

CITY OF SOUTH PORTLAND

Name of Body: Planning Board
Minutes for Meeting of: April 4, 2017 (Rescheduled from March 28th)
Meeting Begins: 7:00 p.m.
Meeting Location: Council Chambers, City Hall

MINUTES

Members Present

Kevin Carr, Chairperson
Linda Boudreau
William Laidley
Isaac Misiuk
Kathleen Phillips
Adrian Dowling

Staff Present

Tex Haeuser, Planning & Develop. Director
Steve Puleo, Community Planner

Absent

Taylor Neff

Pledge of Allegiance

Chairperson Carr opened the meeting at 7:00 p.m. and welcomed all in attendance. He reviewed the meeting's 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 February 28, 2017, Planning Board minutes.

A. Dowling motioned to approve the February 28, 2017, Planning Board minutes.

L. Boudreau seconded; (6-0) (T. Neff absent).

Item #2A. Consent Calendar. Performance Guarantee Release – Ridgeland Gardens – 101 Ridgeland Avenue

T. Haeuser reviewed the agenda item, stating that David Kasik certified that they are able to release the \$57,500.00 public improvements performance guarantee for the Ridgeland Gardens project located at 101 Ridgeland Avenue.

I. Misiuk recused himself from deliberating and voting on this item because he works for the South Portland Housing Authority.

L. Boudreau motioned to recuse Mr. Misiuk from discussions and voting on this item. **W. Laidley** seconded; (5-0) (T. Neff absent, I. Misiuk recused).

K. Phillips motioned to approve the total release of the \$57,500.00 public improvements performance guarantee for the project listed above. **W. Laidley** seconded; (5-0) (T. Neff absent, I. Misiuk recused).

Item #2B. Consent Calendar. Third Amended Minor Subdivision and Site Plan – Subdivision Amendment to 363 Maine Mall Road Commercial Condominium and the Development of Tru By Hilton Hotel – 363 Maine Mall Road – VanEastland, LLC, Van Parcel LLC, VanSleep, LLC- FINDINGS

T. Haeuser introduced the item and showed the location on a map. He stated that the stormwater system associated with this phase of the Tru by Hilton project is having systems replaced. This is accepted by the Maine Department of Environmental Protection (MDEP). While it is a relatively minor change, it is an amendment. He explained that it is a consent calendar item because it falls between a de minimis change and a regular public hearing. Staff recommends approval.

W. Laidley motioned to approve the amended site plan of VanEastland, LLC, VanParcel, LLC, and VanSleep, LLC, dated February 21, 2017, through March 21, 2017, and drawings dated July 28, 2016, through February 21, 2017, for modification to the stormwater management system located at the 363 Maine Mall Road Condominium Complex, with the following conditions:

1. **Planning Board Regulation #5**, standard condition of approval, as stated by the Chair at the opening of the meeting.
2. **The approval of the amended site plan shall incorporate the Findings of Fact and all conditions of approval dated October 27, 2009, July 27, 2010, August 13, 2013, June 10, 2014, October 14, 2014, and July 12, 2016.**

I. Misiuk seconded; (6-0) (T. Neff absent).

FINDINGS

A. Dowling motioned to accept the findings. **L. Boudreau** seconded; (6-0) (T. Neff absent).

Item #3. PUBLIC HEARING – Zoning Text Amendment – Amendment to Chapter 27 Zoning Ordinance for the Creation of Solar Energy Systems Ordinance – City of South Portland

The City of South Portland Planning Staff is requesting the Planning Board consider proposed amendments to correct an inconsistency in the recently adopted solar ordinance relative to the height limit for solar systems.

Per 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.

Legal advertisements regarding this request appeared in the Portland Press Herald on February 28th and March 6th, 2017. Public notices were posted February 28, 2017 at the City Hall, Public Libraries, and on the City's webpages.

T. Haeuser introduced the item. The Planning Board has previously reviewed the amendment to the zoning ordinance that created a definition for solar generation as a principal use in the City, which covered

different sizes of arrays. It was adopted by City Council but Councilor Rose noticed an inconsistency relative to height limits. The Council adopted it in order to get the bulk in place, but referred the inconsistency to the Board. Roof-top solar systems in the Zoning Ordinance's general definition for "height" were given a blanket exemption from the building height limit, but in the solar performance standards this exemption was expressly not provided for such systems in residential zoning districts (so as to prevent views from being cut off, etc.). This amendment aligns the general "height" definition with the performance standards requirements. This will go back to the Council on April 17th.

PUBLIC HEARING OPEN

No comments

PUBLIC HEARING CLOSED

L. Boudreau motioned for the Planning Board to send a favorable recommendation to the City Council for the proposed solar ordinance amendments based on their consistency with the South Portland Comprehensive Plan. I. Misiuk seconded; (6-0) (T. Neff absent).

Item #4. PUBLIC HEARING – Special Exception Request – Warehouse Storage Use – 1 Madison Street – PODS Enterprises, LLC – FINDINGS

PODS Enterprises, LLC is requesting a special exception approval to lease a portion of a building owned by HHHI, LLC to store rental "pods" within an existing building located at 1 Madison Street. The property owner, HHHI, LLC, owns and operates the building by leasing office space within the building. Per Section 27-923 (b), the applicant's proposal is to use approximately 31,630 SF of the existing building for warehouse and distribution space for the rental PODS. The PODS are stored in the building before their final delivery. The empty PODS will be stored on a half acre paved area of the property. The property owner is not proposing any outside site disturbance and only interior building fit-up is necessary. The property is further identified as Assessor's Map 6, Lot 206, located within the Shipyard (S) District.

Public hearing notices were mailed on March 6, 2017, to the 180 property owners within 500 feet of the proposed project and the applicant and sent via email to the Conservation Commission, Planning Board, and City Council.

T. Haeuser introduced the item and showed the location on a map. He noted that minor truck traffic will be involved and long-haul deliveries may occur two to three times per day in the summer. Empty PODS are filled by the customer and stored inside the building. Customers do not visit or have access to the containers in the building. Hours of operation will be 7:00 am to 7:00 pm Monday through Friday and 7:00 am to 5:00 pm on Saturdays. There will be three to four drivers and an office manager. Work consists of loading stored containers on flatbed trucks with forklifts. He stated that staff recommendation is for approval and he reviewed the conditions.

Mary Costigan, Bernstein Shur, introduced herself as representing the applicant. She also introduced Alberto Callwood from PODS. She noted that the warehouse use is a special exception use they are seeking permission for. She explained that PODS are large storage containers that are dropped off at a house where they get filled up and are then picked up for storage within the warehouse. She explained that there is not a lot of traffic making multiple trips throughout the day. Long haul trailers are from someone

coming from a long distance, such as someone moving from California. She explained that it's no more of an impact than other uses there.

PUBLIC HEARING OPEN

Russ Lunt, Brigham St., thinks it's a wonderful application and location.

W. Laidley asked if the PODS are stacked. **M. Costigan** said yes, they are stacked two or three when they're outside and are eight feet high each.

W. Laidley asked about limitations on what's stored inside.

Alberto Callwood, PODS, said they have regulations.

W. Laidley asked if anything flammable or explosive can go inside. **A. Callwood** said no. Weapons and illegal substances are also not allowed.

W. Laidley asked how they know customers are complying. **A. Callwood** said customers sign a contract.

S. Puleo asked if Mr. Laidley had a question about PODS being full outside of the building. He explained that PODS are filled up and put inside the building. Empty PODS remain outside. The building has sprinklers and other necessary protections.

T. Haeuser asked what the market area is for the facility. He's always surprised when something that seems like a highway use ends up inland. **A. Callwood** said they try to keep everything within 100 miles of the facility. They have a drop lot about 100 miles from the facility. As they pick up an empty POD, they try to bring it to another customer.

W. Laidley asked what the construction is. **A. Callwood** said there are six generations of containers. All frames are steel and the material on the sides are aluminum panels. The base on the inside is wood. The containers last 10-15 years.

PUBLIC HEARING CLOSED

L. Boudreau motioned to approve the special exception application of HHHI, LLC and PODS Enterprises, LLC, dated February 10, 2017, through March 7, 2017, for a Warehouse and Distribution Facility located at 1 Madison Street, with the following 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 issuing of the building permits, the applicant shall pay all outstanding review escrow account fees.**
 3. **The applicant shall provide to Planning and Development Director a signage detail addressing Ordinance Section 27-1561 prior to issuing a sign permit.**
- K. Phillips seconded; (6-0) (T. Neff absent).**

FINDINGS

A. Dowling motioned to accept the findings. **L. Boudreau** seconded; (6-0) (T. Neff absent).

Item #5. PUBLIC HEARING – Amended Site Plan Request – Drive-thru Modifications – 419 Gorham Road – McDonald’s Corporation – FINDINGS

McDonald’s Corporation is requesting an amended site plan approval to modify the drive-thru service lane of their McDonald's restaurant located at 419 Gorham Road. The applicant's proposal is to remove the existing drive-thru service lane, menu board, speaker, and other structures to construct a new side-by-side drive-thru layout. Additional work includes reconstructing accessible features, expanding the building's storage area, and updating the building architecture. The property is further identified as Assessor’s Map 68, Lot 3, located within the Central and Regional Commercial (CCR).

Public hearing notices were mailed on March 20, 2017, to 15 property owners within 500 feet of the proposed project and the applicant and were sent by email to the Conservation Commission, Planning Board, and City Council.

T. Haeuser introduced the item and showed the location on a map, showing the placement of the two lanes. He stated that the restaurant size is increasing but seating will be reduced. They are not looking at a traffic increase impact. He explained that the layout of the drive-thru lanes in the drive aisles will be separated and no longer intersect. The separation of traffic will reduce potential conflicts between the two and allow more efficient drive-thru operations. There is a decrease in impervious surface and no changes to stormwater. Staff proposed that the application is eligible for a waiver because they are part of the Long Creek Watershed Management District. He stated that staff recommendation is for approval and he reviewed the conditions.

Eric Dubrule, Bohler Engineering, introduced himself and stated that McDonald’s is looking for an improvement to their drive-thru operation. They are looking to create a side-by-side drive-thru with two places to make an order. He explained how cars will stack, making it more efficient for the restaurant to take in orders and how the setup keeps traffic more uniform. He showed a drawing, stating that the light shades are what currently exists and the darker shades are what is new. There will be additional landscaping.

PUBLIC HEARING OPEN

Russ Lunt, Brigham St., said these plans amaze him because they take the same amount of land and make it better. It is interesting how engineers come up with these plans. He is impressed.

A. Dowling said he has experienced this newer kind of drive-thru in Portland. He asked how they determine who goes forward if two people finish their order at the same time.

E. Dubrule said this comes up a lot. To prevent this, they won’t release an order at the same time.

L. Boudreau said the parking is to the right and it’s difficult for people who park there to get across. McDonald’s knows the business, but it’s not easy access for the person walking into the establishment. This is just an observation and she doesn’t mean to change these plans. She thinks they do more drive-thru business than walk-in.

K. Carr said there were similar concerns when they considered Dunkin Donuts on Main Street. It seems to be the nature of the beast.

PUBLIC HEARING CLOSED

A. Dowling motioned to approve the waiver request of Section 27-1536 (H)(2), for a substitution of the City's Post-Construction Stormwater Management Plan for the Long Creek Watershed Management Plan for the 200 Maine Mall Road site; to approve the amended site plan application of McDonald's Corporation dated February 15, 2017, through March 21, 2017, and drawings dated January 27, 2017, through March 17, 2017, for a two-lane drive-thru service system 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 pay all compensation and/or impact fees as determined by the Planning Board.**

K. Phillips seconded; (6-0) (T. Neff absent).

FINDINGS

L. Boudreau stated that Finding #3 should be removed.

W. Laidley motioned to accept the findings with #3 removed. **K. Phillips** seconded; (6-0) (T. Neff absent).

Item #6. PUBLIC HEARING – Site Plan – Highland Avenue Storage Building – 1325 & 1345 Highland Avenue – Julie Barber – FINDINGS

Ms. Julie Barber is requesting a site plan approval to construct a storage building on her property located at 1325 and 1345 Highland Ave. The applicant is proposing to construct a 3,000 SF building to store her recreational vehicles. The majority of the building will be unheated with approximately 800 SF of heated space for a private workshop including a bathroom. The location of the storage building is permitted in the INR zoning district and passage through the A-1 zoning district is permitted to access uses in the INR. The proposed building will have three overhead doors and will be a single story with 14-foot high walls and an overall height of 20' 8" at the peak of the roof. The properties are further identified as Assessor's Map 59, Lot 6 & 6C, located within the Conditional Residential Use A-1 District and Non-Residential Industrial (INR) District.

Public hearing notices were mailed on March 20, 2017, to the 37 property owners within 500 feet of the proposed project and the applicant and were sent by email to the Conservation Commission, Planning Board, and City Council.

T. Haeuser introduced the item and showed the location on a map. He stated that this is an unusual case, where a residential property owner has property within a residential zone (A-1) but the property extends into the Non-Residential Industrial (INR) district. Essentially, the applicant wants to put in a large garage. It needs to come to the Board because it's not associated with a home and it's large enough to trigger a site

plan review. There is a small piece of new impervious cover. He reviewed stormwater management. The applicant's stormwater management plan is designed to capture the majority the post-development runoff within a vegetated swale to "ditch-turnouts." The turnouts slow the runoff into vegetated buffer areas to provide treatment of the stormwater prior to discharge into the wetlands. There is a small amount of wetland and upland buffer impact and a fee of \$3322.00. The applicant has tried to minimize wetland impacts by relocating the driveway access to a narrow area of the wetlands along Highland Avenue. He stated that staff recommendation is to approve the waiver request of upland buffer loss. He reviewed the conditions.

Shawn Frank, Sebago Technics, introduced himself. He stated that this is basically a large garage with no home on the site. He showed plans on the board. The site is about 3.5 acres, residential along Highland Avenue and the INR district in the rear. He reviewed driveway access off of Highland and the wetland location in the front of the site. He showed the proposed 400-foot long driveway. In the back is where the 40' by 75' storage building would go, where the majority is cold storage. It will be a concrete floor and metal building to store boats, cars, etc. A small portion will be heated and include a bathroom. He reviewed lighting. He stated that stormwater was a main consideration; it is low maintenance and easy to take care of for a small project like this. The most activity that will be seen will be during the construction of the building.

PUBLIC HEARING OPEN

Russ Lunt, Brigham St., asked where on Highland Avenue it is. **L. Boudreau** explained the location. **R. Lunt** said it's a swamp there.

L. Boudreau said her reaction is similar to Mr. Lunt's. It's a 480' driveway to a building, taking it into another zone. She realizes it's incredibly wet but why is it so far back?

S. Frank said they won't have wetland impacts back there. First looking at it, they thought the City would be happier if it's out of the residential zone so no one could see it. There is an old foundation where there was a house and the building is just behind that. This is where the better soil is and where the highland is associated; there is standing water in the front after it rains.

L. Boudreau asked about a gate. **S. Frank** said he doesn't show it but he was thinking about having one. The person he's working with is local. It may be added.

L. Boudreau asked if that would be a de minimis change. **T. Haeuser** said yes.

K. Carr asked if there's anything on the property at present. **S. Frank** said no. There is an old foundation and old septic system but now there is nothing. His understanding is if there was a residence, this would be considered an accessory building to the house.

K. Phillips asked if the building is for personal use and if there's any intent of a commercial application down the road.

S. Frank said it's for personal use. The fire department also mentioned that. He asked his clients and they are comfortable coming back to the Board if there's a change of use. Their only intent is for personal use.

S. Puleo said this is a site plan approval. If they convert to a commercial use, that is substantive change and would come back for another review and approval.

PUBLIC HEARING CLOSED

I. Misiuk motioned to approve the waiver request of Section 27-1536 (e)(1) for upland buffer loss of 1,508 SF; to approve the site plan application of Julie Barber dated February 22, 2017, through March 21, 2017, and drawings dated September 14, 2015, through March 1, 2017, for a Personal Storage Building located at 1325 Highland Ave. 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 pay the Wetland Compensation and Upland Buffer Compensation Fee of \$3,322.00, 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 each completed phase~~, 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 the 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.

W. Laidley seconded.

T. Haeuser noted that in Condition #4 "for each completed phase" should be removed.

Vote (6-0); (T. Neff absent).

FINDINGS

A. Dowling motioned to accept the findings with #6 and #9 removed and the reference to phasing removed in #4. L. Boudreau seconded.

The Board discussed the inconsistencies in the findings. **K. Carr** said the Board acted on items 1-5 and the findings should reflect that.

Vote (6-0) (T. Neff absent).

Item #7. PUBLIC HEARING – Zoning Text Amendments and Zoning Map Change – Suburban Commercial District (CS) Zoning Text Amendments – City of South Portland

The City of South Portland Planning Staff is requesting the Planning Board to consider proposed amendments to the Zoning Ordinance regarding text amendments to the Suburban Commercial (CS) District and zoning map changes to the lots in the area of the Sable Oaks Golf Facility and two parcels located at 300 and 450 Clark’s Pond Parkway.

Per 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.

T. Haeuser introduced the item, stating that this and the next item go together. They reflect new proposed housing development in the west end of the City and the City’s interest in creating more affordable housing. In 2016, the City became aware of two substantial development projects proposed in the west end. He showed these on the map. One is on the bend of Clark’s Pond Parkway. The other is on some or all of the golf course at Sable Oaks.

There was a request for the City to work with the applicants relative to these projects. There may have been consideration for the applicants to submit on their own, but the City could proceed with a zone change to accommodate both in a way that may work out best. The applicants have waited while they’ve worked on these changes, with the idea to expand the Suburban Commercial CS zone. He showed the areas on the map that are existing CS and what is proposed.

CS is a basic mixed use that allows a fairly wide range of commercial and residential. It works well in this part of town. It exists around Clark’s Pond because in the of a congregate care facility that never came forward in the 1980’s. The CPCCR zone, shown on the map, was created for “Home Quarters” before it became Home Depot. It is a conditional zone that has various requirements which have been fulfilled and the zone is no longer needed.

He stated that there is support in the Comprehensive Plan. He reviewed sections from pages 6-37 and 6-38. The proposed CS zoning text and map amendments were discussed at a medium to high level on February 8th by a group consisting of Josh Reny, Craig Piper (CPIC Chairman), Tyler Norod (Portland Housing Planner), Isaac Misiuk and Linda Boudreau (Planning Board), and Mike Hulsey (SPHA Director). Copies were also sent to Craig Gorris (Maine Mall Manager) and Richard Berman (retired developer). A number of suggestions were made and incorporated into the draft amendments. By and large the group felt the amendments were reasonable and should proceed for Council consideration. This has gone to Council workshop on February 27th, where the Council was generally supportive and discussed ways in which additional residential development in the Mall area will require better sidewalks and other non-auto-oriented infrastructure.

He reviewed the changes to the text amendments. He explained references to density being struck out as they see less and less of a reason to include density and are looking at density more in terms of building

coverage on off-street parking. He reviewed the minimum distance between buildings and explained that the reason for this is that a large height bonus is proposed under the next standard for those that include “middle income” units. He said that 156’ is tall but it is the height is where it becomes financially feasible to put in an elevator. In both locations, a mid-rise/high-rise building is not inconceivable. He reviewed the requirement for all projects in CS to go through and meet design standards. The text amendments include the removal of the Conditional Clark’s Pond Central and Regional Commercial District.

PUBLIC HEARING OPEN

Russ Lunt, Brigham St., said this is extremely interesting. He thinks it’s excellent. People have been talking about affordable housing. He thinks it’s a wonderful move to open up a whole new area.

Shawn Frank, Sebago Technics, spoke about maximum building height. He read from page 4, “86’ except 156’ for buildings that meet the Affordable Housing Standards.” He assumes that the Affordable Housing Standards are the Inclusionary Housing Standards. He appreciates the staff effort.

T. Haeuser said this item and the next are intended to go together. There is a reference to Section 27-1804, which is a proposed revision of Inclusionary Zoning.

S. Frank said it’s cleared up for him.

I. Misiuk said it could be reworded to say “that meet the standards of Section 27-1804.”

W. Laidley asked Mr. Puleo when this original zoning was done. **S. Puleo** said it was the late 80’s. **T. Haeuser** said CPCCR was the early 90’s.

L. Boudreau said she thinks this makes a lot of sense. She finds more people are looking at a diversity of housing. There would have been a time that they thought people wouldn’t want to live in a commercial area. She thinks this is appropriate at this time and helps meet the City’s need for housing. She thinks it’s a good move.

I. Misiuk echoes Ms. Boudreau. He’s been a huge proponent of eliminating maximum density in all districts. He thinks they’re headed in the right direction.

L. Boudreau said people in Brick Hill didn’t see an issue with multi-story and multi-units and it was then she realized that the development of single-family homes in the east end is nice but it’s not what everyone needs or wants. Some need to get out of old fashioned ideas. People are looking for public spaces and not so much private ownership.

W. Laidley is focused on the notation about sidewalks and non-auto oriented structure. A number of them there at the time made honest attempts to make the mall area more pedestrian friendly. Maybe this pressure, if the projects go forward, will make it happen.

K. Carr said in regard to the height bonus, he wants to make sure the math is correct and this would be a 15-story. **T. Haeuser** said 14-15 stories. **I. Misiuk** said the idea around extending it higher, not on an even number, is to accommodate the elevator shaft.

K. Carr said thinking about that that area, the difference between 14 and 15 stories is somewhat trivial.

L. Boudreau said because there are areas that refer to Section 27-1804, she's not sure how they go about the recommendation. She has some concerns now about 1804 and the inclusionary zoning. When this goes to Council, they could approve the zone change without the inclusionary zoning.

T. Haeuser said they could accommodate that by saying "for buildings that provide 10% of the units affordable to households at 100% of the area median income (AMI) or less."

L. Boudreau said it implies that they will approve Section 27-1804.

T. Haeuser said if they provide those units, there are rules that go along with the provision of those units. The recommendation could include something along the lines of "if the inclusionary zoning is not adopted at the same time, the height bonus should be changed to..." and include his earlier wording.

K. Carr said the recommendation should include a narrative that points out the dependencies.

I. Misiuk would refrain from including "you get the bonus if you meet 10% of 100% AMI or less" because there are no restrictions. They could market it for one month at 80% AMI and the next month it skyrockets. We don't get the affordable units and they get 156' of luxury apartments.

L. Boudreau asked if that's a bad thing.

I. Misiuk said no, any units help go towards the overarching goal. The goal with this is to help promote affordable housing.

K. Carr said he thinks it depends on your view of economic forces. There have been differing views when it comes to the affordable housing issue.

T. Haeuser suggested the motion be the staff recommendation, if the Board chooses that route, noting that a dependency on the other proposal is reflected in the wording of the maximum height.

K. Carr thinks the Council can sort it out. He noted the interdependencies.

I. Misiuk asked if there could be a condition on the recommendation. **T. Haeuser** said no. **K. Carr** said that would be an overreach of their role.

L. Boudreau would prefer to say the maximum building height. She realizes the idea is to use it as an incentive. Let the Council modify this section to tie it to the middle income housing. She thinks from a land use purpose, it doesn't matter to her whether its 86' or 156', what's inside it.

T. Haeuser recalls Craig Piper making a comment along those lines. If 156' is acceptable because it has some affordable housing, then it's acceptable from a land use view otherwise.

PUBLIC HEARING CLOSED

A. Dowling motioned that the Planning Board send a positive recommendation to the City Council for the proposed Suburban Commercial zoning text and map amendments based on their consistency with the City’s Comprehensive Plan. K. Phillips seconded.

L. Boudreau amended the motion by allowing for a maximum building height of 156’. W. Laidley seconded; (6-0) (T. Neff absent).

Vote on original motion by A. Dowling, seconded by K. Phillips, and amended by L. Boudreau; (6-0) (T. Neff absent).

Item #8. PUBLIC HEARING – Zoning Text Amendments – Inclusionary Zoning Ordinance and a Housing Trust Fund – City of South Portland

The City of South Portland Planning Staff is requesting the Planning Board to consider proposed amendments to the Zoning Ordinance regarding text amendments for an Inclusionary Zoning ordinance and a Housing Trust Fund.

Per 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.

T. Haeuser introduced the item. They have looked to Portland’s Inclusionary Zoning as a guide because they have worked through it and have experience with it. Also, the more the Portland and South Portland ordinances are the same, the less developers shop between the two cities to see where they get a better deal.

The Portland affordable housing zoning provisions consist of three parts: housing preservation and replacement; inclusionary zoning; and the creation of a housing trust fund. The housing preservation piece requires owners who demolish residential units or convert them to non-residential uses to replace the units or pay a compensatory fee. This is currently less of a concern in South Portland and is not included in the ordinance amendments, but can be added later. The two items being proposed now are the inclusionary zoning and housing trust fund provisions. He noted that Cape Elizabeth also has inclusionary zoning.

Middle income households include teachers and fire fighters—examples of people who work in the city and are essential to the city. As in Portland, South Portland proposes to define middle-income housing dwelling units, in the case of rentals, as those affordable to households earning 100% of the AMI, and, in the case of units for sale, to be those affordable to households earning 120% of AMI. These are fairly high income levels, and it reflects the reality that developers, while often being able to accommodate moderate-income units into their projects, generally cannot provide housing units for low-income households without subsidies. Other means, such as affordable housing TIFs (there is one in Brick Hill) and tax credit programs through Maine State Housing Authority grants (such as Ridgeland Gardens), will continue to be needed to meet the affordable housing needs of people at lower income ranges.

According to the Portland housing planner, at this level a developer could charge \$1200/month with utilities for a rental for a two-person household. Inclusionary zoning would be for projects with 20 or more units (Portland’s is 10). Like Portland, if the threshold is triggered, 10% of the total units built would need to be middle-income. They would use standard rounding (rounding up), in some cases gaining an extra unit (Portland rounds down).

As an alternative to providing middle-income units, the proposed South Portland ordinance, like Portland's, would allow a builder to pay an in-lieu fee of \$100,000 per unit. This amount would be deposited into a Housing Trust Fund. The Portland experience is that many developers are paying the fee instead of providing middle-income units for sale but are providing the units and not paying the fee in the case of required middle-income units for rent.

Some incentives include: building permit fees reduced for middle-income units supplied over and above the required 10%, a reduction in the term of the required affordability agreement depending on the number of middle-income units provided, density bonuses ranging from 5% to 25%, a cap on required off-street parking spaces at 1.0 spaces per middle-income unit, and a twelve-foot height bonus for buildings in mixed-use or commercial zones with five or more units of which 20% or more are affordable units for rent or sale.

He explained that 10% of the bedrooms need to be middle-income. To ensure developers don't get creative, the number of bedrooms in market rates are not based on floorplans but on dividing the unit size by 400 SF.

He explained the Housing Trust Fund and the fact that establishing a program like this is complicated and you need regulations to go with it. They propose that by the time it gets to Council for final approval, they will have worked with the Board for regulations to go along with it.

There is support from the Comprehensive Plan. He reviewed page 5-14.

PUBLIC HEARING OPEN

Russ Lunt, Brigham St., thinks this is an absolute win. He remembers the City trying this with Liberty Commons. He thinks this is an excellent move.

Shawn Frank, Sebago Technics, spoke about bedrooms as well as units. He understands where Mr. Haeuser is going. For two bedrooms at 800 SF and three bedrooms at 1200 SF, it seems like small units. All units have bathrooms and a kitchen. Possibly the first 400 SF could be for amenities. He's done a lot of one bedroom apartments 800 SF is a decent size. 1200 SF seems like more of a two bedroom.

I. Misiuk stated that as the Chair of the Affordable Housing Committee, this was along the lines of their recommendations and he has a vested interest in seeing it through. He would like to hear from the Board if they think it's a conflict of interest.

A. Dowling doesn't think he stands to make money off what he's doing or looking to gain fame. He is fine with having Mr. Misiuk participate and vote.

K. Carr doesn't see how it would apply in this case.

L. Boudreau said there's also the appearance of a conflict of interest. The South Portland Housing Authority is in this business. She feels that he is directly involved in the mission of the organization.

I. Misiuk included the Affordable Housing Committee as well.

L. Boudreau thinks it would be difficult for him not to advocate for that.

I. Misiuk doesn't see a conflict as a developer at the Housing Authority.

K. Phillips think Ms. Boudreau meant the appearance or perception.

T. Haeuser thinks the most important thing is if he feels he can deliberate objectively on the topic. He doesn't see this proposal making it easier for the Housing Authority to do projects. If there isn't a direct financial connection, he thinks advocates should be allowed to be on the Board and deliberate on issues in their area of advocacy, but you need to deliberate objectively.

A. Dowling asked how an organization like the Housing Authority or Avesta would specifically benefit from something like this. He asked Mr. Haeuser if he feels those organizations are working with these income levels.

T. Haeuser said either they are working with those levels and this has no effect on them because they're doing it anyway, or they're not and they're working with lower levels and they have to do this now as well. He doesn't think it helps them in any big way.

K. Carr is reminded this is a recommendation and the City Council will act as they see fit. The Council could take the impact of his deliberation into their decision. He's not uncomfortable having Mr. Misiuk participate.

L. Boudreau thinks there is room for appearance of conflict. He has experience to help. She thinks in theory this is wonderful but reading the details it falls apart for her. Mr. Misiuk could play a role, because of his experience, in helping figure out more appropriate guidelines. She likes what the Chair said. She's not sure if it fits the legal definition.

T. Haeuser said it's a lower bar when it's a recommendation.

K. Carr said the minutes will relay the conversations. He would refer to the Council for that.

A. Dowling motioned to allow Mr. Misiuk participate in this agenda item, including voting on the motion.

L. Boudreau noted that someone has to second because they have to vote it up or down.

L. Boudreau seconded. Vote (2-3) (Boudreau, Laidley, Phillips) (I. Misiuk recused, T. Neff absent). Motion failed.

I. Misiuk, 58 Pleasant Ave., echoes Mr. Frank's comments on the deciding of the bedroom unit in the count as 400. It may be a better justification to see a rolling average.

W. Laidley agrees with Ms. Boudreau. The intent is excellent but the underlying procedural processes are very difficult. He's not sure the Council will do that great of a job with it. The Housing Trust Fund bothers him—he thinks it's dangerous to have a "slush fund." Assuming things go forward and there's a trust fund,

he doesn't think it's good to have a fund like this floating around the City. He has real problems with that—how it's administered, who ensures it's secure.

L. Boudreau said it was stated that Cape Elizabeth has an inclusionary ordinance. Does it differ from Portland's?

T. Haeuser said he's not sure. He has been informed that they have one but he hasn't looked at it.

L. Boudreau would like to see and hear it. She sees South Portland government more similar to Cape Elizabeth than Portland. When she read the guidelines, the role of the City is huge and would require a staff person; she's not sure that they want to add more staff. The ordinance seems reasonable but when you read the guidelines... "An owner intends to rent a workforce unit...the City shall make the final determination whether or not a potential household is qualified as well as the maximum allowable rental price as determined in accordance with the calculation parameters determined by the City ..." This is a large job. It's also intrusive into the private businesses and role they play in managing housing. She wonders about the unintended consequence, supported by the article from the *Urban Institute*, that housing prices overall will go up to accommodate this if a developer is building units and decides in lieu of building to pay \$100,000 and pass that on. She wonders if another unintended consequence is that they will see more small units staying under 20 to avoid this regulation. It would be poor land use and it puts a higher cost per development of unit. She had concerns once she started looking at the details. What they do tonight is not approving the guidelines, so it makes it difficult to know what to do. For her, she would rather postpone to see what Cape Elizabeth did before making an initial recommendation. They're a small residential community with higher income housing than us. Later, she would have to struggle with if she recommends the zoning change but not the guidelines as written.

K. Carr said asked where Ms. Boudreau read from. **L. Boudreau** said page 8, Guidelines for Developers of Rental Housing, under tab 3. **K. Carr** said she is basing this on Portland's guidelines. He thought the Board would work to develop guidelines.

T. Haeuser said yes, similar to these. There would be different versions.

S. Frank thinks it's the administration of this that has developers concerned. They don't want to see if people get a raise and how often, they would much rather it come from the City. At the same time, they don't want to feel that if someone is on the list that they have to allow them. They want control in terms of their properties. They want to work with the City in providing this type of housing at these levels, but it's the administration's association with it that they are concerned with. They are concerned with "paper chasing." The concerns raised are what he hears from potential developers.

T. Haeuser said the idea of a postponement may not be bad. He's sure that they don't have to worry about the fears about the administration nearly as much as it might look like from the text. He suggested a workshop and inviting his contact in Portland.

S. Frank clarified that he is not asking to halt the proceedings; he wanted to relay some concerns.

L. Boudreau said the bottom line is that the guidelines have to support the longevity of this kind of ordinance. There will be a lot that's similar to Portland. There may be more creative solutions to how to

maintain that sustainable, affordable unit without feeling that they're running the business that developers and property managers should be doing. She thinks someone must have figured this out.

K. Carr said there is a desire to better understand what's happening in Cape Elizabeth in terms of ordinance, guidelines, and bigger picture administration. There's also the concept of having a workshop. He thinks this is a good idea if this could include the background information Ms. Boudreau described. He thinks they can have some sort of guidelines started at that point. He doesn't think it hurts to have someone be available for questions.

T. Haeuser said his contact came to the Council workshop and it was helpful. They have included a retro clause in the draft on page 12 of the ordinance. The date should be 2017, not 2018. If they have inclusionary zoning, the developments being considered are the largest housing projects they will see for a long time. This means it's a good idea to back up but they also need to keep moving because they have been waiting patiently and the housing market is decent now.

L. Boudreau said that is a real issue—the balance between developers ready to develop but need to work numbers versus getting the ordinance correct. This will make a big difference in the numbers.

T. Haeuser said they could have a workshop on April 25th and postpone the hearing to May 9th. He doesn't think the guidelines will be finalized but they can get an outline.

K. Carr thinks it's unrealistic to ask for comprehensive guidelines but realistic for an outline of high points.

T. Haeuser thinks they will find other less involved ordinances with no guidelines and loopholes and the Portland ones are better at not having loopholes. An appropriate motion tonight is to postpone to May 9th and seek to have a workshop on April 25ths.

PUBLIC HEARING CLOSED

L. Boudreau motioned to postpone the Public Hearing for the Inclusionary Zoning Ordinance to May 9th with a workshop on April 25th. **A. Dowling** seconded; (5-0) (**I. Misiuk** recused, **T. Neff** absent).

Item #9. Public Comment on Items Not on the Agenda

Russ Lunt, Brigham St., thanked everyone for the comments while he was out. He asked what's happening with the Wok Inn.

S. Puleo said the Dunkin Donuts proposal has a two-year approval and they are good until late fall 2018. There is infrastructure going into Route 1.

R. Lunt said it's too bad about Bugaboo Creek. He's surprised nothing went in there.

Item #10. Comments from the Planning Board and Director of Planning & Development

T. Haeuser said Council amended the agenda for tomorrow to include a discussion to extend the marijuana moratorium. If so, they will postpone the hearing scheduled for April 11th. There would likely be Council workshops before it came back to the Board.

There is a meeting April 11th, a workshop on April 25th, and another meeting on May 9th.

W. Laidley asked about the site walk. **T. Haeuser** said it's April 12th, Mill Creek to the Bug Light section of Broadway.

A. Dowling asked if it's an official site walk. **T. Haeuser** said no.

L. Boudreau said the O'Neil Street Redevelopment Committee had its first meeting last Thursday. They are going out tomorrow for a tour of the public works facility. There is an invitation for input and to contact her or Mr. Haeuser. The next meeting is April 27th. It's an important project and a big parcel available for redevelopment.

W. Laidley said the Big Apple is moving along and should be opening in the next few weeks.

Item #11. Adjournment

9:30 pm L. Boudreau motioned to adjourn. I. Misiuk seconded; (6-0) (T. Neff absent).

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