

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**6:30 P.M.**

**OCTOBER 20, 2016**

**MEMBERS PRESENT:** John Ricci, Chairman; Elizabeth Moreau, Vice Chairman; Rebecca Perkins, City Council Representative; David Moore, Assistant City Manager; Colby Gamester; Jay Leduc; Dexter Legg; Jody Record; and Jeffrey Kisiel, Alternate

**ALSO PRESENT:** Mr. Taintor, Planning Director;

**MEMBERS ABSENT:** Nancy Colbert-Puff, Deputy City Manager;

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6:30 pm Work Session on Conflict of Interest, presented by Robert Sullivan, City Attorney

Attorney Sullivan's training presentation elaborated on the following statements:

- It is important to understand conflict of interest because: public officials are required to understand and follow their obligations; to avoid unintended consequences; and, for governmental bodies striving to meet high, ethical standards.
- The City Charter and Code of Ethics emphasize that no Board member is to engage in a violation of any form of or appearance of a conflict of interest.
- The Planning Board makes decisions in both a legislative and judicial capacity. The legislative role occurs when referring zoning amendments to City Council, which calls upon a less restrictive set of conflict of interest principles. The judicial and quasi-judicial capacity requires decisions be made based on the findings of fact. The site review regulations act as that objective criteria for determining those findings.
- A voluntary decision to refrain from voting on a matter is a recusal. State law allows for the Board to vote on that voluntary decision, however, the determination is the Board member's responsibility.

Mr. Legg asked if the City legal staff can act as a sounding board. Attorney Sullivan confirmed that is allowable and highly encouraged that practice.

Mr. Leduc described a situation when the Board member may have a connection to an application through a parent company of employment and asked whether that would warrant a recusal. Attorney Sullivan suggested that it would be best to remove any uncertainty by recusal. He questioned what advantage there exists to not recusing, especially when there are alternate members available.

Chairman Ricci asked what the advised protocol would be in a situation where the applicant singles out a particular member for recusal. Attorney Sullivan replied that the member's decision is the final determination even when the Board votes in opposition.

Attorney Sullivan replied to Councilor Perkins that the best time to recuse from an application is before it happens.

Attorney Sullivan responded to Mr. Taintor’s comment that no individual should state their decision prior to a public hearing.

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Prior to opening the regular meeting, Chairman Ricci welcomed Jody Record as a regular member to the Board and Jeffrey Kisiel as an alternate member to the Board.

Mr. William Gladhill was present to accept recognitions from the Board for his service to the City while a member of the Planning Board and made a brief statement.

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**I. APPROVAL OF MINUTES**

- 1. Approval of Minutes from the September 15, 2016 Planning Board Meeting;

*Vice Chairman Moreau moved to approve the September 15, 2016 Planning Board meeting minutes, as presented. Seconded by Mr. Legg. The motion passed by a unanimous voice vote (7-0-0).*

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**II. PRELIMINARY CONCEPTUAL CONSULTATION**

Mr. Taintor explained that there two types of pre-application review, which are preliminary conceptual consultation or design review. A few projects have received design review, but there have not been any projects thus far that have been reviewed in a preliminary conceptual consultation phase. Going forward, any type of application could be reviewed in either one of these approaches.

Mr. Taintor provided a brief description of what is entailed in a preliminary conceptual consultation phase. It is similar to a work session to review a project’s general concept. There is no requirement for a public hearing. This phase provides the Board an opportunity to provide input earlier on in the application process. There is no action required from the Board and nothing discussed is binding. It is mainly to consider how a project fits in with the Master Plan and Vision Plan, when applicable.

A. The request of **The Foundation for Seacoast Health, Owner**, for property located on **Campus Drive**, for preliminary conceptual consultation review of a proposed subdivision to create two new lots: (1) approximately 50 acres to be conveyed to the City to expand the City’s recycling center, to provide new multi-purpose playing fields, and to protect land for wetlands conservation and passive recreation purposes; and (2) approximately 11 acres to be conveyed to the Hope for Tomorrow Foundation to construct an elementary school and associated facilities.

Chairman Ricci passed the gavel to Vice Chairman Moreau and recused himself from review.

The Vice Chair read the introduction into the record.

Peter Loughlin, Foundation for Seacoast Health

Mr. Loughlin provided a brief history of the ownership transfers of the property over the past few decades. He explained why the 92 acres of property has been unused and described the recent plans for subdividing the lot.

Eric Weinrieb, Altus Engineering, Inc.

Mr. Weinrieb indicated that the lot line adjustment between the Foundation for Seacoast Health and the City of Portsmouth will result in the City gaining 52 acres of land. The cul-de-sac was supposed to be included in the Right-of-Way years ago, thus, the proposed subdivision would fulfill that intent. All the lots will have the required minimum frontage.

Mr. Weinrieb replied to Vice Chairman Moreau that the property will change from four lots to three. Mr. Loughlin added that past deeds convey the cemetery belongs to a particular family that recently sold all their interest. The exact ownership of that property is currently not clear. He ensured that the 25-foot setback to the cemetery will be provided. Vice Chairman Moreau asked whether there are existing structures near that area. Mr. Loughlin replied that the cemetery abuts a 5-6 acre playing field and one small shed.

Councilor Perkins asked if new roads or trails will be proposed. Mr. Loughlin noted that DPW mentioned there should be a bicycle trail connecting to Banfield Road, the playing fields, and West Road. That would be included in the plan and would not allow for motor vehicle access.

Mr. Moore felt the concept aligns with the City’s Master Plan, which concentrates on conserving wetlands, enhancing stewardship, and addressing the need for recreation fields. The lot line revision and concept would be exactly what the City needs and is a phenomenal opportunity.

Mr. Taintor noted that a traffic study was conducted in a recent application to the Zoning Board of Adjustment for the St. Patrick’s school relocation. The staff reviewed that traffic study and provided their recommendations to the Foundation for Seacoast Health as to what additional work would be required in a potential subdivision application.

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B. The request of **Deer Street Associates, Owner**, for property located at **165 Deer Street and 181 Hill Street**, for preliminary conceptual consultation review of proposals to construct three mixed-use buildings fronting on Deer Street and a fourth mixed-use building fronting on a future public street off Bridge Street to be created in association with the City’s new parking garage.

Tracy Kozak, JSA Architect

Ms. Kozak provided a brief description of the North End vision plan and explained how the proposal would support the ideas in that plan. A rendering of the design was presented to emphasize the proposed wide sidewalks and pedestrian connections.

Mark Moeller, JSA Architect

Mr. Moeller’s presentation included the following statements:

- There would be a variety of mixed uses to include office space, commercial retail, and housing.
- The Deer Street extension has slightly limiting factors that may dictate what can be accomplished. The newly adopted CD5 zoning ordinance allows for buildings to be more than

four stories or 50 feet tall and includes incentives for additional building height, which they intend to use.

- The entrance of Lot 2 is adjacent to civic space that would include a mixture of hardscape and landscape. An advantage to the street scape is that all the buildings would require a minimum of 14 feet of sidewalk width to take advantage of various uses. The building on Lot 3 contains parking and juts out into the street to provide a natural visual terminus point. Lot 4 and 5 would be free standing that could attract a larger tenant. There is consideration to provide connections between those buildings. There is a significant grade change from Deer Street to Hill Street, thus an entrance for the Lot 6 buildings would be provided from Deer Street to access the low-grade parking.
- The Deer Street garage would be at least 5-6 stories and roughly 60 feet in height. The edge of the building in Lot 6 would be equal in height to the garage and then terraced in height to provide a visual transition.

Vice Chairman Moreau asked if there is consideration for liner buildings around the parking garage itself. Mr. Moeller explained how the amount of land available constrains the ability to wrap the garage with a liner building. The fallback is to create plazas that provide breathing space. Mr. Taintor added that although a liner building is not feasible, there would be a large effort to activate the street scape along the frontage.

Vice Chairman Moreau asked if there would be access from Hill Street to the Lot 6 building. Mr. Moeller explained the plans for providing residential parking for the Hill Street residents at street level. The building would consist of offices at ground level and residential in the terraced levels.

Mr. Moore felt the concept suggests a significant mass and separation of buildings more than what was envisioned. Mr. Moeller responded that the scale of the envisioned liner building is similar in mass to what was presented.

Mr. Moore emphasized the importance for activating all the sites visually since it is the gateway entrance into downtown.

Mr. Moeller explained to Mr. Leduc that the intent is for the approval process of this plan to shadow the municipal parking garage process. He added that Lots 4 and 5 would be reviewed by the Historic District Commission. The reality of those two lots construction will likely follow the other buildings.

Mr. Leduc asked if the bike path is being considered. Mr. Taintor noted the bike path would be at the other side of the railroad tracks and closer to the pond.

Mr. Taintor urged the Board to consider the planning coordination of the entire area since each parcel will likely require different approval processes, negotiations, easements, and laydown areas.

Councilor Perkins asked for a description of the visual concept and materials for the buildings. Mr. Moeller assured the buildings may be slightly more contemporary and still maintain the typical look of other buildings in Portsmouth.

Chairman Ricci echoed previous statements that it is important to be mindful of the various approval processes and interchanges amongst the lots.

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### III. PUBLIC HEARINGS – OLD BUSINESS

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

A. The application of **599 Lafayette, LLC, Owner**, for property located at **599 Lafayette Road**, requesting Site Plan Approval for the construction of a 772 s.f. 1-story drive-thru Aroma Joe's coffee shop, revision of the existing parking and circulation layout, and relocation of dumpsters, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 229 as Lot 8 and lies within the Gateway (GW) District. (This application was continued from the September 15, 2016 Planning Board Meeting.)

The Chair read the notice into the record.

#### SPEAKING TO THE APPLICATION

John Lorden, MSC: A Division of TFMoran

Mr. Lorden explained the project intends to make parking revisions, move dumpsters and create pedestrian access for administration approval. The Zoning Board of Adjustment granted three variances for the proposal of a standalone drive up facility as a principle use. The Zoning Board of Adjustment expressed concerns regarding the traffic flow for the site. After discussion with the owner of the Lafayette Plaza, the plan was revised to provide no additional impact to the Lafayette Plaza property. Part of the approval received was to complete the Service Drive depicted in the original site plan, which extends into Lafayette plaza.

Timothy Phoenix, Hoefle Phoenix Gormley & Roberts, P.A.

Mr. Phoenix provided documentation and provided an explanation that emphasized how Mr. Petzold does not have the right to block the entrance. He requested that the approval include that stipulation.

Vice Chairman Moreau asked whether the issue with Mr. Petzold was related to parking. Mr. Phoenix explained the changes in the plan that occurred that resulted in Mr. Petzold having no loss in parking spaces.

Eric Tolbert Kilchenstein, Shaheen & Gordon, P.A.

Mr. Kilchenstein explained that Mr. Petzold has stated the original site plan cannot be amended and the proposed application immensely expands on what was originally intended. The existing tenants have expressed concerns for traffic flow and safety with the proposed plan. There were no concessions made other than withholding the number of parking spaces in Mr. Petzold's property.

John Bosen, Bosen & Associates, P.L.L.C.

Mr. Bosen noted that the plan presented to the Zoning Board of Adjustment is not the same as for the Planning Board. He felt the proposed plan should not be approved for traffic and safety concerns. The engineer understood that the traffic for Lens Doctors and Aroma Joe's would be separate rather than combined at one intersection point. Lens Doctors would not be opposed to an Aroma Joe's location in

the area, but would oppose the current application since it was not coordinated with the Lens Doctors project.

Mr. Phoenix referenced a letter sent in May regarding issues from the property owners. He explained the purpose and history of the original site plan approval from the late 1980s and how Service Drive was deeded and reserved for all the property owners to share access to.

Mr. Lorden referred to both the original site plan and the proposed Lens Doctors plan to explain that there is a right for all to utilize Service Drive and it should not cause additional traffic concerns.

Mr. Bosen stated there was no intention for future expansion in the original site plan approval. The traffic is a major concern and the current application would not allow for any revisions to the site plan.

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

## **DISCUSSION AND DECISION OF THE BOARD**

Mr. Taintor replied to Vice Chairman Moreau that the Technical Advisory Committee has not reviewed the plan. Vice Chairman Moreau felt the traffic patterns need to be evaluated as a whole site.

Mr. Taintor explained to Mr. Legg that the traffic study received was strictly for the Lens Doctors plan. He noted that staff had asked for an understanding of how the traffic from Aroma Joe's would impact the 775 Lafayette Road property. The Technical Advisory Committee also made a recommendation for the three properties in the area to improve coordination of each project by eliminating the diagonal driveways.

Mr. Taintor replied to Mr. Moore that, in May, the Board asked the parties to review the plan for consideration of the abutters. The plan was revised and would not be required to have further review from the Technical Advisory Committee. Although, that Committee will be reviewing the plan for Lens Doctors, which may not include the cut thru and would not depict the driveway as presented in the 599 Lafayette Road application. He added that the Board would have to make a motion to postpone and refer to TAC, if additional review is determined necessary.

*Mr. Moore moved to **deny** for the following reasons:*

- *The traffic circulation and safety concerns raised by the abutter in May have not been resolved to the satisfaction of the Board; and the revised plan submitted to the Board this month has not been formally reviewed by the Technical Advisory Committee.*
- *The applicant has not demonstrated to the satisfaction of the Board that the plan meets all evaluation criteria (Section 2.9 of the Site Plan Review Regulations), including:*
  - *Provision for the safe development, change or expansion of use of the site;*
  - *Adequate management of the volume and flow of traffic on the site and adequate traffic controls to protect public safety and prevent traffic congestion; and*
  - *Adequate layout and coordination of on-site accessways and sidewalks in relationship to off-site existing or planned streets accessways, bicycle paths and sidewalks.*

*Seconded by Chairman Ricci.*

Mr. Moore noted that the Board had previously acted on the application in May for postponement until a resolution could be had. He felt that request was not satisfied and the Board cannot be certain that the criteria is met with the information provided.

Chairman Ricci thought that traffic and pedestrian safety are key issues with the proposed application.

Mr. Gamester stated his opposition for the motion. He agreed with the concerns raised and would support postponing the application until the various issues were addressed collaboratively.

Vice Chairman Moreau acknowledged previous statements made and stated her support for the motion given that the traffic may continue to pose an issue regardless of any revision to the plan.

*The motion passed by a vote of 5-2-0, with Mr. Gamester and Councilor Perkins opposed.*

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B. The application of **Seacoast Trust, LLP, Owner, and Stonegate NH Construction, LLC, Applicant**, for property located at **150 Route 1 By-Pass**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer for the demolition of the existing building and the construction of a proposed 246' x 85' 3-story multi-family building with a footprint of 17,667 ± s.f. and gross floor area of 53,000 ± s.f., with 24,950 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 231 as Lot 58 and lies within the Single Residence B (SRB) District. (This application was continued from the September 15, 2016 Planning Board Meeting.)

**DISCUSSION AND DECISION OF THE BOARD**

The Board took action on this application immediately after approval of the meeting minutes as follows.

*Vice Chairman Moreau moved to review the application out of order for purpose of postponement, seconded by Councilor Perkins. The motion passed by a unanimous voice vote 7-0-0.*

*Mr. Gamester moved to postpone the application to the November 17, 2016 Planning Board meeting, seconded by Mr. Legg to postpone. The motion passed by a unanimous voice vote 7-0-0.*

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**IV PUBLIC HEARINGS – NEW BUSINESS**

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

A. The application of **Foundation for Seacoast Health, Owner**, for property located on **Campus Drive**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland and wetland buffer to pave an existing 320' sidewalk (290' of which is in the wetland buffer) extending from the parking lot near the tennis courts to the Community Campus building, to construct associated drainage swales, and to install two 12" culverts, with 240 ± s.f. of impact to the wetland and 2,130 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 266 as Lot 4 and lies within the Industrial (I) District.

The Chair read the notice into the record.

### **SPEAKING TO THE APPLICATION**

#### Peter Loughlin, Foundation for Seacoast Health

Mr. Peter Loughlin explained the project proposes to convert an existing pathway into a paved 6-foot wide sidewalk, which will connect a remote parking area to the main building of the community campus. Several petitions were signed by various organizations to advocate that the proposed plan will improve the safety for employees accessing the satellite lot from the community center.

#### Eric Weinrieb, Altus Engineering, Inc.

Mr. Weinrieb explained the existing pathway coming off the road would be flattened for ADA considerations. The project would not impact the wetland since they are currently not contiguous. The plan would remove the large boulders, install a layer of crushed gravel and pavement, and loam the edges. It will provide people direct access to a remote parking lot from the building. A durable surface will allow for the pathway to be easily maintained from ice and snow. An alternative product will be used to remove the snow to minimize the potential sodium chloride buildup.

Mr. Gamester asked whether porous paving was considered. Mr. Weinrieb explained that the additional work required for a porous surface outweighs the benefits. He noted there would be conduit installed underground to provide lighting. The intent is to complete the project before the upcoming winter season.

Vice Chairman Moreau asked Mr. Peter Britz, Environmental Planner, why rain gardens or plantings were not included in the plan. Mr. Britz felt the purpose of the swale is to deal with stormwater off the path. It should be sufficient due to the size of the area.

Mr. Taintor asked for a description of the culvert. Mr. Weinrieb mentioned that there was consideration for surrounding the culvert with stones to mask the appearance. He noted that the culvert would have a natural base.

Vice Chairman Moreau asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise, the Chair closed the public hearing.

### **DISCUSSION AND DECISION OF THE BOARD**

Mr. Legg moved to **grant** Conditional Use Permit with the following stipulations:

1. The plan shall be amended to include construction details for the stormwater treatment swales and the culverts. The culverts shall be embedded into the ground at least two inches under the soil to provide a natural surface for passage by amphibians and reptiles. The construction details shall be subject to review and approval by the Environmental Planner.
2. The applicant shall provide a winter maintenance plan for the path that avoids or minimizes the use of sodium chloride subject to review and approval by the Environmental Planner.
3. The applicant shall install erosion control measures during construction to protect the adjacent wetland areas.

Seconded by Ms. Record. The motion **passed** by a unanimous voice vote (7-0-0).

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B. The application of **Alden Watson Properties, LLC, Owner**, for property located at **56 Lois Street**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer for the construction of a single family home with access driveway, with 27,581 ± s.f. of impact to the wetland buffer, and for the construction of an extension of Lois Street with 5,161 ± s.f. of impact to the wetland buffer. A Subdivision Application for said property is currently on file with the Planning Department and includes the extension of Lois Street. Said property is shown on Assessor Map 232 as Lot 8 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION**

John Chagnon, Ambit Engineering

Mr. Chagnon's presentation included the following statements:

- The project intends to construct a single family home in the wetland buffer and there are no proposed direct wetland impacts. The project plans to: extend the existing street into a newly dedicated public way; grade a turn around as part of the extension; provide enhanced emergency vehicle safety; propose stormwater mitigation on a developed site, which will provide mitigation for the street extension; move buffer debris piles and improve the buffer in a previously disturbed area; and, provide onsite roof runoff treatment.
- The property is unique in that it was originally two lots in the 1919 subdivision plan and the street currently dead ends in the lot.
- The lot is previously disturbed and there was a preexisting structure. It was suspected that dumping occurred at the end of Lois Street. The buffer area was previously disturbed back when the City sewer line was installed.

Vice Chairman Moreau asked Mr. Britz what concerns the Conservation Commission had raised. Mr. Britz explained that the Commission was concerned for the precedent of a home and considered a nearby wildlife trail that could connect through the lot to Sagamore Creek through the upper wetland area. The Commission was pleased with the proposed efforts to enhance the site.

Mr. Taintor clarified that since the Board has not reviewed the subdivision plan yet, it is essentially a vacant lot.

Chairman Ricci asked if anyone was present from the public wishing to speak to, for, or against the application.

Rodney Rodriguez, 94 Lois Street

Mr. Rodriguez expressed concerns for the proposed plan and questioned the public and private ownership and access.

Mr. Taintor explained that the extension provides the necessary frontage that would eventually be considered by Council for acceptance as a public way. In response to Mr. Rodriguez's question, Mr. Taintor added that the plan for snow storage would be arranged through the Technical Advisory Committee.

Mr. Rodriguez suggested to consider that the preexisting structure was removed from the land because it was illegal. He stated that he did not oppose developing the property, but felt that several questions need to be answered before moving forward.

Janna Barbour, 66 Lois Street

Ms. Barbour mentioned that she previously owned 56 Lois Street and several owners of the property have experienced difficulties in developing the site because of the wetlands, wildlife, and lack of buildable space.

Ryan Tebbetts, 109 Diamond Drive

Mr. Tebbetts expressed interest in the property and asked whether the Board saw any potential use for the land.

Mr. Chagnon noted that it became evident through the TAC process that the street would only be extended if it became a public street. The extension and turnaround would help emergency vehicle access and snow plowing, which helps to address the various safety concerns raised. It would be reasonable to dedicate the property to the Conservation Commission in perpetuity based on the Board's decision on the application.

The Chair closed the public hearing.

## **DISCUSSION AND DECISION OF THE BOARD**

*Vice Chairman Moreau moved to **deny** the Conditional Use Permit for the following reasons:*

- *The land is not reasonably suited to place a house where there is so much wetland and wetland activity.*
- *There is an alternative location outside the wetland buffer that is feasible and reasonable for the proposed use but the lot already has a house on it.*
- *There will be a tremendous amount of adverse impact on the wetland function and values of the site.*
- *The proposal is not the alternative with the least adverse impact to areas and environments as this half of the lot does not offer the ability to put a house on it and a better use would be green space.*

*Seconded by Mr. Legg. The motion passed by a unanimous voice vote (7-0-0).*

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**V. PUBLIC HEARING – LAND USE REGULATIONS**

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

A. Proposed amendments to the Zoning Ordinance, Articles 2, 3, 4, 5, 6, 8, 10, 11, 12 and 15, relating to variances, nonconforming buildings and structures, accessory dwelling units, building coverage and yards, residential bulk control and building heights, Historic District exemptions and design guidelines, wetlands protection, off-street parking setbacks, digital signs, and definitions. The proposed amendments are available for review in the Planning Department during normal City Hall business hours, and are also posted on the Planning Department website, [planportsmouth.com](http://planportsmouth.com). (This matter was continued from the September 15, 2016 Planning Board Meeting.)

Mr. Taintor provided a brief overview of the revisions to the ordinances since the last regular meeting.

Mr. Britz referenced the exemption for uses, activities or alterations impacting 100 s.f. or fewer outside of the wetland and vegetated buffer strip. The Conservation Commission did not support the exemption because there is significant dialog made even in small projects. Discussion was had regarding various approaches that would allow the Conservation Commission to review those projects without Planning Board, but no ideal solution was sought. Therefore, the drafted provision was omitted from the amendment.

Mr. Gamester asked to clarify the purpose of the bulk control plane concept. Mr. Taintor explained that flat roof buildings are increasingly more desirable as land costs increase. It allows for two full stories and a pitched roof.

Councilor Perkins felt there is a significant difference between open and uncovered terraces and proposed building elements. Mr. Taintor explained that the large concern to be addressed was the standard for 'up to one half the required yard', which could be considered open-ended. The proposed table intends to limit the size of the projections into required yards.

Mr. Taintor replied to Councilor Perkins that people would likely rather convert their existing accessory structures rather than lose open space. Thus, Section 10.814.51 is intended to incentivize the garden cottage by requiring the principle dwelling unit and the DADU have the minimum lot area per dwelling unit specific for the district.

*Mr. Moore moved to adopt the proposed amendments dated 10/20/2016 with the exception of Item A, relating to the bulk control plane, and #8 on page 22, relating to exempting small conditional use permits of less than 100 s.f., seconded by Mr. Gamester.*

Mr. Moore commended Mr. Taintor for the amount of effort he contributed to the draft amendments and detailed scenarios.

*The motion passed by a unanimous voice vote (7-0-0).*

*Mr. Moore moved to reopen the agenda item for purposes of the public hearing, seconded by Mr. Gamester. The motion passed by a unanimous voice vote (7-0-0).*

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

*Mr. Moore moved to adopt the proposed amendments dated 10/20/2016 with the exception of Item A, relating to the bulk control plane, and #8 on page 22, relating to exempting small conditional use permits of less than 100 s.f., seconded by Mr. Gamester. The motion passed by a unanimous voice vote (7-0-0).*

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**VI. CITY COUNCIL REFERRALS/REQUESTS**

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

Mr. Taintor explained that Council has referred to the Board before taking action on the land acquisition. The request is for a waiver of referral for the acquisition of a portion of 150 Greenleaf Avenue by eminent domain. If the Board votes to waive, the failure to refer shall not make the Council vote invalid. The Council has voted to acquire the property for conservation interests and Attorney Woodland has previously provided the background of the acquisition to the Board.

*Vice Chairman Moreau moved to waive City Council referral of the acquisition of 4.6 acres or less of land located at 150 Greenleaf Avenue by eminent domain or negotiated agreement, seconded by Mr. Legg. The motion passed by a unanimous voice vote (7-0-0).*

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B. Request for waiver of referral regarding the acquisition of two parcels of land and two drainage easements and conveyance of one parcel of land on Commerce Way, in connection with the Commerce Way Conditional Road Layout and Betterment Assessment.

Mr. Taintor mentioned that the Council approved in 2012 to upgrade Commerce Way in order to accept it as a public roadway. The upgrades have occurred and Council has implicitly accepted the street because of the 2012 vote. Several conveyances and easements were not included.

*Vice Chairman Moreau moved to waive City Council referral of the following conveyances in connection with the Commerce Way Conditional Road Layout, as shown on a plan titled “Right of Way & Easement Plan Affecting Lands of Commerce Way LLC, Arnold Katz & Blair Finnegan, and Commerce Center at Portsmouth, Situated on Commerce Way, Portsmouth, New Hampshire”, recorded in the Rockingham County Registry of Deeds as Plan D-38901:*

- (1) Acquisition of a parcel of land containing 672 sq. ft. on the inside curve of Commerce Way (recorded at Book 5631 Page 1051);
  - (2) Acquisition of a parcel of land at the intersection of Commerce Way and Woodbury Avenue (recorded at Book 5722 Page 0322);
  - (3) Acquisition of two drainage easements containing 6,685 sq. ft. and 892 sq. ft. (recorded at Book 5631 Page 1057 and Book 5631 Page 1054)
  - (4) Conveyance to 135 Commerce Way, LLC of a parcel of land containing 9,933 sq. ft. on the outside curve of Commerce Way.
- Seconded by Mr. Gamester. The motion passed by a unanimous voice vote (7-0-0).

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C. Request of Northern Utilities, Inc. d/b/a Unitel for an easement across land owned by the City at 1 Franklin Drive (New Franklin School).

*Mr. Gamester moved to recommend that the City Council approve an easement over the City property at 1 Franklin Drive (New Franklin School) to Northern Utilities, Inc. d/b/a Unitel, seconded by Ms. Record. The motion passed by a unanimous voice vote (7-0-0).*

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D. Proposed acquisition of property at 850 Banfield Road from George Elliott.

Mr. Peter Rice, Director of the Department of Public Works, explained how the land has changed over time, which has led to the property owner requesting to sell the lot and be compensated for the damages. Mr. Britz explained the City’s interest in conserving a portion of the lot and noted the lot division line has not yet been finalized.

*Mr. Moore moved to recommend that the City Council approve the acquisition of the property at 850 Banfield Road, seconded by Mr. Gamester to. The motion passed by a unanimous voice vote (7-0-0).*

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**VII. OTHER BUSINESS**

A. Appointment of CIP Sub-Committee.

The Board appointed Chairman Ricci, Mr. Legg, and Ms. Record to the CIP Sub-Committee.

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B. The request of **Mark McNally, Owner**, for property located at **21 Brewster Street**, for a waiver of Site Plan Review for conversion of the existing building to six condominium units, construction of a garage and associated site improvements.

Vice Chairman Moreau recused from voting on the application.

Mr. Taintor explained that the owner requests a waiver from the Board for site plan approval and has received variances from the Zoning Board of Adjustment to revert an existing structure into a 6-unit condominium building with an additional garage.

*Mr. Moore moved to deny the request for waiver from the Board for site plan approval.*

Mr. Moore commented that it is the Board’s responsibility to ensure there is proper review of each site plan.

*The motion was seconded by Mr. Legg. The motion passed by a unanimous voice vote (7-0-0).*

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**VIII. ADJOURNMENT**

A motion to adjourn at 10:15 pm was made, seconded and passed unanimously.

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Respectfully Submitted,

Marissa Day  
Acting Secretary for the Planning Board

These minutes were approved at the November 17, 2016 Planning Board Meeting.