

**CITY OF SOUTH PORTLAND**

**Name of Body:**  
**Minutes for Meeting of:**  
**Meeting Begins:**  
**Meeting Location:**

**Planning Board**  
**Febrary 12, 2018**  
**7:00 p.m.**  
**Council Chambers, City Hall**

**MINUTES**

**Members Present**

Kevin Carr, Chairperson  
Leslie Dillon  
Linda Boudreau  
Mary DeRose  
William Laidley

**Staff Present**

Tex Haeuser, Planning & Develop. Director  
Sally Daggett, Corporation Counsel

**Absent**

District 2 vacant  
Steve Puleo, Community Planner  
Katherine Gatti

**Pledge of Allegiance**

Chairperson Carr opened the meeting at 7:00 p.m. and welcomed all in attendance. He reviewed the meeting agenda and reminded the audience and Board of policies regarding a Planning Board Meeting and Public Hearings. He read into the record Planning Board Regulation #5, standard condition of approval: This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. No project, plan or development previously approved by the Planning Board may be altered or modified without securing prior approval of the Planning Board in the form of an amended approval; provided however, that, if at any time it becomes necessary or desirable to make modifications to the project, plan or development, the Planning Director may approve modifications determined by the Planning Director to be de minimis in that they (i) do not amount to a waiver or substantial alteration of any condition or requirement set by the Planning Board; (ii) do not affect any approval standard; (iii) meet all applicable ordinances and laws; (iv) are reviewed and approved by all appropriate City staff and consultants; and (v) do not involve any changes to lot lines. De minimis changes include only the modifications listed in Section 24-27 of the Subdivision Ordinance and Section 27-140 of the Zoning Ordinance.

**Item #1. Approval of the January 23, 2018, Planning Board minutes**

**L. Boudreau motioned to approve the January 23, 2018, Planning Board minutes. W. Laidley seconded; (5-0) (K. Gatti absent, District 2 vacant).**

**Item #2. Consent Calendar**

No items

**Item #3. PUBLIC HEARING – Non-Conforming Lot of Record – Single-Family Residence – 44 Bonnybank Terrace Loring Builders, LLC– FINDINGS**

Loring Builders, LLC is requesting a site plan approval to develop a non-conforming residential lot of record. The applicant is proposing to construct a three bedroom, 1,428 SF one-story detached single-family home with an attached garage. The parcel is 6,577 SF in size with 65 feet of street frontage. Public utilities are available in the Bonnybank Terrace ROW. The applicant is proposing a 23' tall home with a small front porch. Stormwater will be directed away from the structure to vegetated drainage swales to a catch basin connected to the MS4 in Bonnybank Terrace ROW. The property is further

identified as Assessor's Map 8, Lot 23, located within the Residential A District and Stanwood Park Neighborhood.

Public hearing notices were mailed on February 2, 2018, to 110 property owners within 500 feet and the applicant and sent by email to the Conservation Commission, Planning Board, and City Council.

**T. Haeuser** introduced the item and showed the location on the map. He showed the lot from street view. The applicant is proposing a 23' tall home with a small front porch. The proposed new home will be connected to the sanitary sewer via a four-inch main to the City-owned sanitary sewer main located in the Bonnybank Terrace Right-of-Way. The proposed development is located in the City's separated sewer and storm drain system. The proposed single-family home will have a four-inch foundation drain connected to a field inlet basin with a beehive grate. The field inlet will then be connected via an eight-inch storm drain to the City's MS4. The proposed grading contours will be constructed to provide positive drainage away from the building and driveway to vegetated swales along both sides of the home to direct the runoff to a proposed field basin at the front of the lot.

The applicant has kept the front yard setback in line with other homes, along with width of structure and direction of the ridgeline. Height is consistent with other homes in the neighborhood, although there was an initial comment from the peer review architect noting that it seems as though there wasn't enough mass for the house compared to the rest of the neighborhood. A minor modification was made and the peer review engineer felt it was a good improvement.

Staff recommendation is for approval and he reviewed the conditions.

**Shawn Frank, Sebago Technics**, introduced himself and Mark Loring of Loring Builders. He showed drawings of the site and proposed home, explaining the orientation. He briefly discussed utilities and the stormwater drainage system. He provided a photo simulation. In response to the peer review architect's comments, they lifted the building up to expose more concrete in the foundation. There are more steps leading to the porch and they increased the peak of the roof to address the architect's concerns of more mass.

#### PUBLIC HEARING OPEN

**Russ Lunt, Brigham St.**, said that this is a nicely designed house for the street. He commended the applicant for finding these lots. South Portland is a hot market and houses like this is what the City needs.

**L. Boudreau** said they did a nice job incorporating the design of the buildings on the sides. She thinks it's architecturally pleasing.

**L. Dillon** thinks it looks nice and it's a great area.

**M. DeRose** thinks it's wonderful. She knows the neighborhood well and thinks it will be an asset.

**K. Carr** complimented the photo simulation.

#### PUBLIC HEARING CLOSED

**L. Boudreau** motioned to approve the site plan application of Loring Builders, LLC to build a single-family home on a nonconforming lot of record located at 44 Bonnybank Terrace dated December 29, 2017, through February 7, 2018, and drawings dated December 29, 2017, through February 6, 2018, with the following conditions of approval:

1. **Planning Board Regulation #5, standard condition of approval, as read by the Chair at the opening of the meeting.**
  2. **Prior to issuing building permits, the applicant shall provide evidence to the Planning and Development Director that they have recorded the Certificate of Approval and Findings of Fact for the development in the Cumberland County Registry of Deeds (CCRD) and that they have signed the Level One Contractor’s Erosion and Sediment Control Certification.**
  3. **Prior to issuing the certificate of occupancy, the applicant shall complete all improvements in accordance with the approved site plan and said improvements shall have been inspected and found satisfactory by the City’s Engineer or other duly designated person.**
  4. **Prior to the issuance of the certificate of occupancy, the applicant shall provide the Planning & Development Director with evidence satisfactory to the Corporation Counsel that a maintenance plan and drainage maintenance agreement has been accepted by the City of South Portland and will be executed and recorded at the Cumberland County Registry of Deeds (CCRD).**
  5. **Prior to issuing the certificate of occupancy, the applicant shall provide to the Planning and Development Director a certified “as-built” grading plan meeting the City’s G.I.S. requirements; grades will not be modified without first obtaining a Planning Board approval.**
  6. **Prior to providing an occupancy permit, the applicant shall include a Stormwater Management Maintenance Plan acceptable to the Planning & Development Director that has been recorded at the Cumberland County Registry of Deeds. The owner of the property and all future owners shall be required to maintain all elements of the Drainage Plan as contained in the Stormwater Management Maintenance Plan.**
  7. **In accordance with the Section 27-304 (F)(2), the height of the building shall not to exceed 28 feet. This condition shall also be attached to the building permit.**
  8. **The area between the two street utility excavations shall be milled so the pavement restoration is unified.**
- W. Laidley seconded; (5-0) (K. Gatti absent, District 2 vacant).**

FINDINGS

**W. Laidley motioned to accept the findings. L. Dillon seconded; (5-0) (K. Gatti absent, District 2 vacant).**

**L. Boudreau** said sometimes people are not happy with infills and think Board members don’t ever live near these lots. There is a Planning Board member and a member of planning staff who are book ends to this property.

Item #4. PUBLIC HEARING – Amended Site Plan Request – Controlled Environment Agricultural Facility – 25 Duck Pond Rd. – 110 Dartmouth Street, LLC – FINDINGS

110 Dartmouth Street, LLC is requesting an amended site plan approval to construct a controlled environmental agricultural facility located at 25 Duck Pond Road. The facility will include a 14,800 SF cultivation facility into four separate units. The existing site in a gravel parking area for trailer storage. The building will be constructed on a 20,400 SF gravel pad to allow a 20'-foot wide access road around the building. There will be 5,000 SF gravel pad area for soils and material storage as well a parking area for eight vehicles, several generator pads, a transformer, and job trailer. The property is further identified as Assessor’s Map 55, Lot 8, located within the Non-Residential Industrial District (INR).

Public hearing notices were mailed on February 2, 2018, to the five property owners within 500 feet of the proposed project, the applicant, the Conservation Commission, Planning Board, and City Council.

**T. Haeuser** introduced the item and showed the location on a map. He showed street view, stating that this is currently a gravel area. He gave the definition of a controlled environmental agricultural facility

from Chapter 27 of the Code of Ordinances. He stated that this is not associated with marijuana cultivation but reflects the trend toward urban agriculture, such as the use of hydroponics to grow vegetables.

This is an industrial area and zone. They have letters from Portland Water District and Water Resource Protection indicating capacity to serve. There will be new underground utilities and there is a fire hydrant within 400 feet. The stormwater management system is designed to treat the quality and quantity of stormwater runoff in accordance with Chapter 500 DEP Stormwater Management Law. The site is in an urban impaired stream watershed of Barberry Creek. The project will generate less stormwater runoff than the current discharge from the site. The site will be graded to the vegetative swales bordering the building and driveway area. Runoff will be captured by the field inlet to a storm drain pipe conveying runoff to the subdivision treatment wetpond.

He stated that Mr. Puleo signaled a condition of approval for evidence of financial capacity but he's not sure if there should be a condition or not; he doesn't think they need it given the provided financial information.

Staff recommendation is for approval; he reviewed waivers and conditions. The first waiver is of Section 27-1428 (a), Time Limitations. The second because this property is subject to the design standards for neighborhood activity centers. The applicant is requesting a waiver for the predominant exterior to be consistent with a greenhouse. Design standards were included as a requirement for this use, not thinking about a location in the industrial zone. This use would also be allowed in Ferry Village, near the waterfront, and that's where it seemed design standards would be important.

He stated that the applicant is not in favor of the current condition #8. It was added so that there is no confusion since there is no chance for a state or local licenses issued for marijuana cultivation yet. He suggested they change to "permits" to "permits and licenses."

**Dan Diffin, Sevee & Maher Engineers**, introduced himself, his colleague, and the applicant. He explained that the site is in an industrial area; around it is Hannaford, Inland Lobster, and the landfill/public works building. Vegetated areas are to the east and west. He noted that applicant went through Phase I Assessment in 2016 and found contaminated soils, so they are working with DEP. Development is in the northeast corner to fit it in but also leave the rest of the property available for future development. He showed the building, entrances/exits, and fire access. He showed four growing areas and explained that they are partitioned so that they can be removed to create larger growing spaces. Material storage handling was shown, and he noted that a compost shelter will be enclosed in this area. He reviewed parking along the job trailer for employees. 10-12 employees are estimated if the facility is full. He stated that water and sewer exist, and new utilities will come down Duck Pond Road. He showed the stormwater system.

#### PUBLIC HEARING OPEN

**Russ Lunt, Brigham St.**, thinks this sounds like a wonderful project. He wonders what kind of food they're looking at growing. He thinks it's good with condition about marijuana but once regulations pass, some of these places will probably get into that. To grow vegetables is a great idea.

**T. Haeuser** asked if they forgot condition a related to DEP approval.

**D. Diffin** said they have received the approval in early 2017.

**L. Boudreau** asked about a recommended pesticide and waste management condition written by Sevee & Maher that was not included.

**D. Diffin** said the comment made in the memo was that any pesticide use would have a pesticide management plan. They recommended a condition for each tenant to pursue a pesticide management plan with the City before growing crops. It may have been missed but they're happy to have it added. As for the condition related to marijuana, the applicant is comfortable with it. As for what will be grown, they aren't sure at this point. They've talked about people who make custom salsa, fresh herbs, or vegetables for local restaurants. They do not have a tenant yet.

**L. Boudreau** misunderstood if state and DEP approvals had all happened. She asked if there was concern about differences in wording in state approvals. They refer to it as a cultivation facility whereas the City has its own term. **T. Haeuser** thinks that is okay; everything can be linked to the same application.

**L. Boudreau** said there seems to be a passing off of responsibility from owner to tenant and wonders legally if you can completely pass those responsibilities on. They raised the issue of pesticides and waste management but there are others such as proper licensing. Who is responsible if there's a major violation?

**T. Haeuser** said this would be a question for Mr. Puleo. He suggests they bring Mr. Diffin back to give an overview of the relationship between applicant and owner.

**D. Diffin** said the intent is that 110 Dartmouth Street will build the building and provide space for a user, similar to a mall development. The tenant is responsible for what is in there through practices and review. They are the developer leasing the space to the tenant. The building itself provides utilities, mechanical, and electrical they need to grow, including wastewater infrastructure and waste management infrastructure—a compost bin outside for tenants if they need it. What goes in the tenant's space is dependent on what they want to grow so it's difficult to say what they will do for pesticide management. To permit the building and get a tenant and come back to the City to have them review pesticide and wastewater—it will be a partnership, but the tenant is responsible for what they're growing in the space.

**L. Boudreau** said with regard to waste management and composting and what you can legally put in the trash receptacle—it doesn't sound like there will be regular trash receptacles.

**D. Diffin** said there is no dumpster outside. There is internal trash inside that will be removed by the tenants or the owner dependent on the lease agreement. They went through a solid waste review with DEP. The amount wasted with the four small partitions wasn't enough to warrant further review.

**L. Boudreau** said if a marijuana cultivation facility is located here, there may need to be changes to the site plan because disposal of waste needs to be secured.

**T. Haeuser** said there are specific standards for marijuana cultivation facilities that would need to be met. He thinks they would need to come back to demonstrate compliance.

**W. Laidley** asked if they have prior experience with this facility. **D. Diffin** said they do.

**W. Laidley** asked how worked out and if there were ever any violations. **D. Diffin** said they helped with compliance and have had no violations because of environmental site design.

**W. Laidley** said they haven't dealt with this before. He thinks the Board is properly skeptical and it seems like a lot of tomatoes or bushes of vegetables to make this commercially viable. They aren't here to decide that, but he's talking in general terms.

**T. Haeuser** gave the Board and applicant wording for a pesticide management condition. **D. Diffin** agreed with the wording.

**K. Carr** said he is confused about financial capacity and asked if there was further documentation after Corporation Counsel weighed in. Ms. Daggett asked for a standard condition.

**T. Haeuser** said according to Mr. Puleo's memo, the applicant submitted a letter from their accountant.

**K. Carr** said Corporation Counsel references that and the applicant did not object. He would leave the condition in.

**D. Diffin** said they only provided the letter. They can provide more information if they want to leave the condition in.

PUBLIC HEARING CLOSED

**L. Boudreau** motioned to approve the waiver request of Section 27-1428 (a), Time Limitations, for a six month approval period extension to expire on February 12, 2019;  
to approve the waiver request of Section 27-155 (d), to allow the predominant exterior materials to be consistent with a greenhouse, glass and/or plastic panels with a metal frame;  
to approve the amended site plan application of 110 Dartmouth Street, LLC dated January 4, 2017, through February 6, 2018, and drawings dated January 2017 through January 2018 for a Controlled Environment Agriculture Facility located at 25 Duck Pond Road as follows:

**CONDITIONS**

1. Planning Board Regulation #5, standard condition of approval, as read by the Chair at the opening of the meeting.
2. Prior to the scheduling of a preconstruction meeting, the applicant shall pay all outstanding review escrow account fees, post the necessary performance guarantee(s) in such amount(s) as established by the City, post and sedimentation control inspection escrow, and compensation and/or impact fees as determined by the Planning Board.
3. The property is subject to a Stormwater Management System Maintenance Agreement that runs with the land and is binding upon the property owner and its successors and assigns as their interests may from time to time appear. Prior to the scheduling of a preconstruction meeting, said agreement shall be duly executed and recorded by the applicant at the Cumberland County Registry of Deeds, with a copy of the recorded instrument contemporaneously provided to the Director of Planning and Development.
4. Prior to the issuance of a Certificate of Occupancy for the project, the applicant must submit an inspection report to the Code Enforcement Officer documenting that the stormwater facilities have been installed and are functioning as designed and approved and are fully operational. This inspection report must be prepared by a qualified third party inspector as defined in Section 27-1536 (c)(3)(e) of the South Portland Code of Ordinances, as may be amended.
5. On or by July 15th of each year, a completed and signed certification shall be provided by each property owner or applicant to the City's Director of Water Resource Protection in a form provided by that Department, certifying that a qualified third-party inspection employed by the property owner or applicant has inspected, cleaned and maintained the stormwater management facilities, describing any deficiencies found during inspection of the stormwater management facilities and certifying that the person has repaired any deficiencies in the stormwater management facilities noted.
6. Prior to the issuance of a building permit, the applicant shall provide the Planning and Development Director with satisfactory evidence that one of the first six methods set forth in Section#3(B) of the City's Site Plan application form relating to the applicant's financial capacity is in place.

**7. Prior to the issuance of any sign permit, the applicant shall provide the Director of Planning and Development with details of the location, size and materials pursuant to Section 27-1561 of the South Portland Code of Ordinances, as may be amended.**

**8. Marijuana cultivation in any form is not allowed in the facility or on the site until such time as State and South Portland permits and licenses for such cultivation have been granted. The applicant and the owner of the facility shall allow access to the site and inside the facility during normal business hours to the South Portland Code Enforcement Officer, or his/her designee, for periodic inspections to ensure compliance with this condition.**

**9. Prior to being granted an occupancy permit, each tenant shall provide evidence to the Planning and Development Director of a pesticide management plan reviewed and approved by the City's Sustainability Director.**

**W. Laidley seconded; (5-0) (K. Gatti absent, District 2 vacant).**

## FINDINGS

**W. Laidley motioned to accept the findings. L. Boudreau seconded; (5-0) (K. Gatti absent, District 2 vacant).**

### tem #5. PUBLIC HEARING – Zoning Text Amendments – Amendments for Use or Occupancy of Dwelling Units for Short-term Rentals – Citywide – City of South Portland

The City Council has requested a land use determination from the Planning Board to consider proposed amendments to the Zoning Ordinance regarding use or occupancy of dwellings for short-term rentals.

Per City Ordinance Section 27-115(g), the Planning Board will, after the close of the public hearing, make a recommendation to the City Council regarding the proposed amendments.

**L. Dillon** said that Mr. Haeuser received a question from the public to be addressed before they begin.

**T. Haeuser** said he received an email from a member of the public who saw a Facebook post from Ms. Dillon where she questioned the fast pace of the process for the development of ordinances for short term rentals. The member of the public questioned if this is something a Planning Board members should be doing. He explained that 1- this was not a comment on the substance of the proposed ordinances, 2- at the time, Ms. Dillon did not know that a portion of the short term rental ordinances needed to come to the Planning Board, and 3- this is a recommendation to the City Council and is legislative in nature. He encouraged Ms. Dillon to bring it to the Board's attention. They would like to be extra careful and through with a vote by the Board as to whether or not members think Ms. Dillon should recuse herself. Staff does not think there is a conflict.

**K. Carr** said that the Board is being asked to weigh in on substance they've not seen. He pointed out that it does not seem like an issue of conflict but of bias. He would like to know what the threshold would be for bias.

**S. Daggett** concurs; it's a related topic of bias. There are two different types: one based on familial bias and another based on state of mind. As Mr. Haeuser indicated, the Board is being asked for a recommendation on the zoning ordinance, which is legislative. The bias isn't quite as high as a quasi-judicial matter. She thinks it's a low threshold but to be extra cautious, she would like Ms. Dillon to give her take on whether she has prejudged the issue of the Chapter 27 Zoning ordinance. She would like Ms. Dillon's piece stated on record and the remaining Board members can decide.

**L. Dillon** said the purpose and nature of her post was to inform people in her network that this was something going on. What was not included in the description was that she encouraged people to reach

out to City Councilors and posted link to their contact information. She expressed an opinion on how quickly she thought the process was happening and wasn't sure that there were as many voices heard as there could have been.

**K. Carr** asked if she has interest in short term rentals. **L. Dillon** said no, she does not operate one or know anyone who does.

**M. DeRose** said she thinks this came up fast. A few days ago, she didn't think they would discuss this tonight.

**L. Boudreau** said it seems like the opposite—this has been going on for some time. It didn't occur to her that it would come before them. If you read the papers, eventually you come towards some thoughts of your own because it's being discussed so much. Like Ms. DeRose, she was blown away when it got here. It is challenging for Planning Board members to know if things will hit their plate. She doesn't think there was a conflict of interest or pre-established bias. The City Council had four if not five public workshop discussions.

**W. Laidley** thinks it's been percolating for months; he can't see that any member of the public has been denied the opportunity to provide input. He wasn't sure it would ever land in front of them. He thinks it's to her credit to encourage people to reach out and can't see there's conflict or bias; she was encouraging more public input.

**K. Carr** said for him, perhaps it is because he lives most of his working life in the public sector where one needs to be transparent, the reason he asked the question of threshold is because he thinks it's clear the threshold is higher in a quasi-judicial role than in their quasi-legislative role. He respectfully disagrees with his colleagues—he always thinks something will end up with them. He is conservative and he recommends recusal but he is happy to go along with the wishes of the Board as a whole. He asked Ms. Daggett about format or protocol.

**S. Daggett** said there should be a formal motion to allow or not allow Ms. Dillon to participate with everyone voting except Ms. Dillon. It's a low threshold so if they allow Ms. Dillon to participate she believes a court would uphold that.

**L. Boudreau motioned to allow Ms. Dillon to participate in the discussion of short term rentals and sees no conflict or bias that would alter their recommendation tonight. W. Laidley seconded; (3-1) (K. Carr opposed, L. Dillon abstained, K. Gatti absent, District 2 vacant).**

**T. Haeuser** introduced the item. He stated that he provided the first reading position paper and ordinance for Chapters 14 and 27. These show the background and approach the City is using in regard to short term rentals. They also have the ordinance amendments and language. For example, "short term rental" itself is defined in Chapter 14. He read this aloud. The bulk of the ordinance language has to do with licensing and is Chapter 14. There are a few modifications to definitions that are appropriate for Chapter 27 zoning. This is what the Board will make a recommendation on.

Legal ads for this hearing were published in the *Portland Press Herald* on January 29th and February 5th. Similar notice was emailed to the Conservation Commission, Planning Board, and City Council. In addition, a public hearing notice was posted at City Hall on January 29th.

He gave a brief timeline of the discussion up to this point. On February 6<sup>th</sup>, the City Council gave First Reading approval to both the Chapter 14 and Chapter 27 amendments. The vote was 6-0 (Rose absent) in both cases. Two amendments were approved for the Chapter 14 amendments. One was to allow otherwise

noncompliant short term rentals through September 15<sup>th</sup> for rental contracts signed no later than February 6<sup>th</sup>. The other was to allow short term rentals not only in single-family homes and duplexes but also in three- and four-unit owner occupied buildings. In all cases there can be only one short term rental per building. Final action on Chapters 14 and 27 will happen next Tuesday, February 20<sup>th</sup>. Staff recommendation is for approval.

#### PUBLIC HEARING OPEN

**Russ Lunt, Brigham St.**, feels for Ms. Dillon and doesn't think she did anything wrong. The public has had more than enough chances to give input. This is a hot issue.

**L. Boudreau** asked if the amendments were passed.

**S. Daggett** said the thought process was to adopt a comprehensive regulatory scheme and put it all in Chapter 14 because there can be quicker enforcements this way. If someone registers or doesn't, officials will have ability to chase violations faster than under traditional zoning, which is lengthier and doesn't guarantee the results the City Council wanted. Then, they made limited but surgical amendments to the zoning ordinance to show that everything is under Chapter 14. One thing that came out of the discussion was housekeeping: the zoning ordinance doesn't currently say that if a use isn't listed as either a permitted use or special exception use, that it is prohibited. This may have been how the ordinance has been interpreted over time but doesn't say it expressly. This is something that has been added in and other changes were tidying up definitions and references to Chapter 14. Code Enforcement will still field complaints, but they get turned over to the Clerk and not the Board of Appeals. For the two amendments last Tuesday, those were Chapter 14 and did not affect Chapter 27.

**K. Carr** said to Corporation Counsel's point, they have a relatively new disruptive technology that was not anticipated by the ordinance. Sometimes they have to revisit language to bring it into the modern world.

**L. Boudreau** thinks the City Council spent a painful amount of time on this. She thinks they tried to be fair and the zoning provisions they've been provided are acceptable to Planning Board regulations and land use. She doesn't see why this wouldn't get approval tonight. She thinks in Chapter 14, under "Purpose," they captured the purpose and sentiment in that paragraph.

**T. Haeuser** said there was a gentleman who came up at the last Council meeting and commented that it looks like both groups are unhappy and that means they're succeeding—compromises are being made. He apologized that he didn't remember the gentleman's name. There were accusations that the Council only listened to one side, but this was an astute comment.

**W. Laidley** is conflicted on the issue—you want to let people use their property to its best use, and technology enables that. However, much was not anticipated by the Comprehensive Plan. If people are using property in ways that make neighbors pay costs, what costs are the neighbors paying? Noise, parking, etc. Whoever wrote the regulations have tried to cover all the bases and he thinks they've done good work even though it's taken four or five months. He will support this but wonders if they need more staff to administer it. Everything comes with a cost and it looks like the City Clerk's office will need more support for doing licensing and enforcing the issues.

**K. Carr** reminded the Board that their question is narrow—Chapter 27.

**M. DeRose** will support this. She thinks they've done a thorough job.

**L. Dillon** thinks it's wise to add in the differentiation and description incorporated in the definition section. She asked if there was consideration of unintended consequences or substantial departure where language has been added to existing definitions rather than crafting something new. She referenced Section 27-119 and said she's curious if there's thought as to why this type of language wasn't included before and if there could be an unintended consequence. She's also curious if the City is aware and have had the benefit of considering legal updates and best practices like those to be presented at the April 4<sup>th</sup> Maine Municipal Association workshop about regulating vacation rentals. She asked if anyone representing the City has had the benefit of that type of information in their crafting of this.

**T. Haeuser** said yes to the latter. He's accompanied Assistant City Manager Joshua Reny and others to these workshops. As far as unintended consequences, he's not sure what Corporation Counsel would say, but this is what he always understood our ordinance to be—if it wasn't listed, it wasn't permitted. The benefit of that is that it's fairly clear and straightforward and if someone had a use that didn't fit in but wanted to, they could come in and have it listed through an amendment process. He thinks this was a needed housekeeping item.

**K. Carr** said he's okay with the text amendments. As for unintended consequences, listening to Council meetings on this, the one area he's concerned about is if this will yield a proliferation of ADUs. ADUs could be used as a short term rental and he's not sure that that level of commercial use was anticipated when the Council authorized ADUs. He thinks it's something the City will have to keep an eye on. He is encouraged by the fact that City staff has been rigorous in the review of ADUs and the Planning Board is picky about things like life safety code and differentiation of space.

**L. Boudreau** agreed with that. They've seen increasing numbers of ADUs. She's always had a concern about what that represents in their zoning and their Residential A zones. It would be nice if this reflected to Council that they have concern about proliferation of ADUs and to that they need to keep an eye on it. She said that it's here tonight with Mr. Loring building a house when she looks at this zoning. What it does for her is that it helps stop something that is very counter to what they're trying to do, which is increase the housing supply. Reading numbers in the newspaper, she thought it about how it takes them a long time to get 200 units available. They aren't seeing this type of development in the City and when they talk a lot about increasing supply and affordability, short term rentals seem counterproductive. It supports this zoning change.

**W. Laidley** said there's been discussion about raising a fund for legal expenses to file a suit. He asked Corporation Counsel what route a suit might go if it gets filed.

**S. Daggett** said the case could be in state or federal court. Without knowing what the claims are against the City, it's hard to speculate. South Portland isn't the first municipality to deal with this issue and short term rentals have been an issue in other tourist areas. They have looked at other provisions and know which have been challenged successfully and successfully defended. She doesn't know if any challengers will come up with a novel legal theory, but without knowing if a lawsuit will get filed it's hard to speculate.

PUBLIC HEARING CLOSED

**L. Boudreau** motioned that the Planning Board make a positive recommendation to the City Council for the amendments to Chapter 27 zoning regarding short term rentals as presented this evening. **W. Laidley** seconded; (5-0) (**K. Gatti** absent, **District 2** vacant).

Item #6. Public Comment on Items Not on the Agenda

**Russ Lunt, Brigham St.**, agrees with Ms. Boudreau that people buy these houses and it will rip the market out for people who want to come here. With the agricultural building, they will need the permits but he thinks the intent may change down the road.

Item #7. Comments from the Planning Board and Director of Planning & Development

**T. Haeuser** said that the next Council Workshop is on St. John’s Church and also the recommendations for Cottage Road safety improvements. He also wrote a memo with over a dozen transportation projects that are either ongoing or proposed by the many of which are PACTS grant-type projects. He stated that he appreciates the service by Board members and feels they have one of the better Boards that the City has had.

**K. Carr** thanked Mr. Haeuser for the comments; it is a good Board with a good cross-section of skill sets and experience.

Item #8. Adjournment

**8:45pm L. Boudreau motioned to adjourn. W. Laidley seconded; (5-0) (K. Gatti absent, District 2 vacant).**

Respectfully submitted,  
Dana Bettez 2/13/2018

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**Please Note:** No new agenda items will be begun after 11:00 p.m. If during the course of a Planning Board meeting it becomes apparent that the Board will not reach certain agenda items, the Board may, prior to its 11:00 p.m. cut-off, offer to the proponents of such items the opportunity to have their items tabled immediately to the beginning of the next regularly scheduled meeting. Agenda items remaining after the 11:00 p.m. cut-off time will automatically be tabled to the next regularly scheduled meeting.