

SOUTH PORTLAND CITY COUNCIL
POSITION PAPER OF THE CITY CLERK

SUBJECT:

CITIZEN INITIATED ORDINANCE #1-13/14 – Public hearing and action on the citizen initiated proposed waterfront protection ordinance. Passed first reading on 7/1/13 and given second reading on 8/5/13. ROLL CALL VOTE. Passage requires at least five affirmative votes.

POSITION:

On June 17, 2013, a citizen initiative petition was submitted to the City Clerk's office requesting amendment of the South Portland Code of Ordinances to include a so-called "waterfront protection ordinance." On July 1, 2013, I determined that the petition contained the required number of valid signatures and that each paper had a valid statement of the circulator, and so I forwarded the petition to the City Council.

Once a certified initiative petition is received by the City Council, the City Council is required by Section 1107 of the Charter to have the proposed ordinance read and to hold a public hearing on it. Accordingly, the proposed ordinance was placed on the July 1, 2013 agenda for an initial reading and to schedule the public hearing for August 5, 2013. As the proposed ordinance includes proposed amendments of Chapter 27 (the City's Zoning Ordinance), State law requires that the Planning Board conduct a public hearing on the proposed ordinance too. A referral of the proposed ordinance to the Planning Board was made at the July 1 City Council meeting.

The Planning Board scheduled its public hearing for July 23, 2013 and posted and published the required public notices related to the same. All was fine. However, shortly before the Planning Board's July 23, 2013 public hearing, it was brought to the City's attention that the text of Citizen Initiated Ordinance #1-2013/14 that was given first reading on July 1, 2013 was slightly different than the text of the draft signed by the citizen petitioners: namely, it adds a comma that does not appear in the text of the proposed ordinance as submitted with the signed citizen petitions. In other words, the only difference between Citizen Initiated Ordinance #1-2013/14 and the version as submitted on the signed citizen petitions is that the latter version does not contain a comma after the term "other facility" in Section 4(c) of the proposed ordinance. Arguably, this substantively affects the meaning of that sentence. As of July 19, 2013,

both versions have been available on the City's website. As of July 23, 2013, the City has posted notice about the comma issue on the City's website.

Due to an error by one of the petitioners in the submittal of a Word version of the proposed ordinance to the City Clerk's Office, the comma in Section 4(c) after the term "other facility" was inadvertently (and wrongly) included in the text of Citizen Initiated Ordinance #1-2013/14. However, it is the text of the ordinance as submitted on the signed citizen petitions that is the legally operative version of the proposed ordinance, and so it is the second version (without the comma in Section 4(c) of the proposed ordinance) that constitutes the official text of this proposed ordinance.

The Planning Board conducted its first public hearing on July 23, 2013 and took comment on both versions – the one with the comma and the one without (although, again, it is the version without the comma that controls). At the conclusion of the first public hearing, the Planning Board did not act to make a recommendation to the City Council. Instead, the Planning Board scheduled a second public hearing for August 13, 2013 so that it could notice and conduct a public hearing solely on the version of the proposed ordinance without the comma in Section 4(c) after the term "other facility."

On August 5, 2013, the City Council acted to correct Citizen Initiated Ordinance #1-2013/14 to delete the comma after the term "other facility" in Section 4(c) of the proposed ordinance, as the text of the ordinance as submitted by the petitioners is what the City Council is required to act upon pursuant to Article XI of the City Charter. The proposed ordinance was given second reading on this date. The City Council also acted to recess the public hearing to August 19, 2013 in order to give the Planning Board time to complete its public hearing process and to make its recommendation to the City Council pursuant to Sec. 27-115(g) of the Zoning Ordinance.

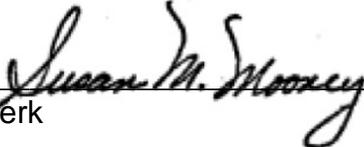
The Planning Board conducted its second public hearing on August 13, 2013. At the conclusion of the public hearing, the Planning Board, by a vote of 4-2, adopted a finding that the proposed ordinance is inconsistent with the City's Comprehensive Plan.

This matter is now in order for the City Council's public hearing and action. Recall that under the Charter, the City Council must complete its action on the proposed ordinance within 60 days of the date it received it from the City Clerk (either by submitting it to the voters or by enacting the ordinance).

The City Council has the option of adopting the ordinance as proposed by the petitioners. If the City Council does not pass the proposed citizen initiated ordinance as written, the proposed ordinance must be submitted to the voters at least 30 days but not more than 15 months from the date of the City Council's final vote thereon. If this later action is taken, the City Council should specify the date upon which the proposed ordinance is to be submitted to the voters.

REQUESTED ACTION:

That the City Council act to (1) reconvene the public hearing on the proposed ordinance; and (2) at the conclusion of the public hearing, take action on the proposed ordinance.



City Clerk



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

CITIZEN INITIATED ORDINANCE #1-13/14

District One
MICHAEL R. POCK

District Two
PATRICIA A. SMITH

District Three
MELISSA E. LINSKOTT

District Four
LINDA C. COHEN

District Five
GERARD A. JALBERT

At Large
ALAN R. LIVINGSTON

At Large
THOMAS E. BLAKE

THE COUNCIL of the City of South Portland hereby ordains that “Code of Ordinances of the City of South Portland, Maine” be and hereby is amended as follows:

Waterfront Protection Ordinance

Section 1: Findings:

Whereas, South Portland is a waterfront community that borders on Portland Harbor and Casco Bay; and

Whereas, the City has adopted a Comprehensive Plan to guide the City’s future growth and development; and

Whereas, a portion of the City’s waterfront is designated in the zoning ordinance as an industrial district named Shipyard District (S), which has as its purpose “to promote the Shipyard area in South Portland as a robust waterfront center for office complexes, commercial uses, marine uses, and light industrial activities”; and

Whereas, the adopted Comprehensive Plan identifies the Shipyard area as an area where, in the short term, the impacts of industrial uses on adjacent residential areas should be minimized, and envisions a transition to more of a mixed-use area preserving the opportunity for traditional marine uses while accommodating recreational, business, and even residential uses; and

Whereas, the City has established a Shoreland Area Overlay District, applicable to the first 250 feet from upland edge of a coastal wetland, in order to prohibit development that would adversely affect water quality, biological ecosystems or scenic and natural values; and

Whereas, there are residential uses including a high rise condominium development and a 123 unit senior citizen facility, as

well as recreational and scenic resources, adjacent to land designated as Shipyard District (S); and

Whereas, there are currently four marinas and a yacht club located in and adjacent to the Shipyard District and recreational uses of the waterfront area continue to expand; and

Whereas, fifty nine cruise ships carrying over 95,000 passengers and crew visited Portland Harbor in 2012, and many of those passengers visited South Portland, providing significant economic benefits to the area; and

Whereas, shoreland areas in the Shipyard District border Casco Bay, which has been designated as an “Estuary of National Significance,” by the U.S. Environmental Protection Agency, supporting some 850 species of marine life; from microscopic plants to migrating pilot whales, and 150 species of waterbirds; and

Whereas, South Portland is a gateway to and from the Gulf of Maine, an area described by the Gulf of Maine Research Institute as a “global treasure,” rich with aquatic life, remarkable natural beauty, and deeply rooted maritime traditions that has extraordinary combination of miles of scenic shoreline, abundant recreational opportunities and world-premier fishing grounds; and

Whereas, Bug Light and Spring Point Light, two of the City’s most important historical landmarks and tourist attractions, are located in and near the Shipyard District; and

Whereas, the South Portland Campus of Southern Maine Community College is located on a campus the college describes as “one of the most picturesque points on the Maine coast”; a few hundred feet from the Shipyard District; and

Whereas, the City is committed to create a sustainable South Portland that includes economic development and job creation through energy conservation and sustainable technologies, has passed a landmark sustainability resolution, No.1-10/11 and signed the U.S.Mayors’ Climate Protection Agreement; and

Whereas, the City’s Comprehensive Plan incorporates the Ferry Village Neighborhood Plan and the Willard Neighborhood Plan, development plans for neighborhoods proximate to the Shipyard District, which plans call for “development in the Shipyard District S to be compatible with the neighborhood”; and

Whereas, the City desires to encourage traditional marine uses and to prevent the intensification or expansion of existing incompatible industrial uses in the Shipyard District; and

Whereas, industrial development in the Shipyard District is limited to light industrial development and construction of equipment or facilities to load oil on tanker ships is not a light industrial use.

Section 2: Purpose:

This Ordinance is enacted to protect and ensure the welfare of the people of the City of South Portland, including protection of property rights, aesthetic values, and economic interests, to promote scenic views and scenic vistas on the waterfront; to protect the environment; and to promote comprehensive land use planning and compatible land uses in and near the Shipyard District and portions of the Commercial District.

Section 3: Amendment to Existing Section (new language is underlined):

Section 27-922(g) and (n) of Chapter 27 are hereby amended as follows:

Permitted Uses. The following uses are permitted in the Shipyard District S....

(g) Petroleum storage tank farms and accessory piers, pumping and distribution facilities for the unloading of petroleum products from ships docking in South Portland, as governed by all applicable sections of the Code....

(n) Facilities for storing and handling of petroleum and/or petroleum products that have been unloaded from ships docking in South Portland, subject to the provisions of Ord. Section 27-1517, excluding automobile filling stations.

Section 4: Section Added to Code:

Section 27-922.5 is hereby added to the Municipal Code to read:

(a) Notwithstanding any other provision of this Code, there shall be no enlargement or expansion of existing petroleum storage tank farms and accessory piers, pumping and distribution facilities, or facilities for the storing and handling of petroleum and/or petroleum products in the Shipyard District or within the Shoreland Area of any Commercial District(C).

(b) No new or expanded facility shall be constructed on an existing pier located in or extending seaward of the Shipyard District.

(c) "Expansion" as used in this section includes, but is not limited to, construction, reconstruction or alteration of any existing facility to change the function or capacity of such facilities; construction of any new combustion units, stacks, vapor recovery systems, equipment, structure, or machinery for transportation or storage of petroleum, including any pumping, distribution or other facility for loading tankers or other ships instead of unloading ships.

(d) This prohibition is not subject to waiver or variance under any provision of this Code unless necessary to comply with the Americans for Disabilities Act (ADA), fire codes, or pollution control regulations imposed on existing facilities with respect to their existing use as provided in Section 27-302(e)(1).

Section 5: Applicability:

The regulations applicable to the Commercial District (C), the Shipyard District (S), and the Shoreland Area within said zoning districts established hereby shall apply to the areas within said zoning districts as they existed on May 1, 2013,

and shall not be affected by any change in district or designation thereafter unless approved by the voters of the City as an amendment to this Ordinance.

Section 6: Violations:

Violation of this Ordinance shall be subject to a minimum penalty of \$1,000 per day for each violation, or such greater amount as may be authorized from time to time for the enforcement of land use ordinances under state statute. The City's remedies by penalty are declared not to be plain, complete, or adequate in the case of continuing or repeated violation of this Ordinance. The City shall seek, and any court of competent jurisdiction shall grant injunctive relief as well as applicable penalties, costs and reasonable attorneys' fees to the City in the event of any repeat or continuing violation.

Section 7: Retroactivity:

Notwithstanding 1 M.R.S.A. §302, this Ordinance shall apply to any proceeding pending at the time of its enactment, unless such proceeding was commenced before May 1, 2013. Any permit or approval issued or rendered by the City after May 1, 2013 purporting to authorize any use or structure prohibited or regulated hereby shall be rendered null and void upon enactment of this Ordinance.

Section 8: Inconsistent Ordinances:

Pursuant to Charter Article XI, and notwithstanding Zoning Ordinance Sec. 27-115, or any other ordinance of the City of South Portland, this Ordinance is not required to be reviewed by the South Portland Planning board prior to enactment, and shall control over any other procedural or substantive provisions of any conflicting ordinance of the City of South Portland.

Section 9: Consistency with Comprehensive Plan:

This ordinance amends the Shipyard District Zone S in the South Portland zoning ordinance to be consistent with the Comprehensive Plan of the City of South Portland, as adopted October 15, 2012.

Section 10: Severability

The provisions of this Ordinance are severable. If any provision of this Ordinance is found to be invalid for any reason whatsoever by any court of competent jurisdiction such invalidity shall not affect any other provision of this Ordinance.

Explanatory Note (not part of ordinance): This is a citizen initiated ordinance; the entire text is proposed to be added as new text to the Code of Ordinances. Pursuant to City Charter Section 1107, "a proposed initiative ordinance shall be read and provision shall be made for a public hearing upon the proposed ordinance."

Dated: August 19, 2013

MEMORANDUM

To: City Council

From: Planning Board

Date: August 15, 2013

Subject: Zoning Text Amendment – Waterfront Protection Ordinance – Commerical District (C) and Shipyard District (S) - Meetings of July 23, 2013 and August 13, 2013

INTRODUCTION

The Planning Board held two public hearings on the proposed citizen-initiated Waterfront Protection Ordinance (WPO), which includes proposed amendments to Chapter 27, Zoning, to amend the permitted uses in the Shipyard (S) zoning district as well as to limit certain uses in the Shipyard (S) zoning district and the Shoreland Area (250 feet from the highest annual tide line) portions of the Commercial (C) zoning district. The first was on July 23rd and the second on August 13th.

The second Planning Board hearing was necessitated by the discovery after the first hearing of a potentially meaningful punctuation error in the WPO draft originally provided to the City Council by the proponents.

Legal advertisements appeared in the Portland Press Herald on July 8, 15, & 29 and August 5, 2013 was posted at City Hall on July 9 and 29, 2013. Public hearing notices were sent on July 9 and 29, 2013 to 46 owners of property within the Shoreland Zone, Commercial (C) and Shipyard (S) Districts, and via email to Conservation Commission, Planning Board and City Council.

This submission was reviewed under Chapter 27 Article. Zoning Ordinance, Section 27-115 (g) Changes and amendments, and the Comprehensive Plan.

ZONING RECOMMENDATION FROM THE PLANNING BOARD

By a vote of 4–2 (Hasson, Hendry opposed; Laidley absent), the Planning Board finds that the proposed citizen-initiated Waterfront Protection Ordinance is inconsistent with the City’s Comprehensive Plan.

Discussion

The Planning Board vote was based primarily on provisions in the Comprehensive Plan (pp. 6-20 and 6-21) which state that maintaining and improving marine facilities and terminals are supported in the Plan. The Board members felt that while regulation of tar sands is an important discussion to have, the proposed ordinance appears vague and overbroad in the regulation of existing operations in the City, and the administration of the ordinance would rely extensively on interpretation such that the average resident would have a hard time knowing how to interpret the ordinance.

Planning Board Minutes of the July 23, 2013 Meeting

Agenda Item #3 Zoning Text Amendment – Waterfront Protection Ordinance – Citizen Initiative
PUBLIC HEARING

The Planning Board will make a Land Use Recommendation to the City Council on the citizen initiated waterfront protection ordinance. The Planning Board will hold a public hearing to review proposed amendments to Chapter 27, Zoning, to amend the permitted uses in the Shipyard (S) zoning district as well as to limit the enlargement or expansion of certain uses in the Shipyard (S) zoning district and the shoreland portion of the Commercial (C) zoning district. A copy of the propose citizen initiated waterfront protection ordinance is available for review at the Planning and Development Department (767-7603) located at 496 Ocean Street, South Portland during normal business hours (8:00 a.m. to 4:30 p.m.). See also Current Notices at www.southportland.org.

M. Butler Bailey read the ground rules regarding tonight's public hearing.

Sally Daggett, Corporation Counsel brought to the City's attention that there is a minor discrepancy between the version of the proposed waterfront property protection ordinance that was given first reading by the City Council on July 1, 2013 as opposed t the text of the proposed ordinance that was actually submitted with the citizens' petition as they were signed. The City Clerk has posted notice on the City's

web site. It has come down to a comma. We are talking about Section 4C of proposed ordinance and in the version the City Council gave first reading on July 1, 2013 , page 3 in Section C second to the last line after the word facility (it is this comma after facility) there is a comma that was not in the text. This was in error. The City will correct this issue. Version #2 attached to the City Clerks' memo, top of page 3, after term other facility there is no comma there. This is the version that controls. An issue was raised by one f the affected property owners about this comma and feels this is a substantive issue so for tonight the Planning Board should take comments on both versions. It is the version without the comma that controls. We will conclude the meeting tonight without a Planning Board recommendation. We will go forward with a second public hearing at the next meeting on August 13, 2013 and will re-notice the public hearing and make sure the version without the comma is the one that is available to the public.

T. Haeuser discussed the background of this item. He stressed at the beginning, Planning Board members aren't making recommendation to City Council on waterfront protection as a whole. We have a narrow job to look at proposed zoning and ordinance amendments to see if they are consistent with the Comprehensive Plan. The waterfront protection proposal went with petition without the comma. There are three parts. 1. The whereas section has a list has paragraphs of support in doing the proposed amendments. Tex read through some of the paragraphs in the waterfront protection ordinance. The meat of the proposal is sections 3 and 4 and these are the actual amendments to the zoning ordinance to shipyard zoning district regulations. Each district has their own set of regulations. Tex showed the existing ordinance is Zone S. Purpose of zone is to permit area as a robust waterfront center for office, marine, industrial uses, etc. The thrust of the waterfront protection ordinance is to not allow the loading of petroleum products onto ships. In the shipyard district it is allowed to have storing of petroleum products subject to provision to section 27-1517 excluding auto filling stations. Under the waterfront protection ordinance proposed amendment that would change to say that unloading of ships docking in South Portland. Tex read the sections on the screen followed by a map of South Portland showing the shoreland zoning area and shipping area. If this is adopted we can't have any enlargement of existing petroleum storage tank and accessory pumping distribution facilities. Now the rule is there is a limitation on enlargement of tank farms. You are not allowed to put tanks in larger than 25,000 gallons, unless on land of same ownership and adjacent to existing storage facility. This would be a change from what we have now. In the shipyard district, section 4161 is looking at the piers. It says no new or expanded facility and facility is the most general word. No new facility shall be constructed on an existing pier in the shipyard district. This does not say anything about petroleum products or loading/unloading of ships. It is qualified by C where it states about what expansion means. C says expansion in this section A and B includes but is not limited to construction/reconstruction of any facility. If it changes the facility, that comes under expansion. It becomes difficult to find out how much of this is modified. D says prohibition is not subject to waiver variance unless relative to requirements like EPA code. So this is what happens to water protection ordinance to shipyard zoning district regulations. Waterfront protection has a third section Tex displayed on the screen. Consistency with the Comp. Plan the ordinance amends the zoning ordinance to be consistent with the Comp. Plan in the City of South Portland. Tex displayed the general points on the screen. Some of the policies in the Comp. Plan are more relevant than others in terms of this proposal. The

ones that are the most relevant are the ones that deal with the waterfront and land use. This is a land use question and what kinds of land use are we going to permit/not permit on the waterfront.

From land use, we are looking at a normal port activity of transshipment, meaning moved from one mode of transportation to another and that is petroleum products. If the Comp Plan supports/not support loading/unloading it equally supports/ doesn't support the other. The Plan seeks to maintain/improve marine related uses in South Portland. Tex reviewed the general land use objectives; promote redevelopment of eastern waterfront, maintain working waterfront while creating limited opportunities for increased public access and mixed uses. South Portland plays a major role because of its all season deep water access. Marine waterfront uses must be maintained. The shipyard district has three areas from the Comp Plan. 1. Marine mixed use district, 2. Marine Industrial district. 3. Shipyard development district. Should changes occur to these waterfront sites, the City and their owners should reevaluate the best use of these waterfront sites? Working waterfront district is commercial C zones on the waterfront and includes Hill St. tank farm. They also include the shoreland area of commercial C areas affected by the waterfront protection ordinance. These are the policies that mostly pertain. There are three additional letters from CITGO, Buckeye Partners and Perkins Thompson.

PUBLIC SESSION OPEN

Natalie West, 5 Deake Street, Attorney for Concerned Citizens stated she has a power point presentation. Here to present ordinance to you. Initiate ordinance and consistency with the general plan is a different dimension that kind of proceeding developed by staff for development by the counsel. The Comp Plan is not an ordinance. The citizens have a right under initiative process to initiate an ordinance for a zoning amendment but they cannot amend the general Comp Plan. We are allowed to initiate a zoning ordinance. There are some areas of the zoning ordinance that are not consistent with the Comp Plan. This ordinance is only about petroleum. The concern is petroleum uses. The obligation of any City after an ordinance passes by initiative is to implement it to carry out the terms and provisions. The ordinance amends two of the permitted uses. The ordinance in your zoning ordinance does not mention initiatives. The consistency we should be concerned about in our community's vision in this ordinance. New facilities that have petroleum facilities are our concern. There are concerns with potential sea level rise. This is a concern as we try to develop our waterfront for the long term future. As we move to put the waterfront development ordinance before the voters, we have an opportunity to do something significant for our community. These are land use regulations that will guide our future and build a community with clean air and water for the future. These are regulations that will help us protect the earth and reasonable necessary. We want to draw the community together and are available to talk to the people and hope the City will interpret these in a reasonable way and looking forward to working with all of you in a cooperative way.

Matt Manahan, Attorney representing PPL Co. and also speaking on behalf of other South Portland businesses including CN Brown, Global, Sprague, Maine Energy Markers Assoc. and Turner's Island. They are all very concerned with potential impacts of this proposed waterfront protection ordinance. The waterfront protection ordinance is in several respects inconsistent with the Comp Plan. This Board can pass the inconsistency of the ordinance and the Comp Plan to the City Council with the recommendation to not adopt this. First point is this ordinance is breathtaking in its scope. It goes beyond tar sans oil. It's drafted in a broader way. Section 3 deals with permitted use or not permitted in shipyard district and the proposed addition in 922N states permitted uses will be changed so facilities for handling petroleum unloaded from ships are not permitted uses, meaning facilities for storing petroleum products are not longer permitted uses in the shipyard district. It could apply to any facilities storing petroleum products if they are not unloaded from ships. That could have broad ramifications and impact all business that doesn't unload fuel from ships. In section 4 922.5 it doesn't talk about permitted uses as section 3 does, but states what is allowed in terms of expansions. Any facilities that store or handles petroleum could not expand or add any new equipment for repairs and maintenance. That could have an impact in the shoreland area of the commercial and shipyard district. The impact of this ordinance would be in over time to shut down and stop petroleum handlings in the shipyard district. That would have catastrophic consequences for facilities handling petroleum products. What the Comp Plan specifically does is the opposite of what this ordinance would do. The Comp Plan talks about protecting these facilities in the shipyard district to allow operation and expansion. This ordinance does the opposite and in time shuts them down. Maine Law prohibits

that are inconsistent with the Comp Plan. This proposed ordinance does not follow the Comp Plan. This ordinance is illegal in other respects. It is inconsistent with Federal and State laws. He urges the Planning Board to adopt a resolution to vote no on this ordinance because it is bad planning and bad policy.

Burt Russell, 65 Mendon Ave., Portsmouth, NH, representing Sprague Operating Resources headquarters in New Hampshire. He is the Vice Presidents of Sprague. Three of terminals in Maine and have been in business for a long time. We believe we add value to the community with environmental compliance and sustainability. Sprague has considerable concerns with the waterfront protection ordinance as it will drastically limit our ability to operate and compete for future business. It will add an unacceptable degree of uncertainty to our business and we strive to strategically plan for the future. At our terminal in South Portland, our owner has invested more than 20 million dollars in the facility. More than 40% is spent on safety and environmental compliance exceeding State and Federal standards. Sprague was the first bio-diesel marketer in the nation, sole supplier of aviation gas in the area, and two years ago enhance unit of a vapor control unit exceeding standards. This will have an adverse affect on Sprague's ability to operate. He urges the Planning Board and Council to reject the ordinance.

Carol Masterson, 14 Coolidge Ave., stated she read the Comp Plan and thought it included environmental sustainability and how tar sans would be consistent with that. If it is a plan that protects businesses and does not support the community, I question that. She stated she has no interest in hurting the business of Sprague. It is the business of the PPL transporting tar sans is the issue. She supports Sprague for their interest in the environment. It seems if there is something flawed in the language, the City should work with the citizens to protect us and keeps us from becoming the next Kalamazoo, Michigan or Mayflower, Arkansas. We do not want that to be our future.

Burley Leavitt, representing Centerboard Yacht Club, is speaking not in favor or against this ordinance other than to express concern of our group with language and inconsistencies which are being evidenced. There is some question as to what is intended and we are concerned with sections 3 and 4 and 5 that we may be subjected to the law of unintended consequences. We have our own docks and marina and not wish to be swept up in some group. We do not want to lose our rights that we have now under your land use and development code.

Jess Yandell, 194 Front Street, stated she faces the PPL and smells the fumes every day. She raises two children there and this is emotional for her. The law of nature doesn't care about papers and sections and those kinds of things. You cannot have these kinds of arguments with an oil spill. The time has come where we don't want to use oil and gas all the time. People are changing and there is more to life than money and you don't sacrifice the land around you for money and profit.

Jamie Py, resident of Portland, Maine and President of the Maine Energy Markers Association. He is very concerned about this ordinance as to what is associated with it. Should this ordinance come through and shut down/limit it would be a dramatic effect to people in our area. We have filed to be a valid question committee to make clear what this ordinance means to people and the people of South Portland. This means jobs and would shut down the terminals if they are not able to update. This does not conform to the Comp Plan. It may conform to some vision the City has. A consequence distributes motor fuels and it comes off the ship. At the terminals you have to add ethanol to it to comply with federal law. That ethanol comes by truck or rail. According to this we cannot blend at the terminal so in order to get gas into Maine you would have to truck from Massachusetts adding many trucks with a huge cost. Heating oil would not be at our fingertips adding to shortages and high prices. He asks to make recommendation to City Council to not adopt this.

Paul Cunningham, 20 Edwards Street, stated the petroleum industry will have their hands tied. There may be some discrepancies between the ordinance and the Comp Plan, you folks know the essence of what this plan holds so don't buy into the fear this evening. The essence is we don't want tar sans being piped into our community. The dirtiest oil we are aware of on the planet. People who signed petitions understood this was directed at tar sans coming through our community. Please recommend to City Council that this ordinance be put on the ballot in November.

Nathan Stevens, Lancaster, Massachusetts stated he is here on behalf of Gulf Oil who owns and operates a terminal at 175 Front Street. We are concerned that the proposed waterfront protection ordinance that was written in a way that will cripple our facility to be here. The language of the ordinance will prevent us from selling gas, fuel and heating oil. The language would also prohibit marinas from operating fuel as well. If the use is not permitted, transit would be via truck increasing costs. We implore the Planning Board to provide an accurate evaluation to the City Council.

Mary Jane Ferrier, 96 School Street stated the PPL is up the street from her. She has no quarrel with the PPL. She does not want the PPL to carry tar sands in the community. She worked on a committee to build Bug Light Park. Recent events have alerted her and other community members to the hazard of transporting tar sands. We cannot afford to have a spill in South Portland. Our environment is important to us. She urges this ordinance to be voted on by the people of the City. It is their environment.

Jeff Leary, 124 Mitchell Road, stated he wants to commend the Planning Board for the Comp Plan. This is a fantastic City. I enjoy all the City provides to us and Bug Light Park is an example of how that is working. That would not have happened without PPL. This is really confusing and if this is about tar sands this needs to be stated. He hopes more people will start to recognize what this is.

Paul Trusini stated the ordinance will pass by 80%. Be brave and look at the oil industry and the pipeline is dying. They want to bring in that really toxic tar sands and somehow tell you the ordinance is very broad and breathtaking. If those tanks were gone and there were hotels, there would be jobs. Don't let anyone persuade you.

Larry Wilson, CEO, PPL Corp. stated it is a privilege to come before you. People have been attacking us for a long time. You have been lied to and we're tired of it. The truth is on our side. We have been here for 72 years. The citizens of South Portland have been duped. We have been correcting the statements and we are exhausted. We are corporate citizens. Have invested money in this community and protected the safety of our assets. Pipelines are the safest mode of transportation. In the months ahead we are going to embrace the opportunity to tell you the truth and give you the facts. Don't be afraid of the truth. Hear what President Obama has said about the truth.

Bianca Pastrana, 67 Haven Road, stated there is a lot of fear in this room and there is also love in this room. Bringing tar sands into the community will damage so much in so many ways. We are not looking far enough in the future and we are only thinking about now. What happens when the tar sands come to South Portland. People don't want it. What makes South Portland great? Is it oil? I don't think so. Tar sands will not save us. We need to work together as a community to solve this.

Fred Brancato, Portland stated he is opposed to tar sands being pumped through the PPL. He doesn't want it near Sebago nor does he want to see stacks near Bug Light. Natalie West's presentation was well done. There would need to be stacks built. That would involve burning off the toxins and how is that consistent with the City's plan. Vote with the sentiment of the people here.

Bill Sousa, Terminal Manager stated the terminal is jointly owned and provides heating oil. Safety is our highest priority and insures the terminal works up to standards. Awards have been received for its best practices and has provided improvements to the infra structure. In addition to property taxes, money has been given to charitable foundations. The proposed waterfront ordinance would restrict us from providing these services.

Karen Silverman, 17 Churchill Road, stated the concern is no technology for the cleanup of tar sands. It is important to protect our waterfront.

Jim Katsiaficas, Attorney with Perkins Thompson and resident of South Portland. He stated he is representing Irving Oil. Marine terminals store various petroleum products. They have no connection to the PPL. They would be affected by the waterfront protection ordinance. Section 4 is the focus and it is the role of the Planning Board to make a recommendation to the City Council on whether the WPO is consistent with the Comp Plan and what the land use implications are for this ordinance. City Council referred the one with the comma and glad there will be a continuation of the issue. The comma does make a difference. This is inconsistency with the Comp Plan. It broadly affects existing units and makes marine terminal existing uses a nonconforming use or worse. It could be interpreted to include routine maintenance. Section 4 is inconsistent with the City's Comp Plan. He urges the Board to state to the City Council this is not conforming with the Comp Plan.

Catherine Chapman, South Portland, stated she is invested in the community. She has worked with people for vision of the future. This citizen's initiative is about change. It is not an ordinance; it is an initiative to put on the ballot. This plan is put before the City to make it better in South Portland. People are concerned with the issue of tar sands in South Portland. The Comp Plan is a vision and initiative. It protects what is already there. It is very specific. It should be adopted and sent forth to the City Council to recommend it is sent to the people so they can vote.

Bob Klotz, 10 Whitehall Ave. stated there is no problem with the ordinance. It is well put together. We are trying to do the right thing for this community. People are attempting to speak to this work. He asks the Planning Board to move forward. Can't afford or allow tar sands to come to our community.

Dave Cyr, PPL, thanked Tex for the summary of the ordinance. EPA wrote a guide of strategies of how to pick up heavy oil. The proponents of this ordinance chose to talk about getting together after the fact rather than have those open discussions before this destructive ordinance. PPL has been active in this community for a number of years. PPL owns 5 acres of Bug Light Park. PPL has licensed two areas of the green belt to the City. Without PPL you would not have that connection. Captains House was also part of PPL's collaboration to the City. It is now the South Portland Historical Society. Parking has also been granted by PPL for events in the area. Chris Gillis, PPL was involved in the Comp Plan. This ordinance is a departure from the way the City has conducted itself.

Willow Femmechide, 81 Morning Street, Portland, stated she feels sad when lawyers pick over commas and trying to prove that something means something else. The leader of a business who has run a clean ship is the one who is demonizing these good people when they are trying to save the quality of life in the place where they live. I am not an extremist. Tar sands oil is extreme energy. It takes a lot of water to make it, mixed with toxic chemicals and creates lakes of toxic waste. There is no place to put the waste water. It is destroying the land in Canada all to make money. This is wrong. The PPL goes under the water in Sebago Lake to 302 to the pumping station in Raymond. The PPL also follows the Crooked River in Harrison. There are numerous waterways. My point is the drinking water (11 towns) is in jeopardy. We would bear all of the risk and the oil companies would benefit the profits.

Brian Leonard is originally from Detroit. It's not a matter of what we say in this room. We are past oil, that's why they're digging out of Canada. It saddens me to see the oil industry with the highest profits on the planet. They have overcharged us so much. There is no more oil coming up; business is declining.

Marla Pastrana, 67 Haven Road, stated it would be difficult with the toxins emitted as they are pumped into the tanker. Accidents do happen. If it spilled into Sebago Lake, drinking water would come from the Saco River. As Natalie West explained, businesses will run as usual. We are not asking anyone to change anything other than preventing tar sands from being pumped from Canada to South Portland.

Robert Sellin, 5 Deake Street, stated co-chair of concerned citizens of South Portland. We need a brighter future for our City. We reach out to all parts of the community and offer to meet with anyone. We do not want your business affected in any way. We are cautious as a community about a change of function. We are willing to talk with you. This initiative protects all jobs and this is business as usual. There is nothing in this ordinance that hurts current business.

Hana Groder, 199 Spurwink Rd., Scarborough, read a poem.

T. Haeuser reviewed the Planning Board's evaluation of the waterfront protection ordinance in terms of consistency with the City's Comprehensive Plan.

Sally Daggett stated the Planning Board's role here tonight is to develop a recommendation to the City Council on the proposed ordinance specifically as it relates to the issue of consistency of the Comp Plan and land use regulations.

Natalie West stated given the unique situation you are in about re-noticing this thing you do have the opportunity to ask the Council what you are supposed to do. Everyone that was at the Council meeting heard the Council say to go to the Planning Commission for a public hearing. There was no charge. It was an opportunity for this ordinance to be presented publicly. Now that it is being put off, why don't you ask the Council. There is no direction. You have an opportunity to clarify it from the Council.

R. Schreiber asked about the comma vs. non comma. It seems awkward to be asking questions tonight without making a decision for a couple of weeks.

M. Butler Bailey stated when we return in August there will be some time for question and answer so we want the opportunity tonight but also there will be some opportunity before we go to making our decisions and deliberate as well.

Sally Daggett stated the Planning Board will incorporate everything from tonight's public hearing into the public hearing for August 13, 2013 so that people who don't want to show up again will be heard and continue to be heard as part of the process. State law requires the Planning Board to conduct a public hearing on any of the proposed ordinances. .

T. Haeuser asked when we reopen the second public hearing will people who testify tonight, testify again at the second hearing.

Sally Daggett stated ground rules apply with repetitious discussion. If people have new things they want to bring up they can be brought up at the next meeting.

M. Butler Bailey asked Ms. West about addressing the parts of the Comp Plan that she was not able to address on her power point.

Natalie West stated the ordinance is in line with the Comp Plan except the one area indicated on the parcel of land located on Broadway and Preble. There are provisions that Tex mentioned that support our point of view. We want a strong industrial waterfront area. The policies are being met by the ordinance. When these ordinances pass, it is the responsibility of the City to interpret these in a reasonable way that is consistent with the language of the ordinance.

M. Butler Bailey asked why not state no tar sands oil.

Natalie West stated this ordinance was reviewed by lawyers across the country specializing in tar sands oil litigation and that approach was based on advice from people who understand what needs to be done to withstand the federal pre-emption.

R. Schreiber asked about tar sands coming in through rail. If this were to go forward, can someone question if the ordinance was punitive or is this something I need to consider.

Sally Daggett stated this does not need to be considered.

R. Schreiber asked if this ordinance does come to pass and people challenge it, can they do it in court. Would that be the cost of South Portland?

Sally Daggett stated yes and it would be up to the City Council to see how much they would be willing to spend.

R. Schreiber asked about application fees.

T. Haeuser stated there are not fees.

Sally Daggett stated people have a right to petition their government.

T. Haeuser stated if the proposed waterfront protection ordinance were to pass and be adopted by the City the only way it could be changed in the future would be by another referendum. It would have to go back to the voters.

C. Hendry asked if the City Council adopts the ordinance, can it be amended.

Sally Daggett stated it can be repealed and amend it.

C. Hendry asks Natalie West about section 4 to be confusing. This is where the unrest comes from dealing with fuel. What is your intent?

Natalie West stated the key part about marine uses is defined elsewhere in code and permitted uses in shipyard zone include marine uses and that isn't amended at all by this ordinance. Marine uses which are your traditional marine uses are not part of the ordinance. They are handled by other sections. This ordinance was intended to take those two portions of permitted uses in shipyard zone which allow in the current form very broad exceptions for petroleum uses.

C. Hendry asked Mr. Wilson about the stacks and could you give us a visual idea of how high those stacks would be and what are they there for.

Mr. Wilson, PPL stated the vapor control unit stacks were originally proposed a project was being considered for the vapor control unit. That project has been shelved because there was an economic justification for the project and we don't have any effort in place to put that project back on the table.

We look for opportunities to maximize our assets. There are projects we might be able to consider to allow our company to operate that might not require a vapor control unit that would require stacks.

There is excellent technology in place. If a project were to take place, we would meet with the necessary people to inform them what this would look like as well as meeting or exceeding the regulatory safety standards. We don't have anything on the plate to utilize stacks. If we do, we would come forward to meet to review standards, meet the code and be fully in compliance.

T. Haeuser discussed follow up on section 4 with Natalie West. What the best interpretation would be for this section. He will invite Patricia Doucette, CEO to the next meeting to review this. His reading is different from what he is hearing. Zoning is legal and you can't go by intent. You have to go by what the words say. Section 4 is trumping everything from what it is saying. He reads section 4 as having broader implications and impacts.

Natalie West stated this is unfortunate going into this. Look at the two sections that were amended in permitted uses. You are narrowing down on the permitted uses.

T. Haeuser stated if section 4 is to be tied to section 3; it should have been included in section 3 or referred to section 3 provisions. That's how you make sure you know what you are talking about. In this case, we know there are good intentions here. The CEO has the final approach on the interpretation. We need to understand how far it goes.

Sally Daggett stated if it becomes effective, the City needs to know what this means. It becomes the law of South Portland.

Erick Giles discussed land use applications on page 4. If zoning ordinance were to be implemented, waterfront would have nonconforming uses.

T. Haeuser stated as it was stated limits on new facilities could have a similar effect as to what is nonconforming.

S. Hasson asked Natalie West about unintended consequences and explain why that won't be prohibited if the ordinance was adopted.

Natalie West discussed ethanol as not a petroleum product. Everything Gulf does is protected. The ordinance talks of expansion.

M. Butler Bailey asked Natalie West about section 3. The concern is section lists all permitted uses and if it's not listed it's not permitted. You changed permitted use for the unloading of ships docking in South Portland. Unloading from vehicles would be prohibited because this ordinance makes it allowed from ships docking in South Portland. Could you address that?

Natalie West stated Gulf is primarily an unloading facility. The ancillary activities of what some type of blending that happens now is clearly going to be allowed.

Jamie Py stated the way it was written will put us out of business.

Natalie West stated it clearly does not prohibit them from doing it. Gulf unloads from ships, store in tanks, blend various products and it would be permitted.

R. Schreiber stated we can only look at it as written.

M. Butler Bailey asked do you bring in ethanol in truck.

Gulf representative stated brings in ethanol, petroleum based additives. They are petroleum based and stored in tanks on site.

R. Schreiber asked for the next meeting to have a definition of petroleum.

M. Butler Bailey asked Mr. Manahan about upgrades and concerned that you were not able to do required doing under Federal law and in section D of section 4 covered that according to Ms. West.

Mr. Manahan stated section D is specific about ADA, fire codes or pollution control regulations on existing facilities. This would not be covered. It states you could get a waiver but it doesn't say. This is concerning.

Erick Giles asked about a specific upgrade that reduces greenhouse gas emissions.

Mr. Manahan stated in section 3 and 4 you may be able to get a waiver for pollution control upgrades. In section 3 there is no waiver there. It would prevent standards for upgrades of those facilities.

Dave Cyr, Sprague stated the upgrade or enhancement that Sprague introduces is blended bio fuel with a petroleum based product. In our read, that would not be permitted. Sprague was the first one to introduce bio fuels in terminals reducing greenhouse gases. Sprague has enacted an upgrade and enhancements that exceed the requirements. 250' shoreline aspect is the life blood that feeds our entire

terminal. It was the intent of the current WPO not to affect our business and to permit this in the future. If this goes through, it will be the end of our terminals.

R. Schreiber motioned to close public hearing and we will be back in three weeks, W. Laidley seconded 7-0.

Planning Board Minutes of the August 13, 2013 Meeting

Agenda Item #5. Waterfront Protection Ordinance – Citizen Initiated Ordinance

PUBLIC HEARING

The Planning Board will make a land use recommendation to the City Council on the citizen initiated waterfront protection ordinance. The Planning Board will hold a second public hearing to review proposed amendments to Chapter 27, Zoning, to amend the permitted uses in the Shipyard (S) zoning district as well as to limit the enlargement or expansion of certain uses in the Shipyard (S) zoning district and the shoreland portion of the Commercial (C) zoning district.

M. Butler Bailey reviewed the public hearing ground rules. This is the ordinance without the comma.

T. Haeuser reminded everyone the Planning Board's charge is not say whether the Board members support the proposed Waterfront Protection Ordinance (WPO); it's to indicate to the Council what land use implications of the WPO are and whether the proposed WPO is consistent with the Comp. Plan. Tex stated he received a letter from Natalie West where a mistake was made on his slide presentation in the marine industrial district. Natalie is correct. T. Haeuser stated he transposed marine industrial with shipyard area. Area 2 belongs to area 3. Discussion for area 3 belongs to Comp Plan marine industrial district. In the WPO section 4(a), it states there should be no enlargement or expansion of existing tank farms or facilities for storing and handling petroleum in the shipyard district. T. Haeuser showed the map and explained the areas. Whether the proposed WPO relative to expansion of storage tank farms is consistent with the Comp Plan matters because PPL could expand on this vacant land. There is a statement in the Comp Plan stating that within this area, the City's development regulations should continue to allow existing facilities for expansion of parcels already used for this purpose. Parcels used for this purpose is the only place it shows up in the Plan. In the long term if the oil use diminishes, the City will need to decide the best use for this land.

David Lourie, Cape Elizabeth, is speaking on behalf of Protect South Portland. He had planned to come as an individual. He stated he did the original version of the initiated ordinance and is much improved from his original draft. Original draft prohibited tar sands oil as such. It is diluted bitumen; a slurry of chemicals to make bitumen flow through the lines. This is why I agreed to originally draft the ordinance. South Portland's consistency with the Comp Plan where a lot has been said about the draft of the ordinance and on the whole it is well drafted. The ordinance provides a gateway to be administered by City staff and presumably have reasonable interpretation of the ordinance. The requirement of consistency with the Comp Plan is a State statute. The ordinance as redrafted put references in relation to the Comp Plan. This ordinance would bring the zoning ordinance closer to the vision of the 2012 Comp Plan while preserving existing uses during the transition. This Board approved the reversal of flow structures back in 2009. This ordinance is to prevent another renewal based on the existing ordinance scheme. The ordinance meets all the legal standards for consistency in the Comp Plan. This includes accommodating existing uses and petroleum based uses in the shoreland areas. There has never been a court appeal of a zoning enactment being inconsistent with the Comp Plan. It is in basic harmony with the Comp Plan. Section 3 amends existing ordinances to make the unloading of petroleum products in the shipyard zone a permitted use. In the commercial zone any existing use involving loading of petroleum onto vessels isn't affected and if it's already an existing use on the property it is grandfathered. In the shipyard zone, new petroleum based product can be established as long as they are

not the principal use of the property. Accessory uses continue to be allowed by 922k. People who own property and fuel vessels will be considered an accessory use having a marina. In general, a lot of activity will be either grandfathered or will be qualified as an accessory use so it doesn't shut down everything that deals with petroleum in the shipyard zone. Section 4 was written with intent to make sure the exceptions didn't destroy the basic intent of the ordinance and the vision of the Comp Plan. Section 4 has 3 subsections A, B and C. This section deals with the effect of the grandfathering section 302. It allows for improvement of building and structures which house grandfather uses. It may operate as a safety valve to sections B and C. The Planning Board's role is to conduct a public hearing. The potential for expansion of petroleum based uses which are to be gradually eliminated over time unless it is trumped in section 4 has the potential for undermining the purpose of the ordinance. The notwithstanding language in section 4A and definition of expansion of petroleum based facilities in subsection C are designed to avoid the expansion of existing nonconforming uses under this improvement provision. The notwithstanding language was necessary to trump other notwithstanding language which is in section 1517 which seems to be trying to establish standards for above ground storage tanks. It contains its own notwithstanding clause which could allow for the unlimited expansion of oil tanks into areas of existing oil tanks. When you look at these other provisions it is necessary to have section 4A language which applies to petroleum bases industry. In B and C having the most discussion, it would have been clearer if they had included the limited word petroleum in the text. B and C spell out on the basic scheme in A and clearly to apply to petroleum facilities; not to other activities on wharfs or piers. It is clear and it's the way the staff will read it if they are going to give it a reasonable interpretation. People who administer these ordinances can either make them or break them. I hope it will be adopted and if not it can be amended. Mr. Lourie handed out a summary of his remarks to Planning Board members.

Matt Manahan, Atty., representing PPL and waterfront businesses. He stated three letters have been sent to the Planning Board. He commented on a few things Mr. Lourie said as Mr. Lourie was distancing himself after having written the initial draft. It is inconsistent with the Comp Plan notwithstanding Mr. Lourie's efforts to sugar coat that. Even Natalie West in her prior statements stated it was inconsistent with the Comp Plan. A reasonable interpretation from staff is what Mr. Lourie is hoping for. The language says no existing petroleum operation in the shipyard or commercial district can operate as it has been normally operating in South Portland. They can't do maintenance repairs and cannot expand and it is quite clear that the Comp Plan contemplates that the existing handling of petroleum operations and oil terminal facilities in those districts are encouraged to operate as they have operated and be allowed to expand. This is a clear inconsistency. There is no way around that. The way this ordinance was proposed is unfortunate and should have gone through the regular ordinance process like the Comp Plan process. Ultimately the voters will have to decide. We hope that the Planning Board recognizes the inconsistency with the Comp Plan and recommends to the City Council not to adopt this and send out to voters as written. If this is adopted by voters, it can only be amended by voters. Should the Council adopt and then fix the ordinance, it would be illegal as it would be inconsistent with the Comp Plan and it would violate the petitioner's rights under the Charter. It would subject the City to a lawsuit. We believe the Planning Board should undertake its charge and make its recommendation to the City Council but should go one step further recognizing this proposed ordinance is poorly written and bad policy. We urge the Planning Board to ask the voters to vote against it.

Roberta Zuckerman, 372 Preble Street stated South Portland is her home and she has her business in South Portland. She stated she feels fortunate to live and work in a place where I am surrounded by the beauty of nature. It is a diverse community with walking, hiking and swimming. It is a destination

place that relies on tourism. I am glad South Portland is a green community committed to the vision of the Comp Plan.

David Cyr, PPL, Cape Elizabeth stated he wanted to address one particular point Mr. Haeuser addressed earlier about the 8 acres of land the PPL owns on the corner of Broadway and Pickett. He states the acres are one parcel with tanks 27 and 28. This parcel is one where we have the right to construct facilities there and have no plans to do so but have the right to under the ordinance. This is not disputable. We will be happy to have our attorney look at this. We have to protect the business and eight acres.

T. Haeuser stated knowing now it is a unified parcel I would agree.

Dan Mooers, 39 Ledge Road, commended all the people who worked so hard on this issue. I hope we are not cutting off our nose to spite our face. From what I have been reading, the Lourie redrafted ordinance would have a severe impact on what we adopt in our Plan. This is a working waterfront and since I have been here it has been oil handling along the whole waterfront down by the cemetery. They are good people and are part of our community for a long time. I would hate to see us do something to prohibit tar sands but not hurt the oil handlers who have been part of our City for a long time. They have participated generously.

Mark Usinger, President, Ale Griffin Ship Chandler, has been supplying commercial tankers for many years. We supply ships with all types of goods. As proposed, I will currently not be allowed to load any of this from the land with my truck onto my company's work boat. That would put me out of business and my customers would no longer be able to get these critical things to run their ships.

Jeremy Anderson, 55 Chestnut Street, USM stated he is concerned for his children. What's the goal of this for the people of South Portland and what are the effects? Decisions are based on economics and power. Are we reducing emissions? What is the value of people's lives? Our health is at risk. The goal is not to squash the economy but to make compromises.

Dr. Pricilla Skerry, discussed complimentary medicine and we treat the whole person. Our genetics depend on the environment; quality of food, air and water. It is an economic and environmental issue. She stated she supports the ordinance.

Carol Masterson, 14 Coolidge Ave., stated the extraction of oil is damaging to global warming. For South Portland to allow tar sands oil does not position us well for the shift. Fossil fuels are hurting our environment and are not longer a sustainable choice. She hopes that the Planning Board will make a recommendation for our town that is based not on what is profitable for our industry but addresses the health and well being of our citizens. Anything less is not for the government of the people but government for industry. People are paid by the oil industry to threaten us to allow a toxic substance to pollute our community.

Bill Vanvoorhis, resident who has been involved with major marine contractor on terminals and tank farms. He has worked with the PPL repairing and inspecting from Maine to the Canadian border. If this ordinance passes business will be lost along the waterfront. This pipe is inspected more than regulations require. He respects the council's decision on this and pass along facts, not opinions.

Meagan Gaven, 120 Thompson Street stated she re-read the Comp Plan today paying specific attention to the community vision portion. She was invited in June of 2010 to SMCC with 100 or so people living in the City and formed groups. What makes South Portland special was asked? Across the board was emphasis on healthy life style, green living, clean air, access to waterfront, caring for young and old and defined ourselves as an education community. We rebuilt our elementary schools and are now renovating the High School. I can't imagine the thought of benzene being off gas with benzene floating around you at the football game. The scenario is not what our community vision describes. Please vote for the ordinance.

T. Haeuser read a letter into the record from NPI objecting to the WPO. They urge the Planning Board to recommend to the City Council not to adopt the ordinance and also urge residents not to adopt this ordinance.

Bill Duffy, resident stated marine industrial areas are maintained and improved while minimizing impact on adjacent neighborhoods. The proposal to would not have actually been considered allowing two stacks to be constructed in residential neighborhoods. It would have severe impact in the area. We know what tar sands consists of. There is proof that tar sands is harmful to the environment and humans. We could not survive living here. We do not demonize the industry. There has been coexistence here. It would not be good neighbor policy if my neighbor put up two smoke stacks. All the facts are with us and the ordinance is brought to you because of the prospect of tar sands.

Jim Katsiaficas, representing Irving Oil terminals. The terminals handle refined products. The terminals do not handle tar sands. We are here to talk about the consistency of the Comp Plan and land use implications of the WPO. The zoning amendment initiated by the citizens or the council questions whether the ordinance is in basic harmony with the Comp Plan. Atty. West suggested we look at the vision behind the Comp Plan. The vision referred to the shipyard district. Marine terminals are located in the commercial district and western working waterfront. The vision of the Comp Plan has a result of maintaining and enhancing the working waterfront that includes the Irving and Buckeye terminals. The vision puts them in a growth area in the upcoming years. Land use implications in section 4 are intended to address uses nonconforming in section 3 which pertains to the shipyard district. Section 4 addresses uses in the commercial district and shoreland zone including the commercial district where the other marine terminals are located. The definition of expansion pertaining to section 4 is a broad definition that could include safety upgrades, maintenance, building, etc. The operations of marine terminals have been in operation for over 100 years. The Comp Plan stated they can continue to exist. The ordinance is inconsistent with the Comp Plan. Thank you.

Dave Owen, 68 Willard Street stated he's on the City's economic division. He would like to respond to Mr., Usinger saying he has a business that could be destroyed. The key word is could. If there are things in this ordinance and Tex and Steve go nuts and push the boundaries of the law; life could be made difficult for existing businesses. As administrators of this law, reconcile the law before them with the rest of the general plan and good common sense. Interpret this law by limiting tar sands.

Frank Day, representing Irving Oil as Manager stated portions of terminals are in shoreland area. The proposed ordinance could not come at a worse time. The community needs to understand marine based WPO will limit ability to grow. The WPO is inconsistent with the Comp Plan.

Pat Hodgins, South Portland terminal stated this is a terminal of clean products. We supply the fuel of vehicles here tonight and jet fuel. We also provide products to Bangor. The WPO would inhibit our ability to maintain our terminal according to Federal and State law. We are continuously upgrading our facility. We are committed to be a good neighbor. The current WPO will have consequences. He is asking the Planning Board to recommend to City Council not to adopt this ordinance.

Bill Sousa, terminal manager, Citgo stated the WPO will restrict our use. Tank 1 is an ethanol storage tank. Tanks 1, 2 and 3 have undergone major upgrades. We have made improvements to our terminals. We meet regulatory requirements and the WPO will impact our terminals.

Roger Hale, Turners Island stated he will be a consequence of the WPO. He stated he shipped water out on rail to a destination. The oil is transferred to a barge and taken to the ship. In the WPO I would not be able to do that anymore. He also handles B100 added to bio fuel and distributed. Efforts should have been focused directly on tar sands.

Larry Wilson, CEO Portland Montreal pipeline community stated it is a privilege to work in South Portland. Proposal to the community is can we set the tar sands debate aside. Let's go as a community together and study this issue as a collaborative way instead of attacking one another and be fearful.

Let's do this together and before we do that we need to defeat this ordinance and we can then sit down and talk about this in an educated way and not a fearful way.

Natalie West, Atty., 5 Deake Street stated look at page 6-20 and 6-34 of Comp Plan you will see what the plan allows in marine industrial areas is almost exacting the same as traditional heavy industrial waterfront. The key is that these areas are well maintained while minimizing their impact on residents and in longer term if the demands change, the City will look at other uses. What this ordinance does is prohibit the enlargement of oil businesses in area of Bug Light Park and establishes a 250 ft buffer for petroleum businesses along our waterfront. When people pass an ordinance, this is interpreted in a reasonable way by the City of South Portland. You as the Planning Board render a tremendous service to the community and City Council if your recommendation includes a finding that the City should interpret the waterfront protection ordinance as part of and along with its existing zoning ordinance. That is: make it clear that the other sections of the zoning ordinance will remain in full force and effect. Those include sections that make marine uses permitted uses. The definitions will remain the same. Marine uses do not include oil industry but does include fueling boats. Once the zoning ordinance is changed, business can continue. WPO was written to be consistent with the Comp Plan. It meets those standards.

Marla Pastrama, 67 Haven Road stated in the Comp Plan there is a vision where people want to live and be a part of the community. This friendly community has grown and changed. Residents do not want tanks on their waterfront. This is a community where we do not want PPL to pump tar sands oil near our schools and burn off toxic chemicals in our parks. She supports WPO for our community.

Sidney Damian-Loring, 33 Cummins Street, attended South Portland schools. She stated she supports WPO. Families, runners and students have been observed during her runs through South Portland. I would not want to live somewhere where my family's health would be in danger.

Rachel Burger, 17 Churchill Rd. stated she wishes to live in South Portland where it is a diverse community and looks forward to voting for the WPO in November.

Dale Cunningham, 261 Preble Street, stated his vision of South Portland is one that encourages the use of green building and alternative ways of building houses. He moved here and decided to stay here because it is clean here and a nice community. People in Maine are innovative and they care. This debate is about clean air, clean water or do you want money. Tar sands are not it. This is health vs. money and it is wrong.

Robert Sellin, 5 Deake Street, stated he would like to address land use implications and a diverse working waterfront. The waterfront is an engaging place and attracted him to this community. He is voting for the WPO. There is a new threat on the waterfront and we need to protect ourselves with this ordinance.

Andrew Jones, 296 High Street discussed his vision for economic diversity and future of our community. We should have a number of different businesses as the Comp Plan states. He is concerned about turning South Portland into an international hub for the transport of toxic fuel. Reversing the flow would damage our scenic beauty. The WPO allows for upgrades for safety and compliance and allows traditional business we have had all along. He supports WPO.

Karen Sanford, 19 Preble Street, stated she has been an advocate for the working waterfronts. Regarding the Comp Plan; maybe it doesn't use the words to protect the health of South Portland people, however, South Portland's vision for the future does not include the nightmare that my neighbors and I that live across from tank 28 while the tank waited to be cleaned for almost a month. In the last few weeks, it has been cleaned. We have been under attack since June by crude oil fumes by a generator parked out near the Bug Light walking trail. There is also a loud hissing noise 24/7. This went on for two months. These experiences with tank 28 have shaken our trust. She is voting for the ordinance.

M. Butler Bailey asked Mr. Lourie a question about Section 4 versus the terms "maintain and improve" in the Comp Plan. The Comp Plan contemplates maintaining and improving what's going on at the

waterfront. The definition of expansion in Section 4 appears to limit this – she can see where the concerns of oil industry are coming from.

Mr. Lourie stated accessory use would be reasonable interpretation of the ordinance in a way which is liberal in terms in rights of existing owners to continue what they are doing and not to embark on something new and different. Security measures would be allowed. Everything they said would be accessory to the marine terminal and would not be new and different.

M. Butler Bailey asked for clarification of whether accessory uses would be protected.

Mr. Lourie stated any principal use will be allowed as long as it tied to an accessory use. If they are doing the same thing they were doing before that would not be an enlargement or expansion. Reasonable administration of the ordinance would deal with this on a case by case basis. He doubts any of them would be denied. The trigger for this ordinance was the proposal to bring tar sands oil here which was approved in 2009.

R. Schreiber asked Mr. Lourie if this ordinance didn't simply prohibit tar sands because such an ordinance would not be defensible so you approached it this way?

Mr. Lourie stated we are can't deal with safety issues. The Federal Safety Pipeline Act seems to preempt all of that; we can only deal with local consequences and not the stuff in the pipeline or with spills.

Matt Manahan stated it is important to look at language of WPO. This language is broad and Ms. West and Mr. Lourie stated there are other sections that will take care of this. Section 4 says "notwithstanding any other provision of this Code," it applies. Essentially you can't have any expansion. It is very broadly defined and includes construction of any new equipment of machinery or petroleum. There is no other way to read it. It is what it is.

S. Hasson asked Mr. Manahan is Section 4(d) modified 4(a).

Mr. Manahan stated that Section 4(d) gave his clients no comfort: who grants a waiver? What are the standards? How Section 4(d) works is at best vague.

C. Hendry asked Mr. Lourie the way the WPO is written is very nuanced in interpretation. Lawyers disagree about it. How does the average resident get what it needs to interpret the ordinance?

Mr. Lourie stated that he or she would go to the CEO for an interpretation and then to the Board of Appeals and then to the Planning Board. People in administration must be reasonable in their administration of the ordinance. The staff may turn down a small fraction of applications under this ordinance. The operations there are intended to be preserved.

Erick Giles asked either Mr. Laurie or Ms. West to site specifics to show that this ordinance is consistent with the Comp Plan.

Natalie West stated we have addressed this tonight and the key is on page 6-20 regarding the western waterfront and later in the Comp Plan I have cited the definitions of marine industrial and commercial are parallel. It does not reference expansion of oil use. One sentence in the Comp Plan talks of enlarging oil use and that the section that we talked about for the parcel on Preble and Broadway that allows tanks. The community vision is the framework that sets forth what is to happen in your Comp Plan and we have addressed all of them. On page 6-20 it says marine industrial uses are "maintained and improved" while minimizing their impact on adjacent neighborhoods. The point is the phrase is maintain and improve which is exactly what the WPO allows. It does not allow expansion or change of use.

R. Schreiber asked if this were to pass, we may still get tar sands through rail or truck?

Mr. Lourie stated anything is possible and there is so much money at stake in the oil industry in getting this stuff to market. We have the pipeline with proposal approved in 2009. We dealt with the issue that pipeline is there and it might be a good idea to plug the hole now before they reapply.

C. Hendry stated she was on the Planning Board in 2009 when it approved a reversal of the flow for PPL. At that time, she brought up in great detail tar sands and huge trucks that mine the tar sands in the

forest that is a depository for carbon dioxide. She voted approval of the application because, as a member of the Planning Board, you have to look at an application and say has the applicant met all the standards of the ordinance and they did. After it was approved, it didn't go anywhere and we don't know why it didn't happen.

R. Schreiber asked Corporation Counsel about Mr. Lourie talking about basic harmony with the Comp Plan and that the State would look at how the municipality decided the issue.

Sally Daggett stated the court cases say that a zoning ordinance has to be in basic harmony with the Comp Plan but it doesn't need to be in complete harmony. The court cases also say that the question of consistency with the Comp Plan is a question of law.

M. Butler Bailey stated Mr. Lourie said the Planning Board did not need to make a recommendation to the City Council and Corporation Counsel about that comment.

Sally Daggett stated there are two things happening tonight in this process. State law requires that anytime there is proposed amendment of a zoning ordinance, the Planning Board must conduct a public hearing. The City's Zoning Ordinance, Section 27-115(g), says that anytime there is a proposed amendment of the Zoning Ordinance, the Planning Board must review the proposed amendment and make a recommendation to City Council on consistency with the Comp Plan and the land use implications of the proposed amendment.

C. Hendry discussed the 2009 PPL application and part of the application referred to the land they own behind the community center and would require a pumping station there. Is that part of this?

T. Haeuser stated it's not part of this.

PUBLIC HEARING CLOSED

C. Hendry stated in some areas of the Comp Plan, the WPO does address certain issues. On the other hand, the business community is correct to say continued growth and development for business is also part of the Comp Plan as far as land use considerations. To bring up Mr. Lourie's point, the Comp Plan is meant to be comprehensive. In areas of health and safety in the environment, the WPO is addressing those issues and the business community has a stake holder in the Comp Plan as their business concerns are outlined in the Comp Plan.

R. Schreiber stated he is an environmentalist and gave background on his environmental credentials. He also served on the Ordinance Committee, comprised of representative of the entire community, that included public debates on "this is what we are thinking" but also "what are you thinking?" Then he was on the Comprehensive Plan Committee where there was extensive talk about the waterfront. He understands where the opponents of tar sands are coming from, but this ordinance does not work for him. The WPO is not in compliance with the Comp Plan. If this goes to the voters, it is my hope is to get above the fray. PPL has been a great corporate citizen. The Planning Board is savvy. It is fact based. If there is a project, we need third parties' information in order to make an informed decision. This ordinance is not in compliance with the Comp Plan. We had a conversation about Planning Board regulation #5 and what de minimis change is. When we looked at that regulation, we spelled out what could be done. When we have to weigh everything, we need to look at how it is written.

F. Hagan stated this is about tar sands and the way this ordinance is written will put the City in a problem trying to enforce it. He doesn't feel it is worded properly.

C. Hendry stated it will go to the voters.

Sally Daggett stated the City Council is meeting next Monday night to complete its public hearing on the proposed ordinance then the City Council can take action to enact the ordinance as written and the ordinance can go into effect 20 days after that date, August 19th. If the City Council does not enact the ordinance as written, it will go to the voters and the City Council will need to decide on a date that the proposed ordinance will go to voters. Under the Charter, it has to go no less than 30 days but nor later

than 15 months. Presumably if the City Council does not enact the ordinance, it will likely go to the voters on November 5, 2013.

E. Giles stated the Comp Plan clearly contemplates a changing waterfront and looks at managing these areas to accommodate changes and mixed use proposals and expansion of neighborhoods. But it clearly talks of preserving and maintaining marine facilities and terminals. The specific language is on pages 6-20 and 6-21. The text says that the City's marine terminals and related marine industrial areas are maintained and improved while minimizing their impacts on adjacent residential neighborhoods. And in the Shipyard Development District it says within this area the City development regulations should continue to allow existing marine and oil facilities to upgrade or expand on parcels that are already used for this purpose. So he reads that as the guiding policy for future land uses in the City, and then looks at what the WPO states in Sec. 4(a) about enlargement or expansion of, and then the definition of expansion in letter (c)—is not limited to, construction, reconstruction or alteration of any existing facility to change the function or capacity of such facilities. You can't increase the capacity of these facilities according to the WPO but in the Comp Plan it's saying we should allow the capacity to continue or increase if these property owners decide to. So he doesn't see how it could be considered consistent with the Comprehensive Plan. Also, there is a lack of goals and policies in the Comp Plan to support this WPO. The WPO is not consistent with the Comp Plan. Having said that he thinks that even as we move forward if there was some kind of development proposal that came along to expand to this area, just because it received approval in 2009 doesn't necessarily mean it's going to get a stamp of approval today. While he doesn't think the WPO is consistent with the Comp Plan, he doesn't think it automatically opens the door for approval of smokestacks adjacent to residential neighborhoods and Bug Light Park.

S. Hasson stated she disagrees with everybody. What would be permitted or not permitted are things that concern me. I am looking at whether this proposed ordinance is consistent and in basic harmony with the Comp Plan. She found numerous instances in Chapter 6 of land use goals and its vision statement and implementation section and anticipate revisiting zoning sections we talked about today. I feel we are blending marine use and petroleum use a lot that would be inconsistent with tar sands. This ordinance is in basic harmony with the Comp Plan.

M. Butler Bailey stated she is still on the fence. Tar sands scare her. If this was an ordinance that could be constitutional and just ban tar sands oil she would recommend it in five seconds. But the way it's worded—the lawyer in her is concerned. She is concerned about the Comp Plan saying that uses are maintained and improved and feels there is an overlap between expansion in Sec. 4 and improvement from the Comp Plan. She agrees with what was presented about a community vision that bans tar sands, but that is not what we are being asked to do here tonight. The definition of expansion is so broad that she is concerned. Mr. Lourie's comments that the staff would interpret this the right way concern her as she doesn't like to assume anything. The statute on its face is what's concerning me even if the intent behind it is wonderful.

E. Giles agrees that the ordinance should not be left to the sole interpretation and administration by staff. He says it is not the role of the Planning Board to turn things over to staff. That is a very dangerous approach.

C. Hendry stated the tar sands fields in Canada are the size of Florida and they are not going to go away. The underlying factor is tar sands.

S. Hasson stated there are safeguards in our ordinance. We look to the zoning ordinance and not the Comp Plan. We grant waivers all the time. We need to look at the direction of the Comp Plan.

R. Schreiber indicated that in developing the Comp Plan we did talk about if, down the road, we do see that there's a different use of energy, we wanted the Comp Plan to say that if Sprague or whoever tries to go into other industries because of market forces, we want them to be able to do that. We didn't put that language in there to be prohibitive. He can see how someone might see that language and have a

different interpretation. But the intent was that the terminals should be accommodated as a marine use, and as long as it's viable that's what it's going to be. But as soon as they want to change their mind, we want to help them make that change. Also, he doesn't believe the WPO language is tight enough and thinks there is a reason why the proponents crafted the language in this way. They don't want to have tar sands but they can't say it so they have to do this.

C. Hendry doesn't like an ordinance where you need an attorney to explain what it is. She agrees with the tar sands people 100% but really doesn't like the ordinance.

M. Butler Bailey takes Ms. Hasson's point about community vision—all that is veering toward this ordinance. But at the same time, there is a very specific vision in the Comp Plan that is not broad, that's very specific, and that says that we're supposed to maintain and improve this area. She feels if it's specific it overrides the general.

T. Hauser stated that in terms of that wording, if you were to put an addition onto your house, could you fairly call that an improvement to your house? (Others—yes) So it's an improvement, but it's also an expansion.

M. Butler Bailey agreed that there is an overlap between improvement and expansion. The specific language in the ordinance that trips her up is “construction of any new combustion units, vapor recovery systems, equipment, structure, or machinery for transportation or storage of petroleum.” Before that in the WPO, they don't want a facility to change function, which makes sense and is ok, but her concern is with the piece about preventing any change in capacity, which she feels would keep them from maintaining and improving, which she feels is very specifically called for in the Comp Plan.

S. Hasson motioned the Planning Board make a recommendation to City Council that WPO is in basic harmony with the Comp Plan, C. Hendry seconded. Further discussion ensued. **Motion failed by a vote of 2-4.**

R. Schreiber motioned that the Planning Board finds the WPO is inconsistent with the City's Comp Plan. E. Giles seconded. Motion passed by a vote of 4-2 (Hasson, Hendry opposed; Laidley absent).

RECOMMENDATION

The Planning Board voted 4–2 (Hasson, Hendry opposed; Laidley absent), , the Planning Board finds that the proposed citizen-initiated Waterfront Protection Ordinance is inconsistent with the City's Comprehensive Plan.

Attachments

1. Workshop and City Council Information:
 - a. Planning Director Memo-ADDENDUM to the Planning Board dated July 18, 2013;
 - b. City Clerk's Position Paper to City Council dated August 5, 2013;
 - c. Ground Rules for the July 23, 2013 Planning Board Hearing;
 - d. Corporation Counsel's email to the City Manager dated July 18, 2013;
 - e. Corporation Counsel's Memo dated July 3, 2013;
 - f. Proposed Citizen Initiated Ordinance as delivered to the City Council;
 - g. Actual Proposed Waterfront Ordinance from the Citizens Petition; and,
 - h. Map of Areas Potentially Affected by the Proposed Waterfront Ordinance.

2. Concerned Citizens of South Portland and City's Staff Response:
 - a. Letter from Natalie West to Tex Haeuser dated July 31, 2013;
 - b. Letter from Tex Haeuser to Natalie West dated August 5, 2013;
 - c. Memo form Natalie West dated July 23, 2013;
 - d. Memo from Natalie West dated June 20, 2013; and,
 - e. Letter from Patricia Doucette, Deputy Planning & Development Direct and Code Enforcement Director in response to the June 20 West memo.

3. Letter from Perkins Thompson Attorneys representing Irving Oil Terminals (Buckeye and CITGO):
 - a. Letter dated July 18, 2013;
 - b. Letter dated July 22, 2013; and,
 - c. Letter dated August 7, 2013.

4. Letter from Pierce Atwood Attorneys representing Portland Pipeline Corporation;
 - a. Letter dated July 18, 2013
 - b. Letter dated August 2, 2013; and,
 - c. Letters dated August 8, 2013.

5. Oil Terminal Operators and Businesses:
 - a. Letter from Buckeye Partners dated August 7, 2013;
 - b. Letter from Irving dated August 7, 2013;
 - c. Letter from CITGO dated August 6, 2013;
 - d. Letter from American Petroleum Institute dated August 12, 2013;
 - e. Letter and video from Portland Tugboat, LLC dated July 26, 2013; and,

6. Public Comments:
 - a. Email from Dave Owen dated August 8, 2013

7. Evidences provided at the August 13th Planning Board Hearing
 - a. Written testimony of Attorney David Lourie dated August 13, 2013; and,
 - b. Written testimony of Mr. Sousa dated August 13, 2013.