

**MINUTES OF
WORK SESSION**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

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

JUNE 12, 2008

MEMBERS PRESENT: John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Donald Coker; Anthony Coviello; Paige Roberts; John Rice; Cindy Hayden, Deputy City Manager; and Norman Patenaude, Alternate

MEMBERS EXCUSED: Jerry Hejtmanek, Vice-Chairman; Richard A. Hopley, Building Inspector; MaryLiz Geffert. Alternate

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

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Chairman Ricci read the four agenda items to the public. He then turned the meeting over to Rick Taintor.

He welcomed Roger Clum, Assistant Building Inspector, to the meeting.

I. DRAFT REVISED ZONING ORDINANCE

A. Continuation of Article 9: Site Development Standards (as needed);

Mr. Taintor stated this agenda item was in case the Board had issues left over from last week. The Board did not have any further issues so they moved on to the next item.

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B. New and Revised Definitions;

Quite a few of the definitions they were reviewing were a result of changes to the draft Zoning Ordinance.

Page 1. Senior Housing Uses. Some of these are not in the current Zoning Ordinance. What has happened is they have an Assisted Living Section being developed but it is not being used. There is a proposal being developed. He thought it would be good to update the definitions of the four types of housing. They come from State law, the building code or national definitions. Some deal with people of a certain age. Federal law allows them to start at age 55. Assisted living units provide some personalized services, defined by insurance and state law. Congregate care facilities are smaller with a kitchenette so residents can eat in a dining room. Continuing Care Retirement Community (CCRC) is a mix of all types. They thought it would be good to add these as they will have more and more.

Mr. Coker asked if this falls more into age restricted housing? Mr. Taintor confirmed it has age restricted and assisted living. Mr. Coker asked in terms of the zoning density and setbacks, do they differ significantly with each of these? Mr. Taintor felt that they could because age restricted is like an

apartment or single family home. The only difference is that it is restricted by age. It does not affect impact. In that case they may have a different density impact than, say, congregate care. The answer is a policy issue and depends on what they would allow. Cars would be handled differently also.

Mr. Coviello asked if they could have an assisted living facility that is not age restricted? Mr. Taintor confirmed they could. For instance, they could allow handicapped persons. Mr. Coviello asked if it was the same with congregate care? Mr. Taintor confirmed that the senior heading is misleading. Many of them do have a percentage that they set aside for non-elderly. Mr. Coviello thought there was a town that had a brain injury center. Councilor Dwyer stated that was an adult day care.

Councilor Dwyer felt that Borthwick was a combination. Are they really talking about uses or facilities? It sounds like there are many combinations of the uses. Mr. Taintor felt she was right about that. At the bottom of the first page where it talks about a retirement community it talks about multiple uses.

Mr. Taintor felt that when you have a facility such as the one being proposed, the use regulations have to be reviewed as well as parking regulations. Councilor confirmed that one would not supersede the other. Mr. Taintor stated the independent units have one type of impact and the nursing care is a different type of impact. Councilor Dwyer felt it could be additive.

Page 2. Individual auto related uses with respect to parking. Mr. Taintor was not sure there was much more to say about them as they have discussed them in the past. Mr. Coker didn't understand why under Motor Vehicle painting or body work, maintenance, service and engine work may be performed as an ancillary function of the body work yet in Motor Vehicle Repair they list install new or used motor vehicle parts such as mufflers, brakes or tires. It seemed to him that it should be motor vehicle repairs includes engine repair. It is a small point but body work is body work is body work. Mr. Taintor felt the sense was painting and body work would be a higher impact than repairs. You might want to be more careful with body work. Mr. Coker noted that body work is noisy. Chairman Ricci added that painting is a big operation and you need a big space.

Mr. Rice stated if you are in an accident they would do body work and engine work at the same time. Mr. Coviello indicated when they came for their approval, they would ask for both classifications. Mr. Holden stated that body work used to be the worse one but now it's better and a lot more electronic. It was the paint and the body work that was segregated apart. Mr. Taintor confirmed they became very particular over the service stations as they have three different kinds.

Mr. Coviello asked if they include a car wash? Mr. Taintor confirmed that is handled separately.

City Attorney Sullivan stated that in prior versions of the Zoning Ordinance that have caused serious problems are auto service and truck service and truck stops. Mr. Taintor stated they have one for truck fueling facility.

Mr. Coker followed up on the motor vehicle service station. To him, a service station is where they pump gas and have a couple of service bays. That would be a small garage for normal maintenance. Deputy City Manager Hayden stated it would be #2.

Mr. Rice asked about car washes and if it should say washing "and/or" waxing instead of just "or".

Page 3 – Industrial Uses. They have an industrial occupancy definition, light industry, and research and development. There are five categories of hazardous uses. Electronic manufacturing can fall under high hazard uses. Research and development does not include any high hazard uses. They have electronic manufacturing which could include high hazard A or B and light industry could only include H3 or H4 from the building code. It's rather complicated but he thinks he has it down. Mr. Coviello felt it is still complicated. Councilor Dwyer asked if they could include a little table, like a matrix that

would summarize everything? Mr. Taintor felt that could be done. It's nice because they can talk about explosion and flames. The hazardous materials are defined in another part of the Zoning Ordinance and he will cross reference them.

Mr. Taintor indicated they added the Personal and Consumer Services and an idea of a Call Center which would be very high density. Deputy City Manager Hayden asked if it was hard to defend a high volume on the Call Center. Attorney Sullivan stated they have had the call centers and some weren't that big but he would like to see it tightened up. Deputy City Manager Hayden asked about political campaign headquarters and asked if they are call centers? They might feel okay about a temporary use for a month or so. Mr. Taintor explained that because they tend to be large facilities, they could reference the square footage. Chairman Ricci asked what do they base it on? Mr. Taintor felt that size would be a good way to do it but he will research it. Mr. Holden added that this is a use they were approached on so it is viable.

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C. Article 10: Signs – Preliminary Discussion;

Mr. Taintor stated that signs are a difficult thing to get your hands around. His handout pointed out the things he thought should be addressed. He wanted a discussion of identifying problems they have seen or things that could be addressed better and what is practical to include in the regulations. They have types of signs (by district), number of signs)by district and type of sign), sign area by district, sign height (by district and type of sign), sign design (by district), sign illumination (by district and type of sign), changeable message, temporary signs and what constitutes a sign? What kinds of signs should be regulated? They can get into different types of sign illumination, signs that can change and move, temporary signs and signs they may want to exempt.

Mr. Taintor started off with what type of signs should be regulated?

City Attorney Sullivan found that their sign regulations were the most frustrating, complex zoning enforcement of the City. We all know what a use is and what an area variance is and they know how to measure a set back but a sign is not a use or an area. They are traditionally regulated by zoning. The current system is they define signs very broadly and they attempt to basically regulate signs and a problem comes up that there are too many signs for them to regulate. A sign inside a store window is a sign and Lafayette Road has them everywhere and they would exceed the amount of signage allowed for each lot. Consequently that part of the Zoning Ordinance is not well enforced. If they have a law which they can't enforce then maybe they should re-think the law.

Mr. Rice noted that things inside the windows were always a thorn to the side of the HDC. Internally illuminated signs were also a big problem.

Mr. Taintor stated that a Coke machine is a sign and he if not sure if they regulate that.

Mr. Coker asked if it would it be useful to work backwards? Video signs for example. Driving on 293 in Manchester before Willow Street there is a huge sign that looks like a jumbotron that keeps changing and you can see cars drifting across the road to read it. It is a huge hazard and is visually assaulting. Would it be beneficial to say they will not have that kind of sign. City Attorney Sullivan offered both local history and state law. Five years ago in three locations they had auto dealerships with signs that moved and flashed. The Zoning Ordinance said signs would not move or flash except time or temperature. The 1st amendment issue with signs is they are expressive conduct and there is some level of 1st amendment protection. But municipalities can regulate signs content as long as they are content neutral and a reasonable time, place and manner restriction that are narrowly tailored to accomplish a governmental purpose. Back to the days of those car dealership signs, their ordinance allowed time and temperature but not 1998 Ford Taurus and that was their weakness. The Zoning

Ordinance was not content neutral. It caused us to settle the court cases in ways they would not have liked to. However, immediately thereafter, they amended the Zoning Ordinance so that no flashing signs were allowed. There have since been some cases in the Federal District Court and in the NH Supreme Court that have said that municipalities can regulate signs notwithstanding 1st amendment protection which said content neutral, reasonable time, place and manner, narrowly tailored and one more important things. Cases have said that protection of aesthetics and traffic safety are two legitimate governmental purposes for sign regulations. So, a sign which takes driver's eyes off the road is clearly something they could regulate. They can also regulate signs along Lafayette Road so as to not look like Saugus.

Chairman Ricci indicated that when he drives down Lafayette Road, the flashing is enough to drive him crazy. There are temporary signs that wave like banners are very distracting. City Attorney Sullivan confirmed those are not legal. Mr. Coviello asked if the same rule apply where it is permissive. So, they can't say the things that they don't want. What happens when someone wants a sign that is not in the Zoning Ordinance? Do they go to the BOA? City Attorney Sullivan felt they can try and they have been struggling that so he is not sure there is a good answer to that.

Mr. Taintor indicated that anything that attracts attention is a sign. Should they be silent on video displays? City Attorney Sullivan responded no but they want to ban jumbo signs. Deputy City Manager thought they might want to look at signs differently in different parts of town. Downtown is very different. She doesn't really care if there are gasoline canopies down Route One with colors and words. But she does care if she is downtown and someone wants to paint a stripe around their buildings and end with the business name. She would like to call that a sign. Mr. Taintor stated that one thing he was suggesting was looking at a Downtown Overlay because there are so many things he sees they regulate are things like menus outside a restaurant and that sort of thing. To a certain extent they may not care but they may want to consider a separate set of regulations that allow menus in windows. Savannah has a historic district sign ordinance. Deputy City Manager agreed that the fluttering signs that Dunkin Donuts puts out are a problem on Route One but you see them in downtown like a banner and she almost likes them. Chairman Ricci noted there is a different traffic pattern downtown.

Mr. Coker asked if they have canopies on his condo building and a canopy was damaged in a storm and it was torn so they had to replace it. There was a second floor hairdresser who wanted his name on the side of the new canopy as the entrance to his business. The City had a problem because it became a sign. Mr. Coker asked where does he go to get permitted for a sign?

Roger Clum, Assistant Building Inspector, stated that one of the problems in the downtown area is the current Zoning Ordinance regulates businesses above the first floor. Second floor businesses are regulated differently than first floor businesses. For long buildings with multiple entrances the Zoning Ordinance says that all of the second floor businesses have to have all of their signs on one bracket and he perceives that as a problem. It also only allows second floor businesses to have 2 square feet of signage. That is always a shock to someone moving into a business but the big shock is that they all have to use the same bracket.

Mr. Clum indicated that an applicant would come to the Inspection Department and apply for a permit. If they don't meet the regulations they send them to the BOA. The other issue that Mr. Clum sees in the downtown, like the McIntosh Building and 10 Congress Street, the sign ordinance regulates signage per lot. A huge building on one lot is limited to the amount of signage on that lot by the Zoning Ordinance. Tiny buildings on separate lots are allowed an amount of signage greater than one big building on one lot. As far as a visitor coming to the city, they do not know where the lot lines are and they perceive these buildings as separate buildings.

Chairman Ricci asked if spotlights at night are considered signs? The light beams. Mr. Taintor said they would include that in the outdoor lighting section but he supposed they could say it was a sign.

City Attorney Sullivan felt they could slice that very fine. If you aim that light at the side of the building and light up the side of the building then that is clearly a sign. But, if they aim it at the clouds, they would probably be allowed. They usually put the machinery in a parking lot, away from the building. How would you calculate how much building space they are lighting? It would be very hard to regulate. Mr. Clum stated they have a special event sign section and you can display seven days every calendar quarter. Special event signs are over and above the sign square footage allowed in the Zoning Ordinance. Deputy City Manager Hayden asked if he knew what was the genesis of that was and if it is used much? Mr. Clum indicated it is used quite a bit.

Mr. Coviello mentioned in their lighting ordinance, they agreed not to allow the spotlights. He asked if that would supersede the sign ordinance? Mr. Taintor felt they weren't saying that the spot light itself wasn't allowed but they would treat it as a light. A spotlight, regardless of whether it is a sign or not, is still addressed in the lighting ordinance. He felt Mr. Clum had brought up a good point that a special event is different. Mr. Holden felt it was done that way to try to avoid interfering too much with businesses. The idea was they could do it for 7 days and then they had to get rid of it. Mr. Coviello liked the special event idea but it needs more control. The City Council is concerned with every single A frame. Deputy City Manager Hayden stated that the A frames are in a public right of way and on City property. Mr. Holden thought the issue they are really dealing with is to what extent do you need to regulate commercial enterprises. If they decide they need to know everything, they would have to hire a lot of Inspectors. If they are willing to let there be some lapse of control but try to keep some upper limits on it, it will probably function. The problem is they have the regulatory aspect of going too far.

Mr. Taintor asked about pedestrian oriented menus out side restaurants? Are we concerned about those? Mr. Coke felt that was a waste of everyone's time. He doesn't think the City should be regulating inside the window. Rick has seen an ordinance that say signs are exempt if not seen from 3 feet away. But, what about the big red Sale sign. Coker felt a downtown business should be able to put a sale sign up if he wants to.

Mr. Clum felt they had to balance that against the new Mojo's BBQ Restaurant and all the plastic graphics glued on his window. When do you say this is a sign or isn't? Deputy City Manager Hayden felt it becomes a sign when it becomes permanent. Mr. Clum stated that Mojo's has 30' x 10' on their windows and he feels that is one huge sign. Mr. Holden felt it is the extremes that will drive the regulations and enforcement.

Councilor Dwyer felt that was not compatible with the basic definition of the sign. The difference between a piece of paper and a mannequin, or anything that attracts attention, doesn't seem to hold up.

Mr. Holden indicated that the Zoning Ordinance goes a little further. For window displays of materials are not a sign and the operative word in it is any representation that is illuminated and consisting wholly or in part of written words or symbols is a sign. Mr. Taintor also felt there was a distinction between what they are defining as a sign and what signs they are allowing and where. They are being inclusive of what they define as a sign and then narrow as what they want to regulate.

Ms. Roberts felt that the concept of viewable distance may be a good way to approach it for a district standpoint. One set of regulations could be City wide and then have a downtown overlay and maybe one for Route One. Mr. Taintor stated that a lot of Zoning Ordinances regulate sign area by posted speed on the street. Mr. Coker noted that the Riverrun Bookstore has books inside the window and asked if that was a sign? Mr. Clum confirmed that it was not as goods for sale are not a sign. City Attorney Sullivan added, by contrast, Springers took a photograph wearing expensive jewelry and that was a sign because it was words and representations and illuminated. Mr. Taintor also indicated that a mannequin is allowed. But, where do you draw the line? Mr. Coviello stated that Bull Moose has album covers plastered all over their windows. City Attorney Sullivan explained that if they are selling those albums they are not signs but if they are not selling those albums then it is a sign. Deputy

City Manager Hayden would like to avoid the cute box stores with a huge ugly outdoor sign of people playing sports, or a big diamond. Mr. Taintor believed that is covered. City Attorney Sullivan felt these are tough issues. Deputy City Manager Hayden felt that the speed limit regulation might be good for a higher speed corridor like Route One but is there a way to regulate how much is allowed to go on the sign? City Attorney Sullivan doesn't like the speed limit idea as he doesn't think it holds together. Deputy City Manager is thinking more of Route One and a big sign with a lot of words is distracting. City Attorney Sullivan felt there are only two absolute sure bases for case law and those are safety and aesthetics. Is it less safe or more safe to be going 70 mph and looking at a big sign? He thinks you area less safe. Deputy City Manager Hayden felt that font size should be a factor.

Mr. Coker didn't feel like they were getting anywhere. He would like to focus on the LED's, the videos, and the jumbotrons. Can they just out and out ban them? City Attorney Sullivan thought they could. There is a Concord ordinance that bans them. Mr. Taintor thought that the distinction was that one is moving and one is non-moving. Mr. Coker saw another one in Nashua which was a real estate sign that changed the message constantly. Mr. Taintor indicated they have the number of signs, the size of the sign, illumination of the sign and then the changeable message and all of those things can work together. Mr. Coker was suggesting that they ban the technology completely. Mr. Taintor asked if he wanted to ban gas pump displays? They can regulate that they can only change once a day.

Mr. Taintor suggested talking about changeable messages. He asked about gas station prices that change everyday. Deputy City Manager stated they have a huge LED in Northwood. It's the new thing. Mr. Taintor felt that the changeable message is the problem. Chairman Ricci asked about limiting it to three changes a day. Mr. Rice felt they are talking about aesthetics and if a sign changed every hour, it is not going to make a whole lot of difference. That allows someone the freedom and flexibility to change their sign.

Mr. Coviello indicated he would like to prohibit any internally illuminated signs. Mr. Taintor asked if he was referring to both plastic signs and also the individual bulbs? Mr. Coviello stated he likes it when a light is pointed on an object. Mr. Holden asked why would we consider allowing bulbs. City Attorney Sullivan stated they have come around full circle. Downtown is different than Route One and Woodbury Avenue. The closer you get to Market Square the more intensively they regulate. Mr. Clum felt that the ordinance pretty much does that now. City Attorney Sullivan stated that the one example where it clearly doesn't is signs in the windows. Deputy City Manager Hayden referred to the Commerce Way sign that was proposed on a private way, would they have been allowed to have an internally illuminated sign? Staff could not recall.

Mr. Taintor indicated that right now the Zoning Ordinance says all signs except signs in a residential district, temporary real estate signs and contractor signs, may be illuminated. He indicated that was pretty broad. Mr. Rice asked about the signage that exists and whether it would be grandfathered. Deputy City Attorney Cindy generally agreed with Tony but she was trying to think through, for example, what if they had a major redevelopment of a shopping center, is it better to have smaller illuminated or is it going to end up being a bigger sign with flood lights. Some times it is better to have internal illumination.

Chairman Ricci asked if that was something where they wanted to consider different areas? He doesn't want to spend more attention to downtown but Lafayette Road has a different character for signs. They need to massage this a little bit. Mr. Coviello thought they could add that signs go through Site Review. Mr. Holden indicated they would have to design their own standards then

Councilor Dwyer went back to the discussion about speed limits and she wasn't sure what the criteria was but she felt it was related to the corridors. They need to be thinking about what they want along their corridors. It is not so much a speed issue as much as an aesthetic issue. It lends itself to a kind of certain case and they don't want to say they can do a certain level of internal illuminated as they are

trying to slow traffic down. Deputy City Manager felt this was a good discussion as it is messy because there are complex issues.

Mr. Taintor discussed illumination. He heard good and bad things. What is called Haloed Lighting was used on Coldwell Banker. Sometimes it is very elegant. Halo lighting is where the lightbulb is behind something that is translucent and it shines through and that is also what internal illumination is. Mr. Clum stated they take something called a channel letter and it is a C shaped metal item that forms a letter and they put neon inside of it and it lights up the wall behind the letter. Mr. Taintor said it is not internal illumination, it is external illumination. Mr. Clum disagreed and indicted he had been told that it is. Mr. Taintor stated it is not defined with the zoning. City Attorney Sullivan stated that there is a real estate office on Maplewood Avenue which is a perfect example of this. Halo lighting is a particular problem for the City because they require signs to be measured. A halo sign is a darkened silhouette and the halo is what you see. Councilor Dwyer wouldn't allow it in the downtown. She could see it in an industrial, office park, or at Pease but not downtown. Chairman Ricci thought maybe they could limit it to different districts. Councilor Dwyer felt that Colwell-Banker is the perfect example of everything that is wrong. An attractive material used with a halo could actually be very attractive. Chairman Ricci felt that is made sense to move on to something else.

Mr. Taintor asked about gas station canopies that often have large stripes and are very colorful. They draws attention to a business. Do they want to include that as signage? Mr. Coker referred to Irving Blue Canoe. He does not find that offensive. He feels the City is over regulating. Mr. Taintor feels they are currently regulating that. Mr. Rice felt that when colors are institutional and part of the sign, they take away form the special character of certain districts. There is a gas station on Islington Street and they had never had to deal with gas station before. How do you get a gas station to fit into the character of a district? It would give teeth to the ordinance to regulate color and stripes.

Mr. Clum asked them to think about signs not visible from the public streets such as fast food drive through menu signs, gas station enter here signs, etc. There are many signs that are not at all visible from the City Street but they count in the square footage. Mr. Taintor indicated that the sign definition is on land and view of the general public on Page 1-11. Chairman Ricci indicated you would have to add "when on a public way". Mr. Coviello has a house where sometimes of the year he can see signs from the By-Pass and they are internally illuminated. Mr. Holden felt that hits on why the current ordinance was written the way it was.

Chairman Ricci thanked City Attorney Sullivan and Mr. Clum for coming.

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D. Other sections;

Chairman Ricci confirmed that their next meeting is on June 19th and is their regular meeting. There will be a Work Session from 6:30 – 7:30 before the regular meeting begins. Mr. Taintor indicated it would be an opportunity to review where they are with the Zoning Ordinance and discuss what issues they have not seen yet.

Mr. Holden stated that at 7:30 they should be getting a presentation of Route One, and then they will go right into the regular meeting. On June 26th there will probably be no meeting or work session so they would like to take the opportunity to reschedule the meeting they might have had on June 26th to a time uncertain.

Chairman Ricci asked for a projection for the rest of the year for meetings with Rick Taintor.

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II. ADJOURNMENT was had at approximately 8:30 pm.

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Respectfully submitted,

Jane M. Shouse
Administrative Assistant

These minutes were approved at the September 18, 2008 Planning Board Meeting.