

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

FEBRUARY 21, 2013

MEMBERS PRESENT: John Ricci, Chairman; Nancy Novelline Clayburgh, City Council Representative; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; John Rice; William Gladhill; and Elizabeth Moreau, Alternate

MEMBERS EXCUSED: Anthony Blenkinsop, Vice Chairman and Karina Quintans

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the October 18, 2012 Planning Board Meeting – Unanimously approved.

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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 **John L. Ahlgren and Bessie Palmisciano, Owners**, for property located on **Langdon Street**, requesting Final Subdivision Approval to subdivide one lot into four lots with the following:

- a. Proposed Lot 1 consisting of 5,022 s.f. and 63.35' of street frontage.
- b. Proposed Lot 2 consisting of 5,301 s.f. and 68.50' of street frontage.
- c. Proposed Lot 3 consisting of 4,965 s.f. and 43.23' of street frontage.
- d. Proposed Lot 4 consisting of 7,920 s.f. and 40.94' of street frontage.

Said lot lies within the Mixed Residential Business (MRB) where a minimum of 7,500' of lot area and 100' of street frontage is required and also within the Office Research (OR) District where a minimum of 3 acres of lot area and 300' of street frontage is required.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Mr. Taintor stated that the applicant is working with the Department of Public Works on some of the utility issues, specifically stormwater drainage, and have requested postponement to next month.

Mr. Allen made a motion to postpone this application to the March 21, 2013 Planning Board meeting. Mr. Rice seconded the motion.

The motion to **postpone** to the March 21, 2013 Planning Board meeting passed unanimously.

Mr. Rice made a motion to take Item B under City Council Referrals out of order for the purpose of postponement. Mr. Gladhill seconded the motion. The motion passed unanimously.

B. Letter from Bernard Pelech, Attorney, representing Portsmouth City Realty Investment Trust and Airgead Realty Trust, requesting that 680 and 678 Maplewood Avenue be rezoned from the Single Residence B (SRB) District to the Business (B) District.

Mr. Gladhill made a motion to postpone for a public hearing to the March 21, 2013 Planning Board meeting. Councilor Novelline Clayburgh seconded the motion. The motion passed unanimously.

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 **Two International Group, LLC, Applicant**, for property located at **17 New Hampshire Avenue in the Town of Newington and 29 New Hampshire Avenue and 14 Manchester Square in the City of Portsmouth**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested to merge three lots into one lot as follows: Lot 6 as shown on Assessor’s Map 302 containing 1.3727 acres, Lot 5 as shown on Assessor’s Map 302 containing 3.7172 and Lot 7 as shown on Assessors Map 302 containing 4.9243 acres. The three combined lots total 10.0143 acres. Said properties are located in the Pease Airport Business and Commercial Zone where the minimum lot size is 5 acres.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech appeared on behalf of Two International Group. Also present was Dan Plummer, David Hislop of Knight Surveying and Maria Stowell from the PDA. Attorney Pelech stated they are proposing a lot line adjustment. This is an interesting proposal as half of the property is in Newington and the majority of the property is in Portsmouth. He reviewed Mr. Taintor’s Memo and concurs with his recommendations for approval and the granting of a waiver. The 1.37 acres located in

Newington is part of the original Pease property. The waiver they have requested is to waive the requirement that they provide a survey of the entire 2,400 acres. The PDA Regulations require a plan with a scale not less than 1" = 100' and the plan for the 100 acres would probably take a month to survey. They will go before the PDA in March, and they were previously before the PDA in December, and they unanimously approved this concept. They will also be back in front of the Planning Board with a Site Plan for this site in April. They are taking 3 small lots that don't meet the requirements of the PDA Ordinance and combining them into one large lot that does meet the PDA requirements.

Mr. Allen noted they have one lot in the middle without any frontage. Attorney Pelech explained that there is a stipulation in the lease for that lot. When that building becomes vacant and demolished, the lot will automatically be merged with the other three lots.

Attorney Pelech also mentioned that because they are working with both the Town of Newington and the City of Portsmouth, Newington has requested that the Title Block on the mylar be revised and also that they clarify the town line between Newington and Portsmouth.

Mr. Taintor wanted to make sure that the PDA was in support of the Waiver and he discussed this with Maria Stowell earlier and she confirmed that they were. Also, the revised plan will address the correct location of the municipal boundaries. Mr. Hislop confirmed that was changed on the plan. Mr. Taintor pointed out that one of the recommended stipulations was that the plan be reviewed and approved by DPW.

Maria Stowell, of the PDA, wanted to clarify that they will be bringing the waiver request to the PDA Board in March and they will vote at that time. She understands this Board is making it a condition of tonight's approval however the PDA Board is who has the authority to waive the regulations and they will make the vote final on March 14th.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Rice made a motion to recommend that the PDA waive compliance with Section 502.03(8) of the Authority's Subdivision Regulations. Mr. Allen seconded the motion.

The motion to recommend that the Pease Development Authority waive strict compliance with the provisions of Section 502.03(8) of the Authority's Subdivision Regulations, with respect to showing the entire area to be subdivided, passed unanimously.

Mr. Rice made a motion to recommend that the Pease Development Authority grant Preliminary and Final Subdivision approval (Lot Line Revision) with stipulations. Councilor Novelline Clayburgh seconded the motion.

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

1. The plan shall be revised prior to recording to show the municipal boundary in the location monumented by the City, subject to approval by the Department of Public Works.
2. Property monuments shall be set as required by the Pease Development Authority prior to the filing of the plat.
3. GIS data shall be provided to the Department of Public Works in the form as required by the City.

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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. Letter from Jean and Gordon Willis requesting the transfer of ownership of Artwill Avenue to the City of Portsmouth. (This request was referred to DPW for a report back at the December 20, 2012 Planning Board Meeting).

Mr. Hopley recused himself.

Mr. Taintor indicated that this has been discussed at great length by various Departments in the City. The issue is that Artwell Avenue is essentially a driveway and an easement and was never designed or constructed to the City's minimum standards for residential streets. In 1972 the City Council took a vote that was essentially contradictory. They voted not to accept the street as a public street but to continue plowing and picking up trash. That is contradictory under State law and the City Attorney has described that as such. They have more recently dealt with this type of issue on Commerce Way and there has been a very complex discussion about how the City would bring the street up to City standards as a condition of acceptance and the cost of that would be paid by all of the abutters. Mr. Taintor believes the same concept applies in this case. They asked DPW how much it would cost to bring this driveway up to City standards and it would be \$125,760 which includes reconstructing the road, providing a sidewalk on one side and a turn around at the end. It is a fairly hefty cost but as the street was not built to any City standard it is damaging to City equipment to plow it.

The Department's recommendation, with the concurrence with the Department of Public Works and the Legal Department, is to recommend that the City Council only accept Artwell Avenue subject to the two conditions. One is the full cost of upgrading the street to City standards should be born by private property owners abutting the street and two that an area sufficient to construct a cul-de-sac or an alternative turn around acceptable to DPW, should be conveyed to the City along with the existing easement area. That was not part of the original proposal and it would probably effect the two parcels at the end of the driveway.

Mr. Gladhill asked if the property owners have been notified of this recommendation. Mr. Taintor indicated that they have not at this point. Ms. Moreau asked if there was any type of association set up by the private homeowners since it was a private way to maintain it. Mr. Taintor did not know but it is simply an easement on one of the properties and it is essentially a private driveway.

Councilor Novelline Clayburgh asked what would happen if one of the homeowners doesn't want to be included in this. Mr. Taintor clarified that the intent is not to make them pay but rather it is to essentially state that these are the conditions under which the City would accept ownership of the street. The driveway only serves two houses so it would seem better to keep it as a private driveway.

Mr. Rice asked why the City was plowing it if it was not a City street. Mr. Taintor responded that because in 1972, for some reason, the City Council made that decision but, as the City Attorney has stated, it is not within the City's authority to plow the street and they shouldn't have been doing it.

Councilor Novelline Clayburgh asked what would happen if the abutters continue to keep it private and would the City continue to plow it. Mr. Taintor stated that the City Attorney has drafted a memo to the City Manager recommending that if the street was not accepted then the City should not continue to plow it. Councilor Novelline Clayburgh did not think that was fair as it has been plowed since 1972. Mr. Taintor added that another option that the City Council has is to have the taxpayers pay for the upgrades. Deputy City Manager Allen stated that one concern is precedent setting as there are other private streets in town that were not built to City standards. Chairman Ricci also added that the construction of the road was an issue and potential damage to City vehicles.

Mr. Rice asked if there was any inclination for a partnership where the City would chip in something along with the abutters. Paving the right-of-way adds to the value of these properties and the City would gain on its tax roles. He felt that the likelihood of homeowners coughing up \$40,000 apiece doesn't seem plausible. Mr. Taintor stated that if the City were to do this as a betterment process, it would not be charged all at once and would be paid over a number of years but the issue remains that they need to treat all homeowners similarly.

Chairman Ricci felt that the biggest concern was precedent setting. Greenland had a similar situation a few years ago.

Councilor Novelline Clayburgh stated she would not vote for this. She understands the issue of setting a precedent but she feels this should be an exception. Chairman Ricci saw this as opening up Pandora's box.

Mr. Allen pointed out that the Memo recommendation does indicate it will go to the City Council and as it was the City Council that made the decision in 1972, it would be up to them to make the decision to change it.

Mr. Gladhill noted that the Memo states that the City Attorney said that the 1972 action was not allowed under State Statute so wouldn't that null and void that decision. Mr. Taintor agreed that, according to the City Attorney, they shouldn't be doing it.

Mr. Allen made a motion to recommend to accept Artwell Avenue as a public street only subject to the conditions listed in the Memo. Mr. Rice seconded the motion.

The motion to recommend that the City Council accept Artwill Avenue as a public street **only** subject to the following conditions:

1. The full cost of upgrading Artwill Avenue to City standards (estimated to be \$125,000) shall be borne by the private property owners abutting the street.
2. An area sufficient to construct a cul-de-sac (or alternative turnaround acceptable to the DPW) shall be conveyed to the City along with the existing easement area.

Passed with Councilor Novelline Clayburgh voting in the negative.

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C. Letter from General Porter Real Estate Trust, Owner, Rita Fabbriatore, President and Applicant, for property located at 32 Livermore Street, for an easement from the City to construct a new underground utility service.

Mr. Taintor stated that this request was very simple. The property owners are upgrading their property and they would like to replace existing overhead wires with an underground conduit. The City does not have a problem as long as they construct the underground conduit and repair the street and the brick sidewalk at their own expense.

Mr. Allen made a motion to approve the easement as presented. Councilor Novelline Clayburgh seconded the motion.

The motion to recommend that the City grant the easement for an underground utility conduit as requested subject to the requirement that the applicant shall construct the conduit and repair the street and sidewalk to City specifications passed unanimously.

V. OTHER BUSINESS

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A. Request from Anthony DiLorenzo, of 7 Islington Street, LLC, Owner, for a one year extension of Site Plan Approval granted on April 19, 2012, for property located at 40 Bridge Street.

Mr. Taintor stated this was a fairly simple request but has a long history. The applicant had received approval in 2009 but it lapsed so they had to come back for a new approval. Although they have been before the Board on four occasions, this is the first extension for this approval. He did include in his Memo some background on on-site parking. The applicant does not have to provide any on site parking as it was granted when the in-lieu parking fee was in existence. If there is a change of use in the property, they will have to come back under the new zoning and either provide parking on site or get a variance. The Board has the authority to grant the one year extension without any other issues involved.

The applicant can come back one year from now but they would have to submit plans for review by the Technical Advisory Committee as well as the Planning Board.

Mr. Hopley understands that if the application lapses and they came back for a new approval of this plan, they would have to provide the 11 on site parking spaces. Mr. Taintor confirmed that was correct.

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

The motion passed unanimously.

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B. Proposed amendment to the Zoning Ordinance – Neighborhood Commercial Use. (This matter was postponed from the January 24, 2013 Planning Board meeting.)

Mr. Taintor indicated this was a significant change to the ZO which they have been discussing for over a year. The Board was in support of this last year but they did not bring it to forward to the City Council. They have brought it back with some amendments that address concerns that the Board raised last year at a work session with the HDC. The point is to provide an opportunity to have small neighborhood retail uses in the neighborhoods only on major streets subject to a Conditional Use Permit granted by the Planning Board. It would involve a public hearing and approval by the City Council. The idea relates to things like the Red Ginger or the Middle Street market. It is not meant to replace a commercial district. The uses are strictly limited, the size is limited and the spaces must be in small clusters at intersections. The map exhibit shows the streets that have been identified as arterial or collector streets and are the only streets on which they would be allowed.

Mr. Hopley noted that there are two type of arterial streets in the Master Plan – principal and minor. He asked if either one of those would quality. Mr. Taintor stated they both would quality.

Ms. Moreau asked what the difference was between Convenience Goods I and Convenience Goods II. Mr. Taintor explained that Convenience Goods I does not sell food prepared on the premises for consumption off the premises and Convenience Goods II sells food prepared on the premises excluding fried food.

Mr. Gladhill was very much in favor of this when they originally talked about it. He wasn't sure if he was in favor of it for nostalgia reasons but he can see why some residential areas may not want a small business in their neighborhood and it may change their way of life. He would like to hear from others to see what they think.

Mr. Rice felt the operative phrase is “discretionary review by the Planning Board.” That is their failsafe language. Mr. Gladhill was in agreement with converting a lower level to a store or a law office but he was afraid the property may be viable for this use but the building wasn't so they may be demolishing a building and building new. Rooftop and mechanical equipment also concerns him as it would change the character of the building and neighborhood.

Ms. Moreau felt that each conditional use permit would have their own hearing so they would all be reviewed individually. Deputy City Manager Allen agreed and felt there would be plenty of vetting before anything would be approved. It would also have to be a low volume of patronage.

Councilor Novelline Clayburgh was undecided at this point but she agrees with Mr. Gladhill. If someone owned a home and the house next door turned into a sub shop, that might change the property value. Also, parking might be a problem for the neighborhood.

Chairman Ricci felt these are difficult because you don't know what site they might be talking about. But he likes the proposal. It brings the sense of place back instead of having to drive down the street to buy something you are able to just walk down the street. Mr. Rice agreed completely. They could build a little character into the neighborhoods. The Board would have a great deal of discretion and latitude.

Chairman Ricci felt this helps with making the City walkable. Mr. Hopley added that walkability is a big part of this and he cannot envision this happening on Elwyn Road or Peverly Hill Road and he's wondering exactly how viable this business proposition really is.

Mr. Taintor explained the difference between the existing building and the new building. With a maximum floor area of 2,000 s.f. he doesn't see the economic incentive to tear down a residence and replace it with a 2,000 s.f. convenience store. But, it might be less concerning if it were to only allow a conversion of an existing structure to commercial use. Who knows, given Portsmouth's residential real estate market, whether there will be any demand for this type of store or not. So, they may want to consider saying only for conversion and not construction. Deputy City Manger Allen felt that some of that is already addressed and would allow the Board to take a look at it.

Chairman Ricci felt that if it was going to happen in the minor arterials, those lots are pretty tight to begin with so he felt some of the charm would be to leave the building there and just renovate it.

Ms. Moreau asked about the off street parking requirements under bicycle parking, it says they only do the minimum of 2' clearance between a bicycle and a pedestrian way and she wanted to know if it was just 2' or 2' plus the walkway. Mr. Taintor confirmed it was 2' from the edge of the bicycle to the edge of the walkway.

Deputy City Manager Allen made a motion to recommend that the Zoning Ordinance be amended as set forth in the Memorandum dated February 21, 2013. Mr. Rice seconded the motion.

The motion to recommend that the Zoning Ordinance be amended by inserting a new Section 10.750 – Neighborhood Commercial Uses, as set forth in the document titled "Proposed Amendment to the Zoning Ordinance" dated February 21, 2013, passed with Councilor Novelline Clayburgh voting in the negative.

Mr. Gladhill added that he was voting for it as he wants to see it go to a public hearing and hear from the City residents at the City Council.

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C. Proposed amendments to the Site Plan Review Regulations to (a) provide for preliminary review of applications by specific regulations, as authorized by RSA 676:4, II; (b) specify what constitutes a completed application sufficient to invoke jurisdiction to obtain approval, as required by RSA 676:4, I(b); and (c) specify the threshold levels of work that shall constitute "active and substantial development or building" and "substantial completion of the improvements as shown on the subdivision plat or site plan," as authorized by RSA 674:39, III.

Mr. Taintor stated this was a complicated one and he is not ready to provide the wording for it yet but he would like to have them recommend the scheduling of a public hearing at the March meeting. He explained that when the zoning change was made concerning building height a couple of months ago

there was concern from several representatives of several projects that were in the process, including the project at Wright Avenue, the Connie Bean Center and 111 Maplewood Avenue. They felt they had been in the process for a long time with the HDC and that the rules were suddenly being changed. They felt that was unfair. The Planning Board had recommended that those projects be exempted from the zoning change and the City Council felt that was not appropriate because the State law it very clear that the projects are not exempt unless they have had a hearing before the Planning Board. .

The way the process works in Portsmouth is that before a project gets to the Planning Board, it has meetings and ultimately a hearing before the Technical Advisory Committee and that can go on for a long time. Also, because projects are very complicated and the land is especially complicated in downtown Portsmouth, they often have to go the BOA and they always have to go to the HDC and those are long review periods. Many times the applicants prefer to go to the HDC before the Planning Board so that results in the Planning Board public hearing coming at the end of a long process.

State law allows for a preliminary review of applications by the Planning Board. One is concept plan review and the other is design review of the Site Plan. The Planning Board has the ability to change the Site Plan regulations to allow or require design review on certain types of projects. The advantage of that is that an applicant could come before the Board with a fairly well engineered site plan at the beginning of the process to vest their plan from subsequent changes to zoning.

The City Council has asked that the Planning Board to look at this process of incorporating a design review process into our Site Plan Review Regulations.

As he started looking at the law more closely, he discovered that another section of State law requires that the Planning Board take a vote on whether an application is complete before voting on Site Plan approval. This section is more applicable for smaller towns that don't have Planning staff or the Technical Advisory Committee process but they really should do this to be consistent with State law.

Therefore, he would propose as part of the regulations he will bring to the Board next month there will some changes that will have that in it. It would very easily be that the Board would vote to accept the application as complete and, at the same time, immediately thereafter vote on the Site Plan itself. Therefore, it would not necessarily be stretching the process out. This is just a formality they should be doing to be consistent with State Law.

The third item, which is the active and substantial development and substantial completion, is also important with relation to vesting developments from changes in zoning. There is another statute that gives a 5 year exemption from changes to zoning from a subdivision or site plan that has been approved by the Planning Board and where it is required to be recorded in the Registry of Deeds. That vesting is only valid if active and substantial development has begun within 24 months after Site Plan approval. The State law does not require us to define what active and substantial development is but it lets you define it and the reason Mr. Taintor felt this was important was if they are going to be changing their regulations to vest projects earlier in the process, then they should also take advantage of this to require that projects move ahead once they have approved them.

In this case, the law allows the Planning Board to define active and substantial development and substantial completion either in its regulations or when it votes on the site plan. They could say that they vote to approve the site plan provided that they do "this" within 24 months. If they don't define what active and substantial development is, then they automatically get the 5 year exemption.

Mr. Taintor acknowledged that these are some complicated procedural changes to their Site Plan Review Regulations but he felt it was important to bring it all together as a package, rather than to simply do the one that has been requested of them. Mr. Taintor will provide draft regulations to them and they can have a public hearing at next month's meeting and then report back to the City Council.

Councilor Novelline Clayburgh asked if this Design Review phase would this have protected and vested the three developers who expressed concerns with the height change. Mr. Taintor stated that it could have. The Planning Board can adopt regulations giving them that option or the Planning Board can adopt regulations requiring it. He felt the Planning Board has so much work that they don't necessarily want to require everybody to do design review but they may want to give them the option of doing it. Essentially they will have twice as much work if they require design review and twice as many hearings. He felt for many Site Plan applications there is very little likelihood of a zoning change that would effect them but a complicated project in the downtown, which requires relief from other boards and a longer approval process, the applicant may choose to do this to get vested. The burden would be on the applicant to request a design review public hearing. So, yes, if this had been in place, those three applicants could have requested a design review hearing during the summer and be exempt from the zoning change.

Mr. Allen asked about the level of completeness and assumed they would need engineered plans and that would be where the applicant would need to make the decision about whether they want to spend that money upfront as opposed to going to the BOA and HDC first. Mr. Taintor agreed and added that typically when things go to the BOA or HDC they have only had a designer or architect involved and have not had an engineer involved. The State law, for design review, specifically requires some engineering to be involved to the level that the Planning Board can determine whether there will be any issues. At the design review phase, the Planning Board can say identify the issues which will have to be addressed when they come back before the Board and the statute also states that nothing in the design review phase is binding.

Mr. Gladhill asked how much they would be allowed to change after the Board has the design review hearing and the applicant gets locked into the Zoning Ordinance. Mr. Taintor felt they would have to define that in the regulations, however, no decisions are made in design review. The Planning Board informs the applicant that design review is finished but the process should include conveying to the applicant what the issues are that need to be addressed.

Mr. Taintor stated that they already have a similar process in the Subdivision Rules and Regulations where they have preliminary and final subdivision. They did this with the Langdon Street subdivision where they granted preliminary subdivision approval and told the applicant what would have to be addressed in order to come back for final subdivision approval.

Ms. Moreau felt this was a very good idea.

Mr. Allen made a motion to schedule a public hearing on March 21, 2013, to consider amending the Site Plan Review Regulations to provide for preliminary review of applications as authorized by RSA-676:4, II, to specify what constitutes a completed application as required by RSA 676:4, I(b) and specify the threshold levels of work that shall constitute "active and substantial development or building" and "substantial completion of the improvements as shown on the subdivision plat or site plan," as authorized by RSA 674:39, III.. Mr. Hopley seconded the motion.

The motion passed unanimously.

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VI. PLANNING DIRECTOR'S REPORT

Mr. Taintor mentioned the project update newsletter that was in the Board's packet and commented that this will be updated and provided on a regular basis.

He reminded the Board of their Work Session scheduled for next Thursday at 6:30 pm to talk about the Coastal Resilience Initiative, a project that the Planning Department has been working on, looking at the impacts of sea level rise on building, infrastructure and natural resources in the City.

Mr. Gladhill noted that the Postal Service has mentioned that they may be stopping mail delivery on Saturdays and that is generally when they get their packets in the mail and he asked if that would have any impact on the applicant filing dates. Mr. Taintor indicated they will look into that.

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VII. ADJOURNMENT

A motion to adjourn at 8:00 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 June 20, 2013.