

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 P.M.**

**JULY 21, 2011**

**MEMBERS PRESENT:** Paige Roberts, Vice Chairman; Eric Spear, City Council Representative; Donald Coker; John Rice; Anthony Blenkinsop; MaryLiz Geffert; Cindy Hayden, Deputy City Manager; Norman Patenaude, Alternate; and William Gladhill, Alternate

**MEMBERS EXCUSED:** John Ricci, Chairman and Richard Hopley, Building Inspector;

**ALSO PRESENT:** Rick Taintor, Planning Director

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**I. APPROVAL OF MINUTES**

1. Approval of Minutes from the May 12, 2011 Planning Board Work Session – Unanimously approved.
2. Approval of Minutes from the May 19, 2011 Planning Board Meeting – Minutes not available.
3. Approval of Minutes from the June 16, 2011 Planning Board Meeting – Minutes not available.

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**II. PUBLIC HEARINGS – OLD BUSINESS**

*The Board's action in these matters has been deemed to be quasi-judicial in nature.  
If any person believes any member of the Board has a conflict of interest,  
that issue should be raised at this point or it will be deemed waived.*

A. The application of **Public Service Company of New Hampshire, Owner**, for property located at **400 Gosling Road**, requesting Amended Site Plan approval to amend the Truck Management Plan regarding deliveries, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 214 as Lots 1 and 2 and lies within the Waterfront Industrial District. (This application is per stipulation of approval on August 19, 2010 for a one year trial period.)

The Vice Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Richard Despina, Station Manager for the Schiller Station, was present to address this matter. At the August 2010 Planning Board meeting they received approval for two time changes to their wood delivery schedule subject to a one year trial period. The first change was a 6:00 am start from a 7:00 am start, Monday through Friday. They received an average of 4-5 trucks during that additional hour with 9 being the most. They have had no complaints since the change. The second change is to extend the Saturday deliveries from 12:30 to 4:00 pm. Mr. Despina stated that Saturday deliveries are only as needed, primarily for severe weather or mud season when they cannot deliver during the normal work week. They used this on 6 different occasions and, again, did not receive any complaints whatsoever.

Given the success of the trial he was requesting final approval to make the changes permanent.

Mr. Coker had a question about the truck route. The town line goes down the middle of Gosling Road. He asked where the trucks were primarily coming from. Mr. Despina stated the trucks come from all different directions and they are required to come onto the Spaulding Turnpike, use Exit 1 Gosling Road and they are required to use Gosling Road to get back on the Spaulding. This was part of the Truck Management Plan as approved by TAC and the Planning Board. Mr. Coker indicated there is housing on Gosling Road and just because there have been no complaints doesn't mean no one complains. He felt that 9:00 pm is pretty late. Mr. Despina responded that 9:00 pm was already approved and was not part of this hearing. Mr. Coker just wanted to express his concern.

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 grant amended Site Plan approval. Mr. Blenkinsop seconded the motion.

Mr. Blenkinsop felt that as they did this as a trial to see if there would be any complaints or if anything didn't go well but everything seemed to work fine, from his perspective it warranted approval.

The motion to grant amended Site Plan Approval passed unanimously.

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B. 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) are requested between two lots as follows: Lot 64 as shown on Assessor Map 237 increasing in area from 2,728 ±s.f. to 15,056 ± s.f. with 241.28' ± of continuous street frontage on Echo Avenue and Wholey Way and Lot 76 as shown on Assessor Map 237 decreasing in area from 43,703 ± s.f. to 31,375 ± s.f. with 200.89' ± of continuous street frontage on Wholey Way. Said properties are located in a Single Residence B district and are shown on Assessor Map 237 as Lots 64 and 76. This application was previously denied by the Planning Board; however, the Rockingham County Superior Court subsequently reversed the Board's decision and remanded the matter "for consideration of the wetlands issue and any other

concerns not addressed” in the Board’s decision. (This application was postponed at the June 16, 2011 Planning Board Meeting)

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Bernard Pelech appeared on behalf of the owners, Henry and Jacqueline Brandt. He stated that the original application was filed in 2008. The Board denied this application and an appeal was taken to the Rockingham County Superior Court where the decision was reversed and remanded. When this application was filed the minimum size for jurisdictional wetlands was ½ acre. Subsequent to this application being filed, the 2010 Zoning Ordinance reduced the size of jurisdictional wetlands from ½ acre to 10,000 s.f. It had previously been determined that the wetlands on this site were less than ½ acre. Going back to the original Wholey Way subdivision in the 1990’s there was a question as to whether or not the wetlands were less than ½ acre in size. The applicant had hired NH Soil Consultants who came in with a figure that was 500 s.f. less than ½ acre. The City then hired Jim Gove, a wetland scientist, to verify the size of the wetlands. In 1999 Mr. Gove verified that the wetlands were actually smaller than NH Soils had determined as he had discovered a couple islands of uplands in the middle of the wetlands. He opined to the City, as the City’s consultant, that the wetlands were less than ½ acre and were non-jurisdictional. Because this application was filed in 2008, they are still operating under that previous Zoning Ordinance.

Their plan was revised considerably after reading Mr. Taintor’s comments. This brought the plan substantially into compliance with plan requirements under the Subdivision Regulations. This application, as the Court found, is not premature and scattered which is one of the reasons the Board gave for denying the application previously. Premature and scattered means there was no bus service, provisions for utilities, etc. The Court found this was not correct because this was part of a previously approved subdivision in a well developed neighborhood with school children, bus stops, utilities, public water and public sewer. Another reason that this Board denied the application was they did not believe the lot was 100’ in depth. The Court found that it did meet the 100’ depth requirement. The Court also found no support that surrounding properties would be diminished by granting approval. The Court found that it was not practicable for the lot lines to be at right angles to the street and that the planned use is consistent with the City’s Master Plan and the proposed lot would meet all requirements of the City’s Zoning Ordinance as to frontage and size. The only other issue that was raised by the Board at the previous denial concerned the wetlands. Because the wetland issue was not adequately addressed and the applicant was not given an opportunity to address the wetland issue, the Court remanded the application to the Board to consider the wetlands issue and any other concerns not addressed.

Since the 1999 delineation, Mr. Brandt was asked as part of another permit he was issued to have the wetlands looked at again. Mr. Brandt hired Jim Gove and in September of 2009 he wrote a letter to Mr. Brandt stating that the wetland was essentially the same area that was delineated in 1999. The wetland was measured at 21,675 s.f. per a plan by Altus Engineering. Since that time a portion was filled to construct Wholey Way, reducing the size of the wetland by 1,490 s.f. Mr. Gove concluded that it does not appear that the wetland has expanded and is still less than ½ acre in size.

Attorney Pelech felt they have addressed the wetland issue. After this Board denied the subdivision application, Mr. Gove re-confirmed that in September 2009 the wetlands were still less than ½ acre.

Attorney Pelech addressed Mr. Taintor's Memorandum. One recommendation is that they request that the applicant prepare an updated delineation of the wetland and wetland buffer. Attorney Pelech felt they just did that in September 2009 after the application was denied. Since that time Mr. Taintor, Mr. Britz and David Desfosses have walked the site with the applicant's engineer, Eric Weinrieb, because of complaints of Echo Ave Condominium owners. Mr. Weinrieb's letter spells out his findings from that site walk that the wetland delineation is still accurate and he sees no reason for the applicant to have to do it again and expend the extra money

The second recommendation is to refer this application to the Conservation Commission for a recommendation. Attorney Pelech sees no reason for this as nothing has changed. He feels that the plan shows a buildable envelope on the lot, outside of the wetland buffers. They believe the subdivision application should be approved, basically as the Court stated, unless there are wetland issues that have not been addressed.

Mr. Taintor's third recommendation is to postpone the application to the September meeting. If the Board feels that an updated delineation is necessary or a referral to the Conservation Commission is necessary, then Attorney Pelech agreed that a postponement is obviously going to be necessary but he does not believe a postponement is necessary. The wetlands have been delineated within the past two years by Mr. Gove. He did not believe a recommendation to the Conservation Commission is necessary because they are not talking about jurisdictional wetlands, they are talking about wetlands that may be jurisdictional under today's ordinance but they were not jurisdictional under in 2008 when the application was filed. The letter from City Attorney Sullivan in 2010 says the Zoning Ordinance in effect prior to January 2010 will be the Ordinance which applies on remand.

Ms. Geffert asked Mr. Taintor to explain the jurisdictional wetland issue. Mr. Taintor stated that in a meeting with Attorney Pelech and Mr. Brandt, both City Attorney Sullivan and Mr. Taintor opined that this was a jurisdictional wetland and the current zoning would apply to a building permit that was applied for on this site. The question is the relationship between the Subdivision Regulations and the Zoning Ordinance. The lot is shown on the Subdivision plan but a more recent structure proposed on the lot and the building permit required would bring it under the current zoning. On one of the lots a Conditional Use Permit was needed for a foot bridge, although he's not positive of that.

Henry Brandt, property owner, confirmed that no Conditional Use Permit was required for the foot bridge in 2009. The bridge was built in October 2009. Deputy City Manager Hayden pointed out that the bridge was approved prior to the 2010 Zoning Ordinance.

With respect to the delineation, Mr. Taintor stated they have a letter from Jim Gove from 2009 but they don't have a certified plan stamped by a wetland scientist and the most recent plan they have is the 1999 plan. Mr. Gove walked the site and made a statement but he did not delineate it again.

Mr. Brandt was present on the site walk and he stated that all original flags were in place from the original wetland delineation and Mr. Gove drew samples on either side to verify whether the original delineation done in 1999 was still accurate. At the conclusion, he was satisfied that the original

delineation was still accurate. Based on that, he used the original numbers of 21,000 s.f. and he reduced the area by the amount of area filled by the road. The only area that was not delineated was where the road went through and fill occurred at one end of the wetland. The key question seemed to be the ½ acre size and it clearly has to still be less than ½ acre.

Ms. Geffert wanted to clarify that today the jurisdiction wetland size is 10,000 s.f. or approximately ¼ acre. She understands that they are saying they could approve the subdivision but it would be a lot that could not be built on. Mr. Taintor agreed that was the issue between the City and the applicant. Ms. Geffert continued that was because the applicant's position is that a building permit, even though it would not have even been applied for yet, would come under the 2009 Zoning Ordinance. She believed that everyone has conceded that the 2009 Zoning Ordinance would apply to the subdivision consideration but she believed it was very difficult for a Planning Board to approve a lot on which no building can be placed without special exceptions. Mr. Taintor added that because it would be a jurisdictional wetland wouldn't necessarily mean a building could not be placed there because a Conditional Use Permit can always be granted in the wetland buffer. Ms. Geffert therefore stated that Mr. Taintor's recommendation to the Board is not so much to go to the Conservation Commission to determine whether this is or is not a jurisdictional wetland but rather, given the configuration of the lot and the placement on the plan of the building envelope, would the Conservation Commission look favorably on and recommend building there given what is now a jurisdictional wetland. Mr. Taintor confirmed that essentially was the point. Mr. Rice asked if a special exception would then be granted. Ms. Geffert did not believe they could do that until they actually knew what was going to be built because, in all fairness, there would not be enough information but they would at least give an advisory opinion that with the appropriate building they would be likely to approve it.

Deputy City Manager Hayden felt another possible approach would be to grant preliminary subdivision approval and final would be pending obtaining a Conditional Use Permit. Rather than send it to the Conservation Commission for advisory, grant preliminary but final could not be granted until they obtain a Conditional Use Permit. She also wanted to be careful about using the term Special Exception because the BOA is the only Board who grants Special Exceptions. They either would or would not grant a Conditional Use Permit with or without stipulations. Ms. Geffert asked if they would be able to grant a Conditional Use Permit without a building plan. Mr. Taintor felt they probably could not. They would probably want to see how the development would effect the wetland area. Ms. Geffert likes Deputy City Manager Hayden's solution except they don't know when that building plan would come forward so how long would the City allow the preliminary approval to remain pending. Deputy City Manager Hayden stated that they can have preliminary approval forever and never obtain final approval.

Mr. Coker disagreed with the concept of preliminary approval because it has an impact on further deliberations. He asked he applicant if when this originally came up, the wetlands were not an issue. Attorney Pelech confirmed that in 2008 when they filed this application they were non-jurisdictional wetlands. The Board raised the question at the original meeting and he offered to have the matter continued to obtain more information but this Board denied it instead. Mr. Coker stated that the Court order has a number of bullets points and they make some good points and some are arguable; however, the one he cannot get past is that the Court said that there was no updated information on current State and local regulations so the wetlands issue remained unresolved. They now are back with a new plan and further information and instruction by the Court because the wetland issue was not adequately

addressed. Mr. Coker looks at this and feels that the City Attorney is correct and the 2010 Zoning Ordinance applies with the 10,000 s.f. wetland size.

Attorney Pelech disagreed with Mr. Coker's statement and believed the City Attorney Sullivan put in writing that he believed the 2009 Zoning Ordinance applies which said that jurisdictional wetlands had to be ½ acre or larger. Mr. Taintor indicated that Attorney Sullivan did not actually state that. He stated that the 2009 ordinance applied to the subdivision. Attorney Pelech agreed that was all they were here for.

Mr. Taintor also stated that in a subsequent meeting with Attorney Pelech, Attorney Sullivan and Mr. Taintor both said that they believed the building permit would be subject to the 10,000 s.f. wetland size. Therefore, the issue before the Planning Board is whether this would be a buildable lot. He felt they may need to ask the question more directly to get a better answer from the City Attorney.

Deputy City Manager Hayden felt that since this has obviously become a point of confusion, they cannot act on this until they get a written opinion from the City Attorney clarifying what he is opining to and what he is not opining to. Also, for the record, the quote that is in the Planning Director's Memo is exactly what is in the Court finding on page 11, "However, because there was no updated information on the current State and local regulations, the wetlands issue remains unresolved". Attorney Pelech was quoting from the paragraph below.

Attorney Pelech passed out copies of the Court decision to the Board members.

Mr. Blenkinsop asked Mr. Taintor, under the old subdivision regulations they have to evaluate whether this is a buildable lot as a factor in their decision on whether to approve the subdivision. Mr. Taintor confirmed that the Subdivision Regulations have not changed. He does not know exactly how it is stated but is certainly a matter that is valid for consideration.

Mr. Rice asked what a buildable acre is. Attorney Pelech believed the previous ordinance indicated use of the 43,560 s.f.

Mr. Brandt felt there seem to be two questions. One is that of subdivision and one is that of Conditional Use Permit as it applies to a building permit application. It appears the lot meets all requirements of the 2009 Zoning Ordinance for Subdivision and at that point in time a building permit could have been submitted and no further action would have been required. The next step of this process is when the building permit application come in. It will be referred to the Conservation Commission for their review and decision of whether a Conditional Use Permit will be required. He felt these are two separate and distinct issues and that they can move forward with the subdivision question without getting buried in whether a Conditional User Permit will be required.

Ms. Geffert wanted to address that as he raises a valid point and she recognizes that he is frustrated by this process. The Planning Board issue is if they grant subdivision approval, then they have a lot and at that point it would be difficult to say, from the perspective of protecting the wetland area (because now they are pulling a permit under the current Zoning Ordinance), that it would be better if the building envelope were in a different spot. Mr. Brandt has a sizeable lot and it is highly possible that, faced with an application for a building permit too close or inside of the jurisdictional wetland, the

Conservation Commission and the Planning Board will not be able to grant you that permit. They are trying to avoid going to Court again. Wouldn't it be better to work through the issue of granting a subdivision that would be very problematic from a building perspective now that the Zoning Ordinance has changed. That is a real consideration that everyone needs to think about.

Mr. Brandt agreed that her point was valid and he certainly would like to get this worked out. He believes that when they sit down with the Conservation Commission they will be making the same argument they are making with this Board.

Mr. Coker agreed that Ms. Geffert's point was very well taken. As they talk about this application it becomes clearer. The question in his mind is whether they are going to allow a lot to be carved out of this area with a very legitimate question of whether the wetlands are or are not jurisdictional. He cannot make a valid decision without knowing that. He would be much more comfortable receiving more information from the City Attorney.

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

Jeanne Burbank, 155 Echo Avenue, Unit 15, President of the Echo Avenue Condominium Association. She sent a letter in on June 15<sup>th</sup> and they also should have letters from two other unit owners. She expressed the objection of the 20 condo unit owners. Their objection was based on aesthetic and environmental impacts to their property. Drainage problems were created and some common areas can no longer be enjoyed. They do not want to see wetlands destroyed and they have a vested interest in the impact. They asked that the Planning Board deny the application.

Amy Shepard, of 91 Echo Avenue. She sent a letter in 2009 at the original hearing and she continues her objection. The application does not benefit the majority of the citizens. They have not provided any additional facts and it will adversely effect the wetlands. She believes their home valuation will be reduced. The lot is not suitable for building a residence. She requested that the Planning Board deny the petition.

Mr. Brandt responded to the condominium owners. Their property is not adjacent to the area so the development has had no impact on their property. Both abutters have properties that contained wetlands which were verified and everyone walked properties and verified that those properties were wet then and are still wet now. These problems previously existed and the construction of Wholey Way did not contribute to them. Eric Weinrieb submitted a letter which stated that the subdivision complies with the approved 1999 plan.

Mr. Taintor stated for the record that Mr. Weinrieb's letter states Mr. Weinrieb's opinion and it does not reflect any opinion of City staff.

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 made a motion to postpone to the August meeting pending a written opinion from the City Attorney as to which wetland protection standards apply.

Councilor Spear seconded the motion. He asked if Attorney Sullivan’s report could also consider whether the land is buildable and how that flows. He would also like to know what buildable means in the context of this discussion.

Deputy City Manager Hayden added that if they go forward with info in the Planning Department Memo they could have acted on this; however, Mr. Brandt and Attorney Pelech have a different line of thinking on this which is why they need a written opinion from our City Attorney because it does all come down to which regulations apply. If the City Attorney opines that the current wetland regulations apply, then she thinks that they really need to have a wetland delineation done because they do not have that.

Mr. Coker asked what role the Conservation Commission would take, assuming the City Attorney says that the 10,000 s.f. wetland area applies, and if the Board could look forward and refer it to the Conservation Commission to review at their next meeting. Deputy City Manager Hayden was wary of that as she didn’t want to have the applicant out spending money that they don’t need to spend.

Councilor Spear asked if the question was not what regulations apply to the subdivision but what regulations apply to a building permit. Deputy City Manager Hayden stated that her motion was what wetland protection standards apply. Mr. Taintor was trying to make a distinction between what standards would apply to the evaluation of the subdivision for the creation of a lot versus what standards would apply when someone came forward with a building permit application. The follow-up question they have is whether lot would be buildable if the current wetland regulations apply to a building permit. They are trying to make a distinction between what wetland regulations apply to the process of developing the lot.

Deputy City Manager Hayden felt that the City Attorney has already opined and there is no disagreement on the issue the original Brandt subdivision is vested under the old Zoning Ordinance. What is comes down to is that is that “this vesting is for improvements shown on the plan” and that is where the disagreement comes in.

Ms. Geffert was in agreement with the motion but felt the City needs to try to facilitate the process. Deputy City Manager Hayden believed that has been done by the Planning Staff.

Mr. Rice agreed with the motion and stated that if there weren’t any regulations governing wetlands and he was just out for a stroll, he would say that these are pretty impressive wetlands. However, having said that, he wants to do what is fair to the applicant and believes this is the way to proceed.

The motion to postpone to the August 18, 2011 Planning Board meeting passed unanimously.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

*The Board's action in these matters has been deemed to be quasi-judicial in nature.  
If any person believes any member of the Board has a conflict of interest,  
that issue should be raised at this point or it will be deemed waived.*

A. The application of **Madison Commercial Group, LLC, Owner**, for property located at **150 Mirona Road**, requesting Site Plan Approval to construct a 2-story 2,600 s.f. (footprint) garage with open space on the second story, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 253 as Lot 2A and lies within the Gateway District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Jeff Clifford, of Altus Engineering, appeared before the Board. He stated that this project was originally approved in May of 2010 however the approval lapsed and they are back with the exact same plan.

Mr. Clifford did a brief summary of the project. Madison Resources owns this property, which houses ReMax, as well as the abutting property, which is the former Artisan Outlet. They would like to build a 2,000 s.f. garage in the rear. Access is off Mirona Road and would go through a portion of the Artisan Outlet property. They will construct 12 parking spaces and the garage has 3 parking spaces, for a total of 15 new parking spaces. There is a wetland south of the parking lot, which is less than 10,000 s.f., so it is non jurisdictional. TAC brought up past drainage issues as the old Yokens property drains down to this property and the 24" pipe gets plugged up sometimes. They propose an outlet control structure on the 24" pipe to narrow down the flow and keep the 24" pipe free and clear. Another added benefit is to add riprap to remediate an erosion problem. They are proposing a rain garden to discharge to the wetlands to help clean runoff from the site. There is a stone punch pool to dissipate the energy of the water coming onto the site. The project includes a Site Lighting Plan and an easement for access across the property, and they requested waivers for architectural renderings. It is complicated to look at all of the stormwater from adjacent properties so they requested a waiver from producing stormwater calculations. He mentioned that part of the area works as a detention pond which will increase the volume of that pond by 20% so there will be a net benefit. TAC, and especially David Desfosses, have been working closely with Altus Engineering to make sure it will be a benefit to the City and the property.

Deputy City Manager Hayden wanted to make sure this was the exact same project that was previously approved. Mr. Clifford confirmed that it was.

Mr. Taintor noted that they mentioned that this would probably be done in two phases with the site work being done first and the construction of the building second. He asked if that had changed. Mr. Clifford was not aware of the two phase plan however he was confident that their plans have not changed. Mr. Taintor felt that can be reviewed as part of the construction process.

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. Blenkinsop made a motion to grant Site Plan Approval with the two previous stipulations. Mr. Rice seconded the motion.

The motion to grant Site Plan Approval was unanimously approved with the following stipulations:

1. A Construction Management Plan (CMP) shall be prepared by the Applicant and approved by the City, prior to the issuance of a building permit.
2. The Easement Deed shall be executed and recorded at the Registry of Deeds.

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B. The application of **Portsmouth Ford Lincoln Mercury, Inc., Owner**, for property located at **450 Spaulding Turnpike**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, including the installation of a gas line, pavement shimming, and replacement of a retaining wall. Said property is shown on Assessor Map 238 as Lot 1A and lies within the General Business(GB) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Matt McCormack, of MSC Civil Engineers and Land Surveyors, was present on behalf of Portsmouth Ford. They were seeking approval for a Conditional Use Permit for work within the 100' buffer. The property is located between the Home Depot, Arthur Brady Drive and the Ford car dealership. They received Site Plan approval at the June 16<sup>th</sup> Planning Board meeting which consisted of the demolition of a one-story building and the construction of a two-story building. One condition of that approval was to receive a Conditional Use Permit. They met with the Conservation Commission and they unanimously recommended approval on July 13<sup>th</sup>.

Mr. McCormack indicated there are three items of work that will take place within the 100' buffer. The first is pavement shimming to eliminate current stormwater ponding. Sheet C-4, Site Grading and Drainage Plan, shows that the wetland in question is located to the east of the property and the pavement shimming will occur in the brown hatched area. There will be no excavation involved and it will strictly be pavement overlay. The second item will be tapping the existing 2" gas main. Sheet C-5, Utility Plan, shows the location of the tap on the abutting property, which is also owned by the applicant. The entire construction of the service line within the 100' buffer will be within the existing pavement and after construction the pavement will be restored to its existing state. The third item is the removal of an existing timber retaining wall that is currently in failure. Sheet C-3, the Layout Plan, shows the location of the existing and proposed wall. The proposed wall will be similar in size and

shape and will be approximately 70’ long and will be 4’ at its highest point. It will be a segmental block retaining wall. There is also a detail crosssection view of that wall on Sheet C-7, Detail Sheet.

Mr. Rice asked what shimming is. Mr. McCormack explained it will just add a layer of pavement to reduce the depression in the existing pavement.

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 grant a Conditional Use Permit approval. Mr. Patenaude seconded the motion.

The motion to grant a Conditional Use Permit passed unanimously.

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C. The application of **Lawrence and Mary Ciotti, Owners**, for property located at **220 Walker Bungalow Road**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer and tidaln wetland buffer, including removal of an existingi bulkhead and replacement of 187’ of riprap. Said property is showno on Assessor Map 223 as Lot 20 and lies with the Single Residence B (SRB) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Zackery Taylor, Project Planner for Riverside and Pickering Marine Construction, was present representing the Ciotti Revocable Trust. Mr. Taylor gave a brief overview of the project. The lot is located on Sagamore Creek and they have two erosion issues. Most of the property was stabilized with a timber bulkhead system, probably in the 1960’s, which includes their shoreline and around the drainage ditch. The bulkhead has fallen into complete disrepair along the shoreline and it is creating some erosion issues on the abutting property as it is diverting the flow of water and it is taking out the trees on the abutters side. They received State approvals for this. Instead of replacing the timber bulkhead in kind they went with riprap which has less environmental impact and serves to absorb wave energy that rolls through. The timber bulkhead just bounces the wave energy as it hits the wall and causes more erosion. The riprap will be a permanent solution to the erosion problem.

They received State approval and then realized that they needed a Conditional Use Permit which is why they are doing this after the fact. They appeared before the Conservation Commission on July 13<sup>th</sup> and received unanimous approval. A planting plan was requested which he handed out to the Board members. The plan involves four native species primarily found in shorelines.

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 grant Conditional Use Permit approval. Mr. Coker seconded the motion.

Deputy City Manager Hayden asked if the planting plan was subject to staff review. Mr. Taintor confirmed that it was just supposed to be submitted and there was not a request that it be approved.

Mr. Blenkinsop asked if they approve the application subject to this planting plan, does it become enforceable. Mr. Taintor confirmed that City Staff could order that it be planted.

The motion to grant Conditional Use Permit approval passed unanimously.

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**IV. CITY COUNCIL REFERRALS/REQUESTS**

*The Board's action in these matters 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.*

A. Letter from Paul G. Sanderson regarding whether the City has interest in purchasing land off of Spinney Road for Conservation purposes.

Mr. Taintor stated that this was not a public hearing but Mr. Sanderson was present to make a presentation.

Paul Sanderson, Trustee of the two trusts that own the property, was present. He handed out a plan to the Board members. He explained that this is a parcel on Spinney Road and Middle Road and is 12.7 acres in size. It has been in his family since 1841 and they are in the process of planning a subdivision. They are at a pre-preliminary phase as they have 28 abutters and 37 legal abutters and they are doing negotiations with many of them to see if they would like to do lot line adjustments. As part of their meeting with the neighborhood, the neighbors asked if there was any interest for the purpose of land conservation. He contacted the Seacoast Land Trust and who responded that they did not have any interest. He then wrote a letter to the City Manager with the same request, and it was then referred to the Planning Board. He gave this information to the Conservation Commission last week.

Mr. Sanderson indicated that their conceptual plan is for a 9 lot subdivision with three lots fronted on Spinney Road, two lots fronted on Middle Road and a cul-de-sac for the remainder of the lots. Out of the 12.7 acres, approximately 8.6 is wetland, or unable to be developed, and 4 acres would be the subject of those 9 lots. Their question is whether the City has any particular interest in either the entire parcel or the 8.6 acres that will be left behind as a wetland. Mr. Sanderson noted that some neighbors were opposed to having this land open to the public for the purpose of trails or access. It is an area that many people wander through and it disturbs their privacy.

Mr. Rice asked about the wetlands. Mr. Sanderson pointed out the delineated wetlands on the plan. Mr. Rice asked if the City did not want to acquire the land, what would happen to it. Mr. Sanderson explained that he could make it an amenity of the 9-lot subdivision or try to sell it to someone else as mitigation property for some other environmental project. Mr. Rice stated there is a precedent for that in his neighborhood, the Woodlands, which has 90 acres of common land surrounding the lots.

Mr. Blenkinsop asked about the acreage. Mr. Sanderson stated the total parcel is 12.7 acres, the area that is either wet or is proposed to be open is 8.6 acres, leaving about 4 acres which would be the subject of the 9 lots. That may change due to abutter interest in lot line revisions.

Mr. Coker understood that the neighbors do not want the land to have public access but if the City acquired the land, he felt it should have public access. Mr. Sanderson added that they have allowed Peter Loughlin to use the area near the Fells Road side as a nursery for the trees that he plants throughout the City. Mr. Sanderson indicated that "publicly owned" does not necessarily mean complete open access to the public and it certainly could be restricted by the City if that is what they felt was appropriate.

Mr. Blenkinsop asked if there is an access point to the 8.6 acres. Mr. Sanderson stated there is a 50' access on Thaxter Road and another 50' access off Middle Road with steeper topography and closer to the wetlands.

Mr. Coker was trying to think where the City owns property where it is restricted. Deputy City Manager Hayden responded that the City owns a lot of property that does not lend itself to public access, but it is not restricted.

Deputy City Manager Hayden asked if they have any kind of information on the land regarding wildlife studies as she is thinking about what kind of values the land has. Mr. Sanderson stated they have only done a wetland delineation. He would be very doubtful that the land would have any such values due to the nature of the surrounding development. It is not a wildlife corridor.

Mr. Taintor indicated that this was a very open-ended inquiry and this discussion is part of the process. He would be guided by the Conservation Commission which has not been able to come to a conclusion. There was interest in protecting the land but the question is what the cost would be and what the value is.

Mr. Coker felt that, if there was an opportunity to acquire open space, it was in the City's best interest but cost is another issue.

Deputy City Manager Hayden noted that they don't even know what is being offered because the subdivision hasn't been done yet but the neighbors asked him to bring it forward. They don't even know how big it will be.

Mr. Coker felt it would be good for the City to indicate a continued interest. Deputy City Manager Hayden did not think they needed to take any action tonight and they should decide whether there is any additional information they may want. Mr. Coker felt there was a great deal of interest. Mr. Rice

disagreed. Deputy City Manager Hayden stated that the question was acquisition, not protection of the open space.

Mr. Gladhill asked if a wildlife study could be done for small animals as that would make the land worth protecting if they had endangered species living on it. Ms. Roberts wondered what would be involved with undertaking an undeveloped land assessment, as discussed by the Conservation Commission.

Councilor Spear wondered what the benefit to the City was as the other two options include preservation of the open space.

Deputy City Manager Hayden asked if the Board was supportive of staff going to the Conservation Commission and asking if they could get a price from Mark West to review this as one of the public undeveloped land parcels and get the money approved from the Conservation Commission funds by the City Council.

Councilor Spears felt that the best way to discourage people from spending the night on the land would be to develop a well used trail system through it. There are more things to think through in terms of public use.

Ms. Geffert wondered if they could put a sports field there. Deputy City Manager Hayden indicated they could include that in their upland assessment.

No motion was required.

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**V. SITE PLAN EXTENSION**

A. Request of Key Auto Group, Inc., Owner, for property located at 549 Route One By-Pass (Traffic Circle) for a one year extension of Site Plan approval received on August 19, 2010.

Mr. Taintor explained this is for the first one year extension which can be granted without a public hearing with good cause shown. The applicant stated that the extension was needed as a result of market conditions and because of delays in obtaining some State permits for the project.

Mr. Blenkinsop made a motion to grant a one year extension of Site Plan review. Deputy City Manager Hayden seconded the motion.

The motion to grant a one year extension of Site Plan review passed unanimously.

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**VI. PLANNING DIRECTOR'S REPORT**

A. Discussion of planned/proposed zoning ordinance amendments.

Mr. Taintor provided a Memorandum with proposed zoning amendments to bring the Board up to speed and let them know what staff has been working on. Some are housekeeping items and others are fairly significant.

Article 4, Table of Uses. They are eliminating a distinction between religious uses and similar non-religious places of assembly.

Article 4 & 5, Municipal Districts. When land is acquired by the City it goes into the Municipal District automatically, but when the City disposes of land the City has to go through another process to rezone. Therefore, he is proposing to eliminate the Municipal zone altogether and to rezone to something that is more appropriate given the surrounding area. Also, the Pease Airport Districts are subject to State zoning yet they have a zoning district in our Zoning Ordinance referring them to the State regulations. He is recommending that they eliminate the Pease regulations and simply refer them to the proper document.

Article 5, Mixed Residence districts. Recommends increasing the allowable residential density. That would make lots more conforming and perhaps allow for some moderate cost housing consistent with the neighborhood.

Article 5, Residential Districts. This is the big neighborhood zoning project they are working on however due to reduced staff they have not been able to move forward with this.

Downtown Overlay District. They would like to talk about expanding this area to include about 3 blocks on lower State Street.

Marinas. Add an environmental regulation regarding pumpouts and dump stations.

Roof-mounted wind turbines. Modify height standards.

Wetlands Protection. Looking at alternative standards for wetland protection and allowing for a remediation plan when violations have occurred.

Off Street Parking. They would like to exempt some small, pedestrian-oriented nonresidential uses. Add requirements for bicycle parking facilities and possibly substitute bicycle parking spaces for up to 5% of the automobile parking spaces.

Outdoor Lighting. Issues have come up with outdoor lighting from within a building and illumination by translucent building elements.

Housekeeping issues for signs and changes to definitions.

Some other issues which have been raised and will be included are allowing limited business uses in residential districts, allowing limited animal raising in residential districts (chickens, beekeeping), addressing concerns about the relationship between building height and street width.

Mr. Taintor’s recommendation was to schedule a Work Session in September; however, at the City Council Meeting the question was raised whether they could move more quickly on some simple changes.

Deputy City Manager suggested a 2-hour work session on a special night. Mr. Taintor felt the Work Session would be to determine priorities for the Planning Staff to work on.

Councilor Spear, Mr. Blenkinsop and Mr. Patenaude were not available on the 4<sup>th</sup> Thursday in August.

It was agreed to schedule a Work Session for Thursday, September 1, 2011 from 6:00 – 8:00 pm

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**VII. ADJOURNMENT**

A motion to adjourn at 9:05 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 September 15, 2011.