

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made by and between the Foundation for Seacoast Health of 100 Campus Drive, Suite 1, Portsmouth, New Hampshire, 03801 ("Lessor") and The Mark Wentworth Home of 346 Pleasant Street, Portsmouth, New Hampshire, 03801 ("Tenant"). Lessor and Tenant may be referred to jointly as the "Parties."

### RECITALS

A. The Lessor is the owner of a multi-unit building of approximately 80,000 square feet, known as the Community Campus (the "Community Campus"), located on Campus Drive in Portsmouth, New Hampshire.

B. The Lessor and Tenant desire to enter into this Lease Agreement whereby the Parties have agreed on the terms and conditions upon which Lessor shall let to Tenant a portion of the Building.

NOW THEREFORE, in consideration of the covenants herein contained and other valuable consideration, the receipt of which is hereby acknowledged, Lessor and Tenant hereby agree as follows:

### ARTICLE I - LEASED PREMISES

1.1 Lessor hereby leases to Tenant and Tenant hereby leases from Lessor, upon and subject to the terms and provisions of this Lease, an area of approximately **Two Thousand Three Hundred Forty-nine (2,349) square feet** on the plan attached hereto as **Exhibit A** (the "Leased Premises"), which area is a part of the Community Campus which is located upon a lot or parcel of land situated in Portsmouth, County of Rockingham, New Hampshire (the "Land").

Tenant's right to the Leased Premises is subject to the rights of Lessor, other tenants, and the invitees of other tenants to use any and all Common Area (as that term is defined in **ARTICLE 8.1** hereafter) within the Community Campus.

1.2 The "Commencement Date" of this Lease shall be October 17, 2012.

### ARTICLE II - TERM OF LEASE

2.1 The term of this Lease is for a period of three (3) years (the "Term"), which period will commence on the Commencement Date

2.2 The term "Lease Year," as used herein, shall commence with the Commencement Date and shall terminate on the last day of the twelfth (12<sup>th</sup>) calendar month after such commencement.

2.3 If Tenant holds over after the expiration of the Term without objection from Lessor, then such holding over will not extend the term of this Lease, but will create a month-to-month

tenancy under the same conditions as this Lease except that rent shall be paid in the amount of one hundred fifty percent (150%) of the base rent set forth in Section 4.1 hereof.

2.4 Subsequent lease negotiations will be made in good faith, providing the Tenant is not in default and has met all requirements of the previous lease period.

#### ARTICLE III - OPTION TO RENEW

3.1 Provided the Tenant is not in default of its obligations under the terms and conditions of this Lease beyond applicable grace, notice and cure periods, both at the time of Tenant's exercise of any renewal option and at the time of the schedule of commencement of such renewal option, Tenant may, at Tenant's option, renew this Lease for up to two (2) additional terms of three (3) years each (individually, a "Renewal Term" and together the "Renewal Terms"). The first Renewal Term will begin on the day after the expiration of the initial Term and will end on the last day of the sixth Lease Year thereafter, and the second Renewal Term will begin on the day after the expiration of the first Renewal Term and will end on the last day of ninth Lease Year thereafter. Each Renewal Term will be subject to the same terms and conditions as this Lease except that there will be no further option to renew after the second Renewal Term, unless otherwise agreed to in writing by the parties.

3.2 The amount of the Base Rent and Additional Rent during any Renewal Term shall be calculated based upon increases in the cost of operating the facility as well as the local rental market for comparable properties. At no time will the Base Rent be reduced. Tenants will be notified of changes to the Base Rent sixty (60) days prior to the first day of each subsequent Renewal Term.

#### ARTICLE IV - RENT

4.1 Tenant shall pay Lessor as the annual base rent the amount of \$8.50/square foot for the Leased Premises during the term of this Lease, for an annual sum totaling **Nineteen Thousand Nine Hundred Sixty-seven Dollars (\$19,967)**, payable in equal monthly installments of **One Thousand Six Hundred Sixty-three and 92/100 Dollars (\$1,663.92)**.

4.2 All rent is payable in advance, without demand, in fixed monthly installments as set forth above, on or before the first day of each and every month during the term hereof.

4.3 The Base Rent and the Additional Rents in Article V and all other sums payable by Tenant hereunder, shall be referred to collectively as "Rent."

#### ARTICLE V - ADDITIONAL RENT

5.1 Tenant shall pay as Additional Rents for the Leased Premises:

- (a) Utilities - which amount will be determined based on the actual total costs for electricity, gas, and water/sewer services associated with the Community Campus for the calendar year period immediately prior to the Lease Year for which Additional Rent is to be paid.

(b) Janitorial/environmental services - \$2.60/square foot.

5.2 The Additional Rents will be paid in twelve (12) equal monthly installments, at the same time as the Base Rent as stated in Article IV above.

5.3 Lessor will notify Tenant of the amount of Additional Rents to be paid no later than 30 days prior to the commencement of each Lease Year.

#### **ARTICLE VI - SECURITY DEPOSIT**

6.1 For new Tenants, the sum of One Thousand Dollars (\$1,000) shall be deposited with the Lessor upon execution of this Lease Agreement by Tenant as security for the faithful performance of all the covenants and conditions of this Lease Agreement on Tenant's part. In the event that all covenants and conditions have been satisfactorily performed over the course of the initial term, the sum deposited as security shall be returned, without interest, to Tenant.

#### **ARTICLE VII - QUIET ENJOYMENT**

7.1 Lessor shall put Tenant into possession of the Leased Premises on the Commencement Date, and Tenant, upon paying the Rent and observing the other covenants and conditions herein, upon its part to be observed, shall peaceably and quietly hold and enjoy the Leased Premises.

#### **ARTICLE VIII - COMMON AREAS OF THE BUILDING; MAINTENANCE THEREOF**

8.1 The term "Common Area" is defined for all purposes of this Lease as that part of the Community Campus and the Land designated by Lessor as intended for the common use of all tenants, including among other facilities all corridors, lobbies (including cafe), access ways, parking areas, private streets, landscaping, curbs, loading areas, sidewalks, hallways, lighting facilities, and such other areas as may be designated as Common Area by the Lessor from time to time. Lessor reserves the right from time to time to manage, control, and regulate all aspects of the Common Area. Tenant, its employees, and invitees shall have the nonexclusive right to use the Common Area as constituted from time to time. Such use shall be in common with Lessor, other tenants in the Community Campus, and other persons permitted by Lessor to use the same, and shall be subject to such rules and regulations governing use as Lessor in its sole discretion may from time to time prescribe, including the designation of specific areas within the Community Campus or the Land in which automobiles owned or used by Tenant, its employees, and invitees shall be parked. Tenant shall not take any action which would interfere with the rights of other persons to use the Common Area. Lessor may temporarily close any part of the Common Area for such periods of times as may be necessary to make repairs or alterations or to prevent the public from obtaining prescriptive rights. Lessor shall be responsible for the operation, management, and maintenance of the Common Area, the manner of maintenance and the expenditures therefor to be in the sole discretion of Lessor.

8.2 It is the desire of the Lessor to keep the outside premises at a high standard of maintenance and cleanliness. Anything seeming to create a hazard or unsightly appearance including, but not limited to, discarded equipment and trash, is prohibited.

8.3 Tenant shall furnish to Lessor upon request a complete list of license numbers of all automobiles operated by Tenant and its employees. Tenant agrees that if any automobile or other vehicle owned by Tenant or any of its employees or invitees shall at any time be parked in any area, other than the specific areas designated by Lessor from time to time for employee parking, Lessor shall be and is hereby authorized to cause such automobile or other vehicle to be removed to such other location, either within or beyond the Building area. Tenant agrees to indemnify Lessor, its employees, and agents and hold each of them harmless from any and all claims of whatsoever nature which may arise by reason of such removal.

#### **ARTICLE IX - CONDITION OF LEASED PREMISES; REPAIRS**

9.1 Subject to the terms of ARTICLE 1 of this Lease, Tenant accepts the Leased Premises and the Common Area and any improvements, and any equipment or fixtures on or in the Leased Premises "as is" and in their then existing condition and agrees that no representation, statement or warranty, express or implied, has been made by or on behalf of Lessor as to such condition, or as to the use that may be made of such property.

9.2 Lessor shall be responsible for all capital maintenance associated with the Leased Premises.

9.3 Tenant shall take good care of the Leased Premises and keep the same free from waste at all times. Tenant shall keep the Leased Premises neat, clean, and free from dirt or rubbish at all times, and shall store all trash and garbage within the Leased Premises in the manner and areas prescribed by Lessor. Tenant shall not operate an incinerator or burn trash or garbage within the Community Campus or any part of the Land. Tenant shall procure at its sole expense all permits and licenses required for the transaction of business in the Leased Premises and otherwise comply with all applicable laws, ordinances, and governmental regulations affecting the Leased Premises, including those relating to Hazardous Waste or Substance (hereinafter defined) now in force or that may be hereafter enacted or promulgated.

9.4 Lessor is responsible for what is considered by Lessor to be usual and customary janitorial services (Exhibit B). Anything above and beyond what Lessor provides is the sole responsibility of Tenant (subject to approval of Lessor). A portion of these janitorial services is paid by Tenant as Additional Rent. Lessor is responsible for preventive pest control/extermination services. However, any pest control services required due to the Tenant's negligence (including improper storage of food and/or dry goods) will be billed directly to the Tenant.

9.5 Tenant is solely responsible for properly disposing, at its sole expense, of any medical waste, biowaste, and other waste not considered by Lessor to be usual and customary, in compliance with all applicable laws, rules and regulations.

#### **ARTICLE X - IMPROVEMENTS BY TENANT**

10.1 Tenant shall not make or allow to be made any alterations, installations, additions or improvement in or to the Leased Premises, or place safes, vaults or any other heavy furniture or equipment within the Leased Premises, without Lessor's prior written consent, such consent to be given or withheld in Lessor's sole discretion. In addition to any and all other conditions imposed by

Lessor, any such alterations, additions or improvements to the Leased Premises shall be governed by the following terms:

(a) No such alteration, addition or improvement lessens the fair market value of the Leased Premises or the Community Campus and all such improvements are performed in class and quality at least equal to the original construction work;

(b) All work for any such alteration, addition or improvement shall be performed by a contractor approved by Lessor prior to the commencement of the work, and Lessor shall approve the construction contract which shall be between the Tenant and the approved contractor;

(c) Prior to the commencement of work on any such alteration, addition or improvement, Tenant shall procure, at its own cost and expense, all necessary permits; furthermore, the plans and specifications covering the same will have been submitted to and approved in writing by (i) Lessor, (ii) all municipal or other governmental departments or agencies having jurisdiction over the subject matter thereof, and (iii) any mortgagee having an interest in or lien upon the Leased Premises or the Community Campus if required by the terms of the mortgage.

(d) In carrying out all such alterations, additions and improvements, Tenant shall comply with the standards, guidelines, and specifications imposed by all municipal or other governmental departments and agencies having jurisdiction over the same, including without limitation, all building codes;

(e) Prior to the commencement of work on any such alteration, addition or improvements, Tenant shall have procured and delivered to Lessor the policy of Builder's Risk insurance hereinafter referred to in Section 22.2 hereof or additional fire and extended coverage insurance as required by Section 22.3 hereof, whichever is applicable;

(f) All work shall be completed promptly and in a good and workman like manner and shall be performed in such a manner that no mechanics, materialmens or other similar liens shall attach to Tenant's leasehold estate, and in no event shall Tenant permit, or be authorized to permit, any such liens or other claims to be asserted against Lessor or Lessor's rights, estate, and interest with respect to the Leased Premises or the Community Campus; and at the completion of all work Tenant shall obtain waivers of mechanics and materialmens liens from all persons performing work on or on furnished material to the Leased Premises; and

(g) Any such alteration, addition or improvement made by Tenant pursuant to the terms hereof shall, at the expiration of the Term become and remain the property of Lessor, provided, however, that Lessor may, at its option and upon notice to Tenant, require Tenant to remove any such alterations, additions, and improvements and to restore the Leased Premises to their condition as at the beginning of the Term hereof, reasonable wear and tear,

taking by eminent domain, and damage due to fire or other casualty insured against excepted.

#### **ARTICLE XI - MACHINERY AND EQUIPMENT - TRADE FIXTURES**

**11.1** All alterations, installations, additions or improvements, other than moveable furniture and moveable trade fixtures, made by Tenant to the Leased Premises shall remain upon and be surrendered with the Leased Premises and become the property of Lessor at the expiration or termination of this Lease or the termination of Tenant's right to possession of the Leased Premises; provided, however, that Lessor may require Tenant, at Tenant's cost, to remove any and all of such items that are not, in the Lessor's discretion, appropriate to the premises within ten (10) days following the expiration or termination of this Lease, or the termination of Tenant's right to possession of the Leased Premises. Tenant, at its sole cost and within ten (10) days following the expiration or termination of this Lease, shall remove all of Tenant's property from the Leased Premises. Any such property which may be removed pursuant to the preceding sentence and which is not so removed prior to the expiration or earlier termination of this Lease may be removed from the Leased Premises by Lessor and stored for the account of Tenant; and if Tenant fails to reclaim such property within thirty (30) days following such expiration or earlier termination of this Lease, then such property will be deemed to have been abandoned by Tenant, and may be appropriated, sold, destroyed or otherwise disposed of by Lessor without notice to Tenant and without obligation to account therefor. Tenant shall pay to Lessor the cost incurred by Lessor in removing, storing, selling, destroying or otherwise disposing of any such property.

#### **ARTICLE XII - UTILITIES**

**12.1** Lessor shall pay when due all charges for gas, oil, electricity, water, light, heat, air conditioning, sewer and power used on or about or supplied to the Leased Premises. Lessor shall not be liable for any failure of water supply or electric current or of any service by any utility; or injury to persons (including death) or damage to property resulting from steam, gas, electricity, water, rain or snow which may flow or leak from any part of the Leased Premises or from any pipes, appliances or plumbing works, on the street or subsurface, or from any other place; or for interference with light or other easements, however caused.

**12.2** Tenant shall be solely responsible and pay any and all charges associated with installation, service, and maintenance of telephone, communications, and any other data equipment to the Leased Premises. Tenant must receive prior written approval of Lessor before installing this equipment.

#### **ARTICLE XIII - USE OF LEASED PREMISES**

**13.1** Without the prior written consent of Lessor, Tenant may use the Leased Premises only for The Mark Wentworth Home Adult Day Program which provides daily support for seniors with physical and cognitive impairments or social isolation and includes organized daily activities, transportation, meals, and professional supervision and for no other purpose whatsoever without Lessor's prior written consent, which consent shall be granted or withheld in Lessor's sole discretion.

13.2 In its use of the Leased Premises, Tenant shall comply with all statutes, ordinances, and regulations applicable to the use thereof, including, without limiting the generality of the foregoing, the Zoning Ordinances of the City of Portsmouth, New Hampshire, as now in effect or as hereafter amended.

13.3 Tenant shall not injure or deface, or commit waste with respect to the Leased Premises nor occupy or use the Leased Premises, or permit or suffer any part thereof to be occupied or used, for any unlawful or illegal business, use or purpose, nor for any business, use or purpose deemed to be disreputable or extra-hazardous, nor in such manner as to constitute a nuisance of any kind, nor for any purpose nor in any manner in violation of any present or future laws, rules, requirements, orders, directions, ordinances or regulations of any governmental or lawful authority including Boards of Fire Underwriters. Tenant shall, immediately upon the discovery of any such unlawful, illegal, disreputable or extra-hazardous use, take, at its own cost and expense, all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove the subtenants, occupants or other persons guilty of such unlawful, illegal, disreputable or extra-hazardous use.

13.4 Tenant shall procure any licenses or permits required by any use of the Leased Premises by Tenant.

#### ARTICLE XIV - HAZARDOUS WASTE OR SUBSTANCES

14.1 Tenant shall not use the Leased Premises for the generation, storage or treatment of hazardous waste or substances, and hereby certifies that its operations or other use of the Leased Premises will not involve same. For purposes of this Lease, the term "Hazardous Waste or Substances" is defined by cumulative reference to the following sources as amended from time to time: (1) The Resource Conservation and Recovery Act of 1976, 42 U.S.C. §901 et seq (RCRA); (2) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq; (3) Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §6901 et seq; (4) CPA Federal Regulations promulgated thereunder and codified in 40 C.F.R. Parts 260-265 and Parts 122-124; (5) New Hampshire R.S.A. ch 147 and 147-A; (6) New Hampshire Regulations promulgated thereunder by any Agency or Department of the state.

14.2 Tenant warrants and acknowledges that at no time have funds been expended from the State of New Hampshire's hazardous waste cleanup fund established under RSA 147-B with respect to any of Tenant's property located within New Hampshire which would entitle the State to a so-called superlien under RSA 147-B:10 III. Tenant also acknowledges same with respect to similar laws of any other state which liens might possible affect the Leased Premises. Tenant shall indemnify Lessor and hold Lessor harmless for any liability imposed should the provisions of this Section 13.2 be or become untrue. The warranty of this section will survive the expiration or termination of this Lease.

#### ARTICLE XV - ASSIGNMENT; SUBLEASING

15.1 Tenant shall not, voluntarily, by operation of law, or otherwise, assign, transfer, mortgage, pledge or encumber this Lease or sublease the Leased Premises or any part thereof, or grant a right to any person other than Tenant, its employees, agents, servants, and invitees to occupy

or use the Leased Premises or any portion thereof, without the express prior written consent of Lessor and in the sole discretion of Lessor. Any attempt to do any of the foregoing without such written consent shall be null and void and of no affect, and shall further constitute a material default under this Lease. If Tenant so requests Lessor's consent, said request shall be in writing specifying the duration of said desired sublease or assignment, the date same is to occur, the exact location of the space affected thereby and the proposed rentals on a square foot basis chargeable thereunder, and shall be submitted to Lessor at least sixty (60) days in advance of the date on which Tenant desires to make such assignment or sublease or allow such occupancy or use. Upon such request, Lessor may, in its sole discretion, (i) grant such consent subject to Lessor's approval of the assignee, transferee, subtenant or mortgagee, or (ii) deny such consent, or (iii) elect to terminate this Lease.

15.2 It is the responsibility of the Tenant to ensure that any sublessee is fully informed and compliant with all Campus Rules and Regulations. However, the Tenant shall, despite any permitted assignment or sublease, remain directly and primarily liable for the performance of all of the covenants, duties, and obligations of Tenant hereunder, and Lessor shall be permitted to enforce the provisions of this Lease against Tenant or any assignee or sublessee without demand upon or proceeding in any way against any other person.

15.3 Consent by Lessor to a particular assignment or sublease shall not be deemed a consent to any other subsequent transaction. If this Lease is assigned or if the Leased Premises are subleased without the permission of Lessor, then Lessor may nevertheless collect rent from the assignee or sublessee and apply the net amount collected to the rent payable hereunder, but no such transaction or collection of rent or application thereof by Lessor shall be deemed a waiver of any provision hereof or a release of Tenant from the performance of the obligations of the Tenant hereunder.

#### ARTICLE XVI - TAXES AND ASSESSMENTS

16.1 Lessor shall pay all real estate taxes associated with the Community Campus and the Land.

In the event that Tenant uses the Leased Premises and Community Campus in such a way as to subject the Community Campus or the Land to real estate taxes, Tenant shall be responsible for such taxes.

#### ARTICLE XVII - MECHANIC'S LIEN

17.1 In the event of the filing in the Rockingham County Registry of Deeds of any notice of a builder's, supplier's or mechanic's lien on the Leased Premises or the Building arising out of any work performed by or on behalf of Tenant, Tenant shall cause without delay proper proceedings to be instituted to test the validity of the lien claimed, and before the end of the term to discharge the same by the posting of bond or otherwise; and during the pendency of any such proceeding, Tenant shall completely defend and indemnify Lessor against any such claim or lien and all costs of such proceedings wherein the validity of such lien is contested by Tenant, and during the pendency of such proceeding such lien may continue until disposition of such proceeding, and after disposition thereof, Tenant shall cause said lien to be released and discharged.

#### ARTICLE XVIII - EMINENT DOMAIN



18.1 If the Leased Premises is lawfully condemned or taken by any public authority either in its entirety or in such proportion that it is no longer suitable for the intended use by Tenant, then this Lease will automatically terminate without further act of either party hereto on the date when possession of the Leased Premises is taken by such public authority, and each party hereto will be relieved of any further obligation to the other except that Tenant shall be liable for and shall promptly pay to Lessor any rent or other payments due hereunder then in arrears or Lessor shall promptly rebate to Tenant a pro rata portion of any rent or other such payments paid in advance. In the event the proportion of the Leased Premises so condemned or taken is such that the Leased Premises is still suitable for its intended use by Tenant, this Lease will continue in effect in accordance with its terms and a portion of the rent and other payments due hereunder will abate equal to the proportion of the rental value of the Leased Premises so condemned or taken. In either of the above events, the award for the property so condemned or taken will be payable solely to Lessor without apportionment to Tenant, except that Tenant shall be entitled to a separate award, if any, for moving expenses.

#### ARTICLE XIX - LIABILITY AND GENERAL INDEMNIFICATION BY TENANT

19.1 Tenant agrees to indemnify, defend and hold harmless Lessor against and from any and all claims, actions, judgments, damages, penalties, fines, assessments, costs and expenses, liabilities and losses (including sums paid in settlement of claims, attorneys' fees, consultants' fees, and experts' fees) as a result of the action and/or inaction of the Tenant, including but not limited to matters resulting or arising as follows:

- (1) from Tenant's use and/or occupancy of the Leased Premises and the Community Campus;
- (2) from any condition of the Leased Premises;
- (3) from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease Agreement, or from any act or omission of Tenant, or any of Tenant's agents, contractors, servants, employees, licensees or invitees; or
- (4) from any accident, injury, loss or damage whatsoever caused to any person or property occurring during the term of this Lease Agreement, on or about the Leased Premises and the Building.

#### ARTICLE XX - RULES AND REGULATIONS

20.1 Tenant, its servants, employees, agents, visitors, invitees, and licensees, shall observe faithfully and comply strictly with the Rules and Regulations set forth in Exhibit C hereto, and shall abide by and conform to such further Rules and Regulations, pertaining to the Leased Premises and Building, as Lessor may from time to time, in its sole discretion, make, amend, or adopt (both at the time of execution of this Lease or in the future).

#### ARTICLE XXI - LESSOR'S INSURANCE

21.1 Lessor shall carry such property insurance, boiler insurance, public liability, and property damage insurance, rent insurance and any other insurance (including both types of insurance and amounts of coverage) with respect to the Building which, from time to time, Lessor deems appropriate.

21.2 In the event of loss, Lessor shall promptly initiate action to effect a settlement with the insurer. Tenant shall cooperate with Lessor and any mortgagee in connection with the proceeding and collection of claims, and shall execute and deliver to Lessor such proofs of loss, releases and other instruments as may be necessary to settle any such claims and obtain the proceeds thereof, and in the event Tenant fails or neglects to so cooperate or to execute and deliver any such instrument, Lessor may, as the agent or attorney-in-fact of Tenant, execute and deliver any such instrument, and Tenant hereby nominates and appoints Lessor the proper and legal attorney-in-fact of Tenant for such purpose, hereby ratifying all that Lessor may lawfully do as such attorney-in-fact.

21.3 If and to the extent permitted without prejudice to any rights of Lessor under the applicable insurance policies, Tenant shall be held free and harmless from liability for loss or damage to the Leased Premises by fire, the extended coverage perils, sprinkler leakage, vandalism and malicious mischief if and to the extent actually insured against, whether or not such loss or damage is the result of the negligence of Tenant, its employees or agents. This subsection does not impose any added obligation or expense upon Lessor nor require that it carry any insurance of any kind and is to be construed only as a limitation upon the rights of the insurance carriers to subrogation.

#### ARTICLE XXII - TENANT'S INSURANCE

22.1 Tenant shall, throughout the term hereof, procure and carry at its own expense comprehensive liability insurance on the Leased Premises with an insurance company authorized to do business in New Hampshire and acceptable to Lessor. Such insurance will be carried in the name of and for the benefit of Tenant and Lessor; shall specifically name Lessor as an additional insured; will be written on an "occurrence" basis; and shall provide coverage for bodily injury and property damage under a combined single limit of at least **One Million Dollars (\$1,000,000.00)** Each Occurrence Limit and with a General Aggregate of at least **Two Million Dollars (\$2,000,000.00)**. If applicable, Tenant shall comply with the requirements of the Boilers and Unfired Pressure Vessels Law (RSA 157-A), and in such event the policy or policies referred to above shall contain an endorsement providing pressure vessels insurance coverage and naming Lessor as either a Named Insured or a Loss Payee. Tenant shall furnish to Lessor a certificate of such insurance which must provide that the insurance indicated therein will not be cancelled without at least thirty (30) days prior written notice to Lessor.

22.2 During any period or periods of construction by Tenant on the Leased Premises, the construction of which (a) is of a type to which Builder's Risk Insurance is applicable and (b) requires the advance written approval of Lessor Pursuant to **ARTICLE X** hereof, Tenant shall obtain and maintain in effect standard Builder's Risk Insurance written on a completed value basis, including extended coverage, and utilizing a maximum value at date of completion not less than the greater of (y) the aggregate contract price or prices for the construction of such facilities or (z) the amount which may be required by a mortgagee which is financing such construction. Such insurance

shall be obtained from an insurance company authorized to do business in New Hampshire and acceptable to Lessor, and Tenant shall furnish to Lessor a certificate of such insurance which shall provide that the insurance indicated therein shall not be cancelled without at least thirty (30) days prior written notice to Lessor. If such construction by Tenant is of a type to which Builder's Risk Insurance is not applicable, Tenant shall provide the necessary additional coverage under the policies referred to in this ARTICLE XXII.

22.3 Tenant shall procure and continue in force during the term hereof, all-risk insurance which contains fire and extended coverage on a full value, repair or replacement basis upon facilities, machinery, equipment and appurtenances constructed, erected or installed on or in the Leased Premises by Tenant and which have or may become the property of Lessor pursuant hereto. The policies evidencing such insurance must provide that loss, if any, payable thereunder will be payable to Lessor and/or Tenant and/or mortgagee of the Leased Premises or the Building as their respective interests may appear, and all such policies together with evidence of payment of the premiums thereon will be delivered to Lessor and/or any such mortgagee. All such policies must be obtained with such responsible companies authorized to do business in New Hampshire as Lessor shall approve (which approval shall not be unreasonably withheld) and must be in form satisfactory to Lessor and Tenant shall furnish to Lessor a certificate of such insurance which shall provide that the insurance indicated shall not be cancelled without at least thirty (30) days prior written notice to Lessor.

22.4 Tenant shall procure and continue in force during the term hereof both workers' compensation and employer's liability policies in coverage amounts acceptable to Lessor. Payment of premiums by Lessor will not be deemed a waiver or release by Lessor of the default by Tenant in failing to pay the same or of any action which Lessor may take hereunder as a result of such default. Tenant shall neither violate, nor allow its agents or employees to violate any of the terms, conditions and provisions of such policies.

22.5 Upon receipt of a copy of notice of cancellation of any insurance which is the responsibility of Tenant hereunder, Lessor may pay the premiums necessary to reinstate the same. The amount so paid will constitute Additional Rent payable by Tenant at the next rental payment date. Payment of premiums by Lessor will not be deemed a waiver or release by Lessor of the default by Tenant in failing to pay the same or of any action which Lessor may take hereunder as a result of such default. Tenant shall neither violate, nor allow its agents or employees to violate any of the terms, conditions and provisions of such policies.

22.6 If and to the extent permitted without prejudice to any rights of Tenant under the applicable insurance policies, Lessor shall be held free and harmless from liability for loss or damage to personal property of Tenant in the Leased Premises by fire, the extended coverage perils, sprinkler leakage, vandalism and malicious mischief if and to the extent actually insured against, whether or not such loss or damage is the result of the negligence of Lessor, its employees or agents. This subsection does not impose any added obligation or expense upon Tenant nor require that it carry any insurance of any kind and is to be construed only as a limitation upon the rights of the insurance carriers to subrogation.

#### ARTICLE XXIII - DESTRUCTION OR DAMAGE

23.1 In the event that the Leased Premises is totally destroyed by fire or other casualty insured against, or is so damaged that repairs and restoration cannot, in the opinion of Lessor in its sole discretion, be accomplished within a period of one hundred twenty (120) days from the date of such destruction or damage, this Lease will automatically terminate without further act of either party hereto, and each party shall be relieved of any further obligation to the other except for the rights and obligations of the parties under ARTICLES XXI and XXII hereof, and except that Tenant shall be liable for and shall promptly pay Lessor any Rent then in arrears or Lessor shall promptly rebate to Tenant a pro rata portion of any Rent paid in advance. In the event that the Leased Premises is so damaged that repairs and restoration can be accomplished within a period of one hundred twenty (120) days from the date of such destruction or damage, this Lease will continue in effect in accordance with its terms; such repairs and restoration will, unless otherwise agreed by Lessor and Tenant, be performed as closely as practicable to the original specifications (utilizing therefor the proceeds of the insurance applicable thereto without any apportionment thereof for damages to the leasehold interest created by this Lease), and until such repairs and restoration have been accomplished, a portion of the Rent will abate equal to the proportion of the Leased Premises rendered unsuitable for the ordinary activities of the Tenant by the damage. Lessor's obligation to restore, replace or rebuild such facilities will not exceed in amount the sum of the insurance proceeds paid to it and/or released to it by any mortgagee with which settlement was made. In the event the Leased Premises may be repaired and/or restored within the aforementioned one hundred twenty (120) day period, but the cost of such repair or restoration exceeds the available insurance proceeds, at Lessor's discretion, this Lease will be terminated in which event the rights and duties of the parties shall be governed by the first sentence of this Section 23.1. Tenant shall execute and deliver to Lessor all instruments and documents necessary to evidence the fact that the right to such insurance proceeds is vested in Lessor. In the event of damage or destruction, partial or total, to or of machinery, equipment and appurtenances constructed or installed on or in the Leased Premises by Tenant, Tenant, provided it then be in full compliance with ARTICLE XXII hereof, will be entitled to receive an apportionment of the insurance proceeds in accordance with the relative damage or destruction to or of (a) the Leased Premises as it exists at the beginning of the term hereof and (b) the machinery, equipment and appurtenances, if any, constructed or installed on or in the Leased Premises by Tenant at its expense after the beginning of the term hereof and which could have been removed by Tenant pursuant to ARTICLE XI hereof. Notwithstanding anything contained herein to the contrary, in the event that the damage to the Leased Premises results from the fault or negligence of Tenant, its agents, employees, licensees or invitees, Tenant shall not be entitled to any abatement or reduction of any Rent or other sums due hereunder, and such damage shall be repaired by Tenant, or at Lessor's option by Lessor at Tenant's expense.

#### **ARTICLE XXIV - REPOSSESSION BY LESSOR**

24.1 At the expiration of this Lease or upon the earlier termination of this Lease for any cause herein provided for, Tenant shall peaceably and quietly quit the Leased Premises and deliver possession of the same to Lessor together with the improvements thereon at the beginning of the term hereof and all improvements constructed thereon by Tenant which are not removed pursuant to the terms hereof, and all machinery, equipment and appurtenances installed therein which have become part of the Leased Premises, or which are not to be removed pursuant to ARTICLE XI hereof. At the time of delivery of possession to Lessor at the expiration of this Lease any and all machinery, equipment and appurtenances constructed or installed on or in the Leased Premises by

Tenant at its expense after the beginning of the term hereof, which constitute fixtures and which have become the property of Lessor pursuant to **ARTICLE XI** hereof will be free and clear of any mortgage, lien, pledge or other encumbrance or charge.

#### **ARTICLE XXV - MORTGAGE LIEN**

**25.1** This Lease and all rights of Tenant hereunder are and will remain subject and subordinate to the lien of (a) any mortgage(s) constituting a lien on the Building, or any part thereof, at the date hereof, and (b) the lien of any mortgage(s) hereafter executed to a person, bank, trust company, insurance company or other recognized lending institution to provide permanent financing or refinancing of the facilities on the Community Campus and/or the Land, and (c) any renewal, modification, consolidation or extension of any mortgage or deed of trust referred to in clause (a) or (b). Tenant shall, upon demand at any time or times, execute, acknowledge and deliver to Lessor, any and all instruments that may be necessary or proper to subordinate this Lease and all rights of Tenant hereunder to the lien of any mortgage, deed of trust or other instrument referred to in clause (b) or clause (c) of the preceding sentence, and, in the event that Tenant shall fail or neglect to execute, acknowledge and deliver any such subordination instrument notwithstanding its receipt of a reasonable subordination, non-disturbance and attornment agreement (see below) from said mortgagee, Lessor, in addition to any other remedies, may, as the agent or attorney-in-fact of Tenant, execute, acknowledge and deliver the same, and Tenant hereby nominates, constitutes and appoints Lessor as Tenant's proper legal attorney-in-fact for such purposes; provided, however, that the subordination of this Lease shall be conditioned upon the execution and delivery by the mortgagee or trustee of an agreement (i) that so long as Tenant is not in default under the terms of this Lease the mortgagee or trustee, or any person succeeding to the rights of the mortgagee or trustee, or any purchaser at a foreclosure sale under said mortgage or deed of trust, shall not disturb the peaceful possession of Tenant hereunder, and (ii) that the proceeds of insurance policies received by it in settlement of losses under insurance policies held by it will be applied to the cost of repairs and restoration in those instances in which Lessor is obligated to repair and restore pursuant to the provisions hereof.

**25.2** Tenant shall execute and acknowledge a certificate containing such information as may be reasonably requested for the benefit of Lessor, any prospective purchaser or any current or prospective mortgagee of the Building within ten (10) days of receipt of same. In the event Tenant fails to deliver such certificate to Lessor, Tenant irrevocably appoints Lessor as Tenant's attorney-in-fact to execute the same.

#### **ARTICLE XXVI - DEFAULT**

**26.1** In the event that (a) any installment of Rent or Additional Rent is not paid within ten (10) days after the same is due and payable and remains unpaid for ten (10) days after written notice has been given or sent to Tenant by Lessor, or (b) Tenant defaults in the performance or observance of any other covenant or condition in this Lease and such default remains unremedied for ten (10) days after written notice thereof has been given or sent to Tenant by Lessor, or (c) activities are conducted in the Leased Premises or Building or on the grounds of the Building by Tenant or its invitees which are not specifically authorized by Lessor or which activities are in violation of the rules and regulations in effect at the time, or (d) the Tenant loses its IRC 501(c)(3) status or (e) the Tenant and the use it makes of the Leased Premises and/or the Community Campus no longer is

determined by Lessor (in its sole discretion) to be "charitable" in accordance with New Hampshire R.S.A. 72:23-Definition of Charitable (as amended) or otherwise entitled to property tax exemption in accordance with R.S.A. 72:23 Real Estate and Personal Property Tax Exemption (as amended) or (f) the Tenant, including its invitees and others at the Leased Premises and/or the Community Campus conducts itself in a manner which, in the sole discretion of Lessor, is disruptive to other activities and tenants in the Community Campus or (g) Tenant makes an assignment for the benefit of creditors, is generally not paying its debts as such debts become due, a custodian is appointed or takes possession of its assets other than a trustee, receiver or agent appointed or authorized to take charge of less than substantially all of the property of Tenant for the purpose of enforcing a lien against such property, commences any proceeding relating to Tenant or any substantial part of its property arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or there is commenced against Tenant any such proceeding which remains undismissed for a period of sixty (60) days, or any order approving the petition in any such proceeding is entered, or Tenant by any act indicates its consent to, or acquiescence in, any such proceeding or the appointment of any receiver or trustee for Tenant or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of sixty (60) days, or any party holding a security interest in any of Tenant's fixtures or personal property of any nature whatsoever that are located on the Leased Premises institutes or gives notice of foreclosure against any such property, or (h) Tenant shall have assigned or sublet the Leased Premises without the prior written consent of Lessor, or (i) Tenant shall abandon or vacate or shall commence to abandon or vacate the Leased Premises or any substantial portion of the Leased Premises or shall remove or attempt to remove, without the prior written consent of Lessor, all or a substantial portion of Tenant's goods, wares, equipment, fixtures, furniture, or other personal property, Lessor may immediately or at any time thereafter and without demand or notice enter upon the Leased Premises or any part thereof in the name of the whole and repossess the same as of Lessor's former estate and expel Tenant and those claiming through or under Tenant and remove their effects forcibly if necessary, without being deemed guilty in any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of Rent or preceding breach of covenant, and upon such entry this Lease will terminate, and in case of such termination or in case of termination under the provisions of statute by reason of the default of Tenant, Tenant shall remain and continue liable to Lessor in an amount equal to the total Rent reserved for the balance of the Term less the net amounts (after deducting the expenses of repair, renovation or demolition) which Lessor realizes, or with due diligence should have realized, from the reletting of the Leased Premises, plus all costs associated with the termination of the Lease, including Lessor's reasonable attorneys' fees. Lessor will have the right from time to time to relet the Leased Premises upon such terms as it deems fit, and if a sufficient sum is not thus realized to yield the net Rent required under this Lease, Tenant shall satisfy and pay all deficiencies as they may become due during each month of the remaining term of this Lease. Nothing herein contained will be deemed to require Lessor to await the date on which this Lease would have expired had there been no default by Tenant, or no such termination or cancellation. Lessor's rights and remedies under this Lease are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by Lessor, will be deemed to be in exclusion of any of the others herein or by law or equity provided. Nothing contained in this Section will limit or prejudice the right of Lessor to prove and obtain, in proceedings involving the bankruptcy or insolvency of, or a composition with creditors by, Tenant the maximum allowed by any statute or rule of law at the time in effect.

#### ARTICLE XXVII - ACCESS TO LEASED PREMISES AND BUILDING

27.1 Lessor or its representatives shall have free access to the Leased Premises at all times in cases of emergency and at reasonable intervals during normal business hours for the purpose of inspection, or for the purpose of showing the Leased Premises to prospective purchasers or tenants, or for the purpose of making repairs which Tenant is obligated to make hereunder but has failed or refused to make; provided, that (with the exception of emergency situations), Lessor shall not unreasonably interfere with Tenant's business. The preceding sentence does not impose upon Lessor any obligation to make repairs.

#### ARTICLE XXVIII - NOTICES

28.1 Any written notice, request or demand required or permitted by this Lease will, until either party notifies the other in writing of a different address, be properly given if hand delivered or sent by certified or registered first class mail, postage prepaid, and addressed as follows:

If to Lessor:            Foundation for Seacoast Health  
                                 100 Campus Drive, Suite 1  
                                 Portsmouth, NH 03801  
                                 Attn: Debra S. Grabowski, Executive Director

If to Tenant:            The Mark Wentworth Home  
                                 346 Pleasant Street  
                                 Portsmouth, NH 03801

*ATTN: WILLIAM C. HOWSON, PRESIDENT/CEO*

#### ARTICLE XXIX - SIGNS; EXTERIOR APPEARANCE

29.1 Tenant shall not, without Lessor's prior written consent, which shall be exercised in Lessor's sole discretion and in addition to the signs, etc. that are set forth in Exhibit D attached, install any exterior lighting, decorations, paintings, awning, canopies or the like; or erect or install any signs, banners, window or door lettering, placards, decorations or advertising media of any type that can be viewed from the exterior of the Leased Premises. All signs, banners, lettering, placards, decorations and advertising media shall conform in all respects to the requirements, if any, of all applicable laws, codes and ordinances and to the sign criteria established by Lessor for the Community Campus from time to time in the exercise of its sole discretion, and shall be subject to the prior written approval of Lessor as to construction, method of attachment, size, shape, height, lighting, color and general appearance. All signs shall be kept in good condition and in proper operating order at all times. Upon the expiration or earlier termination of this Lease, Tenant shall remove the sign and restore the surface to which the sign was attached to its original condition at Tenant's expense. In the event Tenant fails to remove the sign within three (3) days from expiration or earlier termination of this Lease, the sign shall become the property of Lessor without any credit or compensation to Tenant, and Lessor may, but is not obligated to, remove and store or dispose of the sign and Tenant shall be liable to Lessor for all costs incurred by Lessor in connection therewith. Tenant shall indemnify and hold Lessor harmless from all loss, damage, cost, expense and liability in connection with such removal, storage or disposal.

#### ARTICLE XXX - NO BROKER

30.1 The parties covenant that no broker was involved in any capacity in bringing about the relationship evidenced by this Lease; and further agree that if any claim on behalf of any broker

or agent is made or upheld, then the party against or through whom such claim is made shall defend (with counsel reasonably acceptable to the other party), indemnify and hold the other harmless against any damages, costs or expenses in any way attributable to such claim, including without limitation reasonable attorneys' fees.

#### **ARTICLE XXXI - WARRANTIES AND REPRESENTATIONS OF TENANT**

31.1 Tenant warrants and represents to Lessor that Tenant's entrance into this Lease does not violate any other contracts, agreements, Leases or any other arrangements of any nature whatsoever that Tenant has with any third parties.

31.2 If Tenant is a business entity, Tenant represents and warrants to Lessor that Tenant (i) is duly organized, validly existing under the laws of the state of its formation and in good standing under the laws of the state of its formation and the laws of the State of New Hampshire, (ii) has paid all franchise and other taxes, if any, required to maintain the corporate existence of Tenant, and (iii) is not the subject of voluntary or involuntary proceedings for the forfeiture of the business formation documents for its dissolution and (iv) is and shall remain during the Term of this Lease Agreement a IRC 501(c)(3) organization.

#### **ARTICLE XXXII - SUCCESSION**

32.1 This Lease is binding upon and will inure to the benefit of the heirs, executors, administrators, successor and permitted assigns of the parties hereto.

#### **ARTICLE XXXIII - WAIVER**

33.1 Any consent, express or implied, by Lessor to any breach by Tenant of any covenant or condition of this Lease will not constitute a waiver by Lessor of any prior or succeeding breach by Tenant of the same or any other covenant or condition of this Lease. Acceptance by Lessor of Rent or other payment with knowledge of a breach of or default under any condition hereof by Tenant will not constitute a waiver by Lessor of such breach or default.

#### **ARTICLE XXXIV - GOVERNING LAW**

34.1 This Lease will be construed and interpreted in accordance with the laws of the State of New Hampshire.

#### **ARTICLE XXXV - COUNTERPARTS**

35.1 This Lease may be executed in two (2) or more counter-parts, each of which will be deemed an original and all collectively but one and the same agreement.

#### **ARTICLE XXXVI - MODIFICATION; ENTIRE AGREEMENT**

36.1 This Lease contains and embraces the entire agreement between the parties hereto and no part of it may be changed, altered, amended, modified, limited or extended orally or by agreement between the parties unless such agreement is expressed in writing and signed by Lessor and Tenant or their respective successors in interest.

#### **ARTICLE XXXVII - SECTION HEADINGS**



37.1 The headings at the beginning of each of the Sections in this Lease are solely for purposes of convenience and identification and are not to be deemed or construed to be part of this Lease.

**ARTICLE XXXVIII - SEVERABILITY**

38.1 If any term, clause or provision of this Lease is judged to be invalid and/or unenforceable, the validity and/or enforceability of any other term, clause or provision in this Lease will not be affected thereby.

**ARTICLE XXXIX - ADDITIONAL PROVISIONS**

39.1 The additional provisions contained in the Addendum, attached hereto and made a part hereof are additional provisions of this Lease with the same binding effect as though stated herein.

IN WITNESS WHEREOF, the parties execute this Lease as of the day and year acknowledged below.

**Foundation for Seacoast Health**

By: \_\_\_\_\_  
Debra S. Grabowski, Its Duly  
Authorized Executive Director

\_\_\_\_\_  
Witness

**The Mark Wentworth Home**

By: William C. Henderson  
Authorized President/CEO  
Its Duly

Stephanie A. Martin  
Witness

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by Debra S. Grabowski, Executive Director of Foundation for Seacoast Health, a New Hampshire corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Notary Seal or Stamp:  
[Sign in Black Ink]

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of October,  
2012, by, William Henson (Name) President/CEO (Title) of The Mark  
Wentworth Home, a New Hampshire corporation, on behalf of said corporation.

Nancy A. Keane

Notary Public

My Commission Expires: 12-20-2015

Notary Seal or Stamp:

[Sign in Black Ink]

NANCY A. KEANE, Notary Public  
My Commission Expires December 20, 2015

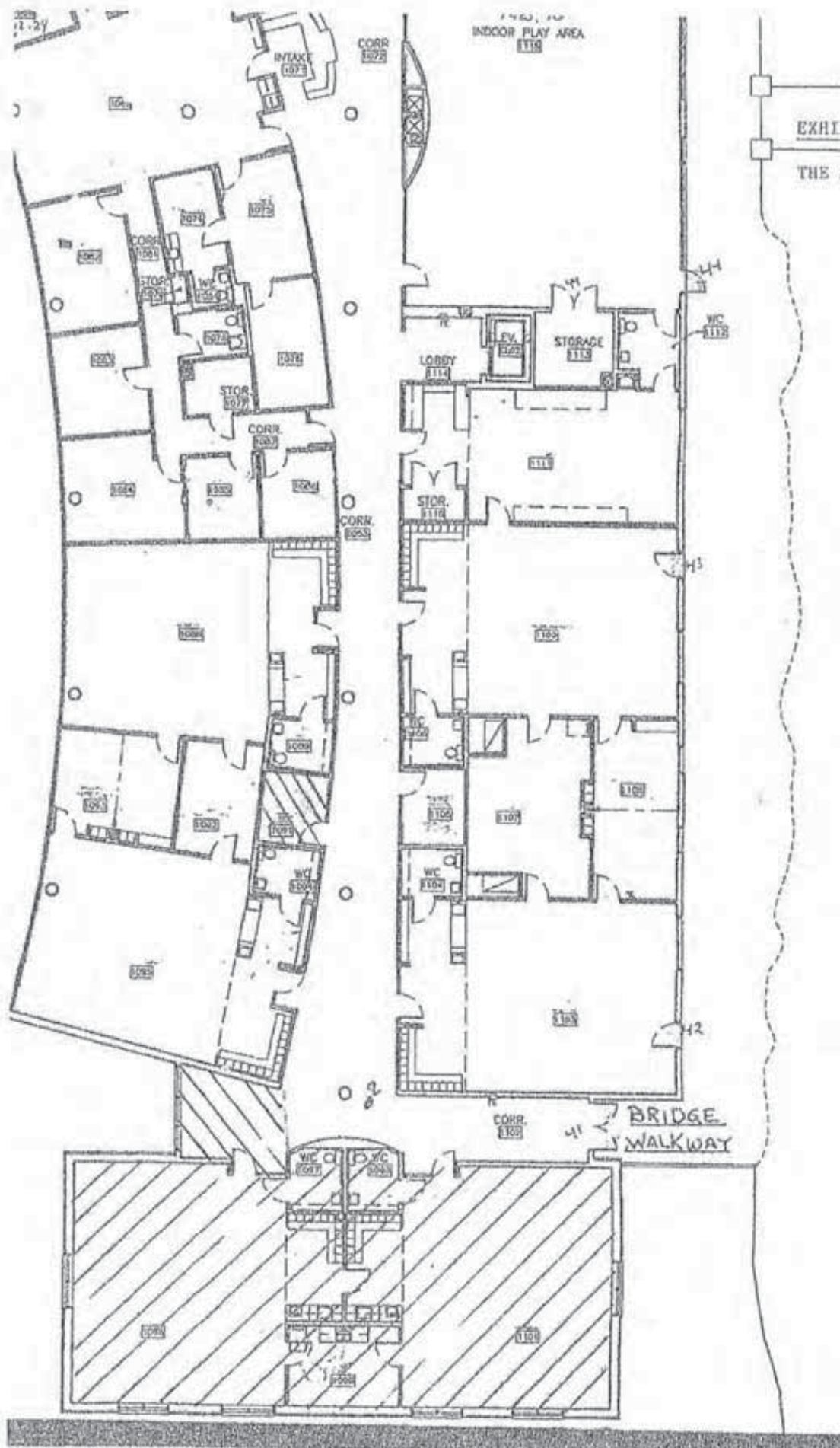
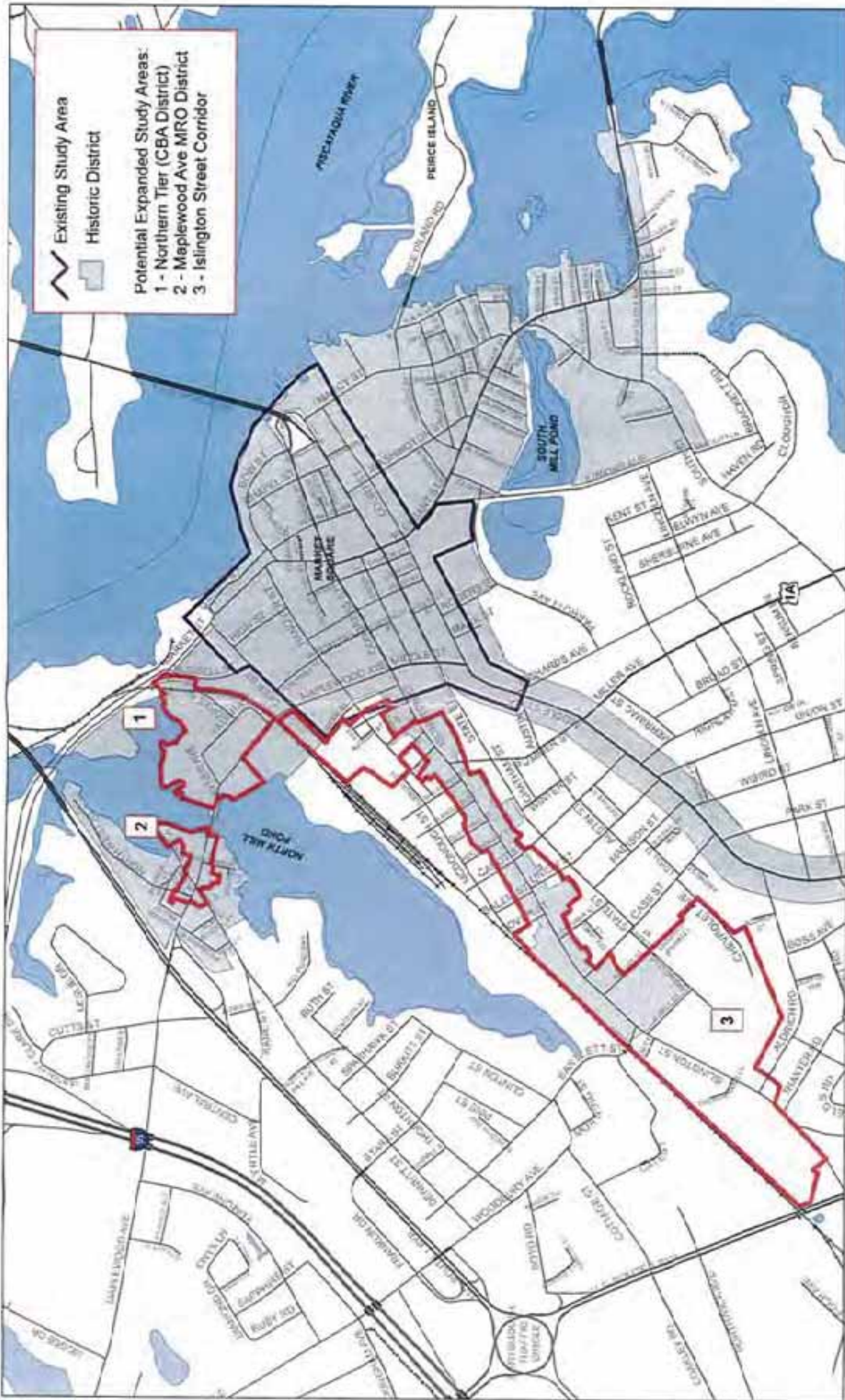


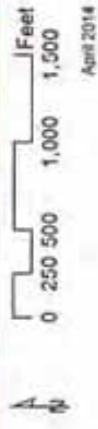
EXHIBIT A

THE MARK WENTWORTH HOME



Existing Study Area  
 Historic District

Potential Expanded Study Areas:  
 1 - Northern Tier (CBA District)  
 2 - Maplewood Ave MRO District  
 3 - Islington Street Corridor



April 2014

Character-Based Zoning:  
 Potential Expanded Study Areas

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# MEMORANDUM

APR 16 2014

TO: John P. Bohenko, City Manager  
FROM: Rick Taintor, Planning Director *RT*  
DATE: April 15, 2014  
RE: Request from Brian Shannon for Restoration of Involuntarily Merged Lots  
at 194 Wibird Street Under RSA 674:39-aa

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In a letter dated April 1, 2014, Christopher P. Mulligan on behalf of Brian Shannon has requested that the City Council restore two lots to their premerger status pursuant to RSA 674:39-11. The letter includes a 1966 deed into the Shannon family and an abstract of the chain of title.

## Property Description

The property that is the subject of this request is located at 194 Wibird Street and is shown on Assessors Map 148 as Lot 1. The Assessors Map indicates that the lot contains 0.397 acre (17,293 sq. ft.) and has 117.12 feet of frontage on Wibird Street. Attached is an orthophoto showing the parcel in question and abutting parcels.

Although the request letter states that the parcel to be unmerged consists of two separate parcels, the documentation submitted with the request shows that it was actually created by combining three separate parcels. The attached deed dated May 31, 1945 (Book 1034 Page 0386) describes the premises as a single lot and states that it is "the same premises conveyed to me by three separate deeds." The three original lots were as follows:

1. A lot approximately 80 feet wide by 100 feet deep, containing the existing house and two driveways, containing approximately 6,000 sq. ft.
2. An L-shaped lot that wraps around the above lot, with about 57 feet of frontage.
3. A small strip of land with about 9 feet of frontage and 73 feet of lot depth, containing about 660 sq. ft. This strip appears to have been set off from the adjoining parcel at 168 Wibird Street.

The request letter attempts to argue that lots 2 and 3 consist of a single lot that is separate from lot 1. However, there is nothing in the chain of title that supports this argument; rather, the 1945 deed indicates that all three lots have a similar status. Therefore, if the City Council determines that the lots were merged by City action, it can only restore the lot to its premerger status as three lots, not as two lots.

## Zoning Issues

The lot is located in the Single Residence B zoning district, which requires a minimum lot area of 15,000 sq. ft., 100 feet of continuous street frontage, and 100 feet of lot depth. Thus, the

existing lot has sufficient area and street frontage for only one dwelling under the Zoning Ordinance.

The historic lot that contains the existing house is smaller than the surrounding lots in the neighborhood. Lots on Wibird and Park Streets average about 60 feet in width by about 150 to 160 feet in depth, while the abutting lots that front on Lincoln Avenue are about 50 feet by 115 feet. To be consistent with the neighborhood lot pattern, it would be more appropriate to obtain variances from the minimum lot area and frontage requirements, and then subdivide the lot into two lots with a common lot line extending from Wibird Street to the rear lot line.

If the Council grants this request, and the owner subsequently submits a request to voluntarily merge the two vacant lots into one lot, variances will still be required to construct a dwelling on the new lot. At a minimum, the applicant would be required to obtain variances from the requirements for 15,000 sq. ft. of lot area and for 100 feet of continuous street frontage.

### **Additional Issues**

The rear portion of the existing lot is low and serves as a natural drainage area for the surrounding neighborhood. This area is known to have drainage problems that have affected abutting properties. Any addition of fill or construction of a new dwelling would require compensating measures to address these existing conditions and mitigate off-site flooding. This issue would be addressed by City staff in reviewing any application for zoning relief.

The owner should be aware that splitting the lot will result in increased tax valuation and assessment, regardless of any zoning relief that may or may not be granted.

### **Statutory Requirements**

The statute, RSA 674:39-aa, assigns the responsibility for "restoration of involuntarily merged lots" to the City Council. The statute distinguishes between "involuntary" and "voluntary" mergers as follows:

- "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.
- "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

The statute states that "The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots."

Unlike other situations where lots are proposed to be merged or separated, there is no role for the Planning Board in this process. If the merged lots meet the criteria in the statute, the Council must vote to restore them to their premerger status. The decision of the Council may be appealed to the Zoning Board of Appeals, but no standards for such appeals are set forth in the statute.

Recent Supreme Court Decision in *Roberts v. Windham*

The request letter cites the case of Roberts v. Windham (2013) as "holding that the conveyance of multiple lots as one tract in a single deed does not support a finding of a voluntary merger." Two aspects of this citation deserve note. First, in the Roberts case the lots were included in a single deed but were identified individually. The actual wording of the Court's decision is that the "conveyance of lots 9 through 11 as one tract in a single deed does not, standing alone, support a finding of voluntary merger" (emphasis added). The facts in the case at hand are quite different, because the lot description does not preserve the prior individual lot references but combines them into a single metes and bounds description.

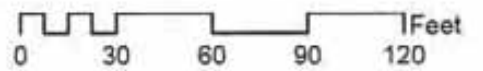
Second, in Roberts v. Windham the Court stated that in determining whether a voluntary lot merger has occurred it is inappropriate to parse a given situation too closely and to consider each individual use in isolation. Instead, the Court emphasized that it is essential to consider "the use of the property in its entirety." In Roberts the Court actually found that it was reasonable to determine that the property owner's predecessors in title had voluntarily merged the lots, and upheld the town selectmen's decision not to grant the unmerger.

**Attachments**

- Orthophoto with parcel lines
- 1945 deed from Mary E. Sides to Villa D. Cole



194 Wibird Street





386

No revenue stamps required

386

Book 1034 Page 0386

### Know all Men by these Presents,

That I, Mary E. Sides of Portsmouth in the County of Rockingham and State of New Hampshire

Sides

for and in consideration of the sum of One Dollar to me in hand, before the delivery hereof well and truly paid by Villa D. Cole of Portsmouth in said County and State

Cole

Delivered to G.D.Foss

the receipt whereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Villa D. Cole and her heirs and assigns forever

A certain lot or parcel of land in said Portsmouth, with the buildings thereon, situate on the Westerly side of Wibirid Street, and bounded and described as follows: Beginning at the southeast corner of the lot herein conveyed, on Wibirid Street, at land now or formerly of the heirs of Fred L. Wood, and running Westerly along said land of Wood one hundred fifty-three (153) feet, more or less, to the southeasterly corner of lot number twenty-two on a plan of lots of land formerly belonging to the Estate of Charles H. Mendum and drawn by Wm. A. Grover, C.E., recorded in Rockingham Registry of Deeds, Volume 1, Page 62; thence turning and running northerly by lots number twenty-two and twenty-one, one hundred sixteen and eight hundredths (116.08) feet to lot number eighteen on said plan; thence turning and running easterly by lots number eighteen and seventeen on said plan, seventy-two (72) feet, more or less, to a point; thence turning and running northerly by lot number seventeen on said plan, nine (9) feet, more or less, to a point; thence turning and running Easterly by land formerly of F. W. Hartford seventy-three and thirty-seven hundredths (73.37) feet to said Wibirid Street; thence turning and running Southerly by said Wibirid Street one hundred eighteen (118) feet, more or less, to the point of beginning.

Being the same premises conveyed to me by three separate deeds: (1). by deed of G. Ralph Leighton, Admr. d.b.n. dated February 25, 1907 and recorded in Rockingham Registry of Deeds, Vol. 628 Page 29; (2). by deed of Alice B. Paul, et al. dated October 24, 1914 and recorded in Rockingham Registry of Deeds, Vol. 712, Page 39; (3). by deed of William O. Sides dated July 6, 1920 and recorded in Rockingham Registry of Deeds, Vol. 747, Page 48.

do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Villa D. Cole, the said grantee and her heirs and assigns, to and their proper use and benefit forever. And I the said grantor and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said grantee and her heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises, and am seized and possessed thereof in my own right and fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever; and that I and my heirs, executors and administrators, shall and will warrant and defend the same to the said grantee and her heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, Mary E. Sides am a widow wife-of-the said in consideration aforesaid, do hereby release my right of dower in the above mentioned premises.

And we, each of us, do hereby release, discharge and waive all such rights of exemption from attachment and levy on sale or execution and such other rights, advantages in said premises, and in each and every part thereof, as may lawfully hereunto be reserved or secured, to us, or either of us, by the Statute of the State of New Hampshire, passed July 4, 1851, entitled "An Act to amend the Statute of Exemption from attachment and levy on sale or execution, as by said Statute appears." under and by virtue of any law of the State of New Hampshire and all other rights and interests therein, in witness whereof I have hereunto set my hand and seal, this 31st day of May in the year of our Lord, one thousand nine hundred and 1945.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF US:

Gerald D. Foss

Mary E. Sides (L.S.)

STATE OF NEW HAMPSHIRE, ROCKINGHAM, SS.

May 31 A. D. 1945

Personally appeared the above named Mary E. Sides and acknowledged the foregoing instrument to be her voluntary act and deed.

BEFORE ME:

Gerald D. Foss

Justice of the Peace.

Received and recorded June 1, 3:10 P.M., 1945

John W. Green, Register.

**BOSEN & ASSOCIATES, P.L.L.C.**  
**ATTORNEYS AT LAW**

**John K. Bosen**  
Admitted in NH & MA

April 1, 2014

APR - 1 2014

**Christopher P. Mulligan**  
Admitted in NH & ME

Robert Lister, Mayor  
Portsmouth City Council  
1 Junkins Avenue  
Portsmouth, NH 03801

**Molly C. Ferrara**  
Admitted in NH

**Albert Hansen**  
Admitted in NH, MA & ME

**RE: Request for Restoration of Involuntarily Merged Lots Pursuant to  
RSA 674:39-aa (194 Wibird Street / Tax Map 148, Lot 1)**

Dear Mr. Mayor:

This office represents the interest of Brian Shannon, successor trustee of the Jane A. Shannon Revocable Trust of 2003, owner of the above referenced property. Please consider this a formal request for the restoration of two involuntarily merged lots to their premerger status, pursuant under RSA 674:39-aa.

The City Assessor's present records indicate that Map 148, Lot 1 is a single lot measuring .40 acres, located at 194 Wibird Street. See Exhibit A. There are actually two separate lots, one measuring approximately .137 acres, and the other measuring approximately .26 acres, which have been involuntarily merged. I enclose the tax cards from 1972 (Exhibits B and C), as well as correspondence from the City Assessor dated August 20, 1971 (Exhibit D) which identify the separate lots as Map 41, Lots 19 and 20 respectively. The City's tax cards dating back to 1951 are also enclosed, and consistently treat these as two separate lots. See Exhibit E.

Former Lot 19 is the lot which contains the existing single family dwelling located at 194 Wibird. Former Lot 20 is the lot to the north and to the west of the house lot. The Shannon family acquired the two lots in 1966. From 1966 through approximately the late 1970s/early 1980s, the Shannon family received and paid two separate tax bills. This is consistent with the City's practice dating back at least as far as 1951, and likely much earlier.

I have enclosed a copy of the 1966 deed into the Shannon family (Exhibit F), as well as an abstract of the chain of title prepared by Ross Engineering of Portsmouth (Exhibit G). The property was originally three separate parcels. In 1920, Mary Sides owned all three parcels via three separate deeds. Two of those lots were combined into

*Please note our new address below*

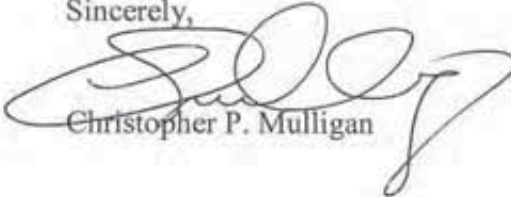
Robert Lister, Mayor  
April 1, 2014  
Page Two

Former Lot 20. In 1945, Mary Sides conveyed all three lots to Villa Cole via a single deed, with a metes and bounds description for the outside perimeter of the entire property, and not calling out the individual lots. This description of the entirety was carried forward to the Shannon deed.

No owner in the chain of title voluntarily merged these lots. The use of a legal description that encompassed the entirety rather than calling out the individual lots is not legally sufficient to effect a voluntary merger of the lots. *See Roberts v. Windham*, 165 NH 186, 192 (2013) (holding that the conveyance of multiple lots as one tract in a single deed does not support a finding of a voluntary merger). Therefore, pursuant to RSA 674:39-aa, I formally request that the lots be restored to their premerger status, and all zoning and tax maps be updated to identify the premerger boundaries of those lots.

I respectfully request that this matter be added to the agenda of the next City Council meeting. Thank you for your attention and please contact me if you have any questions or require additional information.

Sincerely,



Christopher P. Mulligan

CPM/mec

Enclosures

cc: Brian Shannon (w/ enclosures)  
Alex Ross, PE (w/ enclosures)

### 194 WIBIRD ST



<b>Location</b>	194 WIBIRD ST	<b>Assessment</b>	\$452,000
<b>Mblu</b>	0148/ 0001/ 0000/ /	<b>Appraisal</b>	\$452,000
<b>Acct#</b>	34537	<b>PID</b>	34537
<b>Owner</b>	SHANNON JANE A REVOC TRUST	<b>Building Count</b>	1

**Current Value**

Appraisal			
Valuation Year	Improvements	Land	Total
2013	\$186,400	\$265,600	\$452,000
Assessment			
Valuation Year	Improvements	Land	Total
2013	\$186,400	\$265,600	\$452,000

**Owner of Record**

<b>Owner</b>	SHANNON JANE A REVOC TRUST	<b>Sale Price</b>	\$0
<b>Co-Owner</b>	SHANNON JANE A TRUSTEE	<b>Book &amp; Page</b>	4029/0189
<b>Address</b>	194 WIBIRD ST PORTSMOUTH, NH 03801	<b>Sale Date</b>	05/13/2003

**Ownership History**

Ownership History
No Data for Ownership History

**Building Information**

**Building 1 : Section 1**

**Year Built:** 1898  
**Living Area:** 2106  
**Replacement Cost:** \$286,711  
**Building Percent Good:** 65  
**Replacement Cost Less Depreciation:** \$186,400

Building Attributes	
Field	Description
Style	Conventional
Model	Residential
Grade:	B
Stories:	2
Occupancy	1
Exterior Wall 1	Clapboard
Exterior Wall 2	Wood Shingle
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Flr 1	Average
Interior Flr 2	
Heat Fuel	Oil
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	5 Bedrooms
Total Bthrms:	2
Total Half Baths:	0
Total Xtra Fixtrs:	0
Total Rooms:	10
Bath Style:	Avg Quality
WB Fireplaces	0
Extra Openings	0
Metal Fireplaces	0
Extra Openings	0

**Building Photo**



(http://images.vgsi.com/photos/PortsmouthNHPhotos//\00\00\60\20.JPG)

**Building Layout**



Building Sub-Areas		Legend	
Code	Description	Gross Area	Living Area
BAS	First Floor	1001	1001
FUS	Upper Story, Finished	805	805
FAT	Attic	731	183
FHS	Half Story, Finished	234	117
FEP	Porch, Enclosed	75	0
FOP	Porch, Open	60	0
UAT	Attic	46	0
UBM	Basement, Unfinished	1001	0
UST	Utility, Storage, Unfinished	75	0
WDK	Deck, Wood	65	0
		4093	2106

**Extra Features**

Extra Features	Legend
No Data for Extra Features	

**Land**

**Land Use**

**Use Code** 1010  
**Description** SINGLE FAM MDL-01  
**Zone** GRA  
**Neighborhood** 103  
**Alt Land Appr Category** No

**Land Line Valuation**

**Size (Acres)** 0.40  
**Frontage**  
**Depth**  
**Assessed Value** \$265,600  
**Appraised Value** \$265,600

**Outbuildings**

Outbuildings	Legend
No Data for Outbuildings	

**Valuation History**

Appraisal			
Valuation Year	Improvements	Land	Total
2012	\$184,600	\$265,600	\$450,200
2010	\$184,600	\$265,600	\$450,200
2009	\$0	\$197,800	\$420,000

Assessment			
Valuation Year	Improvements	Land	Total
2012	\$184,600	\$265,600	\$450,200
2010	\$184,600	\$265,600	\$450,200
2009	\$0	\$197,800	\$420,000

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177d

PROPERTY OWNER: SHANNON/G ROBERT & JANE E  
 194 WIBIRD ST  
 PORTSMOUTH NH 03804

PROPERTY LOCATION: 194 WIBIRD ST  
 CITY OF PORTSMOUTH N.H.  
 JOHN B. PETTY CAE, ASSESSOR

RECORD OF TRANSFER: 30766  
 DATE: 30766  
 BOOK: 4811  
 PAGE: 332

PLAN LUT: 061 019  
 USE: 001

LOCATED: 5/00

TYPE: N  
 PROPERTY: / / / /

RESID: 31004  
 PAGE: 26070+1001900

MORTGAGE: 1

ALL-STATE LEAD  
 EXHIBIT  
 B

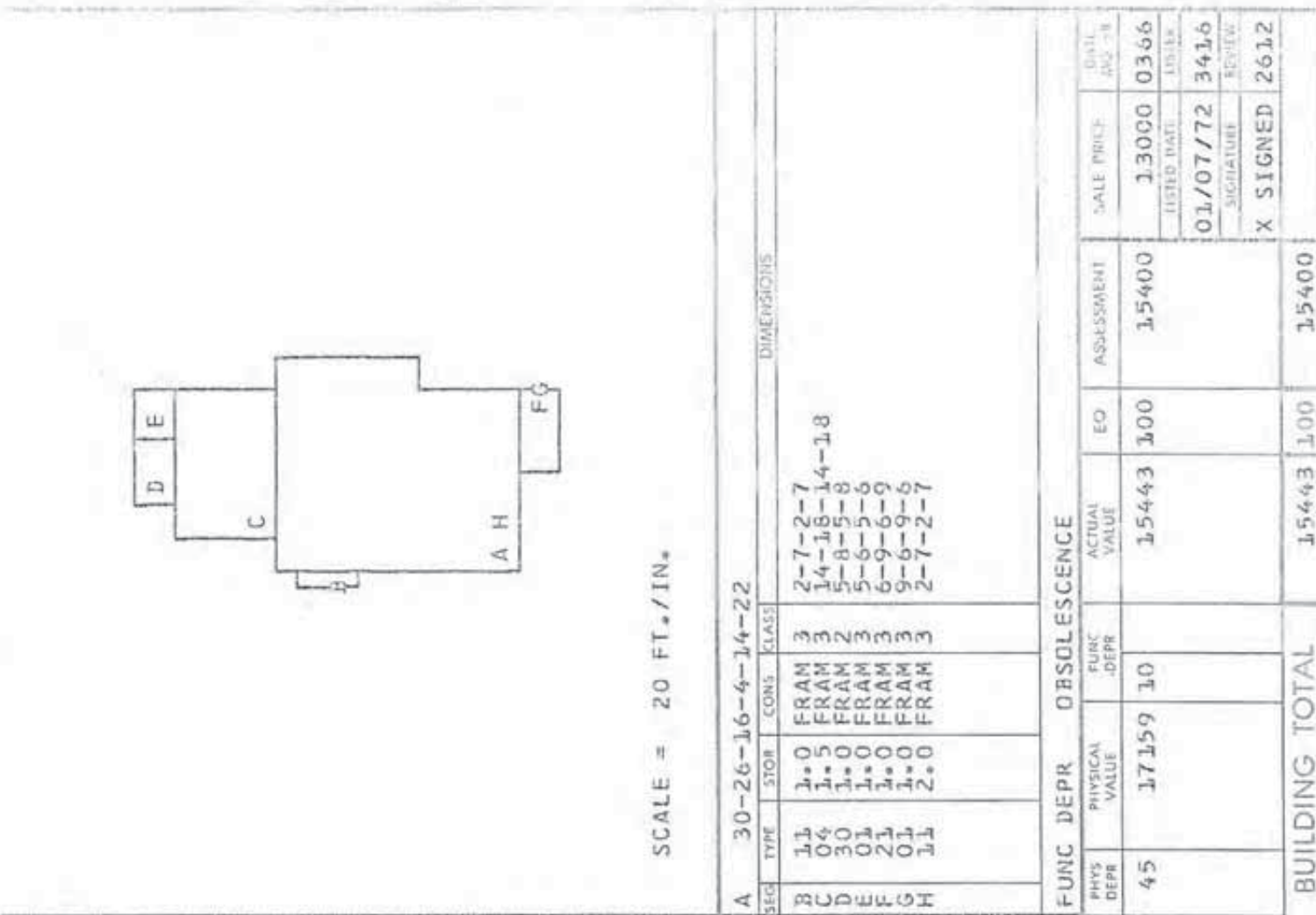
LISTER NOTES:  
 1-OLD FASHIONED KITCHEN

LAND FACTORS		LAND IMPROVEMENTS	
TOPOGRAPHY-1 LEVEL	LOCATION GOOD		
IMPROVEMENTS-1 C WATER	DRAINAGE GOOD		
-2 SEWER	ZONING 33		
-3 ELEC	NEIGHBORHOOD STATIC		
	SOIL-1 SANDY		
	-2 LOAD		
STREET/RD-2 IMPROVE			

TYPE	ACRES	PRICE	TOTAL	DEPR	VALUE	EQ	ASSESSMENT
1 H-LDT 33 A	.110	12000	3960		3960	100	4000
ACREAGE COMPUTATION					3960	100	4000

LOT COMPUTATION			
FRONT	REAR	FRONTAGE	DEPTH
TOTAL			
DEPRECIATION			
CORNER			
VALUE			
ASSESSMENT			
LOT TOTAL			

LOT COMPUTATION			
FRONT	REAR	FRONTAGE	DEPTH
TOTAL			
DEPRECIATION			
CORNER			
VALUE			
ASSESSMENT			
LOT TOTAL			



SCALE = 20 FT. = 1 IN.

DIMENSIONS			
SEG	TYPE	STOR	CONS. CLASS
A	11	1.0	FRAM
B	04	1.5	FRAM
C	30	1.0	FRAM
D	01	1.0	FRAM
E	21	1.0	FRAM
F	01	1.0	FRAM
G	11	2.0	FRAM
H	11	2.0	FRAM

SEG	TYPE	STOR	CONS. CLASS	ACTUAL VALUE	EQ	ASSESSMENT	SALE PRICE	DATE
A	11	1.0	FRAM	2-7-2-7			13000	0366
B	04	1.5	FRAM	14-18-14-18		15400		
C	30	1.0	FRAM	5-8-5-8				
D	01	1.0	FRAM	5-6-5-6				
E	21	1.0	FRAM	6-9-6-9				
F	01	1.0	FRAM	9-6-9-6				
G	11	2.0	FRAM	2-7-2-7				
H	11	2.0	FRAM	2-7-2-7				

FUNG DEPR OBSOLESCENCE						
PHYS DEPR	PHYSICAL VALUE	FUNG DEPR	ACTUAL VALUE	EQ	ASSESSMENT	LISTED DATE
45	17159	10	15443	100	15400	01/07/72

CONTROL NO.		STRUCTURE VALUE		PRICE
260	7041001900	STRUCTURAL ELEMENTS		
		BASE. A	724SF	18890
		FOUNDATION. 1/2 BRICK WALLS		
		1/2 STONE WALLS		
		EXT WALLS. FRAME		
		INSULATION. NONE		
		ROOF. GABLE		
		BASEMENT. FULL	FLOOR	-170
		FLOORS. 2		
		INT FIN. 1		
		2		
		ROOMS. 1		1150
		ATTIC. FULL	COND G	1580
		1-4		
		AT STAIR	3-1	1090
		1/4	FULL FLR	650
		HEAT. 1		
		2 H-W		
		CAST		
		FIREPLACES. 1		
		PLUMBING. BATH		
		TILE. NONE		
		DORMERS. NONE		
		SEG. B		
		1 BAY WINDOW	14SF	200
		2	252SF	5229
		U-BENT. ADD	40SF	244
		D OPEN-PORCH	30SF	699
		E ADDITION	319	
		F QTR/AT-G	54SF	1118
		G ADDITION	14SF	200
		H BAY WINDOW		
SUB TOTAL				31199
REPLACEMENT VALUE				31199
COND				F+
AGE				NO
CLASS				3
CONSTRUCTION				FR B A
OCCUPANCY				2.0S
BUILDING TOTAL				15443
EQU				100
ASSESSMENT				15400
SALE PRICE				13000
DATE				0366
LISTED DATE				01/07/72
SIGNATURE				X SIGNED
REVIEW				2612



PROPERTY: OWNER SHANNON/G ROBERT & JANE E 194 WIBIRD ST PORTSMOUTH NH 03803

PROPERTY: LOCATOR 194 WIBIRD ST CITY OF PORTSMOUTH N.H. JOHN B. PETTY C.A.E. ASSESSOR

PROPERTY: TAX MAP NO. 041 020

PROPERTY: PLAN LOT 041 020

RECORD OF TRANSFER

1 TURNER/JOSEPHINE H 30766 1911 332

2

3

4

5

6

7

LAND FACTORS

TOPOGRAPHY-1 LEVEL LOCATION GOOD DRAINAGE GOOD ZONING 03 NEIGHBORHOOD-1 SANDY SOIL-1 LOAM

STREET/RD-2 IMPROVE

ACREAGE COMPUTATION

TYPE	ACRES	PRICE	TOTAL	DEPR	VALUE	EQ	ASSESSMENT
FRONT LOT	48 A	.230	12000	5760	25	4320	100
REAR	2	.030	2000	60		60	100
<b>ACREAGE TOTAL</b>					<b>4380</b>	<b>100</b>	<b>4400</b>

LOT COMPUTATION

FRONT	REAR	FRONTAGE	DEPTH	STREET PRICE	DEPTH %	ADJ FR PR	TOTAL	DEPRECIATION	CORNER	VALUE	EQ	ASSESSMENT
<b>LOT TOTAL</b>												
<b>LAND TOTAL</b>												



SUMMARY

18 72 LANDS 4400

19 72 BLDGS 4400

20 72 TOTAL 4400

21 72 LANDS 4400

22 72 BLDGS 4400

23 72 TOTAL 4400

24 72 LANDS 4400

25 72 BLDGS 4400

26 72 TOTAL 4400

27 72 LANDS 4400

28 72 BLDGS 4400

29 72 TOTAL 4400

30 72 LANDS 4400

31 72 BLDGS 4400

32 72 TOTAL 4400



I would like to remind you that this adjustment in assessed value has nothing to do with the current revaluation being conducted by the United Appraisal Company. The city-wide revaluation is now in progress, however, the results of this revaluation will not be known for another year.

You may contact this office for an appointment to discuss the value of your property at your convenience.

Your land assessment on Plan 41, Lot 19 for 1970 was \$ 1,800. Your 1971 land assessment will be \$ 2,500 which indicates a more reasonable degree of market value.

*John B. Petty Jr.*

John B. Petty, Jr., CAE, RM  
City Assessor

I would like to remind you that this adjustment in assessed value has nothing to do with the current revaluation being conducted by the United Appraisal Company. The city-wide revaluation is now in progress, however, the results of this revaluation will not be known for another year.

You may contact this office for an appointment to discuss the value of your property at your convenience.

Your land assessment on Plan 41, Lot 20 for 1970 was \$ 1,200. Your 1971 land assessment will be \$ 2,500 which indicates a more reasonable degree of market value.

*John B. Petty Jr.*

John B. Petty, Jr., CAE, RM  
City Assessor



PROPERTY ASSESSMENT RECORD, -- CITY OF PORTSMOUTH, N.H.

RECORD OF IMPROVEMENTS

LOT 20

SECTION

OWNER: G. Robert & Jane E. Shannon

1811/332 3/7/66 see 19

600  
1200  
1300

66  
7

OWNERS PREVIOUS (10 YRS)

1948

RURAL PROPERTY

LAND VALUE COMPUTATIONS AND SUMMARY

PROPERTY FACTORS		NO. OF ACRES		LAND VALUE COMPUTATIONS AND SUMMARY	
CLASSIFICATION	NO. OF ACRES	DATE	CLASSIFICATION	NO. OF ACRES	DATE
TILLABLE					
PASTURE					
WOODS					
WASTE LAND					
TOTAL ACRES					
TOTAL VALUE LAND					
TOTAL VALUE BUILDINGS					
TOTAL VALUE LAND & BUILDINGS					

URBAN PROPERTY

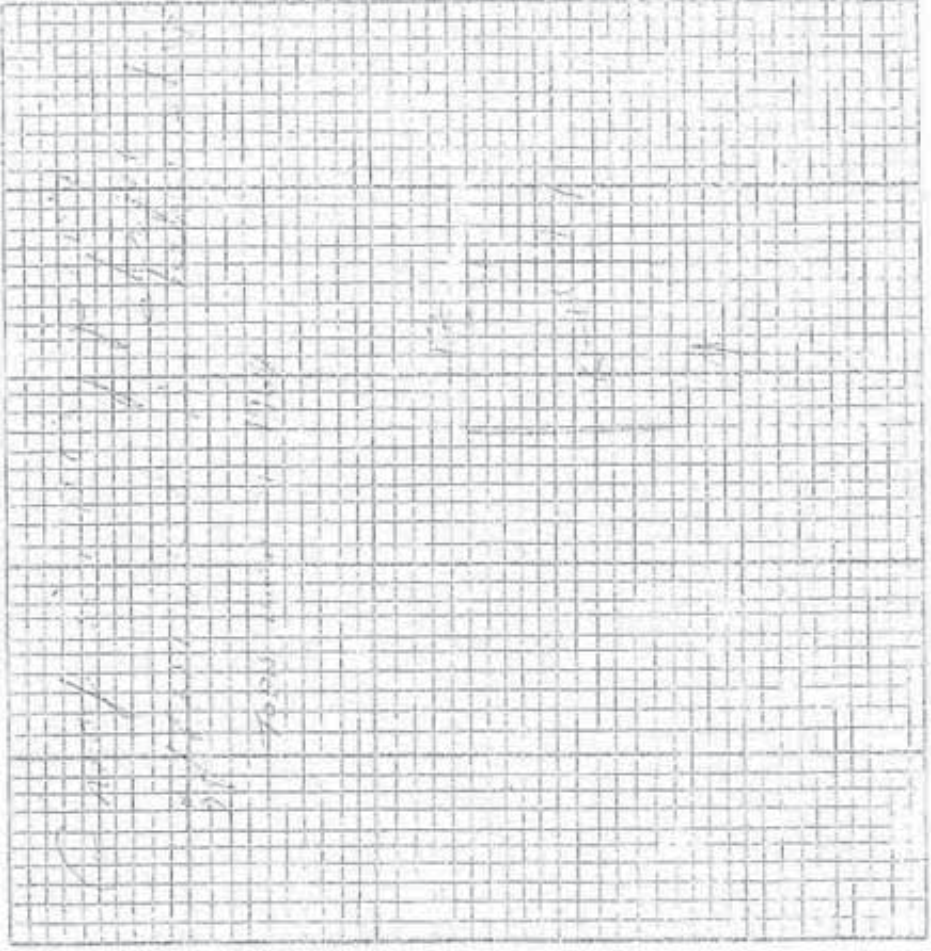
LAND VALUE COMPUTATIONS AND SUMMARY

PROPERTY FACTORS		NO. OF ACRES		LAND VALUE COMPUTATIONS AND SUMMARY	
CLASSIFICATION	NO. OF ACRES	DATE	CLASSIFICATION	NO. OF ACRES	DATE
FRONTAGE					
IMPROVEMENTS					
TOTAL VALUE LAND					
TOTAL VALUE BUILDINGS					
TOTAL VALUE LAND & BUILDINGS					



# RECORD OF BUILDINGS

NOTE: SPECIAL EQUIPMENT



OCCUPANCY		FLOORS		COMPUTATIONS		1951	
UNIT	S.F.	1ST	2ND	1ST	2ND	1ST	2ND
CEMENT							
PLASTER							
HARDWOOD							
ATTIC FL. & STRS.							
INTERIOR FINISH							
PAINT							
HARDWOOD							
PLASTER							
UNFINISHED							
METAL GLG.							
HEATING							
PIPELESS FURNACE							
HOT AIR FURNACE							
FORCED AIR FURN.							
STEAM							
HOT WATER VAPOR							
NO HEATING							
PLUMBING							
WATER							
SEWER							
ELECTRICAL							
WIRE							
PLUMBING							
TILING							
TOTAL							
REPL. VAL.							

## SUMMARY OF BUILDINGS

OCCUPANCY	TYPE	SQRFT.	GROSS AREA	CORP.	REPL. VAL.	FIXED DEPT.	FURNIT. DEPT.	GRAND TOTAL	TOTAL VALUE BUILDINGS	
									19	19
APARTMENT	2									
OFFICE	1									
RETAIL	1									
INDUSTRIAL	1									
OTHER	1									
TOTAL										



1920-1979

Ave.

WIBIRD ST.



ALL-STATE LEGAL EXHIBIT F

U.S. Gov. Stamp 14-30

1811 332

1811 332

2933

Mar 7 11 27 AM '66

# Know all men by these presents

TRUST, I, Josephine B. Turner  
 of Manchester Hillsborough County, State of  
 New Hampshire, for consideration paid, grant to G. Robert Shannon and Jane E. Shannon  
 as joint tenants, with right of survivorship, and not as tenants in common  
 of 191 Crescent Way, Portsmouth Rockingham County, State of  
 New Hampshire with WARRANTY COVENANTS,

A certain lot or parcel of land, with the buildings thereon, situate on the  
 westerly side of W'bird Street in Portsmouth, County of Rockingham and State of New  
 Hampshire, and bounded as follows:

Beginning at the southeast corner of the lot herein conveyed, on W'bird Street,  
 at land formerly of the heirs of Fred L. Wood, and now of Harold B. Wood, and running  
 westerly along said land of Harold B. Wood, 153 feet, more or less, to the southeasterly  
 corner of lot number twenty-two on a plan of lots of land formerly belonging to the  
 Estate of Charles H. Mendum and drawn by Wm. A. Grover, C.E., recorded in Rockingham  
 County Registry of Deeds, Volume 1, Page 62, now owned by Warren and Constance Ward;  
 thence turning and running northerly by lot number twenty-two, 58.04 feet and by  
 lot number twenty-one, now owned by Blanche Reightman, 58.04 feet to lot number eighteen  
 on said plan now owned by John F. & Elsie Cloutier; thence turning and running easterly  
 by lot number eighteen, 20 feet to lot number seventeen owned by Harold and Ruth Sher,  
 and thence continuing in the same direction by lot number seventeen 52 feet to a point;  
 thence turning and running northerly by said lot number seventeen on said plan 9 feet,  
 more or less, to a point; thence turning and running easterly by land formerly of F.  
 V. Hartford and now of Max Weisner, 73.37 feet to W'bird Street; thence turning and  
 running southerly by said W'bird Street, 118 feet, more or less, to the point of  
 beginning:

Being the same premises described in Warranty Deed of Villa D. Cole to Mary E.  
 Sides and Josephine B. Turner as joint tenants with right of survivorship, dated  
 May 31, 1945, recorded in Rockingham County Registry of Deeds, Book 1034, Page 367.  
 The said Mary E. Sides having since deceased at Portsmouth, New Hampshire on June 9,  
 1962.



I, Josephine B. Turner, an unmarried, and  
 as such  
 release to said Grantees all rights, ~~and~~ and homestead and other interest therein.  
 Witness my hand and seal this 3rd day of March, 1966

Witness  
*Justis H. K. Leary*  
*Josephine B. Turner*

The State of New Hampshire  
 Hillsborough, ss. March 3rd, 1966  
 Then personally appeared the above named Josephine B. Turner

and acknowledged the foregoing instrument as a voluntary act and deed, before me  
*Howard L. Loring*  
 Notary Public - Justice of the Peace  
 My commission expires November 30, 1970



103



**ROSS ENGINEERING**  
 909 Inlington Street  
 Portsmouth, New Hampshire 03801  
 (603) 433-7560

TAX MAP: 148 LOT 1

TOWN & STATE. Portsmouth, NH	DATE. 12/10/2013	CLIENT. BRIAN SHANNON
REGISTRY. R.C.R.D.	PREPARED BY. RH	JOB NUMBER. 05-016

**CHAIN OF TITLE**

TRUSTEE OF THE JANE A. SHANNON REV. TRUST		
4029-0189 BOOK/PAGE	↑ DATE OF RECORD	5-13-2003
ROBERT & JANE SHANNON		
1811-332 BOOK/PAGE	↑ DATE OF RECORD	3-1966
MARY B. SIDES & JOSEPHINE TURNER		
1034-387 BOOK/PAGE	↑ DATE OF RECORD	5-31-1945
VILLA D. COLE		
1034-386 BOOK/PAGE	↑ DATE OF RECORD	5-31-1945
BEING THE SAME PREMISES CONVEYED TO HIM/HER BY 3 SEPARATE DEEDS		
628-29 BOOK/PAGE	↑ DATE OF RECORD	2-25-1907
MARY B. SIDES LOT 1		
712-39 BOOK/PAGE	↑ DATE OF RECORD	10-24-1914
MARY B. SIDES LOT 2		
628-29 BOOK/PAGE	↑ DATE OF RECORD	2-25-1907
RALPH LAIGHTON LOT 1 (LOT 16 ON PLAN #0169)		
628-29 BOOK/PAGE	↑ DATE OF RECORD	2-25-1907
MARY B. SIDES LOT 3		
747-48 BOOK/PAGE	↑ DATE OF RECORD	7-6-1920
ALICE PAUL & ROMAINE KELLEY LOT 2		
554-172 BOOK/PAGE	↑ DATE OF RECORD	5-16-1896
WILLIAM O. SIDES LOT 3		
669-299 BOOK/PAGE	↑ DATE OF RECORD	07-05-1912
JOHN W. KELLY LOT 2		

**COMMENTS**

N/F JOHN & ELISE CLOUTIER	N/F HAROLD & RUTH SHER	N/F MAX WEISNER	
WARREN BLANCHE N/F	WARD BRIGHTMAN	N/F HAROLD B. WOOD	DESCRIPTION 1945-PRESENT
DEED 1896-1920			
DEED 1914			
DEED 1907			

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# MEMORANDUM

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**TO:** John P. Bohenko, City Manager  
**FROM:** Rick Taintor, Planning Director *RT.*  
**DATE:** April 14, 2014  
**RE:** City Council Referrals – Proposed Zoning Ordinance Amendments  
- Central Business C (CBC) District  
- Central Business Piscataqua (CBP) District  
- Elimination of Conditional Use Permit for Building Height  
- Maximum Building Footprints  
- Definition of "Building Footprint"  
- Off-Street Parking for Conference, Convention and Event Centers

---

At its meeting on January 13, 2014, the City Council referred to the Planning Board a series of zoning amendments proposed by Councilor Kennedy regarding zoning in the Central Business Districts, and a separate amendment proposed by Councilor Morgan regarding off-street parking requirements for conference, convention and event centers. The Planning Board held public hearings on these proposed amendments on April 3, 2014. I have attached my memorandum to the Planning Board regarding these proposed amendments as background to the Board's actions.

It should be noted that several of the proposed amendments would be affected by the Council's actions with respect to Character-Based Zoning: for example, the proposed CBP district is currently proposed as a Character District, and the proposed CBC district is under consideration as part of an expanded Character District. Because the Council had scheduled third reading for Character-Based Zoning for the Council's April 7th meeting, the Planning Board postponed its action on the related zoning proposals to its meeting on April 17. However, on April 7 the City Council postponed third reading to April 21, and therefore I will recommend to the Planning Board that it again postpone its action on the related zoning amendments to its next meeting on May 15, 2014.

Following the public hearings on April 3rd, the Planning Board voted as follows:

- (1) Create a new Central Business C (CBC) district, encompassing the area currently zoned Central Business B west of Maplewood Avenue and Middle Street:
  - Voted to postpone consideration to the April 17, 2014 Planning Board meeting.
- (2) Create a new Central Business Piscataqua (CBP) district, encompassing the area currently zoned Central Business A north and east of Market Street and Bow Street:
  - Voted to postpone consideration to the April 17, 2014 Planning Board meeting.

- (3) Delete Section 10.535.13 – Increased Building Height by Conditional Use Permit:
  - Voted to reaffirm the Planning Board's vote of February 20, 2014, recommending that the City Council amend the Conditional Use Permit in Section 10.535.13 of the Zoning Ordinance rather than deleting this section.
- (4) Amend Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, to establish dimensional standards for the proposed CBC and CBP districts (including reducing maximum building height in the CBC district to 35 feet); and to establish maximum building footprints of 4,000 sq. ft. in the CBA district, 30,000 sq. ft. in the CBB district, 3,000 sq. ft. in the proposed CBC district, and 4,000 in the proposed CBP district:
  - Voted to postpone consideration to the April 17, 2014 Planning Board meeting.
- (5) Add a definition for the term "building footprint":
  - Voted to recommend that the City Council amend the Zoning Ordinance, Section 10.1530 – Terms of General Applicability, by inserting a new definition of "building footprint" as proposed.
- (6) Amend Section 10.440 – Table of Uses, to assign the same permitted uses and restrictions to the proposed CBC district as currently designated for the CBB district; and to assign the same permitted uses and restrictions to the proposed CBP district as currently designated for the CBA district:
  - Voted to postpone consideration to the April 17, 2014 Planning Board meeting.
- (7) Proposed amendment to the Zoning Ordinance to require conference centers, convention centers and event centers to provide one off-street parking space per 2 persons of rated capacity:
  - Voted to postpone indefinitely, with an update at the April 17, 2014 Planning Board meeting.



# CITY OF PORTSMOUTH

Community Development Department  
(603) 610-7232

Planning Department  
(603) 610-7216

## PLANNING DEPARTMENT MEMORANDUM

**TO: PLANNING BOARD**

**FROM: RICK TAINTOR, PLANNING DIRECTOR**

**DATE: MARCH 28, 2014**

**SUBJECT: APRIL 3, 2014 PLANNING BOARD MEETING**

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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.*

G. Proposed amendments to the Zoning Ordinance as follows:

- (1) Create a new Central Business C (CBC) district, encompassing the area currently zoned Central Business B west of Maplewood Avenue and Middle Street;
- (2) Create a new Central Business Piscataqua (CBP) district, encompassing the area currently zoned Central Business A north and east of Market Street and Bow Street;
- (3) Delete Section 10.535.13 – Increased Building Height by Conditional Use Permit;
- (4) Amend Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, to establish dimensional standards for the proposed CBC and CBP districts (including reducing maximum building height in the CBC district to 35 feet); and to establish maximum building footprints of 4,000 sq. ft. in the CBA district, 30,000 sq. ft. in the CBB district, 3,000 sq. ft. in the proposed CBC district, and 4,000 in the proposed CBP district;
- (5) Add a definition for the term “building footprint”; and
- (6) Amend Section 10.440 – Table of Uses, to assign the same permitted uses and restrictions to the proposed CBC district as currently designated for the CBB district; and to assign the same permitted uses and restrictions to the proposed CBP district as currently designated for the CBA district.

(This item was referred to the Planning Board by the City Council at its January 13, 2014 meeting.)

**Staff Report:** On January 13, 2014, the City Council voted to refer a set of proposed zoning amendments to the Planning Board for a report back. The proposed amendments are set forth in the attached memorandum from Councilor Kennedy to Mayor Lister, dated January 6, 2014. The proposal consists of six separate items, which are addressed individually below.

- (1) *Create a new Central Business C (CBC) district, encompassing the area currently zoned Central Business B west of Maplewood Avenue and Middle Street.*

The attached document states that the purpose of this proposed amendment is as follows:

In order to protect the dense, low-rise neighborhoods in the vicinity of Bridge Street and Islington Street, we propose to bifurcate the Central Business B (CBB) zone, and create a new zone, Central Business C (CBC) that would be comprised of that portion of the present CBB that is situated west of Maplewood Avenue and Middle Street. Were Islington Street to remain subject to the same zoning standards as the city center, then we'd see more grossly oversized buildings in the Islington corridor.

However, the area encompassed by the proposed CBC district is actually not subject to the same zoning standards as the rest of the CBB district, due to revisions in the Zoning Ordinance that took effect in January 2010. Section 10.535.20 of the Zoning Ordinance establishes "transitional requirements" for parcels in the Central Business A and B districts that are adjacent to or within 50 feet of a Residential zoning district. The intent of this section is to create a transitional area between the 50- to 60-foot buildings in the urban core and the 35-foot buildings allowed in the residential neighborhoods, and to ensure that business-zoned parcels are compatible in scale with adjacent residential parcels. The transitional standards include reduced building height (40 feet) and coverage (60%) and increased building setbacks, which together result in a maximum permitted density that is significantly lower than in the rest of the Central Business districts.

The transitional area includes all parcels along Islington Street west of 51 Islington Street and the Keefe House. In fact, of the parcels in the Central Business B district that are not currently proposed to be rezoned to a Character District, only 1 parcel on Islington Street and 2 on State Street are not already subject to the current transitional standards.

The table on the next page compares the existing dimensional standards that apply along the Islington Street corridor with the standards in the proposed Central Business C district. As the table indicates, replacing the CBB district with the proposed CBC district would actually relax several existing dimensional standards: allowable building coverage would increase from 60% to 95% of lot area, and existing setback and open space requirements would be eliminated, allowing building up to the lot line adjacent to residential districts. The only aspect in which the proposed CBC district would restrict development would be a 5-foot reduction in allowable building height, from 40 feet to 35 feet. Overall, the proposed CBC district would allow an intensification of development compared to the current CBB district, which does not seem to be appropriate given the current concerns about impacts on residential neighborhoods.

	Transitional Requirements for CBA & CBB Districts	Proposed CBC District Requirements
Minimum Yard Dimensions (feet)		
Front	0'	0'
Side	10'	0'
Rear	10'	0'
Maximum Structure Dimensions		
Height (feet)	40'	35'
Coverage (percent)	60%	95%
Minimum Open Space (percent)	15%	0%

If it is felt to be critical in the short term that the existing 40-foot height limit along Islington Street be reduced to 35 feet, it would be better to simply change that number in Section 10.535.20 rather than create the new CBC district and thereby allow increased building coverage and reduced setbacks. However, the City Council has requested that staff initiate a study to expand character-based zoning to the entire Islington Street corridor from Bridge Street to Bartlett Street, as well as most of the remaining areas zoned CBA and CBB between Deer Street and North Mill Pond. The zoning recommendations that will result from this study will be more thorough and precise than just changing one building dimension.

- (2) *Create a new Central Business Piscataqua (CBP) district, encompassing the area currently zoned Central Business A north and east of Market Street and Bow Street.*

As stated in the attached document, the purpose of this proposed amendment is as follows:

We also propose to separate the bulk of the CBA that extends over most of the North End from the long finger of CBA that lines the Piscataqua River. These two sections of CBA have virtually nothing in common. Thus, it makes little sense to apply the same zoning standards to both.

However, the area of the proposed CBP district is within the proposed CD4 and CD5 Character Districts (with modifications to preserve existing CBA use standards), for which third reading is scheduled on April 7, 2014. To rezone this area to a new Central Business district immediately after rezoning it to the Character Districts would remove the detailed building and site design standards that have been developed over the past year and signal that this area is of less concern than adjacent parts of the downtown.



(3) *Delete Section 10.535.13 – Increased Building Height by Conditional Use Permit.*

This proposed amendment is identical to a separate amendment that the Planning Board reviewed at its meeting on February 20, 2014.

Since 1982, the maximum allowable building heights in the downtown have been 50 feet in the Central Business A (CBA) district and 60 feet in the Central Business B (CBB) district (except in in proximity to Residential zoning districts as discussed under item (1) above). In reaction to several existing and proposed development projects, the City Council in 2013 enacted two zoning amendments relating to maximum building heights in these districts:

- On January 22, 2013, the Council amended the Ordinance by inserting a new Section 10.535.12, establishing the maximum building elevation above street level as 50 feet in CBA and 60 feet in CBB. This amendment was intended to address a concern resulting from the method of determining building height as the average height around all sides of the building.
- On September 16, 2013, the Council further amended the Ordinance by establishing the lower of 45 feet or 3½ stories as the maximum height allowable as of right, and by inserting a new Section 10.535.13 that allows buildings to reach the previously permitted heights by obtaining a Conditional Use Permit from the Historic District Commission.

On January 21, 2014, the City Council passed first reading on a proposed amendment to the Zoning Ordinance to eliminate the Conditional Use Permit option. The effect of this proposed amendment would be to reduce the allowable building height in the entire Central Business District to the lesser of 45 feet or 3½ stories (again, this would not override the transitional requirements for parcels close to Residential districts, as discussed in item (1) above).

At its meeting on February 20, the Planning Board voted to recommend that the City Council not delete Section 10.535.13, and instead to amend the Ordinance by revising the criteria for granting a Conditional Use Permit for increased building height. Nevertheless, on March 17, 2014, the City Council voted to pass second reading on this proposed amendment and to schedule third and final reading on April 7, 2014.

(4) *Amend Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, to establish dimensional standards for the proposed CBC and CBP districts (including reducing maximum building height in the CBC district to 35 feet); and to establish maximum building footprints of 4,000 sq. ft. in the CBA district, 30,000 sq. ft. in the CBB district, 3,000 sq. ft. in the proposed CBC district, and 4,000 in the proposed CBP district.*

This proposed amendment would establish the dimensional standards for the new CBC and CBP districts, and would also set maximum building footprint areas for buildings in the CBA and CBB districts. The dimensional standards for the proposed CBC district have been discussed under item (1) above, and the proposed CBP district is discussed under item (2) above.

With respect to the proposed building footprints for the CBA and CBB districts, it should be noted that if the Character-Based Zoning ordinance is enacted on April 7 as scheduled, the only remaining areas zoned CBA or CBB will be as follows:

- CBA • 15 parcels between the railroad tracks and North Mill Pond (Maplewood Avenue, Vaughan Street, Raynes Avenue and Green Street)
- Noble's Island (7 buildings) and an adjacent parcel on Market Street
  
- CBB • 25 parcels on Islington Street between Tanner Street and Rockingham Street
- 2 parcels on Bridge Street (Redlon & Johnson) and Deer Street (Gary's Beverages/ Wells Fargo)
- 2 parcels on State Street (adjacent to the Keefe House and Fairpoint parcels)

The proposed amendment would allow building footprints of up to 30,000 sq. ft. in the CBB district, which could be excessive in many areas. By comparison, the building at 51 Islington Street (the former Kline's Furniture) has a footprint of approximately 12,000 sq. ft., less than half of the maximum footprint envisioned by this proposed amendment.

The proposed Character-Based Zoning ordinance includes maximum building footprint standards for two of the character districts: 10,000 sq. ft. in the General Urban (CD4) district and 15,000 sq. ft. in the Urban Center (CD5) district. The next phase of character-based zoning will include the remainder of the CBA and CBB districts as well as parcels in the Mixed Residential Office (MRO), Mixed Residential Business (MRB) and Business (B) districts. As was the case with the Character Districts currently before the City Council, the standards developed in the next phase will include building footprint limits for each area based on the input from the community.

(5) *Add a definition for the term "building footprint".*

The proposed definition of "building footprint" is based on Section 10.515.10 (a) and (b) of the Zoning Ordinance, which exclude certain areas from calculations of building coverage and determination of yards (building setbacks). The term is used in the Character-Based Zoning ordinance but is not defined.

(6) *Amend Section 10.440 – Table of Uses, to assign the same permitted uses and restrictions to the proposed CBC district as currently designated for the CBB district; and to assign the same permitted uses and restrictions to the proposed CBP district as currently designated for the CBA district.*

This proposed amendment would add two new columns to Article 4, Section 10.440, Table of Uses, for the proposed CBC and CBP districts. As indicated under items (1) and (2) above, these proposed districts do not seem necessary and the CBP district directly conflicts with the Character-Based Zoning ordinance that the City Council has scheduled for third reading. Therefore, it would not be appropriate to amend the Zoning Ordinance by adding use regulations for these districts.

In summary, it is anticipated that on April 7<sup>th</sup> the City Council will pass third reading on the proposed Character-Based Zoning ordinance and will vote to appropriate funding to develop character-based zoning for the Northern Tier and the Islington Street corridor. If these actions are taken, most of the proposed Zoning Ordinance amendments in this referral will have been superseded by the new zoning.

**Recommendations:**

- (1) Vote to recommend that the City Council not vote to establish a new Central Business C (CBC) district for the area currently zoned Central Business B west of Maplewood Avenue and Middle Street, because such action would increase the allowable intensity of development in that area and would be contrary to the proposed expansion of Character-Based Zoning in the area.
- (2) Vote to recommend that the City Council not vote to establish a new Central Business Piscataqua (CBP) district for the area currently zoned Central Business A north and east of Market Street and Bow Street, because that area is currently proposed for inclusion in the CD-4 Character-Based District.
- (3) Vote to reaffirm the Planning Board's vote of February 20, 2014, recommending that the City Council amend the Conditional Use Permit criteria in Section 10.535.13 of the Zoning Ordinance rather than deleting this section.
- (4) Vote to recommend that the City Council not amend the Zoning Ordinance, Article 5,
- (5) Vote to recommend that the City Council amend the Zoning Ordinance, Section 10.1530 – Terms of General Applicability, by inserting a new definition of "building coverage" as proposed.
- (6) Vote to recommend that the City Council not amend Article 4 by inserting use regulations for the proposed CBC and CBP districts.

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H. Proposed amendment to the Zoning Ordinance to require conference centers, convention centers and event centers to provide one off-street parking space per 2 persons of rated capacity. (This item was referred to the Planning Board by the City Council at its January 13, 2014 meeting.)

**Staff Report:** On January 13, 2014, the City Council voted to refer the following zoning amendment, proposed by Councilor Morgan, to the Planning Board for a report back:

Add a new line item to Table 10.1112.30 Off-Street Parking Requirements so as to require conference centers, convention centers, and event centers to provide one (off-street) space per 2 persons of rated capacity.

Background

Prior to 2010, the Zoning Ordinance included the following requirements:

Meeting/Function Rooms, Fixed Seating	1 space per 4 seats based on max. occupancy
Meeting/Function Rooms, Unfixed Seating	1 space per 2 seats based on max. occupancy

At that time, there was no separate requirement for specific facilities such as “conference center,” “convention center” or “event center.” Therefore, a small meeting room or large function facility were subject to the same requirements as listed above.

The 2007-2009 Zoning Ordinance revision project included a careful review of off-street parking standards, and the current Ordinance attempts to avoid prescribing too much parking in an effort to reduce the large expanses of impervious surface, particularly in the commercial strips along Lafayette Road and Woodbury Avenue. With relevance to the proposed amendment, the Ordinance now contains two standards:

- A “place of assembly” is required to provide one parking space per 4 persons of rated capacity. The Ordinance defines “place of assembly” as “A building used in whole or in part for the gathering together of persons for such purposes as deliberation, entertainment, amusement, or religious services, or for awaiting transportation.”
- A “conference center” is required to provide one parking space per 100 sq. ft. of gross floor area. “Conference center” is not defined, but may be considered as a particular type of “place of assembly.” Because there a separate parking requirement is established for conference centers, that requirement is interpreted as superseding the general requirement for places of assembly.

### Analysis

There is no direct comparison between the gross floor area of a place of assembly and its rated facility. The Building Code establishes capacity based on net floor area for various types of assembly as follows:

Standing	5 sq. ft. per person
Auditorium seating	7 sq. ft. per person
Tables and chairs	15 sq. ft. per person

The best analysis of parking requirements that we have been able to locate is a 2009 study by the City of Toronto, Canada.<sup>1</sup> The report assessed parking demand as a function of four factors:

1. The capacity of the assembly space,
2. A factor to account for the fact that facilities are not always at 100 percent capacity and that some people may park off-site,
3. The percent of people arriving by car, and
4. The average number of passengers per vehicle.

The Toronto study provided support for estimating each of the above factors, with variations based on the type of location within the urban area (downtown, other major centers, avenues, and “rest of city”). The study noted that facilities without fixed seating varied widely with respect to the type of activity (e.g., conference seating vs. banquets with dancing) and used a range of occupancy levels between

<sup>1</sup> *Review of the City of Toronto Zoning By-Law Parking Standards for Places of Assembly*, Final Report, April 2009 ([http://www1.toronto.ca/city\\_of\\_toronto/city\\_planning/zoning\\_environment/files/pdf/parking\\_assembly.pdf](http://www1.toronto.ca/city_of_toronto/city_planning/zoning_environment/files/pdf/parking_assembly.pdf)).

1.86 and 3.72 persons per 100 sq. ft. gross floor area (20 to 40 persons per 100 sq. meters). The study arrived at the following recommended parking standards:

Area	Minimum Parking Standard for Places of Assembly (Parking Spaces per 100 sq. ft. GFA)*	
	Non-Fixed Seating	Fixed Seating
Downtown / Central Waterfront	0.28	0.46
Other Major Centers	0.42	0.74
Avenues	0.51	0.74
Rest of City	0.65	0.93

\* The Toronto study presented the recommended parking standards in terms of spaces per 100 square meters. The figures in this table have been converted to spaces per 100 square feet.

Because Portsmouth does not have the same level of public transportation infrastructure as Toronto's downtown, major centers or avenues, it would likely be more appropriate to use the "Rest of City" standard as a model. Therefore, it appears that Portsmouth's current standard of 1 space per 100 sq. ft. GFA is approximately correct for places of assembly with fixed seating, and perhaps somewhat high for facilities without fixed seating.

In addition, based on the Toronto analysis, it appears that the standard of 1 space per 100 sq. ft. GFA is approximately equivalent to between 1 space per 1.86 persons and 1 space per 3.72 persons for facilities without fixed seating, and therefore not far from the proposed standard of 1 space per 2 persons rated occupancy. In other words, changing the standard as in the proposed ordinance would have little impact on the amount of parking required for a conference center or other place of assembly.

It should be noted that neither the existing parking requirements for conference centers nor the proposed requirements (as currently stated) apply in the Downtown Overlay District. However, the drafter of the proposed amendment likely intended to have the proposed standard apply in the Downtown Overlay District as well as in the City generally. Thus, there are two separate issues that should be considered by the Planning Board:

- (1) Should the basis for the general standard for conference centers be changed from gross floor area to "rated capacity"?
- (2) Should this general standard apply in the Downtown Overlay District as well as in other areas of the City?

Based on the Toronto study, it appears that the current standard based on gross floor area is equivalent to the proposed standard based on rated occupancy, so it is immaterial which standard is used except that the floor area standard may be easier to compute and explain.

The question of whether to add specific parking requirements for "conference centers, convention centers and event centers" in the Downtown Overlay District raises further questions of scale. For example, the Portsmouth Harbor Events & Conference Center on Portwalk Place has a capacity of 300 attendees. If a conference/event center of this scale in the downtown should provide parking, should a larger performance venue on the scale of the Music Hall (900 seats) also be required to provide its own parking? What about smaller performance spaces such as the Seacoast Rep or 3S Artspace? In

considering the proposed amendment, the Planning Board should consider and address these two questions:

- What constitutes an “event center”? Is it different from a theater or other performance center? How should it be defined?
- What scale of conference or event center in the downtown should be required to provide parking? Should a 100- or 300-capacity venue be treated the same as a 700-person facility?

**Recommendation:** None at this time.

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MEMORANDUM

**DATE:** April 14, 2014

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**TO:** John P. Bohenko  
City Manager

**FROM:** Mark C. Nelson  
Director of Parking & Transportation

Peter H. Rice, P.E.  
Director of Public Works

**SUBJECT:** Isles of Shoals Employee  
Parking Program – Follow-up Report

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From November 1, 2013 to March 31, 2014 the Parking Division operated a seasonal permit parking program for downtown employees as a pilot. The program used 51 parking spaces at the Isles of Shoals Steamship Company parking lot, and charged permit holders \$25 per month per space.

Passes for permit holders were sold at the Parking Clerk's office and permit revenues were used to offset the DPW's set-up, maintenance, and management costs. Funds over and above those costs were to be remitted to the Isles of Shoals Steamship Company.

Results: For the first three months of the program, 50-70% of the spaces were permitted. The last two months of the program experienced 100% sales, with a waiting list. Feedback from permit holders was uniformly positive.

Financials:

-	Revenues:	\$4,250.00
-	Costs:	
	Snow removal -	\$2,000.00
	Set-up (striping, etc) -	\$622.45
	Staff Mgmt. -	<u>\$1,650.00</u>
		\$4,272.45

Summary: The net cost to the City for the five months of use of 51 parking spaces was \$22.45. If this program were to continue next year we would anticipate less set-up costs, which we predict would result in a surplus which would be given to Isles of Shoals Steamship Company for use of the lot.

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**MEMORANDUM**

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**TO:** JOHN P. BOHENKO, CITY MANAGER  
**FROM:** JULIET WALKER, TRANSPORTATION PLANNER  
**SUBJECT:** STRATEGIC MARKETING PLAN FOR DOWNTOWN PARKING SHUTTLE  
**DATE:** 4/14/2014  
**CC:** DAVID ALLEN, DEPUTY CITY MANAGER  
PETER RICE, DIRECTOR OF PUBLIC WORKS  
MARK NELSON, PARKING AND TRANSPORTATION DIVISION  
NANCY CARMER, ECONOMIC DEVELOPMENT MANAGER  
EMMA PEARSON, PUBLIC OUTREACH COORDINATOR

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We are currently working on a number of strategic marketing activities to promote the seasonal downtown parking shuttle, which will go into service effective May 2.

City staff is working with the local marketing firm, DARCI Creative who will be assisting in developing and implementing the strategic marketing efforts.

The marketing strategy will focus on marketing both to local businesses as well as to visitors of the Seacoast region. For this first year, a strong focus on downtown shops and restaurants will be critical.

The key components of our marketing strategy are as follows:

- Web Presence – Accessed through the City’s ParkPortsmouth web site, the shuttle web page will be simple, fun and easy to use with a focus on essential information and designed to provide all pertinent information regarding how to use the shuttle. We are also exploring a small Pay Per Click (PPC) campaign using Google AdWords to help lead tourists and the seacoast community to the web page to learn more about the shuttle.
- Radio Promotion – Our marketing efforts will include targeted promotions through local and regional radio programs such as Z107 “The Live Your Best Life” show.
- Web Promotions – We will reach out through the various web sites that provide information for tourists and locals alike, including PortsmouthNH.com and SeacoastNH.com.
- Seacoast Media Group – We are planning a combination print and online feature in the local papers.
- Social Media & Public Relations – We will be running an ongoing social media campaign through the Chamber’s Facebook and City’s Twitter feeds.



- Press Releases – We will be sending out a series of press releases to local/regional media to further support our efforts and will also be coordinating a series of e-Blasts to the City's newsletter list and the Portsmouth Chamber distribution lists.
- Promotional Materials – We will be designing flyers, rack cards, and other collateral to hand out to people, post on area bulletin boards, and distribute to local shops and visitor sites. These will feature a small map on one side highlighting the location and drop off points and the hours of operation/frequency on the other side. With the assistance of the Chamber we will be distributing these to visitor sites and destinations throughout the City.
- Outreach and Communications – Working with the Chamber, we will be reaching out to the hotels, restaurants, and local businesses to encourage their employees to use the shuttle and also to promote the shuttle to their patrons.
- Grand Opening – We are working with the Chamber to plan an inaugural trip and press event on the opening day of the shuttle's operation on May 2.



## **NEW FREE WEEKEND SHUTTLE BUS MAKES PARKING FOR PORTSMOUTH VISITORS, WORKERS AND RESIDENTS EASIER**

**Service starts Friday May 2, 2014 and Runs Every 10 Minutes**

**WHAT:** FREE shuttle bus service will be provided by the City of Portsmouth on weekends starting May 2<sup>nd</sup>.

**WHERE:** The shuttle will run a loop from the 93 car parking lot at the Connect Community Church on Market Street and the Hanover Street bus stop adjacent to the High/Hanover Parking every 10 minutes.

### **WHEN:**

- **Time Frame:** The shuttle bus service will run Fridays – Sundays starting Friday May 2, 2014 to August 31, 2014.
- **Days & Hours:** The shuttle bus will run Fridays from 4:00 PM to 1:00 AM, Saturdays from 12:00PM to 1:00 AM and Sundays from 12:00PM to 10:00 PM. Standard wait times for the shuttle will be approximately 10 minutes.

**CONTACT:** Please direct any questions or comments to Mark Nelson, Director of Parking & Transportation for the City of Portsmouth via (603) 766-1415 or [mcnelson@cityofportsmouth.com](mailto:mcnelson@cityofportsmouth.com).

## Event Listing by Date

Starting Date: 4/7/2014  
Ending Date: 12/31/2014

Start End	Type Description	Location	Requestor	Vote Date
4/12/2014 4/12/2014	RACE Robert L. Sutherland, Jr. is the contact for this event. 828-5246 Robert7615@aol.com This race begins at 8:00 a.m.	Miller Avenue	St. John's Lodge	3/17/2014
4/12/2014 4/12/2014	WALK Kim Blanchard is the contact for this event. She can be reached at 836-4758. This event begins at 10:00 a.m.	Little Harbour School	National Multiple Sclerosis So	11/18/2013
5/4/2014 5/4/2014	BIKE TOUR Christina O'Grady is the contact for this event. This event begins and ends at Redhook Brewery. This race has three different routes and length.	Begins and ends at Redhook Brewery	American Lung Association	12/16/2013
5/4/2014 5/4/2014	FESTIVAL Barbara Massar is the contact for this event. This event begins at Noon to 4:00 p.m. Street closure - Pleasant Street - State Street to Market Square No Parking on Market Street-Bow Street to Isle of Shoals Steamship Company entrance.	Downtown	Pro Portsmouth - Children's Da	9/3/2013
5/4/2014 5/4/2014	WALK Richard B. Wagner, Executive Director is the contact for this event. This event is from 10:00 a.m. to 5:00 p.m. The walk will begin at 2:00 p.m. and end around 5:00 p.m. in the lower parking lot of Portsmouth Municipal Complex.	Portsmouth Municipal Complex - Lower Lot	AIDS Response Seacoast	2/3/2014
5/10/2014 5/10/2014	ROAD RACE Allison Brownell, Race Co-Chair is one of the contacts for this race. Her cell number is 845-430-9351 The race begins at 8:30 a.m.	Marcy Street	Susan G. Komen New Hampshire R	8/19/2013
5/17/2014 5/18/2014	BIKE TOUR Contact: Kelly Sicard, Director of Special Events and Volunteers	Will begin and end at Pease Tradeport includes Mem	Breathe New Hampshire	12/16/2013
5/17/2014 5/17/2014	RACE Pack & Boots 5K Community Road Race Series  Contact: Doug Bates, Portsmouth Chamber - President@portsmouthchamber.org		Easter Seals Veteran's Count	11/18/2013
5/25/2014 5/25/2014	RACE Contact: Jeanine Sylvester, Proprietor, Runner's Alley, LLC (603) 430-1212. This is a 5K start and finish at Redhook Brewery.	Pease	Runner's Alley/Redhook Brewery	1/21/2014
6/7/2014 6/7/2014	ROAD RACE Jennifer Hubbell, Executive Director is the contact for this event. She can be reached at (603) 512-2799 The road race would being at 9:00 a.m.	Pease Tradeport	Girls on the Run New Hampshire	2/3/2014
6/8/2014 6/8/2014	BIKE TOUR Mary M. Condella, is the organizer of this event. This event begins and ends at Little Harbour School. Reigstration is from 7:30 to 8:00 a.m. Start time of the ride is 8:30 a.m.	Little Harbour School	Seacoast Ride for PKD	2/3/2014

## Event Listing by Date

Starting Date: 4/7/2014

Ending Date: 12/31/2014

Start End	Type Description	Location	Requestor	Vote Date
6/8/2014 6/8/2014	RACE 5K to Keep Kids Safe Community Road Race Series Contact: Christiana Amesquita (603) 437-4107 or Cristianam@sassnh.org	Pease Tradeport	Sexual Assault Support Service	11/18/2013
6/14/2014 6/14/2014	FAIR This is the 37th Annual Market Square Day from 4:00 a.m. to 6:00 p.m. Barbara Massar is the contact for this event.	Market Square	Pro Portsmouth	9/3/2013
6/14/2014 6/14/2014	ROAD RACE This is the 37th Annual 10K Road Race. The race begins at 9:00 a.m. in Market Square.	Market Square	Pro Portsmouth	9/3/2013
6/21/2014 6/21/2014	RACE Alyssa Salmon is the contact on this event. She can be reached at 430-1140 ex. 14 The event is from 3:00 p.m. to 6:00 p.m. Rain date of June 22, 2014.	Pleasant Street	Big Brother Big Sister	9/3/2013
6/22/2014 6/22/2014	MARCH Robert L. Sutherland is the contact for this event. (603) 828-5246	Miller Avenue	St. John's Lodge	3/17/2014
6/28/2014 6/28/2014	MUSIC This is Summer in the Street event. It begins at 5:00 p.m. to 9:30 p.m. Street closures - Pleasant Street - Porter Street to Market Square.	Market Square	Pro Portsmouth	9/3/2013
7/5/2014 7/5/2014	MUSIC This is Summer in the Street event. This event is from 5:00 p.m. to 9:30 p.m. Street Closures - Pleasant Street - Porter Street to Market Square.	Market Square	Pro Portsmouth	9/3/2013
7/12/2014 7/12/2014	MUSIC This is a Summer in the Street event. The event is from 5:00 p.m. to 9:30 p.m. Street Closures - Pleasant Street - Porter Street to Market Square	Market Square	Pro Portsmouth	9/3/2013
7/19/2014 7/19/2014	ART EXH Katharine A. Muth, Executive Director is the contact for this event. The rain date of this event is Saturday, July 26, 2014.	Various Locations	NH Art Association	2/18/2014
7/19/2014 7/19/2014	BIKE TOUR Thomas MacLennan, Logistics Specialist is the contact for this event. This event goes through downtown to Kittery and then back through.	Through Downton	Cystic Fibrosis Foundation	4/7/2014
7/19/2014 7/19/2014	MUSIC This is the Summer in the Street event. This event is from 5:00 p.m. to 9:30 p.m. Street Closures - Pleasant Street - Porter Street to Market Square	Market Square	Pro Portsmouth	9/3/2013

## Event Listing by Date

Starting Date: 4/7/2014

Ending Date: 12/31/2014

Start End	Type Description	Location	Requestor	Vote Date
7/26/2014 7/26/2014	MUSIC This is the Summer in the Street event. This event is from 5:00 to 9:30 p.m. Street Closures - Pleasant Street - Porter Street to Market Square	Market Square	Pro Portsmouth	9/3/2013
8/2/2014 8/2/2014	MUSIC This is a Summer in the Street event. The event is from 5:00 p.m. to 9:30 p.m. Street closures - Pleasant Street - Porter Street to Market Square	Market Square	Pro Portsmouth	9/3/2013
8/23/2014 8/23/2014	ROAD RACE Thunder Chicken Community Road Race Series  Contact: Justin Finn		Portsmouth Rotary Club	11/18/2013
9/7/2014 9/7/2014	BIKE TOUR Downtown Portsmouth  Contact: Thomas Martin, Race Director		Portsmouth Criterium	12/16/2013
9/13/2014 9/13/2014	ROAD RACE Celebrate Pink Community Road Race Series  Contact: Wendy McCoolle		My Breast Cancer Support	11/18/2013
9/20/2014 9/20/2014	ROAD RACE Pease Tradeport  Holly Davis and Melissa Mikulski are the contacts for this event. hdavis@bottomline.com or mmikulski@bottomline.com This event is being held at Pease.		Bottomline Technologies	2/18/2014
9/27/2014 9/27/2014	ROAD RACE Portsmouth High School  Karen Butz Webb is the contact for this event. She can be reached at projectsafetyassociation@gmail.com. This race begins and ends at Portsmouth High School at 8:30 a.m.		Project Safety Association	11/18/2013
9/27/2014 9/27/2014	WALK Peirce Island  Ken La Valley is the contact for this event. This event begins and ends at Peirce Island . Registration being at 8:30 a.m.		American Foundation for Suicid	4/7/2014
9/28/2014 9/28/2014	WALK Strawbery Banke  Becky Coliandris, Development Officer is the contact for this event. This event begins and ends at Strawberry Banke. Walk site opens at 8:30 a.m., the walk kicks off at 10:00 a.m.		Alzheimer's Association	1/21/2014
10/11/2014 10/11/2014	RACE  Contacts: Catherine Edison, Community Child Care Center (603) 422-8223 Ben Anderson and Hannah Comeau, Prescott Park Arts Festival (603) 436-2848 or hannah@prescottpark.org  Community Road Race Series		Prescott PAF/Community Child C	11/18/2013
11/27/2014 11/27/2014	ROAD RACE  Contact: Matt Junkin		Seacoast Rotary Club	11/18/2013

CONSIDERATION

CITY OF PORTSMOUTH, N.H.  
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION



Instructions: Please print or type and complete all information  
Please submit resume' along with this application

Committee: Conservation Commission **Renewing applicant**

Name: Barbara McMillan Telephone: 603 433 6438

Could you be contacted at work?  YES  NO - If so, telephone # 603-271-7889

Street address: 84 Hillside Drive, Portsmouth NH 03801

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): bdoremcmm@gmail.com

How long have you been a resident of Portsmouth? over 20 years

Occupational background:

- 1998 - Present: Watershed Outreach Coordinator, NH Dept of Environmental Services (DES)
- 1995-1998: Recycling Coordinator, NH DES
- 1993-1995: Recycling Outreach Coordinator, NH Office of State Planning

Would you be able to commit to attending all meetings?  YES  NO

Reasons for wishing to continue serving: \_\_\_\_\_

I would like to continue to give back to the City of Portsmouth by serving of the Conservation Commission. I believe that my expertise and background regarding stormwater management and its impact to our water quality provides a nice balance with the other conservation commission

OVER  
➔

Please list any organizations, groups, or other committees you are involved in:

- The Dorr Foundation, Chair - Portsmouth, NH
- Manomet Center for Conservation Sciences, Trustee - Manomet, MA
- The Hudson Brook Advisory Board, Member - Portsmouth, NH

Please list two character references not related to you or city staff members:  
(Portsmouth references preferred)

- 1) Sally Soule      978-407-8106      P.O. Box 102, Kittery Me. 03905  
Name, address, telephone number
- 2) John Craig      603-828-1687      112 Hillside Drive, Portsmouth NH  
Name, address, telephone number

**BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:**

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: Barbara McMullen      Date: 2/27/2014

**CITY CLERK INFORMATION ONLY:**

New Term Expiration Date: 4/1/2017

Annual Number of Meetings: 10      Number of Meetings Absent: 2

Date of Original Appointment: 4/1/2006

**Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801**

CITY OF PORTSMOUTH, N.H.  
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information.  
Please submit resume' along with this application.

Committee: CONSERVATION Initial applicant

Name: KIMBERLY MEUSE Telephone: 603-373-8709

Could you be contacted at work?  YES  NO If so, telephone # 203-913-9694

Street address: 579 SAGAMORE AVE, UNIT #97

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): KIMBERLYMEUSE@GMAIL.COM

How long have you been a resident of Portsmouth? 2.5 YEARS

Occupational background:

FINE ARTIST, COMPUTER GRAPHICS ILLUSTRATOR, WATER COLOUR  
ART WORKSHOP/INSTRUCTOR

Please list experience you have in respect to this Board/Commission:

COUNCIL WOMAN, 2009-2011, STRATFORD, CT  
PUBLIC WORKS COMMITTEE MEMBER, STRATFORD WATER COMMISSION,  
BEAUTIFICATION COMMITTEE CHAIR, BUILDING NEEDS COMMITTEE  
MEMBER, ORDINANCE COMMITTEE, SHAKESPEARE THEATRE REVIEW BOARD,  
SCHOOL BOARD/COUNCIL LIAISON, PROJECT GREENSWEEP CHAIR

STRATFORD, CT

OVER  
➔



Have you contacted the chair of the Board/Commission to determine the time commitment involved? YES/NO

Would you be able to commit to attending all meetings? YES/NO

Reasons for wishing to serve: AS A FINE ARTIST, I AM ABLE TO WORK AT HOME AND SCHEDULE TIME FOR VOLUNTEERING IN THE COMMUNITY. WORKING AS A COMMUNITY VOLUNTEER IN CT HAS REWARDING FOR ME AND A PLEASURE TO FIND A MEANINGFUL MANNER TO CONTRIBUTE TO THE BETTERMENT OF THE TOWN. CITIZEN VOLUNTEERS ARE VITAL TO MAINTAINING THE HEART OF A COMMUNITY. IT'S TIME WELL SPENT, IN MY OPINION.

Please list any organizations, groups, or other committees you are involved in:

AMERICAN RED CROSS - PORTSMOUTH, NH-RESPONDS- EXETER, ARTS IN REACH - PORTSMOUTH, TIDENATCH ASSOCIATION BOARD MEMBER, PORTSMOUTH DEMOCRATS

Please list two character references not related to you or city staff members:  
(Portsmouth references preferred)

- 1) GIBSON KENNEDY, 267 MARCY STREET, PORTSMOUTH (FORMER EMPLOYER)  
Name, address, telephone number
- 2) LARRY DRAKE / JOAN JACOBS / 579 SAGAMORE AVE, PORTSMOUTH, 603-373-8511  
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This application is for consideration and does not mean you will necessarily be appointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: Kimberly Munn Date: 11/18/13

If you do not receive the appointment you are requesting, would you be interested in serving on another board or commission? Yes  No

Please submit application to the City Clerks Office, 1 Junkins Avenue, Portsmouth, NH 03801

# Kimberly Meuse

579 Sagamore Avenue, #97 • Portsmouth, NH 03801 • Phone: 603-373-8709 • E-Mail: kimberlymeuse@gmail.com

## Objective

Conservation Commission volunteer/member.

## Experience

Town Council Member, Town of Stratford, CT (pop. approx. 51,000)      December 2008-December 2011

- Represented the 7<sup>th</sup> District, as well as the town residents at large. Responsibilities included attending monthly Council meetings involving a Mayor and 10 district representatives, researching town issues, and issues specific to the 7th district of approximately 5,000 residents.
- **Water Pollution Control Authority, Stratford, CT (2009-2011)**
- **Stratford Public Works** committee member (2009-2011)
- **Stratford Building Needs** alternate member (2009-2011)
- **Stratford Beautification Committee Chair/Project Greensweep annual town clean-up Chair (2009-2011)**
- Stratford Town representative member of **Keep America Beautiful (2009-2011)**
- **Stratford Longbrook Park Commission, co-Chair (2009-2011)**
- **Stratford Board of Education Town Council Liaison (2009-2011)**
- **Stratford Arts Commission (2009-2011)**
- **Stratford Finance Advisory Committee, co-Chair (2009-2011)**
- **Stratford Safe Routes to School** committee (2009-2011)
- **Stratford Long Range Facilities Planning Committee, (2009-2011)**

## Skills

As a member of the Town Council, my various duties required me to attend and participate in the decision process for a number of committees and commissions.

During the time of my council term, serving the town and the 7th district involved intensive research and study of the various issues and concerns of the community. I was involved above and beyond my duties as councilmember, offering my time to groups that were established during my term to:

- Study improving our school facility planning
- Work towards energy efficiency within town buildings
- Recommend a consulting group to get the town of Stratford's historic Shakespeare Theater renovated and viable
- Work with the elementary school in my district with the Safe Routes to School grant/study.
- Work with Keep America Beautiful and the town grant writer towards replenishing the tree population in the community.



CITY OF PORTSMOUTH, N.H.  
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information.  
Please submit resume' along with this application.

Committee: SUSTAINABILITY Initial applicant

Name: SAMUEL W (WES) TATOR Telephone: 603-661-2867

Could you be contacted at work? YES/NO If so, telephone# YES, SAME

Street address: 411 MIDDLE ST, Apt. 5 PORTSMOUTH NH  
0380

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): wes@26greenprofitably

How long have you been a resident of Portsmouth? 3 1/4 YEARS

Occupational background:  
COMMERCIAL REALTOR FOR 13 YEARS  
HEALTHCARE/CLINIC ADMIN. 10 YEARS+  
SALES (OTHER THAN R.E.) 10 YEARS+/-

Please list experience you have in respect to this Board/Commission:  
I AM A LEED ACCREDITED PROFESSI.  
I HAVE LOTS OF EXPERIENCE IN PROPERTY VAL

Have you contacted the chair of the Board/Commission to determine the time commitment involved? YES/NO

Would you be able to commit to attending all meetings? YES/NO *AT PRESENT YES AND SUBJECT TO EMERGENCIES.*

Reasons for wishing to serve: PORTSMOUTH IS MY HOME.  
SUSTAINABILITY IS MY PASSION

Please list any organizations, groups, or other committees you are involved in:

FOUNDER, NH CHAPTER OF US GREEN BUILDING COUNCIL (CREATED STEWARDS LEED)  
PLAN NEW HAMPSHIRE, COMMITTED TO SUSTAINABLE COMMITMENTS  
ENVIRONMENTAL GUIDO OF AIA NH

Please list two character references not related to you or city staff members:  
(Portsmouth references preferred)

- ALL ARE PORTSMOUTH RESIDENTS*
- 1) BERT COHEN, 431-5113, bcohen@comcast.net  
Name, address, telephone number
- 2) BOB VACCARO 411 MIDDLE ST, PORTSMOUTH, 4304013  
Name, address, telephone number 606@VOCABYDONATION.COM

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This application is for consideration and does not mean you will necessarily be appointed to this Board/Commission; and
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5. Application will be kept on file for one year from date of receipt.

Signature: Samuel W. [Signature] Date: 3/4/14

If you do not receive the appointment you are requesting, would you be interested in serving on another board or commission? Yes  No

Please submit application to the City Clerks Office, 1 Jenkins Avenue, Portsmouth, NH 03801



# CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

## APPOINTMENT APPLICATION

*Instructions: Please print or type and complete all information.  
Please submit resume along with this application.*

Committee: Taxi Commission

**Initial applicant**

Name: Lawrence J. Cataldo Telephone: 603-430-3762

Could you be contacted at work? YES/NO If so, telephone # 908-528-3933 mobile

Street address: 133 Islington Street Unit 10

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): larrycataldo@yahoo.com

How long have you been a resident of Portsmouth? Since 2005

### Occupational background:

My last position ending in 2012 was Vice President – Planning & Strategy for a Middle East

maintenance and construction company. I held that position for more than 4 years. Prior to that, I was an independent consultant for a telecom research/consulting firm specializing in finance and

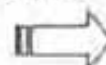
business solutions. Moreover, I was a corporate economist for over 30 years while working for AT&T, Verizon and Telcordia Technologies (now Ericsson Inc).

Areas of expertise: financial consulting, project and program management, strategic and tactical planning, and process engineering

### Please list experience you have in respect to this Board/Commission:

1. As a construction company executive, I was often required to build consensus through negotiation among managers from other departments who often disagreed with each other, in the interests of achieving common corporate goals. This skill will be useful during commission meetings.
2. I mediated with major banks on approving loans for proposed government construction projects. This experience will be useful for dealing with taxi companies.
3. As a business consultant, I analyzed numerous problems and found feasible solutions through research and dialog. Study methods can be useful for resolving the taxi availability problems.
4. Throughout my career, I gave numerous public presentations and chaired sessions at major professional conferences on new research about business and financial problems. This can be useful in giving City Council and public briefings.
5. While employed with Verizon, I testified as an expert witness on economic studies before a state regulatory commission which resulted in positive rulings for the company. The legal training I received prior to testifying and the experience in the public process will help me work on the Commission in adjudicating enforcement issues.

OVER



Have you contacted the chair of the Board/Commission to determine the time commitment involved? YES/NO No but I reviewed the city calendar of meetings.

Would you be able to commit to attending all meetings? YES/NO Yes

Reasons for wishing to serve: I am keenly interested in Portsmouth's future as a city that continues healthy economic growth while at the same time protecting its historic past.

After working for years for consulting companies and with large telecommunications corporations I would like to apply this business experience to make a difference working with the City by solving problems, advising on ways to make process improvements and other work that would provide public benefit.

Please list any organizations, groups, or other committees you are involved in:

Member and volunteer of the Strawberry Banke Museum.

Please list two character references not related to you or city staff members:  
(Portsmouth references preferred)

1) See attached character reference sheet

Name, address, telephone number

2) See attached character reference sheet

Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

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3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: Lawrence J. Cataldo Date: March 12, 2014

If you do not receive the appointment you are requesting, would you be interested in serving on another board or commission? Yes XX No     

Please submit application to the City Clerks Office, 1 Junkins Avenue, Portsmouth, NH 03801

## References for Lawrence Cataldo

1. Lawrence Yerdon  
Strawbery Banke Museum  
14 Hancock Street, Portsmouth  
603-433-1103
2. Joseph Caldarola  
170 Dennett Street, Portsmouth  
603-674-5204
3. Ray Van Sickler  
909 Greenridge Road  
Jacksonville, FL 32207  
904-396-5143
4. John Hayes  
Ericsson Incorporated  
1 Jefferson Drive  
Piscataway, NJ 08854  
848-459-8147

## LAWRENCE J. CATALDO

133 Islington Street  
Portsmouth, New Hampshire 03801 USA  
Email Address: [larrycataldo@yahoo.com](mailto:larrycataldo@yahoo.com)

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### CAREER SUMMARY

My recent position was Vice President – Planning, Strategy and Bank Relations for the Al Kholi Group in Riyadh, Saudi Arabia with a turnover of about \$100 million annually. The group of companies provided construction and facilities maintenance services for government agencies and universities. Besides the planning aspects of this job, I managed relationships with the six largest banks in the country and provided banking services for each operational division. In 2011, I arranged bank financing of \$160 million for more than 30 projects. I also served as acting financial controller for over a 6 month period.

My career covers domestic and international experience as a financial consultant, planner, strategist and both project and program manager. Besides the Al Kholi Group, I held leadership positions with Telcordia Technologies Inc., AT&T and Verizon in financial, regulatory, and process engineering organizations. I had extensive experience in pricing and cost-benefit modeling, complex market entry and competitive threat analyses, investment feasibility solutions and business process improvements.

At the financial consulting level, this experience includes the research, design and development of financial models (including 1-3 year forecasts of cash flow and P/L results), investment feasibility models, market-based pricing models and cost-benefit analyses. I developed an optimal financing model for new projects and introduced this modeling approach to the local Saudi banks.

From a project and program management perspective, this experience includes more than a dozen international projects, some for at least a year on site, leading teams for information technology, operations, disaster recovery and business process related efforts in Canada, Europe, Asia and the Middle East. As a program manager, I co-led a company-wide Y2K effort to ensure that all departments of a telecom company had prepared properly for swift disaster recovery.

In the telecom-consulting environment, I developed and managed strategic and tactical initiatives including complex market entry solutions and forward-looking technology studies.

At the process engineering level, this experience includes consulting on staffing and manpower planning for a major telecom network restructure. I developed company-wide staffing requirements based on business functionality.

### PROFESSIONAL WORK HISTORY

**Vice President – Planning, Strategy and Bank Relations**

2008 - 2012

Joined the Al Kholi Group in Riyadh, Saudi Arabia to lead the corporate planning effort and conduct special studies on financial and operations aspects. The Al Kholi Group is a conglomerate of facilities maintenance and construction companies with an annual turnover of over \$100 million.



- o Conducted a comprehensive review of and revision to the table of organization with position levels and titles for over 4,000 employees. Developed different strategies and presented them to the Board of Directors for approval. Led the debate on the best pathways forward
- o Served on the senior management team tasked with initiating and implementing major structural changes to the company. Developed detailed plans to reorganize the finance organization and actively pursued recruiting of key senior managers. Appointed interim project manager to implement Microsoft Dynamics, replacing several other systems
- o Managed banking relations with six top Saudi banks beginning in 2009 and directed day-to-day banking operations. I secured loans valued of over \$160 million for over 30 maintenance and construction projects and prepared revenue forecasts and forward looking project cash flows
- o As supervising cash manager, met the monthly payroll without delay and exercised control on all payments. Recommended new approaches to alleviate frequent cash shortages
- o Held the position of acting financial controller for over six months and initiated changes in loan policies on invoices that saved the companies over \$1 million in bank interest charges. Made changes to accounting practices and initiated a new fixed assets section.

### **Independent Financial/Management Consultant**

1998 – 2007, 2013

In 2013, an Atlanta-based HR consulting firm engaged me on a short assignment to work for a large government water desalination company in Riyadh, Saudi Arabia. I prepared a three year planning document for the internal communications group that outlined topics, issues and the use of the latest technology to meet a substantial communications gap.

From 1998 through 2007, Telcordia Technologies (now owned by Ericsson) engaged me on four separate occasions, three of which were for long term (up to one year) assignments in the Middle East. In addition, I was employed by three other consulting firms to address specific financial and marketing initiatives.

### **Telcordia Technologies Inc.**

#### **Project Manager – Fixed Assets Accounting/Finance Project**

- o On-site project manager and finance consultant in a multi-year project with Saudi Telecom; the firm is restructuring fixed asset classifications for its \$22 billion capitalization program.
- o Responsible for day-to-day project activities and progress reports to top management.
- o Reviewed current processes, procedures, policies, records and data in the area of Fixed Asset Management. Conducted an extensive present mode of operation review (PMO), and led an investigation on company-wide fixed asset databases.
- o Prepared and implement process recommendations, and teamed with engineers in developing new fixed asset classifications. Devised detailed implementation plans including inventory management. Resulted in a successful implementation of new fixed asset classifications.

#### **Senior Consultant - Process Engineering Task Force**

- o Senior consultant on Saudi Telecom's process engineering task force formed to reorganize the Network and other major corporate organizations.
- o Responsible for investigating and analyzing manpower needs and appropriate processes in the Network Sector. Advised general managers on manpower target levels and sub-organization structure (e.g., number of directors) and salary grades.
- o Analyzed dozens of organizations and recommended reduced staffing requirements to meet corporate-wide guidelines. Received a commendation from the client's HR vice president.

#### **Project Manager - Y2K Project**

- o Managed a team of 50 of highly trained specialists at Saudi Telecom for this broad-ranged \$7.5 million Y2K project.
- o Responsible for day-to-day operations and project status reports to senior managers.

- o Served as co-program manager to ensure company-wide readiness in every facility.
- o Successfully completed all tests and established service outage contingency plans for every major organization. Presented final status reports to the Board of Directors management committee. Cited for outstanding service by the company president.

**Senior Project Manager - Cost Modeling/Number Portability Projects**

- o Managed teams of engineers and cost specialists to implement large-scale network cost and pricing model and brought project back on schedule. Reversed deteriorating client relationship and resolved all outstanding issues.
- o Researched, designed and developed comprehensive revenue-cost, cash flow software programs for wireless and advanced telecom network investment models for Deutsche Telecom and other clients.

**ClientPath, LLC - Doylestown, PA**

- o Developed a national market plans based on extensive market research on demographic characteristics for this real estate consulting firm.

**McGrath & Associates - Lawrenceville, NJ**

- o Directed a three-month long survey research effort, then designed and developed and a complex pricing model (a micro-simulation model).

**Earlier Full Time Appointments in Telecommunications**

**Telcordia Technologies, Inc. – Piscataway, NJ**

**Verizon Corp – New York, NY**

**AT&T – New York, NY and Bedminster, NJ**

**TEACHING EXPERIENCE**

**Substitute teacher - Bound Brook New Jersey School District**

**Corporate instructor - AT&T and Telcordia Technologies Inc.**

**Adjunct assistant professor - St. John's University**

**EDUCATION**

**University of New Hampshire, Durham, New Hampshire**  
 Master of Arts Degree – Economics (Whittemore School of Business)

**St. Anselm College, Manchester, New Hampshire**  
 Bachelor of Arts Degree - Business & Economics (cum laude)

**New York University, New York, New York**  
 Post graduate study in forecasting and mathematical economics

**George Washington University, Washington, D.C.**  
 Core program training on the fundamentals of Project Management

\*\*\*\*\*

Contact: Mobile 908-528-3933 Home Phone 603-430-3762



# CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

## APPOINTMENT APPLICATION

*Instructions: Please print or type and complete all information.  
Please submit resume' along with this application.*

Committee: Taxi Commission Initial applicant

Name: Stephen Dunfey Telephone: 498-8481

Could you be contacted at work?  YES  NO If so, telephone # 498-8481

Street address: 675 South Street, #5

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): sdunfey@comcast.net

How long have you been a resident of Portsmouth? 22 years

Occupational background:

writer for Seacoast Scene and various freelance  
outlets

Please list experience you have in respect to this Board/Commission:

I have experience in state and local government  
including two terms in the N.H. state legislature  
and also appointed by Gov. Hugh Gallen to the N.H.  
State Port Authority where I served as Vice-Chairman  
in the early 1980's.

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Have you contacted the chair of the Board/Commission to determine the time commitment involved? YES  NO discussed with Assistant Mayor Splaine

Would you be able to commit to attending all meetings? YES  NO

Reasons for wishing to serve: I am interested in community service and see an opportunity to contribute that in the Taxi Commission.

Please list any organizations, groups, or other committees you are involved in:

I recently served on the Board of Directors of the Seacoast Mental Health Center and the N.H. Art Association. I help produce an art show every year in my mother's name.

Please list two character references not related to you or city staff members:  
(Portsmouth references preferred)

1) Jim Splaine 201 Oriental Gardens 727-466-9546  
Name, address, telephone number

2) Paul McEachern 282 Corporate Drive 436-3110  
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This application is for consideration and does not mean you will necessarily be appointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: Stephen C Dumbay Date: 3/27/14

If you do not receive the appointment you are requesting, would you be interested in serving on another board or commission? Yes  No

Please submit application to the City Clerks Office, 1 Junkins Avenue, Portsmouth, NH 03801

To Whom it May Concern:

Please accept this email as my evidence of my resignation from the Sustainable Practices Blue Ribbon Committee for the Town of Portsmouth, thank you.

Regards,

Nate S. Alger  
Ameriprise Financial Services, Inc.  
25 Chestnut Street, Suite 300N  
Portsmouth, NH 03801

March 12, 2014

To the Portsmouth City Council,

I have asked the following item be placed on the City Council Agenda for Monday, March 17th:

**Creating A Fee Penalty Guideline For Violations Of Land Use Board Approvals**

While watching the meeting of the Historic District Commission of Wednesday, March 5th, I was surprised to learn that perhaps there are no current ordinances that provide a penalty for violations of land use board approvals.

Fortunately for the people of Portsmouth, the violations of Portwalk from the original permissions granted were caught. But the "**I Forgot, I'm Sorry Syndrome**" should not be accepted as an excuse for such violations -- whether intentional, or not.

I would like to ask for clarification of what statutory authority the City of Portsmouth does indeed have, in addition to forcing a developer or builder to revert back to what had been formally granted.

In this case, the dilemma seems to be that if there are some things that were done without approval, the HDC might well "grant" approval now -- after the fact. That alone sets a dangerous precedent.

Putting the issue of Portwalk aside, in the future, if developers or builders want to make changes after plans have been approved, all they have to do is unilaterally make their change -- and if by chance they are "caught," they just have to plead their case that their change was better than plans originally approved. Then all is forgiven?

I recently reviewed the very first report of the Citywide Neighborhood Committee presented on February 6, 1995 co-written by then City Councilor Evelyn Sirrell and myself, along with resident Ginny Weeks. In the "Conclusion" we observed that one of the major problems was with enforcement of zoning laws. The **Portwalk Incident** highlights that.

On page 31 concerning RECOMMENDATIONS we wrote: ***"Zoning Enforcement seems to be a low priority with Administrative staff. Strengthen procedure and clarify staff responsibilities regarding enforcement. Empower staff to follow through with enforcement policy."***

That was written 19 years ago, and I'm sure our administrative staff does much greater oversight now. But maybe we need to do even better, and a stronger ordinance is needed. If our land use boards are to have any real influence over building Portsmouth's future, they need to have the tools to enforce their decisions. At the very least, a builder or developer should not be given the easy way out when violations have been discovered.

I propose that we ask our City Attorney and staff to come up with a fee penalty guideline that can be used for violations of land use board approvals. I also ask that we ask our City Attorney and staff to pursue a fine for the violations of Portwalk in the most recent instance.

Otherwise, this matter becomes just another example of someone casually going through a STOP sign without really stopping: you get away with it if you don't hit anything and no one notices.

Thank You,

Jim Splaine - City Councilor

March 12, 2014

To: Portsmouth City Council

I have asked that the following be placed on the City Council Agenda for Monday, March 17th:

### **Status Of Abandoned Or Derelict Buildings**

My intent is to ask our good City Attorney and City Manager what our current approach is toward buildings throughout the city that appear to be either abandoned, or in disrepair -- especially business properties, but long-vacant houses as well.

During my Neighborhood Walks, I have been made aware and seen a number of situations of apparently virtually abandoned buildings. To be specific about a few, there is an old former store off Sherburne Road, two homes in Pannaway Manor, a home on Woodlawn Circle, an old store front on a corner on Hanover Street, and an old former gasoline station on Islington Street. There certainly are other examples.

Perhaps in some cases a phone call from city staff could result in either some clarification of abandonment, or an encouragement to make the property more presentable. Perhaps in other cases the city needs to take action to be sure that there is compliance with safety and environmental concerns.

But even if basic safety and environmental matters are met and the property is boarded up and utilities are turned off, the actual impact on the neighborhood should be a consideration since the general ambience is affected, as well as nearby property values likely reduced.

I'm not sure of the depth of what the city should do, either under our own ordinances or state statutes -- but I do know that residents of several neighborhoods which I have visited are concerned about inaction, and about the impact on their neighborhoods.

Relating to this, I also would like an update of our ordinances concerning abandoned vehicles, especially those which remain in locations even on private property which have not been registered for a long period of time.

In one Neighborhood Walk, I was shown two locations in the Pannaway Manor area. It seems that there should be some clarification, and enforcement, of procedures regarding abandoned vehicles -- which affect not only a neighborhood, but also may have environmental and liability impact as well.

Thank You,

Jim Splaine - City Councilor



**MINUTES**  
**PARKING AND TRAFFIC SAFETY COMMITTEE MEETING**

8:00 A.M. – Thursday, March 13, 2014  
City Hall – Eileen Dondero Foley Council Chambers

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I. CALL TO ORDER:

Chairman Pro Tem Lown called the meeting to order at 8:00 a.m.

II. ROLL CALL:

**Members Present:**

Councilor Brad Lown  
Carl Roediger, Deputy Fire Chief  
Frank Warchol, Police Captain  
Peter Rice, Public Works Director  
Ronald Cypher, Member  
Ted Gray, Member  
Harold Whitehouse, Member

**Members Absent:**

John Bohenko, City Manager  
Shari Donnermeyer, Member

**Staff Advisors Present:**

Mark Nelson, Parking Division Director  
Tom Cocchiaro, Parking Operations Manager  
Juliet Walker, Transportation Planner

III. ACCEPTANCE OF THE MINUTES:

**Mr. Gray moved to accept the minutes of February 13, 2014, seconded by Public Works Director Rice. Motion passed.**

IV. FINANCIAL REPORT:

**Public Works Director Rice moved to accept the Financial Report and place on file, seconded by Mr. Gray. Motion passed.**

V. NEW BUSINESS:

A. Informational Item: Citizen request assistance in traffic slowing on Spinney Road

Captain Warchol explained that Reverend Shippee had contacted the police regarding speeding in the Spinney Road/Middle Road area since the closing of the Islington Street Bridge. He stated the police department has conducted extensive monitoring which has helped the situation and the will continue to do so throughout the construction of the bridge.

Public Works Director Rice stated they have also received complaints that people are trying to go over the bridge still even though there are several signs. He stated they will work to make the signage more visible.

Mr. Whitehouse asked if there is anything in the CIP for sidewalks on Spinney Road in the upcoming year. Public Works Director Rice stated there are sidewalks planned 2 years from now in the CIP.

Chairman Lown asked if the property ownership issues have been resolved on Spinney Road. Public Works Director Rice stated that we have obtained easements.

**No Action required.**

- B. Informational Item: Citizen concern raised at City Council meeting regarding need for Crosswalk on Middle Street @ Cabot Street

Parking Division Director Nelson stated a review of the area does show that there is not a crosswalk at that particular intersection but there are 2 crosswalks close to that area; one 200' to the south and one 500' towards town. He stated that this area is included in the upcoming study to be conducted with the bicycle master plan and grant funding being received, so it is possible that they may determine a need for one there.

**No action required.**

**VI. OLD BUSINESS:**

- A. Discussion Item – Status on Hanover Street (vicinity Rock St) changes

Parking Division Director Nelson explained that the 2-way sign plan has been done and the signs will be installed in one-day. He stated that Dig-safe will come in the upcoming week and then DPW will install the appropriate signs all at once to hopefully avoid confusion.

**No action required.**

- B. Discussion Item - Status on pedestrian-activated crosswalk acquisition

Parking Division Director Nelson stated he recently walked the area with the vendor, but the installation will have to wait until the Spring after the ground thaws as prep work will need to be done. He stated we are also trying to make sure it dovetails with the ongoing reconstruction project on Lafayette Road, but feels the roadway is wide enough in that location so it shouldn't be a problem.

**No action required.**

**VII. PUBLIC COMMENT:**

There were no speakers for Public Comment.

## VIII. INFORMATIONAL:

### A. Update on NHDOT Projects

Parking Director Nelson updated the Committee on the ongoing NHDOT Projects as follows:

- a). Lafayette Road section where overpass was removed will be finished on the other side before summer;
- b). Islington Street Bridge, the sewer pipe has been ordered, the gas line needs to be rerouted before going on to the next stage;
- c). Maplewood Avenue Bridge, was going to be out of service in May but has been moved back to August 1<sup>st</sup>.

Chairman Lown stated it seems all of our bridges are due for reconstruction at the same time. Public Works Director Rice stated that is correct as they have all been "red-listed".

### No action required.

### B. Parking Shuttle Status

Parking Division Director Nelson stated that the project has been awarded to Transaction Corporate Shuttles of Woburn MA for \$36,000.00 which was considerably lower than other bids received. He stated that have a long history in this business and great references and run similar services in Massachusetts and Manchester. He stated he and Juliet Walker will be meeting with the CEO of the company and are currently getting quotes for shelters. He stated the CCC Church will be one location where a shelter will be located. He stated that we will need to market this program and ensure signage is visible to those coming into town.

Public Works Director Rice stated they will be putting together the memo for the City Manager to brief the City Council as well. He stated the shelters will have a countdown meter and there will be message boards at the High/Hanover garage directing people to these shuttle locations when the garage is full.

Chairman Lown asked what the turnaround time will be and what days they will be running. Public Works Director Rice stated that this will be run originally as a pilot program to collect data on when/how often it is used etc. He stated it will run in 10 minute intervals and will be run on Fridays, Saturdays and Sundays beginning in early May through the summer. He stated the good price that we are getting the service will help us be able to add hours as needed, but we need to get the infra-structure in place first. He stated he would like to coordinate the opening with "Bike to Work" week if possible.

Mr. Whitehouse asked if this money is coming out of the parking revenues. Public Works Director Rice stated yes, it will be coming from unmet parking needs.

Chairman Lown asked if there will be any cost to CCC Church for the shelter. Public Works Director Rice stated no, they are happy to have it located there because they have students that can utilize it as well. Chairman Lown asked if they want anything in return for allowing it

to be located there. Public Works Director Rice stated no, but the City has done some line striping and paving in the past.

**No action required.**

#### **IX. MISCELLANEOUS:**

Action Item – Request for Handicap Parking space @ 49 Rockingham Avenue  
**(Not on agenda)**

Public Works Director Rice explained that this item came in after the agenda had been sent out but that it is a matter of urgency for the requester who is terminally ill.

**Public Works Director Rice moved to install a handicap space at 49 Rockingham Avenue for the necessary period of time, seconded by Mr. Cypher. Motion passed.**

Mr. Whitehouse asked if there has been any update from the EDC regarding the new parking garage location recommendation.

Chairman Lown stated the EDC is forming a sub-committee and there is currently discussion regarding the “Gary’s Beverage” lot with a public/private partnership opportunity.

Mr. Whitehouse asked if there is a time limit for reporting back. Chairman Lown stated no, and stated that there has been some distress expressed in not being able to consider the Worth Lot in the discussions.

Chairman Lown stated that we are still in discussions with GSA regarding the McIntyre Federal Building and feels that at the very least we should be able to use the parking lot more than we currently do.

#### **X. ADJOURNMENT**

**Mr. Whitehouse moved to adjourn at 8:30 a.m. Seconded by Mr. Gray and voted unanimously.**



March 5, 2014

VIA *E-MAIL* (jdt@mind.net)

Councilor Esther Kennedy  
Councilor Jack Thorsen  
City of Portsmouth, NH

**Re: Legal Questions regarding Financial Disclosures**

Dear Ms. Kennedy and Mr. Thorsen,

It was a pleasure meeting with you both last week. I write as you have requested to confirm our conversation and to provide some language that may helpful if the Council considers amending the City Administrative Code in the ways we discussed.

**1. Preemption/Enabling Legislation**

First, there was concern about whether the City had authority to require financial disclosures, and if any state or federal law preempted the City from requiring financial disclosures from City elected and appointed officials and employees. I noted that RSA 31:39-a (regarding conflict of interest ordinances which may require disclosure of financial interests for specified officers and employees) and RSA 49-C:33, I(c) (permitting city charter provisions to address conflicts of interest in ways at least as stringent as state law) provide the City with the authority necessary to require such disclosures. I also noted that I was unaware of any state or federal statute that would prohibit such a requirement.

In addition, both NH law and court opinions set forth clear and strong requirements regarding conflicts of interest. Whether mentioned in a charter or not, all officials and employees of every municipality must comply with the general principles regarding conflicts of interest. A person has a disqualifying conflict of interest in a matter when he has a "direct personal and pecuniary [financial] interest in the outcome" of a matter before him or her. That interest must be "immediate, definite and capable of demonstration; not remote, uncertain contingent or speculative." *Atherton v. Concord*, 109 N.H. 164 (1968). The reasons for this rule are obvious: a person cannot serve two masters at once. The public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest. Thus, there is no doubt that conflicts of interest are regulated in City government whether or not the Charter or Administrative Code say anything about them. It is simply not optional.

Finally, we all agreed that financial disclosures are an important part of the larger issue of transparency. Everyone who is elected, appointed or hired to perform services for the City is doing the public's work, spending the public's money, and affecting the public interest. Citizens need to know what the government is doing and have confidence that their City officials and employees are acting in the public interest, without conflicts or bias caused by personal or financial interests. That is the purpose from which the rest of our discussion flowed, and that is what I have kept in mind when drafting the language you requested.

## **2. Requirements of Charter Amendment C**

We then turned our attention to Charter Amendment C, adopted 11/3/1987. It states the following:

"The City Council shall establish a Conflict of Interest Ordinance for City Departments, including police and school boards and commissions, no later than sixty (60) days after passage of this provision. The ordinance will contain as a minimum, but is not limited to:

- A. Mandatory financial disclosure by all police, school, municipal officials, whether appointed or elected, of current personal sources of income and all capital assets including, but not limited to, stock and real estate holdings and interests, in a sworn statement before the City Clerk at least biannually or before assuming office.
- B. Mandatory review boards and procedures to determine violation of the ordinance.
- C. Mandatory penalties for violations of the ordinance.
- D. Comprehensive definitions of such violations, and procedures to be used in reporting, investigating, and correcting the results of violations."

The concern you expressed was that City's Administrative Code did not adequately carry out the requirements set forth in Amendment C. In particular, Articles VIII and IX address ethics, conflicts of interest and mandatory disclosures, but it was not clear whether they really accomplish the goal intended by Amendment C.

Attached to this letter please find the memo I shared with you at our meeting. It sets forth the requirements of Amendment C and my observation of exactly what Articles VIII and IX require. It also lists a variety of terms which are either not defined or are used inconsistently among Amendment C and the two Articles. Those definition issues seem to have led to quite a bit of confusion about which officials and employees are required to make certain disclosures, and whether as a whole the Articles are doing enough to carry out Amendment C's requirements. We concluded that they are not. It is not clear how that happened but we agreed it was entirely possible that the definitions and terms used in the Administrative Code and the Charter were in line in the past but that over time one or both have changed so that they no longer agree.

From a big picture perspective, we noted it would make sense to (1) fix what can be fixed in the Administrative Code now, (2) if the Council decides it is necessary, begin the Charter amendment procedure to make changes to Amendment C and/or any other part of the Charter, and (3) if the Charter is amended, make further changes to the Administrative Code to conform to the changes in the Charter.

### **3. Potential Amendments to Administrative Code Articles VIII and IX**

The heart of the issue was the use in Amendment C of the term "City Departments." The disclosure requirements are supposed to apply to "City Departments", which is a term never used or defined in the Charter or the Administrative Code. It is modified by "including police and school boards and commissions," but it is not clear whether that means "including and ONLY including" or "including but not limited to." If read broadly, the disclosure requirements in the Administrative Code should apply to all departments of the City, including but not limited to police and school officials, elected or appointed. If read narrowly, it should apply only to police and school board and officials.

You asked me how a court might look at this issue. I explained that, as a general matter of law, New Hampshire courts faced with an undefined term usually begin with the assumption that the word should be understood according to the "plain and ordinary meaning" used. Courts would also look at the term in the context of the entire document (contract, charter, ordinance, statute, etc.) and assume the intent was for all of the sections to work together. Courts do not ordinarily ascribe a meaning to an undefined term which makes no sense in light of the other sections of the document, or which leads to an absurd result. If a document is ambiguous and intent is difficult to determine, a court will look to the intent of the drafters at the time it was written. (In this case, that would mean looking back to see what was intended in 1987 when Amendment C was adopted, which I understand is something you plan to do.)

Turning back to the documents, Amendment C mandates that the Council adopt an ordinance that requires financial disclosure by all "City Departments, including police and school boards and officials whether appointed or elected...." These disclosures must include "current personal sources of all income and all capital assets, including, but not limited to, stock and real estate holdings and interests...."

However, while Article VIII applies to "officers" and "employees" fairly broadly, it is not clear if it applies to the same intended group under Amendment C. In addition, Article VIII requires only disclosures of interest in legislation, investments creating a conflict of interest with legislation, and incompatible employment. It does not require the specific financial disclosures that are mandated by Amendment C.

Article IX is somewhat the opposite. It seems only to apply to the City Councilors and School Board members, rather than the larger group required by Amendment C, but it does require financial disclosures along the lines of those listed in Amendment C.

In other words, one Article does some of what is required, the other Article does a different piece of what is required, but together they don't seem to accomplish all of what is required by the Charter (or needed on a practical level) and there is some confusion. We discussed merging them into one article but you both felt keeping them separate made more sense. My understanding is that the issue of ethics in general for the Council is somewhat different than the issue of financial disclosures, and you prefer to keep those separate for ease of understanding. This brought us to the second idea, which is to keep the articles separate but amend each of them to add things that are missing and remove unnecessary items. This is the option with which you asked me to go forward to draft some language.

#### **4. Specific Instructions for Amending Language**

The language attached was written under the guidance you provided, including:

- A. Assume that Amendment C's reference to "City Departments" and "municipal officials" is intended to be interpreted broadly.
- B. Specifically, assume that Amendment C is intended to include not only the Charter Departments as defined in the Charter, but also the departments listed in Article I, boards as listed in Article III, commissions and authorities as listed in Article VI, and other municipal officials and employees whose position with the City require transparency regarding personal and financial conflicts of interest to maintain the public's confidence in the integrity of City government.
- C. In Article VIII, add to the definition of "officers" people who are voting members of boards, commissions and authorities as listed in Articles III and IV, as well as other officials including the City Manager.
- D. In Article IX, add to the disclosure of "sources of income" the income and assets of spouses, and add a disclosure requirement regarding public, private or civic board memberships in organizations with a relationship to the city and leadership positions in organizations with a connection to the City. You did not ask me to broaden the scope of the definition of "Municipal Official" in this section to include all those included in Article VIII, so I have not done that, but I have added the City Manager as you requested.



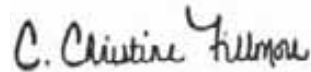
City of Portsmouth  
March 5, 2014  
Page 5 of 5

E. Although we agreed that Amendment C uses broad language regarding the disclosures required, we also agreed that it makes sense only to require disclosures which are related to City property, City businesses, and other City-specific situations rather than broad financial disclosures of every stock held and every business interest having no connection with the City. Amendments as we discussed will not bring Article IX into total compliance with Amendment C, you believed it was closer to the actual intent of Amendment C.

F. Please note as well that the section on “Disclosures of Confidential Information” was duplicative of the next section regarding Investments, and did not actually address confidential information. I have added suggested language that may be helpful as a starting point if this was the original intent of that section.

I hope this information is helpful. Please do not hesitate to contact me at any time should you have further questions or concerns.

Regards,



C. Christine Fillmore  
Staff Attorney  
NH Municipal Association  
25 Triangle Park Drive  
Concord, NH 03301  
1-800-852-3358 ext. 3408  
[legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)

Meeting w/Councilors Jack Thorsen and Esther Kennedy

Portsmouth City Charter/Administrative Code Review  
Disclosure of Interests

February 26, 2014

**Charter Amendment C –**

1. Requires Conflict of Interest Ordinance for “City Departments” including police and school boards
2. Requires mandatory financial disclosures by all “police, school, municipal officials whether appointed or elected”
3. Disclosures of current personal sources of income and all capital assets including but not limited to stock and real estate holdings and interests, at least biannually or before holding office

**Administrative Code – two sections addressing the issue**

Article VIII – Ethics

1. Applies to “Officers” in §1.801(A) which include police commission and school board as required by Charter Amd. C. Also applies to others defined as “officers” which includes
  - a. City Councilors
  - b. School board members
  - c. Police Commission members
  - d. Fire Commission members
  - e. Members of every land use regulatory board, meaning Board of Adjustment, Planning Board, Historic District Commission, Conservation Commission, Technical Advisory Committee, Traffic Safety Committee, Building Code Board of Appeals, Recreation Board, Planning and Development Council and Economic Development Commission
  - f. Every department head as that term is used in the Administrative Code
  - g. Chief of Police
  - h. Fire Chief
  - i. Superintendent of School
  - j. Trustees of Trust Funds
  - k. Housing Authority members
2. Requires disclosures of:
  - a. Interest in legislation
  - b. Investments creating a conflict
  - c. Incompatible employment

Article IX – COI/Mandatory Financial Disclosure

1. Applies to “Municipal Officials” in §1.901(B) meaning
  - a. City Councilors
  - b. School Board members

2. Requires Financial Disclosure Statement by all Municipal Officials annually
  - a. Financial disclosures include sources of annual income and capital assets of at least \$5,000 including stocks, bonds or other business interests in any business entity with connection to City, as well as all real estate and interest in real estate in City.

### **Issues between Charter Amendment C and Administrative Code**

1. “*City Departments*” as used in Amendment C is not defined anywhere in Charter or Admin. Code
2. Charter defines “*Charter Departments*” to include Police Department, Fire Department and School
3. Amendment C applies to “*municipal officials*” which is never defined in Charter or Code
4. Admin Code §1.102 lists departments and organization of them, but does not define them as “City Departments.”
5. Admin Code Art III refers to “boards” but doesn’t call them City Departments or Charter Departments
6. Admin Code Art IV refers to “commissions and authorities” but doesn’t call them City Departments or Charter Departments
7. Admin Code does, however, refer to “Charter Departments,” but not in the financial disclosure sections
8. Admin Code Art. VIII applies to “*department heads*” as referred to in Admin Code, but there is no definition of “department head” in the Code.

### **Issues to Consider**

1. City Departments – what was meant by this in Charter Amd. C?
2. Municipal Officials – what was meant by this in Charter Amd C?
3. Article VIII and IX could be combined or more clearly defined, because Article VIII does not go as far as required by Charter Amendment C. Article IX of Code applies only to City Council and School, but second requirement of Amendment C is for disclosures by all police school and “municipal officials”. This seems to mean a broader group, perhaps as defined in Article VIII as “officers.”

Suggested Amendments to Article VIII: Code of Ethics

**Section 1.801: Definitions**

For purposes of this Article, the following terms shall be defined in the following manner:

- A. Officer: The term "Officer" shall be defined to include every member of the City Council, School Board, Police Commission, Fire Commission, each member of every ~~Board listed in Article III of this Administrative Code, each member of every Commission and Authority listed in Article IV of this Administrative Code, every department administrator of all departments listed in Section 1.102 of this~~ Administrative Code, ~~the City Manager,~~ Chief of Police, Fire Chief, Superintendent of Schools, ~~and~~ the Trustees of the Trust Funds.
- B. Employee: The term "Employee" shall include all employees of the City including ~~but not limited to~~ the Police, School and Fire Departments whose salary is paid in whole or in part from the City Treasury.
- C. Governing Body: The term "Governing Body" shall mean the City Council, School Board, Police Commission, and Fire Commission.
- D. Official Duties: The term "Official Duties" shall mean the following:
  - 1. In the case of members of the City Council, School Board, Fire Commission, Police Commission and the City Manager, those duties and responsibilities set forth in the City Charter, ~~this Administrative Code,~~ and/or established by State law.
  - 2. In the case of members of ~~any Board under Article III of this Administrative Code and members of any Commission or Authority under Article IV of this Administrative Code~~ and the Trustees of the Trust Funds, those duties and responsibilities set forth in the legislation that established each board and/or outlines the duties and responsibilities of each board, ~~the City Charter and this Administrative Code.~~
  - 3. In the case of the Chief of Police, the Superintendent of School, the Fire Chief, and all ~~E~~mployees, those duties and responsibilities set forth in the respective job description for each party or ~~E~~mployee.

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- Deleted:** land use regulatory board, i.e., the Board of Adjustment, Planning Board, Historic District Commission, Conservation Commission, Technical Advisory Committee, Traffic Safety Committee, Building Code Board of Appeals, Recreation Board, Planning and Development Council, and Economic Development Commission
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**Section 1.802: Conflicts of Interest**

- A. No Officer or ~~E~~mployee shall engage in any business or transaction or shall have a financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his/her ~~O~~fficial ~~D~~uties.
- B. Representing Private Interests before City Agencies: No Officer or ~~E~~mployee shall appear in behalf of private interests before any ~~G~~overning ~~B~~ody or ~~B~~oard, ~~C~~ommission or ~~A~~uthority of which the ~~O~~fficer or ~~E~~mployee is a member or ~~for which~~ membership is subject to approval by the ~~O~~fficer or ~~E~~mployee.  
  
Officers and ~~E~~mployees, however, may appear without compensation in behalf of constituents or in the performance of public or civic obligations. This section shall not prohibit appearances

upon matters only incidentally requiring official action which do not develop into a substantial part of the individual's Official Duties, provided that the retainer is not for the purpose of appearing before the Governing Body, Board, Commission or Authority.

- C. Representing Private Interests Before Courts: No officer or Employee shall represent private interests in any action or proceeding against the interests of the Board, Commission, Authority or Governing Body of which the Officer or Employee is a member, or for which membership is subject to approval by the Officer or Employee in any litigation to which the City is a party.
- D. Disclosures of Interest in Litigation: A Councilor who has a direct or indirect financial or other private interest in any proposed legislation shall publicly disclose, on the official records of the Council, the nature and extent of such interest.
- E. Disclosures by Officer or Employee of Interest in Legislation: An Officer or Employee who has a direct or indirect financial interest or other private interest in any legislation, and who participates in in discussion before or gives official opinion to the Council, shall publicly disclose on the official record the nature and extent of such interest.
- F. Gifts and Favors: No officer or Employee shall accept any gift, over \$100.00, whether in the form of service, loan, thing or promise, or any other form, from any person, firm or corporation which to his/her knowledge is interested directly or indirectly in any manner whatsoever, in business dealings with the City. This provision shall not apply to campaign contributions of \$100.00 or less.
- G. Disclosures of Confidential Information: No Officer or Employee shall divulge to the public any information which that Officer or Employee learned by virtue of his/her official position, or in the course of his/her Official Duties, if: (1) A public body properly voted to withhold that information from the public by a vote of 2/3, as required by RSA 91-A:3, III, and if divulgence of such information would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body or would render proposed municipal action ineffective; or (2) The Employee or Officer knew or reasonably should have known that the information was exempt from disclosure pursuant to RSA 91-A:5, and that its divulgence would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body or agency, or would render proposed municipal action ineffective.
- H. Investments in Conflict with Official Duties: Any Officer or Employee who holds any direct or indirect investment in any financial, business, commercial or other private entity which creates a conflict with his/her Official Duties shall publicly disclose on the official record the nature and extent of such interest.
- I. Incompatible Employment: No Officer or Employee shall engage in or accept private employment or render or seek services or goods for private interests when such employment or service creates a conflict with his/her Official Duties.

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**General note:** Although substantively Sections 1.804 and 1.805 do not seem to need any revision based upon our discussion, any official terms (Employee, Official, Official Duties, etc.) should be capitalized to avoid confusion.

Suggested Amendments to Article IX: Conflict of Interest/Mandatory Financial Disclosure

**Section 1.901: City Council and School Board Disclosures**

- A. Preliminary: This ordinance is adopted by the City of Portsmouth in compliance with the mandate contained in the Charter Amendment entitled "CONFLICT OF INTEREST," which was adopted by referendum vote of the City of Portsmouth on November 3, 1987. This ordinance may be referred to as the Mandatory Disclosure Ordinance.
- B. Definition: For purposes of this Article only, the following terms shall be defined in the following manner:

Municipal Official: For the purpose of mandatory financial disclosure, the term "Municipal Official" shall be defined to include City Council, City Manager, and School Board members.

Income: The term "income" shall be defined as a gain of recurrent benefit usually measured in money that derives from capital, labor or investment.

Capital Assets: The term "capital assets" shall be defined to include all corporate stocks or bonds or any other business interest in any business entity which maintains a business location in the City of Portsmouth, owns property in the City of Portsmouth, transacts substantial business in the City of Portsmouth, or transacts business with the City of Portsmouth. The term "capital assets" shall also be defined to include all real estate holdings and interest in real estate located in the City of Portsmouth.

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Financial Disclosure Statement: The term "Financial Disclosure Statement" shall mean a written statement, given under oath, listing an individual's and his/her spouse' primary source of annual income and capital assets. However, in no instance shall disclosure be mandated of capital assets whose value at the time of disclosure is below Five Thousand (\$5,000) dollars nor shall the value of any source of income or the value of any capital asset be required for disclosure.

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Affiliation Disclosure Statement: The term "Affiliation Disclosure Statement" shall mean a written statement, given under oath, listing an individual's board or leadership position (paid or unpaid) with every public, private, professional or civic organization (whether or not for profit) which maintains a business location in the City of Portsmouth, owns property in the City of Portsmouth, transacts substantial business in the City of Portsmouth, or transacts business with the City of Portsmouth.

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- C. Obligation of all Municipal Officials: From and after June 30, 1988, all Municipal Officials will maintain an updated Financial Disclosure Statement and an updated Affiliation Disclosure Statement at the Office of the City Clerk. Each statement shall be updated annually as of June 30<sup>th</sup>. Forms shall be prepared by the City Clerk and made available to all municipal officials for this purpose, substantially the same as the forms attached.

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D. Determining Violations: For violation and enforcement purposes, complaints alleging violations of the Mandatory Disclosure Ordinance shall be administered in accordance with the process and penalties available under the Municipal Code of Ethics, Reference Chapter 1, Article VIII.

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E. Public Records: Financial Disclosure Statements and Affiliation Disclosure Statements shall be public records. (Amended 6/4/2007).

F. Return of Records: Financial Disclosure Statements and Affiliation Disclosure Statements shall be returned to the public official six (6) months after leaving office.

(Adopted In Its Entirety 3/21/88, Amended 3/28/88)



**Sample Financial Disclosure Statement**

The undersigned Municipal Official of the City of Portsmouth discloses the following sources (both mine and those of my spouse) of Income and Capital Assets as defined in Section 1.901(B) of the Administrative Code of the City of Portsmouth:

Primary Source of Income:

Capital Assets:

\_\_\_\_\_  
Municipal Official

Date: \_\_\_\_\_

\_\_\_\_\_  
Please Print Name

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this \_\_\_\_\_ (date) by  
\_\_\_\_\_ (name of person acknowledged).

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My commission expires:

**Sample Affiliation Disclosure Statement**

The undersigned Municipal Official of the City of Portsmouth discloses the following board or leadership positions (paid or unpaid) with every organization as required in Section 1.901(B) of the Administrative Code of the City of Portsmouth:

Organization:

Position with Organization:

\_\_\_\_\_  
Municipal Official

Date: \_\_\_\_\_

\_\_\_\_\_  
Please Print Name

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this \_\_\_\_\_ (date) by  
\_\_\_\_\_ (name of person acknowledged).

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My commission expires:

## MEMORANDUM

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**TO:** John P. Bohenko, City Manager  
**FROM:** Liz Good, Planning Department *lg*  
**SUBJECT:** Conservation Commission Minutes  
**DATE:** April 9, 2014

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Please be advised that the approved minutes from the September 11, 2013 Conservation Commission meeting are now available on the City's website for your review.

## MEMORANDUM

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**TO:** John P. Bohenko, City Manager  
**FROM:** Liz Good, Planning Department   
**SUBJECT:** Conservation Commission Minutes  
**DATE:** April 9, 2014

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Please be advised that the approved minutes from the October 9, 2013 Conservation Commission meeting are now available on the City's website for your review.

## MEMORANDUM

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**TO:** John P. Bohenko, City Manager  
**FROM:** Liz Good, Planning Department   
**SUBJECT:** Historic District Commission Minutes  
**DATE:** April 7, 2014

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Please be advised that the approved minutes from the October 2, 2013 Historic District Commission meeting are now available on the City's website for your review.

## MEMORANDUM

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**TO:** John P. Bohenko, City Manager  
**FROM:** Liz Good, Planning Department *lg*  
**SUBJECT:** Historic District Commission Minutes  
**DATE:** April 7, 2014

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Please be advised that the approved minutes from the October 9, 2013 Historic District Commission meeting are now available on the City's website for your review.