

**REGULAR MEETING
PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:00 PM

February 17, 2022

MINUTES

MEMBERS PRESENT: Rick Chellman, Chairman; Corey Clark Vice Chair; Karen Conard, City Manager; Ray Pezzullo, Assistant City Engineer; Beth Moreau; Peter Harris; Greg Mahanna; Jane Begala; James Hewitt; Franco DiRienzo, Alternate; Andrew Samonas, Alternate

ALSO PRESENT: Beverly M. Zendt, Planning Director; Peter Britz, Environmental Planner; Stefanie Casella, Planner 1

MEMBERS ABSENT:

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Chairman Chellman commented that before they began the agenda City Attorney Sullivan had requested to speak.

City Attorney Sullivan commented that he was there to speak to the Board about the matter with North Mill Pond Holdings LLC and Raynes Ave. vs. City of Portsmouth. It will have an effect on the proceedings this evening. On February 9, 2022, a lawsuit was filed, and the City was served this week. It is a lengthy suit and a serious matter. There are three counts. The City is the defendant but the actions of the Planning Board and Zoning are the subject. The first count is an appeal on the Planning Board's decision to rehear the application. The petition raises a number of legal questions about the Board's authority to conduct the rehearing, actions of particular members of the Board, and generally requests that the court order against a rehearing. Count 2 is in some ways a repeat of count 1. However, it's a request that the judge make a declaratory ruling. That is a statement from the court not necessarily a ruling. The complaint should be read by the Planning Board members. This lawsuit makes assiduous claims for their attorney's fees to be paid by the City because of the actions of the Planning Board. That is a rare situation. When Board members read the complaint, they should direct their attention to the third count. The last item in the complaint is why the City Attorney was there tonight. The process of appealing a Planning Board decision is a little different. Before taking any action, the judge conducts a very brief preliminary hearing to determine if any preliminary orders are needed. They were issued in this case. The order is proceedings upon decision appeal are stayed. That means the rehearing cannot move forward because the court has ordered that it not happen. Beyond that the attorneys in the case have agreed that no action should be taken by anyone in connection to this case. This will end when in some way or another the court orders it

to end. The City has 30 days from filing to file an answer. When the answer is prepared and filed copies will be sent to the Planning Board. The Board should review the complaint and answer side by side.

Chairman Chellman questioned if the order included not reviewing the minutes for that application. City Attorney Sullivan confirmed that was correct.

I. APPROVAL OF MINUTES

A. Approval of the January 27, 2022 minutes.

City Council Representative Moreau moved to approve the January 27, 2022, minutes with the exception of items that speak to the case considered at 31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue, seconded by Vice Chairman Clark.

Vice Chairman Clark commented that the paragraph before 6B was abbreviated and needed to be edited.

Ms. Begala questioned if they would be able to return to the excluded section of the minutes at a later date after the litigation was settled because she had some corrections for that section. Chairman Chellman confirmed that they could.

The motion passed unanimously.

Chairman Chellman commented that they had a robust agenda, and he had a request to postpone items 4 A and B at the beginning of the meeting.

City Council Representative Moreau moved to suspend rules the rules to vote on items 4 A and B at the beginning of the meeting, seconded by City Manager Conard. The motion passed unanimously.

City Council Representative Moreau moved to consider agenda items 4 A and B together and postpone them to the next Planning Board Meeting, seconded by City Manager Conard. The motion passed unanimously.

II. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

- A. Request of **Ricci Construction Company Inc., (Owner)** and **Green & Company Building & Development Corp., (Applicant)** for property located at **3400 Lafayette Rd** requesting Conditional Use Permit for a Development Site in accordance with Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval.

Mr. Hewitt recused himself from the application. Chairman Chellman noted that Mr. Samonas would be voting in his stead.

Mr. Mahanna commented that he has personally known the applicant for 25 years but has never done business with them in the past. Mr. Mahanna had nothing to do with this project and no bearing on the decision.

City Council Representative Moreau moved to determine that the application is **complete** according to the Site Plan Review Regulations and to accept the application for consideration, seconded by Vice Chairman Clark. The motion passed unanimously.

- B. The request of **Monarch Village, LLC (Applicant)**, on behalf of **Nevesha Hospitality, LLC (Owner)**, for property located at **3548 Lafayette Road** requesting Site plan approval.

City Council Representative Moreau moved to determine that the application is **complete** according to the Site Plan Review Regulations and to accept the application for consideration, seconded by Vice Chairman Clark. The motion passed unanimously.

- ~~C. The rehearing request for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** for a Conditional Use Permit as permitted by Section 10.1112.62 of the Zoning Ordinance and Site Plan Review.~~

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. Request of **Ricci Construction Company Inc., (Owner)** and **Green & Company Building & Development Corp., (Applicant)** for property located at **3400 Lafayette Rd** requesting a wetland Conditional Use Permit under section 10.1017 to construct 50 town homes on an undeveloped lot. The (Applicant) is proposing five areas of wetland impact for a total of 21,350 square feet of permanent impact and three areas of temporary impact for a total of 2,350 square feet. Said property is shown on Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District. (LU-21-98)

Mr. Hewitt recused himself from the application. Chairman Chellman noted that Mr. Samonas would vote in his stead.

SPEAKING TO THE APPLICATION

Attorney John Bosen and Gregg Mikolaities from August Consulting spoke to the application. Mr. Bosen commented that the project was to build 50 townhouse style condos, which is less than what the ordinance allows. There is 44 acres on the property. 28.8 acres are in the NRP zone, and 15 acres are in the gateway. That would allow for 248 units, but they are only planning to construct 50 units. They will donate 10.3 acres of land to the City to put in a conservation easement. The developers have worked hard to get the plan where it is today. They first did a Conceptual Consultation in 2020 and worked with Staff, DPW, the Conservation Commission and TAC to finalize the plan. They received TAC and Conservation Commission approval in August. They have been working with DPW to bring sewer to the site and are now in agreement on the cost for off-site improvements.

Mr. Mikolaities commented that this was a unique site because it's set back from Route 1. The frontage is off Lafayette Rd. with good sight distances. There are 28 acres in a conservation easement as part of a wetland mitigation site. The site is surrounded on the south and the west by conservation land. This development will consist of 12 different buildings with a total of 50 units. The site layout has been vetted through TAC. They will be 3 bed units with a 2-car parking garage underneath. There will be 37,000 sf of temporary buffer disturbance that will be restored. There will be walking paths along the back of the units. There will be clear demarcations of the buffer and a three-rail cedar fence will be installed along the path to keep people out of the wetland. There will be a 4,800-sf park in the cul-de-sac area with pet waste stations at the park and along the path. The drainage plan is simple for the site. All of the work will be out of the buffer. There will be 2,600 sf of temporary buffer impacts for the swale to convey clean stormwater. All treatment will be out of the buffer. The disturbed areas will be restored with a wetland mix. The sewer manhole will be a temporary disturbance. There is a robust landscaping plan that will create a private community off Route 1. The site will be fed by municipal water and sewer. They have agreed to contribute \$155,000 to help with the sewer. They are providing 10 acres of conservation land, a park, and walking paths for community space. The site will be 85.3% open space and have only 5.6% building coverage.

Mr. Bosen commented on the CUP request for the development site. The plan is consistent with the City's Master Plan. It is providing much needed housing with multiple unit sizes and a reasonable degree of affordability. It is a gateway project with the allowed use of townhomes. It's permitted and appropriate and it exceeds the public realm requirements. They are restoring wetlands that are currently being impacted, donating conservation land, and adding a dog park walking paths, and sidewalk. The traffic study shows that it will not have an impact to the traffic pattern. The development will complement the surrounding properties as well. There are condos on both sides of this property and one in the front. This project meets the ordinance requirements.

City Council Representative Moreau questioned if there was public transportation access to the site. Mr. Bosen responded that he did not think there was. City Council Moreau commented that it would be good to look into providing public transportation to help residents get to work and play options. Mr. Bosen agreed.

Ms. Begala commented that somewhere in the reading it said there was a bus route they could walk to. There are already condos in the area and this development will add traffic. It may warrant a traffic light especially to help with turning left. It would be good to extend the COAST bus route. The Master Plan vision was for mixed use developments that created unique neighborhoods and village centers. That's what should be shown here. They should take advantage of the conservation land or create a village center and draw more people to this development. This development isn't showing connectivity or a village center. Mr. Bosen responded that they were confined by the environment of the site. It's a huge site but 28 acres are already in the NRP zone. They are donating 10 acres to the City that can be accessed from the trails on Coach Road. There is an opportunity for the public to connect to the site through the trail system.

Mr. Mikolaities added that Hill Crest Estates was the closest COAST bus stop. They can connect with COAST to see if they would coordinate a stop somehow without impacting their schedules. The traffic study was done by Steve Pernaw. The a.m. peak hour showed 4 cars going in and 10 cars going out and the p.m. peak showed 14 cars going in and 9 cars going out. The impact is minimal. This will be vetted by DOT as well. It is allowed in the Gateway Zone ordinance to build a general residential development. This meets that part of the ordinance. There is only 128 feet of frontage on Lafayette Rd., so the site doesn't lend itself to retail or commercial frontage.

Ms. Begala noted that there was a difference between the Master Plan and the zoning ordinance. There are two single family houses along the front of Lafayette Road. This entire development will be built behind those houses. There are other condo developments in the area but there are also individual residences along the entrance to the proposed development. Mr. Mikolaities responded that there were pros and cons when the Gateway District was established. There are individual residences that were there before the Gateway Zones existed. There will be a 6-foot fence that starts at the north end of the property line and goes down to the south end. There will also be a robust landscaping plan. There will be screening.

Chairman Chellman requested clarification about whether or not a traffic light was warranted based on the traffic study. Mr. Mikolaities responded that there was no impact, and they were not applying for a signal.

City Council Representative Moreau commented that they were debating connecting to the sewer in the back or on Lafayette Rd. and questioned how they determined which one to connect to. Mr. Mikolaities responded that they originally proposed to connect to the one out back. The Conservation Commission was concerned about that connection because of the environmental impact. The City was concerned about the capacity on Lafayette Rd. They have worked to determine that there is capacity on the Lafayette Rd., so they will connect there.

Mr. Mahanna commented that the plan noted that there were areas where sand will be used instead of salt and questioned how that would be maintained in perpetuity. Mr. Bosen responded that it would be a covenant in the condo documents. It's a private road so the condo association will enforce it.

Mr. Samonas commented that plants should be planted within 5 feet of the roof drip edge systems. Mr. Bosen confirmed that they would ensure that was in the condo documents. The association will be able to enforce that. Mr. Samonas noted that the operations and maintenance plan call for annual drainage inspections, but they should be more frequent because there is a sensitive water body on the site. Mr. Bosen confirmed they could increase the frequency.

Vice Chairman Clark requested more details on the proposed treatment plan sheet. Mr. Mikolaities commented that they created that plan to show the Conservation Commission what direction the drainage would be flowing on the site. The light brown goes to the wet pond and the light green goes to the bioretention area. That plan just shows the flow and the outlets. Vice Chairman Clark questioned if the concerns about the impact to the prime wetland were eliminated because the sewer was connecting on Lafayette Rd. Mr. Mikolaities confirmed that was correct. Vice Chairman Clark questioned if the NOFA standards would be in the condo documents. The plans don't reference NOFA standards for stabilizing the site. Mr. Mikolaities responded that they could add it to the plan. Vice Chairman Clark questioned if they thought about adding a trail out to the sewer easement which goes all the way to Nathaniel St. They could create a more established trail system. Mr. Mikolaities responded that there was a lot of discussion on that. The original plan had trails that connected in and out. The Conservation Commission wanted to take a bigger look at all the land the City owns in that area and have a larger discussion about how much access and maintenance should be happening in that area. Mr. Samonas confirmed that the Commission did not reach a definitive resolution on the trails. Mr. Mikolaities added that the Commission wanted to look at the City's public lands and access. They had a number of discussions about the trail, but the final decision was to go with this proposal. Vice Chairman Clark questioned if they intended to open Coach Road all the way down to the cul-de-sac. Mr. Mikolaities responded that was a City road with City property around it, and he was not sure what the City was doing with it.

Chairman Chellman commented that the plan did not define the public access easements yet. Mr. Mikolaities responded that the Conservation Commission did not want them. Mr. Samonas added that the Commission could not determine if there should be access or not on the site. Chairman Chellman noted that people were already using that area. Mr. Mikolaities responded that was not on their property. It's in the NRP zone. The Conservation Commission did not want people out there walking. City Council Representative Moreau noted that the rail trail would be done in a couple years and the City will be able to determine access points. The City can look at adding access then.

Ms. Begala noted that the memo explicitly stated that TAC wanted to look at deeded public access to open space that abuts city parcels. Mr. Mikolaities responded that was for the 10 acres they are donating to the City. The discussion is if the City wants paths on it or not. That's an internal discussion within the City. This plan's formal path stops where the informal path ends. The City will have the easement and can determine what they want to do with it. Chairman Chellman requested clarification on the easements. Mr. Britz responded that the green area of the plan will be deeded to the City. The Conservation Commission was not interested in doing heavily developed trails on the site. The sewer line is a wide access road that runs from the Nathaniel St. neighborhood to the Rye line to maintain the sewer. It is not an organized trail, but

it is easy to walk. The Conservation Commission was concerned about cutting a trail through the wetland. Chairman Chellman questioned if the sewer easement allowed for hiking. Mr. Britz responded that it's City property. It's not precluded but the red area of the plan is very wet.

Ms. Begala questioned where people would park now to access this land. Mr. Bosen responded that they would park on Coach Rd. Ms. Begala questioned if they could legally park on Coach Rd. Mr. Bosen responded that they park there now and it's a City street. Mr. Britz added that the City street goes back to the cul-de-sac. It was closed off because people were dumping material back there. It's open for people to walk. It could connect to trails with land that is being deeded to the City with this project. It is probably better for the City to have a bigger discussion about what to do with that land at a later time. It will be deeded to the City, so they can do what they want with it.

Mr. Samonas commented that they should think about a way to advertise the new development along Route 1 to help mitigate the new traffic. Chairman Chellman noted that the State will be looking at access questions and management. A 50-home project will probably not warrant a driver information system. They are also very expensive.

PUBLIC HEARING

Chairman Chellman 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

Vice Chairman Clark moved to request that the applicant revise the plans to comply with the requirements of Section 10.5B92 related to the provision of an 8' wide pedestrian walkway throughout the site, seconded by City Council Representative Moreau.

Vice Chairman Clark commented that this site has the sewer easement back there. It is rutted and has some vehicular traffic. There is a connection to this site from Court St. People will naturally want to go that way. The current trail is in the buffer but not the wetland. There may be future connections to the rail trail, but there is already a connection at the end of Nathaniel Rd. It would be good to see the developer's work with the City to build upon the trails that are back there. That may be in conflict with the Conservation Commissions suggestion, but they are already being used and will continue to be used. The City has a sewer easement to access manholes. The easement is in rough shape and will need to be fixed in the near future. There should be some signage on Court St. It may be more prudent to make this a stipulation in the site plan approval.

City Council Representative Moreau clarified that they were just talking about revising the plan to make sure the sidewalk was a certain width to make sure it's connected. Ms. Zendt responded that the Staff recommended that the Board take a look and decide if it's adequate. The existing

connections and trail provide reasonable support for the proposed use. This will have less pedestrian activity than a mixed-use site, so it seems reasonable. They are only speaking about the 8-foot connections in the development site. City Council Representative Moreau that they should ensure there are safe ways to walk through the site.

Chairman Chellman requested clarification on the motion. Vice Chairman Clark responded that this motion only pertained to the walkway in the development site. Vice Chairman Clark commented that he thought the walkway worked for this particular site. If the Board felt it needed to be 8 feet, then they can move that way.

Mr. Samonas questioned if the sidewalk behind units 45-50 was existing or proposed. City Council Representative Moreau responded that was the walking pathway they are proposing to put in. Mr. Britz commented that an 8-foot pedestrian path is required in the Gateway District. They have provided it through the site but not in front of every building. There is a section of an 8-foot path behind the buildings. Staff just wanted the Board to consider that.

Chairman Chellman questioned if TAC approved of the way it was currently depicted on the plan. Mr. Britz confirmed that was correct. Vice Chairman Clark questioned if they already complied with the provision of an 8-foot path on the site. Mr. Britz confirmed that they did. The path just does not go in front of every building. Staff recommends that it probably meets the spirit because it's residential. The intent was just to point it out. Chairman Chellman requested clarification about whether or not the 8-foot walk throughout the site was adequately depicted on the plan. Ms. Zendt responded that it does not meet the letter, but it meets the spirit and intent for the use on the site.

Ms. Begala questioned where kids could bike on the site. It looked like sometimes it could be on a sidewalk and other times it was in the parking lot. Mr. Britz responded that he came up to clarify one point, but the Board was in motion mode. Chairman Chellman commented that the Board has to approve that question at this point. City Council Representative Moreau commented that they have enough information to move forward.

Vice Chairman Clark commented that even though he made the motion he was going to vote against the revision request. City Council Representative Moreau commented that anyone on the Board should vote against the motion if they felt no revision was needed.

The motion failed unanimously.

Vice Chairman Clark moved to approve the wetland conditional use permit, seconded by City Council Representative Moreau with the following stipulations:

- 1.1) The Condominium documents shall include maintenance for the landscaping and plants proposed for the wetland buffer area and also a requirement that the property owners shall utilize NOFA (Northeast Organic Farming Association) approved practices (or comparable equivalent) for landscaped areas on the site.
- 1.2) The condominium documents shall prohibit the use of salt on paved surfaces.
- 1.3) Applicant will include specification for the use of NOFA standards on the plan set.

1.4) The Operation and Maintenance Manual will include outfall monitoring to occur quarterly

The motion passed unanimously.

B. Request of Ricci Construction Company Inc., (Owner) and Green & Company Building & Development Corp., (Applicant) for property located at **3400 Lafayette Rd** requesting Conditional Use Permit for a Development Site in accordance with Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval for construction of a 50-unit multi-family residential development that includes community space and related landscaping, drainage, paving, utilities and other site improvements. Said property is shown on Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District. (LU-21-98)

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Clark moved to find that the application meets the requirements of Section 10.5B43.10 and to grant a conditional use permit for a Development Site subject to the requirements and conditions of site plan review approval, seconded by City Council Representative Moreau.

Vice Chairman Clark commented that the applicant showed how the development meets the standards of the CUP. This is a purely residential area of Portsmouth. There are a lot of similar developments in the area, and another proposed on the adjacent site. It does lack bringing in the public, but the possible trail networks could attract them. There are good ways to bring people into the site. It meets the character of the neighborhood and Vice Chairman Clark appreciated the large land going into the easement. The site abuts a very large track of conservation land that is managed by the Southeast Land Trust.

City Council Representative Moreau agreed and commented that when they were developing the Gateway the intent was to build residential around commercial areas. Right now, there is no commercial in this area. These additional housing units will be appreciated. It is appropriate to be just residential. This meets all the requirements. The land is surrounded by wetlands and conservation land. This will give a good connection option to the rail trail.

Chairman Chellman commented that the applicant was not required to be consistent with all of the elements of the Master Plan. This property has unique elements. It is back from the road. Access is still needed for retail. They would not want to require something that would fail.

Ms. Begala commented that she appreciated that there will be a fence that will provide screening from the houses.

The motion passed unanimously.

Vice Chairman Clark moved to grant site plan review approval, seconded by City Council Representative Moreau with the following stipulations:

Conditions Precedent

- 3.1) Deeded public access will be provided to the proposed open space and undeveloped portion of the property that abuts city-owned parcels.
- 3.2) Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by City Council.
- 3.3) The applicant shall provide \$155,000 to the City of Portsmouth prior to approval of the Site Plan Agreement for the purpose of infiltration and inflow removal.
- 3.4) The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the installation of utilities and stormwater infrastructure.
- 3.5) The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.
- 3.6) The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 3.7) Applicant to provide a design report on the water booster system summarizing water system supply, pressures and operation for potable water, irrigation, and fire suppression to the satisfaction of the Fire Department and Department of Public Works.

Conditions Subsequent:

- 3.8) The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance;
- 3.9) A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.

Vice Chairman Clark commented that they should add a stipulation to have Staff work with the applicants to see if there is a feasible way to add a trail to the City's sewer access trail.

Chairman Chellman commented that he was concerned about providing additional access along the City sewer easement. Vice Chairman Clark commented that the sewer easement was built up in the wetland for the easement. There aren't any other viable trails through the area.

City Council Moreau commented that the red area was the existing easement, and the green area was the future easement and questioned if the trail would be across the red or green section. Vice Chairman Clark responded both. City Council Representative Moreau commented that the City was already in control of so much of the land and they were adding 10 acres at the bottom of the site. There is not a strong reason to add a trail. The only people going through the red are

residents in this development. Vice Chairman Clark commented that eventually people would access this from the Nathaniel Dr. development and the adjacent development. City Council Representative Moreau commented that they should push the public toward where the rail trail will be built. This is such a sensitive area, and more disturbance would be more harmful. Vice Chairman Clark commented that they will need to do work on the sewer easement to get vehicles down the access road. People can see the clearing from the last unit in this development. It makes sense to provide access. City Council Representative Moreau commented that the other option would be to restrict them from accessing it to begin with. They should add signage stating no entrance into that area. There will be other ways to access the rail trail without going through here.

Chairman Chellman clarified that the Board had differing opinions. One was to allow walking out to and on the sewer easement where walking is not typically allowed. Adding access may be inviting people into trespassing without updating the easement which would require discussions with the landowner. The other is to add signage to not allow that. City Council Representative Moreau commented that they were already adding signs to demarcate the buffer, so they could add wording onto that.

Ms. Begala commented that if they were approving projects that encroach this close to natural areas, then people will be looking for places to walk in that area. Basically, the Board is deciding if they should make that legal or illegal. Ms. Begala commented that she would support Vice Chairman Clark's stipulation.

Mr. Pezzullo commented that it was a challenge to maintain the sewer easement in the wetland and added pedestrian traffic could increase that challenge. It is not allowed now. The Rail Trail may present a better option for pedestrians.

Vice Chairman Clark questioned if City Council Representative Moreau anticipated the Rail Trail would make a direct connection to this site. City Council Representative Moreau commented that it would be possible because there is so much City property around it. The State portion of the of the trail will done in 2024. Then the City can step in and add enhancements to that. Vice Chairman Clark agreed but noted that the only issue was the area between the existing sewer easement and the rail trail is prime wetland. It would require a new wetland impact for a quarter of a mile to make that connection. Regardless of the vote tonight, the easiest way for people to access the Rail Trail would be to go to the sewer easement then to Nathaniel Dr. and then to the Rail Trail.

Mr. Mahanna commented that it did not make sense to encourage the public to walk over a raised path through a swamp. They would be inviting dogs and trash into the wetlands. The sewer easement is not made to be a pedestrian path. It would need to be modified to be a pedestrian path.

City Council Representative Moreau commented that this proposed as an additional stipulation to the site plan approval. They should vote on the site plan approval and then vote on this stipulation separately.

The site plan motion passed unanimously.

Vice Chairman Clark moved to have applicant work with the City to provide meaningful access to and across City sewer easement, seconded by City Council Representative Moreau.

The motion failed by a 1-8 vote. Vice Chairman Clark was the only member who voted in favor of the motion.

- C. The request of **Monarch Village, LLC (Applicant)**, on behalf of **Neveesha Hospitality, LLC (Owner)**, for property located at **3548 Lafayette Road** requesting Site Plan Review and a Conditional Use Permit as permitted under 10.5B41.10 of the Zoning Ordinance to allow for the demolition of 6 structures; the redevelopment of 6 existing structures to create 6 units in building 8, 15 units in building 2, 5 units in building 4, 2 units in building 5, 9 units in building 7; the construction of 4 new structures to create 12 units in building 3 with a 4,303 square foot footprint, 24 units in building 6 with a 7,048 square foot footprint, a 250 square foot storage structure and an 825 square foot storage structure; creating a total of seventy-five (75) residential units with 123 parking spaces where 113 spaces are required. Said property is shown on Assessor Map 297 Lot 6 and lies within the Gateway Corridor (G1) District. **(LU-21-90)**

SPEAKING TO THE APPLICATION

Eric Saari from Altus Engineering and Vicki Martel from Woodburn and Company, and builder Norman Lee spoke to the application. Mr. Saari commented that the site was the Wren's Nest Hotel. This land is behind the site of the application the Board just heard. This hotel was built in the 1930s. There is an eclectic mix of motel units. The most recent building was built in 1999. The parking lot is a mix of pavement and gravel. The proposal is to take down some small structures, retain and rehab the rest of the structures, and build two new apartment buildings. This will yield a total of 75 units on the property which is the maximum allowed. There will be 113 parking spaces. The indoor pool will go away. However, there will be other amenities like a dog park, patio, and bocce ball court. There will be a little trail on the site and a connection out to the conservation land mentioned in the prior proposal. The dumpster will be in the back and the pool building will become common laundry and the mail center. The site currently has a very interesting drainage set up. Right now, it conveys water from Tortillas Flats across the site. The new drainage system will have an infiltration basin and overflow that will only see water in storms over the 10-year storm. Right now, the utilities connect in from a few different directions. This proposal will replace all of that with new upgraded facilities with proper sizing. They will donate to the City's sewer construction project to mitigate the increase in sewer. The lighting on the site will be replaced with dark sky compliant LED lighting.

Ms. Martel commented that the planting plan was very straight forward. The handful of trees at the entry will be retained. The rest of the trees are all proposed trees and will be a mix of native and canopy trees. There will also be some understory trees to remediate the dumping area on the site.

Mr. Saari added that there was a dump site on the property. It's in the wetland buffer. They will remove those items by hand, then seed the area and add the understory trees. There is a small wetland off site, so there is a buffer on the property. Structurally the buildings are in good shape. They just need some cosmetic work. The new buildings will be colonial style. This property is under the DOT jurisdiction. They got comments back today and there were no showstoppers. They need a sewer discharge permit because they are adding a manhole.

Chairman Chellman commented that Mr. Hewitt recused himself from the application so Mr. DiRienzo would be voting on this application.

Vice Chairman Clark questioned if all of the proposed storm water system had perforated pipe. Mr. Saari confirmed that was correct. The site has good soils. They did test pits on the site and lends itself to infiltration. The overflow only sees water at end of a 10-year storm event and they added 15% to the calculations. Vice Chairman Clark commented that the outfall elevation on the plans did not match the hydra CAD. Mr. Saari confirmed they would correct that.

Ms. Begala questioned if there was a bus route stop near this site, or if they had requested to add one. Mr. Saari responded that the trailer park across the street was the last stop on COAST. They have not reached out at to COAST at the present time.

Mr. Mahanna questioned if they knew the price point for the rentals. Mr. Saari responded that they would be market rate.

Mr. Pezzullo commented that they should add a terminal manhole at the end of the line in the back of the property. Mr. Saari confirmed that they could add that.

City Council Representative Moreau questioned what the size of the units would be. Mr. Saari responded that there would be 18 Studios, 15 one bedrooms, and 3 renovated 2-bedroom units. The new buildings will be all 2 or 3 bedroom units.

Chairman Chellman appreciated the crosswalks but questioned why there were no sidewalks on the south side. Mr. Saari responded that they didn't add it so they could maximize grade space. The crosswalk will get people over to the open space. There is a lot of signage and crosswalks on the site. Traffic should be moving at slower speeds. Chairman Chellman noted that 113 parking spaces were required and questioned if they were proposing more than that. Mr. Saari responded that they were only planning to propose 113 spaces. There was a typo on the plan that needs to be corrected.

Ms. Begala commented that market rate was pretty high, and she would hope for a better architectural design. Mr. Saari responded that the buildings were designed to minimize cost which will minimize rent. They will not be visible from the street, and it does meet the architecture requirements for the zone.

Mr. Harris questioned if these would be on the more affordable end of market rate. Mr. Saari responded that they naturally would be because of the location on Route 1.

Chairman Chellman noted that even enhancing the entryway could make a big difference with a building.

Mr. Lee commented that the renderings don't necessarily convey the quality of workmanship the buildings will have. They will be using high end materials with granite counter tops and wood flooring. People will be impressed with the finished product. They will make sure the architecture, construction, and landscaping will all be good quality.

Mr. Samonas questioned if there was a way to better illuminate the crosswalks and curbing on the site. Mr. Saari responded that it was only really dark down the middle. All of the sidewalks will be illuminated, but they can look at adding more light if it's needed. Chairman Chellman questioned if reflectors were a better option. Mr. Saari responded that reflectors don't last as long, so lighting would be better. Chairman Chellman noted that one of the TAC comments mentioned a sewer drain but it was really supposed to be water mains. Mr. Saari confirmed that was a typo. Mr. Saari added clarification to the recorded easement comment. Right now, the drainage is going onto the abutting property and the existing power is coming from the abutting property. They have prescriptive rights and have had trouble contacting the owner to formalize an easement. Therefore, they are moving forward with prescriptive rights. They are also giving drainage easement to Tortilla Flats. Stipulation 2.10 is a little extreme. Review of on-site water and sewer is what is expected. The stipulation could be narrowed down. They don't need a resident engineer for paving and parking. Mr. Pezzullo questioned if they would be doing offsite improvements with a sidewalk. Mr. Saari responded that they may. They will dedicate a 12-foot reserve strip for a City sidewalk.

PUBLIC HEARING

Chairman Chellman 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

Vice Chairman Clark moved to find that the application meets the requirements of Section 10.5B43.10 and to grant a conditional use permit for a Development Site subject to the requirements and conditions of site plan review approval, seconded by City Council Representative Moreau.

Vice Chairman Clark commented that this fits with the surroundings. It is all residential, but it matches the character of the neighborhood. It will have a bocce court and other public amenities. They are also reusing some of the buildings on this site. They may not be the best looking, but that's a huge amount of material that will not be going to a landfill. That's a benefit.

The motion passed unanimously.

Vice Chairman Clark moved to grant Site Plan Approval, seconded by City Council Representative Moreau with the following stipulations:

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

- 2.1.) Remove one additional space from parking area between Building 7 and Building 8 to total 11 spaces and update parking calculations found in note #8.
- 2.2) Include design detail for dog-park subject to review by Planning Staff.
- 2.3) The applicant shall provide \$22,733 to the City of Portsmouth prior to approval of the Site Review Agreement for the purpose of the infiltration and inflow removal project. The costs will be used for engineering and construction of the Sewer System Rehabilitation Contract 1 project being overseen by the City. This work is anticipated to be complete by October 2023.
- 2.4) Page C4 note 15, polyethylene wrap needs to be soil tight not water tight and is only needed around ductile iron pipe. If the contractor is going to use c900 water pipe, tracing wires must be provided that meet the water department requirements.
- 2.5) Add to the profile near the Ripley Dam that 'the City MUST inspect the dam as it's being installed'. Dam should be moved to station 0+60 now that drainage design has changed.
- 2.6) Add thrust block at horizontal 90 degree bend at hydrant. Hydrant location is fine with DPW, needs to be approved by Portsmouth Fire.
- 2.7) The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 2.8) Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by City Council.
- 2.9) The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.
- 2.10) The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the public utility improvements within the public rights-of-way and on site
- 2.11) Owner shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.
- 2.12) The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.
- 2.13) Applicant shall add additional lighting to western sidewalk.
- 2.14) Applicant shall contact COAST and request additional bus service be added to accommodate the addition of 125 units within the general area.

2.15) Applicant shall add a terminal man hole at the end of the sewer line

Conditions Subsequent:

2.16) The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance;

2.17) A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.

The motion passed unanimously.

D. The rehearing request of **Duncan McCallum (Rehearing Applicant)**, for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** for a Conditional Use Permit as permitted by Section 10.1112.62 of the Zoning Ordinance and according to the requirements of Section 10.1112.14 to allow 113 off-street parking spaces including 18 reserved spaces to be provided on-site and 25 spaces to be provided on a separate lot where a total of 138 are required and Site Plan Review approval for the demolition of three existing buildings and construction of the following: 1) a 5-story mixed use building with 66,676 gross floor area and 16,629 sq. ft. building footprint including 7,720 sq. ft. of commercial use on the ground story and 32 residential units on the upper stories; 2) a 5-story 124-room hotel with 65,980 gross floor area and 14,622 sq. ft. of building footprint; 3) 34,427 sq. ft. of community space as well as associated paving, lighting, utilities, landscaping and other site improvements. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

THIS MATTER WILL NOT BE HEARD PER COURT ORDER

E. The rehearing request of **Duncan McCallum (Rehearing Applicant)**, for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** requesting a Wetland Conditional Use Permit under section 10.1017 to construct two buildings 1) a 5 story mixed use commercial and residential building and 2) a five story hotel building with 124 rooms. The project has removed all of the impervious surface from the 25' tidal buffer, proposes 67 square feet of impervious surface in the 25-50' tidal buffer and 21,190 square feet of impervious in the 50-100' tidal buffer. Overall the project is able to demonstrate a reduction of 7,070 square feet of impervious surface in the tidal wetland buffer from the existing condition or a reduction of 10,107 square feet if the reserve parking is not constructed. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54) **THIS MATTER WILL NOT BE HEARD PER COURT ORDER**

IV. 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. **REQUEST TO POSTPONE** The request of **Cate Street Development (Owner)**, for property located at **406 US Route 1 Bypass**, requesting amended Site Plan Review approval to reconfigure and expand parking on Tax Map 172 Lot 2, Tax Map 172 Lot 1, and Tax Map 165 Lot 2 to contain 73 new spaces (52 covered); to renovate the existing structure on Tax Map 172 Lot 2; and to add a bioretention stormwater facilities, stormwater collection and treatment facilities on Tax Map 172 Lot 1 and Map 165 Lot 2. Said properties are shown on Assessor Map 172 Lot 1, Map 172 Lot 2, and Map 165 Lot 2 and lie within the Gateway Corridor (G1) District. **REQUEST TO POSTPONE (LU-22-7)**

DISCUSSION AND DECISION OF THE BOARD

This item was postponed at the beginning of the meeting.

- B. **REQUEST TO POSTPONE** The request of **Cate Street Development LLC (Owner)**, and **Boston and Maine Corp (Owner)**, for properties located at **428 US Route 1 Bypass, 406 US Route 1 Bypass, and 55 Cate St** requesting Preliminary and Final Subdivision approval (Lot Line Revision) to convey 31,187 square feet from Map 165 Lot 14 to Map 172 Lot 2, Map 172 Lot 1 and Map 165 Lot 2 which will result in a total of 52,820 square feet lot area for Map 172 Lot 2, 126,500 square feet lot area for Map 172 Lot 1, and 260,789 square feet lot area for Map 165 Lot 2. Said properties are shown on Assessor Map 172 Lot 1, Map 172 Lot 2, Map 165 Lot 2, and Map 165 Lot 14 and lie within the Transportation Corridor (TC) and the Gateway Corridor (G1) District. **REQUEST TO POSTPONE (LU-22-7)**

DISCUSSION AND DECISION OF THE BOARD

This item was postponed at the beginning of the meeting.

V. DESIGN REVIEW – PUBLIC HEARING

- A. The request of **Port Harbor Land LLC (Owner)**, for the property located at **2 Russell Street** and along Russell Street and Deer Street requesting Design Review for a mixed use project consisting of office, retail/commercial, and residential uses in one 4-story and two 5-story buildings. The site is located between, Russell Street, Deer Street, Maplewood Avenue and the Railroad Corridor. Said properties are located on Assessor

Map 124 Lot 12, Assessor Map 118 Lot 28, Assessor Map 119 Lot 4, and Assessor Map 125 Lot 21 and lie within the Character District 5 (CD-5). (LUPD-22-1)

SPEAKING TO THE APPLICATION

Mr. Mahanna commented that he has known the developers for a long time, but has never done business with them in the past.

Patrick Crimmins from Tighe and Bond and Bob Ulig from Halverson Studio Tighe and Bond spoke to the presentation. Mr. Crimmins commented that they were here for a preliminary design review. They are going through the Historic District Commission process now and it has been very collaborative. They met with TAC for a work session last month. The site is often referred to as the Sheraton parking lot. The site itself is 3 lots and will remain 3 lots. This proposal will require a lot line adjustment. There is also a vacant lot of land on Market St. that is part of the project. There is a proposed 4 story office building on the corner of Maplewood Ave. and Russell St. It will have improved wide sidewalks and a community space plaza area between the buildings. The length of the buildings will have an access drive to provide parking under building 2. It will also be fire access and they are looking at using that as community space as well. Further down Deer St. there will be improved wide sidewalks and a mixed-use building. There will be commercial on the first floor and 72 units on the floors above. It will be a condo building. The first story will have a parking deck and there will be a second story amenity deck to cover it. There will also be basement level parking. The front of the site will have significant upgrades. They will T off the intersection at Russell St. to improve traffic flow. They will create a large open space plaza area which creates the opportunity to put in something special there. Building 3 will also be mixed use. The first floor will be commercial and there will be 44 rental units on the floors above. There will be further improvements to the Russell St. and Green St. intersection as well. They will create community space on the vacant land on Market St. There has been discussions with Staff to see if a roundabout at Market St. and Russell St. was still desired and they indicated it was. That is part of the proposal. There is a shared parking situation at the Sheraton parking lot that exists now and that will continue. The preliminary parking calculations were included as they work through the design. The unit mix has not been determined yet. They looked at the highest parking count per unit. The total estimate is 389 spaces. There is 154 spaces in the Sheraton parking area, so they will need to provide 235 on this site. The first-floor deck will probably hold 80-100 spaces and the basement will have the rest. They will be seeking a CUP for building 2. Buildings 1 and 3 will each be 13,000 sf. Building 2 will have a 40,000 sf footprint. This is allowed in the district if it meets certain requirements and has a CUP. They need to provide a liner building to screen the parking. The parking needs to make up over 50% of the first floor, which it does. If they need additional parking, then they will look at lift systems. They are confident that they can achieve the parking requirement in this space.

Attorney John Lyons addressed one issue relating to parking. The condos across the street are known as Market Wharf 1. By warranty deed created in 1987 Market Wharf 1 has a parking easement for 58 parking spaces on the 2 Russell St. lot. The easement spaces may be temporarily relocated during construction. On the record the client agrees that all of the easement terms are fully enforceable. The application has specifically provided for the 58 spaces. At the present time the client is currently allowing unit owners to have permissive and

temporary use of the underground parking garage on the Sheraton lot. That will continue throughout the construction process. As part of the development, they will go from surface lot parking to covered garage spaces. Prior to the client purchasing the lots there were negotiations between the prior owner and Market Wharf 1 to move them across the street to the underground garage parking spaces. That agreement was never formalized in any written way. Market Wharf 1 may use this development as leverage to get them to accept the prior agreement that was never formalized. Mr. Lyons was confident the Board would not allow themselves to be enrolled in that effort. The client agrees to all terms of the warranty easement and will continue to allow permissive temporary use of the garage. That has nothing to do with the development as Market Wharf 1 would have parking across the street.

Mr. Crimmins commented that they had preliminary grading and drainage plans. They will mimic the drainage flow patterns with roof drain tie ins. They will treat the runoff with storm water treatment units. During a work session there was some discussion about outfall improvements at the North Mill Pond, so they will coordinate with DPW on the storm water design. There will be a number of easements across the site for utilities. Eversource will be doing electric upgrades for the neighborhood. The project will require a site plan review approval, lot line revision plan, CUP for shared parking on a separate lot, CUP for 40,000 sf footprint, and a CUP for use of off-site community space. The project is going through the HDC process as well, so they included some graphics to show options for the public realm improvement. It would be good to get feedback from the Board on what they would like to see in these community spaces. They are proposing a wide sidewalk around Building 1 and a plaza space between the two buildings. The access drive could be used as a community space area as well. That idea was brought up by Staff. Building 2 will have the plaza between the buildings and wide sidewalks. There will be a significant amount of public realm improvements on the right of way that can't be counted as community space. This site requires 30% community space for a 40,000-sf building. They are looking at wide sidewalks and an off site passive park community space area at the top. Another idea could be to tie in brick sidewalk improvements Building 1. The railroad tracks create an impediment for a direct connection. However, people can go from Portwalk and continue on to that neighborhood. Building 3 will have wide sidewalks. The applicant will be deeding some land on the corner to allow for road improvements. Any improvements that may be done in the area of the new roundabout will need to wait until after the roundabout is constructed.

Mr. Ulig presented design ideas for the three community spaces. The Muse common space will be between Buildings 1 and 2, the Corner community space will be on the corner of Deer St. and Russell St., and the North community space will be closer to Market St. The Muse space is long and narrow. Mr. Ulig showed a place in Boston which is a similar open space. The proposal includes wood elements and green plantings. The Boston space includes a sculptural element and that may be included here. Another similar space is the Vaughn Mall next to the Worth Lot. Mr. Ulig showed a space in Cambridge, MA that is similar in scale to the Corner community space. It would be a corner destination. It will have a continued circulation on the street scape. They could make a public space on the inside and surround it with trees. The area in front of Tuscan Market in Market Square is similar to what this space would be. The Muse space would be a continual progression beginning at the African Burial ground to there. One option would be to keep it open in the middle and buffer the edges of the buildings with plantings with a potential

for a spill out at the corner entryway. There will be additional street trees on Deer St. They will use forms to create smaller spaces in the linear space. The space will have seating and maybe sculptures. Another alternative could be to circulate people along the edges and put a tree grove in the middle. That will give more access to the building edges. There would be fixed seating elements in the middle. One option for the community park at the corner would be to create space closer to the building and put in green space along the perimeter. There will be benches in the center. They could add a sculpture for interest. Street trees and larger plantings would provide a lush environment. Another alternative could be to create a stronger tree canopy at the corner and put in a sidewalk along the streetscape. The northern park space is currently overgrown and would need to be regraded. One approach could be to keep the sidewalk along the street edge. Another could be to create a sinuous path with seating throughout. Another option would be to create a straightforward pathway along with buffer with a seating element.

The Planning Board took a 10-minute break.

Mr. Hewitt questioned if they were supposed to take attendance at the beginning of the meeting. City Council Representative Moreau commented that attendance would be reflected in the minutes.

Vice Chairman Clark commented that the Muse community space will not get a lot of sunlight. The Trillium space in Boston works well because one building is smaller in height to allow for more sun. There is also a lot of activity between the building and the public. The proposed building here would be office space. They would need to think about how to activate that building. The liner building should continue around to activate that space. They need to make sure that what's happening in the spaces are activating the community space. There is no activation with the sidewalk on the corner of Deer St. and Maplewood Ave. and they want to make sure to not repeat that. The Market Square space works because there is a café and shops right there. They need to think about how to get people into those spaces. The spaces on the far end may be more of a transient space. If that space is all bedrock, then they will need to think about how to activate it without flattening it. Sidewalks out there are already wide and Deer St. gets a lot of sun. The sidewalk doesn't need to be as wide and they should build upon other areas. It would be good to put in activation on Deer St. A pocket park is a good idea on the other side of the railroad track. Vice Chairman Clark questioned if the applicant was going to pay for the roundabout. Mr. Crimmins responded that they were not. They would be providing the level of design similar to the last project and making a contribution that will be determined in the TAC process.

Mr. Samonas commented that it was critical to have good sun in the community space. The Muse space could be very windy. They don't want to create a wind tunnel. They should consider retail and restaurant functionality on the ground floor spaces to engage the community. This would be the first impression on Maplewood Ave. on both corners. They could consider adding a local art sculpture there. They should think about how people can use these spaces year-round.

Ms. Begala commented that they received a letter from the public talking about the larger community space and asking if it could be a place for people to gather. There should be benches

so people have a chance to sit and enjoy. The Muse space is not comparable to Commercial Way. It will be in shadows 90% of the time. If they consider this an extension of the African Burial Ground, then it would be good to extend the history of Portsmouth along this. The spaces should be 4 season friendly. They should have bike racks.

Mr. Hewitt requested more details on the contribution the client would be making toward the roundabout. Mr. Crimmins responded that the process would be driven by the traffic study. TAC will look at the impact the project will place on the roadway and that percentage of impact will determine the percentage of cost sharing they will contribute. It is the typical process that they work out during TAC. Mr. Hewitt commented that they should complete a shadow study for the entire site. It would be helpful to understand how the buildings would create shadows in the whole site for all 4 seasons during the hours of 10 a.m. and 3 p.m. They should look at different building heights with the extra story and without it. Mr. Hewitt questioned if they would be working on the green space through the HDC process as well. Mr. Crimmins confirmed that they have presented it to HDC at a high level as well. Mr. Hewitt questioned if they anticipated having HDC approval by the time they came back to this Board. Mr. Crimmins responded that they hoped to have it. They are ahead in the HDC process, so they should be able to.

Mr. Mahanna commented that the northern boundary parcel has an active railway, which can be dangerous. Mr. Mahanna questioned if they looked at creating a pedestrian path over the tracks. Mr. Crimmins responded that they have not reached out to the railroad. They are not easy to deal with and their requirements probably won't work in that setting because they would need a pedestrian bridge. They could create a barrier to force the pedestrian traffic back out to Maplewood Ave.

City Council Representative Moreau agreed with Vice Chairman Clark's comments about community. The corner of Deer St. and Russell St. is concerning. That's the entrance to the condo building and it will not be an activated area if it's just an entrance. It will feel like a park for the condo. They need to make sure it's inviting to the public. The Muse will need a lot of work, but City Council Representative Moreau was not sure what the answer was for that. It also needs to be inviting for the public to enter that space. City Council Representative Moreau requested more information about the second story deck. Mr. Crimmins responded that they envisioned it to be an open deck amenity space for the condo space. They are looking at floor depths that would allow for plantings. City Council Representative Moreau commented that it was hard to conceptualize and on the railroad side. It may not be as welcoming there. Mr. Crimmins confirmed that it was important to them to make it welcoming.

Ms. Begala requested more information on the land transfer and questioned how the City was benefitting from it and if the land isn't transferred what would it become. Mr. Crimmins responded that if the land wasn't transferred, then they would not be able to complete the intersection improvements.

Mr. Harris commented that it was a very difficult intersection so that is a welcomed traffic enhancement.

Mr. Samonas commented that they should include wayfinding signs to direct people to the community spaces. They should be conscious about the direction they are pushing people to get downtown.

Vice Chairman Clark questioned if they were providing any workforce housing to achieve the bonus or if it was just community space. Mr. Crimmins responded that they were just doing the community space. Workforce housing does not really work for this site.

Chairman Chellman thanked the applicants for a nice proposal. They got good feedback on what they need to work on. Repairing the damage on Russell St. is a huge move and making a T intersection is a tremendous benefit to the City. It may be beneficial to consider moving the buildings to open the bottom area for community space and step the buildings. They could create a receiving space as people are walking from the Portwalk as opposed to creating a corridor. Breaking it up at the ground level could create seating and landscaping opportunities. Mr. Crimmins did not disagree but the land in yellow was City land. Chairman Chellman commented that it would be to the City's benefit to have that configuration. Russell St. is not a historical street. This proposal is urban repair. It's in the public's interest. Chairman Chellman questioned how they felt about the roundabout. Mr. Crimmins responded that they were indifferent to it. It must have been studied at a prior time to show it's warranted. It would be a nice gateway entry with landscaping. The traffic study will look at it as well. Chairman Chellman questioned if the Sheraton property was included in the application purely for the shared parking and roundabout. Mr. Crimmins confirmed that was correct and the land swap.

PUBLIC HEARING

Attorney Larry Gormley represented Market Wharf 1 which is a condo association of 29 property owners who have a deeded right to park on the site. They have learned more about the future parking plans tonight than they have in 2 years. It is good to hear they conceded that Market Wharf has a property right. They are currently deeded on Russell St. but were moved to the garage. They previously had a 15-page document outlining the agreement with the prior owner, but the property was sold before the agreement was finalized. It would be incumbent on good faith of the developer to inform them that they will be taken care of.

Elizabeth Bratter of 159 McDonough St. commented that she was a big proponent of environmentally friendly developments with less impervious surface. The proposal at Russell St. and Deer St. is a required fire road that will be 20 feet wide. They should consider continuing the fire road all the way to Market St. with a curbed separation. That would provide a safe route for bikers and create a safe route from Bartlett St. to the North End. There are orange crossings on Green St. over the railroad tracks. They are allowed to cross there.

Second time speakers

Attorney Larry Gormley commented that Market Wharf was an entity that has interest in the property. They deserve more information and interest. This process complicates selling condos because they can't account for the parking. They are putting this concern out there for their consideration and to make sure they are accounted for.

Elizabeth Bratter of 159 McDonough St. commented that the second view corridor should be lined up with the hill to look at old houses up there. They could attract people into that area by adding a splash park on the railroad end. Large sidewalks are a waste. They should move closer to Deer St. and add plantings along the railroads.

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

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau moved to find the design review process to be complete, seconded by Vice Chairman Clark.

City Council Representative Moreau clarified for new Board members that if they voted in favor it would lock this project into the zoning as it is now.

The motion passed unanimously.

PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of **Julia R. Tiebout Revocable Trust (Owner)**, for the property located at **405 South Street** requesting Preliminary Conceptual Consultation for the subdivision of the existing parcel of 0.52 acres (22,750 square feet) into two lots. Said property is shown on Assessor Map 111 Lot 18 and is located in the General Residence A (GRA) District. (LUPD-22-4)

SPEAKING TO THE APPLICATION

John Chagnon from Ambit Engineering spoke to the presentation. The proposal is for a subdivision plan. This is a unique property because it runs long and is 70 feet wide. It has access on McNabb Court as well. The property is in a zone that requires 7,500 sf of lot area. The property in total is 22,000 sf. It is a large lot for the zoning. The plan shows subdividing the lot to split it almost in the middle. The lot on South St. would remain as is. The lot in the back would be accessed by McNabb Court. In general, the site slopes southeast to northwest. Past the garage the property drops off. McNabb Court is off Lincoln St. and has a pocket neighborhood of 4 homes. The City currently plows it. The property line ends with an existing chain-link fence. Right now, the City can't push the snow over far enough, so it impacts 2 homes on McNabb Court. They put together a concept plan to show what might be done on the lot. It meets all the criteria except for the required frontage. It has 30 feet instead of 100 feet. They will need a variance. This will be going to TAC and they are talking about the possibility of creating an access drive to give the City the opportunity to clear the street entirely. They looked at placing the house in the middle but that would not allow the snow plowing solution. Therefore, they moved it to the southeast portion of the lot. The low spot would be open space and would help assist with storm water runoff.

Chairman Chellman requested a motion to go past 10 p.m.

City Council Representative Moreau moved to continue past 10 p.m., seconded by Vice Chairman Clark. The motion passed unanimously.

Mr. Hewitt commented that he walked out there the other weekend and talked to someone on Lincoln St. It is a unique lot and slopes from the south to Lincoln St. The abutter he spoke with was concerned about the drainage and the additional impervious this would create. They need to look carefully at that whole system. Mr. Chagnon agreed. They have done some test pits. They will try to infiltrate the roof runoff from the structure. Some of the other lots do drain onto this lot. This will not want to cause a problem.

Ms. Begala commented that the proposed house will be 1,500 sf and questioned if that was consistent with the size of other houses in the neighborhood. Mr. Chagnon responded that it was consistent with the size of the house that's currently on the property. It's a little bit bigger than homes on McNabb Court. They are limited by the coverage requirements there. The builder has recently done some work in the neighborhood and the packet includes architecture plans. It will be a well-done custom house with quality building.

Chairman Chellman questioned if they were proposing to violate the setback on the back. Mr. Chagnon confirmed that they would be asking for relief for that setback requirement. The body of the house and garage bumps back to provide space for a proposed easement for plowing access for the City. It is a small area that would be the subject of a variance for the garage. Chairman Chellman questioned if the City would plow snow in front of the garage. Mr. Chagnon responded that they could plow it off to the side. They will work it out with TAC. Chairman Chellman noted that the garage may be able to slide a couple feet, but they can figure it out with the ZBA.

Chairman Chellman closed the presentation.

- B. The request of **230 Commerce Way LLC**, for the property located at **230 Commerce Way** requesting Preliminary Conceptual Consultation for the construction of a new 2-story structure with 12,000 square feet of office space and veterinary clinic. Said property is shown on Assessor Map 216 Lot 1-5 and located within the Office Research (OR) District.

SPEAKING TO THE APPLICATION

Neil Hanson from Tighe and Bond spoke to the presentation. The project would add second primary structure to the lot. The proposed project will need a site plan review permit and special exception from the ZBA for a veterinary use. They will be heard next week at the Zoning Board. The existing site has an office building on Commerce Way. Behind it is a large surface parking lot with portions in the buffer. There is about 3,000 sf in the buffer, and they will need a CUP for the buffer impact. They have met with the Conservation Commission and TAC for work sessions. Currently storm water runoff sheet flows off the surface lot into the wetland. The proposed site plan is for a 2-story office building. The first floor will be a veterinary office and the second floor will be general office. They will be reconfiguring the parking in the area and

pulling most the existing pavement out of the buffer. There would also be buffer restoration. They are proposing to add a new driveway out to Portsmouth Blvd. This would allow direct access from the rear of the lot. It will require a waiver from the Planning Board to have more than one driveway on a lot. Today there is no storm water treatment. This plan would capture, detain, and treat the storm water runoff before discharging it to the wetlands. The ledge is shallow on the lot, so a rain garden won't be possible. The utilities will connect on Portsmouth Blvd. They are working with DPW on the water main connections.

City Council Representative Moreau commented that they could move the building over to get it out of the buffer. Mr. Hanson responded that could be a possibility. The developer did not have the updated survey originally. When they get to the detailed design work they will work to minimize or completely remove the pavement from the buffer.

Mr. Hewitt questioned if they would be removing sections from the landscaped median on Portsmouth Blvd. to allow access. Mr. Hanson confirmed that was correct. Mr. Hewitt commented that the proposed drive was through a treed area. Portsmouth is fixated on creating safer streets. Fewer access points mean safer streets. They will need justify that this access is really needed.

Ms. Begala commented that they should include landscaping in the parking lot. Mr. Hanson responded that the landscape plan will be included in the future submission. There will most likely be trees and plantings in the islands in the parking lot.

Vice Chairman Clark questioned if the storm water improvements were only in the required parking spaces. Mr. Hanson confirmed it would be for the rear half of the lot. The high point of the lot was in the middle so they will naturally capture most of it.

Chairman Chellman closed the presentation.

VII. PUBLIC HEARING - CITY COUNCIL REFERRALS

- A. Application of **Randi Collins (Owner)**, for the restoration of involuntarily merged lots at **77 Meredith Way** to their pre-merger status pursuant to NH RSA 674:39-aa. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) district. (RIML-21-5)

SPEAKING TO THE APPLICATION

Attorney Monica Kaiser commented that she represented Randi and Jeff Collins. They have resided in Portsmouth for the last decade. Originally, they resided next to this site. They purchased the neighboring lot and downsized. It's in need of significant renovation. They are looking at building another house in its stead. That led to seeking an unmerger. Originally there were three lots, 55-57. This took a lot of deed research, but they did find early deeds that referenced multiple lots. In 1862 and 1865. Ms. Kaiser provided a map from 1876 that showed the subdivided neighborhood. After that it gets a little fuzzy. In 1919 the house went to one owner and stayed in that family for a long time. The name changed in 1972 and it became a

rental until the 1980s. The lots were identified separately on the 1856 plan and some of the deeds thereafter. The conduct has been to develop lot 57 and leave 56 and 55 vacant. The tax cards flip flop a bit. One tax card only lists part of the property and the other lists the whole property. Then after that the tax card lists one lot. The tax maps were a similar split and then it ends up as one lot. That is the lay of the land. Ms. Kaiser noted that their position was that it is the City's obligation to show a voluntary merger happened by conduct. The deed description is one factor in consideration, but not the only factor considered. They need to look at how it was developed and if the owner did any design or construction to occupy one lot. The original house was constructed to occupy just one of the three lots. The only other development on the lot was some landscaping. It is currently just the house and shed on the original lot 57. The current tax map shows a number of the smaller original lots still in existence today.

Mr. Hewitt questioned if the three lots were ever described with meets and bounds and recorded at the registry. Ms. Kaiser responded that they don't find a lot of meets and bounds in old deeds. The lots are shown in the early deeds in 1862 and 1865. They are also included in an undivided land called land on Christian Shore, which shows lots numbered 51-58. Those lots are identified individually and refer to the 1856 plan. Mr. Hewitt questioned if all descriptions referenced a plan. Ms. Kaiser responded that not all of them did. The deed chain stops in the middle. There may have been a time when it was in probate. After that the lot was conveyed 150 sf by 150 sf. That is the issue with the description. That's what the City Assessor is focusing on. Ms. Kaiser's position was that was only one piece of the puzzle.

Chairman Chellman commented that it looked like they were describing a singular parcel piece of land from 1878 on. Ms. Kaiser responded that they understood the issue with that was unclear. Some of those may have been family transfers or transfers from probate. It is a weakness. However, they do not carry the burden of persuasion. The City does. If there were a 10-lot subdivision and it was conveyed to the Board it may be described as a whole area not by lot. The Board should look beyond the deed description. The law is considers other factors as well. Chairman Chellman questioned if they found any monuments on the lots. Ms. Kaiser was not sure.

City Council Representative Moreau commented that the biggest issue is that the prior owner considered it one lot and bought it that way. It was clear that was her position and the deed description for a long time has seen it as one lot. Ms. Kaiser responded that they haven't been too many cases where the court has had to look at the subjective belief of the owner. They look at if the owner put a shed or pool on the other lot or expanded the house to violate setbacks etc. They have yet to look at the subjective opinion of a prior owner. The prior owner had the opportunity to subdivide the property herself and almost did it, but ultimately did not. They did not change the description in the deed conveyed. There were not any new declarations from her in terms of what was given to Mr. and Mrs. Collins. By the time Ms. Dufour got the property the City was already treating it like one lot. The City had already involuntarily merged it. The question is if it was requested to be one lot or was it involuntarily merged. The City has to prove that it was voluntarily merged. The City listed it as 2 lots in the 1920s. The intention is to make it two lots not three. City Council Representative Moreau commented that they should subdivide the lot instead of trying to turn it into 3 lots. Ms. Kaiser responded that they did not have to request to go back to 3 lots. City Council Representative Moreau responded that they had go

back to the original conditions, which would be 3 lots. Ms. Kaiser commented that the request was to unmerge lot 57 and they can file to merge the other 2 lots. They are not obligated to build 3 lots. They can take one out and keep the other 2 lots together.

Chairman Chellman requested clarification on whether or not the prior owner tried to subdivide the lot. Ms. Kaiser responded that she had it under contract with someone who sought to do that.

City Assessor Rosann Maurice-Lentz commented that in decision noted by Attorney Kaiser the Supreme Court made clear that neither the legal description describing one lot nor the owner's acceptance of a taxation of a single parcel supports a finding of a voluntary merger. In the decision those properties were listed as multiple lots in the deeds along with a combined meets and bounds description. These deeds do list multiple lots regardless of having one meets and bounds description. The description of the lot does not constitute a merger if it is listing multiple lots. The deeds go back to 1878 and describes one parcel with no reference to multiple lots in the meets and bounds. The deeds prior 1878 describe 16 lots. Some time after 1865 the lots were transferred and were described as single parcels without reference to multiple lots. Attorney Kaiser states that the property reflects another merger in 1992. It describes 7,500 sf of primary site and 15,287 sf of a secondary site. That does not mean the assessor merged the lot. It means they reviewed the property and the deed and an assessment was made. They recognized the additional land and assessed it at 10% value and listed as surplus land that was not buildable. The 1994 deed does not show a merger. It just shows that the valuation methodology changed that year from a manual process to a computerized process. That changed how it was valued. Two sites were listed as one site because of a valuation methodology change. The Collins' request indicates that the tax maps show the City treated the parcel as separate lots. The only indication that they were treated as separate lots was between 1951 and 1971 when the parcel plan 89 showed lot 45 was assessed as a 100 sf by 150 sf lot, which included the dwelling. There were no additional records for lot 46 on file. Tax records indicate that the lot was treated as a single parcel. 77 Meredith Way was assumed to be sold as a single lot. One would have to research records back to the 1800s to see three lots. Ms. Dufour regarded her lot as a single lot. They went for a subdivision as a single lot and sold it as a single lot. This should not be unmerged.

PUBLIC HEARING

Kendra Forden commented that she submitted a letter for the last hearing objecting to the land being subdivided into 3 lots. Ms. Forden wrote the letter when the wooded area was being clear cut. She was told the cutting was because the trees unhealthy. If that's the case, then that makes sense. The plan for this has changed several times since the neighbors were initially informed. They want the land and surrounding neighborhood to accommodate the plan. This won't suit the neighborhood. The owners have said if they can't subdivide, then they will build a large multi family. None of the plans are good. The drainage will be impacted by additional impervious surface.

Second time speakers

Attorney Monica Kaiser commented that the Collins' would like to put two structures two lots. This lot can support a duplex structure, but they thought it would look nicer to have two separate small homes. Attorney Kaiser and the City Assessor have a difference of opinion on the lead case.

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

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau requested to ask City Attorney Sullivan a question. City Attorney Sullivan noted that he had not studied the factual background of the case. The City's opinion will not be determined until the City Council votes. When they make a decision, it will be the duty of the City's Legal Department to advance that decision should any litigation occur. City Council Representative Moreau questioned if the unmerger had to go back to its original conditions or if they could just take one out. City Attorney Sullivan responded that it is in the statute that it needs to go back to original conditions.

City Council Representative Moreau moved to recommend denial of lot unmerging to the City Council, seconded by Vice Chairman Clark.

City Council Representative Moreau commented that she had seen a lot of these cases for a lot of years. In every case they have been looking at current deeds that list actual lots and the plans it refers too. It will be better to do a simple subdivision. It will be cleaner for the chain of title and the City's Tax Office. There are a lot of gaps in the ownership and listed lots for this. City Council Representative Moreau did not feel comfortable unmerging the lots.

Vice Chairman Clark agreed. Also, the application they just had before the Board is the way to go with this lot. A lot of the abutter issues can be addressed when they do a subdivision. Cleaner way to go. It is cleaner to subdivide.

The motion passed unanimously.

VIII. OTHER BUSINESS

- A. Request of 238 Deer Street LLC (Owner), for the property located at 238 Deer Street for a 1-year extension of the Conditional Use Permit approval granted on February 18, 2021. (LU-20-238)**

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau moved to grant a 1-year extension of the Conditional Use Permit granted on February 18, 2021, seconded by Vice Chairman Clark. The motion passed unanimously.

- B.** Request of **Robert Gigliotti (Owner)**, for the property located at **292 Lang Road** for a 1-Year extension of the Wetland Conditional Use Permit approval granted on February 18, 2021. (LU-20-215)

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau moved to grant a 1-year extension of the Conditional Use Permit granted on February 18, 2021, seconded by Vice Chairman Clark. The motion passed unanimously.

IX. Other Business

Ms. Begala commented that she would like to make a motion because there were new Planning Board members. It would be good to understand the history and context in which they were reviewing developments. One of the Planning Board's roles is growth management and making sure they are reviewing things in the big picture and ensure they were meeting the needs of the community. Citizens have expressed concern on the rate of growth and size of developments happening in Portsmouth and how that's impacting the character of the City. It would be helpful to have a recent inventory of the mix of residential, commercial, hotel and affordable units that have been approved and built in recent years. The Board needs to know if they are meeting the State's standards and if they are meeting the fair share of affordable housing.

Ms. Begala moved to have Planning Staff prepare an inventory of approved and built or in the pipeline to be built single family residences, multi-family condos, affordable units, hotel rooms and number and types of variances, exceptions, CUPs in the last 10 years, seconded by Mr. Hewitt.

Ms. Begala commented that it would be helpful to have the bigger context. The rate of growth is large in Portsmouth and they are changing the cityscape. Everybody knows we need more housing. It would be helpful to understand to what extent and what type of housing was needed. It would be good to understand if the City is meeting that. Ms. Begala commented that she did not mean to burden Staff, but it was a good place to start.

City Council Representative Moreau commented that the Portsmouth Housing Authority is currently doing a housing assessment for the City of Portsmouth. Some of the information from that will be helpful. Also, the Rockingham Planning Commission is doing a housing assessment for the entire state. They will get information on the housing stock and see which towns have affordable housing and which don't. Some of that data will be coming in the next year because there has been a State push. The entire country is experiencing a housing crisis. City Council Representative Moreau was not against getting this information, but they need to look at it in a grander scheme of actual data from more than just Portsmouth.

Mr. Harris commented that he understood City Council Representative Moreau's concern but liked Ms. Begala's request. There has been a lot of new housing units and hotels built in the last

10 years. It would be good to understand the occupancy of the apartments and hotels. It's important to understand when they are building too much.

Mr. Samonas agreed that this was a larger conversation. They need a direction for the motion before sending Planning Staff on an information gathering mission. They need an overarching goal of what they want to achieve. Mr. Samonas commented that he received some housing data monthly as part of his job and he could share it with the Board.

City Manager Conard commented that they have provided some of this information to the previous Council, and they can share it to the Planning Board as well. However, the Planning Board is not a policy making Board. It is a regulatory Board. Staff can provide the information but there are other bodies like City Council that sets policy.

Ms. Begala commented that the City just recently formed a land use committee and it would be good to understand the mission, goals, members of the Committee and what their relationship with the Planning Board would be. Ms. Begala noted that she learned in her training that the Planning Board is an active and passive Board. They are here to review plans, but they are missing their roles as an active Board. It would be good to look at the Master Plan and the rate of variances and CUPs they were granting. It would be good to understand why. If it is too frequent, then they should look at the Zoning Ordinance and recommend revisions to the City Council.

Chairman Chellman commented that they may need a workshop meeting to discuss this in detail. Some of what the Board does effects policy decisions to the Council. Growth management can start with this Board.

Ms. Zendt commented that the Board was interested in a lot of initiative. They can bring some of the information that was requested to the Board. Bringing the entire exhaustive list could take months. Ms. Zendt was working on understanding where the Staff's capacity was. The Planning Department supports multiple Boards and Committees. They recognize that the Planning Board has larger initiatives and policy work. They can work on developing a work plan that is more comprehensive. Some of the requested data is already out there. There's a larger work plan in question here.

Chairman Chellman questioned if they could amend the motion to have the Planning Director come back in a month with a work plan looking to help start the process of gathering information. Ms. Begala and Mr. Hewitt agreed to the amended motion.

The amended motion passed unanimously.

City Council Representative Moreau commented that on February 7, 2022, the City Council created a Land Use Committee whose purpose will be to review all current zoning policy surrounding housing and development to encourage sustainable diverse and affordable housing including expanding transportation. They will report back to Council with information, which will go to the Planning Board as well for input. The Committee will consist of City Council Representative Moreau, Councilor Blalock, Assistant Mayor Kelley, Chairman Chellman, Vice

Minutes, Planning Board Meeting, February 17, 2022

Chairman Clark, Planning Director Zendt, Mr. Cracknell, the Director of the PHA and a representative from the Economic Development Commission. The Committee will give them a chance to take a structured look at immediate changes and look at all city property to expand on affordable housing.

X. ADJOURNMENT

City Council Representative Moreau moved to adjourn the meeting at 11:45 p.m., seconded by Vice Chairman Clark. The motion passed unanimously.

Respectfully submitted,

Becky Frey,
Secretary for the Planning Board