

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

OCTOBER 18, 2012

MEMBERS PRESENT: John Ricci, Chairman; Paige Roberts, Vice Chairman; Nancy Novelline Clayburgh, City Council Representative; John Rice; Anthony Blenkinsop; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; William Gladhill;

MEMBERS EXCUSED: MaryLiz Geffert;

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the June 21, 2012 Planning Board Meeting – Unanimously approved.

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Mr. Hopley made a motion to take the following three items out of order. Mr. Rice seconded the motion. The motion passed unanimously.

II. 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 **Richard P. Fecteau, Owner**, for property located at **120 Spaulding Turnpike, Two Way Realty, LLC, Owner**, for property located at **100 Spaulding Turnpike**, and **Five Way Realty, LLC, Owner**, for property located at **80 Spaulding Turnpike**, (to be consolidated into one lot), requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, involving demolition and construction, driveways, septic systems and construction of a stormwater management system, with 42,331 s.f. of impact to the wetland buffer. Said properties are shown on Assessor Map 236 as Lots 33, 37, and 38 and lie within the General Business (GB) and Single Residence B (SRB) District. (This application was postponed from the September 20, 2012 Planning Board Meeting.)

Mr. Gladhill made a motion to postpone Conditional Use Permit approval to the November meeting. Mr. Hopley seconded the motion.

The motion to postpone Conditional Use Permit approval to the November Planning Board meeting passed unanimously.

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III. PUBLIC HEARINGS – NEW BUSINESS

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

A. The application of **Michaels Realty Trust and ESUM Realty Trust, Owners, and 4 Amigos, LLC, Applicant**, for property located at **1390 and 1400 Lafayette Road** requesting Amended Site Plan Approval to amend a condition of approval which was granted on August 16, 2012 by the Planning Board regarding the installation of curbing or other barriers to prevent vehicles from entering or exiting the parking spaces on the adjacent parcel from the shared driveway. Said properties are shown on Assessor Map 252 as Lots 7 and 9 and lie within the Gateway (GW) District.

Mr. Gladhill made a motion to postpone Amended Site Plan approval to the November meeting. Councilor Novelline Clayburgh seconded the motion.

The motion to postpone Amended Site Plan approval to the November Planning Board meeting passed unanimously.

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IV. CITY COUNCIL REFERRALS/REQUESTS

C. Letter from Attorney James Nocas, 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. (This matter was postponed at the September 20, 2012 Planning Board Meeting).

Mr. Rice made a motion to postpone this matter to the November Planning Board meeting. Councilor Novelline Clayburgh seconded the motion.

The motion to postpone to the November Planning Board Meeting passed unanimously.

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II. PUBLIC HEARINGS – OLD BUSINESS

B. The application of **Olde Parish Townhouses Condominium Association, Owner**, for property located at **66 Madison Street**, requesting Amended Site Plan approval to revise a condition of previous Site Plan approval granted on January 22, 2004 by the Planning Board which requires cross-easements for all utilities for recording at the Registry of Deeds. Said property is shown on Assessor Map 147 as Lots 1-1, 1-2 and 1-3 and lie within the General Residence C (GRC) District. (This application was postponed from the September 20, 2012 Planning Board Meeting.)

The Chair read the notice into the record.

Mr. Taintor indicated that there has been correspondence sent back and forth between the City and the Applicant’s attorney. Last Thursday the Applicant’s attorney sent a revised draft of a Declaration of Independence for the City Attorney’s review and as of today the City Attorney has signed off on it at being appropriate. Mr. Taintor recommended that the Board vote to NOT amend the stipulation.

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

Mr. Rice made a motion to not amend the stipulation. Mr. Blenkinsop seconded the motion.

The motion passed unanimously.

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C. The application of **2422 Lafayette Road Associates, LLC, Owner**, for property located at **2454 Lafayette Road (Southgate Plaza)**, requesting Amended Site Plan Approval to demolish a portion of an existing building and the construction of a 28,385 s.f. cinema with 1,264 seats; to reduce a previously approved retail pad from 27,335 s.f. to 16,075 s.f. of retail and 833 s.f. of restaurant; and to increase parking spaces from 732 spaces to 859 spaces, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 273 as Lot 3 and lies within the Gateway (G) District. (This application was postponed from the September 20, 2012 Planning Board Meeting.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Pelech appeared for applicant, 2422 Lafayette Road Associates. With him were Patrick Crimmins of Tighe & Bond, Stephen Pernaw, Traffic Engineer as well as the principals of 2422 Lafayette Road and Waterstone Development. Attorney Pelech stated they were tabled last month pending a peer review of the traffic study which has been done by GPI. Mr. Pernaw has responded to the report and, as peer reviews go, this was fairly innocuous and only minor items that need to be addressed. They are hoping that the matter will move forward with a conditional approval as time is of the essence.

Steven Pernaw, of Pernaw & Company, stated that he reviewed the peer report and prepared a response. There were four major points he was asked to follow up on.

Crash records. Mr. Pernaw was able to look at the State listing and their latest information is from 2007 – 2009. There were 10 crashes over that 3 year period. That listing is a subset of total collisions but it is an indicator that 10 crashes is not an extraordinary number of crashes for the volume of traffic on Route 1.

Site Distance. They looked at the site distance at the driveways at Constitution and they measured the site distance from the existing driveway opposite the old Friendly's Restaurant, looking left and right exceeds 500'. There was some vegetation on both sides of the service driveway that might block site distance so a recommendation by the City consultant is that the area be trimmed and maintained.

Confirm growth rate used in their study. They used 1% per year because the actual growth was less than that and the City staff was comfortable with the 1%. They were asked to contact the Regional Planning Commission who said that 1% was conservative on the high side.

Trip generation analysis. This is where they estimate the number of trips generated by the whole development. The City consultant asked them to estimate it using a different procedure. They did so and came up with numbers in the same ballpark.

There was a meeting at DOT and there was some discussion about a median island on Constitution as it approaches Banfield but it was decided not to do that as the applicant has agreed to install Opticom and GPS time clocks at three intersections on Route 1. This appeared to make more sense. Mr. Pernaw indicated that summarizes the peer review.

Patrick Crimmins, Tighe and Bond, indicated there weren't many issues with the site plan. Last month's Memo dated 9/20 included three items. They were asked to show at least one dumpster and one grease trap containing unit for each of the restaurants and the plan reflects that on Sheet C-3B. They were asked to show two additional dumpsters for the one proposed behind the cinema. The pad size was increased to accommodate three dumpsters. Lastly, the utility plan was revised to show a ,000 gallon grease trap behind the proposed restaurant behind Constitution Avenue.

Doug Richardson, President of Development for Waterstone, asked about being able to revisit the grease trap issue with the City Engineer as the theater will have some concession but very little food use. Mr. Taintor responded that if the Board approved the site plan with the four grease trap it would then be within the scope of an administrative amendment if it were felt to be appropriate. He would not want to change the Site Plan at this point.

In conclusion, Attorney Pelech reviewed the recommendation of the Department and indicated that they have completed or agree to all of the conditions with the exception of supplying site access improvements on Lafayette Road as may be determined necessary by further analysis. They are not in agreement to doing that as their traffic analysis says that is not necessary. They are providing the GPS Opticom at the other three intersections which they felt was more than ample mitigation for this project.

Mr. Allen asked about any progress regarding the issue that there is no permit for the current driveway and DOT is reviewing that. Mr. Crimmins stated they are in the process of working through that permit now. They brought a consultant on board and they are moving forward with the driveway permit. Attorney Pelech stated that could be added as a condition.

Mr. Blenkinsop referred to condition #5 in the memo. He asked Attorney Pelech to confirm that he does not agree with that. Attorney Pelech indicated that was correct because their traffic analysis says this is not an issue and there is no need for additional off-site roadway improvements. Mr. Blenkinsop asked their position if DOT felt otherwise. Attorney Pelech indicated that as part of the driveway permit they would have to come back to the City. Otherwise, they would leave it in the hands of DOT.

Mr. Taintor explained that was the point of #5 and maybe it could be simplified and reworded to say the applicants shall provide such improvements on Lafayette Road as may be determined necessary by the NHDOT.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Allen made a motion to approve with the recommended stipulations with #5 be amended to say that the applicant provide such improvements on Lafayette Road as may be determined necessary by the NHDOT in conjunction with their review of the Driveway Permit. Mr. Blenkinsop seconded the motion.

Mr. Hopley wanted to thank the applicant for working with the City on this.

Mr. Allen asked if they included a recommendation regarding the clearing. Mr. Taintor agreed it was not in the stipulations and the first stipulation identifies any traffic mitigation measures that may be required based on GPI's review. To be clear they should make it as a 6th stipulation. Mr. Allen requested a 6th stipulation that the drive entrances onto Constitution be cleared so that they meet the sight distance requirements. That was agreeable to Mr. Blenkinsop.

Motion passed unanimously.

Conditions Precedent (to be completed prior to the issuance of a building permit)

1. The applicant shall submit documentation in response to the GPI review regarding:
 - (a) review of accident records and safety concerns (GPI recommendation #1 above),
 - (b) sight distance measurements and analysis (GPI #2),
 - (c) traffic growth rates in the study area (GPI #3), and
 - (d) analysis of trip-generation estimates based on individual uses (GPI #4);and shall identify and implement any additional traffic mitigation measures that may be required as a result of these additional reviews and analyses.
2. The site plans shall be amended as follows:
 - (a) The site driveway traffic signal shall be upgraded to include accessible pedestrian signals (GPI recommendation #7 above).
 - (b) The curb ramps and traffic signal equipment at both ends of the crosswalk shall be upgraded to be compliant with American with Disabilities Act (ADA) standards (GPI recommendation #8).
3. The applicant shall provide security, in a form and amount approved by the Planning and Legal Departments, to assure the completion of all remaining site development and construction.

Conditions Subsequent (to be completed prior to the release of site plan security)

- 4. The applicant shall install GPS time receivers and Opticom traffic signal priority controls in the Lafayette Road traffic signals at the Southgate Plaza entrance, the Wal-Mart entrance and the Heritage Avenue intersection, subject to approval by the New Hampshire DOT and as approved by the Department of Public Works. In the alternative, the applicant may submit a design for the work, to be approved by the New Hampshire DOT, and make a payment to the City sufficient to cover the cost of installation by a contractor to be selected by the Department of Public Works.
- 5. The applicant shall provide such site access improvements on Lafayette Road as may be determined necessary by the NHDOT in conjunction with their review of the Driveway Permit. In the alternative, the applicant may make a contribution to the cost of roadway and signalization improvements in the vicinity of the intersection of Lafayette Road and Constitution Avenue, which may be based on the cost of the improvements made necessary by this development, as determined or approved by the New Hampshire DOT. The intent of this condition is to allow the applicant to make a financial contribution to the cost of a larger project in lieu of constructing a mitigation project that would otherwise be required by the development.
- 6. The driveways onto Constitution Avenue shall be cleared of vegetation to comply with sight distance requirements.

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D. The application of **Stratham Acquisitions, LLC, c/o Frank Catapano, Owner**, for properties located at **5 Sylvester Street and a vacant lot with frontage on Marjorie Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, to relocate an existing driveway and perform surface grading associated with a new gravel driveway, with 2,200 s.f. of impact to the wetland buffer. Said properties are shown on Assessor Map 232 as Lots 37 & 41 and lie within the Single Residence B (SRB) District. (This application was postponed from the September 20, 2012 Planning Board Meeting.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Lindsey O'Reilly, of Gove Environmental Services, was present along with the owner Frank Catapano. She walked the Board through the application. They are looking to relocate an existing driveway to allow them to build a single family house with driveway access on a lot with no street frontage. The current driveway services 5 Sylvester Street and the access is actually on Marjorie Street. They are proposing a small house which will sit on the upper portion of the lot. To make room for the relocated driveway they will also move a man made detention basin. This is outside of the wetland buffer. The work within the wetland buffer consists of relocating the new driveway and also some upland vegetation, and removing an existing dilapidated shed, which will reduce the overall impervious surface area in the wetland buffer.

Mr. Allen asked if there was an issue with easements. Mr. Taintor stated it was an unusual situation. This is not coming before the Board as either a subdivision or a site plan so the Conditional Use Permit application is the only time it will be before them. He just wanted to make sure, and will propose a stipulation, that prior to the issuance of a building permit a driveway easement across the lot to benefit the Sylvester Street parcel be recorded. He also wanted to ask if the lot lines extend to the middle of the paper street or as they are shown on the plan. He would like to make sure that is cleared up to know where the easement needs to go to. Mr. Taintor wants to make sure they have legal access to the Sylvester Street lot. He will recommend a stipulation that prior to the issuance of a building permit a driveway easement to benefit the Sylvester Street lot shall be recorded and the applicant shall work with the City Legal and Planning Departments to determine where the actual lot lines are located.

Chairman Ricci had some requests. He indicated the Board is trying to get away from silt fences on residential lots and would request that they change it to a silt sock. Also, on the legend, there is no denotation of existing grades and proposed grades so he asked those to be added to the legend. He also mentioned that the line types were very hard to discern between existing and proposed. He asked the CAD person take a look at those and make them clearer.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Hopley made a motion to approve the Conditional Use Permit subject to the stipulation concerning the recording of the driveway easement for the benefit of 5 Sylvester, to amend the plan to replace the silt fence with a silt sock and amend the legend to reflect the existing vs. proposed contours. Councilor Novelline Clayburgh seconded the motion. Mr. Blenkinsop also added that they wanted the applicant to work with the Legal and Planning Departments to determine the lot lines. That was acceptable to Mr. Hopley and Councilor Novelline Clayburgh.

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

1. The silt fence shown on the plan shall be replaced with a silt sock.
2. The legend shall be amended to reflect the existing contours versus the proposed contours.
3. The applicant shall work with the City Legal and Planning Departments to determine where the actual lot lines are located.
4. Prior to the issuance of a building permit, a driveway easement to benefit the Sylvester Street lot shall be prepared by the applicant for review and approval by the City Attorney and recorded at the Registry of Deeds.

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IV. CITY COUNCIL REFERRALS/REQUESTS

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

A. Proposed easements for the McDonough Street Improvement Project.

Mr. Taintor stated that Peter Rice, Deputy Public Works Director, was present to answer any questions. The City Ordinance requires the City Council to refer to the Planning Board any permanent easement proposals. These easements are across the railroad land and another easement for the property owned by John Ahlgren on Langdon Street. They have provided approximate locations in their exhibits. Tonight’s purpose is to get a recommendation so that the project can move ahead.

Mr. Allen made a motion to motion to recommend that the City Council authorize acquisition of the easements. Councilor Novelline Clayburgh seconded the motion.

The motion passed unanimously.

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B. Proposed easements and quitclaim of abandoned sewer lines for the Cass Street Sewer Separation Project.

Mr. Taintor stated this is a very similar item but a little more complicated. It includes more area and more property owners. It includes temporary easements for construction which will be superseded once the permanent pipe goes in and quitclaiming of the abandoned sewer line upon completion of the sewer separation project. Again, this is a referral required by City Ordinance.

Mr. Allen made a motion to recommend that the City Council authorize acquisition of the easements and the other actions described in the memorandum from Assistant City Attorney Woodland and Mr. Taintor’s Staff Memorandum. Mr. Rice seconded the motion.

The motion passed unanimously.

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D. Proposed amendments to Zoning Ordinance relative to Exemptions from Certificate of Approval in the Historic District. (This matter was postponed at the September 20, 2012 Planning Board Meeting).

Mr. Taintor stated that a lot of the matters that come before the Historic District Commission are minor routine matters. The Commission usually meets twice a month because they have so many applications and a lot of these matters could be handled through the establishment of some standards. He provided a list of items that could be exempted, provided they met specified standards. The first one is placement or replacement of shutters, but that does not mean all shutters are exempt, but only if they are constructed of wood, they cover half the sash, they are installed with hinges and dogs and the louvered panels are appropriate to the style of the building. The intent is to lighten the load on the HDC so they can focus on the large and complex projects. One item they would like to change is #14 regarding new signs or re-facing of existing signs with no change in dimensions. Mr. Taintor misunderstood what he was getting at with replacement so he is proposing to strike out the words “replacement” and “with no change in dimensions” so that it reads “new signs and re-facing of existing signs”.

The recommendation would be that the Board recommends that the City Council amend the Zoning Ordinance, Section 10.633.20 as recommended by the HDC with the one modification.

Mr. Hopley made a motion to approve as recommended with the modification of item #14.

Mr. Rice referred to contributing structure and asked if they are proposing to change the language there. He felt that sometimes this might be something that isn't defined such as the architectural survey and could be something that clearly adds to the streetscape of an application and it might define specific definition. Mr. Taintor stated that "contributing structure" is used 2 times in this list and the point was to exempt replacement of fencing in kind and exterior lighting in kind and only for those items that were already identified. Mr. Rice was okay with that.

Mr. Blenkinsop asked why they don't want to review new signs. Mr. Taintor confirmed that a lot of this is to formalize what is being practiced. The wording of the ordinance is unfortunate because it says review some signs so the intent is only to require review if they need to go to the BOA, which as been the case in the past, or if it is a free standing sign, which is a structure, and therefore they want it to be reviewed. Mr. Hopley felt if the goal is to decrease their work, this would increase their work because they will have to review every sign. Mr. Blenkinsop confirmed that is why they want to strike out those provisions in the language. Mr. Gladhill pointed out that the wording for the signage was not in the HDC section and is only in the sign section. They wanted to include that language in HDC section for clarification for people.

The motion passed unanimously.

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E. Review of Zoning Ordinance Table of Uses and Zones to expand where assisted living facilities can be located.

Mr. Taintor stated this is a referral from the City Council in connection with Senior Services. The issue is that right now assisted living is only allowed in very limited areas. For more than 5 people is only allowed in the GB, B and Gateway (by Conditional Use Permit). Essentially a residential use is only allowed where people don't usually live. They were asked to look at expanding the areas where they could live. They looked that the whole ordinance and areas around the city areas where this might work. They are proposing a 3 part approach.

In the non-residential zoning districts, it would be to expand assisted living centers to be allowed in the central business districts where they allow high density multi family residential and the assisted living or residential care facility might be appropriate in some of the mixed use development. Allowing the assisted living by Special Exception in the CBA and CBB would be one step to expand the areas where these uses could be allowed. They may not be the prime chose, but they might be considered as part of a mixed

They are suggesting a minimum lot area of two acres, a minimum developable area of the lot of 1,500 sq per assisted living unit or for a bed in an assisted care facility. Right now their highest density residential zoning district is the CRC district. They would have street frontage of 100' and side, front and rear yards would be 50' all around, maximum building height of 40' or 3 stories, whichever is less, and at least 40% open space. The other item that they pulled out of the CCRC draft was that at least

50% of the ground floor of each building shall consist of habitable area. They were concerned last time that the ground floor might be all parking garage.

Mr. Taintor indicated the draft is not a recommendation but is a starting point.

Mr. Gladhill asked what size an assisted living center could be. Mr. Taintor confirmed there was an assisted living home which is up to five residents and assisted living center which is six or more. It would be constrained by lot area. They haven't done an analysis of how many lots in the SRA and SRB are over two acres but he suspects it is probably pretty small.

Mr. Hopley felt they should think about the proposal as it relates to SRA and SRB as these are the districts in the City which have been traditionally reserved for the single family homes. They would have to find a lot at least 2 acres in size which would be rare in the City. He asked if they are comfortable with 40' or 3 stories as that quite a bit of mass in those districts. Mr. Taintor confirmed that the height is currently 35' for those districts so they could limit it to that.

Councilor Novelline Clayburgh stated that when the City Council discussed this, they all realized that as baby boomers age they will need more assisted living facilities so the demand is there but a negative side to this is that the new facilities will probably not accept medicaid residents. Therefore, the Clipper Home or Edgewood will be affected by the new facilities. Representatives of Edgewood and Clipper Home were very vocal about how the new facilities could put them out of business. She felt this was a dilemma. They can't put in the regulations that they have to take medicare residents. Mr. Taintor felt, if there is going to be a demand for assisting living, it won't hurt the existing facilities because there is a demand and they will be adding to the supply. They could edge back toward the continuing care facilities. They could define a facility that includes assisted living and nursing care so they won't have the competition concerns.

Mr. Blenkinsop felt if there is going to be a need for these facilities, from a planning perspective don't they have an obligation to plan for that need. Then he understands the tough policy decisions will be required of the City Council and how they will effect other entities. It seems like a reasonable thing to plan for, which is their job.

Mr. Taintor thought that Mr. Gladhill's question about the scale of assisted living facilities raised an interesting issue. If they are concerned about bringing bigger scale buildings into a single residence district they could define this even further. They could have the assisted living home up to 5 patient facility and some type of mid-range facility that they could allow in multi-family districts and over 40 patient limit in the Garden Apartment/Mobile Home/CB Districts, which would be one way to think about it.

Mr. Gladhill would like more time to absorb this. Mr. Taintor noted the concerns that had been discussed the limit on the scale; the idea of requiring a mix of assisted living and nursing; and a 35' height limit. Mr. Taintor mentioned that one issue that was talked about with the CCRC was that they didn't want senior housing that would kick people out when they needed nursing care. 35' height limit is an issue.

Mr. Hopley made a motion to postpone to the next meeting. Mr. Allen seconded the motion.

The motion passed unanimously.

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V. PLANNING DIRECTOR'S REPORT

There was no Planning Director's Report.

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VI. ADJOURNMENT

A motion to adjourn at 7:55 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 February 21, 2013.