

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM

February 15, 2024

MINUTES

MEMBERS PRESENT: Rick Chellman, Chairman; Greg Mahanna, Vice Chair; Karen Conard, City Manager Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; James Hewitt; Jayne Begala; Paul Giuliano; William Bowen, Alternate

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ALSO PRESENT: Peter Stith, Planning Manager

MEMBERS ABSENT: Andrew Samonas, Alternate

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Chair Chellman called the meeting to order at 7:00 p.m.

I. APPROVAL OF MINUTES

- A.** Approval of the January 18, 2024 meeting minutes and the January 25, 2024 work session meeting minutes.

Mr. Almeida moved to approve the January 18 and January 25 meeting minutes as presented, seconded by Councilor Moreau. The motion passed with all in favor.

II. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

- A.** The request of **The Islamic Society of the SeaCOAST Area (Owner)**, for property located at **686 Maplewood Avenue** requesting Site Plan Review approval and Conditional Use Permit approval.

Councilor Moreau moved that the Board determine that Item A is complete according to the Site Plan Review Regulations, and to accept the application for consideration. Vice-Chair Mahanna seconded. The motion passed with all in favor.

III. PUBLIC HEARINGS – NEW BUSINESS

- A. The request of **The Islamic Society of the SeaCOAST Area (Owner)**, for property located at **686 Maplewood Avenue** requesting Site Plan Review approval for the construction of six (6) single family unit residential condominium with the associated paving, stormwater management, lighting, utilities and landscaping and a Conditional Use Permit in accordance with Section 10.674 Highway Noise Overlay District. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District. (LU-23-57)

SPEAKING TO THE PETITION

[Timestamp 6:31] John Chagnon representing Chinburg Properties was present, including project architect Carla Goodnight and Marie Pyburn pf Chinburg Properties. Mr. Chagnon reviewed the petition in full. He noted that the project received BOA approval in August 2023 for lot-area-per-dwelling-units and for having more than one building on the lot, and TAC approval was obtained on January 2 subject to review of the retaining wall as it pertains to the zoning ordinance's definition of structures and the stormwater plan being approved by DPW. He said the applicant was also requesting a Conditional Use Permit as specified and allowed under the Highway Noise Overlay District and that the project met the standards.

[Timestamp 16:32] Vice-Chair Mahanna said the grade was challenging and asked if there would be fill behind the retaining wall. Mr. Chagnon agreed. Vice-Chair Mahanna said he saw a lot of construction debris. Mr. Chagnon said the previous project had funding problems, so the site became available and was used as a laydown yard during the Maplewood Avenue reconstruction project. Vice-Chair Mahanna said it was difficult to ensure that the six homeowners would follow the maintenance plan for the stormwater system. He asked if there was an optional outlying pipe. Mr. Chagnon explained that the tank system would exit back to the street and be hard-piped to the City's drainage pipes and connect to the City's pipe through Maplewood Avenue. He said the catch basin would stop the system from being clogged and another sump would be maintained. He said the ongoing maintenance plan was in the inspection and maintenance plan that would be submitted to the City. Vice-Chair Mahanna asked if it could be attached to the condominium document so that the homeowners were aware of it, and Mr. Chagnon agreed. Councilor Moreau asked if the plantings' roots would go into the wall. Mr. Chagnon said the root penetration would go down and not out.

[Timestamp 21:28] Ms. Begala asked why no direct measurements of traffic noise on Route 95 were made instead of the sound plan computer model. Mr. Chagnon said the sound consultant took noise level measurements in doing the work. Ms. Begala said if a model used must be approved by the Federal Highway Administration (FHWA) according to the ordinance, then the sound plan should be FHWA approved. Mr. Chagnon said the computer model sound plan was FHWA approved. Ms. Begala asked why all the windows wouldn't be noise mitigating ones instead of just the front windows facing Route 95. Mr. Chagnon said the noise would propagate from the highway going east and the buildings would block the noise on the windows on the back side of the building. Chair Chellman said the noise study indicated that the windows that

don't face the front were subject to 20 dB reduction in noise. Ms. Begala asked how the face of the building was away from Route 95 and was told it was about 120 feet. She said she thought there would be significant noise. Mr. Chagnon said there would be noise and the ordinance had a requirement that noise be reduced in the interior of the structure to 45 dB. He said the noise mitigation would meet the ordinance. Ms. Begala said she only saw three parking spaces. Mr. Chagnon said each building had a two-car garage, which was 12 spaces, and there were three guest spaces. He noted that there would also be extra parking in the driveway. Mr. Bowen asked about trash pickup. Mr. Chagnon said the resident would leave trash at the end of the driveway on a designated day and it would be picked up by a private trash hauler.

[Timestamp 29:06] Chair Chellman asked why the applicant didn't ask for subdivision approval for the six proposed condos. Mr. Chagnon said they were asking for site plan approval to keep it a single lot and make it a condominium. He said the issue of subdividing was extensively discussed at the BOA meeting. He said the zone requires 100 feet of frontage and 15,000 sf of lot are per lot, and that was the same density requirement because the lot was 62,000 sf and would support four units. He said the applicant got approval to build six units by variance, noting that the original ask of the BOA was eight units with two being affordable, but it didn't pass. Chair Chellman said he still thought it was a subdivision by definition. Vice-Chair Mahanna said he thought it was a planned unit development (PUD) vs. a subdivision. Mr. Chagnon said it met the definition of subdivision under the State but it fell under the City's site plan review, and in that zone there could be duplexes and single-family homes by right, but a variance was needed to do a multi-unit development, which was obtained. He said the project met the requirements needed to be approved. It was further discussed. Councilor Moreau said some condo sites looked more like a subdivision but legally were not. Mr. Chagnon said the only area of the unit that was limited common was the deck and the patio below it, otherwise everything else was common and there would be condo fees for plowing, landscaping, and so on, which was part of moving it through the TAC process. Chair Chellman said he still thought it was a subdivision but noted that the applicant had been through TAC and had done what had been done on similar projects. He said the issue would be addressed with City Staff for future projects.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Chellman closed the public hearing.

DECISION OF THE BOARD

Councilor Moreau moved that the Board find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as presented. Vice-Chair Mahanna seconded. The motion passed with all in favor.

*Councilor Moreau moved that the Board grant Site Plan Approval with the following **conditions**:*

- 2.1) *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.*
- 2.2) *The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.*
- 2.3) *The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site.*
- 2.4) *Any site development (new or redevelopment) resulting in 15,000 square feet or greater ground disturbance will require the submittal of a Land Use Development Tracking Form through the Pollutant Tracking and Accounting Program (PTAP) online portal. For more information visit <https://www.cityofportsmouth.com/publicworks/stormwater/ptap>*

Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a certificate of occupancy and release of the surety:

- 2.5) *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;*
- 2.6) *A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted for review to the City's Stormwater Division/ Public Works Department.*

Ms. Conard seconded the motion. The motion passed with all in favor.

Councilor Moreau said it was a good use of a difficult area due to the easement. She said several projects were proposed in that area but that the freestanding single-family condos would fit within the density of the single-family homes behind it. Vice-Chair Mahanna said there were four condos in two buildings to the south that were of similar character.

Councilor Moreau moved that the Board find that the Conditional Use Permit Application meets the requirements set forth in Section 10.674 of the Ordinance and adopt the findings of fact as presented. Mr. Almeida seconded. The motion passed with all in favor.

Councilor Moreau moved that the Board grant the Conditional Use Permit as presented. Vice-Chair Mahanna seconded. The motion passed with all in favor.

- B.** Amend the Zoning Map to change the zoning designation to Gateway Neighborhood Business (G1) as follows: from Office Research (OR): Map 267 Lot 4, Map 267 Lot 5, Map 267 Lot 6, Map 267 Lot 7, Map 267 Lot 8, Map 252 Lot 1, Map 252 Lot 1-7, Map 233 Lot 145, Map 234 Lot 3, Map 234 Lot 7-7, Map 234 Lot 2; from Garden Apartment/Mobile Home Park (GA/MH): Map 291 Lot 1-1 and Map 285 Lot 1; from

General Business (GB): Map 234 Lot 7-6, Map 234 Lot 5, Map 234 Lot 6, Map 234 Lot 51, Map 174 Lot 12, Map 174 Lot 13, Map 175 Lot 11, Map 175 Lot 4, Map 175 Lot 5, Map 236 Lot 35, Map 236 Lot 34, Map 236 Lot 33 (portion of), Map 236 Lot 36, Map 236 Lot 39, Map 237 Lot 56 (portion of) and Map 237 Lot 57; from Single Residence B (SRB): Map 243 Lot 66, Map 229 Lot 6, Map 229 Lot 6A, and Map 268 Lot 97; from Mixed Residential Business (MRB): Map 217 Lot 1 (portion of) and Map 217 Lot 2A (portion of); from General Residence A (GRA): Map 174 Lot 14; from Industrial (I): Map 273 Lot 5; from Industrial (I) and General Residence A (GRA): Map 173 Lot 9.

Amend the Zoning Map to change the zoning designation to Gateway Neighborhood Mixed Use Center (G2) as follows: from Single Residence B (SRB): Map 246 Lot 1.

Amend the Zoning Map to change the zoning designation to Garden Apartment/Mobile Home Park (GA/MH) as follows: from Gateway Neighborhood Business (G1) and Office Research (OR): Map 215 Lot 9.

The above Zoning Map changes are proposed pursuant to Chapter 10, Article 4, Zoning and District Use Regulations, Section 10.421, District Location and Boundaries, Section 10.421.10 of the Zoning Ordinance.

[Timestamp 37:28] Chair Chellman read the zoning map amendments into the record. Mr. Stith began reviewing the proposed amendments. Several members stated that there had not been enough time to review the inordinate amount of information before the meeting and that the information presented did not have enough detail.

*Vice-Chair Mahanna moved to **table** the issue to a future work session, seconded by Mr. Hewitt.*

Mr. Stith then reviewed a few more zoning map amendments. Most Board members felt that they still didn't have enough information or that the proposed zoning did not make sense.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PROPOSED AMENDMENTS

Tony Coviello of 341 Dennett Street said the City had to value the limited land that they had. He said the idea putting affordable housing on single units on parcels of land was not an efficient one, and waiting for a master plan that occurred every ten years was too slow of a method. He said the City had to react faster and go further into zoning to find affordable housing.

Elizabeth Bratter of 159 McDonough Street gave handouts to the Board that showed where the buildings were located and what was next to them. She made several recommendations, including that certain industrial areas should be kept industrial and that the differences between Gateway One and Gateway Two should be kept in mind. She suggested postponing the session until a workshop was done and information from the Land Use Committee could be used.

David Weed of 3003 Lafayette Road said he owned Members Service Credit Union. He said there were 60,000 housing units in deficit that were needed to satisfy demand and there were 1,000 units on the market now. He said he financed mixed-user commercial in NH and had worked with other municipalities to build safe affordable housing.

Christine Wellington said she was a credit union loan officer. She said many more housing units were needed, especially for older people who wanted to downsize and younger people who wanted to buy homes, but affordability was at an all-time low. She said she hoped the Board would consider some of the opportunities available for affordable housing.

No one else spoke, and Chair Chellman closed the public hearing.

DECISION OF THE BOARD

[Timestamp 1:45:29] Vice-Chair Mahanna said he wanted to amend his original motion to continue the session to a later date after the Board had the opportunity to review and approve each parcel individually. He said there wasn't enough technical explanation presented from Staff. There was further discussion. [Timestamp 1:47:38]

*Vice-Chair Mahanna **amended** his motion and moved that the Board continue the discussion at the February 29th Planning Board meeting at 6 pm. Mr. Hewitt seconded. Chair Chellman took a roll call vote. The motion passed by a vote of 7-1, with Ms. Conard voting in opposition.*

IV. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of **100 Durgin Lane LLC (Owner)**, for property located at **100 Durgin Lane** requesting residential redevelopment to include 360 rental housing units with approximately 580 parking spaces and 10% community space including associated site improvements for parking, pedestrian access, utilities, stormwater management, lighting, and landscaping. Said property is located on Assessor Map 239 Lot 18 and lies within the Gateway Corridor (G1) and Highway Noise Overlay Districts. (LUPD-24-1)

SPEAKING TO THE PETITION

[Timestamp 1:57:16] Attorney John Bosen was present on behalf of the applicant along with Andrew Hayes, Director of Eastern Real Estate, Patrick Crimmins of Tighe and Bond, and project architect Brett Bentson and landscape architect Nick Aceto. Attorney Bosen said the development would be a mix of 3- and 4-story buildings with a variety of transportation options including vehicles, bikes, and a possible COAST bus stop. Mr. Hayes said the underutilized retail property would be developed into a unique walkable development. Mr. Bentson reviewed some of the constraints including access and power line easements and wetlands and said the development would have an on-site solar ready infrastructure and EV charging spaces. Mr. Aceto reviewed the proposed landscaping and said the site would have two acres of community space and a central community green. Mr. Crimmins explained that they would need a

Conditional Use Permit for the site development area and a wetland Conditional Use Permit for any work done within the buffer. He said traffic evaluation approval would go through TAC and they would need site review approval and an alteration-of-terrain permit, a sewer connection permit from the City, and an EPA general construction permit with a stormwater plan. He noted that the trip generation showed that a traffic study wasn't needed. He reviewed the public benefits that included 10 percent of community space.

[Timestamp 2:20:20] Vice-Chair Mahanna asked who maintained the other three unnamed roads. Mr. Crimmins said they were private easements and that the owners of the properties and easement rights maintained them. Vice-Chair Mahanna asked who would be responsible for fixing the unsightly road going up to Motel 6. Mr. Crimmins said he thought it would be the current owners of the property or whoever has the easement rights. He said any improvements would be done through the site review process. Mr. Hayes said there were mutual easements and that the ownership group was the contract buyer of the parcel and it would be their responsibility going forward. Mr. Bowen said he thought there would be increased traffic and trip counts going in the direction of Trader Joe's and that it was something the project should think about.

Chair Chellman said that, although the total number of trips would be reduced, the type and time of day and direction of those trips would change given the change in use. He said if a significant portion of the residents decided they wanted to work at Pease, it could create an issue at that intersection. He asked for some destination estimates and also asked what the status of the connection to the north was and whether the development owned it or if it was an easement on someone else's property. Mr. Hayes said the limits of the site plan were owned by the developer and it was a mutual easement of access between multiple parties. Chair Chellman asked if it could be overburdened by putting too many cars on it at a certain time of day, and Mr. Hayes said there was no volume restriction. It was further discussed. Chair Chellman said Pease was a major traffic generator and the intersections around it were congested at times, so he wanted to see it addressed. Chair Chellman asked if the driveways throughout the site would be changed or gated. Mr. Hayes said they had no intention to change or gate them. Chair Chellman asked if the developer was obligated to maintain them for north and south traffic. Mr. Hayes agreed and said they had to maintain access between the Motel 6 and Home Depot. Councilor Moreau said the developer could have gotten more green and community space by having smaller buildings. Mr. Hayes said they considered the existing zoning parameters and a key limitation was the number of units programmed per building. He said the reason they were proposing 3- and 4-story buildings was to have a wider range and diversity of units and to also add variability to the site. He said it would also give them the added benefits of the highway noise overlay and create a bit of a sound buffer along the highway.

[Timestamp 2:29:05] Mr. Almeida asked why the applicant didn't consider podium construction, where the parking is open and on the ground floor. He said the developer could go four stories above a podium and could have more housing and open space. Mr. Bentson said they wanted units on the ground floor so that it felt like a walkable community and that a podium construction didn't allow that social cohesion. Ms. Begala said she didn't see any child-friendly or pet-friendly elements, like safety precautions for crossing roads, play areas, and so on. Mr. Aceto said the plan was in the conceptual stage and that they would have more details about

connections and safety as they continued to break up the parking fields and make more deliberate linkages to the sidewalks. Ms. Begala asked what was meant by offroad multi-use paths. Mr. Bentson said they wanted to create paths for people to walk on and enjoy the natural spaces.

[Timestamp 2:33:13] Mr. Hewitt asked if the Highway Noise Overlay District would be addressed through architecture like a sound wall. Mr. Bentson said they would have an acoustic engineer address it in a few weeks. Mr. Hewitt said the developer was building less than what was allowed by right, and he asked how many units could be built by right. Mr. Hayes said 16 units per acre were allowed, and they had 26 acres, so they could have in excess of 400 units, and if they pursued the Conditional Use Permit for the density bonus, they could have an additional 26 units. He said the current plan was for about 14 units per acre. Mr. Hewitt said his biggest concern with access was the Motel 6 site and the fact that coming off Gosling Road, it felt more like the back of a parking lot than a road and that the applicant wouldn't be able to improve that. Mr. Hayes agreed but said they planned to discuss it with the abutters. Mr. Hewitt said there would be relief needed for wetland buffer issues and asked if it would be new construction. Mr. Crimmins said they needed a permit because they were working in the wetland buffer and would improve what was already there. Mr. Hewitt asked how the developer came up with the parking demand estimates. Mr. Hayes said they surveyed comparable properties in the market and engaged a third-party consultant to help them evaluate it based on the unit mix, and he believed it was appropriate to meet the demand, given the location of the site. Mr. Hewitt said he agreed with the Chair that should be some type of additional traffic study showing more than what was provided in the applicant's peak hour demands.

[Timestamp 2:38:39] Councilor Moreau asked the applicant to explain what 'on-site solar ready' meant. Mr. Hayes said they were evaluating several options and figuring out the optimal location for solar and how the building program would take advantage of it. He said they wanted the EV stations built in anticipation of future growth. Councilor Moreau asked if the area coming down Durgin Lane before the first crossover road was a garden or landscaped one. Mr. Hayes said it could be a dog park or a play area or a possible COAST bus stop. He said it would get reshaped depending on what program came together in that space. Chair Chellman said there were different building types but that the lot got thin as it went more toward the highway. He asked if some of the greenspace between the parking areas and the buildings be put into that area. Mr. Bentson said the overall site plan and mix of buildings across the site continued to evolve every week and that they wanted to ensure that every building had access to meaningful greenspace on the site. He said it was primarily a vehicle-centered site and people wanted convenient parking. He said they were trying to find the right balance so that it didn't feel like a sea of parking.

[Timestamp 2:43:46] The need for a separate location to accommodate package deliveries was discussed. Mr. Hayes said they were leaning toward the central community building as the home for ingoing and outgoing packages, which would allow for better control and security. Mr. Almeida asked if the green space should be more peripheral. Mr. Hayes said the community building would be a one-story building that would invite people into the neighborhood and then expose them to the open green space. He said there would also be a robust wayfinding signage plan. Councilor Moreau asked if the applicant considered a childcare center. Mr. Hayes said they

discussed it but felt that a lot of amenities already existed around the site, so they didn't currently anticipate having on-site retail serving the project itself. It was further discussed.

[Timestamp 2:49:39] Councilor Moreau said the applicant was in Gateway One and the City was looking to expand Gateway One to other lots in the City. She asked if the applicant had any feedback about that and if they considered workforce housing. Regarding Gateway One, Mr. Hayes said he felt that the site was well suited to be programmed in a manner in conformance with code. He said they had the benefit of having scale and a little bit of a buffer between the adjacent units. Regarding workforce housing, he said the program and the mix of different unit sites would meet a wide breadth of the market due to the range of unit sizes and types, which would allow for a breadth of price point for the professional workforce, aging, and young families. He said all the units would be rentals.

DECISION OF THE BOARD

There was no action taken.

V. CITY COUNCIL REFERRALS

A. Request for Salter Street to be rezoned from Waterfront Business to General Residence B

Marsha McCormack of 53 Salter Street was present and said a waterfront business always had an impact on residential. She said she wanted to appeal the zoning due to the large scale construction and reconfiguration of the area. She said the Thompsons' attorney wrote to the Board of Adjustment to request relief to move their structure back and up and said if they were denied relief, they would be forced to restore the structure to an office or event space, which she said would increase traffic and detract from the value of surrounding properties. She said the attorney also stated that there wasn't a single permitted waterfront business that would be appropriate on Salter Street. Chair Chellman said the topic would be added to the discussion of the zoning map changes at the February 29 Planning Board meeting.

Mr. Giuliano moved that the Board add the topic to the February 29 Planning Board meeting, seconded by Mr. Almeida. The motion passed unanimously.

B. Solar Energy Amendments

Chair Chellman said there was a joint work session scheduled with the Historic District Commission on conceptual consensus so that a short Planning Board meeting could be convened after the workshop. He said the Planning Board would make a recommendation to the City Council to get their endorsement and then the plan would get drafted into an actual proposed amendment plan. There was no action taken.

C. Electric Vehicle Amendments

Chair Chellman said the amendments were almost finished and should be ready the following week. There was no action taken.

VI. OTHER BUSINESS

A. Appointment to Rockingham Planning Commission Transportation Advisory Committee

Mr. Hewitt said Eric Eby would do a fine job but that felt that a City resident should be on the committee. Chair Chellman asked that it be kept in mind for the Master Plan discussions. Mr. Stith said the letter noted that the Planning Board nominates a representative for consideration, who would then be recommended to the City Council.

Councilor Moreau moved that the Board recommend to City Council to appoint Eric Eby as the Portsmouth representative on the Rockingham Planning Commission and Transportation Advisory Committee and Jillian Harris as an alternate. Mr. Almeida seconded. The motion passed with all in favor.

Note: The next two items were combined.

B. Chairman Updates and Discussion Items

C. Planning Board Rules and Procedures

Chair Chellman said he spoke to the Legal Department and proposed a new section of Planning Board rules addressing that errors by Planning Board members should be handled at the Planning Board level. He said he recommended a provision whereby the Planning Board could institute a censure process for a member who made a mistake. He said he didn't know if it should require no action the first time or education the second time, and so on. He said the City Attorney had not given him feedback yet.

Vice-Chair Mahanna moved that the Planning Board immediately select and retain outside counsel to advise the Planning Board on all matters including the Master Plan as well as amendments such as errors made by Planning Board members, with the approval of the City Manager. Mr. Hewitt seconded.

Vice-Chair Mahanna said it had been done in the past. He referred to the recent session where the City's Legal Department created a charged document that was overreaching, and outside counsel was able to convince seven out of eight City Councilors that the document was wrong. For that reason alone, as well as moving into the Master Plan and zoning that required more legal analysis, he felt that outside counsel who specialized in those sorts of things should be hired. It was further discussed. Chair Chellman asked Vice-Chair Mahanna if he would consider letting the Master Plan Subcommittee investigate the concept of outside counsel. Vice-Chair Mahanna said he would as long as it wasn't just for the Master Plan. Mr. Bowen asked if there was any role for the State Municipal Association and if they had the resources to be credible enough if there was a need for an intervention. Chair Chellman said they would not intervene between a City attorney. Ms. Conard asked Vice-Chair Mahanna to pose the issue in a more formal

proposal so that there was more time to think about it. Vice-Chair Mahanna agreed and said it would up included at the February 29 Planning Board meeting.

*Vice-Chair Mahanna **withdrew** his motion and said he would submit a more formal proposal in writing for the February 29 Planning Board meeting. Mr. Hewitt agreed.*

D. Board Discussion of Regulatory Amendments, Master Plan Scope, & Other Matters

There was no action taken.

VII. ADJOURNMENT

The meeting adjourned at 10:11 p.m.

Respectfully submitted,

Joann Breault
Secretary for the Planning Board