

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

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

7:30 P.M.

JANUARY 15, 2009

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

MEMBERS EXCUSED: Donald Coker and Anthony Coviello;

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

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7:00 – 7:30 pm NON MEETING WITH COUNSEL in Conference Room A
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I. NEW BUSINESS

A. Election of Officers;

Mr. Holden opened the floor for nominations for Chairman.

Mr. Rice nominated John Ricci. Deputy City Manager Hayden seconded the nomination.

Mr. Blenkinsop moved to close the nominations. Councilor Dwyer seconded the motion to close nominations. The motion to close nominations passed unanimously.

The motion to elect John Ricci as Chairman passed unanimously.

Chairman opened the floor for nominations for Vice-Chairman.

Mr. Rice nominated Paige Roberts. Ms. Geffert seconded the nomination.

Deputy City Manager Hayden moved to close the nominations. Mr. Hopley seconded the motion to close nominations. The motion to close nominations passed unanimously.

The motion to elect Paige Roberts as Vice-Chairman passed unanimously.

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II. OTHER BUSINESS

A. Presentation of Capital Improvement Plan;

Before introducing City Manager John Bohenko, Chairman Ricci acknowledged the Planning Board members who sat on the CIP Sub-Committee and thanked them for their time and effort: Anthony Blenkinsop, Norman Patenaude, and Anthony Coviello.

City Manager John Bohenko stated that they were presenting the City's proposed 6 year Capital Improvement Plan for fiscal year 2010 – 2015. He explained that that process of developing this plan started this past fall, when a Memorandum went out to all Department Heads, including schools and Pease Development Authority, asking that they submit their capital needs for the next six years. The Planning Board Sub Committee met with City Manager Bohenko and various Department Heads to discuss their requests. For fiscal year 2010 Department Heads submitted requests in the amount of \$1,135,000 that would directly effect the fiscal 2010 general fund budget. Last year the Planning Board proposed funding of \$1.2 million, which was reduced during the budget process to \$1,035,000 and was approved by the City Council at that level in May of 2008. For fiscal year 2010, he will be proposing that the City Council fund the general fund portion of the Capital Plan at the Sub Committee's recommendation of \$800,000. There was a lot of discussion about this level given current economic circumstances. He noted that projects that are bonded require a separate vote of the City Council which is a 2/3 vote and a public hearing. In addition, those projects identified in the out years, fiscal 2011, 2012, 2013, 2014 and 2015, are for planning purpose with actually funding not actually required in fiscal year '10. The total Capital Improvement Plan scheduled for fiscal '10, including general fund bonding and enterprise funds, total \$74.5 million of which \$39 million will be leveraged with Federal, State and other sources such as public/private partnerships. Every dollar the City is spending on capital projects, approximately 50 cents comes from other sources other than the local taxpayer.

At this time he asked City staff members to present the details of the CIP for the period of 2010 – 2015. After the presentation, he asked that they vote to recommend that it be forwarded to the City Council for their review. The City Council will be reviewing this document in a work session on February 2nd with a public hearing schedule for March 2nd. Final adoption of the CIP is scheduled for the City Council's March 16, 2009 meeting.

Presenting for the City were: David Fernald, Police Department; Robert Lister, School Superintendent; Cindy Hayden, Deputy City Manager; Stephen Parkinson, Director, Public Works; David Allen, Deputy Director, Public Works; Peter Rice, Water/Sewer Engineer; Alan Brady, Communications Supervisor.

At the conclusion of the presentation, City Manager Bohenko welcomed questions from the Board and requested a vote to accept the plan and move it on to the City Council so that they can continue their process.

Vice Chairman Roberts referred to page 48, Police Department System. It mentions surrounding communities can utilize the AFIS system as well and she asked about charge back? City Manager Bohenko indicated that they have given this to their legislatures to try and see if there is money available to do that on an inter-municipal agreement. Captain Fernald confirmed it is intended to be a regional asset.

Vice Chairman Roberts referred to page 82, overall City Wide Facilities – Capital Improvements. She asked what their sustainability vision was? City Manager Bohenko stated that is their number #1 priority. Mr. Parkinson confirmed that sustainability and energy conservation are both top priorities,

including anything they can do to tighten up their buildings or use more efficient equipment. City Manager Bohenko added that they are working with all departments to look at all of their buildings with the goal to make them all energy star.

Vice Chairman Roberts referred to page 94, Coast Trolley & Public Transit. She asked about the environmental aspect in terms of fuel emission? Mr. Parkinson indicated that they have been using biodiesel for some time. They used to have propane powered buses but they just did not hold up so they went back to the diesel style. They also use the biodiesel at Public Works as well.

Vice Chairman Roberts referred to page 100, City Sidewalk Reconstruction. Do they replace sidewalks in kind, because they have sidewalks made from all different kinds of materials? Mr. Parkinson confirmed that all sidewalks are done in concrete. In CB or HDC they use brick and outside those districts they are converting everything to concrete. Vice Chairman Roberts asked about ADA compliant with brick? Mr. Parkinson confirmed that all city sidewalks are ADA compliant.

Vice Chairman Roberts thanked them for all of their hard work and every year the plan improves but getting more detailed and easier to read.

Md. Geffert referred to page 64, Piscataqua River Walk. Last year they were slated to receive \$1.5 million and there was UDAG money that would go into that but this year they are talking about different amounts of money. She asked what happened last year? Did they get that money and use it? City Manager Bohenko stated that they are trying to get the federal money reprogrammed. Some of the issues they have were to move forward with a public/private partnership. Each property owner would be able to continue the walkway. Major improvements would be with the Poco's deck and they would open up the area as it is City owned. That is all contingent upon what happens with their reprogramming request. Deputy City Manager Hayden added that the Riverwalk had two components, the land side and the pier built structure. After many years, they found it was very challenging to get 5-6 entities on the same page as a unified project. They have changed strategies and they are not anticipating building the pier portion of it. Ms. Geffert indicated that she looked at the previous plans and noticed that they have taken a real tough action of pushing things out and trying to keep things at budget and she commends them for their work. City Manager Bohenko explained that they had to do some rebalancing this year to make sure the projects set for bondings would remain in the parameters that they wanted to. The Sub-Committee was very helpful to address that. They tried to keep their net debt below 10% of their budget, which was a challenge but they were able to do that. Some projects were rearranged from last year.

Councilor Dwyer noticed two things that weren't included. She understands why Scott Avenue isn't there but she wonders about a place holder? Mr. Parkinson stated that they currently have their funding in place for that. Councilor Dwyer asked about Safe Routes to School monies that might go towards sidewalks, etc. and whether they were included in the plan? Mr. Parkinson confirmed that Safe Route to School monies are grants from the State and are not identified in the plan. City Manager Bohenko stated that they have already been appropriated so it would not be included in here.

Councilor Dwyer referred to page 47, Digital Archive System. She felt this was a great idea and it will save labor. She noticed it is split across two years? Captain Fernald stated it would require the savings of two years to purchase it? Councilor Dwyer felt this might be one where they want to put all the money in this year to save labor. That was just a suggestion.

Councilor Dwyer referred to page 49, Radio System – Encryption Modules. They have radios in a couple places. City Manager Bohenko indicated that last year they moved Fire and Police into the IT section. Encryption is a one time expense. Councilor Dwyer understood that the encryption modules are in addition to the radios that they are purchasing in IT. She thought maybe that could be clearer.

Councilor Dwyer referred to page 52, Police Department Space Needs Study. Does she infer that the Police Department has given up on a new facility and is focusing on the rehab of this facility. Captain Fernald stated that in years past they have come forward with items but this year they thought they should step back and re-evaluate. It could go in many directions.

Councilor Dwyer referred to page 54, School Facilities Capital Improvements. In reading the contents of the stimulus package, she noticed some special funds for rehabilitation of schools related to energy savings. That seems like something that could be of particular interest. City Manager Bohenko stated he would be getting a supplement letter out to the Council.

Councilor Dwyer referred to page 55, Middle School Upgrade. She noted they have all money for the Middle school in FY 10. In reality some might go in FY 11. City Manger Bohenko explained that they anticipate that the City Council will make some sort of decision for fiscal 10. Before they can spend any money on the Middle School the City Council needs to appropriate the full amount to make that commitment. The \$41 million, if that is what the City Council approves for bonding, they will not bond the entire amount immediately. They will anticipate cash flow for the next 12 months. They will put together what is known as a Bond Anticipation Note and they will borrow \$10 million and over the period of time, as the bills come in, they will pay it out from the money that they have received from the Bond Anticipation Note. Once they have gone through the first year, they would continue with the second and third year and would at that point know when the project would be ending and they would permanently finance the project of \$41 million and that would be amortized over 20 years and as part of that schedule they will receive whatever grants they will receive from the State based on that schedule.

Councilor Dwyer referred to page 66, Paul A. Doble Army Reserve Center Reuse. Deputy City Manager Hayden was not clear on what the money is being used for and it might be helpful to include that as a note.

Councilor Dwyer referred to page 71, Sound Barriers I-95, Atlantic Heights and Panaway Manor. She thought they had anticipated doing this in FY 10. Mr. Parkinson indicated that they all know that the State financial state is and they are not committing to anything at the present time. They have a little bit of money set aside to do some study work.

Councilor Dwyer referred to page 72, Reclamation of Former Stump Dump for Recreation. She asked if this recreation area receives some partial funding through the Middle School? City Manager Bohenko explained that the original Middle School budget included portions of the fields that were being provided and there were also portions that they wanted funded outside of the City school funding. Councilor Dwyer confirmed that all that with respect to the artificial turf, all that is reflected here is their money but the share of State money would be reflected back on the Middle School renovation.

Councilor Dwyer referred to page 77, Indoor Pool Building Rehabilitation. She was surprised to see this in FY 10. City Manager Bohenko indicated that they expect to have the plan done sometime in November so this money isn't appropriated until the City Council chooses to bond it. This is included in the letter on the stimulus project. They will have the recreation comprehensive plan done by November of 2009 which falls in the middle of fiscal 10. Councilor Dwyer assumed that means that money could be used in a variety of different ways. City Manager Bohenko agreed and added that it has to be voted separately by the City Council through a bond which requires two readings and a 2/3 vote and a public hearing. Ms. Geffert followed up by noting last year they had a \$500,000 capital improvement plan pegged for the pool and for fiscal 10 another \$500,000 but based on what he is saying, none has been spent and they are just moving it forward? City Manager Bohenko indicated that was correct because the City Council wanted a full comprehensive review of all recreation facilities and that is what they are doing.

Councilor Dwyer referred to page 107, Intersection/Signals at Market Street RR Crossing and page 121, Roadway Gateway Improvements. As they didn't bond for what they anticipated for improvements to the gateway, she wanted to make sure they were including an adequate amount of planning in for FY 11 for what they subtracted from the bond that they had planned to do last year. City Manager Bohenko confirmed that when they go forward with the public meeting, it will be on for \$300,000 for Exit 7. They will also be looking for other grant money for other parts of the Gateway Project. The basic component they are going forward with on the \$300,000 on the 26th will deal with Deer Street area. Councilor Dwyer pointed out that they are not anticipating any additional money until FY12 and that seems like a long time to her. Mr. Parkinson indicated that in order to try and balance out the funding over the various years, and things were really loading up in FY 11 and it was going to unbalance the whole program, so they tried to spread things out. They have \$300,000 coming before the Council to go from the Deer intersection to the Russell intersection to get that section done. On the other end they have the Exit 7 money (not to be confused with the gateway), which will come back a little bit from the intersection. There is more than just the roadway. There are walking paths, overviews, etc. Councilor Dwyer felt if they could accelerate it, she would like to see that done. City Manager Bohenko stated that they wrestled with a lot of this and it is not easy to try and rebalance. Once you break the 10% it is easier to go a little bit higher and they felt strongly about keeping that policy in place, that you don't go over the 10% level on your net debt as it relates to your budget.

Seeing no further questions, Chairman Ricci commended City Manager Bohenko and City Staff as every year they get more information and it is easier to understand.

Mr. Blenkinsop made a motion to recommend the CIP to the City Council. Mr. Patenaude seconded the motion.

The motion to recommend the CIP to the City Council passed unanimously.

Chairman Ricci asked City Manager Bohenko if it would be appropriate to provide a copy of the Stimulus letter to the Planning Board. City Manager Bohenko confirmed he will provide that to the Board. He also indicated he will probably put it on line as well.

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III. APPROVAL OF MINUTES

1. Approval of Minutes from the November 20, 2008 Planning Board Meeting – Unanimously approved.
2. Approval of Minutes from the December 18, 2008 Planning Board Meeting – Unanimously approved.

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III. PUBLIC HEARINGS

Deputy City Manager Hayden made a motion to take Public Hearing C. out of order. Vice Chairman Roberts seconded the motion. The motion to take Public Hearing C out of order passed unanimously.

C. The application of **2422 Lafayette Road Associates, LLC, Owner**, for property located at **2454 Lafayette Road**, wherein Site Review approval is requested to construct a 25,500 ± s.f. retail addition, to construct a 27,350 ± s.f. stand alone retail building, and to demolish 155 ± s.f. of existing building to separate the buildings, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 273 as Lot 3 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.

Mr. Holden explained that this application was tabled at TAC so the Department recommended that the Board postpone this to their next regularly meeting.

Mr. Patenaude made a motion to postpone this application to the next regular meeting. Vice Chairman Roberts seconded the motion.

The motion to postpone this application to the next regular Planning Board meeting passed unanimously.

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A. The application of **Henry and Jaqueline Brandt, Owners**, for property located at **37 Wholey Way** and **Salmon Falls Holding, LLC, Owners**, for property located **off Echo Avenue**, wherein Preliminary and Final Subdivision Approval (Lot Line Revisions) is requested between two lots as follows: Lot 64 as shown on Assessor Plan 237 increasing in area from 2,728 ±s.f. to 15,056 ± s.f. with 224.99' ± of continuous street frontage on Echo Avenue and Wholey Way and Lot 76 as shown on Assessor Plan 237 decreasing in area from 43,703 ± s.f. to 31,375 ± s.f. with 200.89' ± of continuous street frontage on Wholey Way, and lying in a district where a minimum lot area of 15,000 s.f. and 100' of street frontage is required. Said properties are located in a Single Residence B district and are shown on Assessor Plan 237 as Lots 64 and 76. (Plat plan is on file in the Planning Department Office and is identified as Plan #12-01-08). *(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 presented on behalf the applicant, Mr. Brandt. The Wholey Way subdivision goes back to 1999 at which time a lot off of Echo Avenue was subdivided into 7 lots and he didn't believe anyone, other than Mr. Hopley, was on the Planning Board at that time. It was an extended approval due to questions about wetlands issues, Conditional Use permit, Site Review and Subdivision. The City engaged the services of Gove Environmental Services to do an independent study and it was determined tah the wetlands on this site were not connected to any other wetlands and that they were not jurisdictional wetlands as they were less than ½ acre. Ultimately the Wholey Way subdivision was approved, Site Review approval was granted and Conditional Use Permits were determined to not be necessary. The applicant and the City agreed to certain stipulations which resulted in Wholey Way being a very attractive appropriate subdivision of moderately priced market value homes to enhance the neighborhood. At that time there was great opposition to the Wholey Way subdivision by abutters and neighbors. But, anyone who is familiar with the Wholey Way subdivision would feel it was an asset to the City of Portsmouth and has resulted in a good subdivision as a result of this Board requiring certain things of the developer.

Attorney Pelech indicated that they were here tonight for a Lot Line Adjustment which would result in one of the lots becoming 15,000 s.f. The Lot Line Adjustment does not require any variances from the BOA as it meets all requirements of the Zoning Ordinance. He handed out a copy of an old tax map, which does not show the Wholey Way subdivision but he colored the lots that surround the subdivision that are subsized and do not meet the current standards of the zoning ordinance. For whatever reason, the Planing Department does not recommend approval of this lot line relocation request. Attorney

Pelech felt this was a very appropriate Lot Line Adjustment request as the plan submitted to them does show that there is adequate building area to construct a 22' x 40' home on the lot within all of the required setbacks of the lot. It is their position that this lot line relocation is consistent with the City's Master Plan. The house that can be constructed on the lot will be of minimal size but that is exactly what the City Master Plan is looking for and would qualify as workforce housing. He felt it should be an easy decision to grant this application. The Department Memorandum says there is not 100' of depth on the lot but Attorney Pelech disagreed. The lot is not a typical rectangle lot but he submits that in today's environment in the City, rectangular lots are few and far between given impediments such as wetlands. This lot is 15,000 s.f. and has 100' of frontage and it meets all setbacks.

Attorney Pelech felt it should be, at the very least, eligible for preliminary approval. If additional information is required, then the application should be tabled but not denied. The application meets all of the requirements so it should be moved on to the next step. He doesn't believe it is a premature subdivision or out of character for the neighborhood. This lot is not out of character but rather more appropriate than the surrounding lots. There is a condo building on the left and a mobile home park on the right. It is not going to diminish the value of surrounding properties. There are several of these small subdivided lots in the City. Tom Heany, who was present, had a very small lot on Lawrence Street which no one ever thought would be developed however there is a beautiful house going up on that lot and it is work force housing. Also, at the corner of Thaxter and Islington Street, a very small house has gone up on that lot and it fits into the neighborhood. These are the type of things that provide the opportunity for work force housing, within the \$200 - \$300 range. He felt the Board should, at the very minimum, grant preliminary approval. If there are questions that are raised from the Planning Department Memorandum, he was happy to provide additional information to answer them.

Mr. Rice asked about the issue of wetlands and setbacks. Are they meeting the 100' buffer? Attorney Pelech confirmed there was no setback as the wetland was not large enough to require a setback. When this subdivision went before the Board in 1999 they provided their report on the wetlands which was less than a ½ acre and the City hired their own expert, who confirmed that. They have since filled 3,000 s.f. of that wetland to build Wholey Way so the wetland is even smaller now. Because of that there is not buffer per the City's Wetland Ordinance. But they voluntarily agreed to a 25' wetland buffer in 1999.

Mr. Blenkinsop noted on the plan where it says "NH jurisdictional wetlands" on plans. Attorney Pelech explained that NH jurisdictional wetlands simply means that they are wetlands per the definition of wetlands by the State of NH. There is no question they are wetlands but City Ordinance says they only apply to wetlands ½ acre or more in size but this is less than ½ acre, which was before they filled part of the wetlands which was part of a valid fill permit. Mr. Blenkinsop asked if there are any State setbacks? Attorney Pelech stated the State does not have any buffers or setbacks from inland wetlands. They simply deal with what you can and cannot do within the wetlands themselves. Mr. Holden felt the other way to ask that question was if there was an issue of whether the contiguous wetlands were all combined? Attorney Pelech responded that the City's expert, Mr. Gove, determined they were not contiguous as they were connected by a culvert to a set of wetlands on the Echo Avenue condominium project and Mr. Gove found that the culvert was not wetlands so they were not connected. Deputy City Manager Hayden asked if this was a recent condition he was describing or from 1999? Attorney Pelech confirmed it was 1999. Mr. Holden asked if it would also be correct to say that NHDES, in its initial opinion, indicated they were contiguous? Attorney Pelech responded that NHDES issued an opinion that they were connected. Mr. Holden explained that was how they go into lengthy review process and why the Department is indicating that a great deal of information is needed. Attorney Pelech confirmed that they had conflicting evidence on whether or not they were contiguous wetlands. The City's expert and the applicant's expert said they were not but NHDES said, by their definition, they were. Mr. Holden added that the initial issue started because the ½ acre was not met by missed by only 400 s.f. which started an internal review process. Attorney Pelech agreed.

Their expert said they were 400 s.f. short of a ½ acre and the City's expert said they were at least 500 – 600 s.f. short because their expert did not discover upland islands within the wetlands.

Deputy City Manager Hayden asked if everything they are discussing is old news and is almost 10 years ago and there has not been any updated evaluation based on current State or local regulations. Mr. Holden confirmed that was correct and added that with the present application they are not seeing the whole picture on just these two lots.

Deputy City Manager Hayden asked about the 25' cemetery setback shown on the plans. Attorney Pelech confirmed that was a NH RSA requirement which that is there is an established cemetery within any municipality within the State of NH, there can be no disturbance of earth around the cemetery and no development within 25' without written consent of the Cemetery Board, which does not exist in Portsmouth. Deputy City Manager Hayden noted, as shown on the plan, in the insert showing the buildable area, that curved dotted line is space that can't have any disturbance such as grass or driveway? Attorney Pelech agreed that the area must pretty much stay in it's current condition. Deputy City Manager Hayden asked about the grey shaded area on the same inset. Attorney Pelech was not sure what the grey shaded area is but indicated that Jane Shouse spoke with the surveyor to get some additional information. Ms. Shouse confirmed she did not discuss the gray area with the surveyor.

Deputy City Manager Hayden went back to the original Wholey Way subdivision and asked if there were other requirements, restrictions or special items put in place for the Wholey Way subdivision? Attorney Pelech did not recall but he can provide that information. Mr. Holden stated that he has not gone back totally but there were many stipulations on the various lots in terms of maintaining the vegetation on lot lines, the orientation of driveway and potential connectivity if Wholey Drive were to be extended to another street. Attorney Pelech remembered that they provided a potential 50' right of way for connectivity through the Catkin property to what used to be Arthur Brady Drive and what is now Durgin Lane in case there was ever a need to connect that. He also remembers they were required to provide landscape plantings along both property lines to screen the single family residences from the condo development and mobile home park, which has been done. As recent as this afternoon, Attorney Pelech and Mr. Holden were discussing this and going back to the minutes of the minutes of the meetings from 1999 and 2000 to remember what happened. Deputy City Manager Hayden went back to the 25' voluntary setback and whether it was a stipulation of the Wholey Way subdivision? Attorney Pelech indicated that even though there was no setback they would agreed to move their structures back 25' from the edge of wetlands. There may have been restrictions about using fertilizers and those type of stipulations in that area. The only thing Mr. Holden would add is that the adjacent property is actually a PUD so all of the density is concentrated into the residential units that are there. They were very active participants as abutters in the subdivision process and there were probably stipulations relating to their involvement.

Councilor Dwyer asked if the land of the cemetery is part of the lot and in private ownership. Attorney Pelech explained that is how this came about because his client inquired of the City as to who was responsible to maintain and keep up the cemetery because it was in bad shape. Lo and behold he was told that the cemetery was his property and it was his responsibility to maintain the cemetery. Mr. Holden believed the question was posed whether the cemetery was part of that lot and he believed the answer was no, the cemetery was on its own lot. Attorney Pelech stated that was the first he had heard that. Mr. Holden referred to the Tax Map where it was shown as its own lot. Attorney Pelech confirmed there are three lots involved. The cemetery lot, next to the cemetery is a 30' x 30' lot that is owned by Salmon Falls, which has it's own Lot number. Mr. Holden felt the cemetery and the small lot were treated as one lot. Attorney Pelech felt, by the doctrine of merger, they are one lot. Councilor Dwyer felt that would have implications about the assumption of depth. Councilor Dwyer went out there to look at it today and asked what was the approximate grade differential in the area they are identifying as buildable? Attorney Pelech stated that the area where the proposed home is shown is, he

would say, several feet above the wetlands which is behind it. Councilor Dwyer added there was a lot of snow so it was hard to figure it out.

Deputy City Manager Hayden asked, looking at the example home, looking to the left, the white area looks like a setback from the property line so she assumes the other side is also a setback. She therefore assumes that the grayed out area on the plan is the building envelop. Attorney Pelech agreed it was the building envelop and what they anticipated is a driveway off of Wholey Way with a garage under the structure, with a driveway off of Wholey Way. The topography is such that a ½ story cape with a garage underneath is very appropriate. Deputy City Manager Hayden asked with an entrance off the side facing Wholey Way? Attorney Pelech agreed. Deputy City Manager Hayden guessed that going from the sideline of Wholey Way to the side of the example home must be about 22'. Attorney Pelech agreed that was a fair representation, between 10' – 20' and they do meet the setback.

Chairman Ricci commented that, to be fair to the other two lots he mentioned on Lawrence and Thaxter, those were both were 100% uplands and there were no wetlands on either lot. He could see a lot of potential issues with this house when there are wetlands in the vicinity.

Mr. Holden did not believe the other two lots had any adjacent land in common ownership, they were preexisting and actually entitled to be built under the zoning ordinance.

Mr. Rice had a question about the Subdivision Rules and Regulations. It says that corner lots shall have at least 10% extra width to permit appropriate building setback from the orientation of both streets. Attorney Pelech was not sure what the intent of the Zoning Ordinance is, but it probably means either extra depth or extra frontage along the other street. He is not sure but he would interpret it as extra frontage along the other street. Mr. Holden explained that it means it is supposed to be wider so that they don't have visibility issues along the frontage. It would probably be helpful with all these design elements being discussed, the applicant usually proposes them so the Board can review them. They need to see the rest of the subdivisions to determine where the other driveways are. There is a much bigger picture that they are not seeing. Attorney Pelech would agree with that and they are happy to provide whatever additional information the Planning Board wants to see.

Chairman Ricci recognized a letter from Glynn Reed and Sara Reed, listing their objections. Copies of the letter were provided to the Board.

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

David Palumbo, 181 Echo Avenue, (since 1971). His home is located on same side of the street but is further down. He definitely is against this application. The cemetery lot has always been maintained by neighborhood children and the Reeds that live next door. Echo Avenue, Woodlawn Circle, and Hillcrest is a very nice residential area. The condos came into existence and they are maintained very well and the trees and bushes and flowers are nice. They have had their problems with Wholey Way and everyone felt it was wetlands. They area beautiful homes but they are not moderate homes. He could not afford those homes. The homes are huge for the small amount of acreage. To fill in the one small area next to the cemetery, it is a partial wetland. There is water than runs underneath a culvert underneath the street, right into a pond by Portsmouth Ford, and then underneath the Spaulding Turnpike. He feels sorry for the people who abut this property. It is not going to protect their property and he worries about the environment. There will not be any privacy. Mr. Palumbo passed pictures around for the Board.

Sharon Flaherty Nutter has lived on Wholey Way for less than one year. The experience of building a home in this neighborhood is still fresh. They don't object a lot revision but a house of this size, 22' x 40', would be out of character for the Wholey Way neighborhood. She brought a copy of the restrictive covenants for the Wholey Way homes. They were put through the ringer with the restrictions as if the size of their house was not 3,000 s.f. then 2,000 s.f. had to be on the first floor,

they had to get approval for which way their garage was facing, the color of their house, it couldn't be vinyl, etc. Their concern, as new homeowners in this neighborhood, is that if a house of this size goes up now with a driveway stuck underneath, will Mr. Brant also require the same covenants for this house. After receiving their first tax bill, she can say this is not affordable housing. Randy Nutter stated that a concern of his was the location of the home. What they are not truly seeing now is the elevation with the snow. It is not 3' to 4' but it goes down at a steeper grade than that. His concern is the wetlands and the elevation of the house to the wetlands, to the cemetery and the house behind that particular property. Also if the driveway is going to be on Wholey Way, what form of restrictive covenants will it be built to? Will it be built to the same standards as their house? The fact that Henry Brandt himself had to approve the color of their house. You can build a small home as desirable as a larger home but not on this lot. Chairman Ricci asked if there was a homeowners association? Ms. Flaherty indicated that it wasn't probably a legal one that was documented with the State but they have the restrictive covenants that they were given when they bought the land that they were held accountable for when they built their house. They are 10 pages long. She handed out copies to the Planning Board members. Mr. Holden pointed out that these covenants do not bind the City and are technically a non issue.

Ms. Geffert asked if it would be fair to say that the neighborhood would seek to enforce these covenants if this lot were approved? Ms. Flaherty felt it would be fair to say that. They realize that on the size of the lot, some covenants couldn't be complied with because the lot is too small. Ms. Geffert asked if they had to accept these covenants as part of accepting the deed? Ms. Flaherty confirmed that they did. Ms. Geffert felt that what they are suggesting to the Board is that there is the potential for a civil action against somebody who violates the covenants.

James Magner, 115 Echo Avenue, abutter. His next door neighbor, Mr. Shepard, who could not be present, abuts the cemetery. He has lived on Echo for 53 years and has seen it change enormously. It is has been fields and meadows. Part of the 11 acres became the condos. The wetlands were so significant that the kids skated on them every year. He wonders what happened to them? This past year they have had 18"- 20" of rainfall above normal but you can't see any water in these wetlands. The wetlands and the wildlife are all gone. He still sees deer and turkeys but less and less. The back road to Portsmouth Ford is always deteriorating because of wetlands. When the subdivision was originally done he felt they were choking nature with 6-7 homes. When he built his home in 1961 he was told there was ledge and wetlands around his house so he would never have any neighbors. The high scale homes don't have a view and they are already crammed in and he doesn't feel it is appropriate. When the last house was built he thought it was all over. He deferred to the Board to make the right decision and deny this application.

Tom Heany, 30 Wholey Way, direct abutter. He is a real estate broker and he represented the Wholey Way property to Mr. Brandt initially. He has enjoyed his time on Wholey Way. He is in favor of the application that is taking one non conforming lot and one conforming lot and making two conforming lots. He felt this proposal meets the zoning ordinance criteria. This application meets the law and it is their role is to uphold the law. He previously lived in Goffstown and served on the Planning Board so he understands what the Planning Board role is. There has been a lot of discussion on the wetland, as there should be, as it was closely scrutinized. They are non jurisdictional wetlands and there is not wetland buffer zone. The size of the wetlands was done on three separate occasions. It was a point of contention and so the NHDES came in and Dori Wiggin agreed that it was non-jurisdictional. There were presumptions made afterwards that were incorrect. Upon inspection, NHDES said there were two separate wetlands. In fact, two years after the approval, an abutter claimed that the wetland had gotten larger. The Planning Department did an inspection and did not support the claim. Abutters always have concerns but the applicant is not doing anything illegal. The Building Department will make sure the house is built properly. He doesn't see any grounds to deny this. The Zoning Ordinance is black and white to prevent arbitrary decisions from being made. He felt an orderly and planned development is a catch phrase and is broad and vague.

Michael McKellar, 156 Woodlawn Circle. He owns a condo down the road and he is very concerned about the drainage situation. The water runs right down in the woods in the culvert and it runs pretty strong. A few years ago, the condo's culvert had to be replaced and it seemed to be in disrepair. He is against this project until they can answer some questions about environmental and drainage.

Attorney Pelech responded in regard to the restrictive covenants. He wrote them. The question by the Board was whether there were any restrictions placed on the subdivision? As far as the restrictive covenants go, they would have to either comply with the restrictive covenants or have them waived by the people who control them. With regard to the abutters concerns, the same concerns were raised in 1999 regarding the wetlands. The City disputed their wetland expert, NH Soils, so the City then hired Gove to reassess the wetlands and the City found that there were less wetlands than their expert determined. Then the NHDES became involved and Dori Wiggin. He did not remember, until Tom Heany mentioned it, the issue of the Echo Avenue Condo Assoc claiming that the wetland was larger and it was because the condo culvert was deficient and that is why they had a green pond and why they had to replace their culvert. He felt the evidence before them is quite clear that Wholey Way is not a detriment to the neighborhood. Many surrounding lots are substandard in size but abutters say this lot should no be approved because it is somehow going to effect the value of their property or the wetland, yet it has been demonstrated in 1999 that the whole development did not effect the wetlands. Attorney Pelech did not see how this Board can deny either preliminary or final subdivision approval.

David Palumbo, 2nd time speaker. He is just an average lay person. He can only call upon the Board to help the residents out. He lives in the neighborhood. He took a picture from the condo of a huge house on Wholey Way and it shows that it dwarfs the condos.

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. Holden wished to point out the Department's position on this matter. Based on the information provided to this Board on this application, it is not sufficient to base an action and that is why the Department recommends that it is premature to subdivide it at this time and this application should be denied. If the applicant wants to file another application that addressed the larger issue or issues the Board wishes to identify, then they will have more information. This may be a Lot Line Revision but if the lot lines were left exactly the way they are now, there is not issue. The cemetery lot has existed in the City as part of an overall lot and as an individual lot. The purpose of this lot line revision is to create a buildable lot in an area that has already been developed and was supposedly built out as a 7 lot subdivision and it is too shoehorn in another residential unit. The covenants do not apply to this Board. It is whether or not they feel this meets the orderly development and the regulations as the time that it was proposed and Mr. Holden submits they do not have sufficient information with this application to do that. He does not know what studies were done when they reviewed other issues that have been raised, they need to go back to the files and check those, they have had no wetland re-mapping that he is aware of. Issues with the development of this project historically have been difficult with numerous inspections by various City departments. He is basing this on the information provided to this Board on this application.

Ms. Geffert asked Mr. Holden if this is a re-subdivision? Mr. Holden responded that to him it was a re-subdivision. Ms. Geffert believed it was based on the definition in the Subdivision Regulations. Mr. Holden refused to call it disingenuous but when you have a cemetery lot that has existed and pre-dates the zoning ordinance and to suddenly say that by expanding one lot and narrowing another lot that they, lo and behold, create a buildable lot from a cemetery lot that was never a problem, it just seems like there is more to it. Ms. Geffert felt it was a change in an approved or recorded subdivision because they are adjusting a lot line? Mr. Holden stated they are changing lot lines. They would treat it as a subdivision regardless of how they introduce it which is why it is a public hearing. Ms. Geffert

just wanted to be clear. Mr. Holden felt there is a great deal of reference to non-conforming lots but those all pre-dated the ordinance. This actual development was done in conformance with the present zoning ordinance and present subdivision regulations. That was the time that it should have been looked at in terms of how this area was to be developed. Not knowing where the driveways are, he had no way of knowing if the new driveway would pose a conflict.

Deputy City Manager Hayden made a motion to deny this application. She felt this was one of the most constrained lots that has ever come before the Board and they would do a real disservice to anyone who would buy this lot given all of the issues. Ms. Geffert seconded the motion.

Ms. Geffert wanted to address the fact that they have been told that they have no grounds to deny and, first of all, this would not be before them unless they had some ground to deny it. Subdivision law is not just a lot that conforms to zoning. It requires the Planning Board to exercise its planning authority and they have the ability under their Subdivision Regulation to look at a lot like this and say they have rules about lot arrangements, and she wanted to point that out for the record, as far as practicable, sidelines shall be at right angles to street lines or radial to curved street lines and this lot does not conform to that. Once they are outside of the basic requirements they are looking at a hardship variance from the subdivision regulations which gets into those items which the Planning Department pointed out to them relating to hardship. No, this is not a BOA type of variance but it is not conforming to what she reads to be the Subdivision Regulations. She felt they placed themselves in that hardship area.

Deputy City Manager Hayden felt that was a really good point and asked to clarify her motion. She felt that the Planning Department staff laid it out very well in their three stipulations with their recommendation because they are very general and they encompass all of those things. She felt they should be careful as a Board about giving them direction in case they want to come back but she is loath to do that as she does not want this applicant to spend a lot of money on things when she is not sure what they could come back with to this Board to get it approved. She felt they should not be too directive on what else they might expect. Mr. Holden felt that was a point well made.

Councilor Dwyer agreed with the motion. She thinks it is important that Portsmouth look at some of their small lots for smaller homes but she wouldn't want to generalize from this experience that the Board isn't interested in doing that. It was only a week ago that she said something like the blanket of affordable housing gets thrown on a lot of stuff but she will pull it off this one. She has learned that traffic studies and mapping wetlands are much more artful than scientific. Their experience with the wetland mapping that they went through earlier this year was done by Gove where there were huge changes in wetlands concerning the sizes and contiguousness. If anything were to come back she would need to know a lot more about the wetlands in the area. She can begin to see how confusing this is for people but she doesn't think this is the right place for what they are asking and the fact that they were not provided any information on grade is important.

The motion to deny subdivision approval passed unanimously, based on the following items:

1. That the proposed new residential building area does not conform to the meaning/intent of lot depth;
2. That the orderly and planned development of this area would not be accomplished with the creation of this proposed lot;
3. That a demonstration of how this application may impact/benefit surrounding and adjacent properties is lacking.

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B. The application of **7 Islington, LLC, Owner**, for property located at **40 Bridge Street**, wherein Site Review approval is requested to construct a 5,472 ± s.f., four story, ten unit retail/residential building, with related paving, utilities, lighting, landscaping, drainage and associated

site improvements. Said property is shown on Assessor Plan 126 as Lot 52 and lies within the Central Business B (CBB) district, Downtown Overlay District (DOD) 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:

John Chagnon, P. E., of Ambit Engineering, appeared on behalf of the applicant, 7 Islington LLC. Also present was John Greenlaw, Project Manager, and Steve McHenry, of McHenry Architecture. They have been before the Board previously for a lot line relocation. They have gone through the HDC process. The site is located near the downtown but outside it. To the west is the Bridge Street parking lot, just north of Islington Street. He reviewed the Plan Set.

The Cover Sheet shows the general relationship to the surrounding neighborhood with a legend. The second sheet shows the Lot Line Relocation Plan which was approved by this Board and the BOA. The third sheet is the Existing Conditions and Demolition Plan that shows aspects of the existing lot. There is a structure on the lot that will be removed for the project. There is a fence that will be straightened out. The Lot Line Relocation with the Tanner Street property deals with a fence that they will move back to the lot line as a part of this project.

The fourth sheet is the Layout and Landscaping Plan which shows the building on the lot. There will be four retail units on the first level. There will be a new sidewalk on Bridge Street and sidewalk improvements around the back of building. At the second story level the building juts out and overhangs the two entrances along the Bridge Street level. There are some small areas of landscaping along the front of building to spruce it up.

The fifth sheet is the Utility and Grading Plan which shows the connections to the utilities which have been fully vetted by TAC.

Lastly, there is a detail sheet with project details for construction. A Traffic Impact Study was provided to the Board for their review. They went to the Traffic & Safety Committee and received a unanimous vote to proceed as presented.

Steve McHenry, McHenry Architecture, indicated that this was a very interesting project because of the location and scale and type of the building. Because of the context and siting of this project it went through a lengthy HDC review. He displayed a rendered view of the proposed plan. He also has views showing materials and dimensions and exterior elevations. He also has a detailed section showing materials being used on the building. The building is at the edge of the HDC and the CB. It is surrounded by 2-3 story wood frame buildings but on the other side it is very public and open and only a couple of blocks from Market Square. They chose a style of building that fit into the residential wood frame look surrounding it and also of a slightly larger scale of the buildings to the left and right of it. After trying some different design approaches aesthetically which were mostly rejected by the HDC they worked through a scheme which is very fitting. He was asked to address a stipulation on the plan regarding brick sidewalks. Across the street in the parking lot there are concrete sidewalks. The brick sidewalks now only extend to the intersection of Maplewood and Congress. There are no brick sidewalks around the building and it is not a big economic issue but it would be out of place to put a brick sidewalk strip in front of this building where everything else around it is concrete.

Deputy City Manager Hayden asked, given that they don't know what will happen with the Bridge Street lot, would he still think that brick is out of context knowing there will be changes on Islington Street. Mr. McHenry responded that it would temporarily look out of place. It is not a hardship to do

it either way. Mr. McHenry felt that if they really want to create that consistent issue of the HDC with brick sidewalks and it is a good guidepost to do that. Deputy City Manager Hayden indicated that they try to get these things as people are redeveloping. As they are the first ones in, it will look a little out of place.

Mr. Blenkinsop asked about the transformer and if it was necessary at the front of the building because there is no space for it anywhere else? Mr. McHenry responded that was correct. Mr. Blenkinsop asked what kind of fence they surrounded it with? Mr. McHenry indicated it was a metal fence similar to the balconies that area on the rest of the building.

Mr. Chagnon indicated that currently the site is a long a stretch of Bridge Street which only has single phase power and they need three-phase power for the building. Three phase is at the intersection of Hanover and Bridge so they will be bringing it up along Bridge Street corridor and are dropping it down as soon as they can. It's a bigger impact having overhead wires so in that respect they are minimizing the impact of the wires. Mr. Blenkinsop asked how big the transformer was? Mr. Chagnon stated that the pad is 8' x 8' and the transformer is probably 72" x 42". There are certain clearances around it that have to be maintained.

Deputy City Manager Hayden asked if the fencing around the transformer was part of their HDC approval? Mr. Chagnon confirmed that it was.

Mr. Chagnon continued with his presentation. TAC recommended some stipulations that were brought forward.

The first stipulation is that they recommended the brick sidewalk because it is in the Historic District rather than concrete. The applicant is proposing concrete and hope the Board will vote that way. They also may consider the condition of the adjacent sidewalk which is in fairly good shape. The CIP presentation tonight had a lot of projects listed and it looks like there will be a long period of time before this area is redone in brick.

Mr. Chagnon volunteered to go through the rest of the stipulations but he believed he had addressed them by the plans.

Chairman Ricci asked if they looked at putting the transformer underground? Mr. Chagnon responded that PSNH does not presently want transformers in basements. The issue is that they need to service the transformer and it needs to be in accessible spaces. Chairman Ricci assumed they could put the transformer in a pit with a device that would allow it to be opened? He assumed they asked the question of PSNH? Mr. Chagnon asked if he meant they would accept it in an areaway? Chairman Ricci felt it was such a nice looking building and it seemed a waste to have the transformer sitting in front of it.

Councilor Dwyer felt that was a very good point. She wanted to underscore the location. This is arguably one of the best locations in Portsmouth and this is a very attractive building. Arguably that will very soon be the center of town. She can't imagine that they would not want brick sidewalks as it would be a great attractor. They had talked to PSNH previously to see if they would do something as an alternate in a different part of time to make it more a piece of art and they should look into that. Aesthetics are important. Councilor Dwyer also noted that they have not addressed parking and that is a big issue here. It was well talked about in the TAC minutes. She has no concerns about traffic but she does have concerns about residential parking. As a Councilor, she just recently got a letter from downtown residents who purchase residences who don't have parking and complain during a snow ban. They are panicked and she has a very big problem with creating this particular problem in this area without assigned parking. It is very important to find a way either on this site or on nearby areas to have agreements for parking. That sounds like a real potential problem. Mr. Holden added that TAC was concerned about that however this meets the ordinance. This parking problem may continue

and rise rapidly to a very serious element to subsequent application. TAC has tried to work with the applicant and this is the balance that has been set but those issues do remain.

Deputy City Manager Hayden understands Councilor Dwyer's concern but doesn't know what the solution is given the state of their ordinance. It only underscores the need for a parking garage nearby.

Vice Chairman Roberts had a related concern. The parking proposed will be above capacity in the existing municipal garage during peak and evening hours. So there is no where to park on the street nearby but there will also be no place available in the garage. There is not a clear solution but some how it all comes together.

Councilor Dwyer asked if it was out of the question that they may consider a stipulation. There are lots around the area, such as the Portwalk, the Masonic Hall, City owned Bridge Street lot, that there could be an agreement that negotiations are done with an owner of a lot for a certain number of spaces. People are coming home from work and cannot find a place to park. Would they consider that stipulation, to negotiate an agreement with a nearby area? Deputy City Manager Hayden felt that a better driver for this is that people who live in these units will find that they won't have a place to park. Councilor Dwyer felt that you would think so but what about the people in this situation now? Deputy City Manager Hayden would have a concern since it is not required and they are meeting the zoning requirements. Mr. Holden felt they would have an enforceability problem. Right now this meets the requirements of the ordinance. This speaks to the need of parking supply and the City will have to work with it. The Department has wrestled with an adjacent lot where they continue to use parking on the City lot. In terms of the traffic there is no issue and they do not have to provide parking. "Buyer beware" is a part of this.

Vice Chairman Roberts indicated that they all know how hard they have worked on the Master Plan but enforcement is an issue. Can they build this back in so they are not continuing to exasperate this problem? Chairman Ricci felt they need to look at the parking credit also. They talk about it all the time. Ms. Geffert thought this project would be close to the Portwalk project which will have parking.

Vice Chairman Roberts asked about lighting? Mr. Chagon confirmed they will use Dark Sky Friendly lighting and he handed out the cut sheets. Deputy City Manager Hayden asked for a detail on the plans for the lights. Mr. Chagon thought the sheets were pretty full at the moment. Deputy City Manager Hayden also asked for a detail on the fence around the transformer. She added that, in her experience, PSNH does not like underground transformers as it is a safety issue so they just won't do it. Also, she asked for a third detail for the brick sidewalk. She asked Mr. Chagon if they have fulfilled the TAC stipulations 2-10 and only #1 was outstanding? Mr. Chagon agreed but mentioned that #5 was not his to fulfill, which was what the sign was going to say. Mr. Holden stated that a recommendation had been received from Deb Finnigan. Mr. Holden also advised the Board that Deb Finnigan reviewed the traffic report and did not have any issues with it.

Vice Chairman Roberts appreciated the lighting cut sheet. She asked if night time friendly is the same as dark sky friendly? Mr. Chagon confirmed that they are downward pointing.

Councilor Dwyer was confused why this would be a 24 hour truck loading zone after what they said about the shortage of parking. Mr. Holden stated this was debated at length. By keeping it a loading zone, it is always available, but more importantly when it's not being used it is available for turning movements and the fire department was concerned about turning movements. This is a concession to enhance traffic movements, provide a loading berth. Councilor Dwyer asked what specific turning movement were they thinking about? Mr. Holden believed it was trucks turning from Bridge Street to Islington. Mr. Chagon did not believe that the truck turning movements was the concern of the fire and police but rather they wanted a 24 hour loading because they want to be able to park there in an emergency. Mr. Chagon felt it was more appropriate to turn that over to parking after 6:00 pm but for whatever reason they felt this was an important area. Mr. Holden interjected that they wanted it to be

open and he didn't want it to be misconstrued and it was a pretty strong statement on the part of TAC. Mr. Chagnon disagreed and did not believe it was turning movements as those are fine. During the day there could be cars parked there or a truck moving there. What they wanted was to be able to park an emergency vehicle out of the travelway. Councilor Dwyer could understand why they want to do that but they would probably want to do that everywhere. Mr. Holden felt this was pretty specific and he would recommend that they perhaps get a report back from the fire, police and DPW on that. Councilor Dwyer understood Mr. Holden to say there was something about this particular corner? Mr. Holden responded that was why they went to the length to find the one other situation in the City where they have done the 24/7 loading berth. There was also a great deal of discussion on where the loading berth should be located. Mr. Hopley thought it almost seems like the loading zone for emergency vehicles was to the benefit to 7 Islington Street as opposed to the new building. Mr. Chagnon added that it was not specific to their building.

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 with the 10 TAC stipulations, reinforcing that the Planning Board will require brick sidewalks and the Site Plans shall be revised accordingly, she requested that they show a detail for the rail fencing, showing how the gates to that transformer fence will be secured so that they are not in the open position except when they are being used, and also a second detail for the lighting fixtures and a third detail for the brick sidewalks, which will replaced the concrete detail. Mr. Rice seconded the motion.

Councilor Dwyer indicated that she would like a report from safety personnel regarding their plans are and why they need the 24/7 loading zone. Deputy City Manager Hayden indicated she could add that as a stipulation. Councilor Dwyer felt it would be good to get a report back because, as a Planning Board, they need information on that.

Mr. Holden suggested getting a report back documenting the reasoning for the location of both of them. Deputy City Manager Hayden stated that she would add another stipulation that they have a report back from Public Safety as to why they want the loading zones as 24 hour. Mr. Rice seconded the additional stipulation.

Motion to approve Site Review approval passed unanimously with the following stipulations:

Stipulations from the December 30, 2008 Technical Advisory Committee Meeting:

- 1) That the Technical Advisory Committee is recommending brick sidewalks, rather than concrete and this issue shall be reviewed and decided by the Planning Board;
- 2) That the full traffic report shall be provided to the Planning Department and the Planning Board members for their review prior to the Planning Board meeting;
- 3) That the "No Parking" sign and the "Loading Zone" sign shall both be on the same pole;
- 4) That the actual wording for the "Loading Zone" sign shall be provided to the Planning Board by Deborah Finnigan prior to the Planning Board meeting;
- 5) That on Sheet C-3, the street milling note should indicate a thickness of 1 ½";
- 6) That the note on Sheet C-3 should add the wording "and curb installation" after "Upon completion of all in-street utility construction ...";
- 7) That the detail should be revised to show the City standard of 4" of asphalt, rather than 3";
- 8) That Site Plan shall reflect that the concrete shall not have any wire in it and shall have a fiber mix instead;
- 9) That there shall be one water meter for the entire building, located in a common area which is accessible to the City meter reader;

- 10) That a Construction Management and Mitigation Plan shall be prepared by the applicant, for review and approval by the City prior to the issuance of a building permit.

Stipulations from the January 15 2009 Planning Board Meeting:

- 11) That the Planning Board requires that the applicant shall provide brick sidewalks, and a brick sidewalk detail shall be added to the Site Plans (and the concrete sidewalk detail shall be eliminated);
- 12) That a detail shall be added to the Site Plans for the transformer rail fencing, showing how the gates will be secured so that they are not in the open position except when they are being used;
- 13) That a detail shall be added to the Site Plans for the light fixtures; and
- 14) That the Planning Board receives a report back from Public Safety regarding the 24/7 loading zones.

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V. CITY COUNCIL REFERRALS/REQUESTS

A. Letter from **Gregg Sessler and John Akar, of Cava, LLC**, regarding license agreement for **10 Commercial Alley** to erect a sign over the public right-of-way; *(The Board action in this matter has been deemed to be legislative 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.)*

Ms. Tillman indicated that this request is for a projecting sign on Commercial Alley. The second picture in their packet shows it best. It is an existing sign bracket. The restaurant is located behind the stone wall. Putting the sign over their door would not be visible from Market Street or Penhallow. The bracket is actually attached to the abutting building and the shear side of the brick wall is the property line so the bracket is on the Cava lot, owned by Perry Silverstein, and the bolts will go into the abutting property. The sign bracket and the projections were existing. The sign is now visible from both Penhallow and Market Street. The sign is up temporarily pending their report back to the City Council. They currently have a temporary sign permit and once approved it would be converted to a permanent sign permit. They are looking for a license for a projecting sign. The Department recommends stipulations also.

Deputy City Manager Hayden made a motion to favorably recommend this to the City Council with the two stipulations. Mr. Blenkinsop seconded the motion.

The motion to recommend a favorable approval of this license request to the City Council passed unanimously subject to the following conditions:

- 1. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and,
- 2. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department of Public Works.

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VI. NEW BUSINESS

A. Request of **Scott Gove, of Catalpa Realty, LLC, Owner**, for property located at **249 Islington Street**, for a one year extension of Site Review Approval which was granted on February 21, 2008; *(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).

Mr. Holden stated that the Department recommended the granting of a one year extension from February 21, 2009 to February 21, 2010. This is the first request and it is more procedural.

Mr. Patenaude 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 from February 21, 2009 to February 21, 2010 passed unanimously.

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B. Request of **Meadowbrook Inn Corporation, Owner**, for property located at **549 Route One By-Pass (Traffic Circle)**, for a one year extension of Site Review Approval which was granted on February 21, 2008; *(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).*

Mr. Holden stated that the Department recommended the granting of a one year extension from February 21, 2009 to February 21, 2010. Mr. DiLorenzo was present if the Board had any questions. This is the first request and is procedural in nature.

Mr. Rice made a motion to grant a one year extension of Site Review Approval. Mr. Patenaude seconded the motion.

The motion to grant a one year extension of Site Review Approval from February 21, 2009 to February 2010 passed unanimously.

Mr. Hopley asked Mr. DiLorenzo the status of the project, as it will be a significant undertaking. Mr. DiLorenzo stated they are in the process of marketing the project and are looking at several possible tenants. He stated there is tremendous interest.

Mr. Holden indicated that most all conditions have been met so this should be completed shortly.

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Mr. Holden advised the Board that there will not be a meeting next week but there will be a work session on January 29th, February 4th and February 12th. An updated schedule will be sent out to the Board tomorrow.

VII. ADJOURNMENT

A motion to adjourn at 10:35 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on February 19, 2009.

