

CITY OF SOUTH PORTLAND

Name of Body: **Planning Board**
Minutes for Meeting of: **December 13, 2016**
Meeting Begins: **7:00 p.m.**
Meeting Location: **Council Chambers, City Hall**

Members Present

William Laidley, Chairperson
Linda Boudreau
Adrian Dowling
Taylor Neff

Staff Present

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

Absent

Kevin Carr
Kathleen Phillips
Isaac Misiuk

MINUTES

Pledge of Allegiance

Chairperson William Laidley 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 November 15, 2016, Planning Board minutes

A. Dowling motioned to approve the November 15, 2016, Planning Board minutes.
L. Boudreau seconded; (4-0) (K. Phillips, K. Carr, I. Misiuk absent).

Item #2A. Consent Calendar – Release of Development Performance Guarantees – MAC Jet (GAF), 775 Westbrook Street; STRIVE, 28 Foden Road

T. Haeuser reviewed the agenda item, stating that David Kasik certified that they are able to release the \$3,500.00 public improvements and \$9,500.00 erosion control performance guarantees for MACJet (GAF) at 775 Westbrook Street and STRIVE at 28 Foden Road.

A. Dowling motioned to approve the total release of the \$3,500.00 public improvements and \$9,500.00 erosion control performance guarantees for the projects listed above. T. Neff seconded; (4-0) (K. Phillips, K. Carr, I. Misiuk absent).

Item #2B. Consent Calendar – Subdivision Reclassification – Congregate Housing Individual Ownership Facility – 14 E Street – Specialized Housing, Inc. (SHI) SP 2016 House Associates, LLC – FINDINGS

T. Haeuser explained this is the first part of a item listed later on the agenda. He explained that major subdivisions are projects that have new roads to be built or are more than ten units. This item is eligible for the consideration as a minor subdivision because it is not more than ten units and the applicant argues that despite being individually owned units, this is still a single-family home facility being used as something like a group home. He believes these are good arguments and staff supports this.

W. Laidley said there is no public hearing on this item. **T. Haeuser** said it can be opened up but doesn't need to be. **W. Laidley** asked if the hearing is more appropriate for the next part.

T. Haeuser said yes.

T. Neff motioned to approve the request of Specialized Housing, Inc. (SHI) SP 2016 House Associates, LLC, dated December 2, 2016, to reclassify the proposed congregate housing individual unit ownership facility to be located 14 E Street as a minor subdivision, based on the Planning Board determining that the reclassification is not inconsistent with the purpose of Chapter 24 Subdivision ordinance which is to protect the public's interest.

S. Puleo made a correction to the approval and noted that it is corrected in the findings. The sentence should read, "...to be locate at 14 E Street as a minor subdivision, based on..."

A. Dowling seconded; (4-0) (K. Phillips, K. Carr, I. Misiuk absent).

S. Puleo mentioned that there will be findings.

L. Boudreau asked if there should be discussion for the findings. She agrees with staff and doesn't think there's an impact to the neighborhood. Ten units still qualifies as minor and from her experience with congregate housing, she thinks they would run into difficulties if they didn't consider this a single-family unit.

FINDINGS

T. Neff motioned to accept the findings. W. Laidley seconded (4-0); (K. Phillips, K. Carr, I. Misiuk absent).

W. Laidley noted that this item will be discussed in more detail at a later part of the agenda.

Item #3. PUBLIC HEARING – Zoning Text Amennndent Request – Benchmarking – City of South Portland

The City of South Portland's Planning & Development department is requesting a land use recommendation to the City Council to amend Chapter 27 Zoning to consider proposed amendments to the Zoning Ordinance related to energy and water use benchmarking.

Legal advertisements regarding this request appeared in the Portland Press Herald on November 29 and December 5, 2016. Notices were also posted at City Hall, the Public Libraries, and on the City's webpage. In addition, an article about the Planning Board hearing was included in the December 2, 2016 Community e-Newsletter and was part of the agenda for an information meeting for Mill Creek property owners held on December 9th.

T. Haeuser said there are representatives from the Northeast Energy Efficiency Partnership (NEEP) and Julie Rosenbach, the City's Sustainability Coordinator. He recapped where they are and why this is being heard again.

This is a recommendation for a zoning amendment that accompanies the new zoning that has been officially adopted for Mill Creek. In an effort to facilitate revitalization of a small downtown area, the City has lessened some zoning restrictions: height limits were increased, residential density restrictions were removed, a more flexible planned development option was provided for the Mill Creek Core district. Together these may not be of immediate use to property owners but it will create new potential value. The Comprehensive Plan Implementation Committee (CPIC) wanted to accompany the liberalized zoning with an environmental component: energy and water use benchmarking.

He explained that the CPIC could have gone a different route, requiring LEED certified buildings or green roofs, but he and Ms. Rosenbach are aware of another approach able to affect older buildings and not just new buildings. It also doesn't require a large dollar investment. He explained that benchmarking as a data-based program. In this case, non-city buildings in Mill Creek that are 5000 SF or larger (there are 29-30) would be required to report energy and water use via a standard tool: the Energy Star Portfolio Manager. This would happen over time, beginning in 2018.

There was concern about privacy about buildings with tenants having to report data at the hearing. He and Ms. Rosenbach have spoken with property owners and based on the discussions they've made changes. They still require data to be provided but have removed any official zoning requirement from tenants and made it more explicit that if a property owner isn't able to obtain data from a tenant, it will be accepted with an explanation and partial data for the building. They will work with other communities to get a process going whereby the utilities with tenant authorizations will provide data directly to property owners.

They have continued to emphasize the direct connection of this program with the benefits being provided by liberalized Mill Creek zoning. At a certain point, when a building is large enough, there is an environmental impact and it becomes reasonable to ask for public reporting of energy and water use data. He emphasized that it is quite inexpensive. It is a hassle in a way but it gives the property owner information they may not have had in which to make improvements that may

save money and provides the City with data used to target efficiency and building improvement projects.

A presentation was given by Charlie Taylor and Carolyn Sarno Goldthwaite from NEEP. They began with background information, stating they are a regional nonprofit out of Lexington, MA. They span from Washington, D.C. to Maine and are one of six regional efficiency organizations funded by the U.S. Department of Energy (US DOE) to provide technical guidance and assistance. They have helped Portland, which recently passed a similar ordinance, and Cambridge and Boston, MA.

They explained that benchmarking is the first step. Benchmarking allows one to plan a comprehensive strategy. You are able to look at a predicted energy use and gives pre- and post-costs to ensure equipment is working at peak efficiency. It helps set investment priorities, identify billing errors, be more responsive to ongoing issues, and assess effectiveness of current operations and policies.

They spoke about benchmarking as a policy. Building to a set standard doesn't tell you what the energy usage will be. Benchmarking policies are used to measure actual, ongoing building energy performance. It allows an opportunity to work with local utilities to focus on where incentive programs could be or find where assistance is needed. Having data, you can work together to see where there's measurable impact.

In terms of an ordinance, they spoke of the concept "you can't monetize what you haven't measured." You cannot understand what the energy use of your building is without a comprehensive policy. They compared this to the meter in a car that tells you the mileage you get per gallon and Weight Watchers holding members accountable by having weigh-ins. They emphasized the importance of being accountable. By collectively looking at a wider picture, you are able to have a more measurable impact.

They spoke about the misconception that this is for big cities. There are smaller cities, such as Cambridge, MA, that have passed similar ordinances. Portland passed an ordinance last month. It creates a partnership between cities, utilities, and building owners. A common way to address the privacy issue is aggregated whole building data. If the building is large enough, you can't back out individual tenants.

They showed how it is working in different cities for the past five years. Buildings affected range from a few hundred to over 15,000 in New York City. One example is Cambridge, MA, the smallest city with a benchmarking ordinance. Their first year they had 95% of eligible buildings reported, which was the highest rate of compliance in the country. Utilities conducted targeted outreach to communicate the available efficiency incentives to building owners. They have a pilot offering for free HVAC tune-ups to improve efficiency. In New York City, over 7,700 jobs were created and there was over \$267 million in reduced energy costs for building owners. They noted that older buildings don't always have worst results—newer buildings were the poorer performers.

At the end of the presentation, the Board decided questions will be taken after the public hearing.

PUBLIC HEARING OPEN

No comments

PUBLIC HEARING CLOSED

L. Boudreau asked Mr. Haeuser what “quite inexpensive” means.

T. Haeuser said it took him a couple of hours to enter information about his building, each meter, and two years’ worth of data for each monthly bill into a template and uploaded it into the tool. He got a score of 75 for his building and it cost nothing. Other than the cost of someone’s time, another cost would be that every fifth year the participating building would need to hire an engineer to review what they’ve been entering into Energy Star to ensure the data is reliable. Compared to a green roof or the comparable, this is more of a reporting activity versus a capital investment.

L. Boudreau asked what the response was from the meeting with the area’s property owners.

T. Haeuser said the Finard and Yankee Ford managers didn’t have a particular response. The Mill Creek Shopping Center owner was concerned because the nature of shopping centers is that you have multiple individual tenants with different uses, which he thought could have an effect on energy uses. They tried to explain that doesn’t matter; it’s shopping centers versus shopping centers. Owners also felt that this would be a fair amount of work. The City has offered to help previously. He spoke more with Ms. Rosenbach and they have put in a request to the CIP for \$18,000 to pay part of the cost of a third-party reporting organization that retrieves the data and does the Energy Star reporting. They also have additional tools and data that provide help. There’s a licensing and setup fee with this and they’ve agreed to a discount. For one year, they will see if City Council will pay \$18,000 for licensing but building owners are responsible for the setup fee.

L. Boudreau asked if he went back to get data before solar panels for the Planning office.

T. Haeuser said it went before the panels.

L. Boudreau asked if he is still doing this. **T. Haeuser** said Ms. Rosenbach has taken over doing this for City buildings.

A. Dowling said his feelings have evolved. He commended Mr. Haeuser and Ms. Rosenbach for taking concerns into account in regard to privacy issues and onerousness. He feels this is easier to swallow now and recognizes that this is a good step and the incentives are generous. The entering of data doesn’t seem like a deal-breaker. He is in favor of this.

T. Neff reiterated that she is a proponent of the benchmarking proposals and didn’t share the previous privacy concerns. Efforts to address the concerns were done well and are well reflected in the new draft. She thinks this proposal is great and is still in favor.

W. Laidley still thinks it’s intrusive. He doesn’t see why private individuals can’t do this on their own. He thinks there are many ways to look at energy consumption and the City and

state have only scratched the surface. He thinks the sustainability issue is more tied to land use than building use. The Sustainability Coordinator and he have exchanged emails, not part of the record, exchanging opinions. He's not convinced. Mr. Canarie's comments, in the record from the July hearing, were convincing. He's glad to hear the City is doing this on their own properties; that is where it should start. He doesn't support this.

L. Boudreau still has trouble with it. She feels it is the responsibility of each individual property owner. Anyone who wants to save money or protect the environment, will use this or a similar tool. She has difficulty imposing this on a building owner and would like to see voluntary compliance. She admires the City looking at these objectives. What they need to do is model the behaviors and show evidence that City buildings have benefited by those actions. She spoke about an article sent to the Board from Mr. Laidley and she thinks it implied only city-owned buildings were benchmarked. At no point could she be clear that these were privately owned buildings. In the list of cities they saw in the presentation, she's not sure which are doing private and publically owned.

C. Sarno Goldthwaite said they are all doing public buildings while they enact the ordinance. They're often phased. It's done together, public and private.

C. Taylor said the list shown requires had city-owned and private commercial and larger multi-families to report.

L. Boudreau recommends that they enact it for all City buildings, making the program voluntary for the 30 existing buildings, and when someone comes forward for a building permit of any kind they discuss the program and benefits. By that time, they would hopefully have Ms. Rosenbach's data on the City buildings. She also thinks they need to revisit this in three years and see if something mandatory is appropriate. She doesn't feel it is at this time.

W. Laidley asked if she's asking for a sunset provision.

L. Boudreau said she'd like to see something in three years. She'd like to see people voluntarily come on board. She has to vote no tonight.

A. Dowling motioned that the Planning Board send a favorable recommendation be made to the City Council on the proposed Energy & Water Use Benchmarking zoning text amendments based on conformity with the City's Comprehensive Plan, Climate Action Plan, and Mill Creek Master Plan. **T. Neff** seconded; (2-2) (**W. Laidley, L. Boudreau** opposed) (**K. Phillips, K. Carr, I. Misiuk** absent).

L. Boudreau asked if it's appropriate to make a recommendation similar to what she stated.

T. Haeuser said her comments will in the in record for the Council.

Item #4. PUBLIC HEARING – Zoning Text Amendment – Zoning Text Amendment to the Village Residential District (VR) – 14 E Street – Specialized Housing, Inc. (SHI) SP 2016 House Associates, LLC

Special Housing, Inc. (SHI) SP 2016 House Associates, LLC is requesting a land use recommendation from the Planning Board to the City Council to amend Chapter 27 Zoning to consider proposed amendments to Section 27-579 of the Zoning Ordinance relating to adding the language, "congregate housing individual unit ownership facility," to the end of the provision. SHI SP 2016 House Associates, LLC is the owner of 14 E Street, in which they are proposing to redevelop the single-family lot into a ten-unit private apartment "congregate housing individual unit ownership facility." The Planning Board will make a recommendation to the City Council regarding the proposed amendment.

Legal advertisements regarding this request appeared in the Portland Press Herald on November 29 and December 5, 2016. Public notices were mailed to 85 property owners in Village Residential (VR) District on November 28, 2016. A notice was posted at City Hall, the public libraries, and the City's webpage on November 28, 2016.

T. Haeuser introduced the item, stating they are not doing the subdivision tonight but the zoning part. When the VR zone was created, it picked up language from the G zone where, due to concerns from the 1980's about unregulated conversions, there is a restriction on adding units to a single-family home. If you demolish you have to wait a year and if not, you are limited to 320 SF. The request from the applicant is for an amendment to add the language, "or to congregate housing individual unit ownership facilities" as an exempted use of conversion of existing structures. He gave an overview of conformance with the Comprehensive Plan. This is adjacent to 20 E Street, which was a successful conversion that has fit into the neighborhood.

PUBLIC HEARING OPEN

Peter Roth, Specialized Housing, Inc. (SHI), Brookline, MA, works with families with adults with special needs to create specialized housing. This project will accommodate ten adults with special needs. The model SHI has is creating a large single-family house with ten bedrooms and shared bathrooms and living spaces/common facilities. It is set up as a condominium for ownership purposes, with each bedroom as a condominium unit, which allows for long-term financing by each of the families of the ten adults. They aren't creating ten dwelling units but a large single-family house structured as a condominium for purposes of financing. This has been consistent over a dozen communities in South Portland and eastern Massachusetts.

They have had several meetings with staff and are aware the City has created a special use to facilitate the development of this. They were made aware of the provisions of Section 27-579. Their proposal is to maintain the existing small house and add an addition. There will be two staff units critical to the support of the residents. They feel that keeping the existing building will provide visual continuity and are proposing to put the addition on the rear of the home. The existing home will be rehabilitated. They would like to avoid a one-year delay and move forward by keeping the existing building and adding on, which they believe is a more responsible way to redevelop the property. They reviewed the Comprehensive Plan and believe their proposal is

consistent with it. Additionally, public transportation is critical to special needs adults, and has been critical to 20 E Street, along with the concentration of shops.

Sue Henderson, 9 E St., spoke in favor of the project. 20 E St functions as a large single-family home and she thinks this will work nicely.

Dan Hogan, 3 E St., is also in favor of the project. They spoke as neighbors when they went through this with 20 E Street. There was apprehension over “condos” but the residents use public transit, there’s less traffic, and they’ve found they’re great neighbors. There have been no behavioral issues and many work in the area. He wonders what could happen or go in here if the project fails.

Russ Lunt, Brigham St., thinks it’s wonderful and supports the project.

Lisa Page, 11 Houlton St., Portland, has an adult brother in Connecticut who lives with their mother. Their parents are aging and she wants to move her brother here. They have been at this for five years and are here tonight to keep it moving forward. Her brother needs his independence and if this were to be pushed back another year, it would mean a lot.

Phil Notis, 71 Ocean St., thinks this is a great project in a great location and supports it. It’s a good addition to the area.

PUBLIC HEARING CLOSED

A Dowling said they are fortunate that they have had a project like this operating in the City for some time. This isn’t a completely new, unknown project. The neighbors know it’s a great addition; it’s nice to have neighbors that don’t each have vehicles or make all kinds of noise. He thinks they cannot do enough for people with disabilities; anything they can do for people with special needs is worth doing. It’s compatible with the neighborhood and the Comprehensive Plan. The need is desperate in some cases. He gives 100% support.

L. Boudreau isn’t sure what better could be said than the neighbors giving support. She was on the Council when 20 E Street came forward; she’s proud the City went forward and accepted it. She’s looked at the building and it looks incredible now. It shows the kind of work that SHI can do. Throughout the City, many people don’t know there is this type of housing. She is for this and thinks it’s a great project. She’s glad they are expanding here.

T. Neff is also in full support. She thinks it fits within the zoning, neighborhood, and Comprehensive Plan and she has no concerns.

W. Laidley asked if each unit is individually financed.

P. Roth said for each family, all costs are aggregated and divided. Each family purchases a unit that consists of the bedroom. Some have a bathroom but most are shared. Each unit has an undivided share of all common areas. Maine Law requires the condominium as a subdivision, but essentially the condominium facilitates the ownership by each family.

W. Laidley asked if there's any chance of default.

P. Roth said there has been no default in the history of SHI, for over 30 years. Families are desperate to find the right kind of supportive housing. It is not inexpensive but these are highly sought after opportunities for special needs adults to live as independently as they can with support they need.

W. Laidley asked if there are there any Section 8 funds applied for or used to support the facility.

P. Roth said it depends on the individual's eligibility. Almost all are eligible for Section 8 by virtue of their incomes. In many cases, the local Housing Authority allocates project-based rent subsidies to support the ongoing costs of residing in the home, which is considerable. He doesn't think there are project-based subsidies available for this particular house but if so, individual families would take advantage to mitigate the long-term cost.

W. Laidley asked if they have discussed any issues with the South Portland Housing Authority.

P. Roth said no, they are focused on getting the building designed, planned, permitted, and constructed. It would be good to have subsidies available but they aren't dependent on it.

W. Laidley said there are hard questions underlying this structure that have to be looked at. As well intentioned as families are, things happen. He wanted to see if it has happened.

P. Roth said that Occasionally a resident's life will change—sometimes people's needs accelerate, some marry. The unit is sold to another clinically appropriate adult with special needs. It happens routinely. It's a process that takes time, and they are carefully screened clinically and also through a financial review. Rarely does change occur quickly—it is a stable environment. Demand is high. It's a fair question but it's fair to say there has never been any default that could be reported.

W. Laidley asked if this has been called communal housing.

P. Roth said congregate implies a degree of community. They are electing to live as a large, single-family unit. They share meals, kitchens, restrooms. The neighbors attest this is a wonderful group of people who learn to care for each other. They live together as a family and this enables their independence as adults.

L. Boudreau asked who upfront finances the projects or do they have their ten owners.

P. Roth said the families finance it. Each project begins with a core group of three or four families. They network to get ten residents. Each group of families determines when they're ready to move forward. They are hoping to move in late fall/winter next year.

L. Boudreau motioned to recommend to the City Council approval of Zoning Text Amendment to Article IV Village Residential District (VR) Ordinance Section 27-579 Conversion of existing structure provisions, based on the consistency with the South Portland Comprehensive Plan. T. Neff seconded (4-0) (K. Phillips, K. Carr, I. Misiuk absent).

Item #5. PUBLIC HEARING – Zoning Text Amendment – Amendment to Chapter 27 Zoning Ordinance Enacting a Moratorium on Land-Use Permitting and Development of Retail Marijuana Establishments and Marijuana Social Clubs – City of South Portland

South Portland City Council is requesting a Planning Board land recommendation regarding a proposed amendment to the Zoning Ordinance enacting a moratorium on land-use permitting and development of retail marijuana establishments and marijuana social clubs. Pursuant to 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 amendment. The City Council will then act on the proposed amendment.

Legal advertisements regarding this request appeared in the Portland Press Herald on November 29 and December 5, 2016. A notice was posted at City Hall, the public libraries, and on the City’s webpage on November 28, 2016.

T. Hauser introduced the item, stating that this creates a challenge for municipalities figuring out zoning for various types of marijuana retail and other facilities. Many communities enact moratoria to give themselves time to do this work. City Council gave first reading to the ordinance on November 14th and because it goes into zoning, it requires a recommendation from the Planning Board to the City Council. This is not the zoning but a moratorium to give the City time to develop zoning for the facilities. The moratorium is for 180 days unless the task is completed sooner, or it could be extended if necessary.

He noted that he is not prepared to discuss what was passed at the state level; he doesn’t have the definitions for the types of facilities. The Council feels a moratorium is a good idea. Without zoning in place, he believes it’s a good idea to give them time to research. They would look at other communities in the state to see what they’re doing, along with other states.

W. Laidley doesn’t believe the recount has finished yet. The Board agreed.

PUBLIC HEARING OPEN

Russ Lunt, Brigham St., said he is in favor of the moratorium. He is against it himself. He loves businesses coming to South Portland but hates to see this type.

Aaron Worthing, small business owner, 14 Gary L. Maietta Parkway, said there are two provisions for the statutory requirement to allow a moratorium. He doesn’t think they’ve seen enough wording to the one requirement that this qualifies for: to prevent the shortage or overburden of public facilities. There is a lot of wording in the brief about the public safety issue that they haven’t seen come to fruition in the medical market; he doesn’t think they would happen in the recreational market either. He believes that, depending on the state law, they have

the power as a municipality to zone and regulate. To drag their feet too long waiting for the rule-making process is inefficient. They have the opportunity to work on the laws now and they would be the guiding authority when Augusta produces the rules. What makes South Portland attractive for cultivators is the robust and secure energy grid. There are few zones in the City where this qualifies; to inadvertently exclude them would be a disservice to the industry. He is willing to participate in work groups and standing committees. He is in favor of the moratorium because they have the opportunity to specialize where the facilities go but he does not share the public safety concern; it's more of a facilities and resources concern that they need to plan.

Matt Bayliss, 27 Walnut St., is a registered caregiver in Maine and has leased warehouse space in the City. As a caregiver, many people have to grow in houses or garages or barns, which he doesn't think are suitable places—they should be in industrial areas with things like concrete floors and appropriate power, not in neighborhoods. He has experience; he lived in California and moved back to Maine when his mother got cancer. He first became a non-registered caregiver and became a registered caregiver over a year ago. He moved into the commercial space in May. He is in favor of a moratorium because he thinks it's a good idea to slow down and work together as a community. He is also happy to provide help and resources. He is passionate about the medical uses of marijuana and has had a couple dozen patients for things like getting away from opiate pain medication and battling chemotherapy nausea. He believes there is stigma attached to adult use. He has a lease on the building and when Augusta decides on regulations, he will apply for a cultivation license. He spoke about the problems finding insurance and issues if the moratorium is extended. He hopes there is a collective spirit and cooperation and believes they have the opportunity to cultivate a craft business.

Phil Notis, 71 Ocean St., said there is a new administration in January. He spoke about the Cole Memo during the Obama administration. The new Attorney General could tie city grants and make it punitive on a city to enforce federal law. He's not speaking for or against, but it could have a fiscal consequence. For example, in approving a warehouse for marijuana growing, it may turn out that the city cannot get a grant. They will be in a position of taking the grant or rezoning and shutting down the marijuana facility. He thinks the moratorium is a good idea. He thinks they have to move forward and they have to know what the federal government will do, as it may have an impact.

PUBLIC HEARING CLOSED

L. Boudreau said when she read the packet, she was taken by the fact that under the citizen initiated legislation, there are nine months to write the rules. It's hard for them to plan when none of the rules are in place. She thinks they need to know what the game is to play. Mr. Notis brought up a good point with the federal government's role. She struggles with the statutory language for a moratorium to be approved. It says to prevent a shortage or overburdening of public facilities: sewer, water, roads, schools, public safety. She doesn't believe that will happen. She thinks that the City voted in favor of marijuana, so it seems that voters didn't believe there was serious public harm. She struggles because as much as she thinks they need to know the rules. With the two conditions for putting a moratorium in place—she needs to know how and why she can approve it.

T. Haeuser said they don't know if the voters felt it was acceptable without regulation or if it would be okay because they knew regulation would go along with it. They don't allow alcohol in certain areas for public harm; this doesn't seem like that much of a stretch.

T. Neff echoes Ms. Boudreau's comments. She shares the skepticism that the case has been made for serious public harm. She also picked up on the nine month issue. It doesn't seem to her that if the state takes nine months to create rules, South Portland could approve facilities to begin operating during that time. Where is the need for a moratorium until nine months have expired? She has no doubt there is a need for regulation, but she's not convinced a moratorium is necessary.

A. Dowling said one concern from the Council was they aren't sure it will take a full nine months. What if it only takes a month or two and they're not quite ready? He shares skepticism that it rises to the level of possibly causing serious public harm. He asked more so than a bar or liquor store? He's hesitant to compare this to alcohol or tobacco. He thinks social clubs will be the wild card for everyone because it hasn't been done anywhere in the U.S. That alone tells him they could take time to figure out where in South Portland there could be a marijuana social club. He is hung up on the serious public harm piece.

L. Boudreau asked Mr. Haeuser if with what's currently in place and similar businesses that raise similar social/moral issues, could something be drafted within the next two or three months?

T. Haeuser said he's not sure. He is very busy. There would have to be a fair amount of public input and that would increase the time. In some ways it may be straightforward but this is a tricky issue that many people want input on. It's possible to overthink it. To the extent that people will be concerned if it goes into the wrong places, there is public harm in his opinion. It seems like common sense that they would do the moratorium, get their ducks in a row, and then proceed.

T. Neff asked what the purpose is. To start public dialog now or to put everything on hold?

T. Haeuser said it is to get to work. There is a feeling that they can't wait to see what they come up with, they have to anticipate it. There could be revisions if there is contradiction.

W. Laidley said there could be dual tract activity, where Augusta and South Portland are working on making rules.

L. Boudreau said public harm would be the fact that the public, if this is pushed, could be harmed in that they have no input or they put this in the wrong area and it affects property values.

S. Puleo said that and not having rules in place makes it confusing for the public and staff to talk with people about the structure. The moratorium would give the opportunity to put people an arm's length away as they work everything out. There was a moratorium with medical marijuana

for the logistics of how a dispensary would be approved. They don't have any but they had the opportunity to set up the structure during the moratorium process.

W. Laidley asked how long it took for the Council to decide.

S. Puleo said there were two moratorium periods. They didn't make it through the entire second moratorium but went into it a couple months or so. They went concurrently with the state.

W. Laidley doesn't see an immediate effect on public safety but sees it as an opportunity to begin writing the rules.

L. Boudreau has concern that the rules aren't written and she feels they can't do too much.

T. Haeuser said along the lines of dual tract, he suspects municipalities will turn to MMA and talking to legislatures. There will be communication up and down.

L. Boudreau motioned to recommend to the City Council approval of the zoning text amendment to Chapter 27 to add Article XVI Moratorium on Land-Use Permitting and Development of Retail Marijuana Establishments and Marijuana Social Clubs in South Portland. A. Dowling seconded.

W. Laidley doesn't see immediate public harm but he believes the Council needs time to work on it so he supports it reluctantly.

T. Neff agreed. It sounds like it's a good idea but she doesn't see that it's necessary.

Vote 4-0 (K. Phillips, K. Carr, I. Misiuk absent).

W. Laidley called for a ten-minute recess.

Item #6. PUBLIC HEARING – Amended Site Plan Review – CaxMax Auto SuperStore – 415 Maine Mall Road – CarMax Auto Superstore Inc. – FINDINGS

CarMax Auto Superstore Inc. is requesting an amendment to a previously approved site plan and special exception approval to construct a 6,876 SF CarMax automobile sales facility located at 415 Maine Mall Road. The applicant did not move forward with the construction of the project but pre-load the site in preparation of the development. The applicant reconsidered the size of the building and reduced the footprint from 18,561 SF to 6,876 SF. The site was the former sites of the Maine Mall Cinema, Pizza Hut, IHOP restaurant, and other commercial uses. The previous existing buildings have been demolished. The applicant is proposing to treat the stormwater generated from the improved site with the same Best Management Practices (BMPs) from the March and May 2015 approvals. These BMPs will include curbing and catchbasins, sub-surface detention facilities, and sand filters for water quality treatment. The property is further identified in mention is Assessor's Map 74, Lot 9, located within the Central and Regional Commercial District (CCR).

Public hearing notices were mailed on December 2, 2016, to the 11 property owners within 500 feet of the proposed project, 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 the map. He reviewed the conditions and asked Mr. Puleo if they are the same as the last time. **S. Puleo** explained that there are two were not necessary: one about the permit in hand, which they have, and the other requiring the cross travel agreement. This has been obtained and provided. They've removed those two conditions and everything else remains the same.

PUBLIC HEARING OPEN

John Thatcher, development consultant for CarMax, gave an overview of the changes. Since the approval in May, they ran numbers and made the business decision to eliminate the private car wash and reduce the size of the building. They also decided to raise the finished grade. Other than that, the site remains as it was. The building is still centered on the site, the sales, customer lots, and staging area are still oriented the same. Impervious is not increased, the staging area is a slightly larger, access has not changed, and the customer and sales lots are a bit smaller.

Russ Lunt, Brigham St., likes to see this type of business. He's glad they are coming.

PUBLIC HEARING CLOSED

L. Boudreau asked about the sales display. It shows 217 spaces and says "potential 265 future spaces."

J. Thatcher said the two counts are there because the idea is that some staging area may be converting into sales spaces as necessary in the future. They'd like the flexibility to convert that, where sales meets staging.

T. Neff asked if there are other facilities without a car wash and what they do in that situation.

J. Thatcher said they have a small service arm with a wet bay to power wash indoors.

A. Dowling asked if it will be 265 additional spaces or 265 total. **J. Thatcher** said total.

T. Neff asked what other than the car wash is eliminated. **J. Thatcher** said it's just a smaller building and is more condensed. They still operate the same.

T. Neff asked if there's a prototype. **J. Thatcher** said there are numerous. It depends on the site and what they can do with the space.

A. Dowling said this is a perfect location for this type of business. It's such a destination for people all over the state. He thinks it's a good business to have in the City and supports the project.

W. Laidley asked about the upland buffer issue.

S. Puleo said the applicant is responsible for replacing or compensating the City for loss buffer 25 feet from any wetland on their property. The site is surrounded by wetlands on the west side and it happens to be on another property owner's land. The site doesn't necessarily have to buffer that area from any loss of buffer. There is a small finger of wetland that is on their property. There is 800 SF that is going to be converted into a parking area and is lost completely. They will add some landscaping buffer material along the western boundary to make up for the impacts. For the wetlands on their property, they cannot replace the entire loss buffer and the Board needs to waive the loss of the buffer for the small compensation fee. They will add more vegetation to buffer the existing wetlands on adjacent properties to do the responsible thing and not build right up to the wetland area, which they could do.

L. Boudreau motioned to approve the waiver request of Section 27-1428 (a) for a 18-month approval period expiring June 13, 2018;

to approve the waiver request of Section 27-1526 (e)(1) for vegetative upland buffer loss of 88 SF and the waiver request of Section 27-1526 (f) Compensation fee in lieu of the reconfiguration and reestablishment of approximately 8,300 SF of vegetative buffer along the southwestern property boundary;

to approve the amended site plan and special exception application of CarMax Auto Superstore Inc. dated October 14, 2016, through December 2016, and drawings dated September 22, 2016, through December 2, 2016, for the development of a CarMax Auto SuperStore located at 415 Maine Mall Road 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 scheduling a pre-construction meeting with the City, 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 impact fees as required by the Planning Board.
3. The property is subject to a Stormwater Management System Maintenance Agreement that runs with the land and is binding upon the property owner and its successors and assigns as their interests may from time to time appear. Prior to the scheduling of a preconstruction meeting, said agreement shall be duly executed and recorded by the applicant at the Cumberland County Registry of Deeds, with a copy of the recorded instrument contemporaneously provided to the Director of Planning and Development.
4. Prior to the issuance of a Certificate of Occupancy for the project, the applicant must submit an inspection report to the Code Enforcement Officer documenting that the stormwater facilities have been installed and are functioning as designed and approved and are fully operational. This inspection report must be prepared by a qualified third party inspector as defined in Section 27-1536 (c)(3)(e) of the South Portland Code of Ordinances, as may be amended.
5. On or by July 15th of each year, a completed and signed certification shall be provided by each property owner or applicant to the City's Director of Water Resource Protection in a form provided by that Department, certifying that a qualified third-party inspection employed by the property owner or applicant has inspected, cleaned, and maintained the stormwater management facilities, describing any deficiencies found during inspection of

the stormwater management facilities and certifying that the person has repaired any deficiencies in the stormwater management facilities noted.

6. Prior to the issuance of a building permit, the applicant shall provide the Planning and Development Director with satisfactory evidence that one of the first six methods set forth in Section #3(B) of the City's Site Plan application form relating to the applicant's financial capacity is in place.

7. Prior to issuing a certificate of occupancy, the applicant will provide to the Director of Planning and Development the required Traffic Impact Fee of \$1,200.00 for the improvements to the Western Avenue and Westbrook Street signalized intersection and \$450.00 for future improvements to the John Roberts Road and Philbrook Avenue intersection.

T. Neff seconded; (4-0) (K. Phillips, K. Carr, I. Misiuk absent).

FINDINGS

T. Neff motioned to accept the findings. L. Boudreau seconded; (4-0) (K. Phillips, K. Carr, I. Misiuk absent).

Item #7. Public Comment on Items Not on the Agenda

None

Item #8. Comments from the Planning Board and Planning Director

A. Dowling asked if this is the only December meeting. S. Puleo said yes. A. Dowling wished everyone a Merry Christmas and Happy New Year. He spoke about Councilor Fox; his open heart surgery was this afternoon and it went well. He wishes him all the best and hopes for a speedy recovery.

W. Laidley is disappointed in the Housing Committee for not grabbing the third rail of housing. He doesn't think they'll ever really do anything without looking at rent control.

L. Boudreau thinks it was a hard discussion with City Council. They could debate the merits of what they have and haven't done. It's a complicated issue. It's sad to see people put out of housing or see it so expensive. She also fears landlords won't improve their properties if they can't raise their rents. A lot of housing stock is old and needs improvement. She sees legitimacy on both sides of the situation.

T. Haeuser said the Council authorized the Committee to become more official and for a mission statement to be created. They hope in the course of crafting the statement, they will get clearer direction. It would appear that some of what's described is reflected in differences among the Councilors. The Committee hasn't had terribly clear direction at this point.

W. Laidley is sorry Mr. Dowling isn't on the Committee anymore. A. Dowling said it's been frustrating because he's thought of different ideas. They have to think of creative ways to address the problem.

T. Haeuser said the Council would be happy to have other people come forward.

W. Laidley asked about O’Neil Street. **T. Haeuser** said there’s a meeting tomorrow on starting to nail down the process for a committee. People have expressed interest.

L. Boudreau said they are pouring foundation in Brick Hill and she hopes they will be on board quickly. **W. Laidley** said they’re building on Running Hill Road as well.

Item #9. Election of the Planning Board Chair

L. Boudreau motioned to nominate Kevin Carr as Planning Board Chair.

L. Boudreau thanked Mr. Laidley for his service. She spoke with Mr. Carr so he’s not surprised; she thinks he would be an excellent Chair. He’s always very thoughtful and is good at recapturing what they’ve said and catching them when they get “lost in the weeds.” He has also experience as Chair of a School Board before.

W. Laidley seconded the nomination.

A. Dowling thinks Mr. Carr is great choice. He’s steady and even-keeled. He picks up on things others wouldn’t catch. He also thanked Mr. Laidley for his service.

Vote 4-0 (K. Phillips, K. Carr, I. Misiuk absent).

Item #10. Adjournment

9:50 L. Boudreau motioned to adjourn. W. Laidley seconded; (4-0) (K. Phillips, K. Carr, I. Misiuk 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.