressed the Board. Mr. Gove explained that the wetland is one of the lower value wetlands on Pease and has a 25' buffer because its major function is water quality features such as stormwater storage, nutrient attenuation and sediment trapping. Although it doesn't show up well on the plans, there are several lines of trees. As a secondary function there is very limited wildlife habitat value and no vernal pool activity. There are invasive species and many trees are stressed or dying. They will try to enhance the area for the wildlife that is using it. The 7,000 s.f. of invasive species they are removing will be replaced with 350 shrubs. They are not doing any work in the wetlands and they are working to enhance the buffers.

Chairman Ricci asked what the process was once the invasive species are removed. Mr. Gove indicated that the physical removal involves digging up the roots and leaving an area of disturbance

which they seed with the wildlife mix. The goal is to block the invasive species. The reason the invasive species have flourished is because some of the native species have died out and left a vacuum and nothing fills a vacuum faster than an invasive species. The reason they are planting the new shrubs is so that they compete with the invasive species. They have to have at least 75% successful growth for two years.

Maria Stowell, of the PDA, stated that when the PDA Board considered the plans they all recognized the need to give this building more visibility. There was a lot of discussion about the original plan proposing to cut 80 trees and there was a consensus to send it forward to this Board for review in the hopes that they would have ideas on how to address the issue. The PDA would recommend this revised plan even stronger.

Mr. Mikolaities went through the criteria for the Conditional Use Permit application.

1. The land is reasonably suited to the use. There will be no wetland disturbance. It is a buffer enhancement.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use. Again, they are doing work in the buffer and their goal is to make the enhancement better than what is there now.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties. Jim Gove addressed how they are not impacting wetlands and with the removal of the manicured grass around the three wetland system is an improvement.
4. Alteration of the natural vegetative state of managed woodland will occur only to the extent necessary to achieve construction goals. He stated that the construction goal is visibility.
5. Potential impacts have been avoided to the maximum extent practicable and unavoidable impacts have been minimized. They gave this a lot of thought and have pared the plan down a lot. The Conservation Commission agreed that this is the least adverse impact to these areas.

Mr. Mikolaities also agreed with the Conservation Commission's condition that they will have a monitoring plan consistent with the State Wetland Monitoring Plan.

Mr. Mikolaities moved on to the modified Site Plan Application.

The Technical Advisory Committee recommended approval with two stipulations. They are seeking approval to remove 35 trees, plant 35 trees, plant 350 buffer plantings, remove 7,040 s.f. of invasive species and plant 47,751 s.f. of meadow.

Mr. Coker felt their desire for increased visibility was counter-intuitive and he would think they would want trees all around them. He asked them to explain why increased visibility is crucial to their leasing of the building.

John Kane, of the Kane Company, responded by giving a little history of why this building has not leased. They signed a 15 year lease with Flextronics 7-8 years ago on all three buildings and this building has remained vacant the entire time. They have had three corporate users look at this building over the last few years and every single one has stated they would like visibility. There are two companies that are currently looking at the space and both want high visibility.

Chairman Ricci asked Peter Britz, the City's Environmental Planner, to address the Board.

Mr. Britz explained that when this application came to TAC he was not supportive of the plan as they were cutting a lot of trees in the forested area that would undermine the root system. He had concerns about the reason being economic, which is not one of the criteria. He felt they were overly aggressive and he did not see it as a maintenance project. Mr. Britz indicated that they toned their plan down, they left the trees in the middle and only the side areas are getting cut now. It looks like they are maintaining the site rather than full-scale changing the site. This plan makes more sense to him and he supports it.

Mr. Coker asked Mr. Britz if, in a perfect world, he would say it was better not to cut the trees than to do what they are proposing. Mr. Britz responded that it was not a perfect world and that was a tough question. He understands that people have a right to use their property and the ordinance is not meant to stop all activity. He felt it was a good balance.

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

Peter Loughlin, a member of the Pease Development Authority Board, stated that he had the same questions that Mr. Coker had before this came before the Board. Michael Kane made a presentation and he indicated a willingness to work with the Board for a solution that would benefit his client. He spent a Sunday afternoon at the site and he came up with what he thought was a good compromise. Unfortunately, through a miscommunication, it never got to the Kanes. However, their plan was modified and brought back to the Board and Mr. Loughlin voted against it. When the application came before the City, he was very happy to see the further modification which he thinks is good for the Kane Company, is good for the PDA and is good for the property. He does not believe there is a significant negative impact to the environment.

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

Conditional Use Permit Application:

Deputy City Manager Hayden made a motion to approve with one stipulation for the monitoring report. Ms. Roberts seconded the motion.

The motion for Conditional Use Permit Approval passed unanimously with the following stipulation:

1. The applicant shall prepare an annual monitoring report consistent with the State wetland restoration monitoring requirements (see N.H. Code of Administrative Rules, Env-Wt 806.02).

Amended Site Plan Application:

Mr. Rice made a motion to approve Amended Site Plan Approval. Deputy City Manager Hayden seconded the motion.

The motion to grant Amended Site Plan Approval passed unanimously.

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I. The application of **Portsmouth Ford Lincoln Mercury, Inc., Owner**, for property located at **450 Spaulding Turnpike**, requesting Site Plan approval to demolish an existing one-story building and construct a two-story 4,000 s.f. (footprint) building, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 238 as Lot 1A and lies within the General Business (GB) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Matthew McCormack, of MSC Civil Engineers, appeared before the Board with Corey Colwell and Attorney Peter Loughlin. Mr. McCormack stated they are seeking Site Plan approval for the demolition of an existing one story building and the construction of a two story, 8,000 s.f. building with associated infra-structure.

Mr. McCormack reviewed the plan set. Sheet C-1, Existing Features Plan, shows the site as it exists today. The current one story building is occupied by Enterprise Rental as well a wash bay that is shared with the Ford dealership. The existing striped parking spaces on the lot are used by Enterprise employees and customers and the area out back, which is not striped, is used for vehicle display for Portsmouth Ford. There is no existing landscaping or stormwater treatment on the site today and the existing open space is only 8%.

Sheet C-2 is the Demolition and Erosion Control Plan. They will demo the existing building and construct the two story building for the same occupants. Sheet C-3, Layout Plan, shows all proposed work being done on the property. The new building will be 50' closer to the Spaulding Turnpike to give the building better exposure, maximize the vehicle display area and, more importantly, it will keep all vehicle display behind the building. The striped spaces will be used strictly by the Enterprise employees and customers. The rear area will be used for vehicle display for the Portsmouth Ford dealership and will be 1,900 s.f. less impervious than today.

Sheet C-4, Grading and Drainage Plan, shows that the entire site will be re-graded to enable them to direct as much stormwater run-off as they could from the parking lot. The two permeable paver areas will use a product called Turf Stone Pavers which are a honeycomb shaped with large voids in the middle that they will fill with peastone. The stormwater runoff will infiltrate between the voids in the pavers, through the peastone, through 8" of sand, 18" of crushed stone to the closed drainage system to

a system of 4" PVC perforated under drain. These permeable pavers will provide stormwater attenuation to a site that currently has none.

Sheet C-5, Utility Plan shows that the site is currently served by municipal water and sewer as well as overhead electric. They are proposing to remove the overhead wire and bring electrical service underground to the same pole. They are proposing to bring gas service to the site and tap an existing 2" gas main off site on the abutting property which is also owned by the applicant.

Sheet L-1, Landscaping Plan, shows they are proposing 57 trees and shrubs throughout the site, where they previously had none, and they will be increasing open space from 8% to 20%. All work in the DOT ROW requires an encroachment permit which has been approved.

Sheet L-3, Lighting Plan, shows they are adding 10 light poles all dark sky friendly, full cut off fixtures with LED bulbs. The building will have a combination of canopy, bollard and wall mounted lights. They are maintaining zero foot candles along the property line with an exception of a minimal area at the entrance to the site. There is spillage onto the abutting property which they solved with a spillage easement.

All easements are shown on the Layout Plan. Two other required easements are a Parking, Vehicle Display, Lighting and Landscape easement and they will be tapping a 2" existing gas main on the abutting property so they will require a 20' wide gas easement.

The southeast corner shows a proposed location for a dumpster. As both sites are owned by the same person, a dumpster is not required on this site and they propose that the dumpster pad and enclosure shall be installed at the time of sale of property.

In conclusion, Mr. McCormack pointed out five major improvements they are incorporating into this site. They are improving the aesthetics of the site with an entirely new building, they are increasing the open space, they are reducing the impervious area by 1900 s.f., they are adding landscaping to a site that currently has none and they are adding permeable pavers to provide stormwater treatment.

Deputy City Manager Hayden asked about the "disturbed wood timber retaining wall" on the plan. Mr. McCormack explained that the retaining wall is slumping but it is in the 100' wetland buffer and will require a conditional use permit to repair so they are not repairing that.

Mr. Hopley asked if the detailing bay trench drain was self contained. Mr. McCormack confirmed the trench drain is connected to sewer. Mr. Hopley added that will need to be detailed as the Sewer Department will require an oil/water separator.

Mr. Coker wanted to confirm that no work was being done within the 100' wetland buffer. Mr. McCormack confirmed that there is minimal work being done in the 100' wetland buffer. They will shim the pavement up and a Conditional Use Permit is not required for that work. Mr. Taintor noted that the gas line is in the 100' buffer. Mr. McCormack understood that because the area was previously disturbed and this is a temporary impact, a Conditional Use permit will not be required.

Mr. Britz confirmed that the pavement shimming does not require a Conditional Use permit. He thought they were still up in the air about where the gas line would come into the site. He confirmed that was not discussed at TAC and it would require a Conditional Use Permit.

Mr. Taintor believed the gas line was changed after TAC looked at it. They will assume it has to go for a Conditional Use Permit.

Mr. Taintor asked about the strip of land shown as alternating grass and gravel between the two properties. He was not sure what the seeding notation meant. Mr. McCormack explained they will loam and seed the triangle between the vehicle display area and the property line. Mr. Taintor asked if that meant the area that is now all gravel will have a line going diagonally across it and on one side it will be gravel and on the other side it will be seed.

Mr. Rice noted that they have a lot of impervious surface in the back of the building. He asked if they have thought about breaking it up with landscaped islands. Mr. McCormack stated they looked at other options, such as drivable grass on vehicle display areas, but TAC was concerned that sunlight would not get through and the grass would not grow.

Deputy City Manager Hayden noted they were reducing the impervious surface by 1,800 s.f.

Chairman Ricci asked if they have a snow removal plan. Mr. McCormack indicated they have not discussed how to maintain the lot in the winter. He believes they will plow it in the winter. Chairman Ricci responded that a concern would be whether they would be using salt or sand or both.

Attorney Loughlin explained that on the BOA exhibits there were items a little bit different than what are shown on the plan. There was a misunderstanding between himself and the Planning Department on whether there was a non-conforming use. Attorney Loughlin filed an application for relief and the department stated they were grandfathered for some items and only 2 variances were needed. At the hearing he clarified that they are not changing the parking and they may move the building 5-10' one way or the other. The BOA minutes reflect these discrepancies and the BOA Board was well aware of what they were asking for. That BOA meeting was held on December 21 2010.

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 stipulation recommended by staff, and additional stipulations that a copy of the DOT encroachment permit be provided for the record, that a trench drain detail be submitted and approved by DPW, that the Planning Department review with the applicant the gas line trenching and determine whether a Conditional Use Permit is required, and that the minutes from the December 21, 2010 BOA meeting be attached to the Site Plan Review record.

Chairman Ricci requested that they provide a snow removal plan for salt, sand and maintenance and include it with an annual inspection report.

Mr. Patenaude seconded the motion.

Mr. Taintor indicated he would like to have the Conditional Use Permit stipulation state that if the Planning Department determines a Conditional Use Permit is required then this approval is subject to Conditional Use Permit approval. He also made a recommendation (not a stipulation) that the applicant look at the damaged retaining wall as it would probably require an administrative approval.

Mr. Coker wanted to make sure that the Conditional Use Permit is either required or not required and is not a judgment call. Mr. Taintor confirmed that was correct but without having a chance to look at it he doesn't want to make a snap decision.

Deputy City Manager Hayden and Mr. Patenaude were both agreeable to the additional stipulations.

Deputy City Manager Hayden asked about where the two properties meet and the issue regarding the gravel and the grass. Part of the challenge for her in trying to figure out what is going on as Sheet L-a doesn't have the property lines on it. Mr. Taintor confirmed it does have the property lines but the challenge is following the lines of the edge of the landscaped area.

Deputy City Manager Hayden added an additional stipulation that the applicant will review with the Planning Staff the Landscaping Plan, where the two properties meet, and that may result in an administrative Site Plan approval because she felt they could either improve or better understand what is going on in that area.

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

1. The applicant shall apply for and obtain approval of a Conditional Use Permit for work within the wetland buffer, including the proposed gas line.
2. The minutes from the December 21, 2010 Board of Adjustment meeting relating to this project shall be attached to the Site Plan Review record.
3. The applicant shall provide a copy of the New Hampshire DOT encroachment permit for the record.
4. The applicant shall submit a detail for the trench drain in the detailing bay for approval by the Department of Public Works.
5. The applicant shall review with the Planning Department staff the proposed landscaping along the boundary with the Portsmouth Ford property in order to clarify the intent of the Landscape Plan. If determined necessary by the Planning Director, the applicant shall submit an amended Landscape Plan for administrative approval.
6. The applicant shall provide a snow removal plan addressing the use of salt and/or sand and including an annual maintenance and inspection report.
7. All proposed easements shall be reviewed and approved by the City Legal Department, and shall be recorded prior to the issuance of a building permit.

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IV. 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. Letter from Attorney Robert Shaines, on behalf of the Estate of Frances Dusablon, regarding a sewer easement affecting 80 Woodlawn Circle.

Mr. Taintor stated this was an easement from 1969 and no sewer line was ever constructed. DPW has advised that they see no need to ever build a sewer in this location.

Deputy City Manager Hayden made a motion to recommend that the City release the easement as requested. Mr. Rice seconded the motion.

The motion to recommend that the City release the easement as requested passed unanimously.

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Mr. Coker recused himself from the next item.

B. Letter from Attorney John McGee, on behalf of the Trustees of the Arthur MacDonald trust, regarding a boundary issue with the Middle School property.

Mr. Taintor explained this request was similar, but not the same, as past requests. In this case the request is for a boundary line agreement rather than a lot line relocation. The concern of staff is trying to treat this property differently than any other property. In order to get things moving, the Department recommendation is to vote to refer the proposed land transfer to the School Board for a determination as to whether the land is needed for school purposes, as they have done with the other two. The recommendation is also to postpone action on the requested boundary line agreement pending a report back from the Planning and Legal Departments so that the City can meet with Attorney McGee and review the issues.

Deputy City Manger Hayden made a motion as follows:

- A. Vote to refer the proposed land transfer to the School Board for a determination as to whether the land is needed for school purposes.
- B. Vote to postpone action on the requested boundary line agreement pending a report back from the Planning and Legal Departments.

Mr. Rice seconded the motion.

The motion passed unanimously.

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C. Letter from John Chagnon, P. E., Ambit Engineering, regarding a Subdivision Application for property located off Kearsarge Way (Tax Map 212, Lots 118, 119 and 122).

Mr. Taintor reminded the Board that they voted to approve the subdivision subject to approval of the street name Harborside Way. Following that meeting, there was concern about this name because of calls coming into 911 for Harborplace and Harborcorp. The applicant proposed three different names, being Laurel Court, Piscataqua Place and Appledore Way. Mr. Taintor felt that Appledore Way was very similar to Albacore Way.

Mr. Taintor indicated that the consensus of City staff was for Laurel Court.

The applicant has also submitted the name of Seaside Way, although that name has not been approved by other City Departments.

Mr. Gladhill thought about the ship theme at Atlantic Heights and he determined that all of the roads were named after ships built on the Piscataqua River. He felt something with more of a river/sea theme would fit in better.

Deputy City Manager Hayden felt that even though this street is so far from the water, she likes staying with the theme of naming the streets after ships. Her own preference is for Laurel Court. She also corrected her statement at the last meeting where she said this was a recommendation to the City Council. That is incorrect and it is actually the Planning Board that names new subdivision streets.

Deputy City Manager Hayden made a motion to name the new street Laurel Court. Mr. Rice seconded the motion.

The motion to name the new street Laurel Court passed unanimously.

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V. PLANNING DIRECTOR’S REPORT

There was no report.

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VI. ADJOURNMENT

A motion to adjourn at 10:07 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 18, 2011.