

CITY OF SOUTH PORTLAND

Name of Body: **Planning Board**
Minutes for Meeting of: **January 10, 2017**
Meeting Begins: **7:00 p.m.**
Meeting Location: **Council Chambers, City Hall**

Members Present

Kevin Carr, Chairperson
Linda Boudreau
Adrian Dowling
Taylor Neff
William Laidley
Isaac Misiuk

Staff Present

Tex Haeuser, Planning & Develop. Director
Steve Puleo, Community Planner
Sally Daggett, Corporation Counsel

Absent

Kathleen Phillips

MINUTES

Pledge of Allegiance

Chairperson Kevin Carr began the meeting by presenting William Laidley with a token of recognition for his many years as Chair of the Planning Board.

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 December 13, 2016, Planning Board minutes

W. Laidley motioned to approve the December 13, 2016, Planning Board minutes.

L. Boudreau seconded; (6-0) (K. Phillips absent).

Item #2A. Consent Calendar. Release of Development Performance Guarantees – Casco Bay Steel Building Expansion: 1 Wallace Road – Home Depot Culvert Replacement: 300 Clark's Pond Parkway

T. Haeuser reviewed the agenda item, stating that David Kasik certified that they are able to release the \$23,000.00 Public Improvements and \$1,250.00 Erosion Control performance guarantees for the Casco Bay Steel Building Expansion, 1 Wallace Road, and the Home Depot Culvert Replacement, 300 Clark's Pond Parkway.

A. Dowling motioned to approve the total release of the \$23,000.00 Public Improvements and \$1,250.00 Erosion Control performance guarantees for the projects listed above.
L. Boudreau seconded; (6-0) (K. Phillips absent).

Item #2B. Time Extension – Regal Pines – 763 Main Street – JDR Trust II – FINDINGS

T. Haeuser reminded everyone that this and the previous item are items that can be quickly dispensed by the Board and are not public hearings unless the Board votes to make them so. He reviewed the Regal Pines project, explaining that it will lapse in a month if the Board doesn't take action.

I. Misiuk stated that in his capacity as a developer with the South Portland Housing Authority, there have been conversations with this company about a possible partnership and though the conversations have ended, he wanted to let the Planning Board know in case they felt he should abstain from the vote.

L. Boudreau confirmed that conversations have ended and asked if previous discussions would change Mr. Misiuk's decision tonight. **I. Misiuk** said they would not.

L. Boudreau said the Board had a site walk here and has spent a lot of time on this project. She doesn't see a conflict.

S. Daggett asked if someone would make a motion to allow Mr. Misiuk to participate.

L. Boudreau motioned to allow Mr. Misiuk to participate in this item on the agenda.
W. Laidley seconded; (5-0) (K. Phillips absent, I. Misiuk abstained).

T. Neff asked if the economic conditions will be favorable in the next year.

S. Puleo explained how plans have changed and stated that the applicant is in the process of getting a set of different bids relative to road construction. The applicant is planning on building the road system for the substantial start and then building the units or each phase. Getting the road in is the cost they are trying to turn into a reasonable number as it was more than anticipated.

L. Boudreau asked if this would help move to all upfront costs.

S. Puleo said possibly. Since the road is built, the units themselves are built per order instead of on spec. It is different than trying to sell and build units in a phase. This will give flexibility.

L. Boudreau motioned to approve a one-year time extension of the February 10, 2015, final major subdivision and site plan approval for JDR Trust II for a 40-unit residential condominium development located at 763 Main Street expiring February 10, 2018.

Conditions:

- 1. Planning Board Regulation #5, standard condition of approval, as read by the Chair at the opening of the meeting.**
 - 2. The time extension approval includes the Findings of Fact and all conditions of approval dated February 10, 2015.**
- A. Dowling seconded; (6-0) (K. Phillips absent).**

FINDINGS

T. Neff motioned to accept the findings. L. Boudreau seconded; (6-0) (K. Phillips absent).

Item #3. PUBLIC HEARING – Zoning Text Amendment Request – Version C – City of South Portland

The City of South Portland is requesting a land-use decision from the Planning Board to City Council to consider revised proposed amendments to the Zoning Ordinance regarding nonconforming residential lots of record, space and bulk standards in the AA and A residential zoning districts, and changes to the Official Zoning Map. These changes may affect the ability to develop lots for single family homes in the AA and A residential zoning districts.

Public hearing legal notices for the Planning Board hearing were published in the Portland Press Herald on December 27, 2016 and January 2, 2017. In addition, a public hearing notice was posted at City Hall December 27th. The public hearing notice was also sent via email to the Conservation Commission, Planning Board, and City Council. In addition, notice was posted on the Planning & Development website under hearings and as part of a subpage on Nonconforming Lots.

T. Haeuser reviewed the item and gave background information. Initially, the Council was interested in a short term fix for the density issue. Effort was made in that direction but was not successful. The Council then decided on a comprehensive approach that looked at minimum lot sizes in A and AA zones and nonconforming lots by looking through two different minimum lot sizes. They chose an innovative approach using GIS, tying minimum lot sizes to the existing median lot size of the lots in the neighborhoods for these zones. The Planning Board and Council settled on Version A of the approach, where the minimum lot size for Meeting House Hill was proposed to be 6,000 SF (the lesser of the two choices). Recently at the Council workshop, the Council requested additional changes.

The following are the changes made to Version A that resulted in Version C:

- Provided a mechanism for applicants to be allowed to have basements in combined sewer areas if soils analysis determines that the basement slab will be a foot above seasonal high groundwater—or if the applicant has rights to send groundwater onto downgradient properties. **T. Haeuser** noted that this was discussed previously and the Council agreed with some Planning Board members.

- Made explicit that maximum net residential density in the A and AA zones only applies to cluster developments and subdivisions. **T. Haeuser** explained that this is so there is no question if these amendments go through as proposed and the minimum lot sizes and number of A and AA zones are thus reduced, it is understood that to get a building permit you don't have to meet the residential density requirement in that zone.
- Reduced the minimum street frontage requirement in the A zone to 50 feet, and to 75 feet in AA, with a provision that these distances revert to the current 75 feet and 100 feet respectively unless the Council acts to maintain the reduced frontage requirements by March 1, 2020. **T. Haeuser** said the argument is that if you normalize lot sizes, you should do so to street frontages at the same time.

In addition, the Councilors encouraged staff to review its procedures to see if there are ways to reduce costs to applicants associated with Planning Board review.

T. Haeuser explained that these were substantive changes, which is why they are being brought forth to the Planning Board. The next step is a Council First Reading for Version C on Wednesday, January 18th.

PUBLIC HEARING OPEN

Will Cabana, 25 Ivy St, Portland, thinks that they have ended up with a proposal that satisfies many parties involved. He thanked everyone for adjusting the minimum lot size in a way that makes sense. He agrees that if they change the minimum lot sizes, it makes sense to change the street frontage requirements. He thanked everyone for their work and the Planning Board in particular for having a consistent, level-headed approach. He hopes they take the Planning Board recommendation to bring Version C to City Council next week.

Joseph Dalton, 83 Summit St., also owns a lot on Grant St. in the G zone that was gifted to his daughter. He understands that these changes would also cover G and wonders if there is a defect in the announcement since the agenda states A and AA only. He reminded the Board that City Council came up with the idea of getting a sense from the Planning Department of what the expected cost would be for homeowners presenting to the Planning Board and what can be done to minimize those costs. He pointed out the issue of basements and spoke about the height limit of houses in nonconforming lots. If you want two stories, you would have ten feet per story and only eight feet for roof and exposed foundation, which is not much. The only thing people can do to have a basement, other than change roof pitch, is dig deeper and that is what the City shouldn't want them to do. The chances of running into groundwater is much higher. If you are digging into groundwater, you are digging too deep because you will never properly dispose of it.

Mark Loring, 5 Woodmoor Rd., said one issue is assessed values of nonconforming buildable lots. How did they come up with the value and, because you couldn't build on it for a year, will they abate the taxes for that year? If it will cost more money to develop these lots, you would think the assessed value would go down. Not only should they be abated but he suggested the City look at the lots and lower the assessed value because it will cost more money to develop them and it will sell for a lower price. Also, he wonders if the application for nonconforming lots

of record will be edited to show 5000 SF lots. With stormwater and basements, if you are not allowed to put a basement into a house, you have to edit the plans, which will cost more money and it reduces the value of the land. If it's the goal to separate all stormwater systems from sewer, and the City is in the process of doing so and it will take years, they are building thinking at some point it will be separated, so why build one way and in ten years there will be a stormwater system, negating the reason of not having a basement? The final point is that it's taken a long amount of time. He feels the Council has made the Planning Department do a lot of unnecessary work. He went through potential costs for a couple building a house losing a year. He used the example of a couple that needs a construction loan and spends about \$200,000 on the house. You can't fix the fixed-rate mortgage until the house is complete. He did the math showing the monthly payments with interest rates from last February and what they could be mid-2017, when a house would be complete, with raising rates. The costs went up over \$2800 per year.

Russ Lunt, 133 Brigham St., congratulated Mr. Carr and said that Mr. Loring's example was perfect.

T. Haeuser said the nonconforming provisions are citywide in all zones but space and bulk are A and AA only. The notice could have been worded more clearly but the supporting materials will help people understand what the proposals are.

In response to Mr. Dalton, in terms of the cost of a Planning Board review, he intends to sit with Mr. Puleo to find out where there is potential to reduce costs. In regard to groundwater, there is a difference if you're in a separated area. You can usually get Water Resource Protection to allow water to be piped into the separated system so it doesn't run into the street or someone else's land. It is hard to convey how much time and effort and problem goes along when you have a small lot with a sump pump going 24 hours a day in a combined sewer area. This is why this concern arose in the first place. It is an interesting point about the height of the house relative to basements and at a minimum that comment will be in the minutes to the Council.

In response to Mr. Loring, regarding abatements and assessed value, he will see if the Assessor wants to come to the Council reading. He is not qualified to address this. He confirmed that applications will be modified. The land value relative to basements is getting more fine grain than the system is set up to handle. The idea is that in 10 years the systems in the City will be separated—they are around 60-70% of the City separated now. The impression is that there are quite a few places left where it makes no economic sense to separate them. He is doubtful. The point about interest rates going up is a powerful comment and a good point.

S. Puleo said it is his understanding that if this version passes, applicants wouldn't have to come to the Board for approval. Although it may be small, they wouldn't have to have that additional cost.

PUBLIC HEARING CLOSED

L. Boudreau motioned to make a positive recommendation to the City Council for adopting the Version C set of zoning text and map amendments based on its consistency

with the South Portland Comprehensive Plan. I. Misiuk seconded; (6-0) (K. Phillips absent).

Item #4. PUBLIC HEARING – Special Exception Accessory Dwelling Unit Request – Veroneau-ADU – 15 Whitworth Rd – Patrick & Cynthia Veroneau – FINDINGS

Patrick and Cynthia Veroneau are requesting a Special Exception approval for a proposed Accessory Dwelling Unit (ADU) to be created in their home located at 15 Whitworth Road. The single-family home is 2,684 SF in size and the proposed ADU is 566 SF in size and will be located in their converted garage. The site can accommodate four vehicle parking spaces. The property is further identified as Assessor’s Map 23, Lot 71, located within the Residential District (AA).

Public hearing notices were mailed on December 29, 2016, to the 43 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 also showed the street view of the home. He asked the applicant what the garage front will look like when it’s completed.

Cynthia Veroneau, 15 Whitworth Road, said that on the front of the garage, all of the siding is flush with the rest of the house. It is very clean looking.

PUBLIC HEARING OPEN

T. Neff asked if this is an after-the-fact request.

C. Veroneau said yes. **S. Puleo** clarified that this is not an existing unit with an after-the-fact approval. There has been construction done, but the unit is created by the kitchen and there isn’t a kitchen until this approval goes forward. If this request is not approved, the space will still be a bonus room.

C. Veroneau said this unit is for her mother who has lived with them for ten years. There is no kitchen until everything is approved.

T. Haeuser noted that this is not good practice.

C. Veroneau said as far as she knows, they were given the go ahead by the City. **S. Puleo** said they were not.

L. Boudreau said this ADU seems very straightforward and looks like one of the cleanest ADUs they have seen in a long time. There is nothing she would challenge.

A. Dowling said he agrees with Ms. Boudreau in it being straightforward. This is what you want it to look like and how it should work.

I. Misiuk asked for clarification on the two doors in the photo of the rear of the home when the floorplan only shows one.

C. Veroneau said the one closest to the end of the house isn't there. **S. Puleo** said the door looking at the rear on the left is to the equipment room for the pool. There are two doors, one for the room and the other into the ADU.

PUBLIC HEARING CLOSED

T. Neff motioned to approve the special exception application of **Patrick and Cynthia Veroneau** dated November 4, 2016, through January 3, 2017, and drawings dated September 7, 2016, for an Accessory Dwelling Unit located at 15 Whitworth Road 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 issuance of the certificate of occupancy, the applicant shall provide evidence to the Planning and Development Director that the Certificate of Approval for the ADU has been recorded in the Cumberland County Registry of Deeds.

A. Dowling seconded; (6-0) (**K. Phillips** absent).

FINDINGS

A. Dowling motioned to accept the findings. **W. Laidley** seconded; (6-0) (**K. Phillips** absent).

Item #5. PUBLIC HEARING – Zoning Text Amendment – Amending Chapter 27, Zoning Ordinance for the creation of Solar Energy Systems Ordinance – City of South Portland

The City of South Portland is requesting the Planning Board to provide to the City Council a Land Use Recommendation of proposed amendments to the Chapter 27 Zoning relating to solar energy systems. Due to the proposed landfill solar project and the trend in general toward more solar energy facilities, the City needs to update the Zoning Ordinance to indicate where various types of solar energy systems may be used.

T. Haeuser introduced the item and gave background information, stating that there was input from Fortunat Mueller of ReVision Energy, an expert in the area, after a second Council workshop in December. He explained that Mr. Mueller's main point was that a number of the provisions related to fire and electrical safety were inferior echoes of what is already in the national regulations, which are more complete, comprehensive, and flexible. The Council agreed and, working with the Fire Chief, wording was added referencing the latest National Fire Protection Association (NFPA) rules to the satisfaction of the fire department. The changes include the following:

- Added large-scale ground-mounted solar energy systems as special exceptions to the zoning districts in which they had not previously been included, but only for lots ≥ 3 acres. This was not done for the VR, VC, and A-1 zones, however, as there are no three-acre lots in those zoning districts. **T. Haeuser** explained that Council felt there

may be special cases, such as parks.

- Changed the applicability date of the ordinance to January 1, 2017.
- Added in the new VE, BC, and MCC zoning districts.
- Reworded the setbacks section, Sec. 27-1805(b), for clarity; added a minimum front yard setback of 30 feet for mixed-use and non-residential zones; used the accessory buildings rear yard setback instead of the one for principal buildings (for example, 6 feet instead of 25 feet in AA, 20 feet in A, and 20 feet in G); and, reduced the minimum side yard setback from 50 to 30 feet.
- Eliminated a number of fire and electrical standards and instead added references to the photovoltaic systems standards in the latest edition of the National Electrical Code (NFPA 70) and the NFPA 1 Fire Prevention Code.
- Required non-residential and multi-family properties with solar energy systems to comply with the NFPA Fire Prevention Code “marking” standards by April 1, 2018. These labels, placed on electric conduits and other solar PV equipment, help prevent firefighters from getting electrocuted when fighting fires in buildings with solar panels. This is a relatively low-cost requirement.

T. Haeuser noted that there were additional changes not in the Board’s packet but were in the Council draft on the website. These were passed out as hard copies to the Board and included revisions to Section 27-201 Definitions and Section 27-1806 Standards for Roof-Mounted and Small-Scale Ground-Mounted Solar Energy Systems. These changes were thought to be substantive and needed to be brought to the Planning Board. The ordinance is needed because of the various issues associated with the City’s joint project with Portland, which is moving along but cannot move forward until an ordinance such as this is adopted.

PUBLIC HEARING OPEN

A. Dowling asked about changes in Section 27-1806. He read the section aloud and explained that to him, the way it is written sounds like the activity of installing the systems must be in compliance with NFPA 1 and not necessarily the system itself. He suggested a change: “at the time of installation, all solar energy systems shall be in compliance...”

T. Haeuser thinks there is repetition in the words and thought it could say “all solar energy system facilities shall be installed in compliance...” He thinks if you say the facilities shall be installed in compliance with the standards, there is no question that the system needs to meet the standards.

I. Misiuk said in reviewing this, it mentioned Ms. Boudreau wasn’t in attendance when they voted but he cannot remember voting on this himself. Secondly, he is glad to hear the comment on solar facility as a constituent mentioned that they hoped it goes forward. He asked Mr. Haeuser it where explicitly states that they need to be maintained in terms of maintenance not maintained up to code.

T. Haeuser said there is a section on page 65 for large-scale systems.

I. Misiuk asked if small- and medium-scale is stated anywhere. **T. Haeuser** doesn't think so. It says if it ceases to function, something needs to be done with it. This could be a comment to Council.

I. Misiuk feels that a large-scale will be done by a company that has the means to maintain it. He thinks it would fall more on the small- and medium-scale projects that may go more neglected than not. He would like to see something added.

T. Haeuser said there is a requirement for an operation and maintenance plan but then realized it was for large-scale.

S. Puleo asked how the language should be done: implying that they have to maintain their systems or submit a maintenance plan? There would be a problem on the staff level to ensure the maintenance was done. It is like maintaining a roof: if you don't maintain it, it will leak. The larger scale would be a functioning system for a development or profit and they will want it running at optimum capacity, so maintenance will be a component.

I. Misiuk wouldn't expect to put an undue burden on a City official to inspect the systems annually. Looking at the labels being added—they will help fire departments find where things are but a label won't tell you if a wire is loose. He stated that his last concern goes back to the recommendation from the Council of reducing the rear setback to six feet for the AA zone. It's not an accessory structure, it's something totally different.

T. Haeuser said going back to the maintenance issue, they still want the systems maintained but not maintained according to future code. If they keep "maintained" in the two provisions and added something such as "in place at the time of installation" it would link it to the code but still get the maintenance. He then addressed the accessory versus principal setback.

I. Misiuk clarified that he's not stating it needs to be based on the principal itself. He thinks six feet is small.

L. Boudreau has concern as well. When people put things in yards, they want to maintain as much space for themselves as anything. Usually they would put it as close to the neighbor as they can. Working on the first draft, they thought the conflict would be on small-scale residential properties where people try to squeeze it in and not negatively impact themselves. Originally they tried to avoid those types of conflicts. Panels look great on a roof but when you add ground structures, you are talking about something that looks mechanical. She has a problem with six feet.

I. Misiuk said it's a choice to add these. Do you want a full backyard or solar panels?

T. Haeuser said the Councilors felt that requiring 20 feet would preclude the possibility of having systems in quite a few yards. Maybe there's a number between six and 20 that's more reasonable.

L. Boudreau said you have to have the right exposure, yard, roof...there are a lot of things that go on. **T. Haeuser** said there are community solar facilities for those reasons.

L. Boudreau said that's why she doesn't think it's unreasonable to put some restrictions in residential neighborhoods. Some people are not going to be able to have solar.

A. Dowling asked what page has the words, "maintained in good working condition."

The Board was pointed to pages 63 and 65. Page 63 has the changes Mr. Haeuser discussed and code compliance. Page 65 has the specific wording "good condition." The Board discussed the language.

A. Dowling said it sounds like with large scale operators, they would be the most likely to maintain their facility in good condition without being told to do so because they won't make money on it if they don't. He wonders why that is put in the ordinance for them specifically and not for medium and small.

T. Haeuser said that is what the model ordinance had. However, you don't require buildings to be maintained in good condition. A large-scale solar facility system produces a lot of juice and maybe if it's not maintained in good condition there are safety issues.

L. Boudreau said it could be compared to the ordinance on telecommunication towers. Once those become obsolete, they don't want them abandoned.

T. Haeuser said there may be an aesthetic property too.

A. Dowling asked in terms of a safety issues, is that covered in the previous page by having to maintain code compliance with NFPA?

K. Carr said those references are for small-scale systems. The issue is freely mixing small- and large-scale systems.

T. Haeuser explained this. With large systems, because of their size and power produced and because of safety and aesthetic concerns, they are being treated in a way similar to cell towers and that is why the different ordinances require maintenance plans. It shows the fire chief that people are serious.

A. Dowling is concerned that if you have a facility and you tell the operator the code to meet (something not ambiguous) versus saying you have to maintain the facility in "good condition." "Good condition" can mean different things to different people.

T. Haeuser said having to maintain with compliance in effect at the time they're built is still a requirement but in addition they need to keep it in good working order.

A. Dowling asked what would happen if the operator said having three feet of weeds is in good condition and no one has ever given them a hard time about it?

T. Haeuser said all projects go through the Planning Board and fire department. If it isn't a concern of the fire department, they won't insist on it in the operations plan. If it is a

concern, they will.

A. Dowling said words like “good” have haziness.

S. Puleo said legally there is a common understanding of “good.” He doesn’t believe it’s applicable. If you are talking about a large-scale operator submitting an operation and maintenance plan, they are adhered to it because it’s part of their approval. If the Code Enforcement officer looks at it and sees the facility out of control, they will say the operator is violating their approval.

T. Haeuser said they go into more detail as to what “good” means: “Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures...” There is some detail there.

T. Neff asked if the changes are to Section 27-1806 (b) and (c). The way she read the letter submitted under Tab 2, it sounded like they said NFPA doesn’t say much about maintenance and doesn’t provide standards by which the systems need to be maintained. So it doesn’t make sense to include the requirement that they be maintained in accordance with any NFPA standard, which is why she thought they are striking the language. If they are now adding it back, she feels it needs to be clear why.

I. Misiuk said his initial point was lost. It was more along the lines that the section on page 65 is included in large-scale but not the small- and medium-scale where in his mind, the fire department will find more issues with at a residential small- or medium-scale structures versus a large farm. He thinks structural repairs is something that needs to be physically stated in small- and medium-scales as well.

T. Neff corrected her earlier statement: it is under Tab 3.

T. Haeuser read the comment in the letter aloud and the Board discussed it. He thinks this is why Mr. Mueller is worried about having to comply with future code changes.

L. Boudreau asked if it’s that the word “maintained” is included in the same section with those standards as opposed to the kind of maintenance they are talking about.

T. Haeuser said yes, there are two different meanings. To him, on page 63 under (b) and (c), it seems clear that they are talking about maintaining it relative to what’s required at the time it’s put in. He thinks this includes keeping it in good working order but also not changing the whole electrical system.

I. Misiuk said that’s not his intention. His intention is making sure the systems are being maintained and repairs are being made if needed.

T. Haeuser said if the Board wants to do that, it’s fine. He thinks there is a difference between the three sizes. Normally they don’t require maintenance for things the Board approves. A large system is big and it’s more reasonable to add in this type of thing.

I. Misiuk agrees but when part of the electrical system is on the outside whereas on a house it's on the inside, there needs to be some language insuring that precautions are being taken.

L. Boudreau asked if they are going too deep into residences. A lot of residences have things the fire department doesn't want to run into and they don't regulate them.

S. Puleo said in his mind, it's like the cell towers. It's for the impacts that put people at risk. Large systems can do that, but for a small or privately owned system it is up to the person who owns it to maintain it so it works properly, much like a roof. If a solar panel stops working, it's because it wasn't maintained.

I. Misiuk said he's not talking about if a panel stops working, he's talking about if there are structural repairs to be made. Under the original writing, it was by kilowatt and now it's by size. As technology continues to improve, there is a possibly a smaller solar farm could produce a lot more wattage.

S. Puleo said talking about inspections, if someone was going to upgrade their panel they would pull a permit and it is inspected. If it doesn't have structural integrity when it's inspected, it won't be approved. You can't build all the safeguards in the language, there is other code that is applicable. For staff to be worried if someone's solar array in their backyard is structurally sound or not, where it could fall and break, versus having hundreds of panels in a field that need to be maintained because it could start fire, they have a big problem. It's a different level of how they can effectively use staff to do the work they need to do. They already need to enforce so much.

I. Misiuk said he's not talking about small things like painting, he's talking about public safety. There's a tendency to do the bare minimum and when something happens, they try to backdate everything. They are here tonight and it might as well be discussed.

T. Haeuser said if it's no longer structurally sound, it's no longer in compliance with the code. In the wording as talked about, based on the suggestions, the proposal now is to keep "maintain" in and add language at the end that would cover the issues he is concerned about.

L. Boudreau asked if they will add "at time of installation." **T. Haeuser** said yes, "in effect at the time of installation." That should be included in the motion.

K. Carr mentioned the setback. He recalls the conversation and the concept of a freestanding solar array as accessory building. He recalls his concern was about the combination of height and proximity to the lot line. He asked what height limitations are imposed on the structure. He concern was about sight lines and looming shade for adjacent properties.

T. Haeuser said page 62, maximum height shall not exceed 12 feet except 20 feet for systems set back at least 30 feet from any property line. It has been addressed.

K. Carr asked if there are maximum height limitations for accessory buildings.

S. Puleo said it's generally the same as the principal.

T. Haeuser said the point is an accessory building in A zone could be 35 feet and they are saying 20 feet maximum if 30 feet from the property line.

K. Carr asked what the minimum setback is for an accessory building and **T. Haeuser** said six feet.

L. Boudreau asked if he's okay with the setback at six feet.

K. Carr said the limitation of a 12-foot height at the 6-foot setback is better than what's allowed for an accessory building in terms of maximum height. He would have been concerned if the maximum height of the freestanding solar array was somehow in excess of what's allowed for the accessory building.

T. Haeuser said the one difference may be a ground-mount solar array could extend the width of the property, minus the setbacks. It could be wider than an accessory building.

K. Carr said the fact that they're eliminating the 12 feet in height helps to mitigate any concerns that may be created by that.

L. Boudreau said with the side setbacks at 30 feet, how many lots actually have that width?

PUBLIC HEARING CLOSED

A. Dowling motioned that the Planning Board make a recommendation to the City Council in favor of the 12-8-16 draft of the proposed Solar Ordinance based on its consistency with the City's Comprehensive and Climate Action plans with the proposed revisions to Section 27-1806 (b) and (c) to keep the word "maintained" and to add the clause "in effect at the time of installation" at the end of each provision.

W. Laidley seconded; (6-0) (**K. Phillips** absent).

Item #6. PUBLIC HEARING – Amended Subdivision Review – Fourth Amendment Subdivision - Boundary Line Change – 15 & 23 Colchester Drive – Filomena R. & Micheal S. Troiano – FINDINGS

Filomena R. & Michael S. Troiano are requesting a fourth amendment to the Grandview 5 Subdivision development located at 15 & 23 Colchester Drive. The applicants are proposing to relocate the side yard property boundary line of Lots 9 and 10. The proposal will convey a triangle shaped piece of land 3,636 SF in size from Lot 9 to Lot 10. The purpose is to provide more consistent property boundaries between the two lots. The applicants received an approval on December 8, 2015, but the signed mylar was not recorded and approval lapsed. This request is the same proposal, but the applicant will need to be reheard by the Planning Board for a re-approval and to have a new mylar signed for recording purposes. The property is further identified as Assessor's Map 57, Lots 509 and 510, located within the Residential District AA.

Public hearing legal advertisements were published in the Portland Press Herald newspaper on January 3 and 9, 2017. Public hearing notices were mailed on December 28, 2016, to the applicants and 50 South Portland property owners within 500 feet. Notices were sent via email to the Conservation Commission, Planning Board, and City Council.

T. Haeuser reviewed the item and showed the location on a map. This is a small lot line change and the request is the same as before.

Ellen Rathbone, 366 Palmer Ave., Portland, appreciates the consideration and doesn't have anything to add.

PUBLIC HEARING OPEN

No comments

PUBLIC HEARING CLOSED

L. Boudreau motioned to approve the amended subdivision application of **Filomena R. & Michael S. Troiano** dated **November 16, 2016, through December 23, 2016, and drawings dated March 12, 2004, through August 24, 2004, through December 23, 2016, for a Fourth Amendment Subdivision Plan – Boundary Line Change located at 15 & 23 Colchester Drive, 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. The approval of the Fourth Amended Subdivision Plan of Grandview V shall incorporate the Findings of Fact and all Conditions of Approval dated January 25, 2005, April 12, 2005, June 21, 2006, and September 11, 2007.**

A. Dowling seconded; (6-0) (K. Phillips absent).

FINDINGS

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

Item #7. PUBLIC HEARING – Site Plan Request – 2401 Broadway - Multi-Tenant Commerical Development – 2401 Broadway – Plummer Properties, LLC – FINDINGS

Plummer Properties, LLC is requesting a site plan review to develop a multi-tenant commercial/warehouse storage facility located at 2401 Broadway. The applicant is proposing to construct three buildings with a total of 60,000 SF in size. The applicant is proposing to construct two multi-tenant structures, 25,380 SF and 28,500 SF, for warehousing and a 6,000 SF commercial lease space. The development also will include a 6,000 SF structure for truck and construction equipment sales. The site will be serviced by 26-foot wide access drive from Broadway. The applicant is proposing to provide 113 parking spaces. The proposed traffic generation is estimated at 51 AM Peak Hour and 52 PM Peak Hour vehicle trip-ends. The property is further identified as Assessor's Map 76, Lots 11 and 13, located within the General Commerical (CG).

Public hearing notices were mailed on December 29, 2016, to the 12 property owners within 500 feet of the proposed project, the applicant, the Conservation Commission, Planning Board, and City Council.

T. Haeuser reviewed the item and showed the location on a map. He reviewed traffic, stating that the proposed development will generate 51 AM Peak Hour, 52 PM Peak Hour, and eight Saturday Peak Hour trip-ends. The daily traffic generation for the site is projected to be a total of 88 vehicle daily trip-ends. The project does not require Traffic Movement Permit (TMP) from the Maine Department of Transportation (MDOT). He pointed out that these are not insignificant numbers and it does add some traffic. Access will be from Broadway via a two-way 26.5-foot wide driveway, located along the southern property boundary. The applicant is proposing to locate the driveway to be lined up with Postal Service Way. They exceed parking requirements.

He reviewed stormwater, stating that the stormwater management system is designed to treat the quality and quantity of stormwater runoff prior to discharge to the Red Brook. The Red Brook is defined as an Urban Impaired Stream Watershed by the Maine Department of Environmental Protection (MDEP). The system is designed to meet the General Standards by using Best Management Practices (BMPs) to control the runoff of 93% of the impervious surfaces, which the MDEP will allow less than 95% if the applicant treats a greater depth of runoff than specified in the standards. The applicant proposes to treat 84% of the total developed area. The applicant has agreed to pay a Compensation Fee Utilization Plan (CFUP) of \$53,700 to the Town Scarborough Red Brook Management Plan.

He asked the applicant to address if there is any construction considered during the winter. They are finding trouble during winter construction with trucks tracking soil onto roads.

He reviewed wetland alteration and the compensation fees, totaling \$26,612, along with landscaping, the conditions, and waivers.

James Seymour, Sebago Technics, introduced himself and the applicant, Rob Plummer. He reviewed site details, noting that the property is almost 10 acres located on the boundary between South Portland and Scarborough. Because of safety concerns, the new entrance is aligned with Postal Service Way. The property is split by a power line and bordered by I-295, a power line, a telecommunications tower, and Broadway. He showed access and parking.

He reviewed the structures and their sizes and reviewed wetlands and upland buffers. The drainage will consist of storm filters and a swale, along with an underground facility. It will discharge to the wetlands prior to Red Brook. He reviewed the permits and compensation fees. Scarborough has a stormwater management plan and per the DEP, they can pay the compensation fee to Scarborough. There is also money paid to South Portland for wetland and upland buffer compensation fees. He showed that these are single-elevation buildings, 18 feet tall, with a drip edge.

He reviewed the phasing plan. The blue parts are Phase 1, utilities and stormwater, and graveling. Phase 2 is the smaller building, including pavement. Phase 2 would be final paved and the drip edge put in. Phase 3 is the same as 2.

PUBLIC HEARING OPEN

Russ Lunt, Brigham St., thinks this is wonderful. It amazes him how people find these lots. It's a win-win.

K. Carr asked for the applicant to address Mr. Haeuser's winter construction question.

J. Seymour said there are ambitions to begin work. It is difficult to maintain washing tires with the freezing temperatures. He wishes to do some winter clearing but he isn't sure given the systems. He suggested monitoring and sweeping the street.

T. Haeuser explained that the issue has come up on Maine Mall Road and the problem is that EPA and DEP are fining municipalities steeply. Planning and Code are in a tough spot because they are supposed to enforce it. It's many thousands of dollars worth of fines. They aren't sure what to do other than actually get dirt off tires before the truck leaves the site. He doesn't think they can add a condition but the procedure is that the erosion control systems will be reviewed and they will express what they feel should be done.

J. Seymour suggested monitoring the applicant and sweeping. He thinks the only way to get it up is to sweep.

S. Puleo said for all large sites, they have contracted a third-party engineering firm with a PE and certified erosion control compliance inspector to inspect on a monthly basis. They stabilize construction entrances as part of the erosion control plan. Washing stations are employed in other warmer areas of the country. There is a problem with winter tracking and they try to document and inspect to keep sedimentation off the road. The possible suggestion is to lengthen the construction entrance and maintain a regular sweeping of asphalt. They will inspect and if things are not in compliance, there is an opportunity to fix and have it re-inspected. Inspections are paid for by the applicant. This is an impaired watershed with strict requirements. The City will need to work with the developer to ensure that they don't get in a noncompliance issue with DEP and EPA.

L. Boudreau said the Planning Board approves the erosion control plan. It doesn't sound like there's much they can do it make it better but possibly extend the entrance requirement. Is it appropriate for them to do this or would it be a de minimis change?

T. Haeuser said the Board hasn't gotten into the details of the erosion control plan much. It can be done if they want. They have had ongoing conversations leading toward the Board getting a more detailed erosion control plan to review and approve. At this point, he appreciates the attention to the issue but it sounds like it will be addressed at the preconstruction meeting. He doesn't think the Board needs to do anything at this time.

I. Misiuk asked if the fines are passed to the applicant. **T. Haeuser** said no, it's the City's fault for not doing proper enforcement.

W. Laidley asked how many instances have there been where the City has been fined.

S. Puleo said there's been one instance several years ago. The upshot is that, between Water Resources, Code, and Planning, they've spent hours in meetings working with other municipal engineers to discuss other municipal inspection processes and enforcement actions.

T. Haeuser said the frustrating part is that they've spent so much time on this issue and in the winter they are still tracking on the road.

S. Puleo said they've recognized that one important issue with the EPA and DEP is record keeping and informing property owners of violations. The deficiency from the beginning was not having a well-established record keeping system, which is much better today. From that standpoint, they have made a step toward fixing the problem. The next step is enforcement.

W. Laidley wanted a general idea of the scope. He gets the impression that they are anticipating problems and actually seeing some. This goes back to comments about everything costing. That doesn't go into anything that he's seen, except general staff time. On the other hand if the department needs more resources, on this issue or another, someone needs to tell the Council.

T. Haeuser said the comments on this have not gone unheard.

L. Boudreau said looking at the erosion control page, there is wording that protects the City as long as they are aware that a problem has occurred. By making everyone aware, if there is a tracking problem someone will notify the Planning Department. She would hope that would keep the state from fining.

T. Haeuser said as long as they can demonstrate written records that they've notified the applicant, they are covered.

L. Boudreau said the plan is well developed. When she read the maximum building height permitted is 90 feet, she has a hard time seeing they are putting in 18-foot buildings. Is this the best use of a property in a prime area? There aren't a lot of locations for 90-foot structures. This is adjacent to Gallery Boulevard.

J. Seymour corrected that the building height is 24 feet, not 18. There are some limitations with flight and the jetport. He's looked at this parcel four times for different uses and this is the only project that has gotten this far. He understands the call to put in a larger structure, but this is a difficult parcel as well. This is not on very good soil and that would be very expensive.

L. Boudreau said knowing that, the buildings seem appropriate and the design looks good. She doesn't see a reason it shouldn't move forward.

W. Laidley thinks it's a great site for a warehouse. You couldn't have better road access. There may be a market for warehouses in the future.

PUBLIC HEARING CLOSED

- A. Dowling motioned to approve the waiver request of Section 27-1536 (e)(1) for upland buffer loss;**
- to approve the waiver request of Section 24-26 (b), for a three-phased development for approved plans to develop the site with conditions deemed necessary to insure the orderly development of the plan;**
- to approve the waiver request of Section 27-1536 (H)(2), for modification of the Post-Construction Stormwater Management Plan to allow a Certificate of Occupancy for Phases I and II prior to submission of the third-party inspection report, as defined in Section 27-1536 (c)(2)(f), of the development's entire stormwater facility;**
- to approve the waiver request of Section 27-1428 (a) Time Limitations, for an 18-month extension to the Planning Board approval period expiring January 10, 2019;**
- to approve the site plan application of Plummer Properties, LLC dated September 8, 2016, through January 4, 2017, and drawings dated September 7, 2016, through January 4, 2017, for a Multi-Tenant Commerical Development located at 2401 Broadway as follows:**
- 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, and pay all compensation and/or impact fees as determined by the Planning Board.**
 - 3. Prior to the scheduling of a preconstruction meeting, the applicant shall pay Wetland Compensation and Upland Buffer Compensation Fees of \$26,612.**
 - 4. 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 or condominium association 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.

I. Misiuk seconded; (6-0) (K. Phillips absent).

L. Boudreau mentioned the financial impact of this.

FINDINGS

L. Boudreau motioned to accept the findings. I. Misiuk seconded; (6-0) (K. Phillips absent).

Item #8. Public Comment on Items Not on the Agenda

Russ Lunt, Brigham St., thanked Mr. Puleo for explaining the tracking and agreed with Mr. Laidley's comment about warehouses.

Item #9. Comments from the Planning Board and Director of Planning & Development

T. Haeuser thanked the Board for the good attendance.

T. Neff asked if there's a second meeting this month. **S. Puleo** said no, the next meeting is February 14.

I. Misiuk apologized for hammering the solar ordinance point.

L. Boudreau said her takeaway was Mr. Loring's comments on the money involved because of time spent on a particular issue. It did take a year but everyone was working and everyone had a fair chance to bring up their issues. Yes, time is money but she believes they came up with a good, solid ordinance in the end.

I. Misiuk wanted to thank Mr. Laidley for his service as Chair and congratulated Mr. Carr.

A. Dowling wanted to know about a workshop with Arts & Historic Preservation. **T. Haeuser** said there will be one, but not before the February meeting.

S. Puleo said it will be a packed meeting again in February. **L. Boudreau** said tonight's meeting had a lot of repeat business and that helped it move quickly.

T. Haeuser said they will try for a March workshop.

K. Carr mentioned the sign ordinance. **T. Haeuser** said they have additional zoning that may come forward and possibly inclusionary zoning. They will have to see what Council wants to do.

K. Carr asked for this to be kept at the forefront.

Item #10. Adjournment

9:50 p.m. L. Boudreau motioned to adjourn. I. Misiuk seconded; (6-0) (K. Phillips 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.