

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MAY 7, 2012 TIME: 7:00PM

AGENDA

- 6:00PM – ANTICIPATED “NON-MEETING” WITH COUNSEL RE: NEGOTIATIONS RSA: 91-A:2, I (b-c)

- I. CALL TO ORDER [7:00PM or thereafter]
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

PROCLAMATIONS

1. Bike/Walk to Work Day in Portsmouth
2. Police Week in Portsmouth & Peace Officers' Memorial Day

PRESENTATION

1. *Mayor's Blue Ribbon Committee on Sustainable Practices – Bert Cohen, Chair

- V. ACCEPTANCE OF MINUTES – APRIL 2, 2012 AND APRIL 16, 2012

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE II, SECTION 7.229 OF THE TAXI ORDINANCE – GENERAL PROVISIONS BY A NEW SUB-SECTION E - ENTITLED COMPLIANCE WITH STATE AND FEDERAL LAW
- B. ORDINANCE AMENDING CHAPTER 10, ARTICLE 4, SECTION 10.440 OF THE ZONING ORDINANCE – TABLE OF USES – RESIDENTIAL, MIXED RESIDENTIAL, BUSINESS AND INDUSTRIAL DISTRICTS BY CREATING PERFORMANCE STANDARDS APPLICABLE TO DRIVE-THROUGH FACILITIES AND; CHAPTER 10, ARTICLE 8, SECTION 10.836.20 OF THE ZONING ORDINANCE REGARDING ACCESSORY DRIVE-THROUGH USES BY CHANGING TYPE OF APPROVAL REQUIRED FROM A SPECIAL EXCEPTION TO A CONDITIONAL USE PERMIT
- C. ORDINANCE AMENDING CHAPTER 10, ARTICLE 15, SECTION 10.1530 – TERMS OF GENERAL APPLICABILITY RELATIVE TO THE DEFINITION OF MUSEUM REGARDING ACCESSORY USES THAT ARE INCIDENTAL AND SUBORDINATE TO THE PRIMARY NON-PROFIT MUSEUM USE

VIII. APPROVAL OF GRANTS/DONATIONS

(There are no items on under this section of the agenda)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section E - entitled Compliance with State and Federal Law ***(Sample Motion – move to pass second reading and hold third and final reading of the proposed Ordinance, as presented, at the May 21, 2012 City Council meeting)***
- B. Second reading of Proposed Amendment to Chapter 10, Article 4, Section 10.440 of the Zoning Ordinance – Table of Uses – Residential, Mixed Residential, Business and Industrial Districts by creating Performance Standards applicable to Drive-through Facilities, and Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance regarding Accessory Drive-through Uses by changing type of approval required from a Special Exception to a Conditional Use Permit ***(Sample Motion – move to pass second reading and hold third and final reading of the proposed Ordinance, as presented, at the May 21, 2012 City Council meeting)***
- C. Second reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 – Terms of General Applicability relative to the Definition of Museum regarding Accessory Uses that are Incidental and Subordinate to the Primary Non-Profit Museum Use ***(Sample Motion – move to pass second reading and hold third and final reading of the proposed Ordinance, as presented, at the May 21, 2012 City Council meeting)***

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Mylene Hollick, March of Dimes, requesting permission to hold the 2012 Seacoast March for Babies on Sunday, May 20, 2012 from 9:00 am. – 1:00 p.m. ***(Anticipated action – move to refer to the City Manager with power)***
- B. Acceptance of Donation to the Fire Department from Patricia MacNeil - \$75.00 ***(Anticipated action – move to accept and approve the donation, as presented)***
- C. 2012 Omnibus Sidewalk Obstruction Renewals – Part III – See Attached Listing ***(Anticipated action – move to refer to the City Manager with power)***
- D. Request for Approval of Pole License to install/replace 1 pole located on Willard Avenue ***(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***

- E. Letter from Alyssa Aldrich, Big Brothers Big Sisters of the Greater Seacoast, requesting permission to hold the 3rd Annual Stiletto Race on Saturday, July 28, 2012 from 4:00 p.m. – 6:00 p.m. (rain date of Saturday, August 4, 2012) (**Anticipated action – move to refer to the City Manager with power**)

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Karina Quintans, Islington Creek Neighborhood Association, regarding Nighttime closure of Rock Street Park
- B. Letter from Padi Anderson, 2012 Fishtival Steering Committee, requesting support from the City of Portsmouth in the amount of \$1,000.00
- C. Letter from Eric G. Mart and Kathryn A. McCallion requesting a rezoning of 1283 Woodbury Avenue (**Sample motion – move to refer to the Planning Board for report back**)

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

Items Which Require Action Under Other Sections of the Agenda

- 1. Public Hearing/Second Reading of Proposed Ordinance Amendments:
 - 1.1 Public Hearing/Second reading of Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section E - entitled Compliance with State and Federal Law (**Action on this matter should take place under Section IX of the Agenda**)
 - 1.2 Public Hearing/Second reading of Proposed Amendment to Chapter 10, Article 4, Section 10.440 of the Zoning Ordinance – Table of Uses – Residential, Mixed Residential, Business and Industrial Districts by creating Performance Standards applicable to Drive-through Facilities, and Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance regarding Accessory Drive-through Uses by changing type of approval required from a Special Exception to a Conditional Use Permit (**Action on this matter should take place under Section IX of the Agenda**)
 - 1.3 Public Hearing/Second reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 – Terms of General Applicability relative to the Definition of Museum regarding Accessory Uses that are Incidental and Subordinate to the Primary Non-Profit Museum Use (**Action on this matter should take place under Section IX of the Agenda**)

City Manager's Items Which Require Action

1. Request for Approval of Police Department Early Retirement Incentive
2. Request to Establish Public Hearing Re: Use of Bond Premium
3. Report Back Re: Proposed Closure of Rock Street Park between the hours of 11:00 p.m. and 5:00 a.m.
4. Request from Paul R. Frohn, Jr., and Susan C. Frohn for Restoration of Involuntary Merged Lots Under RSA 674-39-aa
5. Request from Irene R. Lebel and Frances D. Lebel for Restoration of Involuntary Merged Lots Under RSA 674-39-aa
6. Applications for Sidewalk Cafes Providing Alcohol Service
 - a) Popovers on the Square
 - b) The District
 - c) RiRa
 - d) State Street Saloon
 - e) Surf Restaurant
7. Report Back Re: Public Service of New Hampshire Easement at Prescott Park
8. Report Back Re: Request of New Hampshire Department of Transportation for an Easement under the Scott Avenue Bridge in support of the Memorial Bridge Project
9. Report Back Re: Letter from Attorney Malcolm McNeill, representing Commerce Way, LLC, regarding Commerce Way Conditional Road Layout and Betterment Assessment
10. Report Back Re: Letter from David Mikolaities, Lieutenant Colonel, NH Army National Guard, regarding the Acquisition of a Portion of the Right of Way along Market Street and Site Improvements for Access to the National Guard Readiness Center on 803 McGee Drive
11. Report Back Re: Request of Barbara Devanna and Robert Cohen for an Access Easement over 55 Pine Street for property at 55 Meredith Way (previously identified as 55 Pine Street)

Informational Items

1. Events Listing
2. Installation of New Historic Markers
3. Budget Work Session Agenda

B. MAYOR SPEAR

1. Appointments to be Voted:
 - Reappointment of Kathleen Bergeron to Citywide Neighborhood Steering Committee
 - Reappointment of Ed DeValle to Recreation Board

C. COUNCILOR SMITH

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the April 12, 2012 meeting

D. COUNCILOR DWYER

1. *Middle School Update

E. COUNCILOR COVIELLO AND COUNCILOR DWYER

1. City Council Rule 23 – Committee Nomination

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT [AT 10:00PM OR EARLIER]

**KELLI L. BARNABY, CMC/CNHMC
CITY CLERK**

**Indicates Verbal Report*

INFORMATIONAL ITEMS

1. Notification that the Conservation Commission Minutes of March 14, 2012 meeting are available on the City's website for your review
2. Notification that the Planning Board Minutes of January 19, 2012 and March 15, 2012 meetings are available on the City's website for your review
3. Notification that the Site Review Technical Advisory Committee Minutes of April 3, 2012 meeting are available on the City's website for your review
4. Notification that the Zoning Board of Adjustment Minutes of January 17, 2012 and February 21, 2012 meetings are available on the City's website for your review.
5. Notification that the Zoning Board of Adjustment Amended Minutes of the October 18, 2011 meeting are available on the City's website for your review

NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.

The Council Chambers
City Hall
Portsmouth, New Hampshire

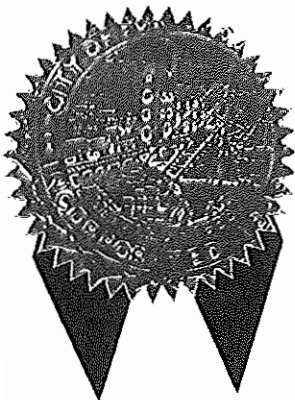
A Proclamation

- Whereas:** May is National Bike Month and bicycling is an integral part of Portsmouth's multi-modal transportation system; and
- Whereas:** Portsmouth is one of several municipalities participating in New Hampshire's 10th annual Bike/Walk to Work Day; and
- Whereas:** Last year, hundreds of commuters took to the streets of the Seacoast aboard their bikes or in their walking shoes and visited one of eight commuter breakfasts in the region; and
- Whereas:** This year, there will be 10 locations offering free breakfast to participants who also will be fitting a workout into a busy day, reducing their pollution footprint, and avoiding traffic jams; and
- Whereas:** The goals of Bike/Walk to Work Day are to promote bicycling and walking as safe ways to get to work, decrease traffic congestion, improve air quality, and raise public awareness of opportunities to improve bicycle and pedestrian facilities in the Seacoast; and
- Whereas:** If the average person biked or walked to work once every two weeks instead of driving, we could prevent the pollution of close to one billion gallons of gasoline from entering the atmosphere every year.

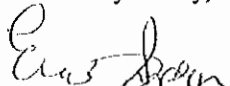
Now, therefore, I, Eric Spear, Mayor of the City of Portsmouth, on behalf of the members of the City Council and the citizens of Portsmouth, do hereby proclaim Friday, May 18, 2012, as

Bike/Walk to Work Day in Portsmouth

and encourage all citizens to celebrate by leaving their motor vehicles at home and making a healthy commute by walking or riding their bicycles.



Given with my hand and the
Seal of the City of Portsmouth,
on this 7th day of May, 2012.


Eric Spear, Mayor of Portsmouth

The Council Chambers
City Hall
Portsmouth, New Hampshire

A Proclamation

Whereas:

Congress and the President of the United States have designated May 15th as Peace Officers' Memorial Day and the week in which it falls as National Police Week; and

Whereas:

The members of the Portsmouth Police Department play an essential role in safeguarding the rights and freedoms of Portsmouth and the State of New Hampshire; and

Whereas:

It is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their Police Department; and

Whereas:

The members of our Police Department recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

Whereas:

The men and women of the Portsmouth Police Department unceasingly provide a vital public service.

Now, therefore, I, Eric Spear, Mayor of the City of Portsmouth, on behalf of the members of the City Council, do hereby call upon all citizens of Portsmouth and upon all patriotic, civic, and educational organizations to observe the week of May 13 to May 19, 2012, as

Police Week in Portsmouth

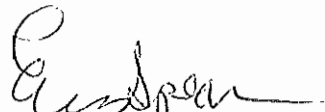
with appropriate ceremonies and observances in which all of our people may join in commemorating all law enforcement officers past and present who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

I further call upon all citizens of Portsmouth to observe May 15, 2012, as

Peace Officers' Memorial Day

in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community, or have become disabled in the performance of duty. Let us recognize and pay respect to the survivors of our fallen heroes by lowering all City, State and American flags in Portsmouth to half staff on Tuesday, May 15, 2012.

Given with my hand and the
Seal of the City of Portsmouth,
on this 7th day of May, 2012.



Eric Spear, Mayor of Portsmouth



CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, APRIL 2, 2012

PORTSMOUTH, NH
TIME: 7:00 PM [or thereafter]

At 6:15 p.m. an anticipated "Non-Meeting" with Counsel was held regarding Negotiations - RSA 91-A:2, I (b-c).

I. CALL TO ORDER [7:00PM or thereafter]

Mayor Spear called the meeting to order at 7:05 p.m.

II. ROLL CALL

Present: Mayor Spear, Councilors Coviello, Kennedy, Novelline Clayburgh, Lown, Dwyer, Smith and Thorsen

Absent: Assistant Mayor Lister

III. INVOCATION

Mayor Spear asked everyone to join in a moment of Silent Prayer.

IV. PLEDGE OF ALLEGIANCE

Councilor Kennedy led the Pledge of Allegiance to the Flag.

MAYOR'S AWARDS

1. 2012 Portsmouth High School Boys Varsity Basketball Team – Division II State Champions

Mayor Spear presented Mayor's Awards and gifts to the Portsmouth High School Boys Varsity Basketball Team in recognition of being the 2012 Division II State Champions.

Coach Mulvey thanked Mayor Spear and the City Council for their support throughout the year and said it was an honor for him to coach this team.

V. ACCEPTANCE OF MINUTES – MARCH 19, 2012

Councilor Coviello moved to approve and accept the minutes of the March 19, 2012 City Council meeting. Seconded by Councilor Kennedy and voted.

VI. PUBLIC COMMENT SESSION

James Boyle provided the City Council with a copy of an ordinance regarding residency for department heads. He stated he does not feel that Planning Director Taintor or Assistant City Attorney Woodland meet the requirements under residency and there should be an investigation into this matter.

Joann Lamoreaux spoke concerned with the sale of the senior center and said there needs to be funding set aside for a replacement of the services provided by the former senior center for the future needs of seniors in the community.

Jack Kelley spoke regarding the traffic and motorcycle noise in the Marcy and State Streets area. He said that the motorcycle noise needs to be mitigated and asked that Chief Ferland address the current bill in the legislature regarding this matter.

Ann Totsen agreed with the comments made by Ms. Lamoreaux.

Joseph Cunningham spoke to the need for the replacement of senior services in the community.

Dorothy Peterson spoke in support of the comments made by Ms. Lamoreaux and Mr. Cunningham.

Paul Peterson spoke to the need to provide services for the senior citizens in the community. He said there needs to be a commitment by the City Council to the seniors.

Alex Loucock spoke in support of the need for a replacement of the senior center. He said that there needs to be more communication between the City and the senior residents.

Councilor Coviello moved to suspend the rules in order to take up Item XII. C.1. – Elderly Services. Seconded by Councilor Smith and voted.

XII. C.1. Elderly Services

City Manager Bohenko reported that approximately \$125,000.00 has been set aside for transportation services throughout the budget for senior citizens. He stated over time, due to financial constraints, the Portsmouth Housing Authority could no longer afford the senior center. The Wentworth Home through Wentworth Connections came forward to provide services by the Portsmouth Housing Authority at a cost of approximately \$100,000.00.

City Attorney Sullivan reported that the City has reviewed the documents from the transfer of property and there were no conditions in any documents for the continued services and programs of the center.

Councilor Novelline Clayburgh informed the Council that Bill Henson of The Wentworth Home is the Chair of the Senior Citizen Steering Committee. She reported that several meetings have been held on the services and programs provided. She further stated that the Committee is awaiting a financial report and that this is a large project but the Committee feels we can have a top rated program with services for the seacoast area.

Mayor Spear stated that communication is important and will continue as the process moves forward.

Councilor Smith asked City Manager Bohenko to review how the Portsmouth Housing Authority is different from the City. City Manager Bohenko stated that the Portsmouth Housing Authority is a separate entity and governed by State statute and the federal government. He advised the City Council that the City had no prior knowledge of the sale of the property on Parrott Avenue.

Councilor Kennedy expressed concern regarding funding for a senior program and the time line. She said the report was due on March 30th and has not been completed. She stated that the seniors need to know if the services will return and when.

City Manager Bohenko said everyone on the staff and City Council wants to see some type of activities for the seniors. He said he was surprised when he came to the City in 1997 that the Portsmouth Housing Authority ran the senior services. He stated that the senior center will be in the City but will be for regional participation. City Manager Bohenko further stated that the City will be part of the services now.

Councilor Kennedy asked if we could have a COAST or Trolley stop at Borthwick Avenue for seniors. City Manager Bohenko said he would look into that matter.

VII. PUBLIC HEARINGS

- A. **ORDINANCE AMENDMENT TO CHAPTER 6, ARTICLE XVI, SECTION 6.16 –
MAGAZINE SUBSCRIPTION SOLICITORS BY AMENDING SECTION 6.1604 –
LICENSE FEE – THE FEE FOR SUCH LICENSE SHALL BE DETERMINED ON
AN ANNUAL BASIS BY THE CITY DURING ITS BUDGET PROCESS**

Mayor Spear read the legal notice, declared the public hearing open and called for speakers. With no speakers, Mayor Spear declared the public hearing closed.

- B. ORDINANCE AMENDMENT TO CHAPTER 5, ARTICLE VIII, SECTION 5.8 – ALARM SYSTEMS MONITORED BY THE CITY - SECTION 5.802 BY REMOVING SERVICE CHARGE TO SERVICE FEE AND ADDING SUCH AMOUNTS AS MAY BE DETERMINED ON AN ANNUAL BASIS BY THE CITY DURING ITS BUDGET PROCESS. THE SERVICE FEE MAY BE GRADUATED TO INCREASE BASED UPON AN INCREASING NUMBER OF UNFOUNDED EMERGENCY CALLS. IN ADDITION, AMENDING SECTION 5.803 – PERMISSIBLE UNFOUNDED EMERGENCY CALLS BY REPLACING SERVICE CHARGE WITH SERVICE FEE AND SUB-SECTION A - REPLACING POLICE OFFICES WITH POLICE DEPARTMENT AND SUB-SECTION B – REPLACING FIRE OFFICIALS WITH FIRE DEPARTMENT

Mayor Spear read the legal notice, declared the public hearing open and called for speakers.

Police Chief Ferland provided a short report on this matter. He advised the City Council that there were 1,286 panic alarms last year with 121 for residential. He stated that the department collected \$32,300.00 in revenue from responding to alarms. Chief Ferland explained the scale of fees and after 3 or more calls the fee increases. He further reported that this fee was created because there was a business in 2002 that had their alarm sound every day and would not do what was necessary to correct it which caused a great deal of time by the department to respond each day to these false alarms.

With no speakers, Mayor Spear declared the public hearing closed.

- C. ORDINANCE AMENDMENT TO CHAPTER 6, ARTICLE VII – DOGS AND OTHER PETS, SECTION 6.708 LICENSE BY THE ADDITION OF THE FOLLOWING LANGUAGE – THE FEE FOR THIS LICENSE SHALL BE SET AT THE MAXIMUM AMOUNT PERMITTED BY STATE LAW

Mayor Spear read the legal notice, declared the public hearing open and called for speakers.

City Manager Bohenko stated that this would allow an additional \$1.00 to be charged for each dog license as permitted by State law. City Clerk Barnaby stated that the increase in fee would go into effect in 2013 to allow for advanced notification to the public.

With no speakers, Mayor Spear declared the public hearing closed.

VIII. APPROVAL OF GRANTS/DONATIONS

(There are no items under this section of the agenda)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Proposed Ordinance Amendment to Chapter 6, Article XVI, Section 6.16 – Magazine Subscription Solicitors by amending Section 6.1604 – License Fee – The fee for such license shall be determined on an annual basis by the City during its budget process

Councilor Lown moved to pass second reading and schedule third and final reading on the proposed Ordinance amendment, at the April 16, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

- B. Second reading of Proposed Ordinance Amendment to Chapter 5, Article VIII, Section 5.8 – Alarm Systems Monitored by the City – Section 5.802 by removing service charge to service fee and adding such amounts as may be determined on an annual basis by the City during its budget process. The service fee may be graduated to increase based upon an increasing number of unfounded emergency calls. In addition, amending Section 5.803 – Permissible Unfounded Emergency Calls by replacing service charge with service fee and sub-section A – replacing Police Offices with Police Department and sub-section B – replacing Fire Officials with Fire Department

Councilor Lown moved to pass second reading and schedule third and final reading on the proposed Ordinance amendment, at the April 16, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

- C. Second reading of Proposed Ordinance Amendment to Chapter 6, Article VII – Dogs and Other Pets, Section 6.708 License by the addition of the following language – The fee for this license shall be set at the maximum amount permitted by state law

Councilor Lown moved to pass second reading and schedule third and final reading on the proposed Ordinance amendment, at the April 16, 2012 City Council meeting. Seconded by Councilor Kennedy and voted.

- D. Third and final reading of Proposed Ordinance Amendment to Chapter 1, Article XIV, Section 1.14 – Municipal Fund Balance by the deletion of the terminology *Undesignated* throughout the Ordinance with the replacement of terminology **Unassigned**

Councilor Novelline Clayburgh moved to pass third and final reading on the proposed Fund Balance Ordinance. Seconded by Councilor Smith and voted.

Councilor Kennedy moved to suspend the rules in order to take up Item XII. C.2. – Exhaust Pipes for Motorcycles. Seconded by Councilor Smith and voted.

XII. C.2. Exhaust Pipes for Motorcycles

Councilor Kennedy asked Chief Ferland to speak to this matter. Chief Ferland said he receives many inquiries on motorcycles and the noise created. He explained the process used to take a decibel measurement for motorcycles. He also spoke to the current legislation in the State for what will be allowable decibel levels. Chief Ferland indicated that the seacoast Police Chief's are in favor of House Bill 1442 and spoke to the various organizations that are in support of the legislation as well. He recommended a letter of support be sent to the State prior to Thursday's hearing by the Portsmouth Legislative Delegation.

Councilor Kennedy moved to instruct City Manager Bohenko to send a letter to NH Senators in support of HB 1442 regarding exhaust pipes for motorcycles. Seconded by Councilor Lown and voted.

X. CONSENT AGENDA

Councilor Coviello moved to adopt the Consent Agenda. Seconded by Councilor Kennedy and voted.

- A. 2012 Omnibus Sidewalk Obstruction Renewals – Part II – See Attached Listing
(Anticipated action – move to refer to the City Manager with power)
- B. Letter from Heidi Roy, National Multiple Sclerosis Society, requesting permission to hold the 2012 Bike MS NH Seacoast Escape on Saturday, August 11, 2012
(Anticipated action – move to refer to the City Manager with power)
- C. Letter from Ken La Valley, American Foundation for Suicide Prevention, requesting permission to hold the Out of the Darkness Walk on Saturday, September 29, 2012
(Anticipated action – move to refer to the City Manager with power)
- D. Request for Approval of Pole License to install/replace 5 poles located on Plains Avenue
(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)
- E. *Acceptance of Donations to the Portsmouth Police Department
 - Donation from former Commissioner William Mortimer in memory of retired Police Captain Robert Roth - \$100.00
 - Donation from Mr. Frank Mastan to the Police Honor Guard - \$50.00***(Anticipated action – move to approve and accept the donations to the Portsmouth Police Department, as listed)***

- F. Request for a License from Carrie Penna, owner of Lululemon Athletica on State Street for property located at 60 State Street to install a projecting sign on an existing bracket (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Carrie Penna, owner of Lululemon Athletica on State Street to install a projecting sign at 60 State Street and, further, authorize the City Manager to execute a License Agreement for this request***)

Planning Director's Stipulations:

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

XI. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- A. Letter from Attorney James Noucas, Jr., representing a property owner of the General Porter Condominiums requesting to construct a garage along the rear boundary line of property located at 32 Livermore Street abutting a cemetery

Councilor Coveillo moved to refer to the Planning Board for report back. Seconded by Councilor Kennedy and voted.

- B. Letter from Attorney James Noucas, Jr., representing Jim and Laurie Teetzel of Wilcox Industries, pledging \$25,000.00 towards the construction of a new tribute to American Veterans in Memorial Park for The Memorial Bridge

Councilor Coviello moved to refer to Art-Speak for report back. Seconded by Councilor Novelline Clayburgh and voted.

- C. Letter from Carl Diemer, Recreation Board Chair, requesting to name the new Youth Recreational Facility as the "Connie Bean Recreation Center"

City Manager Bohenko stated that in accordance with City Council Rules and Orders the City Council would have a Work Session on the naming of a facility however, City Attorney Sullivan has indicated that the Council could suspend the rules by a two-thirds vote to take action this evening.

Councilor Coviello moved to suspend the rules and act on the Recreation Board's Request. Seconded by Councilor Smith and voted.

Councilor Coviello moved to approve the naming of the Youth Recreational Facility as the *Connie Bean Recreation Center*. Seconded by Councilor Novelline Clayburgh.

Councilor Dwyer asked if discussion was held to name the Recreation Facility the Connie Bean Gym. Councilor Novelline Clayburgh said that she was not on the Recreation Board when the full discussion took place on this matter. Councilor Lown said the Recreation Board voted unanimously to approve the name presented.

Motion passed.

- D. Letter from David Mikolaities, Lieutenant Colonel, NH Army National Guard, regarding the acquisition of a portion of the Right of Way along Market Street and site improvements for access to the National Guard Readiness Center on 803 McGee Drive

Councilor Coviello moved to refer to the Planning Board for report back. Seconded by Councilor Novelline Clayburgh and voted.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Report Back Re: Request of David Choate, III, Grubb & Ellis Northern New England, for an Amendment to Section 10.836.20 of the Zoning Ordinance regarding Drive-through Lanes for Retail/Commercial Buildings Outside of the Central Business District

City Manager Bohenko said at the February 6, 2012 City Council meeting this request was referred to the Planning Board for report back. The Planning Board voted to make recommended changes to the Zoning Ordinance. City Manager Bohenko requested that the Council accept the recommendation and bring the proposed ordinance back for first reading at the April 16, 2012 City Council meeting.

Councilor Smith moved to accept the Planning Board's recommendation, and further, authorize the City Manager to bring back for first reading the proposed amendment at the April 16, 2012 City Council meeting. Seconded by Councilor Dwyer and voted.

2. Request for a Parking Lot Agreement Re: Middle Street Baptist Church

City Manager Bohenko recommended the Council approve a one year extension to the agreement, as presented.

Councilor Novelline Clayburgh moved to approve a one-year License Agreement between the Middle Street Baptist Church and the City of Portsmouth, as presented, and further, authorize the City Manager to execute this Agreement. Seconded by Councilor Smith and voted.

3. Report Back Re: Outdoor Boot Camp Proposal at Peirce Island

City Manager Bohenko said this matter was referred to the Recreation Board and Peirce Island Committee for report back. He reported that the Recreation Board approved the request and the Peirce Island Committee denied the request.

Councilor Kennedy expressed concerns because the individuals running the program are not residents.

City Manager Bohenko stated that the City Council can either approve or deny the request.

Councilor Coviello moved to accept the letter and send a letter to the applicant denying the request. Seconded by Councilor Kennedy.

Councilor Dwyer said that this is an unfortunate decision to deny the request. She said there are many individuals from Maine that come to Peirce Island and let their dogs free and they're not residents.

Councilor Coviello said he sees the area as recreational. He stated if this was a free service he would support the request.

Councilor Lown said he does not feel this would deny someone rights to use the Island. He does feel that there would be minimum impact and until there is a problem the request should be granted.

Councilor Coviello suggested allowing this as a pilot program.

Councilor Kennedy said speaking as a member of the Peirce Island Committee many requests have been considered. She reported the Committee has said no to private organizations use of the Island and feels it needs to be kept an open environment. She stated that this may open a Pandora's box.

Councilor Smith asked if the organization has suggested making a donation to Peirce Island. City Manager Bohenko said that conversation has not taken place with them. Councilor Smith said he sees both sides of this matter. He would like to have a one year pilot program.

Councilor Thorsen said he would oppose the motion and feels the Council should allow this request for a six week trial period.

On a roll call vote 2-6, motion to accept the letter and deny request with a letter to the applicant of the Council's decision failed to pass. Councilors Kennedy and Novelline Clayburgh voted in favor. Councilors Coviello, Lown, Dwyer, Smith, Thorsen and Mayor Spear voted opposed.

Councilor Lown moved to approve the request for a trial period of 6 weeks with a report back to the City Council. Seconded by Councilor Dwyer.

Councilor Smith said he would like to encourage donations be made to the park.

Councilor Novelline Clayburgh said she would not support the motion and feels the Council should support the decision of the Peirce Island Committee.

On a roll call 6-2, voted to approve the request for a trial period of 6 weeks with a report back to the City Council. Councilors Coviello, Lown, Dwyer, Smith, Thorsen and Mayor Spear voted in favor. Councilors Kennedy and Novelline Clayburgh voted opposed.

4. Request by Strawberry Banke Museum for Zoning Ordinance Amendment relative to the Definition of "Museum"

Councilor Coviello moved to accept the Planning Board's recommendation, and further, authorize the City Manager to bring back for first reading the proposed Zoning Ordinance amendment at its April 16, 2012 City Council meeting. Seconded by Councilor Smith and voted.

5. Request of PSNH for Easement for Placement of Service at Prescott Park

City Manager Bohenko reported that PSNH needs an easement for the installation of improvements and new transformer pad. He indicated that the cost will be paid by the Prescott Park Arts Festival.

Councilor Lown moved to refer the PSNH easement request to the Planning Board for a report back. Seconded by Councilor Novelline Clayburgh and voted.

City Manager Bohenko asked City Attorney Sullivan to speak to the comments made by Mr. Boyle during the Public Comment Session earlier.

City Attorney Sullivan stated that the ordinance Mr. Boyle referred to was found unconstitutional in 1986. He said the court found that it protects an individuals' right to live where they choose.

Councilor Dwyer thanked City Attorney Sullivan for explaining that to the City Council and the public. She asked if the Council should clean up ordinances that are unconstitutional and if the ordinance should be removed. City Attorney Sullivan said we should remove the ordinance and it would require three readings of the Council to do so.

Councilor Lown said there are many ordinances that should be removed and suggested a special committee be appointed to review the ordinances.

Councilor Smith suggested making changes to the ordinances in an omnibus fashion.

City Manager Bohenko said he would like to meet with Councilor Lown on his list of proposed ordinance changes.

Councilor Smith asked about Mr. Boyle's comments on Assistant City Attorney Woodland. City Attorney Sullivan stated that Assistant City Attorney Woodland is an employee like he is and paid from the budget.

B. MAYOR SPEAR

1. *Discussion Re: Context Sensitive Redevelopment

Mayor Spear spoke to the joint meeting of the City Council, Planning Board, Economic Development Commission and the Historic District Commission. He said he would like a free discussion with no action to receive feed back. Councilor Kennedy said she does not feel comfortable discussing it right now. She feels we need information from all the groups in order to have a discussion. Mayor Spear said this is more to allow the flow of discussion.

Councilor Dwyer said it was a great session and liked breaking into groups for discussion purposes. She stated whenever you have parallel process this is a concern that you could create more hoops rather than less.

Councilor Kennedy said that we were missing the Zoning Board of Adjustment members and felt they should be part of the process.

Mayor Spear passed the gavel to Councilor Coviello.

Mayor Spear said he was impressed with the Planning Department staff. He said Planning Director Taintor provided a thoughtful presentation and further stated that Deputy City Manager Hayden and Planning Director Taintor have been thinking in parallel on how to make the City a better place in the zoning process.

Councilor Coviello returned the gavel to Mayor Spear.

2. Appointments to be Considered:
 - Reappointment of Rich DiPentima to the Conservation Commission
 - Reappointment of Peter Vandermark to the Conservation Commission
 - Reappointment of Laura Montville to the Portsmouth Economic Development Loan Program (PEDLP)
 - Reappointment of Steve Berg to the Portsmouth Economic Development Loan Program (PEDLP)
 - Appointment of Robert Cook to the Blue Ribbon Committee on Sustainable Practices
 - Appointment of Shelley Saunders to the Parking & Traffic Safety Committee

The City Council considered the above referenced appointments which will be voted on at the April 16, 2012 City Council meeting.

3. Appointments to be Voted:
 - Appointment of David Rheume as a regular member to the Zoning Board of Adjustment
 - Appointment of David Rheume as a regular member to the Building Code of Appeals filling the unexpired term of Chester Keefe
 - Reappointment of MaryAnn Blanchard to the Conservation Commission

Councilor Lown moved to appoint David Rheume as a regular member to the Zoning Board of Adjustment until December 1, 2016. Seconded by Councilor Coviello and voted.

Councilor Coviello moved to appoint David Rheume as a regular member to the Building Code Board of Appeals until July 1, 2012. Seconded by Councilor Lown and voted. Mr. Rheume is filling the unexpired term of Chester Keefe.

Councilor Smith moved to reappoint MaryAnn Blanchard to the Conservation Commission until April 1, 2015. Seconded by Councilor Coviello and voted.

4. Appointment of Councilor Anthony Coviello to the Public Access Financial Advisory Committee

City Manager Bohenko reported that this Committee meets once a year to review the budget and it is required by the trust.

Councilor Smith moved to appoint Councilor Anthony Coviello to the Public Access Financial Advisory Committee. Seconded by Councilor Dwyer and voted. Councilor Thorsen abstained.

Councilor Novelline Clayburgh said that there is another idea for a person that was recommended and feels that discussion should be held in a non-public session. City Attorney Sullivan said discussions can be done in non-public but the person that is being discussed could ask for the discussion to take place in public.

Mayor Spear said he would have a non-public session for the discussion.

D. COUNCILOR LOWN

1. Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section E entitled Compliance with State and Federal Law

Councilor Lown said this is to amend the Taxi Ordinance and said it is self evident that the Commission wants the owners to comply with State and Federal Law. He further stated that this gives the Commission power to grant and deny medallions that are not in compliance.

Councilor Kennedy moved to establish first reading at the April 16, 2012 City Council meeting. Seconded by Councilor Smith and voted.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

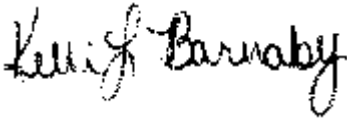
Councilor Coviello thanked the NH Astrological Society for donating a telescope to the Library and they have now donated a second telescope. He said they're located downtown on Saturday's and allow people to look at the planets.

Councilor Coviello said the discussion of CCRC will not go away and it was never personal to him but he has employees that are dealing with this matter. He suggested holding a work session on this matter. He said he wants to give seniors a place to live to stay in the City. He said many people are dealing with this and the community has a void by not having this available to senior citizens.

Councilor Novelline Clayburgh said the Rock Street neighborhood would like the issue of closing the park in the evening brought forward to the City Council for discussion. City Manager Bohenko said the City Council had this conversation in the past about all parks and the City Council wanted the Police Department to go back and look at neighborhoods. City Manager Bohenko said he could bring this matter back at the April 16, 2012 City Council meeting.

XIV. ADJOURNMENT [AT 10:00PM OR EARLIER]

At 9:00 p.m., Councilor Coviello moved to adjourn. Seconded by Councilor Novelline Clayburgh and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, CMC/CNHMC
City Clerk

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, APRIL 16, 2012

PORTSMOUTH, NH
TIME: 7:00 PM [or thereafter]

At 6:15 p.m. an anticipated "Non-Meeting" with Counsel - RSA 91-A:2, I (b-c).

I. CALL TO ORDER [7:00PM or thereafter]

Mayor Spear called the meeting to order at 7:15 p.m.

II. ROLL CALL

Present: Mayor Spear, Assistant Mayor Lister, Councilors Coviello, Kennedy, Novelline Clayburgh, Lown, Dwyer and Smith

Absent: Councilor Thorsen

III. INVOCATION

Mayor Spear asked everyone to join in a moment of Silent Prayer in memory of the Town of Greenland Police Chief Michael Maloney who was killed in the line of duty. Mayor Spear said on behalf of the City Council, those suffering from the tragic loss of Chief Maloney are in their thoughts and prayers.

IV. PLEDGE OF ALLEGIANCE

Councilor Novelline Clayburgh led the Pledge of Allegiance to the Flag.

PROCLAMATIONS

1. Arbor Day

Councilor Lown read the Proclamation declaring Friday, April 27, 2012, as Arbor Day in the City of Portsmouth.

2. Earth Day 2012

Councilor Dwyer read the Proclamation declaring April 22, 2012, as Earth Day and encouraged residents to participate in Portsmouth's Sustainability Day on May 12, 2012.

V. ACCEPTANCE OF MINUTES

(There are no minutes for acceptance this evening)

VI. PUBLIC COMMENT SESSION

There were no speakers for the Public Comment Session this evening.

VI. APPROVAL OF GRANTS/DONATIONS

A. Acceptance of Port Security Analysis Grant

Fire Chief LeClaire reported to the Council we would be serving as the fiscal agent for this grant. He said this grant is relative to Home Land Security and the Port. He advised the City Council that all information will be gathered and contained in one document.

Councilor Smith moved to approve and accept the Port Security Analysis Grant. Seconded by Assistant Mayor Lister and voted.

VII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

A. First reading of Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section E entitled Compliance with State and Federal Law

Councilor Lown moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7th City Council meeting. Seconded by Councilor Smith and voted.

B. First reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance regarding Accessory Drive-through Facilities.

Councilor Smith moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7th City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

C. First reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 – Terms of General Applicability relative to the Definition of

Councilor Smith moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7th City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

D. Third and final reading of Proposed Ordinance Amendment to Chapter 6, Article XVI, Section 6.16 – Magazine Subscription Solicitors by amending Section 6.1604 – License Fee

Councilor Coviello moved to pass third and final reading on the proposed Ordinance amendment. Seconded by Councilor Smith and voted.

- E. Third and final reading of Proposed Ordinance Amendment to Chapter 5, Article VIII, Section 5.8 – Alarm Systems Monitored by the City by amending Section 5.802: Service Fee and Section 5.803: Permissible Unfounded Emergency Calls

Councilor Smith moved to pass third and final reading on the proposed Ordinance amendment. Seconded by Councilor Novelline Clayburgh and voted.

- F. Third and final Reading of Proposed Ordinance Amendment to Chapter 6, Article VII, Section 6.7 – Dogs and Other Pets by amending Section 6.708: License

Councilor Coviello moved to pass third and final reading on the proposed Ordinance amendment. Seconded by Councilor Novelline Clayburgh and voted.

IX. CONSENT AGENDA

Councilor Novelline Clayburgh moved to adopt the Consent Agenda. Seconded by Assistant Mayor Lister and voted.

- A. Request for approval of Pole License to install/replace one (1) pole located on Holiday Drive ***(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***
- B. Request for approval of Pole License to install/replace one (1) pole located on Jones Avenue ***(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***
- C. Request for approval of Pole License to install/replace eight (8) poles located on Marcy Street ***(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***
- D. Request for approval of Pole License to install/replace two (2) poles located on Woodbury Avenue ***(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***

- E. Request for Licenses from Keith Prince, owner of Rudi's Restaurant for property located at 20 High Street and 5 Congress Street for 2 projecting signs. ***(Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Keith Prince, owner of Rudi's Restaurant, for 2 projecting signs at property located at 20 High Street and 5 Congress Street and, further, authorize the City Manager to execute License Agreements for this request)***

Planning Director's Stipulations:

- ***The licenses shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting signs, for any reason, will be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Nicole LaPierre requesting Rock Street Park to be closed between the hours of 11 p.m. and 5:00 a.m.

Councilor Coviello moved to accept and place the letter on file. Seconded by Councilor Novelline Clayburgh.

City Attorney said an amendment to the ordinance would be necessary or the City Manager could set the time for the hours of operation of the park. He said there is significant support by the neighborhood to close the park in the evenings.

Councilor Dwyer stated that Police Chief Ferland and the neighborhood support this request. She feels this is a different situation and suggested creating a pilot program. She requested that the Council allow the City Manager to establish the hours for the park and that this not be extended to other parks.

City Manager Bohenko suggested referring the request to him and Police Chief Ferland for report back.

Councilor Smith said he would not support the motion. He would like to limit the hours but feels we need to have a report back from City Manager Bohenko.

Councilor Coviello withdrew his motion and Councilor Novelline Clayburgh withdrew her second to the motion.

Councilor Smith moved to refer to the City Manager for report back. Seconded by Councilor Kennedy.

Councilor Lown said that the property is owned by the taxpayers and he does not feel the motion is needed or accomplishes the request.

Councilor Smith said that this is a specific park and is unique. He said the report back is needed and maybe we should have an ordinance amendment with a public hearing.

Councilor Novelline Clayburgh said that the neighborhood wants to have the park included and we need to take that into consideration.

Councilor Kennedy and Assistant Mayor Lister said they support the motion.

Motion passed with Councilor Lown voting opposed.

- B. Letter from John Semprini, President of Sons of Italy, regarding Portsmouth Owned Building at 1 Plains Avenue

City Manager Bohenko stated he would like to work with Mr. Semprini on this matter and report back on the issue to the Council.

Councilor Kennedy moved to refer to the City Manager for report back. Seconded by Councilor Smith. Councilors Coviello and Novelline Clayburgh abstained from voting.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Proposed Adoption of the Portsmouth City Employees Local 1386 of the American Federation of State, County and Municipal Employees (AFSCME) Tentative Agreement

City Manager Bohenko announced that he is pleased to bring the AFSCME Agreement to the City Council for approval.

Human Resources Director Fogarty reviewed the specific items contained within the Agreement that changed as well as reported that the Agreement meets the guidelines established by the City Council. She further stated that the Agreement would expire on June 30, 2014. Some of the items she reviewed with the Council were the 10-year rolling cola, insurance co-pay and all overtime requirements have been met.

Councilor Kennedy thanked the employees for working with the City Council on this matter.

Councilor Smith moved to approve the Agreement between the Portsmouth City Employees Local 1386 of the American Federation of State, County and Municipal Employees (AFSCME) and the City of Portsmouth to expire June 30, 2014. Seconded by Assistant Mayor Lister.

Councilor Dwyer said that she would be abstaining from voting on this matter.

Assistant Mayor Lister thanked the employees for meeting the guidelines of the Council on this contract.

Councilor Lown said that this is a good contract and recommended approval by the Council.

Councilor Smith thanked the employees for their hard work on this contract and the process. He also thanked the employees for their hard work for the City.

Councilor Novelline Clayburgh thanked the employees for their hard work and dedication to the City of Portsmouth.

Councilor Coviello spoke in support of the changes in work hours contained in the Agreement.

Mayor Spear passed the gavel to Assistant Mayor Lister.

Mayor Spear said that this issue covers a large area of services and the employees are hard working and knowledgeable at their positions.

Assistant Mayor Lister returned the gavel to Mayor Spear.

Motion passed with Councilor Dwyer abstaining from the vote.

2. Report Back Re: Request of Northern Tier Real Estate Acquisition and Development, LLC, for Property Located at 172 Hanover Street to Remove the Glass Atrium on the Vaughan Mall Side of the Property

City Manager Bohenko reported that The Page Restaurant would like to remove the atrium which is partially on City property on the Vaughan Mall side of the building. He said if the atrium is removed, alcohol service would not be allowed to that area without City Council approval.

Councilor Smith moved to approve the request to remove the atrium subject to the property owner securing all necessary municipal approvals for its replacement prior to its removal. Seconded by Councilor Novelline Clayburgh.

Councilor Lown asked if the bond was still in place from 30 years prior. City Attorney Sullivan said he has not heard of a bond. City Manager Bohenko said we would research the files for a bond.

Councilor Dwyer said she understands the reason for the work but don't we want that atrium removed whether we approve another use for it. City Attorney Sullivan said once the atrium is gone we could have a blue tarp for instance placed on the building with a hole in the side.

Motion passed.

3. Modification of Consent Decree

Assistant City Attorney Woodland informed the City Council that this would be a modification to the existing Consent Decree among the City, the Environmental Protection Agency and the New Hampshire Department of Environmental Services. She reported that the Modification reflects a compliance date that is about 5 months longer than that initially approved by the City Council at its November 10, 2012 meeting. She stated that the May 1, 2017 date more accurately reflects the time needed to permit, fund and bid this significant wastewater upgrade project as well as the time needed to start-up a biological process.

Assistant City Attorney Woodland informed the City Council that current version of the Consent Decree in the Council packet is not the correct version. Paragraph g currently reads as follows:

- g. By June 30, 2012, the City shall complete pilot testing of potential treatment technologies for achieving secondary treatment, including, but not necessarily limited to: Biologically Aerated Filters (BAF), BioMag, Moving Bed Biofilm Reactors (MBBR) w/**Ballested Settlement**, and **Membrane Biological Reactor (MBR)**. By July 1, 2012, the City shall complete a data summary relative to the pilot testing.

*Items that are in **bold** have been removed from paragraph g and replaced with new language listed below.

Assistant City Attorney Woodland read into the record the correct language for paragraph g as follows:

- g. By June 30, 2012, the City shall complete pilot testing of potential treatment technologies for achieving secondary treatment, including, but not necessarily limited to: Biologically Aerated Filters (BAF), BioMag, Moving Bed Biofilm Reactors (MBBR) w/Dissolved Air Flotation (DAF), and Conventional Activated Sludge with BioMag. By July 30, 2012, the City shall complete a data summary relative to the pilot testing.*

Assistant City Attorney Woodland apologized to the City Council for any confusion this may have caused.

Councilor Coviello moved to approve the Consent Decree Modification representing the additional five months to the schedule, as presented. Seconded by Councilor Novelline Clayburgh and voted.

City Manager Bohenko announced that the City Council will be holding the Public Hearing on the Budget Wednesday, April 18, 2012 at 7:00 p.m. in the Eileen Dondero Foley Council Chambers.

Councilor Smith informed the City Council and City Manager Bohenko that he will not be in attendance on Wednesday, April 18, 2012 due to a scheduling conflict but he would watch the meeting.

B. MAYOR SPEAR

1. Appointments to be Considered:
 - Reappointment of Kathleen Bergeron to Citywide Neighborhood Steering Committee
 - Reappointment of John Leith to Portsmouth Housing Authority
 - Reappointment of Ed DelValle to Recreation Board

The City Council considered the appointments which will be voted on at the May 7, 2012 City Council meeting.

2. Appointments to be Voted:
 - Reappointment of Rich DiPentima to the Conservation Commission
 - Reappointment of Peter Vandermark to the Conservation Commission
 - Reappointment of Laura Montville to the Portsmouth Economic Development Loan Program (PEDLP)
 - Reappointment of Steve Berg to the Portsmouth Economic Development Loan Program (PEDLP)
 - Appointment of Robert Cook to the Blue Ribbon Committee on Sustainable Practices
 - Appointment of Shelley Saunders to the Parking & Traffic Safety Committee

Councilor Dwyer moved to reappoint Rich DiPentima to the Conservation Commission until April 1, 2015. Seconded by Councilor Kennedy and voted.

Councilor Dwyer moved to reappoint Peter Vandermark to the Conservation Commission until April 1, 2015. Seconded by Councilor Novelline Clayburgh and voted.

Councilor Kennedy moved to reappoint Laura Montville to the Portsmouth Economic Development Loan Program (PEDLP) until April 16, 2015. Seconded by Councilor Novelline Clayburgh and voted.

Councilor Kennedy moved to reappoint Steven Berg to the Portsmouth Economic Development Loan Program (PEDLP) until April 16, 2015. Seconded by Councilor Coviello and voted.

Councilor Kennedy moved to appoint Robert Cook to the Blue Ribbon Committee on Sustainable Practices. Seconded by Councilor Coviello and voted.

Councilor Coviello moved to appoint Shelley Saunders to the Parking Traffic & Safety Committee. Seconded by Councilor Lown.

Councilor Smith said he would not support the candidate because the process of Rule 23 was not followed.

Councilor Kennedy said she agrees with Councilor Smith and Rule 23 should be followed with appointments.

City Attorney Sullivan reviewed Rule 23 with the City Council.

Assistant Mayor Lister said the person stated that she would like to get more involved in the community and he would like to see her appointed to another committee.

Councilor Lown said there are two other people that want to serve on this committee. He said that it was a mistake for the City Council to amend Rule 23 and further stated that an ordinance trumps a rule. The ordinance says that the Mayor brings the names forward for appointment. Councilor Lown said that Mayor Spear interviewed the person and feels that she is qualified to serve on the committee. He stated that he would support the ordinance and the recommendation of the Mayor.

Councilor Dwyer said it is a simple procedure to make the ordinance work or the rule work. She stated that she has a problem with the Council not following their own process.

Discussion followed among the City Council.

Mayor Spear passed the gavel to Assistant Mayor Lister.

Mayor Spear said that there are only 4 residents on the Parking Traffic & Safety Committee. He stated when considering the appointment he looks at what is the best person and how that person will fit the makeup of the committee currently. Mayor Spear said on the Parking Traffic & Safety Committee it is appropriate to have a mother of a school aged child on the committee and the committee needs geographic diversity and this individual lives in an area of the City that is not represented. He said some appointments we look for technical skills, other times you look at other experiences and this particular committee has a great deal of staff members serving that have the technical skills and he looked for other attributes for the appointment. In addition, Mayor Spear advised the City Council that he interviewed multiple applicants but he felt that Ms. Saunders fit the bill. He said he would continue to look for those skills moving forward.

Assistant Mayor Lister returned the gavel to Mayor Spear.

On a roll call vote 3-5, motion to appoint Shelley Saunders to the Parking Traffic & Safety Committee failed to pass. Councilors Coviello, Lown and Mayor Spear voted in favor. Assistant Mayor Lister, Councilors Kennedy, Novelline Clayburgh, Dwyer and Smith voted opposed.

Further discussion followed on Rule 23 and how to proceed in the future.

C. COUNCILOR NOVELLINE CLAYBURGH

1. *Update on Senior Citizens Programs

Councilor Novelline Clayburgh provided an update on the senior citizens program. She stated that the steering committee developed 6 dimensions of wellness which are as follows:

- Exercise
- Emotional
- Spiritual
- Social
- Vocational
- Intellectual

Councilor Novelline Clayburgh further reported that an organizational chart is being constructed at this time and in the next month or two the committee would develop the final chart.

Councilor Kennedy asked about the time frame for when the programs would begin.

City Manager Bohenko said there is a commitment but not officially by the Mark Wentworth Home for money from the sale of the Parrott Avenue property. He said those funds would go for improvements and an addition to the Community Campus. He further stated that we need to also look at the transportation end of things and support that as well.

Councilor Novelline Clayburgh said that we do not have any answers for a time frame at this time.

Councilor Dwyer said we need to look at housing and Medicare for seniors as well. She said the Council needs to know what housing options are currently available.

D. COUNCILOR DWYER

1. *Update on Middle School

Councilor Dwyer provided an update on the Middle School project. She reported that the windows are being installed and that Principal Stokel is working on a plan for packing the classrooms. Councilor Dwyer announced two upcoming events.

- April 27th – Dedication of the Alumni-Wentworth Field at 4:00 p.m.
- May 17th – Informational Night for parents and students of the Middle School at 6:00 p.m.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Kennedy announced that the Peirce Island Committee will be holding a fundraising event on April 24th at Flat Bread Pizza from 5:00 p.m. – 7:00 p.m.

Assistant Mayor Lister requested that a letter be sent to the family of Michael Maloney, Greenland Police Chief who was tragically killed in the line of duty on Thursday, April 12, 2012 with the City Council's condolences. He also requested that each member of the City Council sign the letter.

The City Council agreed with the request of Assistant Mayor Lister and expressed their sympathies to the Town of Greenland and the family of Chief Maloney.

Councilor Novelline Clayburgh recognized Portsmouth Regional Hospital, their staff and Dr. Heller for their work with this tragic event.

XIII. ADJOURNMENT [AT 10:00PM OR EARLIER]

At 8:40 p.m., Councilor Coviello moved to adjourn. Seconded by Councilor Kennedy and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, CMC/CNHMC
City Clerk

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, May 7, 2012 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH, on a Proposed Ordinance amending Chapter 7, Article II, Section 7.229 of the Taxi Ordinance – General Provisions by a new Sub-section E entitled Compliance with State and Federal Law. The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

KELLI L. BARNABY, CMC/CNHMC
CITY CLERK

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, May 7, 2012 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH, on a Proposed Ordinance amending Chapter 7, Article II, Section 7.229 of the Taxi Ordinance – General Provisions by a new Sub-section E entitled Compliance with State and Federal Law. The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

KELLI L. BARNABY, CMC/CNHMC
CITY CLERK

#12517

11P4/25

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 7, Article II, Section 7.229 – **GENERAL PROVISIONS** of the Ordinances of the City of Portsmouth which shall read as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

Section 7.229: GENERAL PROVISIONS

E. COMPLIANCE WITH STATE AND FEDERAL LAW

Every owner and holder of a taxi medallion shall operate at all times in compliance with all applicable state and federal law, including but not limited to provisions relating to the proper designation of employees as compared to independent contractors, worker's compensation, federal income tax withholding, and social security. The business records of each owner or medallion holder demonstrating compliance with this provision shall be made available on demand for review by City officials engaged in the enforcement of this ordinance.

The City Clerk shall properly alphabetize and/or re-number the ordinance as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

Eric Spear, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, May 7, 2012 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH, on a Proposed Ordinance amending:

1. Chapter 10, Article 4, Section 10.440 of the Zoning Ordinance – Table of Uses – Residential, Mixed Residential, Business and Industrial Districts by creating Performance Standards applicable to Drive-through Facilities, and
2. Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance regarding Accessory Drive-through Uses by changing type of approval required from a Special Exception to a Conditional Use Permit

The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

KELLI L. BARNABY, CMC/CNHMC
CITY CLERK

Legal Notice

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, May 7, 2012 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH, on a Proposed Ordinance amending:

1. Chapter 10, Article 4, Section 10.440 of the Zoning Ordinance - Table of Uses - Residential, Mixed Residential, Business and Industrial Districts by creating Performance Standards applicable to Drive-through Facilities, and
2. Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance regarding Accessory Drive-through Uses by changing type of approval required from a Special Exception to a Conditional Use Permit.

The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

KELLI L. BARNABY, CMC/CNHMC
CITY CLERK

#12517

ITP4125

ORDINANCE #
 THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 10 – Zoning Ordinance, are hereby amended as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

(1) Amend Section 10.440, Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, as follows:

Use	GB	GW	B	WB	OR
19.40 Drive-through facility, as accessory use to a permitted principal use	S CU	S CU	S CU	N	S CU

(2) Amend Section 10.836, Accessory Drive-Through Uses, as follows:

~~10.836.20~~ ~~Size of Facilities~~

~~10.836.21~~ ~~No drive-through facility shall have more than two drive-through lanes.~~

~~10.836.22~~ ~~No drive-through facility shall have more than one drive-through lane for each 5,000 square feet of gross floor area of the principal use that it serves.~~

10.836.20 Performance Standards

10.836.21 A drive-through canopy shall not project more than 26 feet from the principal building and shall be consistent with the architectural style of the building.

10.836.22 Illuminated menu boards or other signs associated with the drive-through facility shall be shielded from public streets and residential properties.

10.836.30 Setbacks

10.836.31 All outdoor service facilities (including transaction windows, menu boards, speakers, etc.) shall be located a minimum of 100 feet from any residential zoning district, and 50 feet from any lot line.

10.836.32 All drive-through lanes, bypass lanes, and stacking lanes shall be located a minimum of 50 feet from any residential zoning district, and 30 feet from any lot line.

~~10.836.33 Menu boards shall be shielded from public streets and residential properties.~~

The City Clerk shall properly alphabetize and/or re-number the ordinance as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

Eric Spear, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

MEMORANDUM

RECEIVED

MAR 23 2012

CITY MANAGER
PORTSMOUTH, NH

TO: John P. Bohenko, City Manager

FROM: Rick Taintor, Planning Director *RT.*

DATE: March 23, 2012

RE: City Council Referral –
Request of David Choate, III, Grubb & Ellis Northern New England, for an amendment to Section 10.836.20 of the Zoning Ordinance regarding drive-through lanes for retail/commercial buildings outside of the Central Business District

The attached letter from David Choate was referred by the City Council to the Planning Board on February 6, 2012, for report back. Mr. Choate requests that the City consider amending the Zoning Ordinance with respect to the number of drive-through lanes allowed for a use. The Planning Board considered this request at its meeting on March 15, 2012, and voted to recommend the changes to the Zoning Ordinance outlined below.

Overview

Under current zoning, the number of drive-through lanes is based on the amount of floor area in the use served, and is capped at two drive-through facilities (windows, vacuum tubes, or ATMs) per use. These rules apply equally to financial institutions, pharmacies and food establishments. Mr. Choate has indicated that financial institutions typically have a smaller building footprint than pharmacies and food service establishments because their retail branches do not require much internal building space and, in turn, current banking industry models typically need two teller drive-through lanes and often prefer a separate ATM lane.

This referral to the Planning Board presented the Board with an opportunity to assess how to better manage the impacts of drive-throughs, while at the same time recognizing the particular economic development and business needs of financial institutions. The Zoning Ordinance changes recommended to the City Council by the Planning Board, combined with changes the Planning Board intends to make to its Site Plan Review Regulations, will accomplish the following:

1. Support the economic development needs of financial institutions by allowing one more drive-through lane (up to three) per financial institution, where a maximum of two drive-through lanes are currently allowed.
2. Streamline the permitting process for all drive-through facilities. Currently, applicants must obtain approvals from two boards for any drive-through land: they must first secure a special exception and possibly a variance from the Board of Adjustment, and then begin the site plan review process with the Planning Board. With the proposed changes, applicants will only need to obtain Planning Board approval for a drive-through facilities via a conditional use permit and site plan approval.

3. Provide increased protection for neighboring properties and residential neighborhoods with regard to noise, light and aesthetics by establishing standards for landscaping and screening of drive-through lanes.

Also, this will be applicable to all permitted uses, not just financial institutions, and will be a significant improvement over what is currently allowed under the City's zoning and land use regulations.

Background – Existing Zoning Ordinance Provisions

The Zoning Ordinance currently limits the number of drive-through lanes serving a single use in two ways, as follows:

10.836.20 Size of Facilities

10.836.21 No **drive-through facility** shall have more than two **drive-through lanes**.

10.836.22 No **drive-through facility** shall have more than one **drive-through lane** for each 5,000 square feet of **gross floor area** of the **principal use** that it serves.

"Drive-through facility" and "drive-through lane" are defined as follows:

Drive-through facility

A **building**, attached **structure** or portion thereof that provides products or services directly to a customer in a motor vehicle by means of a window or mechanical device.

Drive-through lane

A lane in which vehicles obtain service from transaction windows or devices at a **drive-through facility**.

Under the current standards, any use – for example, a bank, restaurant or pharmacy – would be allowed one drive-through lane for up to 5,000 sq. ft. of gross floor area and a second lane for up to 10,000 sq. ft. of gross floor area.

Requested Amendment

In his letter to the City Council, Mr. Choate stated that banks should be permitted at least three drive-through lanes regardless of the size of the bank. He also requested that the language of the ordinance be revised so that it is clear that the phrase "for each 5,000 square feet" is intended to mean "up to 5,000 square feet."

Analysis

Drive-through facilities may be classified into three categories based on use:

- Food service businesses such as restaurants and coffee shops generally include only one drive-through lane because of the need to deliver the product directly from a window in the building. These uses also raise the greatest concerns about traffic congestion and safety because their business tends to peak at certain times, including morning and evening rush hours, and therefore they tend to create longer queues of vehicles waiting for window service.
- Pharmacies may have more than one drive-through lane, but such uses typically contain at least 10,000 square feet of floor area and therefore meet the current requirement of no more than one drive-through lane per 5,000 square feet of floor area.
- Banks are able to support more than one drive-through lane because of the nature of the transactions: a teller is able to serve one customer through the window and additional customers using pneumatic (vacuum) tubes. Many banks also prefer to provide an additional lane for a drive-up ATM. Outside of downtowns and neighborhood business areas, branch banks tend to be smaller than 5,000 sq. ft. in area.

Based on the different requirements of these uses, it is possible to eliminate the floor area requirement altogether. It is important, however, to ensure that increasing the number of permitted drive-through lanes does not compromise the quality of the streetscape in terms of aesthetics and pedestrian comfort and safety. Therefore, it is recommended that any use incorporating multiple drive-through facilities be subject to specific standards and discretionary review by the Planning Board.

The Zoning Ordinance currently requires drive-through facilities to obtain a special exception from the Zoning Board of Adjustment but also requires that all drive-through facilities receive site plan approval by the Planning Board. Because the issues relating to drive-through uses are site issues (including aesthetics and traffic safety), it is appropriate to have the Planning Board responsible for the zoning permission as well as site plan review, which will allow for a more streamlined review process. Therefore, it is also recommended that the table of uses be amended to replace the special exception with a conditional use permit from the Planning Board.

Recommended Zoning Ordinance Amendments

At its meeting on March 15, 2012, the Planning Board voted unanimously to recommend the following changes in the Zoning Ordinance:

- (1) Amend Section 10.440, Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, as follows:

Use	GB	GW	B	WB	OR
19.40 Drive-through facility , as accessory use to a permitted principal use	§ CU	§ CU	§ CU	N	§ CU

(2) Amend Section 10.836, Accessory Drive-Through Uses, as follows:

~~10.836.20~~ **Size of Facilities**

~~10.836.21~~ No **drive-through facility** shall have more than two **drive-through lanes**.

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10.836.21 **A drive-through canopy shall not project more than 26 feet from the principal building and shall be consistent with the architectural style of the building.**

10.836.22 **Illuminated menu boards or other signs associated with the drive-through facility shall be shielded from public streets and residential properties.**

10.836.30 Setbacks

10.836.31 All outdoor service facilities (including transaction windows, menu boards, speakers, etc.) shall be located a minimum of 100 feet from any residential zoning district, and 50 feet from any **lot line**.

10.836.32 All **drive-through lanes**, **bypass lanes**, and **stacking lanes** shall be located a minimum of 50 feet from any residential zoning district, and 30 feet from any lot line.

~~10.836.33~~ Menu boards shall be shielded from public **streets** and residential properties.

Proposed Amendments to Site Plan Review Regulations

In addition to recommending the above amendments to the Zoning Ordinance, the Planning Board also voted to schedule a public hearing on amendments to the Site Plan Review Regulations to address screening of drive-through lanes and any other design and performance standards that may appear appropriate. An initial recommendation is to insert a new subsection 3.6.5 in the Site Plan Review Regulations as follows:

3.6.5 Screening

Drive-through lanes shall be screened from public view with a fieldstone wall, or comparable structure approved by the Planning Board, to a height of at least three feet above grade, and an additional dense landscaping screen to a height determined by the Planning Board. Such

screening shall be continuous along the entire length where there are two or more drive-through lanes.

The Site Plan Review Regulations are adopted by the Planning Board and do not require City Council action.



XI. D.

Grubb & Ellis|Northern New England
500 Market Street, Suite 9
Portsmouth, NH 03801

January 27, 2012

received
1/30/12

603.433.7100 main
603.431.0028 fax
www.grubbellisnne.com
Independently Owned and Operated

Honorable Mayor and City Council
City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Zoning Ordinance Section 10.836.20

Dear Mayor and City Council:

I would like to request that the Planning Board consider amending this section regarding drive-through lanes for retail/commercial buildings outside of the Central Business District. As currently worded, the section limits drive-throughs to a maximum of two lanes and each drive-through lane requires 5,000 square feet of gross floor area. This section of the ordinance is not realistic or appropriate for the following reasons:

1. Banks need at least 3 drive-through lanes (1 teller lane, 1 ATM lane and 1 bypass lane) for customer convenience and retail traffic flow.
2. Retail or commercial establishments that require more than 1 drive-through lane will usually not be 10,000 s.f. in size. Most will likely be under 5,000 s.f. and, although the Planning Director has interpreted this section to read "up to 5,000 s.f. of gross floor area is permitted one drive-through", the language in the ordinance is not clear in this regard.

Thank you for your consideration of this request and I look forward to further discussion on this issue with the Planning Board.

Sincerely yours,

GRUBB & ELLIS|NORTHERN NEW ENGLAND

David F. Choate, III

DFC/ps

G:\Files from Priscilla's Computer\David\Drive-through Ordinance Letter

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, May 7, 2012 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH, on a Proposed Ordinance amending Chapter 10, Article 15, Section 10.1530 – Terms of General Applicability relative to the Definition of Museum regarding Accessory Uses that are Incidental and Subordinate to the Primary Non-Profit Museum Use. The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

KELLI L. BARNABY, CMC/CNHMC
CITY CLERK

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KELLI L. BARNABY, CMC/CNHMC
CITY CLERK

#12517 11P 4/26

ORDINANCE #
THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 10 – Zoning Ordinance, Article 15, Section 10.1530 – Terms of General Applicability, are hereby amended by changing the definition of “museum” as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

Museum

A non-profit permanent institution, open to the public, which acquires, conserves, researches, exhibits, and interprets objects having scientific, historical or artistic value. Museums may include exhibit and display areas, libraries and research areas, administrative offices, areas for constructing exhibits, and storage areas for museum materials, artifacts and objects. Accessory uses may include retail sales (~~but not including the regular sale of objects collected or displayed~~), food services for museum visitors or others, manufacturing for museum purposes, and events such as craft demonstrations, receptions, and periodic celebrations, **provided that all such accessory uses are incidental and subordinate to the primary non-profit museum use.** ~~Museums include galleries for the display of works of art, but do not include commercial galleries for the sale of art work.~~

The City Clerk shall properly alphabetize and/or re-number the ordinance as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

Eric Spear, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

MEMORANDUM

TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director *RT*
DATE: March 27, 2012
RE: Request by Strawberry Banke Museum for Zoning Ordinance Amendment
Relative to the Definition of "Museum"

In the attached letter dated January 27, 2012, Lawrence J. Yerdon and Rodney D. Rowland of Strawberry Banke Museum request that the City consider amending the definition of "museum" in the Zoning Ordinance. Specifically, it is requested that the provision excluding "commercial galleries for the sale of art" be removed from the definition.

Background

The definition of "museum" drafted in 2009 was intended to allow more flexibility for lot area without opening the Mixed Residence Office (MRO) district to retail uses. However, it is now apparent that the definition revision created an unintentional restriction on activities at Strawberry Banke.

Prior to the enactment of the revised Zoning Ordinance in December 2009, the following use was allowed in the MRO district:

Non-profit museums on lots greater than two (2) acres with exhibits, display and/or programs and associated activities and accessory uses including periodic celebrations, receptions, retail sales, food services for museum visitors or others, manufacturing for museum purposes, craft demonstrations, library and scholarly research, administrative offices, and storage of museum materials, artifacts, and objects. In order for a commercial food service type use to be established pursuant to this section, that use must conform to additional requirements as set forth in Article III. *[Emphasis added.]*

The above provision was likely written with Strawberry Banke in mind, as evidenced by the requirement that a museum be on a lot greater than two acres.

When the revised Zoning Ordinance was drafted, the minimum lot area requirement was eliminated and a new definition of "museum" was included which was intended to clarify the difference between a non-profit museum and a commercial use. The definition of "museum" in the current Zoning Ordinance is as follows:

A non-profit permanent institution, open to the public, which acquires, conserves, researches, exhibits, and interprets objects having scientific, historical or artistic value. Museums may include exhibit and display areas,

libraries and research areas, administrative offices, areas for constructing exhibits, and storage areas for museum materials, artifacts and objects. Accessory uses may include retail sales (but not including the regular sale of objects collected or displayed), food services for museum visitors or others, manufacturing for museum purposes, and events such as craft demonstrations, receptions, and periodic celebrations. Museums include galleries for the display of works of art, but do not include commercial galleries for the sale of art work. [Emphasis added.]

The requested zoning amendment, to allow a museum to include a commercial art gallery as an accessory use, is consistent with the intent of the Zoning Ordinance and the City's support for the continuing vitality of Strawberry Banke.

Recommended Zoning Ordinance Amendment

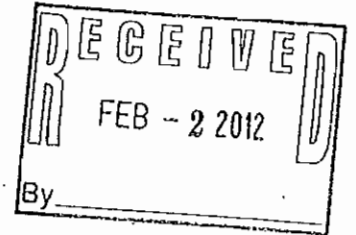
At its meeting on March 15, 2012, the Planning Board voted unanimously to recommend that the City Council amend the definition of "museum" as follows:

A non-profit permanent institution, open to the public, which acquires, conserves, researches, exhibits, and interprets objects having scientific, historical or artistic value. Museums may include exhibit and display areas, libraries and research areas, administrative offices, areas for constructing exhibits, and storage areas for museum materials, artifacts and objects. Accessory uses may include retail sales ~~(but not including the regular sale of objects collected or displayed)~~, food services for museum visitors or others, manufacturing for museum purposes, and events such as craft demonstrations, receptions, and periodic celebrations, **provided that all such accessory uses are incidental and subordinate to the primary non-profit museum use.** ~~Museums include galleries for the display of works of art, but do not include commercial galleries for the sale of art work.~~



January 27, 2012

Mr. John Ricci
Chair, Planning Board
1 Junkins Avenue
Portsmouth, NH 03801



Dear Mr. Ricci,

Strawbery Banke Museum would like to ask the Planning Board to consider a change to the definition of "museum" when it next brings forward changes to the Zoning Ordinance. Specifically, we would like the last sentence changed to remove the language prohibiting "commercial galleries for the sale of art."


The museum has, over the last few years, formed partnerships with galleries to help with seasonal shows in the Rowland Gallery. This gallery was built in 2008 and is the first space at SBM dedicated to changing art shows. Last year we featured a show titled "Painting Portsmouth" which featured over two dozens works of art (one was loaned to us from the City) from various owners and galleries across the northeast. This show would not have been possible without the help of The Banks Gallery and owner, Jamie LaFleur. His knowledge and connections were instrumental in identifying appropriate pieces of art and getting the owners to loan them for the show. The Banks Gallery maintains a space in one of our buildings that specializes in the sale of antique works of art.

Strawbery Banke needs to continue this type of cooperative effort to ensure the highest quality of exhibit show. We believe changing exhibits are crucial to seeing repeat patronage from local and regional visitors.

Thank you for your consideration of this request. Please call Rodney Rowland should you have any questions.

Sincerely,

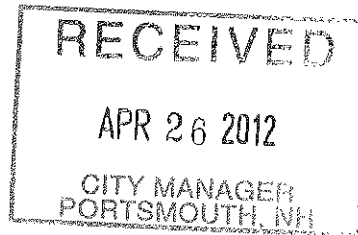

Lawrence J. Yerdon
President/CEO


Rodney D. Rowland
Director of Facilities

March of Dimes Foundation

New Hampshire Chapter
10 Ferry Street, Suite 419
Concord, NH 03301
Telephone (603) 228-0317
Fax (603) 573-9566
NH634@marchofdimes.com

marchofdimes.com
marchofdimes.com/newhampshire



April 25, 2012

Mayor Eric Spear and City Council
1 Junkins Avenue
Portsmouth, NH 03801

Dear Mayor Spear & City Council Members,

I am the Community Director for the March of Dimes New Hampshire Chapter and am writing to you to request your permission to host our 2012 Seacoast March for Babies in Portsmouth. The Seacoast March for Babies is a walk-a-thon event that raises money to support the mission of the March of Dimes, to improve the health of babies by preventing birth defects, premature birth, and infant mortality.

This event will be held at Little Harbor Elementary School in Portsmouth on Sunday, May 20, 2012 from 9:00am to 1:00pm, and we currently expect approximately 200 people to join us as we walk to improve the health of all babies.

I have enclosed a copy of our certificate of insurance for you to review and the walk directions/map. Thank you for your consideration of a permit for this event. If you have any questions or concerns please feel free to contact me at 603-579-9552 or mhollick@marchofdimes.com.

Again, thank you.

For Healthy Babies,

Mylene Hollick
Community Director

March for Babies Seacoast Walker Route

Start and Finish at Little Harbor Elementary School:

Leave school facing out, go left on Clough Dr.

Left on South St.

Right on Miller Ave (1A) Cross over Middle Street to Summer Street

Right on State St.

Right on Marcy St. pass Prescott Park

Right on Gates St.

Left on Pleasant St. (following Route 1B)

Stay straight until turns into Marcy St.

Right on New Castle Ave.

Left on South St.

Left on Haven Rd.

Left on Brackett Rd.

Right on Clough Dr. back to school

This trip is 3.005 miles



CERTIFICATE OF LIABILITY INSURANCE

DATE(MMDD/YYYY)
04/10/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York NY Office 199 Water Street New York NY 10038-3551 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (847) 953-5390	
	E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED March of Dimes Foundation 1275 Mamaroneck Avenue White Plains NY 10605 USA	INSURER A:	Great Northern Insurance Co. 20303
	INSURER B:	Federal Insurance Company 20281
	INSURER C:	Pacific Indemnity Co 20346
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 570045893191 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MMDD/YYYY)	POLICY EXP (MMDD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC			35812529D0	10/31/2011	10/31/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$1,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			7352-50-21	10/31/2011	10/31/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			79864742 SIR applies per policy terms & conditions	10/31/2011	10/31/2012	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N N/A	71737006	10/31/2011	10/31/2012	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 RE: Event Name: Seacost March for Babies, Event Location: Little Harbour School, Portsmouth, NH, Event Date: 05/20/2012. Little Harbour School is included as Additional Insured as required by written contract, but limited to the operations of the Insured under said contract, per the applicable endorsement with respect to the General Liability policy.

CERTIFICATE HOLDER March of Dimes-New Hampshire Chapter Attn: Karen Dennis 10 Ferry Street, Suite 419 Concord NH 03301 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

Holder Identifier :

Certificate No : 570045893191



4-17-012

CAPT. MURPHY
PAUL T.
MARK H.
MIKE R
YOUNG YOUNG

DEAR, WONDERFUL, MEN;
THANK YOU FOR THE SPECIAL CARE
I HAD FROM YOU ON MONDAY.
HOW LUCKY WE IN PORTSMOUTH ARE
TO HAVE YOU. YOU ARE THE BEST
OF THE BEST.

Patricia MacNeil
The Cottage #104

**OFFICE OF THE CITY CLERK
CITY OF PORTSMOUTH, N.H.**

Memo

**Kelli L. Barnaby, CMC/CNHMC
City Clerk
1 Junkins Avenue
Portsmouth, NH 03801
603-610-7207
Fax: 603-427-1579
Klbarnaby@cityofportsmouth.com**

To: Mayor Eric Spear and City Council

From: Kelli L. Barnaby, City Clerk

Date: May 7, 2012

Re: (3rd) 2012 Omnibus Sidewalk Obstruction Renewals

Please find attached a third listing of 2012 Omnibus sidewalk obstruction renewal applications without changes, submitted thus far and that have met the appropriate insurance and fee requirements.

If you should have any questions, please do not hesitate to contact me directly or via e-mail at klbarnaby@cityofportsmouth.com.

cc: John P. Bohenko, City Manager

2012 Sidewalk Obstruction Renewal Applications -05/07/2012 Omnibus

Business	LOCATION	FEE	Tables	Chairs	Bench	Planters	Mannequi	Sign	INSURANCE
Hampshire First Bank	Market St.	\$50.00	0	0	0	0	0	1	September 25, 2012
Portsmouth Gaslight	64 Market St.	\$100.00	0	0	0	0	0	2	April 23, 2013
RiRa, The Irish Pub	22 Market Square	\$50.00	0	0	0	0	0	1	March 15, 2013

InterOffice Memo

To: John P. Bohenko, City Manager
From: Tom Richter, Engineering Technician
Date: April 11, 2012
Subject: PSNH License Agreement 63-0535

I have reviewed the pole location information provided by PSNH for Petition and Pole License 63-0535.

This request is to license one pole located on Willard Avenue. The existing pole needs to be replaced because of its condition. The pole currently has no license and PSNH is requesting one with this petition.

This replacement pole poses no impact to existing city infrastructure. The Public Works Department recommends approval of this license.

Attached is a picture of the old pole. Please call with any questions you may have.

cc: David Allen, P.E. Deputy Director of Public Works
Kelli Barnaby, City Clerk



**Public Service
of New Hampshire**

60 W. Pennacook Street, Manchester, NH 03101

Public Service Company of New Hampshire
P.O. Box 330
Manchester, NH 03105-0330
(603) 669-4000

The Northeast Utilities System

April 4, 2012

Office of the City Clerk
City of Portsmouth
One Junkins Avenue
Portsmouth, NH 03801

APR 0 5 2012

Dear City Clerk,

Public Service of New Hampshire is hereby requesting permission to install/replace poles located in the City of Portsmouth. Enclosed for your review is pole license petition 63-0535 for pole(s) located in the City of Portsmouth.

Upon approval, please have the license section signed by the proper authority. The copy labeled "**Portsmouth**" should be retained for your records.

Please return the remaining copies along with any invoices for payment to my attention at the address below.

If the petition is rejected, please return all copies of the license petitions with an explanation of rejection.

If you have any additional questions or require more information, please contact me at 603-634-2218 .

Respectfully,

Lisa-Marie Pinkes

Lisa-Marie Pinkes
Representative-A Records
Public Service of New Hampshire
60 West Pennacook Street PO Box 330
Manchester, NH 03105-9989

Enclosure(s)

PETITION AND POLE LICENSE

PETITION

Manchester, New Hampshire

March 29, 2012

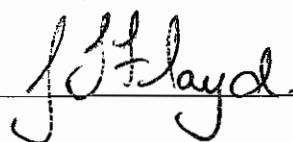
To the City Council of the City of Portsmouth New Hampshire.

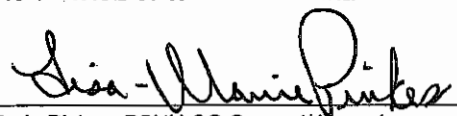
PUBLIC SERVICE OF NEW HAMPSHIRE and Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE, request a license to install and maintain underground conduits, cable and wires, and maintain poles and structures with wires, cables, conduits and devices thereon, together with such sustaining, strengthening and protecting fixtures as may be necessary along, and under the following public ways:

License one (1) pole(s), 120/11 located on Willard Avenue in the City of Portsmouth.

Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE

PUBLIC SERVICE OF NEW HAMPSHIRE

BY: 

BY: 
Lisa-Marie Pinkes, PSNH CO Support/ Licensing

LICENSE

Upon the foregoing petition and it appearing that the public good so requires, it is hereby

ORDERED

This 29th day of March, 2012, that, PUBLIC SERVICE OF NEW HAMPSHIRE and Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE be and hereby are granted a license to erect and maintain poles and structures, with wires, cables, conduits and devices thereon, together with sustaining, strengthening and protecting fixtures, in the public ways covered by said petition. All of said wires, except such as are vertically attached to poles and structures, shall be placed in accordance with the National Electrical Safety Code in effect at the time of petition and/or license is granted.

The approximate location of the poles and structures shall be shown on plan marked "PUBLIC SERVICE OF NEW HAMPSHIRE and Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE No. 63-0535, dated 3/29/2012, attached hereto and made a part hereof.

City of Portsmouth, New Hampshire

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

Received and entered in the records of the City of Portsmouth, New Hampshire, Book _____, Page _____

Date: _____

ATTEST: _____
Town Clerk

POLE LOCATION PLAN

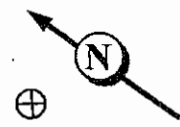
PUBLIC SERVICE OF NEW HAMPSHIRE and
Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE

DATE	<u>03/29/2012</u>	LICENSE NO.	<u>63-0535</u>
MUNICIPALITY:	<u>Portsmouth</u>	STATE HWY. DIV. NO.	<u>6</u>
STREET / ROAD:	<u>Willard Avenue</u>	STATE LICENSE NO.	
PSNH OFFICE:	<u>Portsmouth</u>	WORK REQUEST#	<u>1893378</u>
PSNH ENGINEER:	<u>Sonny Lemire</u>	WORK FINANCIAL #	<u>9P220213</u>
TELCO ENGINEER:	<u>Joe Considine</u>	TELCO PROJECT #	

Pole Numbers		Pole Sz-CI	Eq BH	INSTALL		REMOVE		REF	100% LTS	J/D	100% TEL	Span	DIST. FROM	Remarks	DOC REQ
LTS	TEL			POLE	PB	+	+	+	^	^	↓				
<u>120</u> <u>8</u>														PHASE IN 37KVA XFMR W/ XFMR @120/11	
<u>120</u> <u>9</u>														OPEN SECONDARIES TO P120/10	
<u>120</u> <u>11</u>	<u>5</u> <u>11</u>	<u>40'2</u> <u>35</u> <u>1935</u>	<u>Y</u>											SET POLE DEEP/RAKE TO FIELD REPLACE POLE REPLACE XFMR	<i>M</i>
<u>146</u> <u>6</u>														REPLACE CUTOUT FUSE @ 25T	

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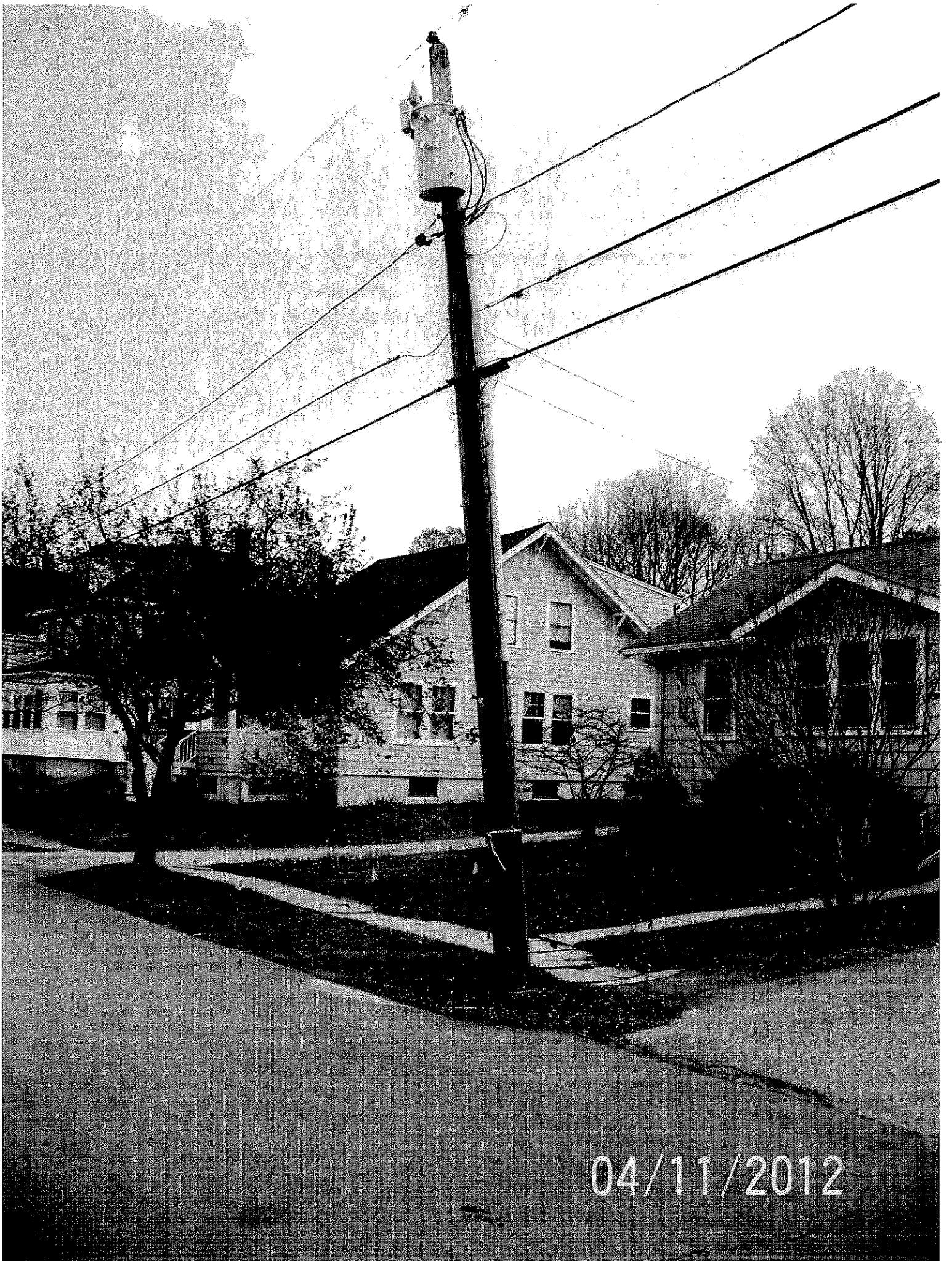


ADDENDUM PER RSA 231:163

- 1) All licensee(s) and any other entity using and/or occupying property of the City pursuant to a license, lease or other agreement shall provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property no later than the due date.
- 2) All licensee(s) and any other entity using and/or occupying property of the City shall provide for the payment of properly assessed real and personal property taxes on structures or improvements added by the licensee(s) or any other entity using or occupying property of the city; and
- 3) Failure of the licensee(s) and any other entity using and/or occupying property of the City to pay duly assessed personal and real taxes when due shall be cause to terminate said agreement by the lessor.

The changes to the licenses, leases and other agreements set forth in the preceding paragraphs shall remain in effect until changed in accordance with the requirements of RSA 231:163.

Approved by City Council:



04/11/2012

start something

**Big Brothers Big Sisters
of the Greater Seacoast**
4 Greenleaf Woods #201
Portsmouth, NH 03801

April 30, 2012

**T 603 430 1140
F 603 430 7760**

Mayor Eric Spear
Portsmouth City Council
1 Junkins Avenue
Portsmouth, NH 03801

www.bbbsgs.org

Dear Mayor Spear and the Portsmouth City Council,

Big Brothers Big Sisters of the Greater Seacoast would like to respectfully request approval to close Chestnut Street on Saturday, July 28, 2012 from 4:00 p.m. – 6:00 p.m. for the 3rd Annual *Stiletto Race*. We further request to reserve the following Saturday, August 4, 2012 for a rain date.

Our Young Philanthropists for Mentoring (YP4M) Committee will be organizing the Stiletto Race this year. The YP4M Committee is a group of young professionals who help raise financial support and awareness for Big Brothers Big Sisters of the Greater Seacoast.

Last year's Stiletto Race was very successful, raising over \$7,000 and garnering positive media coverage. All proceeds from this event will support Big Brothers Big Sisters' mission to help children reach their potential by matching them with caring adult mentors.

Big Brothers Big Sisters of the Greater Seacoast will work with your Council and the Fire and Police Departments to make this a successful and minimally disruptive event. We will require every participant to sign a release of liability waiver as well.

Please know that our agency is willing to work with your Council to select an alternative date and/or time and/or street to host this event if necessary.

If you have any questions regarding this proposal, please contact Alyssa Aldrich at development@bbbsgs.org or 603-430-1140 x 14. We look forward to continued collaboration with the City of Portsmouth.

Sincerely,

Alyssa Aldrich
Communications and Development

BOARD OF DIRECTORS

Janet Sylvester
President

Abby Sykas
Vice President

David Glendon
Treasurer

Chip Martin
Secretary

Nathan Alger

Matthew Becker

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Neil Gibb

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Christopher Knox

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Wynne Levine

Betsy Duevel Rawlings

Nicole Vinet

Debra Weeks

EMERITUS

Donald Boucher

Sean Mahoney

Frank Easton, III

EXECUTIVE DIRECTOR

Jessie C. Dill

IslingtonCreek

Neighborhood Association

To: Members of the Portsmouth City Council
Cc: Chief Ferland, Portsmouth Police Department
John Bohenko, City Manager
From: Karina Quintans, Coordinator, Islington Creek Neighborhood Association
Date: 23 April 2012
RE: Nighttime closure of Rock Street Park

This letter is submitted in response to Chief Ferland's proposal to close Rock Street Park between the hours of 11:00pm and 5:00am, made via a community outreach meeting on 21 March 2012 at the Portsmouth Pearl. While the majority of the neighborhood residents who attended the community outreach meeting are in support of the proposal, there were a few residents who felt strongly against it. As such, on 12 April 2012, Islington Creek residents held a follow up meeting to discuss the matter and to arrive at a consensus. The following counterproposal is the result of our meeting which was also distributed to the neighborhood contact list:

- *Islington Creek Neighborhood residents support a 2-year pilot closure of Rock Street Park between the hours of 11:00pm and 4:00am. At the end of the two years, we would like to meet with the Police Department to evaluate the effectiveness of this measure.*

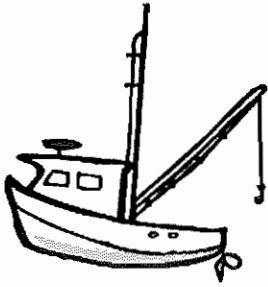
It was noted during the April 16 Council meeting that the city has been aware of the long time existence of problems at Rock Street Park. Our neighborhood has held several meetings over the years with the City Council regarding the park and overall neighborhood issues in terms of alcohol, drugs, the homeless, as well as sex offenders living at the Brewster Rooms. We love having a neighborhood park but it is unfortunate that Rock Street Park is in tucked away location not easily visible to the general public, sandwiched between the railroad tracks and Nickerson Remick making it an easy haven for any type of activity. Through much work with the city over the years, we do feel that notable improvements have been made. However, it is continued vigilance by neighbors, residents, the Police Department, and the support of the City Council that will bring additional improvements. That said, we ultimately feel that there are more upsides to closing the park than there are downsides, particularly given the history of problems. However, I did want to make note of the following two points:

1. Some neighbors feel that the core issue is enforcement of existing rules/ordinances, for example, Article II Parks; Section 8.206 Behavior Item A Intoxicating Beverages and Item J Loitering and Boisterousness
2. It seems that the implementation of an additional/new rule to officially close the park in the evening would be most effective as a deterrent when accompanied by a *temporary increase* in patrols to the Park by the Police Department (for perhaps 6 months) to demonstrate commitment and seriousness about ridding the park of alcohol, drugs, etc.

Lastly, the proposal by the Chief to close the park, I assume, implies the placement of highly visible signs at both entrances to the park.

Thank you very much for your attention to the Islington Creek Neighborhood. We look forward to hearing your decision on the matter.





**NH Fish & Lobster Festival
Collaboration**

Ben Anderson
Co-Chair

Prescott Park Arts Festival

Karen Marzloff
Co-Chair

Seacoast Local

Padi Anderson
Steering Committee

*F/V Rinnack &
Granite State FISH*

Duncan Boyd
Steering Committee

Mark Wiley
Steering Committee
*UNH Sea Grant &
Marine Doerents*

New Hampshire Fish & Lobster Festival

P.O. Box 4370

Portsmouth, NH 03802

603.436.2848



John P. Bohenko, City Manager
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

Dear Mr. Bohenko,

On behalf of all the individuals and organizations involved with the NH Fish & Lobster Festival, held Saturday, September 22, 2012 in Prescott Park, I would like to respectfully request support from the City of Portsmouth in the amount of \$1,000.

Your support, which will be *matched by the Division of Ports and Harbors*, provides this collaborative effort with essential funding to continue this very successful event in support of our struggling local fishing industry.

Over the past 3 years, more than 10,000 people have attended this event and had the opportunity to learn more about our local fishing industry in a fun, festive and delicious way.

More than twenty Seacoast restaurants have participated to date (each serving a different locally-caught fish species), with over 25 local industry-related organizations contributing to the education piece, as well as dozens of local fisherman and their family members. This event offers such great educational components as fishing boat tours, fish displays, cooking competitions, filleting demonstrations and more.

Some of the praise for the event includes:

"It was really the true meaning and spirit of collaboration." – Erik Andersen, President, New Hampshire Commercial Fishermen's Association.

"We all have individual talents and we throw them all together each year and produce the best (and only) fish and lobster festival in Portsmouth, NH." – Damon Frampton, Lobsterman

"This is one of the most amazing community building events anyone could ever dream up. It's no coincidence that it happened here because we have an amazing community." – Karen Marzloff, Seacoast Local

"Thousands of people come out for fun and food and in so doing are brought that much closer to their hard-working neighbors, and the fisherman in turn can see that people do in fact care where their food comes from, if only given half a chance...It is a remarkable event that has succeeded in many more ways than simply its high attendance." – Dave Karlotski, The Wire

Thank you for being part of this powerful event.

Sincerely,

Padi Anderson
2012 Fishtival Steering Committee
President, Granite State Fish



ERIC G. MART & KATHRYN A. MCCALLION
9 COACH ROAD, EXETER, NH 03833
(603) 626-0966 / (603) 580-2649
EMART@COMCAST.NET / KMCCALLION@COMCAST.NET

May 2, 2012

Portsmouth City Council
Municipal Complex
One Junkins Ave.
Portsmouth, NH 03801



RE: 1283 Woodbury Ave. rezoning request

Members of the City Council:

We are writing to request that the City Council consider a rezoning request for the property described below. This request is made with the approval of the property owner, Jonathan Smith, and a letter of support from the owner is attached.

Property Description

- 1) Location: 1283 Woodbury Ave. (See attached map showing property bound by yellow lines.)
- 2) Size: 0.70 acres
- 3) Existing zoning: SRB (Single Residence B)
- 4) Existing Use: 1010 (SINGLE FAM MDL-01)
- 5) Owner: Jonathan Smith, 1283 Woodbury Ave., Portsmouth, NH 03801

Proposed Zoning Change

We are requesting that this property's zoning be changed from SRB (Single Residence B) to MRB.

Proposed Use

The owner of the property has accepted our offer to purchase the property at 1283 Woodbury Avenue. The offer is contingent on the City Council's approval of a zoning change for the property to MRB and the grant by the Board of Adjustment of a special exception to allow the building to be used as a medical (psychology) office and other commercial office space.

Properties surrounding the area of request

The property is abutted on the east side by a residence (51 Granite Street) which is currently zoned SRB (Single Residence B). The owners of this property, Steven M. Oxholm and Karen L. Oxholm, support our request to rezone 1283 Woodbury.

- a. Size: 0.36 acres
- b. Existing zoning: SRB (Single Residence B)
- c. Existing use: 1010 (SINGLE FAM MDL-01)

The land abutting the property on the north and west (Granite Street and Woodbury Ave., respectively) is zoned MRB and covers approximately 3 acres. Across from the two properties on Granite Street, a Rite Aid store occupies a narrow strip in this MRB-zoned buffer. On the Woodbury Avenue block across from 1283 Woodbury is a mixture of residential and business properties; the business properties include a chiropractic center and various small businesses. To the north of the MRB-zoned buffer is a large area zoned GB (General Business). A number of large retail stores such as Market Basket and Panera Bread, are situated in this area beginning about ¼ mile from the property. To the west and south of the MRB zone is a large residential area zoned SRB.

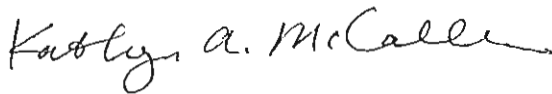
The south and east sides of the properties to be rezoned are bounded by approximately 4 acres of property owned by the City and zoned M. This property is presently being used as an athletic field. The City property is bounded on the east by property zoned OR (Office Research) and GRB (General Residence B) and on the south by a large area zoned SRB.

Thank you in advance for your consideration of this request. Please contact us if you require clarification or further information.

Sincerely,

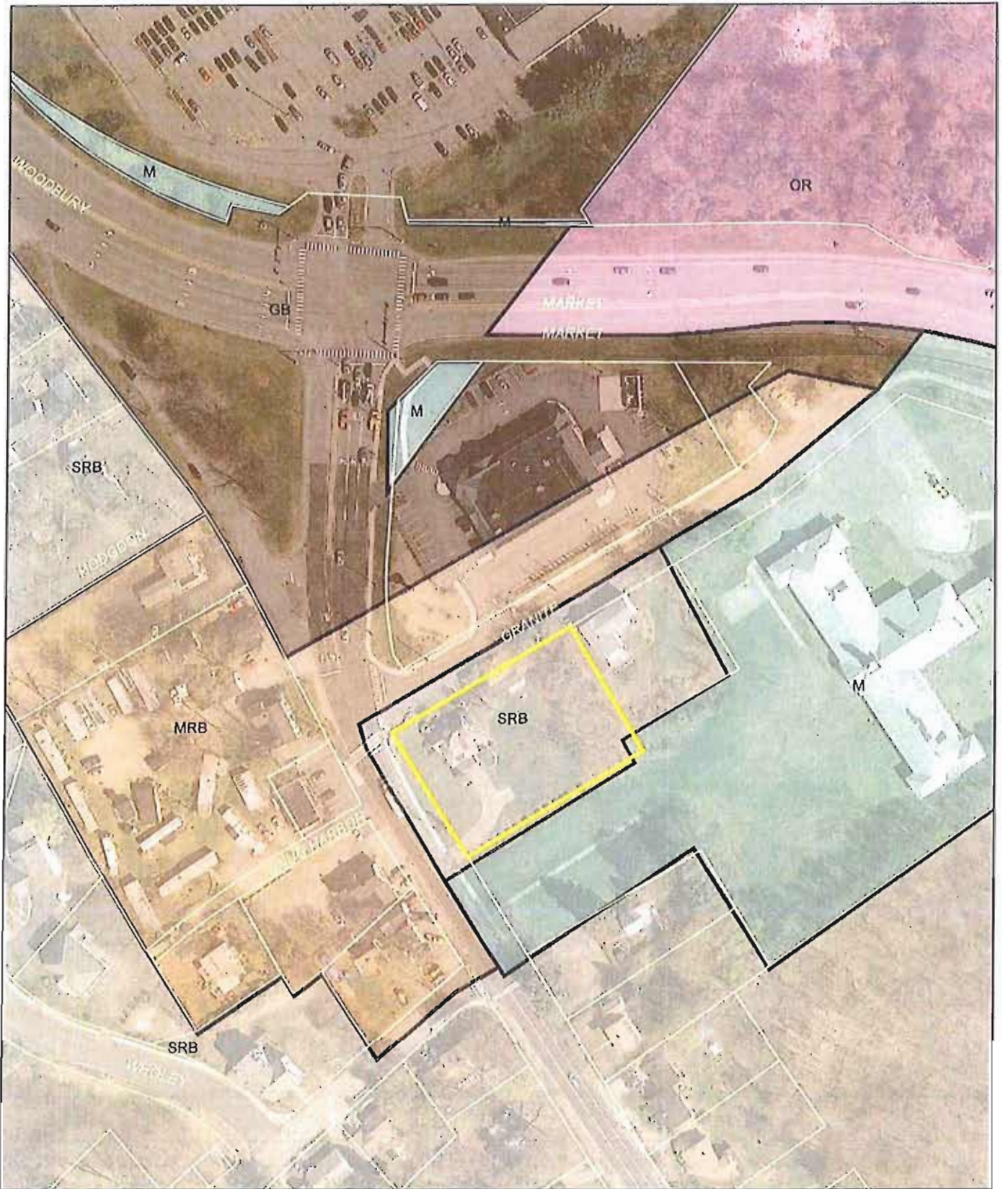


Eric G. Mart, Ph.D., ABPP



Kathryn A. McCallion

Cc: Jonathan Smith



1283 Woodbury Avenue

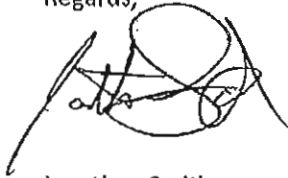


0 50 100 150 200 Feet

To whom it may concern,

I, Jonathan Smith, owner of property with an address of 1283 Woodbury Avenue, Portsmouth, NH 03801 authorize Eric G. Mart and Kathryn A. McCallion to apply to the City of Portsmouth for a zoning change of the same property.

Regards,


A handwritten signature in black ink, appearing to read 'Jonathan Smith', written over a circular scribble.

Jonathan Smith

5/1/12

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: May 3, 2012
To: Honorable Mayor Eric Spear and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on May 7, 2012 City Council Agenda

6:00 p.m. – Non-meeting with counsel.

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

.....

Presentations:

1. **Mayor's Blue Ribbon Committee on Sustainable Practices.** Bert Cohen, Chairman of the Mayor's Blue Ribbon Committee on Sustainable Practices will make a presentation to update the City Council on the Committee's activities at Monday's meeting.

Items Which Require Action Under Other Sections of the Agenda:

1. **Public Hearing/Second Reading of Proposed Resolution and Ordinance Amendments:**
 - 1.1 **Public Hearing/Second Reading of Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section E - Entitled Compliance with State and Federal Law.** As a result of the April 16th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the attached proposed Ordinance amendment to the Taxi Ordinance – Chapter 7, Article II, Section

7.229 – General Provisions by a new Sub-section E - Entitled Compliance with State and Federal Law.

I would recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the May 21st City Council meeting. Action on this matter should take place under Section IX of the Agenda.

- 1.2 **Public Hearing/Second Reading of Proposed Amendment to Chapter 10, Article 4, Section 10.440 of the Zoning Ordinance – Table of Uses – Residential, Mixed Residential, Business and Industrial Districts by Creating Performance Standards Applicable to Drive-Through Facilities and; Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance Regarding Accessory Drive-Through Uses by Changing Type of Approval Required from a Special Exception to a Conditional Use Permit.** As a result of the April 16th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the attached aforementioned proposed Ordinance amendment.

As you will recall, at the February 6, 2012 City Council meeting, the Council referred this request to the Planning Board for report back to the City Council. Mr. Choate's request is that the City considers amending the Zoning Ordinance with respect to the number of drive-through lanes allowed. The Planning Board considered this request at its meeting on March 15, 2012 and voted to recommend the changes to the Zoning Ordinance as outlined in the attached memorandum from Rick Taintor, Planning Director.

I would recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the May 21st City Council meeting. Action on this matter should take place under Section IX of the Agenda.

- 1.3 **Public Hearing/Second Reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 - Terms of General Applicability relative to the Definition of Museum regarding Accessory Uses that are Incidental and Subordinate to the Primary Non-profit Museum Use.** As a result of the April 16th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the attached proposed Ordinance Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 – Terms of General Applicability relative to the Definition of Museum.

Attached is a memorandum from Rick Taintor, Planning Director, regarding a request from Strawberry Banke Museum for an amendment to the definition of "museum" in the Zoning Ordinance. Specifically, it is requested that the provision

excluding “commercial galleries for the sale of art” be removed from the definition.

At its meeting on March 15, 2012, the Planning Board voted unanimously to recommend that the City Council amend the definition of “museum “ as follows:

A non-profit permanent institution, open to the public, which acquires, conserves, researches, exhibits, and interprets objects having scientific, historical or artistic value. Museums may include exhibit and display areas, libraries and research areas, administrative offices, areas for constructing exhibits, and storage areas for museum materials, artifacts and objects. Accessory uses may include retail sales (~~but not including the regular sale of objects collected or Displayed~~), food services for museum visitors or others, manufacturing for museum purposes, and events such as craft demonstrations, receptions, and periodic celebrations, **provided that all such accessory uses are incidental and subordinate to the primary non-profit museum use.**

~~Museums include galleries for the display of works of art, but do not include Commercial galleries for the sale of art work.~~

I would recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the May 21st City Council meeting. Action on this matter should take place under Section IX of the Agenda.

Consent Agenda:

1. **Acceptance of Fire Department Donation.** The Portsmouth Fire Department has received a donation from Patricia MacNeil in the amount of \$75.00 for the gift and donation account ([see attached letter](#)).

I would recommend the City Council move to accept and approve the donation, as presented. Action on this matter should take place under Section X of the Agenda.

City Manager’s Items Which Require Action:

1. **Request for Approval of Police Department Early Retirement Incentive.** The Police Commission has requested that the City Council consider approving a retirement incentive for police officers. [Attached is a Memorandum of Agreement](#) between the Portsmouth Board of Police Commissioners and the New England Police Benevolent Association Local 11, outlining the following details:
 - Eligible members who have twenty five (25) years or more of service in law enforcement by the end of the 2012 fiscal year, which ends June 30, 2012, and

who file an irrevocable commitment to retire from law enforcement between the date of this agreement and on or before June 30, 2012 and who actually retire under the New Hampshire Retirement System at the end of FY 12 will receive a one-time payment of \$12,000.

This is similar to the teacher’s early retirement that was passed earlier this year. The Police Commission feels that this will be a savings in the budget if those eligible participate.

I am recommending that the City Council approve the request from the Portsmouth Police Commission to offer a retirement incentive to police officers, as presented.

2. **Request to Establish Public Hearing Re: Use of Bond Premium.** The City of Portsmouth currently holds the second highest bond rating available from both Standard and Poor’s and Moody’s rating agencies (AA+ and Aa1 respectively).

The City was able to take advantage of its excellent bond rating when on December 14, 2011; the City of Portsmouth issued a \$32,400,000 bond. The proceeds of the bond will finance \$6.4 Million of General Fund capital projects, \$500,000 for a Fire Apparatus, \$22.5 Million for the Middle School and \$3 Million for the Peirce Island Wastewater Treatment Plant and Long-Term Control Plan. In addition to the \$32.4 million principal, the City received a premium of \$2,179,807.65 from the winning underwriter at closing. A premium is the amount by which the purchase price of a bond is greater than its par value. Under certain market conditions, in order to enhance the marketability of the bonds, bond underwriters will structure their bids with bond premiums. In this case, the City of Portsmouth received a True Interest Cost (TIC) rate of 2.86% and a bond premium of \$2,179,807.65. Under Federal Tax Law and State Statutes, the City is restricted on how to appropriate and use these funds.

RSA 33:3-states that any premium received shall not be used to increase the amount to be spent for the purpose for which the loan was originally incurred. Therefore, the City cannot use this money to increase the costs of the projects set forth for the \$32.4 Million bond issuance. However, the RSA states “a city by a vote of 2/3 of the City Council may authorize the expenditure for the premiums received for any purpose or purposes for which bonds or serial notes may be issued for an equal or longer period of time.

The bond premium of \$2,179,807.65 has been allocated respectively to the General Fund in the amount of \$1,977,973.61 and the Sewer Fund in the amount of \$201,834.04.

In accordance with State Statute, I recommend that the City Council authorize and appropriate the bond premium of to be used for the following General Fund projects:

+	1)	Seawall Repairs	Capital Outlay FY13	\$250,000.00
+	2)	Coakley Road/Cottage Street Pedestrian Improvements	Capital Outlay FY13	\$180,000.00
+ *	3)	Peverly Hill Road new Sidewalk	Capital Outlay FY13	\$50,000.00

4) Little Harbour Instructional Space	Bonding FY13	\$600,000.00
* 5) Scott Avenue Bridge Replacement	Bonding FY13	\$725,000.00
* 6) Portion of the Sagamore Bridge project	Bonding FY13	\$172,973.61
Total		\$1,977,973.61

+ reduction in FY13 proposed budget (12¢ reduction in proposed tax rate)

* grant match

I also recommend that the City Council authorize and appropriate the bond premium of \$201,834.04 to be used for the following Sewer Fund project:

- 1) Sewer line replacement for McDonough Street.

As these projects have a useful life that exceeds the original bond issue from which the premiums were received, and would be eligible for bonding under the Municipal Finance Act, it is in the best interest of the City to utilize the premium of \$2,179,807.65 to fund portions of the costs associated with the General and Sewer Funds.

Attached are two resolutions: 1) to appropriate the sum of \$1,977,973.61 for expenses relating to various General Fund projects; 2) to appropriate the sum of \$201,834.04 for expenses relating to Sewer line replacement for McDonough Street Sewer project.

I would recommend the City Council move to authorize the City Manager to bring back for public hearing at the May 21st City Council meeting the aforementioned two Bond Premium Resolutions.

3. **Report Back Re: Proposed Closure of Rock Street Park between the hours of 11:00 p.m. and 5:00 a.m.** As you will recall, at your April 16th City Council meeting, you requested that I provide you with a report back regarding the request of the Islington Street Neighborhood Association to close Rock Street Park between the hours of 11:00 p.m. and 5:00 a.m. In following up on that request, I met with Police Chief Ferland to discuss the neighborhood's proposal. Attached is a memorandum from Chief Ferland recommending the closure of Rock Street Park between the proposed hours of 11:00 p.m. and 5:00 a.m.

City Ordinance Section 8.208: Park Operating Policy states:

“Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during hours designated by the City Manager and approved by the Council. The opening and closing hours for each individual park shall be posted therein.”

As you can see from the aforementioned Ordinance, the City Manager has the power to set the hours in city parks with the approval of the City Council.

Therefore, I would recommend that the City Council authorize me to close Rock Street Park between the hours of 11:00 p.m. and 5:00 a.m. daily. Further, I would recommend

this take effect immediately when proper posting has been made by the Department of Public Works. After one year, it would be my intent to bring this back to the City Council to review the impact on the park and the neighborhood.

Please note the correspondence from Karina Quintans, under Section XIA., regarding this matter with alternative recommendations.

I have asked Chief Ferland to be at Monday night's meeting to answer any questions you might have.

I would recommend the City Council move to authorize the City Manager to close Rock Street Park between the hours of 11:00 p.m. to 5:00 a.m. effective after the proper posting by the Department of Public Works.

4. **Request from Paul R. Frohn, Jr. and Susan C. Frohn for Restoration of Involuntarily Merged Lots Under RSA 674-39-aa.** Attached is a memorandum from Rick Taintor, Planning Director, regarding a request from Paul R. Frohn Jr. and Susan C. Frohn that the City Council restore two lots, merged by City action, to their premerger status (see attached letter dated March 15, 2012). This is the first request submitted to the Council under a new statute enacted in 2011; and the Frohns have submitted the request using a form that the Planning Department has developed for this purpose (see attached sample notice).

The new statute, RSA 674:39-aa (see attached statute), assigns the responsibility for "restoration of involuntarily merged lots" to the City Council. The statute distinguishes between "involuntary" and "voluntary" mergers. The statute states that "The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots."

Unlike other situations where lots are proposed to be merged or separated, there is no role for the Planning Board in this process. The law also does not allow any discretion by the City Council: if the merged lots meet the criteria in the statute, the Council must vote to restore them to their premerger status. The decision of the Council may be appealed to the Zoning Board of Adjustment, but no standards for such appeals are set forth in the statute.

The property that is the subject of this request is shown on the City Assessors maps as Assessors Map 236 Lot 53. It has frontage on both Woodbury Avenue and Meadow Road. The request submitted by the Frohns includes documentation indicating that they received the deeds to the property as two separate lots (see attached deed). In their letter to the City Council, the Frohns assert that the two lots were merged by municipal action without the consent of the owner, and they "certify that no owner in the chain of title voluntarily merged the lots" as defined in the statute.

As outlined in the Planning Director's memorandum, Planning Department staff viewed the property and reviewed maps and aerial photographs of the neighborhood to assess the merits of this request. However, no title search was undertaken.

Attached is an orthophoto with parcel lines; two photos showing the view from Meadow Lane; and two aerial photos.

The principal residential structure is located on the Woodbury Avenue end of the property, lined up with the adjacent houses, and there is a small accessory shed on the Meadow Road end. There is no physical boundary or separation between the two parcels. Generally, the property appears to be used as a single property. However, this common use is essentially passive, and there is no indication of "overt action or conduct that indicates an owner regarded said lots as merged" under the terms of the statute.

I recommend that the City Council move to accept the Planning Director's recommendation to approve the Frohns' request for restoration of the lots to their premerger status.

5. **Request from Irene R. Lebel and Frances D. Lebel for Restoration of Involuntarily Merged Lots Under RSA 674-39-aa.** Attached is a memorandum from Rick Taintor, Planning Director, regarding a request from Irene R. Lebel and Frances D. Lebel that the City Council restore two lots, merged by City action, to their premerger status (see attached letter dated March 26, 2012). This is the second request submitted to the Council under a new statute enacted in 2011; and the Lebel's have submitted the request using a form that the Planning Department has developed for this purpose (see attached sample notice).

The new statute, RSA 674:39-aa (see attached statute), assigns the responsibility for "restoration of involuntarily merged lots" to the City Council. The statute distinguishes between "involuntary" and "voluntary" mergers. The statute states that "The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots."

Unlike other situations where lots are proposed to be merged or separated, there is no role for the Planning Board in this process. The law also does not allow any discretion by the City Council: if the merged lots meet the criteria in the statute, the Council must vote to restore them to their premerger status. The decision of the Council may be appealed to the Zoning Board of Adjustment, but no standards for such appeals are set forth in the statute.

The property that is the subject of this request is located at 457 Broad Street and is shown on Assessors Map 221 as Lot 22. The request submitted by the Lebel's includes the 1958 deed (see attached) by which they acquired the property, which indicates that the lot has 120 feet of frontage on Broad Street and 100 feet of depth, for an area of 12,000 square feet.

The lot is located in the General Residence A zoning district, which requires a minimum lot area of 7,500 sq. ft. Accordingly, area variances for both proposed lots (i.e., for the existing house on a substandard lot, and for a future house on the second lot) would be required if the existing lot were to be restored to the two original lots.

In their letter to the City Council, the Lebls assert that the two lots were merged by municipal action without the consent of the owner, and they “certify that no owner in the chain of title voluntarily merged the lots” as defined in the statute.

As outlined in the Planning Director’s memorandum, Planning Department staff viewed the property and reviewed maps and aerial photographs of the neighborhood to assess the merits of this request. However, no title search was undertaken.

Attached is an Orthophoto with parcel lines; two photos showing the view from Broad Street; and two aerial photos.

Because the 1958 deed describes the property as a single lot, and because the property has been developed in such a way as to preclude separate use of the two lots, a voluntary merger of the two original lots has taken place. Therefore, the statutory criteria for restoring the lots to their premerger status are not met.

I would recommend that the City Council move to accept the Planning Director’s recommendation to deny the Lebls’ request for restoration of the lots to their premerger status.

6. **Applications for Sidewalk Cafes Providing Alcohol Service.** As you know, on March 19, 2012 the City Council adopted City Council Policy No. 2012-02 (see attached) regarding use of City property for sidewalk cafes providing alcohol service. As you also know, during the 2011 season the City Council allowed the pilot use of City property in the downtown for two sidewalk cafes providing alcohol service -- Popovers on the Square and The District. The purpose of the pilot was to determine the public benefit and efficacy of such sidewalk café operations. Each of the two establishments operated under an Area Service Agreement that specified certain terms and conditions of operation and design.

The City has now received applications from five (5) establishments: Popovers on the Square, The District, RiRa, the Surf Restaurant and State Street Saloon. City staff, including representatives of the Police, Fire, Inspections, Public Works, Health and Legal Departments conducted on site reviews and measurements at each of the establishments with chairs and tables in place. Layout modifications were made where needed in order to address various requirements specified in the City Council-adopted policy regarding this matter. Following the site visits, the Legal Department prepared Area Service Agreements for each of the five establishments and these are described below as separate items so that the City Council may take action on each one individually. The Area Service Agreements incorporate the requirements specified in City Council Policy No. 2012-02.

The Council will recall that the fee for use of the public "Area" subject to the Area Service Agreement is \$10.00 per square foot, with a minimum season's fee of \$2,000 and no proration of the fee. The term of the Agreements is for six (6) months from mid-April through mid-October and is not assignable to other parties. The Agreements may be suspended at the sole discretion of the City on an administrative basis and revoked in their entirety by vote of the City Council. Hours of operation are until 10:30 p.m. Monday through Saturday and until 10:00 p.m. on Sunday, with no smoking allowed in the "Area" at any time. Use of the "Area" may be precluded, modified or made subject to special conditions to accommodate municipal events. The sidewalk café Area will be separated from the public pedestrian space by black decorative metal fence similar to what was used by Popovers and The District during last year's trial season.

- a) **Application for Sidewalk Cafe Providing Alcohol Service from Popovers on the Square.** I am bringing forward for City Council action the [attached Area Service Agreement for Popovers on the Square](#) for the 2012 season. City staff have reviewed Popovers' application and are recommending its approval as presented. Please note that the "Area" to be used by Popovers, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

9 4-top tables
1 2-top tables
38 chairs
Area: 723 square feet
Area Service Fee: \$7,230.00

I would recommend the City Council authorize the City Manager to enter into an Area Service Agreement with Popovers on the Square for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- b) **Application for Sidewalk Cafe Providing Alcohol Service from The District.** I am bringing forward for City Council action the [attached Area Service Agreement for The District](#) for the 2012 season. City staff have reviewed The District's application and are recommending its approval as presented. Please note that the "Area" to be used by The District, along with a table-chair layout, is included as an attachment to the Agreement. In the case of The District, the Council should be aware that the public sidewalk area to be used is located on the Vaughan Mall and is contiguous with the privately-owned area on Congress Street that is also used by The District for outdoor dining with alcohol service. The particulars of this application are as follows:

0 4-top tables
17 2-top tables
34 chairs

Area: 467 square feet
Area Service Fee: \$4,670.00

I would recommend the City Council move to authorize the City Manager to enter into an Area Service Agreement with The District for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- c) **Application for Sidewalk Cafe Providing Alcohol Service from RiRa.** I am bringing forward for City Council action **the attached Area Service Agreement for RiRa** for the 2012 season. City staff have reviewed RiRa's application and are recommending its approval as presented. Please note that the "Area" to be used by RiRa, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

5 4-top tables
5 2-top tables
30 chairs
Area: 447 square feet
Area Service Fee: \$4,470.00

I would recommend the City Council move to authorize the City Manager to enter into an Area Service Agreement with RiRa for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- d) **Application for Sidewalk Cafe Providing Alcohol Service from State Street Saloon.** I am bringing forward for City Council action **the attached Area Service Agreement for State Street Saloon** for the 2012 season. City staff have reviewed State Street Saloon's application and are recommending its approval as presented. Please note that the "Area" to be used by State Street Saloon, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

5 4-top tables
0 2-top tables
20 chairs
Area: 340 square feet
Area Service Fee: \$3,400.00

I would recommend the City Council move to authorize the City Manager to enter into an Area Service Agreement with State Street Saloon for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- e) **Application for Sidewalk Cafe Providing Alcohol Service from the Surf Restaurant.** I am bringing forward for City Council action the **attached Area Service Agreement for the Surf** for the 2012 season. City staff have reviewed the Surf Restaurant's application and are recommending its approval as presented. Please note that the "Area" to be used by the Surf, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

2 4-top tables
2 2-top tables
12 chairs
Area: 324 square feet
Area Service Fee: \$3,240.00

I would recommend the City Council move to authorize the City Manager to enter into an Area Service Agreement with the Surf Restaurant for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

7. **Report Back Re: Public Service of New Hampshire Easement at Prescott Park.** As you will recall, at its April 2nd meeting, the City Council referred the Public Service of New Hampshire (PSNH) easement request for placement of service at Prescott Park to the Planning Board for report back to City Council.

Attached is a memorandum from Rick Taintor, Planning Director, regarding this matter. The attached plan shows the layout plan for installation of the new transformer pad.

At the April 19, 2012 Planning Board meeting, the Board voted unanimously to recommend that the City grant an easement to PSNH for installation of a transformer pad and conduit as shown on the plan.

I would recommend the City Council move to accept the recommendation of the Planning Board, as presented, and further, authorize the City Manager to execute the easement deed with PSNH.

8. **Report Back Re: Request of New Hampshire Department of Transportation for an Easement under the Scott Avenue Bridge in support of the Memorial Bridge Project.** As part of the Memorial Bridge Replacement Project, the New Hampshire Department of Transportation has requested an easement to locate a permanent backup generator and utility transformer cabinets on City property under the Scott Avenue Bridge. At its February 6, 2012 meeting, the Council referred this easement request to the Planning Board for a report back to the City Council.

The **attached memorandum from Rick Taintor, Planning Director,** outlines the proposed Utility/Generator Easement area under the Scott Avenue Bridge as well as the generator,

utility pad and transformer. Also, attached is a plan titled "Pavement Marking/NHDOT Maintenance Parking/Generator Area" dated February 22, 2012.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City grant the necessary easement(s) to the New Hampshire Department of Transportation for installation and maintenance of a permanent backup generator and utility transformer cabinets on City property under and adjacent to the Scott Avenue Bridge.

I would recommend the City Council move to accept the recommendation of the Planning Board, as presented, and further, authorize the City Manager to negotiate and execute an easement deed with the State of New Hampshire.

9. **Report Back Re: Commerce Way Conditional Road Layout and Betterment Assessment.** As you will recall, at its March 19, 2012 meeting, the City Council referred a request from Attorney Malcolm McNeill, representing Commerce Way, LLC, to the Planning Board for report back to the City Council, regarding a proposal to make the necessary upgrades to Commerce Way to become a City street.

Attached is a memorandum from Rick Taintor, Planning Director, outlining Commerce Way, LLC's proposal for the reconstruction of the road. Following completion of the roadway improvements, Commerce Way would be deeded to the City. The public roadway will be conditionally laid out as provided for in RSA 231:28; and the cost of construction will be paid for by the abutting private property owners through the betterment assessment process in accordance with RSA 231:29-33.

Steve Parkinson, Public Works Director, has worked closely with Tighe & Bond and Commerce Way, LLC on the development of these plans. Mr. Parkinson affirms that the plans meet City standards and are acceptable to the City. Attached is the proposed Roadway Improvements Commerce Way Plan.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City Council accept Commerce Way as a City street upon completion of improvements to bring the roadway up to City standards in accordance with the Roadway Improvement Plans.

The effect of passage of this matter would be to authorize staff to begin the work necessary to initiate the next step in the betterment assessment process. At a future point in time, the Council will be requested to establish a public hearing on the matter pursuant to RSA 231:28.

I would recommend the City Council move to accept the Planning Board's recommendation for Commerce Way for the Conditional Road Layout in accordance with RSA 231:28 subject to the road improvements funded through the Betterment Assessment Process in accordance with RSA 231:29-33.

10. **Report Back Re: Letter from David Mikolaities, Lieutenant Colonel, NH Army National Guard, regarding the Acquisition of a Portion of the Right of Way along Market Street and Site Improvements for Access to the National Guard Readiness Center on 803 McGee Drive.** As you will recall, at its April 2, 2012 meeting, the City Council referred the aforementioned request to the Planning Board for report back to the City Council (see attached memorandum to Steve Parkinson, Public Works Director from David Mikolaities, Lieutenant Colonel, NH Army National Guard and proposed site plan prepared by Tighe & Bond)

Attached is a memorandum from Rick Taintor, Planning Director, explaining the site improvements to the NH Army National Guard property and the purpose of their request for a Right of Way to access their site at 803 McGee Drive.

At its April 19, 2012 meeting, the Planning Board voted to recommend that the City convey a portion of the Right of Way along Market Street to the State of New Hampshire for access to the National Guard Readiness Center.

I would recommend the City Council move to accept the Planning Board's recommendation, as presented, and further, authorize the City Manager to negotiate and execute an easement deed.

11. **Report Back Re: Request of Barbara Devanna and Robert Cohen for an Access Easement over Pine Street Park for property at 55 Meredith Way (previously identified as 55 Pine Street).** As you will recall, at its March 5, 2012 meeting, the City Council referred the aforementioned request to the Planning Board for report back to the City Council.

Attached is a memorandum from Rick Taintor, Planning Director, outlining this matter and referring to the attached map which shows the relationship of the subject parcel to Meredith Way, Pine Street Park and Pine Street. Although the parcel technically has frontage on Meredith Way, the paved portion of Meredith Way does not extend to this parcel, and therefore its actual access is from Pine Street. The existing driveway from the parcel to Pine Street crosses the northerly corner of Pine Street Park, and the owners are requesting an easement to formalize this existing condition.

Also, attached is a memorandum from Robert Sullivan, City Attorney, opining that if the City Council wishes to grant the request, the City should specifically authorize access over both the paper street and the adjacent park property.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City Council authorize the owners of 55 Meredith Way to cross the paper portion of Meredith Way and a portion of Pine Street Park in order to access Pine Street, in such manner as the City Attorney and City Manager determine appropriate.

I would recommend the City Council move to accept the Planning Board's recommendation, and further, authorize the City Manager to negotiate and execute any necessary documents.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on April 16, 2012. In addition, this now can be found on the City's website.

2. **Installation of New Historic Markers.** For your information, [attached is a news release along with photographs of new historic markers](#) that were installed earlier this spring as part of a project to reproduce historic marker signs, which were once scattered in various locations through the downtown and the South End. Residents and visitors can find the newly installed markers in the following locations:

Historic Marker Topic	Location
First Printing House in N.H.	In landscaped area at the corner of Howard & Pleasant Streets
Haven Park	In Haven Park facing sidewalk along Pleasant Street
John Samuel Blunt, Painter	In Moffatt-Ladd Garden, facing the sidewalk on Market Street
Powder House	In Powder House Park at Islington Street and Essex Avenue along brick walkway
Portsmouth Navy Yard	In Prescott Park on waterfront path, facing Navy Yard
Portsmouth's South Mills	Along Marcy Street sidewalk near the Fish Market
Marcy-Pettigrew Shipyard	In landscaped area at Marcy and South Mill Streets

3. **Budget Work Session Agenda.** [Attached is the agenda for the City Council Municipal Budget Work Session](#) scheduled for Tuesday, May 8, 2012 at 6:30 p.m., in the Eileen Dondero Foley Council Chambers.

MEMORANDUM OF AGREEMENT

**Portsmouth Board of Police Commissioners
and
New England Police Benevolent Association Local 11**

The Portsmouth Police Department and the New England Police Benevolent Association Local 11 currently are parties to a Collective Bargaining Agreement that expires On June 30, 2014. These parties desire to create a temporary retirement incentive benefit for the 2012 contract year only.

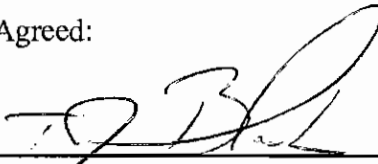
Eligible members who have twenty five (25) years or more of service in law enforcement by the end of the 2012 fiscal year, which ends June 30, 2012, and who file an irrevocable commitment to retire from law enforcement between the date of this agreement and on or before June 30, 2012 and who actually retire under the NHRS at the end of FY12 will receive:

A one-time payment of \$12,000

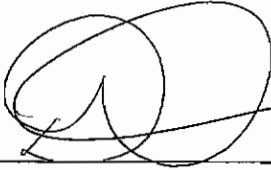
This does not set a precedent or past practice for any other situation.

This agreement is null and void unless approved by the Portsmouth Board of Police Commissioners and the City council.

Agreed:



President NEPBA Local 11 4-11-12
Date



PPD Chief of Police 4/11/12
Date



Portsmouth Police Commission Approval 4/11/12
Date

**IN THE YEAR OF OUR LORD TWO THOUSAND AND TWELVE
CITY OF PORTSMOUTH, NEW HAMPSHIRE
GENERAL FUND BOND PREMIUM APPROPRIATION**

RESOLUTION # **A RESOLUTION APPROPRIATING THE SUM OF ONE MILLION NINE HUNDRED SEVENTY-SEVEN THOUSAND, NINE HUNDRED SEVENTY-THREE DOLLARS AND SIXTY-ONE CENTS (\$1,977,973.61) FOR EXPENSES RELATING TO VARIOUS GENERAL FUND PROJECTS AS NOTED BELOW.**

RESOLVED: **BY THE CITY COUNCIL OF THE CITY OF PORTSMOUTH, NEW HAMPSHIRE ASSEMBLED AS FOLLOWS:**

THAT, the sum of **One Million Nine Hundred Seventy-Seven Thousand, Nine Hundred Seventy-Three Dollars and Sixty-One Cents (\$1,977,973.61)** be and hereby is appropriated for the following projects:

- | | |
|---|--------------|
| 1) Seawall Repairs | \$250,000.00 |
| 2) Coakley Road/Cottage Street
Pedestrian Improvements | \$180,000.00 |
| 3) Peverly Hill Road New Sidewalk | \$50,000.00 |
| 4) Little Harbour Instructional Space | \$600,000.00 |
| 5) Scott Avenue Bridge Replacement | \$725,000.00 |
| 6) Portion of the Sagamore Bridge Project | \$172,973.61 |

Such sum representing a proportionate amount of the **Two Million, One-Hundred Seventy-Nine Thousand, Eight Hundred Seven Dollars and Sixty-Five Cents (\$2,179,807.65)** premium the City received from the sale of its \$32,400,000 General Obligation Capital Improvement Bonds (after payment of underwriter's discount) that is allocable to the General Fund project financed by such bonds. \$29,400,000 of the \$32,400,000 General Obligation Capital Improvement Bond was issued for General Fund capital projects.

THAT, the expected useful life of the project is determined to be at least 20 years.

THAT, this resolution shall take effect upon its passage.

APPROVED BY:

ERIC SPEAR, MAYOR

ADOPTED BY CITY COUNCIL

**KELLI L. BARNABY, CMC
CITY CLERK**

**IN THE YEAR OF OUR LORD TWO THOUSAND AND TWELVE
CITY OF PORTSMOUTH, NEW HAMPSHIRE
SEWER FUND BOND PREMIUM APPROPRIATION**

RESOLUTION # **A RESOLUTION APPROPRIATING THE SUM OF TWO HUNDRED ONE THOUSAND, EIGHT HUNDRED THIRTY-FOUR DOLLARS AND FOUR CENTS (\$201,834.04) FOR EXPENSES RELATING TO THE MCDONOUGH STREET SEWER LINE REPLACEMENT PROJECT.**

RESOLVED: **BY THE CITY COUNCIL OF THE CITY OF PORTSMOUTH, NEW HAMPSHIRE ASSEMBLED AS FOLLOWS:**

THAT, the sum of **Two Hundred One Thousand, Eight Hundred Thirty-Four Dollars and Four Cents (\$201,834.04)** be and hereby is appropriated for McDonough Street Sewer Line Replacement.

Such sum representing a proportionate amount of the **Two Million, One-Hundred Seventy-Nine Thousand, Eight Hundred Seven Dollars and Sixty-Five Cents (\$2,179,807.65)** premium the City received from the sale of its \$32,400,000 General Obligation Capital Improvement Bonds (after payment of underwriter's discount) that is allocable to the Sewer Fund project financed by such bonds. \$3,000,000 of the \$32,400,000 General Obligation Capital Improvement Bond was issued for Sewer Fund capital projects.

THAT, the expected useful life of the project is determined to be at least 20 years.

THAT, this resolution shall take effect upon its passage.

APPROVED BY:


ERIC SPEAR, MAYOR

ADOPTED BY CITY COUNCIL

**KELLI L. BARNABY, CMC
CITY CLERK**

PORTSMOUTH POLICE DEPARTMENT

MEMORANDUM

DATE: 1 MAY, 2012
TO: CITY MANAGER JOHN P. BOHENKO
FROM: CHIEF DAVID FERLAND 
RE: OVERNIGHT CLOSURE OF ROCK STREET PARK


I spent some time recently with some of the Creek Neighborhood Association members over coffee, and the on-going problems with Rock Street Park were part of our discussion. I also reviewed our calls for service/directed patrols/site check history for the park.

We had 51 complaints on record for noise, disorderly conduct, loitering, fights, vandalism, or drug activity in the past year. We also have a record of 11 arrests at that location, in spite of 357 walking property checks. I agree with neighborhood residents that the most effective next step to restore peace and order for the residents is overnight closure of the park. I am writing to request you to authorize and post the closure of Rock Street Park from 11 p.m. until 5 a.m. for a trial period of one year.

The type of activity described above usually happens at night when the risk of being seen is low and witnesses are few. Currently, police officers conduct foot patrols as time and other priorities allow, but even at 357 patrol checks, the problems have persisted. The department does not have the resources to conduct surveillance in the park on the random chance an officer would come across this kind of criminal activity in progress.

I understand the city manager is authorized to close city parks during certain hours, based upon a request from my office. Via this memo, I am requesting the posted closure of Rock Street Park between the hours of 11 p.m. and 5 a.m. for a trial period of one year. This would still allow broad access to the park, while restricting the opportunity for destructive and costly crime. Police officers will be more readily able to identify and thwart criminal behavior and public disorder.

M E M O R A N D U M

TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director 
DATE: April 30, 2012
RE: Request from Paul R. Frohn Jr. and Susan C. Frohn for Restoration of Involuntarily Merged Lots Under RSA 674:39-aa

In a letter dated March 15, 2012, Paul R. Frohn Jr. and Susan C. Frohn have requested that the City Council restore two lots, merged by City action, to their premerger status. This is the first request submitted to the Council under a new statute enacted in 2011; and the Frohns have submitted the request using a form that I have developed for this purpose.

Statutory Requirements

The new statute, RSA 674:39-aa, assigns the responsibility for "restoration of involuntarily merged lots" to the City Council. The statute distinguishes between "involuntary" and "voluntary" mergers as follows:

- "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.
- "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

The statute states that "The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots."

Unlike other situations where lots are proposed to be merged or separated, there is no role for the Planning Board in this process. The law also does not allow any discretion by the City Council: if the merged lots meet the criteria in the statute, the Council must vote to restore them to their premerger status. The decision of the Council may be appealed to the Zoning Board of Appeals, but no standards for such appeals are set forth in the statute.

Property Description and Request

The property that is the subject of this request is shown on the City Assessors maps as Assessors Map 236 Lot 53. It has frontage on both Woodbury Avenue and Meadow Road.

The request submitted by the Frohns includes documentation indicating that they received the deeds to the property as two separate lots. In their letter to the City Council, the Frohns assert

that the two lots were merged by municipal action without the consent of the owner, and they "certify that no owner in the chain of title voluntarily merged the lots" as defined in the statute.

Analysis

In order to assess the merits of the request Planning Department staff viewed the property and reviewed maps and aerial photographs of the neighborhood. However, no title search was undertaken.

The original subdivision of the block within which the property is located consisted of 20 lots, of which half fronted on Woodbury Avenue and half on Meadow Road. The Woodbury Avenue lots were generally 75 feet wide by 125 feet deep, and the Meadow Road lots were 75 feet wide by 100 feet deep. Eight of the original lots were subsequently combined into four larger lots, but the Frohns' property is the only instance in which a "through lot" (i.e., a lot with frontage on both Woodbury and Meadow) was created.

The principal residential structure is located on the Woodbury Avenue end of the property, lined up with the adjacent houses, and there is a small accessory shed on the Meadow Road end. There is no physical boundary or separation between the two parcels. Generally, the property appears to be used as a single property. However, this common use is essentially passive, and there is no indication of "overt action or conduct that indicates an owner regarded said lots as merged" under the terms of the statute.

Recommendation

I recommend that the City Council vote to **approve** the Frohns' request for restoration of the lots to their premerger status. I have attached a sample notice to be sent to the owner and affected City departments.

Attachments:

- Letter from Paul R. Frohn Jr. and Susan C. Frohn dated 15 March 2012 with attached maps and deed
- Orthophoto with parcel lines
- Photos (2) showing view from Meadow Lane
- Aerial photos (2)
- RSA 674:39-aa, "Restoration of Involuntarily Merged Lots"
- Sample "Notice to Owner"

Restoration of Involuntary Merged Lots Under RSA 674:39-aa

received
3/19/12

890 Woodbury Ave
Portsmouth, NH 03801
15 March 2012

City Council
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

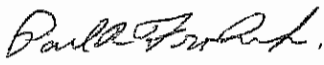
RE: Restoration of Involuntarily Merged Lots
890 Woodbury Ave
Assessors Map 236, Lots 15 and 24

Dear Mayor Spear and Members of the City Council:

The building lots referenced above were involuntarily merged by municipal action without the consent of the owner prior to September 18, 2010. I certify that no owner in the chain of title voluntarily merged the lots, including by any overt action or conduct that indicated that an owner regarded said lots as merged (such as, but not limited to, abandoning a lot line).

In accordance with RSA 674:39-aa, I hereby request that these lots be restored to their premerger status and that all zoning and tax maps be updated to identify the premerger boundaries of said lots or parcels as recorded at the Rockingham County Registry of Deeds.

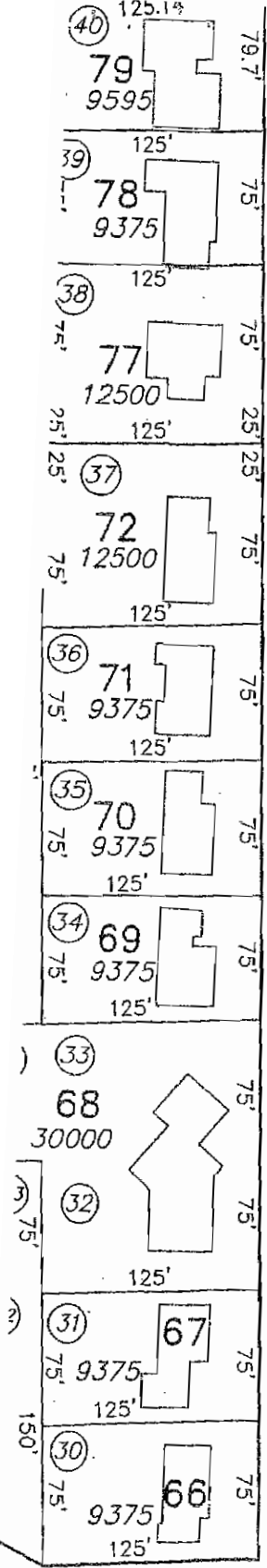
Sincerely,


Paul R. Frohn Jr.

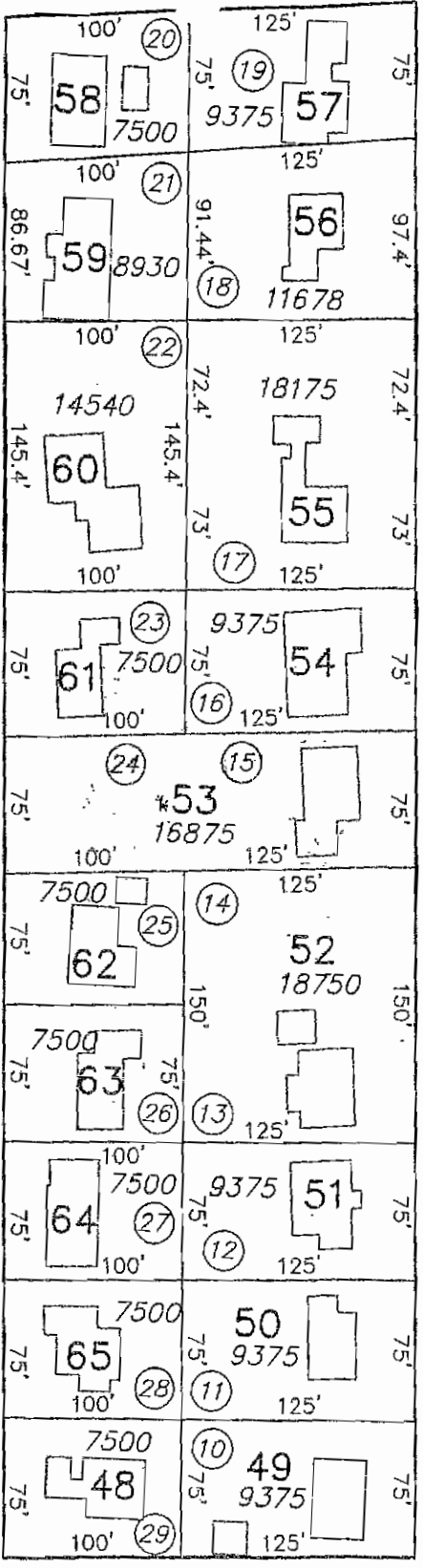

Susan C. Frohn

Attachments: Plan of premerger boundaries as recorded at Registry of Deeds

MAPLE

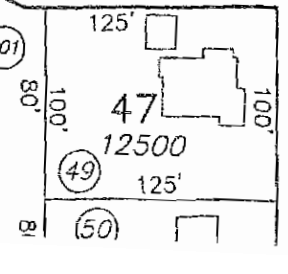


MEADOW

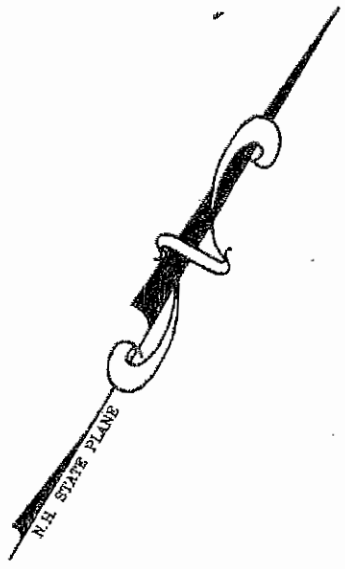
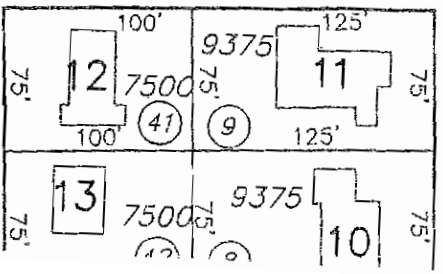


WOODBURY

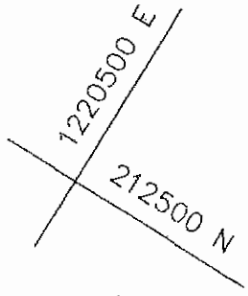
FARM LANE



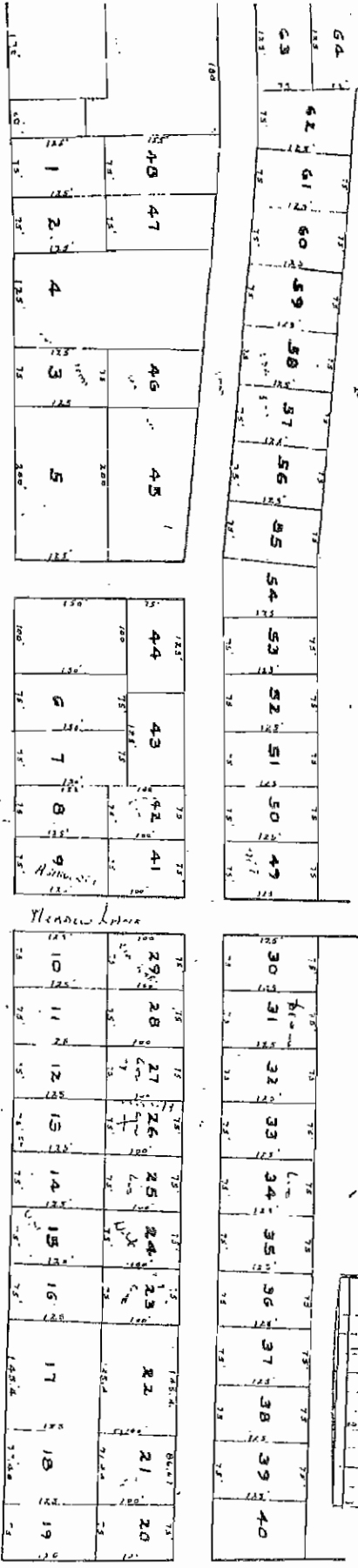
ROAD



R-19



01885

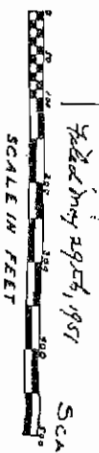


WOODBURY

AVENUE

Roberts of
 Adams & Adams
 100 State Street
 Boston, Mass. 97A

LOT # 21



PLAN OF LOTS
 OWNED BY MRS. CATHERINE H. BADGER
 FORTSMOUTH, N.H.
 JOHN W. DURGIN
 CIVIL ENGINEER
 SEPT. 1938
 SCALE: 1 IN. = 100 FT.

WARRANTY DEED
(Statutory Form, N. H. RSA 477:27)

2877 P0057

0233118691

FOR CONSIDERATION PAID, (We) Donald G. Hayes

9 Taylor Lane, Portsmouth, NH 03801
Grantee: Paul R. Frohn, Jr. and Susan T. Frohn, husband and wife

1890 Woodbury Avenue, Portsmouth, NH 03801

with WARRANTY COVENANTS, as joint tenants with rights of survivorship.

A certain lot of land, together with buildings thereon, situate in Portsmouth in the County of Rockingham and State of New Hampshire being Lot No. 15 as shown on a plan of lots entitled "Plan of Lots owned by Mrs. Catherine H. Badger, Woodbury Avenue, Portsmouth, New Hampshire, September 1938, amended April 20, 1944" drawn by John W. Durgin, C.E. and recorded in Rockingham Registry of Deeds, and bounded and described as follows, viz:

Beginning on the westerly sideline of Woodbury Avenue at land now or formerly of one Batchelder, Lot No. 14, as shown on said plan and thence running Southwesterly by said Batchelder land one hundred twenty-five (125) feet to land formerly of Catherine H. Badger, Lot No. 34; thence turning and running Northwesterly seventy-five (75) feet by said last mentioned land to land now or formerly of Forrest Gray, Lot No. 16, as shown on said plan; thence turning and running Northeasterly by said last mentioned land one hundred twenty-five (125) feet to Woodbury Avenue; thence turning and running in a Southeasterly direction by said Woodbury Avenue seventy-five (75) feet to the point of beginning.

Also a certain other piece or parcel of land situate in said Portsmouth off the westerly side of Woodbury Avenue as shown on a plan of lots owned by Mrs. Catherine H. Badger, Woodbury Avenue, Portsmouth, New Hampshire dated September 1938, amended April 20, 1944, drawn by John W. Durgin, C.E. and recorded in Rockingham Registry of Deeds, bounded and described as follows:

Beginning at the Southwesterly corner of Lot No. 15 as shown on said plan; thence running Southwesterly by Lot No. 21, other land formerly of Paul C. and Orville C. Badger, one hundred (100) feet, to Meadow Road, so-called; thence turning and running Southeasterly by said Meadow Road seventy-five (75) feet to Lot No. 25 on said plan; thence turning and running Northeasterly one hundred (100) feet on said Lot No. 25 to Lot No. 15 aforesaid; thence turning and running Northwesterly by said Lot No. 15, seventy-five (75) feet to the point of beginning.

Being subject to the benefits and burdens of a certain easement for sewer line purposes granted Harold W. Lamonde et al on September 29, 1960, said easement set forth in more specific detail in Rockingham Registry of Deeds, Book 1563, Page 102.

Meaning and intending to describe and convey the same premises conveyed to Donald G. Hayes, by Fiduciary Deed of Joyce Melnikoff, Guardian of Cynthia Wray, dated January 18, 1988, and recorded at Book 3723, Page(s) 2824, Rockingham County Registry of Deeds.

This is not homestead property of the grantor.

STATE OF NEW HAMPSHIRE

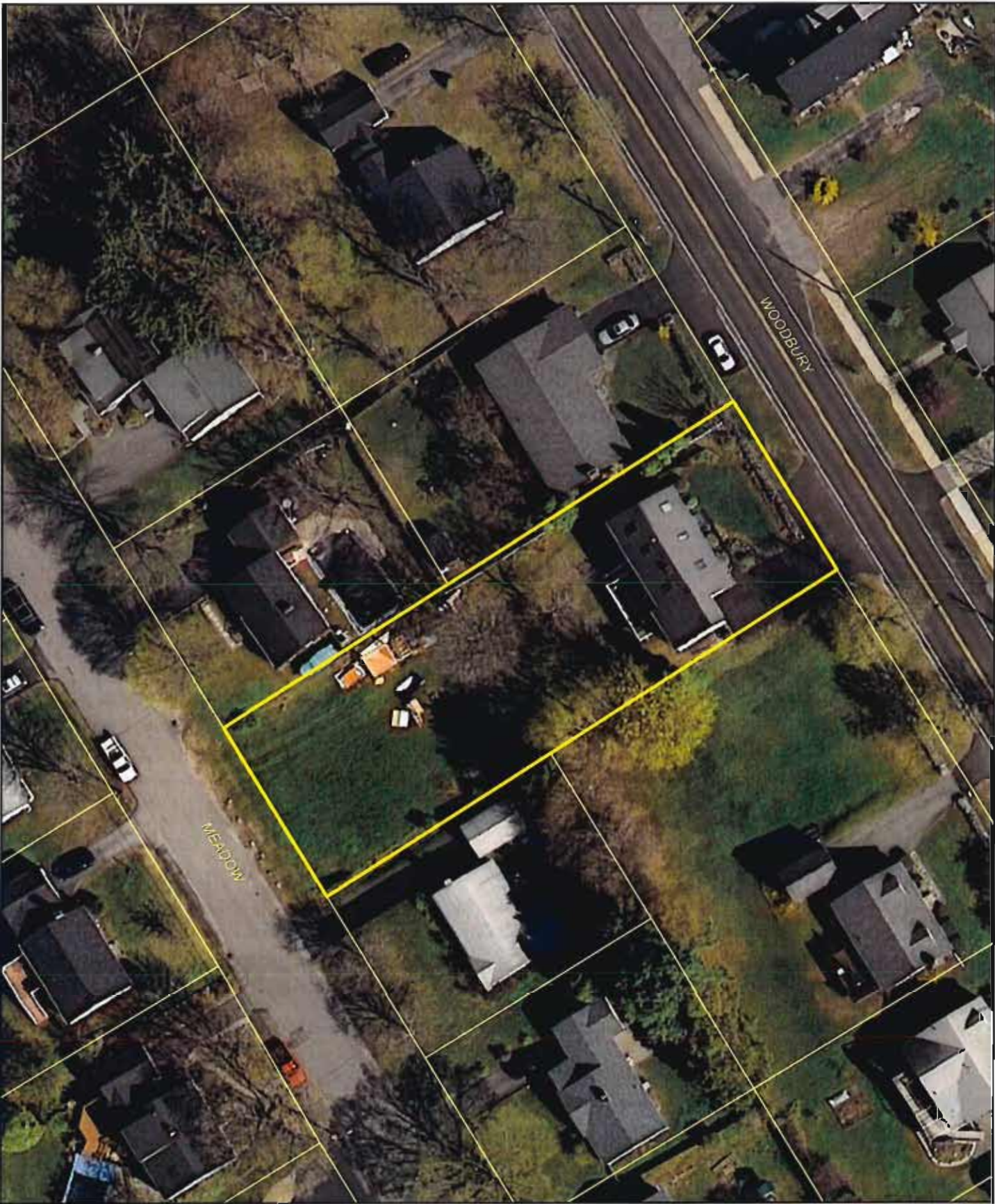
DEPARTMENT OF REVENUE ADMINISTRATION
REAL ESTATE TRANSFER TAX
052291 \$129700
1 THOUSAND, 2 HUNDRED AND 97 DOLLARS
18655 VOID IF ALTERED

3/20/12 10:28 AM 3/24/2012

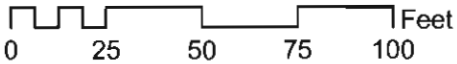
Granite State Title Services, Inc., Rochester, N.H. 03801

Images Available
Books: 0001 - 5281
Plan Numbers: 00001 - 37100
Document Book: 2877
Document Page: 0057
Plan Number: 00057
Prior Document: 00057
View Document
Next Document

Request for Restoration of Involuntarily Merged Lots



890 Woodbury Avenue



890 Woodbury Avenue – Views from Meadow Road



890 Woodbury Avenue – Aerial Views With Approximate Lot Boundaries



TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Regulation of Subdivision of Land

Section 674:39-aa

674:39-aa Restoration of Involuntarily Merged Lots. –

I. In this section:

(a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.

(b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.

(c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

(a) The request is submitted to the governing body prior to December 31, 2016.

(b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports.

Source. 2011, 206:4, eff. July 24, 2011.

**Restoration of Involuntarily Merged Lots Under RSA 674:39-aa
Notice to Owner**

April __, 2012

Paul R. Frohn Jr. and Susan C. Frohn
890 Woodbury Avenue
Portsmouth, NH 03801

RE: Restoration of Involuntarily Merged Lots
890 Woodbury Avenue
Assessors Map 236, Lot 53

Dear Mr. and Ms. Frohn:

The City Council considered your request dated 15 March 2012 to restore the lots referenced above to their premerger status, and voted on _____, 2012 to grant the request. The City will update all zoning and tax maps to identify the premerger boundaries of said lots or parcels as recorded at the Rockingham County Registry of Deeds.

NOTE: The restoration of these lots to their premerger status shall not be deemed to cure any non-conformity with the City's Zoning Ordinance or other existing local land use ordinances. Any development or redevelopment of either lot shall conform to land use ordinances unless relief has been granted in accordance with such ordinances and State law.

Sincerely,

John P. Bohenko
City Manager

cc: Rosann Maurice-Lentz, Assessor
Rick Taintor, Planning Director
James McCarty, GIS Coordinator

MEMORANDUM

TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director *RT*
DATE: April 27, 2012
RE: Request from Irene R. Lebel and Frances D. Lebel for Restoration of Involuntarily Merged Lots Under RSA 674:39-aa

In a letter dated March 26, 2012, Irene R. Lebel and Frances D. Lebel have requested that the City Council restore two lots, merged by City action, to their premerger status. This is the second request submitted to the Council under a new statute enacted in 2011; and the Labels have submitted the request using a form that I have developed for this purpose.

Statutory Requirements

The new statute, RSA 674:39-aa, assigns the responsibility for "restoration of involuntarily merged lots" to the City Council. The statute distinguishes between "involuntary" and "voluntary" mergers as follows:

- "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.
- "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

The statute states that "The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots."

Unlike other situations where lots are proposed to be merged or separated, there is no role for the Planning Board in this process. The law also does not allow any discretion by the City Council: if the merged lots meet the criteria in the statute, the Council must vote to restore them to their premerger status. The decision of the Council may be appealed to the Zoning Board of Appeals, but no standards for such appeals are set forth in the statute.

Property Description and Request

The property that is the subject of this request is located at 457 Broad Street and is shown on Assessors Map 221 as Lot 22. The request submitted by the Labels includes the 1958 deed by which they acquired the property, which indicates that the lot has 120 feet of frontage on Broad Street and 100 feet of depth, for an area of 12,000 square feet.

The lot is located in the General Residence A zoning district, which requires a minimum lot area of 7,500 sq. ft. Accordingly, area variances for both proposed lots (i.e., for the existing house on a substandard lot, and for a future house on the second lot) would be required if the existing lot were to be restored to the two original lots.

In their letter to the City Council, the Lebels assert that the two lots were merged by municipal action without the consent of the owner, and they “certify that no owner in the chain of title voluntarily merged the lots” as defined in the statute.

Analysis

In order to assess the merits of the request Planning Department staff viewed the property and reviewed maps and aerial photographs of the neighborhood. However, no title search was undertaken.

The original subdivision of the block within which the property is located appears to have consisted of 47 lots, of which half fronted on Broad Street and half on Sagamore Avenue. The lots were generally around 60 feet wide by 100 feet deep. Six of the original lots were subsequently combined into three larger lots, including the lot that is the subject of this request.

A voluntary merger will be deemed to have occurred if at any point in the past, there has been “any overt action or conduct that indicates an owner regarded [the] lots as merged” [RSA 674:39-aa, I(c)]. This particular situation fails to meet this condition in two ways.

First, although the deed refers to two lot numbers on an 1893 plan, the description does not actually convey two lots. Instead, the parcel is described as “A certain lot of land” with dimensions of 120 feet wide by 100 feet deep. That is, the deed itself indicates that the original 1893 lots have already been merged.

Second, the physical character of the development on the parcel indicates that at some point an owner of the lot regarded the two lots as merged. Although the principal residential structure is located on the left side of the property, lined up with the adjacent houses, the garage is located across the former boundary line dividing the two original lots constituting the current parcel. This fact by itself is indication that an owner in the chain of title abandoned the lot line and treated the lot as a single parcel.

Because the 1958 deed describes the property as a single lot, and because the property has been developed in such a way as to preclude separate use of the two lots, a voluntary merger of the two original lots has taken place. Therefore, the statutory criteria for restoring the lots to their premerger status are not met.

Recommendation

I recommend that the City Council vote to **deny** the Lebels’ request for restoration of the lots to their premerger status.

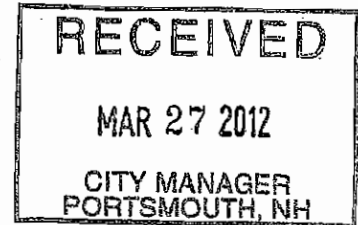
Attachments:

- Letter from Irene R. Lebel and Frances D. Lebel dated March 26, 2012 with attached deed

- Orthophoto with parcel lines
- Photos (2) showing view from Broad Street
- Aerial photos (2)
- RSA 674:39-aa, "Restoration of Involuntarily Merged Lots"
- Sample "Notice to Owner"

Restoration of Involuntary Merged Lots Under RSA 674:39-aa

Irenee R. & Frances D. Lebel
457 Broad Street
Portsmouth, NH 03801



March 26, 2012

City Council
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: Restoration of Involuntarily Merged Lots
457 Broad Street

Assessors Map 0221, Lots 0042 and 0000

Dear Mayor Spear and Members of the City Council:

The lots referenced above were involuntarily merged by municipal actions without the consent of the owners prior to September 18, 2010. We certify that we, and no one in the chain of title voluntarily merged the lots, including by any overt action or conduct that indicated an owner regarded said lots as merged (such as, but not limited to, abandoning a lot line).

In accordance with RSA 674:39-aa we hereby request that these lots be restored to their premerger status and that all zoning and tax maps be updated to identify the premerger boundaries of said lots as recorded with the Rockingham County Registry of deeds.

Very truly yours

Two handwritten signatures in cursive script. The first signature is "Irenee R. Lebel" and the second is "Frances D. Lebel".

Irenee R. Lebel and Frances D. Lebel

Owners

Attachment: Plan of premerger boundaries as recorded with the Rockingham Registry of Deeds

KNOW ALL MEN BY THESE PRESENTS, that I, Jeremy H. Wessauville, of Portsmouth, in the County of Rockingham and State of New Hampshire, Executor of the Estate of Byron F. Staples, late of said Portsmouth, by appointment of the Honorable Probate Court of the County of Rockingham and State of New Hampshire, by virtue and in execution of the authority conferred upon me in my said capacity by license of said Probate Court dated January 7, 1958 to sell the real estate of said estate by private sale or public auction as I shall deem proper, and it appearing to me, the said Executor, that it is for the best interest of said estate that I sell the premises hereinafter described, by private sale in consideration of the sum of Fifteen Thousand (\$15,000.00) Dollars, said sum being in my opinion the fair value of said premises, to me in hand, before the delivery hereof, well and truly paid by Irene R. Lebel and Frances D. Lebel of Kittery, in the County of York and State of Maine, the receipt whereof I do hereby acknowledge, have granted, bargained and sold and by these presents do hereby in my said capacity, confirm unto the said Irene R. Lebel and Frances D. Lebel, as joint tenants with the right of survivorship and not as tenants in common and the heirs and assigns of the survivor of them forever,

A certain lot of land in said Portsmouth with the buildings thereon, being lots number 37 and 40 on "Plan of Lots of Land Extended from South Road to Jones Avenue" Portsmouth, N. H., August 1, 1893, and further bounded and described as follows: Northerly by land formerly of Herbert C. Wallace and now of Elvira Noble, one hundred (100) feet, more or less; easterly by land now or formerly of James Crowley and land of Toole one hundred twenty (120) feet, more or less; southerly by land now or formerly of Albert G. Hunt one hundred (100) feet, more or less; and westerly by Broad Street one hundred twenty (120) feet, more or less.

Subject to the condition that no building, or other structure, shall ever be erected, or placed, upon said lot which shall in any part be located, or stand, within twenty (20) feet of the easterly side line of Broad Street.

Being the same premises conveyed to Mabel R. Staples by deed of Cora J. Craig, et als. dated August, 1944 and recorded in Rockingham Registry Book 1052, Page 375 and passed to the decedent, Byron F. Staples under the Estate of Mabel R. Staples as the probate records of Rockingham County will more particularly set forth.

Taxes for the year 1958 shall be prorated as of the date of delivery of this deed.

TO HAVE AND TO HOLD the same, with all the privileges and appurtenances thereto belonging to them the said Irene R. Lebel and Frances D. Lebel, the survivor of them and his or her heirs and assigns to their own use and behoof forever,

And I do hereby in my said capacity covenant with the said grantees, the survivor of them and his or her heirs and assigns that I am duly authorized to make the sale of the premises aforesaid; that in all proceedings in the sale hereof, I have complied with the requirements of the statute provided, and with the terms and conditions of my appointment as Executor, and that I will WARRANT AND DEFEND the same to the said grantees, the survivor of them and his or her heirs and assigns, against the lawful claims of all persons claiming by, from and under me in my said capacity.

1469 440

IN WITNESS WHEREOF, I have hereunto set my hand and seal
this 17th day of June, A. D., 1958.

Signed, sealed and delivered
in the presence of:

William F. Harrington Jeremy R. Waldron
Executor, Estate of Byron F. Stapl

STATE OF NEW HAMPSHIRE
Rockingham, ss.

June 17, 1958

Personally appeared the above named Jeremy R. Waldron and
in his said capacity aforesaid executed the foregoing to be his
free act and deed, Before me,

Lillian A. Peterson
Notary Public



Received and recorded June 18, 10:25 A.M., 1958.

Request for Restoration of Involuntarily Merged Lots



457 Broad Street



0 10 20 30 40 Feet

457 Broad Street – Street View



457 Broad Street – Aerial Views With Approximate Lot Boundaries



TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Regulation of Subdivision of Land

Section 674:39-aa

674:39-aa Restoration of Involuntarily Merged Lots. –

I. In this section:

(a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.

(b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.

(c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

(a) The request is submitted to the governing body prior to December 31, 2016.

(b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports.

Source. 2011, 206:4, eff. July 24, 2011.

Restoration of Involuntarily Merged Lots Under RSA 674:39-aa
Sample Notice to Owner

[Date]

[Property Owner]

[Address]

[City, State Zip]

RE: Restoration of Involuntarily Merged Lots

[Street address of lots to be restored]

Assessors Map ____, Lots ____ and ____

Dear _____:

The City Council considered your request dated _____, 2012 to restore the lots referenced above to their premerger status, and voted on _____, 2012 to **deny** the request because the statutory criteria for such restoration under RSA 674:39-aa are not met.

Sincerely,

John P. Bohenko

City Manager

cc: Rick Taintor, Planning Director

CITY OF PORTSMOUTH
CITY COUNCIL POLICY NO. 2012-02

POLICY REGARDING USE OF CITY PROPERTY FOR SIDEWALK CAFE'S
PROVIDING ALCOHOL SERVICE

WHEREAS, the City Council allowed the pilot use of City property by two sidewalk cafe's providing alcohol service during the 2011 summer season; and

WHEREAS, the City Council recognizes the benefit to residents, businesses, visitors and the City's economic vitality of allowing sidewalk cafe's with alcohol service on City property; and

WHEREAS, the City Council desires to balance said benefits of sidewalk cafe's with the safety, desires, and convenience of the public at large; and

WHEREAS, the City Council also recognizes that the City has the inherent authority to regulate any obstructions on City sidewalks and any intrusions into City sidewalks; and

WHEREAS, the City Council recognizes the authority of the State to regulate alcohol service.

NOW THEREFORE, the City Council adopts the following policies, criteria and standards with regard to the use of City property for sidewalk cafe's providing alcohol service:

1. Requests for use of City property for sidewalk cafe's providing alcohol service shall be made in writing to the City Council on an annual basis by May 1st with no expectation of continued year-to-year use of the sidewalk area on a continuing basis. The City Council shall allow no more than six (6) sidewalk cafe's with alcohol service in any season.
2. Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curb lines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for the sidewalk café, dimensioned routes of travel within the sidewalk café area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like.
3. The terms and conditions of any such requests that are approved by the City Council in any given year shall be described in an annual Area Service Agreement, which includes a clear depiction of the area approved for sidewalk café use, with said Area Service Agreement to be signed by the City Manager and the party or parties making the request.
4. The term of the Area Service Agreement should be for no more than six (6) months and shall typically run mid-April thru mid-October.
5. Area Service Agreements shall not be assignable to other parties.

6. Use of the Area subject to the Area Service Agreement (the "Area") may be precluded, modified or made subject to any such terms and conditions as may be determined by the City in order to accommodate special municipal events.
7. A ten dollar (\$10.00) per square foot fee will be charged for the Area subject to the Area Service Agreement and the fee shall be for the entire 6 month season with no proration of the fee. The minimum fee for the season shall be \$2,000 even if the size of the Area subject to the Agreement is less than 200 square feet. The fee shall be due and payable to the City of Portsmouth prior to authorization to use the Area.
8. The Area specified for sidewalk café use in the Area Service Agreement shall be restored upon termination of the Area Service Agreement at season's end. Specifically, at season's end, the enclosure system, tables, chairs and all other materials in their entirety shall be removed from the City-owned area with the area left in an unobstructed, undamaged, clean and sanitary condition at no cost to the City.
9. Sidewalk cafés on City property shall indemnify and hold harmless the City of Portsmouth and shall maintain and provide insurance of the types and amounts specified by the City's Legal Department.
10. Sidewalk cafe's shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, or make same inaccessible for public use or maintenance purposes.
11. Sidewalk cafe's may utilize the Area for authorized purposes during their normal business hours, except that all tables within the Area shall be cleared of all food and alcoholic beverages by 10:30 p.m. Monday through Saturday and by 10:00 p.m. on Sunday with no alcohol served within the Area subsequent to one-half hour before the foregoing closure times.
12. Sidewalk café operators shall agree at all times to comply with all laws, rules and regulations of the NH State Liquor Commission and all other local, state and federal laws. Approval of the Area Service Agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission.
13. Sidewalk cafe's shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering a substantial meal with service at tables conducted by wait staff only.
14. Sidewalk café operators will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act.
15. The Area Service Agreement may be suspended at the sole discretion of the City on an administrative basis.
16. The Area Service Agreement may be revoked in its entirety, excepting for indemnity provisions, by the City by vote of the City Council.

17. Sidewalk cafe's with alcohol service should meet the following site design standards:

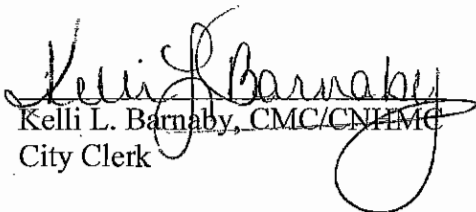
- Be separated from the public pedestrian space on the adjacent municipal sidewalk by an enclosure system consisting of heavy duty black decorative metal materials or equivalent as approved by the City Manager or his designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and insure public safety; the minimum height of the enclosure system shall be 30 inches and the maximum height shall be 36 inches.
- Sidewalk cafe's shall have no audio or visual or entertainment of any type located outside, and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed to patrons in the sidewalk café.
- Sidewalk café seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the Area approved by the City, and the adjacent public pedestrian way shall not be crossed in order to provide alcohol or food service to additional areas.
- The internal dimensions and table/chair layout of the sidewalk café Area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.
- Sidewalk cafe's must provide a 5-foot radius clearance from the center of restaurant doorways (exterior) and doorways shall be kept clear at all times and a 5-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.
- The enclosure system, tables and chairs shall be movable/non-permanent.
- In Market Square the minimum width for the pedestrian way adjacent to the Area shall be 10-feet to 12-feet depending on site conditions. In all other areas where sidewalk cafe's are allowed the width for the pedestrian way adjacent to the Area shall, at a minimum, be 5-feet and, in any event, meet ADA, but will depend on site conditions. The pedestrian way in both instances shall allow for and provide clear unimpeded passage and access along the Area. The pedestrian way shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the Area interfere with accessibility or public safety, including safe lines of site for drivers.
- Canopies over the sidewalk café shall not be allowed unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the sidewalk café; table umbrellas without logos are allowed, but must not extend beyond the Area.
- No advertising of any kind shall be allowed in the Area.
- No improvements or personal property located within the Area shall extend on or over any municipal property located outside the Area.

18. Smoking should not be allowed in the sidewalk café Area.

19. Sidewalk café operators shall agree at all times to comply with all local laws, rules regulations and orders including, but not limited to the following:
- Health Department to approve outdoor food service operations and cleaning operations, with the Area to be left in a clean and sanitary condition at all times and garbage contained at all times in covered receptacles. The Area shall be left in clean condition at close of business with all garbage removed in its entirety from the Area, and any ground debris swept up, at close of daily business. No food prep, grilling, service windows, service counters, wait stations, or bus buckets shall be allowed in the Area and no condiments, paper products or the like shall be stored on the tables in the Area. Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
 - Inspections Department shall review/approve that bathroom facilities are sufficient to support outdoor sidewalk café seating. Permits shall be sought from the Inspections Department for any proposed Area lighting.
 - A Place of Assembly inspection and updated Place of Assembly permit shall be required from the Fire Department and the Fire Department shall review/approve means of egress.
20. No Area Service Agreement should be approved by the City except in conformance with the foregoing.
21. The above are policy guidelines that will serve as the basis for Area Service Agreements, which may include other terms and conditions deemed by the City to be in the public interest.
22. The number and location of sidewalk cafe's on City sidewalks shall be at the sole unfettered discretion of the City Council acting in the public interest and no entitlement is created by this policy for any party to have a sidewalk café at any location.

This policy shall take effect upon the passage by the City Council.

Adopted by the Portsmouth City Council on March 19, 2012.


Kelli L. Barnaby, CMC/CNHMC
City Clerk

AREA SERVICE AGREEMENT

The City of Portsmouth, a municipal corporation having a principal place of business of 1 Junkins Avenue, Portsmouth, County of Rockingham and State of New Hampshire 03801 (hereinafter "City") and Popovers on the Square (hereinafter "Licensee" or "Popovers"), having a principal place of business of 8 Congress Street, Portsmouth, County of Rockingham and State of New Hampshire 03801, hereby enter this Area Service Agreement ("Agreement") for the purposes set forth herein:

PRELIMINARY: Pursuant to the successful completion of the summer 2011 pilot sidewalk café program, and in accordance with the principles set forth more fully in the preamble to City Council Policy No. 2012-02 (the "Policy"), the City is desirous of permitting Licensee to utilize City property as part of its restaurant operation. This arrangement shall be strictly articulated according to the terms and provisions of this Agreement. No obligation or expectation shall inhere upon either party beyond the 2012 season.

It is the intent of this agreement to implement City Council Policy No. 2012-02, which is hereby incorporated by reference and in all respects made part of this agreement.

SCOPE OF AUTHORITY GRANTED: This Agreement shall convey from the City to Licensee a bare license to expand its restaurant activities onto City property, and no interest in the underlying real estate is conveyed through the terms of this Agreement.

TERMS AND CONDITIONS

1. **Term of Agreement:** This Agreement shall commence on the date of its completed execution, and, unless suspension or termination should occur sooner, all provisions of the Agreement, except those governing

indemnification pursuant to the terms set forth within this Agreement, shall expire at midnight on Sunday, October 14, 2012.

2. **Area Use:** The City authorizes Licensee to utilize a certain Area as shown on attached Exhibit A (hereinafter "Area") solely for the purpose of conducting outdoor restaurant operations, which may include the sale of alcoholic beverages in accordance with all applicable provisions of law and other provisions of this Agreement.
3. **Special Municipal Events:** Licensee's use of the Area subject to this Agreement may be precluded, modified or otherwise subject to any terms and conditions deemed necessary by the City to accommodate special municipal events. Such events may include but shall not be limited to: the Portsmouth Criterium, Children's Day, and Market Square Day. Any such adjustments to the use of the Area which may be mandated by the City shall be undertaken without cost to the City, and Licensee shall receive no refund or reimbursement for such adjustments.
4. **Area Service Fee:** Prior to commencing use of the Area, Licensee shall pay the City a single lump sum in the amount of \$7,230.00.
5. **Hours of Operation:** Licensee may utilize the Area for authorized purposes during its normal business hours, except that all tables within the Area shall be cleared of all food and alcoholic beverages by 10:30 p.m. Monday through Saturday and by 10:00 p.m. on Sunday. Further, no alcohol may be served within the Area less than thirty (30) minutes prior to the foregoing closure times.
6. **Conditions Governing Service of Alcoholic Beverages:** In addition to complying with all local, state, and federal laws, as well as rules and regulations of the NH State Liquor Commission, Licensee shall abide by the following conditions in conducting its service of alcoholic beverages in the Area:
 - a. Alcoholic beverages shall only be served to patrons who are seated at a table serviced by waitstaff within the Area, and such beverages must be consumed while seated within the Area;
 - b. Alcoholic beverages shall only be served to patrons ordering a substantial meal;
 - c. The service of alcoholic beverages at tables in the Area shall be conducted by waitstaff only, and no person in the Area shall be permitted to bring his or her own alcoholic beverage to a table;
 - d. Licensee shall bear full responsibility for ensuring that no alcoholic beverages are passed, taken, or otherwise transmitted to individuals on surrounding City property from within the Area.

7. **Smoking Prohibited:** Smoking shall not be permitted within the Area, and Licensee shall bear full responsibility for maintaining conformity with this provision.
8. **Certain Devices Prohibited:** No devices which produce an open flame or otherwise rely upon combustion in any form shall be permitted within the Area. Such prohibited devices shall include, but not be limited to: tabletop candles, outdoor torches, grills, and propane heaters.
9. **New Hampshire State Liquor Commission:**
 - a. Licensee's occupancy of the Area is conditioned upon receipt of prior approval of this Agreement by the State Liquor Commission.
 - b. Licensee further agrees to comply at all times with all laws, rules and regulations enforced by the New Hampshire State Liquor Commission.
 - c. Licensee shall also self-report any violations of such laws in writing within forty-eight (48) hours of the violation, rules and regulations to both the City and to the State Liquor Commission.
10. **Health Department:**
 - a. Licensee's occupancy of the Area is conditioned upon prior approval by the City Health Department of all outdoor food service and cleaning operations.
 - b. Licensee's occupancy of the Area is conditioned upon review and approval by the City Health Department that kitchen facilities are sufficient to support the demands of the additional seating to be placed in the Area.
 - c. The Area shall be maintained in a clean and sanitary condition at all times, and all garbage shall be contained at all times in covered receptacles.
 - d. At the close of business, the Area shall be left in a clean condition, and all ground debris shall be swept up and disposed of. In conducting such cleaning, Licensee acknowledges that washing debris materials into City storm drains or sewer lines is expressly forbidden.
 - e. Within the Area, no food preparation, grilling, service windows, service counters, wait stations, or bus buckets shall be permitted, and condiments, paper products and the like shall be removed from the Area and stored in a secure, indoor location at all times except when actually being used by seated customers.
 - f. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders which may issue from the City Health Department.

11. Inspections Department:

- a. Licensee's occupancy of the Area is conditioned upon review by the City Inspections Department and approval that all bathroom facilities in the main restaurant facility of Licensee are sufficient to support the additional seating in the Area.
- b. Licensee shall also receive permits from the City Inspections Department prior to installing any Area lighting.
- c. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders of the Inspections Department.

12. Fire Department:

- a. Licensee's occupancy of the Area is conditioned upon receipt from the City Fire Department of all necessary Place of Assembly inspections, permits, and modifications thereto.
- b. Licensee's occupancy of the Area is further conditioned upon review and approval by the City Fire Department of the means of egress from the Area.
- c. Licensee expressly agrees to strictly comply with all reasonable laws, rules, regulations and orders of the City Fire Department, including the foregoing.

13. Audio/Visual Interference Prohibited:

- a. No live entertainment performances, film, television, music, speakers or other sound or entertainment amplification devices shall be placed within the Area for any purpose.
- b. No such entertainment shall be situated or conducted inside the building in such a manner that it is transmitted, whether intentionally or incidentally, to patrons in the Area or to adjoining City property.

14. Design of Area Improvements:

- a. Within the Area, every detail of the Licensee's improvements shall comply with the representations and depictions set forth in Exhibit A.
- b. Moreover, every detail of the Licensee's improvements, including but not limited to lighting, access and egress, placement of structures and items of personal property, and every other detail of every kind is expressly subject to the prior approval and continuing review of the City. To this end, the Licensee expressly agrees to make every modification to structural items or items of personal property as may be required by the City.
- c. Notwithstanding the foregoing, the following specific criteria shall apply to Area improvements:

- i. There shall be no canopy to protect the Area, unless it is completely supported by hardware on the building structure and uses no vertical supports in or around the sidewalk café;
- ii. Umbrellas may be placed over individual tables, though no such umbrellas may bear any advertising or logo;
- iii. No improvements or personal property located within the Area shall extend on or over any municipal property located outside of the Area; and
- iv. There shall be no advertising of any kind within the Area.

15. Non-interference with City Infrastructure and Amenities:

- a. Through this Agreement, the Licensee expressly agrees that its use of the Area shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, and that its use shall not make the same inaccessible for public use or maintenance purposes.
- b. Licensee shall further bear full responsibility for providing sufficient staffing and supervision within the Area to maintain an orderly dining environment that does not impede or negatively impact passers-by or other users of City infrastructure or amenities.

16. Compliance with Americans with Disabilities Act ("ADA"): The Area as used by the Licensee shall comply fully with all provisions of the ADA. The Licensee shall be fully and solely liable for assuring that the Area, and the services and programs which the Licensee offers within the Area, are accessible to the handicapped, as defined by the ADA. Where structural modifications to the Area are necessary to achieve accessibility of services and programs offered by the Licensee, Licensee shall be solely liable for making such structural modifications, but before doing so shall obtain the consent of the City.

17. Enclosure System and Area Use Specifications:

- a. The Licensee's use of the Area and installation of an enclosure system shall be subject to the conditions and layout depicted in Exhibit A and the application materials submitted to the City, and any alterations therefrom shall require the express written approval of the City.
- b. In all instances, Licensee shall be fully and solely liable for assuring that installation of the enclosure is conducted in conformity with the requirements set forth in City Council Policy 2012-02.

18. Indemnification: The Licensee agrees to indemnify and hold harmless the City and its officials, employees and agents from any demand, claim, cost or liability of any type arising from the existence or use of this Agreement. This indemnification provision shall survive the termination of the Agreement, whether termination is for cause or otherwise.

19. **Insurance:** At all times during the term of this Agreement, the Licensee shall maintain and provide the City general liability and alcohol service liability insurance coverage of not less than \$3,000,000.00 covering all activities conducted under this Agreement. The City shall be named as an additional insured on all policies. All such insurance shall be approved by the City Legal Department in advance of Licensee's occupancy of the Area, and shall meet all terms, conditions and specifications as the Legal Department may elect to set forth.
20. **Additional Costs:** The Licensee shall bear all costs of every kind associated in any way with the existence of the Area and its use by Licensee. There shall be no obligation on the City to expend any sums of money to accommodate the existence of this Agreement or Licensee's use of the Area.
21. **Suspension for Cause:** For cause, the City may suspend use of the Area by Licensee on an administrative basis without reimbursement of any portion of the Area Service fee for up to fourteen (14) consecutive days, at the sole discretion of the City. No public hearing shall be required prior to such administrative suspension.
22. **Revocation for Cause:** This Agreement may be revoked, in its entirety, by the City for cause by vote of the City Council. No public hearing shall be required prior to such revocation, and in the event of revocation, the Area Service fee shall not be returned to Licensee. Cause for revocation shall include, but not be limited to, the breach of any condition set forth within this Agreement, or the breach of any other City Council policy, ordinance, or pertinent local, state or federal statutory provision.
23. **Revocation without Cause:** This agreement may be revoked in its entirety by the City, without cause, by vote of the City Council. No public hearing shall be required prior to such revocation. In the event of revocation without cause, the Area Service Fee shall be returned on a pro rata basis.
24. **Restoration of Area:** Licensee shall immediately remove from the Area each and every structure and item of personal property, leaving the Area in an unobstructed, clean and sanitary condition, upon termination of this Agreement for any reason or the close of the outdoor restaurant season. In no case shall any items remain in the Area later than October 15, 2012. Licensee shall restore the Area to exactly match the depiction shown in the attached Exhibit A.

25. **Non-assignability:** This Agreement is not assignable, nor may the obligations of Licensee in any way be transferred, alienated, or delegated to any other party.

Dated this _____ day of _____, 2012.

City of Portsmouth

Witness

By: _____

John P. Bohenko
City Manager

Duly authorized by vote of City Council
on _____.

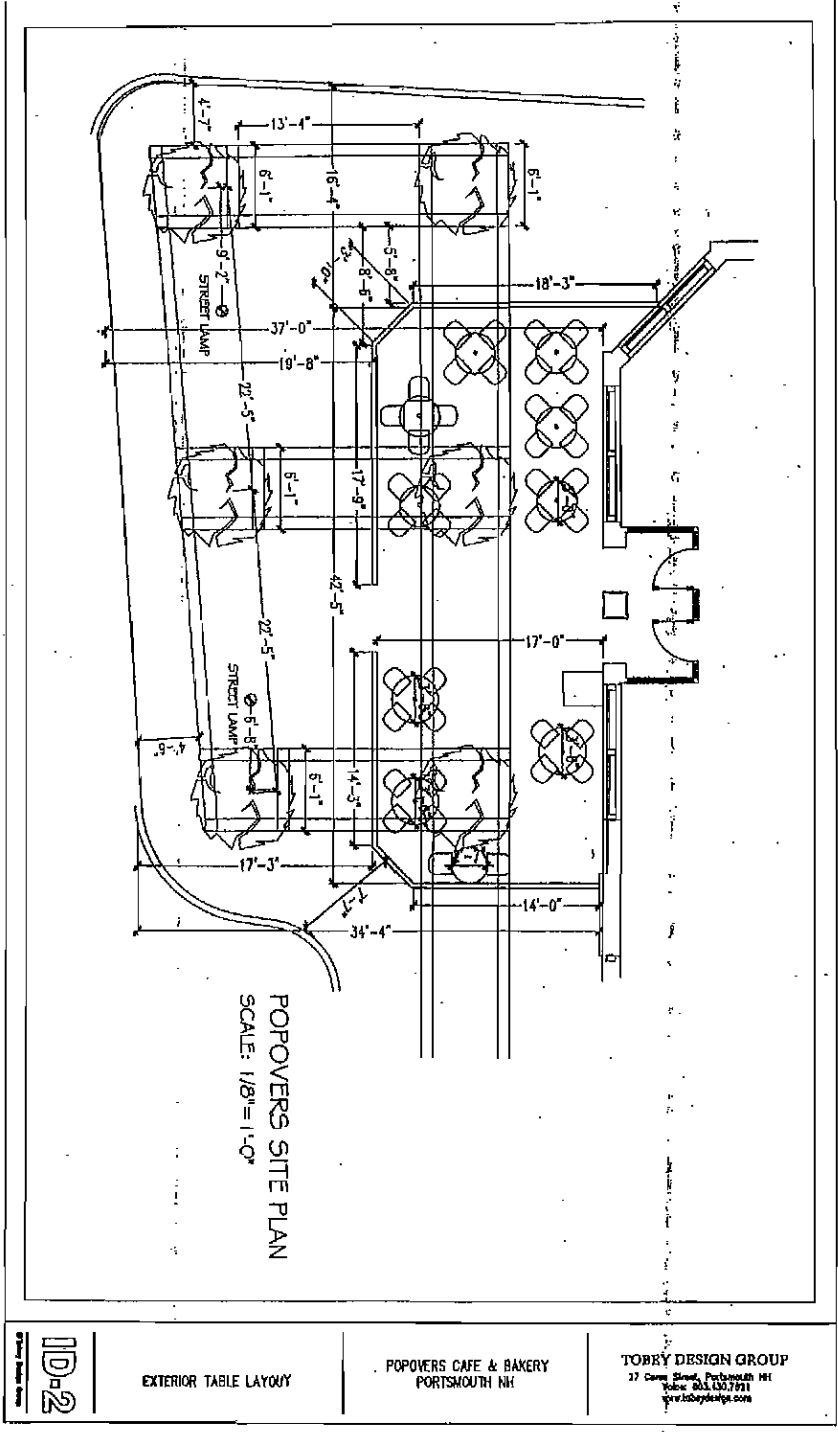
Dated this _____ day of _____, 2012.

Popovers on the Square

Witness

By: _____

John Tinios
President/Manager



AREA SERVICE AGREEMENT

The City of Portsmouth, a municipal corporation having a principal place of business of 1 Junkins Avenue, Portsmouth, County of Rockingham and State of New Hampshire 03801 (hereinafter "City") and The District Restaurant Group, Inc. (hereinafter "Licensee" or "The District"), having a principal place of business of 103 Congress Street, Portsmouth, County of Rockingham and State of New Hampshire 03801, hereby enter this Area Service Agreement ("Agreement") for the purposes set forth herein:

PRELIMINARY: Pursuant to the successful completion of the summer 2011 pilot sidewalk café program, and in accordance with the principles set forth more fully in the preamble to City Council Policy No. 2012-02 (the "Policy"), the City is desirous of permitting Licensee to utilize City property as part of its restaurant operation. This arrangement shall be strictly articulated according to the terms and provisions of this Agreement. No obligation or expectation shall inhere upon either party beyond the 2012 season.

It is the intent of this agreement to implement City Council Policy No. 2012-02, which is hereby incorporated by reference and in all respects made part of this agreement.

SCOPE OF AUTHORITY GRANTED: This Agreement shall convey from the City to Licensee a bare license to expand its restaurant activities onto City property, and no interest in the underlying real estate is conveyed through the terms of this Agreement.

TERMS AND CONDITIONS

- 1. Term of Agreement:** This Agreement shall commence on the date of its completed execution, and, unless suspension or termination should occur

sooner, all provisions of the Agreement, except those governing indemnification pursuant to the terms set forth within this Agreement, shall expire at midnight on Sunday, October 14, 2012.

2. **Area Use:** The City authorizes Licensee to utilize a certain Area as shown on attached Exhibit A (hereinafter "Area") solely for the purpose of conducting outdoor restaurant operations, which may include the sale of alcoholic beverages in accordance with all applicable provisions of law and other provisions of this Agreement.
3. **Special Municipal Events:** Licensee's use of the Area subject to this Agreement may be precluded, modified or otherwise subject to any terms and conditions deemed necessary by the City to accommodate special municipal events. Such events may include but shall not be limited to: the Portsmouth Criterium, Children's Day, and Market Square Day. Any such adjustments to the use of the Area which may be mandated by the City shall be undertaken without cost to the City, and Licensee shall receive no refund or reimbursement for such adjustments.
4. **Area Service Fee:** Prior to commencing use of the Area, Licensee shall pay the City a single lump sum in the amount of \$4,670.00.
5. **Hours of Operation:** Licensee may utilize the Area for authorized purposes during its normal business hours, except that all tables within the Area shall be cleared of all food and alcoholic beverages by 10:30 p.m. Monday through Saturday and by 10:00 p.m. on Sunday. Further, no alcohol may be served within the Area less than thirty (30) minutes prior to the foregoing closure times.
6. **Conditions Governing Service of Alcoholic Beverages:** In addition to complying with all local, state, and federal laws, as well as rules and regulations of the NH State Liquor Commission, Licensee shall abide by the following conditions in conducting its service of alcoholic beverages in the Area:
 - a. Alcoholic beverages shall only be served to patrons who are seated at a table serviced by waitstaff within the Area, and such beverages must be consumed while seated within the Area;
 - b. Alcoholic beverages shall only be served to patrons ordering a substantial meal;
 - c. The service of alcoholic beverages at tables in the Area shall be conducted by waitstaff only, and no person in the Area shall be permitted to bring his or her own alcoholic beverage to a table;
 - d. Licensee shall bear full responsibility for ensuring that no alcoholic beverages are passed, taken, or otherwise transmitted to individuals on surrounding City property from within the Area.

7. **Smoking Prohibited:** Smoking shall not be permitted within the Area, and Licensee shall bear full responsibility for maintaining conformity with this provision.
8. **Certain Devices Prohibited:** No devices which produce an open flame or otherwise rely upon combustion in any form shall be permitted within the Area. Such prohibited devices shall include, but not be limited to: tabletop candles, outdoor torches, grills, and propane heaters.
9. **New Hampshire State Liquor Commission:**
 - a. Licensee's occupancy of the Area is conditioned upon receipt of prior approval of this Agreement by the State Liquor Commission.
 - b. Licensee further agrees to comply at all times with all laws, rules and regulations enforced by the New Hampshire State Liquor Commission.
 - c. Licensee shall also self-report any violations of such laws in writing within forty-eight (48) hours of the violation, rules and regulations to both the City and to the State Liquor Commission.
10. **Health Department:**
 - a. Licensee's occupancy of the Area is conditioned upon prior approval by the City Health Department of all outdoor food service and cleaning operations.
 - b. Licensee's occupancy of the Area is conditioned upon review and approval by the City Health Department that kitchen facilities are sufficient to support the demands of the additional seating to be placed in the Area.
 - c. The Area shall be maintained in a clean and sanitary condition at all times, and all garbage shall be contained at all times in covered receptacles.
 - d. At the close of business, the Area shall be left in a clean condition, and all ground debris shall be swept up and disposed of. In conducting such cleaning, Licensee acknowledges that washing debris materials into City storm drains or sewer lines is expressly forbidden.
 - e. Within the Area, no food preparation, grilling, service windows, service counters, wait stations, or bus buckets shall be permitted, and condiments, paper products and the like shall be removed from the Area and stored in a secure, indoor location at all times except when actually being used by seated customers.
 - f. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders which may issue from the City Health Department.

11. Inspections Department:

- a. Licensee's occupancy of the Area is conditioned upon review by the City Inspections Department and approval that all bathroom facilities in the main restaurant facility of Licensee are sufficient to support the additional seating in the Area.
- b. Licensee shall also receive permits from the City Inspections Department prior to installing any Area lighting.
- c. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders of the Inspections Department.

12. Fire Department:

- a. Licensee's occupancy of the Area is conditioned upon receipt from the City Fire Department of all necessary Place of Assembly inspections, permits, and modifications thereto.
- b. Licensee's occupancy of the Area is further conditioned upon review and approval by the City Fire Department of the means of egress from the Area.
- c. Licensee expressly agrees to strictly comply with all reasonable laws, rules, regulations and orders of the City Fire Department, including the foregoing.

13. Audio/Visual Interference Prohibited:

- a. No live entertainment performances, film, television, music, speakers or other sound or entertainment amplification devices shall be placed within the Area for any purpose.
- b. No such entertainment shall be situated or conducted inside the building in such a manner that it is transmitted, whether intentionally or incidentally, to patrons in the Area or to adjoining City property.

14. Design of Area Improvements:

- a. Within the Area, every detail of the Licensee's improvements shall comply with the representations and depictions set forth in Exhibit A.
- b. Moreover, every detail of the Licensee's improvements, including but not limited to lighting, access and egress, placement of structures and items of personal property, and every other detail of every kind is expressly subject to the prior approval and continuing review of the City. To this end, the Licensee expressly agrees to make every modification to structural items or items of personal property as may be required by the City.
- c. Notwithstanding the foregoing, the following specific criteria shall apply to Area improvements:

- i. There shall be no canopy to protect the Area, unless it is completely supported by hardware on the building structure and uses no vertical supports in or around the sidewalk café;
- ii. Umbrellas may be placed over individual tables, though no such umbrellas may bear any advertising or logo;
- iii. No improvements or personal property located within the Area shall extend on or over any municipal property located outside of the Area; and
- iv. There shall be no advertising of any kind within the Area.

15. Non-interference with City Infrastructure and Amenities:

- a. Through this Agreement, the Licensee expressly agrees that its use of the Area shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, and that its use shall not make the same inaccessible for public use or maintenance purposes.
- b. Licensee shall further bear full responsibility for providing sufficient staffing and supervision within the Area to maintain an orderly dining environment that does not impede or negatively impact passers-by or other users of City infrastructure or amenities.

16. Compliance with Americans with Disabilities Act ("ADA"): The Area as used by the Licensee shall comply fully with all provisions of the ADA. The Licensee shall be fully and solely liable for assuring that the Area, and the services and programs which the Licensee offers within the Area, are accessible to the handicapped, as defined by the ADA. Where structural modifications to the Area are necessary to achieve accessibility of services and programs offered by the Licensee, Licensee shall be solely liable for making such structural modifications, but before doing so shall obtain the consent of the City.

17. Enclosure System and Area Use Specifications:

- a. The Licensee's use of the Area and installation of an enclosure system shall be subject to the conditions and layout depicted in Exhibit A and the application materials submitted to the City, and any alterations therefrom shall require the express written approval of the City.
- b. In all instances, Licensee shall be fully and solely liable for assuring that installation of the enclosure is conducted in conformity with the requirements set forth in City Council Policy 2012-02.

18. Indemnification: The Licensee agrees to indemnify and hold harmless the City and its officials, employees and agents from any demand, claim, cost or liability of any type arising from the existence or use of this Agreement. This indemnification provision shall survive the termination of the Agreement, whether termination is for cause or otherwise.

19. **Insurance**: At all times during the term of this Agreement, the Licensee shall maintain and provide the City general liability and alcohol service liability insurance coverage of not less than \$3,000,000.00 covering all activities conducted under this Agreement. The City shall be named as an additional insured on all policies. All such insurance shall be approved by the City Legal Department in advance of Licensee's occupancy of the Area, and shall meet all terms, conditions and specifications as the Legal Department may elect to set forth.
20. **Additional Costs**: The Licensee shall bear all costs of every kind associated in any way with the existence of the Area and its use by Licensee. There shall be no obligation on the City to expend any sums of money to accommodate the existence of this Agreement or Licensee's use of the Area.
21. **Suspension for Cause**: For cause, the City may suspend use of the Area by Licensee on an administrative basis without reimbursement of any portion of the Area Service fee for up to fourteen (14) consecutive days, at the sole discretion of the City. No public hearing shall be required prior to such administrative suspension.
22. **Revocation for Cause**: This Agreement may be revoked, in its entirety, by the City for cause by vote of the City Council. No public hearing shall be required prior to such revocation, and in the event of revocation, the Area Service fee shall not be returned to Licensee. Cause for revocation shall include, but not be limited to, the breach of any condition set forth within this Agreement, or the breach of any other City Council policy, ordinance, or pertinent local, state or federal statutory provision.
23. **Revocation without Cause**: This agreement may be revoked in its entirety by the City, without cause, by vote of the City Council. No public hearing shall be required prior to such revocation. In the event of revocation without cause, the Area Service Fee shall be returned on a pro rata basis.
24. **Restoration of Area**: Licensee shall immediately remove from the Area each and every structure and item of personal property, leaving the Area in an unobstructed, clean and sanitary condition, upon termination of this Agreement for any reason or the close of the outdoor restaurant season. In no case shall any items remain in the Area later than October 15, 2012. Licensee shall restore the Area to exactly match the depiction shown in the attached Exhibit A.

25. Non-assignability: This Agreement is not assignable, nor may the obligations of Licensee in any way be transferred, alienated, or delegated to any other party.

Dated this _____ day of _____, 2012.

City of Portsmouth

Witness

By: _____
John P. Bohenko,
City Manager

Duly authorized by vote of City Council
on _____

Dated this _____ day of _____, 2012.

The District Restaurant Group, Inc.

Witness

By: _____
David Takis II
Vice President

CONGRESS ST.

EXHIBIT A

4" = 11'

AGE 1

● = POWER OUTS

x = chair

□ = table

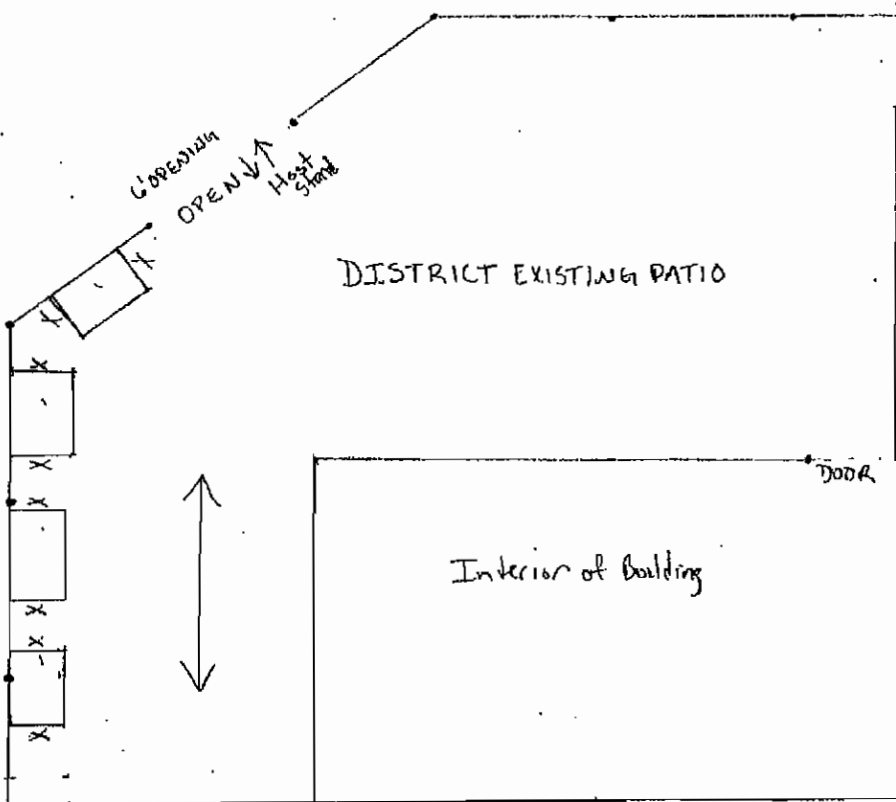
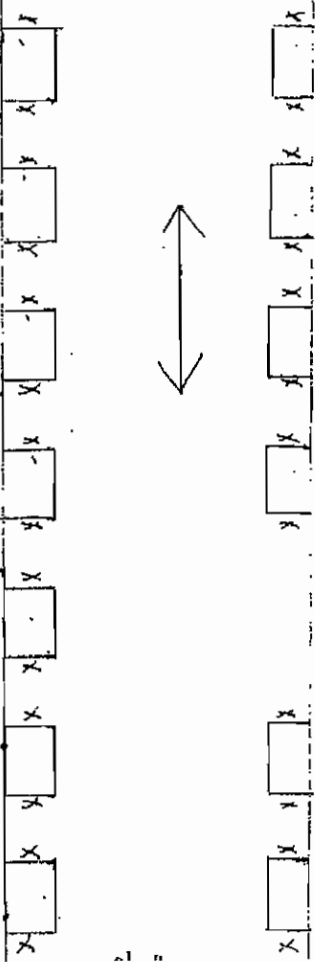
AGE 2

↑ CURB W/ TREES

CURB W/ TREES ↑

VAUGHAN MALL

Total Length of U. Mall Patio is 50'



AREA SERVICE AGREEMENT

The City of Portsmouth, a municipal corporation having a principal place of business of 1 Junkins Avenue, Portsmouth, County of Rockingham and State of New Hampshire 03801 (hereinafter "City") and Rí Rá Irish Pub & Restaurant (hereinafter "Licensee" or "Rí Rá"), having a principal place of business of 22 Market Square, Portsmouth, County of Rockingham and State of New Hampshire 03801, hereby enter this Area Service Agreement ("Agreement") for the purposes set forth herein:

PRELIMINARY: Pursuant to the successful completion of the summer 2011 pilot sidewalk café program, and in accordance with the principles set forth more fully in the preamble to City Council Policy No. 2012-02 (the "Policy"), the City is desirous of permitting Licensee to utilize City property as part of its restaurant operation. This arrangement shall be strictly articulated according to the terms and provisions of this Agreement. No obligation or expectation shall inhere upon either party beyond the 2012 season.

It is the intent of this agreement to implement City Council Policy No. 2012-02, which is hereby incorporated by reference and in all respects made part of this agreement.

SCOPE OF AUTHORITY GRANTED: This Agreement shall convey from the City to Licensee a bare license to expand its restaurant activities onto City property, and no interest in the underlying real estate is conveyed through the terms of this Agreement.

TERMS AND CONDITIONS

1. **Term of Agreement:** This Agreement shall commence on the date of its completed execution, and, unless suspension or termination should occur sooner, all provisions of the Agreement, except those governing

indemnification pursuant to the terms set forth within this Agreement, shall expire at midnight on Sunday, October 14, 2012.

2. **Area Use:** The City authorizes Licensee to utilize a certain Area as shown on attached Exhibit A (hereinafter "Area") solely for the purpose of conducting outdoor restaurant operations, which may include the sale of alcoholic beverages in accordance with all applicable provisions of law and other provisions of this Agreement.
3. **Special Municipal Events:** Licensee's use of the Area subject to this Agreement may be precluded, modified or otherwise subject to any terms and conditions deemed necessary by the City to accommodate special municipal events. Such events may include but shall not be limited to: the Portsmouth Criterium, Children's Day, and Market Square Day. Any such adjustments to the use of the Area which may be mandated by the City shall be undertaken without cost to the City, and Licensee shall receive no refund or reimbursement for such adjustments.
4. **Area Service Fee:** Prior to commencing use of the Area, Licensee shall pay the City a single lump sum in the amount of \$4,470.00.
5. **Hours of Operation:** Licensee may utilize the Area for authorized purposes during its normal business hours, except that all tables within the Area shall be cleared of all food and alcoholic beverages by 10:30 p.m. Monday through Saturday and by 10:00 p.m. on Sunday. Further, no alcohol may be served within the Area less than thirty (30) minutes prior to the foregoing closure times.
6. **Conditions Governing Service of Alcoholic Beverages:** In addition to complying with all local, state, and federal laws, as well as rules and regulations of the NH State Liquor Commission, Licensee shall abide by the following conditions in conducting its service of alcoholic beverages in the Area:
 - a. Alcoholic beverages shall only be served to patrons who are seated at a table serviced by waitstaff within the Area, and such beverages must be consumed while seated within the Area;
 - b. Alcoholic beverages shall only be served to patrons ordering a substantial meal;
 - c. The service of alcoholic beverages at tables in the Area shall be conducted by waitstaff only, and no person in the Area shall be permitted to bring his or her own alcoholic beverage to a table;
 - d. Licensee shall bear full responsibility for ensuring that no alcoholic beverages are passed, taken, or otherwise transmitted to individuals on surrounding City property from within the Area.

7. **Smoking Prohibited:** Smoking shall not be permitted within the Area, and Licensee shall bear full responsibility for maintaining conformity with this provision.
8. **Certain Devices Prohibited:** No devices which produce an open flame or otherwise rely upon combustion in any form shall be permitted within the Area. Such prohibited devices shall include, but not be limited to: tabletop candles, outdoor torches, grills, and propane heaters.
9. **New Hampshire State Liquor Commission:**
 - a. Licensee's occupancy of the Area is conditioned upon receipt of prior approval of this Agreement by the State Liquor Commission.
 - b. Licensee further agrees to comply at all times with all laws, rules and regulations enforced by the New Hampshire State Liquor Commission.
 - c. Licensee shall also self-report any violations of such laws in writing within forty-eight (48) hours of the violation, rules and regulations to both the City and to the State Liquor Commission.
10. **Health Department:**
 - a. Licensee's occupancy of the Area is conditioned upon prior approval by the City Health Department of all outdoor food service and cleaning operations.
 - b. Licensee's occupancy of the Area is conditioned upon review and approval by the City Health Department that kitchen facilities are sufficient to support the demands of the additional seating to be placed in the Area.
 - c. The Area shall be maintained in a clean and sanitary condition at all times, and all garbage shall be contained at all times in covered receptacles.
 - d. At the close of business, the Area shall be left in a clean condition, and all ground debris shall be swept up and disposed of. In conducting such cleaning, Licensee acknowledges that washing debris materials into City storm drains or sewer lines is expressly forbidden.
 - e. Within the Area, no food preparation, grilling, service windows, service counters, wait stations, or bus buckets shall be permitted, and condiments, paper products and the like shall be removed from the Area and stored in a secure, indoor location at all times except when actually being used by seated customers.
 - f. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders which may issue from the City Health Department.

11. Inspections Department:

- a. Licensee's occupancy of the Area is conditioned upon review by the City Inspections Department and approval that all bathroom facilities in the main restaurant facility of Licensee are sufficient to support the additional seating in the Area.
- b. Licensee shall also receive permits from the City Inspections Department prior to installing any Area lighting.
- c. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders of the Inspections Department.

12. Fire Department:

- a. Licensee's occupancy of the Area is conditioned upon receipt from the City Fire Department of all necessary Place of Assembly inspections, permits, and modifications thereto.
- b. Licensee's occupancy of the Area is further conditioned upon review and approval by the City Fire Department of the means of egress from the Area.
- c. Licensee expressly agrees to strictly comply with all reasonable laws, rules, regulations and orders of the City Fire Department, including the foregoing.

13. Audio/Visual Interference Prohibited:

- a. No live entertainment performances, film, television, music, speakers or other sound or entertainment amplification devices shall be placed within the Area for any purpose.
- b. No such entertainment shall be situated or conducted inside the building in such a manner that it is transmitted, whether intentionally or incidentally, to patrons in the Area or to adjoining City property.

14. Design of Area Improvements:

- a. Within the Area, every detail of the Licensee's improvements shall comply with the representations and depictions set forth in Exhibit A.
- b. Moreover, every detail of the Licensee's improvements, including but not limited to lighting, access and egress, placement of structures and items of personal property, and every other detail of every kind is expressly subject to the prior approval and continuing review of the City. To this end, the Licensee expressly agrees to make every modification to structural items or items of personal property as may be required by the City.
- c. Notwithstanding the foregoing, the following specific criteria shall apply to Area improvements:

- i. There shall be no canopy to protect the Area, unless it is completely supported by hardware on the building structure and uses no vertical supports in or around the sidewalk café;
- ii. Umbrellas may be placed over individual tables, though no such umbrellas may bear any advertising or logo;
- iii. No improvements or personal property located within the Area shall extend on or over any municipal property located outside of the Area; and
- iv. There shall be no advertising of any kind within the Area.

15. Non-interference with City Infrastructure and Amenities:

- a. Through this Agreement, the Licensee expressly agrees that its use of the Area shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, and that its use shall not make the same inaccessible for public use or maintenance purposes.
- b. Licensee shall further bear full responsibility for providing sufficient staffing and supervision within the Area to maintain an orderly dining environment that does not impede or negatively impact passers-by or other users of City infrastructure or amenities.

16. Compliance with Americans with Disabilities Act ("ADA"): The Area as used by the Licensee shall comply fully with all provisions of the ADA. The Licensee shall be fully and solely liable for assuring that the Area, and the services and programs which the Licensee offers within the Area, are accessible to the handicapped, as defined by the ADA. Where structural modifications to the Area are necessary to achieve accessibility of services and programs offered by the Licensee, Licensee shall be solely liable for making such structural modifications, but before doing so shall obtain the consent of the City.

17. Enclosure System and Area Use Specifications:

- a. The Licensee's use of the Area and installation of an enclosure system shall be subject to the conditions and layout depicted in Exhibit A and the application materials submitted to the City, and any alterations therefrom shall require the express written approval of the City.
- b. In all instances, Licensee shall be fully and solely liable for assuring that installation of the enclosure is conducted in conformity with the requirements set forth in City Council Policy 2012-02.

18. Indemnification: The Licensee agrees to indemnify and hold harmless the City and its officials, employees and agents from any demand, claim, cost or liability of any type arising from the existence or use of this Agreement. This indemnification provision shall survive the termination of the Agreement, whether termination is for cause or otherwise.

19. **Insurance:** At all times during the term of this Agreement, the Licensee shall maintain and provide the City general liability and alcohol service liability insurance coverage of not less than \$3,000,000.00 covering all activities conducted under this Agreement. The City shall be named as an additional insured on all policies. All such insurance shall be approved by the City Legal Department in advance of Licensee's occupancy of the Area, and shall meet all terms, conditions and specifications as the Legal Department may elect to set forth.
20. **Additional Costs:** The Licensee shall bear all costs of every kind associated in any way with the existence of the Area and its use by Licensee. There shall be no obligation on the City to expend any sums of money to accommodate the existence of this Agreement or Licensee's use of the Area.
21. **Suspension for Cause:** For cause, the City may suspend use of the Area by Licensee on an administrative basis without reimbursement of any portion of the Area Service fee for up to fourteen (14) consecutive days, at the sole discretion of the City. No public hearing shall be required prior to such administrative suspension.
22. **Revocation for Cause:** This Agreement may be revoked, in its entirety, by the City for cause by vote of the City Council. No public hearing shall be required prior to such revocation, and in the event of revocation, the Area Service fee shall not be returned to Licensee. Cause for revocation shall include, but not be limited to, the breach of any condition set forth within this Agreement, or the breach of any other City Council policy, ordinance, or pertinent local, state or federal statutory provision.
23. **Revocation without Cause:** This agreement may be revoked in its entirety by the City, without cause, by vote of the City Council. No public hearing shall be required prior to such revocation. In the event of revocation without cause, the Area Service Fee shall be returned on a pro rata basis.
24. **Restoration of Area:** Licensee shall immediately remove from the Area each and every structure and item of personal property, leaving the Area in an unobstructed, clean and sanitary condition, upon termination of this Agreement for any reason or the close of the outdoor restaurant season. In no case shall any items remain in the Area later than October 15, 2012. Licensee shall restore the Area to exactly match the depiction shown in the attached Exhibit A.

25. **Non-assignability:** This Agreement is not assignable, nor may the obligations of Licensee in any way be transferred, alienated, or delegated to any other party.

Dated this _____ day of _____, 2012.

City of Portsmouth

Witness

By: _____
John P. Bohenko, City Manager

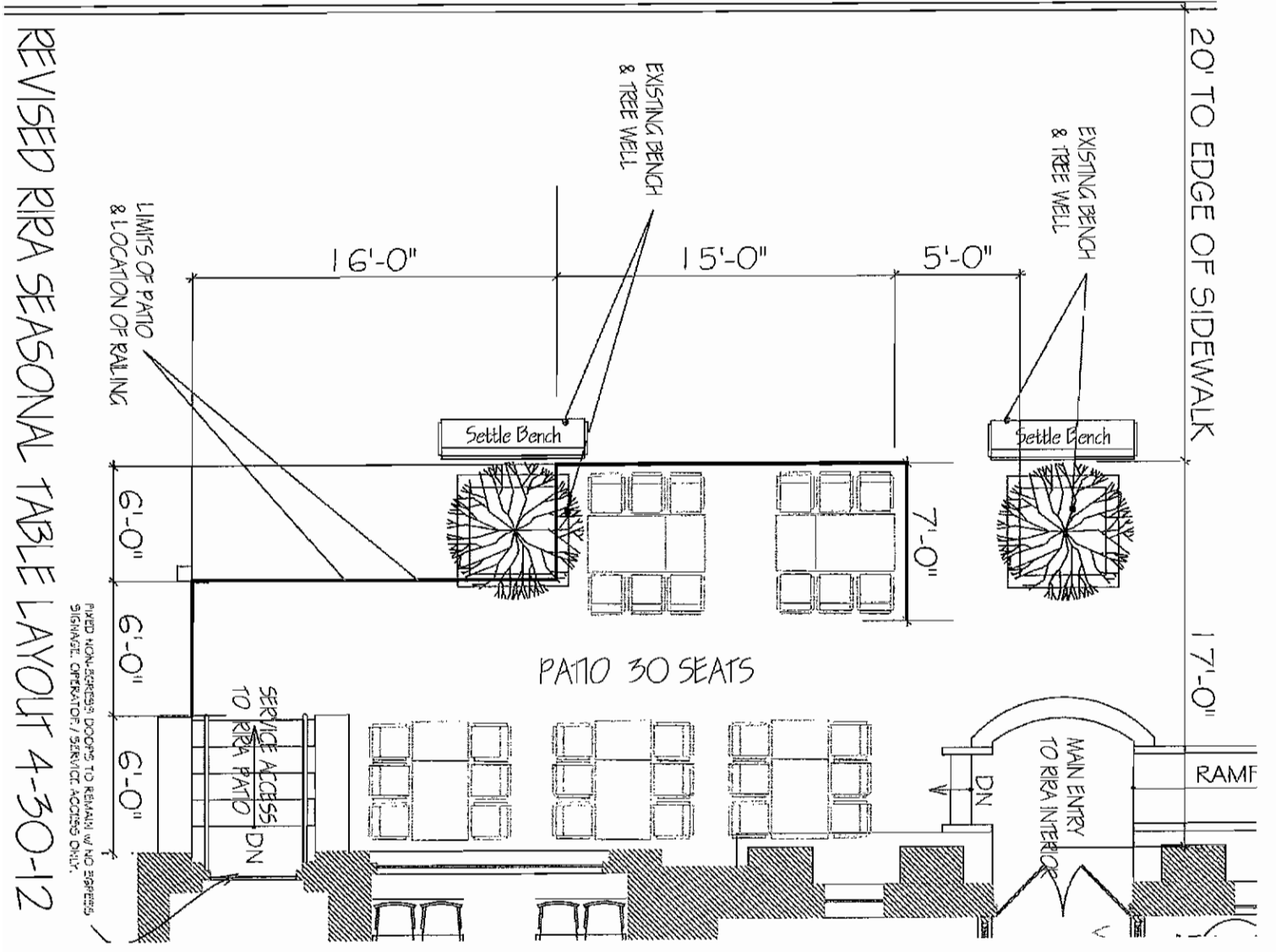
Duly authorized by vote of City Council
on _____

Dated this _____ day of _____, 2012.

Rí Rá Irish Pub & Restaurant

Witness

By: _____
David Nyhan
General Manager



REVISED RIRA SEASONAL TABLE LAYOUT 4-30-12

20' TO EDGE OF SIDEWALK

17'-0"

RAMF

DN

MAIN ENTRY TO RIRA INTERIOR

DN

EXISTING BENCH & TREE WELL

Settle Bench

7'-0"

EXISTING BENCH & TREE WELL

Settle Bench

PATIO 30 SEATS

LIMITS OF PATIO & LOCATION OF RAILING

FIXED NON-OPERABLE DOORS TO REMAIN w/ NO SIGNEES, SIGNAGE, OPERATOR / SERVICE ACCESS ONLY.

SERVICE ACCESS TO RIRA PATIO DN

AREA SERVICE AGREEMENT

The City of Portsmouth, a municipal corporation having a principal place of business of 1 Junkins Avenue, Portsmouth, County of Rockingham and State of New Hampshire 03801 (hereinafter "City") and Roger's Café, Inc. d/b/a State Street Saloon (hereinafter "Licensee" or "State Street Saloon"), having a principal place of business of 268 State Street, Portsmouth County of Rockingham and State of New Hampshire 03801, hereby enter this Area Service Agreement ("Agreement") for the purposes set forth herein:

PRELIMINARY: Pursuant to the successful completion of the summer 2011 pilot sidewalk café program, and in accordance with the principles set forth more fully in the preamble to City Council Policy No. 2012-02 (the "Policy"), the City is desirous of permitting Licensee to utilize City property as part of its restaurant operation. This arrangement shall be strictly articulated according to the terms and provisions of this Agreement. No obligation or expectation shall inhere upon either party beyond the 2012 season.

It is the intent of this agreement to implement City Council Policy No. 2012-02, which is hereby incorporated by reference and in all respects made part of this agreement.

SCOPE OF AUTHORITY GRANTED: This Agreement shall convey from the City to Licensee a bare license to expand its restaurant activities onto City property, and no interest in the underlying real estate is conveyed through the terms of this Agreement.

TERMS AND CONDITIONS

1. **Term of Agreement:** This Agreement shall commence on the date of its completed execution, and, unless suspension or termination should occur

sooner, all provisions of the Agreement, except those governing indemnification pursuant to the terms set forth within this Agreement, shall expire at midnight on Sunday, October 14, 2012.

2. **Area Use:** The City authorizes Licensee to utilize a certain Area as shown on attached Exhibit A (hereinafter "Area") solely for the purpose of conducting outdoor restaurant operations, which may include the sale of alcoholic beverages in accordance with all applicable provisions of law and other provisions of this Agreement.
3. **Special Municipal Events:** Licensee's use of the Area subject to this Agreement may be precluded, modified or otherwise subject to any terms and conditions deemed necessary by the City to accommodate special municipal events. Such events may include but shall not be limited to: the Portsmouth Criterium, Children's Day, and Market Square Day. Any such adjustments to the use of the Area which may be mandated by the City shall be undertaken without cost to the City, and Licensee shall receive no refund or reimbursement for such adjustments.
4. **Area Service Fee:** Prior to commencing use of the Area, Licensee shall pay the City a single lump sum in the amount of \$3,400.00.
5. **Hours of Operation:** Licensee may utilize the Area for authorized purposes during its normal business hours, except that all tables within the Area shall be cleared of all food and alcoholic beverages by 10:30 p.m. Monday through Saturday and by 10:00 p.m. on Sunday. Further, no alcohol may be served within the Area less than thirty (30) minutes prior to the foregoing closure times.
6. **Conditions Governing Service of Alcoholic Beverages:** In addition to complying with all local, state, and federal laws, as well as rules and regulations of the NH State Liquor Commission, Licensee shall abide by the following conditions in conducting its service of alcoholic beverages in the Area:
 - a. Alcoholic beverages shall only be served to patrons who are seated at a table serviced by waitstaff within the Area, and such beverages must be consumed while seated within the Area;
 - b. Alcoholic beverages shall only be served to patrons ordering a substantial meal;
 - c. The service of alcoholic beverages at tables in the Area shall be conducted by waitstaff only, and no person in the Area shall be permitted to bring his or her own alcoholic beverage to a table;
 - d. Licensee shall bear full responsibility for ensuring that no alcoholic beverages are passed, taken, or otherwise transmitted to individuals on surrounding City property from within the Area.

7. **Smoking Prohibited:** Smoking shall not be permitted within the Area, and Licensee shall bear full responsibility for maintaining conformity with this provision.
8. **Certain Devices Prohibited:** No devices which produce an open flame or otherwise rely upon combustion in any form shall be permitted within the Area. Such prohibited devices shall include, but not be limited to: tabletop candles, outdoor torches, grills, and propane heaters.
9. **New Hampshire State Liquor Commission:**
 - a. Licensee's occupancy of the Area is conditioned upon receipt of prior approval of this Agreement by the State Liquor Commission.
 - b. Licensee further agrees to comply at all times with all laws, rules and regulations enforced by the New Hampshire State Liquor Commission.
 - c. Licensee shall also self-report any violations of such laws in writing within forty-eight (48) hours of the violation, rules and regulations to both the City and to the State Liquor Commission.
10. **Health Department:**
 - a. Licensee's occupancy of the Area is conditioned upon prior approval by the City Health Department of all outdoor food service and cleaning operations.
 - b. Licensee's occupancy of the Area is conditioned upon review and approval by the City Health Department that kitchen facilities are sufficient to support the demands of the additional seating to be placed in the Area.
 - c. The Area shall be maintained in a clean and sanitary condition at all times, and all garbage shall be contained at all times in covered receptacles.
 - d. At the close of business, the Area shall be left in a clean condition, and all ground debris shall be swept up and disposed of. In conducting such cleaning, Licensee acknowledges that washing debris materials into City storm drains or sewer lines is expressly forbidden.
 - e. Within the Area, no food preparation, grilling, service windows, service counters, wait stations, or bus buckets shall be permitted, and condiments, paper products and the like shall be removed from the Area and stored in a secure, indoor location at all times except when actually being used by seated customers.
 - f. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders which may issue from the City Health Department.

11. Inspections Department:

- a. Licensee's occupancy of the Area is conditioned upon review by the City Inspections Department and approval that all bathroom facilities in the main restaurant facility of Licensee are sufficient to support the additional seating in the Area.
- b. Licensee shall also receive permits from the City Inspections Department prior to installing any Area lighting.
- c. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders of the Inspections Department.

12. Fire Department:

- a. Licensee's occupancy of the Area is conditioned upon receipt from the City Fire Department of all necessary Place of Assembly inspections, permits, and modifications thereto.
- b. Licensee's occupancy of the Area is further conditioned upon review and approval by the City Fire Department of the means of egress from the Area.
- c. Licensee expressly agrees to strictly comply with all reasonable laws, rules, regulations and orders of the City Fire Department, including the foregoing.

13. Audio/Visual Interference Prohibited:

- a. No live entertainment performances, film, television, music, speakers or other sound or entertainment amplification devices shall be placed within the Area for any purpose.
- b. No such entertainment shall be situated or conducted inside the building in such a manner that it is transmitted, whether intentionally or incidentally, to patrons in the Area or to adjoining City property.

14. Design of Area Improvements:

- a. Within the Area, every detail of the Licensee's improvements shall comply with the representations and depictions set forth in Exhibit A.
- b. Moreover, every detail of the Licensee's improvements, including but not limited to lighting, access and egress, placement of structures and items of personal property, and every other detail of every kind is expressly subject to the prior approval and continuing review of the City. To this end, the Licensee expressly agrees to make every modification to structural items or items of personal property as may be required by the City.
- c. Notwithstanding the foregoing, the following specific criteria shall apply to Area improvements:

- i. There shall be no canopy to protect the Area, unless it is completely supported by hardware on the building structure and uses no vertical supports in or around the sidewalk café;
- ii. Umbrellas may be placed over individual tables, though no such umbrellas may bear any advertising or logo;
- iii. No improvements or personal property located within the Area shall extend on or over any municipal property located outside of the Area; and
- iv. There shall be no advertising of any kind within the Area.

15. Non-interference with City Infrastructure and Amenities:

- a. Through this Agreement, the Licensee expressly agrees that its use of the Area shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, and that its use shall not make the same inaccessible for public use or maintenance purposes.
- b. Licensee shall further bear full responsibility for providing sufficient staffing and supervision within the Area to maintain an orderly dining environment that does not impede or negatively impact passers-by or other users of City infrastructure or amenities.

16. Compliance with Americans with Disabilities Act ("ADA"): The Area as used by the Licensee shall comply fully with all provisions of the ADA. The Licensee shall be fully and solely liable for assuring that the Area, and the services and programs which the Licensee offers within the Area, are accessible to the handicapped, as defined by the ADA. Where structural modifications to the Area are necessary to achieve accessibility of services and programs offered by the Licensee, Licensee shall be solely liable for making such structural modifications, but before doing so shall obtain the consent of the City.

17. Enclosure System and Area Use Specifications:

- a. The Licensee's use of the Area and installation of an enclosure system shall be subject to the conditions and layout depicted in Exhibit A and the application materials submitted to the City, and any alterations therefrom shall require the express written approval of the City.
- b. In all instances, Licensee shall be fully and solely liable for assuring that installation of the enclosure is conducted in conformity with the requirements set forth in City Council Policy 2012-02.

18. Indemnification: The Licensee agrees to indemnify and hold harmless the City and its officials, employees and agents from any demand, claim, cost or liability of any type arising from the existence or use of this Agreement. This indemnification provision shall survive the termination of the Agreement, whether termination is for cause or otherwise.

19. **Insurance:** At all times during the term of this Agreement, the Licensee shall maintain and provide the City general liability and alcohol service liability insurance coverage of not less than \$3,000,000.00 covering all activities conducted under this Agreement. The City shall be named as an additional insured on all policies. All such insurance shall be approved by the City Legal Department in advance of Licensee's occupancy of the Area, and shall meet all terms, conditions and specifications as the Legal Department may elect to set forth.
20. **Additional Costs:** The Licensee shall bear all costs of every kind associated in any way with the existence of the Area and its use by Licensee. There shall be no obligation on the City to expend any sums of money to accommodate the existence of this Agreement or Licensee's use of the Area.
21. **Suspension for Cause:** For cause, the City may suspend use of the Area by Licensee on an administrative basis without reimbursement of any portion of the Area Service fee for up to fourteen (14) consecutive days, at the sole discretion of the City. No public hearing shall be required prior to such administrative suspension.
22. **Revocation for Cause:** This Agreement may be revoked, in its entirety, by the City for cause by vote of the City Council. No public hearing shall be required prior to such revocation, and in the event of revocation, the Area Service fee shall not be returned to Licensee. Cause for revocation shall include, but not be limited to, the breach of any condition set forth within this Agreement, or the breach of any other City Council policy, ordinance, or pertinent local, state or federal statutory provision.
23. **Revocation without Cause:** This agreement may be revoked in its entirety by the City, without cause, by vote of the City Council. No public hearing shall be required prior to such revocation. In the event of revocation without cause, the Area Service Fee shall be returned on a pro rata basis.
24. **Restoration of Area:** Licensee shall immediately remove from the Area each and every structure and item of personal property, leaving the Area in an unobstructed, clean and sanitary condition, upon termination of this Agreement for any reason or the close of the outdoor restaurant season. In no case shall any items remain in the Area later than October 15, 2012. Licensee shall restore the Area to exactly match the depiction shown in the attached Exhibit A.

25. Non-assignability: This Agreement is not assignable, nor may the obligations of Licensee in any way be transferred, alienated, or delegated to any other party.

Dated this _____ day of _____, 2012.

City of Portsmouth

Witness

By: _____
John P. Bohenko,
City Manager

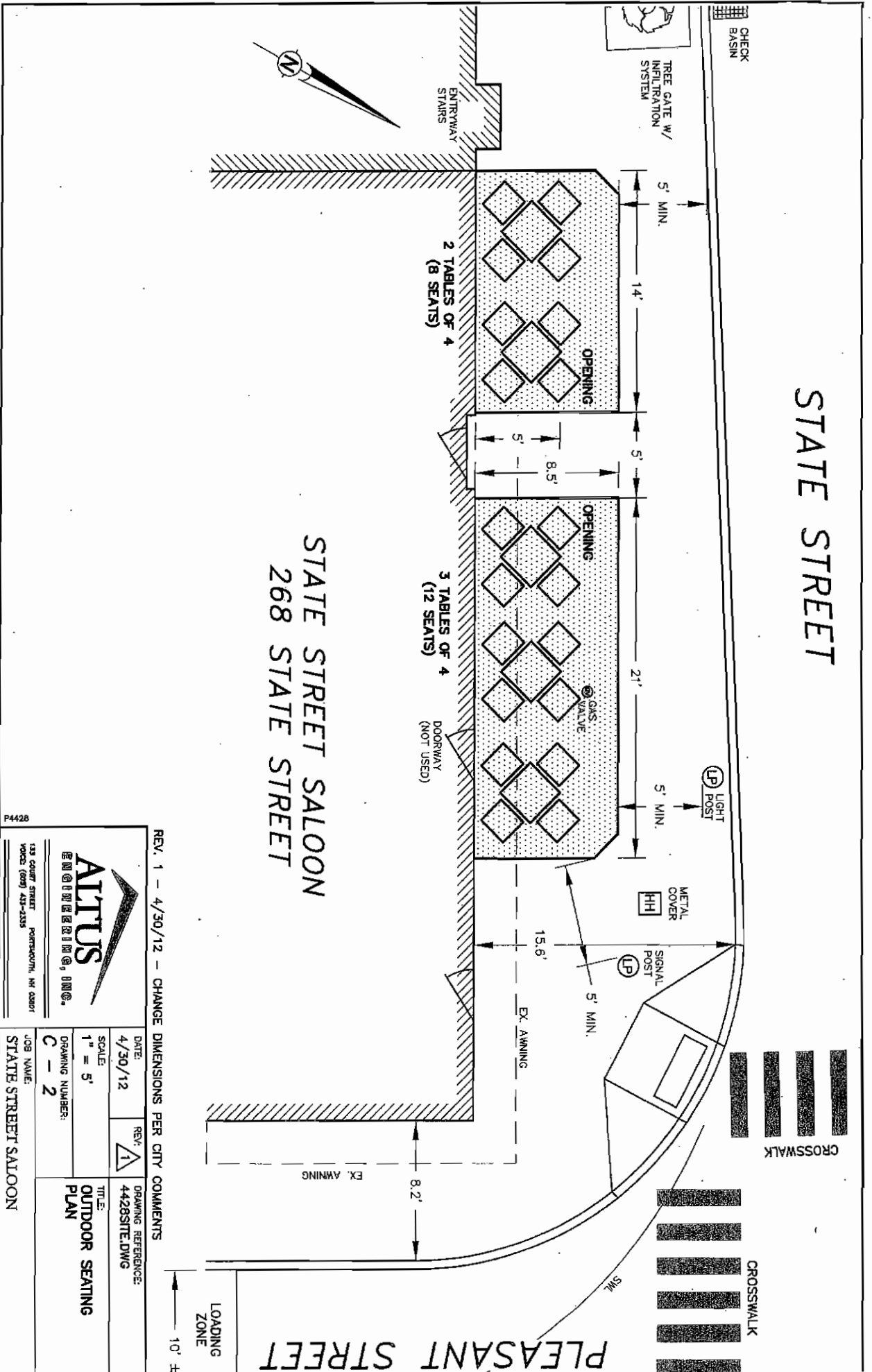
Duly authorized by vote of City Council
on _____

Dated this _____ day of _____, 2012

**Roger's Café, Inc.
d/b/a State Street Saloon**

Witness

By: _____
Eli Sokorelis
President



REV. 1 - 4/30/12 - CHANGE DIMENSIONS PER CITY COMMENTS

<p>ALTUS ENGINEERING, INC. 133 COURT STREET PORTSMOUTH, NH 02801 PH: (603) 433-2533</p>		DATE: 4/30/12 SCALE: 1" = 5' DRAWING NUMBER: C-2 JOB NAME: STATE STREET SALOON
REV: 1	DRAWING REFERENCE: 4428SITE.DWG	TITLE: OUTDOOR SEATING PLAN

P4428

AREA SERVICE AGREEMENT

The City of Portsmouth, a municipal corporation having a principal place of business of 1 Junkins Avenue, Portsmouth, County of Rockingham and State of New Hampshire 03801 (hereinafter "City") and Surf Portsmouth Inc. (hereinafter "Licensee" or "Surf"), having a principal place of business of 99 Bow Street, Portsmouth, County of Rockingham and State of New Hampshire 03801, hereby enter this Area Service Agreement ("Agreement") for the purposes set forth herein:

PRELIMINARY: Pursuant to the successful completion of the summer 2011 pilot sidewalk café program, and in accordance with the principles set forth more fully in the preamble to City Council Policy No. 2012-02 (the "Policy"), the City is desirous of permitting Licensee to utilize City property as part of its restaurant operation. This arrangement shall be strictly articulated according to the terms and provisions of this Agreement. No obligation or expectation shall inhere upon either party beyond the 2012 season.

It is the intent of this agreement to implement City Council Policy No. 2012-02, which is hereby incorporated by reference and in all respects made part of this agreement.

SCOPE OF AUTHORITY GRANTED: This Agreement shall convey from the City to Licensee a bare license to expand its restaurant activities onto City property, and no interest in the underlying real estate is conveyed through the terms of this Agreement.

TERMS AND CONDITIONS

1. **Term of Agreement:** This Agreement shall commence on the date of its completed execution, and, unless suspension or termination should occur sooner, all provisions of the Agreement, except those governing

indemnification pursuant to the terms set forth within this Agreement, shall expire at midnight on Sunday, October 14, 2012.

2. **Area Use:** The City authorizes Licensee to utilize a certain Area as shown on attached Exhibit A (hereinafter "Area") solely for the purpose of conducting outdoor restaurant operations, which may include the sale of alcoholic beverages in accordance with all applicable provisions of law and other provisions of this Agreement.
3. **Special Municipal Events:** Licensee's use of the Area subject to this Agreement may be precluded, modified or otherwise subject to any terms and conditions deemed necessary by the City to accommodate special municipal events. Such events may include but shall not be limited to: the Portsmouth Criterium, Children's Day, and Market Square Day. Any such adjustments to the use of the Area which may be mandated by the City shall be undertaken without cost to the City, and Licensee shall receive no refund or reimbursement for such adjustments.
4. **Area Service Fee:** Prior to commencing use of the Area, Licensee shall pay the City a single lump sum in the amount of \$3,240.00.
5. **Hours of Operation:** Licensee may utilize the Area for authorized purposes during its normal business hours, except that all tables within the Area shall be cleared of all food and alcoholic beverages by 10:30 p.m. Monday through Saturday and by 10:00 p.m. on Sunday. Further, no alcohol may be served within the Area less than thirty (30) minutes prior to the foregoing closure times.
6. **Conditions Governing Service of Alcoholic Beverages:** In addition to complying with all local, state, and federal laws, as well as rules and regulations of the NH State Liquor Commission, Licensee shall abide by the following conditions in conducting its service of alcoholic beverages in the Area:
 - a. Alcoholic beverages shall only be served to patrons who are seated at a table serviced by waitstaff within the Area, and such beverages must be consumed while seated within the Area;
 - b. Alcoholic beverages shall only be served to patrons ordering a substantial meal;
 - c. The service of alcoholic beverages at tables in the Area shall be conducted by waitstaff only, and no person in the Area shall be permitted to bring his or her own alcoholic beverage to a table;
 - d. Licensee shall bear full responsibility for ensuring that no alcoholic beverages are passed, taken, or otherwise transmitted to individuals on surrounding City property from within the Area.

7. **Smoking Prohibited:** Smoking shall not be permitted within the Area, and Licensee shall bear full responsibility for maintaining conformity with this provision.
8. **Certain Devices Prohibited:** No devices which produce an open flame or otherwise rely upon combustion in any form shall be permitted within the Area. Such prohibited devices shall include, but not be limited to: tabletop candles, outdoor torches, grills, and propane heaters.
9. **New Hampshire State Liquor Commission:**
 - a. Licensee's occupancy of the Area is conditioned upon receipt of prior approval of this Agreement by the State Liquor Commission.
 - b. Licensee further agrees to comply at all times with all laws, rules and regulations enforced by the New Hampshire State Liquor Commission.
 - c. Licensee shall also self-report any violations of such laws in writing within forty-eight (48) hours of the violation, rules and regulations to both the City and to the State Liquor Commission.
10. **Health Department:**
 - a. Licensee's occupancy of the Area is conditioned upon prior approval by the City Health Department of all outdoor food service and cleaning operations.
 - b. Licensee's occupancy of the Area is conditioned upon review and approval by the City Health Department that kitchen facilities are sufficient to support the demands of the additional seating to be placed in the Area.
 - c. The Area shall be maintained in a clean and sanitary condition at all times, and all garbage shall be contained at all times in covered receptacles.
 - d. At the close of business, the Area shall be left in a clean condition, and all ground debris shall be swept up and disposed of. In conducting such cleaning, Licensee acknowledges that washing debris materials into City storm drains or sewer lines is expressly forbidden.
 - e. Within the Area, no food preparation, grilling, service windows, service counters, wait stations, or bus buckets shall be permitted, and condiments, paper products and the like shall be removed from the Area and stored in a secure, indoor location at all times except when actually being used by seated customers.
 - f. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders which may issue from the City Health Department.

11. Inspections Department:

- a. Licensee's occupancy of the Area is conditioned upon review by the City Inspections Department and approval that all bathroom facilities in the main restaurant facility of Licensee are sufficient to support the additional seating in the Area.
- b. Licensee shall also receive permits from the City Inspections Department prior to installing any Area lighting.
- c. By and through this Agreement, Licensee expressly agrees to comply with all additional laws, rules, regulations and orders of the Inspections Department.

12. Fire Department:

- a. Licensee's occupancy of the Area is conditioned upon receipt from the City Fire Department of all necessary Place of Assembly inspections, permits, and modifications thereto.
- b. Licensee's occupancy of the Area is further conditioned upon review and approval by the City Fire Department of the means of egress from the Area.
- c. Licensee expressly agrees to strictly comply with all reasonable laws, rules, regulations and orders of the City Fire Department, including the foregoing.

13. Audio/Visual Interference Prohibited:

- a. No live entertainment performances, film, television, music, speakers or other sound or entertainment amplification devices shall be placed within the Area for any purpose.
- b. No such entertainment shall be situated or conducted inside the building in such a manner that it is transmitted, whether intentionally or incidentally, to patrons in the Area or to adjoining City property.

14. Design of Area Improvements:

- a. Within the Area, every detail of the Licensee's improvements shall comply with the representations and depictions set forth in Exhibit A.
- b. Moreover, every detail of the Licensee's improvements, including but not limited to lighting, access and egress, placement of structures and items of personal property, and every other detail of every kind is expressly subject to the prior approval and continuing review of the City. To this end, the Licensee expressly agrees to make every modification to structural items or items of personal property as may be required by the City.
- c. Notwithstanding the foregoing, the following specific criteria shall apply to Area improvements:

- i. There shall be no canopy to protect the Area, unless it is completely supported by hardware on the building structure and uses no vertical supports in or around the sidewalk café;
- ii. Umbrellas may be placed over individual tables, though no such umbrellas may bear any advertising or logo;
- iii. No improvements or personal property located within the Area shall extend on or over any municipal property located outside of the Area; and
- iv. There shall be no advertising of any kind within the Area.

15. Non-interference with City Infrastructure and Amenities:

- a. Through this Agreement, the Licensee expressly agrees that its use of the Area shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, and that its use shall not make the same inaccessible for public use or maintenance purposes.
- b. Licensee shall further bear full responsibility for providing sufficient staffing and supervision within the Area to maintain an orderly dining environment that does not impede or negatively impact passers-by or other users of City infrastructure or amenities.

16. Compliance with Americans with Disabilities Act ("ADA"): The Area as used by the Licensee shall comply fully with all provisions of the ADA. The Licensee shall be fully and solely liable for assuring that the Area, and the services and programs which the Licensee offers within the Area, are accessible to the handicapped, as defined by the ADA. Where structural modifications to the Area are necessary to achieve accessibility of services and programs offered by the Licensee, Licensee shall be solely liable for making such structural modifications, but before doing so shall obtain the consent of the City.

17. Enclosure System and Area Use Specifications:

- a. The Licensee's use of the Area and installation of an enclosure system shall be subject to the conditions and layout depicted in Exhibit A and the application materials submitted to the City, and any alterations therefrom shall require the express written approval of the City.
- b. In all instances, Licensee shall be fully and solely liable for assuring that installation of the enclosure is conducted in conformity with the requirements set forth in City Council Policy 2012-02.

18. Indemnification: The Licensee agrees to indemnify and hold harmless the City and its officials, employees and agents from any demand, claim, cost or liability of any type arising from the existence or use of this Agreement. This indemnification provision shall survive the termination of the Agreement, whether termination is for cause or otherwise.

19. **Insurance:** At all times during the term of this Agreement, the Licensee shall maintain and provide the City general liability and alcohol service liability insurance coverage of not less than \$3,000,000.00 covering all activities conducted under this Agreement. The City shall be named as an additional insured on all policies. All such insurance shall be approved by the City Legal Department in advance of Licensee's occupancy of the Area, and shall meet all terms, conditions and specifications as the Legal Department may elect to set forth.
20. **Additional Costs:** The Licensee shall bear all costs of every kind associated in any way with the existence of the Area and its use by Licensee. There shall be no obligation on the City to expend any sums of money to accommodate the existence of this Agreement or Licensee's use of the Area.
21. **Suspension for Cause:** For cause, the City may suspend use of the Area by Licensee on an administrative basis without reimbursement of any portion of the Area Service fee for up to fourteen (14) consecutive days, at the sole discretion of the City. No public hearing shall be required prior to such administrative suspension.
22. **Revocation for Cause:** This Agreement may be revoked, in its entirety, by the City for cause by vote of the City Council. No public hearing shall be required prior to such revocation, and in the event of revocation, the Area Service fee shall not be returned to Licensee. Cause for revocation shall include, but not be limited to, the breach of any condition set forth within this Agreement, or the breach of any other City Council policy, ordinance, or pertinent local, state or federal statutory provision.
23. **Revocation without Cause:** This agreement may be revoked in its entirety by the City, without cause, by vote of the City Council. No public hearing shall be required prior to such revocation. In the event of revocation without cause, the Area Service Fee shall be returned on a pro rata basis.
24. **Restoration of Area:** Licensee shall immediately remove from the Area each and every structure and item of personal property, leaving the Area in an unobstructed, clean and sanitary condition, upon termination of this Agreement for any reason or the close of the outdoor restaurant season. In no case shall any items remain in the Area later than October 15, 2012. Licensee shall restore the Area to exactly match the depiction shown in the attached Exhibit A.

25. Non-assignability: This Agreement is not assignable, nor may the obligations of Licensee in any way be transferred, alienated, or delegated to any other party.

Dated this _____ day of _____, 2012.

City of Portsmouth

Witness

By: _____

John P. Bohenko
City Manager

Duly authorized by vote of City Council
on _____.

Dated this _____ day of _____, 2012.

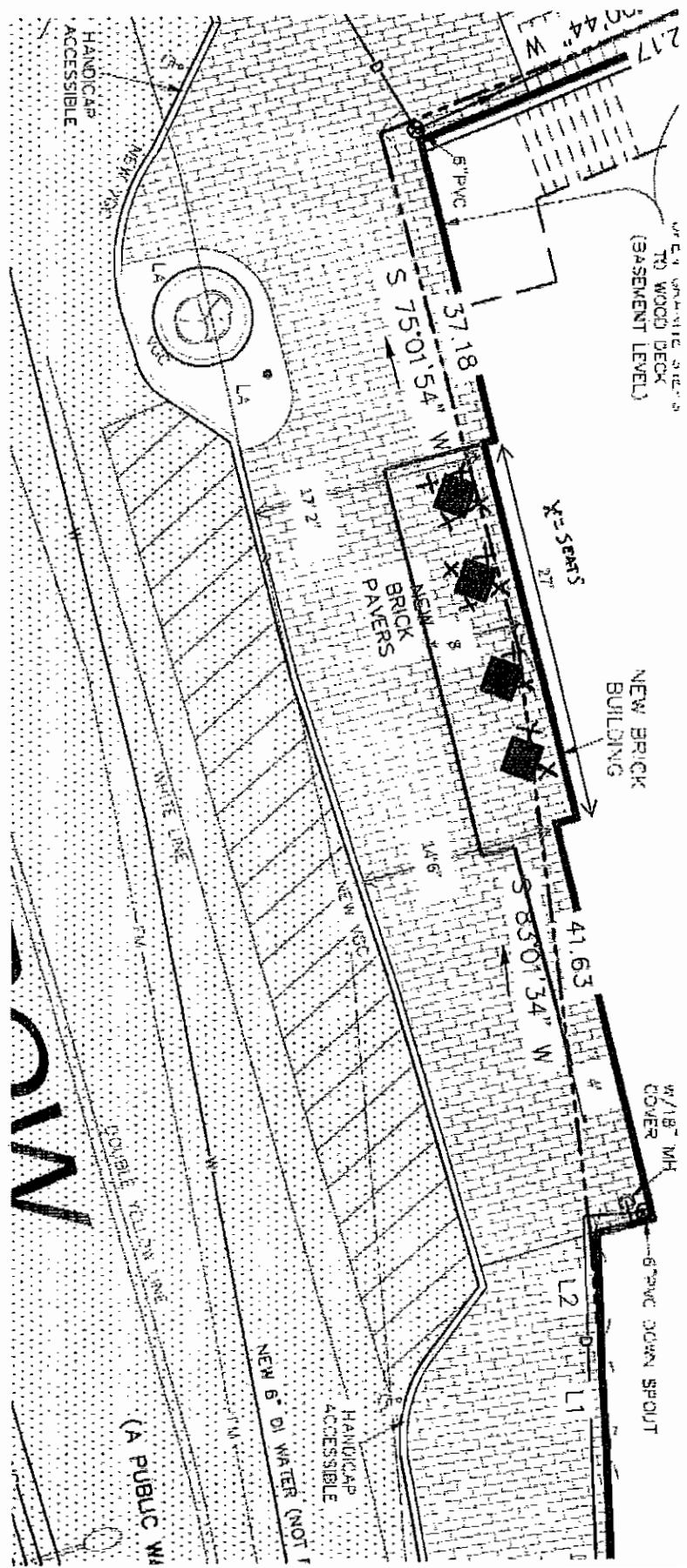
Surf Portsmouth Inc

Witness

By: _____

John Dunn
General Manager

EXHIBIT A

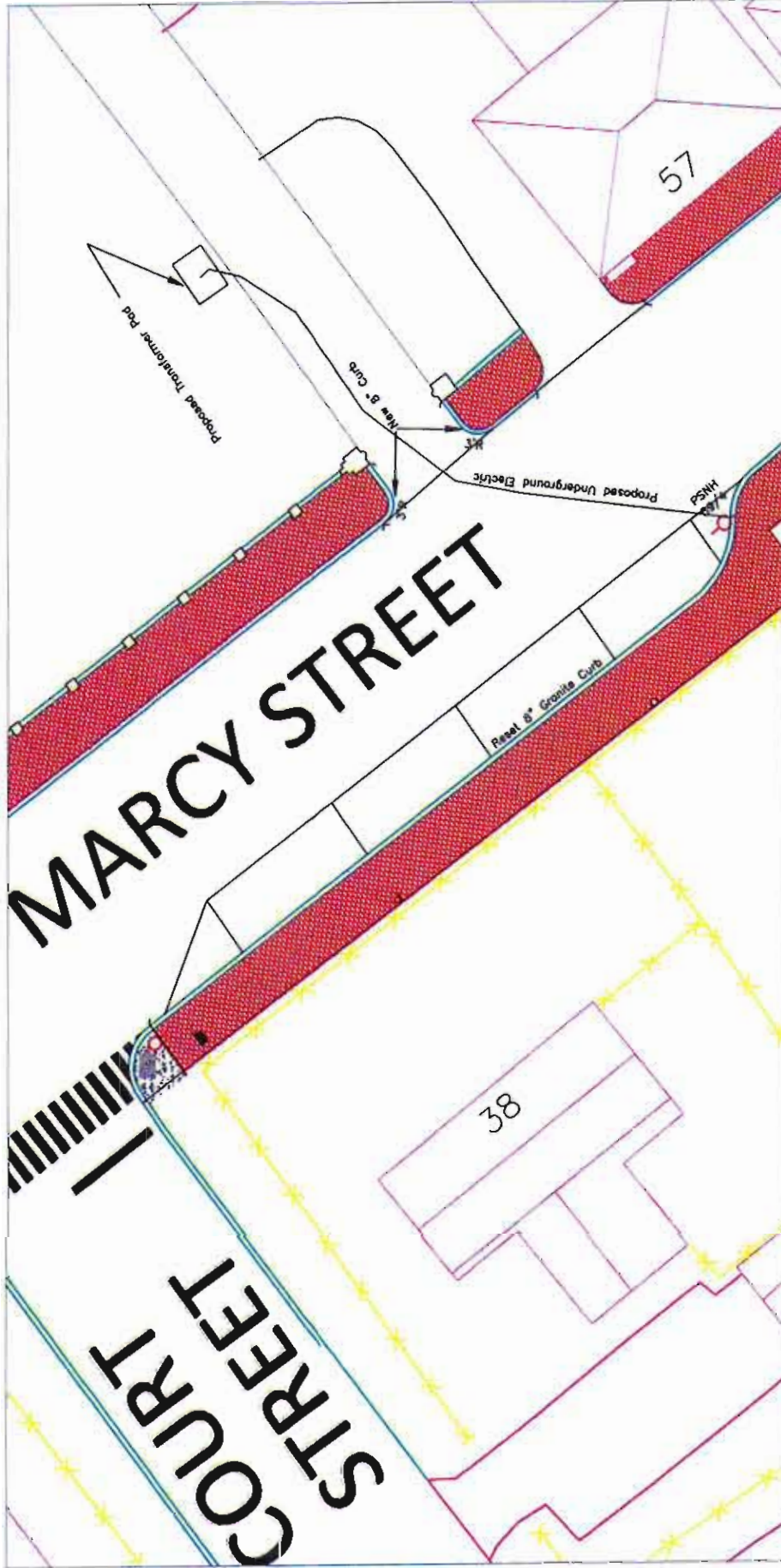


MEMORANDUM

TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director *RT.*
DATE: April 26, 2012
RE: City Council Referral –
Request of Public Service of New Hampshire for an easement for
placement of service at Prescott Park

Representatives of Public Service of New Hampshire (PSNH), Prescott Park Arts Festival (PPAF), the Trustees of Trust Funds and the Department of Public Works have developed a plan to improve electrical service for Prescott Park. The proposed new service includes the installation of a new transformer pad on Prescott Park property. PSNH is requesting an easement to install and service the new transformer pad as shown on the attached plan.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City grant an easement to Public Service of New Hampshire for installation of a transformer pad and conduit as shown on the plan.



**SOUTH END SIDEWALK & ROAD
REPLACEMENT PROJECT**

LAYOUT PLAN

**DEPARTMENT OF
PUBLIC WORKS**

CITY OF PORTSMOUTH

NEW HAMPSHIRE

MARCH 2012



SCALE 1"=20'

M E M O R A N D U M

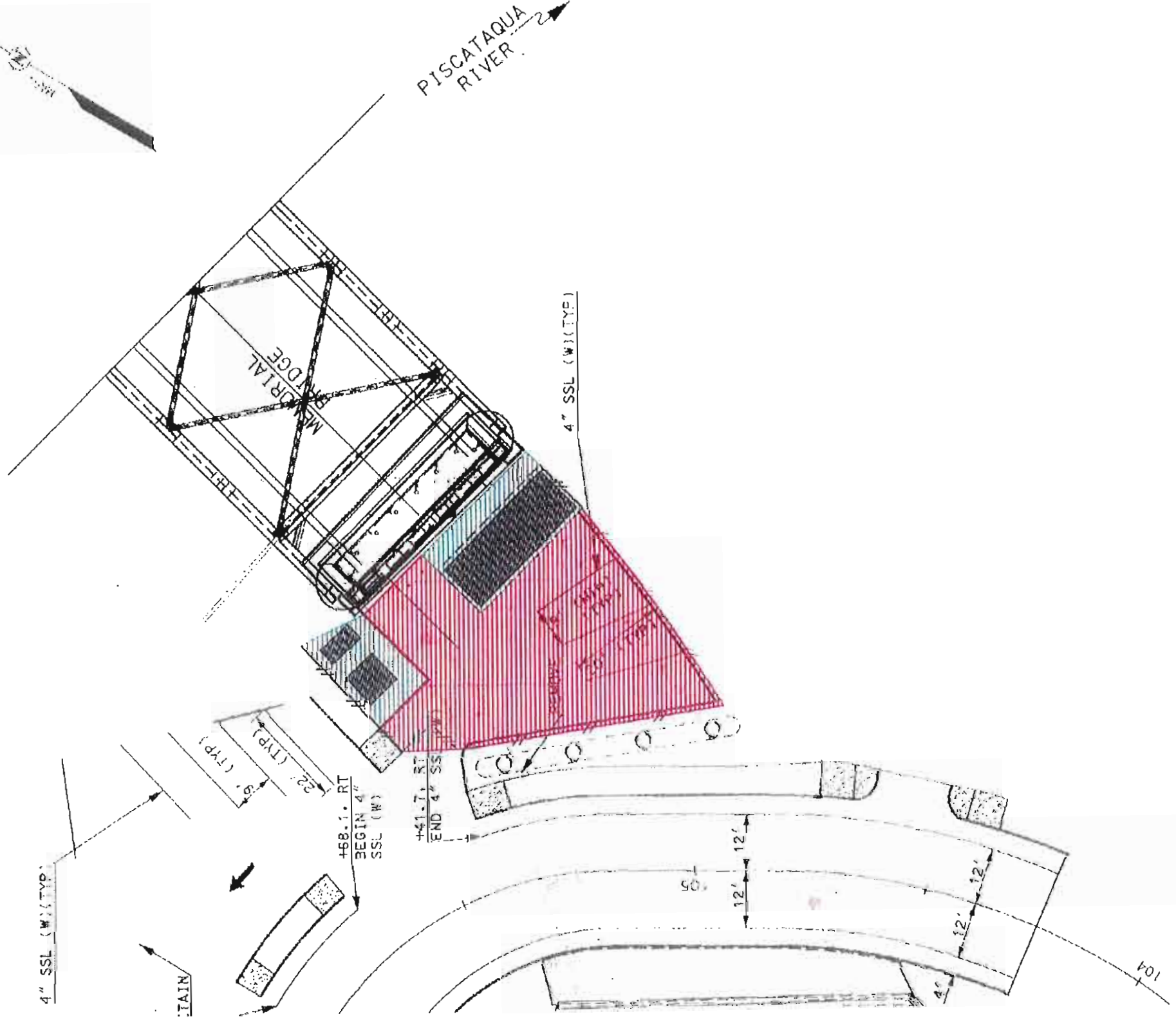
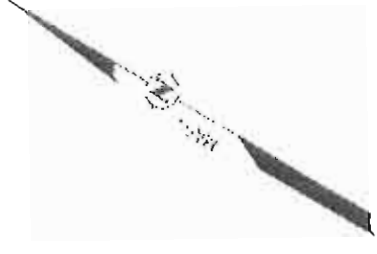
TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director *RT.*
DATE: April 26, 2012
RE: City Council Referral –
Request of New Hampshire Department of Transportation for an
easement under the Scott Avenue Bridge in support of the Memorial
Bridge project

As part of the Memorial Bridge Replacement Project, the New Hampshire Department of Transportation has requested an easement to locate a permanent backup generator and utility transformer cabinets on City property under the Scott Avenue Bridge. The City Council voted at its meeting on February 6, 2012, to refer this easement request to the Planning Board for a report back.

The proposed Utility/Generator Easement area under the Scott Avenue Bridge is as shown on the attached plan titled "Pavement Marking/NHDOT Maintenance Parking/Generator Area" dated February 22, 2012. As a result of discussions between the City, NHDOT staff and representatives of 10 State Street, LLC, the easement request area originally submitted by NHDOT to the City Council was modified so that the generator will be completely under the easterly side of the Scott Avenue Bridge overhang. The generator will be powered by natural gas and located inside an enclosure with a muffler system for maximum silencing, with the noise level expected to be no greater than listening to a propane gas transit bus in an idling condition. The generator will only be used during power outages and will need to be test run one time per week during daytime weekday hours. The generator will be visually screened by a black vinyl chain link fence with black slats and the fence will be a minimum of 5 feet in height.

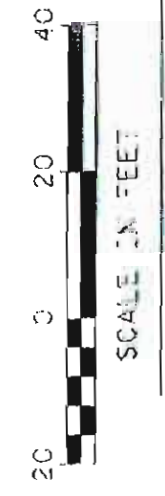
The utility pad will be located on the westerly side of the Scott Avenue Bridge and will be contained in a utility panel as shown on the attached detail sheets. The transformer will clean up the existing overhead wires and will be within the enclosed chain link fence and out of site from the street level view.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City grant the necessary easement(s) to the New Hampshire Department of Transportation for installation and maintenance of a permanent backup generator and utility transformer cabinets on City property under and adjacent to the Scott Avenue Bridge.



- Parking License Zone *
- Utility / Generator Easement *

* Preliminary Plan Subject To Change



W13-1
(15 MPH)

STATE OF NEW HAMPSHIRE

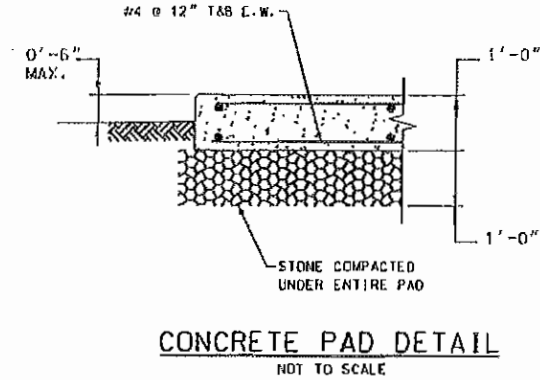
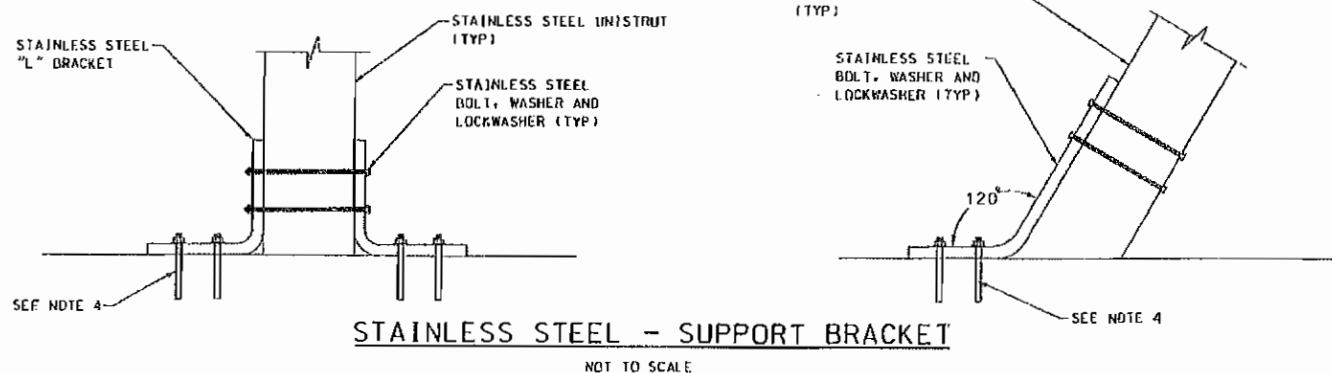
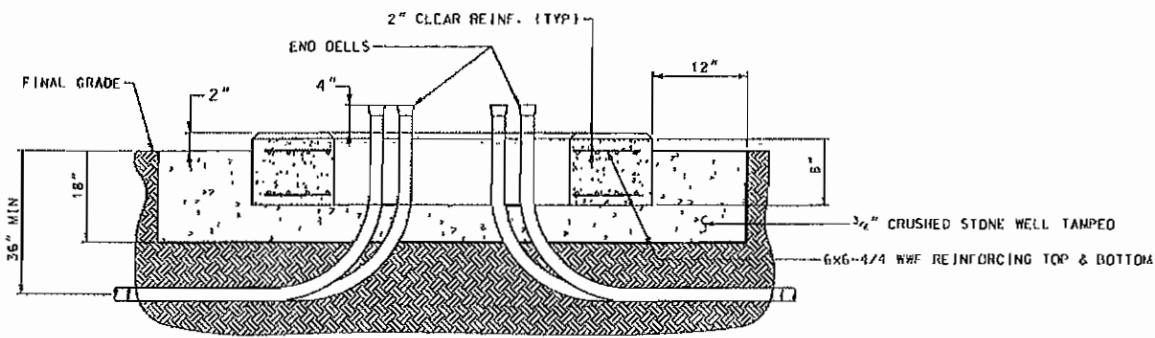
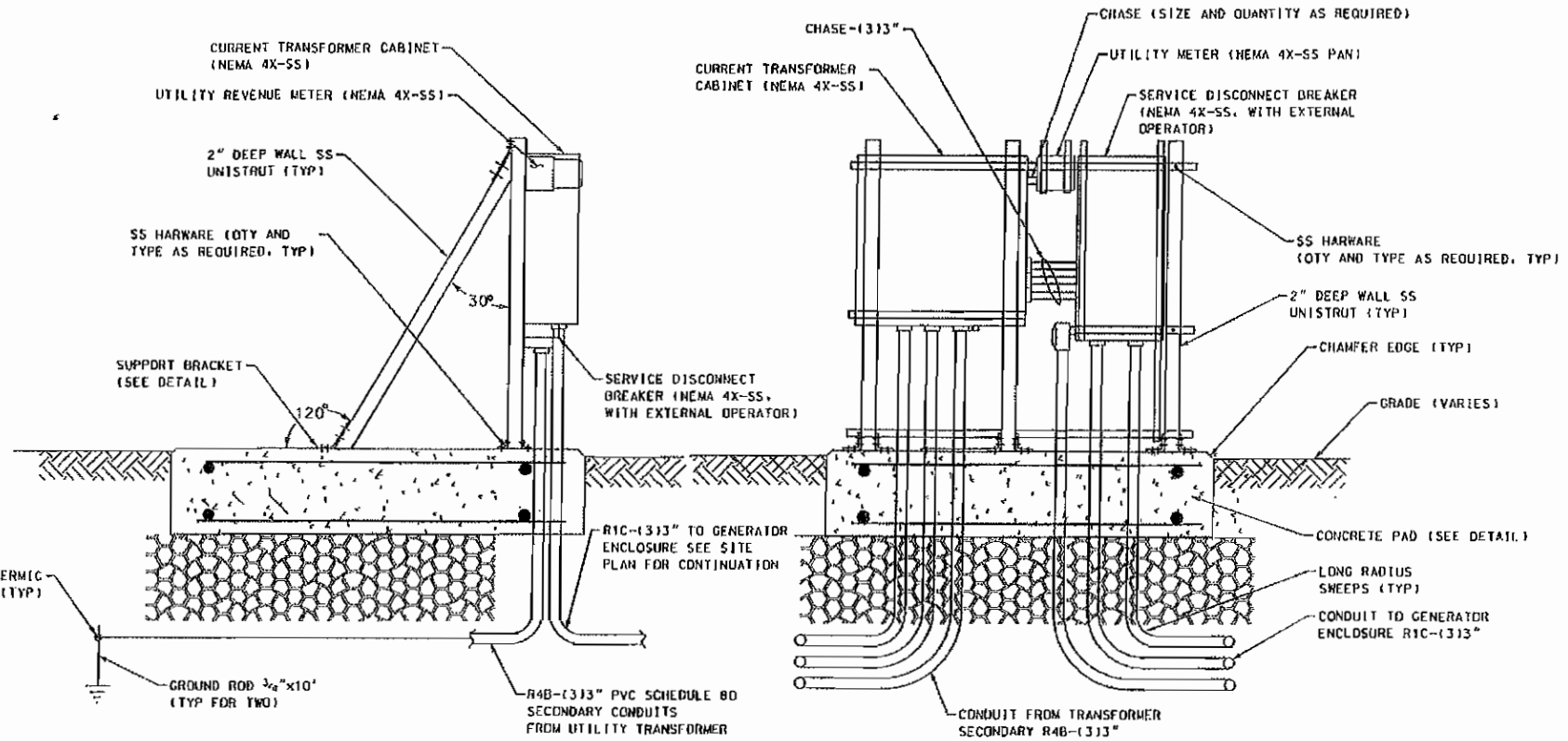
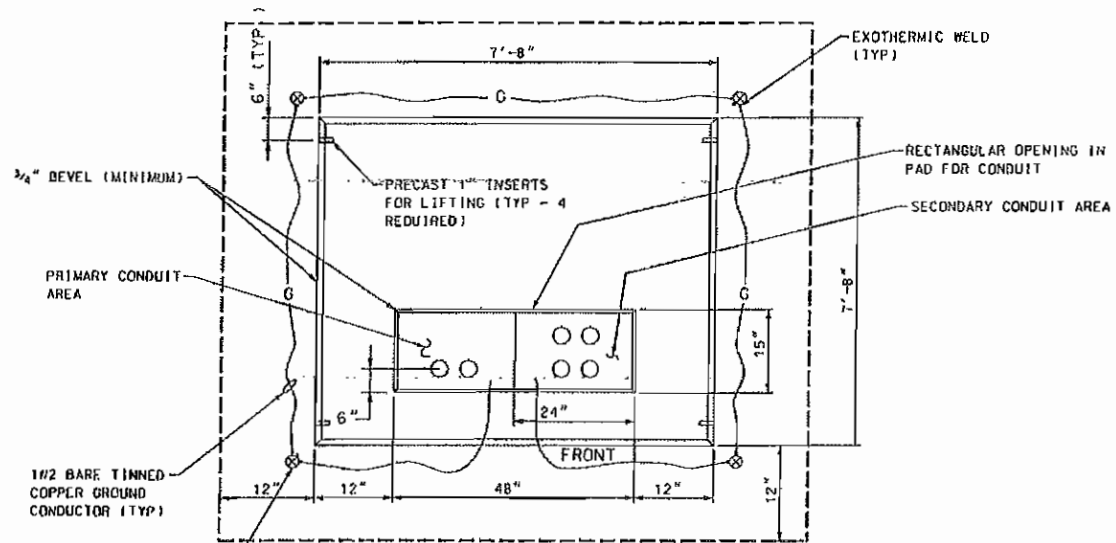
DEPARTMENT OF TRANSPORTATION • BUREAU OF HIGHWAY DESIGN

Pavement Marking / NHDOT Maintenance Parking / Generator Area



February 22, 2012

FEDERAL PROJECT NO.	STATE PROJECT NO.	SHEET NO.	TOTAL SHEETS
		13678F	



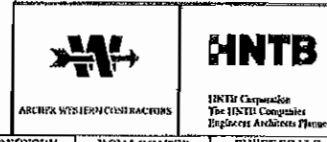
UTILITY NOTE:

1. TRANSFORMER PAD SHALL BE AS REQUIRED BY THE UTILITY. SEE UTILITY CONSTRUCTION STANDARDS... CONTRACTOR SHALL INSTALL TRANSFORMER PAD AND CONDUIT AND SHALL PULL AND COIL WIRES FROM THE SERVICE DISCONNECT BREAKER TO THE PAD FOR TERMINATION BY THE UTILITY COMPANY.
2. THE CONCRETE PAD SHALL BE BONDED TO A GROUND GRID.
3. TEMPORARY ELECTRIC SHALL BE PROVIDED DURING CONSTRUCTION TO MAINTAIN ALL MARINE AND AVIATION LIGHTING AT ALL TIMES.

CONCRETE PAD NOTES:

1. THE SERVICE ENTRANCE EQUIPMENT PAD SHALL CONFORM TO A.C.I. 318-02 "BUILDING CODE" AND "A.C.I. DETAILING MANUAL" ACI SP66194.
2. ALL CONCRETE SHALL HAVE A COMPRESSIVE STRENGTH OF 4,000 PSI. THIS CONCRETE SHALL HAVE A MINIMUM TYPE II CEMENT CONTENT OF 6.5 BAGS PER CUBIC YARD, 5.0 GALLONS OF WATER PER BAG (W/C=0.45) & 6% +/- AIR ENTRAINMENT SUCH THAT THE HARDENED WEIGHT IS 145% +/- LBS/CUBIC FOOT.
3. ALL REINFORCING STEEL SHALL HAVE A MINIMUM YIELD STRENGTH OF Fy=60 KSI. ALSO SHALL BE NEW DEFORMED EPOXY COATED BILLET-STEEL CONFORMING TO ASTM A615-01b GRADE 60.
4. SECURE TO CONCRETE PAD VIA EPOXY TYPE ANCHOR BOLTS, WITH MINIMUM 6" EMBEDMENT. QUANTITY AND SIZE AS REQUIRED.

80% SUBMISSION
JANUARY 18, 2012



STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION * BUREAU OF BRIDGE DESIGN											
TOWN PORTSMOUTH NH - KITTBY, ME				BRIDGE NO. 247084				STATE PROJECT 13678			
LOCATION US ROUTE 1 OVER THE PISCATAQUA RIVER											
UTILITY SERVICE DETAILS											
DESIGNED		MCO		01/12		CHECKED		XXX		01/12	
DRAWN		GS		01/12		CHECKED		DR		01/12	
QUANTITIES		XXX		XXX		CHECKED		XXX		XXX	
ISSUE DATE				FEDERAL PROJECT NO.		SHEET NO.		TOTAL SHEETS		B309 or B37	
REV. DATE				BHF-T-0101(015)		XXX		XXX			

SUBDIRECTORY	IGN LOCATOR	SHEET SCALE
Plans	3678F-309_ElecSvcDets	1" = 50'-0"

DATE TIME 1/18/2012 3:52:48 PM USER: greg@hntb.com
 FILE NAME: \\hntb.com\projects\13678\Bridges\Kittby\Bridges\13678-E09_ElecSvcDets.dwg
 MODEL NAME: PLAN
 LAST SAVE: 1/18/2012 8:02:45 AM

MEMORANDUM

TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director *RT.*
DATE: May 1, 2012
RE: City Council Referral –
Letter from Attorney Malcolm McNeill, representing Commerce Way, LLC, regarding Commerce Way Conditional Road Layout and Betterment Assessment

Attorney Malcolm McNeill, representing Commerce Way, LLC, submitted a letter dated March 12, 2012, describing a proposal to make the necessary upgrades to Commerce Way to become a City street. On March 19, 2012, the City Council voted to refer this matter to the Planning Board for a report back.

The Commerce Way subdivision and roadway were initially developed in the mid-1980s as part of Commerce Center. Commerce Way is a private roadway maintained by Commerce Way, LLC. The roadway serves commercial properties and connects Portsmouth Boulevard and Woodbury Avenue.

Commerce Way, LLC wishes to have the City improve Commerce Way in order to make this commercial area of the City competitive with other local office retail markets. Specifically, Commerce Way, LLC proposes that approximately 2,500 linear feet of Commerce Way be reconstructed to City standards and that a five-foot wide pedestrian way be constructed from Woodbury Avenue to Portsmouth Boulevard. The roadway improvements will also include vertical granite curb to City standards, lighting fixtures, utility upgrades, and the construction of 600 feet of landscaped median islands between the K-Mart driveway and the north corner of Commerce Way consistent with the landscaping on Portsmouth Boulevard. These proposed improvements are shown on the attached plan titled "Proposed Roadway Improvements – Commerce Way – Portsmouth, NH."

At an appropriate time, Commerce Way would be deeded to the City. The public roadway will be conditionally laid out as provided for in RSA 231:28; and the cost of construction will be paid for by the abutting private property owners through the betterment assessment process in accordance with RSA 231:29-33.

Director of Public Works Steve Parkinson has worked closely with Tighe & Bond and Commerce Way, LLC on the development of these plans. Mr. Parkinson affirms that the plans meet City standards and are acceptable to the City.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City Council accept Commerce Way as a City street upon completion of improvements to bring the roadway up to City standards in accordance with the Roadway Improvement Plans.



PROPOSED LIGHTING
(TO MATCH
PORTSMOUTH BOULEVARD)

- PROPOSED STREET LIGHTS
- PROPOSED LANDSCAPING PLANTING TO MATCH
- PROPOSED STREET LIGHTING
- PROPOSED STREET LIGHTING
- PROPOSED STREET LIGHTING

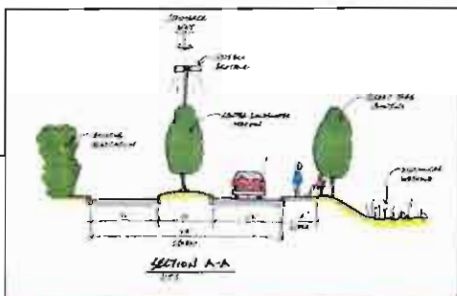


SECTION B-B
COMMERCE WAY SECTION

- LEGEND
- PROPOSED TREE
 - EXISTING TREE
 - PROPOSED PAVEMENT SECTION
 - PROPOSED DRAIN AND 12" OVERLAY
 - EXISTING PAVEMENT SECTION
 - PROPOSED SIDEWALK
 - EXISTING SIDEWALK
 - PROPOSED DRAINAGE IMPROVEMENTS
 - PROPOSED WATER MAIN LOOP
 - PROPOSED SEWER LINE REPLACEMENT



APPROXIMATE BUILDING LOCATION
PER AERIAL PHOTO



SECTION A-A
COMMERCE WAY SECTION
(BOULEVARD STYLE)

APPROXIMATE BUILDING LOCATION
PER AERIAL PHOTO

**PROPOSED ROADWAY
IMPROVEMENTS
COMMERCE WAY
PORTSMOUTH, NH**

M E M O R A N D U M

TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director *RT*
DATE: May 1, 2012
RE: City Council Referral –
Letter from David Mikolaities, Lieutenant Colonel, NH Army National Guard, regarding the acquisition of a portion of the Right of Way along Market Street and site improvements for access to the National Guard Readiness Center on 803 McGee Drive

The attached memorandum to DPW Director Steve Parkinson from Lieutenant Colonel David Mikolaities dated March 21, 2012 outlines a request of the NH Army National Guard (NHARNG) relative to property located at 803 McGee Drive. On April 2, 2012, the City Council voted to refer this matter to the Planning Board for a report back.

This NHARNG site at 803 McGee Drive has been underutilized in the past due to limited parking and site access constraints. NHARNG is now planning site improvements to the National Guard Readiness Center in order to address these constraints. The proposed improvements include a new primary site access using the existing driveway from the Center to Market Street. Site improvements include expansion of the existing motor pool to allow for additional military vehicle storage and additional parking for NHARNG soldiers during training days, as well as the improved site access along Market Street. The 8½ x 11 Proposed Site Plan prepared by Tighe & Bond, attached to Lieutenant Colonel Mikolaities March 21st memo, depicts the proposed site improvements.

In order to accomplish the proposed site improvements, NHARNG seeks to acquire from the City a portion of the right of way along Market Street. When NH DOT constructed this portion of Market Street in approximately 1980, the State acquired right of way for the roadway, and the State later turned the right of way over to the City. The attached 8½ x 11 aerial photo depicts the existing right of way and lot lines in the vicinity of 803 McGee Drive, and the attached Boundary Line Adjustment Plan shows the proposed right of way and lot lines.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City convey a portion of the Right of Way along Market Street to the State of New Hampshire for access to the National Guard Readiness Center as presented.



DEPARTMENTS OF THE ARMY AND AIR FORCE
JOINT FORCES HEADQUARTERS
NEW HAMPSHIRE ARMY NATIONAL GUARD
1 MINUTEMAN WAY
CONCORD, NH 03301-5607

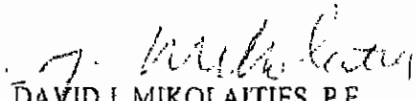
NGNH-FMO

21 March 2012

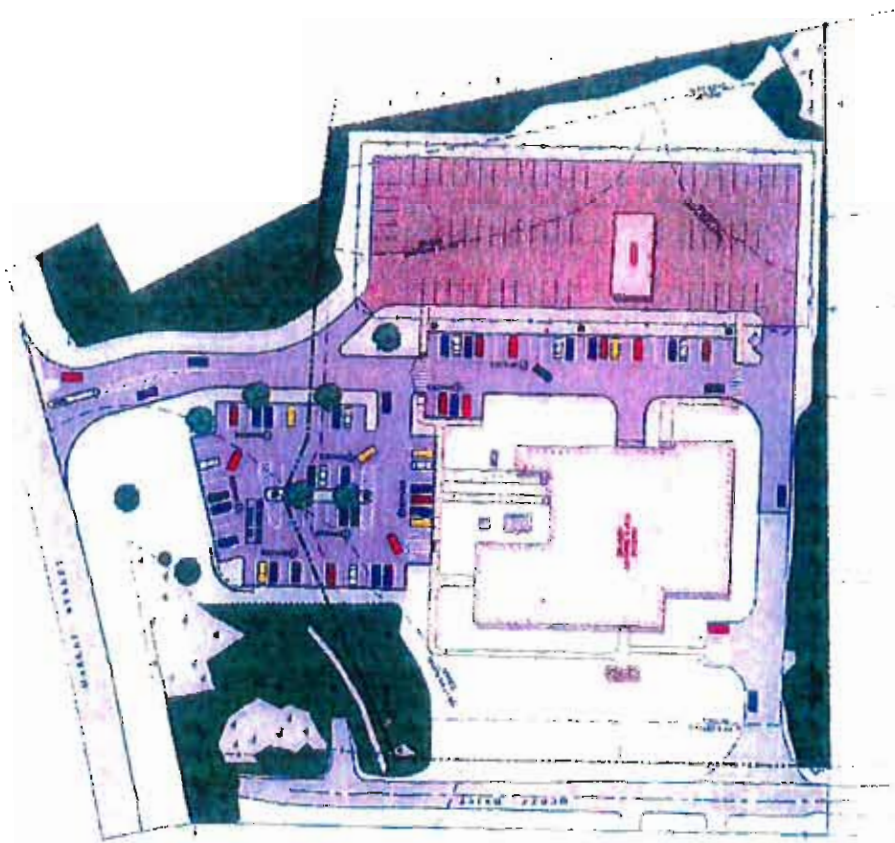
MEMORANDUM FOR Mr. Steve Parkinson, Director of Public Works, Department of Public Works, 680 Peverly Hill Road, Portsmouth, NH 03801

SUBJECT: Right of Way Access to National Guard Readiness Center on 803 McGee Drive

1. The New Hampshire Army National Guard (NHARNG) would like to initiate discussions regarding the acquisition of a portion of the Right of Way along Market Street. This Right of Way is adjacent to our existing readiness center located at 803 McGee Drive. The NHARNG is proposing to expand its existing motor pool to allow for additional military vehicle storage within our current property boundaries. In addition, we are looking to perform the following site improvements which occur within the City's Right of Way: improved site access along Market Street as well as additional parking for Army National Guard soldiers during their scheduled training days.
2. The NHARNG would also like to reiterate that this facility is available for community use on a case by case basis through the Adjutant General's Department. Several of our facilities throughout the state are used by local organizations for events such as Red Cross blood drives, food drives and other community related events. This facility has been underutilized in the past due to inadequate site access and parking, both of which we seek to improve.
3. The site was originally developed circa 1955 for the stationing of NHARNG soldiers. Circa 1980, Market Street was constructed by NHDOT in which a Right of Way was acquired for the roadway. NHDOT has since turned the land over to the city.
4. Please see the attached color rendering of our proposed site plan. We would appreciate the opportunity to discuss this with City staff at your earliest convenience.
5. Point of contact for this action is LTC David Mikolaities at (603) 227-1464 or email: david.mikolaities@us.army.mil.


DAVID J. MIKOLAITIES, P.E.
LTC, SF, NHARNG
Construction and Facilities Management Officer

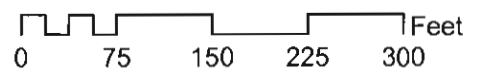
NH ARMY NATIONAL GUARD
MCGEE DRIVE
PORTSMOUTH, NH
PROPOSED SITE PLAN

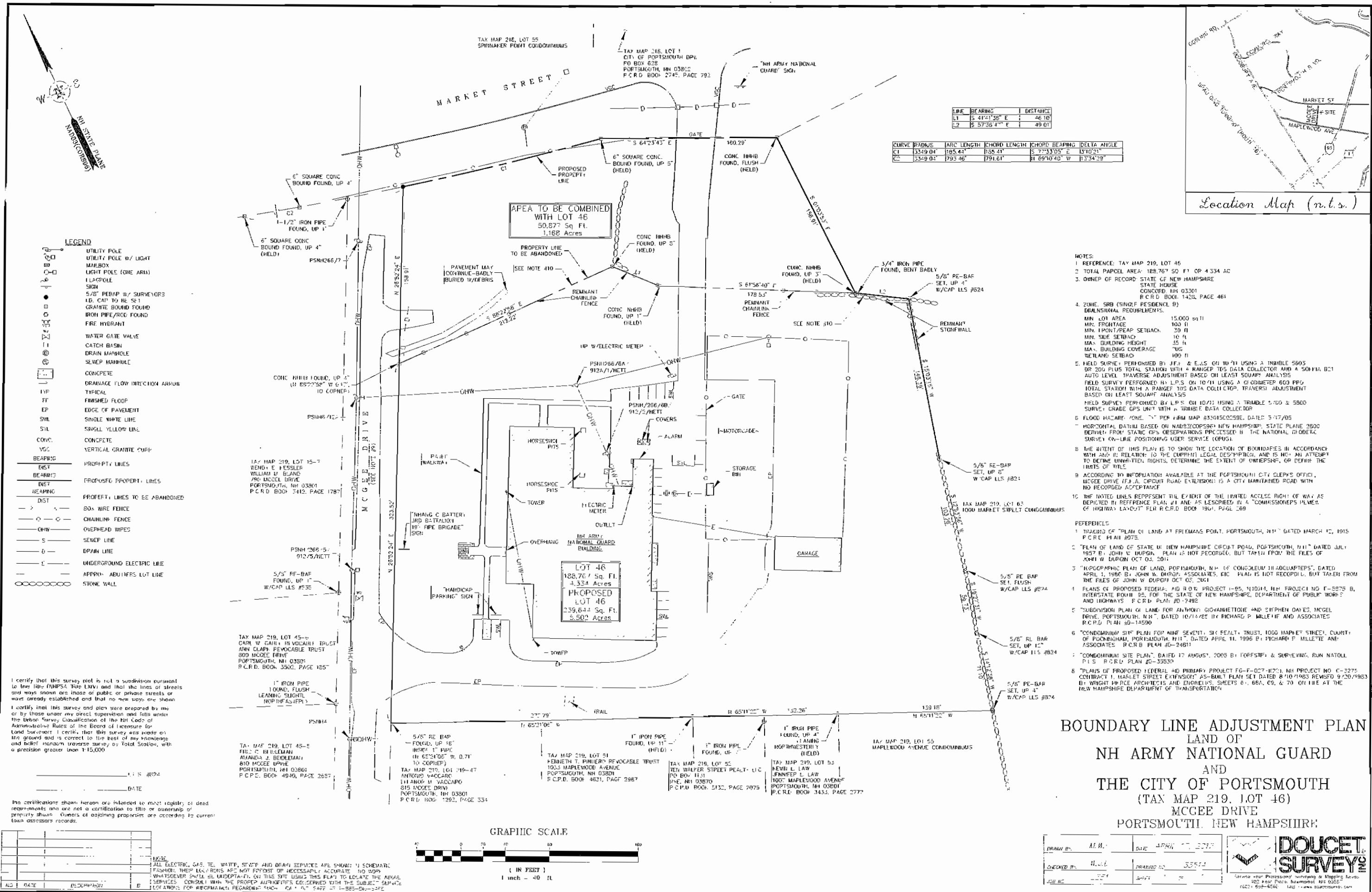


Tighe & Bond
Civil Engineers
1075 Lafayette Street
Portsmouth, New Hampshire 03801
Phone: 603.761.2610 Fax: 603.761.2612

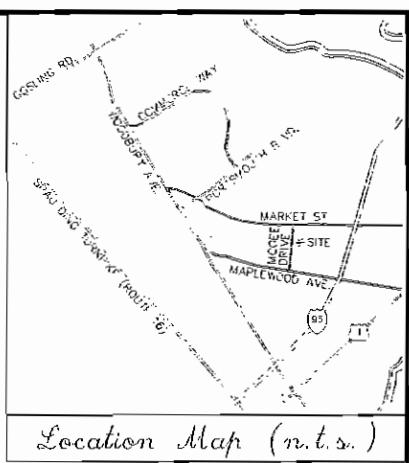


National Guard Readiness Center
803 McGee Drive





CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	3349.04'	185.44'	185.41'	S 77°33'05" E	13°10'21"
C2	3349.04'	185.46'	185.61'	N 69°10'40" W	13°34'39"



- NOTES:**
- REFERENCE: TAX MAP 219, LOT 46
 - TOTAL PARCEL AREA: 188,767 SQ FT OR 4.334 AC
 - OWNER OF RECORD: STATE OF NEW HAMPSHIRE
STATE HOUSE
CONCORD, NH 03301
R.C.R.D. BOOK 1428, PAGE 461
 - ZONE: SRB (SINGLE RESIDENTIAL B)
DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 15,000 sq ft
MIN. FRONTAGE: 100 ft
MIN. FRONT/REAR SETBACK: 30 ft
MIN. SIDE SETBACK: 10 ft
MAX. BUILDING HEIGHT: 35 ft
MAX. BUILDING COVERAGE: 70%
SETBACK SETBACK: 100 ft
 - FIELD SURVEY PERFORMED BY J.E. & E.L.S. ON 10/11 USING A INHIBIT 5603 OR 200 PLUS TOTAL STATION WITH A RANGE FINDER DATA COLLECTOR AND A SONOMA B21 AUTO LEVEL TRAVERSE ADJUSTMENT BASED ON LEAST SQUARES ANALYSIS
FIELD SURVEY PERFORMED BY L.P.S. ON 10/11 USING A GOMMETER 600 PPS TOTAL STATION WITH A RANGE FINDER DATA COLLECTOR. TRAVERSE ADJUSTMENT BASED ON LEAST SQUARES ANALYSIS
FIELD SURVEY PERFORMED BY L.P.S. ON 10/11 USING A TRIMBLE 5700 & 5800 SURVEY GRADE GPS UNIT WITH A TRIMBLE DATA COLLECTOR
 - FLOOD HAZARD: NONE. "X" PER FEMA MAP #33015C0059E, DATED 5/17/05
 - HORIZONTAL DATUM BASED ON NAD83(CORS98) NEW HAMPSHIRE STATE PLANE 2800 DERIVED FROM STATIC GPS OBSERVATIONS PROCESSED BY THE NATIONAL GEODETIC SURVEY ON-LINE POSITIONING USER SERVICE (NPOS)
 - THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH AND IN RELATION TO THE CURRENT LEGAL DESCRIPTION, AND IS NOT AN ATTEMPT TO DEFINE UNWARRANTED RIGHTS, DETERMINE THE EXTENT OF OWNERSHIP, OR DEFINE THE LIMITS OF TITLE
 - ACCORDING TO INFORMATION AVAILABLE AT THE PORTSMOUTH CITY CLERK'S OFFICE, MCCREE DRIVE (F.J.A. CIRCUIT ROAD EXTENSION) IS A CITY MAINTAINED ROAD WITH NO RECORDED ACCEPTANCE
 - THE NOTED LINES REPRESENT THE EXTENT OF THE LIMITED ACCESS RIGHT OF WAY AS DEPICTED IN REFERENCE PLAN #1 AND AS DESCRIBED IN A "COMMISSIONER'S PLAN OF HIGHWAY LAYOUT" PLAN R.C.R.D. BOOK 1801, PAGE 269
- REFERENCES:**
- TRACKING OF "PLAN OF LAND AT FRIEMANS POINT, PORTSMOUTH, N.H." DATED MARCH 12, 1915 P.C.R.D. PLAN #873.
 - "PLAN OF LAND OF STATE OF NEW HAMPSHIRE CIRCUIT ROAD, PORTSMOUTH, N.H." DATED JULY 1957 BY JOHN W. DURGON. PLAN IS NOT RECORDED, BUT TAKEN FROM THE FILES OF JOHN W. DURGON OCT 03, 2011
 - "TOPOGRAPHIC PLAN OF LAND, PORTSMOUTH, N.H. OF CONGREGATION IN ACCQUARTERS", DATED APRIL 1, 1960 BY JOHN W. DURGON, ASSOCIATES, INC. PLAN IS NOT RECORDED, BUT TAKEN FROM THE FILES OF JOHN W. DURGON OCT 03, 2011
 - PLANS OF PROPOSED FEDERAL AID R.O.W. PROJECT I-95, HIGHWAY 114 PROJECT NO. E-5875 B, INTERSTATE ROUTE 95, FOR THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS. P.C.R.D. PLAN #0-2485
 - "SUBDIVISION PLAN OF LAND FOR ANTHONY GIOVANNETTO AND STEPHEN DAVIS, MCCREE DRIVE, PORTSMOUTH, N.H." DATED 10/14/82 BY RICHARD P. MILLETTE AND ASSOCIATES. P.C.R.D. PLAN #0-14590
 - "CONDOMINIUM SITE PLAN FOR NINE SEVENTH SIX FEELT TRUST, 1000 MAPLE STREET, COUNTY OF ROCKINGHAM, PORTSMOUTH, N.H." DATED APRIL 11, 1996 BY RICHARD P. MILLETTE AND ASSOCIATES. P.C.R.D. PLAN #0-2481
 - "CONDOMINIUM SITE PLAN", DATED 17 AUGUST, 2005 BY PORTSMOUTH & SURVEYING, RUN NATOLL P.L.S. P.C.R.D. PLAN #0-33330
 - "PLANS OF PROPOSED FEDERAL AID PRIMARY PROJECT FG-F-027-10701, NH PROJECT NO. C-3275, CONTRACT 1, MARKET STREET EXTENSION AS-BUILT PLAN SET DATED 8/10/1983 REVISED 9/20/1983 BY WRIGHT PRICE ARCHITECTS AND ENGINEERS, SHEETS 01, 02, 03, & 04 ON FILE AT THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

**BOUNDARY LINE ADJUSTMENT PLAN
LAND OF
NH ARMY NATIONAL GUARD
AND
THE CITY OF PORTSMOUTH
(TAX MAP 219, LOT 46)
MCCREE DRIVE
PORTSMOUTH, NEW HAMPSHIRE**

DRAWN BY: A.E.H.	DATE: APRIL 17, 2013	
CONCORDED BY: H.L.L.	PROPOSED NO: 33514	
CHECKED BY: J.S.F.	DATE: 05/01/13	

- LEGEND**
- UTILITY POLE
 - UTILITY POLE W/ LIGHT
 - MAILBOX
 - LIGHT POLE (ONE ARM)
 - FLAGPOLE
 - SIGN
 - 5/8" RE-BAR W/ SURVEYORS I.D. CAP TO BE SET
 - GRANITE BOUND FOUND
 - IRON PIPE/ROD FOUND
 - FIRE HYDRANT
 - WATER GATE VALVE
 - CATCH BASIN
 - DRAIN MANHOLE
 - SEWER MANHOLE
 - CONCRETE
 - DRAINAGE FLOW DIRECTION ARROW
 - TYPICAL
 - FT FINISHED FLOOR
 - EP EDGE OF PAVEMENT
 - SWL SINGLE WHITE LINE
 - SYL SINGLE YELLOW LINE
 - CONC. CONCRETE
 - VGC VERTICAL GRANITE CURB
 - BEARING PROPERT. LINES
 - DIST BEARING PROPOSED PROPERT. LINES
 - DIST BEARING PROPERT. LINES TO BE ABANDONED
 - BOX WIRE FENCE
 - CHAINLINK FENCE
 - CHW OVERHEAD WIPES
 - S SEWER LINE
 - D DRAIN LINE
 - UNDERGROUND ELECTRIC LINE
 - APPROX. ADJACENT LOT LINE
 - STONE WALL

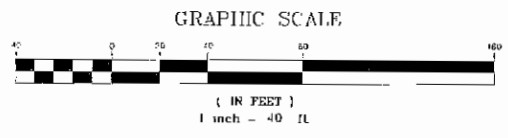
I certify that this survey plot is not a subdivision pursuant to the title (NHPSA, Title 21) and that the lines of streets and ways shown are those of public or private streets or ways already established and that no new ways are shown

I certify that this survey and plan were prepared by me or by those under my direct supervision and falls under the Uniform Survey Classification of the NH Code of Administrative Rules of the Board of License for Land Surveyors. I certify that this survey was made on the ground and is correct to the best of my knowledge and belief in accordance with the provisions of the statute and that the precision is greater than 1:15,000

DATE: _____

NO	DATE	DESCRIPTION

ALL ELECTRIC, GAS, TEL, WATER, SEWER AND DRAIN SERVICES ARE SHOWN IN SCHEMATIC FASHION. THEIR LOCATIONS ARE NOT NECESSARILY ACCURATE. NO WORK WHATSOEVER SHALL BE UNDERTAKEN ON THIS SITE USING THIS PLAN TO LOCATE THE ABOVE SERVICES. CONSULT WITH THE PROPER AUTHORITIES CONCERNED WITH THE SUBJECT SERVICES FOR ANY NECESSARY PERMITS. SEE PLAN SHEET 01-085-DN-001-001



GRAPHIC SCALE
(IN FEET)
1 inch = 40 ft

M E M O R A N D U M

TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director 
DATE: May 1, 2012
RE: City Council Referral –
Request of Barbara Devanna and Robert Cohen for an access easement over Pine Street Park for property at 55 Meredith Way (previously identified as 55 Pine Street)

Barbara Devanna and Robert Cohen, as administrators of the estate of William Cohen, have requested an easement across City-owned land at Pine Street Park for access to their property at 55 Meredith Way. The City Council voted at its meeting on March 5, 2012, to refer this easement request to the Planning Board for a report back.

The attached map shows the relationship of the subject parcel to Meredith Way, Pine Street Park and Pine Street. Although the parcel technically has frontage on Meredith Way, the paved portion of Meredith Way does not extend to this parcel, and therefore its actual access is from Pine Street. The existing driveway from the parcel to Pine Street crosses the northerly corner of Pine Street Park, and the owners are requesting an easement to formalize this existing condition.

Because of past legal complexities with parcels on Meredith Way and adjacent to Pine Street Park, the Planning Board voted at its meeting on March 15, 2012, to refer this request to the Legal Department for a report back. The City Attorney provided the attached memorandum stating that the status of the paper street portion of Meredith Way is uncertain, and that portion of the street may have reverted to abutter ownership by operation of law. In that case, in addition to the requested access easement over City land at Pine Street Park, the owners of 55 Meredith Way would need authorization to cross the paper street portion of Meredith Way. Therefore, if the City Council wishes to grant the request, the City should specifically authorize access over both the paper street and the adjacent park property.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City Council authorize the owners of 55 Meredith Way to cross the paper portion of Meredith Way and a portion of Pine Street Park in order to access Pine Street, in such manner as the City Attorney and City Manager determine appropriate.



7 Blackberry Hill Rd.
Berwick, Maine 03901
Feb 25, 2012

John P. Bohenko, City Manager
City Hall
1 Junkins Ave.
Portsmouth, N.H. 03801

Dear Mr. Bohenko:

In 1980, I bought a house at 55 Pine St., Portsmouth, which is now listed as 55 Meredith Way. In 1983 I sold this house to my brother, William Cohen who passed away last October. Another brother, Robert Cohen and I have been appointed administrators of the property and we plan to sell it.

My brother's deed shows 100 foot frontage on Meredith Way which never was completed and so his frontage is really on a "paper street". His driveway actually crosses over city property to reach Pine St.

We would like to have an easement in perpetuity over an area of 750 sq. ft. that allowed him access to his property (see attached sketch, Exhibit 1). Pine Street Park is adjacent to his land and we would like an easement from the park fence to the end of his property line. This is the width of his driveway. (approximately 30 feet).

Thank you for your consideration. You can E-mail with any questions:
BDevanna@comcast.net

Sincerely,

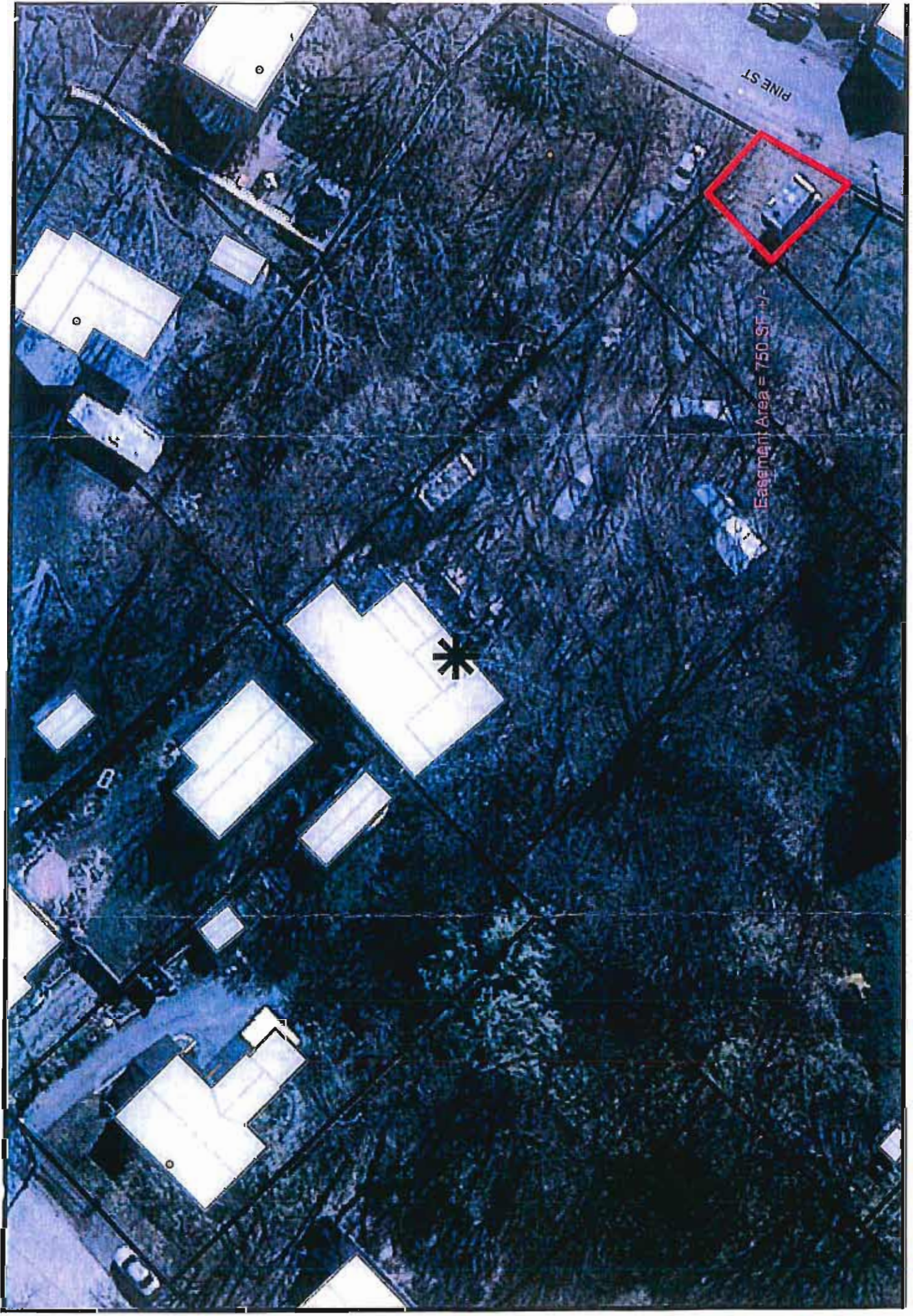
Barbara Devanna

1-207-698-1759

Robert Cohen, 84 Birch St., Peabody, MA 01960 1-978-535-0407

Cc: Eric Spear, Mayor – Portsmouth City Council
Nick Cracknell, Planning Dept.

Enclosures : Copy of Deed
Sketch, Exhibit 1 and picture



KNOW ALL MEN BY THESE PRESENTS, That William J. Devanna and Barbara A. Devanna of 245 Thornton Street, Portsmouth, County of Rockingham and State of New Hampshire

for consideration paid, grant to William Cohen of 55 Pine Street, Portsmouth, County of Rockingham and State of New Hampshire

with Quitclaim Covenants the following described premises:

Two certain lots of land, with the buildings thereon, situated on the northerly side of Pine Street in Portsmouth, County of Rockingham and State of New Hampshire, and bounded and described as follows:

Beginning at the southwesterly corner of said premises, at a post at land now or formerly of Kostanty Zabrocki Estate;

Thence turning and running easterly along said Pine Street, one hundred (100) feet, more or less, to land now or formerly of Alvin Mayo;

Thence turning and running northerly along said last mentioned land, one hundred and fifty (150) feet, more or less, to a wire fence, at land now or formerly of Nancy V. Tebbetts and Margaret E. Tebbetts; and

Thence turning and running westerly along said last mentioned land, and also along land now or formerly of Lloyd Rader and Edith Rader, one hundred (100) feet, more or less, to said Zabrocki land;

Thence turning and running southerly along said Zabrocki land; one hundred fifty (150) feet, more or less, to the point of beginning.

Being the same premises conveyed to these Grantors by deed of John Hassett, Jr. and Marjorie Hassett dated April 24, 1980 and recorded in the Rockingham County Registry of Deeds at Book 2362, Page 1473.

We are _____, husband and wife of ~~WILLIAM J. DEVANNA~~, release to said grantee all rights of homestead and other interests therein.

Witness our hands and seal this _____ day of _____, 1983

Witness:

William J. Devanna

Barbara A. Devanna

State of New Hampshire

Rockingham ss.:

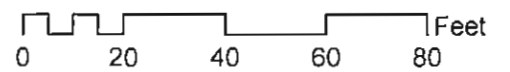
A. D. 1983

Personally appeared William J. Devanna and Barbara A. Devanna known to me, or satisfactorily proven, to be the persons whose names subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

Before me, _____
Justice of the Peace - Notary Public




55 Meredith Way and Pine Street Park





**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: April 10, 2012
TO: RICK TAINTOR, PLANNING DIRECTOR
FROM: ROBERT P. SULLIVAN, CITY ATTORNEY
RE: REQUEST OF BARBARA DEVANNA AND ROBERT COHEN
REGARDING 55 PINE STREET



I am aware that a request of Ms. Devanna and Mr. Cohen for the ability to pass over City property adjacent to the paper street portion of Meredith Way in order to provide access to 55 Pine Street has been referred by the City Council to the Planning Board.

I am familiar with both the paper street issue in question as well as the property involved from numerous activities which occurred in the 1980s. In reviewing the request of Ms. Devanna and Mr. Cohen I have looked at the plan which they presented. My review indicates that in addition to the requested ability to cross over a portion of Pine Street Park, in order for access to actually be provided to 55 Pine Street property, it would also be necessary for the City to grant them the ability to pass over the paper street portion of Meredith Way. This is because even if Meredith Way has reverted to abutter ownership by operation law, the City is the abutter on one side. Therefore, the City would own one-half of Meredith Way. It is this element which would require that the City give Ms. Devanna and Mr. Cohen the authority to pass over Meredith Way in order for them to be able to access the Pine Street property.

It should be noted that the City may not actually have any interest in that half of Meredith Way which abuts the Pine Street property. However, developing the answer to that question could be very labor intensive. Therefore, if the Planning Board and the City Council desire to grant the request of Ms. Devanna and Mr. Cohen, in order to eliminate any possible title issues, the City should specifically authorize access over both the paper street and the adjacent property.

cc: Barbara Devanna
Robert Cohen

h:\rps\planning\55 meredith way memo

Run: 5/02/12
8:50AM

Event Listing by Date

Page: 1

Starting Date: 1/ 1/2012

Ending Date: 12/31/2012

Start End	Type Description	Location	Requestor	Vote Date
1/ 1/2012 1/ 1/2012	ROAD RACE	Little Harbour School Stu Simon is the contact for this event - 436-2014. This event begins at 11:00 a.m.	Great Bay Services	4/ 4/2011
2/13/2012 2/13/2012	CONCERT	Chestnut Street Vernis Jackson is the contact for this event.	African Burying Ground Committ	12/19/2011
3/11/2012 3/11/2012	ROAD RACE	Pease Tradeport Todd Hanson is the contact for this event. He can be reached at 436-2551. This event starts at 10:30 a.m.	St. Paddy's 5 Miler	3/15/2012
3/25/2012 3/25/2012	ROAD RACE	Portsmouth High School Donald Allison is the contact for this event. This event begins at Portsmouth High School to Route 1A South. The event begins at 11:00 a.m.	Eastern States 20 Mile	1/17/2012
4/14/2012 4/14/2012	ROAD RACE	Baptist Church - Miller Avenue Robert Sutherland, Jr. is the contact for this event. This event begins and ends at the Baptist Church on Miller Avenue. Race starts at 9:00 a.m.	St. John's Lodge - Out of Hibe	2/ 6/2012
4/14/2012 4/14/2012	WALK	Little Harbour School Heidi R. Roy, Development Manager is the contact for this event. This event begins and ends at Little Harbour School, from 10:00 a.m. to 2:00 p.m.	National Multiple Sclerosis So	12/19/2011
4/15/2012 4/15/2012	ROAD RACE	Pease Tradeport Olivia Kopri is the contact for this event. This event begins at approximately 11:00 a.m. This event starts and finishes at Martin's Point Health Care.	Sexual Assault Support Service	2/ 6/2012
4/15/2012 4/15/2012	WALK	City Hall Randy Eaton is the contact of this event. The event beings at City Hall and ends at Prescott Park, starting at 1:00 p.m.	Walk for Faith	12/19/2011
5/ 6/2012 1/ 3/2012	BIKE TOUR	Little Harbour School Kathryn M. Libby is the contact for this event. This event begins at 7:00 a.m. and ends at approximately 4:00 p.m.	American Lung Association	12/19/2011
5/ 6/2012 5/ 6/2012	FESTIVAL	Downtown Portsmouth Barbara Massar is the contact for this event. This event begins at Noon until 4:00 p.m.	Pro Portsmouth - Children's Da	1/18/2012
5/ 6/2012 5/ 6/2012	WALK	Lower Parking Lot of City Hall Barbara Kautz is the contact for this event (207-363-5833). This event begins at 10:00 a.m. and the walk starts at 2:00 p.m. and ends around 5:00 p.m.	AIDS Response Seacoast	1/17/2012
5/12/2012 5/12/2012	ROAD RACE	Pease Tradeport Kimberly McGlinchey and Deirdre Barrett are the ECO Club Advisors and they are the contacts for this event. The time of this event is 1:00 p.m. to 3:00 p.m.	Portsmouth High School ECO Clu	2/21/2012

Run: 5/02/12
8:50AM

Event Listing by Date

Page: 2

Starting Date: 1/ 1/2012
Ending Date: 12/31/2012

Start End	Type Description	Location	Requestor	Vote Date
5/12/2012 5/12/2012	ROAD RACE Deborah Peretz is the contact for this event. This event begins at 9:00 a.m.	Strawberry Banke	Susan G. Komen for the Cure	10/ 3/2011
5/19/2012 5/20/2012	BIKE TOUR Kelly Sicard is the contact for this event. Tel. (603)669-2411 ex. 120	Pease International Tradeport	Breathe New Hampshire	3/ 5/2012
5/19/2012 5/19/2012	ROAD RACE Doug Bates is the contact for this event. This event is part of the Greater Portsmouth Chamber of Commerce Road Race series. This event begins and ends at the YMCA on Peverly Hill Road.	YMCA - Peverly Hill Road	GPCC - YMCA	12/19/2011
5/27/2012 5/27/2012	ROAD RACE Jeanine Sylvester is the contact for this event. This event begins at 11:00 a.m.	Redhook Ale Brewery	Runner's Alley	2/ 6/2012
6/ 9/2012 6/ 9/2012	FESTIVAL Barbara Massar is the contact for this event. This event begins at 9:00 a.m. to 4:00 p.m.	Downtown Portsmouth	Pro Portsmouth - Market Square	1/17/2012
6/ 9/2012 6/ 9/2012	ROAD RACE Barbara Massar is the contact for this event. This is the Market Square Day Road Race that starts at 9:00 a.m. in Market Square.	Starts in Market Square	Pro Portsmouth - Market Square	2/17/2012
6/23/2012 6/23/2012	FESTIVAL This is a Summer in the Street Music Series. It begins at 5:00 p.m. to 9:30 p.m.	Downtown - Pleasant Street/State and Square	Pro Portsmouth - summer in the	1/17/2012
6/30/2012 6/30/2012	FESTIVAL Barbara Massar is the contact for this event. This is Summer in the Streets event beginning at 5:00 p.m. to 9:00 p.m.	Downtown - Pleasant Street/State and Square	Pro Portsmouth - Summer in the	1/17/2012
7/ 7/2012 7/ 7/2012	FESTIVAL Barbara Massar is the contact for this event. This is a part of the Summer in the Streets series that begins at 5:00 p.m. and ends at 9:30 p.m.	Downtown - Pleasant Street/State and Square	Pro Portsmouth - Summer in the	1/17/2012
7/ 7/2012 7/ 7/2012	ROAD RACE Doug Bates is the contact for this event. This event is part of the Road Race Series. It begins and ends at Little Harbour School at 9:00 a.m.	Little Harbour School	GPCC - Harbour Trail	12/19/2011
7/ 8/2012 7/ 8/2012	PARADE Contacts: Peter Somssich and Josh Denton		Welcome Home, Iraq Veterans Pa	3/19/2012
7/14/2012 7/14/2012	FESTIVAL Barbara Massar is the contact for this event. This event is part of the Summer in Street Series. It begins at 5:00 to 9:30 p.m.	Downtown - Pleasant Street/State and Square	Pro Portsmouth - Summer in the	1/18/2012

Event Listing by Date

Starting Date: 1/ 1/2012
Ending Date: 12/31/2012

Start End	Type Description	Location	Requestor	Vote Date
7/15/2012 7/15/2012	ROAD RACE Brenda M. Blonigen is the contact of this event. Her cell number is (603) 475-4080	Pease Tradeport - Great Bay Community College	The Minuteman Fund	3/ 5/2012
7/21/2012 7/21/2012	FESTIVAL Barbara Massar is the contact for this event. This event is part of the Summer in the Streets begins at 5:00 p.m. to 9:30 p.m.	Downtown - Pleasant Street - between State Street	Pro Portsmouth - Summer in the	1/17/2012
7/28/2012 7/28/2012	FESTIVAL Barbara Massar is the contact for this event. This event is part of the Summer in the Streets series that begins at 5:00 p.m. and ends at 9:30 p.m.	Downtown - Pleasant Street - between State Street	Pro Portsmouth - Summer in the	1/17/2012
8/ 2/2012 8/ 2/2012	ROAD RACE Doug Bates is the contact for this event. This event is part of the Road Race series. It begins and ends at Peirce Island at 6:00 p.m.	Peirce Island	GPCC - Portsmouth Rotary Club	12/19/2011
8/ 4/2012 8/ 4/2012	FESTIVAL Barbara Massar is the contact for this event. This event is part of the Summer in the Street series which begins at 5:00 p.m. and ends at 9:30 p.m.	(Raindate)Downtown - Pleasant Street/State and Squ	Pro Portsmouth - Summer in the	1/17/2012
8/ 8/2012 8/ 8/2012	FESTIVAL Doug Bates is the contact for this event. This is the 2012 Greater Portsmouth Chamber of Commerce Annual Dinner "Celebrating Portsmouth Business".	Pleasant Street from State to Congress Street	Greater Portsmouth Chamber of	2/17/2012
8/11/2012 8/11/2012	BIKE TOUR Heidi R. Roy, Development Manager is the contact for this event. Her contact number: 623-3502. This is a use of roads from Strawberry Banke onto Marcy Street, onto Route 1B south to Odiorne State Park (Route 1A) for a rest stop.	Thru South End	National Multiple Sclerosis So	4/ 2/2012
9/ 9/2012 9/ 9/2012	BIKE TOUR Susanne Delaney or Catherine Keenan are the contacts for this event. This event begins and ends at Market Square.	Downtown	Portsmouth Criterium	12/ 6/2011
9/15/2012 9/15/2012	ROAD RACE Doug Bates is the contact for this event. This event is part of the Road Race series - it begins at 9:00 a.m.	Little Harbour School	GPCC - BreastCancerStories.org	12/19/2011
9/15/2012 9/16/2012	TOUR Caroline Amport (686-4338) and Nancy Pollard are the contacts for this event. This event begins on Saturday, September 15th from 9:00 a.m. to 1:00 p.m. and Sunday, September 16th - 11:00 a.m. to 3:00 p.m.	South End	Friends of the South End	2/ 6/2012
9/29/2012 9/29/2012	ROAD RACE Ksren Butz Webb is the contact for this event. This event begins and ends at Portsmouth High School. the course starts at Portsmouth High School, left onto South Street, right onto Middle Street, bear right to Court Street, right onto Marcy Street back to South and finishing at the PHS.	Portsmouth High School	Project Safety	2/21/2012

Run: 5/02/12
8:50AM

Event Listing by Date

Page: 4

Starting Date: 1/ 1/2012

Ending Date: 12/31/2012

Start End	Type Description	Location	Requestor	Vote Date
9/29/2012 9/29/2012	WALK Ken La Valley is the contact for this event - 603-862-4343. Registration for this event begins at 8:00 a.m. and the walk duration is 10:00 a.m. to Noon. The walk would begin and end on Peirce Island near the outdoor pool. Walkers would make a 2.6 mile loop starting from Peirce Island to March Street, continuing onto South Street, Miller Avenue, Middle Street, State Street and finishing at Peirce Island.	Peirce Island	American Foundation for Suicid	4/ 2/2012
10/13/2012 10/13/2012	ROAD RACE Doug Bates is the contact for this event. This event is the for the Community Child Care and it is part of the Road Race series. This event begins at 9:00 a.m.	Little Harbour School	GPCC - Community Child Care	12/19/2011
11/11/2012 11/11/2012	ROAD RACE Jay Diener, Co-Race Director is the contact for this event. This race begins and ends at Portsmouth High School.	Portsmouth High School	Seacoast Half Maranthon	3/20/2012
11/22/2012 11/22/2012	ROAD RACE Doug Bates is the contact for this event. This event is part of the Road Race Series. The event begins at 8:30 a.m.	Prescott Park	GPCC - Seacoast Rotary Club -	12/19/2011

CITY OF PORTSMOUTH



New Historic Markers Installed in City

April 30, 2012

FOR MORE INFORMATION:

David Moore, 610-7226
Between 8:00 a.m. and 4:30 p.m.

PORTSMOUTH –Earlier this spring, the City of Portsmouth installed seven historic markers as part of a project to reproduce historic marker signs, which were once scattered in various locations throughout the downtown and South End. The original historic markers were installed as part of a project sponsored by Strawberry Banke, the City of Portsmouth, and a civic group then known as the South End Association. At that time, the project (completed in 1977) resulted in the installation of approximately 40 markers covering a variety of topics from the City’s rich history.

The first five markers were installed by Public Works in 2009. A sixth marker, *Wharves at Spring Hill* was installed as part of the Bow-Ceres Waterfront Park Project in 2010. The titles of the seven newly installed markers include “First Printing House in N.H.”, “Haven Park”, “John Samuel Blunt, Painter”, “Powder House”, “Portsmouth Navy Yard”, “Portsmouth’s South Mills” and “Marcy-Pettigrew Shipyard”.

According to City Manager John Bohenko, the markers will help insure the City’s history is accessible. “The attractiveness and placement of the new markers will insure residents and visitors have the opportunity to learn more about their historic surroundings as they explore our City on foot.”

Funding for this project was provided through the Capital Improvement Program and coordinated by the Community Development Department. The City contracted with local graphic designer Susan Hamilton of Phineas to provide layout and digital file services. Content for the markers was authored and edited by local volunteer Richard Adams and historian Richard Candee in cooperation with the City. The total project cost was \$9,500 and includes the graphic design and layout, fabrication and shipping, and installation.

David Moore, Community Development Director, coordinated the project for the City. According to Moore, improvements in signage materials and technology since the 1970s have made the new markers much more durable. The technology has also permitted the use of color scanned images of maps, paintings, and photographs. The new markers are fabricated using highly durable synthetic panels, which are protected from the deteriorating effects of UV rays and have graffiti surface protection. The panels are directly attached to durable steel pedestals, and designed to be both vandal resistant and very low maintenance.

According to Moore, the intent is to standardize these markers so they are identifiable as being City-sponsored and are consistent in format, durability and quality. Design work for the next group of historic markers is in progress, with fabrication and installation planned for 2013.

The historic markers are also viewable on the City of Portsmouth website at www.cityofportsmouth.com and click on *Community Development*.

Residents and visitors can find the newly installed markers in the following locations:

Historic Marker Topic	Location
First Printing House in N.H.	In landscaped area at the corner of Howard & Pleasant Streets
Haven Park	In Haven Park facing sidewalk along Pleasant Street
John Samuel Blunt, Painter	In Moffatt-Ladd Garden, facing the sidewalk on Market Street
Powder House	In Powder House Park at Islington Street and Essex Avenue along brick walkway
Portsmouth Navy Yard	In Prescott Park on waterfront path, facing Navy Yard
Portsmouth's South Mills	Along Marcy Street sidewalk near the Fish Market
Marcy-Pettigrew Shipyard	In landscaped area at Marcy and South Mill Streets

Haven Park

Marker Location:
In Haven Park facing sidewalk along Pleasant Street



HAVEN PARK

The Haven Park is a beautiful park located in the heart of the city. It was established in 1880 and has since become a popular destination for residents and visitors alike. The park features a large open field, a playground, and a walking path. It is a great place to enjoy the outdoors and spend time with family and friends.

STABLES & PARK

The Stables & Park was established in 1880 and has since become a popular destination for residents and visitors alike. The park features a large open field, a playground, and a walking path. It is a great place to enjoy the outdoors and spend time with family and friends.

HAWAIIAN STABLES IN 1903

The Hawaiian Stables in 1903 were a significant landmark in the park's history. They were built by the city and served as a stable for the city's horses. The stables were a popular attraction and were used for many years.

FREEZE HOUSE BARRACKS

The Freeze House Barracks were a significant landmark in the park's history. They were built by the city and served as a barracks for the city's soldiers. The barracks were a popular attraction and were used for many years.

HYPERBOLIC STABLES BUILT IN 1880

The Hyperbolic Stables built in 1880 were a significant landmark in the park's history. They were built by the city and served as a stable for the city's horses. The stables were a popular attraction and were used for many years.

Historic markers can also be viewed at <http://www.cityofportsmouth.com/community/hmrp.htm>

First Printing House in N.H.

Marker Location:

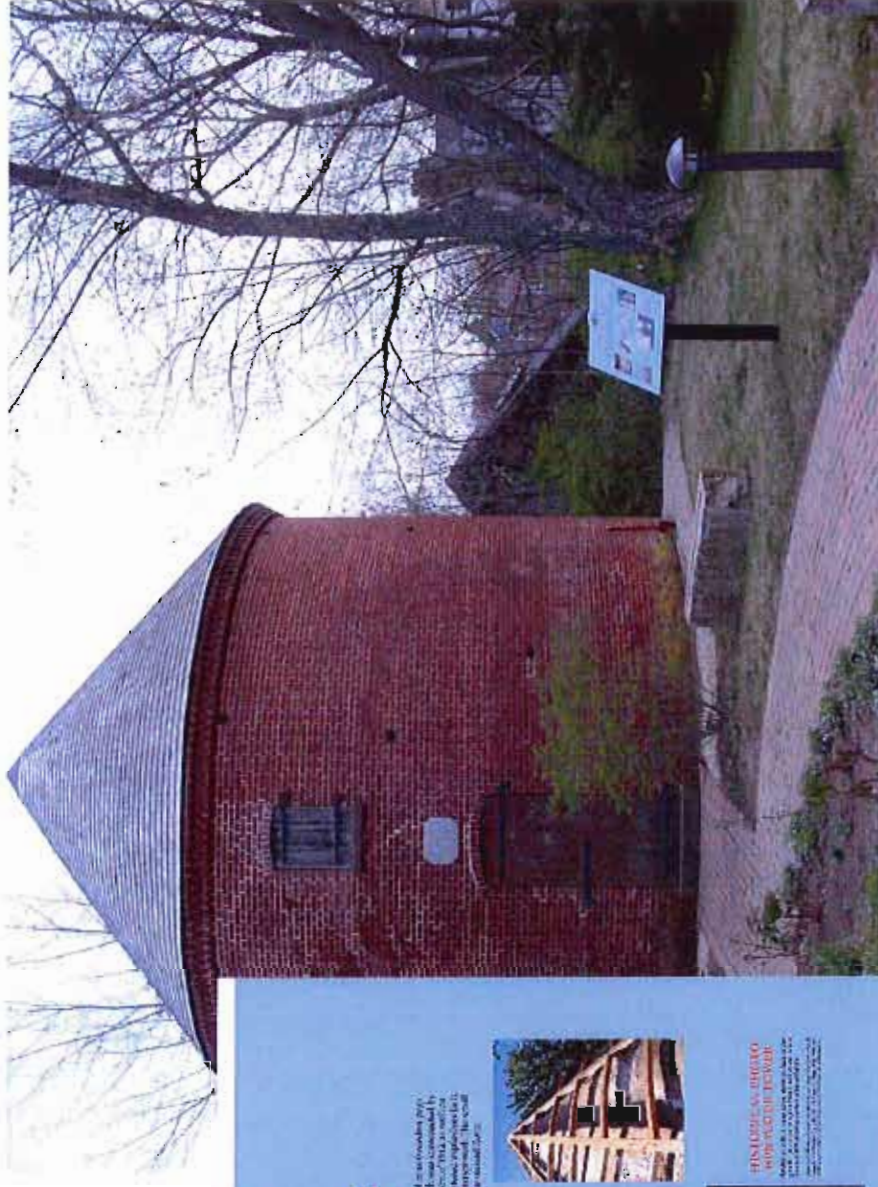
In landscaped area at the corner of Howard & Pleasant Streets



Historic markers can also be viewed at <http://www.cityofportsmouth.com/community/hmnp.htm>

Powder House

Marker Location:
In Powder House Park along brick walkway



POWDER HOUSE

THE HISTORICAL COMPANY BARN, BUILT IN 1852, WAS USED TO STORE POWDER FOR THE ARMY. IT WAS BUILT BY THE POWDER HOUSE COMPANY, WHICH WAS FOUNDED BY JOHN W. BROWN AND HIS PARTNERS. THE BARN WAS BUILT OF BRICK AND HAD A CONICAL ROOF TO PROTECT THE POWDER FROM THE ELEMENTS. THE BARN WAS USED UNTIL THE 1920S, WHEN IT WAS ABANDONED. THE BARN IS NOW A HISTORIC LANDMARK AND IS OPEN TO THE PUBLIC FOR VISITATION.

THE HISTORICAL COMPANY BARN

THE HISTORICAL COMPANY BARN WAS BUILT IN 1852 BY JOHN W. BROWN AND HIS PARTNERS. THE BARN WAS BUILT OF BRICK AND HAD A CONICAL ROOF TO PROTECT THE POWDER FROM THE ELEMENTS. THE BARN WAS USED UNTIL THE 1920S, WHEN IT WAS ABANDONED. THE BARN IS NOW A HISTORIC LANDMARK AND IS OPEN TO THE PUBLIC FOR VISITATION.

AGRICULTURAL HISTORY

THE HISTORICAL COMPANY BARN WAS BUILT IN 1852 BY JOHN W. BROWN AND HIS PARTNERS. THE BARN WAS BUILT OF BRICK AND HAD A CONICAL ROOF TO PROTECT THE POWDER FROM THE ELEMENTS. THE BARN WAS USED UNTIL THE 1920S, WHEN IT WAS ABANDONED. THE BARN IS NOW A HISTORIC LANDMARK AND IS OPEN TO THE PUBLIC FOR VISITATION.

HISTORICAL BIRDS

THE HISTORICAL COMPANY BARN WAS BUILT IN 1852 BY JOHN W. BROWN AND HIS PARTNERS. THE BARN WAS BUILT OF BRICK AND HAD A CONICAL ROOF TO PROTECT THE POWDER FROM THE ELEMENTS. THE BARN WAS USED UNTIL THE 1920S, WHEN IT WAS ABANDONED. THE BARN IS NOW A HISTORIC LANDMARK AND IS OPEN TO THE PUBLIC FOR VISITATION.

HISTORICAL BIRDS

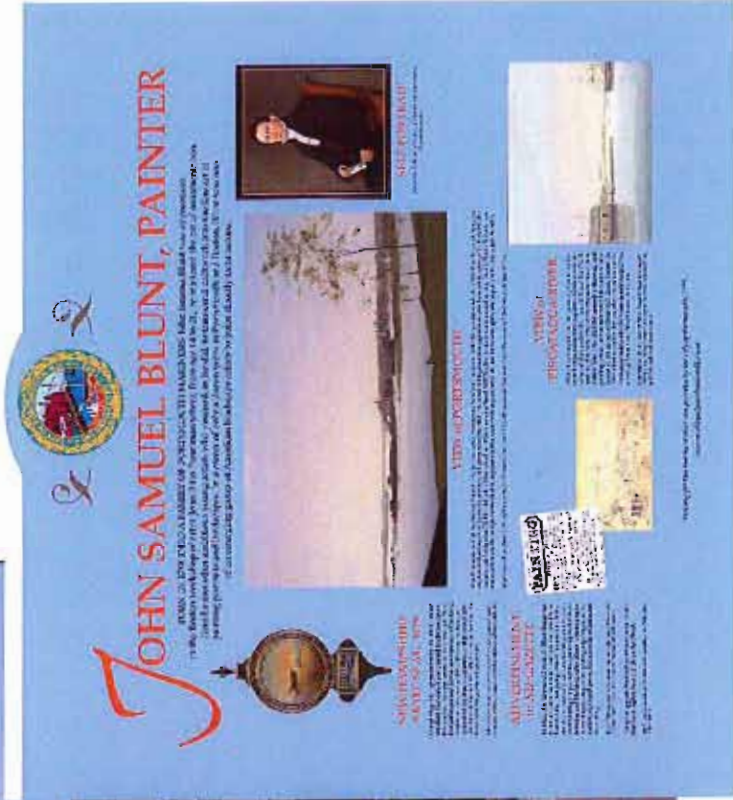
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Historic markers can also be viewed at <http://www.cityofportsmouth.com/community/hmrp.htm>

John Samuel Blunt, Painter

Marker Location:

In Moffatt-Ladd Garden, facing the sidewalk on Market Street



Historic markers can also be viewed at <http://www.cityofportsmouth.com/community/hmrp.htm>

Portsmouth Navy Yard

Marker Location:

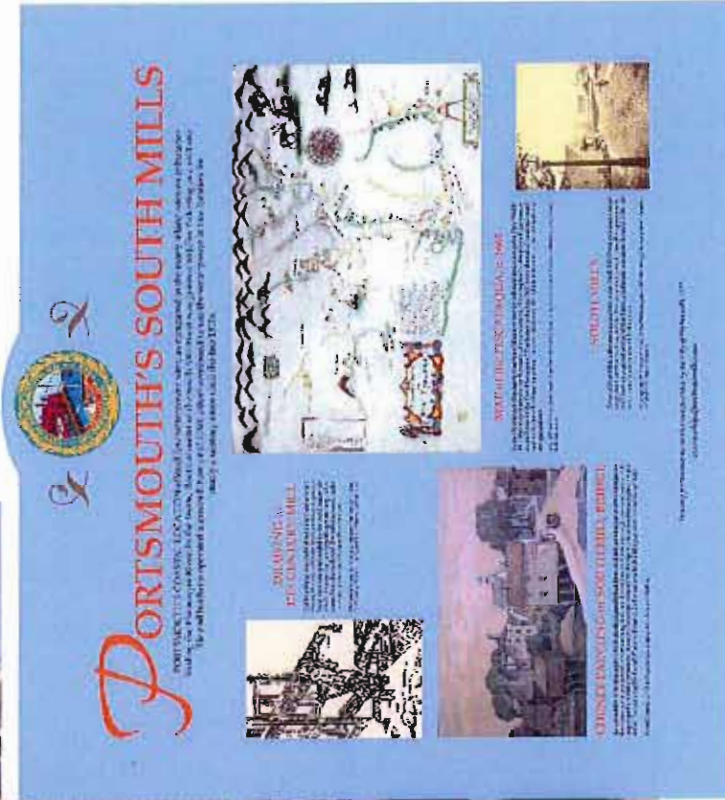
In Prescott Park on waterfront path, facing Navy Yard



Historic markers can also be viewed at <http://www.cityofportsmouth.com/community/hmrp.htm>

Portsmouth's South Mills

Marker Location:
Along Marcy Street sidewalk near the Fish Market



Historic markers can also be viewed at <http://www.cityofportsmouth.com/community/hmrp.htm>



CITY OF PORTSMOUTH

Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
(603) 431-2000

CITY COUNCIL WORK SESSION

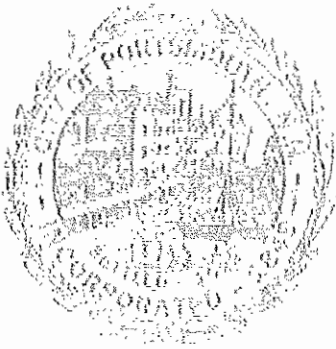
DATE: TUESDAY, MAY 8, 2012
LOCATION: CITY HALL – EILEEN DONDERO FOLEY COUNCIL CHAMBERS
TIME: 6:30PM
SUBJECT: REVIEW OF FY13 MUNICIPAL BUDGET

A G E N D A

- I. Call to Order – Mayor Spear
- II. Introduction – John P. Bohenko, City Manager
- III. Presentations – General Administration
 - Recreation – Rus Wilson, Recreation Director
 - Public Works – Steve Parkinson, Public Works Director
 - Library – Mary Ann List, Library Director
 - Welfare/Social Service Agencies – Keith Bates, Welfare Director
 - Planning, Inspection, Health – Cindy Hayden, Deputy City Manager
 - Finance – Judie Belanger, Finance Director
- IV. Presentation – Parking & Transportation – Jon Frederick, Director of Parking & Transportation
- V. Presentation – Sewer & Water Departments – David Allen, Deputy Public Works Director
- VI. Questions and Discussion
- VII. Adjournment

KELLI L. BARNABY, CMC/CNHMC
CITY CLERK

NOTICE TO MEMBERS OF THE PUBLIC WHO ARE HEARING IMPAIRED: If you require assistance, contact Dianna Fogarty, Human Resources Director, at 603-610-7270, one week before the meeting to make arrangements.



CITY OF PORTSMOUTH, N.H.
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

MAR 29 2012

Instructions: Please print or type and complete all information
Please submit resume' along with this application

Committee: Citywide Neighborhood Steering Committee **Renewing applicant**

Name: Kathleen Bergeron Telephone: 603 433 3261

Could you be contacted at work? YES NO - If so, telephone # 603 436 3009

Street address: 199 Wilbird Street

Mailing address (if different): _____

Email address (for clerk's office communication): kbergeron@aol.com

How long have you been a resident of Portsmouth? 16 years

Occupational background:

Commercial Real Estate Appraiser

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: I feel this

Committee is very important in strengthening communication within & between neighborhoods within the city.

OVER
➔

Please list any organizations, groups, or other committees you are involved in:

Please list two character references not related to you or city staff members:

- 1) Karen Boisvert 603-781-4774
Name, address, telephone number
- 2) Sharm Dubois Carney 603-828-1312
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: Kathleen Bergerm Date: 3/28/12

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: _____

Annual Number of Meetings: _____ Number of Meetings Absent: _____

Date of Original Appointment: _____

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application

APR 04 2012

Committee: Recreation Board

Renewing applicant

Name: Ed DeValle Telephone: 603 436 1213

Could you be contacted at work? YES NO - If so, telephone # 603 617 2111

Street address: 166 Buckminster Way Portsmouth NH 03801

Mailing address (if different): same

Email address (for clerk's office communication): Buckway@comcast.net

How long have you been a resident of Portsmouth? 42

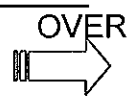
Occupational background:

SALES

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving:

I want to give back to the community which I have been a part for many many years.



Please list any organizations, groups, or other committees you are involved in:

LITTLE League Baseball
Bobo Ruth Baseball
Library Trustee

Please list two character references not related to you or city staff members:

- 1) Carl Diemen 427 4517
Name, address, telephone number
- 2) Mark Barentyne 427-6111
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

- 1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
- 2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
- 3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
- 4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
- 5. Application will be kept on file for one year from date of receipt.

Signature: [Signature] Date: 4/4/12

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: _____
Annual Number of Meetings: _____ Number of Meetings Absent: _____
Date of Original Appointment: _____

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801

ACTION SHEET

PARKING and TRAFFIC SAFETY COMMITTEE

Councilor Ken Smith, Chairman

To: City Council Meeting of May 7, 2012

Re: Parking Committee Meeting held April 12, 2012

ACTIONS:

- [1] Accepted and placed on file the minutes of the Parking and Traffic Safety Committee meeting held March 8, 2012.
- [2] **Financial Report – MOTION** made by Mr. Whitehouse to accept the report, seconded by Deputy Chief Dubois. **Motion passed.**
- [3] **809 State Street**– Citizen request for “Drive Like Your Kids Live Here” – **MOTION** made by Public Works Director Parkinson to table to next meeting (*as citizen requestor was not in attendance by the end of meeting*), seconded by Mr. Cypher. **Motion passed.**
- [4] **Aldrich Road** – Citizen request for no parking area in vicinity of 270-320 Aldrich Road –**MOTION** made by Mr. Gray to place the request on file (*with review to be conducted after scheduled capital improvements are completed*), seconded by Mr. Whitehouse. **Motion passed.**
- [5] **40 Bridge Street** – TAC Referral – Request to reconfigure on-street parking and add a loading zone – **MOTION** made by Public Works Director Parkinson to approve the reconfiguration of on-street parking spaces, addition of a loading zone and a 40 foot “No Parking Here to Corner” area as presented, seconded by Mr. Gray. **Motion passed.**
- [6] **1390 Lafayette Road (former Yoken’s site)** – TAC Referral – Request for approval for driveway configuration and traffic plan – **MOTION** made by Public Works Director Parkinson to approve the driveway configuration and traffic plan as presented with the stipulated recommendation back to the TAC that the driveway block on Peverly Hill Road be “Right in, Right out”, seconded by Fire Chief LeClaire. **Motion passed.**
- [7] **Haven Road, Brackett Lane and Brackett Road** – City Council Referral – Neighborhood Petition regarding Little Harbour School events – **MOTION** made by Public Works Director Parkinson to recommend that;
 - 1) No outside sound systems be allowed; and
 - 2) The event organizers must be responsible for ensuring No Parking on the surrounding residential streets.Seconded by Mr. Gray. **Motion passed.**

- [8] **Franklin Street Handicap Parking Space** – Citizen Request for reserved space on Franklin Street at Pleasant Street - **MOTION** made by Mr. Whitehouse to approve the request for a reserved Handicap Parking Space on Franklin Street at Pleasant Street with the stipulation that if the property changes hands, the space is non-transferable, seconded by Deputy Chief Dubois. **Motion passed.**
- [9] **Dennett Street and Kane Street** – Action on reconsideration from March 8th – Addition of 5 space parking area – **MOTION** made by Public Works Director Parkinson to approve the 5-space parking area as presented on Dennett and Kane for striping by DPW, seconded by Mr. Gray. **Motion passed.**
- [10] **Downtown Speed Limits** – DPW report back – Speed study – **MOTION** made by Mr. Whitehouse to accept the report, seconded by Mr. Cypher. **Motion passed.**

MINUTES
PARKING AND TRAFFIC SAFETY COMMITTEE MEETING

8:00 A.M. – Thursday, April 12, 2012
City Hall – Eileen Dondero Foley Council Chambers

I. CALL TO ORDER:

Chairman Ken Smith called the meeting to order at 8:00 a.m.

II. ROLL CALL:

Members Present:

Councilor Ken Smith, Chair
Steve Parkinson, Public Works Director
Stephen Dubois, Deputy Police Chief
Chris LeClaire, Fire Chief
Ron Cypher, Member
Ted Gray, Member
Harold Whitehouse, Member

Member(s) Absent:

John Bohenko, City Manager

Staff Advisors Present:

Jon Frederick, Parking & Transportation Director
Michael Angstadt, Legal Department

III. ACCEPTANCE OF THE MINUTES:

Mr. Gray moved to accept the minutes of the March 8, 2012 meeting as presented. Seconded by Mr. Cypher and voted.

IV. FINANCIAL REPORT:

Parking and Transportation Director Frederick stated that everything is on target at this time.

Mr. Whitehouse moved to accept the Financial Report and place on file. Seconded by Deputy Chief Dubois and voted.

V. NEW BUSINESS:

A. **809 State Street** – Citizen request for “Drive Like Your Kids Live Here” -

Parking and Transportation Director Frederick stated that the requester, Kelly Weinstein, is not present at this time so Chairman Smith suggested action be deferred to the end of the meeting to allow time for her to arrive.

As Ms. Weinstein did not arrive by the end of the meeting, Public Works Director Parkinson moved to table to the next meeting. Seconded by Mr. Cypher and voted.

- B. **Aldrich Road** – Citizen request for No Parking area in vicinity of 270-320 Aldrich Road

Mr. Gray stated that a site walk was held of the area and reported that the speed limit is 20 mph, there wasn't a lot of traffic and he didn't feel that the curve was sharp enough to prevent seeing the traffic and therefore recommends that the request be placed on file.

Mr. Gray moved to accept and place on file, seconded by Mr. Whitehouse.

Chairman Smith stated that the site walk was held during a time when there was a lot of construction in the area so it was not necessarily a good representation

Bob Shouse, 555 Dennett Street, stated he travels the area everyday and if cars are parked on the side curve, the cars are forced into the opposite lane. He disagrees that there isn't a lot of traffic and feels that people do not adhere to the 20 mph limit. He stated the construction in the area emphasizes and aggravates the problem and feels that this request should be approved.

Public Works Director Parkinson stated that this project is scheduled as a Capital Improvements project within the next year and would agree to place this request on file, but would like to revisit the request after the project is complete.

Motion voted to accept and place on file and to revisit after project completion.

- C. **40 Bridge Street** – TAC Referral – Request to reconfigure on-street parking and add a loading zone

Jon Frederick explained that the developer is requesting the addition of a 40 foot loading zone, approximately 40 feet from the intersection of Islington Street. This will include a "No Parking Her to Corner" sign and the appropriate loading zone signage. Additionally, four metered parking spaces will be striped in front of the development, resulting in a net gain on one parking space. All parking spaces will be painted as enclosed parking spaces. He stated that this area is metered with a pay and display meter. He concluded by stating that John Chagnon from Ambit Engineering is here to answer any questions.

Chief LeClaire asked for clarification that there is usually on 20 feet clearance required for a corner, so why are they asking for 40 feet.

Mr. Chagnon stated that this was originally reviewed by the TAC in 2008 and it was the recommendation of the Fire Department at that time to have a 40' clearance.

Public Works Director Parkinson moved to approve the reconfiguration of on-street parking spaces, addition of a loading zone and a 40 foot "No Parking Here to Corner" area as presented, seconded by Mr. Gray.

Chairman Smith asked about the original approval which included spaces for the building in the front. John Chagnon explained that the building was converted to condos which did not require city approval for that change but there was no loss of parking in regards to this project.

Motion passed.

D. 1390 Lafayette Road (former Yoken's site) – TAC Referral – Request for approval of driveway configuration and traffic plan

Jeff Dirk, Vice President of Vanasse & Associates Inc. (VAi) stated that this was presented to the TAC on April 3rd and there have been a couple of changes made to the plan since then which are reflected on the new plan he distributed to the committee.

Mr. Dirk stated that the assessment of the intersection operations were in the context of the planned NHDOT Lafayette Road traffic signal coordination project and the completion of the contemplated master planned build-out of 1390 Lafayette Road and concluded at that time that a left-turn phase could be accommodated at the intersection for the Peverly Hill Road approach both with and without the future corner radii improvements on the northwest corner of the intersection. He continued that in order to implement the suggested traffic signal timing and phasing modifications at the intersection, there were several improvements that would need to be made which he then reviewed. He stated that the change that is being proposed since the initial review is the addition of a right turn lane onto Peverly Hill Road from Route 1 and the retiming of the traffic signal which they feel will be more effective.

Chairman Smith asked about the stacking area in the right hand turn lane with Mr. Dirk stating it should hold approximately 6 vehicles at a time during the traffic signal rotation.

Next, discussion ensued regarding various curb cut areas for traffic flow within the parking lot area as well as the driveway entrance/exit onto Peverly Hill Road with Chief LeClaire stating he would prefer to see this be designated as right in, right out. Mr. Dirk responded that they are only allowed one drive-way per lot according to the city requirements unless they meet certain criteria to add another driveway, so they felt they could live with this proposal.

Public Works Director Parkinson clarified that this is not a requirement imposed by the TAC and stated that this is the Parking and Traffic Safety Committee and therefore he feels the recommendation back to the TAC should be for a right in, right out access point.

Mr. Monteiro of MHF Design Consultants stated that the original proposal was a right in, right out but the TAC recommended that it be a right out only. He asked that it be clarified if the TAC will adhere to the recommendation of the Parking and Traffic Safety Committee.

Chief LeClaire asked if the Route 1 right turn onto Peverly Hill Road was required. Mr. Dirk stated that this came as a result of the review with the consultant for Market Basket, but this is the first time anyone from the City has seen it.

Mr. Cypher asked what the purpose is of the extension of the median to West Road. Mr. Dirk explained that there was a concern that U-turns would be made without it, but stated that it is a flush median of serrated concrete so that trucks can make the turn. He clarified that the loading zone areas are also flush serrated concrete pads and not elevated.

Chief LeClaire stated he still is concerned with there being 2-way traffic to a certain point and then reverting to one-way traffic stating it doesn't make sense to him safety-wise.

Public Works Director Parkinson moved to approve the driveway configuration and traffic plan as presented with the stipulated recommendation back to the TAC that the driveway block on Peverly Hill Road be "Right in, Right out", seconded by Fire Chief LeClaire. Motion passed.

Chairman Smith stated as a suggestion, he would like to see concrete motorcycle pads added as well.

- E. **Haven Road, Brackett Lane and Brackett Road** – City Council Referral – Neighborhood petition regarding Little Harbour School events

Mike Coffey, 86 Haven Road – explained that this issue is related to the ongoing parking issue with Little Harbour School, with this relating to the events being held on the weekends, which are occurring more frequently since the Middle School reconstruction. He stated this petition was presented to the City Council who then referred it to the Parking and Traffic Safety Committee and he is asking that some resolution be concluded for the sake of the neighborhood. He stated that the issues arising from these weekend events include parking, but also there is a noise problem as there are often public address systems used and the events start as early as 7:30 a.m. He concluded by asking that these events be relocated to either the High School or Pease Trade Port in the future.

Bob Bacon, 26 Brackett Road – stated that these weekend events are impacting the neighborhood quality of life as the noise at 7:30 a.m. forces them to keep their windows closed on nice days. He stated he also wants to see the speed limit enforced during school days.

Discussion ensued regarding various options to address the concerns.

Public Works Director Parkinson moved to recommend that;

- 1) **No outside sound systems be allowed; and**
- 2) **The event organizers must be responsible for ensuring No Parking on the surrounding residential streets.**

Seconded by Mr. Gray.

Discussion ensued regarding requiring police presence at the events.

Deputy Chief Dubois stated it would be a better idea for the events organizers to have enough staff to manage it and perhaps barriers to restrict parking.

Chairman Smith suggested that the police department be supplied with a contact person and phone number for events and also that the neighbors continue to register any complaints with the Police Department so there is a record on file.

Mr. Coffey thanked the committee members who have been patrolling the area and speaking with the parents stating it has helped.

Motion passed.

- F. **Franklin Street Handicap Parking Space** – Citizen request for reserved space on Franklin Street at Pleasant Street.

Mr. Whitehouse reported that a site walk was held and they recommend approval of this request.

Mr. Whitehouse moved to approve the request for a reserved Handicap Parking Space on Franklin Street at Pleasant street with the stipulation that if the property changes hands, the space is non-transferable, seconded by Deputy Chief Dubois. Motion passed.

VI. OLD BUSINESS:

- A. **Dennett Street and Kane Street** – Action on reconsideration from March 8th – Addition of 5 space parking area

Chairman Smith explained that the vote to reconsider was held at the last meeting and asked for any public comment.

Alain Jousse, 197 Dennett Street – thanked the committee for their time and effort in resolving this issue. He asked that when this has been approved that a letter be sent to the residents in the area to let them know the new rules and to remind them of the 72 hour parking law as well.

Chairman Smith reminded everyone that if someone sees a vehicle parked in one spot for a long period of time, they need to call the police to come out and chalk it, as that is what starts the 72 hour time-frame for towing.

Public Works Director Parkinson moved to approve the 5-space parking area as presented on Dennett and Kane for striping by the DPW, seconded by Mr. Gray. Motion passed.

Chairman Smith requested some public notification to the neighbors and also requested a **report back** from the Legal Department regarding the striping of parking areas being adequate to convey "No Parking" without signage or printed wording.

B. Downtown Speed Limits – DPW report back – Speed study

Parking and Transportation Director Frederick stated he received the scope of services from Resource Systems Group that the cost to conduct a speed study for a 3-week period of the downtown core would be \$2,680.00 and the Dept. of Public Works plans to proceed with the study.

Mr. Whitehouse moved to accept the report, seconded by Mr. Cypher. Motion passed.

C. Report back regarding volunteer patrolling of Haven Road area – (*Not on the agenda*)

Mr. Cypher reported that he and Mr. Whitehouse have been patrolling the area during the peak drop off and pick up times and have been wearing their bright yellow PTS jackets. He stated they have been speaking with the parents and he feels that they have been able to educate them about the issue and are making an impact.

Mr. Whitehouse stated he agrees and he enjoys doing it. He stated they will continue through the month of April.

Mr. Coffey from the audience stated he agrees that their presence has made a difference but will be interested to see what happens when they aren't there any more. He stated he feels the school needs to step up to the plate.

Chairman Smith stated we should meet again with the Principal at the end of April and can also look at this again next school year.

VII. ADJOURNMENT

Mr. Gray moved to adjourn at 9:15 a.m. Seconded and voted unanimously.

RULE 23 – COMMITTEE NOMINATIONS

Rule 23:

The City Council shall meet as necessary to review applications for appointment to all city boards and committees. This 'selection meeting' should occur as a non-meeting with counsel, to review and critique all the available applications for an open position or a position up for renewal. At this meeting, the Mayor shall attempt to develop a consensus on an applicant to bring forward for a vote at a subsequent council meeting. The Mayor shall not be bound to bring forward any name. The council recommends that the Mayor does not bring a name forward for a vote that has not been considered at the most recent 'selection meeting'.

Proposed Rule taken verbatim from Councilor Coviello

MEMORANDUM

TO: John P. Bohenko, City Manager
FROM: Liz Good, Planning Department
SUBJECT: Conservation Commission Minutes
DATE: April 12, 2012

Please be advised that the approved minutes from the March 14, 2012 Conservation Commission meeting are now available on the City's website for your review.

MEMORANDUM

TO: John P. Bohenko, City Manager
FROM: Jane Shouse, Planning Department *JMS*
SUBJECT: Planning Board Minutes
DATE: April 20, 2012

Please be advised that the approved minutes from the January 19, 2012 Planning Board meeting are now available on the City's website for your review.

MEMORANDUM

TO: John P. Bohenko, City Manager
FROM: Jane Shouse, Planning Department *JMS*
SUBJECT: Planning Board Minutes
DATE: April 20, 2012

Please be advised that the approved minutes from the March 15, 2012 Planning Board meeting are now available on the City's website for your review.

MEMORANDUM

TO: John P. Bohenko, City Manager
FROM: Jane Shouse, Panning Department *JMS*
SUBJECT: Site Review Technical Advisory Committee Minutes
DATE: April 17, 2012

Please be advised that the approved minutes from the April 3, 2012 Site Review Technical Advisory Committee meeting are now available on the City's website for your review.

MEMORANDUM

TO: John Bohenko, City Manager
FROM: Mary E. Koepenick, Planning Department
SUBJECT: Board of Adjustment Minutes
DATE: April 20, 2012



The approved Minutes of the following Board of Adjustment meetings are now available for review on the City's website:

January 17, 2012

February 21, 2012

MEMORANDUM

TO: John Bohenko, City Manager
FROM: Mary E. Koepenick, Planning Department *M E Koepenick*
SUBJECT: Board of Adjustment Minutes
DATE: April 6, 2012

The following approved minutes of Board of Adjustment meetings are now available for review on the City's website:

Amendment to October 18, 2011 Minutes