

MINUTES OF MEETING
SITE REVIEW TECHNICAL ADVISORY COMMITTEE

2:00 P.M.

CITY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

NOVEMBER 29, 2005

MEMBERS PRESENT: David Holden, Director, Planning Department, Chairman; David Allen, Deputy Public Works Director; Peter Britz, Environmental Planner; David Desfosses, Engineering Technician; Tom Cravens, Engineering Technician, Debbie Finnigan, Director of Parking and Transportation; Steve Parkinson, Director of Public Works; Steve Griswold, Deputy Fire Chief and David Young, Deputy Police Chief.

ALSO PRESENT: Lucy Tillman, Chief Planner

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I. PUBLIC HEARINGS

1. The application of **The Hill Unit Owners Association, by Paul Demars, President**, for property located **off Deer Street**, commonly known as "The Hill", wherein site plan approval is requested to add 13± new parking spaces, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 118 as Lot 26 and lies within a Central Business B, Historic A and Downtown Overlay Districts. (This application was tabled from the November 1, 2005 Technical Advisory Committee Meeting)

The Chair read the notice into the record.

Mr. Defosses made a motion to take the application off of the table. Deputy Police Chief Young seconded the motion.

SPEAKING TO THE APPLICATION:

Cory Colwell, of AMES MSC, appeared on behalf of the Hill Unit Owner's Association. He indicated there are 13 individual buildings that were converted to condominium ownership in July of 1977. In 2001 Makrie, LLC bought 12 buildings and amended the Condo Declaration. All 12 of those individual units were sold which make up The Hill Unit Owner's Association today. In 1977 a parking easement was granted to The Hill on adjacent land of the Parade Office Mall, where the hotel is currently being built. 48 parking spaces went with the hotel. Litigation started over the parking easement but the construction of the hotel was allowed to go forward. The case was appealed by the The Hill Unit Owner's Association but it has not been scheduled yet. The construction of the hotel left The Hill 48 spaces short. They are proposing 13 new spaces on site, 8 of which were contained in individual deeds through the subsequent owners. Those were shown on the plan provided with a circled number. The numbers in a square represent non-deeded parking spaces that they are proposing. They will accommodate safer access to the spaces by making the paved surface road one way from High Street to the hotel site via their access easement. Additionally they are proposing a small bricked surface to allow for one of the parking spaces. There has been some bricking on site by individual owners who did not realize permission was required. They are asking for after-the-fact approval for these spaces. Mr. Colwell provided 8 ½ x 11 plans showing the history of the site.

The first plan, entitled "Subdivision Plan of The Hill", is what the site looked like in 1976, showing the buildings, the service road and the brick areas. The second plan, an overlay, entitled "Supplemental Subdivision Plan of The Hill" shows the site 25 years later. Mr. Colwell indicated there is very little difference between the two. The only changes are adjacent to building 7-1, 7-2 and 7-10 where some small brick walkways have been added. Mr. Colwell also included an aerial photograph for verification that the site has not changed much in the past 25 years.

Mr. Colwell stated that the new brick areas that some of the unit owners have added in the past year are shown on the June 23, 2005 plan. The only proposed changes that they want to do are the small bricked area adjacent to building 8-3 and to make the service road one way. After construction, 39% of the site will be open space and the minimum requirement is 5%. Drainage is easily handled. Bricks are sand and there is very little run off. They are making a safer vehicular access pattern through the site. They hope to gain back parking spaces they have lost through the hotel litigation. They feel they could fit many more parking spaces on the site but they do not want to jeopardize their unique setting. They want to keep their historic group of buildings and do not want to add any further parking spaces. All proposed spaces are adjacent to vehicular access.

The Chair inquired if there was anyone wishing to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing would remain open.

Mr. Parkinson asked how many spaces were shown next to building 10-8?

Mr. Colwell clarified they were showing 2 spaces in front of 10-8.

Mr. Parkinson indicated he was out there yesterday and there were approximately 6-8 cars parked on the grass. He asked if that would continue?

Mr. Colwell stated it was not their intention as those are spaces that pull in front of the building and they are proposing one parallel parking space.

Mr. Parkinson asked how that would be enforced?

Mr. Colwell indicated it would be similar to the way parking in the City is now enforced. If they overburden their parking, they would be entitled to the same enforcement as the rest of the City.

Mr. Holden asked if it was their position that the City is enforcing private property?

Mr. Colwell indicated that the City would enforce this the same way that they enforce all other Site Plan Reviews. If someone overburdens their approval, someone from the City's inspection staff lets the Planning Department know and appropriate action is taken. Mr. Colwell didn't believe it was any different from any other private development.

Mr. Holden felt it was debatable if they can hear an application if there is an existing violation. If they have people parking on the grass, one issue would be whether this was even properly before the Board. Where is the enforcement now on that?

Mr. Colwell confirmed there is no enforcement now.

Mr. Holden indicated that the plan makes reference to deeded spaces. He asked if what they meant by that was that someone perceives they have the right to that particular area of land?

Mr. Colwell indicated that was correct and it was contained in the deed under the condominium subdivision.

Mr. Holden stated they would normally treat this as one lot for zoning purposes. The state definition of subdivisions does include deeded rights.

Mr. Colwell indicated it was the same as a condominium with 12 individual units with common areas on one lot. It is one tract of land with 12 individual units owning the tract of land, having exclusive use to a small portion of that land.

Mr. Holden asked if there was any dispute that the original Site Review Plan for this area contemplated a largely pedestrian oriented development?

Mr. Colwell agreed because in 1976 the plan was primarily pedestrian access. They had parking on adjacent land at that time.

Mr. Holden thought it looked like some of the pathways are now being used as driveways or means of access for vehicles. Were any changes done to the sidewalks to accommodate vehicles?

Mr. Colwell confirmed that this past year, some owners had bricked in new areas and those are shown on the plan.

Mr. Holden asked what is the base of the expansion?

Mr. Colwell indicated the bricks are laid in sand, a permeable layer.

Mr. Britz asked if they were counting the brick space as open space?

Mr. Colwell confirmed that they were not as the definition excludes parking areas.

Mr. Allen asked if the Condo Association has limitations on the parking and how is it addressed? Were they looking to approve something that might be in conflict with their deed?

Mr. Holden was curious on how individual condominium owners were able to do work and did the Association approve it?

Mr. Colwell believed it was individuals doing it on their own.

Ms. Finnigan asked what impact does the parking have on pedestrian safety?

Mr. Colwell indicated that all spaces they are proposing are adjacent to the service road.

Mr. Finnigan asked how pedestrians have safe passage to the other side of the service road?

Mr. Colwell indicated that 4 units abutting the Parade Mall have leased parking in the parade mall, right up against their units and won't need to use the service road.

Ms. Finnigan asked if before the parking went in, were people walking through the lot where the path no longer exists. How do they access that now?

Mr. Colwell indicated that the access is still there but it is not as safe as before. There will be a defined sidewalk.

Mr. Parkinson stated they are asking for 13 parking spaces and asked how many exist now?

Mr. Colwell stated that 8 exist today.

Mr. Parkinson said there was talk about the brick area being used in the future. He asked if they will see this come back for additional parking?

Mr. Colwell indicated that the Condo Association has recognized that area as common area and that it should be pedestrian friendly and is not safe for parking.

Mr. Holden asked how they will keep vehicles away from that area?

Mr. Colwell stated by virtue of where the parking spaces are located, there is not enough room to access that area and they will block them with curb stops.

Mr. Holden indicated that he has three concerns.

- 1) They need to define what deeded rights are and whether they constitute a subdivision or whatever other approvals may be needed. Memos are required to make that determination;
- 2) Under Site Review criteria, he is concerned about H. which states "The site development will result in loss of important natural or historical site features that could be avoided or minimized by modification of the Site Plan"; and
- 3) Under Site Review criteria, he is concerned about J. which states "The proposed volume and arrangement of vehicular and pedestrian traffic flow, including but not limited to parking areas, intersections, roads or driveways, and traffic controls will create an unacceptable increase in safety hazards and traffic congestion."

Mr. Colwell thought Mr. Holden had a very good point that they did not consider which was how to separate vehicular access with pedestrian access and maybe they should create a barrier so cars cannot continue through the courtyard. Maybe they could do plantings or concrete curbstops and it would enhance the landscaping on the site.

The Chair inquired if there was anyone else wishing to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

DISCUSSION AND DECISION OF THE COMMITTEE:

Mr. Holden stated he was still concerned about the deeded easements and he would be interested in seeing a revised Site Plan.

Ms. Finnigan was concerned about the spot by the hotel where they park a lot of cars and how they will enforce as just one space?

Deputy Fire Chief Griswold asked about the direction of travel from the north back towards hotel and he was not sure fire trucks could make that turn and it may not work for traffic flow for emergencies.

Mr. Colwell indicated they created it due to the location of the parking spaces. They will be backing out and they felt it flowed nicer that way. They are not planning to block either way. Emergency access would be allowed in either direction.

Mr. Desfosses asked how they picked the direction of travel?

Mr. Colwell indicated it was based on the direction of the parking spaces.

Ms. Finnigan asked for "One Way" signage at both ends.

Mr. Colwell confirmed they would have that at both ends.

Mr. Holden reiterated that he would like a revised plan.

Mr. Allen made a motion to table this matter until the next meeting scheduled on January 3, 2006. Mr. Desfosses seconded the motion.

Mr. Desfosses also would like to see improved brick accessways, with sidewalks on both sides of the accessways. Possibly the bricks could be widened on the side of Building 7-10 so the accessway could remain open. He also felt that the direction of traffic flow should be reversed.

Deputy Police Chief Young asked what will be done in the area of enforcement? This is a private area and this is already the subject of current violations. He would like clarification from the Legal Department.

Mr. Holden would also like the issue of the deeds to be reviewed by Legal. He would not support this plan and is not sure another plan will be a substantial improvement but if it is, it will need a detail to show how the driveways are going to be constructed. Enforcement is his largest concern.

The motion to table to the next TAC meeting on January 3, 2006 and the Planning Board meeting on January 19, 2006 passed unanimously.

Concerns from this meeting:

- 1) That the proposed parking spaces must be moved off of the sidewalks so that the accessway remains open, specifically along the "service road";
- 2) That consideration should be given to reversing the direction of traffic flow on the "service road";
- 3) That the City Legal Department provide an opinion regarding parking enforcement;
- 4) That the City Legal Department provide an opinion regarding the issue of the deeded easements;

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2. The application of **Lewis A. and Ruth Cicero, Owners, and Changing Places, LLC, Applicant**, for property located **off Falkland Way** wherein site review approval is requested for the creation of 24 new town home units on a proposed 8 lot subdivision, with all of the proposed lots having access off of a proposed extension of Crescent Way extending through to Saratoga Way, with related paving, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Plan 212 as Lot 123 and lies within a General Residence B District; (This application was tabled from the November 1, 2005 Technical Advisory Committee Meeting)

The Chair read the notice into the record.

Peter Torrey, Business Administrator for the School Department, joined the Committee for this hearing.

Mr. Britz made a motion to take the application off of the table. Mr. Parkinson seconded the motion. The motion passed unanimously.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech appeared on behalf of Changing Places, LLC. Attorney Pelech indicated that at the last meeting there were concerns over the streets and traffic. They appeared before the Traffic and Safety Committee and they conducted a site walk, and voted to favorably recommend this proposal. Another issue was Falkland Way, the “paper street”, which they are seeking to have the City Council abandon. According to Attorney Pelech’s research, the 1919 Atlantic Heights plan did not show that street. Most of the rest of Atlantic Heights to the north was on the plan and all streets were dedicated to public use. In 1955 John Durkin did an amendment to the Atlantic Heights Plan showing “Future Falkland Way” without a note dedicating it to the public. He has researched the records of the Registry of Deeds and City Council and is pretty sure there was never an acceptance of the street by the City. That request has gone to Dave Holden and Bob Sullivan for their review. This is similar to the streets that were abandoned for the Senior Housing building. Attorney Pelech turned the meeting over to Dennis Moulton. He added that there was concern by abutters regarding a cut through to Kearsarge Way. The Traffic & Safety Committee looked at that issue and recommended that they take some type of action so that can be discontinued.

Dennis Moulton, of AMES MSC, handed out a revised site plan and a traffic analysis. He indicated this was a subdivision of 8 lots, each conforming in size and density, ranging from 10,000 s.f. to 27,000 s.f. Each lot contains from 2 to 4 units, and a 2 car garage, accessed from a main road. At the last TAC meeting, there were 5 items of concern and he reviewed them with the Committee.

They communicated with the Community Development Department regarding lighting. They provided preferred lighting and it is shown on the plan.

The 10’ sidewalk easement is not prepared at this time however this is actually more of a landscape easement and he asked that that language be changed.

All topographic features have been shown on the plans.

They have agreed to have an independent Inspector for the proposed street.

Two issues that were brought up were a referral to the Traffic & Safety Committee. The connection from Saratoga to Kearsarge was also discussed and there was an independent recommendation to solve that. They proceeded with a traffic analysis that was provided to the Committee members. The level

of service at the intersection of Raleigh and Saratoga is an 8. The average traffic count at peak hours was around 60 cars, or one car per minute, which was not a lot of traffic. The second item was a drainage analysis. They provided an analysis that was not as satisfactory as he would have preferred. It was unexpected that they would receive so much run off from the back yards. The analysis shows over 19 c.f. of run off to a little bit of over 32%. They looked at ways to mitigate this. One possibility is to tie into the current drainage system on Saratoga, which would work from a gravity standpoint. Catch basins could come across and continue down the manhole to Saratoga. They would need upgrades to and from the manholes. He would work with the City engineers to design a plan. Otherwise, they would have to litigate the run-off on -site.

Mr. Holden asked if they are proposing to tie into the existing drainage?

Mr. Moulton indicated that all stormwater run off from the houses on Raleigh Way collect at a low point, to a treatment swale.

Mr. Britz asked if they have done calculations on that?

Mr. Moulton stated they are still increasing flows from 19 to about 24 or 25% increase.

Mr. Britz asked if this was just roof and yard run off?

Mr. Moulton confirmed that the run-off going to the swale would essentially be clean run off. A little bit from the driveway would make it into the swale but the rest would run off and flow off of the site through vegetation. The site runs into a channel flow, into a culvert, back to PSNH property to the Piscataqua. There is a minor additional volume of run off.

Mr. Moulton indicated that they made all of the corrections asked of them except the sidewalk. They will do additional topo work to continue the pedestrian way.

Mr. Torrey asked how many of units this included?

Mr. Moulton confirmed there would be 23 new units.

Mr. Torrey asked how many bedrooms?

Mr. Moulton confirmed 2 bedrooms each.

Mr. Torrey asked if they had done expectations of school children?

Mr. Moulton indicated that, based on the Site Review Regulations, there would be 2.3 students for elementary school and junior high and 9 for high school.

Mr. Torrey interpreted this that they were maintaining that the impact would be minimal. He asked if the streets will meet city standards, ie for the school buses?

Mr. Moulton confirmed they will meet city standards.

Mr. Holden asked Mr. Moulton to show on the overall site plan the driveway that Traffic & Safety was concerned about.

Mr. Moulton pointed out the area on the site plan and indicated that some of the new residents have used this for a shortcut.

Mr. Holden asked if this was a safe situation?

Mr. Moulton felt it was not a desirable situation but it was not a safety issue.

Mr. Holden asked if this would likely be used in same manner if this development goes in?

Mr. Moulton felt it would probably continue to be used by people at the apartment building that is already there.

Mr. Holden asked if it was a nuisance or a safety hazard?

Mr. Moulton felt the number of cars will not cause a safety issue.

Mr. Holden asked if it would effect the traffic report?

Mr. Moulton stated it would go from level A to level A.

Attorney Pelech indicated that the Traffic & Safety Committee stated that there was an 8' strip of land that is not paved between the parking area and the apartment house and the site plan showed a landscaped barrier to be constructed. That no longer exists but it would solve the problem if the landscaped barrier were replaced. The Traffic & Safety Committee indicated that this was not their problem but rather the problem of the apartment house who owned the land. Attorney Pelech thought the Traffic & Safety Committee was going to send a letter to the Planning Department to review the situation.

The Chair inquired if there was anyone wishing to speak to, for or against the application.

Stephanie Krenn, Chairperson of the Atlantic Heights Neighborhood Association. She indicated that they had a meeting on 11/6 with presentations by developers of the hotel, the housing partnership and also this development. She read from the letter that she sent to Mr. Bohenko.

They are concerned about the lack of infrastructure and there is strong doubt that the streets are adequate. They are concerned about the cut-through and there is a general feeling that a traffic study is needed from the Market Street Extension. They are at risk of being unable to evacuate the area in emergency. They would like their issues addressed adequately and with communication with the City. They have flooding and lots of runoff in their neighborhood. They worry about safety of traffic, run off and the adequacy of the roads.

Robin McIntosh, Kearsarge Way, stated that she send a letter at the last hearing. She questions the safety of Raleigh Way and whether fire trucks will be able to get through? Lots of kids play on the streets and she is concerned about the cut-through. Stormwater drainage is a concern. She is not against the project but wants to make sure that the project is supported properly

Andre Cardoso, 199 Concord Way, stated that he lived one street down from Raleigh Way which is also a narrow road and not wide enough for two lanes of traffic. More traffic will be a concern. He questioned the stormwater run off. He reiterates other speakers, and asked them to please look at the area as one big package before any further development is done.

Cathy Gallagher, 175 Raleigh Way, was concerned about run off. Improvements to Saratoga have greatly improved the run off but the catch basin is not really a catch basin as it's open at the bottom so water seeps into it underground. There is still a big run off problem. She asked about a traffic study and mentioned that there were 6-7 vehicles parked all across the street from the traffic study members and when the garbage truck came it had a terrible time getting down the street. Also, when the traffic study people were done, they all left via the cut through. She was concerned that once the cut off is landscaped, those people will be exiting off of Saratoga.

Mr. Holden asked if other people, other than the apartment residents, use the cut through?

Ms. Gallagher indicated that there are people coming down all the time where it deadends and they sometimes turnaround through the cut-through but there is not a lot of traffic.

Chet Brud, Jr., owner of property at the Heights, stated he was not against the development but felt there were problems in Atlantic Heights that needed to be addressed.

Paul Reardon, 207 Raleigh Way, agreed with the previous speakers. He is not against the development. He grew up in the Heights and is familiar with the land. There is a big problem with drainage as the land is a big bowl and there is a lot of ledge. Regarding the issue of abandoning Falkland Way, he wondered to whose advantage would that be? He asked if the developments are sitting on slabs or full foundations? He stated there was a problem with blasting the last time. The houses in the neighborhood are very old and there are some issues with cracking.

Attorney Pelech indicated that the abandonment of Falkway Way would not effect any setbacks. Ownership to the centerline would revert to the abutters and they would gain 20' along the back of their lots.

Mr. Holden asked if the property owners on each side of the right of way would receive an additional 20'?

Attorney Pelech further explained it is an automatic mechanism and no deed is necessary. He believes it is a paper street. The future Falkway Way was shown on the amended Durkin plan.

Mr. Holden asked them to summarize the traffic plan and drainage again.

Mr. Moulton stated that the conclusion of the study is pretty much what they expected. He understands the roads are narrow but the volume of traffic they are talking about is very small. They have verified this with traffic counts. Closing off the cut-through is minimal with no effect on traffic. They have had their crews out looking at drainage and they will have to verify but they believe there is sufficient capacity to handle the buildings they are proposing. They will upgrade the pipes at the manhole all the way back. He didn't observe a lot of flow at the catch basin.

Mr. Torrey asked about the foundations.

Mr. Moulton stated the houses are townhouse type units and each have a 2 car garage at the basement level. Each unit has a driveway that is a level lower than the front. All units provide off street parking for the cars.

Mr. Torrey asked about blasting?

Mr. Moulton confirmed there would be blasting and ledge removal. They will follow city regulations.

The Chair inquired if there was anyone else wishing to speak to, for or against the application.

Cathy Gallagher spoke for a second time. She provided a 1920 insurance map of the neighborhood showing Falkland Way. She indicated that there was some confusion over the lots but her map reflects that there were separate lots behind Falkland without frontage so they were not buildable.

The Chair inquired if there was anyone else wishing to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

DISCUSSION AND DECISION OF THE COMMITTEE:

Mr. Desfosses felt the drainage was complex enough to warrant a site visit by representatives of the Public Works Department. His initial instinct is that the water needs to be controlled and needs to go in the direction it goes now, through its own pathway that already exists, to the river and not go through the existing municipal system which was not sized for any additional capacity. There was some additional capacity but that pathway needs to be explored and determine what effect it would have on the backroad to PSNH. With the underlying terrain, there is a lot of terraforming going on. Because of the ledge, there could be more ground water issues that pop up. He would like an on site with the developer and engineer in the near future. Also, based on the traffic study, it indicated level A but also points out 26 cars at peak on Raleigh which is 28% more traffic. Also, when the city redid Saratoga, that was a deadend. It was built that way for a back accessway to the housing authority. At that time, the apartment building was in the works but had not been built so basically it was access to just 2 houses. They need to look at Saratoga to see if it meets the standards that they need it to meet.

Mr. Britz added to what Mr. Desfosses said by indicating that he has a concern exporting all that water to the watershed. He would like to see it brought behind the site.

Mr. Desfosses indicated that he was aware that the catch basin was a leaching catch basin and it was installed because of being unable to get drainage pipes to that connection.

Mr. Allen had questions on grading. He indicated that there seem to be a couple of areas where there is conflicting information. Between Lot 5 and Lot 4, they are coming upgrade from the back to the front yard, ending with a 62 contour, and then it runs to the street at about elevation 68. It looked to him that they may need some more information in there, maybe they were missing some contours or missing grading information?

Mr. Moulton confirmed that something needs to be changed around.

Mr. Allen indicated there were other areas that were also void of that information. Likewise, as you move down towards Crescent Way, some road grading is confusing. Another issue was, on the water line.

Mr. Desfosses made a motion to table with stipulations. Mr. Allen seconded the motion.

Mr. Holden clarified that they are looking for guidance to the applicant rather than making stipulations.

Mr. Allen indicated that the water line is shown tying in half way down Saratoga which is actually a couple of services to the PHA housing. They will need a 10" stub going up to Raleigh where the 8" left off with two new connections coming in off their line. Also a 10" stub from the property line of Saratoga so the City could extend that water line over PHA property to loop into Atlantic Heights for another feed.

Deputy Police Chief Young asked what the best way was to address the cut through?

Mr. Holden suggested having the Planning Department work on the issue and report back at the next meeting.

Mr. Cravens requested a meeting to discuss off site improvements for water. The City has worked to make improvements in the area and in the late 70's put in a new water main. Prior to that, it was from the late 1800's and was in poor shape and undersized. He would like to meet and discuss off site improvements to include replacing some of the main on Kearsarge with new main. Mr. Cravens asked if the units were going to be condos?

Mr. Moulton confirmed that they would be.

Mr. Cravens noted that they indicated service size of ¾ “ which is the minimum but he recommends going with 1”and they would have less problems.

Mr. Holden asked Mr. Desfosses if the City has done all of their improvements at Saratoga and Crestcent to the end or are there more to be completed?

Mr. Desfosses indicated there was a section of Crescent slated for capital improvements next summer.

Mr. Holden asked if they needed something to show how these would tie in?

Mr. Desfosses indicated they are shown on the plan.

Mr. Holden would like to have a note so there is something to show to the neighborhood and also clarified that the sidewalk easement is really for a vegetative buffer. He felt the applicant has gone a fair distance to meet its burden but they just have to work the final details out. The drainage is an important issue and the traffic needs to be reviewed.

Mr. Cravens asked if they were going to have any irrigation?

Mr. Moulton indicated none was proposed at this time.

Mr. Holden confirmed that the effect of the motion is to table to the January 3rd TAC meeting, and the item would then be taken up at the January 19th Planning Board meeting.

The motion passed unanimously.

- 1) That the applicant meet with the City Community Development Department to coordinate lighting;
- 2) That a 10' sidewalk easement shall be prepared by the Applicant and reviewed and approved by the City Attorney;
- 3) That all topographical features shall be shown on the Site Plans;
- 4) That the applicant shall work with Steve Parkinson and Deb Finnigan, of DPW, to determine what the city shall require for a Traffic Study;
- 5) That there shall be an independent inspector for the proposed roadway as this will eventually be a city street;

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3. The application of **Dennett-Prospect Realty Investments, LLC, Owner**, for property located at **69-73 Prospect Street** wherein site review approval is requested for the renovation of an existing multi-family dwelling on Lot 28 to convert structure from 6 dwelling units to 4 dwelling units and the construction of a two dwelling unit structure on Lot 29, with related paving, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Plan 142 as Lots 28 & 29 and lie within a General Residence A District; (This application was tabled from the November 1, 2005 Technical Advisory Committee Meeting)

The Chair read the notice into the record.

Mr. Desfosses made a motion to take the application off of the table.
Deputy Fire Chief Griswold seconded the motion.

SPEAKING TO THE APPLICATION:

Attorney John Bosen, appeared on behalf of the applicant. Also present were Bob Dennett and Alex Ross. This application was tabled at the last TAC meeting with five concerns.

Attorney Bosen reviewed those concerns. Stipulation #5 was that the applicant shall schedule a meeting with DPW to discuss concerns so that updated plans could be provided prior to the next TAC meeting. Alex Ross met with Dave Desfosses and the site plans were amended to the satisfaction of Mr. Desfosses.

Attorney Bosen went on to indicate that all water pipes were upgraded to copper and the Site Plans have been revised to show a new water line. There is only one waterline for this lot, which will be a new 1 2/3' copper line, with the meter in the basement of the primary house. The water meter is shown on the Site Plans on the main house. The Temporary Benchmark Logs were provided by Roto Rooter and a report was shared with David Desfosses at their November 10th meeting. They also provided a report from Roto Rooter indicating the pipes are solid and useable, however a cleaning was suggested. The water line is now shown on the Site Plans. Attorney Bosen believed they had satisfied the 5 concerns of the previous hearing.

He further indicated that the as-built utility plan had been prepared. They are scheduled to appear before the Planning Board on December 15th and they were seeking approval from this Committee. Attorney Bosen indicated that Alex Ross was present for questions.

Mr. Allen asked if the tape from Roto Rooter was available of their camera work?

Mr. Ross indicated that it was available and he would get that for Mr. Allen.

The Chair inquired if there was anyone wishing to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

DISCUSSION AND DECISION OF THE COMMITTEE:

Mr. Desfosses made a motion to approve with stipulations.

Mr. Cravens seconded the motion.

Mr. Desfosses indicated that his motion included the concerns from the last meeting as stipulations. Also that the Roto Rooter tape be reviewed by David Allen, if the condition of the sewer line is not satisfactory then the line shall be replaced, that the existing and proposed utilities be differentiated on the Site Plans in some manner and there should be a detail on how water services are connected.

Mr. Cravens asked about the contour at the intersection of Prospect and Walker Streets that is shown as 100. He asked if that was the true contour elevation or a temporary benchmark?

Mr. Ross indicated it was an assumed mark.

Mr. Cravens indicated that all water lines shall be installed to City Water Department standards and specifications and that the size of services to the main house and the gerrish house be reviewed by their mechanical engineer to make sure they are adequately sized for their use. Also, there was a note on Sheet 4 on the waterline installation where they show the trench for a 1 1/2" line to be over 27" wide but 5' deep. He suggested making a minimum width for a bucket size or back hoeing. Also, they want to make sure the detail on the waterline is tapped off on the customer side of the water main.

The motion to approve passed unanimously with the following stipulations:

- 1) That the camera tape from Roto Rooter be provided to David Allen of DPW for his review;
- 2) That the existing and proposed utilities be differentiated on the Site Plans;
- 3) That a detail be added to the Site Plans showing how the water services are connected;
- 4) That all water lines shall be installed to City standards and specifications;
- 5) That all water pipes shall be upgraded to copper;
- 6) That the water meter shall be shown on the Site Plans;
- 7) That Temporary Bench Mark logs for the sewer shall be provided to DPW for their review and comment;
- 8) That all water lines shall be shown on the Site Plans;

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4. The application of **Marilyn Rath, Owner**, and **Portsmouth Fabric Company, Applicant**, for property located at **112 Penhallow Street** wherein site review approval is requested to construct a 679± s.f. second floor addition to the existing one story section of the building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 106 as Lot 20 and lies within Central Business B, Historic A and Downtown Overlay Districts; (This application was tabled from the November 1, 2005 Technical Advisory Committee Meeting)

The Chair read the notice into the record.

Mr. Desfosses made a motion to take the application off of the table. Mr. Allen seconded the motion. The motion passed unanimously.

(Let the record show that Mr. Parkinson excused himself from the rest of the meeting.)

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, appeared on behalf of Portsmouth Fabric. Also present was Marilyn Rath and John Rummler. On November 2nd they appeared before TAC and subsequently met with City Attorney to discuss the party wall issue. Mr. Chagnon indicated that John Rummler would

speak to that further. They have engaged council but a meeting was unable to be scheduled. The second issue was drainage and Mr. Rummler met with Dave Allen and they believe they have met all of those concerns. Hopefully they can now be moved along to the Planning Board Meeting.

John Rummler, from Interface Architects, spoke next. He indicated there were two conditions for further discussion. One was the party wall and he indicated that there was a meeting with the City Attorney and Sharon Somers, who represents the Raths. Mr. Rummler was not able to attend. He did receive a copy of Attorney Somers letter to Attorney Sullivan and he is comfortable addressing her concerns architecturally. Attorney Somers is focusing on the Site Review criteria F & G.

Mr. Rummler indicated that item F states that "The site development lacks adequate protection for neighboring properties against fire, noise, explosion, glare, odor, air pollution, hazardous waste, or other objectionable features or nuisance." He addressed the potential issues under F and felt the key issue was protection from external or neighboring properties. The downtown zoning ordinance allows for 0 lot line setbacks. He stated the blocking of the 3 windows will increase fire protection with the layering of a rated covering rather than unrated windows, noise impact to neighboring properties will be improved by a brick wall, glare will be eliminated and become moot, noxious odors will be blocked off and other objectionable features are unknown. He could only think of views, which are addressed under the zoning regulations and light and ventilation go under the Building Inspectors review. The abutting building will remain code compliant without the windows.

Mr. Rummler addressed item G, which states "The site development lacks adequate quantities, type, or arrangement of landscaping and open space for the provision of visual, noise and air pollution buffers." He did not believe there was anything to clarify and he feels the argument is moot as the blocking of the windows will decrease pollution. Therefore, he did not believe there was any logic to items F or G.

Most significantly, Mr. Rummler asked whether the intent under the Site Review criteria clauses needed to be considered in the context of the properties which are in downtown Portsmouth. They conform to consistent building standards that have been in effect for centuries.

Mr. Rummler's greatest concern was the advisability of TAC allowing the precedent providing for contingent approvals to the Planning Board. Attorney Somers has asked for a condition that they get a signed approval before they can proceed and he believes that is contrary to the review process.

The Chair inquired if there was anyone wishing to speak to, for or against the application.

Attorney Sharon Somers, appeared on behalf of Judith Trausch, trustee of the J-Rel Realty Trust, who owns abutting property 108-110 Penhallow Street. She submitted a status report dated 11/22/05 to the Planning Department regarding her meeting with Bob Sullivan and Mr. Rummler had indicated that neither he nor council could attend. Subsequently she submitted a letter outlining her continued opposition to this project. She reiterated that they object to the proposal. This proposal is now before TAC and she believes the Planning Board would be the appropriate forum to grapple with this issue. Her chief concerns and the reason for their opposition to this project is the reference to the Site Review criteria, particularly F, which requires that the Planning Board has to make findings that if the site development lacks prevention for neighboring properties against fire, noise, explosion, glare, odor, air pollution, hazardous waste, or other objectionable features or nuisances. She feels that the blocking of 3 existing windows and blocking off the light source and ventilation is going to be an objectionable feature and it will be a nuisance. There is a failure of this project to meet the Site Review criteria. The blocking of the windows also blocks proper air flow.

Attorney Somers went to the site and went inside and reports that going into the inside of the building is important to understand the full impact to her client's property. The only openings in the party wall are the three windows. If light and air sources are blocked off, it will create a "cave-like" atmosphere. If they would like to conduct a site walk to see the interior and see the impact this proposal will have, she is more than willing to accommodate them. Mr. Rummler states that BOCA requirements have

been met and he is implying that should be the end of the analysis. She feels as a planning component they have to take it to the next level up. BOCA is the minimum requirements. They need to determine whether this is an objectionable feature. They cannot ignore the reality that there is a party wall separating the two buildings. She feels it would be appropriate to recommend requiring the consent of her client to change the features of the party wall. She recommends this project not go forward to the Planning Board and she encourages them to come look at the property.

Mr. Holden stated, absent that condition, they would still have the right to bring suit.

Attorney Somers responded that the condition is appropriate because it is tied into the Site Review criteria.

Mr. Holden asked if there was any precedent in the City?

Attorney Somers felt the distinguishing feature is the party wall situation, which is unique to this particular fact pattern.

Mr. Holden asked if she didn't agree that 0 lot lines are made to deal with that?

Attorney Somers felt, because they deal with Site Review criteria, it is part of this review.

Mr. Holden stated that the City is not going to defend a private party wall. If this project is subsequently approved, their issue will be in Court and the private property owners will be in dispute.

Attorney Somers agreed that Mr. Holden was largely correct.

Mr. Holden asked if they would be doing a service to move this project along?

Attorney Somers repeated that she objects to this project. She believes that Planning Boards have the ability to impose reasonable conditions and especially if the condition ties into Site Review criteria.

Mr. Holden does not believe that item G is involved and item F is the only one that could possibly raise a question. By action of this committee, they would be moving this along to the Planning Board.

Attorney Somers asked what he meant by "moving this project forward"?

Mr. Holden said if TAC were to make a favorable recommendation to the Planning Board, she would make the same case to the Planning Board and they could deny and the other side would have recourse. If it were approved, then they would have that same recourse with or without the condition.

Attorney Somers felt this was an appropriate condition for this Committee to consider. It is not a view issue but rather is a light and ventilation issue.

Ms. Finnigan asked what happens if they build 3' off the party wall?

Attorney Somers indicated that, hypothetically, that would solve the light and ventilation issue.

Mr. Britz asked what was she asking this Committee, that permission be granted for her client to approve the party wall construction?

Attorney Somers confirmed that she is asking that this Committee deny approval. Second, if approval is recommended, she would like it subject to a condition which would indicate that her client's consent would have to be obtained before this project could be executed and a building permit issued.

Mr. Britz asked if that consent is similar to their Site Review Regulations?

Attorney Somers disagreed and said that if they recommended approval, she is requesting that it would be subject to a condition.

Mr. Britz thought the condition would be based on Site Review regulations.

Attorney Somers said the source of her objection was the Site Review criteria. The Committee can consider reasonable conditions and those are linked to the Site Review Regulations, and she is citing F & G.

Mr. Britz indicated that he doesn't see that link.

Attorney Somers indicated that the link is Site Review criteria F which is designed to address the design features and nuisances.

Mr. Rummler responded. Regarding light and ventilation, he believes those are building code issues. BOCA is very clear on their requirements and these bedrooms meet those requirements. The first thing he did was discuss this with Roger Clum. He won't contest that blocking some windows reduces the light and ventilation but from a zoning, building code and site review process, they are allowed to do that. He reiterated that the site review criteria language talks solely to protecting external adverse effects. He feels they are improving the external situation. He would support Mr. Holden's comments concerning precedent as no prior case law has been brought forward.

Mr. Holden stated that this matter was tabled last month to allow for a discussion which they were not able to have, which is part of the problem. Attorney Somers was able to have her own conversation with no report back from City Attorney. Mr. Holden has nothing from Attorney Sullivan with any conclusion. His intent would not be to put a condition on it but he would like to dispose of the application one way or the other. There are only three ways to do that: approve, deny or table. Mr. Holden asked when Mr. Rummler felt he would have the ability to meet with Legal Council?

Mr. Rummler has been trying to meet since the week before Thanksgiving. He got the letter from Attorney Somers ½ hour before this meeting. His question to Mr. Holden was whether Site review criteria was developed and regulated by this committee?

Mr. Holden confirmed it is regulated by the Planning Board however this committee needs to make a recommendation. He felt this Committee needs to make a strong recommendation backed by fact. Attorney Somers has raised an interesting issue. If he had an attorney, he would ask if he was prepared to argue this case in court and did he have a good feeling that he would prevail? He didn't believe they were prepared to say that yet.

Attorney Somers realized that some of the issue was that Mr. Rummler was unable to meet with her and Attorney Sullivan. She indicated that she is happy to schedule another meeting.

Mr. Holden felt the real burden was now on the applicant by loosing another month.

The Chair inquired if there was anyone else wishing to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

DISCUSSION AND DECISION OF THE COMMITTEE:

Mr. Holden indicated they still have not resolved the issue for which this application was originally tabled. He does not believe there is a precedent in the City for this but Attorney Somers has raised a good issue. He recommended tabling this to the next TAC meeting for the scheduling of a meeting with all parties and a report back to this committee.

Mr. Desfosses made a motion to table this matter until such time as a meeting could be held with legal councils and Attorney Sullivan, with all parties present, and a report shall be submitted back to TAC for review prior to the meeting.

Mr. Allen seconded the motion. He also indicated that Mr. Rummeler had called with a brief description of the drainage issues and those drainage issues should be discussed and addressed at the next meeting.

The motion to table to the next TAC meeting on January 3, 2006 and the Planning Board meeting on January 19, 2006 passed unanimously.

- 1) That the parties meet with the City Attorney and the Planning Director to address the “party wall” issue with a possible easement solution;
- 2) That drainage be better addressed on the Site Plans;

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5. The application of **T-Beyer Realty, LLC, Owner**, and **Tina Montgomery, Applicant**, for property located at 141 Banfield Road wherein amended site review approval is requested to revise the loading docks and the striping of the existing paved area, and the removal of the landscaped islands, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 254 as Lot 3 and lies within an Industrial district.

(Let the record reflect that Debbie Finnigan the left meeting and did not sit for this application.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech appeared on behalf of T-Beyer Realty, LLC. He indicated that he worked on the original Site Plan. He gave some history on why the site was designed the way it was and why it needs to be changed. Originally they had a tenant who was a warehouse who wanted to use this for a lumber facility so the site was planned with large tractor trailer maneuvering and little parking. However, the site was actually developed into 13 small condo units with no need for tractor trailers. They appeared before the Conservation Commission last month and they favorably recommended this matter with stipulations. The applicant has also agreed to do some additional plantings and reconfigure an area that was not built according to the Site Plan.

Mr. Holden asked why wasn't the site built according to the approved site plan?

Attorney Pelech indicated that Dennis Moulton could probably better answer their question.

Dennis Moulton, of AMES MSC, addressed the Committee. He explained that the site was not built according to the approved Site Plan and the areas that were not constructed according to the site plan were listed out in a meeting with the property owners and City personnel.

Mr. Moulton explained that the drainage swale in the wetland buffer should be a grassed area and they have agreed to restore that area, re-grade it and create a swale. Stone fill was put in by the applicants/owners. As to why that was done, he doesn't really think that is important however at the final site review it was discovered by the City. A Conservation Commission Approval stipulation was

the addition of plantings. Also the Conservation Commission required a barrier along the edge of pavement so that cars could not park in that area, which has been a problem in the past. It would also prohibit the storage of snow in that area. The third stipulation was that the vegetative swale be enhanced with plantings and the applicant will work with Peter Britz to identify plantings and mix.

Mr. Moulton indicated they have shown the proper snow storage area and changed the loading areas. Originally they were angled towards the west area and those were eliminated. They removed the landscaped area in the front and rear of the building. Those areas prevented large tractor trailers from making the turn. The storage of vehicles off of the paved area has been discontinued and those vehicles have since been removed. There is one tenant that runs a delivery service and employees park on the side when they work and use the company delivery cars. Another business is a van conversion service and they have vehicles that are ready for sale and they have worked on that are stored on the east side of the site. Those have also since been moved. The owners have notified tenants where they are allowed to park. Also, the renting of parking spaces has been eliminated by advising all tenants that it was not allowed.

Mr. Moulton did a comparison of the original Site Plan and there are several areas where they paved. They propose 36 additional parking stalls along the front, a striped area mid point to the edge of the building and an additional 14 parallel parking spaces to the rear. They eliminated 2 parking stalls to allow for turning around the building.

Mr. Moulton handed out a revised plan. He tried to get a 67' tractor-trailer around the site and he was able to get the truck around the building, although it is a very tight fit. The truck then continues around the front of the stalls, parallel to the accessway and it can make the turn out of the accessway to Banfield Road.

Mr. Allen asked what was the sidewalk on the end, where they are cutting across, with the handicapped parking spot?

Mr. Moulton indicated that was just a gravel stone area.

Mr. Allen made a general comment. When this Site Plan got approved they were showing a catch basin discharging into the drainage swale. Now that is a parking lot for vehicles and he was concerned about a drainage system that was not designed for this current use and it seems to shed off in both directions into the wetlands. Given the level of scrutiny for stormwater phase II in preventing silt getting into those drainage area, getting into a contained area to pick up drainage into a sump basin before getting into the catch basin would be appropriate.

Mr. Britz stated that because of possible oil and grease that wasn't there before, there will be a greater impact.

Mr. Holden asked if the edge of gravel was part of the prior plan?

Attorney Pelech indicated that was existing gravel. Originally this site was the Iafolla junk lot.

Mr. Holden asked if they shouldn't be using the approved site plan at this point? Was it envisioned, for example, to have propane tanks on it?

Mr. Holden indicated that there is a general note on the landscaping plan and it was to be used for open area. He was troubled by the propane tanks and wondered if it was a zoning issue and possibly a fire issue?

Deputy Fire Chief Griswold stated it depends on the size and location.

Mr. Moulton stated they were at least 50' from the building.

Mr. Holden felt it may take some zoning review.

Mr. Britz asked about the parking of cars and whether they were renting parking spaces?

Mr. Moulton stated that there will be no renting of parking spaces. A tenant took it upon himself to rent out spaces once but that has been stopped.

Mr. Holden asked the Committee if they had enough information to act on this?

Mr. Allen indicated he did not have enough information.

Mr. Desfosses asked about the Conservation Commission approval with stipulations.

Mr. Moulton indicated that there were three conditions:

- 1) That the applicant shall provide a planting plan to be reviewed and approved by the Planning Department;
- 2) That a barrier shall be constructed at the edge of the pavement within the wetland buffer area and no snow storage shall be allowed in that area; and;
- 3) That the vegetative swale shall be constructed as originally approved and enhanced with plantings.

Mr. Desfosses asked what type of barrier they were proposing?

Mr. Moulton indicated a wood guardrail but it was not shown on the plan yet.

Mr. Allen made a motion to table. Mr. Desfosses seconded the motion.

Mr. Allen felt that as the original plan had stormwater management for that particular area, that needs to be incorporated into this plan.

Mr. Desfosses stated that the site was changed because the basin wouldn't work in that particular location. They will need to be creative and the Applicant will have to invent something.

Mr. Allen indicated that they will have to design it but the sheet flow should not be flowing off of the parking lot.

Mr. Holden indicated at there should be a note of all prior approvals from the Planning Board and the Conservation Commission all in one place on the plans. Also there should be a zoning interpretation on the propane tank.

Mr. Allen indicated they should get Ms. Finnigan's input on the trailer movement issue.

Mr. Holden requested that the plans should show the proposed fencing. And the plans need more definition, showing what they are proposing and what they are not.

Mr. Britz indicated that the Cape Cod berm was not proposed. What will they do to keep the water into the catch basin?

Mr. Moulton stated that to keep water along that pavement edge, the rock apron will slope towards the pavement to keep the water along that edge would not be subject to damage as would the Cape Cod.

Mr. Holden said nothing beats granite curbing.

Mr. Moulton disagreed as far as durability.

Mr. Holden indicated they will require a new Site Review Agreement with a new bonding amount and add the existing bond to it.

Attorney Pelech indicated he would work with the City on that.

Deputy Fire Chief Griswold asked for the distance between the building and the tank and the distance from one tank to another.

The motion to table to the next TAC meeting on January 3, 2006 and the Planning Board meeting on January 19, 2006 passed unanimously.

Major items of concern to the Committee are the following:

- 1) That stormwater management needs to be incorporated into this plan to conform with the present use and site conditions;
- 2) That all previous stipulations from prior Planning Board and Conservation Commission approvals shall be added to the Site Plans;
- 3) That the Planning Department will complete a zoning review regarding the propane tanks currently stored on the site;
- 4) The Site Plans should show the proposed fencing;
- 5) That a new Site Review Agreement will be required, along with a corresponding bond to be posted with the City in an amount to cover all proposed site work;

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II. ADJOURNMENT was had at approximately 5:00 p.m.

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These minutes were taken and transcribed by Jane M. Shouse, Administrative Assistant in the Planning Department.