

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**6:15 P.M.**

**JUNE 15, 2017**

**MEMBERS PRESENT:** Dexter Legg, Chairman; David Moore, Assistant City Manager; Colby Gamester; Jay Leduc; Jody Record; and Jane Begala, Alternate and Corey Clark, Alternate

**ALSO PRESENT:** Juliet T.H. Walker, Planning Director

**MEMBERS ABSENT:** Elizabeth Moreau, Vice Chairman; Rebecca Perkins, City Council Representative; Nancy Colbert-Puff, Deputy City Manager; and Jeffrey Kisiel

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**I. APPROVAL OF MINUTES**

- A. Approval of Minutes from the April 20, 2017 Planning Board Meeting.
- B. Approval of Minutes from the April 27, 2017 Planning Board Meeting.
- C. Approval of Minutes from the May 18, 2017 Planning Board Meeting.

*It was moved, seconded and unanimously voted to approve the three sets of minutes.*

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**II. DETERMINATIONS OF COMPLETENESS**

**A. SITE REVIEW**

**Chairman Legg read the three notices into the record.**

1. The application of **Five Hundred Five Lafayette Road, LLC, Owner, and Lens Doctors, Applicant**, for property located at **605 Lafayette Road**, requesting Site Plan Approval.

2. The application of **Pauline M. Dowd, Owner, and Tuck Realty Corporation, Applicant**, for property located at **288 Peverly Hill Road**, requesting Site Plan Approval.

3. The application of **299 Vaughan Street, LLC, c/o Cathartes Private Investments, Owner**, for property located at **299 Vaughan Street**, and **Sanel Realty Company, Inc, Owner**, for property located at **225 Vaughan Street**, requesting Site Plan Approval.

Mr. Gamester moved to determine that the applications for Site Plan approval was complete according to the Site Plan Regulations and to **accept** them for consideration, seconded by Mr. Moore. The motion **passed** by unanimous vote.

**B. SUBDIVISION**

**Chairman Legg read the two notices into the record.**

1. The application of **Elizabeth E. Simpson Revocable Trust, Owner**, for property located at **40 Martine Cottage Road**, and **Carolyn McCombe Revocable Trust of 1998, Elizabeth Barker Berdge Revocable Trust of 1993, and Timothy Barker, Owners**, for property located off **Little Harbor Road**, and requesting Preliminary and Final Subdivision Approval (Lot Line Revision).

Mr. Leduc moved determine that the application for subdivision approval was complete according to the Subdivision Rules and Regulations and to **accept** it for consideration, seconded by Mr. Gamester. The motion **passed** by unanimous vote.

2. The application of **299 Vaughan Street, LLC, Owner**, for property located off **Vaughan Street**, requesting Preliminary and Final Subdivision Approval

Mr. Leduc moved determine that the application for subdivision approval was complete according to the Subdivision Rules and Regulations and to **accept** it for consideration, seconded by Mr. Gamester. The motion **passed** by unanimous vote.

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**III. PUBLIC HEARINGS – OLD BUSINESS**

A. The application of **Swirly Girl II, LLC, Owner**, for property located at **244 South Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to convert a three-unit residential building to a two-unit residential building, construct a 27’ high, 22’ x 30’ addition, a 10’ high, 7’ x 17 addition, a 6’ x 12.5’ deck, the addition of 581 ± s.f. of pervious driveway and stormwater management structures, with 1,091 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 111 as Lot 3 and lies within the Single Residence B (SRB) District and the Historic District. (This application was postponed at the May 18, 2017 Planning Board Meeting).

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

Steve Riker of Ambit Engineering was present on behalf of the applicant to speak to the petition. He reviewed the site map and stated that the proposal was to place an addition on the existing structure and build a two-car garage with living space above. He said the 3-unit dwelling would be converted to two units. He said the rear half of the existing structure, the roof, and the addition would have storm water collected via gutters and downspouts. He noted that test pits were dug near the dry well locations for soil tests and that a drainage analysis was completed.

Mr. Riker cited the volume of flow numbers for 10-year storms and 50-year storms:

- 10-year storm: .04 pre-construction; .03 post-construction.
- 50-year storm: .27 pre-construction; .17 post-construction.

Mr. Riker briefly discussed the proposed drywells, pervious paver driveway and walkway, buffer area enhancement, shrub plantings, and decreased stormwater flow from the site.

He reviewed the criteria for the Conditional Use Permit (CUP) and noted the following:

- Variances were granted by the Board of Adjustment on 3/21/17.
- No alternative location outside the wetland buffer was feasible.
- There would be no adverse impact on the wetland.
- There would be stormwater treatment.
- The project would not alter the natural vegetative buffer.
- The project would have the least adverse impact on areas and environments while allowing reasonable use of the property.
- There would be two off-street parking spaces in the garage.
- The driveway would minimize impact to the 100-ft buffer.

Mr. Clark asked Mr. Riker to review the maintenance plan for the porous pavement and drywells. Mr. Riker did so, noting that the Conservation Commission had asked him to make one addition to the document, as indicated on the copies that the Board had. He said the drywells would be kept functional and that they would keep the porous surface free of debris. They would monitor erosion and check the sediment accumulation in the trenches. He explained the pipe process and the impervious paver maintenance. He said that broken or dislodged pavers on the surface would be replaced and organic buildup between the spaces would be removed, and that leaves, grass and so on would also be removed so that the paver functioned properly and infiltrated stormwater.

Ms. Begala asked where the 677 square feet of impervious surface was. Mr. Riker showed the location and said that the addition was 718 square feet, of which 236 square feet was in the buffer. He said it was outside the footprint of the current structure and that they would remove a deck but expand the footprint of the structure.

**Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application.**

Mary McElwain of 259 South Street said she lived diagonally across from the property and that she and her husband had written to the Conservation Commission regarding the proposal's impact on the wetland buffer. She read a brief statement that Portsmouth limited activities compatible to protecting the natural resource value of the buffer and that new construction, etc. was not allowed in the buffer without a CUP. She stated that 7 out of 13 applicants were asking for some infringement in the wetland buffers and felt that it was a mistake due to the possibility of future coastal flooding. She cited an extensive coastal flooding report stating that Portsmouth would flood in 40 years. She said the City needed to pay attention to the wetlands buffer ordinance and to the report.

John Chagnon of Ambit Engineering stated that he worked on the plan and that the project team understood the buffer process. He explained that the project would allow off-street parking, which would be better for the wetland because it would get vehicles out of the buffer and prevent oil from

dripping into the wetland. He also noted that they would add buffer plantings and infiltration features so as not to increase storm water.

Mary McElwain said she wondered how many members of the Board had read the report, and she insisted that the area on South Street would be flooded. She said the tide came up very high in that area because it was part of the coastal vulnerability area, and she wanted it acknowledged more.

Seeing no one else rise, Chairman Legg closed the public hearing.

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

Ms. Begala said she didn't feel that the plans were clear concerning where the 100-ft buffer was, with regard to the existing house. She asked if any part of the house was in the buffer. Mr. Riker said it wasn't, and he referred to the standard boundary survey plan. Ms. Begala said she agreed with Ms. McElwain about wetland buffer concerns. She noted that the proposal's response to whether there was any feasible alternative location outside the buffer was that, due to the lot configuration and side and front yard setbacks, there was not an area to construct an addition. She concluded that everything was front the point of view of how the addition must be built, but she said the addition didn't have to be built if it was within a 100-ft buffer and felt that there was no reason that was more compelling than preserving the wetland buffer.

Ms. Walker clarified that there was an addendum on the Memorandum noting that the Conservation Commission recommended two stipulations.

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

*Mr. Gamester moved to **grant** Conditional Use Permit approval with the following stipulations:*

- 1) the stone between the pavers remain pervious and that this detail be included in the maintenance plan;
- 2) the maintenance plan for the catch basins and pervious pavers be recorded at the Registry of Deeds to ensure future property owners maintain the stormwater treatment proposed.

*Mr. Leduc seconded the motion.*

Mr. Gamester stated that the buffer went into the wetlands and that it was an area of balance between the public the City, and the environment. He said that it was allowed that the buffer be built in, changed, and used, so long as the applicant met certain requirements. He said the Planning Board had denied CUP requests before for compelling reasons, which he didn't see in this case. He said the Board just had to ensure that the proposal met the five criteria and was suitable.

Ms. Begala said she did not believe the applicant met the #2 and #3 criteria, that there was no alternative location outside the wetland buffer that was feasible and that there would be no adverse impact on the wetland functional values. She said it would be a total of 1,090 square feet inside the wetland buffer which she felt would be an impact.

Mr. Moore said he appreciated the discussion but said the Board was heavily reliant upon the considerations and robust deliberations of the Conservation Commission on those matters. He

emphasized that there would be proper stipulations and, because of those stipulations and the presentation, felt comfortable with approving the application.

**DISCUSSION AND DECISION OF THE BOARD**

*The motion passed by a 6-1 vote, with Ms. Begala opposed.*

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B. The application of **Five Hundred Five Lafayette Road, LLC, Owner, and Lens Doctors, Applicant**, for property located at **605 Lafayette Road**, requesting Site Plan Approval for the demolition of the existing building and the construction of a proposed 2-story office building, with a footprint of 7,000 ± s.f. and gross floor area of 14,000 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 229 as Lot 9 and lies within the Gateway (GW) District. (This application was postponed at the May 18, 2017 Planning Board Meeting).

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

Eric Weinrieb of Altus Engineering was present on behalf of the applicant to speak to the petition. He reviewed the site plan and noted that the Technical Advisory Committee approved the project with stipulations. He said the proposed to demolish the existing building and construct a two-story commercial building. He said that the existing building would be operational during construction and then demolished upon the completion of the site work. He noted that there would be 51 parking spaces. He reviewed the grading and stormwater management plans and said they were all impervious with catch basins. He also stated the following:

- Green space and landscaping would be added, along with a rain garden on the north side
- Other portions of the site would be treated with catch basins with sumps.
- The drainage system would discharge on Lafayette Road
- There would be a peak rate of runoff and volume on the site that they would step up
- They would eliminate one of two existing driveways going onto Route One.
- They would install LED site lighting that would be dark-sky compliant and City-compliant.
- They applied to the Department of Transportation(DOT) for a driveway permit

Mr. Weinrieb also noted that they addressed four comments from TAC, leaving only one outstanding item, which was the retaining wall on the boundary. He said they would work with the Division of Public Works (DPW) to grade it and make a smoother transition, in return for which they would offer an odd-shaped lot to DPW during the construction. He said a Memo of Understanding was drafted and would be submitted to the City.

There were no questions from the Board.

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

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Moore moved to **grant** Site Plan Approval with the following stipulations:

Conditions Precedent (to be completed prior to the recording of the site plan)

1. A Driveway Entrance Permit approval shall be secured from NHDOT.
2. The applicant shall enter into a Memorandum of Understanding with the City for use of a portion of the property by the City for a laydown area related to the City’s upgrades to the municipal sanitary pump station.

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

1. The site plan and landscape plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
2. The contractor shall test excavate to locate existing utilities prior to construction. Any design modifications from the approved site plan shall require DPW review and approval and notification to the Planning Department.

Mr. Gamester seconded the motion. The motion **passed** by unanimous vote.

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C. The application of **Pauline M. Dowd, Owner**, and **Tuck Realty Corporation, Applicant**, for property located at **288 Peverly Hill Road**, requesting Site Plan Approval for the demolition of an existing residence and the construction of a proposed Planned Unit Development (PUD) consisting of two 2 ½ story buildings, with five units in “Building A” with a footprint of 5,200 ± s.f. and gross floor area of 13,230 ± s.f., and four units in “Building B” with a footprint of 4,160 ± s.f. and gross floor area of 10,504 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 255 as Lot 8 and lies within the Single Residence B (SRB) District. (This application was postponed at the May 18, 2017 Planning Board Meeting).

**Chairman Legg read the notice into the record. He combined it with Item I and read the notice for that item.**

**SPEAKING TO THE APPLICATION**

Mike Garrepy of Tuck Realty was present on behalf of the applicant to speak to the application. He introduced the design engineer Mike Carrigan.

Mr. Garrepy stated that the home was in a neglected state and that they proposed to demolish it as well as the shed. He said they would improve the buffer by removing the existing debris. He said they would create a private driveway from the existing frontage and construct a 9-unit townhouse development consisting of two buildings, one with four units and one with five, with parking garages underneath. He discussed the drainage design and small retention pond that would outlet to a small wetland internal to the site. He said they would provide a conservation easement of 11-1/2 acres and the remaining developable land would be under the control of the development association by deed.

Mr. Garrepy said he met with the Conservation Commission and received a favorable review.

Ms. Begala stated that the total lot was 14.9 acres, of which 3.4 acres was considered developable land. She asked who considered the land developable. Mr. Garrepy said that the PUD section of the Ordinance considered it developable because the uplands were not steep slopes. Ms. Begala noted that it was zoned for moderate residential up to 2-3 residences and that the applicant was asking for it to be within 80 feet of the buffer. Mr. Garrepy said they were outside of the 100-ft buffer and that the CUP was for wetland buffer disturbance and restoration so that they could remove some debris.

Ms. Begala confirmed that the wetland buffer was very close to the corner of the south-most unit and asked whether one could drive or walk around that unit. Mr. Garrepy said there would be no driving access around the units, only driveway access and access to the front of the buildings. He said the far two end units might be restricted from the lawn area in the back, but all units would have decks and patios on the fronts and backs. He said that TAC asked them to get more in depth with the landscape design, so they would cut into the buffer for about 50 feet or so and remove saplings and invasives without disturbing the soil, then plant a native grass seed mix.

Ms. Begala said she drove by the property and noted that the slope was toward the wetlands from Peverly Hill Road. She asked how oil and gas doing directly into the wetlands would be treated when they made the dirt road impervious. Mr. Garrepy stated that the units were at a lower elevation than the wetland behind them, which would prevent anything running toward the wetlands. In response to further questions from Ms. Begala, Mr. Garrepy stated that the driveway was lower but would be elevated 4-5 feet so that it wasn't a steep drop and would be below the prime wetland system behind the units and that the runoff from raising the road would be contained by the drainage system.

Ms. Begala said a traffic study was requested because the nine units would probably have 18 vehicles and that Peverly Hill Road was already challenged by traffic. Mr. Garrepy said they did a traffic analysis for site distance that was processed through DPW and the technical staff and met all safe site distances. He said they didn't provide numbers for impact but that the increase was not a great one and that they met the requirement.

Mr. Record asked whether the roads that were mentioned by a neighbor were on the property, and Mr. Garrepy said they were not.

Mr. Clark said that the City would eventually redo Peverly Hill Road and asked how the project would be incorporated into it as far as sidewalks and so on. Ms. Walker said it was reviewed and that she thought there were proper easements.

Ms. Begala asked whether there would be restrictions for dogs or other domestic animals, noting that the Great Bog could connect with the wetlands and had a lot of wildlife. Mr. Garrepy said he believed there was some language with respect to domestic animals but no restrictions on dogs except for perhaps a size limit.

Mr. Clark asked what kind of seed mix would be used for the stormwater soil. Mr. Carrigan pointed out where the seed mix was listed. Mr. Clark asked him to review the maintenance plan for it. Mr. Carrigan stated that the sediment depth, swale, and retention area would be inspected semi-annually and when it reached halfway to the depth, they would remove whatever had to be removed.

Mr. Clark commented that the building orientation was great, especially the fact that the roof pitches were solar.

Ms. Walker said the Conservation Commission's Memorandum had a comment concerning future condominium owners and making them aware of the wetland buffer's importance as well as adding information to the document on what could be dumped there and so on. She asked the applicant if they would be amenable to it being added to the Conditions of Approval. Mr. Garrepy agreed.

Ms. Begala asked how the applicant ended up with nine units for the property size. Mr. Garrepy replied that they followed a density calculation formula in the Ordinance for new developments.

**Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application.**

Mary McElwain of 291 South Street said that the purpose of the buffer was to protect the wetland or there would be flooding everywhere. She said the extensive study was prepared by the Portsmouth Planning Department, the University of New Hampshire, the Rockingham Planning Commission, and others. She said she wanted the whole picture looked at because it seemed that some plans went before the Board and not before the Conservation Commission.

Phil Stokel of 83 Peverly Hill Road said he was concerned about the wetland. He described the route of the drainage ditch on the church property, noting that it was put in 100 years ago to facilitate the runoff from the stream to farmland. He said that the first proposal by the Dow family in the 1980s for cul-de-sac properties wasn't approved and that a dirt road still remained from it. He said it meant that the water from several streets accumulated and ran under Peverly Hill Road where the drainage ditch began, which was about a 4-acre volume of water from 48 houses that gathered in the catch basins that went to the ditch, in addition to the yearly average 50" of rain that Portsmouth got. He said the water ended up in his land because the ditch was blocked from the unapproved Dow project, and what used to be agricultural land was now wetlands. He pointed out that one inch of rain on four acres was 1,008 gallons of water and that runoff water was usually polluted.

Seeing no one else rise, Chairman Legg closed the public hearing.

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

Chairman Legg stated that there was a total of four votes to consider on the two applications, the first one of which was the CUP.

Mr. Garrepy stated that their neighbor had an existing fence that ran along the proposed roadway and that it was initially going to be removed, but the project decided to incorporate it into their landscape.

Ms. Begala asked Mr. Garrepy to explain the smaller wetland area on the southern part of the property. Mr. Garrepy said the site used to be an excavated area and was once an upland area, but it had become a wetland because it didn't outlet anywhere and was too small to have a buffer designation. Ms. Begala asked whether there would be runoff into that area due to the impervious surface near it. Mr. Garrepy said their retention pond would treat all the stormwater before it went into the upland area and wetland system.

*Mr. Moore moved to determine that the application for Site Plan Approval was complete according to the Site Plan Regulations and to **accept** it for consideration. Mr. Gamester seconded.*

Mr. Moore said he was pleased that the applicant and Ms. Walker pointed out that there were two CUPs before the Board and that only one was related to work within the buffer and had a limited scope of work associated with correcting a condition that was detrimental to the wetland; and by virtue of the project coming in as an open space PUD and not related to impact to the wetlands. He said his motion was related to that CUP associated with 3,100 s.f. of disturbance in the wetland area for removal of the shed and associated debris.

*The motion **passed** by unanimous vote.*

### **B. OS-PUD Conditional Use Permit**

*Mr. Moore moved to find that the application met the requirements of Section 10.727.31 and to **grant** a Conditional Use Permit (6-1) as presented subject to the following conditions:*

- 1) All materials submitted to the Planning Board and representations made at the public hearing for this application shall be deemed conditions of approval and shall be documented in a development agreement entered into and between the applicant and the City, which shall be reviewed and approved by the City Attorney.
- 2) Measures shall be taken to inform future Condominium owners about the importance of the wetland buffer and the prime wetland area at the rear of the property. This includes putting information in the Condominium documents as well as marking the boundary of the wetland buffer with markers spaced about 15' apart along the edge to delineate where the wetland buffer begins. In particular, concern is that the future owners may use the wetland buffer as a place to dump leaves, grass clippings and other yard debris. A provision against using the buffer in this manner shall be included in the Condominium documents.

*Mr. Gamester seconded the motion. The motion **passed** by a 6-1 vote, with Ms. Begala opposed.*

### **C. Site Plan Review**

*Mr. Moore moved to **grant** Site Plan Review approval (6-1) with the following stipulations:*

#### Conditions Precedent (to be completed prior to the recording of the site plan)

1. The detail for the hydrant on Sheet D3 shall be reviewed and approved by DPW.
2. Utility Plan Note 36 shall be revised to read "Final design of water main shall be reviewed and approved by DPW."
3. The blanket easement for maintenance and access to private water lines and shutoffs shall be reviewed and approved by the City's Legal Department.
4. The common open space management plan shall be reviewed and approved by the City's Legal and Planning Departments.
5. The applicant shall coordinate with DPW to add required language to the site plans regarding maintenance of stormwater management systems in perpetuity.

- 6. The following notes shall be added to the Site Plan:
  - “1. This Site Plan shall be recorded in the Rockingham County Registry of Deeds.
  - 2. All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director.”
- 7. The following notes shall be added to the Landscape Plan
  - “1. The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.
  - 2. All required plant materials shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. All required fences and walls shall be maintained in good repair.
  - 3. The property owner shall be responsible to remove and replace dead or diseased plant materials immediately with the same type, size and quantity of plant materials as originally installed, unless alternative plantings are requested, justified and approved by the Planning Board or Planning Director.”
- 8. The existing fence that runs along the proposed roadway shall remain and a note shall be added to the Site Plan.

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

- 1. The Site Plan (Sheet C4), Landscape Plan (Sheet L2), easement plans and deeds shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.

*Mr. Gamester seconded the motion. The motion passed by a 6-1 vote, with Ms. Begala opposed.*

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**IV. PUBLIC HEARINGS – NEW BUSINESS**

A. The application of **Ryan A. and Adrienne A. Cress, Owners**, for property located at **185 Edmond Avenue**, and **the City of Portsmouth, Owner**, for property located **off Edmond Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to excavate (8’ x 55’) along the south and west side of the house, remove and replace the existing headwall and failing CMP culvert and install new RCP culvert, with 750 ± s.f. of temporary impact to the wetland buffer. Said properties are shown on Assessor Map 220 as Lots 56 & 79 and lie within the Single Residence B (SRB) and Municipal (M) Districts.

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

The applicant was not present.

**DECISION OF THE BOARD**

*Mr. Leduc moved to postpone the meeting to the July 20, 2017 Planning Board meeting, and Ms. Record seconded. The motion passed by unanimous vote.*

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B. The application of **Pease Development Authority, Owner, and City of Portsmouth, Applicant**, for property located at **135 Corporate Drive**, requesting Conditional Use Permit approval, under Section 304.A.08 of the Pease Land Use Controls, for work within the inland wetland buffer to construct a 74' 8" X 30' 8" headworks building at the wastewater treatment facility, consisting of three levels (one above grade level and two below grade levels), with 23,790 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 303 as Lot 6 and lies within the Pease Airport Business Commercial (ABC) District.

*It was moved, seconded, and passed by unanimous vote to postpone the meeting to the July 20, 2017 Planning Board meeting.*

C. The application of **Pease Development Authority, Owner, and the City of Portsmouth, Applicant**, for property located at **135 Corporate Drive**, requesting Site Plan Approval, under Chapter 400 of the Pease Land Use Controls, Site Review Regulations, to construct a 74' 8" X 30' 8" headworks building consisting of three levels (one above grade level and two below grade levels) totaling 2,290 ± s.f. , with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessors Map 303 as Lot 6, and lies within the Pease Airport, Business, Commercial (ABC) District.

*It was moved, seconded, and passed by unanimous vote to postpone the meeting to the July 20, 2017 Planning Board meeting.*

Ms. Begala noted that the Board was simply giving opinions to the Pease Development, who had their own zoning ordinance. Ms. Walker clarified that Pease Development defaulted to their site review process and complied with the zoning, and the Planning Board made a recommendation to the Pease Board, which the Pease Board generally did not change. Ms. Begala said the applicant was subject to the land use regulations of Pease Development rather than the City's and asked whether there was something else that she should look at. Ms. Walker said she would refer the additional information to her. Ms. Begala asked that it be sent to everyone on the Planning Board.

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D. The application of **Society for the Preservation of New England Antiquities of MA, Owner**, for property located at **62 & 76 Northwest Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the tidal wetland buffer consisting of minor grading around the house, a new yard drain system, two new grass swales and a level spreader, with 3,400 ± s.f. of impact to the wetland buffer. Said properties are shown on Assessor Map 141 as Lot 29 and Assessor Map 122 as Lot 9 and lie within the General Residence A (GRA) District and the Historic District.

*It was moved, seconded, and passed by unanimous vote to postpone the meeting to the July 20, 2017 Planning Board meeting.*

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E. The application of **Elizabeth E. Simpson Revocable Trust, Owner**, for property located at **40 Martine Cottage Road**, and **Carolyn McCombe Revocable Trust of 1998, Elizabeth Barker Berdge Revocable Trust of 1993, and Timothy Barker, Owners**, for property located **off Little Harbor Road**, and requesting Preliminary and Final Subdivision Approval (Lot Line Revision) between two lots as follows:

- (1) Map 202, Lot 14 decreasing in area from 7.33 ± acres to 5.17 ±.f. acres.

(2) Map 202, Lot 15 increasing in area from 2.28 ± acres to 4.44 ± acres. Said lots lie within the Rural (R) District where the minimum lot area is 5 acres and there is no continuous street frontage requirement.

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

John Chagnon of Ambit Engineering was present on behalf of the applicant to speak to the application. He stated that they wanted to relocate a lot line, Lot 14. He explained where it ran and said the lot would be relocated to the west of the existing line and would allow the Simpson property on Lot 15 to have more frontage and a more rectangular shape of conforming lot.

There were no questions from the Board.

**Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise, he closed the public hearing.**

**DISCUSSION AND DECISION OF THE BOARD**

*Mr. Gamester moved to determine that the application for subdivision approval was complete according to the Subdivision Rules and Regulations and to **accept** it for consideration.*

*Mr. Gamester moved to **grant** Preliminary and Final Subdivision approval with the following stipulations:*

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

*Mr. Moore seconded. The motions **passed** by unanimous vote.*

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F. The application of **Gary and Aerial Sillanpaa, Owners**, for property located at **4 Sylvester Street**, requesting Conditional Use Permit approval to create a two-bedroom 676 ± s.f. detached accessory dwelling unit on the second story of a garage (to be constructed), with associated paving, lighting, and utilities. Said property is shown on Assessor Map 232 as Lot 36 and lies within the Single Residence B (SRB) District.

**DISCUSSION AND DECISION OF THE BOARD**

*It was moved, seconded, and passed by unanimous vote to **postpone** the meeting to the July 20, 2017 Planning Board meeting.*

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G. The application of **Kelly Property Trust AB, Owner**, for property located at **Oriental Gardens Mobile Home Park off Woodbury Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer consisting of installation of rip rap outlet protection associated with an existing 48" RCP culvert and sewer improvements including removing an existing inoperative pump station, subsurface piping and reconstruction of the sewer system to operate by gravity, with 3,318 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 215 as Lot 9 and lies within the Office Research (OR) District.

**Chairman Legg read the notice into the record.**

### **SPEAKING TO THE APPLICATION**

Steve Riker of Ambit Engineering on behalf of the applicant was present to speak to the application. John Chagnon of Ambit Engineering was also present.

Mr. Riker reviewed the drainage maintenance plan and described the flow from the culvert that created a plunge pool and channel that emptied onto a property. He said the PWD recommended a rip rap outlet protection to reduce and eliminate erosion and sedimentation as well as some of the flow. He said that he met with the Conservation Commission and that there were changes in response to some of their comments, which resulted in reducing the limit of work to just the area of the rip rap outlet and removing the trimming vegetation note. He said they also added a note that New England wetland seed mix would be used as part of the construction process, which he briefly discussed.

Mr. Riker discussed the sewer improvement plan, including the pumphouse in the culvert area and the City sewer line. He said that Oriental Gardens' sewer line went into the pump station and emptied into the City's sewer line, which wasn't desirable, so they planned to remove a section of the line and the pump station and connect it via pipe to the City line.

Mr. Clark noted that the sewer manhole looked higher than all the inverts coming in. Mr. Chagnon said it was a typographical error. He explained how the pipe from Oriental Gardens joined up with the City's line and said that the old pumphouse was for the older septic system and was a liability that they wanted to remove. He said it was the reason for the impact in the buffer and that the pipe was higher than the City's pipe. Mr. Chagnon stated that they would make the change and then work with PWD.

Mr. Clark asked if there were calculations for the design velocity and whether it could handle the flow when the pipes were full. Mr. Chagnon said it could. He said it was a large pipe but had a shallow pitch. He said he would check the rip rap design to ensure that it was appropriate.

Ms. Begala observed that there was an additional 139 square feet of impact on inland wetland and noted that the Conservation Commission said the plan was incorrect, indicating that there would be more construction and possibly more impact. She asked whether there was a way to do the construction and not have the 139 square feet of inland wetland impact. Mr. Chagnon agreed, noting that there was no rip rap at the exit to the 48" pipe. He said it was owned by the City and that the applicant wishes to do maintenance work in the swale due to a larger impact involving removing vegetation, which would slow down the flow. He further explained it, stating that it would have no impact on the wetland. He said DWP reviewed it and asked them to put in a plunge pool to allow for better exit of the water from the pipe, which was why they had the direct wetland impact.

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

**DISCUSSION AND DECISION OF THE BOARD**

*Mr. Gamester moved to **grant** the Conditional Use Permit approval with the following stipulations:*

- 1) The applicant revise the plan to show the updated limits of construction.
- 2) The applicant add a note to the plan to restore the site with a conservation seed mix where disturbance occurs.
- 3) Remove the note from the plan calling for trimming and pruning vegetation.
- 4) The applicant shall provide a revised plan showing the correct limit of construction.
- 5) The inlet and outlet dimensions on Sheet P2 shall be corrected.

*Ms. Record seconded the motion. The motion **passed** by unanimous vote.*

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H. The application of **Christopher and Rachel Delisle, Owners**, for property located at **250 McKinley Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to construct a rain garden to collect existing sump/gutter runoff, add a soil berm and deep rooted plantings along the rear property line, add a thin layer of loam to lower areas to reduce the pitch of grade from the house to wetland, and raise the soil level at the house foundation, with 250 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 250 as Lot 117 and lies within the Single Residence B (SRB) District.

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

The applicant Christopher Delisle stated that he proposed to reduce the current surface water impacts at the rear of the property and mitigate the water entering the basement. He reviewed his application, noting that he wanted to add a raingarden, add a soil berm and a thin layer of loan, and raise the soil level at the house foundation. He also said he would add a silt fence.

Ms. Begala asked whether the water heading down would affect the neighboring property at the back. Mr. Delisle said it would not because the neighbor had an elevated property, adding that the neighbor approved the project.

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

**DISCUSSION AND DECISION OF THE BOARD**

*Mr. Gamester moved to **grant** Conditional Use Permit approval with the following stipulation:*

- 1) Any revisions to raingarden plantings shall be reviewed and approved by the City’s Environmental Planner.

The motion was seconded by Mr. Moore. The motion *passed* by unanimous vote.

.....

I. The application of **Pauline M. Dowd, Owner**, and **Tuck Realty Corporation, Applicant**, for property located at **288 Peverly Hill Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to demolish a shed and remove debris, with 3,100 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 255 as Lot 8 and lies within the Single Residence A (SRA) District and the Single Residence B (SRB) District.

**SPEAKING TO THE APPLICATION**

This item was combined with Item C.

*It was moved, seconded, and passed by unanimous vote to grant Conditional Use Permit approval as presented.*

.....

Chairman Legg stated that Items J, K, and L were combined.

J. The application of **299 Vaughan Street, LLC, Owner**, for property located **off Vaughan Street**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots as follows:

- (1) Proposed lot #1 having an area of 47,776 ± s.f. (1.0 acre) and no continuous street frontage.
- (2) Proposed lot #2 having an area of 3,947 ± s.f. (0.09 acres) and no continuous street frontage.

Said property is shown on Assessor Map 123 as Lot 15 and lies within Character District 5 (CD5), the North End Incentive Overlay District, the Downtown Overlay District (DOD) and the Historic District, where there is no minimum lot area or continuous street frontage requirement.

K. The application of **299 Vaughan Street, LLC, Owner**, for property located at **299 Vaughan Street and property located off Vaughan Street**, and **Sanel Realty Trust Company Inc., Owner**, for property located at **225 Vaughan Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the tidal wetland buffer for the demolition of the existing buildings and for the construction of a 143 guest room hotel, with 1,970 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 255 as Lot 8 and lies within Character District 5 (CD5), the North End Incentive Overlay District, the Downtown Overlay District (DOD) and the Historic District

L. The application of **299 Vaughan Street, LLC, c/o Cathartes Private Investments, Owner**, for property located at **299 Vaughan Street**, and **Sanel Realty Company, Inc, Owner**, for property located at **225 Vaughan Street**, requesting Site Plan Approval for demolition of the existing buildings and for the construction of a hotel with 143 guest rooms and 2,500± s.f. of commercial space, a 43,325± s.f. public park along the North Mill Pond waterfront (to be deeded to the City), and a 2,869± s.f. public path from Vaughan Street to the waterfront park. Said properties are shown on Assessors Map 123 as Lot 15 and Assessors Map 124 as Lots 10 and 11, and lie within Character District 5 (CD5), the North End Incentive Overlay District, the Downtown Overlay District (DOD) and the Historic District.

**Chairman Legg read the three notices into the record.**

## **SPEAKING TO THE APPLICATIONS**

Jeff Johnston of Cathartes was present on behalf of the applicant to speak to the application. He introduced Patrick Crimmins of Tighe and Bond and the landscaper Robbie Woodburn.

Mr. Crimmins stated that they were seeking several approvals for the project and that the packet included materials related to the site plan review. He said the CUP was for a 40,000-s.f. footprint in the CD5 District and materials related to the CUP for work in the 100-ft wetland buffer. He said there was also a subdivision application. He said they began the permitting process six months ago and met with TAC several times, getting approval with 22 stipulations. He said they also were before the Conservation Commission and received recommendation for CUP approval.

Mr. Crimmins reviewed the hotel site layout. He said they had a letter from Eversource approving the utilities and a letter from the hotel approving the trash management plan as well as a recommendation from City Staff to further detail the trash management plan, which he said they agreed to.

Mr. Crimmins reviewed the easement plans, noting that they key ones involved a land swap along Green Street proposing to deed 727 square feet of land to the City, including the valet operation and parking loading area on Vaughan Street. He said that the 608 square feet of parking was an important feature that had received HDC approval. He pointed out that the pedestrian gateway design would be the inviting entry space to the waterfront park. He said there was also an easement related to future community space and a pedestrian easement for a 7-ft wide pedestrian access to the waterfront park.

He said a CUP was requested for the building and that they were required to provide 30% of community space and the pedestrian sidewalk. He said the 14,844-s.f. waterfront park would be along North Mill Pond and pointed out that the project received a lot of good feedback from a lot of the Boards. He said the project proposed that, in lieu of constructing the park themselves, they provide a fair share financial contribution for the project. He said it was conceptual at that point and that the future community space would be deeded to the City and constructed by the City. He also said they would provide a contribution toward the Artspace piece for the public art.

Mr. Crimmins said that the CUP request for work in the 100-ft wetland buffer was removed because they were not doing any work in the waterfront park. He said they were now just dealing with the hotel. He said that the included amendment letter detailed the buffer impacts. He said it was an existing previously-disturbed upland buffer, and with the parking lot and raingarden, had a 2,065-s.f. wetland buffer impact, of which 1,075 s.f. was impervious surface and 495 s.f. was the raingarden. He said they would reduce the buffer impact by 30 s.f. and pointed out that the important piece was the reduction in impervious area in the wetland buffer. He said they were now proposing 550 s.f. of impervious in the wetland buffer, which was a 1,025 s.f. reduction. He said they also proposed 1,375 s.f. of impact relate to the raingarden.

Mr. Crimmins said they met with the Conservation Commission and received recommendation for approval. He said the site itself at base flood was at Elevation 9 and that the building met the FEMA flood requirement and the City's ordinance. He said that life safety designs were implemented and that

mechanicals and fire protection would be situated on the roof, out of Elevation 9 and that the generator and transformer would sit at Elevation 12. He said the structural design would withstand storm events.

Mr. Clark noted that the 7-ft easement went through the raingarden system and asked how it would be re-designed if it became a walkway. Mr. Crimmins said there was a drainage easement to benefit the hotel situated on the community space site, and if the path were built and reduced the raingarden's volume, the balance of what it needed to be would be constructed in that area. Mr. Clark asked if the ramp would be freestanding from the ground to the floor. Mr. Crimmins said it would. Mr. Clark asked if there would be infiltration below the ramp. Mr. Crimmins said they didn't put stormwater management where the columns would be under the ramp. Mr. Clark said the columns could be in the middle and the infiltration could be built around the columns. Mr. Crimmins said they were meeting all the treatment requirements and also met the new rainfall data values.

Mr. Clark said that the outfall outlets would be below the high tide mark and asked whether the check value along the drain would be replaced. Mr. Crimmins said it was only two years old. Mr. Clark asked whether the plantings in the raingarden would be salt-water tolerant, and Mr. Crimmins agreed.

Mr. Clark noted that there would be lots of utilities under the raised planter with a catch basin and drain in that area, and he asked if there would be treatment. Mr. Crimmins said there would not be any treatment because the planter was raised high due to duct banks.

Mr. Clark asked whether the 15-ft wide minimum way coming along the access to the public space from Vaughan Street was the easement or the walkway. Mr. Crimmins said it was the walkway. Mr. Clark said it looked pretty tight. Mr. Crimmins said the walkway was 10 feet, even though the minimum required was 15 feet, he said it was much wider. Mr. Clark said he just wanted to make sure that the pinch point complied. Mr. Crimmins said it complied with the minimum distance required for the pedestrian alleyway.

Ms. Begala asked whether 20- or 50- year surge calculations were done. Mr. Crimmins said they did not do surge calculations but designed it to meet the City's ordinance relative to FEMA and the hotel itself. Ms. Begala noted that the community space might be a challenge because of the coast flood assessment concern and the periods of time when pedestrians couldn't use it. She said it might be costly to claim it as a sustainable community space.

Mr. Leduc asked whether the parking was just for the hotel. Mr. Crimmins said it was but noted that there were three public parking spaces and the valet parking.

Chairman Legg brought up the subdivision plan, noting that one of the two lots would go to the City and one would stay with the developer. He said he was concerned about the way it was laid out because it created a pinch point between the northeast corner L9 lot line and the wetlands, a space of maybe 16 feet or so. He suggested redrawing the northeast lot line so that it didn't job toward the north and continue it on the existing lot line to the northwest and added to the lot on the southwest corner to eliminate the pinch point. Mr. Crimmins said it was possible and that they would agree to a stipulation to work with the Planning Department for configuring that lot.

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application.

Mary McElwain of 295 South Street urged the Board to study the floor report carefully, especially the adaptation recommendations. She said the applicant said he worked within the tidal wetland buffer, but she said there was a difference between that and a wetland buffer. She read the adaptation section, concluding that the wetland should be addressed as a tidal wetland, and she asked the Board to delay approval until they studied the report and discussed it.

No one else rose to speak, and Chairman Legg closed the public hearing.

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

Ms. Walker addressed the report. She said it was on the Planning Board website and was authorized by the Planning Board a few years before. She pointed out that the Conservation Commission did refer to it and were involved in creating it, as was Peter Britz in the Planning Department. She said that the Planning Board believed in that report and were working to codify it because they didn't have zoning codified to reflect some of the recommendations in that report.

*Mr. Gamester moved to **grant** Preliminary and Final Subdivision approval with the following stipulations:*

1. The lot line along the northeast corner (L9) and the wetlands shall be reconfigured to eliminate the pinchpoint.
2. Lot numbers as determined by the Assessor shall be added to the final plat.
3. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
4. GIS data shall be provided to the Department of Public Works in the form as required by the City.
5. The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

*Mr. Leduc seconded. The motion **passed** by unanimous vote, 7-0.*

*Mr. Gamester moved to **grant** the Conditional User Permit approval as presented. Mr. Leduc seconded. The motion **passed** by unanimous vote, 7-0.*

*Mr. Moore moved to find that the application met the requirements of the proposed zoning amendment Section 10.5A46.233 and, pending final adoption of that amendment, **grant** approval for a Conditional Use Permit for the excess community space to be credited toward a future project. **grant** approval for the CUP for the additional building footprint. Mr. Gamester seconded. The motion passed by unanimous vote, 7-0.*

Ms. Walker stated that the Zoning amendment referenced was the community access space zoning amendment that would go before the City Council for a third and final reading, and that any zoning amendments that had gone through a second public meeting with the City Council had to comply with that zoning amendment. She said the current amendment was applicable to the project and would remain so if passed the following Monday. She said it would set aside a future community space to be used by the applicant or conveyed to another developer to be used toward incentives in the Incentive Overlay District, banking that community space toward a future development. Chairman Legg asked

what would happen if it didn't pass a third reading. Ms. Walker said it would return to the Planning Board.

*Mr. Moore moved to vote to **grant** Site Plan Review with the following stipulations:*

Conditions Precedent (to be completed prior to the recording of the site plan):

1. The existing sewer to be abandoned shall be shown on the Utility Plan.
2. The street lighting type to be used shall be finalized through consultation with the Planning Department.
3. All easement plans, land swap agreements, and deeds shall be reviewed and finalized by Planning and Legal Department.
4. The applicant shall provide more detail for review and approval by DPW regarding solid waste and recycling generation amounts to back up the size of the containers needed and the frequency (per week) that is intended for trash/recycling pickup.
5. The Site Plan shall include the following notes:
  1. This Site Plan shall be recorded in the Rockingham County Registry of Deeds.
  2. All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director.”
6. The Landscape Plan shall include the following additional notes:
  1. The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.
  2. All required plant materials shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. All required fences and walls shall be maintained in good repair.
  3. The property owner shall be responsible to remove and replace dead or diseased plant materials immediately with the same type, size and quantity of plant materials as originally installed, unless alternative plantings are requested, justified and approved by the Planning Board or Planning Director.”
7. The Site Plan (C-102.1) shall be revised to update the zoning table.

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

1. The Site Plan (Sheets 102.1 and 102.3), Landscape Plan (Sheet L2), easement plans and deeds shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.
2. For the portion of community space on Map 123 Lot 15 to be designed and constructed by the City, the Applicant shall provide to the City all of the preliminary engineering design, surveying, and archeological survey that has been conducted on that property by the applicant to date and shall provide a financial contribution in the amount of \$100,000 for the construction of the community space and \$15,000 to Art Speak for the installation of public art.
3. The terms of the conditional use permit for the banking of the community space per Section 10.5A46.23 shall be documented in a Prospective Development Incentive Agreement (PDIA) to be entered into between the applicant and the Planning Department.
4. The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.

Conditions Subsequent (to be completed prior to the issuance of a Certificate of Occupancy):

1. For the Green Street sewer replacement project which shall be undertaken by the City, the applicant shall contribute \$50,000, shall provide a biddable plan set to the City by October 1, 2017, and shall work with the DPW to determine project limits and specifications as well as the timing of the installation of the binder overlay for the road.
2. The loading zone shall require Parking & Traffic Safety Committee approval.

*Mr. Gamester seconded. The motion **passed** by unanimous vote, 7-0.*

Chairman Legg stated that the Staff Memo notes said that if it was passed the applicant would provide \$100,000 toward the entire community space and \$15,000 to Artspeak for future art. Ms. Begala asked how the landscaping for the community space would be budgeted. Ms. Walker said the applicant did some preliminary designs that helped the City get a sense of the potential cost. She said there were some unknowns, like whether the path was porous pavement, but said they had enough contingency to be realistic. She noted that permitting and a consultant for the design and process was also included in the cost, so they felt that it was a realistic number. Chairman Legg said that the future user of the additional space would be responsible for making a financial contribution for their portion, which would give more financial support to develop the public space.

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M. Request of Debra Regan to transfer title to half of the “paper street” known as Oak Street that abuts 43 Mangrove Street. (City Council Referral)

Catherine Culley on behalf of the applicant was present to speak to the request. She stated that Jennifer Armstrong wanted part of the paper street conveyed to her as part of her existing lot.

Chairman Legg stated that the Legal Department and DPW needed to do additional work before making a recommendation. He said the Board would postpone the decision but would open it up to a public hearing.

Mr. Clark asked what Oak Street presently was. Ms. Culley said it was a lawn.

**Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. No one rose to speak, and Chairman Legg closed the public hearing.**

*It was moved, seconded, and passed by unanimous approval to **postpone** the request to the July 20, 2017 Planning Board meeting.*

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**V. OTHER BUSINESS**

A. Request that the City accept a water line easement from Dorado Investments, Inc. in Greenland.

Ms. Walker stated that there was a memorandum from the Legal Department related to this agreement between Greenland and the City.

*It was moved, seconded, and **passed** by unanimous vote to recommend acceptance of the easement to the City Council.*

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**VI. ADJOURNMENT**

*It was moved, seconded, and **passed** unanimously to adjourn the meeting at 10:00 p.m.*

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Respectfully Submitted,

Joann Breault,  
Acting Secretary for the Planning Board

These minutes were approved at the July 20, 2017 Planning Board Meeting.