

# CITY COUNCIL WORK SESSION

## Review of Proposed Revised Zoning Ordinance

June 25, 2009 – 1:00 p.m.

Portsmouth Public Library Levenson Room

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City Council Present: Mayor Ferrini, Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Smith, Kennedy, Spear, Hejtmanek and Pantelakos

Officials Present: John P. Bohenko, City Manager; Robert Sullivan, City Attorney; Cindy Hayden, Deputy City Manager; Rick Hopley; Chief Building Inspector; Rick Taintor, Planning Consultant, Lee Jay Feldman, Chief Planner, Alan Brady; Communication Supervisor, John Ricci, Planning Board Chair and Dianne M. Kirby, Deputy City Clerk

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### **I. Call to Order**

At 1:00 p.m., Mayor Ferrini called the work session to order. He thanked the Planning Board for all the hard work that has gone into revising this Ordinance.

### **II. Welcome/Introduction**

John Ricci, Planning Board Chair thanked the members of the Planning Board and Planning staff for all their hard work within the last three years on this project. He stated it has been a long and extensive process.

### **III. Presentation Overview – Land Use Management System – Background & Process – Objective & Format**

Rick Taintor, Planning Consultant, in a PowerPoint presentation outlined the context and background of the Zoning Ordinance. He reviewed the process taken and changes that have been proposed. Mr. Taintor stated the Zoning Ordinance is governed by various laws and regulations to include state and federal laws, Planning Board regulations, City ordinances, external codes and the Master Plan. He discussed the various land use boards stating the City Council is the primary board with the Planning Board, Conservation Commission and Historic District Commission performing a more administrative role under zoning along with the Board of Adjustment who is also relegated to hearing appeals and variances. He further discussed the differences between the zoning and site plan reviews. He discussed the dimensional & intensity regulations and reviewed the background of the 2005 Master Plan and the existing Zoning Ordinance. Mr. Taintor stated the process started in April 2006 and after 45 Planning Board Work Sessions, 8 City Council Work Sessions and meetings and 12 meetings with other municipal boards, they are submitting the draft Zoning Ordinance. He said the objectives of the committee was to promote sustainability, balance flexibility with predictability, balance resource protection with private property and economic development, use common sense and make the ordinance more user-friendly. He further said in making the ordinance user-friendly they have changed the structure and format of the section numbering, incorporated more tables, defined terms in a more expanded list and highlighted these terms within the text and created a more readable page layout.

#### **IV. Resource Protection & Sustainability**

Rick Taintor, Planning Consultant, reviewed the goals and their corresponding strategies for protecting neighborhood character, improving commercial corridors, protection of natural resources and the protection and enhancement of community character. He stated these goals would require minimum standards for open space and remove requirements in Central Business A/Central Business B (CBA/CBB). He said we would have to be flexible with the front yard exception, look more closely with regards to off-street parking and off-street loading and look into the possibility of drive-through uses. He further outlined projected changes in wetlands protection and site review regulations.

##### Questions & Discussion

Councilor Spear stated the details required by open space, the CBA change and the off-street parking changes are all great changes and was glad to see them in there.

Councilor Smith said he is assuming this is still going to be a permissive ordinance. Rick Taintor, Planning Consultant, stated the Ordinance is permissive with some restrictions. He said a permissive Ordinance basically lists what you can do and if it listed, you can not do it. He said a restrictive ordinance will list what you can do this and also what you cannot do. He said with the new ordinance, by in large, if it is not in the table, it is assumed you cannot do it. Councilor Kennedy asked in order to bring new blood into the City, which type of ordinance would he recommend we use. Rick Taintor, Planning Consultant, said it is a matter of choice. Councilor Kennedy asked which looks better in court. Rick Taintor, Planning Consultant, stated either would.

Councilor Novelline Clayburgh asked if we were to build our Middle School without State aid, we wouldn't have to follow the State code – correct. Rick Taintor, Planning Consultant, stated the Zoning Ordinance only restricts private property with the exception of Land Use and Building & Safety Codes.

Assistant Mayor Blalock stated he liked the innovated suggestions, such as a simple matter of parking in the back of building rather than in front to embellish streetscapes. He feels this is certainly needed in our new ordinance. He asked if Mr. Taintor could clarify, for example, eliminating the open space in the downtown and central business districts. He further asked if the new ordinance would include some kind of mitigation where you would account for storm guard run off. Rick Taintor, Planning Consultant stated it would be done through site review. Assistant Mayor Blalock stated he feels it is easier to deal with a permissive ordinance because you know what is allowed and it creates a balance within the district and helps create a balance down the road.

Councilor Kennedy asked how similar the Master Plan maps and the Zoning maps are. She asked if the changes were major or minimal changes. Rick Taintor, Planning Consultant said he would go into that more elsewhere on the agenda. He stated one of the biggest changes is in the corridor.

Councilor Kennedy said she is confused about the front yard entrances. She said some sit on the street and some sit back. She asked if Mr. Taintor was saying those will all have to move half way up. Rick Taintor, Planning Consultant stated many districts have a 20-30 foot set back, which is required for zoning. He said it doesn't make sense to say you have to build 30 feet back when all the rest are not. He stated the new ordinance will say the required setback is the average of all the established set backs.

Mayor Ferrini called a brief recess. Mayor Ferrini called the meeting back to order.

## **V. Gateway District**

Rick Taintor, Planning Consultant, stated the Gateway District and the Gateway Planned Development are two separate concepts. He stated the Gateway District and the Gateway Planned Development are the proposed zoning strategies for the Lafayette Road Business Corridor. He reviewed the zoning maps for the Gateway District comparing the existing zoning map with the proposed new zoning changes. He stated the objectives are to encourage mixed-use development in both residential and commercial properties, enhance the character of the corridor development, expand moderate-cost housing opportunities, incorporate pedestrian/bicycle access and circulation and use transportation infrastructure efficiently. He went through a series of slides where, with the use of trees and architectural design, made an unattractive intersection more attractive.

He stated the proposed Gateway districts are the Southgate Plaza/Water Country area and the Yoken's/Market Basket area. He explained that this would be accomplished in part by reducing front yards and placing parking behind the buildings and encouraging the use of landscaping.

### Questions & Discussion

Councilor Spear stated this idea is brilliant. Councilor Kennedy agreed. Councilor Dwyer said we need to go to the next stage and ask where else can we do this. Councilor Kennedy asked if there is a standard committee or brochure for developers. City Manager Bohenko stated there is. He said that a developer will come in and meet with Nancy Carmer, Economic Development Manager. He said they will discuss what their interest is. Ms. Carmer will then suggest some areas of the City to look at. If there are space issues, she will refer them to the Pease area. He said Ms. Cramer will then walk them down to the Planning Department and introduce them to the people there as well as legal and the City Manager's office upstairs. She will give them a packet of information about the City and if they have a specific area in mind, she will set up a time for them to sit down with the staff and brainstorm what they want and follow it up with e-mails and letters.

Mayor Ferrini stated he would like to see something like this Gateway District concept on Woodbury Avenue.

Councilor Novelline Clayburgh asked if all the renovations to the Southgate Plaza have been designed with this concept in mind. Rick Taintor, Planning Consultant, said the renovations are being done under the existing ordinance, not the new one.

Assistant Mayor Blalock stated in the Route 1 area with regards to the 105 foot set back, this really doesn't fit a lot of the properties anymore. He said the new one would be a 92 foot right-of-way with a set back from that of 20 feet. He asked if that reflects what is currently there for the most part. Rick Taintor, Planning Consultant said some commercial properties reflect that, but most properties do not because they have parking in front. Mayor Ferrini said it would be a sin if permits got pulled up and down Route 1 without this being passed.

## **VI. Sign Regulations**

Rick Taintor, Planning Consultant, stated signs are important. He outlined the types of signs within the Portsmouth area along with the major issues of height, set back and illumination. He reviewed the zoning map showing the various sign districts and stated the proposed zoning ordinance has set up tables to easily identify sign types, areas, height, setback and illumination restrictions. He stated an illuminated sign is a very tricky area.

### Questions & Discussion

Councilor Spear said we can get a much better looking City if we adopt some of these aesthetic improvements Citywide. He said he would like to see a more aggressive stance on this. Councilor Dwyer said the challenge for her was trying to get aesthetics into a code. Rick Taintor, Planning Consultant, said the use of sign districts is one way you can get this. He said you could be more permissive in one district and less in others. John Ricci, Planning Board Chair, stated this was a very hard issue for the board to get through. He invited the Councilors to watch the work sessions on signs to see the issues that arose. Councilor Pantelakos said what we might need is to set a time line for lighted signs to be turned off. Councilor Novelline Clayburgh asked why the Yoken's sign is still up. City Manager Bohenko stated originally the community wanted to keep the sign. He said what we wanted was to find someone to take the sign and preserve it. He said this is not happening. He said we are looking into what we can do. Assistant Mayor Blalock said a resident suggested we have it restored and put it in Leary Field to replicate the CITGO sign in Fenway Park.

## **VII. Downtown Parking**

Rick Taintor, Planning Consultant, reviewed the existing system. He said the baseline was adopted in 1997 with a purpose of promoting shared parking in garages and discouraged individual lots/garages at street level. He went on to say the challenges with this were increased complexity and a lack of transparency. He stated the objectives of the proposed zoning ordinance were to continue flexibility in the downtown area, promote public/shared parking and discourage surface parking lots. He said in the short term it is proposed to simplify and update, with long term proposals for separate parking financing from development permitting.

Rick Taintor, Planning Consultant went on to review Phase 1 (short term) – Modify Parking Requirements by eliminating parking requirements for first-floor, non-restaurant businesses, standardize parking requirements based on floor area and deduct the first 4 spaces in order to support smaller uses. He went on to say Phase 1 would require on-site parking for residential property with no in-lieu fee option, eliminate the 1997 “baseline” computation and increase in-lieu fee to 40%-50% of estimated cost.

Mr. Taintor, Planning Consultant reviewed Phase 2 (long term) – Parking Assessment District as being based on the Capital Improvements Plan. He said the proposal would entail a full transition to a parking enterprise fund with clear public/private cost sharing. He said it would disconnect parking assessment from development permitting, spreading costs over all benefiting properties and not just new development. He said also within Phase 2, all off-street parking requirements in the Downtown Overlay District will be eliminated, assessment will be based on current supply/demand and credits will be given for physical spaces provided and prior payments to off-street parking fund. He said this will be a complicated plan and will take thought, discussion and a lot of hard work.

### Questions & Discussion

Councilor Spear asked if eliminating off street parking will also include residents. Rick Taintor, Planning Consultant stated it would. Councilor Spear stated this is a fantastic plan.

Councilor Smith said with regard to annual fees, he asked if a store front business that paid up front would get a credit, but then after time would have to pay again annually. Mr. Taintor said there would be a tax, a surcharge or credit for on-site parking. Councilor Smith said he feels this could push business/offices out of the downtown area to Pease. City Manager Bohenko said it isn't a tax, it is a fee. He said the Economic Development Commission has put a lot of time into this. He said it would be a good idea to have the Parking Committee and the Economic Development Commission get together to look this over. Mayor Ferrini suggested the areas of the Zoning Ordinance that are complex and in need of public input be red-lined and a procedure for review be set up.

Rick Taintor, Planning Consultant, stated they are requesting approval of Phase 1 (short term) and will be asking for a study for Phase 2 (long term).

Councilor Kennedy asked if there was a reason why we didn't go to Phase II first and had the study. Councilor Dwyer said we have some immediate needs that need to be taken care of with a short term fix. City Manager Bohenko said with Phase II there is the commitment of the Legislative body to have parking garages. He said we have had a CIP with a parking garage listed for 10 years now. He said if we are going to go this route, we have to go forward and stick to some additional public parking because it won't work without it. He said additional parking is a key item in Phase II. Assistant Mayor Blalock said he see it as Phase 1 is something we have to do now. He said a property owner downtown has to recognize that when a community provides parking for their business, there is a value there. He said when we spend all this money on parking we are essentially increasing the value of everyone's property. He said the value is there – the more parking the City creates, the better off the downtown businesses are. Rick Taintor, Planning Consultant, said with this plan half will be paid by the benefit properties and half by the property owners.

Councilor Smith said he agrees it will raise property value, but he still feels it will force businesses/office spaces out of the downtown area because they can go to Pease and pay less per square foot and not have to pay this additional fee. This will also hurt the restaurants and shops in the area that depend on this lunch crowd for business. Councilor Dwyer said in order to avoid what Councilor Smith is talking about, we have to provide parking. She said once we have this, the fee becomes very small. She said we could pull in some short term ideas, such as exempt first floor businesses or small business owners. She said we do not want to drive out small business. City Manager Bohenko said we are headed for an enterprise fund for parking. He said we would want to use caution given what Councilor Smith has said. He also agrees with Councilor Dwyer in that we need to look out for the smaller businesses as those are the ones with vitality. He said he believes once the City becomes a full enterprise fund we will have enough money set aside and a big enough revenue stream to build another parking garage without having to tap into the general fund. Councilor Dwyer asked when we have the public hearing should we even mention the long term aspect since we are not really passing that. City Manager Bohenko stated Councilor Dwyer was correct.

Mayor Ferrini called a brief recess. Mayor Ferrini called the meeting back to order.

### **VIII. Continuing Care Retirement Community (Borthwick Village)**

Rick Taintor, Planning Consultant reviewed the proposed "Borthwick Village" Continuing Care Retirement Community stating it will contain independent living, assisted living and skilled nursing care facilities. He said the site will be 35 acres within a half-mile radius from the hospital. He further stated unusable open space would be 40% of the developable land with a maximum height of four stories high. He said site review would be required to outline emergency and fire access. Rick Taintor, Planning Consultant said we are working on a plan to reflect the proposal of the developer. He stated a public hearing on this proposal will be held on July 9, 2009 with a regular Planning Board meeting to follow on July 16, 2009.

#### Questions & Discussion

Councilor Hejtmanek asked if this facility would be affordable to our residents. Mr. Taintor said there were many questions about whether it should be affordable workforce housing or affordable senior housing. He said these facilities typically are not affordable.

Councilor Spear said he does not like the idea of setting an age limit of 62 or older. Councilor Dwyer said what the Master Plan is asking for is a diversity of housing. She said our residents want to be able to bring their parents to Portsmouth. She further stated this would be a proactive response that our residents want for themselves or their parents. She said it provides a much needed service that Portsmouth presently does not offer. Councilor Smith said this is something that has been very strongly asked for. He said he likes the full scale environment. He further stated these types of communities are needed. He said our generation is getting older, but their independence is not. Councilor Novelline Clayburgh said there are long waiting lists for this type of care in this area. She said we definitely need this concept.

Councilor Kennedy asked what the bed capacity is within the present nursing homes within the City. She further stated it looks like we are building our ordinance around a developer instead of the developer building around our ordinance. Councilor Dwyer said we do not have a continuing care option in our present Zoning Ordinance. She said we need to have this option in the new ordinance. Councilor Kennedy said she is not disagreeing with having the option in the ordinance, what she is disagreeing with is creating the zoning around the developer. John Ricci, Planning Board Chair, said we need to plan around the need of our aging residents. He said he thinks this is a well thought out proposal.

Councilor Spear said his objection was in limiting the age to 62. He said he feels we can have this type of facility and zoning without the age determination. Councilor Kennedy said she sees people in need of independent living assistance who are under the age of 62 and these residents should be able to qualify for this facility also. Councilor Dwyer said we have a lot of affordable age discriminating housing within the City. She said what we don't have is affordable housing for the middle income residents. She said most of our public housing is being turned into dealing with the people who don't own a home. She said she does not feel everything has to be for everyone. She further stated we do not have anything for continuing care/independent living residents. Councilor Novelline Clayburgh asked how many residents this proposed facility would accommodate. Rick Taintor, Planning Consultant, said the proposed plan would have 410 units for independent living with 72 units for assisted living/skilled nursing residents. Mayor Ferrini stated he agrees with Councilor Dwyer's argument that you can't build something that is for everyone when you already serve a certain need. He said he thinks this is a need that we don't provide in the City. He further stated this would be great for the tax base as it would pay a lot of money in taxes. He said one of the things the City Council has to contend with is the continuing "Greenwichization" of Portsmouth and that the amount of money that people have to pay to get into these units is not for average folks. He said it is about money and it is about a lot of money. He said this is ok because it provides a nice benefit to the tax base and he likes that. He said he would like to see the ratio of people who sell a house on the water, the ratio of other housing stock that is less expensive and the existing elderly housing and how these ratios work.

## **IX. Zoning Map Changes**

Rick Taintor, Planning Consultant reviewed zoning map changes to Islington Street, the Historic District, Osprey Landing, the Bypass, Bartlett Street, Cate Street, and Cottage Street.

## **X. Continuing Review Implementation – Process Going Forward**

Rick Taintor, Planning Consultant stated they will continue to review design standards/regulations, performance standards, PDA Zoning Ordinances and the airport approach overlay. He said nonconforming lots would be looked at to remove the need for every resident to go to the Planning Board for approval in areas such as Atlantic Heights, the Historic urban core and other older neighborhoods. He said implementation comes with the City Council adopting the Zoning Ordinance, amending the Planning Board Ordinance and amending the Site Plan Review Ordinance and the Planning Board adopting the Site Plan Review Regulations.

Rick Taintor, Planning Consultant stated from here the Zoning Ordinance/Site Review Regulations will be posted to the website with Planning Board Public Hearings to be held on July 9, July 23, August 6, and September 10, 2009. He further stated a hearing will be held on July 16, 2009 on the Continuing Care Retirement Community (Borthwick Village). He said after all the public hearings are completed, the Planning Board recommendations will be sent to the City Council for consideration and action.

### Questions & Discussion

Councilor Kennedy stated these public hearings are all in the summer months when a lot of people are on vacation. She asked if a public hearing could be held in October.

Councilor Smith stated he is glad to see the changes within the Historic District area. He further stated he thought there was a deed restriction on the area of the Stuart Shaines building. He asked if there is a deed restriction, how will our zoning rules affect that. City Attorney Sullivan stated it would always remain on the side of the Historic District Commission even though we put the property in place.

Councilor Smith said with regard to taking the noise restrictions out of the Zoning Ordinance, he feels it should be maintained in both places. He feels if you take the noise restrictions out of the Zoning Ordinance, developers are not going to look elsewhere for these restrictions. He said the restriction for developers should remain within the Zoning Ordinance with residential/business restrictions within the Noise Ordinance.

Mayor Ferrini thanked Rick Taintor, Planning Consultant, the Planning Board and staff for a great presentation. He asked when we can get together to get a technical, page by page, old vs. new meeting. He further asked, when the presentations for the public are scheduled, would it be under the City Council agenda or the Planning Board agenda. City Manager Bohenko stated that a meeting can be set up between the Council and Mr. Taintor and staff for a detailed side by side review if the Council would like one. He suggested he will go back and see how this can be done and set it up. He further stated the Planning Board does need to stay on their proposed schedule. He said the Council can create workshops for the public with the Council as the sponsoring agency and that could happen in September/October time frame.

Rick Taintor, Planning Consultant, stated that a questionnaire would be put on the website for the public to submit their questions and comments. Councilor Dwyer suggested possibly taking some properties and showing the problems/issues under the old zoning ordinance and then the new ordinance or having a "fish bowl" type meeting with the Planning Board. John Ricci, Planning Board Chair, asked if the board could get some idea of what some of the Council's issues are and then they can gear another presentation in that direction. Councilor Dwyer asked if a Council member has some specific question or area they don't understand, maybe they could get with the board. City Attorney Sullivan said this is a legislative function. He said there is latitude for that. City Manager Bohenko said the only problem he has with this is that it fragments the Council. He said he feels this should be discussed as a body.



Councilor Spear stated that on page 31 – Permitted Usage - it does not talk about television antenna as being allowable. Rick Taintor, Planning Consultant said this section is about Wireless Telecommunication Facilities, television antennas would be discussed in another section.

Councilor Spear spoke to page 48 – Energy Panels. He asked if Mr. Taintor could explain why solar energy panels cannot be visual from 20 feet about the edge of the street. Rick Taintor, Planning Consultant, stated they allow them to be there, but they are required to hide them from the view of other property.

Councilor Spear spoke to page 78 – Downtown Overlay District – Ground Floor Uses. He said the intention of the pedestrian use is great. He said in looking at the non-residential principal uses permitted in the underlying zoning district he doesn't feel this is exactly right. However, he asked how this can be avoided in other situations like Hanover Street where there is a whole block where there is no pedestrian interaction and compare that to somewhere like Market Street where every 15 feet there is a door, either from an apartment or a business. He asked if there was a way we can somehow codify that there has to be pedestrian interaction of some sort to eliminate it becoming a desert. Mr. Taintor stated this has been discussed and does deserve more study.

Mayor Ferrini requested that another session be set up for these types of questions. City Manager Bohenko stated he could set up a tutorial type session with Mr. Taintor for any Councilor who has questions. He said this would get the more technical questions out of the way. He said if any policy issues come up, these can be marked and brought up at a work session.

## **XI. Adjournment**

At 4:35 p.m., Mayor Ferrini closed the meeting.

Respectfully submitted by:

Dianne M. Kirby, Deputy City Clerk