

**MINUTES
OF
REGULAR MEETING**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 P.M.

JUNE 18, 2009

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

MEMBERS EXCUSED: Paige Roberts, Vice Chairman and Donald Coker;

ALSO PRESENT: David M. Holden, Planning Director;

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the April 16, 2009 Planning Board Meeting – Unanimously approved.
2. Approval of Minutes from the April 20, 2009 Planning Board Work Session – Unanimously approved.
3. Approval of Minutes from the May 14, 2009 Planning Board Work Session – Unanimously approved.
4. Approval of Minutes from the May 21, 2009 Planning Board Meeting – Unanimously approved.

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Chairman Ricci called the meeting to order. A presentation was made to David Holden, Director of the Planning Department, who is retiring at the end of June after 30 years with the City. Gifts were presented to Mr. Holden and words of gratitude were expressed by Board members.

II. PUBLIC HEARINGS

A. The application of the **City of Portsmouth, Owner**, for property located at **10 Middle Street (formerly 8 Islington Street)**, wherein amended Site Review approval is requested to reconfigure parking , with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 126 as Lot 21 and lies within the Historic District A, Downtown Overlay District (DOD) and Municipal District;

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

David Allen, Deputy Public Works Director, presented for the City of Portsmouth. He also thanked Mr. Holden for all of his service and acknowledged a wonderful working relationship. He displayed the plan of the site and pointed out the area that was grass where a beech tree used to be which they are proposing to pave to create 3 parking spaces.

The Chair asked if anyone was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Rice made a motion to approve with one stipulation. Mr. Coveillo seconded the motion. Deputy City Manager Hayden felt they should explain what the waiver of Site Review Regulations is for. Mr. Holden explained that it was difficult to prepare a fully engineered plan for 3 parking spaces so they are requesting a waiver for that.

The motion to approve passed unanimously with the following stipulation:

- 1). That a waiver of Site Review Regulations was granted by the Planning Board;

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B. The application of **Madison Town houses, LLC, Owner**, for property located at **5, 7, 11 and 13 Old Parish Way (formerly 66 Madison Street)**, where in amended Site Review approval is requested for revisions to Units 8 – 11 to include interior garages, , with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 147 as Lots 1-1, 1-2 and 1-3 and lies within the Apartment District;

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, was present on behalf of the applicant. This was a simple application which was approved by the Board in 2005. When it was first approved, the units they are addressing tonight had double parking spaces rather than garages and he would like to provide for garages, like the other units on the property. The impervious area will be exactly the same and there will be no impact to surface water. TAC proposed 8 stipulations.

- 1) That the patios shown on the Site Plans with a dashed line shall be labeled appropriately;

The Site Plan shows an extended bold line for the building and a dashed line for the patio. The first level is open but it is built out above it. This has not changed from the original application.

- 2) That the line on the Site Plan for the retaining wall shall be lightened up and re-labeled as “previously approved”;

Due to the grading of the site, the retaining wall has not yet been constructed. They lightened up that line. The developer has spoken to DPW and they may install some of it but not all of it is needed.

- 3) That the applicant shall add dimensions on the pavement that is to be removed and the pavement that is to remain so that the appropriate amount is removed;

They added the dimensions to the plan.

- 4) That the material for the walkways shall be labeled on the Site Plans;

There are two kinds of walkways. The kind they are installing will be fieldstone or cobble and they are labeled on the legend.

- 5) That the site shall be completely stabilized within 30 days of the date of commencement of any work on the site based on this approval;

The site will be stabilized and they added Note 8 to the drawings.

- 6) That erosion control measures shall be installed as part of this approval and shown on the Site Plans;

They added a section of information about erosion control methods. Basically, the site is fully stable now. They are proposing silt socks around the site.

- 7) That the revised Site Plans shall be reviewed by David Desfosses prior to the Planning Board meeting;

Revised Site Plans were sent to Mr. Desfosses but nothing was heard back.

- 8) That elevations shall be provided to the Planning Board.

Elevations were added. The only changes are that windows were removed for the garage door.

Deputy City Manager Hayden asked Mr. Chagnon to explain what they meant by completely stabilizing the site within 30 days as this project has had a history of stops and starts so if work has started again and then stops, what does that mean? Mr. Chagnon felt that the City's concern is that if it is started and not completed, then the area that is disturbed should be brought back to grass. It doesn't have to be seed but it has to be stabilized.

The Chair called for public speakers.

Dorothy Kearsarge, 50 Lovell Street. She stated that this fiasco borders her property. This site has been a mess for a very long time. She had a letter from June 2006 to the applicant from the City about uncompleted work. She stated they already have the pavement down and now they want to pull it up. There are still foundations that haven't been finished. They work on Saturday and Sundays. She indicated that the neighbors do not want to attend this meeting as they feel it's useless. Contractors have come and gone. She felt they need to finish what they started and stop changing things. She questioned the validity of the workers at the site and whether they had something to do with the fire damage to two of the buildings. It has been a mess and she just wants it finished.

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

Deputy City Manager Hayden felt this project has a history of not moving forward. She thinks the concerns that the abutters have raised are always reasonable. Mr. Holden stated that when they had

this at TAC this was a concern. Given the history of project, and because there are new Board members, it might be a good idea to meet with the applicant and work out a schedule of work. Mr. Coviello asked about a bond? Mr. Holden confirmed there is a bond in place but reminded the Board that it only covers the site work and infrastructure work so it could still be an active construction site. This seems to be the one project in Portsmouth that doesn't conform and just drags on.

In listening to Mrs. Kearsarge and what she said about just getting on with the project, Councilor Dwyer asked if TAC had discussed that as well. Mr. Holden responded that this would be a slight improvement because it would be a slightly less pervious surface and the units would be more marketable. The issue was will this help the project finish in light of the market.

Deputy City Manager Hayden made a motion to postpone to the July meeting pending a better understanding from City Attorney Sullivan and DPW Director Steve Parkinson on how to bring this to a conclusion. Her concern is if they approve this, is it ever going to get built? Mr. Patenaude seconded the motion.

Mr. Hopley offered that the three buildings are built, and 6 out of 7 units are occupied. It has been slow but it has steadily moved on over the past years.

The motion to postpone to the July 16, 2009 Planning Board meeting passed unanimously.

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III. CITY COUNCIL REFERRALS/REQUESTS

A. Request from Philip Thanas, of Thanas Galleries, for property located at 39 Ceres Street, to install a projecting sign; *(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.)*

Mr. Holden advised the Board that this is following the new City Council policy where projecting sign applications come to the Planning Board first for a recommendation. This is a new sign and the only information it was lacking was that it will be 7' above the sidewalk.

Deputy City Manager Hayden made a motion to recommend approval with the Department stipulations. Mr. Rice seconded the motion.

The motion to recommend a favorable approval with the following conditions passed unanimously:

1. That no sign is authorized to be placed, unless, it is at least 7' above the sidewalk surface;
2. 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,
3. 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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B. Request from Alessandra Domina, of Sandy Domina Associates, for property located at 10 Ladd Street, to install a projecting sign; *(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.)*

Mr. Holden indicated that this application is similar to the previous application as the applicant did not indicate that the sign would be 7' above the right of way. This is a new sign.

Mr. Coviello made a motion to recommend approval with the Department stipulations. Deputy City Manager Hayden seconded the motion.

The motion to recommend a favorable approval with the following conditions passed unanimously:

1. That no sign is authorized to be placed, unless, it is at least 7' above the sidewalk surface;
2. 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,
3. 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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C. Request from Stuart Tulchinsky, of Headlines, for property located at 103 Vaughan Mall, to install a projecting sign; *(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.)*

Mr. Holden stated that this projecting sign height does meet the requirements and he recommended that the Board make a favorable recommendation with the usual two conditions.

Mr. Rice made a motion to recommend favorable approval with the Department stipulations. Deputy City Manager Hayden seconded the motion.

Mr. Coviello thought it should show the proposed sign that is being removed, so they can make sure it actually is removed. He felt the photos were confusing. Deputy City Manager Hayden suggested writing the stipulation so they have some flexibility. There is a sign bracket there and there may be another sign on the other street. They are trying to add this sign on Congress on the existing bracket. Councilor Dwyer noted there are two signs that look just alike but they are on different streets. It was decided that they should probably leave well enough alone.

The motion to recommend a favorable approval with the following conditions passed unanimously:

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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D. Request from Mike Bristow, of Roly’s English Fudge, for property located at 10 Commercial Alley, to install a projecting sign; *(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.)*

Mr. Holden thought the Board members should be familiar with this site, off of Commercial Alley.

Mr. Patenaude made a motion to recommend a favorable approval with the Department stipulations. Mr. Rice seconded the motion.

The motion to recommend a favorable approval with the following conditions passed unanimously:

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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E. Request from Alex Rogers and Jane Derry, of J. Covington, for property located at 185 High Street, to install a projecting sign; *(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.)*

Mr. Holden indicated that this application was the one he was thinking of where they propose to remove a sign. The Department recommends approval with an additional stipulation that the sign proposed to be removed is actually removed.

Mr. Rice made a motion to recommend a favorable approval with the Department stipulations. Mr. Patenaude seconded the motion.

The motion to recommend a favorable approval with the following conditions passed unanimously:

1. That the sign to be removed is removed either before or at the same time as the proposed sign is placed and the one removed shall not be replaced unless all approvals are secured;
2. 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,
3. 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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F. Request from Mario Giberti requesting to purchase City-owned land located adjacent to 16 Barberrry Lane; (This matter was postponed from the May 21, 2009 Planning Board Meeting); *(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.)*

Mr. Holden reported that the Department is reporting that they are still getting staff comments back from the various City Departments and the process is continuing. He contacted the Gilberti's and advised them that no action would be taken until the July meeting.

Deputy City Manager Hayden made a motion to postpone to the July meeting. Mr. Coviello seconded the motion.

Motion to postpone to the July 16, 2009 Planning Board meeting passed unanimously.

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G. Request from Doug Bates, President, Greater Portsmouth Chamber of Commerce, regarding Market Square Informational Kiosk; *(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.)*

Mr. Holden indicated that the Board had received Rick Taintor's Memorandum on this earlier in the week.

Councilor Dwyer indicated that when this came before the City Council they were concerned about two things and she was pleased to see the digital picture frame advertising was gone. She did not believe the Memorandum was clear enough of whether the locked display cases would allow general advertising or whether it is specific to schedules and special events in Portsmouth. She was hoping it was the latter. Deputy City Manager Hayden stated they talked about that internally and item 3 is the key as the City owns the kiosk and it has never had any formal agreement or license authorizing who can post items on it. This is a report back from the City Manager to the City Council so she believes the next step would be to sit down with Doug Bates and discuss exactly what is going to be in that agreement. She would not want to see commercial advertising but felt it would be a great opportunity to advertise events that are going on it town.

Mr. Blenkinsop asked if there was a concern that if they restrict the posting of handbills should there be a structure that would allow people to do that? Deputy City Manager Hayden confirmed that they talked about that also and their utility poles are no longer used for that purpose but this would still be available to post handbills during non-tourist season, but without destroying the building. Mr. Blenkinsop's issue is a separate issue of whether the City should try and identify some other spot.

Councilor Dwyer added that the City Council also discussed that. From having lost a cat recently and attempting to find legal places to put up his picture, it really is very limiting. She believed several Councilors indicated they would look into a place to post general announcements because, for some of the stores that allow limited posting, it becomes a real issue because then everyone wants to post there. They don't want to just push the problem down the street.

Mr. Holden indicated they are looking for a recommendation to go back to the City Council. Staff is recommending #3, "Enter into an agreement with the Chamber for operation and maintenance of the kiosk, in order to formalize the City's authorization and to outline the respective roles of the two parties, including review of advertising policies."

Mr. Coviello made a motion to recommend to the City Council to approve as stated in the Planning Board Memorandum with the 3 stipulations and a fourth recommendation that the City Council look into an issue of public posting of notices elsewhere. Deputy City Manager Hayden seconded the motion and requested a modification. Because of the way this came to the Board they want to say it is not just a report back to the City Council, but to the City Manager as well. The City Council's motion referred it to the City Manager with power and then he indicated that he wanted to refer it to the Planning Board and the Council agreed with that.

The motion passed unanimously to report back to the City Council and the City Manager as follows:

- 1) Approve the installation of display cases for event advertising as requested in Mr. Bates' letter of June 9, 2009;
- 2) Approve the installation of off season panels as outlined above;
- 3) Enter into an agreement with the Chamber for operation and maintenance of the kiosk, in order to formalize the City's authorization and to outline the respective roles of the two parties, including review of rental policies; and
- 4) Explore possible locations in the downtown area as alternatives to the kiosk for posting notices during the tourist season.

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Mr. Blenkinsop made a motion to take Item B out of order. Councilor Dwyer seconded the motion. The motion to take Item B out of order passed unanimously.
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IV. OLD BUSINESS

B. Correspondence received relative to property located at 150 Greenleaf Avenue, for Board review:

- 1) Letter from Robert P. Sullivan, Esq. to John Kuzinevich, dated May 22, 2009;
- 2) Letter from John Kuzinevich, Esq., to John Ricci, Chairman, dated May 26, 2009;
- 3) Letter from Charles Griffin, Esq., to John Ricci, Chairman, dated June 10, 2009;
- 4) Rockingham Superior Court – Notice of Decision;
- 5) Rockingham Superior Court – Notice of Hearing;

Mr. Holden advised the Board members that they also have an additional communications from Attorney Kuzinevich at their seat this evening. He recommended that they should take no action as this matter will be before Rockingham County Superior Court on July 6th. No vote was required. The Board acknowledged that they received the correspondence.
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A. Discussion regarding possible zoning amendments to permit Senior Housing Facilities in the Office Research (OR) District, subject to certain conditions. (Borthwick Village);

Mr. Holden invited Rick Taintor to join the Board at the dais and address this item as it will outlive Mr. Holden's tenure.

Chairman Ricci formally welcomed Rick Taintor to the Board as the new Planning Director, effective July 1st.

Mr. Taintor indicated this is a continuation after a number of meetings. At the May 14th Work Session they discussed a number of items and he took those comments and provided a marked up draft which included changes. He has reviewed this draft with the proponents of Borthwick Village and they were in general agreement.

On Page 1, the definition of Assisted Living Residence has been removed as they are not using it in this revised ordinance.

On Page 2, Paragraph A, there was discussion about not being so specific about the housing goals, but talking more about all of the goals of the Master Plan, including sustainability, so they changed the wording to include “an environmentally sustainable development”. At the bottom of Page 2, Paragraph D3, the set back for residentially zoned land was 150’ with 4 story building height and they added that if they reduce it to 3 stories it could be within 100’ – 150’ from a residential zone. On the top of page 3, new item 5, they talked about the area next to a residential district and that it shall include a landscape buffer. In this particular case (Borthwick Village), half of that space is taken up by railroad. On Page 4, they removed the requirement for private streets, added a provision saying that renewable energy utilities would not have to be underground. They created a new Item 4, and now leave emergency access up to Site Review and they added meaningful connections between the neighborhoods. On page 5 there are a number of changes but they are generally more format changes. In Item 4 they have eliminated the preliminary approval process because they are trying to tie it to the Conditional Use Permit and Site Review. The long phrase at the end of #5 get combined with the last item on the final page. There is a type because they have two #6, but the underlined #6 is what used to be the regional impact section. #7 changes are just editorial to refer to the CCRC instead of Senior Housing. Same on page 6 item 2. Item 3 brings all of the agreements together.

In their recommendation they offered three options: One is that they may want to roll this into the overall revised Zoning Ordinance for public hearings this summer. Second option is that they may want to make a separate recommendation back to the City Council. Third is to schedule another public hearing.

Deputy City Manager Hayden asked about, on page 2, just say sustainable development instead of environmentally.

Mr. Coviello asked if this was a “cross the t” and “dot the I” discussion or can he step back and ask a big picture question. His concern was the idea of an age restricted community and that it is written into the requirements of living there. With the vast amount of older population and the down turn on the economy, developers end up going back to the City Council and ask to change the age restriction. He doesn’t want people saying they don’t want children living next to them. If they built the buildings so that only elderly people would want to live there. If they didn’t have that rule, people who didn’t want to live next to children, probably wouldn’t live there. He asked about eliminating the last sentence on the second paragraph about the requirement of over age 62?

Deputy City Manger Hayden agreed that was a large physiological question. They can’t just delete a sentence as that would be a major policy issue. She has come to think of this proposal that there is a desire in this community for this type of housing. Chairman Ricci felt those issues have a grand shift in age and because we are a diverse community, there is a need for this and there shouldn’t be a problem.

Councilor Dwyer understood what Mr. Coviello was saying and thought she did not see herself wanting to live in an age restricted community, some people do what that and this is about options. A lot of the physical environment needs to be taken into account as well. It isn’t just a mater of not

wanting kids next to you. It's a matter of what the thresholds are like and a ton of things for which specialized housing is important. This is providing an option they don't have.

In the same paragraph, Councilor Dwyer felt that the phrasing of the first sentence saying "including", should be changed to reflect that Continuing Care means having all three options. She wants to make sure the wording is clear enough. Mr. Blenkinsop suggested saying "that shall include".

Councilor Dwyer referred to page 3 at the top, item #5. They don't say anything about a landscape buffer with 150'. Wouldn't they want a substantial buffer at 1500' as well as 100' from a residence? Mr. Taintor clarified that this is only addressing the area within the 100'.

On Page 4, under H, on phasing, it should be proportioned rather than percentage. And it should say occupiable units, not occupied.

On page 4 under F4, she asked if the meaning of the word separate meant not on two different streets? Mr. Taintor agreed that was the intent. Deputy City Manager Hayden thought they could have a road "Y" and have two access points. Mr. Taintor will look at that. Mr. Blenkinsop thought it should imply that they are different public streets. Deputy City Manager Hayden felt it should say two access points to two different public streets. Mr. Taintor thought there was a discussion about the possibility of getting from the unit to a public street two different ways would satisfy the requirement. He will have to clarify that.

Deputy City Manager Hayden summarized that the first definition of assisted living is gone. Mr. Taintor also felt that the point about changing the wording "including" to "shall include", they have been thinking about this being three different type of units all along and they have to make sure it is somehow specified. Deputy City Manager Hayden confirmed on Page 5, item 13, wllil be Site Review Regulations rather than Subdivision Regulations.

Chairman Ricci reminded the Board that they have three options to choose from.

Deputy City Manager Hayden was leaning towards #3 which is to schedule a public hearing. With these edits, they can post this as a public hearing as a final document and get public comment at the regular July meeting. Then they can decide whether to send it to the City Council or let it travel along with the whole proposed Zoning Ordinance. Councilor Dwyer wanted to make sure that allows for going ahead and including it as #1. It would miss one public hearing on the draft Zoning Ordinance. The City Council does not like to get pieces of things. The City Council is having a one half day work session to review the proposed Zoning Ordinance next Thursday. She would like it to catch up to #1 as soon as it can. Deputy City Manager Hayden felt they could fold it in for the next Zoning Ordinance public hearing. Mr. Coveillow asked if it would get lost that way? He felt it might need its own public hearing. Deputy City Manager thought they don't have to make that decision tonight. They can see who comes out on July 16th and then decide what they want to do.

Ms. Geffert stated they have not made a determination on how they are going to consider the Zoning Ordinance so it should be possible to fold this in. She felt it might be appropriate to have questions for the applicant. They could set a particular Planning Board session on the Zoning Ordinance for this.

Deputy City Manager Hayden made a motion to schedule this for a public hearing at the July 16th Planning Board Meeting. Mr. Coviello seconded the motion.

The motion to schedule this matter for a public hearing at the July 16, 2009 Planning Board meeting passed unanimously.

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Chairman Ricci mentioned the informational item regarding the Economic Revitalization Zone Tax Credit request from High Liner Foods in the Board's packet.

Deputy City Manager Hayden mentioned the work session with City Council and City staff to do an overview of the Zoning Ordinance. They will also be sending out the full Zoning Ordinance to all other Lane Use Boards and they will be posting it on the website.

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V. ADJOURNMENT

A motion to adjourn at 8:20 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 July 16, 2009.