

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

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

**7:00 P.M.**

**APRIL 19, 2007**

**MEMBERS PRESENT:** John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Jerry Hejtmanek, Vice-Chairman; Donald Coker; Raymond Will; Anthony Coviello; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector;

**MEMBERS EXCUSED:** Paige Roberts and Timothy Fortier, Alternate;

**ALSO PRESENT:** David M. Holden, Planning Director; and, Lucy E. Tillman, Planner I

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**I. APPROVAL OF MINUTES**

- A. Approval of Minutes from the March 1, 2007 Planning Board Work Session – Unanimously approved.
- B. Approval of Minutes from the March 15, 2007 Planning Board Meeting – Unanimously approved.

Mr. Coviello made a motion to approve both sets of minutes. Vice Chairman Hejtmanek seconded the motion. The motion passed unanimously.

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Chairman Ricci announced that Public Hearings E & I will be tabled, in case anyone was in the audience to speak at those hearings.

**II. PUBLIC HEARINGS**

Chairman Ricci recused himself from this hearing and turned the meeting over to Vice-Chairman Hejtmanek.

- A. The application of **Harborcorp, LLC, Harborside Inn, Inc., Harborside Associates, and City of Portsmouth, Owners**, for properties located **off Deer Street, Green Street, Russell Street, Market Street, and Maplewood Avenue** wherein Preliminary and Final Subdivision approval (Lot Line Revisions) is requested to allow for the following: 1) the consolidation of Harborcorp, LLC lots 12, 21 and 28 into one lot consisting of 2.37 acres with conforming area, street access and frontage and including approximately 17,607 s.f. of land to be conveyed from the City to this lot (collectively these lots comprise the existing surface parking lot in the area bounded by Russell, Deer, Green Streets and Maplewood Avenue) and the City owned land is currently part of the Russell and Green Street right-of-ways and these two right-of-ways will be reconfigured as part of this application and subsequent

development project; 2) Harborside Associates, Lot 1-1C (existing hotel and condominium lot) is conveying approximately 434 s.f. of land to the City for use within the proposed relocated Russell Street right-of-way; 3) Harborside Inn, Inc. Lot 1-1A with an area of approximately 2,640 s.f. is being conveyed to the City for use within the proposed relocated Russell Street right-of-way; and, 4) a conveyance from the City of a portion of the Russell and Market Streets right-of-ways totaling approximately 5,260 s.f. to Map 119, Lot 4 for the proposed realignment of the intersection of Russell and Market Streets. All resulting lots are in conformance with the Zoning Ordinances and Subdivision Rules Regulations. Said lots are shown on Assessor Plan 118 as Lot 28, Assessor Plan 119 as Lots 1-1A, 1-1C and 4, Assessor Plan 124 as Lot 12 and Assessor Plan 125 as Lot 21 and such other land of the City as shown on the subdivision/lot line revision plan and lying within the Central Business A (CBA) and the Central Business B District (CBB), the Downtown Overlay District (DOD) and the Historic District A.

The Chair read the notice into the record.

### **SPEAKING TO THE APPLICATION:**

Attorney Malcolm McNeill appeared on behalf of the applicant. He pointed out that the issues before them tonight deal with boundary line adjustments and this is not a technical review. This is a further effort of the applicant to comply with agreements which have been reached with the City relative to the processing of this project. Municipal stages of this project have mostly been completed. With him were Corey Colwell, of AMES MSC, and Dennis Moulton, of AMES MSC, and Giles Ham, traffic consultant. This is a unique application as it is a joint application between various Harborcorp entities and the City. The City has reviewed this proposal and supports the adjustments requested tonight. The party who is joining in and asking for the relief is also the City. Therefore, this is an assented to boundary line adjustment. After the completion of this process, the lots will be conforming. Similarly the lots being conveyed to the City must also be approved by the City Council. All exchanges and consolidations have been the subject to previous agreements with the City Council. The first document is a Memorandum of Understanding passed on November 30, 2005 by the City Council. There as a distinct entry that there would be roadway changes. On the same page it mentioned a land exchange consistent with a plan that was appended to the agreement and that is the basis of their requests this evening. Therefore, they specifically contemplated the changes that they are seeking tonight. The Joint Development Agreement was also approved at that time and it also provides that the City will convey to Harborcorp any property for the purposes of the project and the particular lots were listed out. This was a City designed plan that formed the basis of the documents that are part of this Subdivision request. The City Council then passed a bonding resolution that incorporated the MOU and Joint Development Agreement so that the City Council was again exposed to these agreements that provided for the land swaps. These documents are also not unfamiliar to this Board. When they reviewed a re-zoning request regarding height in the CBA, the rezoning report specifically referred to these two documents. Attorney McNeill was trying to establish a continuum of this which the City has already committed to.

They are asking the Board to consider consolidating several lots owned by Harborcorp. The function and use of those spaces will continue to be under review of TAC until this project is completed. Ultimately, the function of the roadway system is up to the Board. Therefore, it is not uncommon to bring up a subdivision proposal at the same time as a site review. All exchanges are intended to effectuate the contractual agreements of the parties and deal with the traffic surrounding the project.

Attorney McNeill asked Dennis Moulton and Corey Colwell walk them through the requested changes. He also added that they agree with all of the recommendations included in the Planing Department Memorandum.

Corey Colwell, of AMES MSC, referred them to a three sheet set of colored drawings. The orange areas represent conveyances into Harborcorp, blue represents conveyances into the City of Portsmouth,

brown areas represent existing buildings and the red lines are the end result of the new property lines. There are six lots of records and five public right of ways. The first step was to merge three separate lots of record into one lot. The orange area on the plan is a small sliver which starts on Maplewood Avenue, follows Deer Street, turns and runs up Russell Street and then turns into Green Street and is a conveyance from the City into Harborcorp and is 17,607 s.f. or 0.4 acres. Together, that creates a lot of 103,000 s.f. or 2.37 acres. The next conveyance is much smaller. Starting on Green Street, to Russell and to Market Street is a conveyance from the City into Harborcorp and represents 5,260 s.f. or .12 acres. This makes the lot go from .22 to .34 acres. On the other side they have Harborcorp conveying land to the City and they are shown in blue. The intersection of Russell and Deer Street is a separate lot of record and is 2,640 s.f. and will go into the City for part of the Russell Street realignment. Lastly, there is a tiny blue sliver of land which will also become part of Russell Street. The major change is where Russell intersects Deer and represents the most significant change.

Mr. Coviello asked if any on street parking was being removed? Giles Ham, of Vanasse & Associates, stated that on Deer Street there will be approximately 40 on street parking spaces removed to make room for a left turn lane to allow for better traffic access. They are moving 8 spaces north of Russell Street as well for realignment. Vice Chairman Hejtmanek felt these were Site Review questions. Mr. Holden confirmed that they are meeting all requirements of the Subdivision Rules and Regulations. The parking orientation will be a valid issue under the Site Review application. Mr. Ham stated they are aware of that issue and are attempting to minimize that and are working with the TAC committee.

Deputy City Manager Hayden asked in terms of trying to improve traffic flow, as you travel down Russell Street there is a little pickup whereas everything else is a straight right of way and she asked what it was? Mr. Ham pointed out that as you are traveling along Russell Street, that is where they will drop off at the new hotel.

Attorney McNeill referred to a letter from Attorney Ryan which the Board received regarding litigation. Attorney Ryan has appealed the other findings to the Supreme Court and they are pending. Attorney McNeill did not feel it was appropriate for these proceedings to be delayed based upon the piece of litigation that relates to the height of the building. He is also aware of a letter received from Attorney Keane regarding a driveway and that same issue was raised at a Traffic & Safety meeting. Their position is that they are not affecting the driveway and the litigation has no bearing on this hearing. City Attorney Sullivan has indicated that he will address both of those issues.

Vice Chairman Hejtmanek called for Public Speakers.

Attorney Douglas Macdonald, representing Fred Lowell of 62 Deer Street, who has a driveway issue. He handed out a letter to the Board members. He wanted the Board to be aware that as the Board went through a process to realign property lines, it will move the intersection closer to his clients' driveway. Recently the Superior Court reversed the City's denial of his client's request to locate a driveway at 62 Deer Street. This has been appealed to the Supreme Court by the City. Attorney Macdonald's position was, in light of Attorney McNeill's position that this is being done in agreement with the City, it will adversely effect his client.

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

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

Mr. Will referred to Mr. Coviello's comments regarding parking and although he realizes that they are in a subdivision hearing, he referred the Chairman to Subdivision Regulations where one of the requirements of a preliminary plat, Section 4, #7 which stated "Dimensions and area of any and all property to be dedicated or reserved for schools, parks, playgrounds, or other public purpose" and #8 stated "Location, names and present width of all adjacent streets, with a designation as to whether

public or private and approximate location of existing utilities to be used. Curbs and sidewalks shall be shown". He felt that referred to parking spaces and loss and/or gain of parking spaces was pertinent to this application. Mr. Holden stated that, in general, they agree but part of the Joint Development Agreement addressed parking. This deals with right of way and the Board does not normally have a great deal of say on so they will deal with it at Site Review. He was not so sure why Mr. Will was delving into parking spaces when dealing with realigning lots. Although it may be germane, it may not be totally germane. Mr. Will agreed but felt that Mr. Coviello's question was pertinent as the parking was part of the Agreement. Mr. Holden stated that the plan arises from the Joint Development Agreement which was approved by the City Council. They are not here to comment on the Agreement or how the right of way will be utilized. Having some information on it is appropriate but delving into the numbers or rational is going too far.

Mr. Coviello indicated that he appreciated Mr. Will's comments but agreed that his comments were premature.

Mr. Coker requested that the Planning Board take a 10 minute recess to go into an administrative session with the City Attorney. Mr. Coker asked Attorney Sullivan if someone requested an executive session with the City Attorney, do they have to state a reason? City Attorney Sullivan stated that an executive session is not a "meeting" and is called a "non meeting" and is not subject to a right to know law so postings do not apply. This means that if the Planning Board would like to, by majority vote, adjoin to a separate meeting with Counsel, they may do so.

Mr. Will understood that under the right to know law there are general reasons why they can go into executive session without revealing what is going on, i.e., personnel reasons or negotiating a contract. He asked if Mr. Coker could be more specific about why they want to go into executive session. Attorney Sullivan explained that Mr. Will was referring to an old regulation regarding the right to know law. Mr Coker and Mr. Will are talking about different things.

Mr. Coker made a motion to meet with Council in a private session. Mr. Will seconded the motion but disagreed.

Mr. Coker voted in favor and all others voted in the negative. The motion failed by a 1 to 6 vote.

Mr. Coviello felt that Mr. Coker had blindsided the Board with his request.

Mr. Coker called for a roll call vote:

Mr. Coviello – opposed.  
Councilor Dwyer – opposed  
Mr. Coker – in favor  
Mr. Will – opposed  
Mr. Hopley – opposed  
Deputy City Manager Hayden - opposed  
Vice Chairman Hejtmanek – opposed

Attorney McNeill was aware of Mr. Coker's concern and it felt it was in the City's best interest to accommodate his request. The goal of this developer is to move forward as quickly as possible. He felt that Mr. Coker's concern is worthy of an executive session. Attorney McNeill felt it was about how the Board would act this evening with the Board who is sitting here tonight.

Mr. Coviello made a motion to convene into executive session. Mr. Will seconded the motion.

Attorney Sullivan stated that his job was to advise and represent the Planning Board and he will do whatever they wish him to do.

Mr. Will asked if there was a requirement of some reason, generally without getting into specifics, for them to go into executive session? Attorney Sullivan did not believe so.

Councilor Dwyer felt they were at an impasse and they clearly need the advice of the City Attorney so it seemed to her they should take 10 minutes and hear the issue and move on.

The motion passed with Mr. Will voting in the negative.

**AN EXECUTIVE SESSION WAS HELD WITH PLANNING BOARD MEMBERS AND CITY ATTORNEY ROBERT SULLIVAN.**

Attorney Sullivan addressed the audience. He explained that Mr. Coker raised an issue of whether it may be a conflict of interest for Mr. Hopley, Deputy City Manager Hayden and Councilor Dwyer to vote on the application based on the fact that they have connections with the City. Attorney Sullivan stated this had too much weight to answer off the top of his head and due to the seriousness of the project, it would be appropriate for a member of the Planning Board to make a motion to postpone any action on this until Attorney Sullivan is able to make a recommendation on this issue.

Mr. Will made a motion to postpone this application to May 17, 2007. Mr. Coviello seconded the motion, to await an opinion from Attorney Sullivan.

The motion to postpone until May 17, 2007, to allow Attorney Sullivan to issue an opinion, passed unanimously.

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Chairman Ricci read items B & C into the record to be heard together but voted on separately.

B. The application of **The Estate of Emerson McCourt, Owner, Heather Parker, Applicant**, for property located **off Mill Pond Way**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to construct a single family residence, within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 143 as Lot 9 and lies within a General Residence A District;

C. The application of **The Estate of Emerson McCourt, Owner**, for property located **off Mill Pond Way**, wherein Preliminary and Final Subdivision approval is requested to subdivide one lot into two lots with the following: Proposed Lot 1 having 20,095 ± s.f. and 102' ± of street frontage on Mill Pond Way and Proposed Lot 2 having 13,529 ± s.f. and 0' of street frontage and lying in a zone where a minimum lot area of 7,500 s.f. and 100' of street frontage is required. The purpose of this subdivision is to deed to the City of Portsmouth Proposed Lot 2 to be used as a public park. Said property is shown on Assessor Plan 143 as Lot 9 and lies within a General Residence A District;

The Chair read the notices into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, addressed the Board on behalf of the Emerson McCourt Estate, Also present was Heather Parker, applicant and Attorney Paul McEachern, representing the Estate.

Mr. Chagon first spoke to the Conditional Use application. They prepared a packet for the Board which contained supporting materials. He highlighted from his cover letter what the application was about. The project is to construct one single family dwelling on an existing vacant lot, adjacent to a wetland that is greater than ½ acre. That size means it is subject to a 100' buffer requirement. The applicant, in order to obtain a conditional use permit, must meet the criteria under the ordinance,

section 10-609, in order to be approved. This application, in his opinion, meets that criteria and has been reviewed by the Conservation Commission and recommended unanimously approval. They will exercise some technique to minimize the impact. The applicant will do restoration work in the vegetative zone between the house and the wetland by removing invasion species. They will dedicate a portion of the lot to the City for use as a public park. They might recall there was a project adjacent to this property which recently dedicated an adjacent parcel to the City to be used as a park. Therefore, this expands the size of that public park. He handed out a copy of the proposed deed of that land to the City to the Board members.

Additionally, the applicant will plant some landscaping, in particular they will provide some wildlife value, the applicant will use propane fuel and not oil or maybe natural gas and passive solar possibly in the future. The structure is situated on the property to maintain the views of the existing abutting residents. The applicant is proposing a shallow foundation so it is less disturbing to the ground. She is dedicated to sound management practices and hopes to construct a building that conforms to LEED standards and a porous concrete driveway. Altogether, they have addressed the required criteria. Staff has recommended approval subject to a stipulation to assure that the wetland is protected. Mr. Chagnon stated that the Site Plans shows the improvements and suggests that approval of the application is contingent upon doing these protective items. They are open to talking about how to craft a condition to maintain the wetland buffer.

Mr. Holden referred to the condition of the Conservation Commission, he didn't see anything about how the house will be construction, how it will be oriented, or have the items Chagnon is talking about. The one thing they requested to be in the deed, Mr. Chagnon is now saying is too restrictive. Where does it say they will do all of these things? They need to get these representations down with a formal agreement to show how these things will be done.

Attorney McEachern, trustee of the Emerson McCourt trust, offered plans showing the items which he would offer as conditions. Mr. Holden thought maybe they could use Attorney McEachern to help the Board craft something that would be appropriate? Attorney McEachern agreed to assist.

Deputy City Manager Hayden referred to Page 2 of the Conditional Use permit application which has a list of what the applicant will employ to minimize impact. Are they agreeing to list those as stipulations to this approval? Attorney McEachern had no problem with that. Mr. Will asked if it would be simpler to have the addendum listed as the stipulation, rather than listing everything out? Deputy City Manager Hayden felt they might want to have them be more specific. There is a very nice list on page 2 and she believed the applicant is making a good faith attempt to do the right thing.

Councilor Dwyer asked if they are also talking about then adding the Conservation Commission stipulation? Deputy City Manager Hayden indicated that was correct.

Mr. Chagnon stated that it is not that they do not want to follow their submission item but they are wondering how to set up a deed restriction for native landscaping? They felt it would be better to let the plan stand. Chairman Ricci suggested working with City staff to finalize that.

Mr. Chagnon moved on to the Subdivision. They are looking to create two lots from one lot. They are proposing to put one line down the middle with the second lot being deeded to the City to be used as a public park, subject to eight stipulations which they have no problem with.

Mr. Will asked about the northeast corner and whether it will be set back from the right of way and provide public access? Mr. Chagnon clarified that public access will come from the adjacent park. Deputy City Manager Hayden reminded the Board that there is a new City owned lot next to it.

Mr. Coviello asked if they should make a stipulation on this in case the other lot falls through? Attorney McEachern confirmed the other lot has been finalized and the deed has been recorded.

Mr. Holden requested that Condition #7 should be corrected from “City Complex lot” to just “City lot”.

Mr. Coviello felt that deed restrictions can wreck havoc as “in perpetuity” is not binding. Mr. Holden stated that the City would not need to restrict it. The City land will remain City land. Mr. Chagnon pointed out that their proposed deed says the land will be used as a public park in perpetuity. Mr. Coviello felt maybe they don’t want that restriction on it in perpetuity. Chairman Ricci indicated that the City Attorney will review this. Councilor Dwyer thought if they are going to have it restricted in perpetuity then she wants the wetland buffer mentioned as well as they go hand in hand.

Chairman Ricci referred to the monument set in the middle of Lot 1 and asked along Mill Pond Way if any pavement out of the right of way on the north side of the road? Mr. Chagnon did not believe so.

Attorney Paul McEachern, trustee of the Emerson McCourt trust, stated that this will increase the area of the park land next to it. Emerson and Ruth McCourt have owned this lot for over 50 years and the proceeds will go to a scholarship fund.

The Chairman called for public speakers.

P.J. Tossi, of Ruth Street, abuts this property kitty corner. He is not against a single family house but he has concerns about drainage that goes behind his house and down to that lot. He is concerned the back up will come up to his house. Also, two tiers of the lot and the upper section has been filled in over the years. Mr. McCourt had advised him that a lot of the fill was concrete, etc. and when they start digging, how will they control it? He provided photographs showing the land under different conditions. He wants to control the build up of the lower tier.

Kent Kirpatrick, of 5 Ruth Street, supported Mr. Tossi’s comments. There has been a lot of filling of the wetlands and it has affected the drainage in the neighborhood. The whole area is connected and they have to be very careful as what goes on there could affect his lot. He also felt it was important to protect any wetlands in the area.

Chairman Ricci asked Mr. Chagnon to address the drainage issues.

Mr. Chagnon stated they have not done a soil analysis. But the wetland is not going to be impacted by the construction. They will only impact the buffer. The house is on a high point and will not block the drainage coming from the residential neighbors.

Chairman Ricci asked, in light of the environmental protections, have they considered an underground dry well with stone? Mr. Chagnon did not believe that would work.

Mr. Coviello asked if grade at elevation is changing? Mr. Chagnon confirmed it will not be changing. The grade of the house is 2’ above the existing grade. The construction of the shallow foundation is 22’ below so almost everything is from the ground up. They are not changing the direction of the flow as they are at the top of the hill. Mr. Coviello expressed concern as they are adding more drainage into the area.

Deputy City Manager Hayden indicated that after looking at the photos and listening to abutters, it appears that some water drains from other peoples’ lots. Is it true that water is coming onto this lot from other peoples’ lots and will that still be able to happen? Mr. Chagnon indicated it would. He does not believe anything will change. Deputy City Manager Hayden asked if the improvements were not going to change drainage in that area? Mr. Chagnon indicated that was correct. Deputy City Manager Hayden also asked about the ability of the land area to absorb water? Mr. Chagnon again indicated that was correct. They reviewed elevations.

Mr. Tossi indicated that he was trying to explain it was not so much drainage coming from the house but the natural run off from the other houses in the area. It is with the drainage coming down along the back. As long as they say nothing will change, he is satisfied.

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

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Coviello made a motion to approve the Conditional Use Permit with stipulations. Mr. Will seconded the motion.

Deputy City Manager Hayden requested the Conservation Commission stipulation, along with the section from Page two of the application and the plans prepared by Ambit Eng dated July 2006 with specific focus on items listed on page 2 of Conditional Use Application where they list things they will do to limit impact on the environment. Also, a deed restriction as finalized between the applicant, staff and the City Legal Department.

The motion to grant Conditional Use Permit approval passed unanimously with the following stipulations:

- 1) That measures be taken to insure that the stated improvements to the buffer zone are protected over time through some type of legal mechanism such as a deed restriction or conservation easement for native landscaping in the wetland buffer area;
- 2) That said deed restriction or conservation easement shall be reviewed and approved by the City's Legal Department; and
- 3) That the Conditional Use Permit Application report, dated March 30, 2007 and prepared by Ambit Engineering, Inc., with specific focus on the items listed on Page 2 listing the techniques to be used to minimize the impact to the surrounding environment, and the Plan Set consisting of a Boundary & Topo Plan dated July 2006, Layout & Landscape Site Plan dated March 2007 and Grading & Utility Site Plan, dated March 2007, all prepared by Ambit Engineering, shall be incorporated as part of this approval;

Mr. Coviello made a motion to approve Preliminary and Final Subdivision approval with the eight stipulations recommended by staff. Vice Chairman Hejtmanek seconded the motion.

Deputy City Manager Hayden requested a stipulation modifying #7 to strike "municipal complex" and say "City owned lot". Also, to modify the plan to show that the lots being deeded to the City and with the concern about the fill, that the applicant do an environmental assessment of the property.

Mr. Coviello stated, as a Dennett Street resident and member of this Board, thanked the applicant for the gift of the land.

The motion to approve Preliminary and Final Subdivision approval passed unanimously with the following stipulations:

- 1) Public ownership protects this area from future private development;
- 2) Public ownership of and public access to a waterfront area are public benefits;
- 3) That boundary monuments shall be placed in accord with DPW requirements;
- 4) The submission, to Department of Public Works of electronic data, suitable for updating the City Assessing Records;
- 5) That the City Council authorize the City Manager to accept this land offer;

- 6) That a deed transferring ownership to the City of this parcel shall be prepared, reviewed and approved as to content and form by the City Attorney;
- 7) That this parcel shall be consolidated with the City owned lot along with the filing in the Registry of all appropriate deeds and plats;
- 8) That upon acquisition of this parcel and pursuant to Article II, Section 10-202(B) of the *1995 Zoning Ordinance* that the *2005 Zoning Map* shall be hereby amended so as to include this parcel within the Municipal district;
- 9) That the applicant shall complete a Phase I environmental assessment of the property for review and approval by the Planning Department;

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 Chairman Ricci is a direct abutter to this application. He turned the hearing over to Vice Chairman Hejtmanek.

D. The application of the **Foundation for Seacoast Health, Owner**, for property located at **100 Campus Drive**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to construct playing fields and ball courts to accommodate softball/baseball, soccer, tennis and basketball activities, within an Inland Wetlands Protection District. Said property is shown on Assessor Map 266 as Lot 4 and lies within an Industrial District;

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Peter Loughlin appeared on behalf of the Seacoast Health Foundation. Also present was Ben Dwyer of Underwood Engineering, Bobby Iafolla of the Foundation, Dan Hoefel, Chairman of Foundation, and Vice Chairman Ted Connors. They handed out exhibits to the Board including an aerial photo and two plans. They seek conditional use approval for a multi purpose playing field, 2 tennis courts and a parking lot. Part of the parking lot and some of the field is in an inland buffer. The reason for the relief is so the three facilities can be placed in reasonably close proximity to the Community Campus building. The Foundation has been very successful and they have identified needs that were not anticipated when the facility was constructed 10 years ago. The foundation has done everything possible to minimize the impact on the wetlands and there is no agency or entity that has done a better job of designing a building and layout. All surface water that presently falls on the pavement goes to the interior and not directly into the wetlands. The surface water goes inside the perimeter of the roadway and is treated before it goes into the swamp. One point of this submittal is that the water that comes from the Water Country parking lot will be directed to a drainage swale and will receive treatment before entering the swamp. The Foundation has been very sensitive to how their facility was laid out and maintained. At the first Conservation Commission meeting issues were raised and addressed. At the second meeting, trails came up and two members were concerned as they were at the Campus and saw students using the trails and that would negatively impact the trails that the daycare center uses. Attorney Loughlin agrees there will be some impact on the trails but that is a trade off. After the first Conservation Commission meeting there were a number of suggestions made and after a site walk, revisions included pulling the parking lot to the left back from the roadway so the buffer would be maintained. The south entrance to the parking lot was eliminated to have less impact and less pavement and allowed additional landscaping. There were three tennis courts and basketball courts and that was changed to two courts so they were pulled completely out of the buffer. A screen was added to both sides of the fields for visual impact and porous pavements will be used in the parking lot. Attorney Loughlin indicated some people from the Agencies at the campus would speak and address their application.

Deputy Police Chief Len DiSesa spoke in support of the expansion of the Community Campus. He is on the Board of Directors for the Child Advocacy Center at the Community Campus. Their important and primary mission is to prevent child abuse, in partnership with government agencies. The CAC

offers their support for the approval and the CAC would be impacted in a positive manner with the additional parking. They have served over 2700 families and often people are unable to find parking and that only adds stress to what is already a stressful time for them.

Tracey Tucker, Director from New Heights, stated that in the summer they have a very successful sports camps and parking is at a premium. The growth is based on the success of the Community Campus. The new courts will allow them to no longer use parking lots for sports in the future.

Judy Ryan, Executive Director of Stepping Stones, indicated that they serve people with brain injury. They serve 70 people a day. Their program is not an original program but has been added. The additional sport and recreational areas would be extremely beneficial to their members, in addition to the therapy that they currently offer.

Beth Cleary, Chairperson from Community Child Care Center, indicated that they support the expansion of the center. They have 120 children enrolled at their site. They are concerned with families dropping off and picking up children. Also, the playing fields will greatly enhance their program.

Attorney Loughlin indicated that additional representatives from other agencies were also present.

Councilor Dwyer noted that he has spoken to parking and an increase to services. Was any thought given to doing a garage on existing pavement to minimize the impact to the area? That might be more user friendly. Attorney Loughlin confirmed that it is not their intention to increase programs. Councilor Dwyer understood that but by building up there would be less impact to the land. Only one corner of the parking area is in the buffer area.

Bob Iafolla, of Myriad Management Group, pointed out that the building is 80,000 s.f. and the parking is for 200 spaces. They are very proud that they have minimized the scale of the property in an aesthetic and environmental way. The only way to put a double deck parking garage would be in front which would destroy the ambiance of the campus they have worked so hard to create.

Mr. Coviello asked if they considered artificial turf for the playing fields? Mr. Iafolla indicated they did not because of the number of Babe Ruth's. They are serving smaller children. With the size and different configurations of the fields, the lines are usually pre-done on artificial turf.

Councilor Dwyer, realizing the shortage of playing fields in the City and the use of artificial turfs, she was surprised by his answer. Mr. Iafolla stated he is a volunteer football coach at PHS but they are dealing with fields of the same size and there are many different types of games, as well as just kids running around. Councilor Dwyer asked won't this field have to rest if it's not artificial to minimize the potential usefulness of the field. Will they be traded off with the existing fields? Mr. Iafolla felt they will not get the play that the other city fields do. They will use them for a shorter period of time.

Councilor Dwyer asked, given the letter of public benefit and given there will not be as much use, will they be open to the recreational department? Mr. Iafolla stated that the fields are always open to other people, by arrangement through the campus.

Deputy City Manager Hayden asked if the parking area will be used year round, how will that be plowed and salted? Mr. Iafolla indicated there is room for snow storage around the edges of it. It is porous pavement so the water runs through pretty quickly so there is less storm build up. Deputy City Manager Hayden asked about the area between the playing field and the buildings and whether any trees are being removed? Mr. Iafolla confirmed they are not removing any. They have been working with the City and others for 2-3 years on this to benefit the campus and at the same time have minimal impact on the environment.

Mr. Will referred to the softball field on the southern portion. If someone is trying to catch a fly ball, won't that all be flooded in the spring? What mitigation will stop a catcher from going into the wetlands? Mr. Iafolla felt that is a long way and it wouldn't happen very often but that is a good question that they have not answered. Attorney Loughlin added that they have already received a State wetland permit for that section. Mr. Iafolla stated they have received a Dredge & Fill Permit as well.

Mr. Coviello asked if there are vernal pools in this area? Mr. Iafolla did not believe there are any. The soil scientist report would indicate that. Attorney Loughlin confirmed there was no mention of a vernal pool in the report.

Mr. Coviello was not convinced this is the least impact. What is precluding the artificial field? They would use less fertilizer and it could be used more often. Mr. Iafolla stated they are coming back next month for Site Review and they could look at it then. Deputy City Manager Hayden was not sure that it is their purview to dictate what fields would be best for their use. Mr. Coviello stated that his point was the fertilization.

Peter Britz, City Environmental Planner, addressed the question about artificial turf vs. fertilized grass. He felt there are benefits to both. They could use a low phosphate fertilizer. Natural grass will do more for carbon intake and things like that. It is a very tricky question. In his opinion, it would not change his recommendation on the site.

The Chair called for public speakers.

Harold Ecker, 422 Banfield Road. He gave a history of the land. It was filled in with brown clay. Drainage goes down Banfield Road. He has reviewed where they propose their new ball fields and parking lot. When the ground freezes the water goes over it and goes somewhere else. The ground out there is like a sponge and the water starts to run off and a lot of it goes his way. He believes this is a good project but the City is slowly filling in all of its conservation land. All of the trees in the rear of his property are dead because of the water they sit in. There are 400 – 500 more that he will cut down as they are just going to die. He doesn't want any more water on his property. There must be a way to solve the problem.

Attorney Loughlin stated that in the drainage study that was submitted, it said the improvements would increase the run off by 1/100 cubic feet per second in a 100 year storm. Only a small portion of the tennis courts are anticipated to be in the buffer. He read a statement in the Wetland Permit, condition #5, DES where a field inspection showed that field conditions were accurately represented in the file and that proper storm water management with the project was likely to provide greater runoff protection to the Ecker property rather than increase.

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

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

Mr. Holden pointed out if the Conditional Use was granted, the Board will see it again for Site Review and drainage issues will get aired there as well.

Councilor Dwyer asked, given the concerns of Mr. Ecker and what Attorney Loughlin read, she asked them to show them on the plan where the suggested improvements would effect the Ecker property.

Mr. Iafolla used the aerial photo to show where the sheet drainage from Water Country bypasses the campus and creates problems and erosion on the Foundation property. Water Country is giving them an easement to bring this into a swale to cut across the campus into the drainage system and after

treatment will go into the red maple swamp to drain way down Banfield Road, passed Mr. Ecker's property.

Mr. Coviello made a motion to approve Conditional Use with stipulations. Deputy City Manager Hayden seconded the motion.

Mr. Ecker stated that his property goes on both sides of Banfield Road. His trees could have died from various ways but the roots are all sitting in water and they will die.

Mr. Will apologized to Mr. Ecker for blurting out that he could not speak as it should have been directed to the Chair and he explained what the proper procedure should have been.

The motion to approve conditional use permit approval passed unanimously.

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E. The application of **Meadowbrook Motor Inc, Owner, and Key Auto Group, Inc., Applicant**, for property located off **U.S. Route One By-Pass (Traffic Circle)**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to develop the site to include a hotel, a retail building, three restaurants, and a convenience store/gas station, within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 234 as Lot 51 and lies within a General Business District; (This application was tabled at the March 15, 2007 Planning Board Meeting)

Mr. Will made a motion to take the application off of table. Deputy City Manager Hayden seconded the motion.

The motion passed unanimously.

Mr. Holden indicated that the Department continued to meet with the applicant and they recommend tabling to a time uncertain.

Mr. Coviello made a motion to table to a time uncertain. Mr. Will seconded the motion.

The motion to table to a time uncertain passed unanimously.

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F. The application of **Steven and Christie Scott, Owners**, for property located at **293 Dennett Street**, **Danny Medeiros, Owner**, for property located at **287 Dennett Street**, and **Walter and Patricia Holt, Owners**, for property located **off Dennett Street**, wherein Final Subdivision Approval is requested to subdivide Map 142, Lot 15 and combine it with Map 142, Lots 1 & 2, as follows: Map 142, Lot 1 increasing in area from 7,313 s.f. to 14,436 s.f. and with 59.85' of continuous street frontage on Dennett Street (unchanged) and Map 142, Lot 2 increasing in area from 3,655 s.f. to 10,778 s.f. and with 28.04' of continuous street frontage on Dennett Street (unchanged), and lying in a zone where a minimum lot area of 7,500 s.f. and 100' of street frontage is required. Said lots are shown on Assessor Plan 142 as Lots 1, 2 and 15 and lie within a General Residence A District;

The Chair read the notice into the record.

Mr. Holden and Mr. Coviello stepped down from this hearing.

**SPEAKING TO THE APPLICATION:**

Corey Colwell, of AMES MSC, appeared for the applicants. This application came before this Board last month. They are not increasing the number of lots but are decreasing the number of lots. The lot in the rear is being cut in half and is being added to the two lots in the front. The proposal was approved for preliminary last month. Stipulation #1 was that monuments be placed, Stipulation #2 was that electronic data be provided and Stipulation #3 was that a final application be filed. All stipulations have been complied with.

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

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Coker asked the Department if all outstanding conditions are satisfied? Ms. Tillman confirmed they were satisfied.

Deputy City Manager Hayden made a motion to approval final subdivision approval. Mr. Will seconded the motion.

The motion to approve final subdivision approval passed unanimously.

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G. The application of **68 State Street, LLC, Owner**, for property located at **68 State Street** and **March Twenty-Two, LLC, Owner**, for property located at **58 State Street**, wherein Preliminary and Final Subdivision approval (Lot Line Revision) is requested between two lots having the following: Lot 12 as shown on Map 105 decreasing in area from 3,380 ± s.f. to 3,304 ± s.f. and street frontage on State Street decreasing from 48.41±' to 46.71±' and Lot 13 as shown on Map 105 increasing in area from 7,759 ± s.f. to 7,835 ± s.f. and street frontage on State Street increasing from 55.19±' to 56.89±', and lying in a zone where a minimum lot area of 1,000 s.f. and no street frontage is required. Said lots are shown on Assessor Plan 105 as Lots 12 and 13 and lie within a Central Business B (CBB) District and Historic District A;

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, appeared for the applicants. Also present was Attorney Paul McEachern. Mr. Chagnon indicated that the Lot Line Relocation is a result of construction at 58 State Street. A building was proposed at this site and went through Site Review and a relocation of a lot line. Those documents were turned over to a design team and part of that design created a jog in the property line abutting 68 State Street. The purpose of this Lot Line Relocation is to revise the lot line to match the building line.

Ms. Tillman asked if the open space will be maintained on 58 State Street with this change? Some of the land area of 58 is going to 68 State Street. Mr. Chagnon stated that the area is hardly diminishing at all but he will redo the calculations.

Mr. Holden asked if 68 State Street will be coming through this board in the future and also the HDC? Mr. Chagnon confirmed it went through the HDC on the other lot but it is going back next month for 58 State Street. Mr. Holden felt that both 58 State Street and 68 State Street should go back to the HDC.

Attorney Paul McEachern was at the HDC hearing for 68 State Street and it was on the configuration as the lot line would be adjusted. It was presuming that this Board would approve the adjustment. But 58 State Street has to go back. Mr. Holden asked why does it have to go back? Attorney McEachern indicated that 58 State Street because it will be 40” shorter than the street configuration and the windows have to be properly reconfigured.

Mr. Holden felt that, in light of issues, it would be helpful if someone would explain what happened.

Attorney McEachern felt it was an engineering answer. He felt it came about as a result of a slight jog in the property line that wasn’t perceived as it should have been. Mr. Holden felt that the foundation was put in square but all of the plans showed that it was not square. He asked what happened. Mr. Chagnon indicated what happened is all documents were given to the structural engineer to design the foundation and that person felt he had a better idea and made the angle square. The owner decided that it would be better to put in a straight line rather than a line that angles. Mr. Holden added it also manifests itself in the front. If everyone had built the building as it was approved, they would not be in this situation and it was only by chance that a major problem was averted. He is looking for someone to step up to the plate and accept responsibility.

Mr. Chagnon felt they are fixing the problem with the construction of the face wall at the street. The reason it came through this way was a coordination issue with the architect and revisions did not go through review by the architect but rather went straight to the contractor. But, he feels this makes sense in the long run.

Mr. Holden also added that the applicant and design team have been proactive once the problem was identified. Mr. Chagnon stated that a lot of communities require as-builts before construction starts but Portsmouth does not so he is sure a lot of buildings are not built as approved.

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

**DISCUSSION AND DECISION OF THE BOARD**

Deputy City Manager Hayden made a motion to approve preliminary and final subdivision approval with stipulations. Mr. Coviello seconded the motion.

The motion to approve preliminary and final subdivision approval passed unanimously with the following stipulations:

- 1) That the applicant shall recalculate the open space for review and approval by the Planning Department;
- 2) That boundary monuments shall be placed in accord with DPW requirements; and
- 3) The submission of electronic data suitable for updating the City Assessing records.

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H. The application of **Richard and Linda Harding, Owners**, for property located at **1808 Islington Street**, wherein Preliminary and Final Subdivision approval is requested to subdivide one lot into two lots with the following: Proposed Lot 1 having 20,548 ± s.f. and 100’ of street frontage on Islington Street and Proposed Lot 2 having 61,803 ± s.f. and 124.17’ of street frontage on Islington Street, and lying in a zone where a minimum lot area of 15,000 s.f. and 100’ of street frontage is required. Said property is shown on Assessor Plan 241 as Lot 15 and lies within a Single Residence B (SRB) District;

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, presented for the applicants. Linda Harding was also present. This is an application to subdivide one lot into two lots. The lot is unique. There is frontage along Islington Street and then it comes back behind lots that were separated out from the original lot. One section has City owned property next to it which looks like it should be part of the lot but actually is not and is not considered frontage. They went through a process earlier and the biggest problem was drainage. They want to begin the process of working on the other issues and determine how they want to handle the drainage analysis. They want to work with the City on the configuration of this area. They would like to consider realigning the driveway cuts and the City property area. Also, this area will be redesigned in the future as part of the Route 33 redesign. He hopes they will accept this as an application so they can get started to work with City staff on the best way to configure this and work with the City to incorporate a drainage analysis. Mr. Chagnon indicated that the applicants support the tabling motion. He also mentioned that they are aware that the Board received correspondence from abutters which they are happy to respond to.

The Chair called for public speakers.

Attorney John Lyons, representing Tom Patterson, an abutter, addressed the Board. He indicated they have 17 signatures from the 19 abutters to the property objecting to this application. This application is identical to a previous subdivision application and he would ask the Board to act consistently with their action in 2001. On the plan submitted, note #7 indicates that the parcel is served by municipal sewer and water and that is inaccurate as it is served by septic. That is a real concern to abutters. The Plains Field floods and the City created a sewer drain on the island, which runs under Pearson Street in a clay pipe along the old School House, into a manmade swale. That is shown partially on the plan but not accurately. The drainage runs back out to the wetlands that are shown. This area is extremely wet. For those reasons, they ask that this application be tabled. He referred to them to Mr. Holden's letter in 2001 requesting a drainage study. Mr. Patterson grew up in that subject house and he believes the City may actually have an easement across that lot.

Linda Harding, applicant and owner of property spoke next. She stated that they dropped the application in 2001 because they were going to build a house for their parents and they didn't want to wait. Their three children are all teenagers and will be heading off to college which they will need financing for. They are going to submit a drainage plan but they wanted to talk to the Board first. All of the water in the Plains comes across Route 33 now and flows into the cellar of their barn. There is a swale dug along the back of the lot and it is wet during heavy rain times, but they hope to solve that problem. Regarding sewer, they submitted sewer plans previously and they have permission from the City to hook up their house and barn to City sewer. She acknowledges wetlands but the proposed house would be 100' away from the wetlands. She is hopeful that when the City does work on the sewer, it will no longer be as wet.

John Chagnon handed out revised plans. The first page was a copy of the approval for the sewer connection and the second page was a revised wetland delineation that was done previously. Next was the subdivision site plan filed under the previous application and it shows a proposed structure and a change of the driveway configuration. What has changed considerably is the proposal for what will happen when the Plains Avenue is closed off and the large parking lot is constructed. The City is in the process of the final design but won't be funded until June. At the next budget cycle they will go into the final design. One thing that will happen with the curbing is that drainage will be redirected to the west. A lot of the issues will be addressed in the design and they want to work with that when they do their drainage analysis. The last exhibit shows the extent of the low area which encompasses a large area behind Islington Street and Pearson Street. There is an opportunity for them to expand the low area. Mr. Chagnon wanted the Board to see what they were thinking about.

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

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Holden felt that the applicant is showing good faith by filing the application to start the process. The neighborhood is also correct that there are still outstanding issues from the last application from six or seven years ago. Since their prior application there has been the B&M railroad bridge project, the Route 33 project and Packard Development has had impact along this corridor. He sees this as having the chicken and the egg with the question of where should they start. If they grant Preliminary approval they only have 90 days to finalize this. They have a good number of issues to be resolved. The Department's recommendation is to table this matter to enable City staff to meet with the applicant. He doesn't know if after seven years if the sewer connection approval is still valid. By tabling they are encouraging the applicant to continue with their task but look for more complete plans. Other City concerns were how to get to Plains, what pavement is going to be removed, is the pavement going to be removed, do they need a council license to pass over City lane, and will the new configuration affect the curbcut. This lot could very well be subdividable but the issues need to be addressed. Therefore, he recommends postponing this to the May 17<sup>th</sup> Planning Board meeting.

Mr. Will made a motion to postpone to the May 17<sup>th</sup> Planning Board meeting. Deputy City Manager Hayden seconded the motion.

The motion to postpone passed unanimously.

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I. The application of **Millenium Borthwick, LLC, Owner**, for property located at **155 Borthwick Avenue**, wherein Site Review approval is requested to convert 72,232 s.f. from business office space to medical office space, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 259 as Lot 14-1 and lies within the Industrial District;

The Chair read the notice into the record.

Mr. Holden indicated that the Department is working with the applicant and they are hopeful that they will begin communicating soon but the Site plan still needs some work. They have requested this matter be postponed to the May 17<sup>th</sup> meeting.

Mr. Will made a motion to postpone until the May 17, 2007 meeting. Vice Chairman Hejtmanek seconded the motion.

The motion to postpone to May 17, 2007 passed unanimously.

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J. The Planning Board is conducting a Public Hearing in order to solicit public comment on a proposed amendment to the Planning Board's *Administrative Procedures, Rezoning Review Checklist and Informational Matrix for Zoning Referrals*. This amendment is primarily for the purpose of converting the existing document to an electronic format and to reconfigure the Informational Matrix section. Copies of this proposed document are available for public inspection in the Planning Department Office at the Municipal Complex.

Mr. Holden stated this is getting heavy use and has been very rarely amended or updated. Proponents of it seek to have an electronic version of it. The Planning Staff converted it to an electronic format

and it does differ a little bit. It does not change the content of it but changes the form so that it is more user friendly. They recommend that the Board adopt the new format and recognize that it has been done.

Mr. Will stated that most of the time, a request is made by a developer who has enough know how to do this. Is this a requirement that someone provide an electronic format or is it available in other formats as well? Mr. Holden confirmed that a person could use this without even using a computer.

Mr. Coker asked what type of format it is in? Mr. Holden stated it was in a PDF format.

Chairman Ricci opened up the public comment section.

Malcolm McNeill, an attorney from Dover, commended the Board for this effort. In terms of his practice, this is one of the rare communities that uses this tool. This tool has the benefit of encapsulating complying with all issues. It gives a more or less standardized scorecard. It allows staff to more efficiently process requests. Any means of making this more available to the public can only be viewed as advantageous.

Chairman Ricci called for additional speaker. Seeing no one rise, he closed the public comment period.

Mr. Coviello made a motion to accept the proposed amendment. Mr. Well seconded the motion.

The motion to accept the proposed amendments passed unanimously.

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**III. CITY COUNCIL REFERRALS/REQUESTS**

Chairman Ricci recused himself from Items A & B.

A. Request from Borthwick Forrest, LLC, for proposed Zoning Amendments of 37 acres of land frequently called "Islington Woods" located off of Islington Street;

Attorney McNeill appeared on behalf of the applicant and he prepared the matrix that was provided. This subject review had been addressed in the Master Plan that some additional review would be appropriate for this site. He referred this to the City Council on February 27, 2007 and enclosed the rezoning documents. The City Council referred it back to the Planning Board. His presumption was that the Board would ask for a Rezoning Matrix which was provided to the Board on April 5th. He relies primarily on the Master Plan which was enacted in March of 2005. This area was specifically referred to on page 27 of the Master Plan. There was consideration of a mixed use development that did not go forward. That is not what they are proposing here. There were concerns about various issues and as a result they are bringing back a project that has resolved the railroad issues and matters contained in the Master Plan. The Master Plan stated that "to carry out the comprehensive planning study of the existing office research district located between Islington Street and Borthwick Avenue to determine the appropriate long range policy and zoning of this area. The study should address environmental carrying capacity of the site (including impacts on upstream flooding, wildlife habitat, and municipal water supplies), potential reactivation of passenger rail service, the potential for expansion of office campus development from Borthwick Avenue and traffic circulation and access." Their rezoning would address all of those issues. They are asking the Board to honor the referral and consider this as a rezoning item.

Mr. Will asked why not do a planned unit development to allow more flexibility rather than a change to the table of uses? Attorney McNeill indicated they include a new definition Elderly Congregate

Facility. Within the OR zone, subject to minimum lot sizes, etc. there would be a consideration of whether the use would be appropriate and it would also require a special exception. Obviously any rezoning proposal is up for debate but this is what they think is appropriate.

Mr. Will followed up as he did not get an answer to his question. Why not a PUD that can address those issues of flexibility? Attorney McNeill stated they could not apply the current PUDs to this site. Many of the criteria that applied would not fit a "60 and older" project. Recognizing the work load of the Planning Board and the Planning Department, they think this presents a desirable opportunity to the City to bring a fiscally positive use forward and they are asking the Department and the Board to proceed with this.

Vice Chairman Hejtmanek felt they have a number of council referrals pending and have been looking at the zoning referrals rather than working on their zoning re-write. He doesn't believe they have the time to devote to this.

Mr. Coker asked Mr. Hejtmanek what he suggests?

Councilor Dwyer felt this was different than the council referrals. The other referrals were ideas that were generated and geared towards the other work they were undertaking and she doesn't see this as the same thing.. They should either schedule a work session or public hearing to move forward on it.

Mr. Coviello noted that the applicant believes this request is a higher priority than the Woodbury Avenue request.

Mr. Holden stated that the City Council has made a referral. A public hearing won't do anything. The Board needs to decide how they want to proceed on it. They need to decide what their priorities are. The last two initiatives took over a year and involved their consultant full time. If the Board wishes to go through with this, they need to direct the department how to proceed. Mr. Holden does not believe this will be an easy one.

Vice Chairman Hejtmanek suggested that they will be looking at the Office Research district and they could see how they want to see it developed. Then they could consider this study.

Mr. Coviello did not want to see the consultant working on this. Mr. Holden felt it was very unusual for a developer and/or an attorney to write a zoning ordinance. The end result is nothing like the original. This is talking about numerous different factors and will be very complex. It may be very appropriate but the Board needs to decide what their priority is and how soon they want to get the Zoning Ordinance re-write done.

Mr. Will asked how appropriate it would be to table the request and integrate it into any future discussion about that area? Councilor Dwyer felt that is how they have proceeded with other requests.

Attorney McNeill stated that the reason they brought it forward is because it was ripe with the Master Plan. About 10 sections of the City were identified as an area of action. Vice Chairman Hejtmanek did not think it was inconsistent but the constant requests are slowing them down with their primary task which is the Zoning Re-Write process.

Councilor Dwyer felt because they have had other time consuming matters, they have priorities that they need to look at and review the line up and see where things fit. Deputy City Manager Hayden stated that Rick Taintor is redoing a schedule as they are so far behind. Councilor Dwyer felt that at their next meeting they could have a discussion on where these items would fit. Deputy City Manager Hayden confirmed the next work session is on May 10<sup>th</sup>.

Councilor Dwyer made a motion to discuss this within the other zoning priorities at their May 10th Work Session to know what their working plan is. Mr. Will seconded the motion.

The motion passed unanimously.

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B. Request from Icon Realty, LLC, for proposed Zoning Amendments for a parcel of commercial land formerly known generally as "Woodbury Gardens";

Attorney McNeill surmised they would treat this request the same as the previous request. However Borthwick Forrest is the highest priority.

Mr. Will made a motion to discuss this within the other zoning priorities at their May 10th Work Session to know what their working plan is. Deputy City Manager Hayden seconded the motion.

The motion passed unanimously.

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C. Request from Perry Silverstein, Owner, for property located at 10 Commercial Alley, for an easement/license for a building addition;

Mr. Holden advised the Board that essentially a portion of the building will be out to the lot line so it will need an easement from the City for footings and the department recommends granting an easement. Deputy City Manager Hayden asked if it is just for footings? Mr. Holden suggested including any other license and/or easements that come from the construction of that building.

Perry Silverstein, owner, stated he is requesting permission to work in the public right of way Commercial Alley and Penhallow Street. He will be disrupting 4'-5' in Commercial Alley and he is requesting to make some landscaping changes in the alley. When he puts it back he would like to eliminate the knee wall. That was put in to keep people from entering the parking lot and his new façade will accomplish that. He will shorten the planters so that they will not extend in front of the retail windows.

Mr. Holden confirmed that item #3 is the only one that is outstanding which is the easement request for the foundation, gutter edge, 6" overhang and copper gutter, sills, and exterior fixtures.

Mr. Coviello asked if the Department is recommending approval? Mr. Holden stated they are and they are trying to get all licenses and easements prepared to finalize the project.

Deputy City Manager Hayden made a motion to recommend to the City Council that they approve the licenses and easements as listed under Item #3 and Exhibit III. Mr. Hopley seconded the motion.

The motion to recommend approval to the City Council passed unanimously.

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**IV. AMENDED SITE PLAN REVIEW**

A. **Tidewatch Condominium Association, Owners**, by their counsel, Thomas R. Watson, for property located at **579 Sagamore Avenue**, for amended Site Review Approval to reconfigure the driveways of five units previously constructed, being Units 34, 35 and 36 in Building XIII and Units 37 and 38 in Building XIV;

Mr. Holden advised the Board that this arises from a need to revise a previously approved site plan. The City has met with various people and it appears the plans show an elevated floor elevation. The question of whether the buildings were built as approved is not the issue. The issue is to amend the plans. He is advising the Board that the Department reviewed this as a minor amendment as there was no elevation shown on the original plans. They asked members of the Tidewatch Condo Association to be present in case there were any questions.

The Association agreed with Mr. Holden’s explanation and felt it was very accurate. They thanked him and the Department for all of their work on this.

Mr. Holden indicated that no action was required by the Board.

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**V. OTHER BUSINESS**

A. Request from **Avanti Development, Owner**, for a one year extension of Site Review Approval relative to property located **off Falkland Place**, which was granted on June 22, 2006;

Mr. Holden indicated this is an automatic extension.

Deputy City Manager Hayden made a motion to grant the one year extension. Mr. Coviello seconded the motion.

Mr. Will abstained.

The motion to grant a one year extension passed, with all in favor and Mr. Will abstaining.

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**VI. ADJOURNMENT**

A motion to adjourn at 10:45 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse  
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on May 17, 2007.