

**MINUTES**

**PLANNING BOARD  
WORK SESSION  
PORTSMOUTH, NEW HAMPSHIRE**

**CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 P.M.**

**SEPTEMBER 1, 2011**

**MEMBERS PRESENT:** John Ricci, Chairman; Paige Roberts, Vice Chairman; Eric Spear, City Council Representative; Richard Hopley, Building Inspector; Cindy Hayden, Deputy City Manager; John Rice; Anthony Blenkinsop; MaryLiz Geffert; Norman Patenaude, Alternate; and William Gladhill, Alternate

**MEMBERS EXCUSED:** n/a

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

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**I. PROPOSED/POTENTIAL ZONING ORDINANCE AMENDMENTS**

Chairman Ricci called the meeting to order and turned the meeting over to Rick Taintor. Exhibits were provided to the Board last week for their review.

**1. OVERVIEW**

Mr. Taintor asked the Board about additional items to look at and their priorities.

Councilor Spear has received a lot of comments about building heights. People struggle with visualizing exactly what people are talking about. He asked for visual tools for the next round of the Master Plan.

Deputy City Manager Hayden inquired about the status of the Waterfront Business District. Mr. Taintor stated that the Waterfront Business Districts are so small and so few and there are basically two groups (downtown and Sagamore Avenue). He thought they might want to look at having two different types of districts. He will add that to his list for future review.

Deputy City Manager Hayden asked about Atlantic Heights. Mr. Taintor stated that would be covered in the neighborhood business category. People in the neighborhood organization are anxious to have them move forward. He has that as the first item under residential districts on page 2 of the handout.

Deputy City Manager Hayden asked if the OR district was on the list as well. Mr. Taintor agreed that was another item that needed a lot of work, especially the North Mill Pond area.

Mr. Spear did not see where it included the parking changes they have been discussing downtown. Mr. Taintor added that to the list.

## **2. TABLE OF USES**

Mr. Taintor explained that there will always be things to work with on the Table of Uses as they keep finding new uses that they never would have thought of. In this particular case, they have concerns about religious uses and the federal law Religious Land Use and Institutionalized Persons Act, where they cannot zone religious uses differently than similar non-religious uses. Changes to Section 3 & 4 will get rid of that distinction and treat all public gatherings the same. Pages 4 and 5 show the result of the proposed changes.

Deputy City Manager Hayden asked about 3.40, Place of Assembly and wondered if it should say “indoor”. Mr. Taintor stated that was a building code reference and he would look at that. She also asked about a drive-up church and if that would fall under Outdoor Performance Facility where it would be allowed with a Special Exception in GB but not at all in OR.

Ms. Roberts noted that by eliminating religious from place of assembly, they are eliminating the Special Exception for religious in SRA, SRB, GRA & GBB. Mr. Taintor stated they have inappropriately distinguished between religious and non-religious uses but have been favoring religious uses and it is contrary to federal law to do that. He was not sure whether a non-religious place of assembly could sue them under RLUIPA now. Ms. Roberts asked if that would make religious places of assembly in those districts more non-conforming. Deputy City Manager Hayden felt that was a good point and they should look at that.

Mr. Taintor pointed out that they created a new category for “occupancy by fewer than 50 persons”. They should look to see if that small category could be allowed in more places.

Mr. Rice asked about use number 4.2 where religious, sectarian or private non-profit recreational uses would be allowed in SRA and SRB by Special Exception. Mr. Taintor explained the reason is that lots in GRA and GRB are so small those type of uses wouldn't fit. This refers to things like tennis courts or riding clubs. That is their current zoning and has not changed. Mr. Hopley asked how that section differs from 4.3, outdoor recreation use. Mr. Taintor felt that outdoor recreation use could be a for profit outdoor recreation.

Mr. Blenkinsop asked why would they separate a section for non-profit. Mr. Taintor will look at that more.

Mr. Taintor asked how they feel about outdoor recreation use as a primary use in residential areas. Use number 4.30, outdoor recreational use, is prohibited except in business districts. Deputy City Manager Hayden felt they should just delete 4.20 in its entirety and figure out what they want to permit for any outdoor recreation.

Everything looked good regarding amusement parks, water parks or theme parks.

**3. PROPOSED ELIMINATION OF THE MUNICIPAL AND PEASE DISTRICTS**

**Municipal District:**

Mr. Taintor explained that any property the City owns or leases is automatically placed in the Municipal (M) district. Elimination of this district is something that just occurred to them as they have been disposing of some City land over the past few years, such as the old Fire Station and the land adjacent to the Middle School. The Municipal District allows for a wide range of municipal uses and any properties owned or leased by the City are automatically zoned as Municipal. On the flip side, there is a separate provision in the Zoning Ordinance which states that the City does not have to follow anything set forth in the Zoning Ordinance, except for the Wetland Protection Regulations. The difficulty is that when they dispose of land they have to go through a rezoning process. Mr. Taintor felt that the Municipal District is useful on the Zoning Map for identifying municipal properties, but it doesn't really help them in regulating things and it makes things more complicated. He would suggest removing the Municipal District and leave the Natural Resource Conservation District and re-zone all of the Municipal zoned parcels to an appropriate adjacent zoning district. Mr. Blenkinsop asked if the primary purpose would be to make it easier to manage. Mr. Taintor agreed and felt that the current district doesn't give them anything and it just makes things complicated. Mr. Gladhill asked what schools or City Hall would be changed to as they are surrounded by residential districts. Mr. Taintor felt they would be changed to residential. Mr. Taintor was seeing the Portwalk project coming up which will be taken back by the developers in the next year.

Mr. Hopley gave an example of putting an addition on a municipal school, adjacent to a residential district, where he would not have to do any zoning analysis. It now goes into a residential district, and even though the City is exempt we still try to follow the rules: would they then be required to get a variance? Mr. Taintor confirmed they would not because it says in the Zoning Ordinance that the City does not have to follow any of the regulations. Chairman Ricci asked if that was what the City policy actually was. Deputy City Manager Hayden agreed that they generally try to follow the regulations. That was Mr. Hopley's point and the Municipal District wasn't created that long ago for that reason.

Deputy City Manager Hayden felt the only down side is people use the Municipal parcels on the Zoning Map as their guide to what is City owned land. She wondered if it would be useful for homeowners to be able to recognize that they live next to a municipal property. Mr. Taintor felt they would continue to show the municipal properties on the zoning map so they would still be recognized.

Mr. Hopley didn't feel that the City sells so much property that it is a big inconvenience. There has only been the Middle School and the fire station over the past five years. He wondered if it was so cumbersome or happened frequently enough for it to be creating a problem.

Mr. Blenkinsop asked if there would be the potential for creating confusion for someone making a claim and by rezoning it somehow affects their argument and the City has to take a position that it doesn't intend to. Mr. Taintor indicated there are already some provisions in the Use Table and Dimensional Table that are not comprehensive. Maybe they should just get rid of the use table in the Municipal District and keep them zoned Municipal.

Chairman Ricci suggested that they could add a note that municipally owned property, when sold, should revert to the zone that is adjacent to it. Mr. Taintor pointed out there would be a problem if there were different zones abutting. However, if there is only one zone abutting the property, it could revert to that zone. Deputy City Manager Hayden liked that idea.

**Pease Districts:**

Mr. Taintor explained that zoning at Pease is governed by State law. The City Zoning Ordinance has the Pease districts as a reference point but it is approximate and it refers you to the Pease regulations. Mr. Taintor recommended deleting the use regulations and dimensional intensity regulations for the Airport and Pease districts. Deputy City Manager Hayden agreed that was a good solution.

Ms. Roberts understood that even though they have no control over Pease zoning, the current Zoning Ordinance states that the standards represent the City's land use policy and their attempt to provide guidance. She was thinking about the wetland issue.

Mr. Gladhill asked what would happen if the State didn't want control of Pease any more and it reverted back to the City. Mr. Taintor felt that if the City voted to accept the land back, the City Council might adopt the Pease regulations as an interim measure as everything has been developed at Pease under those regulations.

Ms. Roberts was concerned about the "nudge" factor. Mr. Rice had a concern about the planning factor. If it is left up to the State, he was concerned about how orderly the development will be. It is still in Portsmouth. Mr. Taintor confirmed the City would still review applications but they review them under the Pease ordinance.

Deputy City Manager Hayden thought Mr. Taintor was talking about getting rid of the districts and not an overlay district such as the wetlands. Most of Pease is built out at this point. She doesn't see that they lose anything by doing this because most of the area is already built. The wetlands would remain regardless.

**4. PROPOSED CHANGES TO DIMENSIONAL AND INTENSITY STANDARDS FOR RESIDENTIAL AND MIXED RESIDENTIAL DISTRICTS**

**MRO and MRB Districts:**

Mr. Taintor indicated that they had already talked about this. Most of the MRO and MRB districts are encircling the Central Business District, coming down Court Street, Middle Street and cutting across Albany and Cass and going up Islington Street and the McDonough Street area, with small clusters scattered around the City. He wanted to focus on the downtown area. These districts have a minimum lot area of 7,500 s.f. and also a minimum lot area of 7,500 s.f. per dwelling unit. Many lots do not comply with the minimum lot area and most do not comply with the minimum lot area per dwelling unit. This change would help get rid of nonconformities and would make the transitional business area more consistent with the abutting residential area, and might provide for some more affordable housing.

Deputy City Manager Hayden wondered about the MRB district in Atlantic Heights and whether that was a different kind of MRB, and questioned whether they want more density there. She also questioned whether they want more density on Sagamore Avenue by the Golden Egg Restaurant.

Mr. Hopley mentioned that he deeply regretted when Sagamore Avenue, beyond Ordione Point, changed from Residential to MRB because those are primarily homes. That was a re-zoning request and there were enough votes on the Council at the time, although the Planning Board was not in favor of it. He was also trying to figure out on Cass Street, between Islington and State, what is the little island that is not zoned MRB. Mr. Taintor stated it is four small residential lots and it is surrounded by the former Apartment district. Mr. Taintor felt that might be an area to look at. One side of the street is residential and one side is MRB.

Chairman Ricci felt that the Golden Egg area and the Atlantic Heights area should be higher density.

Mr. Taintor pointed out an area going down Wentworth House Road, between MRB and the creek that is Waterfront Business District. This area may call out for different treatment.

## **5. BICYCLE PARKING STANDARDS**

Mr. Taintor indicated that they added a few items relating to bicycle parking when they did the revision of the Zoning Ordinance. At this time, he is recommending additional standards for bicycle parking in relation to car parking. He did a lot of research in other parts of the county and he feels this is a good starting point.

He recommended inserting a new section in the Site Development Standards for bicycle parking. The first section, 10.1112.61, would have a requirement for bicycle parking in a use that requires vehicle parking, including multifamily dwellings, schools and other uses. If the Planning Board allows fewer off street parking spaces than required for a reserved parking area, they would still compute the required number of bicycle parking spaces on the original ratios. The proposed standard would also allow bicycle parking spaces to be substituted for up to 5% of required automobile parking spaces. There was a list of exemptions and standards for location and design. Chairman Ricci thought it would be a good idea to provide some sketches. Mr. Hopley wondered if these standards were more appropriate in the Site Review Regulations. Mr. Taintor felt that some of them might be but the Zoning Ordinance actually specifies the dimensions of parking spaces for cars in the Zoning Ordinance. It probably could go either way but he would like to have it in both.

Mr. Blenkinsop asked what a bicycle locker was. Mr. Taintor explained it was basically a box with a lock which protected bicycles in all weather. He will add a definition.

Deputy City Manager Hayden asked if there was anything precluding applicants to put their bike racks inside if they want to. Mr. Taintor stated that would be acceptable.

Ms. Roberts felt it might be a good idea to add something about public right-of-ways and not blocking handicapped access to buildings. Deputy City Manager Hayden felt they would have to go to the City Council for a license so it would be analyzed at that level.

Ms. Roberts asked about parking in snow storage areas as people do bike in the winter. Mr. Taintor stated they have a couple of recent projects which have bicycle racks that are separate from the snow storage area. That was addressed at TAC.

Councilor Spear noted that the exhibits say that the spaces shall be located near the entrance. He asked if “near” is typical for this type of ordinance or is it too vague. Mr. Taintor admitted that he struggled with that word. If they are in Cambridge, or Long Beach, or Portland, the regulations says it has to be between the parking spaces and the entrance to give preference to bicycles but he was trying not to be so strict. He will look at it more. Chairman Ricci liked the word “near” and that leaves it up to their discretion. Deputy City Manager Hayden felt they could say something like “near and convenient for the users”. She asked if it is the front entrance or the primary entrance.

That was the conclusion of Mr. Taintor’s exhibits. He went on to review his list of proposed zoning amendments.

Article 3 – Nonconforming lots, buildings, structures, uses. Mr. Taintor stated they have found that in some places the regulations are too rigid. He would like to allow Special Exceptions for some minor changes.

Article 5 – Dimensional and Intensity Standards. There are redundancies in the Zoning Ordinance that make it difficult to interpret. A Special Exception for some non-conforming uses is the same thing he is trying to do in Article 5 with the residential districts. He would like to remove some of the burden on the homeowner and the BOA. In many cases, the zoning was imposed well after most homes were built so it doesn’t make sense.

The residential districts are a priority but he just has not had time to work on it.

Article 5 & 11 - The Gateway District needed some minor changes for building and parking setbacks.

Article 6 – Downtown Overlay District (DOD). They need to look at the area between Washington Street and the bridge that is not in the DOD and expanding that area. A lot of those buildings have already been converted to all residential use so they will have to be careful.

Article 8 – The Health Department is concerned to require pump-outs in marinas. There is a high concentration of people boating and mooring at the piers and they will look at pump-outs as part of marina use.

Article 9 – Roof mounted wind turbines. They have adopted provisions for small wind turbines for ground units; however, when considering a roof turbine the regulations don’t make sense. They will look at a minor change.

Article 10 – Wetlands Protection. Mr. Taintor indicated that it is sometimes very difficult to use the existing criteria for approval and the Department is working on revising the criteria. They would like to add the ability to require an alternatives analysis. The other thing they are looking at is the case where someone has done something work in the wetlands or wetland buffer without permits and they would like to add a provision under which the City could require a remediation plan.

Mr. Rice asked if that would cover non-jurisdictional wetlands. He had a problem with a recent application where they were looking at a perfectly healthy wetland that was not jurisdictional. Mr. Taintor indicated that the wetland that Mr. Rice was talking about would be jurisdictional under their current ordinance. There are some very small wetlands and the Board talked about dropping the wetlands down to 5,000 and the Board agreed that threshold was too low and they ultimately went with 10,000 s.f. Mr. Taintor indicated they can always bring that up again. Mr. Rice wouldn't mind spending some time on it.

Article 11 - Off Street Parking. The recent ice cream stand that opened on State Street raised this issue. This is a business that is not going to create a parking need. It is pedestrian driven so it should not be required to provide off street parking. Mr. Taintor stated he would like to look at some of the very small pedestrian oriented non-residential uses and exempt them from parking requirements.

There are also some conflicts in the new ordinance where they changed the definitions of yards and setbacks for parking requirements.

Under outdoor lighting there is an issue of the effect of lighting inside the building shooting out onto the sidewalk or street, even brighter than any outside lighting. That is a very difficult item but he will be working on that. He will also be looking at illumination by translucent building elements.

Article 12 - Clarification of Sign Regulations. There are issues with setting maximum sign area based on the façade of the building and the maximum sign area for free standing signs as absolutes. It is currently very complicated and he feels we can do it in a more direct way.

They will go back to a previous provision for projecting signs because some sidewalks are so narrow that it is difficult to get a good looking projecting sign that complies with the zoning standards.

Finally, the allowable sign area for projecting signs in the business districts may be too large and may go down to 12 s.f.

Article 13 - Emergency generators are not as prolific as they were after the severe ice storm but they need to look at the noise standards.

Article 15 – Definitions. They need to look at some definitions.

Other Zoning Issues for Consideration:

Allow limited business uses in residential districts, e.g., neighborhood stores, small cafes or restaurants, craft stores, etc.). Councilor Spear was in favor of this idea and wondered if a combination of this and the off street parking revisions would tie into remapping State Street. He felt that this type of thing really benefited neighborhoods and provides another set of eyes during the day.

Mr. Taintor asked what they thought about allowing uses where you cap the number of parking spaces. That may be a way to control the scale and impact in a neighborhood. Deputy City Manager Hayden

wondered if they could limit the number of square feet and make it more performance driven rather than use. Maybe they could allow a take out restaurant with no tables.

Chairman Ricci and Mr. Hopley agreed that they could limit the level of food preparation to keep restaurants within a certain description.

Mr. Taintor asked if any Board members had any severe reservations about this concept. Councilor Spear felt the performance measures were one way to look at it – smell, sound, etc. Chairman Ricci felt they should consider parking. Mr. Taintor asked if they felt it should be a Special Exception use. Chairman Ricci felt it would take care of itself. Mr. Rice asked if the City does any type of cursory study to see why certain businesses work and write that into the ordinance. For instance, the Red Ginger is very successful but the Middle Street Market has struggled for years. Deputy City Manager Hayden felt they should just concentrate on creating the opportunity rather than fine tune the business aspects. Ms. Geffert noted that the Richards Avenue store struggled, probably due to lack of traffic.

Deputy City Manager Hayden felt that parking was a good way to manage it but if there was a lot of off street parking there might be some unintended consequences.

Councilor Spear asked about what other kinds of businesses they were thinking about. Mr. Taintor was thinking of businesses that serve the neighborhoods. Councilor Spear was concerned about what would happen if the business became very popular and the cars became a problem.

Allow limited animal raising in residential districts (e.g., chickens, beekeeping) Mr. Taintor explained they are getting lots of inquiries for chickens and bees. Backyard chickens are a big thing. Chairman Ricci did not want to see it expanded and felt it could get out of control and would be hard to enforce. The consensus was to leave chickens alone for now.

Review whether certain businesses should be permitted (“P”) or allowed by special exception (“S”). This would be a general review of the use table.

Address concerns about the relationship between building height and street width (the “canyon effect”) They did this a little in the CBA district when the request came to lower building heights and they required them to step back after 40’. In a way it makes sense but, on the other hand, it’s part of the character of Portsmouth, so Mr. Taintor did not want to go too far in one direction in prohibiting it but maybe they will look at some other areas of the City. People are seeing change and they are objecting to the change. They are feeling hemmed in.

Strengthen environmental regulations to protect water quality (e.g., fertilizer application). This is a hard thing to include in zoning but they have been asked to look at this. Deputy City Manager Hayden agreed it would be difficult to enforce and suggested public education instead.

#### Site Plan Review Regulations – Proposed Amendments

Section 1.2.2 - Mr. Taintor has the ability for administrative approval in some cases but there is a broad statement that requires him to make a determination that Site Review does not apply if three



criteria area met. He would like to change that to “may determine” so that they can require site plan review in some situations if necessary.

Section 2.1.2 - We have never recorded Site Plans so Mr. Taintor would like to go back and review that. They have some issues with enforcing site plans with subsequent owners if they are not recorded.

Section 2.13.3 - Change “NH licensed civil engineer” to “NH licensed land surveyor”.

Section 3.6.3: Traffic Impact Studies are currently required for drive through facilities in all cases and may be required by the Planning Board where it determines appropriate. He felt it would be good to specify standards for traffic impact studies. The Institute of Traffic Engineers has come up with the Multimodal Level of Service (MMLOS) which means you don’t just look at cars and you look at pedestrians and bicyclist, etc. He would like to start looking at that as part of becoming a green community.

Section 5.3 – Bicycle Facilities. Additional guidelines should be included in the Site Plan regulations.

Section 7.4 – Stormwater Management. They should look at climate change or sea level rise in stormwater management and figure out what the appropriate storm is.

Section 10.3 – Lighting Plan. There are some discrepancies in the requirements which need to be addressed and Mr. Taintor would like to include some sample documentations.

Ms. Roberts referred to the stormwater management and what he meant by the 10 year storm. Mr. Taintor just wanted to make sure their Site Plan Review Regulations are consistent with what DPW is looking at. Ms. Roberts has been thinking about what their standards are in terms of storms and their expectations as the frequencies are changing. Their regulations are not as rigorous as she would like to see them.

Deputy City Manager Hayden asked if they were going to beef up what they have to provide for utility services on site plans. Mr. Taintor agreed they have things in the Site Plan Review Regulations that they do not consistently require them to adhere to. Another item is the building elevations. Deputy City Manager Hayden felt they should add the CMMP that they need to submit. Also, on Page 6 of the Site Plan Review Regulations, 2b says they have to submit any exhibits, data, reports or studies that “may have been required”. She felt it should say “may be required”. Mr. Taintor thought it could say “may be required unless exempted”. That should be reviewed.

Ms. Geffert felt that a checklist at the front of a submission would be very helpful. Mr. Taintor indicated that they have an internal checklist to make sure applicants have complied with the regulations.

Mr. Taintor felt the next step would be to come back with some revisions and some sign changes.

Chairman Ricci reminded the Board that they will meet on September 15<sup>th</sup> for their regular meeting and September 22<sup>nd</sup> for their joint work session with the HDC.

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**II. ADJOURNMENT**

A motion to adjourn at 7:45 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 October 20, 2011.