

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 P.M.**

**MAY 16, 2013**

**MEMBERS PRESENT:** John Ricci, Chairman; Anthony Blenkinsop, Vice Chairman; Nancy Novelline Clayburgh, City Council Representative; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; William Gladhill; Karina Quintans; Elizabeth Moreau, Alternate and Jay Leduc, Alternate

**MEMBERS EXCUSED:** John Rice and Colby Gamester;

**ALSO PRESENT:** Rick Taintor, Planning Director

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Chairman Ricci welcomed the newest member, Jay Leduc, to the Board.

**I. APPROVAL OF MINUTES**

1. Approval of Minutes from the February 21, 2013 Planning Board Meeting – Unanimously approved.
2. Approval of Minutes from the February 28, 2013 Planning Board Work Session – 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.*

Chairman Ricci requested that Item B be taken out of order for purposes of postponement. Mr. Gladhill made a motion to take Item B out of order. Mr. Hopley seconded the motion, and the motion passed unanimously.

B. The application of **Jean R. Johnson, Owner, and Thomas Johnson, Applicant**, for property located at **50 Martine Cottage Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland and a wetland buffer, to construct a 850' ± pervious driveway to access a proposed subdivided lot, with 247 s.f. of impact to the inland wetland and 7,900 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 202 as Lot 16 and lies within the Rural Residential (R) District. (This application was postponed at the April 18, 2013 Planning Board meeting.)

Chairman Ricci read the notice into the record.

Councilor Novelline Clayburgh motioned to **postpone** Conditional Use Permit Approval for 50 Martine Cottage Road to the June 20, 2013 Planning Board Meeting. Mr. Hopley seconded the motion. The motion was passed unanimously.

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 is shown on Assessor Map 138 as Lot 48 and 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. (This application was postponed at the April 18, 2013 Planning Board meeting.)

Chairman Ricci read the notice into the record.

Ms. Moreau and Ms. Quintans recused themselves.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, appeared on behalf of the owners. This project received pre-approval and they have been working with the City to complete issues. The application consists of the Subdivision of one lot into four lots. Lots 1-3 will have frontage off Langdon Street and are proposed building lots. Lot 4 is proposed to be transferred to the City of Portsmouth. The plan set contains the subdivision plan and also an easement plan showing an area that will be a permanent easement for the City to work on drainage and utility improvements in the neighborhood. There is flooding in the area and the City is working on an outfall. The City is scheduled to upgrade Langdon Street and then the applicant will be requesting building permits to put the structures on the lots.

Variations were received for dimensional requirements, and these lots are conforming under those variations. There is mention of a procedural vote that is needed to be taken regarding the dimensional requirements. The staff has handed out some draft stipulations and there were no issues with those stipulations as worded by the staff. The neighborhood can rest assured that no construction will take place until the situation of flooding in the neighborhood is remedied. That was the major concern at the original preliminary approval.

**Questions of the Applicant:**

Councilor Novelline Clayburgh asked if parking for these lots when there are homes on them would be on site or on-street. Mr. Chagnon replied that parking would be on site. The last sheet in the set is a landscape plan showing that each lot has a two-car garage and there is space to park in front of the garage.

Chairman Ricci asked if anyone was present from the public who wished to speak to, for or against the petition. Seeing no one rise, Chairman Ricci closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD**

Planning Director Rick Taintor handed out a set of draft stipulations that had been developed over the past one and one-half weeks of working with DPW and the Applicant. He read them aloud so that that they were part of the record.

Mr. Taintor made an additional point regarding the discussion of parking. One aspect of the site is that the street is very narrow and the sidewalk is proposed to be in the street. It was an earlier plan by the current owner. This is the reason they recommended this go to the Parking Traffic and Safety Committee, but that Committee did not feel they wanted to look at this until the development was in place. His point is that there will be no on-street parking because the width of the street will not handle that.

Relating to the timeframe of the project, Deputy City Manager Allen spoke with DPW that day, and the intent is to try to get work started this construction season, probably later in the year. What could prevent it from being completed is that it requires an easement from the B&M Railroad for the outfall. It will require a taking, but things are moving forward and the design is completed. It's just a matter of getting the final outfall piece from the B&M Railroad.

Mr. Blenkinsop asked about the wording of stipulations subsequent, regarding the fact that they're called 'conditions subsequent to be completed prior to' and wanted more of an explanation. Mr. Taintor replied that they meant subsequent to the filing of a plat, which is how they normally break them up. Mr. Blenkinsop also asked about Condition #6, 'the Applicant shall have the right to complete the City's infrastructure project' and wanted to know if the City is comfortable with the Applicant completing a city infrastructure project. Deputy City Manager Allen replied that it is not uncommon for any subdivision where the applicant puts in drainage that is turned over to the City. They would have the City plans and it would be monitored.

Councilor Novelline Clayburgh asked what would happen if the City Council didn't approve taking Lot #4. Mr. Taintor replied that the owner would keep ownership of Lot 4. The City cannot accept title without the City Council approving it. Mr. Taintor didn't think it was likely to happen, but if it did, it would stay in the ownership of the developer.

Mr. Blenkinsop made a motion to grant Final Subdivision Approval with stipulations. Deputy City Manager Allen seconded the motion.

The motion passed unanimously with the following stipulations:

Conditions Precedent (to be completed prior to the filing of the plat):

1. Notes shall be added to the Subdivision Plan stating that:
  - (a) No basement shall be constructed on Lot 3, and
  - (b) No basement floor on Lot 2 shall be lower than 4.5 feet below current existing grade.
2. The owner shall grant an easement to the City for utility purposes as shown on the Easement Plan submitted with the application for subdivision approval.
3. Property monuments shall be set as required by the Department of Public Works (DPW).
4. GIS data shall be provided to DPW, as the form is required by the City.

Conditions Subsequent (to be completed prior to the issuance of any building permit):

5. The applicant shall submit a grading plan for review by DPW, to ensure that adjacent properties are not impacted by site run-off. Approval by DPW shall not relieve the applicant of any liability for correcting off-site impacts.
6. If the City's infrastructure improvement project in Langdon Street has not been commenced or substantially completed to the point where DPW consents to allow construction on the lots, the applicant, at the applicant's option, shall have the right to complete the project as designed by the City at the Applicant's expense.
7. The applicant will coordinate with the City on the installation of underground electrical conduits in order that no excavation will be required in Langdon Street after it is reconstructed as part of the City's utility improvement project.
8. The applicant shall convey Lot 4 to the City, subject only to (1) approval and acceptance of Lot 4 by the City Council, and (2) the following restrictions as shown on a recordable plan to be prepared by the applicant and approved by DPW:
  - (a) a 5-foot by 87.64 foot vegetative buffer along the north side of Lot 3 for the benefit of Lot 3,
  - (b) a view easement and no parking area, approved by the Planning Department, for the benefit Lot 3 as shown on the recordable plan to be prepared by the applicant.

**III. PUBLIC HEARINGS – NEW BUSINESS**

A. The application of the **City of Portsmouth, Owner, and the Portsmouth School Department, Applicant**, for property located at **50 Andrew Jarvis Drive** (Portsmouth High School), requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, to install a 47' telephone pole as part of a zipline element of the existing Project Adventure course, with 3 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 229 as Lot 3 and lies within the Municipal (M) District.

Chairman Ricci recused himself from this hearing.

Vice Chairman Blenkinsop read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Mr. Ken Linchey, Facility Director for the Portsmouth schools, said that they are requesting permission to add an element to their Project Adventure course. This project is going to be presented by the Senior Class of 2013 as their gift to Portsmouth High School.

Three students presented. Mr. Sam Lichenstein, President of Class 2013, said that he was very excited to present this gift to Portsmouth High School as a class gift because it promotes non-traditional academic self-learning. Mr. Ricci and Mr. Andrew Sumonis, who have also participated in the project, were introduced. Mr. Ricci said that during the first quarter, he took Project Adventure and was at first nervous because he didn't like heights, but he felt it was challenging, as it involved full-value commitment, daily journal entries and accomplishing goals. He hoped that the whole senior class would get to experience it, with the Board's approval.

Mr. Sumonis said that they are trying to capture the essence of dynamic learning outside of the regular classroom, resulting in positive relationships with their peers or cooperation with teachers. He felt it

would add a whole new dynamic to the class. There was one zipline previously, and they want to bring it back because it was a positive influence for the school.

Mr. Linchey provided the Windspeed plans and showed where the zipline and telephone pole will be installed. The pictures showed an overlay of the site to give an idea of how big the area is (52 acres). They have an 8' x 8' platform on a telephone pole that goes down to the varsity baseball field, and there is one connecting tether line. He showed where the pole is located and said that students would dismount using a stepladder. No wetlands would be disturbed. They have checked with their insurance companies and school superintendent and everyone is on board and would love to see the project move forward.

Deputy City Manager Allen asked where the 15' area was where they would disembark. Mr. Linchey replied that it was a little grass area next to the parking lot just to the right of the tennis courts, and he emphasized that they would not be impacting the wetland area.

Mr. Hopley commented that the zipline is not actually a 400' ride. Mr. Linchey responded that it probably was more of a 325-foot to 350-foot ride.

Councilor Novelline Clayburgh offered her congratulations to the seniors and asked if the students would be tied in with safety apparatus. Mr. Linchey said yes, and he added that they'll retain a recertified inspector every year. The safety equipment will consist of a belt, harnesses and a hardhat.

Mr. Blenkinsop asked if the zipline would be used during non-school hours or if it would be locked. Mr. Linchey said that the system would be locked securely during nights and weekends and could not be accessed by the public. He added that the platform would be high enough to provide clearance for vehicles, and the back deck platform would be 10 feet off the ground.

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

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Hopley made a motion to grant Conditional Use Permit approval. Councilor Novelline Clayburgh seconded the motion, and the motion passed unanimously.

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B. The application of **Christian B. and Kirstin E. Stallkamp, Owners**, for property located at **565 F.W. Hartford Drive**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, to construct a screened porch addition with new landing and stairs; proposed pervious patio; and associated stormwater improvements in the wetland buffer, with 1,150 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 250 as Lot 99 and lies within the Single Residence B (SRB) District.

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Christian Stallkamp, property owner, presented and outlined the reason he is seeking a Conditional Use Permit. During warm months, Mr. and Mrs. Stallkamp like to spend time outside and have dinners on the deck in a screened atmosphere. The whole project consists of creating a new porch off of the existing structure. The screened-in porch will have a 5' x 5' landing area, giving access to the existing deck and also access down to the yard. The Stallkamps are sensitive to the wetland issue and are trying to have the least environmental impact possible by researching stormwater runoff, creating a rain garden, and planting vegetative grass. Due to those issues and others, they are looking for a Conditional Use Permit to complete their project.

Deputy City Manager Allen asked if the Stallkamps already have the deck and if so, if they considered building a porch on the existing deck structure. Mr. Stallkamp replied that the pitch that would be required wasn't big enough with the window line.

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

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Blenkinsop made a motion to grant Conditional Use Permit approval with the recommended stipulations. Deputy City Manager Allen seconded the motion. The motion passed unanimously with the following stipulations:

1. Sealcoat shall not be applied to the driveway due to the potential for toxic runoff.
2. The new buffer plantings shall be maintained and shall remain in place as shown on the plan and shall not be converted back to grass or impervious surface.
3. The rain garden shall be maintained and kept in functional order to continue to receive and treat run-off from the driveway.

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C. The application of **Carol J. Trecosta and Michele D Cole, Owners**, for property located at **32 Boss Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, to remove an 8' x 25' storage pen with concrete block flooring and to construct a 12' x 24' deck off the rear of the existing structure, with 288 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 153 as Lot 5 and lies within the Single Residence B (SRB) District.

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Carol Trecosta and Michele Cole, property owners, presented to the Board. They distributed photos and handouts to the Board members.

Ms. Trecosta stated that they are looking to replace an existing covered storage pen by removing it and erecting a 12 x 24 foot deck in its place in the rear of the house, where the storage bin is now. They would remove the concrete flooring and install gravel instead. They would also replace the grass with ground covering and native plants, like ferns. The deck would be installed where the bin is now to

ensure that it is further away from the wetlands. Their sketches show the existing pen in the back, giving an idea of what the area looks like now. The new deck will extend 8' past the existing pen.

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

**DISCUSSION AND DECISION OF THE BOARD**

Deputy City Manager Allen made a motion to grant Conditional Use Permit approval. Mr. Hopley seconded the motion, and the motion passed unanimously.

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D. The application of **Janis Hancock, Owner**, for property located at **59 Taft Road**, and **Peter M. Dinnerman Revocable Trust, Owner, and Peter M. Dinnerman, Applicant**, for property located at **61 Taft Road**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between two lots as follows:

- a. Lot 77 on Assessor Map 247 increasing in area from 13,679 s.f. to 14,562 s.f. and increasing in continuous street frontage from 90.03' to 97.91' on Taft Road.
- b. Lot 11 on Assessor Map 251 decreasing in area from 31,417 s.f. to 30,534 s.f. and decreasing in continuous street frontage from 180' to 172.12' on Taft Road.

Said properties are shown on Assessor Map 251 as Lot 11 and Assessor Map 247 as Lot 77 and are located in the Single Residence B (SRB) District where the minimum lot size is 15,000 s.f. and the minimum continuous street frontage is 100'.

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Karen Lovejoy, of Altus Engineering, presented to the Board. The topic was lot line relocation. The Dinnermans have owned the lot on the right for many years, believing that the lot line ran along the stone wall. The Hancocks recently bought the lot next door and also believed that. A survey recently showed that the lot line was actually different and that the Dinnermans were encroaching over the line. The lot line relocation will result in a lot that is more conforming for the Dinnermans, and the Hancock lot will remain conforming. The Dinnermans and Hancocks request preliminary and final subdivision approval.

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

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Hopley made a motion to grant the waiver from Section VI.2.B of the Subdivision Rules and Regulations, requiring lot dimensions to conform to the requirements of the Zoning Ordinance. Mr. Blenkinsop seconded the motion, and the motion passed unanimously.

Mr. Blenkinsop made the motion to grant Preliminary and Final Subdivision Approval with the recommended stipulations. Councilor Novelline Clayburgh seconded the motion.

The motion to grant preliminary and final subdivision approval passed unanimously with the following stipulations:

1. Property monument shall be set as required by DPW prior to the filing of the plat.
2. GIS data shall be provided to DPW in the form as required by the City.
3. The final plat and all deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

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E. The application of the **RLD Revocable Trust and the AMD Revocable Trust, Owner**, for property located at **3201 and 3203 Lafayette Road**, requesting Preliminary and Final Subdivision approval to subdivide one lot into four lots as follows:

- a. Proposed Lot 1 consisting of 6.02 acres and 561’ of continuous street frontage.
- b. Proposed Lot 2 consisting of 67.11 acres and 200’ of continuous street frontage.
- c. Proposed Lot 3 consisting of 11.38 acres and 1084’ of continuous street frontage.
- d. Proposed Lot 4 consisting of 123.97 acres and no street frontage (deeded easement for access and utilities).

Said property is shown on Assessor Map 291 as Lot 7 and lies within the Gateway District where a minimum lot area of 43,560 s.f. and 200’ of continuous street frontage is required; the Rural (R) District where a minimum lot area of 5 acres and no continuous street frontage is required; and the Garden Apartment/Mobile Home (GA/MH) district where a minimum lot area of 15,000 s.f. and no continuous street frontage is required.

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Steve Oles, of MSC Engineers, presented on behalf of RLD and AMD Revocable Trust. Also present were the Applicants, Phil Desfosses and Theresa Desfosses, and Attorney David Brown. The property is just south of the Service Credit Union by 200’ on Lafayette Road. They are looking to create four lots. One lot will be along Lafayette Road (Lot 1) and will contain the Desfosses law offices and will be six acres. The first lot will contain the law offices and will be six acres. The second lot will contain the manufactured housing and will have 67 acres. The third lot will be vacant land, over 11 acres along Lafayette Road with over 1,000 feet of frontage, and the fourth lot will be 123 acres that is all wetlands. The property is completely surrounded by stone walls to define the property. The map showed three different colored areas, and Mr. Oles pointed out what they were. They are looking to have access to Lot #4 via an easement along Lot #1 for utilities and for access to that lot from Route 1, with easement across Bluefish Avenue and Desfosses Avenue to provide a second access. The property is serviced by City water and sewer.

Deputy City Manager Allen asked how many homes would be in Lot 2 and was told 206 homes.

Ms. Moreau asked what the application’s exact purpose was and noted that some of the lots were not even buildable in any way. Mr. Oles replied that the purpose was to take a single lot and create four separate lots for ownership. The intent of the owner is to do what he desire with the property.



Mr. Desfosses stated that existing mobile homes would be sold, and the purpose of the lot separation was to separate those lots from the remaining land and to facilitate the sale.

Mr. Taintor said that they were concerned about infrastructure and asked what discussions they had had regarding drainage and sewer. Mr. Oles assured him that a considerable amount of time was put into scoping and reviewing drainage.

Mr. Desfosses said the only utility issue that they had been apprised of is the existing sewage and whether or not there was infiltration. They have had the entire system scoped and any infiltration discovered plugged, and provided reports to DPW. To their knowledge, they said there is not a problem with the sewage and infiltration.

Deputy City Manager Allen stated that there is a driveway on the easterly side of the property where the law offices are. The existing street is called Desfosses Avenue and will remain so and that it is not shown on the plan. Mr. Oles agreed that it is not. Ms. Moreau said that it was shown on page 2 but not on page 1. Deputy City Manager Allen also noted that the plan doesn't show any sort of easement, that it shows a 25' row on manufactured housing property. Mr. Oles said that they will graphically show it on the area for the benefit of Lot 2.

Mr. Blenkinsop asked if these issues are in the deeds. Mr. Oles replied that deeds are currently being proposed between owner and buyer. The Board doesn't have them because they're not recorded.

Mr. Taintor said it was sort of unclear whether or not they had an easement across (when they originally talked about this they talked about a looped road). They have not actually done that, so they in effect have a very long cul de sac and only one road out of the site. Mr. Taintor said it's an unusual situation, that it's not really a road but is a driveway.

Mr. Desfosses pointed out on the plan that the existing road connects with Bluefish Avenue, so it forms a loop and creates multiple exits from the housing community.

Deputy City Manager Allen said that, having spent some time out there several years ago looking at inflow and infiltration, he was somewhat uncomfortable, as the situation is what they would call severe. He talked to DPW that day and he is not sure that they have seen any final report.

Ms. Desfosses said they hired the Ted Barry Company and they advised the City when the dry down test was going to happen. Someone said they may request a picture of the pump station, and were provided with one. The Ted Barry Company did a lot of the repairs. They did an entire pump system evaluation and repair and provided the report to the Planning Board. Ms. Desfosses is sure that the Ted Barry Company is well respected and has done work for the City.

Deputy City Manager Allen was not aware of the receipt of this report and said he would feel more comfortable getting DPW to review the report.

Mr. Blenkinsop wanted to discuss the access to Lot 4. Mr. Oles said that it was across a utility easement off Bluefish Avenue to the rear portion of Lot 4. There is variable width over the actual pavement of Bluefish Avenue. Mr. Blenkinsop asked if the deeds had been drafted yet and Mr. Desfosses said that they had not. Mr. Oles said that they have preliminary drafts if anyone would like to see them.

Mr. Blenkinsop asked what the purpose was in creating Lot 4 if it was entirely wetland. Mr. Desfosses referred to the access issue and said that there was access to Lot 4 from Lang Road from a lot that they own. Mr. Blenkinsop reiterated that there would be access but that there presently wasn't. Mr. Desfosses agreed. They anticipate some sort of recreation or donation for conservation use. They agree it is not developable. Mr. Blenkinsop asked if that held true for Lot 3 as well and Mr. Desfosses said no.

Mr. Hopley stated that the RLD AMD lot in the back of Lot 4 goes all the way out to Lang. Mr. Desfosses agreed and said that the RLD AMD lot would then become part of Lot 4.

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

### **DISCUSSION AND DECISION OF THE BOARD**

Deputy City Manager Allen proposed that the decision be postponed to next month, that there was enough information that they would like to review and confirm with DPW. He stated that the inflow and infiltration from this site was significant, the most significant of its type in the City, and if it had been done, that was good, but it would be what he considers a considerable effort. He would have expected DPW to inform him when that had been done. Deputy City Manager Allen felt that there were a few issues that needed to be ironed out, such as through access, details about Map 290, Lot 1 and things that need to be cleaned up before they can take action.

Mr. Blenkinsop agreed, stating that they need to make sure the access issue is resolved to the satisfaction of the Board and the City Attorney. Instead of talking about drafts that they haven't seen, they need to have definite language on the access issue for the use of all the lots.

Mr. Taintor asked if the issue should be referred to TAC or just left with DPW. Deputy City Manager Allen agreed that it was worth referring it to TAC and amended his motion to include referring it to TAC. Deputy City Manager Allen said that the reason he would do so was because of the associated infrastructure issues.

Mr. Desfosses said that he appreciated their position but felt that he and his team did what was necessary in dealing with something that was not concrete. They provided detailed reports to the City but if DPW expected these reports, why weren't they here to say that they did not have them? Chairman Ricci said there was a multitude of issues that should be on the drawings but were missing, and that it was the purview of the Board to postpone the decision so they could meet with DPW in order to get all the information.

Mr. Oles asked that, if they had a postponement, would it have anything to do with design aspects? Chairman Ricci said it was site-related issues, such as utilities.

Mr. Blenkinsop was agreeable referring this matter to TAC, and he said that part of the reason he was seconding the postponement was because there was absolutely nothing about access, and that it was an important missing element, so they warranted postponement.

Deputy City Manager Allen made a motion to postpone Preliminary and Final Subdivision approval to June 20, 2013 with the TAC referral. Mr. Blenkinsop seconded it.

The motion to postpone to the June 20, 2013 Planning Board Meeting passed with the following stipulations:

1. This application is referred to the Technical Advisory Committee for review of the infrastructure issues as well as any other technical issues that TAC may deem appropriate.

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Deputy City Manager Allen made a motion to read in Items F and G together. Ms. Moreau seconded, and it passed unanimously.

F. The application of **Cumberland Farms, Inc., Owner**, for property located at **1475 Lafayette Road**, and **ONB Realty Corp, Owner**, for property located at **1555 Lafayette Road**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between two lots as follows:

- e. Lot 124 on Assessor Map 251 increasing in area from 24,895 s.f. to 57,433 s.f. with 200' of continuous street frontage on Lafayette Road.
- f. Lot 125 on Assessor Map 251 decreasing in area from 76,330 s.f. to 43,792 s.f. with 155' of continuous street frontage on Lafayette Road.

Said properties are shown on Assessor Map 251 as Lots 124 and 125 and are located in the Gateway District where the minimum lot size is 43,560 s.f. and the minimum continuous street frontage is 200'.

G. The application of **Cumberland Farms, Inc., Owner**, for property located at **1475 Lafayette Road**, requesting Site Plan Approval to demolish the existing building and gas dispensers and construct a new 4,513 square-foot convenience store, new canopy and four gas dispensers, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 251 as Lot 124 and lies within the Gateway District.

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATIONS:**

Present were Frances Bruton, Attorney representing Cumberland Farms, Paul Wilson from Cumberland Farms, Traffic Engineer Giles Ham of Vanesse and Associates, and Scott Boucier, Project Engineer from Dubois and King.

Attorney Bruton explained that this project has two applications. The first application is a lot line adjustment which consists of an existing conditions plan and the actual lot line adjustment plan. The Cumberland Farms site will be razed and rebuilt and they would like to create a conforming lot. They worked with the bank that abuts their property so that part of the land to the rear of their property would be conveyed to Cumberland Farms. The lot line adjustment is fairly straight forward. The issue that came up and the waiver they are requesting relates to the fact that there is an existing frontage shortfall with the respect to bank property. The street frontage doesn't change.

The Site Plan was displayed and showed the proposed design of the site which would consist of a convenience store, parking in the front and a small portion in the back. The existing pumps would remain at four. Prior to coming up with the plan, the existing conditions showed numerous access points to Lafayette Road and Elwyn Road. The current plan went through five TAC meetings with a lot of good input, and they addressed a lot of TAC's concerns. One main issue was the main access to the

site and the access point was moved further away from the intersection at Lafayette and Elwyn. TAC was very opposed to a left turn exiting from the Elwyn Road side. The Applicant had preferred not to have limited access, but the only option was to add a median in the road. Therefore, they eliminated the left turn out of the site and that was a significant change that occurred with TAC.

The applicant obtained four variances. With the lot line revision, they did not have a 200' buffer from the residential district. Another variance was the requirement that the gas pump island shall be 40' from the frontage instead of 37'. The third variance was related to parking restrictions between the building and the street. They wanted parking in front for easy access to the store. The last variance was an existing condition where the bank sign was on the back parcel, so they asked to have two free standing signs on one parcel. The only other thing that happened at the BOA was that they asked for a Conditional Use Permit to have the sale of gasoline be allowed on the new land they acquired.

They had a recommendation by Mr. Taintor to accept the Site Plan as complete and to grant a waiver for some green elements on the project and a confirmation from the utility companies that they had the ability to get access. The only permits they need from the State are from DES for the underground storage tanks and DOT for the driveway permits because they're on Lafayette Road. Typically, Cumberland Farms does not make arrangements with utility companies until after approvals have been obtained and they start construction. Perhaps they can make that a condition of approval.

The only thing left in terms of relief that they are asking from the Board is that they are only allowed one point of access to and from the lot and they want to have three. There used to be five, so they're going from five down to three and they are moving them back from the intersection. The store would be a state-of-the-art design from Cumberland Farms. The Applicant had elevations which were displayed. They will be open 24-hours per day. They have a traditional New England look to the store that includes a stone veneer. The design has been very well received in other communities, most recently in Rollinsford.

Mr. Blenkinsop asked that they talk a little more about the lot line adjustment. He indicated that a lot of the work that was done in creating the Gateway District had to do with the idea of bringing buildings closer to the street and parking to the rear. He was trying to understand why a store like Cumberland Farms is resistant to bringing the store closer to the street and putting parking in the rear. Attorney Bruton pointed out that they received the variances for that and Mr. Blenkinsop pointed out that they were conditioned upon the approval by the Planning Board. Attorney Bruton noted that gas stations are unique and there is a need to have a good distance between the pumps and the store and traditionally where people park. Placing parking on the side or the rear doesn't work in terms of the natural flow that people tend to exhibit when they use these facilities. They were trying to create areas where they could get a tanker in as well. People filling up their tanks with gas should be distinct from the activity associated with the convenience store.

Project Engineer Scott Boucier tried to explain traffic flow and delivery of fuel. They were trying to maintain separation of the fuel pumps and access to the convenience store to ensure safety.

Mr. Hopley put the question a different way, asking why it wasn't possible to design a functional site by flip-flopping the building and the pumps.

Paul Wilson, of Cumberland Farms, replied that it was several reasons. There are residential homes behind the site, and Cumberland Farms tries to be considerate to their abutters and shield them as much as possible from the business. At all times, the cashier needs to have a clear view of the gasoline

fueling, and by putting the building out to the front of the street, the design has the front door on the main street. If they have two separate entrances, in the front and in the rear, it is not as safe for the employees or the customers. Another aspect is they are a gasoline facility, so if the building blocks their gas pumps, customers may not stop and will instead go to the next gas station to get their fuel.

Councilor Novelline Clayburgh agreed with the parking configuration because the building conforms to the bank that is next to it. She asked if they would still be able to access the bank from Elwyn Road and was told yes. Regarding the entrance from Elwyn Road to Cumberland Farms, she asked what would prevent people from going out that way and taking a left or cutting over to get to the light. Mr. Bruton said they originally had an exit out that would have been more attractive and would have done as she suggested, but DPW still did not like it so they removed it. They are trying to get away from the intersection and create a safe way in.

Traffic Engineer Giles Ham said that the width of curbcut is only 15', so it's only wide enough for one vehicle and there is a 'Do Not Enter' sign.

Mr. Leduc asked if Cumberland Farms intended to close off the access when the fuel truck is unloading. Mr. Wilson said their intention was to try to have the fuel truck make its deliveries during off peak times, but on other occasions, when the tanker comes in, cars will still be able to access the right lane and get around the tanker.

Mr. Ham said that one of their improvements will be modifying the radius around the intersection as well as providing easements to the City for the signal and pedestrian equipment and sidewalk. He said they will also be extending the sidewalk on site.

Mr. Hopley asked if the Lafayette Road median was currently just a curb. Mr. Ham stated it was just a 4-5' wide curb, extending past the bank property. Mr. Hopley proposed that they put a "Right Turn Only" or "Left Turn" sign, and Mr. Ham said that would be fine. That would prevent somebody from trying to hop the curb.

Mr. Gladhill asked if there is a clear view from the first entrance into their lot on Lafayette Road as he was concerned about seeing pedestrians on the sidewalk. Mr. Ham confirmed that there is plenty of site distance at that location and it should be fine.

Mr. Blenkinsop asked where the snow storage is located. Mr. Boucier replied that it normally is between the parking lot and existing vegetation, but that it is temporary storage and once a storm is over, they remove it from the site. Mr. Blenkinsop asked if the temporary storage was shown on the plan and was told that it wasn't. He asked that it be added. Also, he recognizes that this is a gas station and that cars will be the primary users, but relating to the convenience store aspect, he asked if there were any bike racks. Mr. Boucier said the bike racks were located in front of the building.

Mr. Taintor noted that the attorney mentioned that Cumberland Farms intends to operate 24 hours, and that they would need to have a variance for that. Mr. Bruton said that they did not get a variance. Mr. Bruton stated that they can adjust the hours to 5:00 a.m. to 12:00 am and assume that would be acceptable. If they needed to get a variance for 24 hours, they would do that. Mr. Taintor said that, as this is a new use, the hours would not carry over and this approval would be limited to 6:00 am – 11:00 pm. Mr. Bruton stated that the applicant would like a condition that they would be able to go back to the BOA for a variance. Mr. Taintor responded that the Planning Board would not have any purview over hours. Mr. Taintor was just putting them on notice.

Mr. Bruton stated that the applicant did find the list of conditions in the Staff Memorandum acceptable.

Chairman Ricci asked about the note regarding the proposed CO2 tank, with a 6" chain link fence. Mr. Bruton stated it was for use in the soda machine inside the building.

Ms. Moreau asked whether they were putting the sign where the sidewalk is. Mr. Bruton replied that the sign is outside of the sidewalk. With setbacks, it was the only location they could put it, between the sidewalk and the building.

Deputy City Manager Allen noted that there was no left turn onto Lafayette Road, but it looked like they had some sign posts and sign symbols at that intersection as well as at the entrance in off of Elwyn Road and the exit out off of Elwyn Road, but he couldn't find where those signs actually are. He said they should be labeled somehow. Mr. Boucier replied that they have a Signage and Marking plan.

Mr. Gladhill asked about the metal fence around the patio area facing Elwyn Road, wondering why it was not something closer to the design of the building. Mr. Wilson told him that it is more of a wrought-iron metal and not all that intrusive, and that any other material would require more maintenance. Mr. Wilson said that they went back and forth on that design and it will be something relatively small and not intrusive.

Mr. Blenkinsop asked why none of the plans were stamped. Mr. Bruton said that they normally wait until the final version to stamp them.

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

## **DISCUSSION AND DECISION OF THE BOARD**

### **Subdivision Application:**

Mr. Hopley made a motion to grant a waiver from Section VI.2.B of the Subdivision Rules and Regulations, requiring lot dimensions to conform to the requirements of the Zoning Ordinance. Deputy City Manager Allen seconded the motion.

The motion to grant a waiver from Section VI.2.B of the Subdivision Rules and Regulations, requiring lot dimensions to conform to the requirements of the Zoning Ordinance, passed unanimously.

Mr. Hopley made a motion to grant Preliminary and Final Subdivision approval, with the three recommended stipulations, with one question. He asked if an easement over this lot was necessary for the benefit of the bank. Mr. Taintor said they do not need to require it but that it is a relationship between the bank and Cumberland Farms. Deputy City Manager Allen seconded the motion.

Mr. Blenkinsop noted that just because the variance approval was conditioned on their approval of the lot line adjustment, he thinks they need to revisit this issue regarding the Gateway District. This is the second applicant fairly recently that insisted that they follow their corporate policy rather than the Gateway requirements and he felt that the Board really needed to revisit the whole Gateway District. They had a certain idea and vision and this is not how they envisioned encouraging developments. If

people are just going to ignore it or get variances, then it is not serving the purpose that they intended it would. Chairman Ricci said that maybe they overlooked the use aspect of it. Mr. Blenkinsop replied that it was a fair point, but that is what they are trying to avoid in Portsmouth. They don't want to look like Rollinsford or everywhere else, and maybe they want Cumberland Farms to look different and maybe they will have to make changes if they want to be in Portsmouth. From a planning perspective they are not accomplishing what they want to do.

The motion to grant Preliminary and Final Subdivision Approval (Lot Line Revision) passed unanimously subject to the following stipulations:

1. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
2. GIS data shall be provided to the Department of Public Works in the form as required by the City.
3. The final plat and all deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

**Site Plan Approval:**

Mr. Taintor mentioned that Mr. Blenkinsop noted that the site plans were not stamped, which is a Site Plan regulations, so they will need a waiver on that.

Mr. Hopley asked the question: If they are going to get the stamped plans and they have the statement on the green building, why do they need to waive legitimate documentation requirements? Mr. Taintor said they need to waive the stamped plans because they were not submitted and the Board does not have them in front of them, they do need to waive the statement that they can provide the services and they need to waive the statement regarding the driveways. In that case, Mr. Hopley responded that maybe they should postpone this matter until they get the stamped plans and condition approval on complete submissions rather than granting a waiver. He said it seems as if the applicant doesn't have to follow the regulations.

Chairman Ricci said that was a good point, that they can condition the approval on the stamped plans and they will be all set to go.

Mr. Blenkinsop agreed with Mr. Taintor's waiver and that they should have had stamped plans at tonight's meeting. Mr. Taintor said that conditional approval might be better than a waiver; they will list those three items as conditions of approval and Mr. Taintor will have the authority to approve the conditions. Chairman Ricci felt that procedurally the plans are okay and conditional approval is the way to handle this.

Mr. Hopley felt that Item E, the waiver for the three driveways, was warranted. Chairman Ricci agreed. There are five driveways there now and this is a huge upgrade.

Deputy City Manager Allen indicated that approval was complete conditioned on getting the stamped plans in, with the recommended conditions. They first need to vote on whether the application is complete. Chairman Ricci asked if they could amend their vote that the application is complete but contingent upon final stipulations. Mr. Blenkinsop made that motion. Deputy City Manager Allen seconded the motion.

The motion that the application for Site Plan Approval is complete according to the Board's regulations, contingent upon compliance with the Board's stipulations of approval regarding documentation and stamped plans, passed unanimously.

Mr. Hopley made a motion to grant a waiver from the Site Plan Regulations to allow three driveways. Mr. Blenkinsop seconded the motion.

The motion to grant a waiver from Section 3.3.2.3 of the Site Plan Review Regulations, to allow three driveways on the lot as shown on the proposed site plans, as they will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, passed unanimously.

Deputy City Manager Allen made a motion to grant site plan approval with the stipulations included in the Staff Memorandum along with a stipulation for a "No Right Turn" sign, delineated snow storage area and final stamped plans and other documentation. Mr. Hopley seconded the motion, but noted that they needed to talk about Stipulations 5 and 6. The verbage, 'Conditions subsequent to be completed prior to the release of the site bond' followed by some conditions about DOT and Elwyn Road, to be recorded prior to the issuance of the C.O. confused Mr. Hopley. Mr. Taintor said maybe they could make it 'prior to the release of the site review bond. Mr. Hopley also mentioned the roadwork and sometimes the timing is off between the completion of the building vs. the completion of the site work and will this open up an issue where they will have a completed building but, if it is past paving time, they won't be able to occupy it. Mr. Taintor said they have done this with the project across the street so that things don't drag on after the building is up. Deputy City Manager Allen agreed with the recommended condition. Mr. Hopley said this is contrary to 29 years of policy. Deputy City Manager Allen agreed with this, given the access to the site, and felt it is important to get that off site work done before they open. Chairman Ricci said that if they get caught in Mother Nature and they have the base coat down, they should be able to occupy. Mr. Hopley would defer that to DPW. Chairman Ricci did not feel that the site bond should hold up occupancy. Mr. Taintor said it was written for a purpose because they have a lot going on in that area of the City. Chairman Ricci noted that in New England the weather can prevent final paving for months. Deputy City Manager Allen felt that all improvements on Lafayette Road and Elwyn Road should be completed prior to release of security, but it shouldn't hold up the Inspection Department from issuing a Certificate of Occupancy.

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

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

1. On Sheet CFG4.0 (Site Plan),
  - (a) Clearly identify all four existing monitoring wells and add "(Typ. 4)" to the callout note stating "existing monitoring wells to remain and raised to proposed grades."
  - (b) Delineate and label the snow storage area in the right rear corner of the parking area.
2. On Sheet CFG4.1 (Signage and Marking Plan), add a "No Left Turn" sign for exiting vehicles at the Lafayette Road driveway.
3. On Sheet CFG8.0 (Landscape Plan), a note shall be added stating, "All trees shown on this plan shall be maintained and allowed to grow in their natural shape, and shall be pruned only as necessary for healthy growth or to remove branches that are less than 7 feet above grade over a sidewalk or parking area."
4. Provide all final plans stamped by a New Hampshire licensed civil engineer as required by the Site Plan Review Regulations, Sec. 2.4.4.1(d).



- 5. Submit documentation from private utility service providers and a list of required state and federal permit applications as required by the Site Plan Review Regulations, Sec. 2.4.3.2(d) and (e).
- 6. The applicant shall videotape the 10" ductile iron drain pipe running across Elwyn Road for review by DPW. If DPW determines that the pipe needs to be replaced, the applicant shall coordinate with DPW and shall complete all work associated with the replacement.
- 7. The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City prior to the issuance of a building permit.

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

- 9. The easement to NHDOT along Lafayette Road and the easement to the City along Elwyn Road shall be prepared for review and approval by the Legal and Planning Departments, and shall be recorded prior to the issuance of a Certificate of Occupancy.
- 10. All improvements in Lafayette Road and Elwyn Road shall be completed as shown on the site plans prior to the issuance of a Certificate of Occupancy.

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**IV. PLANNING DIRECTOR’S REPORT**

- A. Planning Department website and social media initiatives. This was an informational item.
- B. Proposed amendments to the Planning Board Rules and Regulations to require digital submission of plans and other application materials. Mr. Taintor recommends a public hearing to amend these regulations.
- C. Status of Zoning Ordinance amendments recommended by Planning Board. In addition to his handout, he indicated that they are going to 1<sup>st</sup> reading for the proposed change to OR on Lafayette Road at Monday’s City Council meeting.
- D. The Transportation policy update is up on line and a public meeting was held last night with Portsmouth Listens. The City Council will be discussing that report on June 3<sup>rd</sup>.
- E. Upcoming meetings and work sessions.

There will be a May 28<sup>th</sup> Joint City Council/Planning Board WS on the new issue of a moratorium. The Planning Board would have to vote and recommend to the City Council before the City Council could vote on this.

The Work Session scheduled for next Thursday is on the Master Plan. They have a request to have a meeting to vote on some easements on the Lincoln 3B sewer separation project on Rockland Street so they will add that to the agenda because otherwise the City Council would not be able to act on it and vote until July 17<sup>th</sup>. Therefore, there will be a special meeting of the Planning Board as well as the Work Session next week.

The Charette is June 6<sup>th</sup> – 10<sup>th</sup>. All of the information is on the new Portsmouth Planning Website.

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**V. ADJOURNMENT**

A motion to adjourn at 9:05 was made and seconded and passed unanimously.

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Respectfully submitted,

Joanne Breault  
Temporary Secretary for the Planning Board

These minutes were approved by the Planning Board on January 16, 2014.