

**MINUTES OF
WORK SESSION**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

6:30 P.M.

OCTOBER 23, 2008

MEMBERS PRESENT: Paige Roberts, Vice Chairman; M. Christine Dwyer, City Council Representative; Donald Coker; Anthony Coviello; John Rice; Anthony Blenkinsop; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; and MaryLiz Geffert, Alternate

MEMBERS EXCUSED: John Ricci, Chairman and Norman Patenaude, Alternate

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

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Vice Chairman Roberts called the meeting to order.

I. DRAFT REVISED ZONING ORDINANCE

6:30 – 7:30 pm - Senior Housing Over-lay

Mr. Holden advised the Board that they had received a communication from Attorney McNeil seeking to have this item postponed. Mr. Holden believed this was the Board's Work Session and it was up to them whether they wanted to postpone. He added that Attorney McNeill was present. He was seeking what the Board's consensus was. They have their schedule worked out through November so there is no guarantee when this would be rescheduled.

Mr. Coker asked if it was normal and customary for the applicant to offer additional information? Mr. Holden assumed this was the Board's work session but in the past they have allowed for comments to be made and he was sure Attorney McNeill would be willing to speak to that. Mr. Coker felt, given the request of the applicant and the valuable input they have provided to-date, he would be willing to honor their request. Mr. Coviello felt that their schedule was busy enough where they have to use what time they have so he would be in favor of continuing tonight. Councilor Dwyer agreed with that because she felt that this Board needs the discussion of where they are, what do they agree with, what do they not agree with, what do they think needs to be clarified and she did not believe this would be the last meeting on this or making a decision tonight. She felt that if there was information that would be helpful to surface it, they should give the applicant time to respond to that in some way although not necessarily tonight. They have been everywhere with this and they should talk big principals, big purposes, big ideas of where of where they want to go with it and separate it from little details that bog them down so. She understands what the applicant is saying and, certainly if they were planning to make a presentation she would totally agree with honoring that, however that is not the case. Deputy City Manager Hayden agreed with Councilor Dwyer. They asked everyone to do their homework and doesn't want to push it off at the last minute as they are booked through December and public hearings

will begin in 2009 for the zoning rewrite. She thinks they need to move it ahead. Mr. Coker felt there have been times when various members of this board have said they need to move forward but this is the applicant's request and the only way he would alter his thinking would be if they will not be dealing with the applicant's exhibit one and two, but rather with their exhibits three and four. Deputy City Manager Hayden stated that was one reason why she wants to have the discussion. It's not like they have an active Site Review Application before them. They are talking about the re write of the City's zoning ordinance and they are not in a negotiation with the developer for a particular project.

Attorney McNeill stated that he withdraws his letter and request for a postponement. Mr. Stebbins was regretful he cannot attend. They wanted to work with the Board but if they wish to go forward they will not stand in their way. They are prepared to provide input if they want it. Before a final decision they would like a public hearing where they can speak. Vice Chairman Roberts confirmed that will definitely happen but they need to move forward with the Department's draft.

Mr. Holden stated, since this is withdrawn, they are now in a work session on this ordinance and he turned it over to Rick Taintor.

Deputy City Manager Hayden thought a review of their last meeting would be helpful as a number of Board Members came unprepared to talk about this but this time they have read the materials and they are now prepared. In fairness to the individuals who proposed this, they need to move this somewhere.

Mr. Coker asked when an applicant comes before this Board with a conditional use permit, they have criteria that have been laid out for them as Board members for approval or disapproval. When an application comes forward with a rezoning request there is no criteria for determining whether or not a request has merit or not. City Attorney Sullivan indicated that was almost correct. When they receive a Site Review application, or a subdivision application, or a conditional use application, they are acting in a quasi judicial capacity and their job is to apply the facts of the application to the regulations. When they receive a referral from the City Council on a rezoning matter they are not acting in a quasi judicial capacity but you are acting in a legislative capacity and are not limited by any objective criteria and are free to have positions. The only slight limitation is that there are general broad principals that a rezoning matter must be in compliance with, ie, the Master Plan. If they were reviewing a re-zoning petition and it was totally at odds with the Master Plan, it would be appropriate to discuss that as a criteria. Otherwise, when acting in legislative capacity they have quite broad latitude to analyze things.

Councilor Dwyer mentioned that this morning they wrapped up their proposed plan for affordable housing for the City for creating and preserving affordable housing so for the last six months that committee has been working on the affordable housing issue. She thought that they were very clear that affordable housing has to be obtained in many ways, in many places, through many avenues, in many small increments that, over time, will take a little bit of a bite out of the problem. They are not going to get to it in one fell swoop and, in keeping with the principals of their Master Plan. In big picture terms, what is coming before them is whether we have a need and use and value in this community for over 55 housing. Over the last year and one half this has been going on and many people feel they do have the need but they also have the affordable housing need. How do they get the affordability issue to relate to this project. She felt this is an opportunity to get some workforce housing. She would like to make this work. Many people feel there is a need for over 55 continuing care concept but she wants public benefit with it and she wants it to be related to affordable housing. The other details are how do they divide the acreage. She doesn't think it is that difficult and they need to come back to some fundamentals.

Deputy City Manager Hayden agreed they need to go back to basics. She has lost the connection between this proposal and affordable workforce housing. She felt they are trying to shoe horn it into something. She is concerned with the enforceability with private development projects and the more

she looks at it, the more impossible she believes it is to achieve all of the time. She does not see they as an affordable housing project.

Councilor Dwyer did not want to be misunderstood that she thought of this as an affordable housing project. She is just saying that, as a City, they have a commitment that one of their major public purpose is to try and develop in many different ways the affordability component to this.

Deputy City Manager Hayden looked at the Master Plan and they had ten areas on future land use. Regarding this land, it said "This area is currently zoned office research. It represents and extension of the OR district containing the hospital and related uses and the City is maintained the OR zoning to accommodate future office campus growth. Office development on Borthwick Avenue is continuing and this area continues to be a suitable site for such uses. Another important issue relates to the site location between two railroad lines. This location may present the City's best opportunity for future development of a passenger rail station if passenger service is reinstated and supporting the Master Plan. In addition, the introduction of new residential development to the rail lines could create obstacles to the rail service because residents of this new neighborhood could be opposed to such expansion." When Deputy City Manager Hayden went back to basics they said they needed to study the area more, it had resource restraints, etc. She also looked at the affordability issue and went back to some of their market research which is in the June 21, 2007 Market Study. They have gotten confused about who will live there. Their local area market study, there would be in the \$50,000 - \$100,000 wage earners, between 35 and 46 locals that would live there. In the \$100,00 an up bracket of income there would be anywhere between 24 and 30 that they think market area would attract. Therefore there would be 60-70 locals above \$50,000 and 10% of those people would result in affordability for so few people, in exchange for a 482 unit building which seems to be targeted to wealthier seniors from elsewhere. If they feel good about this project doing that, she thinks that is fine but they have gotten unclear about what "the project" is. Their unit sizes go up to 850 sf to 2,500 sf which is very big. High end senior housing was not in the Master Plan but she did see workforce housing.

Mr. Coviello did a lot of homework on this and has so many thoughts that he is trying to put in a coherent order. His first question is why do they want workforce housing and what are they trying to do? His answer to himself was that they want families in the communities to do the blue collar work. This goes back to the Middle School issue where they need a diverse population for major funding issues and not an older community. It has been said that an older population doesn't necessarily vote down bonding issues but in reality he does not believe it is true. The elderly population tends to shoot down bonding issues and he is concerned about that. The positive of this project seems to be the promise that they would not be importing the elderly population but they would come from their own area. He does not know if that statement is true. His research shows that New Hampshire is losing any demographic under age 65 and only in above 65 are they gaining. Southern New England is losing them in droves, part of which is because of the tax implications of those communities. Seniors can live here much cheaper. He felt that the bigger picture of what they are looking for in affordable housing is that they may get some as a token out of this but they may have exasperated the problem of the demographics by trying to do that.

Councilor Dwyer felt they need more housing to create more tax payers. They have to get some new incentives. She sees this project as more tax payers. Also, as a Councilor, has had to deal with the retirement system and the annual wages are not out of line with what workers are receiving for retirement, including from unions. Retirement wages have really changed in the last few years. They are not being given an either/or choice. The biggest thing they need to deal with is housing for jobs and they need more affordability. The last thing they would want to do is put more jobs on this parcel given the imbalance they have or pretend it would be OR. They have variables affecting each other and this is not a solution to one of those things, this is a different issue. Deputy City Manager Hayden may be right, they may be trying to shoe horn affordability into this as they want it so much and it may not be a good fit.

Mr. Coviello doesn't think they are being offered this or that. They have been directed by the Master Plan to look at this for re-zoning. He doesn't think the office park would impact the residents of Portsmouth negatively. It might impact the traffic leading outside of Portsmouth.

Councilor Dwyer responded that if they put 700 jobs there they would create the need for 700 more affordable housing units. Mr. Coviello thought it might be better than creating a demographic shift than shutting out the younger family community. They have to show that they value the younger families by building a good school system, by giving tax abatements to only the elderly. Councilor Dwyer indicated that is State law. Mr. Coviello understands that but he feels they are shifting the burden based on ability to pay by basing it only on age.

Mr. Coker felt that they cannot have affordable housing in Portsmouth as land is just too valuable. The question is what do they do with this piece of land. The Applicant has said by right they can put 3 office buildings with 700 jobs which produces roughly \$143,000 per year in tax revenue for the City. The overlay produced 10 times the tax revenue, or \$1.4 million. He can see how Councilor Dwyer's goal of creating more tax payers could be an incentive to allow that but that is not necessarily the overriding factor. Like Mr. Coviello, he has been doing a lot of research and he's not sure the rezoning request is good for the community. They have had enough testimony that he doesn't see the benefit of re-zoning this. He felt that the tax revenue is off set by the City's resources. He keeps heading down the road of 700 high paying jobs, which makes more sense to him, as opposed to creating space for 680 wealthy seniors, who can afford \$600,000 and maintenance costs. Those are not moderate income people but are fairly well to do. To this day he has not seen anything that is pushing him in that direction. He does not believe that affordable housing should be part of this and this should rise and fall on its own merits.

Vice Chairman Roberts felt that Mr. Coker made a good point that the issue of affordability might not have even come up unless the units were quoted as so expensive. It feels they are trying to shoe horn it but they are two separate issues. As much as that is a critical issue, they need to consider this draft that the City staff has prepared in the context of a legislative standpoint.

Mr. Coviello thought he would be fine with this if he was confident that the housing would be for Seacoast residents.

Councilor Dwyer felt that she represents a different demographic. She has a parent on social security and a modest income, living at Riverwoods. She drives every day to Exeter from Portsmouth, as many people have done for their parents. She would bring her mother here from Illinois if that was possible. She has heard many people saying they would like something in Portsmouth rather than do the 35 minutes to Exeter twice a day. A lot of people who have moved to Portsmouth and who are now taking care of older relatives from other parts of the country, could have that option. A lot of people who have moved here and love the house they are in and love the City will not leave anytime soon. It would be such a relief to bring their parents to such a place.

Deputy City Manager Hayden responded to a comment made by Mr. Coviello. Theoretically they could re-zone this to anything but the reality is they are not going to down zone it to work force housing without a massive substantial subsidy.

Mr. Coviello has talked to people who say they wish their adult children could move here but they can't because it's too expensive.

Mr. Blenkinsop indicated he would be interested in knowing whether anyone has any numbers on what is happening in Portsmouth in relation to the State and whether the seacoast is also getting older? Mr. Holden stated that the Portsmouth population is getting much older than the state, partially because

they have services. Councilor Dwyer wanted to make sure they factor out how much of that is subsidized services.

Deputy City Manager Hayden wondered what people think about how most hospital now have satellite offices mushrooming up around them. She wonders, over time, where are those uses going to go? For the City, do they need to develop all of their land right away or would it be good to have this available for when the medical community grows?

Vice Chairman Roberts noted that somewhere in the draft it says that the facility would have to be within ½ mile of a hospital. This question comes up every time they see a new section of the zoning ordinance. To what or how many parcels would this apply? Is this a one lot deal?

Mr. Coker felt that it effectively was a one lot deal.

Mr. Coviello doesn't see that being very satellite from the hospital as it is across the street. Back to Vice Chairman Roberts' point, he would be fine if they took away the discrimination factor regarding age.

Mr. Rice agreed with Mr. Coviello and he also read some demographic studies by Mr. Frances. When you put in age restricted housing, you are also discouraging the growth of young families or taking away opportunity for housing for younger families. Also, he brought up that this age restricted housing may in a relatively short period of time become irrelevant as that demographic decreases and more younger, vibrant demographic increases and the buildings are not suitable for that demographic. They have ended up building a lot of irreverent housing.

Councilor Dwyer wanted to underline Deputy City Manager Hayden's point and this is unlikely to have this be zoned for single family. That should be taken off the table. Mr. Coker asked about a planning unit development with a higher density. Mr. Holden stated it is OR now and they are looking for amendments to affect that zone so if there was a proposal to change a zone they would be looking at that and it is not likely that they would zone it residential or that the applicant would actually want that as there may be more value in another zone.

Mr. Coker has to keep reminding himself is that they hear the word senior housing and the normal reaction is the Feaster Apartments. This is not senior housing in his definition. This is housing for wealthy seniors. This is a huge proposal and he has lost any connection with affordable housing. He still comes back to the basic question of whether this is a good idea. Shifting demographics concerns him. It might be better to leave it OR and look to the future as a medical corridor.

Deputy City Manager Hayden felt there is a public good for a community when here is a full continuum of care but this is not what this is. That is a component that is of concern to her. Councilor Dwyer was more in favor of this when the affordable living portion was added to it. Independent to assisted is the biggest need.

Mr. Coviello indicated that one thing he looked at was what if the demographics shifts. There other parts of the country that have areas which are mostly an older population. Unlike the southwest and Florida, there are no surrounding communities that are housing the workers. Councilor Dwyer certainly wants to see everyone present in force when they work on their affordability housing to help beat off all of the NYMBY's to fight this argument. Every time they try to get there, there are a thousand reasons when they get close to affordability that people say they can't do it. She agrees with all of their arguments but she felt it seems weak to push it all in one place when they don't do anything the rest of the time. It seems weak to apply it to one parcel when they are not advocating all the time with other things to have affordability. November 24th is the work session and she expects a full house.

Mr. Coker felt that another thing they would see in a shift of demographics is that the elderly are more politically active than the active citizen and if they had 600 elderly people in this development and there was something before the City Council and 75 of them came out against it, it would make a big impression. The City Council did that with Smutty nose and disregarded their recommendation and listened to a small group of citizens.

Councilor Dwyer did not believe that the fact that the elderly do their civic duty is not a reason to not have the development. Mr. Coker did not feel that everyone agrees with that.

Deputy City Manager Hayden felt that what makes this such a big deal is that it is 500 units.

Mr. Coviello felt that Exeter is a great example. They got all this money up front and they built a beautiful school but what will happen in 25 years when they have a demographic shift and who is going to pay for the next bond? Councilor Dwyer responded that what they are doing is building affordable units downtown so they are doing both and it is not an either/or situation. Two train lines are starting but why do they know one will fall off? Mr. Coviello felt that as communities grow older, schools have closed and younger families move out and the State demographic studies show that.

Deputy City Manager Hayden felt they are now getting into playing junior demographics. How can they frame this differently so they can move forward? Do they want to put this on a Planning Board agenda where they have the option to speak publicly to this and invite people to come and comment? Vice Chairman Roberts felt they have talked a lot about demographics and are starting to talk in circles.

Mr. Coker asked what would prevent them from a referendum. City Attorney Sullivan responded that would take it into the next election next year. Some people would see that as an avocation of their responsibility. Mr. Coker agreed and withdrew his comment.

Mr. Coviello stated that the applicant's assertion that the housing will be filled up with local residents is a sticking point for him. Is there a way for them to show that as a fact? Deputy City Manager Hayden did not believe that is what they have asserted. They have their market study saying it will be a certain percentage. They have underscored that there will be a certain number of people living here now that would sell their homes and go there and there would be a certain number living here now that would bring relatives and friends here. Mr. Coviello remembers the Board being alarmed when this was originally brought up and the applicant responded that the area would be much smaller than their market study. Deputy City Manager Hayden felt that might be something that they could respond to in the form of a public meeting. She went back and reviewed all of the documents and, in looking backwards, she now sees them a little differently.

Vice chairman Roberts felt they should bring this up in a public hearing and have the applicant speak and have a public discussion. Mr. Taintor wanted to break down the issues as they have a pretty good list and he felt they keep confusing many things. There is the issue of whether this should be an employment center or a residential center. Then, they have a couple of different break points. They have an age restricted or non-restricted age residential. They have affordability for a portion of it or not affordability. What they haven't really talked about is the amount of housing that goes in there and the density and the type of structures that are created under the residential option that are different from the office. They have had in their mind a proposal that has been offered to them and they have not been talking about options within that proposal.

Councilor Dwyer felt that, along the public hearing line, perhaps this Board would like to identify some local experts who know the population. The City has twice as many subsidized low income seniors and they haven't been talking about that as a City. Approximately 1,000 low income elderly have been attracted from other communities. Mr. Coker stated they do more than their share. Councilor Dwyer indicated they are adding more to that all the time. She wondered if there were

individuals from the housing community or someone from the medical community, who they would like to pose very particular questions to that might help them. Perhaps someone from the Exeter Town municipality. It feels they have exhausted their points of view and they are not getting fresh perspectives. Why haven't they been worried about attracting elderly people before when they do it all the time with their subsidized housing?

Ms. Roberts was not sure how to respond to that. She felt there are some issues they have talked about that Mr. Taintor just highlighted, such as who the residents would be that impacts the umbrella issue of office research vs residential. How helpful would it be to have these outside experts to get us beyond these hurdles of specific issues.

Deputy City Manager Hayden stated that her concern would be that it would be an invitation only work session. On one hand she thinks it would be a good idea however on the other hand she thinks it could be challenging. There are not any self evident key players. She wanted to throw out an idea that she wasn't even sure was a good idea and that was should they go through each 3-4 items and do a straw poll. Mr. Taintor felt that one concern was whether they wanted an affordability component in it. Deputy City Manager Hayden felt you have to ask at what cost do you want to include the density issue for affordability?

Councilor Dwyer felt that theoretically someone could believe in both sides. She felt it was hard to do an either/or and she didn't believe it was a good way to poise the choices. Vice Chairman Roberts was unclear on whether they wanted to do a straw pole now or later. She wanted to allow the applicant a chance to speak and this seems like a good time.

Michael Kane appreciated all of the Board's effort. He indicated that they have a seriously vested interest in Portsmouth and they care about this community deeply. They are not people who come in and try to make some money and leave town. For 20 years he has been bringing companies from out of State to Portsmouth. They always ask about the schools and the housing availability. Those are two things that bring in good businesses. His company also does a ton of office development. There is a lot of office space available and there are plenty of other locations to build more. Jobs provoke office space but office space does not provoke jobs. It is their job as developers to look and see what is missing in a community. This is not an affordable housing project. It is an upper market housing project for senior citizens but he does not think it overly expensive. Also, he doesn't see the number of residents being able to shift the demographics of Portsmouth. He doesn't think the community in Exeter is a short lived one as it has been there since 1980. They felt this proposal was good for the community. It bring in 10 times the tax revenue of office space. He thinks this is a solution that is good for Portsmouth. There will be people from out of town but when they look at the demographic information and if they expected to bring everyone from out of town, he would be man enough to stand up and say that. They feel it will open up housing in Portsmouth where people can't live in right now and support them as they get older in a comfortable way. There certainly will be people from out of town. When they offered the \$10,000 per unit he was afraid it might sound like they were trying to buy zoning in Portsmouth. He apologized if it came out that way as they did not mean for it to come across that way. They are seriously vested in Portsmouth and didn't want it to come out the way it sounded.

Attorney Malcolm McNeill stated that this property has been under consideration since 2005, beginning with the Chinberg proposal. Councilor Dwyer spoke about the demand for Office Research. He called Nancy Carmer and she they have not done an investigation on that but if they were, they would hire a guy like Steven Berg to do it. Steven Berg did the study that they supplied to the Board and it showed that there would be no significant demand for Office Research for 15 or 20 years. Since 2005 there has been no proposal from the Planning Board saying something different should happen here and the initiative has come from them for something that they believe this is viable. If it were viable from an office perspective, that is what they would be doing. The option of generating 10 times the amount of taxes, the City hopefully using that in a fashion that would help other components of

their housing stock and supply a need that was viable was what they were trying to do. Under the circumstances, all of evidence points to the fact that this would be a helpful component to the community. In terms of the demographic shift, he has been proposing these projects in there or four different communities and it always comes up. The presumption that everyone over 55 thinks the same way, votes the same way and does everything the same way is not the case. This community is not going to be altered. Attorney McNeill felt it would be helpful to have one more public hearing to vent the issues. He thinks it would be helpful to have some people from Exeter come and speak as that is a thriving community. Their consultant, Mr. Taintor, is very accurate regarding the issues. They would like to have one more chance to tell their side of the story one more time and have the Board decide where they are going.

Vice Chairman Roberts asked what the opinion of the Board was regarding a public hearing?

Mr. Coviello was in favor of a public hearing. There was very little that he disagrees with that Attorney McNeill said. No one is questioning any ones sincerity or motive and everyone is trying to do the right thing. There are some things that they just disagree on. They are all open minded and he would like to have them come back.

Mr. Coker asked if there was any way to play this up to the media as a very crucial fork in the road for the future of Portsmouth? Mr. Holden indicated that staff could take care of that. Attorney McNeill indicated he would like to work with Mr. Holden on that.

Mr. Holden felt that the public hearing may take 3-4 hours. They are committed through December now. Deputy City Manager Hayden felt they could do it at a regular meeting? It was the consensus of the Board that they would schedule it for the first public hearing at the December Planning Board meeting.

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Continuation of Article 4: Districts and Uses

Vice Chairman Roberts turned the work session over to Rick Taintor.

Mr. Taintor confirmed that they would be starting on Page 26, Accessory Uses, Household Pets.

Ms. Tillman indicated that they have had some unusual household pets over the years and this section has been helpful for enforcement.

Mr. Taintor indicated it is one of those things that is allowed everywhere just because they want to not allow something somewhere else. Mr. Coviello asked if this is the current definition? Deputy City Manager Hayden indicated it is not the current section. Mr. Coviello asked if it was the idea that a pet not listed here is not a problem and it doesn't get enforced? Mr. Taintor felt it was the current definition and Ms. Tillman felt it works so they should keep it the same.

19.20 Accessory Use: Mr. Taintor confirmed this is the current definition. Ms. Tillman indicated that an industrial user who has an accessory daycare center is an example. They may find it more in an industrial type use. Another example is a cafeteria along with a manufacturing facility. Mr. Taintor stated this Zoning Ordinance is much more detailed than other Zoning Ordinances. In most zoning ordinances they might not have some of these sections but they become issues in Portsmouth so there has become a need to insert them.

Mr. Coker asked if an accessory use included in-law apartments? If they had a large house and they needed a caretaker to live there? Mr. Hopley confirmed they could not do so in a residential zone. The primary focus is another kitchen. Unless you are zoned for multiple units in a building. In many

communities that concept it allowed. Councilor Dwyer added that the Housing Committee is going to ask the City Council to have the Planning Board take a look at that. Mr. Hopley felt that, over time, the potential for that to go from an in-law apartment to an apartment for rent is the issue which eventually changes the character of an area and parking becomes a huge problem.

Section 19.40 Day Care Facilities. Section 19.50 Support and maintenance shops. Ms. Tillman stated they don't have that type of shop in Portsmouth any more. If you had a nursing home that had an accessory use of a laundromat. This section breaks it out. It was important to get daycare in. Deputy City Manager Hayden asked about Section 19.30, roadside stand, and if that would ever come up or could they remove it? Ms. Tillman felt they are problematic and cause traffic problems. It has been in since the 1982 ordinance. She has no problem with deleting it. Councilor Dwyer indicated they could go to the BOA. Mr. Taintor stated it would have to be associated with a farm. City Attorney Sullivan could not think of one. Deputy City Manager Hayden confirmed they will delete it.

Councilor Dwyer asked why are MRO and MRB treated differently for day care facilities for employees? Mr. Holden stated that MRB tends to be more business oriented and more traffic and MRO is more open, so you could almost argue that they be reversed. Mr. Hopley asked what would be the down side to having it for employees? Mr. Taintor felt this was something that they had not cross-referenced the changes. He felt they could get rid of the accessory use as they already allow it as a permitted use.

Support and maintenance shops. Mr. Taintor felt they might as well take that out too. Ms. Tillman asked about an apartment building with a storage shed that keeps the equipment for the site. Mr. Taintor felt that would be no different than keeping your snow blower in your garage. It seemed to him that it is covered. Mr. Coviello asked if that would just be currently not permitted? Mr. Taintor confirmed it was an accessory use. Mr. Holden felt the key is not to include outdoor storage.

Deputy City Manager Hayden then asked if they could delete section 19.60, concessions and services located within the principal building. Mr. Coker asked if he was a home owner and he bought a shed and put it in his back yard... Mr. Hopley indicated that would be after he got his permit! And Ms. Tillman indicated it couldn't be too close to the property line! Mr. Holden indicated it couldn't be too high! Deputy City Manager Hayden indicated he might need a Conditional Use permit if there is a foundation! Mr. Taintor confirmed that would not be an accessory use but it would be an accessory building and he would still need a permit. Mr. Holden was concerned about a concession stand and how big it could become. He confirmed this came up when we were trying to stick in under 19.20. He agrees with shrinking some of the others in but he felt there was a limit to that. Deputy City Manager Hayden asked if this would be like the cafeteria in K-Mart? Mr. Holden asked stated it could be at Pease where a lot of buildings were thinking of having their own concession stand. If they put everything under 19.2 they are going to have things they don't want. Mr. Coker asked about the sausage man at Home Depot? Mr. Hopley confirmed that would be under enforcement. For example, for services, he believe they meant to include day care when they originally did it. Mr. Coker stated that services could be a beauty salon, a barber shop, a manicurist. Mr. Holden stated they had a problem at Pease because they didn't allow food services for many years. Mr. Taintor felt they should just say it is permitted. Councilor Dwyer felt they should be treating GA/MH the same on that? Mr. Taintor felt it should just be a "P" everywhere as it is an accessory use. There shouldn't be an "N" if it is a use that is typically associated with a single residence. They may want to turn the GA/MH into a "P".

Page 27. Section 20.70 Drive through facility. The intent is to incorporate the work that they did on drive through standards when they were looking at the OR district before into this revised ordinance. Wherever they see the reference to 10.556, those are all of the standards they talked about for months before and they are all by Special Exception.

Section 20. Accessory Storage. Section 20.10 Indoor storage for Motor Vehicle or boat is permitted in all districts. Deputy City Manager Hayden asked if they could combine 10, .20 and .30 as they are all permitted? Mr. Holden felt that commercial vehicles might have certain requirements. Each came up under different circumstances. Mr. Taintor felt they could have a combined category that is more generic. Deputy City Manager Hayden felt the major concern is leaving things outside that upset neighbors. Ms. Tillman suggested re-write it and combine it. Mr. Hopley felt that seasonal on 20.30 should have a length of time. Mr. Holden stated they took the position that it did not matter if the boat went into the water or not. Mr. Taintor felt it didn't have to be seasonal then. The existing regulation is stricter. They changed it from registration to boat length. Deputy City Manager Hayden suggested keeping a seasonal limitation. Mr. Taintor asked about nine months of consecutive storage? Deputy City Manager Hayden suggested adding, not to include hand powered craft. Mr. Holden suggested season outdoor storage not to exceed "a time period". Deputy City Manager Hayden stated this is not going to come up unless there is a problem. If it's not broke, don't fix it.

(ML Geffert arrived at 8:10 pm)

Section 20.20. Vice Chairman Roberts asked why they don't seem to have outdoor storage of regular motor vehicles? Mr. Taintor stated they may have as many personal motor vehicles as you want and they can sit there forever, as long as they are registered.

Mr. Rice noted that Commercial vehicles that can be parked in SRA and SRB, what about vehicles that have a great length. There are trailers that are huge, for example, that store other vehicles. Mr. Holden stated they have not had complaints on those. Do they want to regulate that and does it serve the public? Mr. Rice was asking about large moving van type vehicles that are big. Ms. Tillman indicated it would be a temporary structure. Mr. Holden pointed out that it's registered. Mr. Rice gave an example of where people were trying to sell their homes and an abutter had a large vehicle and it detracted from the value of the home. But there was a license plate on it. Mr. Rice's other comment was on a boat length of 12', is this enforceable? Mr. Holden explained that this is only if someone has a problem. If someone has multiple boats on their property and it's causing a problem for an abutter, they would have ways to go in and look at it. The City Council wanted the Board to honor the maritime traditions of Portsmouth and that's where the lobster traps came up. Mr. Rice felt that the 12' length on the boat seems awfully short and he thought they might want to add a few feet. Deputy City Manager Hayden felt they were killing themselves on the minutia.

Page 27, Section 20.40 Outdoor storage. Mr. Hopley was surprised by the lobster traps. He wondered how someone would like to have hundreds of lobster traps stacked on their property line. Mr. Taintor indicated that this section is the same. He was trying to take all of the supplemental use regulations out of the use table. Mr. Holden felt they could incorporate what they originally had. He also added that they have only had one problem with this, a guy who had 800 traps on his lawn.

Page 28. Section 20.60 Outdoor storage. Mr. Hopley asked how this differs from 20.40 and if there was a conflict there. Mr. Taintor explained that they were trying to consolidate things from the various sections and there was a special regulation for waterfront industrial and waterfront business districts. They did not mean to be more restrictive in the other districts so that may be a good point. Mr. Hopley felt there could be some confusion. Ms. Tillman asked, as this is an accessory use, do they still have the primary use in the use tables? Mr. Taintor confirmed that he will check to make sure they still have it.

Mr. Coveillo wanted to compliment the new format of the draft as it is much easier to read.

SIGNS:

Rick Taintor started off with a powerpoint presentation. He showed different types of signs, including signs that are window signs, projecting signs hanging over the sidewalk, which would involve zoning and City Council for licensing, sandwich board or A-frame sign, projecting sign over the front entrance, wall sign flat against the building, a hanging sign, a banner, an awning sign, a building nameplate or a historic nameplate on the building, for sale or for lease signs. There is a lot of energy going on downtown with the signage. He displayed roof signs and marquee signs, various of types of window signs and free standing signs. They do not want to write the ordinance to prevent a lot of this signage. The Brewery has a lot of interest along the sidewalk he would applaud that when it is done well. One thing that is an issue is signage on the second floor downtown. They then get into the internally illuminated, channel letters on a sign plate and neon signs in a window. Gas station canopies have a lot of signage on them that makes them very distinctive and the questions is how much is signage? A monument sign is a free standing sign whose base is on the ground. They have pedestrian friendly items such as menus, notices, and handbills. Business information signs (hours of operation, Visa) aren't worth regulating. Internally illuminated signs are a big problem along with a halo sign (Coldwell Banker sign). City Attorney Sullivan indicated that moving and flashing signs are also a problem.

Councilor Dwyer asked about signs that move, like the one at the corner of Bartlett and Islington. Mr. Hopley confirmed they are not allowed and that sign is being addressed.

Mr. Rice understood that projecting signs are hanging signs, perpendicular from the wall, but asked if they can also project out from the building and not be perpendicular. Ms. Geffert agreed that they look really bad. Mr. Rice felt they would be a concern in the HDC. Mr. Taintor indicated he will go down and look.

Mr. Coker felt, as a downtown resident, he felt that all A-frame signs should all be outlawed. Mr. Taintor confirmed that is not a zoning issue as they are in the public right of way. Mr. Coker sees A-frame signs that are clearly out of spec. He has seen people peel stickers off of approved signs and put them on signs that take up half of the sidewalk. He has a huge problem with A Frame sign. What he doesn't have a problem with are awning signs and window signs as they need approval from the City Council as they project out. Window signs, which are inside the window, are very difficult to regulate. They would be regulating something that is inside of private property. The Gap is a good example. Mr. Taintor pointed out that if you take that point of view to the extreme and not regulate inside the building, someone could have a very large garish bright sign in the window that would change the whole look of the area. They have talked about having a certain distance back from the window that they would regulate. Mr. Coker could make an argument with flooding the streets with lights and glare but he felt that MoJo's BBQ is an example as it is private property. Mr. Taintor pointed out that the outside of the building is private property also. Deputy City Manager Hayden felt that signs are all about what you can see from the public right of way. Mr. Holden felt that the products are not viewed as signs and are displays. Ms. Geffert mentioned illuminated awning signs, which would change the character. She said they should imagine 42th Street in NYC where the window signs used to be just blocked out for peep show places and were horrible and would look terrible downtown. What if someone painted the plate glass window and painted on wording. There needs to be a review for aesthetics. She felt windows have to be viewed as windows and translucencies.

Mr. Coviello wished they could extend the downtown regulations down the other corridors.

Mr. Taintor explained that they have talked about the idea of creating sign districts like zoning districts. They talked about having one for the districts that are lower key and pedestrian oriented and one for the larger scale commercial districts and also they should think about the residential and industrial districts. They can then start looking at what types of signs and size and number of signs for

all of those areas. Plaza 800 might be different than other compact areas of the business district. Ms. Geffert felt they should consider gateway areas for different regulations. Mr. Taintor agreed they could look at that.

Mr. Coviello stated that the last time he mentioned the internally illuminated signs he thought they were eliminated everywhere. Mr. Taintor responded that they are still talking about that but there are some internally illuminated signs that work. They need to look at that a little bit more. Mr. Coviello asked if a special exception was an option? Mr. Taintor felt that just started sending more sign exceptions to the BOA. Mr. Coviello would not be offended if they don't allow some nice internally illuminated signs.

Mr. Taintor felt illuminated signs create all sorts of issues. It is difficult to keep up with the technology. Moving signs and animation signs asked the question of how many times the words could be changed per day. Looking at controlling animated signs by defining changeable signs and then looking at the whole LED technology and how that is applied to Halo and moveable signs.

There is a whole variety of temporary signs an the ordinance addresses some of them. It is confusing because of how the ordinance defines a temporary sign as a sign for a new business. There are special events signs, for sale and for rent signs, construction signs, etc. and they all need to be addressed. They need to address signs above the first floor. They also want to exempt some signs all together such as historic signs and signs that are necessary (directional signs). He showed a one page sign definition from a municipality in California to show how complicated it can get.

Mr. Taintor confirmed they will be coming back to the Board with draft language. This is a very difficult section.

Mr. Coker was not sure how they want to deal with signs but the A-frame signs bother him. Mr. Holden confirmed that they don't have any authority over a-frame signs. Mr. Coker asked why are real estate people exempt? City Attorney Sullivan confirmed that was a policy decision made by the City Council.

Deputy City Manager Hayden indicated that the Board's next Work Session will be on November 13th from 6:30 – 9:00 and they will get a draft sign ordinance ahead of time and maybe another section too.

Mr. Taintor indicated that definitions will also be revised and provided to them.

Mr. Holden felt this has been a very productive work session.

II. ADJOURNMENT

A motion to adjourn at 9:00 pm was made and seconded and passed unanimously.

Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on November 20, 2008.

