

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

APRIL 30, 2015

MEMBERS PRESENT: John Ricci, Chairman; Elizabeth Moreau, Vice Chairman; Jack Thorsen, City Council Representative; David Allen, Deputy City Manager; Robert Marsilia, Building Inspector; William Gladhill, Colby Gamester, and Justin Finn, Alternate

MEMBERS EXCUSED: Michael Barker and Jay Leduc

ALSO PRESENT: Rick Taintor, Planning Director; Jessa Berna, Associate Planner

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I. DETERMINATIONS OF COMPLETENESS

A. Site Plan Review:

1. The application of **Rye Port Properties, Owner, and Charter Foods North LLC, Applicant**, for property located at **2299 Lafayette Road**, requesting Site Plan Approval to construct a 50-seat, 2500 s.f. Taco Bell Restaurant.

Ms. Moreau made a motion to determine that the application is complete according to Site Plan Review Regulations and to accept it for consideration. Deputy City Manager Allen seconded the motion.

The motion passed unanimously.

2. The application of **Northern New England Conference of Seventh Day Adventist, Owner**, for property located at **861 Middle Road**, requesting Site Plan Approval to construct an 18' x 33' addition to the front of the existing church.

Deputy City Manager Allen made a motion to postpone consideration of the completeness of the application to the May 21st, 2015 Planning Board meeting. Ms. Moreau seconded the motion.

The motion to postpone consideration of completeness of the application to the May 21st, 2015 Planning Board meeting passed unanimously.

3. The application of **Old Tex Mex, LLC, Owner**, for property located at **290 Heritage Avenue**, requesting Site Plan Approval to construct a 110' x 250' two story steel frame building.

Ms. Moreau made a motion to determine that the application is complete according to Site Plan Review Regulations and to accept it for consideration. Deputy City Manager Allen seconded the motion.

The motion passed unanimously.

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The Chair asked for a motion to take Item C Public Hearings New Business and Item A Other Business out of order for the purposes of postponement.

Ms. Moreau made a motion to take Item C Public Hearings New Business and Item A Other Business out of order for the purposes of postponement. Deputy City Manager Allen seconded the motion.

The motion to take Item C Public Hearings New Business and Item A Other Business out of order for the purposes of postponement passed unanimously.

II. PUBLIC HEARINGS – OLD BUSINESS

A. The application of **Saco Avenue Professional Building, Inc., Owner**, for property located at **125 Brewery Lane**, requesting an extension of Site Plan Approval to construct a 4-story, 64' x 240', 15,500 ± s.f. 48-unit residential building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. (Site plan approval was originally granted on November 18, 2005, and extensions were granted through November 17, 2010.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

City Attorney Robert Sullivan was present to speak to the application. He explained the situation that brought the application before the Board this evening. Ten years ago site approval was issued. For a variety of disputed reasons, the project has not been built. In spite of several extensions to the approval, nothing has happened with the project. Numerous meetings between the developer and City officials were unable to resolve disputes regarding whether Site Plan Approval was still valid and a building permit could be issued.

The City and the developer agreed to a mediation process which was held March 31st, 2015. After a lengthy process, a resolution was reached. The City did not agree that the former Site Approval was still valid. Nor was the developer required to start at the beginning. Rather, the developer was allowed to come before the Planning Board to request an extension up to the present time. Attorney Sullivan felt that this was a reasonable settlement of a highly disputed matter between the City and the developer.

Councilor Thorsen stated that the Site Plan is not outside of what the Charrette put forth. He inquired if anyone had made a comparison of the project (as it is now outlined) to the Charrette.

Attorney Sullivan stated that this comparison has not been made. The developer had an approved Site Plan, but the project was not built due to delays by the City (storage of raw materials for City projects). The developer felt that they should not be held up to scrutiny by something the Charrette has set forth and that they should be able to go ahead with the project as originally approved.

Councilor Thorsen stated that he understands the nature of the timing. However, it would help to know if it does deviate from the Charrette as changes to the Charrette could then be made.

Deputy City Manager Dave Allen stated that it is difficult to make that kind of determination. The Site Plan is not out of character with the buildings in the area; however it doesn't necessarily comply directly with the Vision Plan. Still, the project is close to having an angle shaped building (what the Vision Plan puts forth).

Councilor Thorsen stated that he doesn't see the Charrette as a development plan, but rather an example of the type of design the City would like to see in this area. The purpose of the Charrette is to serve as a character overlay for the area more than a plan. He would like to ensure that if this project deviates from the Charrette, the Planning Board will know about it and the Charrette drawings can be changed.

Mr. Taintor stated that the Planning Department will look into this matter. If there are any major discrepancies, the Department would let the Planning Board know about them.

Ms. Moreau stated that the original expiration of the extension was the close of 2010. She inquired if the applicant took appropriate measures to request further extensions.

Attorney Sullivan stated that the applicant had exhausted all opportunities for extension.

Ms. Moreau inquired about how many of the zoning laws (since 2005) that would affect this Site Plan have actually changed.

Mr. Taintor stated that he can think of no significant changes.

Mr. Gladhill inquired if both parties are willing to abide by the decision made by the Planning Board or will a decision made serve only as a stepping stone to the ZBA and the courts.

Attorney Sullivan stated that if the Site Plan extension is granted, it would compel the developer to complete the project within a 24-month time period. If the extension is not granted, the developer is allowed to use whatever legal remedies necessary to settle the matter in court or otherwise.

Mr. Gladhill stated that when an extension is granted, most members of the Planning Board that have seen the project are still on the Board. This is not the case for this project. None of the current members, with the exception of one person, have seen this project plan or heard the public hearing. He

stated that it is not just a couple of years in time, the lapse is 10 years. He inquired as to whether the applicant would be agreeable to conditions/stipulations ,or does he want a straight approval.

Attorney Chris Keenan representing the owner was present to speak to the application. He wished to clarify some things first and would subsequently answer Mr. Gladhill's question. There was an agreement entered into between the City and the developer while the last extension was still in place. There was some disagreement over the amount of time remaining for the extension. That led to another meeting in February of 2012 with the City. Everyone involved thought that an agreement was reached, but it was not recorded. Apparently, there was a misunderstanding of exactly what the agreement was. The disagreement is what led to the mediation. With regard to stipulations and conditions, there have been no zoning changes that would affect the project so the applicant would be very hesitant in agreeing to additional conditions. The sewer separation project was going to be completed within a year of the Site Plan Review. However, they continued the sewer separation up to Lincoln from the area and the site has been in continual use since that time. Had the City not used this site, there would've been many large trucks going through different neighborhoods, particularly in the past two years.

Mr. Gladhill asked for clarification as to whether the applicant would agree to any stipulations.

Chairman Ricci inquired whether the applicant would be amenable to presenting the application to this current Board at the next meeting. He stated that it is not fair to the Board to ask them to approve something with which they are not familiar. He stated this request as a question, not a demand.

Attorney Keenan stated that the applicant prefers not to present the application at the meeting next month. He stated that he is not saying "no" to this request, but he will have to confer with his client. He stated that it is a good project and was thoroughly reviewed by the Planning Board, even though it was not the same members at the time of approval as it is today. He doesn't see the necessity of having to go through another presentation. However, he stated that they would be willing do a straight presentation next month, but not a full formal presentation.

Mr. Gamester inquired whether a public hearing would be required.

Chairman Ricci stated that this was a public hearing.

Mr. Gamester inquired whether the presentation next month would then extend the public hearing and whether new comments and/or stipulations to the Site Plan would be considered. He inquired about the presentation and what it would look like and what would it involve.

Chairman Ricci stated that if the applicant would like to do the presentation tonight, they are welcome to do that.

Attorney Keenan stated that they can present tonight.

Councilor Thorsen stated that the plan the Board has before them tonight received on April 6th, 2015 is the same plan without modification as the one that was accepted last time.

John Chagnon, Ambit Engineering presented the plan. He stated that the plans are from January 18th, 2010. Mr. Chagnon described the site environment using a slide presentation. The project site is the old DPW site. DPW moved from this site in 1999. An area at the back has been dedicated to conservation. He stated that there will be a large area of pavement that will be moved during construction and the existing metal building will remain for construction only for staging of materials. Two buildings in the front will remain. The project is development of a 48 unit residential building to be constructed on the south end of the property. There will be a courtyard/greenway out to a sidewalk to be built on Chevrolet Avenue. There will be a sidewalk on Chevrolet Avenue with connections to Plaza 800. Parking will be reconstructed into a large 4-bay north/south arrangement. A second bay will also be constructed. A driveway with speed bumps will cross the site. There will be a garage below grade. There will be 3-4 stories above grade with apartments units. There will be extensive landscaping and plantings around the building. The Utility Plan shows the connections required for the building. They were laid out in advance because the project was on the books. All those connections are ready to be worked on. A Lighting Plan depicts pole mounted lights in the middle of the parking bays. Entrances and sidewalks will be lit. The last sheet in the set is the approved architectural renderings. There are also the standard Detail Sheets.

Ms. Moreau stated that the plans show a lawn area (once the garage building is gone). She inquired as to whom will be using that area.

Mr. Chagnon stated that this area is primarily for the residents for recreation purposes. He doesn't think the businesses would have as much interest in that area and they may create spaces closer to their business.

Ms. Moreau stated there is a chain-link fence with barbwire there now. She inquired as to whether that will be removed.

Mr. Chagnon stated that the fence will be removed. There is a fence shown on the plans but it will be more of a picket variety fence.

Mr. Gladhill inquired if the housing will be market price and is there a standard for square footage for the condominiums. He stated that 48 units is a high number of units.

Mr. Chagnon stated that the housing will be market priced according to the size of the building and that this is set because it falls within the business district. Because it is mixed used, the square footage of residential is 2/3 total site square footage (and commercial is 1/3). The number of condo units seemed reasonable given these parameters. He does not have the exact square footage numbers with him this evening.

Deputy City Manager Allen stated that a condition of building would be to ensure that the location of everything (utilities, lighting, drainage, etc.) is verified with DPW prior to the bidding process and construction.

Mr. Taintor stated that there is approximately 62,000 s.f of residential area so that each unit would be 1,292 s.f/ unit for 48 units. There will be some common area so if the number is cut down by 10% due to the common area that brings the number to approximately 1,163 s.f/unit.

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

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau made a motion to waive compliance of Section 2.13.2 of the Site Plan Review Regulations prior to the expiration date of the application. Deputy City Manager Allen seconded the motion.

Mr. Gladhill stated that when Harborcorp missed its deadline, the applicant asked for an extension/waiver request. The Planning Board did not grant the waiver/extension. The City is now reviewing a better project/building than it would have 10 years ago. He stated that we may get a better project in this situation.

Councilor Thorsen stated that the issue is the involvement of the City delaying this project. He will be making his decision based on this factor.

Chairman Ricci stated that this is the type of project the City needs with onsite parking, many small units, and many people. This is the type of project discussed in the Charrette and is exactly what the Islington Street corridor needs.

Mr. Gladhill stated that architecturally the project looks good, and perhaps the only change he would make is to suggest that the developer set aside units to be dedicated to Workforce Housing. The subject of Workforce Housing was not talked about 10 years ago.

Chairman Ricci stated that Mr. Gladhill's point is well taken.

Ms. Moreau stated that this can be suggested, but there are "no teeth" to make it happen (Workforce Housing). She added that the site is hideous now and the project as planned is a tremendous improvement. She felt that the Board should support the project, although she agrees with what Mr. Gladhill is saying.

The motion to waive compliance of Section II.13.2 of the Site Plan Review Regulations passed unanimously.

Ms. Moreau made a motion to grant an extension of the Site Plan Approval originally granted November 17th, 2005 and recently extended to November 17, 2009 with the stipulation that all site work shown on the Site Plan shall be completed by April 30th, 2017. Deputy City Manager Allen seconded the motion.

Mr. Marsilia clarified that the 24-month extension is to do site work, not to complete the building, and if the site work shown on the Site Plan has not been completed by April 30th, 2017, he inquired as to what would happen.

Mr. Taintor stated that if this was the case, the City can call the bond and the City can complete the work. That is the purpose of the bond.

Chairman Ricci added the stipulation that the applicant shall coordinate with the DPW for any proposed utility connections.

The motion to grant an extension of the Site Plan Approval originally granted November 17th, 2005 and recently extended to November 17, 2009 with the following stipulations passed unanimously.

- 1) All site work shown on the Site Plan shall be completed by April 30th, 2017
- 2) The applicant shall coordinate with Portsmouth DPW for any proposed utility connections, prior to the issuance of a building permit.

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Chairman Ricci asked for a motion to take Item A Public Hearings New Business out of order so Attorney Sullivan could present a request for waiver of Subdivision Rules and Regulations.

Ms. Moreau made a motion to take Item A Public Hearings New Business out of order. Deputy City Manager Allen seconded the motion.

The motion to take Item A Public Hearings New Business out of order so Attorney Sullivan could present a request for waiver of Subdivision Rules and Regulations passed unanimously.

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B. The application of **Rye Port Properties, Owner, Charter Foods North, LLC, Applicant**, for property located at **2299 Lafayette Road**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 50-seat 2,500 s.f. Taco Bell Restaurant with drive-thru, with 5,990 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 272 as Lot 10 and lies within the Gateway (G) District. (This application was postponed at the March 19, 2015 Planning Board Meeting.)

The Chair read the notice into the record.

The discussion of this application and the decision by the Board appears under Item B Public Hearings New Business.

III. PUBLIC HEARINGS – NEW BUSINESS

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A. Request of **Stella B. Stokel 1993 Trust, Stella B. Stokel, Trustee, Nancy A. Stokel 1993 Trust, Nancy A. Stokel, Trustee, and Philip J. Stokel, Owners**, and the **City of Portsmouth, Applicant**, for property located at **83 Peverly Hill Road**, requesting a waiver of the Subdivision Rules and Regulations, Section VI.3.I – Cul-de-Sacs, to allow a cul-de-sac to exceed 500 feet in length. Said property is shown on Assessor Map 242 as Lot 4, and lies within the Single Residence A (SRA) and Single Residence B (SRB) districts.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Robert Sullivan, City Attorney, was present to speak to the application. The action for this plan began a long time ago in 2008 as an Eminent Domain conducted by the City of Portsmouth. There was a railroad bridge over Greenland Road that was in serious disrepair. This was a main artery in and out of the City. As part of the management of this project, the City determined that there was a Right of Way, a “farm lane”, that provided an opportunity for the Stokel property to gain access to Greenland Road. Because the new bridge was wider, higher, etc. the continued use of the farm lane was deemed unsafe and the City “took” the Right of Way on which the “farm lane” was constructed. The City compensated the owners (Stokels), but there was a significant dispute about the value of the property. There was a lengthy hearing with valuation being the bottom line. The case was appealed by the Stokels to the Superior Court. A jury trial was scheduled for April, 2015. However, a settlement agreement was reached, one element of which requires Planning Board approval. The element is that the property owner agrees to settle if the Planning Board waives the limit to exceed 500’ for the cul-de-sac requirement. In this case, the owners would be able to use a road ending at the cul-de-sac coming in from Peverly Hill Road to reach the back of the property. This is the only relief requested (for up to 10 years) so that the settlement may be implemented.

Mr. Gladhill asked for clarification on what constitutes the “back” of the property.

Attorney Sullivan stated that the owners wish to come in off Peverly Hill Road.

Suzanne Woodland, Deputy City Attorney, displayed a map on the slide presentation and clarified where the owners wish to gain access.

Mr. Gladhill stated that he is hesitant to approve something for which there is no plan and for which the owners may come back with the developer with another request that may perhaps be for 2000’. He is concerned with where the limit would end.

City Attorney Sullivan stated that there is no plan to date because the waiver has not been granted. He also stated that the limit has been waived for other parcels in the City. Eastwood Drive is one example. If the waiver is granted, the Planning Board could deny the request further based on any of the Rules and Regulations, except for exceeding the 500’ limit.

Mr. Gladhill is concerned that if the waiver is granted and a road is built to 2000’ (exceeding the 500’ limit that has been waived), and asked if the Planning Board could say that this is unacceptable and ask that the road be made shorter.

City Attorney Sullivan stated that the Planning Board has control of the entire subdivision for other rules and regulations. The applicant is going to have develop a subdivision plan meeting all other rules and regulations and the application at that point could be denied based on any other rule or regulation with the exception of the 500’ limit, if waived.

Ms. Moreau inquired as to why this limit is in place.

Mr. Taintor stated that the primary reason is for fire access and providing water.

Ms. Moreau wondered that given this, could the Planning Board require hydrants along the access road.

Councilor Thorsen wondered whether the Planning Board could state that the cul-de-sac has to be restricted to 501'. He stated that otherwise, it seems as if the Board is giving an unqualified approval for any length.

City Attorney Sullivan stated that the applicant (with this waiver in place) must present a subdivision plan. The only thing the Planning Board could not do is deny the plan for failure to meet the 500' restriction. As long as the Planning Board acted reasonably and in compliance with the law, when a subdivision plan comes to the Board, the action of the Planning Board would be acceptable.

Mr. Marsilia stated that fire hydrants, etc. are controlled by ordinance. There is an inherent incentive to make the road as short as possible because as the road lengthens, there is more infra-structure required. The issue of public safety drives the restriction of 500'. The length could only go as far as the back of the site anyway and although this could be as much as 2,000', he is not particularly concerned about it because the infrastructure that would be required by ordinance for a longer road is in place and would have to be adhered to by the owners. This is disincentive to make the road a long one.

Deputy City Manager Allen stated that if there were an accident, the people on the upper end of the development may not have the ability to escape. He wondered whether there could be some alternate access that can be incorporated into the design. He pointed out that this will likely go through TAC. Fire personnel, who should be looking at public safety with regard to this request, would be present on that Committee. This issue could be worked through technically with TAC.

City Attorney Sullivan stated that premier subdivisions in the City have one access in and out with lengthy roads. He cited Tidewatch with a single access point as an example.

Mr. Gladhill brought up the example of Atlantic Heights. He stated that there was one way in and one way out; if the bridge collapsed and people were stuck. He doesn't want to grant a waiver tonight without a plan. There is no way to know at this point where the extension would end.

City Attorney Sullivan talked about Atlantic Heights. He stated that while it has suffered from limited access, it was approved at a time when there was no Planning Board, and at a time when regulations like there are now, were not in place. Atlantic Heights would have to come before the Planning Board today as does this current application.

Mr. Gladhill asked fellow Board members if it would be appropriate to vote tonight to grant the 500' waiver, but not designate a length now. This would grant the waiver in effect approving a road that would not be less than 500', but for which the final length could be determined at a later date.

City Attorney Sullivan stated for the record that the Planning Board can rely on this.

Chairman Ricci stated that if the waiver were granted tonight, the subdivision could be denied based on the length at a later time.

City Attorney Sullivan stated that the Planning Board could deny the subdivision based on the length as long as the denial was not for simply a failure to meet the 500' requirement and as long as the denial is reasonable and based upon the application of some other regulation.

Chairman Ricci stated that if granting this waiver, the Board gives up the right to deny for a road that is 1,000 or 2,000' long.

City Attorney Sullivan stated that the Board gives up the right to deny based on anything more than 500'.

Chairman Ricci stated that if a tree falls across the road and the Fire Department cannot access this parcel because of this, and it was approved, this would be tragic.

City Attorney Sullivan stated that the subdivision could be denied based on the fact that if Fire Department personnel, in their review of the application, felt that the road would be unsafe due to this possibility (of a tree falling and causing difficulty with access) or any other safety possibility, the subdivision could be denied at that time based upon that fact, but not based upon exceeding the 500' limitation that had been waived.

Chairman Ricci stated that he is uncomfortable approving anything for which there is no plan.

Councilor Thorsen stated that the reason for the 500' requirement is based on a set of needs. It is, in effect, a distillation of other concerns. If those other concerns remain, then the 500' limit is still maintained. He inquired if the 500' requirement is a derivative of other concerns, do those other concerns remain.

Mr. Taintor stated that those other concerns could potentially remain. If a proposed subdivision plan comes in that has a longer road due to the design, there would be serious access and safety concerns. The Board wouldn't use the 500' limitation as a reason to deny, but would rather use those other (safety and access) concerns to deny.

Chairman Ricci inquired as to why the applicant wouldn't come before the Planning Board and ask for a waiver with a set of plans, as would anyone else.

City Attorney Sullivan stated that this is because the application comes before the Planning Board in the context of trying to settle a case with other issues (not related to the Planning Board).

City Attorney Sullivan stated that the amount of planning and engineering to do this would not be justified until a waiver is granted. The applicant feels that the best interest of the City is met by doing a number of things including granting the waiver. It is not appropriate or possible to take this one element out of the package at this time.

Chairman Ricci inquired that if they denied the application based on the road being too long, would this being going up a slippery slope for the City.

City Attorney Sullivan stated that the Planning Board (if the waiver is granted) cannot deny the project at any point based on the fact that the road/access is longer than 500'. The Board can deny it for reasons that the Fire Department felt that they cannot gain access, or for any other public safety issue.

Mr. Gladhill inquired that while he understands wanting to gain access to the back of the property, (particularly as it is 107 acres) to cut down a tree or what have you, so that a 4X4 vehicle doesn't have to be used to get to the back of the property, if they were to choose to subdivide, could the waiver be deemed null and void.

City Attorney stated that the 107 acres remains 107 acres unless the City gives them the right to subdivide. Part of the purpose of this is to be able to have the right to subdivide and to bring a plan before the Planning Board.

Mr. Gladhill stated that he feels like he is giving a credit card with no limit and doesn't know what will be charged. He felt he needs to know why to grant the waiver.

The City Attorney stated that it is one element of a settlement of a very large case involving a very large amount of money.

Mr. Marsilia stated that the wetlands would effectively limit the subdivision of the site.

City Attorney Sullivan stated that it would be a very complex site to subdivide.

The Chair opened the public hearing and asked for speakers.

Bernie Pelech, Attorney, was present to speak to the application. He stated that he does not "have a dog" in this fight. However, he stated that if he asked the Planning Board for a carte blanche waiver for an unknown cul-de-sac length, he would be laughed out of the room. He wondered whether the road would be 500', or 2000'. The Planning Board is being asked to grant something for which it doesn't know what it is. The only reason the Planning Board is being given to grant the waiver is to end some litigation. The applicant must give some showing as to why this waiver should be granted other than it may end a nasty litigation. To grant this would set a precedent and others would take advantage of this in the future.

City Attorney Sullivan stated that he couldn't disagree more with what Attorney Pelech is stating. Granting this waiver would not set a precedent whatsoever. He stated that every request is different from another. The only way this would be setting a precedent is if the City was in another situation with an Eminent Domain with a property with a "farm lane" and it went to trial and the City's legal department recommended a waiver.

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

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau made a motion to grant a waiver of the Subdivision Rules and Regulations, Section VI.3.I – Cul-de-Sacs, in order that the applicant may exceed 500’ in length as stated in the Department Memorandum. Deputy City Manager Allen seconded the motion.

Councilor Thorsen felt that granting the waiver was fairly low risk and that it would not amount to giving up subdivision oversight. He is however concerned about granting a flat out waiver. He felt that there should be a connection to the suit as well and a condition set forth if the settlement does not go through (that the waiver would not be granted).

City Attorney Sullivan stated that this is the final element of the settlement agreement and without a doubt, if the waiver is granted, the settlement would go through.

Ms. Moreau stated that there are other rules and regulations that must be complied with and she doubts that a 1,000 or 2000’ road would be constructed without running into other regulations preventing it.

Mr. Gladhill inquired if a 500’ road could be installed in the existing condition without running into wetland issues.

Mr. Taintor stated that this is an unknown. He stated that the wetlands on this parcel are not surveyed wetlands. The information is only from aerial surveys.

Mr. Gladhill stated that the road may not be 500’ after all if there is, for example, a wetland crossing. In this case, the road may end up being only 200’.

Mr. Taintor and Ms. Moreau confirmed this and reaffirmed that in this case, the application would not be denied based on the fact that the road is more than 500’, but that there is a wetland issue.

The motion to grant a waiver of the Subdivision Rules and Regulations, Section VI.3.I – Cul-de-Sacs, in order that the applicant may exceed 500 feet in length as stated in the Department Memorandum passed with a vote of 6-2 in favor (The Chair and Mr. Gladhill voted against).

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B. The application of **Rye Port Properties, Owner, and Charter Foods North LLC, Applicant**, for property located at **2299 Lafayette Road**, requesting Site Plan Approval to construct a 50-seat, 2500 s.f. Taco Bell Restaurant with drive thru, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 272 as Lot 10 and lies within the Gateway district.

The Chair asked for a motion to read Item B Public Hearings Old Business and Item B Public Hearings New Business in together to be voted on separately.

Ms. Moreau made a motion to read Item B Public Hearings Old Business and Item B Public Hearings New Business in together to be voted on separately. Mr. Gladhill seconded the motion.

The motion to read Item B Public Hearings Old Business and Item B Public Hearings New Business in together and vote on them separately passed unanimously.

The Chair read the two notices into the record.

SPEAKING TO THE APPLICATION:

Mark Gross with MFH Design Consultants was present to speak to the application. Heather Monticup with Greenman Pedersen, Inc. was also present to speak about traffic. Mr. Gross spoke to the Site Review application first followed by the Conditional Use Permit (CUP). The Site Plan is for the Taco Bell, with an access point off Route 1. It shares a common driveway with Advance Auto Parts. The applicant will come off this common driveway with their driveway. The existing lot is approximately 80,000 s.f. There is a wetland in back of the site that will be subject to the CUP. There are eight stacking spaces in the drive thru. There are 25 parking spaces. They will provide additional sidewalk along Route 1 accessed from the intersection at Route 1 and Springbrook Circle. There is access along Route 1 on the sidewalk to the site. There are 2 entrances for the building. They are providing closed drainage on site and directing all runoff from the site to a catch basin and tying this into 2 bioretention areas with plantings. Those will accommodate runoff, and in terms of quantity and quality, will convey the runoff to the back of the site. Post development flows will be less than pre-development flows at the design point prior to going into the wetland. There are existing stubs (for water and sewer) on site. The applicant will tie into the water line. There is an existing 6" sewer service coming across Route 1. This will not have enough cover. They are proposing to replace the sewer service and tie in with a grease trap with a private pump station. Mr. Gross showed building elevations using the slide presentation. The Lighting Plan will use all LED lighting. There are street trees along Route 1 and heavily landscaped areas along the building. They will install wetland buffer plantings along the back, (which is where the 100' wetland buffer is located).

Ms. Moreau asked if there was an existing easement to use the shared driveway.

Mr. Gross stated that there is; it is one owner for both properties.

Ms. Moreau stated that the plans show trucks going in only one direction. It doesn't show detail for trucks coming from more than one direction. She wondered about a sufficient turning radius.

Mr. Gross stated that the radius is more than sufficient.

Mr. Ricci inquired as to why the pump station and the sewer connections are not shown.

Mr. Gross stated that it is shown on the Utility Plan (Sheet C4).

Chairman Ricci pointed out that the detention basin is shown as 6' deep, yet it has no fencing around it. He is concerned about the safety of people walking by this area.

Mr. Gross stated that the slopes are a 4:1 ratio and this typically does not require any type of protection. In addition, the basin will typically be dry.

Chairman Ricci inquired about how deep the water would be during a 100-year storm.

Mr. Gross stated that there would be about 4' of water.

Chairman Ricci wondered why the applicant would not be concerned with 4' of water with no fencing around the area. Kids will potentially be playing in the general area and there is also a bus stop close by.

Mr. Gross stated that the applicant would be amenable to fencing in that area to the height of 42". There was some concern about the look of fencing they had proposed around the AUR. They are moving the bus stop about 40' to get it away from the intersection.

Chairman Ricci suggested something attractive for the fencing such as a 4' picket type fence.

Deputy City Manager Allen inquired about the "Activity in Use" restricted area.

Mr. Gross stated that this is an area of contamination (with fill material) from a prior use. It has been regulated by DES as to what can be done in this area. In order to develop here, they had to install some protection (hence the 6' chain-link to keep people out of the area) required by DES.

Mr. Gross spoke to the CUP. The original application had over 8,440 s.f. of wetland impact in the 100' buffer. After meeting with the Conservation Commission, the applicant removed 5 additional parking spaces and moved the dumpster. The impact area was reduced to approximately 1,440 s.f. There was also a wetland delineation issue. There was an independent investigation of the wetland conducted by the Rockingham County Conservation District (RCCD). Gove Environmental Services delineated the wetland in 2004 and 2014 (which was smaller than the 2004 line). The difference in the delineation had to do with "wetland soils". The result of the investigation was that the 2014 line was the correct delineation. The Conservation Commission voted yesterday to recommend approval of the CUP with stipulations.

Mr. Britz was present to speak to the application. He stated that the key point is that the wetland delineation was approved. He apologized that the memo was received today, but the Conservation Commission only met yesterday. The majority of the buffer impacts are temporary and the Conservation Commission is happy with the minimizing of the impact to the buffer and with the 2 bio-retention areas. The Conservation Commission recommended approval unanimously with the following stipulations.

- 1) The applicant shall use a low phosphate and slow release nitrogen fertilizer on the grassy areas
- 2) The applicant shall use a seeded erosion blanket
- 3) The applicant shall conduct winter snow removal with a Green SnowPro (using a certified tech)
- 4) The applicant shall conduct maintenance of the Bio-retention area.
- 5) The applicant shall install orange construction fencing at the Silt fence

Ms. Moreau inquired if left hand turns can be made currently out of the existing driveway.

Mr. Gross stated that left hand turns can be made out of the site currently and there are no restrictions on movement.

Ms. Monticup with Greenman-Pedersen, Inc. was present to speak to the traffic impact and access study conducted in conformance with state and local guidelines. They looked at existing conditions in 2015. The study area included the unsignalized site driveway, as well as the adjacent signalized intersection of Route 1, Springbrook Circle and The Southgate Plaza. They collected traffic volumes during pm and Saturday peak periods. They looked at collision data (from NH DOT and the Police Department) as well as public transportation and vehicle speeds. They also looked at opening year future traffic conditions for 2016 and 10 years out for 2026. Half of the traffic to and from the site or that will enter the site is already on Route 1 in the current condition. They will just enter the site and then leave using the site as a "pass-by" trip. The traffic engineers are expecting 42 new trips during the weekday pm peak hour and 76 new trips during Saturday mid-day peak hour. Those traffic increases will generate somewhere between 29 and 39 vehicles/hour which equates to one vehicle trip every 1 ½-3 minutes. They conducted a capacity analysis at both signalized and unsignalized intersections. There is no drop in the level of service on any movement due to the project between build and no-build situations. Increases in delay in any movement at the signalized intersection will be less than 8 seconds. Increases in queuing will be 2 vehicles or less. To look at it another way, they are expecting that 20 vehicles trips will move through the signalized intersection during the pm peak hour, which is a 0.9% increase in traffic. On a Saturday, the increase would be 37 vehicle trips which would amount to a 1.4% increase. Therefore, there will be a negligible impact to the adjacent signalized intersection because of the project. Where delays will be seen, however, is at the site driveway. Left turns into the site will be level of service B or better on Lafayette Road. There can be a queue of 4-5 vehicles at the site driveway with a maximum queue of 7 vehicles. Taco Bell stated that their need in terms of space for queuing is 8 vehicles. This can be accommodated on the site without disrupting traffic on Lafayette Road. A sidewalk has been proposed at the front of the site, but has been pushed back to the easement line to accommodate any future widening of Route 1. The bus stop has been pulled back even further from the street in order for it to be a good refuge for pedestrians. It has wheel chair ramps on both sides and is ADA compliant. The site requires an amended driveway permit. The original driveway permit was issued in 2005 and has no turning restrictions. All the project information was submitted to NH DOT. The traffic study was approved and no offsite mitigation measures were required. TAC wanted the bus stop moved. This has been done. They also requested a bus shelter. The applicant is willing to install it and put money towards it, but not fund it entirely. TAC felt video detection should be installed at the signalized intersection of Route 1, Springbrook Circle and the plaza driveway. Ms. Monticup reiterated that the project will have minimal impact on this driveway. Levels of service do not drop. If video detection were to be installed, it would require NH DOT approval. NH DOT said they would not support this option financially. If the City would like to move forward with video detection, the applicant would contribute a "fair share contribution" to this. The site currently does not have a left-turn restriction. If left turns were to be restricted, it would require a U- turn at the closest signalized intersection up the road, or a turn around to be made on other private property. This would only push the problem to the north. Burger King does not have a left-turn restriction, so perhaps vehicles could go that way. If the left-turn restriction is required by the City, Ms. Monticup would request that it be only during peak periods when there is heavy traffic on Lafayette Road so that the person that comes to Taco Bell at 10pm, for example, really does not need to be restricted to a right-turn only out of the site. At this point, they are only waiting on the amended driveway permit.

Mr. Gladhill stated that having a right-turn only restriction forces people to go to Burger King or to Water Country. He may choose to ignore the right-turn only and take the left-hand turn, or go to Burger King and make the left-hand turn. He felt that they would be pushing the traffic problem down the road.

Councilor Thorsen inquired where the crossing is with the walkway across Lafayette Road heading north.

Ms. Monticup stated that there is no crossing and had asked TAC about removing that sign. She stated that TAC did not want to do this given the proximity to Water Country.

Councilor Thorsen stated that people coming from Water Country may cross the street to Burger King. He inquired as to whether this might be a City issue around crossing the street in this area. This is a high-density area with kids and a restaurant and this situation could pose problems with no crossings.

Mr. Taintor said that the state is not in favor of pedestrian crossings on Route 1.

Councilor Thorsen inquired about an egress onto Springbrook Circle from the property.

Mr. Gross stated that this was an issue raised at the TAC meeting. The applicant approached the condo association who was not amenable to any connection onto their street.

Deputy City Manager Allen stated that he is uncomfortable with a left hand turn out of the site. He wanted to discuss limiting turning at certain times. He inquired how the applicant would accomplish this.

Mr. Gross stated that this would be accomplished through signage stating something to the effect of "no left turns between 4am and 10pm". During peak hours such as Saturday between 11am-2pm and weekdays from 4-6pm during the week, there would be no left turns. However, the property owners would like to see no turn restrictions at all.

Chairman Ricci stated that signage restricting times people could make a left hand turn would not work. It is either no left turns allowed or left turns allowed. He supports a left turn out of the property.

Ms. Monticup pointed out that DOT's point is that this is no different than any other site such as the Auto Parts store or the Burger King, which currently have left turns out of the site. She stated that there have been no traffic accidents at these sites due to left turns for the past three years (the time frame in which they looked at traffic data).

Mr. Taintor stated that these were TAC recommendations and that 7/10 mile down the road at 1900 Lafayette Road, a project recently approved by the City imposed a right-turn only out of the site. The state, as the applicant stated, will not impose this turn restriction. TAC is concerned about safety as this will be creating a150 new turning movements during the Saturday peak traffic hours. Half of these movements at peak hour will be left turns.

Ms. Moreau stated that at the other site where turning movements were restricted, there was also a back way out of the site so it is a bit of a different situation.

Mr. Gross addressed the other two stipulations. The applicant would install the bus stop and issue a check for \$2,000 towards the shelter. With regards to the video detection system, the applicant would pay their share toward the installation of this if the NH DOT approves it, which they may not.

Ms. Moreau inquired about the cost of a bus shelter.

Mr. Taintor stated that the cost of a bus shelter is \$8-9,000.00

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

DISCUSSION AND DECISION OF THE BOARD

Chairman Ricci reminded the Board that that there are two applications before them to vote on and stipulations to discuss. The first is the Conditional Use Permit for this application.

Conditional Use Permit Motion:

Ms. Moreau made a motion to grant the Conditional Use Permit with the 5 stipulations from the Conservation Commission. Deputy City Manager Allen seconded the motion.

The motion to grant the Conditional Use Permit with the following 5 stipulations from the Conservation Commission passed unanimously:

1. The applicant shall only use fertilizers that are low phosphate and slow release nitrogen.
2. The applicant shall install a seeded erosion control blanket to stabilize bare ground on the site after constructions.
3. The applicant shall conduct winter snow removal using a New Hampshire certified Green Snow Pro Contractor.
4. The applicant shall maintain the bioretention areas and file an annual report with the Portsmouth Department of Public Works and Planning Department.
5. The applicant shall install orange construction fencing along the erosion control line to keep construction equipment out of the wetland buffer.

Site Plan Review Motion:

Chairman Ricci stated that the second item to vote on is Item B Public Hearings New Business, the application for Site Plan Approval.

Deputy City Manager Allen made a motion to grant the Site Plan Approval subject to the stipulations from TAC. Ms. Moreau seconded the motion.

Chairman Ricci called for a discussion on each individual stipulation from TAC.

1) The Site driveway shall be restricted to right turns exiting the site and the bus stop shall include a shelter.

Mr. Gladhill stated that he personally will follow the traffic recommendations, but the right-turn only will be hard to enforce. He is of the opinion that it will not be a safer alternative.

Ms. Moreau inquired as to whether these turns could be allowed for a year, at which time it could be reviewed. If there is an issue, at that time, it could be changed to right-turns only out of the site.

Mr. Taintor stated that this was done for the Schiller Power Plant station.

Deputy City Manager Allen stated that as the motion maker, he would accept a stipulation to this affect.

Chairman Ricci stated that the applicant found that there were no accidents. As such, he felt that a traffic study is not needed and a report back on accidents at the end of the designated period would suffice.

Chairman Ricci called for discussion on the second item of Stipulation 1, the Bus Shelter.

Ms. Moreau would like to see a requirement for installation of the bus shelter.

Chairman Ricci stated that the contribution to the bus shelter is good, and the installation equally as good.

Deputy Manager Allen clarified that what he felt Ms. Moreau meant was that the applicant should pay for the bus shelter entirely, as well as install it.

Ms. Moreau confirmed that this is what she meant.

Chairman Ricci stated that he would not support this and that \$2,000 was a fair contribution to the shelter. He stated that if Taco Bell did not go in, the bus shelter would still be needed. Shelters have been going in along this corridor anyway.

Mr. Taintor stated that this is the case, but the shelters have been part of other projects.

Chairman Ricci observed and stated that most of the Board agreed to the \$2,000.00 contribution by the applicant and the installation of the bus shelter.

Chairman Ricci called for discussion of Stipulation 2.

2) The applicant shall be responsible for upgrading the traffic signal at the intersection of Lafayette Road, Springbrook Circle and Southgate Plaza Drive with all-way video detection.

Ms. Moreau stated that she felt that the "fair share" offered by the applicant is more than adequate.

Deputy City Manager Allen stated that the applicant offered 1.4% of the \$25,000.00 it would cost to upgrade the signal.

Chairman Ricci stated that a certain dollar amount could be decided on but that amount goes to the state *unrestricted*.

Deputy City Manager Allen stated that this issue should be driven by and paid for to a large extent by the Southgate Plaza Re-development more so than this development. The amount offered to contribute to the video detection by the applicant of \$350.00 seems a little light to him.

Chairman Ricci stated that he would have a hard time asking the applicant to “cure all the ills”.

Chairman Ricci observed and stated that the Planning Board generally agreed that the applicant shall not have to pay the \$350.00 towards video detection.

Chairman Ricci called for discussion of Stipulation 3.

3) The applicant shall apply for and obtain connection permits from DPW.

Chairman Ricci observed and stated that the Planning Board agreed with this stipulation and there was no discussion on this item.

Chairman Ricci called for discussion of Stipulation 4.

4) The Site Plan and Landscape Plan shall be recorded.

Chairman Ricci stated that this is standard operating procedure and there was no discussion on this item.

Chairman Ricci stated that he would like to add a stipulation for decorative fencing.

Ms. Moreau would like to have fencing that might look a little better than chain-link fencing.

Deputy City Manager Allen inquired if there were going to be plantings installed in front of the fence.

Chairman Ricci called for discussion of Stipulation 5.

5) The applicant shall install a 4’ decorative fence with vinyl slats on the Springbrook Circle and Lafayette Road side.

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

1. The site plans shall be amended as follows:
 - (a) Left turns onto Lafayette Road from the site driveway shall be allowed, however, a report will be filed with the Planning Department in one year from the date of the Certificate of

Occupancy on accidents that have been reported in the area, and if there are concerns at that time by the City this matter may be reconsidered.

- (b) The applicant shall contribute \$2,000 towards the construction of a bus stop shelter and shall install the shelter.
- 2. The applicant shall apply for and obtain connection permits from the Department of Public Works for stormwater, sanitary sewer and water.
- 3. The Site Plan (Sheet C1) and Landscape Plan (Sheet L1) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department, prior to the issuance of a building permit.

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C. The application of **Northern New England Conference of Seventh Day Adventist, Owner**, for property located at **861 Middle Road**, requesting Site Plan Approval to construct an 18' x 33' addition to the front of the existing church, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 232 as Lot 120 and lies within the Single Residence B (SRB) district.

The Chair read the notice into the record.

Ms. Moreau made a motion to postpone consideration of Site Plan Approval to the May 21st, 2015 Planning Board meeting. Deputy City Manager Allen seconded the motion.

The motion to postpone consideration of Site Plan Approval to the May 21st, 2015 Planning Board meeting passed unanimously.

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Chairman Ricci asked for a motion to take Items D and E out of order for the purposes of reading them in together to be voted on separately.

Ms. Moreau made a motion to take Items D and E Public Hearings New Business out of order for the purposes of reading them in together to be voted on separately. Deputy City Manager Allen seconded the motion.

The motion to take Items D and E Public Hearings New Business out of order for the purposes of reading them in together to be voted on separately passed unanimously.

D. The application of **Old Tex Mex, LLC, Owner**, for property located at **290 Heritage Avenue**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 110' x 250' two story steel frame building, with 9,860 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 275 as Lot 7 and lies within the Industrial (I) District.

E. The application of **Old Tex Mex, LLC, Owner**, for property located at **290 Heritage Avenue**, requesting Site Plan Approval to construct a 110' x 250' two story steel frame building with a footprint of 27,683 ± and gross floor area of 40,211 ± s.f., with related paving, lighting, utilities, landscaping,

drainage and associated site improvements. Said property is shown on Assessor Map 275 as Lot 7 and lies within the Industrial (I) District.

The Chair read the two notices into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, Ambit Engineering, Mike Brown from Insurcomm, Attorney Peter Loughlin, Michael Keen, and Joe Miletti, of Ambit Engineering, were present to speak to the application. The site will be the headquarters for Insurcomm. There will be 2 driveway cuts creating a circular pattern which will allow ease of access for tractor-trailers. There will be 89 parking spaces. There will be primary entrances on the south and north side of the site. Sheet C1 is a topographic map. Also shown are ledge contours. The site is a hill that comes off of Heritage Avenue. There is a small wetland in the southeast portion of the site. The lot is currently vacant. There is a need onsite to control stormwater runoff. There are 2 rainwater gardens. One is along the frontage on the west side of the site and the second is in on the north side of the site. There is a large area of under parking storage for stormwater runoff on the south side of the building. They are reducing the peak runoff volume from the site for every storm from the 2-year storm to the 50-year storm. They are maintaining the existing drainage as is. There are certain requirements being met for lower flows and channel flows. Street trees will be planted along Heritage Avenue. There are trees along the perimeter and at the building. They will install plantings to encourage wildlife using the site as a travel corridor. There is a Lighting Plan in the package. Cut Sheets are a part of the additional submitted materials. The elevation drawings show the proposed structure. The loading zone is on the north side and there are overhead doors. There is an area east of the rear raingarden where there will be a retaining wall built. The drainage analysis is in the package. The applicant was asked to do a stress test on the drainage, which is an extra level of review. The result, included in the package, shows that excess water will remain on site and will not cause any issues downstream. The drainage system will be maintained by the owner. The maintenance plan in the packet discusses this. There are 2 waiver requests. The first is for 2 driveways on the site. Ninety percent of facilities on this road have two driveways. This is particularly important in order for tractor-trailers to be able to make turnarounds. The second waiver request is for sidewalks along the street and a sidewalk connecting to the building from the street. All of the conditions outlined in the Department Memorandum are acceptable to the applicant. The CUP criteria have been submitted and the Conservation Commission recommended approval.

Ms. Moreau stated that one of the stipulations is that the occupants are educated about the wildlife component. She inquired about how the applicant intends to accomplish this.

Mr. Chagnon stated that this would be accomplished through direct communication with occupants and through signage.

Deputy City Manager Allen stated that the Stormtech Chamber is sitting on ledge.

Mr. Chagnon stated that they will be cutting the site down well below the level of the Stormtech System.

Joe Miletti stated that it is common to construct these systems close to ledge without impacts.

Mr. Gladhill stated that he appreciates the passageway for wildlife.

Chairman Ricci felt the applicant has gone above and beyond regarding drainage on site. He was impressed with it and wished that more applicants would do this.

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

DISCUSSION AND DECISION OF THE BOARD

Conditional Use Permit Motion:

Ms. Moreau made a motion to grant approval of the Conditional Use Permit subject to the 4 stipulations as stated in the Department Memorandum. Mr. Gladhill seconded the motion.

The motion to grant approval of the Conditional Use Permit subject to the stipulations as stated in the Department Memorandum passed unanimously:

1. Before site construction begins the applicant shall measure current water levels of the wetland to the west of the site and monitor water elevations of this wetland during construction and post construction at least quarterly for two years. If the results clearly demonstrate an impact to the adjacent wetland system the applicant will work with the City to address and mitigate these impacts.
2. That the occupants are educated about wildlife passage through the area on the site and that signage is erected to notify the users of the site and protect the wildlife passage area as well;
3. That the City's Environmental Planner is informed of the results of the monitoring studies until the site stabilizes.

Motion on Site Plan Review:

Ms. Moreau made a motion to grant a waiver of the Site Plan Review Regulations limiting site driveways to one. Mr. Gladhill seconded the motion.

The motion to grant a waiver of the Site Plan Review Regulations limiting site driveways to one passed unanimously.

Chairman Ricci asked for a motion regarding the Item B waiver from the requirement for a sidewalk along the front connecting the building entrances.

Ms. Moreau made a motion to grant a waiver from the requirement for a sidewalk along the front connecting the building entrances. Mr. Gladhill seconded the motion.

The motion to grant a waiver from the requirement for a sidewalk along the front connecting the building entrances passed unanimously.

Ms. Moreau made a motion to grant Site Plan Approval subject to the 4 stipulations as listed in the Department Memorandum. Deputy City Manager Allen seconded the motion.

The motion to grant Site Plan Approval subject to the 4 stipulations as listed in the Department Memorandum passed unanimously:

1. The applicant shall prepare and implement a post-construction monitoring plan with mitigation measures to be approved by the Department of Public Works. The plan shall include follow-up and a commitment to work with DPW to assure that the stormwater volume and flow rate do not increase. The results of the monitoring will determine what, if any, additional post-construction measures may need to be implemented before bond release.
2. The applicant shall apply for and obtain connection permits from the Department of Public Works for stormwater, sanitary sewer and water.
3. The applicant shall apply for and obtain a sign permit from the Inspections Department for the proposed property sign.
4. The Site Plan (Sheet C2) and Landscape Plan (Sheet L1) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department, prior to the issuance of a building permit.

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IV. PUBLIC HEARINGS – CITY COUNCIL REFERRALS

A. The request by **Portsmouth Land Acquisition, LLC**, that the following lots be rezoned from Industrial (I), Office Research (OR) or Municipal (M) to Gateway (GW):

- Assessors Map 163, Lots 33, 34 and 37.
- Assessors Map 165, Lots 1, 2 and 14.
- Assessors Map 172, Lots 1 and 2.
- Assessors Map 173, Lots 2 and 10.

and including Cate Street between Hodgson’s Brook and Bartlett Street, and that the Zoning Map be revised accordingly; and further that the Zoning Ordinance, Article 7, Section 10.730 – Gateway Planned Development, be amended by inserting a new Section 10.734.40 as follows:

10.734.40 Workforce Housing Incentives

If a GPD with a Residential Component contains 10% or greater Workforce Housing Units, the following shall apply:

- 10.734.41 The minimum lot area per dwelling unit shall be 1,000 square feet.
- 10.734.42 The maximum building length set forth in Article 5, Section 10.522 shall be increased to 350 feet.
- 10.734.43 Required off-street parking may be located in a required front yard or between a principal building and a street.

(This proposed amendment was previously considered at the October 20, 2014, Planning Board meeting.)

The Chair read the notice into the record.

Mr. Taintor stated that the Planning Board had recommended deferral until after the Charrette; which has now occurred. The City Council has scheduled a meeting for the reading.

SPEAKING TO THE APPLICATION:

Attorney Bernie Pelech was present to speak to the application. City Council referred this matter to the Planning Board. Prior to the City Council vote, this had gone to the Charrette in February, 2015. The applicant has been meeting with the City since 2013. Since that time, the City proposed to rezone this area to a CD4 District. This Board said that it should be rezoned but that CD4 was not correct. An outcome of the Charrette was CD4; another traffic circle at the intersection of Borthwick Avenue and the Route 1 Bypass and an additional traffic circle at the intersection of Cate Street and Bartlett Street, as well as multi-family residential and retail uses not allowed in CD4 District. The uses and buildings the Charrette proposed are not allowed. The City has wanted a connector road through this site for the past 10 years.

Attorney Pelech submits that what the applicant has proposed does fit. The plan envisions 288 residential units in mixed use, 144 of which would be “microunits”, 10% of which would be Workforce Housing, also a through connector road and a 50’ Right of Way. The Gateway proposal rezoning deserves the consideration of the Planning Board and deserves a favorable recommendation. This Board should not take into consideration whether this site should become a city parking lot. He felt the only issue before the Board is the rezoning. He felt that CD4 does not make sense. The Gateway District makes sense. It includes what the City has told us they wanted. As a result of 20 meetings with the City, they have come up with the current plan. This is a design review plan which bears the consideration of the Planning Board. He is requesting a favorable recommendation back to the City Council, or at a minimum that this Board withhold its recommendation until they have heard the Design Review application scheduled for the next Planning Board meeting.

Peter Loughlin of Thaxter Road was present to speak to the application. He supports the rezoning of the land. He does not support the full extent of the incentives proposed as part of this. He stated that he thought that Vice Chair Moreau made a thoughtful and courageous presentation to the City Council concerning issues with the proposal. He stated that he thinks the applicant has done everything they have been asked to do and he cannot blame them for wanting to get the request approved. In 1980, the City rezoned 65 acres on Lang Road to permit 252 garden units (Beechstone); 45 of which were dedicated to open space. He felt the City should consider purchasing a Right of Way. He has an issue with the density of 150% (10%) more square footage. The density bonus of 1,000 s.f. is too much. The length of the building he felt is excessive (350’). It should not be compared to the Button Factory for length. He would like to see alternatives in the Gateway District for buffering/screening for parking so that a sea of cars is not visible. It seems to be done effectively at some places such as Pease. He is concerned about being blinded by the desire to create Workforce Housing. He felt that the application needs some refinement before going back to the City Council

Attorney Pelech spoke to the building length. The building length restriction in the zoning ordinance is for residential buildings and would not prohibit their project as a mixed use building. With regard to Workforce Housing at 10%; it is in keeping with what the City has wanted. If 10% is not adequate

according to the Planning Board, this can be discussed for further modification. They units can be made into “microunits” instead of “Workforce Housing”. The overall rezoning is really the important issue.

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

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau stated that she has been very vocal on this issue and her concerns about Workforce Housing remain. She feels that this area is one of the areas in the City where Workforce Housing will work and is suitable, but she does disagree with the 150% increase in density with a 10% bonus back. She felt that the City is not getting enough to impact the need in the community. If the proposal can be rewritten, she would take another look at it.

Councilor Thorsen felt the issue is it looks like we would be creating another neighborhood that is difficult for trucks to go through. There is no great way to get from the Bypass to the Islington Street area. There are no off ramps to get onto Islington Street. The only way to work your way back is to go through the Toyota Dealer and through side streets or go up to Cottage Street. The plan for the area is less a purely residential consideration than it is more about a connecting area (Bypass to Bartlett Street). He doesn't feel that this project is what the City needs in this area.

Mr. Taintor stated that this is the Vision Plan. No comments have been received even from property owners. They are awaiting this prior to going to Zoning. Attorney Pelech talked about a rotary on Route 1. This was in an earlier version, not the currently published version. There is no rotary on Route 1. The zoning is being refined. The zoning that is suggested by the Vision Plan allows all the uses in this application. This Vision Plan shows the U-Haul gone, which is an uncertainty at this point, so this Vision Plan is not going to be implemented as shown. He emphasized that clear feedback is needed. Perhaps this meeting will serve as an impetus to submit comments.

Councilor Thorsen stated that there is nothing that states that this is not the Vision Plan that will be used. The public may think this is the plan even though it states “preliminary” on the plan.

Attorney Pelech stated that their plan is not the Vision Plan. They have submitted a plan and he inquired if the Planning Board had a copy.

Mr. Taintor stated that the Board does not have the plan from the applicant but they will have it for the May Planning Board meeting.

Ms. Moreau stated that there were 2 Vision Plans presented at the Charrette. There was one that left the U-Haul in the plan and built a more direct road. The plan in front of the Board tonight seems more pie-in-the-sky. The other plan submitted seemed based in reality.

Deputy City Manager Allen stated that the elements put out in the Vision Plan do not feel quite right. It is incumbent upon the Board to make comments.

Chairman Ricci stated that while he understands the intent, the plan before them is not based in reality. He knows Ricci Lumber intimately and this Plan has a road cutting right through the middle of the site, which is not practical or based in reality. He doesn't like this version of the Vision Plan. He stated that while the City does need Workforce Housing, the density bonus is not quite right. He has never seen the math work right for what the City wants in terms of Workforce Housing. Applicants have played upon the fact that the City wants and needs Workforce Housing.

Councilor Thorsen stated that he is not quite convinced about Workforce Housing plans and incentives. He inquired if Chairman Ricci was stating that the City should not have these incentives.

Chairman Ricci stated that land in Portsmouth is expensive. It is very difficult to make the two work (Workforce Housing and development). The developer pays a lot for the land and needs to make it profitable. What he has before him with this request doesn't seem right. He felt that perhaps the Workforce Housing component should be taken out of the request.

Mr. Taintor inquired if Chairman Ricci is in favor of the Gateway District stripping out the Workforce Housing incentives.

Chairman Ricci asked if it should perhaps be decided on a case-by-case basis.

Ms. Moreau stated that it can be decided upon ahead of time by the City as to which areas and densities would work best.

Mr. Gladhill stated that this may work almost like another CUP. He reiterated the words of Chairman Ricci that living in Portsmouth is expensive. He works at the Navy Yard. Most of these people don't live in Portsmouth. They live in Barrington, Limington, Rochester, and Sanford. They used to live in Portsmouth years ago, but it is very unaffordable now. It is a sign of the times.

Mr. Taintor suggested building in some flexibility with regard to Workforce Housing. Perhaps the Planning Board could recommend in favor of Gateway without specific Workforce Housing incentives. This would support the concept without the specific numbers. The City Council could be informed of the support. Gateway Zoning would be appropriate for this area, but further refinement of wording could occur at the next meeting.

Mr. Gladhill stated that he would like the City Council to know that the Planning Board agrees to Workforce Housing, but that the current incentives are not right.

Ms. Moreau made a motion to move forward with Gateway District zoning but to remove Workforce Housing incentives until further refinement of wording occurs at the next Planning Board meeting, May 21st, 2015. Deputy City Manager Allen seconded the motion.

The motion to remove Workforce Housing incentives from Gateway District zoning until further refinement of the wording occurs passed unanimously.

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B. Proposal to amend the Zoning Ordinance by inserting a new Section 10.814 – Short-Term Rentals, and to make conforming amendments to other sections of the Ordinance as necessary.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Mr. Taintor stated that this proposal is a request from the City Council to address this issue. It is being addressed in other cities around the country. Some helpful information from other communities has been researched and used to the benefit of Portsmouth. He has drafted an outline of an approach to short-term vacation rentals. The proposal is to revise the definition of a Bed & Breakfast to reduce the scale of what constitutes a Bed & Breakfast. Currently, a Bed & Breakfast “1” is 1-5 units and a Bed & Breakfast “2” is 6-10 rooms. This overlaps with what an “Inn” is. Mr. Taintor proposes revising what a Bed & Breakfast “1” to be 1-2 rooms, with or without breakfast being served, and a Bed & Breakfast “2” to be 3-5 guest rooms, and an “Inn” as anything above 5 guest rooms that may or may not be owner occupied. This is not directly related to “Short-term Rentals”. However, at least one application that came before the Zoning Board was what the owner considered a Bed & Breakfast but it did not fit into a zoning ordinance and was determined by the zoning officer to be an “Inn”. Short-term vacation rentals are a new use and would be defined as the rental of an entire dwelling unit for less than 30 consecutive days. The provisions would be that the lot would comply with existing zoning standards for the zoning district with a limited occupancy of no more than 2 people per bedroom. It shall require a license from the City Council. The City Attorney is not comfortable with this particular provision being in the zoning ordinance. He prefers that it be addressed elsewhere in a City ordinance. Mr. Taintor proposed that no 2 short-term rentals shall be located within 300’ of each other in order to avoid too many rentals being located in any one neighborhood. They shall comply with building and life safety codes and would be subject to initial inspections as well as annual re-inspections. Smoke and carbon detectors would be part of the inspections. The owner shall pay all state room taxes. Parking standards would need to be added for short-term rentals.

Mr. Gladhill inquired as to whether short-term rentals would have to pay one dollar under the proposed state ordinance.

Mr. Taintor stated that they do not fall into the category/definition of “hotels”.

Mr. Gladhill inquired about requiring smaller homes with 2-3 bedrooms to find/have appropriate parking.

Mr. Taintor stated that the proposed ordinance requires onsite parking. The first 2 bedrooms require 2 parking spaces each. Each additional bedroom requires one additional onsite parking space.

Mr. Gladhill then stated that some people would not be allowed to conduct this type of business based on a lack of adequate parking. He doesn’t want to see more parking on tight streets.

Mr. Taintor stated that Mr. Gladhill was correct in stating this. However, the owner submitting the request could ask for a variance, but it would likely be opposed by abutters.

Deputy City Manager Allen inquired about a secondary egress.

Mr. Marsilia stated that because it is a Bed & Breakfast, entrances and exits will be shared. The largest impact, other than smoke detectors and carbon detectors, which is a recommendation, not a requirement for single family owner occupied buildings is that they would have to have appropriate escape size windows for each bedroom. Many older homes do not have these types of windows. If they start renting this type of dwelling, the owner may have to make some changes.

Ms. Moreau inquired about the distance limit between short-term rentals and how it is measured.

Mr. Taintor stated that it would be measured directly. He stated that 300' is somewhat arbitrary and he questioned whether this measure is needed. The intent is to limit concentrations. He stated that there is an email that every member of the Board has (from Bob Mackin) suggesting an alternative that in lieu of 300', no 2 short-term rentals shall be allowed within the equivalent of a single block.

Ms. Moreau stated that each one has to be licensed and wondered whether the concentration could be managed/limited through that process.

Mr. Taintor stated that it could be regulated through the licensing process.

Councilor Thorsen stated that the method seems problematic and there would be unfair property rights. There very well may be neighborhood land wars. He doesn't think that the City should do it, even though they may have the legal right to do so. His suggestion is to remove the limiting clause. He inquired with regard to the limit of 2 persons/bedroom, whether this is referring to adults.

Mr. Taintor stated that it just states "persons".

Councilor Thorsen then inquired about a couple bringing a baby/toddler with them and would this mean that they could not stay in the same room.

Mr. Taintor stated that this refers to renting an entire dwelling, not just a room. Typically there is more than one bedroom in a house.

Mr. Gladhill asked for clarification on the owner.

Mr. Taintor stated that the owner would not be living there. This is only for a Bed & Breakfast.

Mr. Gladhill stated that it feels like the integrity of neighborhoods may be lost with different people coming and going all time.

Ms. Moreau stated that this is a good segue into what she would like to discuss. She felt that the MRB should be a special exception like the MRO. They are not permitted in single family residential areas A or B. They are not permitted in the GRC or GA. They are permitted in the business district. If it is a special exception and is permitted, the neighbors should have a say in what is allowed next to them.

Deputy City Manager Allen stated that with regards to the second item under short-term rentals, those in the GRA and GRB district such as the Lincoln Street area, are not “conforming” lots. They do not conform to zoning requirements.

Ms. Moreau stated that many people do not live on “conforming” lots.

Councilor Thorsen stated that when the turnover in the neighborhood is every day, the neighborhood remains unsettled all the time with people continually coming and going (much like when a new neighbor moves in, but then there is a settling down of the neighborhood after everyone meets the new neighbor). The psychological impact of this is something that he felt should be considered. He wondered about special requirements such as noise constraints, or limitations on when people can arrive in these places, and so on.

Mr. Marsilia stated that enforcement would be difficult around this issue and he doesn't want to get into something that cannot be properly and effectively enforced.

Chairman Ricci stated that his first priority is protecting the neighborhoods where these types of businesses want to be. Secondly, between code compliance and special exceptions, there may be enough there so that proper enforcement will not be a nightmare.

Mr. Gladhill stated that people in his neighborhood have been there for 30-40 years. It is a close knit neighborhood. It would be a shame to lose that aspect of neighborhoods.

Attorney Peter Loughlin of Thaxter Road was present to speak to the application. He is not speaking for or against either side of the issue, but he wished to warn the Board of legislation that is out there that sounded an alarm for him. The legislation (House Bill 146) has passed in the senate would allow every house on almost every street in almost every municipality to have an accessory dwelling (essentially rendering everything the Planning Board has thought about, discussed and considered regarding this issue to date a moot point). The House of Representatives does have reservations about the bill.

Jeffrey and Abigail Cooper of 227 Park Street were present to speak to the application. They were living in a house that would now be classified as a Bed & Breakfast 1. He felt that the case the Planning Director referred to earlier may have been their case. However, they did not want to be a Bed & Breakfast. They were looking for where they could fit in. The Zoning Officer recommended that they apply for the special exception for the Bed & Breakfast. The Zoning Board of Adjustment did not approve their variance. Had it been approved, they would've been approved for much more than they actually were looking to do. They wanted to rent one room to tourists on the weekend. The neighbors did complain because they didn't want a hotel in their neighborhood. A preferred method he felt, was a permit. They suggested using the Home Occupation Ordinance to the City Council to accomplish this. This way the permit goes with the person, not the property.

Bob Mackin of 56 Dennett Street was present to speak to the application. He stated that Rick Taintor had done a great job of framing something controversial and making it understandable. He appreciates that the Planning Board is addressing this issue. He is a homeowner and rents out his property periodically. He would like to continue to do so. Dennett Street has become a thoroughfare. He

understands the concerns that Mr. Gladhill has expressed. He felt there should be distinctions made between the types of neighborhoods. One being the type that Mr. Gladhill lives in, and the type of area such as Islington Street, or the type of neighborhood that he lives in. They have 3 spaces in their driveway and a garage, so they have 4 parking spaces. They have 4 bedrooms. However, at no time have they needed 4 parking spaces. His suggestion was that perhaps every couple that drives to the business must have a parking space rather than restricting it to 2 spaces for 2 bedrooms, and so on.

Jeffrey Cooper of 227 Park Street was present to speak to the application. He stated that people that came to his house (before they were shut down) to stay were respectful of the neighborhood. Regarding parking, they have parking spaces, but if this comes about, they would need a variance as they have only 2 parking spaces and they would need 3. He stated that there is a lot of renting out there that is “flying under the radar” and proper standards are not enforced. Currently, it seems to be a case of enforcement by complaint. He felt that on street parking should be considered also. He stated that people are looking for an experience outside hotels in Portsmouth. They are looking for a different experience and felt that this is a win-win situation.

George Dempsey of 42 Dennett Street was present to speak to the application. He provided a handout to the Board entitled “Regarding: The Contamination of the Residential Neighborhood by Outside Sources”. He has seen numerous ads for “sleeps 6”, “sleeps 5”, “sleeps 10”, “sleeps 8” and so on. He requested that the Planning Board think about what the City is doing to our neighborhoods with the influx of people allowing these types of businesses. He asked that the Planning Board not approve this tonight. He stated that short-term rentals should be 6 months, not 30 days. He spoke about ambiguities and stated that if the laws of the City worked, this would not be before the Planning Board tonight. He felt to spend this kind of time, energy, and cost on this issue is absurd. The laws are on the books. He stated that once you allow commercialization of a neighborhood, once you open the door, the floodgates have opened. Developers are looking to exploit. He named some of the many downsides of this type of arrangement: no emergency lights, no handicap accessibility, no rental insurance, and so on. He has spoken to rental insurance agencies that state there is no insurance out there to cover such a thing. He also spoke about issues not brought forth such as pets. He wondered whether these people would be required to follow leash laws, rabies vaccine laws, etc. He spoke of his right to quiet enjoyment of his property.

Eileen Mackin was present to speak to the application. She wished to respond to a couple things. They have homeowners insurance. They have rental insurance that allows them to rent 60 days/year. They can produce the document. They live on a street that has hotels along the street, the Holiday Inn is at the end of Dennett Street, for example and there are several hotels along Woodbury Avenue. They have good relationships with all but one of their neighbors who doesn't agree with what they are doing. They are not greedy. They are in their retirement years and want to stay in their home. Renting a room 60 days/year might allow them to afford to stay there. She felt that renting a room is a valid way to do this. She doesn't feel that all neighborhoods should be designated one way or the other; it depends on the situation.

Bob Mackin of 56 Dennett Street was present to speak to the application. He stated that the ZBA made the decision to deny them, not because they disagreed with short-term rentals, but because the application was before the Planning Board and the City Council for consideration. They called their use an “Inn” because it was the definition which they fell under and this is why they were denied.

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

DISCUSSION AND DECISION OF THE BOARD

Councilor Thorsen stated that if the senate legislation is in process, he would rather wait until the issue is decided at that level. He would like some guidance on this issue from the City attorney.

Mr. Taintor stated that it is a terrible law. He has testified in the Senate Committee about it and has prepared information for the Senate Delegation on it. The law allows the creation of permanent second dwelling units on lots, which could be used for short-term rental. What is being discussed tonight is whether the existing 1st or 2nd dwelling can be used for short-term rental. He agrees with Attorney Loughlin, although the two are different issues. The law in the senate now is a more serious law.

Councilor Thorsen inquired as to why Attorney Loughlin brought it up if the issue he is referring to and the one being discussed tonight are different.

Mr. Taintor stated that he thought Attorney Loughlin wanted to bring it to the attention of the Board and that what is being considered this evening is a small issue in comparison. The law under consideration could take away from the single family character of neighborhoods across the City.

Councilor Thorsen stated that the Board could continue their discussion and consideration of what is on the table tonight.

Chairman Ricci wondered why, if there are that many units being rented out, there are not more speakers present this evening to voice opinions against this issue. He wondered about requiring all parking to be off-street. This would take away the bedroom/parking space designation. He would like the ordinance to be as simple as possible. He is concerned about too much government and enforcement.

Ms. Moreau inquired how this would be enforced (off-street parking).

Chairman Ricci stated that it would be difficult, but he doesn't see a lot of people out there tonight stating that they are having problems.

Ms. Moreau inquired if they need to provide a recommendation this evening for the City Council.

Mr. Taintor stated that they do not have to.

Mr. Gladhill inquired about whom is pushing this bill.

Mr. Taintor stated he was only one of 2 people that testified against the House Bill. There were many people in favor of it. It passed the Senate. The bill is sponsored by Senator Boutin. He stated that in summary, the Statute states that "communities shall, by ordinance, permit by right or by special exception, accessory units on every lot in every zoning district in which single family dwellings are

allowed”. The Statute affects many dwellings across many neighborhoods. It prevents the addition of any extra dimensional or other requirements beyond what a single family dwelling would require.

Ms. Moreau made a motion to postpone consideration of the amendment to the Zoning Ordinance to the May 21st, 2015 Planning Board meeting. Mr. Gladhill Seconded the motion.

The motion to postpone consideration of the amendment to the Zoning Ordinance to the May 21st, 2015 Planning Board meeting passed unanimously.

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V. OTHER BUSINESS

A. The request of **Portsmouth Land Acquisitions, LLC, Owner**, for property located at **428 U.S. Route 1 By-Pass, property off Cate Street and 55 Cate Street**, for Design Review under the Site Plan Review Regulations, for a proposed mixed use development consisting of 288 dwelling units and 40,000 s.f. of commercial space in 3 buildings, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 172 as Lot 1, Map 173 as Lot 2, Map 165 as Lot 2, and Map 163 as Lots 33, 34 and 37, and lie within the Industrial (I) District, the Office Research (OR) District, and the Municipal (M) District.

The Chair read the notice into the record.

Ms. Moreau made a motion to postpone consideration of the request for Design Review to the May 21st, 2015 Planning Board meeting. Deputy City Manager Allen seconded the motion.

The motion to postpone consideration of the request for Design Review to the May 21st, 2015 Planning Board meeting passed unanimously.

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VI. PLANNING DIRECTOR’S REPORT

On May 21st, 2015, Harborcorp will return to the Planning Board meeting. The Planning Board cannot vote on the Site Plan as the HDC has yet to vote, but the Planning Board will need to provide a recommendation. There will also be the Site Plan Review for the subdivision on Commerce Way and Portsmouth Boulevard, an 112,000 s.f. office building. At this meeting, there will also be the Cate Street Design Review.

Deputy City Manager Allen reminded the Planning Board that on Tuesday evening, there is an informational meeting on north end zoning.

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VII. ADJOURNMENT

A motion to adjourn at 11:31pm was made and seconded and passed unanimously.

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Respectfully submitted,

Toni McLellan
Acting Secretary for the Planning Board

These minutes were approved at the May 21, 2015 Planning Board Meeting.