

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

**JANUARY 16, 2014
to be reconvened on
JANUARY 23, 2014**

MEMBERS PRESENT: John Ricci, Chairman; John Rice, Vice-Chairman; Jack Thorsen, City Council Representative; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; William Gladhill; Colby Gamester; Elizabeth Moreau, Michael Barker and Jay Leduc, Alternate

MEMBERS EXCUSED: n/a

ALSO PRESENT: Rick Taintor, Planning Director

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Chairman Ricci welcomed the new City Councilor Representative, Jack Thorsen, to the Planning Board.

I. APPROVAL OF MINUTES

- A. Approval of Minutes from the May 16, 2013 Planning Board Meeting - Unanimously approved
- B. Approval of Minutes from the May 23, 2013 Planning Board Meeting – Unanimously approved
- C. Approval of Minutes from the June 20, 2013 Planning Board Meeting – Unanimously approved

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II. NEW BUSINESS

- A. Election of Officers

Election of Chair: Mr. Gladhill nominated John Ricci. Deputy City Manager Allen seconded the motion. Mr. Ricci was unanimously voted as Chairman for the coming year.

Election of Vice-Chair. Deputy City Manager Allen nominated John Rice. Mr. Gamester seconded the motion. Mr. Rice unanimously voted as Vice Chairman for the coming year.

- B. Amendment to Planning Board Rules and Procedures re: Public Hearings

Mr. Taintor stated this was a response to last month’s Planning Board meeting where members of the public wanted to make a power point/multi media presentation and the Board had not been faced with that issue before. In response to that, staff prepared a proposed amendment to the Planning Board’s Rules and Procedures. This goes beyond the matter of presentations and also formalizes public comment. Mr. Taintor read the proposal to insert the following new paragraphs in Section G – General Procedures:

8. Procedure for Public Hearings

- (a) Public hearings of the Board shall follow the following procedure:
 - (1) Presentation by the proponent
 - (2) Questions by Planning Board members
 - (3) Public comment to, for or against the application or proposal:
 - (a) All comment shall be directed to the Chair
 - (b) First round: maximum of 3 minutes per person; oral comment only
 - (c) Second round: maximum of 10 minutes per person; may include presentations
 - (d) Third round: maximum of 10 minutes per person; oral comment only
 - (4) Chair closes public hearing
 - (5) Motion(s) on the application or proposal
 - (6) Discussion on the motion(s)
 - (a) No further public comment
 - (b) No addition by the applicant or proponent unless in answer to a question from the Board
 - (7) Vote on the motion(s)
- (b) If the public hearing is continued to a subsequent meeting of the Board, the procedure outlined above shall also be followed at the continued hearing.
- (c) The Planning Board may modify the above procedure for an individual application by a concurring vote of 6 members of the Board.

9. Electronic or Multimedia Presentations

- (a) The Planning Board encourages (and, in some cases, requires) applicants to provide their materials in electronic format (PDF). The purpose of this is twofold: to publish application materials on the Planning Department's website for public review, and to project the application materials on a screen in the hearing room so that it can be more easily seen by Board members and the public. Applicants for subdivision or site plan approval must submit their materials at the same time as their paper applications.
- (b) In addition, applicants are allowed to submit modified plans as PowerPoint, PDF or multimedia presentations in a format that is easier to display or view (for example, colored site plans and renderings). Any such presentations must be submitted to the Planning Department by the close of business on the day preceding the public hearing.
- (c) Members of the public may use PowerPoint, PDF or multimedia presentations in a public hearing during the second round of public comment, subject to the 10-minute time limit specified in paragraph 8(3)(c) above. Any such presentation must be submitted to the Planning Department by the close of business on the day preceding the public hearing, as is required of the applicant.
- (d) Other presentation formats may be permitted during a public hearing subject to the prior approval by the Planning Director.

Discussion and decision by the Board: Mr. Rice was in favor of this amendment and felt it was an excellent suggestion, especially starting with a 3 minute rule which forces people to focus in on the issue when you have quite a few people waiting. The 10 minute second round allows you to expound when 3 minutes is not enough. He would amend the third round to make it 5 minutes instead of 10 minutes. He felt it was reasonable for someone to speak at all three rounds and 18 minutes is a lot of time for one individual to speak and they can always suspend the rules. Deputy City Manager Allen was thinking the other way. At most other Boards they don't typically have a time limit except at the City Council meetings. His thought by the third round they should remove the time limit as they don't usually have a third time speaker. He would make an amendment to not have a time limit on the third round.

Mr. Barker felt it was important for the citizens to have the same time availed to them that the applicant has. He agrees that people should not have a time limit on the third round.

Mr. Gladhill agreed to limit the time on the first two rounds. That way people who have been waiting for a long time can get up and go home. By the third round, they don't usually have a lot of people, so he does not have a problem with eliminating that time limit.

Mr. Gamester felt that many times the presentations are the reduceable information for the public sometimes, even for himself sometimes. He asked if they could consider requiring the applicant submit their materials two days prior to the public hearing and the public one day prior to the public hearing. Mr. Taintor responded that the intent was to publish the applicant's presentation that came in at the last minute. They don't want to commit to something they cannot perform on so they require the applicant to submit the electronic materials with their paper applications so they can get posted to the website at the same time that the agenda is posted. If they actually gave out the expectation that people would be able to see the presentation on line the day before, and they were not able to do that, they would have a lot of disappointed people.

Mr. Gamester referred to 9-D and asked if there should there be a time limit as well or are people able to come up 5 minutes before the meeting and request to use a prop. Chairman Ricci felt that they can bring anything the night of the public hearing with the exception of multi-media.

Mr. Gamester asked if there would be any situation, other than submitting a 15 minute video which would be in contrast to the second time speaker maximum of 10 minutes, where they would deny a presentation for any reason. Mr. Taintor stated that they would not want to be excluding people on the basis on content.

Chairman Ricci asked if it was the general consensus that 3rd time speakers should have an unlimited time to speak. Everyone appeared to be in agreement.

Mr. Hopley made a motion to amend Item 8 (a)(3)(d) to no time limit for third time speakers. Mr. Rice seconded the motion. The motion passed unanimously.

Chairman Ricci summarized the rules for the public who were planning to speak tonight.

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III. 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 **Ertugrul Yurtseven, Owner**, for property located at **292 Lang Road**, requesting Final Subdivision Approval to subdivide one lot into four lots with the following:

- a. Proposed Lot 4 having 87,153 ± s.f. (2 acres) and 201.36’ ± of continuous street frontage on Lang Road.
- b. Proposed Lot 4-1 having 405,342 ± s.f. (9.31 acres) and 384.05’ ± of continuous street frontage on Lang Road.
- c. Proposed Lot 4-2 having 177,434 ± s.f. (4.07 acres) and 100’ ± of continuous street frontage on Lang Road.
- d. Proposed Lot 4-3 having 140,181 ± s.f. (3.22 acres) and 310.87’ ± of continuous street frontage on Lang Road.

Said lot is shown on Assessor Plan 287 as Lot 4 and lies within the Single Residence B (SRB) District where a minimum lot area of 15,000 s.f. and 100’ of continuous street frontage is required. (This application was postponed at the December 19, 2013 Planning Board meeting.)

The Chair read the notice into the record.

Ms. Moreau made a motion to postpone this matter to the January 23, 2014 Planning Board meeting. Deputy City Manager Allen seconded the motion.

The motion to postpone Final Subdivision approval to the January 23, 2014 Planning Board meeting passed unanimously.

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B. The application of the **Hill Hanover Group, LLC, Owner and G. L. Rogers and Company, Inc., Applicant**, for properties located at **181 Hill Street and 317-339 Hanover Street**, requesting Preliminary and Final Subdivision (Lot Line Revision) approval as follows:

- a. Assessor Map 125, Lot 14 decreasing in area from 38,305 s.f. to 16,127 s.f. with no change in street frontage; and
- b. Assessor Map 138, Lot 62 increasing in area from 20,574 s.f. to 42,752 s.f. with no change in street frontage.

Said properties lie within the Mixed Residential Office (MRO) and Mixed Residential Business (MRB) Districts where the minimum lot area is 7,500 s.f. (This application was postponed at the December 19, 2013 Planning Board Meeting and was referred to TAC at the request of the applicant.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, appeared before the Board, on behalf of the Applicant. Also present was Attorney Dennis Robertson and Kim Rogers, Principal of Deer Street Associates. Mr. Chagnon stated this is an application for a lot line relocation and the proposal is to transfer 23,178 s.f.

from Lot 125-14 to Lot 138-62, or the lot to the north. He noted there is a historic 20' right-of-way in the middle of the lot. Currently both parcels owned by Hill Hanover LLC and Deer Street Associates has a valid Purchase & Sales Agreement to purchase not only Lot 138-62 but the portion of Lot 125-14, which would merged together as one lot. They asked to be postponed in December so they could attend TAC on January 7th and at that meeting they added an easement plan showing a 20' area which is coincident with the existing right-of-way that will be dedicated to the City for the purpose of maintaining utilities that currently exist in that area. TAC recommended approval of the plan subject to providing a Utility Easement Deed and also subject to a variance and special exception for the application. This application will require some zoning relief, including the lot area per dwelling area and relief for parking dimensional requirements. They are providing the required parking for the smaller lot. Some parking will be located on Map 138-62 and remain tied to Lot 125-14. There are two spaces that currently back out onto a public way so they are asking for a variance for that. This is a current non-conforming lot and they are making it somewhat more non-conforming. Additionally TAC recommended the verification to the City that the 138-62 properties will have access to the full right-of-way for ingress and egress. They also intend to make sure the other lot has full access capabilities over the right-of-way also. Mr. Chagnon asked the Board to grant preliminary and final approval tonight subject to the stipulations in the Staff Memorandum.

Ms. Moreau noticed that this plan was difficult to read as it does not have a legend. She had to go to the tax maps to figure out what the original lots actually looked like. Mr. Chagnon confirmed they will add a legend.

Mr. Hopley asked if they can drive to the two wood frame buildings to the north. Mr. Chagnon explained that you get there by going down Rock Street and coming down a right-of-way. Mr. Hopley asked if that was City property. Mr. Chagnon confirmed it is City property and there is a right-of-way allowing access.

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

Ms. Moreau made a motion to grant Preliminary and Final Subdivision approval, including the stipulations in the Staff Memorandum and the addition of a legend on the plan. Mr. Gamester seconded the motion.

Mr. Rice asked if it was unusual that this had not gone before BOA first. Mr. Taintor agreed that it was unusual but because of the timing of the meetings the Planning Board meeting came before the BOA meeting. They felt this could be granted subject to a stipulation. Also in this case, no physical change is being made on the ground subject to the variances.

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

1. Final subdivision approval shall be subject to the granting of all variances which are currently pending before the Board of Adjustment, or otherwise determined to be required.
2. A legend shall be added to the subdivision plan to clarify the existing and proposed lot lines.
3. The following documentation shall be provided for review and approval by the Planning Department and Legal Department prior to the filing of the plat:

- (a) Verification that the dwellings on Map 138, Lot 62 will have legal access to the right-of-way along the proposed lot line;
- (b) The proposed deed for the utility easement.
- 4. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 5. GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 6. The final plat and all easement 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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C. The application of **Harborcorp, LLC, Owner**, for property located on **Russell Street, Deer Street and Maplewood Avenue**, requesting Design Review for a proposed 5-story mixed use development with a footprint of 72,680 ± s.f. and gross floor area of 390,831 ± s.f., including a hotel/event center with 141,781 s.f. of event center space and 98 hotel rooms, 14 residential condominiums, a 40,000 s.f. retail supermarket, and 660 parking spaces (490 spaces in a garage structure and 170 below-grade spaces serving the retail use); with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lot 21, Assessor Map 118 as Lot 28 and Assessor Map 124 as Lot 126 and lies within the Central Business B (CBB) District, the Downtown Overlay District (DOD) and the Historic District. . (This hearing was postponed at the December 19, 2013 Planning Board meeting.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Chris Thompson, of Harborcorp, addressed the Board. He was present with their design team who were available for any questions. Mr. Thompson stated they have been working on this project for well over a year and publicly committed to it this fall. On December 2nd they made a submittal for Design Review. They had a public hearing on December 19th where they received a lot of feedback which was helpful. They took that feedback to heart and worked through the holidays for a second submittal of supplemental materials on December 27th. Some of the significant changes they made had to do with comments and concerns from the public and staff to reduce the mass of the project, to create penetrations through the project and create ways to separate the buildings. They also tried to find ways to reduce the roofline where possible and generally work to reduce the massing and scale of the project. They made a presentation at the joint Work Session last week with Planning Board, HDC and EDC.

A plan was displayed showing the first step of this project which was shared at the joint work session last week. Mr. Thompson indicated that one concern they took to heart was the level of the footprint of the project and to create significant breaks in mass at the street level. They are continuing to work in earnest on this plan to take the massing further in the direction of its reduction. In their view they have made a good faith effort to listen to the feedback they have received. In the view of their team, the most helpful format they could have hoped for was the joint work session with the three boards. The plan continues to develop the elevated pedestrian access over Russell Street to the existing Sheraton from the conference center at the 3rd level. They have been pushing hard to see if there are ways to bring the roof area down and those plans are still in process and as they go forward with the HDC process they will continue with that review. In short they feel that the design review process has

been a very successful and instructive process and has allowed them to make the most out of the feedback they have received to come forward with an improved plan.

Rather than go through the submittals to-date and the amended materials they have provided, they have all of them loaded on powerpoint and are able to respond to any questions from the Board or members of the public. At that, Mr. Thompson closed their presentation and asked for questions from the Board and the public.

Mr. Gladhill asked if they have talked to the railroad company at all to see if they are willing to grant easements over the track for pedestrian easements. Mr. Thompson stated they have not.

Mr. Gamester applauded the applicant as he felt they have made a lot of progress in a month already and it appears they are willing to accept and work with public comment. He would like to see at least an exploration of putting more parking underground. He has no idea what is geographically under the ground but he felt it would be more developable commercial space.

Chairman Ricci was thinking the same thing. He asked if the Site Plan and revised elevations were available to display for the public. He felt it was important to spend a few minutes reviewing their revised site plan and also showing an elevation so that the Board can see it and he also felt it may alleviate some of the public's comments and concerns.

Mr. Thompson displayed the elevations showing the original submittals and the plan that assumed the land swap for the reconfiguration of Russell and Deer Streets. As they looked at different ways to design the site, they spent time looking at how to accomplish that without the land swap to keep Russell and Deer in its current configuration and that was one fairly significant change. They heard from the Board, staff and the public that, although there are railroad tracks and because of the condition of the rail corridor on the north side of the project creating a barrier to pedestrian or vehicular progress through the site, the building also should not be a hindrance to that passage so they spend some time working on that. They looked at how to create a very significant break at the first and second level of the garage to create a way through. As they continued to work after the 27th submittal, they continued to work on their plan revised the turn-in area and the hotel conference center entrance and broaden the entry area for loading vehicles to come in behind the site. They also continued to integrate with the work on the Market Street corridor to create the various pocket parks. Another significant change was to try to push further and create a broader pedestrian experience. Things were fairly tight on Russell Street so they expanded the sidewalk and added street trees and widened the pedestrian sidewalk.

He displayed rendering views of the landscaping around the existing Sheraton and the proposed building. He moved through slides starting with their first set of plans. They have moved forward with that design to create a more historic design. He understands that the garage still needs a good amount of work and they will continue to improve upon that. When they come back before the HDC they will be coming back with a fairly improved plan. What they are trying to demonstrate in good faith is to take the feedback to heart and move back towards something more reminiscent of the prior Western design. Their direction is to take all of the feedback and pull it together and see if they can deliver the same program, with some reduction of square footage. In summary, they feel the Design Review has been very successful and will be a springboard for the next step.

Mr. Leduc referred to their letter dated December 27, 2013 where they indicated they were considering a plan where they swap the parking and whole foods locations and asked if they are still exploring that.

Mr. Thompson confirmed they are still exploring it but it is tricky. It is a fairly tight site and there is not a lot of space where the garage and whole foods can co-exist.

Councilor Thorsen had a parking question. Last week a comment was made by the consultant that parking should be hidden within the structure of the building rather than on the outside. They may not have the depth to do that but he asked if they have explored the possibility that more of the parking area façade could be hidden behind other development. Mr. Thompson confirmed they have started to look at that and are looking at garages that have been built around the country. They intend to push further with that. They have seen a series of open garage floors and they are rethinking that fairly significantly so that it ties in better to the rest of the building. Also, one thing they have considered is the significance of the Maplewood Avenue approach. They did an adequate job with the previous project but were not thinking about it as a front door to the City. Over time that is what has unfolded. There is no front or back to this building and all sides have to be quality. One issue is the loading area which is a function of the operation but he acknowledged there is a better way to do that.

Mr. Barker asked what considerations have been made for more underground parking. Mr. Thompson confirmed that they have already put 170 spaces underground and this is an area they will explore. It is a fairly costly endeavor and he is not sure it is warranted because they can do a good job of redesigning the building.

Mr. Barker noted that one issue is how long the façade is unless they break it up. Do they know how big, with the break in the middle, each section is compared to the Portwalk III building. Mr. Thompson deferred to Carla Goodknight on that.

Carla Goodknight, of CJ Architects, stated they will be looking at a variety of ways to break the building up during their HDC work sessions.

Mr. Barker was looking for a comparison of the separate buildings in this project to the Portwalk project. Ms. Goodknight stated that HDC Chairman Almeida mentioned that they will not only be looking at the neighboring buildings, but at the neighborhood as a whole. They will be looking at a 3-D model which is currently in the works of the entire City and they are also looking to work with Tingram who already have a number of buildings in the City modeled. That will give a clear overview of the size of this building.

Mr. Gladhill asked, if for some reason Whole Foods decides not to move it, what would go in their space. Mr. Thompson responded that they have a very specific relationship with Whole Foods and that is why they are creating the components the way they are. Without Whole Foods, it would change the entire look of the project.

Chairman Ricci opened up the public hearing and called for first time speakers (3 minute limit).

Bill Haggerty, 1704 White Cedar Boulevard, objected to the square lines of the modern architecture. He felt the Athenaeum could be a good model.

Ken Murphy, owner of 439 Middle Street, was on the Portsmouth BOA for many years. He appreciates the Board's service to the City. He is in favor of the project as a general matter and helps the City in many obvious needs. His personal opinion is that the City Council should have done something about the parking but they didn't. Having a convention center is a good idea. He is on the Board of 3S Artspace who has an agenda item this evening and he fully anticipates that project will start soon on

Vaughan Street and he would like to see a way for people to walk from Portwalk and across this project to Vaughan Street.

Steve Sanger, a Portsmouth Resident, stated he has seen a lot of changes. He has tried to become involved in the City and was involved in Portsmouth Listens. One of the great things about Portsmouth Listens is that it brings people together to look at the City's vision. They came out with a passion for a livable and walkable City. A key recommendation they made was that the City should have a supermarket downtown. He really likes this development and believes it is a diverse, urban development. He feels the developers are very open to comments of the public and very much in line with the City's Master Plan.

Nancy Pearson, President of the Board of Artspeak, the City's Cultural Commission. She wanted the Board to know that Mr. Thompson has already reached out to Artspeak to put public art in the development. They will be helping them as much as they want, making sure the developers are in touch with local artists. They are already being proactive. She also stated that she is in favor of the Whole Foods.

Matt Solomon, is a local resident and business owner. He felt this is more positive than last month's meeting. He is an even stronger advocate for it, especially for the parking. Any Thurs, Fri or Sat night he struggles to find a parking space for his apartment. A grocery store and conference center are a plus.

Steve Barndollar, of 120 Ridges Court, has been a resident for 33 years. He is basically for the project and feels development is good if done right. He has a problem as he goes down Maplewood and the size of Portwalk and this building would be even higher. Portwalk has massive brick and is built right out to the road with very little green pedestrian areas. They risk seeing a massive 10 acre site at a 50' elevation so when they enter the City from the salt piles they will see nothing but brick. He would like to see them incorporate some terrace type building and transition down to Vaughan Street. Some greenery and a more varied front and back would cut down the massive brick façade.

John Wyckoff, is a member of the HDC but was speaking as a private citizen tonight. Concerning the functions of this building, as opposed to design and the rendering, he is looking at a building with a parking garage, conference center, retail, restaurant, hotel and condos. He is feeling that some discussion should be made to cut down some of the uses and concentrate on the conference center, the whole foods and the parking situation as those are the most important items of this proposal. Residential and another hotel are a decision that needs to be made. He feels if they would cut down on the functions they could reduce the size of the building. The HDC Chairman, Mr. Almeida, brought up the question of a little more underground parking to alleviate the size of the structure. By eliminating the residential and hotel uses, they would not require as many parking spaces. Mr. Gladhill brought up an idea of discussing a bridge over the railroad tracks, or something similar, and he felt that was a great idea to make the area more accessible.

Jeffrey Kissel, lives on Wallis Road in the Maple Haven neighborhood and was born in Portsmouth. He loves and respects the City. He is the founder of Portsmouth Forward which agrees that change is inevitable but they can help form it. The goal of this group is to assure that citizens are properly heard to promote the responsible development in the City without putting unreasonable restraints on those willing to invest in moving Portsmouth forward. He felt it was too early to fully endorse this project, however there are many positives. This project resolves a lot of needs of the City, including a downtown grocery store, public parking, a civil conference center and a good use of under utilized

land. It brings jobs, tax revenues and sustainability. The height of the building is less of a concern to him as many historic building exceed this height. He likes what Portsmouth was, what it is now and what it will become.

Anthony DeLorenzo, of 33 Bow Street, is a 30 year resident of Portsmouth and a business owner and a tax payer. He supports the project and believes it is a great use of the property. He looks forward to having the opportunity to buy groceries within walking distance of his house. He believes that tourism is the most important economic engine in their community and the conference center benefits the entire City. As a taxpayer he appreciates the revenue this will provide and believes the entire project is a benefit to the City and he supports it.

Wayne Semprini of Newcastle, is a lifelong resident of Portsmouth and Newcastle and he is speaking in support of the project. He has noticed that there is a real strong anti-growth sentiment running through Portsmouth these days. His Italian grandparents lived in the north end and his other grandparents lived in the Puddle Dock area. He wanted to remind folks that they have already ruined that community and they replaced it with an absolute disaster. He feels projects like this and Portwalk are wonderful projects. He's not crazy about this design as the parking lot looks a lot like Maine Medical Center as you head down I-95 but he is very supportive of what they want to do with this project. In 1972 Portsmouth was nothing but a quick stop to get gas on the way from Boston or Maine. Now they stay in Portsmouth and visit Maine and a big reason for that is the great job that has been done in developing Portsmouth.

Dr. Kathleen Wheeler, is the owner and director of Independent Archaeological Consulting, and she will bring a whole new view. She is more interested in the historic resources below ground. She has met a lot of developers and not all are equal. She has been in a conversation with Harborcorp since 2006 and they have engaged them to work on their behalf to investigate the historic resources below ground. She also added that if you are coming from out of town and don't want to explore too far, its nice to have a friendly grocery store to stop at.

Pete Geremahta, of Maplewood Avenue, not too far from where this development will be. He has lived in seacoast his whole life, attended Portsmouth High School and UNH and bought a house in 2007 in Portsmouth because he loves the City. He believes this project will contribute to the City's beauty and will add things that the City does not have right now. The parking garage is often full and that frustrates him. This project will give them over 100 parking spaces for public parking. Also they will provide parking to sustain all of their uses. The conference center, during the slow times in Portsmouth during the winter, can bring in people to help business owners. He is very excited about Whole Foods. He is also happy with Whole Foods because they source a lot of their products locally. He fully supports this project and feels it will be good for the City. He is not concerned about the height of the building s there are other buildings in the City that are the same height or higher.

Jason Boucher, was born in this building (City Hall), went to Portsmouth High School and lives on Wibird Street and is involved in the local art community. He loves this City and the changes. He believes this project is great. There used to be an A&P downtown and now they will have the chance to walk to a grocery store again. A conference center is great for film festivals or UNH events to bring people into the City to spend their money. Parking is a huge thing for him and has been working to help get a new parking garage built. Lastly, he mentioned the \$750,000 annual tax revenue that Harborcorp would be making. Considering that over the course of the past two years our city's teachers had to give back over \$600,000 in promised contracts and raises due to a budget shortfall, he

felt this increased tax revenue could make a large impact on the City's operating budget. He would like to see better landscaping, wider sidewalks and more partnerships with local artists.

Peter Eggleston, owner of Portsmouth Brewery and Smuttynose Brewing Company, stated that he feels very strongly about this project and he is speaking in favor. First, he recognized the Chair and the Board members for the work they do. It is a thankless task sometimes. He likes the concept of this project, the mixed use, and the parking. In 1990 when they started construction of the Portsmouth Brewery, the A&P was still there along with Newberry's and Peavey's Hardware where you could purchase everyday items. It's nice to see the tide starting to move back in that direction with the proposal to have a real supermarket in downtown. The principals behind this project have been great neighbors for 23 years. They have been terrific and supportive members of the community as a whole and this project is an indication of their commitment to this community. He also wanted to say that this Board and the HDC will do their jobs and put the developers through the paces and make them respond to legitimate concerns about traffic, building massing, etc. He will be looking for an attractive building that honors the surrounding buildings and the community.

Jay McSharry, of 58 Pleasant Point Drive, also owns several buildings in town. He is speaking for the project. Some things can come and go and they have lost out with other developments or projects in this town before and they need to grab a hold of things. They need to do it right and he feels the City has great staff and boards to work with Harborcorp to get it right. There are a lot of people present tonight, both for and against, and that is not always seen because people are so busy with their lives. It is the task of the Boards to make it happen and make it happen right. A conference center isn't just great for Portsmouth, it's great for the whole State. There is no good conference centers where 500 people can meet and this would be a huge attribute to the City and the State. Whole Food was just rated 41st best employer in the country. He could not see how they wouldn't want a good company in the community.

Art Gregg, of 13 Salter Street and is also a business owner in town. He advocates strongly in favor of this development. He doesn't think he has much to add to the two previous speakers except the Board has a tough job ahead of them. He misses the old downtown shops and he worries what they won't be able to buy anything downtown except buy clothes. He finds it ironic that The Health Food Store seemed so precariously in need of the City's parking to be successful which make him question about how solid their business model is if it would not succeed without the parking that is given to them by the City. Yet, Harborcorp is a development that is not only going to sustain itself but it will bring in the type of service that the downtown will truly use. It will sustain itself, it will give back, create great space for the City and it will provide a huge tax revenue to the City. He also speaks on behalf of the film festival and his own business. It was always his dream to do great stuff in the City and to make things happen and it is developments like this that will make it possible for him to stay in business and thrive. He advocates for this project but implored the Board to hold them to a high standard.

Angela Pont, of 133 Miller Avenue, was generally in favor of the project and is very excited about a Whole Foods. She loves Portsmouth because she can walk to everything. The only thing she had to get in her car for was the supermarket. She respects their CEO and how they handle their employees and they will support farmers and growers in NH. The Conference Center will support all of the little shops in Portsmouth. Summertime has a lot of tourism but in the off seasons this would be great for businesses. She was concerned about the scale and her issue is design. If it is beautiful, pedestrian friendly, with greenery and communal art, she generally speaks in favor.

Larry Gormley, was an attorney speaking on behalf of the Market Wharf Condo Association which is directly opposite the Sheraton. That Association is comprised of 29 direct abutters to this project. Those 29 owners have an easement to use 58 parking spaces directly on this space. He is not here to speak for or against the project but his directive is to alert them to the fact that his clients have a deeded right to use this property and they are concerned about their future right to use it. Attorney Gormley stated that they need to be part of this process.

Steve Scott, of 377 Upper Richards Avenue, works downtown. Based on the concept he has seen he really likes the project. He used to work at the A&P during his UNH days and it is great to have a grocery store downtown again. He loves the convention center as they could use something bigger than what is currently available. The city has an obvious need for the parking garage. He is supportive of this project and it is the Board's job to make sure the massing and design are appropriate to the local area.

Joe Calderola, of 170 Dennett Street, stated that he believes the requirement to submit a slideshow the day before is a violation of the first amendment but that is a discussion for another time. As he studied this design review request he keeps finding questions about the design review regulations. During his slide show he will refer them to December 9th, the date of the posting of the public notice, because the question of when the request is required to be complete does not appear to have a clear answer. He has concerns about when vesting begins. He went through other items in the Design Review requirements that he questioned. He also indicated his slide show is 11 ½ minutes and he asked for permission to go over the 10 minute limit for second time speakers.

Jerry Zelin, from Portsmouth, stated he is not against growth or the building on this lot. He questions whether this is the right building. He has heard people question how this will relate to Portwalk III. Mr. Zelin indicated that the footprint of Portwalk III is 50% smaller than Harborcorp and he compared other aspects of the two projects. He believes this building can be reduced to comply with the Zoning Ordinance with a height of 45' with some portions approaching 60'. Having the whole building 60' high is over-reaching.

Bill (last name inaudible) was inspired to speak by some of the compliments made about the parking this will provide to the City. He would like to comment that he is for development of this area but objects to this specific proposal. He sees this project as a gross parking deficit. He reviewed the uses vs. parking spaces provided and feels they don't have enough spaces for their uses, especially with the conference center.

Fred Sullivan, stated that he grew up in Portsmouth and is in support of the project. He felt the benefits are multi faceted and they are doing a great job with it.

Mary McCallum stated that she agrees with previous speaker and believes the parking plan is nothing but a smoke screen and it will not solve the City's parking problem. She asked who will be policing the parking spaces to make sure they are being used by the citizens of Portsmouth. She also felt there are plenty of grocery stores in the area and Whole Foods is very expensive. She would rather see off site parking with a shuttle to bring people into our City.

Arthur Clough of Pleasant Street felt this was a nice design but it's in the wrong location. They are putting a monstrous sized building in the downtown. He has a problem because Harborcorp is asking for an exception of the 45' height limit. He added that there are already two grocery stores downtown and people seem to be turning a blind eye to the Health Food Store. Lastly, he felt there will be new

traffic flows going into an already congested downtown which will affect the downtown. He felt because of the scale, the unbroken characteristics and their request for a height exception this project should be retooled in a big way.

Lawrence Cataldo, of Islington Street, commended the Planning Board for their unenviable task of getting through this. He felt this is a wonderful town with a lot of cultural heritage. The Harborcorp project is not a bad concept but the issue is with mass, size and the fact it doesn't quite match the Portsmouth culture. He hopes Harborcorp will work to make the project work and belong with the community. He thinks they can get through the problems of this development but they need to make it fit into Portsmouth.

Claire Kittridge, of 27 Franklin Street, is Portsmouth Now, a civic group. She stated there is a lot of misinformation going around but they feel that the City is moving in a direction that is too radical. This project is too big and needs to be broken up. She is glad this developer is expressing a willingness to have a dialogue and work with people. She agrees with the questions that have been raised about vesting. Many people feel that different rules are being applied to the "big guys" than those being applied to the "little guys".

Jeff Mountjoy, of 62 Orchard Street, is a local business owner. During the past 19 years he has seen nothing but development and growth and the City has gotten better and better. The quality of life in Portsmouth wonderful and taxes have remained low thanks to the tax base of developments such as this one. They are tourist mega and one of the best places in America to live and work. They got to this place because City Boards have worked together with developers to bring about projects like this. He supports development and thinks it is a good thing and a sign of success. Portsmouth is seeing success like it has never seen before. He also speaks for his kids and future generations. He wants Portsmouth to be a great place for his kids and he fully endorses the project.

George Carlisle, of 18 Congress Street, was born and raised in Portsmouth. He not only live at 18 Congress Street but co-owns a business in downtown as well. He and his wife live, eat and breathe in the downtown. He is strongly in favor of this development. It will be a huge economic and social boom for the City. The last year has had a negative air about development. He feels we are all huge beneficiaries of development in downtown Portsmouth and it has never been in a better place. Taxes are lower because of what has happened in downtown Portsmouth whereas the rest of New Hampshire had had their tax base increased. He understands this is a large building with many uses but his mother grew up 100' from that spot and she would be cheering to see this being made into a vibrant area after being a parking lot for 65 years. He applauds the project.

Mark Frank, of 1275 Maplewood Avenue #7, opposes this project due to its massing and location. He recently moved from Buffalo, NY, which is in decline and full of derelict and abandoned buildings. They found that the larger the building, the harder it is to find tenants. When Whole Foods moves out, they will never fill it with another business.

Chris Hackett, of 105 Thornton Street, didn't plan on speaking but one thing that really floored him was the number of jobs that would be coming to this community. He is very much for this project for what it brings to the downtown. He has a young family and whenever they have an opportunity, they walk to town. This will only make the City better.

John Gilbert, of Thornton Street, is in favor of a development on this plot of land and just feels it is a little too big. He asked if a traffic study had been done yet. Chairman Ricci explained that a study had

not yet been done. Mr. Gilbert is glad to see a pedestrian walkway through the building. He also asked if it was possible to actually lower the building to 45' and still make it economically feasible. Mr. Taintor confirmed that the building cannot exceed 60' from the street level. Mr. Gilbert also mentioned that the Health Food Store is downtown and Whole Foods would likely put them out of business.

David Lord, (address inaudible), asked about the competency of the architectural firm. They have not presented a current graphic representation of the changes they have made. He asked if the architectural firm had been deceitful with regard to the demand for parking spaces or were they just unable to do arithmetic. He asked the Board to be very vigilant about the ideas that are brought before the Board. The project needs to be scaled down drastically and it needs to relate to the City.

Jim Eath, 40 Sommerset Road in Portsmouth, and he has not made a decision about how he feels about this project but is concerned as tax payer and resident of the City. He spends a lot of time walking around town and he is overwhelmed by the size of Portwalk. He doesn't want to see another monstrosity downtown that hinders his view of the sky.

Barbara DeStefano, of 99 Hanover Street, spoke in favor of this project and is excited that 23 people ahead of her have spoken in favor of this project. She looks out at the new Portwalk and is so excited about what is going to go on inside. There will be places for people to live, work, shop and eat downtown. She is looking forward to the Convention Center bringing more people downtown who will want to return. She felt this is a win-win-win. This is just the initial development process and this will have to go through multiple City Boards. She also felt that Portwalk III looks really, really big but when all of the jersey barriers and scaffolding comes down it will look nice. She is strongly in favor of this development.

Mary McElwain, of 259 South Street, requested that a 3-D model be part of the education process for the City. She knows the City is in the process of setting up this procedure. The architects and developers should have the ability to produce that, and also it should show its relation to Portwalk. Something that can sit on a table of the whole complex would be a huge benefit.

Drew Schultess, is a resident and business owner. He felt one thing to look at is that Whole Foods is a great business to come to Portsmouth. He feels it is unbelievable that a business like Whole Foods wants to come to Portsmouth. They will have people shopping and going in and out of the building, and along with the Conference Center, this will be a big utility piece that the City needs. He felt we are the e-coast technology area and a conference center will help get them on the map. He felt this project is very exciting.

Rick Beckstead, 1395 Islington Street, was raised in Portsmouth. He doesn't feel anyone objects to the interior of the building. It is the mass, size and scale of the building that people object to. His biggest concern is parking and believes Councilor Thorsen made a good point about parking at the Work Session last week and whether it would be adequate at peak summertime hours. He felt that traffic will be a big part of this and they still haven't even seen a traffic report. He feels if everyone works together they can come up with something positive for the City.

Micaela Purcell, of 124 Raleigh Way, has lived in the City for five years and owned for one year so she is now a taxpayer. She came to the meeting looking for more information. She is not necessarily for or against the project but has concerns about traffic congestion. The garage is always full and there is a lot of traffic backed up from Market Street as well as from Maplewood and its getting worse. She

felt they have a lot of grocery stores in town and people can walk to Hannafords. She wants to look at the big picture before moving ahead.

The Chair called for any further first time speakers. Seeing none, he called for second time speakers.

Bill Haggerty, of White Cedar Boulevard, moved to the City in 1968. He loves Portsmouth. He talks to a lot of people downtown who wish there was a grocery store downtown. He has an engineering background and is concerned about transportation. It seems like they should require a mini-bus terminal providing cars the size of mini-golf carts so that customers can take their groceries home.

Joe Calderola made a powerpoint presentation pointing out what he thought were omissions in the design review process. He was allowed 11 ½ minutes. He asked the Board to find that the Design Review Submission was incomplete.

Jerry Zelin felt they were prisoners of the program that the developer has come up with and he asked the developer to modify that program. They are driving a building that is 60' tall and if they eliminated the boutique hotel and the 14 apartments, they could eliminate 1-2 floors in the conference center wing and would allow them to have variability of the height. He wonders about the size of the apartments and wonders what luxury apartments would add to the City. This building will have 390,000 s.f. and Whole Foods will occupy about 30,000 s.f. so it is not Whole Foods that is driving the size of the building. Lastly, he wanted to follow up on what Joe Calderola said, which is to point out that what has been submitted does not satisfy the legal criteria for Design Review. What makes Design Review so momentous is that it leads to vesting. If the design review submittals do not meet the Design Review regulations then it is incomplete and there is no vesting. Someone has to decide whether the plans were not complete and that should not be the developer or the Planning Department. He felt the Planning Board has to decide whether the application for Design Review is complete. It doesn't have to be tonight and it is within their power to postpone that decision as long as it takes for them to determine whether the submission was complete. Whether this plan will be exempt from new zoning amendments rests on the Planning Board's decision of whether this Design Review is complete.

Jonathan Springer, spoke at Attorney for Harborcorp. Attorney Springer noted that Mr. Calderola said that he has asked a lot of attorneys about what constitutes a complete application and he could never get an answer. Mr. Calderola never asked for his opinion but he was happy to give it to him, although it was not just his opinion but rather it is State statute 676:4 which states that a completed application means that "sufficient information is included or submitted to allow the Board to proceed with consideration to make an informed decision". Attorney Springer sat through 3 hours of opponents speaking at the December 19th meeting and not one person said that they did not know what this project is about or that they did not have sufficient information. To the contrary, he heard Mr. Zelin give all of the square footage information and comparisons to other projects so he knew exactly what this project was about, as did every other single speaker. He felt it was interesting that Mr. Calderola, who went over these plans with a fine tooth comb, came up and said that certain things were missing. The lay people who have spoken against this project are not saying they don't know what the project is about. He believes the Board feels that it has sufficient information to proceed with Design Review. Also, you can't even get to a public hearing without a request so the very fact that this Board went into public hearing is an indication that this Board has sufficient information. Mr. Zelin referred to his memo which was sent out today and Attorney Springer responded 4:00 pm. Mr. Zelin said the conceptual review and design review are a two step process and that is wrong under state statute. A party can submit for one or the other or both. They do not have to do conceptual. He also talks about vesting. It is not a technicality. It has been upheld by the Supreme Court many times and has a very

useful purpose. He continually hears about how they are rushing to beat the deadline however this project has been in the works for many, many months. Once they finalized negotiations with Whole Foods, they were able to move forward. The only thing that was rushed through were zoning amendments aimed at killing their project. Attorney Springer stated that vesting is allowed during Design Review so that a project can know that it will not face proposed zoning amendments down the road that would kill the project. The only other point he would make it when Mr. Calderola says he is not playing “got cha”, he certainly is. These plans are “preliminary” and a work in process which is the whole purpose of Design Review. They don’t think there is any question that while there are questions to be addressed, to say that people didn’t have a fair view of this project or not enough information, in his opinion, is incorrect. They are asking the Board to close Design Review tonight so that they can move on.

An unidentified gentleman wanted to let Attorney Springer know that he doesn’t understand the project. He had been given the impression that Whole Foods was using a lot more square footage.

Ms. McElwain, of 259 South Street, stated that she doesn’t understand it and that is why she requested a 3-D plan. They need more detailed information.

Ms. Kittridge stated that she doesn’t understand it either but just tries to avoid Portwalk as much as possible. Also, they are not trying to rush zoning changes through.

Mr. Mountjoy stated that he doesn’t understand the project either. He felt that Mr. Calderola’s powerpoint was a great piece of work. At the December 19th hearing the issue of vesting came up and it wasn’t answered.

Mr. Taintor stated that he provided the Board with a memo regarding vesting at the request of Councilor Thorsen. Under the statute for Design Review, what vests a project that has requested design review is having public notice of the design review public hearing and that happened. The question that is raised by others is what if the law is not what it means. The law doesn’t say anything about the completeness of an application and, in speaking with the City Attorney, since there is nothing in the statute about a complete application, it just simply says that they have to have a public hearing notice published for it to be vested. If the Planning Board decided to vote on the question of completeness, which they do not have in their regulations, and the Board voted in the negative, he doesn’t know what that would mean or whether it would effect the vesting because the law says what vests the projects is actually the public notice. Accordingly to the City Attorney and their interpretation of the law, this project is vested. It means that the project can move forward under the current zoning ordinance and the current zoning ordinance involves going to the Historic District Commission which has the authority to not grant a conditional use permit to go above 45’. It has to go through Site Plan Review which can also reduce the height. There is a lot of process to go through. This simply determines what Zoning Ordinance the project falls under and to provide input to the developer.

Paul Mandle, of 1490 Islington Street, felt that this can be a great project and the developer has been very sensitive to all of the constructive criticism going on. He wanted to talk about flipping the design and putting the parking garage where Whole Foods is. At the joint work session, Mr. Almeida made a suggestion of going down one level. He thinks three levels underground would be great. He would like to have them put Whole Foods on Maplewood Avenue and have the trucks go all the way under the building, eliminating all of the traffic being generated on Maplewood. That would also eliminate the need to be 60’ tall.

Chris Thompson wanted to respond to a couple of comments and wanted to say that the nature of this process is that they have had very comprehensive feedback and critique. They have made some very significant commitments to make this a better project. He pointed out that the Conditional Use Permit comes with criteria that they would have to meet and they are rigorous. Either they will meet the criteria or they won't. He would agree with one of the speakers who liked everything about the project but wants to see it be a beautiful building, as do they. Mr. Thompson restated that this project does not work at 45' but it doesn't require 60' everywhere. At the next step of this process they will dig into the plans and design review.

Mr. Kissel spoke about the general negative connotation feeling that people have about downtown Portsmouth. He disagrees with that and, speaking on behalf of a younger generation, they love what Portsmouth is. It is not what it was in the 1980's and it has become more urban. Some people don't like to see the changes but there is a strong majority who are enjoying it.

Seeing no further 2nd time speakers, the Chair called for 3rd and final time speakers.

Mr. Zelin referred to a Memo from the City Attorney that was mentioned and that it basically says that the project is vested, it is filed and no one has a chance to vet whether what was filed is complete. Mr. Taintor responded that he was not sure there was a memo from the City Attorney. Mr. Taintor prepared a memo based on what had been discussed. Mr. Zelin felt that the City's position is wrong and that it was absolutely astounding if the Planning Board is adopting the position that whatever the developer files is ipso facto complete because the developer says it is complete. The Statute says that the Planning Board may establish "reasonable rules and procedure relating to the design review process including submission requirements". That implies that there are standards that have to be met. Given all the unanswered questions that their regulations demand as part of the design review project, he asked what the heck has been vested. Mr. Zelin felt this could cause chaos down the pike.

Mr. Calderola felt that Attorney Springer tried to turn his presentation into a general review of the building, however, his point was that the Board should follow all of their design review requirements.

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. Taintor indicated that in his staff memo he recommended that they determine that the design review process has ended. The developer and the Board heard a lot of comments regarding various items, through the December 19th public hearing, joint work session and tonight's public hearing. The second option concerns the question of completeness and they could continue the design review until a future meeting to allow for more feed back to the developer. The third option would be to vote on whether the application is complete. There is nothing in their regulations about voting on completeness of design review as it is not an application.

Chairman Ricci advised the Board that they typically start with a motion but he thought maybe they can start with some dialogue. He stated that he is very happy with this and he doesn't see how any applicant could come up with a design plan and that would be an injustice to this board, the public and the applicant. This process did what it was supposed to do. He wouldn't want the applicant to go too far with this design before going to the HDC. He felt this process did exactly what it was supposed to

do. The applicant readily admits there is a long way to go. This building can be reduced as it goes through their approvals. This City does a remarkable job with applicants and public input and when the applicant makes their submission it will be a better design as a result of this process.

Mr. Rice made a motion for the purposes of discussion that the design review process has ended. Mr. Hopley seconded the motion.

Deputy City Manager Allen felt this was a tough process for the Board as it is new. They have filed a large plan set with a lot of details however the plans have changed, not insignificantly, as a result of public comments and staff comments. It isn't perfect right now and the part that is missing is that design review brings them to a point where they acknowledge that they are going in the right direction but still have a huge road to go down with the rest of the land use boards. When the dust settles, this process will have done a lot of justice for this process.

Ms. Moreau was in full agreement with Deputy City Manager Allen. When they looked at adding design review in the regulations, it was to give preliminary feedback in the beginning of the process. This gives the Board an opportunity to do this before they get too far down the road. She felt this process worked incredibly well for this project.

Councilor Thorsen stated that he wants to see this project completed in a good design and is glad to see there has been a lot of back and forth. He has procedural questions. Does this design meet the Planning Board regulations for design review and he didn't see where that was answered. The City Attorney gave his opinion but he hasn't seen where anyone has answered specifically that what was presented meets the regulations. He has no comment on that and is just asking the question. Second, he asked what is the criteria to close design review. Lastly, for public input, he indicated that the term design review sounds like getting into the design and reviewing it whereas this process appears to be more of a design presentation and just to get started on the process by giving feedback to the developer. He wanted to remind the public that design review may not be what they think it is and it doesn't get into the nitty gritty detail.

Mr. Taintor confirmed that it is not design review in the sense of an HDC review or a TAC review. If you imagine the sequence of how you develop a plan, you provide enough information so that the Planning Board can give meaningful feedback to the developer before final engineering is done. At that point, the Design Review process is done.

Councilor Thorsen asked the Board if they think they have provided adequate feedback to the developer so that they can go to the next phase. Mr. Taintor confirmed that the only action that the Planning Board can do under the statute is that the Design Review phase has ended.

Mr. Gladhill indicated, for this project, he could definitely see the benefits of design review. They spent months and months at the HDC on Portwalk III and it then went to the Planning Board where site changes were made so it had to go back to the HDC for more exterior design review. This will help shorten the HDC process. He felt this is a great process.

Mr. Hopley felt it was time to end the design review phase and move to the next step. He was comfortable understanding the scope of the project. He is not comfortable with this current configuration but still understands the various components. There still needs to be a lot of research by the developer regarding the parking garage/retail flip and he is certainly not comfortable about how this project looks as you approach from Maplewood. Also, everyone talked about the 60' and the

vesting is very important. Mr. Hopley would think that one of the last things that Mr. Calderola would want, being a developer and builder, is to start a project, expend a lot of money and then have the community pull the rug out from underneath his feet because the rules changed. That is unfair to everyone. Everyone needs to know what the rules are upfront and people can't be switching them around half way down the track. He also thinks that some people are missing the point that the rule is that they are allowed to build to 45' and the development needs to demonstrate that they should be able to go up higher.

The motion to close the public hearing and vote to determine that the design review process of this application has ended passed unanimously.

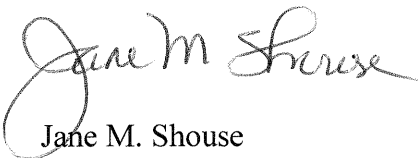
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Mr. Taintor reviewed a schedule that he prepared for the Board regarding upcoming zoning amendments. Several items have been referred to the Planning Board by the City Council.

Councilor Thorsen commented on the Mayor's request to evaluate Design Review and when this came up at the City Council Meeting he asked exactly what were they asking for. His concern was it would come to this Board and they wouldn't be clear on what they were supposed to do. The Council asked him pole them to come up with an idea of what was on their minds. He asked what his deadline was to get the information back to this Board prior to the meeting so that they have sufficient time to review any of the suggestions he will be collecting. Mr. Taintor suggested one week prior to the meeting would be sufficient time.

V. ADJOURNMENT

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

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Respectfully submitted,



Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved at the May 15, 2014 Planning Board meeting.