

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

NOVEMBER 16, 2004

A meeting of the Planning and Economic Development Committee was held on Tuesday, November 16, 2004 at 7:09 p.m. in the Aldermanic Chamber.

Chairman David Rootovich presided

Members of the Committee present: Alderman Richard LaRose, Vice Chair
Alderman Kathryn D. Vitale

Members Not in Attendance: Alderman David MacLaughlin
Alderman Robert G. Shaw, Jr.

Also in Attendance: Alderman-at-Large Brian S. McCarthy
Alderman-at-Large James R. Tollner
Alderman-at-Large David W. Deane
Alderman-at-Large Paula I. Johnson
Alderman Lori Cardin
Alderman Marc W. Plamondon
Mike Lowe, Planning Board Liaison
Katherine E. Hersh, Div. Dir., Community Development
Roger Houston, Director/Manager, Planning Department
Jay Minkarah, Director, Economic Development
Bette Lasky, Chairman, Nashua City Planning Board
Peter Kelleher, Harbor Homes
Brad Whitney
Mark Fougere, Planning Consultant
Mr. Kane

MOTION BY ALDERMAN LAROSE TO GO OUT OF THE REGULAR ORDER OF
BUSINESS TO TAKE UP O-04-50
MOTION CARRIED

MOTION BY ALDERMAN LAROSE TO TAKE FROM THE TABLE O-04-50

ON THE QUESTION

Alderman Johnson

Mr. Chairman may I ask a question of Alderman Cardin?

Chairman Rootovich

Is this in reference to the motion? The motion is to take from the table. Any discussion will take place afterwards.

MOTION CARRIED

O-04-50

Endorser: Alderman Lori Cardin

AMENDING THE ZONING MAP BY CHANGING A TRACT LOCATED EASTERLY OF SPRING STREET AND SOUTHERLY OF FOUNDRY STREET FROM GENERAL INDUSTRIAL (GI) TO GENERAL INDUSTRIAL MIXED USE OVERLAY DISTRICT

MOTION BY ALDERMAN LAROSE TO RECOMMEND FINAL PASSAGE OF O-04-50 PENDING A FAVORABLE RECOMMENDATION FROM THE PLANNING BOARD

ON THE QUESTION

This past Monday I took the opportunity of walking around that area. Even though I am a Nashua native and some of the other members of the Board are Nashua natives, we don't always know exactly what is there. We know the edges of what it looks like. I think that this is an ordinance that changing it to mixed use is very appropriate for that section of the city. I think it will help generate some much-needed investment in that area. There are a couple of single-family homes and they are in nice shape. Even the abutting properties are in pretty good shape. I think that if we start putting some development and some monies in that area that would certainly help foster to make people keep their properties in repair and good speed. I would hope that the other members of the committee vote favorably for this. Thank you.

Alderman Johnson

Thank you. I just want to clarify a couple of things. Alderman Cardin said these are twenty units for families of veterans. We heard from Harbor Homes and they said that this is units 20 for veterans. I want to get some clarification is it basically for the veterans themselves or is it for families with the veterans or just families of veterans because it makes a real difference. I am hearing of two different people that will be living there.

Alderman Cardin

If you don't mind Mr. Chairman Steven Kelleher is here from Harbor Homes and he is the one that is proposing this development.

Steven Kelleher

The housing that we are proposing is specifically for veterans and their families to live in individual apartment units. We do have some housing that Alderman Cardin spoke about, which are just for veterans themselves in the community now. What we are proposing is for veterans and their families.

Alderman Johnson

For Mrs. Hersh – what else do you anticipate going into that area other than the housing?

Katherine Hersh

We don't have any particular anticipation. By allowing it to be a mixed use overlap district over a GI zone allows some more versatility and flexibility with regard to what goes in there. It can respond better to the market. There isn't anything else that I am aware of at this time in that area.

Alderman Johnson

We are going from what now?

Katherine Hersh

It would be a mixed-use overlap district, which would allow more flexibility for uses in that area, which is consistent with downtown and with the recommendations of the E. Hollis Street Master Plan.

Alderman Johnson

Right now it is general industrial.

Katherine Hersh

Yes.

Alderman Deane

How many of these buildings are going to be torn down that are there?

Peter Kelleher

The property at 46 Spring Street, which is currently a gray warehouse building we would be proposing to demolish it and build on that site. That is the only building that we are engaged with.

Alderman Deane

Do you feel as though this is going to be a problem because the Nashua Foundry still operates in this area and now you are going to mix residential in with some of the industrial that still operates in there.

Peter Kelleher

We have looked at the site pretty carefully and we feel that the type of construction, the site plan approval process that we will have to go through would really enable what we are proposing to co-exist quite nicely there.

Alderman Deane

Have you spoken with the owners of the foundry?

Peter Kelleher

No I have not personally, but I believe others have.

Alderman Deane

Have you spoken to them Kathy?

Katherine Hersh

I have not spoken to the owners myself.

Chairman Rootovich

Has anybody from your department spoken with anybody else? Mr. Houston has anybody spoken to the abutters or anybody else from the area?

Roger Houston

We haven't received any phone calls on this Mr. Chairman.

Alderman Deane

Do you send out notification of the public hearing to the abutters?

Roger Houston

The law requires it to be put in the newspaper – a general notice on a rezoning like this individual abutters or property owners are not notified, but there is a notice in the paper, and there was I believe 1 of 2 articles in the paper as well explaining this. It got good coverage as well.

I might add that this is no further than the Sullivan Terrace from the foundry, which is another side of East Hollis Street and this property on Spring Street is not down wind from the foundry. The GI/MU designation does not take away the ability for the foundry to continue to operate. I think the mixed use overlay district compliments existing use mix already there. If you go through that list on the staff report that was attached to your agenda tonight there is a mix of uses. I think Alderman LaRose pointed that out. There is residential, there is the post office, there is a warehouse, there is a foundry, there is an automotive repair facility, and a number of other uses.

Alderman Deane

Have you looked at another area of town to put this up in?

Peter Kelleher

We have spent since November of last year looking for sites. We have looked at I would say at least 20 possible sites.

Alderman Deane

This one what is so special about this site compared to the other ones you have looked at?

Peter Kelleher

Well I think this site is large enough and would enable the size of the apartments and some parking on the site. Many of the other sites we looked at just did not have enough square footage of the lot or other issues that just made it very difficult to develop.

Alderman Deane

Thank you.

Alderman Plamondon

I have a few questions. One is I want to clarify the East Hollis Street Master Plan didn't go this far. I have some uncertainties there. I attended the first meetings thinking that it would go to Main or to overlap in the downtown master plan, but it only goes to Spruce and Harbor. I am not sure that we have a master plan that has a recommendation to go to a mixed use from GI. The question I would throw out is would RC also because as you can tell from the map this is a very small block that it is GI – what would the difference be instead of going to mixed use to an RC? Would it still work for this development?

Katherine Hersh

Even though there is a proposal to put a particular development in this zone and that is what raised the issue with regard to the rezoning to take a look at this area, in reality when you rezone you really need to look at it a little more holistically and not because a certain use is coming in but because it is in the best interest long term for that particular area to be a different zone or to have an overlay district.

If you look at that location it is by itself among other zones and downtown, which includes the neighborhoods, extends beyond Main Street and is a mixed-use area. We talked a lot about this in the downtown master plan and in the East Hollis Street Master Plan, and although this particular location is sort in between the Downtown Master Plan and the East Hollis Street Master Plan, it is the same recommendations that permeate both of those documents that really promote this having a mixed use overlay on this site. Although it isn't specifically in the East Hollis Street Master Plan this rezoning is very consistent with both the Downtown Master Plan and the East Hollis Street Master Plan.

Alderman Plamondon

That is one reason why I asked if the East Hollis Street Master Plan went to the Downtown Master Plan guidelines so we wouldn't have this empty pocket. Obviously this Veteran's housing development is the impedes for this change. It was stated that it is for Veteran's families that were honorably discharged. Might I through you Mr. Chair to Mr. Kelleher pose some questions?

Chairman Rootovich

Please.

Alderman Plamondon

Mr. Kelleher these Veterans are they homeless? What brings them to the status of needing these homes, and please I have been in the dark on this. This is why I have questions. Bear with me please.

Peter Kelleher

I apologize for sort of not fully informing people as we go along here, but the targeted group of individuals are veterans that we are trying to serve – would in fact have to be meeting the definition of homelessness as defined by the Veteran's Administration.

Alderman Plamondon

By the definition they are homeless?

Peter Kelleher

That is correct.

Alderman Plamondon

The area from which we are drawing – are we drawing from Nashua, Merrimack Valley, Southern New Hampshire, and regional Boston?

Peter Kelleher

That is a very good question, and to the extent that I can answer it, it goes like this – Harbor Homes wherever we can in funding new programs has always tried to establish a local preference. Just this week we had a housing program advertised in the paper where we as a preference aimed it at Nashua residents. In this particular case we would try to do the same thing to the extent that the Veteran's Administration would allow us to do so. Sometimes with the federal programs you don't always have the ability to do that.

Alderman Plamondon

I imagine the causes for homelessness could be quite dispersed. Is there a higher percentage such as what about criminal backgrounds and so on – honorably discharged when they get out of the service, but from that honorable discharge to this homelessness situation, is there a primary or the highest percentage of reasons? Is it a criminal background? Is it drug and alcohol abuse?

Peter Kelleher

There are a whole set of spectrum of reasons that people enter into homelessness whether they are veterans or not. In many cases, it is economically driven. In New Hampshire there have been studies that have sort of counted the number of homeless veterans across the state in the last several years, and typically those numbers have come in at about between 450 and 500 homeless veterans across New Hampshire. We know that there are a set of strong needs that exist in the community already. The reasons that many of the veterans might end up into homelessness certainly could have something to do with substance abuse.

I would also like to say that much of what our programs are about are trying to get people reconnected – a fresh start in life where people are able to get jobs. Our agency employs about 85 people every day that have been clients of ours in the past. We have a wide range of employment programs. We also try to work with people in getting them connected up to education. We are very active in setting up a whole range of activities. The local Continuum of Care in Nashua has been involved in working on planning to end homelessness in the community.

Alderman Plamondon

Will Harbor Homes be actively involved with the varying types of rehabilitation – working with Continuum of Care and the organizations that are downtown? Let me backup a little. This is Ward 4. I am the Ward 4 Alderman. I have been in the dark on this. Ward 4 is not unfamiliar with social organizations coming into it. Harbor Homes has a strong presence. Keystone Hall, Soup Kitchen, but I have also heard from the resident of Ward 4 why is it always us? I need to be clear to the residents that this is well managed and that there is a track record for it, and it is not just the residents it is downtown businesses. I need to make sure this is a right fit for the people who live downtown as well as those businesses.

Can you go into the rehabilitation programs, and will you have someone on site and so on?

Peter Kelleher

I would first invite yourself or anyone that would like to visit the existing veteran's program and at first glance the picture at first hand it really is a powerful image and would help you get a picture of what is actually happening. Part of what would happen here is that the Veteran's Administration would enter into a contract with Harbor Homes and we would provide a range of services after the program becomes operational. We would have people on site, we would provide case management, employment services, and you mentioned Keystone Hall that is actually one of our affiliated agencies. We would be able to make referrals to whatever community resources might be necessary to assist somebody. We have a very close working relationship with sort of the full spectrum of community

agencies, and are confident that we would be able to collaborate for whatever needs would present themselves.

Alderman Plamondon

Are there guidelines for failure – individuals who fail to meet criteria once they are established – if there is criminal activity or continued drug abuse – are there backup programs to remove them from this facility to put them in a more in depth program out of this...

Peter Kelleher

That is a good question also. People would not be eligible to receive the sort of rental assistance that one would receive in the program if they had serious criminal records. We are subject to the same type of screening process that we have to go through for federal assistance so that the person with a very serious criminal record would not be eligible to begin with.

Alderman Plamondon

For those who break the guidelines do they go somewhere or are we stuck with them in this structure?

Peter Kelleher

I should have said probably from the beginning that this is actually transitional housing meaning that people can stay for a period of up to 24 months and then longer with permission from the VA. The VA is extremely strict when it comes to the issue of substance abuse as we have seen in the months that we have operated our program with them so far. If someone is really violating program rules they really won't last long in the program. I think we would have the resources necessary to refer them if rules in the program were broken.

Alderman Plamondon

I didn't know this was transitional. Other than that I would really like to sit down with you sure and learn more of this. Again I am not adverse to it. People and businesses in Ward 4 always have open arms to organizations to help elevate the character of mankind. I think historically you will see that is what we have done, but we are also seeing a rash in crime, i.e. there was just a recent murder and so on so there is just a concern if we have too much focus on downtown and all social organizations coming downtown we are keeping all the problems downtown yet our police force is thin and spread throughout the city, but on the other hand these organizations such as Keystone Hall and the soup kitchens and shelters are there and they do a phenomenal job with the tools that they have. Obviously they never have enough tools. Thank you Mr. Chair.

Alderman Cardin

I would like to say something on behalf of Harbor Homes. I have known Peter for many years. Harbor Homes is in my neighborhood. They are good neighbors. The leadership at their agency is proven. They have stepped up to the plate when it comes to working with the city with homeless for the

winter. They really are good collaborators here in the community. They are very active in the Continuum of Care – just bring in all other agencies and work well together with everyone. I can't say enough about what good neighbors they are because they are in my neighborhood and we don't know they are there. They just kind of melt in and everybody goes about their business. I have nothing but good things to say about the way the agency is managed.

Alderman Tollner

This is one of the reasons why I am here tonight. I would like to echo Alderman Cardin's comments. I would like to apologize to Alderman Plamondon. A couple of us on the Board probably could have gotten you some information. I know I spoke to you briefly about it a week or so ago, but I think it is a good idea to sit down and meet with Peter. I know there are a number of people in the city that are fairly strongly behind this particular project. I think the location that you are looking at is a good one both for the neighborhood and for the entity that you are trying to put in place. I think it is a win/win. I would also like to thank the city too, the Community Development Division. I think Peter would definitely say if he has not said already that Harbor Homes also appreciates the support that the city has given and lent to this project. That is the way great projects like this come about is cooperation from the city, Board of Aldermen, different agencies, and the volunteers. That is why we come up with these win/win situations.

Alderman Johnson

I just want to go back to the notice of a public hearing. I guess I am a little bit confused because Mr. Houston was saying that I know you put it in the paper quite a bit. What happens if somebody doesn't read their paper, and I know that you do send out notices for public hearings for some abutters because I know it happened in my neighborhood with Stellos' many a times the abutters got notices regarding public hearings. Now you leave the issue open to chance that everybody definitely buys the paper, but they don't and they don't have that opportunity to come to a public hearing if they don't know. I thought that by law you have a certain I think 100 feet or 1,000 feet within a certain radius that notices do go out. Correct me if I am wrong, but I remember we discussed this many times over the Stellos' issue about people getting notices for public hearings.

Roger Houston

This is a public hearing by the Board of Aldermen. If the Board of Aldermen wishes to notify each of the abutters you can do so. If it is a Planning Board or a Zoning Board of Adjustment action then the State law prescribes that you notify specifically the adjacent property owners or abutters. That is done. That is prescribed by law. Re-zonings are more of a general community wide interest issue and that is why it is required that there be a newspaper notice, and in this case there was an article written of general interest. Obviously not a lot of people read public notices. Some do though. There was an article that did generate response. I think several people did comment on that. That is an issue if this Board wants to send notices out that can be done, but that is not normally the case when you have a general map change or a zoning change.

Alderman Johnson

Can I respond?

Chairman Rootovich

Please.

Alderman Johnson

I guess what sparked my interest was because you said that we made sure meaning I would think it was your department, that there was enough public notice given out on this. My whole issue a lot of time is that you leave it to chance on some things that people automatically read the Telegraph. Not everybody subscribes to the Telegraph, not everybody has time to read the Telegraph on a certain day. That doesn't mean that I am against the project I just want to make sure all of our Is are dotted and Ts are crossed on this whole issue.

It sounds like it is a worthwhile investment in the property in that area. Nobody wants to see homelessness in this city or any other city especially our Veterans who served this country. I want to say it seems like a nice project. Thank you.

Alderman LaRose

I would just like to point out that if this project goes forward it has to come in front of the Planning Board. It is going out again – this time the abutters will be notified, and there are signs that have to be put up around the area so I would suspect that if anybody in the area missed the notice about the public hearing they will have certainly the opportunity of coming in front of the Planning Board to discuss this project.

Mike Lowe

I don't know if that is right because it is on the Planning Board's agenda for Thursday. Another point has anybody contacted the Post Office to find out if they are aware of it or the State because the court house is right next to it? It is one of the abutters.

Katherine Hersh

There are two different things. The ordinance before you is for the rezoning. The ordinance at the rezoning is before the Planning Board on Thursday night, but that is not the site plan for that specific project. They are two different things. We are required by law to do abutter notifications for things that go before the Planning Board and the ZBA, but we aren't required by law to do specific abutter notifications for rezoning. Sometimes rezoning are for a very large area and sometimes they are not. In order to be consistent there isn't any abutter notification on rezoning.

I don't know if the post office is aware of this particular transaction, but the post office had the opportunity to purchase that property in the past, and the post office most recently renovated the post office and spent their money on that, and has not expressed an interest in that property in some time. In fact actually I talked to the current owner of the property with regard to that and he informed me that

the post office was not interested in the property at this time.

Mike Lowe

I did go over and look at the property and I think almost anything would be an improvement especially in the foundry area there are just huge piles of junk right in the middle of the city.

Alderman Tollner

I was just going to confirm that I had a conversation with the owner of the property that we are having the conversation about and he has had numerous conversations – as a matter of fact the postal service had a deposit on the property – a non-refundable deposit, and for whatever reason the federal government changed their mind about the expansion of the post office and lost that deposit. The owner of the property kept the deposit and the post office was very clear they were no longer interested in the property.

Alderman Deane

I would like to make a comment on Mr. Lowe's remark about the huge piles of junk. Most of that is steel, which will be I would imagine melted down again. It is worth quite a bit of money. That facility stores quite a bit of material outside and probably will continue to do so as long as it operates. When you go plucking in a 20 unit building down there you will deal with the noise, the heat, and the smell. They have been pushing that business for quite a few years.

My other question is what is the current assessed value of that property the way it sits and what is the tax bill on it?

Peter Kelleher

I don't know off the top of my head. I knew recently, but I can't remember right now.

Alderman Deane

We should understand that once the property is sold and torn down that it is now a non-profit so the property taxes that have been collected on it are now taken off the books. Am I correct to assume that?

Chairman Rootovich

That is true.

Alderman Deane

Thank you.

Alderman Plamondon

I would like to pose some questions to Community Development. It was stated by Director Hersh that going to a mixed usage gives versatility and flexibility. Could you go into details as to what types of versatility and flexibility can we look forward to in this particular area?

Katherine Hersh

A mixed use will allow more uses in a particular area. As Mr. Houston has pointed out in his report, there are already a number of uses in that area. If it is zoned GI then it allows the permitted use is general industrial, which is industrial. As you can see there are a lot of other uses in that area and having it mixed use will allow that flexibility to have other uses in that area. For example, Mr. Kelleher may decide that what he wants to do is put a commercial space on the first floor of his building – I am just making this up – he could do that if he wanted to do that and use that as leased space. That might generate some income for him and then have the rest of the building as residential if he wanted to do something like that. There is flexibility that you can build into a site and into an area when you have a mixed use overlay district.

For example, downtown if you take a look at downtown, downtown you have retail and commercial on the first floor and then you have on the upper floors sometimes you have residential and sometimes you have a dance studio or a lawyer's office or a number of other uses. It allows you that flexibility without always having to go back – you don't have to go back to the ZBA and get approvals for different uses because the uses are allowed.

Alderman Plamondon

I guess if I understand correctly – you go in that area and it is quite mixed now so the variety of commercial entities that already are there have gotten variances from the Zoning Board in order to be there?

Katherine Hersh

I would defer to Mr. Houston for absolute answers. It does depend on how old they are because if they were there before the area was zoned General Industrial then ...

Roger Houston

Yes there were a couple particularly on Mason Street that I am aware of that did receive use variances of special exceptions to be in that area. I think the auto body shop not too long ago opened up and there might have been another one. I don't recall off the top if there were any others. However, I wanted to point out too that the mixed use overlay district has been applied to another GI district and that is in the mill yard and the Nashua Corp. had two separate actions and that has really opened up a lot of different mixed uses; a combination employment opportunities, housing, and retail – that has worked out I think exceptionally well. The premise behind the mixed use requires a use report that is done showing how the use is going to fit in with the surrounding uses in the neighborhood. That is reviewed by the Planning Department as well as and then that report is given to the Planning Board and the Planning Board looks at that and the site before they decide whether or

not that use is compatible with other uses and whether that mix works.

It has worked very well. I think generally speaking reference to the East Hollis Street Master Plan was made – I think that is one of the biggest points that was made in that plan was a huge area of general industrial land in that area that is currently split with housing and retail and industrial. The mixed-use overlay allows for that marriage if you will of those different uses, but in a controlled way.

Alderman Plamondon

There are at least 4 residences in this current GI district. What impact is it going to have on them let's say on their property values or any other impact by switching the zoning for these residences?

Katherine Hersh

In and of itself I wouldn't think it would have any impact on the property values. What I think it might do is allow for some creative reuse of some of the properties as time goes forward that may not have been available if it weren't a mixed use overlay district, which keeps the area viable and keeps people's property values up. I think in the end it will serve the area well. I don't see a reduction in property values.

Alderman Plamondon

If I understand correctly a current resident could say have a carpentry business now, but by going to mixed use a carpentry business operating out of this former residential with the vans and workers coming and going.

Katherine Hersh

They would need to come to the Planning Board to do that, which would look at the traffic and the impact on the other uses in the neighborhood and things like that to make sure it was compatible and a reasonable thing to do.

Alderman Plamondon

Even if we change it to mixed they will still need to come. I have issues within the Tree Streets for those specific things – residential and they are running carpentry businesses with 5-6 vans and 20 employees at 6:00 a.m. loading ladders and everything. Okay. Thank you Mr. Chair.

Alderman Johnson

There would be additional area for parking of vehicles. You plan to have parking on the site also?

Peter Kelleher

Yes.

Alderman Johnson

So there would be more than enough room to have the units plus how many parking spaces? This is – you are going to change..

Chairman Rootovich

Keep in mind Alderman Johnson that the site plan has not been developed.

Alderman Johnson

I understand that, but it is just you are changing it and I want to make sure there is enough room with what you are going to do on that site.

Chairman Rootovich

I have to assume the site plan wouldn't be approved by the Planning Board if there weren't enough parking spaces.

Alderman Johnson

Okay. Just kind of curious if ...

Chairman Rootovich

I will allow him to answer your question I am just saying I would assume that would be the case.

Alderman Johnson

If they are going to be having vehicles there I am kind of curious.

Peter Kelleher

We are not to that degree in the planning process yet, but our thinking at this point is that we would try to use the existing parking lot that is there now for parking spaces for a number of reasons, but it would probably be similar number of spaces in a similar use of the same location.

Alderman Johnson

Thank you.

Alderman Deane

For Roger, it has to do with the percentage of occupancy such as the Franklin Street building, which was purchased I believe by a church. Kathy had mentioned perhaps maybe some fictitious commercial entity in the bottom floor of this building – my question is it is my understanding that the

former Nashua Corp. building is now housing many different businesses. At what point does that facility lose its non-profit status?

Roger Houston

As I understand the way the tax structure is those businesses are taxed on their square footage just like the hospital as an example a lot of that is non-profit and not taxed, but the private offices or the doctor offices are taxed. The Assessor's Office puts that out. I don't know how they exactly do that. That might be a good question to ask them. That is not lost.

Alderman Deane

I would imagine every time there is a fit up done inside that facility down there that they come to the Community Development Division and get a building permit so there is proper electrical and building inspections. I want to request that information because it is my understanding that there are a number of businesses that are being run out of there. We have the non-profit tax status with the churches where they are exempt as this would be as well, but if the uses change and people are garnering income from it then they should be paying their fair share of property taxes.

Alderman McCarthy

That was actually a change in the interpretation of the State law about 5 years ago that basically only those portions that are actually in use for the business of the non-profit are non taxable and that everything else including just unused sections that are not used for the non-profits are now taxable at market rate.

Alderman Deane

Mr. Marino would know that?

Alderman McCarthy

Yes.

Chairman Rootovich

Are there any further questions or comments? The motion before you is to recommend final passage pending a favorable recommendation from the Nashua City Planning Board.

MOTION CARRIED

MOTION BY ALDERMAN LAROSE TO RETURN TO THE REGULAR ORDER OF BUSINESS

MOTION CARRIED

Alderman Deane

Do you have any intentions on dealing with the other piece of legislation that is being held in committee later on in this meeting?

Chairman Rootovich

It is not my intention, but if any member of the committee wishes to make a motion they are more than welcome, but I doubt it very much.

Alderman Deane

Can I ask why it is being held?

Chairman Rootovich

I am going to allow Mrs. Hersh. She is here tonight to discuss her discussion on the commuter rail, and I think when we get done with that discussion we will have a better understanding.

Alderman Deane

So there will be no discussion this evening on this piece of legislation?

Chairman Rootovich

Again if somebody in the committee – there will be discussion during the discussion of commuter rail.

Alderman Johnson

I thought when we discussed this at the Board that you were going to have discussion on it tonight that is why I made it a point to be here.

Chairman Rootovich

I will say again there is a discussion coming up right now about the commuter rail.

DISCUSSION

Katherine Hersh

I am actually hoping that the committee will take up R-04-134 this evening and consider recommending to the full Board after this discussion this evening.

One of the questions that came up in the course of discussions since this resolution was introduced that I was asked to clarify and I am happy to clarify is that this resolution if you notice does not specifically talk about a specific site, but in the presentation that was given the site that was used to do the feasibility study of whether or not a transit oriented development could generate the increased value in taxes in order to provide the match for the commuter rail – the site that was used to do that

feasibility study was the southern 10 acres of the Dow Chemical site. I just wanted to make it clear to the Board that isn't specifically the site although that has been the site that has been identified, that isn't specifically the site. Dow is in the process of marketing that site and my understanding is that they have concerns and have restricted from what I understand the future use of that site from having residential on it, which and residential is an important component of transit oriented development. I don't have final disposition on that.

What is before you really has to do with a resolution supporting transit oriented development in a location in south Nashua that is determined to be an appropriate train station and using the tax revenue from that to pay for the match. I wanted to clarify that this particular legislation does not mention the Dow site, it is not necessarily the Dow site, it may very well be the Dow site – all of those things have to come back to you, but in reality this is a piece of legislation about transit oriented development and about using the tax increment from allowing increased density that transit oriented development would allow and using that as the match for commuter rail.

Chairman Rootovich

There are two other parts of the resolution. One is with respect to the city taking its roll and part in the \$14 million so it is just not the site. It does involve a commitment with respect to the \$14 million.

Katherine Hersh

Absolutely.

Chairman Rootovich

There is more than one part of this.

Katherine Hersh

That is the tax increment-financing district that would be established to generate that. We would need to come back to you when that final site is identified. We would need to come back to you and say here is the site, here is the tax generation that is proposed for this site – every step of the way we would need to come back to you. This legislation is a policy decision by the Board as to whether or not from a policy standpoint funding the match with tax increment financing is an acceptable method to do that.

Chairman Rootovich

Alderman Tollner could you be so kind as to get a copy of R-04-134? This is something you are really good at. Would you grab a copy for members of the committee and the Board who do not have one?

Mrs. Hersh my apologies for interrupting you.

Katherine Hersh

There are four parts to that resolution, and probably it would be good to take another minute to go over those four parts of it, which will refresh everybody's memory. The four parts of it are one would be to support transit oriented development as a smart growth initiative as part of the train station site in South Nashua. The second part to that resolution is that the Board would look favorably upon using the increased taxes generated from the increased density and from the transit oriented development site use that to match the federal money that we have gotten and will continue to get to bring commuter rail from Lowell to Nashua. The third part says that the Department of Transportation, the State, will be responsible for commuter rail. Commuter rail one of the things we had talked about previously is whether or not the city would manage the commuter rail project, and that was something that the Board was clear that they were not interested in doing. We have since talked to DOT again about that so this resolution says that the State would manage it and the city would have final approval on the site design. The fourth component of this says that the City, Nashua Regional Planning Commission, and DOT would work together to draft or formulate a New Hampshire Transit Authority. Those are the four components.

Alderman Deane

Kathy I had spoken to you briefly about this and it was my impression the way this was presented by the Regional Planning Commission was the site to be selected or we were looking at was the Dow Chemical site. That is what the Board was told. Maybe other people had a different impression of where this may be built, but I felt as though that was the site because when we look down Daniel Webster Highway or in that South Nashua area where the railroad tracks are that run down along the river there is really not much property down there that is as readily available as this piece would be. I also had concerns over – that was my major concern that everybody understood that there is more than one site perhaps that may be available for this rail station to be put in.

My other concerns were the disposition of the chemical factory and the fact that there may be some constraints put on by Dow Chemical on what we can and can't do with the property. I spoke with some other Aldermen about that briefly and they didn't seem concerned if the residential component was taken out and I think that would dramatically change the revenue or the assessed value of the property once you took all of those units out. He was more concerned with the retail end of it, but if that is what he likes that is what he likes. I still don't know where down the south end of town other than that site we could do this.

The other question I have is if I remember correctly when the people from Dow Chemical came in prior to our Board of Aldermen meeting and Alderman McCarthy had them come in to give us an update on the project going on down there, dismantling that building, they told us that site would be as clean as a whistle when they were done. Correct me if I am wrong Alderman McCarthy, but I think I remember them saying that. I was kind of astounded because I am thinking that facility has been operating for a number of years, something had to have spilled on the ground somewhere and there had to be some issues down there. I remember back in the late '70s when the fire department had to respond down there a number of times.

Now DES was to look at the site and it is my understanding now that there are 12 acres of that parcel that aren't going to be allowed to be touched at all. There is a lot that has to be looked at down there.

As Kathy had mentioned perhaps maybe some Brownsfield money down there, but what I would like you to do Kathy is try to identify the other area in that end of town that might work for implementing this legislation other than that Dow site. Do we have another place in mind? Have you spoken with anyone down there?

Kathy Hersh

I have not spoken with anyone, and the reason that I haven't spoken with anyone is because if the Board of Aldermen is not interested in paying for the match for the commuter rail whether it is through a TIF or in any other way, which we haven't come up with any other way, so if the Board of Aldermen is not interested in pursuing that from a policy standpoint then there isn't any reason for me to go pursuing other locations. If I understand that the Board of Aldermen, if this piece of legislation passes and the Dow Chemical site turns out to be not the acceptable site for whatever reason for this then believe me I will be all over trying to find another site for this. For me to do that without understanding whether or not the Board is going to support from a policy standpoint funding the match in this way is

Chairman Rootovich

I think you can look at it a different way – the Board might be apt to support it more if they knew the site that you are going to select rather than the unknown where it is going to go. That may play a role with member of the Board.

Katherine Hersh

I can understand that and I would be willing to go – I am certainly willing to do that if that is what the Board would like me to pursue, but if in the end if I pursue all of that, if staff pursues those and makes approaches to other businesses and has them go back to talk to their boards and people about the possibility of doing this and we start those balls rolling and then when we come back to the Board the Board says well that is not the way that we would like – we don't feel that it is appropriate for the City to be funding the match for commuter rail then it ends up to be that we have lead other people down a direction.

Chairman Rootovich

The other issue is this particular site here does not allow residential buildings. There may be another site, which that retail might not match and that would also jeopardize your plan. There are just a lot of unknowns right now. I guess many of us would feel better if we knew what the site would be, and if all three of those were applicable to the TIF.

Alderman Deane

I wanted to continue. The way I look at it is that this site – the site offers some – the parcel that is there there are some issues with it and what was presented by the Regional Planning Commission and what we may or may not be able to do will have some affect on a) the terms on the payback on the TIF, b) the amount of revenue that we pull out of that area to pay the bond off before we started

realizing some tax dollars out of it. I think until we know how those components are going to fit into what we can and can't do down there I would have trouble supporting this.

Also there are a lot of other factors involved. I would imagine Dow has to have the environmental done on it, DES has to look at it, and then if they go to put any constraints on the use of the property due to liability issues or whatever Dow puts in place when the factories do close down that has to be realized too. I think until we know and understand the challenges that this site has unless that can be done in a hurry, which I kind of doubt. I do understand there is a timeline on the other dollars that we have to look at, but to move forward and approve this without understanding the entire ramifications of what that site might – what we may and may not be allowed to do down there I think isn't wise unless somehow we could just let it be. Once we commit to this – there are other pieces of legislation if we remember correctly and go right down the street here and look at the fact that there were three components of that that were produced and people read it and didn't understand it and voted on it and when it was time to implement the TIF people didn't want to vote for it.

I don't want to go down that road again and I would like to better understand what the environmental issues are and what we can and can't do on this property.

Alderman Johnson

I just want to elaborate with Alderman Deane. I don't want to get onto Jackson Falls, but to hurry up and pass these bonds and then nothing will happen. That is exactly what happened with Jackson Falls, which was supposed to be November and now we are pushed out to spring. You said that we will continue to get federal dollars. I am still waiting for my letter from Congressman Bass' office. I spoke to Washington I believe it was Friday night and I asked a lot of questions about the \$4 million because if in fact they do not continue with a continuing resolution like we lived on for a while and it gets passed tomorrow the federal budget that money I guess is gone. That is \$4 million more than we are talking about not \$14 million that we will need for the matching funds on this we are talking \$4 million more so there is about \$18 million – well you shake your head no right now we are talking \$14 million and we included the money from Congress. Maybe we need some more clarification on everything.

... tape flipped ...

Katherine Hersh

... is allocated for this project at this time. The total project cost is \$70 million of which \$56 million is the federal money and then \$14 million would be non-federal money to match the federal money. We don't have all of the \$56 million set aside, but Congressman Bass has been an incredible supporter of this. He truly believes in this and his frustration has been that he has not seen at the State level the leadership to move this forward. In my conversations with him, his feeling is if this \$14 million if there is a way to find this \$14 million and then the State can move forward to do the study – the State has \$300,000 set aside to match federal money to do the studies that we need to do to get this commuter rail to the point where we can start building this commuter rail. The State isn't going to do that – spend that \$300,000 until the \$14 million match is identified. It all revolves around finding the \$14 million match. If we find that then Congressman Bass will start right back at Congress pulling that

money back in to this project because we are still going to need a total of \$56 million altogether.

Chairman Rootovich

Are you saying that the \$56 million will be a guarantee from the federal government as the years go on?

Katherine Hersh

Nothing is a guarantee, but ...

Chairman Rootovich

If the federal government were to only come up with \$40 million where would the other \$16 million come from?

Katherine Hersh

We wouldn't do the project. If we don't do the project until all of the money is there for us to do the project.

Chairman Rootovich

That could take anywhere from two to ten years. You are saying we are willing to wait that long to start that commuter rail if necessary?

Katherine Hersh

If we have to I think that we should, but I don't think it is going to take that long. Quite honestly I think it is an important initiative that I think if we can all get everybody on the same page and start moving forward on this I think that you will be amazed how fast this will move along. We have waited a long time for commuter rail. If we didn't have commuter rail for another 5-8 years we would still be leaving our community and our state a really important viable economic engine that will go all the way up to Manchester, Concord, etc.

Chairman Rootovich

It is a great point. I apologize Alderman Johnson for taking the floor.

Alderman Johnson

Anytime Mr. Chairman I am patient. I concur with Alderman Deane when we are talking about the Dow Chemical site because I know one Alderman was thinking about doing a name change on the street over there removing the name Poison Ave. and making it a nicer street name. Obviously he thought about the idea that was where the commuter rail was going.

You said that the State will be responsible for the commuter rail after this whole thing is up and running. I would like a letter from DOT confirming that. As I hear about the rail more and more I am not against rail. I lived my life on the subway. I know what it is like to ride the Long Island Railroad; I know what it is like to ride the New York City subway. I am not afraid of trains. If you are going to be investing \$70 million and we are talking about – the original figures I think were between 740 and 960 ridership and then in 20 years I believe we are talking about 3,000 ridership. That is not a very big increase. You really need to have more of an increase up front. We got a letter from the Mayor talking about TIF that is paid off in Hooksett and my comments back to the Mayor and I sent it to everybody – it is great news, but what works for Hooksett doesn't always work for Nashua. I guess we have done a lot of private/public partnerships, which we haven't done very well. I truly believe that this was going to work. It is not the question of bringing the rail to Nashua and stopping, the rail has to come across – we need to work hand in hand – I agree with Alderman Lozeau – with Massachusetts and the rail really needs to go to Manchester to the airport because I think that is where your ridership is going to go. I have received e-mails from constituents saying that is exactly right to Manchester. I truly believe we want to focus where we want them to go.

My colleague from Ward 98 said you are going to eliminate the traffic coming up from the south at Christmas time. I think everybody needs to stand on the highway and look at the traffic coming down from the North where it has no place to feed onto Daniel Webster or Spit Brook Road.

I have concerns when you say where we will place it and where we will not place it. I have to get an understanding where we are talking in the south end of town to put a station. Just to arbitrarily say we haven't found a spot – everybody has to go legwork if you want to put a business anyplace. You would find the place that you would like to do it, you would talk to people and negotiate, and you would see where the traffic comes from. I have to get an understanding if this is not the spot where would we possibly put the train station. Then I would consider whether or not \$14 million should be spent for this to give a commitment. Right now you are asking me to give a commitment on a blank piece of paper. I don't think that is the right way to go. Thank you.

Chairman Rootovich

Has the Mayor asked Congressman Bass to come to the City – testify before this committee that he is willing to do his part in obtaining that \$56 million?

Katherine Hersh

He hasn't but I can certainly pursue that.

Chairman Rootovich

I will call the Congressman myself. I have a great relationship with him, and I will ask him to come before this committee on the record and testify that he is willing to go to bat and what his chances are, how he feels his chances are of obtaining that \$56 million.

Katherine Hersh

Terrific.

Alderman McCarthy

Actually I think you should do that because he made remarks basically to that affect at the last ...

Chairman Rootovich

Alderman McCarthy I assure you that is exactly what I will do.

Alderman McCarthy

I guess I want to step back and look at this as to where we are and also talk about some differences between this and the problems that we have perceived with Jackson Falls and first let me say I am not sure I would want to come in front of this Board and present something because if you are coming before us to present something general we ask for the specifics and if you are coming to give us the specifics we say well I don't like the specifics so I am not going to vote for the general. It sort of – there are enough of us that we all have different perspectives and it generates an environment where it is really tough to get past stage 1 on a multi-stage process.

I think what we are looking at here is vastly different from projects that we have done, and I will agree with you Alderman Deane we did some thing on the Jackson Falls TIF that as you know from your votes on the final TIF stuff we took the first piece of legislation that came before us created the TIF, that in fact was sufficient to get a private party to go out and invest a whole lot of money in designing a project that it really was not fair when they come back to say we now don't like the economics of it we are going to force you to waste the money that you invested. I know that is why you voted the way you did on the TIF bond at the end.

Alderman Deane

Correct.

Alderman McCarthy

There are a number of things that we could have done differently there that I think we would do differently in the future in terms of making sure the development agreement was in place before we took on the TIF, making sure that there was a performance bond from the developer to cover shortfalls in the initial tax revenues so that we wouldn't get stuck with that, and I think there are a number of lessons learned to make sure we improve, but we are not up to that point in the process. What will happen here is first we have to get some consensus that there is going to be commuter rail and that requires getting the federal government to step up to the plat with a whole lot of money. In order to do that they want to be assured that the somewhat smaller sum of money will come from somewhere to match that. That is the phase we are at now.

After that we would come back with legislation to establish a TIF and hopefully we would have much better agreements in place when we got to that phase to look at the specific site. We don't really need

the specific site right now because we are not up to the point of evening looking at a TIF on a specific site. I have to agree I have some of the same concerns. I heard the same thing you did – I heard Dow Chemical sit here and say the site will be clean as a whistle and then I hear the site the week before that nobody every tried to blow the whistle. There is stuff there that we need to work with in order to deal with that. There are other sites. The rail line runs along the entire length of that industrial and commercial property down there.

This particular property has some great advantages in that it is right now under utilized and undervalued because of its position relevant to the highway and its suitability for retail without structure and without traffic on it. It would be a site that is easier to develop for this, but there are other places that we could in fact envision, and we talked about this years ago – putting the site at the mall and doing structured parking and multi-plexing that. That is one thing that I think we would look at if this site were not one that was there.

There are any number of other sites there that could be utilized. In fact, sitting thinking about it one of the perfect places for it to go and I hope it doesn't go down this way is that Tyngsboro could decide to pursue putting it just over the border on the other side of the mall. Not only do we then get the traffic and none of the benefit of the property, but I hate to even say this they have some great amenities that allow it to be built there like an agreement to purchase 500 thousand gallons a day of our water over the border from Pennichuck Water Works. There is ample opportunity for us to miss out entirely on the eventual revenue that will be generated by the train station if we don't pursue it in New Hampshire.

Where we are at is we need to be able to demonstrate that there is some willingness defined for the \$14 million piece of the \$70 million equation for the train station. Then we can go forward and look at is there a way to do that on a site that is acceptable in South Nashua.

The questions that are before us right now – there are four really simple questions that I think position where we should be on this legislation; 1) do we support transit oriented development, which basically says would we do something innovative to allow increased density on that site in order to generate additional tax revenue from that site and additional traffic to allow it to be an effective commuter rail station. I think we are all agree that is a good thing to do. The second question is do we agree that DOT should be running this project if it happens, and I think we all agree on that. The third question was do we think there should be a transit authority the details of which will be hammered out by Nashua, NRPC, and the DOT, and I think we all agree on that, which brings us to the last one of the TIF. The only question that I think we are asked to answer on this piece of legislation is would we be amenable to investigating a TIF on a site that is eventually identified and saying we will devote additional tax revenues to pay the \$14 million if we can figure out an equation where the \$14 million comes entirely out of that site and not out of the taxpayers' pocket and we are confident that we will get it.

All of the details about what is the methods in which we are getting it, what development we have to do, which site is it on, what is the developer agreement so that we can make sure we get the money – all of that is in the next phase after this. Presumably if this legislation passes we then go back to Congressman Bass and say great we have stepped up to the plate, we are ready to do this. If there is a federal match then we will start looking for a developer who would do that, but we have the policy

agreement on the mechanism by which we will do this. I don't believe this commits us to doing anything in terms of selecting a site, empowering a TIF – we are not doing anything that says to a third party go off and spend money on this. We are doing something that causes the State to do a study that we believe it is time to do. We are doing something that causes the federal government to look at the rest of the money that we need in order to do that part of the project.

Beyond that we would then investigate what the details of the sites are and which ones are and are not appropriate and the mechanics and the economics of how we would do that. Given that I think the answer to all of those four questions is yes. I think we should go forward with this and pursue that option. I do agree that we need to be very vigilant about the mechanics of how that TIF gets created when it gets created.

Jackson Falls was a fairly small project in the overall scheme of things. If we made a mistake there we will pay for it, but it is not tremendous. This one if we make a mistake with it could have much more impact and we need to be very careful about it, but I think we need to move from here to the point where we are ready to make that investigation and determine if there is a way to do this.

Alderman Deane

Thank you for your detailed dialogue and explanation. I have issues associated with this Board where certain members of this Board are not kept apprised of what is going on. This is – you can take some of the smaller scale legislation and perhaps members of this Board if they want to play that game they can feel free to do so. I don't think this is a piece of legislation and/or project where that should go on. In fact I think it would be just downright wrong for anybody to allow that to happen because this is a very large investment that is being proposed to be made. I think that updating so that members of the Board understand this whereas the last project at Jackson Falls I can't go back on critiquing the presentation because quite frankly I don't remember all of it, but I did spend some time reading everything and I did understand what it was all about and I didn't support doing it. Once everything was put into place and the majority of this Board supported it then when it came time to support the TIF end of it people didn't want to do it I just sat back and said this is plain wrong. At this point you are committed to doing it because an investment has been made by the developers and the guys at the restaurant and everything – you can't drag them 2/3 of the way into a project and then turn around at the end and spit them out. We are trying to develop – bring businesses in here and that would just give us a black eye.

I had concerns with the site. I just want to make sure that we as a Board are updated on the progress of this. In the recent past, for example the Nashua Pride legislation, people knew about that last Friday and we don't find out about it until 4:00 p.m. Tuesday afternoon. I just think that the communication should be opened up and looked on and presented a little better amongst the Board especially on an issue like this. This has some serious financial implications. I believe you used some numbers – I think some tax numbers you had used out – what did you use 24 \$80,000 something?

Alderman McCarthy

I picked numbers out of the air that were in approximately the right order of magnitude just to show the

difference between the two approaches. There was no attempt there to get real tax numbers on that sheet.

Alderman Deane

When you are trying to understand about the residential end of that down there that is going to have a significant reduction in the taxes, which will take this bond payment and push it way out. Things of that nature we all have to understand. If that site has challenges and numbers change then everybody has to be – it has to be put out in layman terms so everybody understands this is no longer a 20 year bond it is a 40 year bond and this is the reason why so everybody knows. That is my only concern.

Alderman McCarthy

I couldn't agree with you more on the communication with the Board. I would like, if we go forward with this, to make sure that we are getting updates on a every other month or quarterly basis or whatever is appropriate as changes take place in the project. I think this committee may well be the appropriate forum to continue doing that. I understand your concern over that Alderman Deane. I will tell you that I think the issue with the Pride was an 11th hour issue, which through a comedy of errors became what looked to be a conspiracy, but in fact was fit the old maxim never attribute to malice which can adequately be explained through stupidity. It was just things did not fall into place in time – I heard that we needed to have a piece of legislation on Friday and was asked if I would sponsor it and I said yes.

Alderman Deane

Then to top it off Mike Atkins sent us an e-mail gives us Monday and the wrong date to go meet these people. It just doesn't stop.

Alderman McCarthy

I won't comment on that one. With regard to the mechanics of the TIF the sheet that I had handed out I actually did that about an hour before the meeting we had that night. The question had been asked previously about gee what happens if the tax revenues fall short. That afternoon I had posed the question to Mrs. Anderson about and our financial analyst happened to be here so I was able to talk to Cinder at the same time, and asked can we structure the bond in such a way that we can be flexible about it. There are some concerns there – that was simply a demonstration of yeah we ought to think about this, but that is what the next step is to go look at is there a way we can go do those things. In fact after further discussions what we would probably do is to structure the bond so that it looked like a longer bond than we were likely to prepay. There is a problem with saying the bond is open ended. It has to have a lifetime. The model that I showed you was a 20-year bond that might slip out to 22 years. The way you do that is to write it as a 25-year bond, which we could potentially pay in 20 years if we wanted to. Those are exactly the kinds of details that we need to get in place to understand the economics of the TIF and whether we can go about doing it that way.

Alderman Plamondon

I wanted to speak after Alderman McCarthy first talked about where we are at in the process. I want to say I agree with where we are at and what we need to be focusing on now. I also concur with Alderman Deane. This is a major project that we need to be educated on. I might even suggest maybe through Strategic Planning. Case in point, maybe a correction to one of the statements that Alderman McCarthy had made it is my understanding one of the other locations that we were looking at was the mall. Well that location wasn't technically at the mall it was in the parking lot of the mall, which is Tyngsboro, which at the state line would be MBTA. After the state line the MBTA ends there and becomes Gilford Corporation. There are so many variables. There are the environmental issues, it is the bond and the revenues, it is the strategy as to the best location and ramifications. To address a concern I have is if we as a city are going to be putting up this match and taking the risk albeit hopefully it is a secure risk to a TIF district, one concern I have is the location south of us utilizing the MBTA and the MBTA saying oh well we will add a station in Chelmsford and everywhere else where we are paying to upgrade the line. I have a real issue with that.

I think we need a strategy to know the partners we are dealing with and probably through Strategic Planning or this committee, but we really need to look at this project financially, environmentally, and strategically. Thank you.

Chairman Rootovich

Is there any further discussion?

Katherine Hersh

I don't know where the Board is at this point in time.

Chairman Rootovich

Is there a member of the committee that wishes to once again go out of the regular order of business and take R-04-134 from the table?

MOTION BY ALDERMAN VITALE TO GO OUT OF THE REGULAR ORDER OF BUSINESS TO TAKE FROM THE TABLE R-04-134
MOTION CARRIED

MOTION BY ALDERMAN VITALE TO TAKE FROM THE TABLE R-04-134
MOTION FAILED

COMMUNICATIONS

From: Bradley Whitney
Re: Ordinance O-04-19

MOTION BY ALDERMAN LAROSE TO ACCEPT AND PLACE ON FILE
MOTION CARRIED

From: Karen Berchtold, AICP, Planner II
Re: Ordinance O-04-50

MOTION BY ALDERMAN LAROSE TO ACCEPT AND PLACE ON FILE
MOTION CARRIED

UNFINISHED BUSINESS – RESOLUTIONS - None

UNFINISHED BUSINESS – ORDINANCES

O-04-19

Endorser: Alderman-at-Large Brian S. McCarthy
AMENDING THE PLANNING AND ZONING ORDINANCES OF THE
CITY OF NASHUA IN THEIR ENTIRETY

Discussion Topics Include: Article IV. Procedures. Division 1, Generally

Chairman Rootovich

I would ask the individuals that we normally have to please come up and we can continue our discussion this evening.

I must say Mr. Whitney that I have probably received more mail from you in the last week than I have from everybody combined.

Brad Whitney

I will take that as a compliment.

Chairman Rootovich

Take that as a compliment. Your passion for this is unsurpassed. This evening we will continue starting on page 220, Article IV, which is Procedures.

Chairman Rootovich

Is there anything with respect to Procedures?

Brad Whitney

I was just wondering if there had been any studies regarding time studies on the procedures of what the expected time consideration would be for anyone making an application regarding the cost of paying someone to come before the Board or through the procedures to get a permit – if there is any kind of a study for the economic impact of that.

Roger Houston

If I understand the question correctly there was an economic consultant that was hired as part of the Downtown Master Plan that was Stu Patts. He provided advice to the Downtown Master Plan Committee and to the Planning Board on the whole process. I think Mr. Whitney was part of that process at that point in time as well.

Brad Whitney

I don't recall that, but thank you.

Jay Minkarah

This is a very general comment that I think relates to a lot of the sections. On the whole the way this is organized is really the first 7 pages or so are dealing with kind of general requirements that are applied to all of the different types of procedures that we have whether it is land use permit, special exception, variance, site plan review. On the whole frankly I find it a little bit confusing. The way it is structured is that these requirements will apply unless there are different requirements that you find later in the document. Along with all the circumstances there are different requirements that basically contradict these procedures further on.

It is a little bit difficult I think for your typical user to get through. I think most people who are going to approach the document are going to approach it from the point of view of I need to apply for a variance what do I need to do, and in the way it is structured now you basically have to read the whole document to find that out. I think from a structural point of view it would be easier for the user if we structured it in the way people would typically use it – structure it by Zoning Board these are the procedures, these are the procedures for variances, etc. rather than in this way, which I think is more difficult for a user.

Chairman Rootovich

Are you suggesting that this particular section be re-written based on your comments about having separate sections one for zoning, one for planning?

Jay Minkarah

It wouldn't really be two sections. I think as we work through it we will find that we do have sub-sections in here for each of the different types of reviews and we have a section that starts off by saying generally these are how all procedures will be followed, but then once you go further you find that there are these sub-sections. I guess I would ask the consultant to look to organize in the entire section by the type of review sought.

Mark Fougere

Just a follow up to Jay's comments. I think we brought this up earlier in the year that a minimum because of that concern that we at least try to direct people to a specific section or page. If they are

referencing another area so that we could see at least where to go, but I concur with Mr. Minkarah's comments.

Bette Lasky

I have to make a suggestion that perhaps these could be scheduled on just when they can be taken up on their own, the ordinances, this is extremely late to start. I am not faulting you.

Chairman Rootovich

My sincerest apologies. You are absolutely correct. I made a determination – I looked at the agenda tonight before I came here, that from now on we will have any other discussion separate and anything that we have will be just that night. We have a night it will be just with respect to this. My apologies.

Bette Lasky

I would rather come on an alternate night for whatever and not have to sit here for two hours and then start to do this because it is a long day for all of us. At any rate, I totally agree with both of the gentlemen. What thought came to mind is that perhaps at the beginning of this particular section it could say sort of a very basic thing like if you want a building permit go to pages bla bla bla, and this is what you do and if you want whatever it is that you might want to direct people directly to it even if it changes the format somewhat of the whole document. I think in this particular case it would be – again a much more user-friendly document and it would be something that people could immediately turn to this section and find out what they had to do.

Roger Houston

I believe this section well obviously the consultant wrote this in the way it was described to the Land Use Advisory Committee and those who sat on it was this was they had done several numerous blind test studies of different people and how they understood the ordinances and this was one of the best ways to do it for that understanding. Certainly from as being Administrative Officer I can understand either the old one of this one it doesn't matter, but it does matter for that lay person or someone who wants to know how to do something to be able to do it. That is the purpose of this is to make it more user friendly. I can't argue with Mr. Minkarah's perspective on this, however, I think this is an area that the consultant should address in the matrix and explain to this committee why he chose this particular format for this.

Chairman Rootovich

Just so the committee knows Mr. Houston has also started the process. He has sent an e-mail to Mark White. I appreciate you copying me on that, and giving examples with respect to how the matrix should look. He does have all the minutes of the meetings and all the notes and all the different communications that were provided to the committee. That was sent to him so we should start having some results. I would assume is 4-8 weeks reasonable Roger?

Roger Houston

I am awaiting his response to that e-mail. I asked him to give us a time and a cost estimate of what it would take to prepare that. Obviously I suppose it depends to a certain extent we are on page 220 and there are another 100 or so pages left, however, a lot of those pages are Glossary and Appendix so I am not sure how long it will take us to go through those. I would like to see that happen yes.

Chairman Rootovich

At least to get the ball rolling he has been provided with those materials. We are one step closer.

Are there any further comments with respect to Article IV Procedures before we start going through the different categories? The points are very well taken. Division I – Generality – 16-401 and 16-402 – are there any comments? If I am going too fast please say something.

Roger Houston

In 16-402, under subsection B – pre-application conference, there was a question raised I know at the last Planning Board workshop whether or not pre-application conferences should be mandatory and I know that was an issue that I don't think was fully aired, but perhaps Mrs. Lasky could add to that -- this is permissive now and certainly I want to bring that point up. Another item I had in that section was under jurisdiction in subparagraph D-1A – Administrative Officer – he should have in here or his designee – shall review all applications. He needs to insert the words “or his designee”.

Chairman Rootovich

Is there anything else with respect to 16-401 and 16-402?

Roger Houston

If I may one other thing and I think I got my numbers mixed up here – under 16-402 subparagraph D bottom of the page item 3B – it says not later than 10 days after. State law and other agencies we all use now 30 days. That is an older provision. That should be 30 days. Just for clarification on that second sentence – it says shall determine in writing whether the application is complete. That I think the word in writing should be stricken. If it is complete we notify the applicant. If we had to take time out to write a letter that would take more time in receipt. Normally the way that works with engineers if it is complete we call them, they get on the agenda, and we move it very quickly.

Jay Minkarah

I think that we would have to look carefully at that although again according to my earlier comment I don't think we should have a general section and then sub-sections, but I think we would want to look carefully at all – this is not just applying to subdivisions it is applying to all types of applications that are applied for. I think that the 30 days to make a decision to whether or not the application is complete or not would not comply with the requirements that are by statute for some of those. We want to be careful about that. Also the form in which if the permit or application is denied I believe there are some that do in fact require written notification.

Chairman Rootovich

Are there any further comments? There being none we will move on to 16-403 – Notice Provisions – are there any questions or comments on this section? On to 16-404 – Public Hearing Procedures – are there any questions? Section 16-406 – Revocation of Permit or Approval – any questions?

Mike Lowe

There is a question on public hearing procedures, which came up tonight. Should a notification go out if the change in the zoning is taking place within the city itself?

Chairman Rootovich

Are you advocating that should be put in there in writing?

Mike Lowe

I think it really should be put in there in writing.

Jay Minkarah

With all due respect I would definitely disagree. The zoning changes could affect every single resident in the city and I think that would be every property owner in the city, every organization that does business in the city, and to attempt to notify everybody who may be affected by a zoning change I think is an undue burden. Zoning changes unlike specific site plan or subdivision applications, which affect a specific piece of property generally, are perceived to be something of general public benefit. I think that would again be an enormous burden to place on the municipality and would paralyze the zoning process.

Mike Lowe

I think we need to do something with a small area like we did tonight. We are only talking two city blocks.

Chairman Rootovich

Mr. Lowe if you wrote the change in there it would not specify the size of the area, but would be for all whether it is 4 acres or 450 acres. You can't distinguish between the size because in the law it is not allowed.

Mike Lowe

I still think we have to do something.

Chairman Rootovich

Any suggestions?

Mike Lowe

I think we can use the green card and we can specify if it is not a major change – what happens is you can get a thing that is 4 houses long and all of a sudden 4 houses the zoning is being changed and nobody around it knows it – nobody gets the information because none of the abutters are informed. You really don't want that.

Chairman Rootovich

It goes well beyond the abutters.

Mike Lowe

I just think that is one thing that really needs to be done. Maybe somebody else can come up with a suggestion.

Roger Houston

I wholeheartedly concur with Mr. Minkarah on this issue because the cost would be prohibitive number one. That would be a cost born by the Legislative branch so if it is a legislative action, any kind of rezoning, that would not be a Planning Board or Planning Department action that would be a legislative action so that would have to be something the legislative assistant would have to undertake. That would be a very, very heavy burden.

What tends to happen in this community and it is probably the most effective way of doing it, is the Telegraph has been especially good and others to take issues like this and write an article about them. They don't always fall on the front page, but they do get press and people do read them and respond to them. We get a lot of reactions on that even on site plans and subdivisions that we notice and we send letters to adjacent landowners and we sign post them. If it is a small area on a rezoning we can put signs out. If an applicant is in requesting a rezoning we have been known to do that and we certainly can. When we get into larger areas it is not practical.

Mike Lowe

I agree that it is not practical in larger areas. I agree that we can't do it when we are doing the whole city, but when you are doing a smaller area, and I don't know how to word it but I think it really needs to be in some way or other. There has to be a way of doing it. If you looked at I think it was something like the abutters are something like 14 people or we just put the notices out they would have noticed it. The green card if you put four of them out on the four corners of that area people would notice it. People living in the area would notice it and notice that there is something changing. That is all I am really saying we should be doing is the same as we do when we have a site plan. There is a green card out there and I get people knocking on my door what the green card is for.

Mark Fougere

In the past, this has come up and one thing I have done in the past is published a map of the area along with the ad for the rezoning. You don't have to be that specific just give people a general idea that you are talking about this section of Main Street or Elm Street or whatever the case may be. Obviously trying to notify a thousand people would be impossible. Maybe a map would help.

Brad Whitney

I notice on some legal situations you see notices in the paper three separate notices maybe a week apart and if this were a major change in the zoning, which is an important change, that could possibly be one way of giving three shots rather than just hope that the newspaper takes it upon themselves to write an article about it. I know you have a public notice or something, but that might give a little more presentation. Thank you.

Chairman Rootovich

Are there any further comments? We will ask the consultant to give us some suggestions Mr. Lowe.

Mike Lowe

Thank you.

Roger Houston

If I may I just noticed something here on page 225 under the table 403-1 Notice – it says signage. Currently we do it says non-applicable under subdivision flat and we do post signs for subdivisions currently so that should be ... if we also notice them on the Zoning Board we also put signage up for subdivisions and I believe waivers as well as a Zoning Board action.

Jay Minkarah

In that same table I think it should be 5 days for publication for variances consistent with equitable waiver, special exceptions – ZBA is 5 days not 10.

Where it says publication under column B the variance should be 5 days not 10.

Chairman Rootovich

Is there anything else? We are still discussing 16-404, 16-403, and 16-406.

Jay Minkarah

Perhaps in that sub-section, and again I don't want to be too picky, but under subsection under records, I don't know if the term administrative officer is really applicable to the Board of Aldermen and D under Board of Aldermen again I think that whole paragraph I don't think really contemplates the

kinds of things the Board of Aldermen act on, and I am not sure what applications are being approved or not or when an application to the Board of Alderman triggers a hearing. I think generally the Board of Aldermen is legislation that is introduced so I am not sure what this is getting at.

Roger Houston

My opinion on this section and it is basically – I am not sure it is really necessary. If it were to stay I would certainly say under records it says that I shall provide minutes, and to be written retained minutes I would like to put in there subject to funding by the Board of Aldermen. I can't do it personally without – on a side I think most of this information is covered by the Aldermen in their By-Laws and the Planning Board By –Laws, not by ordinance, but by your own by-laws and Mason's rules and Robert's Rules and it is probably unnecessary to be in this ordinance.

Chairman Rootovich

I am not familiar with it being in Mason's Rules. It may be in Robert's Rules, but... is there any further discussion?

Jay Minkarah

Being extremely picky, but under Conduct of Hearing under Sub-section II going down to the third line from the top – when you appear on behalf of an organization you are required to state the mailing address of the organization – I think that should go. I think those people wouldn't know off the top of their heads the mailing address of the organization they are representing. It could be in Washington, DC.

Bette Lasky

I am going to be picky in that I agree with Mr. Houston I think this whole section can be scrapped. It is in the respective organizations a request by laws and a notice is given and it is announced before each Planning Board meeting a lot of this. I don't know that it needs to be in the ordinance.

Chairman Rootovich

Are there any further comments?

Bette Lasky

It will narrow this down Mr. Chairman by about half a page. I think that is very good when that happens.

Mike Lowe

I was just going to say that maybe you should put in there as per Robert's or Mason's Rules of Order. Then you can trash the whole thing and you have done it. The Board runs under Mason's and the Planning and Zoning Boards as far as I know run under Robert's.

Chairman Rootovich

That is correct.

Alderman McCarthy

Other boards generally adopt Robert's or at least use them by inference.

Mike Lowe

Thank you.

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Roger Houston

Section 16-406 – Revocation of Permits or Approval – I am not sure why this is in italics. This is verbatim with State law. The city has used this provision in the past. I am not sure why we don't just make it a part of the ordinance or reference the State law or just repeat it verbatim. The italics means that it is not a part of the ordinance, but it is State law and it is procedure that the city would want to use if we get into that situation where we have to go out to that particular developer if the bond expires or another situation like happened last time when the FDIC closed several banks and had the security evaporated and the Planning Board had to consider revoking certain approvals.

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Chairman Rootovich

Further comments? Moving ahead to Division II – Administrative Procedures – 16-420 – Land Use Permit, page 228. Are there any comments?

Roger Houston

Under the first section under A, the last sentence under 1 – weekly the Administrative Officer shall publish the list of approved permits granted in the proceeding 7 days – I know that is to my knowledge has never been done. I have not seen any records of that happening. While it may be in the existing code, it is – I know of no State law that requires that, and it is probably not necessary.

Alderman McCarthy

Apparently nobody has ever asked to see the list either.

Roger Houston

There is certainly no budget to do that either so that might be another thing you might want to consider. I guess if it is the intent to keep this we would have to add that into the budget. This is certainly a cost. I assume this is published in the newspaper. It doesn't really state that.

Chairman Rootovich

It could be published on a piece of paper down in the foyer too.

Roger Houston

That is the way it is generally interpreted as building permit files, but I really don't think that sentence is needed. The sentence before that – in a plot plan, we usually don't refer to any plots. It is usually a term that we refer to in a cemetery that ... just made in a plan or a map or something is fine. I am not sure we even need sub-paragraph 2 or 3. I really don't think they are necessary. That is done internally anyway.

Chairman Rootovich

So you want to take out 2 and 3.

Roger Houston

Correct.

Chairman Rootovich

Is there anything further Mr. Houston?

Roger Houston

Under Initiation, sub-paragraph B half way down it says "such plats" probably infers to subdivision plats and that is not always the case with administrative filings. I would just substitute the word plan instead of plat. That is some carryover language from the old ordinance.

Chairman Rootovich

Is there anything else?

Roger Houston

There is no E under that section and somehow ...

Chairman Rootovich

Maybe we should just put the letter E and substitute the rest with the letters on the way down. Eliminate I.

Anything else Mr. Houston with respect to that section?

Jay Minkarah

I think Roger's suggestion helps substantially. Going back to Applicability I think it is a very confusing section in the way it is worded. I would probably go a little further and in the elimination process Roger suggested eliminating subparagraphs 2 and 3, and I believe the last sentence in 1. I would probably eliminate the two sentences that come before it.

The scope of what is being talked about there I think is just very very ambiguous. Addition to the layman being confused, and again I agree with the eliminations, I think we may want to ask the consultant to expand on this. The reason I say that is that ... tape flipped ... there seems to be significant concern about when somebody will be required to apply for a permit. Some people are under the impression, which I believe is a mistaken impression that any time the occupancy changes in a building they will be required to come in for a new permit. I don't believe that is our intent, but because that is the perception I have heard from a number of people I think that we want to make sure that this section is very clear on exactly what activities require you to come in for a new occupancy permit or not. Moving again to Initiation under D, and I could have missed something here, but it starts off by saying "and administer this permit", and I am not sure that is a term that we have used yet so I am not quite sure what an administrative permit is. Then we go on "such permit application procedure". The next line we get into the building code, which I think can get kind of confusing when we talk about flats. I am not sure what the scope of this is or the terminology is or what the intent is, but again I would ask the consultant to maybe look at this section and clarify what we are talking about in this section, what exactly are the types of permits or approval this is applying to.

Mr. Kane

I don't know if this is the appropriate time, but since listening to discussion it seems maybe it is. One of the goals of this re-write apparently was to try and simplify and make more user friendly this code and ordinance. I think in all honestly that was a sincere attempt, but as a person who has been on both sides of this fence both as a planner and a developer, this code is one of the most difficult codes to administer or to review. I think the reason is because you try to in each section cover land use, zoning, subdivision regulations, site plan regulations, building permits – if I go into a community, which I frequently do, and say I am proposing a subdivision can you get me your subdivision regulations? Right now in Nashua those subdivision regulations probably entail about 40 pages. If I say what are your sit plan regulations there may be another 30-40 pages. Now when I come into Nashua if this code gets adopted I will be given a book that says here is 400 pages read all of them and somewhere in there you will find all the rules and regulations.

It really – it is a comment that I make, but it is a comment frequently here being made about the proposed land use code, I think when this process started there was some thought of maybe trying to index or reference when you are talking about a particular area under subdivision regulations you might want to look under the site plan regulations for landscaping or what have you, but this has become so complex and so difficult I feel some sympathy for Roger and his staff in having to try and administer this because it can become very wieldy and I think unworkable. I know this is a terrible time to be talking about this because there has been a lot of time and effort put into it and I think the intentions were excellent, but I think the results don't live up to the expectations or to the original plan. Thank you.

Alderman McCarthy

I guess I would have to respectfully disagree. Looking at the way this document is organized and the way the current Chapter 16 is organized what we did primarily on advise from users was to split out the submittal requirements and the technical requirements of the plans from the review criteria. In fact, two easily identifiable sections of this code now constitute the site plan regulations and two easily identifiable sections of this code now constitute the subdivision regulations. Within those the chapter headings are not terribly different from what is in the existing Chapter 16 other than they are sequential sections in Chapter 16. They are also sequential in Chapter 16 with how the Planning Board is constituted, how vacancies are filled, and a host of other things like how we will vacancies on the Industrial Development Authority and this Historic District Commission that frankly someone who is interested in the zoning code doesn't want to bother to read. With the index that is in it the organizational of the code the way it is presented I think makes it much easier to deal with in fact than the current Chapter 16, which you basically have to thumb through page by page anyway to find those regulations.

Brad Whitney

I don't know if things have changed since we first started working on this proposed land use code, but at the beginning we were told if we wanted to present any comments we were to give the page and the item number so that the board could find what we were talking about because it was so complex. I don't know if that is still in force or not, but if anybody comes up with a question I am wondering how fast anybody can find the answer. I find it very confusing to me, but I am not an expert. I do know that if I wanted to find out what was entailed in making a change of a use I would have a big problem. I would have to come to City Hall to get an explanation because I couldn't figure it out. Thank you.

Roger Houston

They do that with existing code. My professional opinion is that no zoning ordinance, land use code whatever you want to call it is – it depends on what you are used to. Certainly the old format works very well, the new format is what many cities are going to today, and as the consultant on numerous occasions told to the land use advisory committee is that they actually do blind tests as far as getting citizens to read these things and what do you and don't you comprehend. That is something that maybe perhaps the land use consultant can address to this committee if that is a concern. Maybe that is an area that you would like to hear from him on.

Chairman Rootovich

Mr. Kane have you ever seen the one that they have in Portsmouth, NH?

Mr. Kane

Yes I have.

Chairman Rootovich

What do you think of that one?

Mr. Kane

It works.

Chairman Rootovich

You don't find it complex and hard to understand?

Mr. Kane

I don't think it is as complex and hard to understand. I feel a lot of communities not just in New Hampshire, but also Massachusetts and Connecticut – if this is the trend that everyone is going to I haven't seen it. Your reference to Portsmouth is probably the closest to it, but they still have sections that really talk about here are the subdivision regulations ...

Chairman Rootovich

I only mention that because I need – I have a business in Portsmouth, and I found that to be very complex. The amount of steps you have to take up there to get something done you talk about madness. There is three steps before you get to the Planning Board.

Mr. Kane

They have a different system where they use a technical review committee, which really does the bulk of the work and the reviews and presents a report back to the various agencies.

I had just gone through a rezoning process that required three official hearings before City Council so I – I am not sure that is necessarily the model you want to use of what you are trying to achieve.

Chairman Rootovich

Portsmouth is considered an entire historic district anyway.

Mr. Kane

I recognize change is always difficult and fortunately I am an old fart and in a few more years I won't be worrying about this, but I just tell you it is very confusing. If I go into a community and I am doing a subdivision I don't really need to know all the zoning regulations I need to know what the subdivision regulations are and what the and what the minimum lot size and frontage is and that is really about what I get into. Hey if this is what the city wants to do certainly your codes and ordinances and you have a right to do whatever you feel is appropriate. I am just saying that as a person who has to use these I find this hard to grasp. It is just so immense. You don't know – there are so many different sections all the way through that relate sometimes to subdivision and sometimes to site plans, sometimes to zoning – it is just hard to know what section you are in and where you have to look.

Again I know this committee has spent a lot of time and effort trying to get through this process. It is probably too late to make the change, but I thought it was appropriate to make those comments.

Alderman McCarthy

Can I ask a question through the Chair of Mr. Kane?

Chairman Rootovich

Please.

Alderman McCarthy

What is the situation where you would undertake subdividing land without understanding what you are going to build on the subdivided parcels and how that relates to the zoning code?

Mr. Kane

If I was going into a community and let's assume I wanted to do a six lot subdivision really the issues I need to know other than the subdivision regulations would be what is the minimum lot size, what is the minimum lot frontage, what is the minimum lot depth, and that really pretty much allows me to do a subdivision plan. Now when I want to do a site plan it is obviously more detailed regulations involved, but a lot line relocation – you were thinking a subdivision necessarily is creating a lot. In a lot of cases it may be just relocating lot lines. It may have little impact on zoning.

Alderman McCarthy

Part of the reason for that if I go back and look at the changes we have made to subdivision site plan regulations based on the tremendous number of variances that we were forced to give out to add garages onto properties where the building was not situated in such a way that it could be added on to. We added a provision to the subdivision plan criteria where for example residential subdivisions had to show the building envelope on the plan so that we can understand whether the lots that were being proposed and the structures that would eventually be built on them will fit in the building envelope and any anticipated reasonable addition to those structures would not require any variances. That is just a matter of good zoning policy on our part. We don't want to have a zoning policy that is torn apart by giving out a variance on every other property in the neighborhood. It is not good for the process and it is not fair to the landowners who buy thinking that the zoning is one thing.

I bring that up as an example because it simply points out that the problem that we are dealing with now in an almost built out community is significantly more difficult than it is on a blank sheet of paper, and as a result we have had to add a lot of things to the subdivision criteria and yeah I honestly believe that in most cases you need to understand the zoning code before you do a subdivision. Lot line relocations are different and in fact we make different provisions for them. We don't require for example that you post the subdivision notice signs if all that is being done is a lot line relocation. We have a much easier process for a lot of those things. I suggest to offhand say we can just compartmentalize this into this and this there is a lot of overlap between those.

We are looking at land use in a holistic planning sort of way and all three of the things that we normally do; subdivisions, site plans, and building permits and zoning checks are very closely related.

Mr. Kane

I understand your comment about setbacks and – typically the first thing I look at is the tables dimensional regulations for a community, which pretty much summarizes all of the major issues you have to worry about, but you are already selling a consolidated book of land use codes. Right now I have it back here the yellow book has pages for your site plan, your subdivision, and your zoning ordinance so why buy the regulations from the community? I get all three. I don't have a problem with that. I think it is very good. It is a good process and I am not arguing about that I am arguing about – discussing sorry – trying to segregate the site plan regulations in one location, the subdivision regulations in another and the zoning – not that they are not all in the same book, but if the basic thing I am interested in is a site plan I don't need to know about your watershed regulations necessarily or the flood plane if I know I am up in the middle of Crown Hill on the top of a hill. They are there if I need them, but it is just easier to work the regulations when I can look and say here is the zoning, basic zoning they are all in one book in one section, here are the subdivision, and here are the site plans. That is not as easily found I don't believe in this current draft. That is all. I think we can debate this forever. It has gone on longer than I wanted it to.

Chairman Rootovich

It has gone on enough and we need to get back. I appreciate your comments though very much.

Jay Minkarah

I was hoping to accomplish the same thing, but I guess I would just say that broader issues aside, I don't think it is an issue of the consultant's method or the current method or any method. It is whether or not the procedural section that we have before us is reasonably clear and functions in the way that we need it to do. I think as we have gone through this section this evening we have identified areas where we think we can eliminate sections, we have identified areas where we need to clarify or change wording. I am confident by the time we complete this process we will have a section I think most of us can reach an consensus on that it does meet our needs.

Chairman Rootovich

Seeing all of the aforementioned dialogue, is there anything further on 16-420? We will continue.

Jay Minkarah

Under sub-section G, H – Scope of Approval – Authorization of Permit – such permit shall be null and void after one-year bla bla bla – I think we need “if not acted on”.

Chairman Rootovich

What are you talking about again?

Jay Minkarah

Sub-section H on page 229, top of the page, scope of approval – it says your permit is null and void within a year of approval. I think we need it is null and void from one year of approval if you haven't acted on it. Under subsection I- Recording Procedures, copy of the application may be retained. We actually have a series of records retention laws under statute, and certainly this section should reference those, which differ for the different types of applications – many of which would be actually retained through the City Clerk.

Alderman McCarthy

I actually want to go back to Section H. That is an interesting – we have seen both sides of this problem where somebody doesn't – under the current draft I think we interpret that it is not finished within a year the building permit becomes null and void and that is as bad as the opposite, which is

Chairman McCarthy

Some individuals would say no.

Alderman McCarthy

Do we not – I am not sure I understand – we currently think that if you build it, because the other one we see is somebody does a tiny amount of work on a plan that they have no intention of building right now on the last day of the year and then does a little more work just to keep the permit alive. I think we have to figure out a way to make that a reasonable provision. If you don't get the building or if it takes longer than a year that shouldn't be an issue, if you are not really building it after a year you ought to lose the authorization to build it.

Bette Lasky

Is that something that generally happens a lot? I don't know that it does that someone would just start a project to keep within that year limit and then not finish it. I don't know that is a problem that we need to address.

Alderman McCarthy

I have seen it at least once on a plan that subsequently came before the Planning Board. I don't want to mention which one it is now.

Bette Lasky

Is it something you felt that if it warrants that you would legislate? To fix a problem that isn't really a problem.

Alderman McCarthy

We do it all the time.

Bette Lasky

No comment.

Mike Lowe

This is a change from what we currently do. If it hasn't been started within one year then it comes back to the board. I think something has to be done, but I think maybe it should say it has to be started within one year and finished within 3 years or it has to come back to the board. I think that is what you need to do.

Roger Houston

I need to elaborate on this one because what I understand – this is after they go through the site plan process they have one year to pull a building permit and a land use permit. They don't necessarily have to pull them in that order, but what this says is if they haven't started work generally speaking the way that has been interpreted within one year after they pull their land use and building permit then the approval is null and void. They have a year to start. Likewise after a variance is granted they have a year to act on that whether coming into the Planning Board or pulling a building permit or land use permit depending on what they are doing. Usually it is both.

Mike Lowe

I agree with what Roger is saying, but I think somewhere we have to say in there if you just pull a permit and put a shovel in the ground and then it is started. You have to have a stop date too. If they don't do anything for the next five years – maybe it should say you have one year to start and three years to completion from the time you pull the permit.

Roger Houston

I think some of the areas where I see some concerns it is primarily with commercial type properties. It is very seldom that happens, but that is maybe something that if that is a concern that a phasing plan or a bond or some requirement by the Planning Board when that site plan is approved could maybe handle that issue if there is a concern about how quickly a project is actually constructed. I think that can be a concern for the neighbors or abutting property owners when you have a project that seems like it is going on forever and creating problems. It should be started and finished in a speedy fashion.

Brad Whitney

If I recall some of the building permits ran up to as high as \$3,000 for a house. I don't know what expense the person would have gone to, but in that kind of an area or several hundred dollars for a permit – I understand where the board is coming from and the concern if they don't complete it within

a year. I also think that perhaps the board could have the party come forward with a documented or valid reason and ask for an extension. Some of those reasons might be illness or loss of financing – something of that nature. They could ask for an extension for a reasonable length of time and that would give everybody a chance to be more reasonable. Thank you.

Jay Minkarah

I think if you look at the subsection that we are under, we are under right now land use permit. We are not under building permit so this subsection only applies to the land use permit. I think we find that building permits have their own expiration periods and their own consequences for failing to act on those permits. It is dealt with separately. Within the context of the land use permit it simply is a matter of have you done whatever is necessary to act on that keeping in mind that could be a variety of things that may not involve a building permit. That said, I think that even there we have other protections that could protect against some of the consequences you are talking about – whatever that evil is that we are concerned about. For example, even if you received your land use permit and whether or not your land use permit is expired if you have not completed the work, the zoning changes, regulation changes – you are not immunized from that because there is a statutory 4-year exemption. There is also other vesting issues out there. There are a number of ways to deal with it.

We could certainly expand the scope of this little subsection to address all of those possibilities. I am not sure we need to, but we certainly could ask the consultant to do that. I think we would probably wind up with a fairly substantial section.

Mr. Kane

This actually came up once. Your building code has a requirement that once you start construction if you stop construction for a period of more than 6 months your permit automatically lapses. There has to be substantial activity going on. If you can document that there hasn't been activity going on and inspections have not been going on over a six month period I believe under your building codes they lapse. I would not suggest a one-year permit for that time particularly for commercial buildings because a lot of the commercial buildings you just don't complete them in 12 months particularly more the larger projects like the Sheraton Tara Hotel. It is a fairly lengthy process.

I think if you really look through all of the various existing codes there are – Roger is correct in you have a year to secure a building permit after you get a variance, you have a year once you have your site plan to start construction, and if you abandon construction for 6 months your permit lapses.

I think the problem is the way this wording is written it is confusing. It seems to eliminate all of these other provisions, which are in affect. It probably just needs some re-write.

Roger Houston

Mr. Kane is absolutely correct about the building permit process. That provision though in terms of activity I understand is hard to please and usually it takes them a year before they actually pull the permit and they can come back in. That is covered under the following section, 16-421, and those two processes work hand in hand. I have seen them work most of the times. They don't in unusual cases.

Mr. Kane

Neil Barrett just reminded me that there have been a couple of recent court decisions in New Hampshire relative to this very issue that we might want to look at that may also shed some light on this provision.

Chairman Rootovich

Is there any further discussion? On to Section 16-422 – Certificate and Use of Occupancy – any questions?

Jay Minkarah

To repeat a couple of earlier comments, under subsection B – Change of Use, because of the concern I think that has been expressed in the community I think defining what we mean by change of use would be helpful so that it is clear to people that we don't simply mean change of occupancy. Under subsection C again the same comment about reporting I think we should reference the applicable statutes.

Roger Houston

Subsection A, number 2 – Decision – it says Administrative Officers shall take action within 7 days after written notification to let you know it has been completed – normally we have under State law 30 days to review that – normally it happens very quickly if everything is in order. The 7 days I am not sure where that number came from. I think that is in existing code, and there again that is something that doesn't match reality sometimes.

Chairman Rootovich

Does that also relate to section B3?

Roger Houston

Yes it is.

Jay Minkarah

I would just request that we verify whether it is in fact clear. I am not sure that it is. I know it is when you make an application, but in this case this is after the structure has been completed. I am not sure that the 30-day time period applies. I would request that we have that clarified.

Chairman Rootovich

Am I to assume that you are taking this homework assignment on?

Jay Minkarah

I can do that sure.

Roger Houston

I just want to add there have been a number of times where we have been told it is complete, we go out to the site, and it is not complete. It does take a little longer and it is required to notice so that we can have the manpower to send someone out in the field to check something. We try to do that in a very quick fashion, but to be constrained by this kind of arbitrary 7 days I don't think the statutes require that. I did look in the RSAs and couldn't find any reference to that.

Chairman Rootovich

Is there anything else with 422? Moving on to 16-423 – Minor Site Plan Amendments – any questions?

Roger Houston

I wasn't sure whether we were going to get to this one. This section is not one where the committee spent a lot of time on because we were running – because of the process and the way it went the last time. This is an area that I was going to ask for some changes to the existing code, which I felt – we did spend quite a bit of time on in working that out, and we almost submitted those to the Board of Aldermen for approval because we don't know how long it will take to get this process through. We have had a number of issues that have arisen with this provision. If I may I would like to pass that out if I could and then speak to that.

This section pretty much contains every issue that we could think of in terms of making the section better from every respect. One of the issues we have had is with existing properties that don't have the benefit of a site plan, but someone wants to do an addition onto that – something very minor, and they don't want to go through the whole site plan process. In some cases, we have actually under existing codes and this legitimizing what we have been doing in many ways is we consider as built sites and take as built surveys and site plans and consider those as as built site plans with the uses that were on those previously, historically, and then allow the minor addition or whatever needed to occur.

There are a number of other issues relative to this section as well. As built section, the issue with – I have highlighted in bold any changes on this sheet and I could send this on to the consultant if that is the committee's desire. I am just going to go through each of these. The major amendments obviously would go through the normal process – the site plan review. Under #2 minor amendments – we have inserted as built site plans including overlay districts. There was a lot of concern that overlay districts would not be covered because of the reference in that division in the existing code. We recommended that be included in there so we could include those as part of that mix.

Then also for the purposes of this section a minor amendment by definition is administrative decision and does not constitute a site plan. The clarification to that obviously Planning Board instead of

NCPB. One of the issues that we have grappled with and the 10% rule. We have had a number of cases where something is maybe just slightly over 10% or there have been issues and I remember this one clearly and this is something that obviously as Administrative Officer I would never approve administratively, but Filene's was less than 10% at the Pheasant Lane Mall. There was no way that we were going to approve that administratively. We just sent that straight to Planning Board. There are issues like that which require obviously common sense that even though it is a part of a larger building it is a very significant size and would require public input and review by the Planning Board. In those cases just about every case the minor amendment process is intended to deal with the small insignificant things that did not require abutter participation – if there is a question we all can ask the applicant or the developer or the owner to get us a letter from the neighbors saying that they had no interest in this. We have done that on a few occasions too if we feel that there might be abutter concern and we don't know whether there will be.

Other issues the landscaping – that issue with 10% doesn't relate – it is hard to calculate a 10% number on landscaping. That requires more of judgment and I think discretion as to whether or not this tree is going to be substituted with this tree in the plan because it is not available or the applicant feels he can get a better quality tree. I think some of those issues can be handled administratively and don't necessarily need to follow the 10% rule.

Alderman McCarthy

That actually brings up an interesting question about interpretation of the 10% rule. In sites like the mall it is my understanding of the mall was that it is a common site plan, but there are actually multiple lots involved. Is that correct? Some of the anchor stores are in fact on separate lots of record.

Roger Houston

That is correct with zero lot lines between the buildings. It is all one building and it has multiple lots.

Alderman McCarthy

When we have those do we apply the 10% rule to the overall site plan or to the lot on which the change or changes are taking place?

Roger Houston

Usually it would be with the site plan. There again that is an area where you would exercise judgment. In that case the 10% obviously would not apply to the single new building that is being attached to a large mall. It didn't make sense to do it that way. When there is a doubt and that is why under 2 it says very clearly here that it will be forwarded to the Planning Board if there is any question as to whether or not there needs to be abutter input or not.

Alderman McCarthy

I guess that also brings up another question that is related. I was just reminded of an issue with remember the issue we had with I think it was Webster Square, which has what 15 owners and some

number of lots on a single site plan, and we had an issue with just getting the plan amended basically to reflect the as built condition of one of the buildings that had been that way for some number of years. Is there something we need to do to make those kinds of things easier in these sections? Remember the issue I was talking about?

Roger Houston

Webster Square if I recall has maybe 2 or 3 lots that are associated with it, but it is one site plan.

Alderman McCarthy

The issue I remember was the building where Settings now is the previous building was there did not actually match what was on the site plan and there was some tremendous notation about getting approval from the various owners that were involved in the site plan so that they could get the site plan amended to reflect what was actually on the ground. It seems to me that is something that ought to be covered by the administrative section.

Roger Houston

That particular building was not a part of actually Daniel Webster Square. That was the issue with that one. That was on a separate lot of record and that building was separate. What they proposed there was a complete change and addition to the second level from the previous – there was a major re-expansion and changes.

Alderman McCarthy

I think what I am remembering is prior to when they changed the second floor.

Roger Houston

There was a billiards parlor or something like that on the second floor at one time. I don't really recall any major issues with that one. I think we felt that one needed to go. I think that one did go to the Planning Board, and there were some issues – I don't recall the circumstances of that.

Alderman McCarthy

Okay.

Jay Minkarah

Roger I think may still be going through it, but if not I just wanted to comment that I think that Roger's draft really goes a long way to clarify and simplify the procedures that we have in place for these minor site plan amendments. I think it represents a significant improvement to the draft.

Brad Whitney

A question for Roger – your handout says Section 16-169 and I thought we were discussing 16-423. Am I missing something?

Roger Houston

Not really. This is what we are saying should be the new 16-423. This is existing code language. This would be a replacement of that ...Currently today 16-423 is 16-169. We are proposing that this language be inserted in place of 16-423 or something very similar to this language.

Brad Whitney

It appears to be a very good replacement.

Roger Houston

Thank you. Do you wish for me to continue with the explanation?

Chairman Rootovich

Please.

Roger Houston

I will just go down to B – it says here the Planning Director may require revised site plan or as built plan. In some cases it may not be necessary if we have a plan on record. If we are showing a little bump out or a little improvement in the back or a change in the note of the plan we don't need to have it redrawn formally. One of the biggest complaints we have gotten especially from a small business, which usually this applies to because it is a site plan, is the cost of going in and having a plan re-engineered or re-surveyed just for a small addition or some small change to a note in the plan that may not be necessary. This gives us the discretion. Right now we don't have that discretion and that can be a burden in certain circumstances. This gives us the flexibility to deal with that situation.

Under Subsection C, we ran into a problem with the one-year – previously it was 12 months and many whether they are construction trailers or temporary structures on a lot for whatever reason that 24 months is a more adequate time for that so we don't have to renew it. That made more sense to everyone involved.

The biggest change is under paragraph D – currently we can't modify a minor change in use that really doesn't – I will just read this section – “Changes in uses depicted and permitted on the approved site plan or approved as built plan, may be approved by the Planning Director provided it is a permitted use within the zoning district or where a special exception or use variance is granted by the Zoning Board of Adjustment.” In essence, that allows uses to be changed administratively provided it is permitted under the zoning district and it is – this is an issue that has been really the potential is to go in and change a note on a site plan for uses permitted under the zoning district, but doesn't have any impact on – we have taken a few votes to the Planning Board and then they say why are we seeing this and I say well we have to take it to you because the ordinance says we have to do this.

This past section should deal with that issue. That is all I have on that.

Chairman Rootovich

Are there any questions for Mr. Houston? Roger you will send this to the consultant as well.

Roger Houston

The only other issue and I think that we have left it at 10%, but I have heard some people say it should be 15% or 20%. I don't know where that magic number should be. I have had some come in at 10.2%.

Chairman Rootovich

This is probably one of those sections that when it goes back to the full Board of Aldermen we will have hours of discussion on it. Thank you Roger.

Is it the committee's desire to continue to Division III? Does anybody wish to finish it this evening and get it all done?

Brad Whitney

I think that you should consider having not concluding this tonight because there is no Director of the Chamber of Commerce – he is out of the city or the state. There are a number of public individuals who could not get here and they might want to ...

Chairman Rootovich

I don't want to interrupt you, but we are not done here. This will continue. I hope you don't think we are ending this tonight.

Brad Whitney

Oh I thought that is what you were ...

Chairman Rootovich

We still have 130 pages to go Mr. Whitney.

Brad Whitney

Thank you.

Chairman Rootovich

Is there any discussion? Again I don't think there is anything on the agenda for the next meeting

except the continuation of this, but if there is I will move it. The next meeting will continue with nothing but this.

Alderman McCarthy

I would actually like to understand back on an issue a few hours ago what additional information the committee would like regarding the commuter rail resolution.

Chairman Rootovich

I can't speak for my two colleagues, but I will give you my perception. I feel a little bit more comfortable with the site knowing what that site is, and I would like to hear from Congressman Bass whether he feels comfortable enough that he will be able to get that \$56 million in a reasonable amount of time. Those are the two things I am looking for. If I have those two things I am pretty sure that I will support it at that time. I won't speak for my two colleagues.

Alderman Shaw

I agree with you. I think that I would certainly like to know the site.

Alderman Vitale

I would also.

Chairman Rootovich

I think that would play a role in our comfortable level knowing that we would be able to get all three with respect to residential, commercial, and office space. I think that will play a role in it I really do.

Alderman McCarthy

I guess I go back to the same issue of I am not sure we need to understand the site now we need to predicate the decision based on we will only go forward if the site exists for which the balance of those components makes sense in terms of the tax valuation. I don't know that we have the ability to get a lot of commitment on the site at this time.

Chairman Rootovich

I guess if we get 1 or 2 sites even something more than just an open it will be in so and so quadrant.

Brad Whitney

Regarding the site for the railroad station has anybody looked at the abandoned W.R. Grace – it is right on the railroad track.

Chairman Rootovich

That is what this whole discussion has been about for some time now.

Brad Whitney

The one on Burke Street what is that planned for?

Chairman Rootovich

That is not part of the resolution Mr. Whitney. Is there any further discussion?

NEW BUSINESS – RESOLUTIONS - None

NEW BUSINESS – ORDINANCES - None

HELD IN COMMITTEE

R-04-134

Endorsers: Mayor Bernard A. Streeter
Alderman-at-Large Brian S. McCarthy
Alderman David MacLaughlin
Alderman-at-Large James R. Tollner
Alderman Kathryn D. Vitale
Alderman Lori Cardin
Alderman Marc W. Plamondon
Alderman-at-Large David Rootovich

CONTINUING SUPPORT FOR COMMUTER RAIL AND SUPPORT FOR TRANSIT
ORIENTED DEVELOPMENT AT AN APPROPRIATE TRAIN STATION LOCATION
IN
SOUTH NASHUA

DISCUSSION

ADJOURNMENT

MOTION BY ALDERMAN LAROSE TO ADJOURN
MOTION CARRIED

The meeting was declared adjourned at 10:00 p.m.

Alderman Kathryn D. Vitale
Committee Clerk