

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

OCTOBER 20, 2011

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

MEMBERS EXCUSED: n/a

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the August 18, 2011 Planning Board Meeting – Unanimously approved. (Geffert abstained)
2. Approval of Minutes from the September 1, 2011 Planning Board Work Session – Unanimously approved.

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II. PUBLIC HEARINGS

*The Board's action in these matters has been deemed to be quasi-judicial in nature.
If any person believes any member of the Board has a conflict of interest,
that issue should be raised at this point or it will be deemed waived.*

Mr. Rice made a motion to take Items B & C out of order. Mr. Hopley seconded the motion. The motion passed unanimously.

B. The application of **Mitchell and Edward Hyder, Owners**, for property located at **659 and 677 Dennett Street and 295 Woodbury Avenue** (now consolidated into one lot), requesting a Conditional Use Permit under Section 10.726 of the Zoning Ordinance for a Residential Density Incentive Planned Unit Development (RDI-PUD) consisting of one 4-unit building and one 5-unit building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 161 as Lots 31 and 32 and Assessor Map 175 as Lots 6 and 6A and lie within the General Residence A (GRA) District. (This application was postponed from the September 15, 2011 Planning Board Meeting)

C. The application of **Mitchell and Edward Hyder, Owners**, for property located at **659 and 677 Dennett Street and 295 Woodbury Avenue** (now consolidated into one lot), requesting Site Plan Approval to construct a 9-unit residential development with one 4-unit building and one 5-unit building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 161 as Lots 31 and 32 and Assessor Map 175 as Lots 6 and 6A and lie within the General Residence A (GRA) District.

Mr. Rice made a motion to postpone Item B to the next regularly scheduled Planning Board meeting. Mr. Blenkinsop seconded the motion. The motion passed unanimously.

Mr. Rice made a motion to postpone Item C to the next regularly scheduled Planning Board meeting. Mr. Blenkinsop seconded the motion. The motion passed unanimously.

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A. Request to re-zone seven parcels of land on the westerly side of Lafayette Road from the Office Research (OR) District to the Gateway (G) District. Said properties are identified as 1700 Lafayette Road (Map 252, Lot 1); unnumbered Lafayette Road (Map 252, Lot 1-7); 1900 Lafayette Road (Map 267, Lot 8); 1950 Lafayette Road (Map 267, Lot 7); 2000 Lafayette Road (Map 267, Lot 6); 2010 Lafayette Road (Map 267, Lot 5); and 2032 Lafayette Road (Map 267, Lot 4). (This hearing was postponed from the September 15, 2011 Planning Board Meeting)

Mr. Taintor provided an update on this proposal. At the September Planning Board meeting there was input from residents on the proposed change from Office Research to Gateway and the Planning Board had quite a bit of discussion about the issues. The Board asked the Planning Department to look at changes to the Office Research or Gateway District that would enhance the development potential of the seven OR parcels while still protecting the residential neighborhood. They looked at several options, including rezoning to an existing zoning district, rezoning to a modified Gateway District and amending the Office Research District. The Planning Department feels that the best option is to keep them zoned OR but modify the dimensional standards of the OR district in four respects:

- Reduce the required lot area from three acres to two acres
- Reduce the required street frontage from 300' to 200'
- Reduce the required lot depth from 300' to 200'
- Reduce the required sideyard, which is the building setback, from 75' to 50'

Mr. Taintor stated these changes will make the OR district comparable to the Industrial district, except for the front yard. This would afford more flexibility for development.

There are five OR districts in the City. One on Lafayette Road, a large one on Borthwick Avenue near the hospital, Commerce Way and Portsmouth Boulevard, a very complex one on the North Mill Pond, Bartlett Street and Cate Street and a single lot on Market Street at I-95. They looked at the impacts and there is limited development potential in most of these areas so they think this makes sense.

They are also recommending two minor changes to the Table of Use definitions. One is to allow assisted living centers, which are currently allowed in the Business and General Business Districts and the Gateway District; and another is to allow a club, fraternal or service organization by Special Exception. These are non-retail uses and would add potential uses to the area without creating a lot of traffic and light.

Chairman Ricci asked for questions from the Board. Seeing none, he opened up the public hearing.

Mark Allinson, 2007 Lafayette Road. He asked how close the buildings can be to Lafayette Road. Mr. Taintor stated there is no real effect on Lafayette Road. They are changing the front setback from 75' to 50' but on Lafayette Road in general there is a 30' setback that overrides everything. Mr. Allinson applauded the Planning Department for following the Master Plan. He felt it was a good change and hopes it will satisfy the owner of the vacant lot. Considering there is only one vacant lot left, it would keep everything intact that is already out there.

Seeing no further speakers, the Chair closed the public hearing.

Deputy City Manager Hayden made a motion to vote to recommend to revise the Zoning Ordinance as presented in the Planning Department Memorandum for today's meeting, with both items 1 and 2 with the dimensional changes and the changes to the use table. Mr. Rice seconded the motion.

Ms. Geffert wondered if there had been any consideration about restaurants, small retail, an inn or a day care. She understands there is considerable disinclination from the neighborhood to change the OR but she was thinking about the plan for that corridor. Mr. Taintor stated that they went through the entire use table to see what was different between the Gateway and OR. Based on the information and comments from the last meeting residents were concerned about uses that would generate light and traffic. Regarding small retail and restaurants, they were concerned that those were Gateway type businesses. They didn't focus on inns at all but he doesn't have any strong feeling one way or the other. Ms. Geffert asked about daycare as she is thinking more about the other OR areas, like Borthwick. Mr. Taintor added that he believed hotels are allowed in some OR districts or maybe the one on Portsmouth Boulevard was grandfathered. Mr. Gladhill felt that daycare and OR almost go hand in hand. Mr. Taintor agreed they should look at that. They could go ahead with this amendment and look into daycare in the future.

The motion passed unanimously.

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Deputy City Manager Hayden made a motion to read Public Hearing Item D and City Council Referral Item D together and to vote separately. Mr. Blenkinsop seconded the motion. The motion passed unanimously.

D. The application of **Dexter and Ellen Legg, Owners**, for property located at **4 Moebus Terrace**, for Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer, including the demolition of the existing house and garage and construction of a 1 ½ story house and garage; demolition of the existing deck and construction of a smaller deck;

installation of a 200 s.f. patio; removal of all artificial turf and associated landscaping. Said property is shown on Assessor Map 207 as Lot 24 and lies within the Single Residence B (SRB) District.

D, Letter from Dexter Legg requesting a license for a new driveway at 4 Moebus Terrace.

The Chair read the notices into the record.

SPEAKING TO THE APPLICATION:

Brendan McNamara, project designer, was present along with landscape architect, Terrence Parker. He explained that the existing house will be demolished in its entirety as well as the garage and its foundation. The new house will be built on the existing foundation and the garage will be built on a new foundation. There is also an extremely large deck that runs the whole length of the house on the western side and that will be totally demolished and replaced with a much smaller deck. The house will be elevated a little and as a result there will be a small grade change. There is a small amount of excavation on the southeastern corner as larger windows are being put into the walkout basement and to get clearance they are taking away about 1' of earth in a location which was filled when they did the original foundation.

Terrence Parker, of terra firma, stated that the Shoreline and Dredge and Fill permits have been received from DES. They also appeared before the Conservation Commission who asked them to recalculate some of the coverage within the 100' setback which is included on the current plan. There is still a reduction in impervious surface, dropping 3.7% in the 100' setback but overall on site it drops 4.5%. This is a plus in terms of impervious surface and the plantings try to reflect that by maintaining most of the marsh grass and pulling out the invasive species that are in the setback area between the wall and the salt marsh; and they will install native plant materials to continue the buffer zone. The site is a completely altered state right now with a putting green, astroturf and mowed lawn, so there is a lot of removal of either real turf or astroturf in favor of native plant materials. They are leaving a portion of the existing drive as the standard pavers for guest parking but they are removing most of that and the new surface for the walk and front drive will be permeable pavers.

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

Conditional Use Permit:

Mr. Rice made a motion to grant with the stipulation that during construction the site shall be stabilized as soon as possible, and proper erosion control measures shall be used to prevent any impacts to the tidal wetlands and salt marsh area. Mr. Blenkinsop seconded the motion.

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

- 1) During construction the site shall be stabilized as soon as possible, and proper erosion control measures shall be used to prevent any impacts to the tidal wetlands and salt marsh area.

City Council Referral – License for New Driveway:

Mr. Taintor stated that the request is to move the driveway to the other side of the property, to a paper street that was never constructed. The City Council has previously granted a license to another property owner on the same piece of land so the request is to allow their driveway to cross and access the existing driveway from that direction. The Department recommendation is to grant it as requested.

Mr. Blenkinsop made a motion to recommend that a license be granted as requested. Deputy City Manager Hayden seconded the motion.

The motion to recommend that a license be granted as requested passed unanimously.

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E. The application of **Portsmouth Housing Authority, Owner**, for property located at **444 Pleasant Street**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer, including the construction of roof extensions to the existing decks to provide weather protection. Said property is shown on Assessor Map 102, as Lot 54 and lies within the General Residence B (GRB) District and the Historic District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Geoffrey R. Aleva, of Civil Consultants, represented the Portsmouth Housing Authority. They are proposing to extend the roof covering to the rear deck of both buildings. When originally constructed they were not extended over the stairs so in the winter they can't be used. This is part of an overall renovation for new roofs and weatherizing the windows. As this is within 100' of the tidal wetland area they need Conditional Use Permit Approval. On the back side of each building they are adding an extension of 1' 3" to cover the stairs. At the request of the Conservation Commission they will install two dry wells off of each that direct the gutter flow from those roofs into that prior to the stormwater being discharged over land into the tidal area.

Ms. Roberts only saw one drywall on the plan. Mr. Aleva pointed out the second on the other side.

Chairman Ricci asked if they did they do any soil work around the dry wells. Mr. Aleva stated that, technically it probably will not work very well as a dry well just based on the soils, and he felt it is more of a retention feature and they hope it infiltrates and the rest will overflow. They will be flush with the grass lines that will be mowed. Chairman Ricci asked if they had any concerns with them icing up and backing up. Mr. Aleva did not think they would because once the water gets cold it will be in snow and it won't get into that area. People don't usually access the rear of the 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 as requested. Mr. Blenkinsop seconded the motion.

Mr. Gladhill pointed out that this still need to come before the HDC.

The motion to grant Conditional Use Permit Approval passed unanimously.

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F. The application of the **Baroni Family, LLC, Owners, and Joseph R. Baroni, Applicant**, for property located **off Constitution Avenue**, for earth product removal under Sections 10.1022, 10.1023 and 10.1024 of the Zoning Ordinance. Said property is shown on Assessor Map 274 as Lot 5 and lies within the Industrial (I) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Eric Weinrieb, of Altus Engineering, represented the Baroni Family and 755 Banfield Road Realty LLC. They were here last month for the excavation and removal of material and the matter was referred to TAC. TAC had 5 stipulations which they have added to the plans:

1. They marked the wetland buffer as they are not doing any work within the 100' buffer.
2. They removed the note saying there would be work on Saturdays as that is not allowed.
3. They identified the travel route to Rye which will be from Constitution to Lafayette and then down Washington Road, to limit the amount of traffic on City streets.
4. They will do a survey of the condition of Constitution Avenue and submit it to DPW prior to the commencement of any work.
5. They will post a bond with the City in an amount to be determined by DPW prior to the commencement of any work.

Mr. Weinrieb advised the Board that they are working on a larger development plans for the property which will include a 60,000 s.f. office/warehouse building. The work they are seeking approval for tonight would be incidental if they were coming for the Site Review at the same time. The large rocks they are seeking to remove are perfect to be used for a seawall on another property.

Mr. Taintor indicated that this application doesn't come before the Board very often and there is a section in Zoning Ordinance on Earth Product Removal and Placement. It is simply a "permit" they are granting.

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 the permit and thanked the applicant for a better plan as a result of going to TAC. Ms. Geffert seconded the motion.

The motion to grant the Earth Product Removal permit passed unanimously.

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G. The application of **Troy and Diane Thibodeau, Owners**, for property located at **240 Elwyn Road** and property **off Taft Road**, and **Frank and Linda Ashton, Owners**, for property located at **79 Taft Road**, wherein Preliminary and Final Subdivision Approval (two Lot Line Revisions) is requested between three lots as follows: Lot 85 as shown on Assessor Map 247 increasing in area from 12,682 s.f. to 15,000 s.f. with 132' of continuous street frontage on Taft Road; Lot 86 as shown on Assessor Map 247 increasing in area from 7,969 s.f. to 8,797 s.f. with 103' of continuous street frontage on Taft Road; and Lot 88 as shown on Assessor Map 247 decreasing in area from 19,942 s.f. to 16,796 s.f. with 100' of continuous street frontage on Elwyn Road. Said properties are located in a Single Residence B District (SRB) where the minimum lot size is 15,000 s.f. and minimum street frontage requirement is 100'.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, appeared on behalf of Troy and Diane Thibodeau, for the relocation of lot lines. There are currently three lots on Taft Road and Elwyn Road. Two lots were part of the Elwyn Park subdivision and the lot on Elwyn Road existed prior to the creation of Elwyn Park. They are proposing to move one line up to the northeast, creating a lot which now has a conforming area and will be a buildable lot. At the same time, Mr. Thibodeau is providing his neighbors, the Ashtons, with additional land to make their lot more conforming. He understands a waiver would be required for that because it only makes the lot more conforming. It is a simple application and he is available for questions. They have no problem with any of the recommended conditions.

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

Waiver request

Mr. Blenkinsop made a motion to waive compliance with Section VI.2.B of the Subdivision Rules and Regulations to allow the lot dimensions as shown on the subdivision plan. Deputy City Manager Hayden seconded the motion.

The motion to grant the waiver request passed unanimously.

Preliminary & Final Subdivision approval

Mr. Hopley made a motion to grant Preliminary and Final Subdivision approval with stipulations; however, he pointed out an error in the legal description of Lot 86 where it talks about 103' of continuous street frontage but it doesn't include additional frontage on the curve. L2 is 12' so it would be an extra 35' + 12'. Mr. Hopley felt it was insignificant to the proposal but should be noted. Mr. Chagnon concurred that it is closer to 50'.

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

1. The applicant shall obtain a driveway permit for lot 247-85 from the Department of Public Works.
2. All property monuments shall be set as required by the Department of Public Works prior to the filing of the final plat.
3. GIS data shall be provided to the Department of Public Works in the form required by the City.
4. The final plat and all resulting deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

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Ms. Geffert made a motion to read Public Hearing Items H & I together and vote separately. Mr. Rice seconded the motion. The motion passed unanimously.

H. The application of **Brian and Susan Regan, Owners**, for property located at **28-30 Dearborn Street**, and **Regan Electric Company, Inc, Owner**, for property located at **6 Dearborn Street**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between two lots as follows: Lot 1 as shown on Assessor Map 140 decreasing in area from 14,311 s.f. to 13,182 s.f. with 145' of continuous street frontage on Dearborn Street; and Lot 4 as shown on Assessor Map 123 increasing in area from 12,821 s.f. to 13, 950 s.f. with 91' of continuous street frontage on Dearborn Street and 27' of street frontage on Maplewood Avenue. Said properties are located in the General Residence A (GRA) District where the minimum lot size is 7,500 s.f. and minimum street frontage requirement is 100'.

I. The application of **Brian and Susan Regan, Owners**, for property located at **28-30 Dearborn Street**, wherein Preliminary and Final Subdivision Approval is requested to subdivide one lot into two lots as follows: Proposed Lot 1 having 6,750 s.f. and 55' of continuous street frontage on Dearborn Street and proposed lot 2 having 6,432 s.f. and 90' of continuous street frontage off Dearborn Street. Said property is located in the General Residence A (GRA) District where the minimum lot size is 7,500 s.f. and minimum street frontage requirement is 100'.

The Chair read the notices into the record.

Mr. Taintor advised the Board that the BOA granted variances to allow this subdivision to proceed. On Tuesday there was a request for rehearing which the BOA did not grant. Today they received another request for a rehearing which will probably go before the next BOA meeting. He just wanted to raise that as there may be some uncertainty on whether the subdivision can move forward and they should probably make their decision subject to BOA disposition. The Chairman recommended going forward with the presentation.

SPEAKING TO THE APPLICATION:

Bernard Pelech was present on behalf of Susan Regan. Also present was Chris Berry, the engineer who prepared the plan and Jack McGee on behalf of Regan Electric and Brian Regan. Attorney Pelech stated that case law in NH is very clear that a Superior Court appeal does not stay the action of the Board of Adjustment. The BOA granted variances in September and a motion for rehearing was denied on Tuesday. A second request for rehearing has been filed but it does not in any way negate or affect the BOA's action in granting the variances. This Board can act on the Subdivision request.

There are two components to this proposal. This arises from a divorce where the property at 28-30 Dearborn Street has to be divided. At the same time, they are asking to move a side property line 11' to legitimize an agreement which was never finalized. They felt this would be a good time to deal with both items at the same time.

Attorney Pelech is aware Mr. Brandzel has asked that this be continued because he has filed a request for rehearing with the BOA and if he has some objections to the subdivision, he would certainly would be happy to respond to those.

Attorney Jack McGee, representing Brian Regan and Regan Electric Company, Inc, indicated that he could not add much to what Attorney Pelech said; however, he has been present since the beginning. The lot line revision goes back to 1994 when both Mr. and Mrs. Regan agreed to the lot line revision with Regan Electric. They received consideration from Regan Electric Company and the lot line adjustment that they contemplated makes it reasonable to get into the back door which is the main door used for the Regan Electric property. In terms of the current desire on the subdivision, Mr. Regan supports that and, as pointed out at the BOA, he is agreeable to the subdivision which would assist Mrs. Regan's attempt to stay at 30 Dearborn Street. It does not make sense to have two houses on one lot. He would also like to reserve the right to respond to any arguments raised by Mr. Dempsey or Mr. Brandzel.

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

Mike Brandzel, of 39 Dearborn Street, indicated that he was not completely against subdividing the property but the property has some serious outstanding violations, all of which are in the City files. There is an ordinance that states that variances cannot be granted when there are outstanding violations, unless the effect of such variance or special exception would be to remedy the violations. He handed out an exhibit that listed the seven outstanding violations.

1. 30 Dearborn is built on City property, which is outlined on the surveyor's drawings.
2. A letter was sent to the Regans on September 4, 1984 stating that they were to provide five parking spaces which they never complied with.
3. Their 1984 plans show a garage but that has since been completely renovated with a front door and a window.
4. 30 Dearborn is actually a three-family, rather than a two-family.
5. There is an exposed sewer line and an electrical service on City property without protective barriers in front of them, which is a violation of the 2006 International Plumbing Code.
6. A retaining wall/fence was built on City property (out in the street).
7. As a result of the retaining wall, there is not adequate room for emergency vehicles, including fire apparatus.

He felt they have substantial violations, over 20 years, and nothing has been done. He talked about these to the BOA and was told they could not discuss prior violations. Mr. Brandzel indicated that if the violations were fixed, he would support the subdivision.

Mr. Taintor pointed out that the material that was handed out tonight did not have the cover sheet from Brandzel in which he requested a postponement of tonight's subdivision hearing.

George Dempsey, of 42 Dennett Street. Attorney McGee stated that everything was raised at the BOA however Mr. Dempsey indicated that the violations were not allowed to be heard. On the day of the fire, he was concerned about the brush fire and a life saving issue because the fire truck could not get thought the street to the fire.

Attorney Pelech stated that this is the Planning Board and their job is not code enforcement. The City has a code enforcement officer and a legal department. These issues came before the BOA. The abutters are frustrated because they perceive that there are 20 year old violations and they feel this Board should become the code enforcement officer. The BOA has granted all variances so that the subdivision can now be acted on. The abutters are bringing their complaints to the wrong place.

Attorney McGee stated that it seems as though Mr. Brandzel does not object to the subdivision but has concerns about violations. Attorney McGee is unclear about whether there are any violations because there is nothing pending with the City and it is obvious that the City has known about these issues for over 20 years, including the retaining wall. Attorney McGee questioned whether the City even has any rights to Dearborn Street, from a dedication standpoint, and any rights that the public has to Dearborn Street were acquired from usage. Mr. Regan has indicated that before 1984 there was no street where the retaining wall was and it was nothing more than a hill. He put the retaining wall where he did because PSNH wouldn't move their pole. Attorney McGee felt that if Dearborn Street was impacted, given all of the complaints over the years, the City would have done something by now. If PSNH could move their pole, it would help out. The BOA considered these issues and no violations could be substantiated. From a technical standpoint he was unsure what Mr. Brandzel was complaining about as there is a Lot Line Relocation request and there is a subdivision request. He asks them to support this subdivision and allow the Regans to finalize their divorce.

Mr. Brandzel spoke for the second time. He referred to Exhibit 7 in his handout. He referred to a letter from Rick Hopley stating there was a third unit, which would be a violation. He felt this was

important because there is a series of violations. He also felt it was an injustice to trivialize the subdivision of this property.

Susan Regan of 30 Dearborn Street stated that there are no violations. Jason Page has been in her house and he knows there are two units at 30 Dearborn Street. Regarding the fire truck, cars are always parked along the street and the trash truck can get all the way down the street. There has never been a problem.

George Dempsey spoke again. He asked Rick Hopley if he wrote the violation letter listing a third unit. Mr. Hopley asked if he was referring to Exhibit 7. He stated it was a log report with no address written on it. He would need to know which building they were talking about and it makes a difference because the log was written in 2006 and it's now 2011.

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

Chairman Ricci stated that the Board is looking at two items. Item H is for the Preliminary and Final Subdivision approval between Susan and Brian Regan and Regan Electric. Item I is for Brian and Susan Regan for Preliminary and Final Subdivision approval for 28 and 30 Dearborn Street.

Motion and discussion for Item H. Brian and Susan Regan and Regan Electric Company:

Deputy City Manager Hayden made a motion for discussion as this is a very complex situation created by many interesting decisions and actions over many decades. She made a motion on A, B, and C from the Memorandum, which addresses all of them. She made a motion to postpone action on the waiver request of the Subdivision Rules and Regulations until the November Planning Board meeting. She also made a motion to grant Preliminary Subdivision approval and refer this matter back to the Technical Advisory Committee for their input, particularly on public safety, on the sewer infrastructure issues, the PSNH utility pole, the wall and any other concerns they may have. This would also be contingent upon whatever the BOA or the Court decides because if they grant preliminary approval, it may never get to final approval. However, if they grant preliminary approval it gives an indication that there is some interest with the Board to move forward.

Mr. Patenaude seconded the motion.

Councilor Spear asked how the waiver fits in with the BOA variances. Mr. Taintor stated that the purpose of the waiver is for a legal nonconforming structure or lot. Before, it has been for a lot where no new violation is being created, the lot existed before the subdivision regulations applied and the regulations read that the lot dimensions must comply with the Zoning Ordinance as modified by variances. Therefore if the BOA grants variances, the Planning Board does not have to waive the dimensional regulations. But if there are pre-existing non-conforming issues, they would need to waive those before granting a subdivision approval. His point was that the structure at 30 Dearborn does not comply with the wetland setbacks but he doesn't have enough information to know if work was done before the wetland regulations were adopted. The waiver doesn't mean they are varying

anything and they are just recognizing there is something existing that is a lawful non-conforming situation as opposed to a violation.

Councilor Spear asked for clarification on whether they would grant preliminary approval tonight or postpone. Deputy City Manager Hayden indicated that her motion was basically to grant preliminary subdivision approval pending input from TAC on infrastructure public safety issues.

Mr. Rice wondered if they were putting the cart before the horse and asked why they wouldn't want TAC approval first before preliminary approval. Deputy City Manager Hayden explained that she suggested preliminary approval is because she doesn't think people are concerned with the subdivision, but rather are concerned with other things. If the Board prefers, they could just postpone everything until November. No one has indicated that they feel this is a really bad idea but they are concerned about other matters. Numerous things could happen so that this Board never grants final approval.

Mr. Rice stated they are creating two nonconforming lots and he cannot find a compelling reason to create two nonconforming lots. Deputy City Manager Hayden did not believe they were creating two nonconforming lots as they already have lots of nonconformity in this area. Mr. Taintor added that if the variances stand, then the lots are conforming. The BOA has taken that action and gives the Planning Board the ability to grant the subdivision.

Mr. Rice understood that if there are violations on a lot, they cannot grant an approval. Mr. Taintor confirmed there are two separate provisions. The Zoning Ordinance states that the BOA cannot grant a variance on a property that has violations unless the effect of the variance or special exception is to remove or address all of the violations. That is the issue before the BOA and does not relate to the Planning Board. The comparable regulation for the Planning Board is that the lots to be created in a subdivision must comply with all requirements of the Zoning Ordinance and the Planning Board has the ability to waive that. The Planning Board does not have zoning authority.

Ms. Geffert stated that she cares about the subdivision because they will create a right to build too close to the North Mill Pond. She doesn't think it is a good idea. She understands the Regan Electric property wants to be bigger but, from a planning perspective, they would be creating an irregular lot. Deputy City Manager Hayden would agree with her in an ideal world but they have inherited the sins of the past. There are two dwellings on one lot and they need to find the best way to resolve it. Ms. Geffert responded that they will never be able to make them take one down but she felt the property is too close to the water and the lot is too small. They can work out some sort of contractual agreement on the property that is not a subdivision.

Mr. Blenkinsop asked if they would have a report back from TAC at their November meeting and they would then potentially take action on final approval. Chairman Ricci confirmed that was correct.

Mr. Taintor explained that one of the reasons for tabling is to respond to new information which they didn't have before tonight. Also, the plan appears to show a 30' right-of-way on Dearborn Street yet Attorney McGee says there isn't a right-of-way. The testimony tonight contradicts the plan so that is another reason why they may want to postpone it.

Deputy City Manager Hayden asked if he saw any issue with granting preliminary approval. No one had an issue with that.

Mr. Hopley felt that a lot of attention is on the lot lines that are moving. This plan also establishes the front line which clearly shows the wall on City property. Maybe this is the first plan that has ever shown that. But, he agrees that preliminary doesn't lock them into final. Chairman Ricci saw it as a way to move this application forward.

Chairman Ricci called for a vote on Item H. The motion was unanimously approved.

Deputy City Manager Hayden stated her intent was to make her motion on both applications. Mr. Blenkinsop understood they were voting on both but felt they should take action to make it clear.

Councilor Spear made a motion to rescind the previous vote. Mr. Blenkinsop seconded the motion. The motion passed unanimously.

Vote on Item H

Deputy City Manager Hayden made a motion to postpone action on the waiver request on the Subdivision Rules and Regulations to the November meeting. Ms. Geffert seconded the motion.

The motion to postpone action on the waiver request to November passed unanimously.

Deputy City Manager Hayden made a motion to grant preliminary subdivision approval with the stipulation that they refer this matter to TAC for a report back on sewer infrastructure issues, public safety issues, and the PSNH pole. Also that action shall be pending any further action by the BOA and the Court regarding this matter. Mr. Gladhill seconded the motion.

The motion to grant Preliminary Subdivision Approval passed with an 8-1 vote, with Ms. Geffert voting in the negative, with the following stipulations:

- 1) This matter shall be referred to TAC for a report back on sewer infrastructure issues, public safety issues, and the PSNH pole.
- 2) This approval shall be pending any further action by the BOA and the Court regarding this matter.

Vote on Item I

Deputy City Manager Hayden made a motion to postpone action on the waiver request on the Subdivision Rules and Regulations to the November meeting. Mr. Gladhill seconded the motion.

The motion to postpone action on the waiver request to November passed unanimously.

Deputy City Manager Hayden made a motion to grant preliminary subdivision approval with the stipulation that they refer this matter to TAC for a report back on sewer infrastructure issues, public

safety issues, and the PSNH pole and that this action shall be pending any BOA outcome or Court action on this matter. Mr. Blenkinsop seconded the motion.

The motion to grant Preliminary Subdivision Approval passed with an 8-1 vote, with Ms. Geffert voting in the negative, with the following stipulations:

- 1) This matter shall be referred to TAC for a report back on sewer infrastructure issues, public safety issues, and the PSNH pole.
- 2) This approval shall be pending any further action by the BOA and the Court regarding this matter.

.....

J. The application of **HarborCorp, LLC, Owner**, for property located **off Deer Street, Green Street, Russell Street, Market Street and Maplewood Avenue**, for a third one year extension of Site Review Approval which was granted (amended) on October 16, 2008 for the construction of an 83,118 ± s.f. 6/7 story structure consisting of a hotel, convention center, parking garage and 21 residential condominiums, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 118 as Lot 28, Assessor Plan 119 as Lot 1-1A, Lot 1-1C and Lot 4, Assessor Plan 124 as Lot 12 and Assessor Plan 125 as Lot 21 and lie within the Central Business A (CBA) District, the Central Business B (CBB) District, the Downtown Overlay District (DOD) and the Historic District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Malcolm McNeill, Esq., attorney for Harborcorp, LLC, addressed the Board. Also present was Dennis Moulton, of MSC Civil Engineers and Chris Thompson, principal of Harborcorp. Attorney McNeill indicated that he has been involved with this process since 2005. They are seeking an extension as they want to proceed forward with the project. The reason the project has not started is because they have not obtained financing of approximately \$80 million. His clients have been working on this since the date of approval. This project was significantly delayed by litigation brought by competitors. Final approvals were delayed to October 2008 which was the beginning of the real estate recession which directly influences the availability of credit and the willingness of banks to loan money to anyone, let along \$80 million. This project is not divisible so they are seeking financing for the whole project. They believe this project continues to be in the best interest of the City and there is no downside to anyone by extending the approval of this project.

Attorney McNeill indicated this project is one of the largest projects in the history of the City and was supported by the City as a co-applicant. The plan is for an 83,118 s.f., 6/7 story structure consisting of a hotel with 207 rooms, a large convention center with 1,900 s.f. of meeting space to accommodate 1,000 people at a seminar, a 7 level parking garage which will provide parking for 657 cars, and 21 residential condominium units as well as retail facilities on the first floor.

The developer has spent \$1,800,000 so far on this project in soft costs. Due to the significant size of the project, this required approvals at all levels of the City regulatory process. He displayed views of the project. The HDC has approved a third extension. The plans show a bridge connecting the new project to the existing Sheraton Hotel.

A great deal of study and process went into this approval as they were challenged at every stage by competitors and the City stood behind them. The first challenge was the public nature of the garage and the second challenge was over issues of the project and went all the way to the Supreme Court. The Supreme Court stated in their opinion that it was clear this was in the interest of the public.

TAC process in 2011 brought up traffic. This project considered any new projects in the area, just as any other new projects must do. Subsequent projects always consider approved projects. A third extension was granted by the HDC. They appeared before TAC but had nothing new to submit and had no changes. There are no additional impacts. No traffic that they hadn't considered before. This should be a magnet to tourism and commerce.

As noted earlier, Attorney McNeill indicated that this project has not gone forward because it has been unable to obtain the necessary financing. The project cannot be divided as everything ties in together. The parking spaces are essential to the conference center, the hotel rooms are essential to the conference center, the condominiums are essential to the commercial viability of the project. In seeking financing it is essential to present evidence to a lender that a project is permitted and ready to proceed. Despite their participation in the TAC process they cannot agree with some of their conditions, specifically #1, 2, 4 and 5. The condition that is most difficult is the Northern Tier Traffic Study. The cost and timing of this study is uncertain and depends on three competitors all contributing towards the same study. There will now be a new approach that was never contemplated at the time of this project. Condition #1 is well intended but is absolutely the opposite of what is required to obtain financing for this project. It creates uncertainty and an added layer of review as well as the potential for litigation because as the plan changes, it creates the opportunity for litigants to raise issues to any modifications, which would further delay the project. Conditions #4 & #5 ask for revisions as a result of the Northern Tier Traffic Study and they don't have a clue what that means or what the substance could be.

These recommendations create uncertainty and the likelihood of never obtaining financing. They would ask that the City extend the original approval. It should not deter potential developers to plan around existing improvements. The 2010 approval allows revisions to sidewalks, etc. but not to moving buildings.

The people who are behind this project are who developed the Sheraton. They took a major risk with the Sheraton and would like to do it again. Because of litigation, recession and limited financing, all beyond the control of the developer, this project has not been built. This developer cannot agree to the new TAC conditions as it will kill the project. They ask the Planning Board and the City to continue to be a partner in this project. The conditions proposed by the developer provide an opportunity for the project to success but also with controls that the City can exercise.

Attorney McNeill proposed that this project should be extended based on the original approvals. However, if the Board wishes to revert back to the 2010 approval, he would like a deletion of the provision that relates to the Site Plan Regulations.

The Planning Director also brought up the fact that they are requesting two waivers. One is to request a waiver that they did not have to file full size plans. The plans haven't changed so he hoped they would agree there was not reason to come in with full size plans.

They are also asking for a waiver for the time deadline for submission and action on the extension request. This was not an issue before the HDC as they have different rules. The Planning Board rules say it must be filed and acted on before the expiration date of October 14 and 15, 2011. Due to scheduling and filing requirements, the request for an extension of the subdivision approval which involves the exchange of various parcels with the city will be four days late and the Site Review would be five days late. They are asking for a waiver so that the approval of the extension will revert back to those four or five days. Mr. Taintor has indicated that he is concerned about precedent. Attorney McNeill's opinion was that a precedent always involves a consideration of the likeness of the projects being considered. They believe this project is absolutely unique and should stand alone on its extension request.

Attorney McNeill indicated that usually when he comes before them he has worked with staff and all are in agreement on the conditions. The developer found out about these conditions two weeks ago and they just cannot agree to them. He asks them to provide them with the ability to have an approval they can continue to bring to banks so that they can obtain financing and proceed forward.

Attorney McNeill felt this was no small matter. When a taxpayer spends almost \$2 million to obtain approvals and tries to bring a project to the community that everyone would be proud of, it is uncomfortable to be standing here. No one regrets standing here more than them because they would rather be cutting a ribbon than requesting an extension. They are asking for the opportunity to still proceed with the project the City supported.

Attorney McNeill's specific request is that the 2010 approval that is before them be the basis for an extension subsequent to the deletion to the reference to the Site Review language and that the waiver be granted with regard to being four and five days late with regard to the project filing date.

Mr. Blenkinsop asked why their filing was submitted late. Attorney McNeill assumed erroneously that the same rules applied that applied to the HDC would apply to the Planning Board submission. In candor, they "blew it". As soon as it became evident, they filed as soon as they could. Mr. Blenkinsop said it sounded like an innocent mistake. He asked at what point, recognizing the economy won't be better one or two years from now, when does it become appropriate to look at what was approved years ago. Attorney McNeill practices in many other communities and there are many communities that do not have term limits on approvals. The philosophy is as long as one is vested in or vested out they may proceed. There are numerous projects in this period of time that have been subject with extensions and state statutes to vest a project. It used to be one year and now it is three. In terms of how far out they go, they are getting close to the end but they don't want the end to be now.

Deputy City Manager Hayden asked for year of the first approval. Attorney McNeill indicated that the application was filed in December of 2005 and the project was approved by the HDC in February of 2007. In June 2007, subdivision and site review approvals were granted. Shortly thereafter there was a minor change in the subdivision because of some street issues that needed to be changed in August. In 2007, litigation occurred relative to whether the parking garage could be public and litigation brought by an abutter to this project with regard to the basic terms of the approval. In August 2008 the parking garage was found not permitted to be public and so they indicated it would be private. In August 2008 they came back before the Board to indicate the change from public to private and that was approved. In October of 2008 the Supreme Court litigation concluded in their favor and shortly thereafter the City Attorney concluded that all time periods for the project would not start to run until that period because until the termination of litigation they could not go forward with the project. Amended Site Plan approval after all of the litigation was concluded was October 2008. Therefore, the first time they requested an extension was August of 2009 and it has come forward from then. This was just the beginning because any challenges to this project were very well timed regarding bumping the project into a period of time where financing and construction of a project of this size would become extremely difficult.

Councilor Spear asked about their concerns with stipulations #1, 2, 4 and 5. He felt that #2 seemed rather innocuous because it doesn't have any conditions. They help fund a study but they still proceed with their project. Attorney McNeill did not believe that was the intent of that conditions and Mr. Taintor should probably explain it. Mr. Taintor indicated that #5 is in the existing approval so that has not change. Attorney McNeill stated the issue for them is that it is in the context of the study. Mr. Taintor asked if the study were not there, then #5 would not be an issue for them. Attorney McNeill did not believe it would be. Mr. Taintor explained that the only difference in #2 between now and the existing approval is partially the relation to the current Site Plan Regulations. Attorney McNeill indicated that this approval was unusual because it had the support of the city and the desire to go forward. He felt that provision related to the Site Plan Review Regulations at the time. Similarly, in the extension that occurred last year, Mr. Taintor went on to say that this project as approved on October 16 remains subject to the standards of the Zoning Ordinance on that date. What he is seeking is a meshing of those controls. Mr. Taintor remembered their discussion last year saying they would go with the new Site Plan Review Regulations but the old Zoning Ordinance and that is why that was written the way it was. Attorney McNeill does not remember that discussion. He added that as comparing the traffic impacts with Site Review impacts they have done an analysis and they are less concerned about other matters such as archaeological considerations.

With respect to the traffic study, stated that the discussion at TAC was that a lot has changed in the environment downtown since the date of development of this project. The Planning Board should consider whether there are any changes that materially change the approved Site Plan with regard to traffic control, volume or congestion, etc. His concern was that it does not make any sense knowing what they do about the downtown, to pretend that these projects are all happening in isolation. They need to look at an overall level at traffic planning in the downtown. Whether it happens by a contribution by developers, as proposed by condition #1, or by appropriation by the City, he feels they have to take a look at the overall downtown traffic. They can't pretend the Westin Hotel is the only thing on the block. Therefore, Mr. Taintor believes we need to do a traffic study and come up with a plan for traffic circulation in the downtown. The second step would have been what's in item #4, to look at incorporating any results. He can see Attorney McNeill's issue, not wanting to change traffic

improvements, but he can envision where the traffic improvements they have committed to don't make any sense. The double driveways coming out onto Maplewood may not make any sense. They can proceed with their current plans and come back and revisit it later.

Attorney McNeill stated that this project went through an excruciating review process and other projects were planned around this project. The only complicating factor has been the delay in this project going forward. They regret having to be here but in terms of the usual planning process with the requirement that they have to go back to Traffic & Safety anyways, this study being proposed is entirely uncertain as to its content, timing, cost and results and they would have to wait until the completion to incorporate the proposals of the unnamed study into their project. Their problem is, if they are lucky enough to walk into a bank in two months and get consideration, they would have to explain the loose end of the unknown study with an unknown completion date, requiring unknown revisions. He suggested that they need to be practical, without being critical to his proposal. Attorney McNeill indicated there are two ways for this Board to not have this project proceed. One would be to approve Mr. Taintor's recommendations and the other is to deny the project. If the City wishes to have this project, the developer would request they consider last years approval.

Councilor Spear asked what the difference is between #4 and #12 from last years' Memo. They seem similar. Mr. Taintor responded that they have to understand that many things were left unresolved in the original approval and it was a very open-ended approval with many things that needed to be done in the future. What happened was, at some point, there were two sets of traffic studies and he believes there had been changes in the local road system that didn't quite line up with the details of the traffic improvement plan that came out of the Site Plan. Looking at small details of the off site improvements of the 2008 approval. The original approval was dealing with small changes to changes in traffic.

Deputy City Manager Hayden asked why there was concern with items #2. Attorney McNeill felt there was already a provision in the 2010 approval and their concern is that there have been revisions to the Site Plan Review Regulations, they have done a preliminary study but have not completed it, and they are concerned that that there may be provisions that may have a significant effect.

Mr. Taintor stated that one significant difference between the current TAC recommended stipulations and the previous ones is that the current stipulations intend to move the project forward with a time line. Attorney McNeill indicated they are not concerned about that and would be looking at timelines for the loose ends, to be done in the next spring/summer.

Mr. Patenaude asked if the bottom line is that they need the waiver and the extension to get sufficient financing to move forward. Attorney McNeill confirmed that they do.

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

Councilor Spear made a motion to grant the two waivers. Mr. Patenaude seconded the motion.

Mr. Blenkinsop stated he did not have an issue with the plan size. For the record he will vote in favor of the deadline waiver because it was an innocent mistake and that the request came in before the plan expired.

Deputy City Manager Hayden stated she would not be supporting the motion. She felt that Attorney McNeill made some very good points but granting this takes tremendous planning control away from the Planning Board. When anyone else come in asking for this, the Board will have a difficult time saying no. It has been six years since this was originally approved and most of the Board members sitting tonight have never reviewed the project and they are even resisting providing a full set of plans for the Board members. She felt they have a responsibility to review this project as the landscape has changed dramatically downtown.

Councilor Spear agreed with the Deputy City Manager on two counts. Not only has the landscape changed and but their own Site Plan Review Regulations have changed. As they move forward in time, the situation in which this was approved becomes more and more out of date. He will vote against this.

Deputy City Manager Hayden added that she is not against this project but the Board has a responsibility in their downtown to plan very carefully and things have changed too much downtown and they will have open ended Site Review approvals for forever if they approve this.

Mr. Hopley confirmed that the first vote will be on the waiver only.

Ms. Roberts agreed with Deputy City Manager Hayden. She was concerned about the scale of the project. She felt that the nature and scale of the changes they have seen in the past few years really necessitates another look, as well as the precedent they would set. Innocent or not, they need to follow the rules and respect filing deadlines.

Chairman Ricci stated he also will not support the motion. Attorney McNeill said three years ago that this project was the first shopping center but now it is the second shopping center. Also, the precedent would weaken their ability to enforce time limitations for applicants. He supports this project but does not support the waiver.

Councilor Spear stated that his motion was to grant two waivers, one for the requirement to submit full size plans and one for the deadline for submission and action on a waiver request.

A roll call vote was taken:

Mr. Blenkinsop – yes

Mr. Rice – no

Vice chairman Roberts - no

Mr. Hopley - yes

Deputy City Manager Hayden -no

Mr. Gladhill - yes

Councilor Spear – no

Ms. Geffert – yes.

Chairman Ricci – no

The motion to grant the two waivers **failed** with a four to five vote, where six votes were needed.

Deputy City Manager Hayden made a motion to find that Site Plan approval granted on October 16, 2008 and most recently extended on October 16, 2010 has expired. Councilor Spear seconded the motion.

The motion passed unanimously.

(Please note that Mr. Patenaude was not a voting member for this hearing and therefore his votes were not counted)

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K. The application of **180 International, LLC, Applicant**, for property located at **180 International Drive**, requesting amended Site Plan approval for parking lot expansion to add 31 new parking spaces, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 312 as Lot 3 and lies within the PDA Industrial District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

William Davidson, of Hoyle Tanner, appeared representing 180 International, LLC. This is a small site plan and they wish to add 31 parking spaces. They met with TAC as well as responded to comments from the PDA. They have three small areas where they are adding parking and one handicapped stall. They were requested to add closed drainage tied into the detention basin that exists. They responded to all of the TAC and PDA comments.

Chairman Ricci recognized that Maria Stowell from the PDA was present.

Deputy City Manager Hayden wanted to be clear that the plan that was provided tonight is the most up to date plan and the plan that was in their packet should be disregarded.

Mr. Taintor indicated that an as-built landscaping plan was submitted to be compared with the approved landscaping plan and he discovered there were 11 more parking spaces in the existing conditions than on the approved plan. There is a section in the back of the site that was not on the approved plan. He asked if there was an administrative approval that just didn't go through the City.

Mr. Davidson indicated that the PDA regulations state they can expand by 8 parking spaces without formal approval but 11 were actually built rather than the 8.

Ms. Stowell confirmed that they use that regulation, but the rules were changed recently, and they were aware that they were going to build 8 spaces. She can't explain how it came to be 11 but the 11 spaces were included in their drainage calculations for this time. Mr. Taintor also noted that on the 16 space

addition they are removing 3 trees and adding 4. At the 13-space addition to the left, there were three approved trees but they were never placed there and maybe that is an appropriate time to place trees there to soften around the edge and provide some shade.

Ms. Stowell agreed with Mr. Taintor’s suggestion.

Mr. Taintor indicated that where the 11 spaces were added there were supposed to be 2 trees added and they never were. It seemed like a good place to put additional trees in.

He suggested adding a stipulation that a revised landscape plan be submitted for review and approval by the Planning Department and the PDA.

Mr. Taintor also brought up the issue that the applicant did not agree with the stipulation for the area drain by the new parking spaces and the PDA had recommended that the drain be relocated back and the area be regarded. Ms. Stowell felt that, hearing no further comments from TAC or DPW, she would go along with their view of that catch basin and didn’t have any concerns.

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 asked Mr. Taintor to clarify the drainage issue. Mr. Taintor explained that there was a concern raised by the PDA about the existing drain next to the driveway and the new parking spaces will be moved right up against that drain. There was concern that in the winter they might not have a grade separation between the drain rim and the top of the sidewalk and it would create a freezing situation. It didn’t get to the TAC because it just came in. Ms. Stowell further explained that she discussed this with the applicant’s engineer today and the catch basin is not directly adjacent to the sidewalk and there is a few feet of grass in between. As TAC or DPW did not comment on it they must not have had any concerns so she would agree that it was fine where it was.

Deputy City Manager Hayden made a motion to recommend Site Plan approval with the stipulation that a revised landscaping plan be provided for review and reflect the comments that were discussed tonight. Mr. Gladhill seconded the motion.

The motion to recommend approval of Amended Site Plan approval with the following stipulation:

- 1) A revised Landscaping Plan shall be submitted for review and approval by the Planning Department and the PDA staff.

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L. Proposed amendments to the Planning Board’s Site Plan Review Regulations.

Mr. Taintor stated he was proposing three small changes to the Site Plan Review Regulations. Two are technical housekeeping changes and one addresses a recent issue they have identified.

The first one is a revision to their exemption for small projects and it is basically an all or nothing item.

It reads “If a building permit application is submitted that meets the following three criteria, then the Planning Director **shall** make a determination that the project is exempt from Site Plan Review:”

They have found some issues where there are some significant changes in landscape or lighting that would not violate any of the three criteria and would be exempt from Site Plan review. He would prepare to have a provision where “the Planning Director **may** make a determination” to give them some flexibility.

The second revision is an item that they brought up shortly after they adopted the regulations which is the State law requires that a NH licensed surveyor sign As-Built Plans, rather than a NH licensed civil engineer. This would just bring this in accordance with State law.

The third item is to clarify the photometric plan requirement. In one section it says that they **may** want a Photometric Plan and one says they **must** have a Photometric Plan. The Planning Board can always waive that so he would prefer that they get rid of the “may” and just have the “must”.

Mr. Taintor stated those are the three changes they are recommending at this point.

He would like to look at broadening their standards for traffic impact studies, rather than those only for drive-through facilities and he would also like to provide specific standards for bicycle parking facilities.

Mr. Blenkinsop made a motion to amend the Site Plan Review Regulations as set forth in the document entitled “Site Plan Review Regulations Proposed Amendments – October 2011”. Mr. Rice seconded the motion.

The motion passed unanimously.

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III. CITY COUNCIL REFERRALS/REQUESTS

*The Board’s action in these matters has been deemed to be legislative in nature.
If any person believes any member of the Board has a conflict of interest,
that issue should be raised at this point or it will be deemed waived.*

- A. Letter from Tony LaCava, of 95 Mechanic Street, regarding the sale of his property.

Mr. Taintor indicated that this property is between the Pierce Island Bridge and the Mechanic Street pump station. It is a very complicated area. The actual property that Mr. LaCava owns is fairly small but there is development on a pier over the water beyond his property line and he also uses some City owned land under a lease which is an extension of Gate Street. The intent is for the City to acquire the LaCava property at 95 Mechanic Street and all interest in adjacent land between the pump station and

the Pierce Island Bridge. That would provide opportunity for upgrading and expansion of the pump station.

Mr. Rice asked how the purchase price will be determined. Mr. Taintor responded that will be determined by the City Council, probably through an appraisal, but that is not part of their decision.

Ms. Roberts agreed with Dave Allen that whether the sewerage facility stays on Pierce Island or not, ownership will be important to the City in the future.

The motion to recommend that the City acquire the LaCava property at 95 Mechanic Street and all interest in adjacent land between the Mechanic Pump Station and the Peirce Island Bridge passed unanimously.

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B. Letter from Linda Smith, NH Department of Transportation, regarding an offer for the acquisition of land as required for the reconstruction of the US Route 1 Bypass.

Mr. Taintor advised the Board that this is a taking for the reconstruction of the intersection of the Bypass and Lafayette Road. It is a request to require 300 s.f. of property and a 100 s.f. temporary slope easement. Dave Allen has stated that this will have no impact on the City's pump station and DPW has recommended approval. Therefore, the Planning Department recommends approval of the land transfer and slope easement..

Mr. Rice made a motion to recommend approval. Ms. Roberts seconded the motion.

The motion to recommend that the City approve the requested land transfer and temporary slope easement passed unanimously.

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C. Letter from Paul G. Sanderson regarding whether the City has interest in purchasing land off of Spinney Road for Conservation purposes.

Mr. Taintor stated that the Conservation Commission has met with Mr. Sanderson and Eric Weinrieb twice. Staff did a site walk last week to consider this land for possibly recreation purposes. No determination has been made. There were two options presented to the Conservation Commission. The first option was the development of a 9 lot subdivision with 8 acres of open space which has been presented informally to TAC. The second option was no development with the entire 12.7 acre tract preserved. The third option assumes the City would acquire the entire tract either for conservation or recreational purposes.

Subsequently, a conceptual plan for a 5 lot subdivision with a larger area preserved for open space has been discussed. The wetland area, which is the back portion of the site surrounded by the residential properties, would be protected to a large degree and couldn't be developed.

The Conservation Commission members expressed an interest in the five lot subdivision option. There is no proposal before the Board so no action is required. Also, Mark West provided a report on the natural resource value.

Deputy City Manager Hayden felt it would be helpful for them to have some discussion on this. She shared her observations. There is some lukewarm interest on behalf of the Conservation Commission. Her thinking is that acquisition of the whole parcel is off the table. They need to proceed carefully as they will have a subdivision before them and they need to separate the two. She was curious what the Board thinks.

Mr. Blenkinsop was having difficulty as there are various possibilities and he's unsure what they are talking about. Deputy City Manager Hayden stated that when the City acquires property, it is because it has some value to them. The Board needs to think about, as a general concept, whether they have interest in conserving some part of this property. At some point they need to be careful about modifying a subdivision plan based on how much of the land they may or may not want to acquire.

Deputy City Manger Hayden asked if the Board was interested in a site walk with either with or without the Conservation Commission. Various members were interested in a site walk. Deputy City Manager Hayden stated that her goal would be to get it out of the lukewarm phase and determine what they have an interest in.

Paul Sanderson, Trustee of the Sanderson Trust, stated that they have not done a site walk with the Conservation Commission but that is exactly what he is looking for. The neighbors asked him to explore with the City the possibility of conserving some or all of the land and that is what created the letter to the City Council and the referral to this Board and the Conservation Commission. He will continue with this process until the City comes to a firm recommendation. He is happy to facilitate whatever he can for them. He wants to either proceed to a subdivision or continue discussions.

Chairman Ricci indicated they do not need to vote on this and a Site Walk will be scheduled by staff.

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IV. NEW BUSINESS

A. Request of Tain Property, LLC, for a one year extension of Site Plan Approval granted on October 21, 2010 for property located at 195 Commerce Way.

Ms. Geffert made a motion to grant a one year extension. Mr. Hopley seconded the motion.

The motion to grant a one year extension passed unanimously.

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B. Request of Tain Property, LLC, for a one year extension of Site Plan Approval granted on October 21, 2010 for property located at 215 Commerce Way.

Ms. Geffert made a motion to grant a one year extension. Mr. Hopley seconded the motion.

The motion to grant a one year extension passed unanimously.

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IV. PLANNING DIRECTOR’S REPORT

A. Request for rezoning of land on Bartlett and Cate Streets.

Mr. Taintor reported that in August the Board recommended to the City Council that this parcel be rezoned to Business. It went to the City Council for a public hearing and the City Council tabled it and requested that the Planning Department meet with the neighborhood and look at broader rezoning issues. They will set up the neighborhood meeting in November or December and will invite the Planning Board.

B. City Council request for Planning Department and Planning Board to consider incorporating subsurface (i.e., archaeological) preservation in site plan review.

Mr. Taintor stated they do not actually have a specific timeline but may be bringing a two phase approach to the Board. They would first identify archaeological hot spots and then incorporating a map into the Site Plan Review Regulations. Deputy City Manager Hayden added that whatever they do will be a real balancing act so that they don’t hinder development but still respect their archaeology. She felt it would be helpful to have the City Attorney make sure the enabling State legislation exists to allow them to do something.

C. City Council work session with Planning Board and Economic Development Commission to discuss downtown hotel construction and City goals.

Mr. Taintor indicated that a Work Session will be scheduled for December 12th to discuss downtown hotel construction and City goals.

D. New proposed development projects.

1390 Lafayette Road (former Yokens) The developers are proposing a phased project with (1) a Rite Aid Pharmacy with a drive-through, (2) a coffee shop or bank with a drive-through and (3) another retail pad in the rear, facing Market Basket. It is a challenging site because of circulation and they may look into introducing residential into the back of the site. There is no formal application but they are considering coming in for a formal work session with TAC on November 29th.

720 Lafayette Road (former Bournivals) An application has been received for a Goodwill Thrift Store with drive-up drop off and a coffee shop with a drive-through and a retail/restaurant space. This is also a challenging site. They will need to go to the BOA for special exceptions for the drive-throughs.

The Spinney Road subdivision has gone through a Work Session with TAC and will be coming back in the future.

218 Griffin Road (Fed Ex) Last month the Board voted to approve a Conditional Use Permit contingent on review and approval from TAC. That has happened and TAC approved it with two stipulations, including increasing the depth of asphalt for more stability for the road and protecting the wetlands from construction impacts. .

Wholey Way Subdivision (Henry Brandt) The Board’s decision to deny subdivision approval has been appealed regarding their determination on the buildability of the new lot.

Mr. Taintor announced that the American Planning Association has designated Market Street and Market Square as a Great Street of 2011. It was in recognition of the historic character of street and also the great work of the City Boards, residents and departments.

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VI. ADJOURNMENT

A motion to adjourn at 10:15 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on January 29, 2012.