

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

**CONFERENCE ROOM B  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 P.M.**

**JULY 17, 2008**

**MEMBERS PRESENT:** John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Jerry Hejtmanek, Vice-Chairman; Donald Coker; Anthony Coviello; Paige Roberts; John Rice; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; and Norman Patenaude, Alternate

**MEMBERS EXCUSED:** MaryLiz Geffert, Alternate

**ALSO PRESENT:** David M. Holden, Planning Director;  
Peter Britz, Environmental Planner  
Robert Sullivan, City Attorney

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**6:00 – 7:30 PM WORK SESSION - Draft Senior Housing Ordinance**

Chairman Ricci welcomed everyone to the work session and turned the meeting over to David Holden. Mr. Holden indicated that the last time the Board considered this item, they asked staff to work on this. Staff has prepared handouts that outline the applicant's original proposal to jog their memory and a map showing two concentric circles using the hospital as the center point showing a ½ mile radius and a 1 mile radius, the pink is office research and the other colors are municipal parcels. Some other parcels are the Liberty Mutual parking lot and building, the hospital, Jackson Gray and other parcels that HCA owns, and the applicant's parcel. Moving to the mile radius they reach an OR portion off the North Mill Pond but the ordinance would be for the ½ mile. Mr. Holden turned the meeting over to Rick Taintor, of Taintor & Associates.

Rick Taintor started with the first exhibit which outlines some of the policy issues that need to be addressed for a senior housing ordinance. He began by going down the outline and identifying the issues that they are talking about and need the Boards input on. These were identified by the Board in previous meetings and staff has been doing quite a bit of work on this.

Mr. Taintor did an overview. The first issue is what types of housing would be included in this ordinance. The proposal that has been made deals with independent living units and assisted living units but there is also congregate care and continuing care. The next set of issues deals with affordability and it is very complicated: The first piece is defining housing affordability and the second is affordability requirements for senior housing units which is rent plus other costs and there are different issues between the independent units and assisted living units. The Planning Board raised the issue of incorporating workforce housing units which is a completely different issue.

Another set of issues is development intensity, dealing with dwelling units per acre, building height, building coverage, impervious surface coverage and open space. There has been talk about community benefits and there has been talk of passenger rail in the area or recreational facilities.

They then start getting into some easier issues such as what type of non residential uses would be allowed? Many developments have small banks, hair salons or small stores and they are not primary uses but geared towards the residents of the facility. Parking requirements are different for different types of housing. Buildings taller and closer to residential areas might have higher architectural design standards.

Exhibit 3 dealt with definitions of types of senior housing. There are two ways to look at senior housing, being either restricted to age 62 and old or age 55 and older. The 55 and older is age restricted housing and is a federal term that deals with fair housing. It is something that communities are allowed to do as part of their zoning to discriminate in favor of older residents. This is regulating the type of occupant but not necessarily the type of units. Many communities allow a higher density for lower parking requirements, etc. for age restricted housing and they talk about that in the parking section. They are not really talking about that but he wanted it on the table.

What they are really talking about is housing for older persons under State law, which is 62 and older. They divided those from the most independent to most services. The senior housing facilities encompass independent living, congregate care, assisted living and continuing care. Independent living is housing units without inclusive supportive services. Congregate care is independent living with centralized amenities. The next level is where a resident needs some assistance with daily living which is called assistant living and that is where you get into a different cost structure. The rent or monthly charge includes housing and a substantial amount of non-housing cost as well. For the purpose of the ZO revision they looked at the breakdown of 5 or fewer or 6 or more residents. They thought that might allow them to allow some small assisting living facilities. Lastly, the final category is what is called continuing care retirement community which provides multiple types so that as you age you can ease into different levels of care.

Mr. Taintor thought this would be a good place to pause and see if there were any questions from his overview.

Mr. Coker asked where does the ownership type fit for the housing types? Do they own the units outright or lease? Mr. Taintor felt that does not fit into this. But it is factored into the affordability issue later on. Mr. Coker asked is that was within the purview of this? Mr. Taintor asked City Attorney Sullivan whether that is something they could address? Attorney Sullivan stated that the purview of this is whatever the Planning Board wants that purview to be. Mr. Coker indicated he would like to see some discussion on that at some point.

Councilor Dwyer did not want to confuse this with other types of housing but frequently they see senior plus disability. Does this strictly meaning older or could they combine this with other restricted classes? Mr. Taintor knew that when they have a federally subsidized project they have to have a certain percentage that has to be reserved for non-elderly disabled. Councilor Dwyer was thinking if there were financing opportunities if someone got credit for including other classes, like disables. She was not suggesting they require it but if someone wanted to do that, would these definitions apply? Or would they want to make them flexible enough so that they could apply? Mr. Taintor guessed that the definition would not permit that but it could be written that way if they wanted to. Deputy City Manager Hayden asked Councilor Dwyer if her question was whether there were federal subsidies out there that could work with particular classes? Councilor Dwyer knows that there are and she was wondering if they should have a definition to allow people to do so. For example, suppose they were doing a continuing care community and they wanted it to include, in addition to age restricted, some units that might be appropriate for disabled who would need very similar services but who might not be in that age category. Deputy City Manager Hayden felt there was an easy answer to this as all

Federal subsidies are income driven. Councilor Dwyer asked what if they wanted to do something that didn't require a Federal subsidy? Someone might want to live in a facility to receive medical attention but they may not be 62. Mr. Taintor felt this was a policy question and maybe they should save that for after they go through all of the very complicated issues.

Mr. Taintor continued with Defining Affordability (Exhibit 4). Affordable housing means a monthly total housing cost that does not exceed 30% of a household's monthly income. Mr. Coker asked if this is this a classic definition or a federally defined definition? Mr. Taintor indicated the numbers range from 28% - 36%, depending on what they are including for utilities, but many state and federal programs use 30%. In the private mortgage qualifications you may get 28% - 36% but a federal program often uses 30%. The next level is when they get into income level and there are many ways to do this. Federal and State agencies use low income which is 80% of median income and very low income which is 50% of median income. They usually use a family of 4 for the median income. Every year, information is collected on household incomes and family incomes. The single number they tend to use is the family of four. What happens is they start with that number and HUD updates it annually for the particular areas but they do not break down the individual family sizes. His handout shows that the HUD median family income for the Portsmouth/Rochester area is \$77,300. They spread it out and break it down by percentage of median income and number of persons in the household.

The next stage is looking at applying the 30% of income to specific dwelling unit sizes. An affordable rent for at 80% of median income, for a 3-bedroom apartment is \$1,383 in Portsmouth. The two special considerations for affordable senior housing are that households headed by elderly persons have lower average income and the monthly costs of senior housing developments are higher than monthly rents for standard apartments and the 30% stops working.

Mr. Taintor moved to Exhibit 5 regarding the Senior Housing Ordinance, Specific Affordability Issues. He stated this is about specific issues related to housing affordability for seniors. The first point is that the income of seniors is lower than those of the overall population. In 2000 the median income for a family of 4 in the Portsmouth area was \$59,630 and the median household income for households with head over 75 years old was \$22,076 which factors to a 37.02% of MFI. Vice Chairman Hejtmanek asked if the income is higher at 62 than 72: Mr. Taintor confirmed it was and it continually goes down. Chairman Ricci asked what defines the median family income? Mr. Taintor explained that was collected in 1999 for all households in Portsmouth where the head of household was 75 years or older. They then take the median family income for four and apply the 37% to that, the median household for elderly head of households is \$28,616 and 80% of that becomes \$22,000. They have a proposed definition for Affordable Senior Housing Unit, limited to and affordable to households not exceeding 37% of the median household income. Assuming those percentages remain much the same. Councilor Dwyer thought they usually think of affordability as the 80% - 120%. Mr. Taintor agreed that they do, but there are many different ways to do this. If you think about it, if the typical senior household is really 38% of the median family household income, that median senior household is a low income household. If they just used 80%, it would be too hard for those elderly households so they at least want to get it down to the median of those elderly households. He felt that was a fair number.

Councilor Dwyer has a hard time not thinking in ranges when they do affordability. They did a survey a few years ago of artists and a number of them are spending close to 50% on their housing and seniors are probably in a similar situation. So, it's not the number but rather not thinking in a range when they talk about affordability. Deputy City Manager Hayden referred back to Exhibit 4 and felt it was clear to see how it is a ceiling and there is a range. A family of 4 has a range of \$38,000 - 77,000. So it is a range and that is why it is a ceiling. It doesn't mean affluent people can live there but others can too. It's almost better to start low, in her opinion, as more and more of your income goes to medical costs and you end up having to leave the facility. Also, real income becomes less through time for lower income people. Mr. Taintor felt these numbers are not tied to any program so they can try them out and change them around. This seemed a way to target it to something real. Councilor Dwyer felt it

has all to do with what use they make of this. She just wants to caution them not to think of this number in the same way they were thinking of affordable housing numbers. They are different things and they don't use them in the same way. She accepts Mr Taintor's explanation but asks that they not use them in the same way. Mr. Taintor stated that if they took the 37% and multiplied it by the affordable median income rents, this is what the affordable rents would be at 80% of income for households with a head of household of 75 years or more. This is not a proposal but is just a comparison. However, more importantly, Item 3 is the monthly costs for senior housing include non-housing components which effect affordability calculations. Different levels would have different costs. They looked at 40% of estimated median income which would be a maximum rent of \$954 monthly. Mr. Coviello asked why do they look for a comparison of 4 person household. Why not 1 or 1 ½ person household? Mr. Taintor responded that they don't have that data. This may be misleading but it is all they have. This may be too high or it may not be but it is a way to illustrate these numbers. Ownership plays into Item 4, with an affordable entrance fee which may or may not be refundable either in whole or part. Therefore, when you look at affordability you can't just look at the monthly cost.

Mr. Taintor moved on to when they have an affordable entrance fee definition. Using the numbers they have been using on his exhibits, the maximum affordable entrance fee would be \$163,000. Mr. Coviello asked if this is in lieu of rent? Mr. Taintor explained that what really happens is what someone can afford is a combination of the entrance fee and the monthly cost. Somebody could have a \$954 monthly fee and no entrance fee or \$163,000 entrance fee and no monthly cost, or some combination. The idea is to try to do the math so that the actual monthly cost to the resident wouldn't exceed that percentage. Mr. Coker asked if they are talking about affordability as a component of their senior housing? They could just as easily be talking of no affordability component. Mr. Taintor confirmed that was correct and this is the prelude to asking how much affordability do they want and do they want affordability for the different categories. Mr. Coker felt they would have to have a very specific proposal

Vice Chairman Hejtmanek asked if the \$163,000 assumes that they would not have any equity and they would borrow the entire purchase price and therefore they can afford \$900 per month to pay back the loan. Mr. Taintor felt this assumed they are dealing with someone who does not have an income or assets.

Mr. Taintor referred to the proposed development components for Borthwick Forrest. They are proposing a combination of units at market rate and affordable among the independent units and just market rate among the assisted living units. The reason for that is it is very hard to do affordable assisted living units. The breakdown of the numbers is there and the numbers that are being talked about are an entrance fee of \$270,000 and a monthly fee of \$1,600. When they compare it to what they were just talking about, this is above the affordable level. They talked about 10% of the total independent living units being affordable, or 42 units. That is a starting point for a proposal. He took the numbers and tried to apply them to this development. If they had 42 affordable units and they limit them to \$163,000, that represents a differential of \$4.5 million. Mr. Coviello asked if that number includes the rents? Mr. Taintor confirmed it does not. If they try to distribute that \$4.5 million across the 370 remaining market units, you have only modest increase in order to subsidize those units. This doesn't address the question of the monthly costs and that would be a total write off. You can't know how this affects the overall structure of the development but this is the overall general way it would apply. Mr. Coker asked, without expressing an opinion one way or the other, whether it would be fair to say that based on these numbers, the of fee of \$270,000 and monthly fee of \$1,600 is not really affordable? Mr. Taintor agreed that was correct and these are not targeted towards that income class. Mr. Coker recalled an earlier discussion where it was said the \$270,000 was in fact the affordable housing number. Councilor Dwyer indicated that was the danger she was trying to raise before. That is the poster child for the problem of how you define affordability. It is how they use it and it is a completely different meaning than what Mr. Coker intended. Mr. Taintor believed the affordable units were the 10%. Mr. Coker clarified what he said. In the earlier discussions, the numbers were thrown

around and there was a component that was described as affordable and the discussion focused on that number of \$270,000 which was the affordable housing of that earlier iteration. Deputy City Manager Hayden agreed it was probably by their definition of affordability and this is why they are here tonight. How you define affordability is really challenging. They may define it a certain way but the Board was looking at a way for it to be enforceable and monitored and easily understandable. Councilor Dwyer also felt they were talking before about the difference between buyable and reasonable and then they brought up affordable. She thinks they started by trying to figure out if there were people in Portsmouth who, if they were selling their homes, could come into such a facility. They were not talking about affordable at the level they are now talking about. Vice Chairman Hejtmanek felt they are talking about income but people may have assets. Deputy City Manager Hayden was concerned that affordable has been viewed differently. Councilor Dwyer felt the other big thing was assets for people at this age level is a huge thing. Mr. Taintor felt they could distinguish affordable from moderate priced. That is why they have this outline and discussion. They need a definition for what they would have as part of the development. Mr. Coker felt when the applicant says affordable they may or may not hear what their definition of affordable is which is in the outline. Mr. Coviello indicated that he needs some numbers to help him figure out how to handle this. He would need the number of households in Portsmouth and the number of assisted households for seniors. He felt what they are trying to do is create zoning to not create a burden on the City. They need to make sure they have the correct portion amount of subsidized living. Deputy City Manager stated that the City has 10,000 housing units total and half of those are rental. They have about 1200 to 1300 subsidized units and about half of those are for seniors. Mr. Coviello indicated that was about 6%. Councilor Dwyer also mentioned that they learned that 240 households are owned by seniors that qualify for their senior discount. Therefore, with 240 people on the cusp, in addition to the 600, it is more like 8%. Mr. Coviello asked what percentage of the units do they want to be affordable in their definition. Chairman Ricci asked if Deputy City Manager had indicated the city has 10,000 housing units? Deputy City Manager Hayden confirmed that and added that about half of those are rental and half are residential single family units. The other key item that she thought about is their proposal is to do 10% of their units affordable. She thought something they have to be careful about is getting that a group into independent units and what happens if none of the assisted units are affordable? If they bring people into the independent units and as they age they need more assistance but can no longer afford it. Where do they go? Chairman Ricci agreed that is a good question. Deputy City Manager Hayden felt staff is looking for direction on what the Board is trying to accomplish. What are they trying to achieve with the ordinance? Ms. Taintor added that the question about affordability needs to be addressed.

Mr. Coviello asked if they want to ask the developer to do this. It seems that Portsmouth is known for being higher in age bracket, they have good housing programs for our seniors but they wish they could have more residential units in the City to bring down the age. The perception is the older the age the less money they spend in the community. By allowing larger elderly population they are further shooting themselves in the foot as they spend less income. They are hurting themselves twice. Chairman Ricci asked if they were then opening up more housing stock to young people who can afford them? Vice chairman Hejtmanek suggested they might think about this as if there are lower income people living in Portsmouth that are older, they are just going to live somewhere else. So, it may not be adding more people and it may open up a home. Deputy City Manager Hayden remembered that the Board did not have a lot of interest in this proposal unless there was an affordability component. They are trying to define affordability as the major issue and monitoring and enforcing these all of the time is a big deal. They need direction for staff on how they want to go forward on this.

Councilor Dwyer stated that this discussion convinces her that all this adds and makes much more sense to have the affordable units and not the age restricted as there are so many community benefits to that such as the lower income elderly who are likely to have more health issues, the value of mixed housing, and the values of the kinds of workers who are likely to live in the community. She set aside the family issue but it seems if they talk about subsidized (which goes with the age restricted) it makes

much more sense to have the affordability not be age restricted. It goes back to the very first page, they must be very careful about how they define age restricted.

Mr. Coker followed up on Mr. Coviello's comment about the big picture and hurting themselves twice. When he asked staff to put together demographic information and how elderly spend money in the community and Deputy City Manager Hayden respectfully declined to do that, which forced him to go out and do his own homework and there is a very big impact in the community when there are a fair number of well-to-do elderly people in the community. They are very politically active, they vote and they can alter the character of a community by grouping together. It is a serious question and it gets to the bigger picture. They could dramatically alter the character of the community with this.

Mr. Taintor referred to the last page of his handout, entitled Senior Housing Ordinance – Affordable Monthly Cost Equivalents. He tried to translate the new State law on workforce housing and translated it to Portsmouth. There is a definition of work force housing in the legislation and it is housing that is affordable to and percentage of incomes and truly is designed for moderate to low income family households and households with kids. Affordable means 30% of gross annual income so when you translate this to Portsmouth, housing for sale means a house that sells for \$220,000 and rental housing is an apartment that rents for \$1044 per month, including utilities. Mr. Coviello asked, since they can't restrict children or no children, they might get singles or couples. He is landlord and rents an apartment and that is near the price he charges and it is professionals that pay the rent. This is an upper tier. Councilor Dwyer indicated in the workforce of 2008 professionals are the work force in the affordable level. They are not talking low income. Mr. Hopley asked if this number is just for rent? Mr. Taintor confirmed this is rent and utilities. Deputy City Manager Hayden felt it says you "should" be able to afford this. Mr. Taintor added that many people who are professionals, making \$77,000 and have a \$220,000 house. That is what they would be targeting. Unlike the other things they talk about with percentages, there is no real necessarily logical connection between the number of workforce housing units and the number of senior housing units. He just took some hypothetical number to show them how this would work.

Mr. Coker asked if they can mandate percentages of affordable units? Attorney Sullivan responded that they could, in this sense, as they would create an option that somebody can accept if they want or they can allow someone to accept their requirements for the lower fee. Mr. Coker added they are trading something off, such as increased density or lower parking. Mr. Coviello felt it allows the developer or owner to collect money than if they were doing the affordable senior housing. Deputy City Manager Hayden felt it depends and they could do both. Mr. Taintor stated these are not necessarily alternatives or trade offs. There are at least three big questions and one is do you want to have an affordable component to independent living, senior housing. And, if so, what does affordable mean? The second question is do you want to have an affordable component to senior assisted living? The third is whether you want to mandate as part of the senior housing development a non-elderly component that would be, in this case, an affordable component. Deputy City Manager Hayden felt that this particular proposal that has come forth is very different in many ways than when they looked at Atlantic Heights and they looked at the Residential Density Incentive PUD because she feels the affordability component is like trying to stuff a private sector project into a public box and that is very challenging. Atlantic Heights was a little easier as it was quasi public and was non-profit. That is why this becomes so hard as the major drive is not a non-profit but this is a for profit that wants to build a senior housing development and they have to decide as a Board those three big questions. The other big question is or do they want no affordability. Mr. Taintor referred to his exhibit which has to do with development intensity and the more you ask of a developer in terms of affordability the more the developer is going to say they need more development potential to pay for that.

Councilor Dwyer thought this is the beginning of the future. They are going to have to figure out how to stuff affordable into everything. It will become the job of this Board. The Housing Committee has been spending a lot of time on zoning and will be coming forward with zoning recommendations. She thought Deputy City Manager Hayden was right that this is a struggle as this is not unique to this

project and State law forces them to have it because it has become such an economic problem in our State. It is wise to set this groundwork.

Deputy City Manager Hayden suggested not to have staff do any more work at this point as the Board needs to digest this material and come back together again and give the answers to the three big questions. The Board has to give direction so staff can go forward.

Ms. Roberts thanked them for the great handouts with information. She reiterated her concerns about affordability which she thinks is the most pressing issue for the City. It is important to her that this project and others address affordability and her sense of affordability is along the lines of what is proposed here. Her additional initial thought, in response to Councilor Dwyer’s comment to roll in workforce housing that would be for the population as a whole, is that she likes that because part of her concern is 482 units for seniors when they already are doing their fair share providing housing for seniors. If anything, for a variety of reasons, they need to have a broader diversity of age in this section.

Mr. Coker wanted to add a fourth question, the ownership model which is a buy-in vs. rent. There are a lot of assumptions made about people selling their existing home without a mortgage. A lot of people who are elderly have reverse mortgages. He would like a discussion on that next time.

Chairman Ricci asked if they have provided enough information? The highlight for him was Councilor Dwyer’s comment concerning including everybody and they shouldn’t forget the young single families. Deputy City Manager Hayden felt they should conclude with a sense of when they should have their next work session.

Chairman Ricci felt another 90 minute section prior to their August meeting would be appropriate. This would be for a discussion and possibly they could hear from the applicant at that meeting as well.

Deputy City Manager Hayden noted that they talked about affordability, but on Exhibit 2 with the key policy issues there is also development intensity, community benefits, permitted uses, parking requirements, etc. and the applicant may want to give them something in writing that they can digest prior to the next work session.

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**I. APPROVAL OF MINUTES**

- 1. Approval of Minutes from the May 29, 2008 Joint Planning Board and Conservation Commission Work Session – Unanimously approved.
- 2. Approval of Minutes from the June 19, 2008 Planning Board Meeting – Unanimously approved.

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A motion to take Public Hearings A and G out of order for the purpose of postponing to the next month was made by Mr. Rice. Deputy City Manager Hayden seconded the motion.

The motion to take Public Hearings A and G out of order passed unanimously.

**II. PUBLIC HEARINGS**

A. The application of Minnow Realty **Investors, III, LLC, Owner and City of Portsmouth, Applicant**, for property located at **3000 Lafayette Road**, wherein Site Review approval is requested to construct a 13,260 s.f. footprint Fire Station, after the demolition of existing buildings, with related

paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 292 as Lot 12 and lies within the General Business and proposed Municipal District; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

A motion to postpone to the August 21, 2008 meeting was made by Deputy City Manager Hayden. Ms. Roberts seconded the motion.

The motion to postpone this application to the August 21, 2008 Planning Board meeting passed unanimously.

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G. The application of **Old Tex Mex, LLC, Owner**, for property located at **3510 and 3518 Lafayette Road**, wherein Site Review approval is requested to construct a 4,275 ± s.f. warehouse building with a 1,400 ± s.f. mezzanine office, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 297 as Lots 7 and 8 and lies within the Single Residence A district; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

A motion to postpone to the August 21, 2008 meeting was made by Deputy City Manager Hayden. Mr. Hopley seconded the motion.

The motion to postpone this application to the August 21, 2008 Planning Board meeting passed unanimously.

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B. The application of **Parade Office, LLC, Owner**, of property located at **195 Hanover Street** wherein Preliminary and Final Subdivision Approval is requested to subdivide one lot into three lots with the following: Proposed Lot 1 having 64,941 ± s.f. (1.49 ± acres); Proposed Lot 2 having 26,585 ± s.f..(0.61 ± acres); and Proposed Lot 3 having 83,863 ± s.f. (1.93 ± acres); and lying in a zone where a minimum lot area of 1,000 s.f. is required. Said property is shown on Assessor Plan 125 as Lot 1 and lies within the Central Business B District (CBB), Historic District A and the Downtown Overlay District (DOD); *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Chairman Ricci acknowledged the receipt of a letter from Attorney Douglas MacDonald.

Jeff Johnston, of Cathartes Private Investments, owners of both the Parade Office Mall as well as the Hilton Garden Inn. He indicated that the application is to subdivide the Portwalk project into three separate lots. This would allow them to move forward as quickly as possible on the development and would allow them more flexibility in financing. From a Master Plan standpoint and the urban planning principals that they worked so hard with the Board members, their abutters and their team are still in tact and there will still be four buildings and the road cutting through the site. Having said that, he introduced Gregg Mikolaities, of Appledore Engineering.



Gregg Mikolaities indicated that the subdivision plan was prepared by MSC Engineers and Land Surveyors. They handed out a color drawing showing the three proposed lots and how the master plan works with the three lots. Proposed Lot 1 is the 1.49 acre lot with the hotel. Proposed Lot 2 is the residential building and Proposed Lot 3 would be the large lot that abuts Maplewood and the lot line would run down the middle of Portwalk Place. All three lots meet zoning requirements. At the next public hearing he will discuss the Site Review applications for Proposed Lots 1 & 2.

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

**DISCUSSION AND DECISION OF THE COMMITTEE:**

Mr. Holden stated that staff recommended preliminary subdivision approval. Mr. Coviello made a motion to grant preliminary subdivision approval with the 5 recommended stipulations in the Department’s Memorandum. Deputy City Manager Hayden seconded the motion.

The motion to grant preliminary subdivision approval passed unanimously with the following stipulations:

- 1) That the applicant, the Planning Department and the Legal Departments shall work together to submit an acceptable approach to the lot line issue as part of the Final Subdivision Approval;
- 2) That the Plat plan shall indicate the subject properties are in the Downtown Overlay District;
- 3) That property monuments shall be placed per the requirements of the Department of Public Works before a Final Subdivision Application is filed;
- 4) That the applicant shall submit electronic data to the Department of Public Works, suitable for updating the City’s Assessing Records, and
- 5) That when the aforementioned conditions are completed, the applicant shall file an application for Final Subdivision Approval with the Planning Department.

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Mr. Rice made a motion to combine items C and D, to hear them together and vote on them separately. Deputy City Manager Hayden seconded the motion. The motion passed unanimously.

C. The application of **Parade Office, LLC, Owner**, for property located at **195 Hanover Street (as proposed subdivided Lot 1)**, wherein Site Review approval is requested to construct a 25,270 ± s.f. 5-story building, consisting of a 128-key hotel, 7,500 ± s.f. of retail and 2,500 ± s.f. of restaurant, after the demolition of the existing building, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 125 as Lot 1 and lies within the Central Business B District, the Historic District A and the Downtown Overlay District (DOD); *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

D. The application of **Parade Office, LLC, Owner**, for property located at **195 Hanover Street (as proposed subdivided Lot 2)**, wherein Site Review approval is requested to construct a 10,850 ± s.f. 5-story building, consisting of 10,000 ± s.f. of retail and 36 dwelling units, after the demolition of the existing building, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 125 as Lot 1 and lies within the Central Business B District, the Historic District A and the Downtown Overlay District (DOD); *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any*

*member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Gregg Mikolaities, of Appledore Engineering, addressed the Board and confirmed they submitted plans for both proposed Lots 1 and 2. They have met with TAC and Traffic & Safety and received favorable recommendations. They filed for proposed Lot 3 today which will come up in the future.

Mr. Mikolaities displayed a plan showing the existing Parade Mall and where the four proposed buildings would be built including the hotel, a residential building and two office buildings. As these plans have been further developed, the proposed Lot 1 5-story building footprint has been reduced by about 660 s.f. so they made some site plan changes. Proposed Lot 1 includes a 128-key hotel with a 15 seat meeting room, 7,500 s.f. of first floor retail and 2,500 s.f. of restaurant space. This has not changed except the footprint is slightly smaller. The lot line goes down the center of the road. Proposed Lot 2 is a residential building and the 10,850 s.f. footprint has stayed the same. It includes 36 residential units in the upper four floors and the first floor will be retail. On the third handout, they showed the original approval in black and the proposed in red overlay. On proposed Lot 1, by reducing the footprint, they were able to provide four extra parking spaces for The Hill. The wall shifted back 5' and the side wall moved back 2', which allowed them to get some extra spaces in the rear which will be used for 13 head-in valet spaces. Proposed Lot 2, based on getting further along with the design of the residential building, they figured out they could get 2 more units on each floor so they have 8 additional units. Additionally, they moved the building 2' allowing them to switch parallel parking spaces for head-in spaces resulting in an additional 13 spaces. They also got two more spaces along Portwalk. The limits of the underground parking garage for proposed Lot 3 was reduced so they were able to put in a series of trees along Portwalk. Proposed Lots 1&2 meet all zoning requirements and they do not need any zoning relief. Also attached to their handout is a spreadsheet they prepared showing the status of the original stipulations from their July 2007 approval and January 2008 approval. Out of the 57 stipulation they have closed 41 of them. The remaining deal with agreements with the City and the CMMP but they wanted to show how much progress they have made. He does not intend to read all of them but the stipulations in yellow are currently outstanding. The last page shows the recent stipulations from the TAC meeting on July 1<sup>st</sup> and Traffic & Safety. He read those into the record. They are plowing through them and they have two that are closed, five that they have addressed and City staff is reviewing, and seven will be completed with City agreements and the Construction Management Plan.

- 1) That the pavement markings on Deer Street to reflect existing conditions. When they came in on Deer Street, the Westin was going to start construction before them or concurrently. The City Traffic Engineer has asked them to put the traffic markings as they are today and assume their project will be first.
- 2) That a CMMP be prepared by the applicant for review and approval by the City. That is understood and agreed to.
- 3) That a report on traffic impacts on the revised plan shall be prepared for review and approval by the City Traffic Engineer. VHB, the project's Traffic Consultant, has submitted that on July 9<sup>th</sup>. The next step is for VHB to meet with the City's traffic engineer to review the memo. The purpose of the memo was to address the phasing of this project and whether the traffic is different. The conclusion of VHB was that there was no change in traffic.
- 4) That the applicant shall receive approval from the Traffic & Safety Committee. They received approval from them.

- 5) That the stipulations from the original approval dated July 31, 2007, shall continue to apply. They are working through those and are in agreement with that.
- 6) That the automatic emergency notification system shall be separated for each individual lot. That is agreed and as the final building plans are done they will complete that.
- 7) That an easement will be required for the sewer to cross over to another lot. Because this will be three lots, there is a sewer that services proposed Lot 1 that goes over proposed Lot 2 and they will need an easement for that.
- 8) That preliminary and final subdivision approval shall be granted. They have received preliminary subdivision approval and will proceed with final approval next month.
- 9) That the HDC shall be allowed to consider any exterior changes. That is agreed. The only exterior changes to the building are the walls moving in a few feet. They are scheduled on the August 6<sup>th</sup> HDC Agenda.
- 10) That the pavement delineation for Maplewood Avenue and Deer Street shall be added to Sheet C-5. They have made those changes and are awaiting approval.
- 11) That the valet parking spaces shall be labeled on the Site Plans as non-conforming parking spaces. That has been completed on the Site Plans.
- 12) That a revised marking plan shall be provided to the City Traffic Engineer. That has been completed.
- 13) That Sheet C-6A shall be revised to correctly label the proposed stairs. That has been completed.
- 14) That the Landscaping Plan shall reflect a variety of tree species. They are adding 6 trees of the same species that are used on the exterior of the lot.

That concluded his presentation and he asked if there were any questions.

Chairman Ricci asked Mr. Holden if he was in agreement with the fourteen items? Mr. Holden confirmed that he was.

Mr. Coviello expressed concerns about how the property will be left if Parade Mall is demolished and they decide not to go forward with Lot 3. This is right in the heart of downtown Portsmouth. He asked what they intend to do with that property? Is there a plan? Will they construct the street? Mr. Mikolaities responded that they have had 2-3 conversations with staff on that. Their application for proposed Lot 3 will be on next month's agenda and they will talk about what will happen. Lot 1 and 2 will start and the CMMP will show Lot 3 as a construction lay down area. The intent is that this will be a rolling development. Clearly when they come in for proposed Lot 3, they will discuss bonding the lot and doing something so that it does not look like a construction site for any length of time. Mr. Holden added that having proposed Lot 3 available for the lay down area is very valuable to the City and everyone else. The City has expressed the same concerns to the applicant and the applicant has assured them that it will be taken care of.

Councilor Dwyer felt that makes it difficult to have this conversation tonight. There were two lines in the minutes that stuck with her. The line in this application was if nothing viable was there, it would become an asphalt lot. That is a major concern for her. She agrees having it as a lay down area is fabulous but what assurance can they be given tonight that essentially they haven't waited 40 years to have another asphalt lot. Mr. Mikolaities responded that the parade mall building is coming down and that alone is an improvement. It is not their intent to keep this valuable lot paved but it may happen and they have talked to staff about that. They may turn that into a benefit for the city by having additional parking there, but that is not the intent. However, their intent is to keep the project rolling. They are looking at it as a positive and he doesn't want to downplay that because they do not want to look at a vacant construction site. With the phasing, they will have to dig up anything that they put on Lot 3 such as utilities, sidewalks and landscaping when they start construction so it would be a shame to have to do that. Councilor Dwyer asked what the parking credit would look like, for the record, so that they all understand it and accepting that they have calculated the parking credit correctly, where do they actually expect people to park? They have a 128 key hotel with a few valet spaces and four floors

of residential. Councilor Dwyer asked where these cars are going to go? Mr. Mikolaities referred to Sheet 6-A. it shows the site uses and the corresponding parking requirements and their current parking credits. They are using 206 parking credits out of the 660 that go with this property for Lot 1. Sheet 6-B has a site data block for Lot 2. Per the City's code, the 36 residential dwelling units require 54 spaces, the retail requires 25 spaces for a total of 79 spaces, so there will be another 43 parking credits used. That leaves approximately 440 left. Also, under parking spaces provided for Lot 2, it indicates 36 conforming spaces. That is the parking credit scenario. The rest of the parking credits will be discussed for Lot 3. Councilor Dwyer noted that was about 80 parking spaces being provided on the two lots. Mr. Mikolaities confirmed it was 72 spaces. Councilor Dwyer also asked what plans are they making for where they will take the cars for the hotel guests?

Jeff Johnston, of Cathartes Investments, responded that on the residential lot there is about one space per unit. When they shrunk the size of the units they were able to get about one space per unit. Relative to the hotel parking, the mixed use principals are still in place relative to hotels consuming spaces primarily on nights and weekends. When the garage comes in the hotel would consume it during the night and the offices would have it during the day. Councilor Dwyer felt it was all night parking right now so those 36 spaces are for the hotel guest and they are not doing a night/day trade off yet. Mr. Johnston indicated that is how they are looking at it. Councilor Dwyer agreed that is the "after the next meeting" prospective but for the "tonight" prospective there is not an answer. Mr. Johnston felt the answer is that they are meeting zoning and code.

Mr. Coker was concerned about their statement that "they are meeting zoning and meeting code". He requested a definition from the department for a parking credit. Mr. Holden explained that when the ordinance was passed, Article XII, that was the existing Parade Mall lot that contributed to a parking credit. As you subdivide a lot, the credits revert to the original lot. Hence, when the Hilton Garden Inn went in, for example, with residential condominiums, a considerable credit was paid for and arrangements were made with the High Hanover facility to meet their need. But the credit from that area reverted to the remainder of the lot. Now, as they are coming down to the last three lots, there is a credit of 660 spaces, which probably means that almost no parking needs to be provided and it would meet the ordinance. In this case, they are not using all of the credits on the two proposed lots and are reserving some and they are providing parking. It is in conformance with the Zoning Ordinance and there is no issue in the way the ordinance is interpreted.

Mr. Coker agreed wholeheartedly and that is the crux of what he wanted to say. He followed up on Councilor Dwyer's point. He looks at the nice drawing they provided and he simplified it. A 128 key hotel is providing 36 spaces. Lot 2 consists of 36 residential units and 10,000 s.f. of retail is providing 36 parking spaces. It does not take a rocket scientist to see that something is extraordinarily wrong here. He agrees the developer has met the requirements so he turns to City Councilor Dwyer and asks if she could work with the City Councilor on this. This will choke the downtown. He can't believe the City allows this. Allowing a 128 key hotel with 36 parking spaces is drastically wrong. He also asked if those parking spaces include the valet spaces? Mr. Holden confirmed they do not because they are not recognized as valid parking spaces. Mr. Coker saw that they are noted as non-conforming spaces. Mr. Holden explained that they are useable spaces but they are not counting them on the credit. Mr. Holden further explained that in your downtowns, you do not provide parking on a one to one ratio as the land is too valuable. The downtown is totally different. If they provided the parking for all of this, they would have all parking. There may be some question on what the ratio should be but it couldn't be one to one. Prior to 1997 there were no parking standards in the downtown. He stressed that they shouldn't penalize someone who has come in and meets the Zoning Ordinance. Mr. Coker clarified that was not his intent. He just wanted to make the point that something is broken and it needs to be fixed. Deputy City Manager Hayden stated that the City just had a work session on parking standards and they are doing a lot of work on parking standards as this issue has been recognized.

Mr. Coviello also added that he did not know how they came to accrue the 660 credits but if they paid for it by impact fee, they may say they haven't used them for 10 years and they may want to take

ownership of them. Mr. Coviello asked if “horse trading” of these spaces is allowed with these credits after we subdivide and approve the site plan? Mr. Holden responded that as a project is developed the credits get assigned and would go with the lot. The 660 would not increase as that is what existed as of the “magic date” June 1, 1997. Mr. Coveillo asked if they say 200 credits for Lot 3 and they come back for Lot 2 and they want to pull some over there. Mr. Holden preferred not to give a quick answer but the 660 is a fixed figure and that is not changing.

Councilor Dwyer agreed they are obviously well within their rights within our existing ordinance but her eyes still fall to Lot 3. Her concern is she does not want to see us forced backwards into making that asphalt because then having the viability of hotel and residential. She was not prepared to suggest what the solution is but it is the combination of those two and what that forces to happen to have viable uses and that is her concern.

Mr. Coker asked if it would it be unreasonable for this Board to request that when construction is completed and Lot 3 has not yet started, they make it green space. Mr. Holden indicated that they have granted preliminary approval and they will have another look at it for final approval. They will look to grant site review approval but it won't be complete until they see the final. Right now they have filed an application for Lot 3 for Site Review so it is coming through the process. He thinks they will have the opportunity to ask those questions at that time. Deputy City Manager Hayden indicated that they know that Lot 3 is coming for site review and if these two get approved tonight and then Lot 3 gets approved but they don't actually construct, their site review approval would lapse and they would have to come and ask for it to be renewed. At that point in time they could point out what they didn't build so they could look at “dressing up” the site. They would have another shot at it so they don't have a gravel or asphalt lot for the next 20 years. Mr. Holden felt that a vacant lot in downtown Portsmouth is too valuable to stay vacant. Most vacant lots have been vacant due to litigation.

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

Paul Nelson, 31 Aldrich Road. He has the same concerns as the Board which are parking and congestion. His other concern has to do with the rolling development and financial leverage. How long will it take? When these properties are split up, down the road they may fall into disrepair. He finds it very difficult to get into the City at night and on weekends and there is never any parking. He asked if there was any control regarding the businesses that occupy the locations? Mr. Holden advised him that the Zoning Ordinance would regulate the uses.

Barbara Ward, 16 Nixon Park, was representing the Moffatt Ladd House, who is an abutter. Her question was about parking and asked how it impacted the parking for the existing Hilton Garden Inn. It seems that what is being created as parking is currently being used by the Hilton Garden Inn and therefore leaving the Hilton Garden Inn and the Harbour Hill Condominiums without any parking. She also was concerned about blasting due to the sensitivity of their historic property. Is construction going to require blasting?

Arthur Carakatsane, 77 Hanover Street. He sent a letter of support which hopefully the Board has seen. Chairman Ricci acknowledged that they had received three letters of support from Weichert Real Estate, Northern Tier Real Estate Acquisitions and Mr. Carakatsane.

The Chair asked the applicant to address Barbara Wards questions.

Alec McEachern, Esq., on behalf of the applicant, spoke to the issue of parking and what effect it would have on the Hilton Garden Inn. This application is confined to Lots 1 and 2 and the Hilton Garden Inn was a separate application and not relevant this evening.

Jeff Johnston addressed the blasting concern. The primary ledge was by Deer Street and the Hill and by reducing the parking garage, the blasting should be extremely reduced. It is a possibility they may

have to blast but they are not sure. Ms. Ward asked where the parking garage was? Mr. Johnston confirmed that the garage has been shifted to Lot 3.

Mr. Coker added that in the event there is blasting, the applicant will need to come to the City to follow their blasting requirements. Mr. Holden confirmed that and that the CMMP will assist in that process.

Barbara Ward asked about the Hilton Garden Inn. They are currently parking in an area on Proposed Lot 1. She felt it was relevant and that was her point. She understands as an abutter they will be notified as part of the CMMP. Chairman Ricci confirmed that was correct.

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

### **DISCUSSION AND DECISION OF THE COMMITTEE:**

#### **Discussion on Proposed Lot #1:**

Councilor Dwyer felt compelled to postpone until after hearing the plans for proposed Lot 3. Mr. Coker seconded the motion for discussion. Chairman Ricci stated they could have limited discussion on a postponement. He asked Councilor Dwyer to expound. Councilor Dwyer felt that, while she respects that legally the parking requirements have been met, from where she sits and with what this Board has said she does not feel it passes muster and she feels the need to have a real solid understanding of what's viable for Lot 3 before deciding on Lot 1 and 2.

Chairman Ricci stated that his feel was that they should act on the two items that are before them. They granted preliminary subdivision approval which has not been final and they will see Lot 3. He would assume that the applicant would have a plan that would address the concerns for Lot 3, based on Lots 1 & 2. Councilor Dwyer stated she would have thought so prior to the answer that Attorney McEachern provided to Miss Ward.

Mr. Coviello asked why is a postponement a problem? Chairman Ricci understood that they are addressing Lots 1 & 2 and Lot 3 is not in play at this point. Mr. Holden did not feel it was unusual for an application to come forward in this way. They have a large development which they have granted approval for as one lot, the lots meet all of the requirements of the subdivision and everything else and they are proposing to come in with a lot to be developed. Technically, if the lot wasn't going to be developed, it wouldn't be an issue. The only reason it is an issue is because of the original approval and they have heard the applicant say they are going to work on it. That doesn't mean if they have concerns they are not valid. He was trying to point out that developments in the downtown sometimes go forward in phases.

Deputy City Manager Hayden stated she did not see a problem going forward as they have already reviewed this project in its full form once and her guess is that lot 3 is the most complex as it has the underground component. She would hate to hold up this downtown project because they aren't quite ready with Lot 3. She doesn't know what they would gain by holding them up. They already approved this once.

Mr. Coker clarified they are doing the two Site Review applications together but he heard preliminary subdivision approval in the discussion. If they vote on this, they are only voting on Site Review approval. Chairman Ricci added that they do not have a final subdivision approval for those lots. Mr. Holden also added that they can't pull a building permit because there is no lot to build on. Mr. Coker assumed that would address Councilor Dwyer's concern.

Ms. Roberts agreed with Councilor Dwyer’s point. She sees the Robert Moses approach and sees a highway or project half built and then there is the force of momentum. She has seen this numerous times in the City and she would like to see them be more cautious. It would only help the Board to gain more information.

**DECISION ON LOT #1:**

Chairman Ricci called for a roll call on the motion to postpone for Lot #1:

- Mr. Coviello – yes
- Councilor Dwyer –yes
- Vice Chairman Hejtmanek –yes
- Mr. Coker – yes
- Mr. Rice – yes
- Ms. Roberts - yes
- Mr. Hopley – no
- Deputy City Manager Hayden – no
- Chairman Ricci – no

The motion to postpone passed with a vote of 6-3.

**DECISION ON LOT #2:**

Deputy City Manager Hayden made a motion to approve. Mr. Hopley seconded the motion.

Mr. Coviello felt it only made sense to have it postponed. He made a motion to postpone. Mr. Coker seconded the motion.

Chairman Ricci called for a roll call on the motion to postpone Lot #2:

- Mr. Coviello – yes
- Councilor Dwyer –yes
- Vice Chairman Hejtmanek –yes
- Mr. Coker – yes
- Mr. Rice – yes
- Ms. Roberts - yes
- Mr. Hopley – no
- Deputy City Manager Hayden – no
- Chairman Ricci – no

The motion to postpone passed with a vote of 6-3.

The intent of the motions was to postpone to the next Planning Board meeting scheduled for August 21, 2007.

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A motion to take New Business Item A out of order was made by Mr. Hopley. The motion was seconded by Mr. Rice.

The motion to take New Business Item A out of order passed unanimously.

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A. Request of Parade Office, LLC for property located at 195 Hanover Street (Parade Mall) for a one year extension of Site Review Approval granted on July 26, 2007;

Mr. Holden indicated that this was the first request for an extension which is routinely automatic. This keeps the original approval as one lot as a valid approval. The Department’s recommendation is to grant a one year extension.

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

Mr. Coker noted that this original approval of July 26, 2007 was for a single lot with four buildings, even though that plan has changed. Mr. Holden explained that technically it has not as they haven’t done anything with it. Mr. Coker asked if their new plan would eventually render this moot? Mr. Holden confirmed that at some point it would become moot.

The motion to grant a one year extension to July 26, 2009 passed unanimously.

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E. The application of **Catherine R. Whelan, Owner**, of property located at **660 Middle Street** wherein Preliminary Subdivision Approval is requested to subdivide one lot into three lots with the following: Proposed Lot 1 having 19,428 ± s.f. (.446 ± acres) and 70’ ± of street frontage on Middle Street; Proposed Lot 2 having 19,428 ± s.f. (.446 ± acres) and 113.5’ off of a right of way; and Proposed Lot 3 having 19,428 ± s.f..(.446 ± acres) and 114’ off of a right of way; and lying in a zone where a minimum lot area of 7,500 s.f. and 100’ of continuous street frontage is required. Said property is shown on Assessor Plan 147 as Lot 19 and lies within a General Residence A (GRA) District and Historic District A; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Bernard Pelech appeared on behalf of Catherine Whelan, owner. He indicated this is a very interesting situation. In deference to the evenings very long agenda tonight, after giving a brief background on the property, he will be asking that it be either tabled or preliminary approval be granted pending a referral to the BOA. They are seeking to divide a piece of property that has over 230 feet of frontage on Chevrolet Avenue which runs from Cass Street to the Pic N Pay parking lot. The question is whether it is a public Street. The City, in the information which they have submitted to the State of New Hampshire says it is a public street, the City has painted the lines down the middle, they have maintained it and they have plowed it for many years yet it is being referred to as a right of way. It is not listed as a right of way by the State of NH but rather is listed as a public street. The issue is whether these two lots which are almost three times the required size and each with 113’ of frontage, can be created. The City says no because Chevrolet Avenue is not a public street. They are simply asking the Board to table this to go to the BOA for confirmation of whether Chevrolet Avenue is a public Street. They would then return to the Planning Board for preliminary and final subdivision approval next month.

Mr. Coker asked if this was Wyman Boynton’s old property? Attorney Pelech, stated that was next door.

The Chair asked if anyone was present from the public, wishing to speak to, for, or against the petition.



Paul Nelson, 33 Aldrich Road. He was speaking against the motion. He was not in favor of additional development of the lot. He was in favor of the carriage house being turned into a residence several years ago but any more would be over development, especially in his back yard.

Judith Brown, direct abutter at 23-25 Friend Street and also owns property on Chevrolet Avenue. She indicated that this is not a very detailed plan and it doesn't show any sewer lines. Chevrolet Avenue is very busy and she didn't realize it was private until she came her tonight but she's concerned with the lack of details. She was told 8 years ago her sewer line would be removed when they upgraded the infrastructure and it is a big problem. The Whelans are in that line and there is only one house on Friend Street that is in that line and she has a problem with this.

Attorney Pelech indicated that the issues of sewer could be dealt with at final subdivision approval. It is not anticipated there would be a problem with municipal sewer.

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. Coker asked for clarification of what is the issue that will be in front of the Board of Adjustment? Mr. Holden responded that the status of this street is rather complex. Contrary to opinion, even John Sullivan wasn't there when the railroad went down there and there was a turn table which is why the streets are off set. There are very poor municipal records as to the status of this. Attorney Pelech is correct that DPW does maintain it but they do not treat it as a street. The issue that will be before the BOA is whether this constitutes continuous street frontage. Mr. Coker felt that it seemed to be more of a Legal Department question than BOA. Mr. Holden indicated that they are as terrified of getting this one as anyone else.

Mr. Coviello made a motion to postpone to a time indefinite and a decision by the BOA, with two stipulations. Vice Chairman Hejtmanek seconded the motion.

Mr. Coker asked for a third stipulation for an opinion from the Legal Department. Chairman Ricci assumed they would have that information when this comes back to them.

The motion to postpone to a time indefinite passed unanimously with the following stipulations:

- 1) That the application shall be reviewed and acted upon by the Board of Adjustment;
- 2) If the Board of Adjustment's ultimate action is deemed favorable, that a Plat Plan that conforms to preliminary plat requirements shall be submitted to the Planning Board for scheduling as a public hearing at some future meeting; and
- 3) That the City's Legal Department shall research and report back to the Planning Board regarding the right-of-way.

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F. The application of **150 Greenleaf Avenue Realty Trust, James G. Boyle, Trustee, owner**, for property located at **150 Greenleaf Avenue**, wherein Site Review approval is requested to revise parking and drainage and add a new parking area and a drainage treatment area, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 243 as Lot 67 and lies within the General Business district; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Vice Chairman Hejtmanek stepped down from this application.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Bernie Pelech appeared on behalf James Boyle, Trustee of 150 Greenleaf Avenue Realty Trust. They were present to revise, revamp and alter their parking plan on site. This is the former NH Voc Tech School, followed by Southern NH University and various other tenants. Dennis Moulton, of MSC Engineers was present, along with Mr. Boyle, owner, and Attorney John Kuzinevich, council for Toyota. They have been before the TAC on several occasions, they have worked diligently with staff and he gave accolades to David Holden, Lucy Tillman and members of staff who have been very receptive to them. One interesting aspect to this case was with regard to the stormwater management and treatment. They proposed a gravel wetland which is fairly new and which UNH has promoted as an up and coming treatment. After they proposed this, Peter Britz who is the City's Environmental Planner, wanted to make sure they were doing what they should be doing and requested an independent evaluation of the gravel wetland. They agreed that the independent evaluation would be done by Dr. Roseen, of UNH, who is the individual who has promoted the gravel wetland as a stormwater management and treatment option. Mr. Moulton met with Dr. Roseen on several occasions, who assisted in designing this plan. Dr. Roseen says that the stormwater treatment and water quality which will occur because of this gravel wetland is an improvement on what exists now.

The second issue that became important was site lighting. Some of the abutters and some non abutters who live on Hillside Drive, were concerned about site lighting. Portsmouth Toyota has existed at this site for four years and that site lighting as it exists now was once an issue. Mr. Boyle had PSNH come once and reduce lighting due to complaints from the neighbors. With the new plan they have now submitted 3-4 lighting plans to TAC, each one being a reduction from the predecessor in the number of foot candles on site. They reduced it to such a level that it is lower than the two auto dealerships which the City used as a reference in Greenland. All three auto dealerships happen to have the site lighting plan designed by the same lighting engineer. They are now proposing something lower than what exists now so site lighting should no longer be an issue.

The only other issue might have been traffic but Attorney Pelech felt that has been satisfied. The TAC has recommended approval of the plan, the applicant submitted their engineering studies and the Traffic & Safety Committee has approved their plan, and Steve Pernaw, their traffic engineer, was present for any questions.

Dennis Moulton, of MSC Engineers, reviewed the site with the Board. This is the current site of Portsmouth Toyota, at the corner of the Route One By-Pass and Greenleaf Avenue. It is a 13.78 acre site and abuts residential neighborhoods to the east and north and commercial property on the west and the Chase Home property. Access is from Greenleaf Avenue. No proposed changes will be made to the entrance to the site. It is currently a 3,000 s.f. building, portions of which are 2 story. The 2 story portion is approximately 11,600 s.f. After renovations, half of the 2<sup>nd</sup> story will become a combination two story space and mezzanine area. Currently on site there are 199 striped parking spaces in addition to large areas of unstriped pavement which are used for vehicle display. There are approximately 146 additional vehicle parking spaces in the unstriped areas. Utilities to the site mostly enter from Greenleaf Avenue (gas, water and sewer). The exception is the electricity and communications (cable and telephone) which come from a line that comes down Marjorie Street, across the wetland and comes into the rear of the property. In addition, there is an existing sewer that runs through the property. The building does not connect to it but it runs down the property line, cuts across the Greenleaf Avenue property and continues on across Greenleaf Avenue to the pump station. Closed drainage existing on the site consists of a series of catch basins and drain manholes that cross through the front of the property as well as handles some of the drainage that comes across the street which was connected along the By Pass or collected from run off coming from the Hillside Drive residential neighborhood. Other than the portion in the front, drainage flows to the front of the property, into

swales, which feed into the closed drainage system. Drainage that comes off the rear and side paved areas generally flow across land and either infiltrate into the ground or into the swale or the drainage ditch or wetland areas surrounding the site. The entire front portion of the site remains unchanged except additional parking along the property line. There are some minor changes in terms of sidewalks, curbing and they change to the landscaped island, but everything else stays the same. The closed drainage system remains as is and continues to function as shown. In the proposed condition, most of the expansion occurs to the rear although there is an expansion of the parking and display areas to the front. Where they see a single row of parking and an access aisle they will now see the single row of parking loaded against the curb with the access aisle behind it and then two additional rows of parking along the front for vehicle display area.

Mr. Moulton stated that the drainage will go through new catch basins and directed into the existing catch basin system. Drainage from the rear of the site and the side of the site will be caught by either a closed drainage system for the back area which will direct it into one of two gravel wetlands. The gravel wetland gets fed by sheet flow at the corner to a sedimentation basin.

The second major item being changed on the site is the relocating the electrical and communication feeds to the buildings. They will eliminate the overhead wires from the rear and will bring them all in underground to a new transformer located at the front of the building.

The third major change is the lighting. They worked diligently with the City to come up with a lighting plan that meets the concerns of the neighbors and the needs of the dealership. The lighting is set up so that during the night when the business is open, there will be a certain amount of light on the site. When the business closes, the lights along the front of the site have been configured so that two of the three heads on each of the poles will be shut off, thus leaving just the lower wattage bulb working, thereby reducing the light during the pm hours when most people would be effected by the lighting.

As Attorney Pelech mentioned, Mr. Moulton stated that they worked diligently with Dr. Roseen on the gravel wetland issues. They are down to three comments and one doesn't even need to be addressed as it just confirms that their gravel wetlands were sized properly to handle additional flows should there be an additional expansion of paved display area on the site. The other had to do with the design of the infiltration area which is something they discussed at their second meeting with Dr. Roseen. That in addition to the gravel wetland system which was designed to handle the first 1" of rainfall, he suggested that they should incorporate some infiltration on the site so as to provide additional volume reduction from the proposed expansion. They have done that by adding an infiltration area on the side as their test pits showed high ground water in the other areas. They feel this system is certainly innovative, it has been tested extensively at UNH and found to be one of the most effective stormwater management systems, if not the most effective. It is something they have learned more about going through this process. He felt it would be quite an improvement in stormwater run off into the surrounding wetlands.

Ms. Roberts wondered about parking. One stipulation from the first TAC meeting was that the applicant shall provide the Planning Board with an explanation of how the parking will be utilized. Some information is shown on the plan fairly clearly but she needed more information. Attorney Pelech stated that he submitted a memo to David Holden via e-mail. The site plan shows display areas where cars are double and triple stacked. Customer parking is delineated on the plan. There are roughly 30 employee parking spaces, 70 service parking spaces and the balance are vehicle for sale display spaces. Mr. Holden confirmed he received it but the intent was to have it on the plan. Attorney Pelech indicated they would be happy to have those numbers on the plan.

Ms. Roberts was looking for clarification of the handicapped parking spaces. Ms. Moulton pointed out four handicapped parking spaces in one area and two handicapped spaces in another location.

Ms. Roberts asked about the flow of vehicles. She saw the note about drive through service entrances and asked how that works? Mr. Moulton explained that you drive into the service bay, a service technician greets you, at that point you can either go to the waiting room or go outside to get picked up. The service technician then brings the car around to another location.

Chairman Ricci read the email from Bernie Pelech regarding the parking counts into the record. The breakdown of the 554 proposed parking spaces is as follows: Customer parking is 25 spaces, employee parking is 40 spaces, service parking is 73 and display parking is 416 spaces.

Mr. Hopley was looking at Sheet 3, trying to determine how one would establish in the field the limits of the paving and the sloped granite curbing as he could not find any dimensions. He thinks the limits of the paving need to be set in stone so there is no question in the field. He also sees 24' aisle width but he was particularly concerned with the northerly boundary where there is a reference to a 100' parking and access buffer and then there is nothing to tell him where the paving is. Mr. Moulton confirmed that was not shown on the plan and they could make a stipulation to have the pavement staked out by a survey crew and confirmed after construction. It is such an irregular area it is difficult to dimension.

Mr. Coker asked in the existing conditions, how many parking spaces there are today? Mr. Moulton indicated 199 striped, 146 unstriped, for a total of 345. Mr. Coker stated that usually they struggle with getting enough parking and this plan goes to the extreme of showing an extraordinary amount of parking. The nature of the business is to have the cars outside with the lights shining on them. So the more cars there are, the more lighting there is. He is concerned about the over-intensification of this property. It seems like there is a lot of paving. Would they be willing to reduce the number of parking spaces? That would reduce the lighting and the glare. Mr. Moulton felt that the answer to that would be no, they would need that for more vehicle space for the operation. Mr. Coker asked Attorney Pelech if his representation is that no lighting will spill off of the property. Attorney Pelech confirmed that is the only requirement that is currently in the City's Regulations and they have met that requirement since day one. They have also reduced their foot candles from 18, to 10, to 7, to 5 so their automobile display area has foot candles between 4 and 5 per foot. That is the same lighting that Wal-Mart has in their parking lot. It is also about one half of the lighting of the Volkswagen and Mercedes dealerships in Greenland and it is about one fifth of the lighting that most standard Zoning Ordinances contain. He submitted to the City of Portsmouth at least five to eight Zoning Ordinances from around the Country and they have specific foot candle requirements for automobile dealerships. There are three areas that require and allow enhanced foot candle levels: ATM Machines, Convenience Store/Gasoline/Canopies, and automobile outdoor display areas. In most Zoning Ordinances an enhanced level of lighting is allowed. Portsmouth's Zoning Ordinance is absolutely archaic and it does not say how much light you can have and it basically says you can have as much light as you want as long as it doesn't spill over the property lines. They have never spilled over the property lines. They first started with a lighting plan that adhered to industry standards and they reduced that by 200%. Their lighting is now below what is in Greenland which everybody thought was the goal standard. They are also probably one half of the Dodge dealership next door.

Mr. Coker asked about noise and whether there were any speakers outdoors? Attorney Pelech confirmed that they have stipulations that there will be no outdoor intercom loudspeaker systems.

Deputy City Manager Hayden had some questions regarding lighting. They had an 11" x 17" plan which showed the normal and night setting. Does that replace Sheet 7 of 10 in the big plan set? Mr. Moulton confirmed that Sheet 7 of 10 shows the normal condition. Deputy City Manager Hayden asked if they could add the night study as a sheet to the big plan set? Mr. Moulton indicated that would be done. Deputy City Manager Hayden asked how it switches from the normal lighting to the night study at 10:00 pm. Mr. Moulton noted that the stipulation from TAC asked for a 10:00 pm cut off but they would ask for some flexibility in that simply because there are occasions when the Toyota dealership may have special events that would last beyond 10:00 pm. Or there might be other

activities on site that would require the full lighting to be active. Although 10:00 would be a goal and the normal time they would close, they would ask that there would not be a hard and fast 10:00 pm cut off. Deputy City Manager Hayden asked how does that switch over occur? Mr. Moulton explained that there are three heads on each pole located along the front of the property. There are two 750 watt heads and a 400 watt head. When they go to night mode, the two 750's shut off and the 400 is left on. Deputy City Manager Hayden asked if the front is the Route One side? Mr. Moulton confirmed he was talking about the side that abuts Route One. Mr. Boyle stated that all the lights that are on all night are 400's. Along the By Pass, the poles have 3 heads and the 750's are on either side and will go out and the 400 will remain on. It will be uniform around the site of 400's for the police to do their patrols. Deputy City Manager Hayden confirmed that every single light pole on the site will be 20' height with the flat cut off? Mr. Boyle confirmed that was correct. Deputy City Manager Hayden asked if, when they get the first call from the neighbor about enforcing this, it will be easy to see if the 750's are shut off? Mr. Boyle confirmed that was correct. However, getting back to the 10:00 pm cut off, sometimes they are there until 10:00 pm – 11:00 pm at night and they would like to have a leeway on that. They would like to save the aggravation of having the police show up or the aggravation of someone complaining that the lights are on at 10:01. Deputy City Manager Hayden asked how many light poles are there now and are they taller? Mr. Boyle confirmed that the poles have been there since 1965.

Deputy City Manager Hayden asked about parking and understood that they were going from 344 parking spaces to 554 parking spaces. Are all 554 striped spaces? Mr. Boyle confirmed they would not be and that they will not all be legal spaces. The display spaces are where the inventory will go. The Greenleaf side has legal striped spaces. He doesn't plan to stripe the stacked spaces as different sized cars need different sized spaces so he would rather not stripe them. Deputy City Manager Hayden asked if all customer/employees parking will be striped? Mr. Boyle confirmed that was correct. Deputy City Manager Hayden asked if they had a count of striped spaces? Mr. Boyle noted that 554 parking spaces are shown as striped as a total amount laid out. Unstriped spaces are potentially up to 416, in the back. Striped spaces are 25 customer spaces, 40 employee spaces & service spaces.

Chairman Ricci was confused and asked for help with the gravel wetland bay #1. He looked at test pits #1 & #2 and there is a high ground water table. He looked at gravel wetland bay #1 and to him it is about 6' below existing grade. He looked at invert #1 going into gravel wetland bay #1 where the water table will be almost 24' so that inlet is 1½' below groundwater, submerged, he looked at catch basin #4 that has an invert of roughly 23.25' and he sees groundwater at roughly 23.8' so that's a half foot of water. Then, as he goes up to proposed catch basin #5 it shows an even higher water table and it looks like the invert is 25.30 when ground water is at 26.18. Mr. Moulton explained that part of the reason that they chose the gravel wetland it is designed to remain wet at all times. The issue of the groundwater has been brought up before at TAC and with Dr. Roseen. They discussed whether this could cause an issue with free flowing water and the determination was that they are talking about the seasonal high ground water table. Chairman Ricci asked, so close to a wetland, how seasonal do they think it is? Mr. Moulton indicated that they then looked at gravel wetland elevations. In reviewing this with Dr. Roseen and staff, everyone was satisfied that the groundwater would not be an issue and the test pit which was in the rear, running down to the wetland area, they expect the seasonal high ground water table would be moving downward at that point anyway. He did not feel that it would be an issue. Chairman Ricci felt that it would be an issue. He asked if they took that into consideration when they ran the drainage calculations, that their pipes would be half full of water? Mr. Moulton indicated they did not consider that but when they ran their drainage calculations, during a storm the first bay fills up to a couple of feet within the first hour of the storm. Chairman Ricci addressed catch basin #4 that outlets into that, if that is a couple of feet then their whole pipe is almost completely submerged. Chairman Ricci had a very big issue with that. He wants to see the back up data. Mr. Moulton did not feel it will be an issue. It has been reviewed by an expert in the field and he felt that the groundwater situation was conducive to the gravel wetland system design. He appreciates the difference of opinion. Chairman Ricci asked if it was common engineering practice to design pipes

that are submerged in water due to ground water? Mr. Moulton stated they were not submerged in groundwater. They are talking about seasonal ground water. If the groundwater reached a level that it would start to infiltrate into the bottom of the pond, it would simply flow through the gravel wetland and out the outlet. Basically, the way the system works is from the sedimentation bay, it flows into the first gravel wetland bay, into a perforated inland pipe down into the wetland, through the gravel base, it hits another perforated pipe which is the intake. Chairman Ricci asked if all of the basins are open and they are digging down 6' for them? He has a philosophical difference and he will leave it at that.

Mr. Coker was not a construction guy but respects Chairman Ricci's opinion. Mr. Moulton made some representations by this expert and he asked if they have a letter or document that states from this expert that this design will work given the water table, especially as this is experimental and not normally done?

Mr. Holden explained that Dr. Roseen is an independent expert working in conjunction with the City and the applicant as they were interested in seeing how the gravel wetland would work and they did not have enough familiarity with it so they wanted to make sure the installation would be done properly. Dr. Roseen is working independently of the applicant and technically independently with the City. The reports they have been receiving from Dr. Roseen are very favorable and Dave Allen has been reviewing them and the reports are continuing right up until today. Dr. Roseen and Mr. Moulton's comments are converging although they still have a little ways to go. Dr. Roseen is very favorable on this design. It has gone through many reiterations. Mr. Coker felt they would be voting on an application that they are not sure that the design is adequate and he asked Mr. Holden is that what he said? Mr. Holden responded that he did not say that. He would say that they are agreeing to the final numbers. Dr. Roseen has said this design will work in this area and it will handle what it is expected to do and it will benefit the water quality. David Allen concurs. There are still some questions being answered. If they get to that point they will need final concurrence from Dr. Roseen. Mr. Coker felt it would not be unreasonable to ask for a letter of approval from Dr. Roseen. Mr. Holden just wanted to make clear that he is also the City's consultant.

Deputy City Manager Hayden thought Mr. Coker might be satisfied if Stipulation #1 added "in writing" from Dr. Roseen. Mr. Coker indicated he was still concerned about Chairman Ricci's question. Deputy City Manager Hayden felt that was a separate question. Mr. Coker stated that Chairman Ricci is saying the water table is too high and Dr. Roseen is saying it isn't, then they have dueling experts. Mr. Holden didn't know if he was saying it wasn't, but he is saying the design will handle it. He felt it would be an appropriate question to let Dr. Roseen respond to. Mr. Coker felt that somehow in the stipulation they were able to do that and if Cindy was comfortable with that, then he was also.

Mr. Coviello had questions not pertaining to wetlands or catch basins. He asked if there will be any new Toyota signs on site? Mr. Moulton indicated they are proposing a number of signs in terms of customer parking, stop signs, etc. but all Toyota signs are existing. The only additional signage is a portal to the building which is part of the proposed construction and which will require BOA relief. Mr. Holden suggested that any proposed signage should be subject to a sign permit.

Mr. Coviello referred to their comment that there will be no outdoor paging systems. He asked about when all doors are open to service bays. Is there a public address system there? Mr. Moulton indicated there are two doors to the service area and the service bay is extremely clean and is air conditioned so the doors won't be left open.

Mr. Coviello asked about any new trees being installed? Mr. Moulton handed out a Landscape Plan which they were asked to prepare. He indicated there is quite a bit of landscaping up front around the island. They are not proposing a lot of additional landscaping other than six additional trees. There are two trees on site that have died so those will be replaced. Mr. Coviello asked for a tree planting detail. Mr. Moulton indicated they will add that to the full plan set. This plan was requested of him at

about 4:00 pm this afternoon so they worked as quickly as they could to have it tonight. Mr. Coviello referred to the Site Review Requirements, under Section C, Screening and Landscaping, they talk about shade trees should be planted in all right of ways and he asked if there was a contention that this was existing so they didn't need to do that? He was wondering about the screening along Joseph Street and some trees along the Route One By-Pass. Mr. Moulton stated that Joseph Street only exists on paper and there is no street there. There are currently existing trees growing among the wetland area so there are trees that exist in that area and along that boundary. They are a mixture of evergreen and hardwood he believed. There are trees in the front area and it would not be Mr. Boyle's desire to have trees planted in front of the cars he is trying to sell. Mr. Coviello understood that it may not be Mr. Boyle's desire but it is in the Zoning Ordinance. He asked if it was the department's opinion that there is some reason why this should be overlooked? Mr. Holden responded that the Department and the applicant are beginning to converge on the need for the landscaping plan. The Board is well aware of the landscape requirement and this is the applicants' well founded attempt to show how it would be resolved. Maybe they would want a condition that they would review a plan at a subsequent time. It may be if they think there should be more effort they might want to indicated that or if they find this acceptable than they can just go forward. Mr. Coviello felt that they have a plan in a corridor in the City that they have been talking about that involves landscaping and he doesn't see why they aren't enforcing that. He doesn't want to hold up the project but it would to have it worked out later.

Mr. Coviello asked what was the curbing, if any, along the Route One By Pass, between the pavement and the landscaping. Mr. Moulton responded that they are not proposing any. Mr. Coviello asked if it was a zoning requirement that they cannot park in that area? He is worried about them parking on the grass. Mr. Holden was sure that Mr. Moulton will assure them that there is a note on the plan that there will be no parking on the grass. Mr. Moulton confirmed that. The note was a carry over when they were very concerned about the buffer. He will modify that note and place it on the plan.

Mr. Coker assumed they would have no problem with twice per year maintenance reports to DPW on the gravel wetland.

Mr. Holden noticed they just received the landscaping plan and it refers to an issue TAC thought they had addressed. It says "Sewer Line, see Note 8". He doesn't see Note 8 and he would need that detail addressed. He was somewhat disturbed that the note about parking on the grass is not on the plans. Mr. Moulton explained that at the time the comment from TAC was concern about parking on the grass in the buffer and that is what they were asked to address. He will be happy to modify that note to read just on the grassed areas.

Deputy City Manager Hayden asked Mr. Moulton if other than the last one they just discussed, have the 12 stipulations from TAC been addressed? Mr. Moulton indicated that #1 is still in process, #3 the issue with Note 8 (#3) has to be modified and the CMMP still needs to be approved by the City.

Mr. Hopley was assuming that with regard to the wetland structures they have designed, that it is important their sizing is of a certain size? He is trying to figure out how large the bays are supposed to be so that the guy with the excavator will know how wide and how deep they need to be. He asked where is that shown? Mr. Moulton stated that they indicated a square footage of the gravel wetland bays on the Gravel Wetland Sheet. Mr. Hopley was not sure what the numbers represent? Mr. Moulton referred him to the detail and there are certain items that he did not duplicate over and over. He gave various elevations within the gravel wetland. Mr. Hopley asked if the gravel wetlands have a specified length and width? Mr. Moulton answered that they have a specified gross area and they would have to be dimensioned. They would agree to a stipulation to have those as part of the times that would have to be laid out by a surveyor.

Mr. Coviello asked if the square footage is at the base of the stone layer or at the top? Mr. Moulton confirmed it was at the base. They will have to excavate down to a certain base area and then build up to the gravel layer.

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

Charles Griffin, of 210 Hillside Drive, spoke on behalf of his wife, Judy, who owns their home in trust. He handed out a packet consisting of exhibits that he will refer to. He started by quoting Peter Loughlin's Book on Land Use Planning, as Exhibit 1:

“Site plan review is one of the most useful techniques in modern land use control. It is an extremely important device to insure that uses which are permitted by the zoning ordinance are constructed on a site in such a way that they fit into the area in which they are being constructed without causing drainage, traffic or lighting problems. Sight plan review is also useful in preventing visual blight due to lack of landscaping”

Peter Loughlin also states that, as Exhibit 2,:

“Site plan review approval is designed to assure that sites will be developed in a safe and attractive manner and in a way that will not involve danger or injury to the health, safety or prosperity of abutting property owners or the general public. This is accomplished by reviewing site plans to determine if they properly address such issues as surface and sanitary drainage, the effect on ground water, and the creation of pollution sources. The planning board also determines whether proper provisions are made for public safety, traffic circulation, and open spaces.”

The City's Site Review Regulations, include under Exhibit 3, under the Purpose section, state:

“... to protect abutters against hazards, unsightliness, and nuisances detrimental to property values, to insure that development of land is appropriate for the public services and facilities available and to insure that pedestrian and vehicular circulation can be accommodated in a safe manner.”

And under the Section Evaluation Criteria, j, indicates that if you disapprove a plan, you may do so on the basis that:

“The proposed volume and arrangement of vehicular and pedestrian traffic flow, including but not limited to parking areas, intersections, roads or driveways, and traffic controls will create an unacceptable increase in safety hazards and traffic congestion.”

Attorney Griffin's purpose was not to say they should deny this request all together but, rather, to limit it to what is appropriate and what fits in the area, as opposed to what has been proposed which he believes is excessive, not appropriate, does not fit into the area and which would become a springboard for further expansion in the not too distant future. While this is the first time this Board has dealt with this applicant, Hillside residents have been dealing with him since 2005 for outdoor display of vehicles on pavement within 200' of a residential district. The applicant is seeking to have 554 parking spaces on site and he questions the applicant's need for those spaces. Exhibit 5 is an extract from the Minutes of the October 19, 2005 BOA meeting, where Mr. Horrigan asked if there was some number of cars to be displayed to have a viable dealership. Mr. Boyle stated that a 60-day supply or roughly 240-304 cars is needed. But, now, in 2008 the applicant claims it needs 554 spaces, or nearly double that amount. Also, the initial site plan filed in March, Exhibit 6, it indicated it has 199 existing parking spaces. That figure was consistent with what was indicated to the BOA in October 2005. After the initial TAC meeting in April, the applicant submitted a revision to that plan, Exhibit 7, which now shows 199 striped spaces and 145 unstriped spaces for a total of 344 spaces. That information is



important because in their traffic report of June 12<sup>th</sup>, Exhibit 8, Mr. Pernaw indicates that the proposal is going to increase the number of spaces from 345 to 554. Presumably it bases its conclusion on the impact of the increase of those spaces on traffic in the area on that baseline. In Exhibit 9, which is an excerpt from the July 1<sup>st</sup> TAC meeting, the applicant's attorney indicates there are actually 384 spaces on site. Clearly there is a discrepancy. Attorney Griffin's question is whether the unstriped spaces are valid. Has there been site approval for 344 spaces in the past? If there are 199 spaces and the request is now to have 554, that is an increase of 279%. The increase from 345 to 544 is a 63% increase and he still thinks that is significant. In doing a traffic analysis, is the increase is actually 279% and you have used 63%, are your traffic conclusions valid? The issue before the Board is what is a reasonable use of the site given the various Site Review Criteria. He does not believe they must grant the applicant the maximum number of spaces it is requesting. Furthermore, although Pernaw indicated there will be a reduction in traffic over what previously existed on the site, he also indicates, in Exhibit 10, from his June 10<sup>th</sup> letter:

“However, it is our opinion that the standard ITE methodology utilized by MSC and Pernaw & Co., Inc., is more representative of adding a new dealership to the site, rather than adding more display vehicles to an existing dealership (with no change in manufacturers or services provided).”

Attorney Griffin next called their attention to the statement made by the applicant's attorney at the April 29<sup>th</sup> TAC meeting, Exhibit 11, “comparing what existed in the past to what is proposed is like comparing apples and oranges.” He refers to “the whole renovation that will be more of an economic force with more jobs ...” and goes on to say “It still looks like a temporary dealership vs. the changes that will be made to the building and when the show room is much larger and the site is developed.”

The applicant's attorney also stated at the July 1<sup>st</sup> TAC meeting, Exhibit 12,

“They (the applicant) have not tried to project some future expansion in the dealership because they don't know when it will happen. They have improved the traffic situation.”

That suggests to Attorney Griffin that there will be additional expansion above and beyond this request. He also takes exception to Mr. Pernaw's conclusion that there will be no more traffic to the site. The reason for asking for more parking is to display more vehicles for increases sales. At the April 1<sup>st</sup> TAC meeting, Exhibit 12, where Ms. Finnigan asked Mr. Boyle if he was expecting an increase in business and Mr. Boyle indicated he did. Mr. Boyle and Ms. Finnigan had quite a discussion resulting in Ms. Finnigan not feeling comfortable with Mr. Boyle's answers or the traffic study. Also, at the July 1<sup>st</sup> TAC meeting, Exhibit 14, :

“Ms. Finnigan commented on the traffic report. While she agrees with the information in the report per se, she does not necessarily agree with the conclusion that it will reduce traffic on Greenleaf Avenue. There will be a decrease from what was originally in place. In terms of now and the future, she felt the ITE generation rates would be the correct ones to use. Therefore, she would agree with the information but she does not necessarily agree with the overall conclusion.”

Attorney Griffin mentioned the twelve stipulations from the July 1<sup>st</sup> TAC meeting. The first stipulation deals with the exterior lighting and TAC recommended that they be dimmed at 10:00 pm each night (Exhibit 15). The flexibility to go beyond 10:00 pm gives the residents no say in the matter. He urged them to not allow the dealership to exceed 10:00 pm.

One item which was mentioned at TAC but not included in the stipulation was regarding the sewer line and he referred to Attorney Kuzinevich's letter (Exhibit 17) which states:

“As you are aware, the city does not have an easement for the sewer. Should there be a breach we will ask for the immediate removal of the line and Mr. Boyle will not be consenting to repairs.”

Attorney Griffin felt that was a disturbing statement for someone who is seeking approval of this Board to expand his business.

He was also concerned that they are seeing the Landscaping Plan for the first time tonight but was not surprised. He urged the Board to make sure every “I” was dotted and every “T” was crossed.

In conclusion, Attorney Griffin felt there was no question that Mr. Boyle has a right to an automobile dealership on the site. But, similarly, as neighbors, they have the right to make sure that the expansion of that facility fits into their neighborhood and does not adversely impact their neighborhood. He also pointed out that there is pedestrian traffic at the signalized intersection. The Board has expert reports and as such they have the ability to weigh the reports and make reasonable conclusions. If they approve the application, he would ask that they do so only if they limit the number of spaces and he would suggest around 350 spaces. Such a limitation is fair and reasonable to Mr. Boyle and the neighborhood.

Michael Donah, 152 Hillside Drive. He has followed this proposal to expand the dealership since day one. He asked what 544 spaces means? Are those vehicle spaces or cars squeezed bumper to bumper? Portsmouth Ford parks their inventory five rows deep. All of the plans that were drawn up showed about 189 spaces that were allowed but that was changed when they lost the buffer space through the BOA. All he sees is a constant expansion. His second point was lighting. David Desfosses, of TAC, took it upon himself to go to Greenland and utilize their foot candle meter and look at two dealerships. His methodology and his presentation was excellent. The Volkswagen dealership was 4.5 footcandles and the Mercedes dealership was 5 footcandles. Mr. Donah went out himself and found the lighting at those two dealerships quite realistic. To him, anything above those numbers would be excessive. Also, those dealerships are not in as close proximity to residential neighborhoods as the Toyota dealership. The landscaping plan was discussed at TAC and it never seemed to appear until finally tonight a plan was presented. All new developments around town have new landscaping and he felt it would be commonplace to require something to mitigate the destruction of that area. He also asked if the gravel wetland fails, who is responsible?

Mr. Boyle addressed the Board. Mr. Coker had asked a question about how many cars and spaces, what was the maximum. Last August Portsmouth Ford had 1400 cars all over the City in several lots. They have retired people drive the cars around. This parking lot is designed to only have to move two cars to get any one car out. When he bought the building from MSN Brothers, they had a plan of 345 spaces. Their lighting is below the Volkswagen dealership. Lastly, he pointed out that this is an existing building, built in 1965. He stopped at the corner of Greenleaf and Route One this afternoon and his next door neighbor is Comcast. Stopping at that intersection, you cannot see the Comcast building or the houses on Lois, Sylvester and the other street, due to the size of the trees. All of the other bushes around the building and trees on the island will remain. They are not leveling the whole property but rather are saving all of the existing plants worth saving. The front lawn will have over 50' of grass with sprinklers and it will look better than it ever has.

Attorney Pelech stated that despite what Attorney Griffin has stated, Deb Finnigan, the City's Traffic Engineer and Consultant, voted to recommend this plan to the Planning Board for approval. Regarding the issue of the number of parking spaces, when he was before the BOA 3 years ago, the question was presented to him and Mr. Boyle, the number of new vehicles he needed to display on his lot. And the answer was 240 – 300. The 544 before the Board is new vehicles, used vehicles, service vehicles, employee vehicles and customer vehicles. What is being proposed by Mr. Boyle meets each and every

requirement of the Zoning Ordinance and the Site Review Regulations. The 544 spaces is an allowed use. The business is an automobile dealership. Finally, with regard to the lighting, at the last TAC meeting, Mr. Donovan spoke about the Greenland dealerships and how they were great and when the applicant told the TAC they were below those levels the applicant thought the issue was resolved. The issue of lighting was laid to rest at TAC a long time ago.

Attorney Griffin stated that the issue of what was said to the BOA in 2005, the record speaks for itself. Mr. Horrigan asked what number of cars and it doesn't say new cars. Mr. Boyle responded that a sixty day supply or roughly 240 - 304 cars. The word "new" appears no where in those minutes. They want 554 spaces and they are entitled only if the Board is satisfied that they will not create a problem with traffic circulation and congestion with both vehicles and pedestrians.

Mr. Boyle advised the Board that he had his traffic expert present for any questions.

Mr. Coviello noted that it was stated that even though they are increasing the vehicle storage, it would have no increase on traffic?

Stephen Pernaw, of Pernaw and Company, the authors of the Traffic Memorandum dated June 12, 2008. He indicated that Mr. Coveillo was not correct. There will be an increase over the current level of traffic coming in and out of the site. He felt that the confusion may be that in their Memo they also did an analysis of the former uses of the site and that is where the former uses likely generated a lot more traffic than the post development condition that is before the Board tonight.

Chairman Ricci asked if he would submit that when this was formally an educational facility that the By-Pass traffic was a lot less at that point also than it is today? Mr. Pernaw stated that what they have in their report is a trip generation analysis of former uses and have made a reasonable assumption. Chairman Ricci felt they may be talking a decrease in traffic but overall that intersection has far more traffic now than it did back then. Mr. Pernaw agreed with that and that the region is growing.

Councilor Dwyer inquired into the spaces vs. vehicles issue. She doesn't believe they have heard that additional vehicles are needed on the property but additional spaces are needed on the property. Because the only justification she has heard is Mr. Boyle talking about the way cars are accessed, which she felt was quite reasonable, and needing additional space to access them in a different way for the customers. If there is a different justification, she would like to hear it. She believes that is what Attorney Griffin was raising, the difference between the spaces and the vehicles. If it were true that the additional spaces are needed and not the vehicles, there would never be more than 554 vehicles on the site. She asked Attorney Pelech if that was correct. Attorney Pelech was not sure he understood the question but the burden is not on the applicant to justify why the spaces are needed as the use is an allowed use and the spaces are needed because the applicant wishes to display additional vehicles on site which is his right. Councilor Dwyer was trying to sort out whether they are approving spaces or vehicles? Attorney Pelech confirmed they are seeking approval for the expansion of the parking area, to allow Mr. Boyle to display additional vehicles for sale above and beyond what he displays now. Councilor Dwyer confirmed it would never be more than 416? Attorney Pelech confirmed that was the For Sale display vehicles, unless they come back before the Board. Councilor Dwyer felt that helped with Mr. Donah's question.

Attorney Pelech felt that one thing that the Board may not realize is that at the present time, approximately one half of the building is not utilized. They are in the process of obtaining building permits to utilize the unused portion. They now have permits to go forward with the expansion into that area and they are trying to make this a green LEED building. This is all part of the whole plan to bring Portsmouth Toyota into the 21<sup>st</sup> Century. Everything has been a temporary fix up for the past 3-4 years. In 2003 they shared the space with 14 different tenants but they are the only use on the property now.

Councilor Dwyer assumed there could be a stipulation that there would never be more than 416 vehicles on display. Attorney Pelech felt that as long as they were allowed to come back and seek expansion. He really didn't want to get into the Supreme Court case but while this application was pending, Portsmouth Toyota prevailed in the NH Supreme Court that said there are no buffer zones and the applicant had entered into an agreement with the City that if there were not buffer zones, then they could come back and expand further. So, he does not have a problem with 415 but he wants them to know that the applicant will probably be back before them to expand. They had been required to honor the 100' wetland buffer until they had a court decision, which they did.

Councilor Dwyer stated she has not heard them address the implication in the letter of Attorney Kuzinevich and what was the explanation for that? Attorney John Kuzinevich stated that the sewer issue has been a background issue that he has been addressing with the City's Legal Department and is not part of the Site Review process. They are concerned as the City does not have an easement with the condition of the sewer. They are in the process of studying the legal implications and technical and engineering implications which they hope to have results to discuss with the Legal Department in the near future. In his letter where he said they were not consenting to anything other than the removal of the sewer line, they need to make sure that the sewer line is not leaking contamination into the wetland areas. Those are not issues that are easily answered. They are doing engineering and testing and are trying to address the issue and once they understand the entire issue, they will work with the City. It is a different problem for a different forum. Councilor Dwyer felt that the oral explanation helped and gave a different interpretation to what the written language suggests. Attorney Kuzinevich agreed that his letter did sound harsh.

Mr. Coviello asked about parking. The residents obviously have a concern about the number of cars. Without striped parking in the back, there is potential to have more cars than what they are led to believe. With more vehicles for sale, there will be more traffic and that may invalidate the traffic count. He felt it may be easier for staff to inspect this if all spaces were striped. They need to know the number of cars there and they need to tell that reasonably. He asked if there was a reason they cannot have those spaces striped?

Attorney Kuzinevich indicated that the parking spaces were designed to meet normal dimensions. When they refer them to parking spaces, they think of vehicle storage spaces as it is not an area of traffic flow where customers will drive back there. There will be signage for customer parking and vehicle storage. Mr. Pernaw could further expound on that because the traffic studies are not determined by number of displayed vehicles stored but calculate the number of trips by the square footage of the show room and the usage of the property. They calculated it on the size of the building. Mr. Griffin tied parking spaces into trips on and off the site but the experts did not. The experts tie it into square footage and to formulas of how many people could be anticipated going to a business of that square footage. He turned it over to Mr. Boyle for the issues of striping the spaces.

Mr. Boyle stated they will stripe the spaces but they are not the same as the spaces on the Greenleaf side which are all legal spaces. These will be a little different sizing and not legal sized spaces but they will be striped.

Attorney Griffin referred to the sewer issue. He felt it is part of this application because part of their criteria is that the site proposal lacks adequate water supplies or sewerage disposal facilities. They have a letter from the applicant saying they think the sewerage is leaking and the City doesn't have an easement, and they are not going to let them in to repair it, he felt that was on point.

Mr. Holden stated that the site plan does show the notes that were negotiated with the City Attorney that addresses how this issue with the sewer would be addressed. This project is not using that sewer. He suggested that they read the Memorandum from Suzanne Woodland that was passed out. The second sentence reads "There are no pending legal actions between the parties. There are still matters of disagreement between the parties on issues unrelated to Mr. Boyle's application before the Planning

Board but none of these issues are in litigation and not summarized here as they do not bear on the plan before the Planning Board.”

Attorney Kuzinevich wanted to confirm that their sewerage system for the dealership has nothing to do with the sewer line they are talking about.

Michael Donah spoke to lighting. He would like to see the City afford a foot candle meter and have Mr. Desfosses perform a study similar to what he did in Greenland to see if the numbers match. Also, the Hillside Drive neighborhood feels that the Supreme Court has taken the buffer zone away from them and they did it arbitrarily.

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 with the 12 TAC stipulations, with modification and additions.

He requested a modification to Stipulation #1, to add “in writing”.

That Dr. Roseen, in his written letter, should also evaluate the catch basin elevations that Chairman Ricci brought up.

That any new signs meet the sign ordinance of the City.

That the landscaping plan be approved by this Board or staff with increased tree planting along Route One By Pass.

That a note be added to the plans that there shall be no parking on grass anywhere on the site.

That the sewer line note #8 be added to the plan.

That the gravel wetland dimensions be added to the plans.

That vehicle storage spaces be striped for a maximum of 416 display vehicles.

Deputy City Manager Hayden seconded the motion and added the following stipulations:

That they add a sheet for the night study lighting plan, in addition to the normal lighting plan. (which was provided to the Board as an 11”X 17”.

To clarify there is no change to the 10:00 pm cut off in Stipulation #2.

That the paved areas shall be dimensioned on the plans.

That parking count information by which was provided in Attorney Pelech’s e-mail be added to the plans.

That the lighting levels post construction shall met the light levels as proposed, before the release of the Site Review bond.

That the Landscaping Plan shall include a planting detail.

Mr. Hopley requested that a special inspection of the subsurface section prior to it getting back fill by an independent, as approved by DPW. Mr. Holden suggested they make it Dr. Roseen as the agreement is in place. Mr. Hopley was in agreement with that.

Mr. Coker requested that maintenance be reported to DPW on a semi-annual basis (twice a year). Mr. Holden added that, based on the review by Dave Allen that was done today, in addition he would request a maintenance plan for the gravel wetland and it be so noted on the site plan.

Deputy City Manager Hayden stated that she does not feel great about voting on this because of Chairman Ricci's concern about the catch basin elevations was adequately addressed. Chairman Ricci confirmed that he would not be supporting the motion. Deputy City Manager Hayden also had an issue with landscaping. At the June 3<sup>rd</sup> TAC meeting, Mr. Moulton delivered revised plan that addressed some of the technical issues and indicated the landscaping plan was not quite ready. Her concern was that they are six weeks beyond that and they are just getting a plan tonight. She did not feel comfortable that the landscape plan should be left to staff because it is a pretty thin plan right now. Mr. Coviello would be happy to revise his motion to have this Board review the Landscape Plan. Deputy City Manager Hayden felt if that was the case, they need to look at whether this is a good time to approve this application. As she sees it, there are not a lot of great places to add landscaping given it's current configuration and the only alternative might be to take out some pavement. She asked if that would be too substantial of a change to be approving it tonight?

Mr. Coker stated he will join Chairman Ricci in not supporting this application. He thinks this is beginning an over intensification of a piece of property. He wondered if 544 spaces was too many? He doesn't know. He was concerned about the proximity of residential units to this. He is troubled with the term wetland when it is convenient. He never saw a traffic study. He knows the Traffic & Safety Committee does good work but he would like to have had the facts in front of him. He wants to make sure everything works and as this is presented, with Chairman Ricci's concerns, he is not comfortable with the drainage. He doesn't have enough information so as presented so he will not be supporting this application.

Mr. Holden felt if they are going to vote against it, they should refer to their Site Review Criteria to be as clear as possible.

Chairman Ricci confirmed that Mr. Patenaude would be voting.

Deputy City Manager Hayden commented on the screening and landscaping section of the Site Review criteria, "The parking lot shall be interrupted by shade trees and landscaping to allow no more than 150' of continuous asphalt. ... Parking lots visible from public street or adjacent property shall be screened with shade trees with 20' spacing or shrubs. ... Shade trees shall be planted within all proposed right of ways." She felt that would be some indication of the six trees and small number of shrubs could be improved upon.

Councilor Dwyer added that she is not inclined to support it, for a positive reason. All of the discussion tonight has shown real advancements forward in working together and it reminds her of the Meadowbrook site where the Board and the applicant worked incrementally through various pieces. Yes, they elected not to approve it but they moved it forward each time. She felt they have identified so much information tonight that they need and which still needs to be addressed and it would be inconsistent to support this when they postponed a previous application this evening. She thinks this is a helpful process to bring things forward.

Chairman Ricci agreed and felt that this is a great application but they can go a little bit further.

Mr. Coviello also echoed Councilor Dwyer's comments. He had concerns and he felt they have the leverage to get those addressed. They will have a bond and they won't get it back until things are

done. He is not an expert in stormwater design and he would respect the experts. He is fine either approving or postponing, although he is more favorable with approving to let the applicant move forward.

Chairman Ricci conformed that if the motion to approve doesn't pass, it is denied. If they have a motion postpone, they can review it next month.

Mr. Hopley made a motion to postpone to the August 21, 2008 Planning Board meeting. Deputy City Manager Hayden seconded the motion.

The motion to **postpone** a motion to approve to the August 21, 2008 Planning Board Meeting passed unanimously.

In taking this action, the Board made note of the following stipulations that were entered into the record:

**Stipulations from the July 1, 2008 Technical Advisory Committee Meeting (as amended):**

- 1) That the applicant and Dr. Roseen shall have final concurrence in writing on the design of the gravel wetland, prior to Planning Board approval;
- 2) That a note shall be added to the Site Plans that all exterior lights shall be dimmed to the night study levels by 10:00 pm;
- 3) That Note 8 on Sheet C-3 shall be removed from the Site Plans;
- 4) That the sign details shall be revised, for approval by the City Traffic Engineer and in conformance with the Zoning Ordinance;
- 5) That all grass areas shall be noted on the Site Plans to avoid the possibility of cars parking on them;
- 6) That all pavement areas shall be clearly marked on the Site Plans as overlay or reclamation areas;
- 7) That the applicant shall communicate to the Planning Board that there will be no invasive species or dead trees on the site;
- 8) That a note shall be added to the Site Plans that light poles shall be no more than 20' from the ground;
- 9) That the applicant shall provide the Planning Board with a full description of how the 554 parking spaces will be utilized;
- 10) That the poles from the wetland and/or wetland buffer shall be removed, with all necessary approvals, prior to the return of the Site Review Bond;
- 11) That a note shall be added to the Site Plans that no outdoor public address system shall be used;
- 12) That a Construction Management & Mitigation Plan (CMMP) shall be prepared by the applicant, for review and approval by the City.

**Stipulations made at the July 17, 2008 Planning Board Meeting:**

- 13) That Dr. Roseen, in his written letter, shall evaluate the catch basin elevations (see Stipulations #1);
- 14) That any new signs shall meet the City Sign Ordinance;
- 15) That the Landscaping Plan shall be approved by the Planning Board, with increased tree planting along Route One;
- 16) That a note shall be added to the Site Plans that there shall be no parking on grass anywhere on the site;
- 17) That the sewer line note #8 shall be added to the Site Plans;
- 18) That the gravel wetland dimensions shall be added to the Site Plans;

- 19) That all vehicle storage spaces shall be striped for a maximum of 416 display vehicle spaces;
- 20) That a sheet shall be added to the Site Plans for the night study lighting plan, in addition to the normal lighting plan;
- 21) That there shall be no change to the 10:00 pm cut off for dimming lights to the night study levels (see Stipulation #2);
- 22) That the dimensions of the paved areas shall be added to the Site Plans;
- 23) That the parking count information which was provided by Attorney Pelech in his email to David Holden shall be added to the Site Plans;
- 24) That the light levels, post construction, shall meet the night study levels as proposed, before the release of the Site Review Bond;
- 25) That the Landscaping Plan shall include a planting detail;
- 26) That a special inspection shall be made by Dr. Roseen of the subsurface section prior to having it back filled;
- 27) That a Maintenance Plan for the gravel wetland shall be added to the Site Plans, for review and approval by David Allen;
- 28) That a maintenance report of the gravel wetland shall be provided to DPW semi-annually (twice a year);

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At 11:00 pm Chairman Ricci advised the Board that he wanted to keep the Agenda moving and keep to one meeting in July. He suggested a five minute break.

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H. The application of **Kentucky Fried Chicken of Portsmouth, Inc., Owner, and Churchill & Banks Company, Inc., Applicant**, for property located at **1840 Woodbury Avenue**, wherein Site Review approval is requested to construct a 1,750 s.f. addition to an existing building, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 239 as Lot 8 and lies within the General Business and Single Residence A districts; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Attorney Bernard Pelech appeared on behalf of the applicant. He stated that the Board should be familiar with this application as they were before the Board jointly with the Conservation Commission regarding their application for a Conditional Use Permit. They then appeared before the Conservation Commission who recommended approval of their plan and they then came before this Board and granted a Conditional Use Permit. They have appeared before the TAC on two occasions and received a favorable recommendation. They appeared before the Traffic & Safety Committee who also unanimously recommended approval of this project. They appeared before the BOA and received variances to allow parking within 100' of a residential zone as well as to allow the building addition to be constructed within 100' of a residential zone. They have been received favorable recommendations and approvals on all occasions before every conceivable Board.

Richard Baccari was present from Churchill & Banks.

Dennis Moulton, of MSC Engineers, indicated that this is a 15 ½ acre site with ½ acre of upland area on the site. The current site is the old KFC and was an approximately 2,500 s.f. restaurant, with 37 parking spaces and a drive thru window. Their proposal is for approval to construct an addition onto the building to expand the building to approximately 4,000 s.f. to be used as a cell phone store and for a regional office for the cell phone sales. There would be 28 parking spaces on the site, reconfigured parking on the site. Six of the parking spaces will be pavers, as they will recall from their previous



presentation. They are removing significant parts of the pavement, reducing their impact to the wetland buffer. They received Conditional Use approval, BOA approval, Traffic & Safety Committee approval and a favorable recommendation from TAC with stipulations. They tried to address as many of the stipulations as they could but the TAC meeting was only last Tuesday and the revised plans were due the following day.

- 1) That the 1,000 gallon external grease trap and a note indicating that the sewer service may need to be reconfigured shall be added to the Site Plans;

That note was added to Sheet 2.

- 2) That all easements shall be reviewed and approved by the City Legal Department for content and form;

The easement issue has to do with a water line that runs though the front of the property. What happens with the water line is it basically is a 16" line that deadends in front of Gerber Dental and then T's off and goes into the Gerber Dental site and continues on in front of their building and, based on City information, it continues on and feeds the Mattress Giant. They will be preparing the necessary easements for review by the City Legal Department.

- 3) That the applicant shall confirm with the Planning Department that the BOA Site Plan is the same as the Site Review Site Plans;

That has been confirmed and they have received their BOA approval.

- 4) That if the building looks like it is being demolished after the applicant has obtained a building permit, the City will issue a cease and desist order until the proper variances are obtained;

This refers to how much of the building is being taken down for the addition and currently the proposal is, in order to go from the current KFC structure to the proposed cell phone store, the rear wall and most of the side wall will be kept in tact. Most of the front area is basically glass and doors and would have to be taken down or filled in. They will preserve as much as possible but basically it is a glass front. The whole side would have to be demolished for the addition.

Chairman Ricci asked Mr. Moulton to just ask the Board members if they had any questions about the stipulations rather than reading through all of them. Mr. Moulton wanted the Board to know that, for the most part, they have been satisfied.

Mr. Coker remembered at their last presentation they discussed the sheet flow on the east corner. Two thirds of that water goes into the detention pond and one third of the water was brought down to the bottom of the water. At the last meeting he had suggested taking from the bottom part of the lot and somehow push the water over to the right side of the lot and have it come down to the grassy area, it would steer it away from the wetlands and give it more treatment before getting into the wetlands. He asked how Mr. Moulton did that? Mr. Moulton responded that they provided curbing along the edge of pavement, which will mostly be replaced, and they graded it so that the stormwater flows from the side of the building, down along the curbed edge and into the stone infiltration area. It will capture the stormwater and let it infiltrate into the ground. He indicated infiltration rates on the site seem to be pretty good due to the fact that this is mostly fill material.

Deputy City Manager Hayden noted that the main Site Plan says see detail for the ECO Paver but she couldn't find the detail and asked Mr. Moulton to make sure it was there. Mr. Moulton was pretty sure it was there but he would go back and make sure it was still there.

Mr. Coviello asked if there are any trees going in the proposed landscaped island? Mr. Moulton confirmed they are not putting any trees in the front island. They are proposing 5 trees along the side of the building. At this time they are not proposing a tree in the front as Deb Finnigan agreed that it might block the site view.

Mr. Coviello asked if there will be any signs? Mr. Moulton indicated there is a free standing sign on the site and they plan to reuse that sign. Mr. Coviello asked if it was internally illuminated? Mr. Moulton believed it probably was when it was a KFC but he was unsure what the plan was for the proposed site. Attorney Pelech confirmed it was an internally illuminated sign, which is allowed, and they will continue to use that during business hours.

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. Hopley made a motion to approval with the 24 stipulations. Deputy City Manager Hayden seconded the motion. Chairman Ricci confirmed that they found the detail sheet so they were all set on that.

The motion to approve passed unanimously with the following stipulations:

#### **Stipulations from the July 1, 2008 Technical Advisory Committee Meeting:**

- 1) That the 1,000 gallon external grease trap and a note indicating that the sewer service may need to be reconfigured shall be added to the Site Plans;
- 2) That all easements shall be reviewed and approved by the City Legal Department for content and form;
- 3) That the applicant shall confirm with the Planning Department that the BOA Site Plan is the same as the Site Review Site Plans;
- 4) That if the building looks like it is being demolished after the applicant has obtained a building permit, the City will issue a cease and desist order until the proper variances are obtained;
- 5) That a note shall be added to the Site Plans indicating which walls are coming down and exactly what will be removed;
- 6) That the Applicant and a representative from DPW will look at the 6" water line to determine whether it is public or private and whether it can be capped;
- 7) That a lighting cut sheet shall be added to the Site Plans, and all lights shall be Dark Sky Friendly;
- 8) That a fence around the dumpster shall be added to the Site Plans;
- 9) That the applicant shall obtain a letter from PSNH confirming that the pole down the street is acceptable to run underground utilities from, for review and approval by David Desfosses, DPW;
- 10) That the Site Plans shall reflect that the curbcut 40' down the road shall be filled, that granite curb and paved sidewalks shall be added and the sidewalk shall be rebuilt and noted on the Site Plans;
- 11) That the fog line shall be repaired wherever the asphalt will be patched and re-striping shall be done as needed;
- 12) That the applicant shall receive approval from the Traffic & Safety Committee prior to Planning Board approval;
- 13) That handicapped signs shall be added to the Site Plans;
- 14) That the front island shall be landscaped and added to the Site Plans;
- 15) That "Do Not Enter" signs shall be added to both sides of the exit and added to the Site Plans;
- 16) That in and out markings shall be added to the pavement and noted on the Site Plans;
- 17) That all new signage shall comply with the current version of MUTCD;

- 18) That additional pavement markings shall be added to the Site Plans to show new parking spaces;
- 19) That the Landscape Plan shall be reviewed and approved by Deborah Finnigan and Lucy Tillman;
- 20) That a detail shall be added to the Site Plans for the handicapped parking space and a handicapped detail on the van side;
- 21) That the applicant shall update the ITE numbers, include the proposed hours of business and the actual counts from Kentucky Fried Chicken, if available;
- 22) That the applicant is only required to show utility lines to the edge of their property on the Site Plans;
- 23) That a Knox Box shall be provided and added to the Site Plans;
- 24) That the stipulations from the Conditional Use Approval shall be noted on the Site Plans as follows:

Stipulations from the May 14, 2008 Conservation Commission Meeting (as amended by the Planning Board):

- 1) That there shall be routine maintenance as recommended by Best Management Practices for the storm water management system;
- 2) That there shall be routine trash removal from the parking areas and general sweeping of the parking lot;
- 3) That the sloped areas shall be vegetated with native plant materials to minimize the need for mowing;
- 4) That there shall be routine trash removal 200' from edge of the pavement;

Stipulations from the June 19, 2008 Planning Board Meeting:

- 5) That the Site Plans shall be amended to show that the roof drains go into the treatment swale;
- 6) That the soils within the 47' elevation shall be removed down two feet and replaced with loam;
- 7) That the silt fence shall be removed once vegetation is established;
- 8) That the applicant shall assess the possibility of providing additional stormwater treatment to the south of the property;
- 9) That the silt fence shall be relocated around the riprap apron leading to the infiltration basin;
- 10) That the applicant shall report stormwater maintenance to DPW on an annual basis
- 11) That the applicant shall explore the possibility of reducing the number of parking spaces;

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I. The application of the **Commerce Way, LLC, Owner**, for property known as the private right of way entitled **Commerce Way**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* for the reconstruction of Commerce Way in order to meet City roadway standards, including increasing the curve radius for safety and traffic purposes, relocation of overhead utilities to underground utilities, upgrading of closed drainage systems, landscaping, guardrail construction, roadway lighting and the addition of 6,325 s.f. of sidewalk, all within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 216 as Lot 1 and lies within an Office Research District; (This application was postponed from the June 19, 2008 Planning Board Meeting) *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Sergio Bonilla, Wetland Scientist from NHSC, Inc., was present along with Patrick Crimmins of Appledore Engineering. Mr. Bonilla gave a brief history. They appeared before the Conservation Commission with members of City Staff to address concerns regarding reducing wetland impacts and sidewalk reductions to reduce impervious surfaces within the 100' wetland buffer. In the interest of brevity, he ran down what they came up with following the final Conservation Commission meeting. Roadway improvements will consist of lighting improvements, the construction of sidewalks to facilitate pedestrian traffic. The goal is to have this right of way accepted by the City of Portsmouth which is why they had the significant interface with DPW with regard to roadway design. They have met all requirements of DPW. The Conservation Commission expressed concerns with regard to wetland impacts and they have reduced their impacts from 1,150 down to 43 and also included a comprehensive construction sequence in that respect to address some of the concerns that several Commission members had with regard to temporary wetland impacts and subsequent restoration. With regard to improvements, they will put utilities underground, they are upgrading a lot of the drainage systems, drainage catch basins and oil and grease separator hoods. Along with that is the increase of 6,000 s.f. of pervious area, taking into account the proposed landscaped island which will mirror what is at Portsmouth Boulevard. In addition to the landscaped island, they are gaining more pervious area by removing a cut out that was designed for large truck vehicles to make that turn. They would increase that radius for that corner which is the reason they are encroaching on the wetland, and it will be reverted back to grass area which again accounts for some of the additional pervious area, along with the landscaping on the western side. Granite curbing will divert and direct stormwater flow into the catch basins. Included in the packet was an exhibit that addresses the Commissions final concern, to provide some opportunity for reptiles to pass without being obstructed by vertical granite curbing so they centered it on both sides of the wetland by the culvert.

Chairman Ricci asked Peter Britz, City Environmental Planner, to speak to this.

Peter Britz indicated that the Conservation Commission requested improvements to the application with the 20' sloped granite curbing. In general the application was a good reduction in the impact as they only have 43 s.f. of impact to the curb area. There was discussion in the minutes about Public Works acceptance of the road way. Mr. Britz spoke to Steve Parkinson, Director of Public Works, and the design is acceptable to meet City street standards and they did not have a problem with the sloped granite in the one section, although they don't like to do it everywhere. Therefore, in general, he supports the application.

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. Coviello made a motion to approve with 20' of sloped granite curbing. Deputy City Manager Hayden seconded the motion.

The motion to approve passed unanimously with the following stipulation:

- 1) That approximately 20' of sloped granite curbing be placed adjacent to the wetlands, centered on the culvert or thereabouts, to allow for wildlife passage.

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Chairman Ricci recused himself from Items J., L. and M.

Mr. Coviello recused himself from Items J.

J. The application of **Martingale Wharf, LLC, Owner**, for property located at **99 Bow Street**, wherein an amendment to Site Review approval granted on April 27, 2006 is requested to relocate utility lines and poles along Bow Street, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 106 as Lot 54 and lies within the Central Business A District, Historic A District and Downtown Overlay District; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Robert Ricci, applicant and owner, addressed the Board. He stated they are amending a site plan approved 2 years ago in April of 2006, although they were tied up in litigation for two years and only recently broke ground. They have met with Jim Osborne from PSNH and Fairpoint to get lines that are currently on Bow Street, the water side, moved to the other side of Bow Street with currently existing poles that are in place. That was a key point, that they are not adding any new poles, they are basically taking poles that are on Bow Street, on the southerly side, and replacing them with new poles. They are adding one guide wire on one of the pole. There is an existing pole in front of the Stockpot that will remain but that has a sidewalk guide which would be similar to the sidewalk guide that they will be adding to one of the poles, as shown on the site plan. At that point, they will be coming to a latter point to be running utilities underground back over to their side. The way the utilities lines are running along Bow Street, with the new OSHA requirements, he won't say it is impossible but it is difficult at best for anyone on Bow Street to work on their buildings as you need to be 10' back from the primary 17,000 volt line. That is why Jim Osbourne states in his letter he feels the fire department would be in favor of this and PSNH and Fairpoint are in favor of it. Basically it is taking two poles on Bow Street, eliminating them, bringing the lines to the other side, installing new poles where there are currently existing poles and bringing the lines over accordingly.

Mr. Rice asked if they are adding any poles? Mr. Ricci confirmed they are not adding any poles. There are currently three poles that were set up some time ago by Fairpoint/Verizon. They want to recapture those poles because there are lines going in both locations. Some are going up Chapel Street and some are going down Bow Street. They want to take all the lines and get rid of some of the old lines. They have a primary and a secondary line and they want to clean them up. They see these poles across the street that are already there, which were put for that purpose, by the way, in the event that they decided to move back across the street it would be much better. Eventually, at some point down the line, the rest of the lines down Bow Street will be moved as well so that no one needs to worry about the high voltage line. He has obtained approval from his abutters to his immediate east to Bow Street and those letters were included in his packet.

Mr. Coker asked about the term "ladder", where lines are going underground and he asked if that is what this was. Mr. Ricci confirmed that the current existing pole in front of the Stockpot is what they will have on their pole because they will now be coming from where the new poles are proposed to go and they will be coming underground into the Martingale Building. Steve Parkinson wanted them to know exactly what they were doing.

The Chair asked if anyone was present from the public, wishing to speak to, for, or against the petition.

Steve Feld, of 76 Bow Street. He handed out a Supplemental Report from the Concerned Citizens Coalition. They have a summary of findings they feel the Board should make and request for action by this Board. He will go over them briefly and then take a few minutes to go over, line by line, the aspects of the Construction Management Plan that are not being complied with at the present time. In conclusion, because there are so many point of non-compliance with the existing plan that no further modifications should be authorized by this Board, no power lines should be moved, although they have no objection to doing something with the phone lines which he will address in a minute, and any power

lines that are going to be changed should be put underground in this location period. As part of the record, there is a document that was never provided to any abutters, which is the Construction Management plan that was agreed to by the City and the developed and was executed on April 24, 2008. They have attempted to highlight the points that the developer was supposed to comply with and explain largely through photographs which are thumbnailed in the paper before them and they have large blow ups which they will pass around.

First, the approved plan requires that the construction zone, which is in the plan that is part of the Planning Board file, should end at the end of the property. In fact, as shown on the photograph excerpt on their document and as displayed in a larger version, there are jersey barriers that extend past the guard rail which is the point of the end of the abutting property. Also, in the plan that was approved by the Planning Board, and it was submitted in the official file as late as April 28, 2008, there is a small area that was supposed to be retained as part of the developers site and there is a 4' retainer wall which has been removed and it is not part of their request but on the most recent documents that they have submitted they have removed that language.

Acting Chair Hejtamnek interrupted and stated that, although the Planning Board requires it, the Planning Board does not administer it. He really should go to the City's Legal Department because the Board cannot take action on it.

Mr. Holden advised Mr. Feld that the only issue that is before this Board is an amended Site Plan. This Board is authorized to handle the amended Site Plan. The issue before this Board is limited to utility lines. If he has a complaint over and above the utility lines, then that should be presented, as the Construction Management and Mitigation Plan says, to the affected and appropriate City officials and not this Board.

Mr. Feld stated there have been at least seven noise complaints filed that he is aware of. Mr. Holden reiterated that this Board cannot handle that. Mr. Feld indicated he would appreciate it if he would allow him to answer the question. Mr. Holden answered the that question was what does this have to do with the amended Site Plan because this Board is only authorized to deal with the amendment that is before it, which is with the utility lines and not the CMMP. Mr. Feld stated he understood that. There are eleven points on this, including photographs of the poles that he is talking about and what they are showing is that in eleven different ways the Construction Plan is not being complied with and that to allow an additional change in the plan would be even more burdensome to the abutters where there has not been any compliance before. He is showing that there has been a course of non-compliance and why this particular change is particularly burdensome, unnecessary and dangerous and he would appreciate it if he would be given a few moments to address the points in the written document.

Mr. Holden thought as far as it addresses compliance with the CMMP, that is not before this Board. If he can relate it directly and succinctly to the utility line, he thinks he has something.

Mr. Feld stated there are several points on this. The existing utility line, by this plan, was supposed to be guarded by two temporary concrete barriers. In the documents that they have, there are photographs that it is not being guarded the way it is supposed to be. In fact, on this particular picture, there is a jersey barrier that is hard to see because it is blocked off but the jersey barrier effectively runs at an angle from the street towards the pole and it does not guard it on either side.

Acting Chair Hejtmanek asked Mr. Feld to take the microphone so that the people in the audience and watching on TV could hear him.

Secondly, this plan required 12' travel lanes. They are not 12'. At the critical point it is less than 12'.

Mr. Holden submitted that that was a CMMP issue and not related to the utility lines.

Mr. Feld was saying that they are trying to relocate a power pole in a location that is already ... he stated he would really like them to allow him to make the presentation according to the paper they submitted but if they want to do it this way then that is what he is going to have to do. In their packet, they will find a photograph that is marked #17 that is one of the poles on the opposite side of the property.

Acting Chair Hejtmanek advised Mr. Feld he was away from the microphone again.

Mr. Feld indicated he would speak loud enough so that everyone could hear him.

Acting Chair Hejtmanek advised him there was a portable hand mic he could use.

Mr. Feld pointed out what was one of the two poles they want to replace with the high tension wires in front of the property across the street. This pole is already reduced by 25 – 30% in its girth because it has been hit by so many snow plows and other vehicles since it has been there. This is the location where they want to put it. This particular pole, prior to the end of April of this year, was also guarded by a parking space so it was not in a direct line of traffic. At the present time this is in the direct line of traffic and there have been all sort of problems. It is constantly used for parking because people have done it for years and years. The walkway that is supposed to be 5' is in many places only 3' which requires people to walk out in the street. The location on Bow Street has numerous tractor trailers.

Acting Chair Hejtmanek asked if this had to do with the utilities?

Mr. Feld felt it did as they are locating the utility to a place that is already a dangerous place where the pole has been hit numerous times. The existing location where they were supposed to wire it is not properly guarded even though they were supposed to do it, they are parking all of their vehicles in the street in violation of the street and almost everyone of them extends into the travel lane and blocks the pedestrians which means people are walking around. All of these things contribute to the fact that there will be accidents there He has almost seen a fatal accident. He has seen numerous jack knife trucks before the road was done. They submitted extensive documentation about this and one of the letters from the prior submission in 2006 which Richard Poor filed with an attached photograph that they have, this particular storm one of the concerned citizens filed that two years ago that the City's own scraper got stuck on Bow Street hill. That is the way the street looks after an inch or two of snow. That is no longer 50' wide and it is supposed to be 24' and it is actually like 43'. The curb is the most dangerous portion of this as it is extremely difficult to get up even with a limited amount of snow. They want to put new poles in these locations where right now there is already extensive damage from people running into it, the city runs a little snow plow along the walk that has run into it many times. What they are doing is taking probably the most dangerous street in downtown Portsmouth which is already being confined to less than what is required, put a high tension wire up and they are asking for trouble. Mr. Feld stated he has personally been run into in a car, parking on the road, he has seen numerous accidents, they have reported about numerous people who have seen accidents and problems in this location. It is wrong to put a high tension wire up on that side of the street and it should all be put underground and is the perfect place for an underground wire.

Mr. Feld wanted to be quick as he knew it was late, but he was going to leave the Board a photograph. All of the photographs were documented that show that people are walking in the street because they are not providing the 5' right of way that is supposed to be on the plan. All of which will encourage people to do things ...

Acting Chair Hejtmanek stated these are all things that Mr. Feld should take up with the City. Mr. Feld indicated that had done so but no one has paid any attention to it. The Planning Board is the one that issued the order. What they are saying is that it is not only wrong and unreasonably burdensome

to the abutters to have dealt with all of these issues before that have not been dealt with, but the city is creating a real hazard to hundreds if not thousands of people who traverse that every week.

Mr. Feld stated there was some documentation from the United Nations World Health Organization that deals with the most critical aspects of electromagnetic fields which is not the radiation but the static electricity and there is a little supplement in large type that has been passed around a lot that discusses it in layman terms. They specifically object to moving a high tension wire across the street to burden the abutter even more than it has been. There has already been loss of phone service twice due to this construction, parts of the building are falling off, it has broken several windows, it has caused things to fall off the wall from their constant hammering and additional construction on that side of the street is more burden than an abutter should have to take from one particular project. It is not just the abutter, but there are other people who have signed this. Jennifer Pagent, who works at both 80 Bow Street and 117 signed this and wanted to come to state that she has seen this. She has worked at 117 Bow Street for three years and she has personally send these things and she wanted to come to voice her objections. She has filed two complaints with the City. She filed one for noise an done about the parking issue and she regrets that she is unable to come but her information in included in this.

In conclusion, Mr. Feld felt this Board should not authorize any further expansion or changes of the construction activities that are ongoing because there is not compliance with even the bear minimum of the existing plan that was signed by this City just two months ago. More importantly, under no circumstances should the power lines be moved across the street if they are going to be changed, they should be put underground and if they want to reconfigure the telephone lines which are already across the street on poles that are about 1/3 shorter than the ones that are carrying the high tension wires, there is no objection to doing whatever they do with the telephone but they would request specifically that they contact Bayring which provides the line service to the building across the street because on at least two occasions there have been disruption of one or more telephone lines due to the fiddling around on the street over the past several weeks.

Robert Ricci stated that he felt most of Mr. Feld's points were not relevant. All Bow Street abutters are in favor of this. Power lines, 12,740 volts, cannot be run underground due to high voltage. That is why they want to keep it above ground so that they can maintain it. Once they put it underground they really have no control over it. Fairpoint and PSNH both are in agreement with this. None of Mr. Felds other comments were relevant. Mr. Ricci indicated he could answer all of this questions but he assumed the Planning Board did not want him to. Mr. Coker asked if PSNH has approved this? Mr. Ricci confirmed they have. They have met with Jim Osborne of PSNH and Steve Parkinson, Director of DPW, on site on numerous occasions. PSNH is on board and they want to clean up the lines. Fairpoint/Verizon is on board as well.

Deputy City Manager Hayden wanted to clarify that these are going on new poles across the street, 39' in height? Mr. Ricci confirmed that was correct.

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. Rice made a motion to approve the amendment as presented with the three stipulations. Mr. Coker seconded the motion.

Councilor Dwyer asked if there is any particular protection provided for poles when they are so close to the roadway or is there anything PSNH does different for a pole in that type of location? Mr. Ricci stated there really isn't. Basically, they make the base of the pole larger than it needs to be structurally assuming it is going to be dinged and it will end up having 1,000 staples in it over the years but



basically they just oversize it as they know it is going to get hit and it is designed to do that. Councilor Dwyer asked if that will happen here? Mr. Ricci confirmed it will and that it happens to every pole in downtown Portsmouth. That is why they have a system to monitor poles and they inspect them regularly and replace them as necessary.

The motion to approve the amendment passed unanimously with the following stipulations:

- 1) That the Department of Public Works shall review and approve all aspects of this relocation;
- 2) That any poles that are no longer needed to service this area shall be removed at no expense to the City; and
- 3) That any necessary licenses/easements shall be secured from the City Council as part of this process.

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A motion to take Items L and M out of order was made by Deputy City Manger Hayden. Mr. Rice seconded the motion. The motion to take Items L and M out of order passed unanimously.

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L. The application of the **City of Portsmouth, Owner, and PHA Housing Development, LTD, Applicant**, for property located at **100 Lafayette Road**, wherein an amendment to Site Review approval granted on January 17, 2008 is requested to construct an at grade handicapped accessible entrance, relocate the HVAC units, remove the emergency generator, and modify the limits of the chain link fence, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 151 as Lot 8 and lies within the Municipal District; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Eric Weinrieb, of Altus Engineering, presented. The legal notice captures the essence of their requested changes which is they are removing emergency generator and eliminating the handicapped ramp and constructing a new, at grade, entrance to the building with an elevator access. Because of that, they can now locate the handicapped parking spaces directly across from that ramp. In the back they have two HVAC pads that they didn't have the final location for when they last appeared before the Planning Board.

Mr. Holden indicated that the reason they have advertised this is because it is in a municipal district with residential properties nearby, but this is a minor amendment.

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 the amendment. Mr. Coviello seconded the motion.

The motion to approve the amendment passed unanimously.

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M. The application of **Cross Roads House, Inc., Owner**, for property located at **600 Lafayette Road**, wherein an amendment to Site Review approval granted on January 17, 2008 is requested to reduce the previously approved building footprint, the relocate the transformer pad, the addition of an outdoor picnic area and the reconfiguration of the sewer service and the waterline, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 243 as Lot 2-A and lies within the General Business District; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Eric Weinrieb, of Altus Engineering, presented on behalf of the applicant. He indicated these were minor changes to the Site Plan. They have been able to, through architectural work, capture the lower space of the building for the dining area which allows them to reduce the footprint and eliminate ledge cuts. They have been able to relocate the water line out of the footprint and now they only have the sewer line to move. PSNH has requested that they move the transformer pad up to the front of the building and they are providing better screening around that and they have added a picnic area in back.

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. Rice made a motion to approve the amended as presented. Deputy City Manager Hayden seconded the motion.

The motion to approve the amendment passed unanimously.

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K. The application of **Atlantic Point Builders, LLC, Owners**, for property located at **13, 20, 25, 33, 44 and 57 Albacore Way**, wherein an amendment to Site Review approval granted on March 16, 2006 is requested to revise slope grading and a retaining wall at the intersection of Albacore Way and Saratoga Way, with related paving, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Plan 212 as Lot 123 and lies within a General Residence B District; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Dennis Moulton, of MSC Engineers and Land Surveyors, distributed a handout to the Board. Also present was Barry Sullivan, owner. The amendments to the Site Plan were requested by DPW. They met David Desfosses on-site and he had a concern about the grading of the slopes coming down to the sidewalks in the area. They worked with DPW to come up with a solution to make the slopes a little gentler and combine it with a retaining wall system. They have created a retaining wall on the back side of the sidewalk, along Albacore Way just before it meets Saratoga. He handed out literature on the retaining wall showing the texture and color. The wall has a chain link fence along the length of it

to prevent anyone from using the sidewalk and falling over the edge of the retaining wall because of the 4 ½ feet above the adjacent ground level. It is a black vinyl chain link fence as specified by the City and approved by David Desfosses and DPW. They were requesting a sign off from the Planning Board.

Deputy City Manager Hayden referred to Sheet 2 of 2, Layout plan, is says top of wall 64. Mr. Moulton explained that was an elevation. Deputy City Manager asked the length of the wall. Mr. Moulton indicated it was 81'. Deputy City Manager Hayden asked what was the average height of this from the ground? Mr. Moulton responded that Sheet 2 gives an idea of the average height. As you move from left to right it dips down quickly. The highest part of the wall is about 4 ½ feet. Deputy City Manager Hayden asked how tall the chain link fence was at the top of the wall. Mr. Moulton indicated it was 4' tall. Deputy City Manager Hayden asked if it was vinyl coated chain link? Mr. Moulton confirmed it was black vinyl chain link. Deputy City Manager Hayden asked exactly where is it exactly on the plan? Mr. Moulton pointed out at the end of Albacore Way just as they merge onto Saratoga and it ends where the sidewalk curves out to the road. Deputy City Manager Hayden asked if it is in front of anybody's house? Mr. Moulton thought the closest abutter is the property that fronts on Raleigh Way.

Mr. Coviello asked Mr. Moulton to trace the property line in the area and asked how close to the retaining wall does it get? Mr. Moulton confirmed that it gets very close to the retaining wall. Mr. Coviello stated that these walls typically have a geogrid to reinforce the top of the wall and he asked if that will go back onto the other property? Mr. Moulton responded that the block wall manufacturer design guidelines do not require geogrid for that height. If there was any geogrid it would come back over the sidewalk and not the abutters.

Mr. Rice asked if Mr. Moulton said he was planning on planting some vegetations or vines around this as it is a residential neighborhood? Mr. Moulton believed that Mr. Sullivan was going to loam and seed the area so it will be grass and there will not be anything climbing up the wall. Mr. Holden confirmed that this wasn't anticipated in the original in the original site plan. They now have a sense of the aesthetics. If they think there is a way to minimize the mass of it further, perhaps the vegetation would be a good idea. Mr. Rice felt as it is a residential neighborhood and it is a little stark, he would like something. Councilor Dwyer stated that if it was her neighborhood, she would be present to express her concerns. She felt there must be another solution to this. Reading between the lines, she is hearing him say that this is DPW's solution. Deputy City Manager Hayden did not believe it was DPW's solution but they coordinated with them. She felt that an explanation of why this is coming up would assist the Board. Mr. Moulton explained that originally the design plan was to grade down from the sidewalk down to the abutting property line. Mr. Sullivan started the rough grading for that and at that point he realized it was not what they thought it was. Mr. Desfosses came out and indicated that he felt it was too steep and they needed to do something to fix it. They came up with the retaining wall, regarding and the fence. Mr. Holden thought another way would be to do some slopes but the slopes would exceed what the City wanted and would go on abutting properties so this was the minimal solution and it seemed to be appropriate. DPW is satisfied with it.

Mr. Coviello asked if they explored other material like dry set stones? Mr. Moulton indicated they didn't look at that type of solution. They felt this was the best solution in terms of constructability, it matches some of the other retaining walls that have been constructed on the site, and they felt it made more sense to go this route in an attempt to aesthetically tie everything together.

Chairman Ricci asked if they explored a stone that runs similar to the stone that he suggested that is almost like an eco-paver that has voids to allow vegetation to grow through it? They use it a lot on Route 93 in Manchester. Mr. Moulton indicated they did not. He reiterated that this is not something that was a concern during the time they were working with DPW. There is a desire to soften the face of this towards the abutter and probably some sort of climbing vine would be the best idea. Chairman Ricci felt a vine might not be appropriate but eco blocks might be more of a greenscape. Councilor

Dwyer referred to the back of their pamphlet and felt they might be able to do something more terraced could be a half way point between the original goals and the concerns that have been raised. Mr. Moulton noted that in that literature they also show vines running up the front of it so maybe it is not such a concern for this particular block.

Mr. Hopley referred to the cross section on Page 2. The side walk is on the low side of the wall? Mr. Moulton confirmed that the sidewalk is on the high end of the retaining wall. Deputy City Manager Hayden asked if she was walking down the sidewalk, what was she going to see? Mr. Moulton indicated she will have a 4' chain link fence on one side and then it drops off. She will only see the top cap. Mr. Hopley realized he was reading it backwards. He thought they were retaining the earth against the sidewalk but that is not the case at all. Looking at the 1' contours that progress downslope, wouldn't he just roll down the hill? Why do they need the fence? Ms. Moulton confirmed that at some points there is a 4' drop.

Ms. Roberts asked what purpose the chain link fence served? Mr. Moulton responded it was to prohibit people from falling off and potentially injuring themselves and it was insisted upon by DPW staff.

Councilor Dwyer felt that that raised more of a safety concern than the fence as there are so many children in the neighborhood. The fence is just asking for trouble as kids will swing off of it.

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Rice stated he would like to postpone for a site walk to take a look at this area. Mr. Coviello seconded the motion.

Mr. Coker felt they were really over thinking this one. Deputy City Manager Hayden disagreed.

Chairman Ricci called for the motion for a postponement to August 21<sup>st</sup> with a site walk between now and next month's meeting. It was agreed that members should just go out to the site on their own prior to next months meeting.

The motion to postpone passed unanimously.

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**III. NEW BUSINESS**

B. Request for amended Site Review Approval for Property Located at 549 Route One (Traffic Circle), to add a 10' X 11.5' pavilion next to the proposed hotel;

Mr. Holden indicated that they did not add this as a public hearing but this is a minor plan amendment which they were going to approve administratively. This pavilion is needed as part of the hotel which was approved as part of the Site Plan. The Department recommends they allow staff to handle this administratively. No vote was needed but there was concurrence from the Board.

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C. Request of Fred Lowell, for property located at 62 Deer Street for a one year extension of Site Review Approval granted on July 26, 2007;

Mr. Holden explained that this approval was coming up for expiration.

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

The motion to grant a one year extension of Site Review Approval was granted.

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**IV. OLD BUSINESS**

A. Appointment of Planning Board Representative to the Historic District Commission;

Deputy City Manager Hayden made a motion to postpone this item to the August meeting. Mr. Coveillo seconded the motion.

The motion to postpone to the next meeting passed unanimously.

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**V. ADJOURNMENT**

A motion to adjourn at 12:20 am 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 August 28, 2008.