

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

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

7:00 P.M.

JUNE 7, 2007

MEMBERS PRESENT: Jerry Hejtmanek, Vice-Chairman; M. Christine Dwyer, City Council Representative; Donald Coker; Raymond Will; Anthony Coviello; Paige Roberts; Timothy Fortier, Alternate and MaryLiz Geffert, Alternate;

MEMBERS EXCUSED: John Ricci, Chairman; Cindy Hayden, Deputy City Manager; and Richard A. Hopley, Building Inspector;

ALSO PRESENT: David M. Holden, Planning Director; and,
Lucy E. Tillman, Planner I
Peter Britz, Environmental Planner
City Attorney Robert Sullivan

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Vice Chairman Hetjmanek introduced the members of the Board.

Attorney Robert Sullivan addressed the Board and the public, indicating that this was an unusual proceeding. A number of the members of the Board have decided to recuse themselves due to an issue brought up by Mr. Coker and Chairman Ricci has recused himself due to a conflict with his company and Attorney McNeill. Deputy City Manager Hayden and Mr. Hopley are not present so as to avoid any impermissible conflict. That determination was not made but they have chosen to avoid the issue. He then suggested to the Board that they recognize Board member Dwyer.

Councilor Dwyer indicated she was asked to recuse herself as she was a joint City Council and Planning Board member. She sought independent legal council for an independent decision regarding her recusal. It is clear she has no legal conflict of interest, however, on advice of counsel and practical expediency she will recuse herself.

Mr. Coker stated for the record that this cuts to his very basic belief of the process and he believed as appointed board members, elected officials and City employees they should be held to a higher standard. He has never stated that he feels there is a conflict but rather has stated the integrity of the process forces one to insure that even the mere appearance of a conflict takes precedence over anything else. This is not a personal matter and he expressed his utmost respect to those who stepped down.

I. PUBLIC HEARINGS

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 2.36 acres with conforming area, street access and frontage and including approximately 17,446 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 4,220 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 Vice Chairman read the notice into the record.

SPEAKING TO THE APPLICATION:

Steve Griswold, principal owner of the business entity and owner of the Sheraton, thanked the members of the Board and the audience for considering this important step. It is the last of many steps but not the least. He looks forward to working with the Board and moving ahead with this project. He introduced the first member of the team, Attorney Malcolm McNeill.

Attorney Malcolm McNeill then introduced the members of their team that were present: Nancy Ludwig, architect; Dennis Moulton, AMES MSC; Jeffrey Dirk, with Vanesse & Associates, Traffic Engineers; Art Static, with Walker Garage Consultants; Steve Parkinson, Director of Public Works, to discuss the infrastructure issues and roadway changes; Everett Eaton of the Economic Development Commission, and, Steve Griswold who will speak again at the end of their presentation.

Attorney McNeill asked if he could use the evidence for both proceedings and he suggested that Vice Chairman Hejtmanek read the notice for the Site Review into the record. Mr. Holden agreed it would be better to read the Site Review notice at this time.

Vice Chairman Hejtmanek read the Site Review notice into the record.

C. The application of **Harborcorp, LLC, Owner** for property located **off Deer Street, Green Street, Market Street, Russell Street and Maplewood Avenue**, wherein Site Review approval is requested to construct an 83,118 ± s.f. 6/7-story structure consisting of a hotel, convention center, parking garage and 21 residential condominiums, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 118 as Lot 28, Assessor Plan 119 as Lot 1-1A, Lot 1-1C and Lot 4, Assessor Plan 124 as Lot 12, and Assessor Plan 125 as Lot 21 and lie within the Central Business A (CBA) District, the Central Business B (CBB) District, the Downtown Overlay District (DOD) and the Historic District A.

Attorney McNeill felt this meeting was an important night for Portsmouth. Hopefully they will complete the final review of a project which has been in the works since 1998. It is important to say this is not just the developer's project but it is the City's project as well and represents the City's future. It will continue to be a catalyst to the northern tier. This is best expressed in a legal document by Attorney Sullivan in a law suit brought by Ocean Properties. Attorney McNeill read from Attorney Sullivan's document describing the importance of this project.

Attorney McNeill felt it has been suggested by some that this has been a rushed project but the facts don't support that. He provided the Board with a timeline of the project, which was an abbreviated

list, showing the extensive process. It has been open, shown on closed circuit TV, through the media and has evoked much discussion. It has resulted in favorable votes from all proceedings.

Tonight's hearing is of the technical review of compliance with the City's regulations. The Planning Department has indicated that they are in compliance with everything and all specialists and consultants of the City have recommended this proposal. What is different about this project is that they are building a garage for the City. There were two important aspects to this project. One is a conference center which will be extremely important to Portsmouth. That would be of little merit without a place to park. An essential component of this project is the City's parking garage. The City has retained an expert to speak tonight about why the garage should be approved in its present form. There is no part of the regulatory or technical establishment of this City that takes issues with this project. There is no evidence of any violation of any regulations of this City nor any indication of any technical violations.

Attorney McNeill referred to the time table. On February 5, 1999 when the Northern Tier Feasibility Study came out and said that the development of this kind would be appropriate for this part of the City. On September 8, 2004 there was an Economic Impact Analysis completed and he summarized that. For this project it would support 144,000 visitor days per year, it will generate over 300 full and part time jobs and 500 jobs during the construction phase, at current wage rates the facility will sustain annual wages of \$6.8 million and \$18.8 million during the construction phase, it will generate \$700,000 in annual property tax payments, it will generate \$16,000,000 in off site spending in restaurants, attractions, retail stores and supply stores, conference attendees will stay at surrounding hotel facilities as well. On November 30, 2007, the City entered in a Memorandum of Understanding (MOU) with Harborcorp with one important paragraph regarding policy issues that relate to this project. Under the section entitled "The Public Interest, the City has an interest in securing additional public parking in the downtown. In addition, the City has an interest in the development in additional conference space as a means of increasing economic benefits to the City. Development of the conference center and hotel would also increase assessed value of the lots owned by Harborcorp and result in additional tax revenues." Shortly after in March of 2005, the Master Plan was passed and it supports this development. In addition, the City retained their own consultant to review the project, to ascertain whether what the developer was saying was true. Hospitality Resolutions, Inc. indicated in its report findings that were almost identical to what Attorney McNeil reviewed above.

Next, the City went forward, armed with that information, to pass the Joint Development Agreement, which forms the basic of the relationship between the developer and the City, controls the number of parking spaces, including the exchanges of land as part of the subdivision process. On December 19, 2005, the City put its money where it's mouth was and passed a bonding resolution in the amount of \$15 million to buy the garage at the conclusion of the build out project. In May of 2006 they were going through a process that involved this Board relating to a rezoning of the building to raise the permissible height. That report had the benefit of reconstructing many of the matters that he discussed but also provided compliance with this project with the matrix requirements, zoning requirements, Master Plan intentions, and other matters, which resulted in this Planning Board recommending the zoning change to increase the height which the City Council ultimately approved. They then started going to HDC meetings. They attended ten meetings with the HDC with a great deal of public input, which resulted in a Certificate of Approval from the Board.

The remaining step was to obtain approval from the Planning Board. They have attended TAC meetings, Traffic & Safety (T&S) meetings, met with attorneys regarding traffic issues, and on April 19, 2007 they came to this Board for the first time. All meetings have been public, thorough and have resulted in favorable recommendations. He added that most of the changes that were made were driven by the City and business owners.

At this stage, all traffic considerations have been approved by the City's traffic consultant. There has been no professional contradictory traffic evidence given, no BOA approval was necessary, all parking

garage components of this project have been approved the City's Parking Consultant. The Department's finding is that all regulations have been complied with. The zoning change was heard in Court and upheld in terms of the reasonableness of modifying the zoning for this project. The bottom line has been that in light of the fact that this project has been an effort that inherently involves the City, raised the level of scrutiny to a higher level, because the City will be an ultimate owner of this project. They also have recognized that everything they do will be questioned. The applicant comes to the Board this evening after all reviews for over 2 years have come to a conclusion and compliance of all reviews is the strongest reason for them to request their support.

Nancy Ludwig, of ICON Architecture, addressed the Board next. She stated they did sketches for this project when they originally designed the Sheraton Hotel in the early 1980's. The project includes a garage, the Westin hotel with 207 rooms, 21 condominiums, a ballroom with exhibition space and a conference area to support the larger exhibition space. The resources of the Sheraton couples with the Conference Center. She oriented the Board to the Site Plan.

Because of the narrow parcel along Russell, the main piece of the hotel sits against Russell Street and the conference facilities are placed along the main street level with an entry point at the top of Russell Street. There is quite a drop between the two intersections. There are public areas of the hotel reaching out of view. There is a clean division between the hotel and the garage, however, the space between is where you will enter the garage. It is important to place commercial space on Deer/Maplewood Avenue to give the building more life and interest. She then went to depictions of what the building will look like and pointed out the window views and landscaping. A model of the project and the vicinity was displayed. It was an important element of the HDC that the building actually break into a series of masses so that it does not appear as one large building. Along Russell Street they have come up with a series of elements to break the building mass, including window openings and the main entry piece pulls up a bit, a portico drop off area. The hotel rooms array in a T. The connection between the Westin and the Sheraton will be an overhead pedestrian bridge connecting from the 2nd level of the Westin to the 2nd level of the Sheraton. She displayed a steel-framed off white picture of the bridge and stated that they had many discussions with the HDC regarding this connection. She illustrated how the car drop off would look and work and stated that it is a very open and inviting space. She pointed out the roof garden over the conference room, which will provide a view for the upper levels. In the HDC review process they heard concerns about people wanting to have a sense of being able to look through the building so they raised the building up 3 levels with recessed panels. The HDC encouraged them to have the garage look building-like and more welcoming and inviting. It will be concrete, clad in masonry. The stair element at the corner will be glass and very light. There is a second entrance to the garage off of Maplewood Avenue that takes you to what could potentially be a reserve area of the garage. The materials for the building will be masonry which has been used throughout the downtown area, woodlike material for some of the paneled areas, the upper floor of the building sits back 12' and will be clad in a roof material (slate-like), the dormers will be traditionally detailed and the same materials will be carried into the garage.

Dennis Moulton, Civil Engineer from AMES MSC, started his presentation with the existing conditions. The site is surrounded by streets with railroad tracks behind it. They are asking for a subdivision and pointed the areas out on the site plan. They needed to reconfigure the property lines to site the building. Coming down Market there is a change to the right of way that allows for the turning lanes which will be configured onto Russell Street and will allow for a signalized intersection. Moving down Russell Street the next property which will be exchanged is at the corner of Deer Street which they plan to square off to assist with the drop off area of the hotel. Also three current parcels will be merged together. Other smaller portions of land change, including a small sliver on the Sheraton which will go to City in exchange for the right of way.

One of the major issues affecting the City is the construction phasing. They have included a demolition and construction plan. They show areas that will be cordoned off and will provide for a secure construction area on site.

On the proposed condition plan he pointed out the hotel/conference center/garage building. Working around the building there are changes to Russell Street to create more of a 90 degree angle with Deer Street. Along Green Street they straighten the road for a lighted intersection. The 90 degree intersection with a stop will allow left and right turns. Around the building there is a two lane turn into a third lane. Continuing down Deer Street, to Maplewood with a configuration of the northbound lane and a configuration similar to what is there now with a dedicated left turn lane and right turn lane. As a result of the lot line relocations, Deer Street will become somewhat narrower which still allows for 9' sidewalks. The other element to this site is a 12' accessway to the rear which will be used exclusively by the hotel for deliveries or trash pick up. There will be a gate with a call button and security cameras. They are showing several van parking spaces for exhibitors or repair vehicles. There is another gated access point with a coordinated gate system with the parking lot and it will also be tied into the railway signal, when a train is passing by.

This plan proposes the elimination of quite a few parking spaces. All spaces on Deer Street will be eliminated along both sides of Deer Street. They have reconfigured the spaces so that there are parallel parking spaces and they have reconfigured the lower part of Deer Street to be one way with angled parking.

Mr. Moulton indicated that water and sewer are available and a water line and gas line will need to be relocated. There are also electrical, gas and sewer easements on the properties and all will be relocated or eliminated. In particular, gas will be brought out to Maplewood. Electrical lines will be relocated to under the building and down Deer Street. The sewer line comes into the site and will be relocated down Maplewood Street. The water line will be relocated. The drain line runs from the hill down to the drain manhole and they will reconfigure that drainage so that it catches part of the street drainage.

Mr. Moulton reviewed sewer connections. The kitchen functions will be located in one area and there will be a sewer connection for the required grease traps. The garage will have two sewer connections, one for restrooms and second for the retail space. Water connections will be made from Russell Street to the building from the newly configured water line.

Drainage was a special problem for the site. In the existing condition it goes in three directions. One goes to the river, one crosses the railroad tracks and a smaller part of the run off hits catch basins on Maplewood Avenue. It was finally decided to split the flows so that they match closely to the existing flows. The larger portion of flows will be collected in a reservoir, retention structure. They can mitigate the flow rates from that system and connect it to the existing drainage system off Deer Street, and eventually to the North Mill Pond. Improvements to the pipe system will be required. This project will have a benefit of reducing drainage in one direction.

Mr. Moulton addressed the movement of large vehicles in and out of the site. How tractor trailers enter the site was a concern and he showed the turning radius of the trucks coming in and backing out of the loading zones. They also show bus movements through the drop off area. Ten cars fit comfortably in the drop off area and probably two more could fit in as well.

Mr. Coviello asked about the traffic turning radius taking a right onto Maplewood. Mr. Moulton demonstrated the route that a tractor trailer truck would take, which would be to come out the driveway and circle around the back and into the other loading area for the Sheraton. There is no reason for a tractor to make that right turn and it would also cause a head-on conflict with traffic coming down Maplewood. Mr. Coviello asked for signage to address that.

Mr. Coviello asked about the Deer Street angled parking and if they were just restriping the area? Mr. Moulton indicated that they will be constructing two bumpout areas at each end but the sidewalks will remain the same.

Mr. Coviello asked if the parking below the hotel was for patrons only or was it for the public? Mr. Griswold stated that some is public and some is private. There are two sections.

Mr. Will asked if tractor trailers will be able to make the turn on the one way section of Deer Street. Mr. Moulton indicated that question will be answered later in presentation.

Mr. Coker referred to the Memorandum to the TAC Committee, it indicated that several types of systems were investigated regarding stormwater treatment and several options were mentioned, including a vortechnic. He asked what the ultimate resolution of that was. Mr. Moulton indicated they are still investigating that. They are looking at something that will not be a vortech but will be a sand type filter. Mr. Coker noted that the vortechinics have fallen out of favor at UNH. Mr. Moulton assured him that they are still investigating this subject.

Mr. Coviello referred to Page 5 Parking Calculations and indicated it should be 2109 rather than 2107.

Jeffrey Dirk, of Vanasse & Associates Traffic Engineers addressed the Board next. Mr. Dirk indicated that Attorney McNeill reviewed the process they went through as a development team and the traffic element went through a similar process. There have been a number of refinements. They have met with TAC, T&S and the Parking Committee and that has resulted in a very good plan from a transportation perspective. They are looking at public transportation access, vehicular access to their project as well as abutting businesses and pedestrians. They prepared two full traffic studies for the project. The 2005 report looked at all aspects. They looked at traffic patterns, pedestrian access and safety and they looked at the planning horizon. The State required an opening year condition. All findings of the traffic study and their recommendation have been reviewed by City Staff, Deborah Finnigan, TAC and the Parking Committee.

He started with a plan displaying the street configuration they are proposing. He showed how they are realigning the Deer Street intersection and making it much safer. It also shortens the crossing distance for pedestrians. The other central component of the plan is the north end and the installation of a traffic signal. They looked at the location and there is a series of criteria to install a traffic signal. Their study showed that it met all standards. They will also realign the intersection.

They looked at the Deer Street corridor. Turning lanes to the parking lot were all envisioned by the City. Those changes resulted in a reduction of parking from Deer Street to Maplewood. Heading towards Maplewood Avenue, they will extend the left turn lane westbound on Deer Street to get more cars in it. The traffic signal and other signals along Maplewood will be retimed. Heading down Maplewood to the garage access they are installing a gate system to make sure there are not two vehicles simultaneously exiting from the garage and the service area. It will also be timed to the railroad tracks.

He continued down Deer Street from Russell to Market Street. The first plan embraced what was approved for the parking garage. To implement those improvements it resulted in the removal of a substantial number of parking spaces. They created additional parking by eliminating the left turn lane as a result of the creation of one way traffic down Deer Street. It allows them to reintroduce parking on Deer Street. This will also reduce heavy traffic flow and the traffic movements will compliment each other and reduce conflicts. In terms of the improvements, they will relocate the curblin to create the depth required for the angled parking spaces. Bumpouts will assist with pedestrian crossings and make them much easier and safer. All signs and pavement markings will be improved or restriped. They have worked with Coast and will retain their two existing bus stops. The mid-block crossing on Russell Street was necessary for the Coast bus stop.

Mr. Will asked if at the corner of Deer and Market Street, is it possible for a tractor trailer to make left hand turn and continue to I- 95. Mr. Dirk confirmed that it will actually be easier as there will be a

16' travel lane which is wider than what is there now. Mr. Will asked if it will be equally easier to go through the Russell Street turn? Mr. Dirk confirmed that would be easier also.

Mr. Coker asked about the stretch of Market Street from Russell to Deer, and whether they considered any traffic calming features? Also, the intersection of Deer and Market, heading up hill to the downtown district, is a horrible intersection as it is not lined up. He asked if those were considered? Mr. Dirk stated that regarding traffic calming, when they add the traffic signal on Market Street it will break the flow of traffic. Mr. Coker was talking about the intersection of Deer and Market. Mr. Dirk felt that some of the misalignment can be improved with pavement markings but the mid-alignment is actually a traffic calming feature itself. There are simple things that can be done with the re-striping.

Mr. Coviello felt that Mr. Dirk had contradicted Mr. Moulton. He asked if they are moving the curb lines? Mr. Dirk indicated that the curb line is being adjusted slightly but to create the width that they need it may be reset. Mr. Coviello asked if they are required to have ADA sidewalks? Mr. Holden confirmed that all public sidewalks in that area will be ADA compliant.

Ms. Geffert asked if they considered bicycle access? Mr. Dirk confirmed the roads are wide enough to share access.

Mr. Coker asked Mr. Dirk if he would object to a stipulation to provide the striping he was talking about to provide the traffic calming? Attorney McNeill stated that was acceptable as long as Public Works agrees to it.

Everett Eaton, Vice Chairman of City's Economic Development Commission (EDC), was the next speaker. He indicated that a lot of what he wanted to say was stated by Attorney McNeill relative to the economic impacts to the City. The project has been on the EDC agenda for many years and noted in many studies as being the economic engine for the whole city. They saw 3 to 4 key benefits to the project: to continue economic vitality to the downtown area, to promote tourism and, now that Yoken's is closed, the City needs a conference center. If Portsmouth does not have a conference center then another City will draw the business out of Portsmouth. The City hired an independent consultant to determine what the impact of a conference center would be on the City. It came back showing that there would be 120,000 – 140,000 visitor days a year to the City, creating \$16,000,000 in direct economic benefits from sales to local restaurants, markets, shops, and \$700,000 in annual tax income to the City, and 300 permanent jobs. This is a very significant project and a side benefit to the City is the parking. The EDC strongly recommend approval of this project.

Art Static, of Walker Parking Consultants, who are the City's parking consultants, spoke next. They were retained to facilitate the design process to insure that the quality and nature of the parking design is appropriate for the City and to set up the requirements for the project. The requirements he is talking about delve into the nature of the project, the functional design of the project, how vehicles and people move through the project with appropriate level of comfort, to assure there is a balance between that comfort level and the efficiency of the garage and to insure that is properly taken into account. Along with that, one other area they are getting into is the engineering systems of the facility. They are looking at the structural, durability, mechanical, plumbing and lighting facilities. They are looking at the operations of the parking facility to make sure the design properly incorporates the proper operation of the parking facility to assure it works well with the parking in town. There are other criteria over and above they will look at. Finally they are here to guard the interest of the City. They have been working on this project for 2-3 years. They originally set up the conceptual design of the facility. More recently, in the fall, they were asked to accelerate their involvement to facilitate the design and work with the team. They set up some rigid requirements and found some items that were not meeting the long term interest of the City. They have set up and established criteria and a manual for the design of this project and have designed a grading system with this facility receiving a grade B. They have met with City staff to incorporate their requirements. At this stage, they are very happy and comfortable and confident that the direction is appropriate to meet the long term needs of the city.

Mr. Coker asked if they were they involved in the financial analysis of the garage? Mr. Static stated they were not.

Steven Parkinson, Director of Public Works, addressed the Board. He indicated he has been with the City over 25 years, 18 as the Director of Public Works. He has been involved with this project from concept to the present design. This design has been through many issues and revisions over many years of meetings, both in house meetings as well as public meetings with various City Boards and Commissions. Many members of the Public Works staff serve on the various Boards that this project has gone through or serve as technical advisors to those Boards, such as the Technical Advisory Committee, Traffic & Safety Committee, and the Trees & Greenery. They have had a very cooperative arrangement with the developer and they have been attentive to the needs of the City as well as the businesses and citizens who are affected by this project. Throughout the process the Department has looked at various items that have impact on the existing infrastructure of the City, including drainage, water supply, sewerage, pedestrian traffic, vehicular traffic, parking and the various landscape items. One of the most important issues which was evaluated by Deborah Finnigan, City Traffic Engineer, regarded roadway improvements and the impact on parking. All plans have been reviewed by Ms. Finnigan, culminating in the approval by the T&S committee. The changes which took place resulted from public input in a collaborative fashion which was embraced by the parties involved. The area between Russell and Deer Street on Market Street is already a City project to create traffic calming measures. City staff has been involved with this project since the beginning, including when John Burke was the Traffic Engineer for the City. David Allen, John Burke, himself and all of the technical staff have been involved throughout the project. This project has been approved with various stipulations from the various Boards by the Public Works staff as meeting all of the technical requirements of the City of Portsmouth utilizing sound engineering practices.

Mr. Coker asked, given the improvements being made by the City, would it be redundant to ask the applicant to do some striping, etc. Mr. Parkinson felt they can work with the developer on that.

Mr. Griswold was the final speaker of their presentation. He appreciated them taking the time tonight to review this. A lot of what they do is technical and it is not an easy job. He indicated that regarding the technical items heard tonight, they are taking very much to heart the expansion of the downtown area. They believe traffic calming is essential to the development of downtown. It is important to create more of a pedestrian friendly environment that works together with vehicular traffic. To be more a part of the downtown is a plus. He referred to Mayor Foley's portrait smiling down at him and told the Board that the City has always been professional to work with and he has enjoyed his partnership with the City. He believes this project has withstood the rigors of time.

Mr. Coviello asked about the retail units in the parking garage and who owns those? Mr. Griswold responded that the City owns those units because they own the garage. Mr. Coviello asked if they can be used as restaurants? Mr. Griswold felt they would have to review the zoning. He thinks it may be difficult. Mr. Holden confirmed that restaurant and retail would be an allowed use so basically that space is entitled to everything under the Zoning Ordinance but it might have to meet other requirements. Mr. Coviello was concerned about grease traps? Mr. Holden confirmed there would be no waiver granted for a grease trap.

Mr. Coviello noted on the lighting plan that parking goes all the way up to the roof? Mr. Griswold confirmed that the parking goes the top in the center of the garage, but not around the perimeter. Mr. Holden confirmed the lighting was similar to the High Hanover garage and they will be dark sky friendly.

Mr. Will thought that Mr. Coviello was referring to potential grease traps and they have had a problem with projects coming forward putting a restaurant in at a later date. The Board had previously had a suggested of a way to make it easier down the road to have a grease trap installed. Mr. Holden felt

that, given there is a public facility behind it, there is no lack of space to install a grease trap. Probably the City's biggest grease trap is located on the adjacent parcel. He does not believe they will be seeing a restaurant on the parcel but, if a restaurant does go in, he does not see the City granting a waiver for the grease trap. But, he added that Mr. Will could make a stipulation.

Ms. Roberts asked about the ownership issue and whether cars traveling underneath garage for the hotel would have a special access and how did that work? They had referred to a fire wall and she was envisioning that as a solid wall but evidently that is not how it works. Mr. Griswold stated this issue was described in the MOU with the City. The City grants an easement to the owner of the hotel for the purposes of passage through that part of the space until they get to a gated entry that breaches the vertical wall to get into the remaining spaces. They will be separately maintained and it will be done with an easement.

Ms. Roberts also asked about the Section 108 Archeological process. Mr. Holden stated that the Department and TAC wanted to make them aware that that was a requirement and the applicant is currently in that process. Mr. Griswold indicated that they were proud of the historical artifact aspect. They did find several artifacts on the Sheraton site and they have funded digs at Strawberry Banke.

Vice Chair Hejtmanek opened the public hearing and called for speakers.

Deborah Bouchard Smith, 298 Myrtle Avenue, speaking in favor of the project, as a resident of the northern tier, a business owner on Deer Street and a retired event planner. She is excited to see an ugly parking lot turn into a beautiful conference center. She commends the Westin for its open minded communication with residents of Deer Street. They have addressed concerns of the construction process. Deer Street is working to make it a viable destination for visitors. Portsmouth needs this hotel and conference center desperately. The need for parking in Portsmouth is great and this will help relieve that problem. The Westin will be enhancing the Deer Street.

Bernard Pelech, Attorney, has lived in Portsmouth for 36 years and has practiced law for 30. He is not speaking for or against but with regard to one particular aspect to the project. The plan to make Deer Street one way was unveiled only one month ago. He represents Granite Street Minerals and he felt it was not considered that 150 to 200 tractor trailer trucks, loaded with salt, go up Deer Street and across Maplewood Avenue to their other Granite State Minerals bagging plant across Maplewood Avenue. They will now have to go around to Russell Street, down Deer and back o Maplewood and it will be difficult for their tractor trailers. He feels a compromise suggestion was to simply shift the parking to the other side of Deer Street and make it one way going the other direction away from the water. Then the vehicles could go up Deer Street to unload. There is also another unintended consequence. 95% of the trucks going to Granite State Mineral are coming from 95 and they form a line waiting to get into Granite State Minerals. If the queue is full, they will have to continue up Market Street and drive through Market Square which is a problem. He has suggested this to the Traffic Engineer at the T& S meeting but it fell on deaf ears. He realizes that Granite State Mineral is an industrial business but they have been there for many, many years. The Master Plan indicates they want to keep water businesses. This is going to severely hurt their business. He thinks changing the direction of one way traffic on Deer Street should be reconsidered.

Harold Ecker, 422 Banfield Road, stated that he was not speaking for or against the project, but maybe a little bit against it. If the City is going to pay for a parking garage then the City should be able to control it. He questions whether the Master Plan says we should have bridges connecting buildings in the historic building. Also, it is over his street that tax dollars pay for. He was concerned about where all of the new employees would live as they would not make enough money to afford to live in Portsmouth. Are the developers going to help pay for the City's sewer system? Will they redo all of the utilities when they redo the roads? He would like to know what months the traffic studies were done and what hours they were done. He felt the City should be getting the tax dollars from the garage. He feels the Planning Board should be looking out for all of the residents of Portsmouth.

Douglas Macdonald, Attorney for Fred Lowell, 62 Deer Street, handed out a letter which they delivered to the City Legal Department today. His comments were directed more at the Board than the developer. In 2002 his clients purchased 62 Deer Street, where the reconfigured intersection meets Deer and Russell Street. In 2004 his clients filed a driveway application with the City and re-filed in 2005. It was denied which led to the lawsuit pending today. They planned to locate a driveway on the right side of their house. The City denied that plan and it was appealed to the Superior Court and an order was issued directing the City to provide Mr. Lowell with a driveway. The City argued that the location of the driveway was unsafe and appealed to the Supreme Court. He has attended the last T&S meeting, the Parking Committee meeting and the Planning Board meetings. A month ago, the plan changed and they provided a bumpout and cross walk at the intersection of Deer and Russell Streets. The crosswalk is now aligned with the only space that Mr. Lowell's driveway can be aligned on his property. He has recommended that the City not approve the plan. Attorney Macdonald stated that the City will approve this plan in violation of the Court Order with the knowledge that the plan will be used to adversely deprive his client of his rights. He believes this issue rests with the City as the driveway doesn't concern the project. This taxpayer has gone through a three year ordeal and is now being further inconvenienced by the proposed plan. He asked them to consider this in their deliberations.

Mr. Coker asked Attorney Macdonald if his firm was involved in other litigation concerning this project? Attorney Macdonald stated that they also represent 1000 Market Street Corporation, who is the trustee of 976 Real Estate. Mr. Coker asked if there has been litigation in the past? Attorney Macdonald confirmed that there has but the two are completely unrelated. Mr. Coker did not understand the claim that the City was acting in contempt of a court order. Attorney Macdonald stated he was making that claim because there was an existing Superior Court order issued on January 24, 2007. The City claimed that the driveway location was unsafe and the City appealed the Superior Court order. The Superior Court found that the City's decision was untenable and the City's position was unreasonable. Mr. Coker asked if that decision was settled? Attorney Macdonald felt that the decision has been stayed pending the appeal and the order stands.

Vice Chairman Hejtmenek indicated that Attorney Robert Sullivan would address the Board later in the hearing.

Carol Johnson, 401 The Hill, spoke personally as well as on behalf of The Hill. Their businesses are not destination businesses and their customers come and go quickly. Parking in the garage is not realistic for them. They are very pleased with the diagonal parking and they commend the Weston for meeting that need for them. Regarding the crosswalk, they are in legal litigation with the Parade Office project to actively create a pedestrian way between The Hill and what is now the Parade Mall to promote the flow of pedestrian traffic and again between The Hill and the Hilton Garden. If the City chose to move the crosswalk to the opposite corner it would improve their pedestrian flow and they are asking the City to consider that.

John Ryan, Attorney for Dennis Prue, 976 Dover Realty Trust, 10-A, Market Wharf Condominiums, submitted a letter to the Board. His letter discusses the zoning ordinance requirements and the deficiencies in the parking calculations. Independent of the zoning issue, they have hired an expert to address the question of parking as provided as well as the street parking issues which have come up on Deer Street, turning radii, and the light. He introduced Diane Morabito from Main Traffic Resources.

Diane Morabito, from Maine Traffic Resources, stated that they were hired to review the parking and traffic studies for this project. A summary memorandum was distributed to the Board members. She understood that the original Sheraton Hotel required 401 spaces and the new hotel and conference center require 1359 according to the ordinance, totally 1760 spaces. They reviewed the parking requirements as the City has approved them and they did their own analysis of the parking demand. They looked at the existing Sheraton Hotel which was consistent with what was required. They looked

at the new facility and they do not believe 600 spaces are adequate. She stated that a shortage of parking spaces will create traffic congestion as they will circle, looking for a parking space. They performed an auto-turn analysis and they do not believe a standard size tractor trailer can make the turn at the loading areas. They found encroachment into the right turn lane at Russell Street. She has identified a significant lack of parking and felt that the truck access is inadequate.

Mr. Coviello referred to Sheet C-5 of the project Site Plans where there is a parking calculation table. He asked which numbers she had a problem with. Mr. Morabito indicated that she used ITE figures. Mr. Holden asked if there was a violation of the Zoning Ordinance that she has seen? Ms. Morabito responded no. Mr. Coker asked if this study was done for 1000 Market Street? Ms. Morabito confirmed that was correct, along with 976 Dover Realty Trust.

Doug Macdonald, Attorney, spoke on behalf of 1000 Market Street Corp, 976 Realty Trust. They engaged the Traffic consultant who just spoke. 1000 Market Street Corp owns two office buildings and one hotel approximately 1 mile from the site. However, all of their guests use Market Street. With respect to the updated traffic study, he was constantly commenting on the fact that the traffic studies were outdated. During those meetings, he does not recall any of the committees notifying him of the updated traffic study. His letter outlines they believe there is an inadequate basis for this plan. He shares the comments made by Attorney Ryan and believe there is a shortfall of spaces. Although it has been said that there are no zoning issues outstanding, when the Sheraton was originally approved, a Special Exception was granted and 123 spaces are on the Sheraton and the remaining spaces are located on the other lot. If they change the use, they are required to bring it into conformity. He feels there is a very real issue regarding compliance with the zoning ordinance. He feels this is a serious issue and the non-conforming use has to be brought into conformance and this plan does not do it.

Attorney McNeill responded to Attorney Pelech and indicated that they appreciate his comments and that the changes to Deer Street were driven by the City. The T& S met on two occasions regarding the alternation to the street and Attorney Pelech spoke at one meeting and voiced his concerns. The goal was to retain as many parking spaces as possible. The telling component of the evidence was when the Deputy Fire Chief said it was the primary desire of the Fire Department that the street should be headed towards the water and towards the downtown. Suffice it to say this component was recent but it involved numerous meetings and on site visits.

With regards to Mr. Ecker, Attorney McNeill stated that the City did not donate the property to this developer. With regard to Attorney Macdonald for 62 Deer Street, there has been great deal of discussion of the rights of the owner of 62 Deer Street but the focus of all city committees has been on the safety of this area in the development of this project. Attorney Sullivan advised them that the plans are not to be modified as a result of this pending litigation. As such, they believe it is appropriate to proceed and is consistent with the advice of Attorney Sullivan.

With regarding to Mr. Prue's comments, they have always questioned how Mr. Prue was affected by this project. Given the fact that the space which he relies upon to give him legal standing is located inside the Westin facility and it has never been occupied. They were also aware that this space was acquired in 2005, about the same time that this project started forward and they were also aware that it became necessary for interested competitors to have some standing. Despite the efforts of Ocean Properties to object to all of their competitors, they were no longer able to participate in law suits because they didn't have standing. Mr. Prue's attorney submitted a report at this meeting which the Board finds out is paid for by Ocean Properties. Mr. Prue is also employed by a company that is controlled by Ocean Properties. Regarding the issues with regard to parking, they should first examine the source and he asked if they envision under any circumstance that the City would recommend approval of this project if they were in violation of their Zoning Ordinance. Also, there has not been any direct allegation by the attorneys involved that they violated the Zoning Ordinance. Attorney McNeill felt the reason they are not is because the City does, in fact, comply with the intermodal

credit requirements that exist for this site and they have over 200 extra spaces. This is not a new issue and has been considered repeatedly within the City.

Mr. Coker asked about Ocean Properties. Attorney McNeill stated they have sued the City over the bonding resolution, they sued the City over the Zoning Amendment and the Court threw it out as they found that they did not have any legal standing to challenge it, they have sued the Hilton Hotel and ultimately lost that case in the Supreme Court and they have been in litigation with their competitor, Mr. Ramsey, for at least 10 years. Weighing the credibility of their positions against the advice received by Attorney Sullivan and the Planning Department, Attorney McNeill asked them to consider the track history of the City and then consider the track history of Ocean Properties.

Attorney Pelech confirmed that his client was a true abutter, and they have very realistic concerns and they think those concerns can be easily remedied by making the one way street go in the other direction. He understands the fire department's needs to having access to the waterfront but there are other alternatives.

Attorney Macdonald wanted to clarify one statement. He stated that this is a claim that, as proposed, the parking violates the Zoning Ordinance. It is expanding or enlarging a non-confirming use and violates a Special Exception and also, during construction, the use will be discontinued for over 8 months.

Jeffrey Dirk responded to the truck circulation regarding Granite State Minerals and he indicated that was considered very seriously. The one way traffic flow was very explicitly requested by the Fire Department for safety. Concerning the staging of trucks, that is not allowed and they should be using radio contact to determine when it is safe to approach the site. Mr. Coviello asked about the claim about the improper truck size by the consultant? Mr. Dirk stated that the other engineer was mentioning the site circle issue within the site itself regarding 50' long truck. The off site improvements are designed for a larger longer truck.

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.

Mr. Will made a motion for a recess. Mr. Coker seconded the motion. The motion passed unanimously.

A 5-MINUTE BREAK WAS TAKEN

DISCUSSION AND DECISION OF THE BOARD

Steve Parkinson stated that from a City perspective regarding the one way traffic, it is the City's position that the plan should be approved as presented, towards the water. This reduces the amount of conflict at the intersection of Deer and Russell. There is plenty of width to the roadway and design on the curbs to allow the trucks to go around the block waiting for Granite State Mineral.

Mr. Coviello felt there was some talk about the traffic study being outdated. Mr. Parkinson confirmed that the traffic study was up-dated as of last month. Depending on the duration of projects as they are dragged on, the reports are updated as needed. This traffic study was done in that manner and it looked at the street being one way.

Vice Chairman Hejtmanek asked Attorney Sullivan to comment on the pending litigation on Deer Street.

Raymond Will asked about the driveway issue and if they have an appeal that is unresolved. City Attorney Robert Sullivan stated that until the litigation is completed, there is no final order. The

Planning Board denied that driveway and the City Council denied the driveway, both for good reasons. They are appealing the Court order and they feel they have a strong case. If there is a final order allowing Mr. Lowell a driveway, the City will work with them to comply with the order.

Mr. Coviello asked Attorney Sullivan to help explain the Special Exception granted in 1984 regarding parking. Attorney Sullivan stated that a special exception is a permitted use. The project as proposed now combines the two hotels and was reviewed in its entirety by the Planning Department. There will be parking spaces on the area that is now vacant in the parking garage that are the spaces that had to be part of the Sheraton garage. Mr. Holden confirmed that this is not a non-conforming use and the parking calculations have addressed the parking that was created for the Sheraton. Attorney Sullivan also added that that was a zoning question and this was the Planning Board so this was not the place to be debating that sort of question.

Mr. Coker thought it was by claimed by Attorney Macdonald that a special exception creates a non conforming use. Attorney Sullivan disagreed with that as a proposition.

Mr. Fortier asked about the bridge that connects the building. Attorney Sullivan stated they have a connecting bridge which is unique and will be our first in the City. He is quite confident that it is within the authority of the City Council to approve that structure and the structure is required to receive all approvals necessary. The City Council will enter into some sort of licensing agreement to allow that structure to be built. Vice Chairman Hejtmanek is also the HDC representative from the Planning Board and he advised the Board members that the HDC had a lot of discussion and they decided for a safety issue it was necessary.

Vice Chairman Hejtmanek asked for a motion on the application for preliminary and final subdivision.

Mr. Will made a motion to grant Preliminary and Final subdivision approval with the six stipulations. Mr. Fortier seconded the motion.

Mr. Holden confirmed that if this motion were to pass, the other application would be withdrawn.

Motion on Preliminary and Final Subdivision Approval:

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

- 1) That this Board recommends to the City Council that it should allow for Deer, Russell, Green and Market Streets to each be reconfigured as presented/proposed;
- 2) That all necessary plat plans, deeds, easements and/or licenses necessary for the above should be prepared by the applicant for review and approval by the City Legal Department as to their content and form;
- 3) That property transfers and the issuance of a Building Permit shall be done simultaneously;
- 4) That as a public improvement, the costs for constructing the parking garage shall be part of the Site Review Bond;
- 5) That boundary monuments shall be placed in accord with DPW requirements; and
- 6) That electronic data, suitable for updating the City Assessing records shall be submitted to the Department of Public Works.

Attorney McNeill advised the Board that they would withdraw their previously submitted subdivision application. Mr. Holden confirmed that is the original application that was filed in April.

Motion on Site Review Approval:

Mr. Will made a motion to approve Site Review approval with the six stipulations recommended in the Department Memorandum, and the 19 TAC stipulations. Mr. Coker seconded the motion.

Vice Chairman Hejtmanek requested a stipulation for a sign at end of the back road at the intersection of Maplewood saying no right turn for large trucks, something agreeable to DPW.

Mr. Coker requested that DPW will work with the applicant for additional traffic calming.

Mr. Will spoke to his motion. He stated that he does not like the project but he will vote for it. Harold Ecker mentioned big people vs. little people. Urban renewal was big people and this is the culmination of that. He also voted against the height change amendment. Mr. Will indicated that he will be voting for this motion as the applicant has complied with all regulations of the City but he does not agree with this vision of Portsmouth.

Mr. Coviello stated that he likes this project.

Ms. Geffert stated that she has real concerns about affordable housing for all of the jobs that this project is creating. She has concerns about landscaping, public recreation, bike trails, however, she realizes it complies with the Site Review Regulations. She is concerned about what they are doing to the City and the Northern Tier. This Site Plan does not make specific reference to things such as pocket parks and she thinks they could do more.

Mr. Coker enthusiastically supports the project. He felt that the argument for affordable housing in Portsmouth is a lost battle as they do not have the land and it irrelevant to this project. He thinks this is a tremendous opportunity for the City.

Mr. Coviello expanded on his previous comment. He appreciates the concerns about affordable housing and pocket parks but felt that this is hitting two big concerns of the city - parking and conference space.

Ms. Roberts was appreciative of Mr. Will for his eloquence about urban renewal. It is a current running through this whole story and she would disagree that this is in any way how they can address the mistakes the City made 30 years ago with that unfortunate project. She agrees this will give the City a real shot in the arm. She is very much in favor of it and this is an opportunity for them to move forward as a city.

The motion to approve Site Review passed unanimously with the following stipulations:

Stipulations from the April 3, 2007 Technical Advisory Committee Meeting:

- 1.) That the applicant shall meet with David Desfosses of DPW to finalize construction details to make sure they meet City standards;
- 2.) That the additional 2" water service to the garage shall not be activated until the subdivision is approved;
- 3.) That the applicant shall arrange to have the USGS monument off the ledge at Russell Street relocated during construction;
- 4.) That the applicant shall work with DPW regarding drainage;
- 5.) That the applicant shall work with Peter Rice, DPW, to review the proposed 1,000 gallon grease trap to determine whether their flows from their cooking facilities are adequate;
- 6.) That the applicant shall work with the City's Police and Fire Departments to verify that they can communicate with their base station inside the proposed buildings;
- 7.) That the applicant shall coordinate the VAI plans with the AMES plans;
- 8.) That the landscape plan should be subject to review by the Trees and Greenery Committee and coordinated through Lucy Tillman;

- 9.) That the applicant shall review and work with the City Traffic Engineer to coordinate the timing systems at the intersection of Maplewood and Deer Street;
- 10) That a meeting be set up between the applicant and David Desfosses to review final street geometry, paving and side crosswalks;
- 11) That a signage plan will be required and subject to review by DPW and the City Traffic Engineer;
- 12) That the applicant shall prepare a Construction Management and Mitigation Plan for review and approval by the City Legal Department, Planning Department, City Traffic Engineer and City Manager, prior to permit approval;

Stipulations from the May 8, 2007 Technical Advisory Committee Meeting:

- 13) That this project shall be reviewed by the Parking Committee;
- 14) That automatic notification of emergency services and a knox box shall be installed;
- 15) That the first and last angled parking spaces be shall be reviewed for safety purposes.
- 16) That the final lighting plan shall be reviewed and approved by David Desfosses. Included in that review would be type of fixture and spacing;
- 17) That the City and the applicant shall work together to identify areas where brick sidewalks shall be installed along the perimeter of the property.
- 18) That the applicant shall provide anticipated water demand for the project and include references of where that demand came from, ie., a similar type of store in another area or industry standard, and said report shall be stamped by a licensed engineer;
- 19) That DPW shall review and approve the design of the proposed signal design of Market Street at Russell Street intersection.

Findings and Stipulations from the June 7, 2007 Planning Board Meeting:

- 20) Through City Council actions, the City is a part in this application;
- 21) The proposal is in conformance with the Joint Development Agreement;
- 22) The overall development scenario encompassed by this site plan has been extensively vetted by a variety of municipal agencies as is demonstrated by prior site plans, architectural designs, development scenarios, etc.;
- 23) The Site Plan now before the Board represents the culmination of those efforts and demonstrates an active collaboration with other interested parties, including, abutting property owners in terms of vehicular movements and parking resources;
- 24) In presenting its findings, the Technical Advisory Committee has found this proposed project to be in conformance with the Board’s Site Review Regulations, therefore, the approval of this project, subject to relevant TAC and Planning Board stipulations, is recommended;
- 25) That the Site Review Agreement shall compel the construction of a public parking garage;
- 26) That a sign shall be added to the Site Plans for the service road at its intersection with Maplewood saying “no right turn for large trucks” or other language that is agreeable to DPW;
- 27) That DPW shall work with the applicant for additional traffic calming measures at the intersection of Deer and Market Streets;

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II. OTHER BUSINESS

- A. Discussion regarding July Work Session;

A work session meeting schedule was handed out. General consensus was that they not meet on July 5th. All other dates are acceptable.

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III. 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 July 19, 2007.