

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

MARCH 20, 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 Justin Finn, Alternate

MEMBERS EXCUSED: Jay Leduc, Alternate

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

- A. Approval of Minutes from the October 17, 2013 Planning Board Meeting - approved unanimously.
- B. Approval of Minutes from the October 24, 2013 Planning Board Meeting – approved unanimously.
- C. Approval of Minutes from the October 31, 2013 Planning Board Meeting – approved unanimously.

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Mr. Gamester made a motion to read in Items A and C under Old Business, and Items C, D & E under New Business for the purpose of postponement. Ms. Moreau seconded the motion. The motion passed unanimously.

II. PUBLIC HEARINGS – OLD BUSINESS

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

A. The application of **Ertugrul Yurtseven, Owner**, for property located at **292 Lang Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a wetland buffer, to construct a 15’ wide paved driveway, with 4,885 s.f. of impact to the wetland buffer. Said lot is shown on Assessor Plan 287 as Lot 4 and lies within the Single Residence B (SRB) District. (This application was postponed at the February 20, 2014 Planning Board meeting)

Ms. Moreau made a motion to postpone the Conditional Use Permit application to the April 17, 2014 Planning Board meeting. Mr. Hopley seconded the motion.

The motion to postpone Conditional Use Permit application to the April 17, 2014 Planning Board meeting passed unanimously.

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C. The application of **Borthwick Forest, LLC, Owner**, for property located **between Islington Street and Borthwick Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a road from Borthwick Avenue to Islington Street in connection with a proposed subdivision, with 10,700 s.f. of impact to the wetland buffer and 5,800 s.f. of wetland buffer restoration. Said properties are shown on Assessor Plan 233, as Lots 112 & 113 and Assessor Plan 241 as Lot 25 and lie within the Single Residence B (SRB) District and the Office Research (OR) District. (This application was postponed at the February 20, 2014 Planning Board meeting)

Ms. Moreau made a motion to postpone the Conditional Use Permit application to the April 17, 2014 Planning Board meeting. Mr. Hopley seconded the motion.

The motion to postpone Conditional Use Permit application to the April 17, 2014 Planning Board meeting passed unanimously.

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III. PUBLIC HEARINGS – NEW BUSINESS

C. The application of **Searay Realty, LLC, Owner, and Public Service Company of New Hampshire, Applicant**, for three properties located at **445 Route 1 By-Pass, off Borthwick Avenue and off Barberry Lane**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to remove two existing buildings, the paved driveway and the existing substation and to construct a 12,250 s.f. gravel substation area with associated equipment, poles, fence, gravel accessway and paved driveway apron, with 48,945 s.f. of permanent impact to the wetland buffer plus 5,525 s.f. of temporary impact to the wetland buffer and the removal of 17,120 s.f. of impervious surface from the wetland buffer. Said property is shown on Assessor Plan 234 as Lots 2, 2A & 7-7 and lies within the Office Research (OR) District.

Ms. Moreau made a motion to postpone the Conditional Use Permit application to the April 17, 2014 Planning Board meeting. Mr. Hopley seconded the motion.

The motion to postpone Conditional Use Permit application to the April 17, 2014 Planning Board meeting passed unanimously.

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D. The application of **Christine V. Crockett, Owner**, for property located at **209 Gosport Road**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 2,081 ± s.f. (footprint) dwelling and a 14’ wide driveway (12’ paved), with 925 ± s.f. of impact to the wetland and 2,750 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 224 as Lot 10-12 and lies within the Single Residence A (SRA) District.

Ms. Moreau made a motion to postpone the Conditional Use Permit application to the April 17, 2014 Planning Board meeting. Mr. Gamester seconded the motion.

The motion to postpone Conditional Use Permit application to the April 17, 2014 Planning Board meeting passed unanimously.

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E. The application of **Francis Sullivan, Owner, and Janice Stanley, Applicant**, for property located on **Brackett Road**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 2,464 ± s.f. (footprint) dwelling with proposed pervious driveway, with 4,020 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 206 as Lot 17 and lies within the Single Residence B (SRB) District.

Ms. Moreau made a motion to postpone the Conditional Use Permit application to the April 17, 2014 Planning Board meeting. Mr. Gamester seconded the motion.

The motion to postpone Conditional Use Permit application to the April 17, 2014 Planning Board meeting passed unanimously.

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II. PUBLIC HEARINGS – OLD BUSINESS

B. The application of **Strawbery Banke, Inc., Owner**, for property located off **Washington Street**, requesting Site Plan Approval to construct a 12,500 s.f. seasonal ice skating rink with an 8' x 10' transformer, a 25' x 10' rink chiller and a 25' x 60' concession pavilion, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 104 as Lot 7 and lies within the Mixed Residential Office (MRO) District and the Historic District. (This application was postponed at the February 20, 2014 Planning Board meeting)

Mr. Gamester and Mr. Barker recused themselves from this hearing.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, appeared on behalf of Strawberry Banke. Also present was Lawrence Yerdon, CEO; Rodney Rowlands, Operations Manager; Jeff Keefe, Project Coordinator; Brian Murphy, Project Architect, and their lighting designer.

Mr. Chagnon displayed a conceptual rendering to give the flavor of the proposal. Strawberry Banke is working with local businesses and volunteers to build a winter skating rink with a temporary structure on left. This activity will occur during the winter season and the ice will be frozen with a rented chiller. A new electric transformer will be installed to supply power to the rink. The rink will be used once a month for a special event. There is ample parking at the paved parking lot and spill over parking for over flow capacity. They will arrange for the removal of the rink, decks and walkway on a seasonal basis. The buildings will be stored on the property or at an off site location. They appeared before the BOA on June 13th and received approval for the use and they appeared before TAC on March 4th and received a favorable recommendation for Site Plan Review. They have filed with the HDC and will be heard in April.

Mr. Chagnon reviewed the plan set. Highlights include :

- The rink is 312' from Marcy Street and 191' from Hancock Street.
- Temporary structures include: The storage shed for skates, the ticket shed and some decks.
- The decks wrap around the east side of the rink to cover the chiller pipe.
- The proposed chiller will be on a pad and surrounded by a fence enclosure which is a sound barrier to mitigate the noise of the chiller.
- There will be a reserve parking area next to Marcy Street that will connect to the existing parking area.
- There are 55 parking spots in the reserve lot and 87 in the existing parking lot.
- Traffic flow is shown on the plans.
- New drains will handle surface water run off and connect to existing drains.
- There will be a new power service from Marcy Street to the transformer.
- The electric service will run to the chiller; the conduits will be buried, capped off in spring time and covered over.
- The chiller will only run when needed to keep the ice cold.
- The ice rink is surrounded by a fence.
- The Lighting Plan shows lighting at the rink, the existing parking lot and the edge of the lot; lights will be replaced with LED downward pointing.
- The Architectural Plan A-1, shows elevations of the structures.

Also included as support material were a Traffic Assessment and the conclusion states the project would generate between 32 and 65 peak generation trips. (32 comes from the ITE manual.) The project team also studied another facility nearby in Durham and the actual trip generation may be closer to 65 peak hour trips. The engineers concluded that it is a minor impact and that the level of traffic would not burden the flow of the network.

The Monitoring Plan by Strawberry Banke shows how they will do pre and post measurements of sound levels and lighting to assure that the project stays within the ordinance levels. It also provides for parking security measures.

The Staffing Summary states that a team will run the rink and it will be well staffed. They are experienced at operating functions such as this so their experience will give a certain level of trust. They will do what is needed to do to keep peace and run the operation correctly.

Jeff Keefe, Co-Chair and Project Coordinator of Puddle Dock Pond, discussed the operation schedule. Over the past year he has recruited an amazing team of pro bono professionals to manage the project. From the very beginning there has been a tremendous amount of careful thought to design the ice rink in a way that is tasteful as well as respectful of the neighborhood. The idea was to have outdoor recreation in Portsmouth during the winter. It will be a place to gather in the winter, a place for outdoor recreation and limited performing arts. As part of their programming, three times per year they want to bring a professional skating show. He reviewed their schedule of events and stated they want to have a venue for everybody, whether for a spectator, skater, to play pond hockey or just spend time with your family. He handed out a music schedule that was layered over the activity schedule. There are defined times for music but more of the time they will not be playing any music.

On January 27, 2013, when they had their first presentation, the hours of operation were 8:00 am - 10:00 pm. As a result of feedback they revised their hours to 9:00 am – 9:00 pm, which is permitted within the Zoning Ordinance.

Councilor Thorsen referred to their professional shows and asked about seating for the public watching the shows. Mr. Keefe responded they have been working with an ice skater from NY and he has told them that people stand and watch this type of a show. There is also an opportunity for the children to go out on the ice and skate with the professional.

Mr. Rice asked if the utilization of music on Thursday evenings from 7:00 – 9:00 was a make or break deal. He thought they could perhaps eliminate music for that night. Mr. Keefe felt that was a tough question because they have never tried to rent the rink. They felt it would be a nice feature. Mr. Rice asked if they have thought about any cover for the rink. Mr. Keefe stated they have not.

Mr. Gladhill asked if the HDC doesn't approve a 13 ½' fence around the chiller will that violate the noise limits. Mr. Keefe would have to speak to their sound expert to see if he could design something different.

Chairman Ricci asked if liquor would be served outside. Mr. Keefe confirmed no liquor will be served at the rink, only in the café. Chairman Ricci also felt that 65 trips at peak should be compared to summer traffic so they can relate.

Mr. Chagnon explained they didn't do a trip generation for summer traffic but based their report on what he was told it would probably be about the same times. Peak hour would probably not be the same on adjacent streets and would be more spread out across the day. He felt it was difficult to equate.

Mr. Yerdon responded to the liquor question. He stated the Café will have a beer and wine license and they expect to limit alcohol consumption to the café and outdoor deck which is fenced in. They keep track of that very carefully and have sponsored some large events centered around beer and they have never had any type of problem. They did serve alcohol in the tavern during Candlelight Stroll with over 8,000 people, and nobody was sold a second drink and that is fairly common for Strawberry Banke.

Mr. Chagnon referred them to the sound study in their packet which concluded noise would comply with the ordinance. They are not opposed to verifying that during operations. There are plant materials long Hancock Street and parking. They have provided other options that Strawberry Banke would be willing to install to provide more green wintertime buffering. They have some pictures which they passed around. They prefer not to put a fence up because of maintenance issues and mature trees that would be in the way.

TAC recommended Site Plan approval as presented with 8 stipulations.

Councilor Thorsen researched what 55 decibels of noise would sound like and he cannot understand how a group of noisy guys playing pond hockey could possibly be less than that. Two people talking conversationally is 55 decibels. He understands the ordinance deals more with the periphery however he would like to see them explain that somehow. He knows Mr. Chagnon was not the sound engineer but he would like him to consider it. Mr. Chagnon indicated that the sound is measured at the property line and they have to just go with what is in the ordinance and what is acceptable to the City.

Mr. Hopley asked about the 25 x 60 concession pavilion that was advertised but not shown on the plan. Mr. Chagnon confirmed there is no longer a concession function, just a rental shop and ticket shed. Mr. Hopley was glad to hear they had some programming for the disabled but they will have a hard time getting to the rink with various elevations from the walkway and change in grade. Mr. Chagnon felt they may be able to incorporate a ramp where they have the 2 steps. Mr. Hopley reminded him that it will have to meet building code and it will be considered outdoor public assembly, which could result in some legal issues. Mr. Hopley asked about the bathrooms and Mr. Yerdon responded that there are two sets of restrooms. They are committed to making Strawberry Banke accessible and they installed two more ramps. The Visitor Center will be open anytime the rink is open.

Deputy City Manager Allen noticed in the acoustical study that they have a barrier around the chiller. It shows a wood fence but they referenced a minimal wall. He indicated that needs to be shown on their construction plan. Brian Murphy, the project architect, explained the chiller enclosure is designed to accommodate sound deafening material. They will work with an acoustical consultant to nail that down.

Deputy City Manager Allen asked about the pedestrian accessway from the new lot. Mr. Chagnon indicated that from the reserve parking area it will be shoveled as a 4' wide path with no construction.

Deputy City Manager Allen asked about the open rail fence they are showing for the rink and if there would be any screening to keep the pucks contained. Mr. Chagnon felt that was a good point and something they should think about.

Ms. Moreau asked if the vacuum for skate sharpened enclosed. Mr. Chagnon confirmed it was in the skate shop. Their report says if it needs to be further enclosed, they can do that.

Ms. Moreau didn't feel that the sound dampening around the chiller was sufficient at night and asked if they could do something to further decrease the noise. Mr. Chagnon indicated they did work on an installation on a generator downtown with sound dampening material and it worked well.

Mr. Gladhill asked about the fire pit and Mr. Keefe stated the firepit will be a temporary stone fire pit designed so that there is a barrier to keep children away and fueled by wood. It will probably operate during the evening hours.

Mr. Taintor thought the conduits from the chiller to the rink were going to be buried. Mr. Chagnon confirmed that most piping will be underground but as they get to the ice surface they will need a header row.

Mr. Moreau asked what concessions were made to abutters. Mr. Yerdon stated the original hours were reduced, and they had discussions in-house about making a very concerted and conscious effort not to impose on the neighborhood any more than they have to. In original discussion they have been very conscious of sound, lighting and traffic issues. The greatest concerns have been noise. They met with neighbors at four different meetings and over time they were able to answer questions regarding sound issues and lighting. Mr. Keefe added that they initially were going to play music all of the time and the rink itself was originally going to be located closer to the streets but they tucked it in behind the buildings.

The Chair opened up the public hearing and asked if anyone was present from the public wishing to speak to, for or against the petition.

David Kremple, 111 Gate Street, commented on the rendering they displayed and felt it was not representative of what they are constructing. He felt it is a question of enforcing the rules. His concerns were hours of operation and having a hockey rink with lights and robust young men across the street from his house until 9:00 pm.

Nancy Pollard, 294 Marcy Street, stated she was also on the Board of Strawberry Banke. She felt this has been a very open project, everyone has been willing to compromise and the City has been very willing to work with the parties. The rink will bring joy to everyone and not to the detriment to the abutters.

Bernie Pelech, Attorney on behalf of Don and Beth Margeson and other abutters, noted that the Superior Court said that issues of noise, lighting and hours of operation were the job of the Planning Board. The purpose of Site Review is to allow the Planning Board to review various types of plans and to prevent and protect abutters from nuisances arising from the site. The BOA members felt that lighting and noise was not their purview and that it was the Planning Board's job and the Judge said the same thing. He stated that the abutters not in favor of this project deserve to be heard. Tonight they heard that they didn't really know what the sound decibel level was or how effective the sound barrier was. He felt this matter should be postponed to get these questions answered.

Jane Kilcoyne, Gate Street, felt it will be difficult to get a good night's sleep with hockey players in her back yard. The noise from Strawberry Banke events is very loud inside her house. Other than reduction of their hours, she does not believe Strawberry Banke has made any concessions.

Jane Nelson, Gate Street, felt there were unresolved issues. The departure of cars and skaters at closing will likely add another hour to the noise and headlights, the scheduling of pond hockey in the evening hours, the use of the parking lot by residents for snow emergencies as Mr. Yerdon recently issued a list of parking policies with a statement that parking for Strawberry Banke purposes would take precedent over emergency snow parking for residents.

Mary Kremple, 111 Gate Street, stated that because of elevation, she has a full view of the skating rink site. Strawberry Banke has solicited a lot of people to speak tonight in favor of the rink but they don't have to live with the noise, traffic and lighting. This will change the historic nature of the south end. She would like a compromise on hours of operation.

Gloria Guyette, 7 Hancock Street, was looking for a level of trust from the Planning Board to her as a property owner. She wants clear written guidelines on noise, lighting, and traffic with regular monitoring. Any violation of the guidelines should have a set punishment. She felt parking would be a problem and there will be a shortage, especially during a snow emergency.

Nicole Pollock, resident of Portsmouth thought that a lot of planning has gone into this rink and it is wonderful. She is a woman hockey player and feels that the City needs an ice rink. When playing hockey, there are no boards and only 12 people on the ice at one time.

Michaela Neirel, plays co-ed hockey. When playing without boards and without a roof there is not as much noise. She noted that you can't drink and skate at the same time and there is no music when you

play hockey. She doesn't like to hear people criticize hockey players. She would love to teach children to skate outdoors. This would be great to get people and families outdoors during the winter.

Brad Lown, 45 Brackett Road, felt it was hard to find a good outdoor skating rink. He grew up in Amherst where they had a big skating rink in the center of town. Strawberry Banke should be commended for bringing this to Portsmouth and they are raising all of the funds privately. The Planning Board's responsibility is apply the balancing test and to decide whether the hours of operation and noise will constitute a substantial unnecessary nuisance to the abutters. He felt this was a great thing for the City.

Ryan Connan, 148 State Street, was a local business owner and felt that Strawberry Banke was an asset to the City. He constantly struggles to find outdoor activities for his family. He added that in the summer, with their windows open, they have not been bothered by activities at Strawberry Banke.

Tracey Kozak, 28Walden Street, was very excited about the prospect of a skating rink. It makes for a great quality of life and something she would like her kids to enjoy. She is also a great supporter of Strawberry Banke and hopes this is a way to keep the museum viable. They should have the same rights to use their property in the winter as they do in the summer. Even so, a skating rink would be no where near the magnitude of Prescott Park in the summer.

Gibson Mike Kennedy, spoke on behalf of his wife, Patty, as well. They live on Marcy Street and support the skating rink. In running for City Council last fall the skating rink came up from time to time and people on Gate Street may have had concerns but most people were in support of it. He felt the benefits of the rink should outweigh the nuisance to the people who live on Gate Street and around the rink. He likes the energy that will be created in the community with the skating rink.

Emma Wilson spent the vast majority of her youth in south end and Strawberry Banke has always been a trustworthy neighbor. Prescott Park was more of a nuisance. They are focusing largely on some negative aspects of the rink but she does not see this becoming a drunken debauchery with hockey players. They are planning programs for the disabled and for children. She hopes they will look past the issues that can be resolved and look at how this would be good for the community.

Maria Danahoe, of Gate Street, was begging the Planning Board to use its authority to mitigate the effects on the surrounding neighborhood by requiring Strawberry Banke to meet certain conditions. This is a mixed residential office zone, which is to provide areas where a limited range of business establishments can be located near or adjacent to residential development, creating a transition between the uses. She works where she lives and abides by the spirit of the Zoning Ordinance. There is nothing transitional about the skating rink and feels it is a full-board commercial enterprise with much longer hours than most in the zoning district. They do not have a great track record from past special events with loud music. She speaks for the people who look forward to peace and quiet during the winter, after a noisy and busy summertime.

Joe Galley, 209 Marcy Street, was for the proposed skating rink until he saw the BOA meeting. He represents 10 other neighbors who are concerned about the impact of a skating rink operating 3 months a year, 12 hours a day with amplified music, 7 days a week. They would ask that the hours of operation be adjusted.

Lee Roberts, lived on Howard Street for 18 years and now lives on Court Street which is even closer to Strawberry Banke. She is totally in support of this project. She agrees with the words of Nancy Pollard

who explained that she understands there are two sides to this issue. She sees this as a wonderful vitalizing project, giving them a chance to get outside in the winter. She is convinced that most people are excited about this and it is more of an 80/20 split.

Natalie Bovaire, resident of Portsmouth, performed with Disney on Ice for many years. The type of performances coming to the ice rink will be unbelievable. The skaters are respectful, truly talented and will be a wonderful draw for friends and family.

Richard Bouton, Sherburne Road, has built a skating rink in his back yard for 12 years and all of the neighborhood kids come over every night to skate. He is impressed with this project and noted that the rink is actually smaller than what he has in his back yard. He has never had a complaint from any neighbor. Mr. Keefe brought a decibel meter over when they had a big crowd of 15 – 16 guys that were trying to make noise and they still stayed in the acceptable decibel limit. He hopes this goes project is approved.

Greg Polluck, of Union Street, spoke in favor and thought the ice rink was a wonderful idea. His daughter spoke earlier and was very enthusiastic, which is representative of the youth. People are concerned about young people leaving Portsmouth and this would help keep them in town. He also felt that Strawberry Banke has made an effort to address all concerns of abutters.

Janet Marks, 73 Gates Street, lives behind Studleys Tavern. She heard that this plan is currently fluid and assumes changes could be made in the future. She noted that the ice rink has been compared to large events at Strawberry Banke but felt it was not in that category at all. The music will be very low key and she doesn't understand the concerns. This rink is a new thing, has never been tried, and Strawberry Banke would be open to adjust things once they are underway.

Larry Yerdon, President of Strawberry Banke, clarified some of the concerns expressed. There will be a staff member who lives on the grounds and it will be his job to make sure everyone is off the grounds and the gates are locked at night. There will be no drinking on the grounds. Pond hockey will end the day and very few people would be playing. Approximately 20 cars would be leaving whereas the Candlelight Stroll attracts 2,000 in a high volume evening and only takes 15 minutes for everyone to clear the lot. Strawberry Banke has a very large parking lot and they have always allowed neighbors to come over and park in their lot. The City helps plow the lot but they do a lot of plowing themselves. Regarding the chiller, if they have many more winters like this one the chiller will not run at all. It only runs when it needs to run. He is only offended by one comment which is that they have no concern about neighbors. They have children come through their sight and they are very careful to make sure they are safe. That is a very genuine concern for them and they have improved over the years. Overflow parking is only necessary during the daytime and will not be used in the evening so there is no reason to light that lot.

Mitchell Foster, 205 Wibird, is a 20 year resident and a hockey player. He feels the concerns of abutters are very valid and he can hear their emotion. If he was an abutter he would probably have similar concerns. However, they can only have 4 & 4 at one time on a rink of this size. The crowds won't be very large. He would love to have a rink for his son who loves hockey. They went to Lake Placid last month and skated on a rink outside and it was one of the best times he has ever had with his family. It would really add to the community and the benefits would outweigh the concerns.

Jack Slater, Vice Chairman of the Board of Strawberry Banke and Portsmouth resident, has an 8 & 10 year old who are very excited about the ice rink. The abutters have valid concerns and they have tried

to address them. 95% of the people who have spoken to him are in favor of the rink. He became a part of the Board when they made the decision to make it more attractive to people in town. It was felt that it was a "dead" museum with nothing going on. They have brought the museum full circle where it is no longer losing money. He doesn't envision them using the rink every night until 9:00 but they want to ask for the ability to do so up front.

Katy Linzio, UNH graduate student, has devoted her last semester to people in the community with disabilities. A lot of people are in favor of this and will be using it. She is imaging families with their children, teaching them how to skate. She is in support of the ice rink.

Amanda Colby, 19 Atkinson Street, noted that her residence does not come with private parking but she has not once needed to park at Strawberry Banke during the snow emergencies. The current programs at Strawberry Banke - trick or treat and the candlelight stroll, are wonderful for the City. She is also an outdoor skater and looks forward to having clear ice to skate on. This rink will continue to make her feel fortunate for the neighborhood she lives in.

Kathy Baker, Gates Street, stated that when she first heard about this project a year ago, she was upset as she can hear every Strawberry Banke event inside her house. She felt that 12 hours, 7 days a week, for 3 months is more than just an event. The BOA Chairman stated there were obvious issues and they will be addressed at the Planning Board. This meeting is to determine how this skating rink will operate in a residential neighborhood. Amplified music is unnecessary and does not belong in a residential neighborhood and should be limited to just the ice shows.

Mike McNally, Willard Avenue, has two young children. His son started skating this year and they drive to Durham to skate. This would be an opportunity to skate residents to skate with their families. This is just one more way to make Portsmouth even more special. He hopes it passes because otherwise it would be a missed opportunity.

Beth Margeson, indicated she was one of the 16 people who sued Strawberry Banke and their attorney, Bernard Pelech, will speak about why they believe a continuance will be necessary. The chiller is the source of the noise problem. The noise study doesn't include all noises that need to be considered. They would like the study updated and verified by the City. They would like to have the rink close at 5:30 on weekdays, it should be verified that the lighting and noise meets the Zoning Ordinance, and no music should be allowed. They are asking for a fence on Hancock Street to shield the headlights in the parking lot and Strawberry Banke should be required to hire a security firm.

Andrea Daily, 429 Richards Avenue, grew up figure skating and hopes to teach her kids the same. She has always been surprised that the City has not had this available before. This cannot be compared to the Taste of the Nations event. In order to be financially viable, the ice rink has to be open later than 5:00 pm as that is when people can come out after work and enjoy it. Having been a long time supporter of Strawberry Banke, she felt they undertake activities with tremendous thoughtfulness and work with the community and adjust as the needs require. They want to make this succeed and a few abutters should not stop this.

Bill Downey, 67 Bow Street, thought this is the most exciting thing he has seen during his time in Portsmouth. He doesn't think the pond hockey will be very loud but at the end of the day it has to meet the noise ordinance. He thinks this will be a tremendous asset and great for business. It is a win-win project.

Attorney Peter Loughlin, of Portsmouth, handed out photos from 1959 & 1960 City Reports showing the Greenland Road skating rink. He stated this was common and there were numerous skating sites around the City. This is not a new concept in residentially zoned areas and they have never created any problems. They have stated from the beginning that the Planning Board would look at this at a micro level and they expect the Board to do that. The Technical Advisory Committee has looked at this application for months and have heard from lighting experts. The City rules are in place, the guidelines are spelled out and the citizens of Portsmouth can expect that the City will enforce them. In addressing the use, irregardless of the financial plan, just considering reasonableness and fairness, it can't close everyday at 5:00 pm. A skating pond should be available to the community at large, within reason, with the house hours that are spelled out.

Jeff Keefe, Project Coordinator, wanted to address the noise concerns. He thought it was important to understand the difference between what they are proposing and the special events that are shaking their house. For the ice rink they are talking about technology that limits the noise at the property line. They have heard a lot about limiting hours and essentially that means limiting hours when families can come in the evening and cutting out all pond hockey. This is an opportunity to enhance life for the community and by limiting hours they are also limiting the enjoyment of the community on the ice.

Martha Fuller Clark, 152 Middle Street, recently retired from serving off and on the Strawberry Banke Board. She sees Strawberry Banke as a tremendous asset to the community. It is 38 historic buildings and it has been continuously challenged to preserve and promote its assets. They worked very hard at how to be a greater service to the community at large. They needed to figure out how to strengthen the institution without relying on contributed income. If Strawberry Banke isn't a good neighbor, it won't survive. This is a work in process and if problems emerge, Strawberry Banke will make adjustments.

Catherine Kane, lives two streets away and her primary concern is there may be an effort to limit the hours and she thinks that is a way to defeat what could be a great public benefit to this community. She is a trustee to Strawberry Banke and they have purposely set this up to be a break even situation. They have already cut back the hours once and, if the operation were curtailed much more, it could mean the end to something that was not going to be their primary reason or a big fund raiser, but rather to be a benefit to the community and a way for everyone to come together. As long as they are operating within the City's regulations and with good cause, then they should be allowed to move forward.

Seeing no further first time speakers, the Chair called for second time speakers.

Attorney Bernie Pelech thought it sounded like the Planning Board was being asked to secure the financial wellbeing of Strawberry Banke. He stated this isn't about Strawberry Banke and whether it is good or bad, it is the job of the Planning Board to ensure this project does not interfere with the abutters private use of their property. The abutters are asking them to look at the noise, lights and music. Also, the abutters are very clear that the hours of operation need to be cut down and determined that they are reasonable. The Planning Board needs to make sure this fits into the neighborhood and doesn't disturb the neighbors.

Bill Downey respectfully disagreed. He felt the Planning Board's job was not to enforce tranquility but is to enforce the codes. He thinks this is a great asset.

Cathy Baker, of Gates Street, stated that both the BOA and Judge McCue relied on the Planning Board to mitigate the ice rink. She read from the Judge's order, relative to the responsibility of the Planning

Board. She felt the previous speaker was misinformed. Also, the variance they received was to have an outdoor recreational use within 500' of a residence. There are 8 young children that live within that area that go to bed before the rink will be closed.

David Kremple, 111 Gates Street, was tired about talking about the rink. He recently spoke to a friend who lived across the street from a skating rink in Reading, Mass and hockey took over both rinks at night and she said that due to the yelling and noise in the parking lot she called the Police Department every week. Those are precisely his concerns. No one objects to daytime programming and most can accept Friday and Saturday nights but he asked that school nights close at 5:00 pm.

Attorney Peter Loughlin passed out an exhibit from the Court hearing, showing the location of the rink and circles around the rink and the structures around the rink. There are no other homes within the length of a football field. They are talking about reasonable hours and for the four school nights they are talking about possibly 20 people skating or playing hockey. The morning schedule will not have much impact with children and retired people. The one time when most people of the public will have a chance to enjoy this is between 5:00 pm – 9:00 pm so that is not unreasonable. He referred to Leary Field where there are lights on up to 11:00 – 12:00 every night. When this rink was first proposed he thought it was a nice idea and he wouldn't use it but then he thought about his three grand daughters that will come and visit and realized it would be great to bring them to skate. This application has been reviewed by TAC and this Board, with experts on sound and light, and that is all an enforcement issue. He felt TAC was very comfortable with this after several meetings. He ended by noting that one of the ironies is that Strawberry Banke has been a good neighbor by allowing neighbors to park in their parking lot but that is now being used as a reason to limit use of the ice rink.

Mitchell Foster played a recording of the sound of 10 people playing pond hockey for the Board. They play at Jackson Landing at 10:00 at night because it's hard to get ice time in this area. The people coming from 7:00 – 9:00 are people who want fun and don't want to get rowdy. And they are the same people who will be there during the afternoons with their families. The community would benefit a lot from this rink.

Beth Margeson, 124 Gate Street. She attended a pond hockey game at a friend's house and it was loud. Responding to Attorney Loughlin, they do not object to the morning and afternoon skates but they want the rink to close at 5:00 on weekdays. They are asking for the noise analysis to include all noises and not just stationary noises.

Richard Bouton spoke about the ice rink in his back yard and over 12 years his two children have never had trouble sleeping and they do well in school. The adults use is as well as the children and none of his neighbors complain.

Zack Slater, Vice Chairman, felt the opposition lost their request to deny the rink so they are now asking to reduce the hours. Everything they are asking for will prevent them from getting the rink done for 2014. They have a time crunch to raise the money and get everything going and this is just a stalling tactic. Mr. Kremple brought up the hockey rinks in Massachusetts and he is pretty sure they had boards. Regarding property value, one of the reasons the property values are what they are is because of Strawberry Banke. One abutter said there would be hockey from 5:00 – 9:00 but the schedule clearly stated that is not the case. The chiller will not be running all the time and it is more likely to run during the day than at night. One of the worse things the City did was force the Children's Museum out of town. He doesn't want restrictions put in place because it would limit who would be able to skate on the rink.

Jeff Keefe noted that at the BOA hearing they indicated they expected 175 – 200 people on the ice. That was responding to the maximum capacity on the ice. They do not expect to have anywhere near that many people on the ice. Again there is a lot of talk about the noise, and rightly so, but they hired a very qualified sound analysis and he has analyzed every sound that falls under the ordinance. He hopes they will vote in favor of this.

Seeing no further second time speakers, the Chair called for third and final time speakers.

Attorney Bernie Pelech stated this is to be a three month operation, from December 1st through February 29th, with one big event per month, and that should probably be one of the conditions of the Planning Board approval. The Board can add any conditions they want, including hours of operation.

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

Deputy City Manager Allen made a motion to approve with stipulations, including those recommended in the Staff Memorandum. Ms. Moreau seconded the motion, for discussion.

Ms. Moreau appreciated the concern of abutters but didn't think it should have to close at 5:00 pm and maybe it could be closer to 7:00 pm. There needs to be a balance between all interests.

Mr. Rice felt the subject of quiet enjoyment came up many times. He felt they are talking about not exceeding certain noise and light levels and they have to make decisions that are lawful. The evidence that he has shows that the noise levels are within the ordinance and the light should be dark sky friendly. Where he sees a problem is the noise that they haven't spelled out. The other important thing is for HDC approval which he would like to add as a stipulation.

Deputy City Manager Allen realized that procedurally they have to accept the plan as being complete, so he withdrew his motion. Ms. Moreau withdrew her second.

Deputy City Manager Allen made a motion to determine that the application was complete under the Site Plan Review Regulations and to accept it for processing. Ms. Moreau seconded the motion.

Chairman Ricci was not sure he could support this application as being complete. He has issues with the depiction that was displayed on the screen, an issue with ADA compliance, and he has an issue with sound and would have liked to have heard from the sound engineer.

Mr. Gladhill was concerned about projects that come before the Planning Board before coming before the HDC. The materials they used in these plans have not been approved by the HDC yet although the materials are specifically selected to buffer noise and light.

Councilor Thorsen asked if they could make the approval subject to the HDC. Mr. Gladhill felt if the Planning Board was approving something which verified sound decibels, it could change everything. Mr. Taintor agreed it could cause problems.

Councilor Thorsen's concern with the noise issue is he cannot imagine listening to noise every single day of the week. To have that broken up during the week would be a good idea. The other issue with noise is when they did the noise study, did it really consider the uses involved and the contributory noise that goes along with crowds. He wondered if it took into account the different types of activities.

Chairman Ricci agreed that sound is the biggest issue but the least of his concerns as the Zoning Ordinance clearly states what is allowed in decibels so the sound regulates itself. The difference he hears on other public rinks is that they weren't managed whereas Strawberry Banke will have their own management security. He feels the same about light.

Mr. Hopley wondered whether additions need to happen or are they comfortable with the physical plan that can be modified.

Mr. Taintor felt that the ADA issue could be addressed on the plan administratively however they may want an independent review of the sound analysis.

The motion to determine that the application was complete under the Site Plan Review Regulations and to accept it for processing passed with an 8-1 vote, with Chairman Ricci voting in the negative.

Deputy City Manager Allen made a motion to approve with stipulations, including the stipulations included in the staff memorandum which involve the reserved parking area being available, the City working with the applicant to formalize an agreement on the parking area, and the applicant providing a monitoring report back to the Planning Department and he would propose that be done the first month of operation rather than the first week as he felt that week would be fairly chaotic and not representative of what will actually occur. He would also include a stipulation that it was subject to a successful Certificate of Approval from the HDC.

Mr. Hopley indicated that the plans need to be modified to show accessibility to the ticket area, the rink and to the restrooms as it is a place of assembly. The occupant load factor is 50 s.f. per person which works out to 250+ people.

Mr. Hopley seconded the motion.

Councilor Thorsen felt it would be prudent to require a stipulation to conduct regular light and sound measurements, at least for the first season, so that they have some sort of a record. Chairman Ricci indicated that they have a stipulation that they are going to report back after the first month. Councilor Thorsen felt that was sufficient.

Councilor Thorsen wanted to discuss the chiller and the corresponding noise. Although the skating rink will close at 9:00 pm, the chiller will continue to run. Even though it is enclosed, during the night around 3:00 a.m. it is very quiet and he wondered if they should they have a stipulation that during the middle of the night they turn the chiller off. Chairman Ricci was concerned that they may need it to keep the ice to a certain temperature in order to function. Again, he felt if it runs within the City regulation decibels maybe they shouldn't get into that. He was concerned they were trying to fix something that isn't a problem.

Councilor Thorsen asked about a stipulation that keeps the months of operation within the dates stated. Chairman Ricci and Deputy City Manager Allen felt that would be a good idea. That would be based on what was presented tonight, December 1st through February 28th.

Councilor Thorsen brought up the question of operating hours and whether they wanted to have a discussion of what they think is reasonable.

Chairman Ricci stated that he did not have an issue with the noise. He agrees with what David Witham said, it is a very clear regulation and it is enforceable. He felt they should leave the hours the way they are and leave it as an enforcement issue. If someone is in their house with the TV on with kids running around, they are probably over 45 decibels.

Councilor Thorsen understood they are going up against the edge of what is allowable regarding the ordinances. What he was trying to do was come up with something that was more reasonable than the ordinances and perhaps they need to look at the hours, not from an enforcement perspective, but from the idea of peaceful enjoyable. That is a term of law and well understood by any lawyer. It seems to him that the residents need a little bit of quiet time during the week.

Mr. Rice did not have an issue with the hours of operation but he does think it would be more neighborly of Strawberry Banke to not have music on Thursday nights. Otherwise, he felt they would have quiet hours on the rink from Monday through Thursday. Chairman Ricci agreed with Mr. Rice.

Mr. Gladhill added that not all parents work a Monday – Friday schedule and aren't available to take their kids on skate on the weekends. He felt there have to be some evening hours, Monday through Thursday, to accommodate that.

Mr. Hopley addressed the Monitoring Report. He asked if they should be more specific on the monitoring and who's doing it. Chairman Ricci suggested that they say it will be monitored by an independent monitoring company, approved by the City.

Mr. Finn felt if this is to be beneficial to the younger demographic of the City, they need the hours from 7:00 pm – 9:00 pm for those people to enjoy it.

Councilor Thorsen asked if it would be appropriate to discuss security arrangements for the operation. Chairman Ricci did not believe that would be a Site Plan issue.

Mr. Gladhill referred to the photo that Attorney Loughlin distributed of a City maintained skating rink from the '80's which was very large, had skating and hockey, in a residential neighborhood, in a time period where there were no video games or tablets. He asked if anyone knew why the City stopped providing this service. Deputy City Manager Allen believed it was because they went through a period where they weren't getting consistent cold weather and it took a lot to flood the rink. It didn't have anything to do with noise or rowdiness.

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

1. The reserve parking area shall be available for normal operations during daytime hours, with the understanding that if expanded hours are required the Site Plan will need to be amended to add lighting.
2. The applicant shall work with the City DPW to formalize an agreement regarding snow removal and parking lot lighting, including replacing the existing 25' high flood lights with lower dark sky compliant fixtures, possibly with multiple poles.

- 3. A monitoring report, prepared by an independent monitoring company approved by the City and paid for by the applicant, shall be provided to the Planning Department after the first month of operation.
- 4. The skating rink shall be in operation from December 1st through February 28th only.
- 5. There shall be no music played on Thursdays from 7:00 pm – 9:00 pm for rink rentals.

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III. PUBLIC HEARINGS – NEW BUSINESS

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

A. The application of the **City of Portsmouth, Owner, and Jack Rodgers, Applicant**, for property located at **50 Clough Drive**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to remove a shed and invasive plants, plant a memorial garden, and install a sculpture and bench, with 950 s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 206 as Lot 20 and lies within the Municipal District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Jack Rogers stated that he was working on his Eagle Scout badge. This project is a memorial garden for a girl who died last year of cancer, in the class of his younger brother. The project is behind the Little Harbor School. There is an existing vegetable garden that they will add on to with a flower garden and a bench, they will construct a path of cement pavers and the final element is a metal sculpture. It will have kinetic elements that will allow it to move around in the wind. They will also have the ability to display artwork of the students to keep the project alive. They talked with the school and it will not be a lot of work to maintain it. They will have a fund that will keep it going for many years. They talked to the Conservation Commission about the invasive species that they will be talking out and replacing with some needed plants to maintain the integrity of the area.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Rice made a motion to grant a Conditional Use Permit with a stipulation that the applicant shall submit a revised landscaping plan to the Environmental Planner. Mr. Gladhill seconded the motion.

The motion passed unanimously with the following stipulation:

- 1. The applicant shall submit to the Environmental Planner a revised landscape plan showing native plantings in the area of invasive species removal for approval before the project proceeds.
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B. The application of **Vincent J. Marconi Revocable Trust and Linda L. Marconi Revocable Trust, Owners**, for property located at **501 New Castle Avenue**; **William T. Marconi, Owner**, for property located at **517 New Castle Avenue**; and **William Marconi Revocable Trust and Eva Marconi Revocable Trust, Owners**, for property located at **529 New Castle Avenue**, requesting Preliminary and Final Subdivision (Lot Line Revision) approval as follows:

- a. Assessor Map 205, Lot 004 increasing in area from 1.13± acres to 1.16± acres, with no change in street frontage;
- b. Assessor Map 205, Lot 005 increasing in area from .97± acres to 1.02± acres with no change in street frontage; and
- c. Assessor Map 205, Lot 006 decreasing in area from 1.12± acres to 1.04± acres with no change in street frontage.

Said properties lie within the Single Residence A (SRA) District where the minimum lot area is 43,560 s.f. (1 acre).

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Bernard Pelech, Esq., addressed the Board on behalf of the Marconi family. They are trying to straighten out some lot lines. They are eliminating some jogs and all of the three lots will be conforming in size and the structures meet all setbacks. No variance relief was required by the BOA.

Mr. Hopley was curious about the history of the Marine railway. Bill Marconi stated that the railway was there in the 50's and was used to pull boats out.

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 accept the application as complete according to the Subdivision Rules and Regulations, and to accept the application for consideration. Mr. Barker seconded the motion.

The motion passed unanimously.

Ms. Moreau made a motion to waive compliance with Section III.A.1 of the Subdivision Rules and Regulations, requiring referral to the Technical Advisory Committee for applications that include a common driveway or access easement. Mr. Rice seconded the motion.

The motion passed unanimously.

Ms. Moreau made a motion to waive compliance with Section VI.2.B of the Subdivision Rules and Regulations, requiring all lot dimensions comply with the requirements of the Zoning Ordinance. Mr. Rice seconded the motion.

The motion passed unanimously.

Ms. Moreau made a motion to grant Preliminary and Final Subdivision (Lot Line Revision) approval with stipulations. Mr. Barker seconded the motion.

The motion passed unanimously with 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 easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

Mr. Taintor pointed out that as a result of the updated Subdivision Regulations, the owners have to comply within a 6 month period unless they come for an extension.

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F. The application of **4 Amigos, LLC, Owner**, for property located at **1390 & 1400 Lafayette Road**, requesting Amended Site Plan approval to add a free-standing sign to the Lafayette Road side of the site, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 252 as Lots 7 & 9 and lies within the Gateway District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Richard Uchida spoke on behalf of the applicants. Jim Mitchell, with MHF Designs and a representative of the Newburyport Bank were also present. They were seeking a site plan amendment to allow them to place two sign boards on the restored Yoken’s sign near the right in/right out entrance. They will be required to remove one tree and plant another tree in the triangle. They received relief from the BOA for the size and height of the sign and for an additional free standing sign on the site. The restoration of the sign is running over \$40,000 and they are bringing it back to its former glory.

Mr. Hopley asked if the BOA approval included the extra proposal between the posts. Attorney Uchida confirmed that it did.

Ms. Moreau worried about people still being able to see as they pull out with a tree in that tiny median.

Attorney Uchida referred to the landscaping that they are proposing. They will only be looking to the left for traffic coming up Lafayette Road and they will be able to see right underneath the canopy of the tree.

The honey locust are on the corner of the site and wrap around the site. They will trim the tree and keep it properly sized. They have a template showing that they will be able to pass through without any problems.

Mr. Rice asked if the Yoken’s sign will be lighted with the neon lights. Attorney Uchida confirmed they would like to have that as part of the restoration. Mr. Taintor stated there was never a request for a variance for an animated sign. It was only approved for a stationary sign. Attorney Uchida stated that, in an ideal world, they will be seeking that variance.

Mr. Gamester asked why Rite Aid did not want to be included in the Yoken’s Commons sign. Attorney Uchida indicated they have their own sign and were well taken care of.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Hopley made a motion to waive compliance with the Site Plan Review Regulations, Sections 2.5.3 and 2.5.4, regarding information to be included with the application and required exhibits and data. Mr. Rice seconded the motion.

The motion passed unanimously.

Mr. Hopley made a motion that the application was complete according to the Site Plan Review Regulations and to accept the application for consideration. Ms. Moreau seconded the motion.

The motion passed unanimously.

Mr. Hopley made a motion to grant Amended Site Plan approval subject to approval of the revised plan by the Zoning Board of Adjustment. Ms. Moreau seconded the motion.

The motion passed unanimously.

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IV. CITY COUNCIL REFERRALS/REQUESTS

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

A. Request for three City easements: Drainage Easement for Aldrich Improvements; Sidewalk Easement for 185 Cottage Street; and Utility Easement for 65-67 Mark Street.

Mr. Taintor explained that these three easements have been negotiated with the City Legal Department and DPW. They have all been executed by the private property owners and the Planning Board needs to make a recommendation before the City Council approves them.

Deputy City Manager Allen made a motion to recommend to the City Council that the three easements be approved. Ms. Moreau seconded the motion.

The motion passed unanimously.

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V. PLANNING DIRECTOR’S REPORT

In addition to ZO amendments and design review issues on April 3rd, they will also have a presentation by Juliet Walker on the Wayfinding Plan which is going out to bid for the first phase of implementation.

Also, on April 3rd, they will review the question of architectural design review in other parts of the City. Their plate is very full so they may not get to that until another meeting.

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VI. ADJOURNMENT

A motion to adjourn at 11:00 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved at the August 21, 2014 Planning Board Meeting.