

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

JANUARY 19, 2012

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

MEMBERS EXCUSED: n/a

ALSO PRESENT: Rick Taintor, Planning Director

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6:00 – 7:00 WORK SESSION on Subsurface Investigations in Site Plan Review Regulations

Chairman Ricci opened the Work Session and turned it over to Rick Taintor. This was referred to the Planning Board by the City Council for a recommendation on how to incorporate subsurface archaeological preservation protection into Site Plan Review Regulations. Deputy City Manager Hayden has been very involved in this over the years with various projects so he turned the meeting over to her.

Deputy City Manager Hayden indicated that at the State level the Division of Historic Resources is the State Agency that oversees archaeological and above ground historic buildings, in certain instances, which is when a resource that is either on the National Register or eligible for the Federal National Register. The JFK building, on the new library site, was older than 50 years old so it was eligible to be on the National Register so that triggered the Section 106 process. The Section 106 process, in its best form, is meant to be a consultative process with the community and the Division of Historic Resources. It is triggered when there is a Federal license or permit or federal funds are involved. The City learned long ago to follow the Section 106 process and consult with the Division of Historic Resources on just about any of their projects and she listed a number of projects that went through Section 106. She also mentioned that all sewer projects go through the archaeological review because they are digging underground. Community Development Block Grants, which are HUD funded projects, have a checklist form that they fill out and send to the Division of Historic Resources. If it comes back requesting that they do more research, the first step is looking at existing documents to see if something is historic. At Pierce Island they went to the next step and did on site test-pitting and found Native American artifacts like flints, so they were required to redirect the walking path they were constructing. The African burial ground went through Section 106 and they were very involved with them on the design of the memorial parks so they didn't disturb anything else below ground.

This process is not triggered is when there is no federal involvement. Private developers would not be required to go through this process. There is legislation being proposed by Senator Stiles that would place that responsibility with Historic District Commissions. That doesn't mean they can't do something in their Site Plan Regulations as well. Mr. Taintor indicated that Councilor Dwyer advised him that Senator Stiles has changed the legislation to place it with the Planning Board.

Deputy City Manager Hayden stated that they looked at other communities and Newington was the only one that had something in their Site Plans Regulations. They do this in other parts of the Country. They identify boundaries where they would want to look and define the boundaries of the archaeology search. In some cases communities do an archaeological assessment to look at the whole area. They would then have to determine how they would protect those resources. For example, at the Middle school they did a lot of test pits and had the historic resource staff weigh-in but they did not find anything of significance.

Mr. Rice asked what was involved with a test pit and how big they usually were. Deputy City Manager Hayden stated that Pierce Island was an example. They told the archaeologist that they wanted a trail in a particular area and they determined where the test pits should be. Typically it starts with a shovel. Ms. Roberts stated that they are actually pretty small, 2' x 2'. The depth will depend on their expertise and what they think they may find.

Deputy City Manager Hayden indicated that some of the things they should be thinking about are what geographical areas of the City should be subject to archaeological review and protection regulations, what should trigger local level archaeological review of development projects, and what regulatory review process should follow. Newington's section doesn't have any teeth in their section. The Department outlined how the Board might want to proceed, if they want to pursue this. She thinks because they are such an old City they have a responsibility to do so in some form but they also need to consider the cost it will impose on developers. To help them define what area they are talking about they think they would need input from professional archaeologists and the Division of Historic Resources. Would it be the downtown, a portion of the downtown or the whole City. It would vary depending on what era they are looking at or whether they are talking about the waterfront. Deputy City Manager Hayden also attached a Memo about the Advisory Council on Historic Preservation. The State Division of Historic Resources and the Federal Advisory Council on Historic Preservation believe that if someone goes to get a general construction permit for stormwater when you disturb more than an acre, they have to file a Notice of Intent for construction general permit. The historical people believe that triggers the 106 progress but she doesn't know if EPA does or not but, in practice, they do not follow that.

Mr. Blenkinsop asked if there any discussion about what is an archaeological resource. Having lived and experienced a lot of stormwater reconstruction this summer in his neighborhood, they see bottles everywhere. Is that what they are talking about. Deputy City Manager Hayden believed that there is a lot of modern era fill that is out there but they would have to define that. Some communities don't define it and leave it very open ended. The City generally has an archaeologist come and determine if something is worthwhile or not.

Mr. Hopley asked, if they dig up something up that is important, what should they do. Is the goal to dig more and find more good things and where does it end. Deputy City Manager Hayden felt it does

need to be defined. If they find human remains it's easy and there is a state process to follow. In the 106 statute it lists out Phase A, which is doing the research, then you do test pits, which brings you to the archaeologist who goes to the Division of Historic Resources and then, if warranted, the Division will require a Phase B assessment which is a lot more involved and everything found needs to be documented. Ms. Roberts stated that most archaeological excavations do not involve a full digging of an entire area. The goal is to document in the smallest area possible what is going on there historically so that something will be left in case technology changes and some better research might be able to show something 50-100 years from now. They try not to destroy everything in the process of doing the excavation.

Mr. Rice was concerned about areas that were not in the immediate downtown, such as the Frank Jones Mansion on Woodbury Avenue. Obviously the downtown area is the most intense area but he felt the approach should initially be broad. Deputy City Manager Hayden did not disagree but felt that the first step was to have competent people do a study of all areas.

Mr. Blenkinsop asked how extensive is the City's existing knowledge of which areas might be more valuable than other areas. Deputy City Manager Hayden felt it was probably pretty general and based on City experience with previous projects but there is a lot of information out there.

Mr. Gladhill commented on location and wondered if archaeologist could determine any inland where Native Americans may have lived, other than waterfront. Ms. Roberts felt it would be hard to know the prehistoric history unless they found 1700 documents. Most of those people died out because of disease that came in. Mr. Gladhill asked who would be on site to determine whether something was valuable or not. Deputy City Manager Hayden felt it would depend on how they wrote the ordinance. They might have to work directly with Historic Resources. For City projects they have an archaeologist they are paying to review the area being impacted ahead of time to help them determine if they could expect to find something ahead of time and if something is found then the contractors have to contact the archaeologist to find out what to do next. So far, the City has not uncovered really significant items that they weren't aware of, other than the African Burial Ground.

Councilor Novelline Clayburgh asked if significant items were found, could it delay a project. Deputy City Manager Hayden felt that typically one of two things happens. If they had a big 50 acre site and they encountered some important historic resources, they might be able to shift the building to miss those. Under the Section 106 project you would enter into an agreement stating how everything will be handled with photographs, notes, memorial plaques and detailed logs.

Ms. Roberts felt that starting with a general survey would be critical in terms of assessing what the resources are and where they are located. There are likely other areas in the City besides downtown that might have historic resources. Some kind of City wide inventory wouldn't be that difficult because it's all already been done. Richard Candee has done a lot of work.

Chairman Ricci felt that enforceability would be their biggest challenge. If someone finds something and it's a big deal they are probably going to sweep it under the carpet and move on. He would like to find ways to minimize costs and delays. Construction projects are now on a tight schedule and a shoe string budget. He suggested spending more time on an inventory to determine hot zones so that

contractor will know going into the project that they may find something. If they layer another potential cost on a developer, he would like to see those minimized.

Deputy City Manager Hayden agreed that they think carefully about how they do it to get the right balance. Chairman Ricci felt it was really important for the City to log what they have and keep track of these things and he doesn't want valuable items tossed aside because of delays and costs.

Mr. Gladhill asked what the policy was on finding human remains. Deputy City Manager Hayden indicated that human remains automatically are handled by the State archaeologist. On Chestnut Street there were 13 human remains and they moved some of them and some were left in place. It is up to the State archaeologist. The more they go through the process, it really works quite well and she doesn't think it has been a real delay factor. The library was more of using Section 106 by private parties to significantly change the direction of that project. .

Chairman Ricci felt that when they talk about municipal or federal it's different than talking about independent contractors. Deputy City Manager Hayden thought it has to be very balanced and very clear to developers what the rules are. She's not sure they will find that many hot spots.

Councilor Novelline Clayburgh asked if the Board had a deadline on this item. Deputy City Manager Hayden explained that this matter was referred by the City Council in October and the Board held their first meeting in December and there is no time deadline on this. They could recommend to the Council that the first step would be to do a sensitivity analysis to gather all of the pieces of data that are out there. The Board cannot vote tonight but they should probably bring it back next month so that they have a little more time to think about it.

Ms. Roberts stated that the Massachusetts communities have a model of the historical commissions which oversee a lot of aspects of historic preservation, but appears to be a little loose as well.

Mr. Rice thought that the sensitivity study should be as broad as feasible and not limited to the downtown. They clearly know there are historic areas outside the downtown.

Chairman Ricci asked if the City building permit included anything about what should be done if they find any type of artifact. Deputy City Manager Hayden confirmed that the building permit paperwork did not include anything but they did create a pamphlet which is available at the front desk explaining what should be done if they find an artifact, which basically says contact the Division of Historic Resources.

Ms. Roberts felt it would also be nice to tie this to GIS. Then, in theory, someone could come in and look at their own property. Deputy City Manager Hayden suggested that they may want to consider an overlay area.

Mr. Taintor indicated that staff would come back to the February meeting with a more specific recommendation for the Board to vote on. Deputy City Manager Hayden asked the Board to take some time to think about the Memo which was provided to them as this is not a simple issue. It is important for an old City like Portsmouth to protect its resources but it's also a balance issue.

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Chairman Ricci welcomed the new City Council Representative to the Planning Board, Nancy Novelline Clayburgh.

I. APPROVAL OF MINUTES

1. Approval of Minutes from the September 22, 2011 Planning Board Joint Work Session with the HDC – Unanimously approved.
 2. Approval of Minutes from the October 20, 2011 Planning Board Meeting – Unanimously approved.
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II. NEW BUSINESS

A. Election of Officers

Nominations for Chairman:

Mr. Rice nominated Mr. Ricci. Mr. Blenkinsop seconded the motion. The motion to re-elect John Ricci as Chairman passed unanimously.

Nominations for Vice Chairman: Mr. Blenkinsop nominated Ms. Roberts. Mr. Rice seconded the motion. The motion to re-elect Paige Roberts passed unanimously.

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III. OTHER BUSINESS

A. Presentation and adoption of **Capital Improvement Plan**

John Bohenko addressed the Board and stated they will be presenting the six year Capital Improvement Plan for FY 2013 – FY 2018. This past fall a Memorandum went out to all Department heads, including schools and the PDA, asking them to submit their capital need for the next six years. The Planning Board Sub-Committee, consisting of Chairman Ricci, Vice-Chair Roberts and William, met with him and the Department heads to review their requests.

For Fiscal year '13, Department heads submitted requests of \$2.2 million that would directly affect the FY '13 general fund budget. Last year the Planning Board proposed funding of approximately \$1 million for these improvements and the City Council approved this amount through the general fund expenditures for fiscal year 2012 during it's budget process.

In fiscal '13, City Manager Bohenko will be proposing that the City Council fund the general fund portion of the Capital Plan at the sub-committee's recommendation of \$1.5 million. As in prior years, the Board has developed the Capital Improvement Plan with the goal of targeting a stable amount of the City's property tax revenues to capital projects. In general, the Board has recommended a target of \$1.2 million in general fund moneys for capital investments on an annual basis.

In the past three years, the City has expended well below this goal in response to fiscal restraints. As a consequence, projects that are important to maintain the quality of life in the City have been pushed out or delayed. Also, over the long run, it has been more costly to defer spending on capital needs. As a result, this year a total of \$1.5 million to assure that the City can meet its obligation to maintain its infrastructure and quality of life for its residents.

It should be noted that projects that are bonded require separate vote of the City Council, a two-thirds vote and a public hearing. In addition, those projects identified in the out years fiscal 14, 15, 16, 17 and 18 are for planning purposes and for actual funding not required in fiscal '13. The total Capital Improvements Plan scheduled for FY '13, including general fund bonding and enterprise funds, is \$47 million, of which \$43 million will be leveraged with Federal, State or other sources such as public/private partnerships. Therefore, for every dollar the City is spending on the Capital projects, approximately 70 cents comes from other sources other than the local tax payer.

City Manager Bohenko indicated that City staff was present to review the proposed Capital Improvement Plan, which included:

- Steve Parkinson, Director of Public Works
- David Allen, Deputy Director of Public Works
- Cindy Hayden, Deputy City Manager
- Steve Bartlett, Business Administrator, School Department
- Peter Torrey, Prescott Park Trustees of the Trust Fund
- Steve Dubois, Deputy Police Chief
- David Moore, Community Development Director
- Jon Frederick, Parking and Transportation Director
- Alan Brady, IT Coordinator

City Manager Bohenko indicated that the next step is for the Planning Board to act on this plan and it will then be forwarded to the City Council for their review. They will be having a Work Session on February 13th and a public hearing on March 5th. Final adoption of the plan will take place on March 19th at the City Council meeting.

Mr. Blenkinsop made a motion to approve the Capital Improvement Plan as presented. Mr. Rice seconded the motion.

The motion passed unanimously.

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IV. PUBLIC HEARINGS – OLD BUSINESS

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

A. The application of **Portwalk Office, LLC, Owner**, for property located at **195 Hanover Street**, requesting Site Plan Approval to construct a 5-story, 71,500 ± s.f. (footprint) building, to include a 124 room hotel, 92 dwelling units, 10,335 s.f. of restaurant use, a surface level parking deck and a one-story underground parking garage, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lot 1 and lies within the Central Business B (CBB) District, the Downtown Overlay District (DOD) and the Historic District. (This application was postponed from the December 15, 2011 Planning Board Meeting)

Ms. Geffert recused herself from this hearing.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Jeff Johnston, of Portwalk Office, LLC, appeared before the Planning Board. Mr. Johnston indicated that since the December Planning Board meeting their team has worked very closely with City Staff to come up with solutions to the Boards concerns. They moved the trash room off Maplewood Avenue; there are no trash doors on any City street; there is no depression of the sidewalk on Maplewood any longer; they relocated the transformers and generators which assure that there will be no noise issues at the property line and will allow for future retail growth along Maplewood Avenue; and, they have added retail along Maplewood Avenue, including direct access from the street which allows them the flexibility that in the interim it could be used as office or other commercial space which is allowed by zoning. It also insures that the pedestrian access on Maplewood is great enhanced. Mr. Johnston indicated that they also did a lot of technical work which Mr. Mikolaities will review but he indicated that this project still meets all the parking requirements in the City and they are very excited about the opportunity to complete the project and bring this high quality, mixed-use, pedestrian friendly project to completion.

Gregg Mikolaities of Appledore Engineering, indicated that they were before the Board in November and December. They appeared before TAC in November, December and January. They have made some significant changes to the plans since their last meeting. He pointed out the additional retail along Maplewood, the location of the emergency generator in the central parking area, and the trash room which is now inside the building, at the entrance to the underground parking garage. The door to the trash room will come out to the driveway which goes into the parking garage on Hanover Street. They also had a lot of discussion last month regarding zoning and parking and the City Attorney prepared a Memorandum addressing that issue.

Mr. Mikolaities quickly went through the site plan. This is a 4 acre site, referred to as the Portwalk property. Phase I was the Residence Inn and Phase II was the residential building. Portwalk Place is a private road that connects Hanover Street to Deer Street. Tonight they are here for Lot 3 which currently is the temporary City municipal parking lot. This lot will be a hotel with retail, 2 restaurants, surface parking and an underground parking garage. There are a total of 268 parking spaces, 86 on the ground level and 182 underground. Lot 3 is a 1.93 acre lot in the Central Business District and the Historic District Overlay District.

After going through TAC, they had comments from David Allen and Rick Taintor as well as TAC stipulations. Mr. Mikolaities handed out a list of all of those comments along with how they addressed those comments. The Planning Department Memorandum did a good job of summarizing what they have revised over the past month so he won't go through it again. He was happy to answer any questions.

Deputy City Manager Hayden felt these were very commendable improvements. On C-5A she noted there was conflicting information about the pick up times for the trash. At the bottom of the plan, the note next to the trash says 6:00 am – 9:00 am loading zone and Note 11 says 9:00 am – 4:00 pm. She assumes they are using the 6:00 am – 9:00 am so Note 11 should be changed. Mr. Mikolaities added that they are doing this because this is before the meters go into effect.

Also, on C-9, under the detail for the Deer Street sidewalk planter it says Hanover Street.

She did not see a bench or sign detail where they have the pedestrian signs at the driveway going to the basement garage. She asked them to put the bench detail and sign detail on the plan.

Because they may have construction going on across the street at 30 Maplewood, she asked if they have a construction schedule yet. Mr. Mikolaities stated they plan to start construction in the fall, right after the City's parking lease end.

Deputy City Manager Hayden felt that the trees on Hanover Street are tight and she would prefer to have the five trees on Hanover go away and have one more streetlight pole on the side of the driveway to the basement that is towards Portwalk 1 and 2. Her thinking was that the sidewalk plow has to fit in a very tight area and the sidewalk plow tends to rip up the granite curbing around the tree grates. Mr. Mikolaities indicated they are happy to do whatever the Board wants. They did revise the species after last month's comments.

Lastly, Deputy City Manager Hayden understood that they did the archaeological sensitivity analysis and it has three recommendations. She asked if they are planning to implement those recommendations. Mr. Mikolaities confirmed they were and that they filed that completed report last month.

Mr. Hopley indicated that they did a great job on the revised plans. On C-7, he noted that they labeled the grease traps #3 and #4 and he wondered if there was #1 or #2. Mr. Mikolaities confirmed there were four originally but now there are only two. They will revise those numbers.

The Chair asked if anyone was present from the public wishing to speak to, for or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Hayden made a motion to grant Site Plan approval as presented with stipulations, to include the five stipulations listed in the Planning Director's report with Stipulation #3 being revised. It now reads that all proposed easements shall be approved by the City Council and she felt it need to be revised to read that all proposed easements to or from the City needs to be approved

by the City Council. That is because there are a lot of cross easements back and forth between properties.

She also added a stipulation to make a correction to C-5A relative to the zoning load time (Note #11 should read 6:00 am – 9:00 am) They should correct the typo on C-9 relative to the Deer Street sidewalk planter, add a bench detail and a pedestrian sign detail at the garage entrance, that the City Attorney review the Private City Street Agreement to make sure that it covers all requirements relative to the Lot #3 site plan, including grease traps on Portwalk Place, and provide any archaeological studies or findings to the City and the Division of Historic Resources and to carry out any recommendations listed out in the Archaeological Sensitivity Analysis, which is dated December 20, 2011. Deputy City Manager Hayden also added the stipulation that they remove the 5 trees on the Hanover Street side and add one light pole on Hanover Street in a location to be agreed to between the applicant and the planning director. Lastly, she requested a review by the Planning Director and the Public Works Director of the sign detail for the pedestrian crossing into the lower garage.

Mr. Hopley requested a corrected note for the grease traps which should be labeled #1 and #2, rather than #3 and #4. Also, on the Street Agreement, he reiterated that everyone was mentioned except the fire service. Mr. Hopley seconded the motion.

Mr. Rice asked why they would remove the trees. Deputy City Manager Hayden felt there was only about 3 ½ feet of space. If two people were walking down the sidewalk they would be shoulder to shoulder and they couldn't get by the tree grate. Trees on streetscapes are to give upright elements and they will have quite a number of the really nice street lights down that street. She also worries about the sidewalk plow fitting in the narrow sidewalks. It is misleading because they have a tree and an upright tree protector around it so there is a closed in feeling and they have the option to plant trees down the road if they want them.

Mr. Blenkinsop asked if there was any concern about establishing some minimum width of sidewalk. He felt that her points were very well made but are they saying that they will discourage future applicants or will the applicants just say no to trees because Portwalk #3 got rid of them. Deputy City Manager Hayden felt there are plenty of trees on the other streets and did not believe that it sets a precedent. Chairman Ricci felt they could always add the trees.

Mr. Taintor felt that the Fire Department access could be reviewed with the City Attorney.

There was a discussion about the actual width of the sidewalk and the placement of the tree and the grates.

Mr. Blenkinsop suggested keeping just one or two trees. Deputy City Manager Hayden stated she is willing to remove the stipulation. Mr. Blenkinsop was concerned as they are continuously talking about trees and landscaping so he would like to limit it rather than remove them all. He felt it seemed a bit harsh. Chairman Ricci suggested leaving the trees and they could be removed if necessary.

This was acceptable to Deputy City Manager Hayden and to Mr. Hopley. They will keep the five trees on the plan and not add a street light.

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

Conditions precedent (to be completed prior to issuance of a building permit):

1. Sheet C-11 shall be revised to be more legible and to comply with Section 2.4.4(2) of the Site Plan Review Regulations regarding information required on all sheets of the plan set.
2. The proposed loading zone on Hanover Street shall be approved by the Parking and Traffic Safety Committee and City Council.
3. All proposed easements to or from the City shall be approved by the City Council.
4. Any required licenses (e.g., for door swings into the public way) shall be approved by the City Council.
5. Sheet C-5A, Note 11 shall be revised to state that loading zone times are from 6:00 am – 9:00 am.
6. Sheet C-9, shall be revised to state Deer Street sidewalk planter, rather than Hanover Street.
7. Sheet C-9, shall include a bench detail and a pedestrian sign detail at the garage entrance.
8. The City Attorney shall review the Private Street Agreement as it related to Lot #3, including grease traps.
9. The applicant shall review the sign detail for the pedestrian crossing into the lower garage with the Planning Director and the Director of Public Works.
10. The grease traps shall be renumbered as #1 and #2, rather than #3 and #4.

Conditions subsequent:

11. Any change in use or design of the site or building shall comply with the Zoning Ordinance and Site Plan Review Regulations.
12. The applicant shall provide any archaeological studies or findings to the City and the Division of Historic Resources, and shall carry out any recommendations listed out in the Archaeological Sensitivity Analysis, dated December 20, 2011.

Chairman Ricci thanked the applicant and their team for the Plan Set that was approved tonight. He also thanked the Planning Board and believed that, down the road, the public will appreciate the Board’s work on this project. Deputy City Manager Hayden also thanked the applicant for working with the City. She felt this was a much better project for the City and ultimately for the principals.

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B. The application of **Michael R. Clark, Owner**, for property located at **325 Little Harbor Road (Belle Isle)**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots with the following: Proposed Lot 1 having 276,867 ± s.f. (6.36 ± acres) and Proposed Lot 2 having 218,736 ± s.f. (5.02 ± acres), and lying in a district where a minimum lot area of 5 acres is required. Said property is shown on Assessor Plan 205 as Lot 2 and lies within the Rural (R) District. (This application was postponed from the December 15, 2011 Planning Board Meeting)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Corey Colwell, of MSC Engineers, appeared along with Attorney Bernard Pelech. Mr. Colwell indicated that this subdivision appeared before the Board in December and was referred to the City

Legal Department for review of access issues and to TAC for review of water, sewer and technical issues. They appeared before TAC on January 3rd and the Committee voted to recommend approval with 7 stipulations which represent the majority of the plan revisions. Mr. Colwell reviewed the stipulations briefly.

1. The plan shall indicate that a new water service shall be provided from Little Harbor Road to the proposed Lot 2, and that the water services to both Lot 1 and Lot 2 shall be sized for adequate water flow and approved by DPW prior to the issuance of a building permit.
They met with DPW on this issue and it was agreed that two new water services are to be installed for both lots prior to the issuance of a building permit on the new building on Lot 2. this is indicated in Note 16 on the plan.
2. The plan shall show the locations of access easements for proposed Lot 2 and the area of the bridge to be subject to a use agreement.
A new Access Easement has been added to the south of the bridge. This easement is from the southerly terminus of the bridge to the existing access easement on the mainland. This is also noted on the plan. The Access Easement from the north side of the bridge has also been revised. The purpose of the revised easement was to utilize the existing driveway, both paves and gravel portions, therefore eliminating the need for a Conditional Use Permit. At the last meeting the driveway looped to Lot 2 and they did not utilize the existing gravel portion of the driveway and the Committee felt that if they could avoid a Conditional Use Permit it would benefit the plan.
3. The septic system for proposed Lot 2 shall be reviewed by DPW prior to the issuance of a building permit.
The septic system for proposed Lot 2 cannot be designed until the lot is under agreement and the size of the proposed house is determined. Once determined, the design can be reviewed by DPW and they have indicated this in Note 16.
4. The access easement to proposed Lot 2 shall be relocated out of the wetland buffer, or a note shall be added to the plan stating that a conditional use permit is required.
As previously explained, they opted to relocate this easement, eliminating the need of a Conditional Use Permit.
5. All access and utility easements, as well as the use and maintenance agreements for the easements and the bridge, shall be reviewed and approved by the City Attorney.
Attorney Pelech has sent the access easements as well as the Use and Maintenance Agreement and, as of today, the City Attorney has not had a chance to review these.
6. All required waivers from the Subdivision Rules and Regulations shall be stated in the application.
Attorney Pelech has a letter tonight requesting these waivers and as these waivers were just identified by the Planning Director and he asked that they vote on the waivers. These are because the driveway from Little Harbour Road to the island is not a City street. This Board did grant a waiver for the prior subdivision of the mainland and they felt these waivers were necessary as well.
7. Note 10 on the plan shall be corrected with respect to uses and activities that are exempt from the requirement for a conditional use permit.
This note was revised to refer to Section 10.1016 of the Portsmouth Zoning Ordinance which outlines what the future purchaser of Lot 2 can and cannot do in the 100' wetland buffer zone.

Mr. Colwell confirmed that the Board had received a letter explaining that a recent structural analysis had been conducted on the bridge and concluded that the bridge will support H-20 vehicle loads and is sufficient for most 2-axle fire trucks.

Chairman Ricci noted that the date of the plan is Nov 7, 2011 yet note 7 says the highest observable tide was done on November 8, 2011. Mr. Colwell explained that the original date is Note 7 but they have made several changes to the plan since November 7th.

Mr. Hopley noted that Note 17 referred them to prior Roadway and Bridge Agreement to be recorded herewith. Mr. Colwell indicated that the intent is to record the Agreement at the same time as the Subdivision plan at the Registry of Deeds. Mr. Taintor confirmed that agreement is currently being reviewed by the City Attorney.

Mr. Groth didn't understand Note 12 regarding the easement where it indicates that the owner of Lot 1 shall retain exclusive use of the easement and Lot 2 will not have the benefit of the easement. Mr. Colwell referred to the hatched area at the bottom center of the plan which refers to Note 12. That is a beach area on the mainland and is exclusive to owner of Lot 1 and does not pass to Lot 2.

Mr. Geffert indicated that the hatching goes through the access easement so it looks like they are cutting off the road. Mr. Colwell explained that he did not create the easement area and it was on a previously subdivision plan of the mainland. It looks complicated but if you read the deeds, there is a separate access easement to the beach front. On top of that is a separate access easement that defines the existing paved road. There are two easements. Ms. Geffert asked if there was a way to change the note to make it clear that it is not for access. It just doesn't make sense. She realizes the other documents will clarify it but this plan makes it look like that is the only access point. Mr. Colwell attempted to do that with their note. He agrees that it looks like they are cutting off access but the document shows that there are clearly two separate easements. Ms. Geffert made some suggestions about changing the Note. Mr. Groth agreed that it was technically sound but maybe Note 12 could refer to the area which has been called the beach area.

Mr. Blenkinsop asked how they will memorialize the recommendation for a structural engineer evaluation every five year. Attorney Pelech stated that TAC suggested the five year inspection. They have included that in the Driveway Maintenance Agreement stating that the two owners of the island would share in the maintenance of the driveway and bridge and would split the cost of the bridge study required every five years. That is also before Bob Sullivan and will be recorded in the Registry of Deeds. Attorney Pelech also added that the easements were drawn up five years ago and he agrees the notes are confusing. Regarding the Driveway Maintenance Agreement and the Access Easement, he delivered those on January 6th. City Attorney Sullivan stated today that it was not a problem and he felt the Board could approve the subdivision with a stipulation subsequent that the documents be approved by the Legal Department. Attorney Pelech also indicated that he talked to Mr. Taintor and they are in agreement as to what waivers they will need with regard to the street. In 2005 when the Little Harbour portion of the land was subdivided the Board granted waivers for the roadway and they are requesting waivers again. Attorney Pelech reviewed the waivers they are requesting.

Mr. Hopley asked why couldn't this paved surface be considered a shared private driveway. Mr. Taintor explained that he talked about the access requirements under State Law for subdivisions in his memo and every lot has to meet certain access requirements and there is a list of type of accesses they can have. He felt Belle Isle Road has been there for a long time so it qualified as a road. It is not identified as a road on the plan, but rather is shown as a driveway with easements. Now they are subdividing and creating 2 lots so maybe they need to show this as a private road. His question is whether they should have another sheet added to the plan showing the private road from Little Harbour Road to Lot 1 and Lot 2.

Ms. Geffert offered that that road is not only serving the island but it is also serving a house on the mainland. Mr. Taintor confirmed that the mainland lot actually has frontage on Little Harbour Road. Deputy City Manager Hayden understood that they still need the waivers but they just call the access something different that what it is called now. Mr. Taintor said he would call it a private road and show it on the plan. Ms. Geffert agreed because otherwise you don't see access to an actual street.

Attorney Pelech confirmed it is called a private driveway on the plan that was previously recorded. Mr. Taintor does not believe it can be a driveway as it has to meet one of the conditions under State law. Attorney Pelech felt that they are talking semantics. If there is a private roadway shown on a previously approved subdivision plan then the building inspector can issue a permit for a lot which is accessed by that private roadway and that is what he thought they were talking about. Unfortunately the previously approved and recorded plan says private driveway but the note says private roadway. He did not have a problem with the Board granting waivers which will put them all on the same page. Mr. Taintor's specific problem is that the law says the access shall not include a street from which the sole access to the lot is from an easement's specific problem is that the law says the access shall not include a street from which the sole access to the lot is from an easement's specific problem is that the law says the access shall not include a street from which the sole access to the lot is from a private easement or right-of-way, unless that private easement or right-of-way also meets the criteria set forth. Maybe they could attached the previous plan sheet attached to the subdivision plan and he would be more comfortable. Deputy City Manager Hayden felt this was a good time to clarify it.

Ms. Geffert felt that if all they have is this little insert showing the island connected to a road, it may appear that they created two lots without real access, although the notes have spelled it out.

Mr. Groth asked if the Fire Chief had an opportunity to review the bridge report. Mr. Taintor confirmed that the Fire Department representative on TAC confirmed that the report was acceptable.

The Chair asked if anyone was present from the public wishing to speak to, for or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Motion on Waivers:

Deputy City Manager Hayden stated that no matter what they do with the second item they still have to vote on the waivers. She made a motion to approve all four waivers. Ms. Geffert seconded the motion.

The motion to waive compliance with the following provisions of the Subdivision Rules and Regulations passed unanimously:

- Section VI.3.B – 50-foot minimum right-of-way for residential streets
- Section VI.3.I – 500-foot maximum length for cul-de-sacs
- Section VI.3.I – “drive-around roadway” at the end of the cul-de-sac
- Section VII – street design standards

Motion on Preliminary and Final Subdivision:

Deputy City Manager Hayden made a motion to grant preliminary subdivision approval with the four stipulations in the Planning Director’s report. She stated that the City Attorney has not had an opportunity to review the easement information prepared for this application. She felt that should the bridge fail, it would be a huge expense and believed that the homeowner’s first thought would be to ask the City of Portsmouth to fix the bridge. She would want to change the first stipulation to read that all easements and agreements shall be reviewed and approved by the City Legal Department with the guidance that in no event, and under no circumstances, will the bridge become the responsibility or property of the City of Portsmouth and with further guidance that the bridge is over State land. This is her second concern. This is an easement situation where something is going over State land.

Additionally, Mr. Taintor requested that the private road be shown as a private road, possibly on a separate sheet, to clarify that in their records. He also asked that Note #5 be added to plan regarding periodic inspections of the bridge. Deputy City Manager Hayden agreed with those stipulations.

Mr. Blenkinsop seconded the motion. For the sake of discussion, regarding stipulation #5, he did not feel that the wording made it clear that this joint responsibility will be contained in bridge or maintenance agreement and is referenced differently in the plan than it was tonight. He felt it was important that the joint responsibility needs to be clear in the chain of title. Ultimately Attorney Sullivan should have a roll in reviewing and approving the agreement. Deputy City Manager was agreeable to that. Mr. Taintor ‘s interpretation would be that the primary place for that would be in a recorded agreement or a recorded easement and there would be a reference to that recorded document on the plan. Mr. Blenkinsop pointed out Note 17 on the first sheet, it says Private Roadway and Maintenance Agreement to be recorded herewith. Attorney Pelech confirmed that would cover the entire roadway and bridge from Little Harbour Road to the island and calls for equal division of cost for any and all maintenance, repair and replacement of the bridge as well as shared cost for the 5 year inspection. Mr. Blenkinsop would look for something in the 5th stipulation that the owners of Lots #1 and Lot #2 shall enter the private roadway and bridge maintenance agreement which shall provide that they are jointly responsible for ensuring that the bridge is inspected, etc. .

Ms. Geffert asked if Mr. Blenkinsop if he would be more comfortable if the plan reference to that agreement was more elaborate. Mr. Blenkinsop responded that he just wants to be clear that it is very important that the responsibility of the owners of the two parcels will be a big responsibility and that it

will be recorded and part of the chain of title. That will prohibit future owners from claiming that they were not aware of this responsibility.

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

1. All easements and agreements shall be reviewed and approved by the City Legal Department with the guidance that in no event, and under no circumstances, will the bridge become the responsibility or property of the City of Portsmouth and with further guidance that the bridge is over State land.
2. All property monuments shall be set as required by the Department of Public Works prior to the filing of the final plat.
3. GIS data shall be provided to the Department of Public Works in the form required by the City.
4. The final plat and all easements shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
5. The owners of Lot 1 and Lot 2 shall enter into a Private Roadway and Bridge Maintenance Agreement which shall provide that they are jointly responsible for the proper maintenance of the roadway and bridge and also ensuring that the bridge is inspected by a structural engineer at least once every five years, with the first inspection no later than January 1, 2017; and shall provide copies of the inspection reports to the Planning Department, Fire Department and Department of Public Works.
6. The Private Roadway and Bridge Maintenance Agreement shall be recorded at the Registry of Deeds to insure that future owners are made aware of their responsibilities.
7. The subdivision plan shall include an additional sheet showing Belle Isle Road as a private road, to demonstrate compliance with State law regarding access to lots.
8. A note shall be added to the plan regarding periodic inspections of the bridge.

Attorney Pelech asked if the Board was asking them to do anything further or just come back next month? Chairman Ricci indicated that annotations should be made to the plan and a separate sheet to show the roadway. Mr. Taintor felt that a meeting with Attorney Sullivan would help to finalize the easement and maintenance documents for the next meeting.

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Deputy City Manager Hayden made a motion to read Items C & D in together and vote separately. Ms. Geffert seconded the motion. The motion passed unanimously.

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

D. The application of **Mitchell and Edward Hyder, Owners**, for property located at **677 Dennett Street**, requesting Site Plan Approval to construct a 9-unit residential development with one 3,918 s.f. 5 unit building and one 2,753 s.f. 4-unit building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 161 as Lots 31 and 32 and Assessor Map 175 as Lots 6 and 6A and lies within the General Residence A (GRA) District. (This application was postponed from the December 15, 2011 Planning Board Meeting)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, was representing the applicant. They have provided slightly revised plans based on the December meeting and he reviewed the changes for the Board.

Mr. Chagnon stated that they originally showed on site sidewalk only and the plans now propose to extend the sidewalk from the proposed driveway entrance to the sidewalk on Woodbury Avenue. They would still have the bumpout for the bus stop and, as shown before, the sidewalk will cross over the property at the corner so they also submitted a proposed sidewalk easement to address that issue. They also eliminated the issue with the proposed tree planting at the corner because of the new sidewalk there will be plenty of sight distance. Detail X on Sheet D-4 shows a fence detail. The architect submitted a packet of proposed building materials and as well as renderings showing the finishes. They added snow storage designations to the plan and submitted legal documents relative to the affordability which the Board should have. That agreement has not been reviewed with the City Attorney. They understand that the Board would like to table them tonight pending the approval of those documents.

Mr. Hopley felt that they did a nice job on sidewalk. He asked if there has been any investigation as to the ability for a tractor trailer truck to make left hand turn motion off of Bartlett onto Dennett without going into the parking spaces. Mr. Chagnon stated they have made a determination that it is quite possible to make that turn without going into the parking spaces. He submitted turning templates to Jon Frederick. The truck will cross the yellow line but can make the turn without entering the parking spaces.

Mr. Gladhill asked if the affordable units were rented today how much would they be rented for. Mr. Chagnon indicated that is an agreement that just states the applicant will comply with the ordinance as written and the ordinance currently says that the affordability is up to 120% of area median income. Today that would translate to a monthly rent of \$2,526. That is probably above the market and not what they are shooting for so their proposal will be different.

Mr. Taintor felt that one of the pieces of evaluation by the Board is to determine whether the increase in density is consistent with the level of affordability being provided. They talked about this in TAC and what 120% of median income means. At one point the applicant provided a report from a realtor but the Board will be looking for specific rents. His interpretation is that they will provide greater affordability than the market rate.

Deputy City Manager Hayden asked if the project is shooting for a lower rent. Mr. Chagnon stated they do not have the expertise to come up with a number and representatives are not present tonight to commit to a number. They will commit at the next meeting and it will be significantly below the 120% to justify the increase in density. He thought the comparison will have to be somewhat skewed as the Portsmouth market is primarily much older and don't have the amenities these units will have. This project will be brand new and it has open space and outdoor parking. Deputy City Manager Hayden asked what the source of the 120% was. Mr. Chagnon stated that the ordinance wants them to look at the HUD median income and those are changed annually. Deputy City Manager Hayden asked why not use something else like 80%? Mr. Chagnon stated they will come back with something lower than 120%. Deputy City Manager Hayden asked why a 3-family was chosen rather than a 1-family or 2-family. She pointed out some things that the City has experienced in their First Time Homebuyers Program for the applicant to think about. They need to somehow address a change in circumstances where a tenant's income increases considerably and whether they would still be income eligible and whether they are allowed to serve out their one year lease. She asked if there has been contact between the applicant and the Housing Authority to see if they have any interest.

Mr. Blenkinsop questioned the detail for the rain garden and where the numbered ponds are identified on the plans. Mr. Chagnon referred to Sheet C-3. Pond 1 is on the northwest side of property, pond 2 is along the Dennett Street frontage west, pond 3 is an infiltration treatment pond east of the parking area and pond 4 is at the corner of Bartlett and Dennett. Mr. Taintor felt it was okay to leave it on the Utility Plan.

Mr. Groth asked about an agreement regarding the maintenance of the rain gardens. Mr. Chagnon responded that the submitted Drainage Analysis has an inspection and maintenance program for the rain garden as well as the infiltration pond.

Mr. Rice asked Mr. Chagnon to explain how the design of this proposal is harmonious with the neighboring development and housing in the area from an architectural prospective. Mr. Chagnon indicated that he could not and the project architect, Steve McHenry, was not present to address that but will be back next month.

The Chair opened the public hearing and called for public speakers.

Bob Lister, 69 Diamond Drive. As stated at the December 15th Planning Board meeting, the neighborhood has other issues such as traffic and pedestrian issues but there are some issues that he would like to address tonight. One issue is the anticipated rents. The Planning Board looks into the rents and they have heard that they may run from \$1,400 to \$2,000 per month for affordable rents. They think those might be appropriate downtown but not in an affordable rent scenario. They want to make sure they deemed affordable and remain affordable. They question how that is determined and what information the developer is using. The design is a big concern. He does not see any changes and does not feel this design fits into the Dennett Street neighborhood. It looks more like a Residence Inn Hotel in a residential neighborhood. They are asking that everyone be good neighbors. They want to see something built on that property but they want to see something that fits into the neighborhood and doesn't stick out like a sore thumb. They feel it should be six units, and not nine units. They are concerned about delivery trucks turning onto Dennett Street. Also, if they are talking about affordability housing in Portsmouth, they hope they are sincere about affordable housing and are not in

this for financial gain. They would ask that the Planning Board continue to keep the integrity of the process of approval in tact and that the neighborhoods be given the same importance as the downtown and that the Planning Board take into consideration the concerns of the neighbors.

Pamela Shore, 623 Dennett Street. She felt that allowing the increase of density would have a negative impact on the neighborhood. There are many issues that will be exasperated by the additional density. The school bus stops there and it is not a great idea for tractor trucks to cross the yellow line when they turn. The benefit of creating two affordable units is not worth all the negative effect this project will have on the neighborhood. She asked if the affordable units are approved, is there a time limit on them. Mr. Taintor advised her that the ordinance says they would be affordable for the longest legal time and that has not been finalized yet. Ms. Shore felt there has been a lot of effort and confusion for two units. She asked the Board to enforce the Zoning Ordinance and not allow the additional density. She would like to see them build six units.

Lenore Bronson, 828 Woodbury Avenue. This property used to have a dilapidated house which the owners ignored and it just let it fall down. She would really like something built that fits in with the neighborhood. She asked if the applicant is representing the Estate of the Hyders or it is the two individuals whose names are on the legal notice. Chairman Ricci indicated they will look into that. City Attorney Sullivan told her that the State would monitor this. He had never seen this put into practice and wasn't sure how it would be handled. She felt it appears like an unenforceable rent control. She was unhappy with the design and felt it almost looks like they tried to create something that doesn't fit into the neighborhood. She felt that rentals units will have a higher turnover rate. She has been looking at rentals in the paper and found them to be anywhere between \$650 - \$1,650 per month. In closing, she wondered how they expect them to maintain this proposed development if the Hyders have not been able to maintain this property for the past 25 years. She hopes the Planning Board understands that this neighborhood is just as important as the downtown.

Wade Babish, 273 Woodbury. He disputes the truck turning from Bartlett to Dennett. He had photos showing that in order for them to straighten up they are well into the parking spaces on Dennett. If cars are in the parking spaces on Dennett, they are going to take up much more of the other lane to turn. Some truck drivers are better than others. He would like to see three wonderful homes on the lot.

Abe McGuire, representing the Hyder Estate. Mr. McGuire stated that the parking spaces on Dennett Street are existing and the Traffic & Safety Committee just wanted them to delineate them. The spaces are not part of their project. They have plenty of parking on site.

Joanne Colts, 369 Dennett Street. She was concerned about the amount of the affordable rents as she has never paid more than \$1,200 for a two bedroom apartment in that neighborhood. She is concerned about traffic and safety issues near the elementary school. She agrees with comments made by others so she indicated she would not repeat them. She is concerned about the enforceability of affordability. She indicated there is a lot of talk in the neighborhood about their displeasure about this development.

Mr. Chagnon had truck turning templates and he handed them around to the Board.

Lenore Bronson, 2nd time speaker, asked about snow removal and run off towards the Route One By-Pass. She also remembers that the houses do not have gutters on the roofs. Chairman Ricci confirmed they have taken care of all run off on their site.

The Chair asked if anyone was present from the public wishing to speak to, for or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Hayden made a motion to postpone consideration of the Condition Use Permit for the RDI-PUD, although she was not sure she was going to support her own motion. She made the motion for discussion purposes. Mr. Gladhill seconded the motion. Deputy City Manager Hayden stated that her concern is the same as last month. She is concerned that they continue to spend money on site design when their first concern should have been the RDI-PUD and convincing this Board of the merits of affordability. At their last meeting they asked for data supporting where they were going with the rents and they haven't gotten that. The Affordability Agreement is substandard in her opinion and she doesn't think it will work. By right they can have 6 units and the RDI-PUD allows them an additional 3 units and 2 of the 9 units have to be affordable. That is why she asked where they came up with the 120% knowing it was so high. She was curious to see how the rest of the Board felt.

Mr. Groth indicated that if they were referring to affordability with respect to work force housing, the State defines that for an owner occupied unit to be 30% of their total income going to housing costs. For rental units it is defined as affordable to a 3 person household earning 60% of median area income. That number for rent, including utilities and costs, hovers somewhere \$1,000. But, 120% of the median area income is probably around \$95,000 per year and if they are going to consider density bonuses he felt the applicant should really be bringing that forward for this application.

Mr. Hopley agreed and also felt that the architecture does not blend into the neighborhood and he will have a hard time supporting this project if that does not change drastically.

Mr. Gladhill stated he would also have a hard time supporting as the architecture is not harmonious with the neighborhood. He also has a concern with the affordable housing as the rents are questionable and he needs to see them nailed down.

Mr. Rice echoed the sentiments about non-harmonious aspects of the architecture. The Dennett Street neighborhood all seem to feel the same way. Regarding, Section 10.7.27.31 about the anticipate impacts on market values which this application would have. He cannot see how the application would enhance market values in the neighborhood because it simply is not compatible. It is a single family neighborhood for the most part with gabled roofs, New Englanders, clapboarded, single family homes.

Chairman Ricci reminded the Board they will be voting on the two applications separately. This vote is for the Conditional Use Permit.

Ms. Roberts felt that affordable housing is something this Board has worked very hard on for many years but it is also important that the project they approve as an RDI –PUD is something they are happy with. She has been concerned from the beginning about the affordability aspect of this project.

Mr. Hopley indicated they have see this 3 months in a row and he’s beginning to think this is a test for the Board. The Board has never given positive feedback on the project yet the applicant keeps coming back with the same thing or not enough information. He’s getting frustrated with the repetitiveness and agreed with Deputy City Manager Hayden that a tabling motion isn’t strong enough.

Deputy City Manager Hayden was happy to either vote on the motion or withdraw the motion, if that’s acceptable. Mr. Gladhill was agreeable to withdrawing the motion.

Deputy City Manager Hayden withdrew her motion. Deputy City Manager Hayden made a motion to deny the RDI-PUD as presented. Mr. Gladhill seconded the motion. Deputy City Manager Hayden wanted to make it clear that under the RDI-PUD ordinance they have a lot of control over design and how the buildings will look. Her reason for denial is that she doesn’t believe a good faith effort has been made regarding the affordability elements and she does not believe it is harmonious to the neighborhood.

Mr. Rice agrees and added that the impacts of the proposed PUD would be detrimental to market values, under Section 10.7.27.311

Chairman Ricci will not support the motion although he does agree. He is frustrated that they have not seen the key piece of this application so he would be denying something he hasn’t seen. He agrees it is not harmonious. He does agree the affordability piece should have been the first thing they saw.

Mr. Hopley understands what Chairman Ricci is saying but this is not an approvable development as presented at the last three occasions. It doesn’t preclude them from re-applying with something different.

Ms. Novelline Clayburgh stated she was new to the Committee but, as a City Councilor, she has received phone calls from neighbors of this project and they are very concerned about the project. Those comments are important and she will vote to deny the RDI PUD. She also agrees that it could possibly work out with a different plan.

Mr. Blenkinsop stated he would support the motion and because under the rules and regulations they are required to make certain findings in order to approve and based on the lack of information after 3 meetings it is impossible for them to make those findings. He did not think they had any other option but to deny.

Vote on Conditional Use Permit:

The motion to deny Conditional Use Permit approval passed with Chairman Ricci voting in the negative.

Motion for Site Plan approval:

Deputy City Manager Hayden felt they can't approve this because it doesn't comply with zoning as they now have too many units after denying the RDI-PUD. She asked if they can vote to postpone or are they required to deny it. Or, since arguably they could resubmit under the RDI PUD and revise this site plan, should they postpone. Or they could ask to withdraw the site plan. Mr. Taintor felt that a withdrawal would be better although he's not sure it makes a difference. They would have to re-advertise if they postponed.

Mr. Chagnon asked if the Board allowed them to withdraw the application and re-advertise, would they waive the application fee. Deputy City Manager Hayden felt that would be unlikely but they can discuss it.

Mr. Chagnon asked if they can resubmit another RDI PUD application. Mr. Taintor confirmed they could as long as it was substantively different from the previous application, which might mean they had more information on affordability in the application.

Mr. Chagnon requested to withdraw the Site Plan application.

Ms. Geffert made a motion to accept the withdrawal. Deputy City Manager Hayden seconded the motion.

The motion to accept the withdrawal of the Site Plan application passed unanimously.

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V. PUBLIC HEARINGS – NEW BUSINESS

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

A. The application of **Young Men's Christian Association (The Seacoast Family Y), Owner**, for property located at **550 Peverly Hill Road**, wherein Preliminary and Final Subdivision Approval is requested to subdivide one lot into three lots as follows: Proposed Lot 10A on Assessor Map 244 having 1,103,695 s.f. (25.34 acres) and 331.13 ±' of continuous street frontage off Peverly Hill Road and Proposed Lots 1 and 2 each having 15,000 ±s.f. and 100.13' ± of continuous street frontage on Peverly Hill Road. Said property is located partially in the Single Residence A (SRA) District where the minimum lot size is one acre (43,560 s.f.) and the minimum street frontage requirement is 150' and partially in the Single Residence B (SRB) District where the minimum lot size is 15,000 s.f. and the minimum street frontage requirement is 100'.

Mr. Blenkinsop recused himself from this hearing.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, appeared along with Hal Jordon, president of YMCA organization. Mr. Chagnon stated the proposal to subdivide one lot into three lots, creating two frontage lots on Peverly Hill Road, each containing 15,000 s.f. The purpose is to allow one single family home on each new lot.

Mr. Chagnon reviewed the plan set. The first sheet was an overall plan showing the entire property. It currently has the YMCA facility on it. The two proposed lots would be bordered by a residential lot which was subdivided from the property 17-18 years ago and a lot that was residential but is now use commercially.

The second sheet is a detail plan showing the meets and bounds for the two proposed lots.

The third sheet is a Subdivision Site Plan showing the topography and utilities. The sites are serviced by municipal water and sewer. The topography is gently sloping from the road to the northeast.

Mr. Chagnon stated it was a fairly simple application and they were agreeable to all recommendations in the Staff Memo.

The Chair opened the public hearing and called for speakers.

Julia Russell, 515 Peverly Hill Road. Her concern is with the positioning of the driveway. Her driveway is almost across the street from the proposed driveway. Going southbound on Peverly Hill Road there is a crest of a hill and cars coming up cannot see as they come up across the crest of the hill. She has lived there for 17 years and between 7:30 a.m. -9:30 a.m. and 3:30 p.m. – 6:30 p.m. the traffic is very heavy. She would estimate the average speed is 40 – 50 mph. She has had many close calls entering and exiting her driveway. The proposed driveways are actually closer to the crest than hers. It's cars, City trucks and 18 wheelers that speed down the street. She would rather see one lot with a driveway closer to the northbound side, or the karate studio. She felt this was a very dangerous situation.

Jay Goldsmith, 515 Peverly Hill Road. He had the same concerns as his wife, Ms. Russell. Peverly Hill Road used to be the country but now it is extremely busy. He was against the proposal for two lots with one driveway in the center. He read that the site distance to the driveway from the top of the hill is 237'. The time between when you can see someone coming over that hill to the proposed driveway is only 3 ½ seconds. The karate owner was timing people today with a stop watch and was clocking people between 3 and 4 seconds and one person was under 3 seconds. He feels this is very dangerous.

Mike Shortell, 465 Peverly Hill Road. He felt that pulling out of the driveways in this area is extremely dangerous. He has heard that there is a plan for a granite curbed sidewalk down Peverly Hill Road and felt it would be nice if the plan included room for a sidewalk as a lot of people walk down that road. The police were out yesterday pulling people over on Peverly Hill Road. He felt the site would be much better as one large lot with a single family house. He agrees that it would be better for the driveway to go behind the back of the YMCA somehow.

David Choate, a City realtor, indicated that he has been advising the YMCA for sometime and wanted to give the Board some background on why this is being proposed. They looked at this property as a source of potential revenue for the YMCA. They have fallen into some severe financial woes over the past few years and have been close to going out of business until the Manchester YMCA helped them out. They need to expand the facilities at this location to attract the number of members that they need to make it an economically viable enterprise. They looked at several alternatives for this land. They looked at putting in a PUD for 4 to 6 units but that would probably encumber land the Y would want later on for fields. They need to raise cash and they felt this was the way to do it. This is not the neighborhood for a \$700,000 house. The driveway was well thought out and he felt the speed on that road is an enforcement issue.

Carol Rosswich, 545 Peverly Hill Road. She stated that she can attest to the speed of the cars on this road. Tractor trailers fly up the hill and it will be extremely difficult to stop for a car coming out of a driveway at that speed. She doesn't have a problem with people developing their property but she has an issue with the number of accidents that will happen. There will be a safety issue.

Mr. Chagnon stated that the distance from the edge of the pavement to the property line would allow for a sidewalk. This driveway has a sight distance which is on the plan and has been reviewed by DPW. There is a fence in front of Ms. Rosswich's which acts as an impediment to sight distance and is in the City right-of-way.

Chairman Ricci asked if they took into account the car speeds when they calculated the sight distances. Mr. Chagnon responded that they were just measurements and DPW took into consideration the posted speed limits. Chairman Ricci felt that road is treacherous and a higher speed would change things dramatically. Mr. Chagnon felt that a solution might be to move the driveway further north for additional sight distance.

Mr. Hopley noted that the plan says 234' for sight distance to the south and he asked if that takes into account the knoll of the Hill. Mr. Chagnon pointed out that the high point is more in line with the door of 545 Peverly Hill Road. The distance was measured per the DOT standards and requirements.

Jay Goldstein, second time speaker, felt it was a simple matter to time cars coming over the hill which is what Mr. Park did today. He worries that the second or third car in line may not be paying attention.

Mike Shortell, second time speaker, stated that he was also a real estate broker, and one reason he bought his house was because of the horse farm and the marsh. He felt they might be better served to have a nicer and longer lot with a bigger and more expensive house. There are also 20-30 deer that go down through a sliver of woods across the street and this strip of land provides a circulation route for all of the neighborhood.

Carol Rosswich, second speaker, both accidents that have happened to cars exiting her driveway involved the second car behind the car that stopped that crushed a car that crushed another car.

David Choate, second time speaker, felt that the length or location of the lot is not the issue. The driveway seems to be the issue. The problems with Peverly Hill Road are not the purview of the Planning Board.

The Chair asked if anyone was present from the public wishing to speak to, for or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Hayden made a motion to refer this application to TAC and Traffic & Safety for an on-site review for a recommendation back to the Planning Board, and to postpone this matter to the next Planning Board meeting. Ms. Geffert seconded the motion.

Chairman Ricci agreed. He also agreed that speeds on Peverly Hill Road are not their purview but the realities are what they are. He supposes the motion and another month to obtain more information is time well spent.

Deputy City Manager Hayden felt that the driveway is an issue which they do have purview over.

Mr. Hopley asked if this review should take place during certain times of the day. Chairman Ricci thought that 7:00 a.m. – 8:00 a.m. or 5:00 p.m. – 6:00 p.m. would be busy times.

The motion to postpone Preliminary and Final Subdivision approval to the next Planning Board meeting with the following stipulations passed unanimously:

1. This application shall be referred to the Technical Advisory Committee (TAC) and placed on their next agenda.
2. This application shall be referred to the Traffic & Safety Committee and placed on their next agenda.

Chairman Ricci confirmed that both referrals were relative to the driveway only.

Chairman Ricci stated that it was 10:20 pm and he asked the Board if they would like to continue and finish up the agenda this evening. It was the general consensus of the Board to continue.

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Mr. Geffert made a motion to read items C, D and E in together and to vote separately. Deputy City Manager Hayden seconded the motion. The motion passed unanimously.

B. The application of **Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson, Trustee, Owner**, for property located **off Spinney Road**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, including a stormwater detention pond/raingarden, vegetated outlet swale and a level spreader. Said property is shown on Assessor Map 167 as Lot 5 and Assessor Map 170 as Lot 24 and lie within the Single Residence B (SRB) District.

C. The application of **Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson, Trustee, Owner**, for property located **off Spinney Road**, requesting Preliminary and Final Subdivision Approval to subdivide two lots into nine lots, including a public right-of-way, with the following: Lot 5 on Assessor Plan 167 having 316,165 s.f. (7.258 acres) and

Lot 24 on Assessor Plan 170 having 238,601 s.f. (5,478 acres), to be consolidated and subdivided into nine separate lots, ranging in size from 5,000 s.f. to 329,641 s.f. and all with a minimum of 100' of continuous street frontage on Spinney Road or the new proposed public right-of-way. Said properties lie in a Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100' of continuous street frontage.

D. The application of **Lynn J. & Frances T. Sanderson Revocable Trusts, Paul J. Sanderson, Trustee, Owners**, and various other property owners, for property located **off Spinney, Middle, Thaxter, Sewell and Kensington Roads**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between lots as shown on Assessor Map 167 as Lot 5 and Assessor Map 168 as Lot 17, and abutting lots as listed below. Said properties are located in the Single Residence B (SRB) District where the minimum lot size is 15,000 s.f. and minimum street frontage requirement is 100'.

1. Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson Trustee, Owner
Property located off Spinney, Middle, Thaxter, Sewell and Kensington Roads (Assessor Map 167 as Lot 5 and Assessor Map 170 as Lot 24)
Lot area decreasing in size from 12.74 acres to 11.92 acres
2. Craig S. and Christine Almond Hodgson, Owners
Property located at 165 Middle Road (Assessor Map 168 as Lot 17)
Lot area increasing from .18 acres to .30 acres
Street frontage increasing from 75' to 125' off Middle Road
3. Neal L. and Darlene L. Ouellett Revocable Trust, Neal L and Darlene L. Ouellett, Trustees, Owners
Property located at 124 Kensington Road (Assessor Map 152 as Lot 20)
Lot area increasing from .22 acres to .43 acres
Street frontage remaining at 100'
4. Jeremy D. Martin, Owner
Property located at 199 Middle Road (Assessor Map 168 as Lot 14)
Lot area increasing from .28 acres to .51 acres
Street frontage remaining at 100'
5. Patrick B. and Karen A. Lyons, Owners
Property located at 185 Middle Street (Assessor Map 168 as Lot 15)
Lot area increasing from .13 acres to .80 acres
Street frontage remaining at 50'
6. David and Patricia Gress, Owners
Property located at 14 Sewall Road (Assessor Map 170 as Lot 20)
Lot area remaining at .31 acres to .31 acres
Street frontage decreasing from 135' to 125'
7. Michael Jacques, Patricia Newman and Caroline A. Newman Revocable Trust, Caroline A. Newman, Trustee, Owner
Property located at 342 Spinney Road (Assessor Map 169 as Lot 5)
Lot area increasing from .51 acres to .54 acres
Street frontage decreasing on Spinney Road from 171.3' to 162.59'
8. Joseph G. and Carol S. McGinty, Owners

Property located at 300 Spinney Road (Assessor Map 169 as Lot 6)
Lot area increasing from .69 acres to .70 acres
Street frontage decreasing from 150' to 141.26'

9. Patricia O. Sanderson Revocable Trust, David Sanderson, Trustee, Owner

Property located at 248 Spinney Road (Assessor Map 169 as Lot 4)
Lot area increasing in size from 1.31 acres to 1.46 acres
Street frontage remaining at 288.23'

The Chair read the notices into the record.

SPEAKING TO THE APPLICATION:

Eric Weinrieb, of Altus Engineering, appeared before the Board on behalf of Paul Sanderson. Mr. Weinrieb stated this was a relatively complex project and they have done their homework, their studies and surveys and have met with staff, TAC, and the Conservation Commission. Because of the complexity of presenting this to the City, they are asking to be referred to TAC to keep this project moving.

The Chair opened up the public hearing and called for speakers.

John Lyons, 76 Fells Road. Attorney Lyons indicated that the white dotted lines on the plan are next to his house. There is a 20' wide drainage easement shown across his property which he indicates does not exist. The supposed easement goes right through an ash tree. He would challenge the drainage easement. There is also a 24" side culvert that runs directly into the City sewer and the City would have to make sure they can handle additional water. After the City water/sewer separation it eliminated any water issues but they have concerns with all of the wetlands. They are concerned about the cul-de-sac and drainage and wetlands and the effect on the neighborhood. Lot 6 contains the entire remaining portion of land and he asked about conditions for maintaining the land. The drainage study was prepared with very limited coverage on these lots but if the lots were used in some other fashion it would change the drainage calculations and affect the drainage. There is a plan showing homes being built around the cul-de-sac right on the wetland buffer and he doesn't understand how they could be built without impact to the wetland buffer. He has significant issues with the project as it does not fit with the Master Plan. There is an environmental study of the area and the habitat will be affected. They would aggressively oppose one additional drop of water going down into the wetlands which would encroach on the surrounding properties which would result in an unconstitutional taking of their properties and the 20' easement show to run across his property needs to be eliminated.

Jerry Zellin, 70 Kensington Road. Attorney Zellin has lived there since 1983. Kensington Road is an "L" shaped road. The houses were built in the 20's and 30's and many houses have pipes from their basements going onto the road. After heavy rains, you will see their basements being drained out of those pipes. Their concerns are the surface runoff as they are directly downhill from the wetland and, more importantly, there supposedly say there is an underground stream that runs from the wetland beneath Kensington Road. The engineering studies address surface run off but there is no addressing sub-surface run off. They await more information and thank the Board for listening to them.

Steven Moore, Sewell Road. Mr. Moore spoke at the Conservation Commission last week regarding the collection of water. The sewer was separated 10 years ago and it helped quite a bit but his neighbors still pump continuously. Behind him are five lawns that “drain” with no pipe to take the water anywhere. The lawn slope down 4’ – 5’ to that imaginary drain and it does fill up. He has not yet heard that this system will work and the rain gardens will take the water away. There is no guarantee and that is his concern.

Leslie Dalman, 257 Middle Road. She is where the water from proposed Lot 2 slides down into her basement. She has serious concerns about the water and the cul-de-sac being very close to the back side of her property and the light and the traffic going off of the cul-de-sac. She is very concerned about her property values.

Mr. Weinrieb assured the Board that through the due diligence of TAC and the Planning Board that they will leave no stone unturned and will address all concerns to the best of their abilities.

The Chair asked if anyone else was present from the public wishing to speak to, for or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Item B. Motion on Conditional Use Permit:

Mr. Blenkinsop made a motion to postpone the Conditional Use Permit application to the next regularly scheduled Planning Board Meeting on February 16, 2012. Ms. Geffert seconded the motion.

The motion to **postpone** the Conditional Use Permit application to the February 16, 2012 Planning Board meeting passed unanimously.

Item C. Motion on Preliminary and Final Subdivision Approval:

Deputy City Manager Hayden made a motion to postpone Preliminary and Final Subdivision approval to the next regularly scheduled Planning Board meeting and to refer this matter to the Technical Advisory Committee. Mr. Blenkinsop seconded the motion.

The motion to postpone Preliminary and Final Subdivision approval to the February 16, 2012 Planning Board meeting and to refer this matter to the Technical Advisory Committee (TAC) passed unanimously.

Item D. Motion on Lot Line Revisions:

Mr. Blenkinsop made a motion to postpone Preliminary and Final Subdivision approval to the next regularly scheduled Planning Board meeting on February 16, 2012. Ms. Geffert seconded the motion.

The motion to postpone Preliminary and Final Subdivision approval to the February 16, 2012 Planning Board meeting passed unanimously.

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

Ms. Geffert made a motion to postpone this item to the next Planning Board meeting. Councilor Novelline Clayburgh seconded the motion. The motion passed unanimously.

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VII. PLANNING DIRECTOR’S REPORT

n/a

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VIII. ADJOURNMENT

A motion to adjourn at 10:45 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on April 19, 2012.