

**City of Newburyport
Planning Board
November 1, 2017**

The meeting was called to order at 7:06 PM.

1. Roll Call

In attendance for the Planning Board: James Brugger, Anne Gardner, Tania Hartford Joe Lamb, , Leah McGavern, Andrew Shapiro, Bonnie Sontag, and Don Walters.

Mary Jo Verde arrived at 7:48 PM

In attendance for the City Council's Planning & Development Committee and Committee of the Whole: Ed Cameron, Joseph Devlin, Jared Eigerman, Greg Earls, Charles Tontar, and Bruce Vogel

Absent: Barry Connell

Andrew Port, Director of Planning and Development, was also present

2. Continuation of Joint Public Hearings with the City Council's Planning & Development Committee and Committee of the Whole on Proposed Zoning Changes

Councilor Cameron called the Planning & Development Committee meeting to order.

a) Hotel/Inn (#105), Lodging House (#106), and B&B (#110) and short term residential unit changes

Chair Sontag and Councilor Cameron asked for public input on questions raised by the subcommittee: 1) Should a unit owner reside on the property as their primary residence? 2) Which districts should allow short-term rentals? 3) Should minimum or maximum length of stay, or frequency of turnover be regulated? 4) Should minimum or maximum size of units be regulated? 5) Should licensing terms be one or two years? Councilor Tontar added: 6) should violations carry a financial penalty? 7) should Plum Island (PI) be an exception?

Public comment open.

Audrey Miller, 294 Water Street, said a two-year license was needed for 9-10 month advance bookings. Otherwise, advance bookings would be inhibited.

Jim McCauley, 27 Storeybrooke Drive, said resident owners had more success. Districts differed. Ward 5 was spread out, but other districts were so compact that a TV on next door was a bother. He supported a two-year license and was concerned about a licensing backlog.

Lynn Mason, 99 Reservation Terrace, said PI should be an exception because property owners purchased with a plan for short-term rentals. Realtors show budgets for mortgage and taxes based using rental income. Chair Sontag acknowledged the situation.

Neal Sanders, 58 Merrimac Street, supported owner occupancy and one listing per owner.

Lisa Shactman, 13 Bayberry Road, an owner-occupied Airbnb who did not allow parties or guests, did not support a minimum or maximum stay. She supported a two-year license. It was important to meet guests and touch base as they came and went from her home.

Amy Badger, 21 Olive Street, an owner-occupied Airbnb in a densely populated, quiet neighborhood, in a dense Ward, had zero complaints and favorable reviews. She supported restrictions and parameters, but did not support a minimum-maximum stay. She required a security deposit, always met with guests staying in her home, and supported a noise violation penalty because there was an avenue for that in the pricing. A B&B owner did not have breakfast with, or want to know, their guests. She hosted many wedding guests due to the lack of a hotel.

David Moore, 82 Water Street, an owner-occupied Airbnb, did not support minimum-maximum restrictions. A member said the zoning regulation would apply to rentals only under 30 days.

A resident asked if anyone had studied other communities where Airbnb regulations had many restrictions that had not worked and were dropped? Chair Sontag said the subcommittee looked at two proposed state bills. The goal was to be reasonable.

Jane Snow, 9 Coffin Street, wondered what transition would be offered to residents who believed they lived in a residential district?

Councilor Tontar said Airbnb's data showed 110 Newburyport hosts and 4,400 guests last year.

Al Clifford, 45 Green Street, was opposed to Airbnbs in R1, R2, and R3 and taking regulatory authority away from the ZBA because of the need for hearings and recourse. Airbnbs should be in business and waterfront districts only.

Constance Preston, 18 Atwood Street, said a Newburyport wedding bringing 147 guests to town for a four-day weekend could not have been held here without Airbnb accommodations.

Rick Taintor, 10 Dexter Street, described four different types of short term rentals: 1) a spare bedroom, 2) a B&B, 3) a stand alone house, more typical for PI but not downtown, and 4) a separate apartment on the premises. The short-term rental types were appropriate for different parts of town. He supported a two-year license with a rolling, annual renewal.

Joanne Clemens, 26 Jefferson Street, an Airbnb super host with a 5-star rating, did not support distinguishing between districts, a minimum-maximum stay, or making PI an exception. Five years of owner-occupied experience made her cognizant of neighbors. She did not want complaints. Profits helped maintain her antique, two-unit home deeded as two condos. One side was the short-term rental. Many non-tourists visited Newburyport for weddings, emergency family visits, funerals, graduations, and family reunions. Strict limitations on the number of guests would help make a minimum impact on neighborhoods. The definition of short-term

rental was important. A noise ordinance already existed. A board member and Councilor Eigerman said there was no noise ordinance. Ms. Clemens said the City should write one.

Tom Kolterjahn, 64 Federal Street, agreed with Mr. Clifford's concerns about introducing a business use in residential neighborhoods. His long-term rental property, if used as an Airbnb, would remove rental units from the market. Could the rental market impact be quantified?

Public comment closed.

Member comments: The City could ignore existing Airbnbs or enforce the ordinance and shut them down. Members did not want to ignore the issue. Did an Airbnb differ from a neighborhood financial planning business? Would a short-term rental regulation open the door to other types of business uses in residential areas if the impact to the public were no different? Incremental parking exacerbated an existing problem. Would there be a taxing component? Councilor Cameron said only the state could authorize taxing. Chair Sontag said taxing was not under consideration at his time. Members supported owner occupied short-term rentals as an exception to any other business use in residential districts because owners were sharing their homes. Short-term rentals would continue if regulatory allowances were not made. Removing long-term rentals from the market should not be allowed unless property was owner occupied. The number of licenses per person could be capped to avoid entrepreneurial expansion. A licensing process offered feedback through public hearings and notified abutters.

Councilors Cameron and Eigerman considered whether owner-occupied or resident-occupied was an important distinction. A resident-owner of a 10-room house could use Airbnb for nine rooms while living in one. Members did not want to restrict residents from renting while they were away for two weeks. Florida resident-owners lived in town less than six months a year, generally renting the rest of the year. Councilor Eigerman said the focus was to limit short-term rentals to primary residents. Chair Sontag said limiting rentals to owner occupied at the time guests were present omitted a number of situations, leaving many properties unoccupied a good part of the year. Councilor Eigerman said some people used Airbnbs for more than two months. Any rental over 30 days was already legal, but all communities focused on rentals 30 days or less. Members considered whether houses connected by a breezeway could be considered owner-occupied? Councilor Tontar said it was necessary to define resident. What if an owner occupied wanted to Airbnb the home when they went away for a month? What about requiring a local agent? Councilor Eigerman said the existing law did not allow residential district home to be used as a business where customers enter the premises. The difference between PI and the mainland was the PI tradition of absentee landlords. Most testimony and the letter from Airbnb related to people sharing their homes to make ends meet. A host on the premises was no problem, but he did not want absentee-resident Airbnbs all over the City. That was the exception for PI. Annual renewal was an opportunity to be heard and the mechanism to catch problems.

Chair Sontag said a license requirement would cover suspensions. Councilor Vogel said when an owner was out of town, a local agent to call would benefit the renter and the community. Members said an agent would remove the local management aspect. Councilor Eigerman said there was a policy dimension for City Council regarding transient renters due to the lack of hotel rooms for the tourist-driven City. What could balance the loss of housing stock? Councilor

Devlin said Mr. Taintor's four Airbnb types were important. Any regulation was a blanket to cover a few intensive problems. Identifying non-intensive uses define the exceptions to an intense commercial enterprise. Homeowner's liability insurance covered sporadic rentals but Airbnbs required a commercial insurance policy. A less intrusive regulation would not cause problems for hosts with a less intensive use. Councilor Cameron agreed. A bedroom rented nightly all year, should not be a problem, but a stand-alone house would take units off the market. Unbridled growth in short-term rentals would cause concerns. Members asked what defined a rental versus an Airbnb? Councilor Eigerman said hotels, B & Bs, and lodging houses were all defined by a kitchen and other things. Airbnb did not fit any categories. They could not be a residential use because they were open to the public. Members said Airbnbs could not be compared with other business uses because they performed a residential use. Councilor Eigerman said a body of law prohibited operating a business open to the general public out of a house. Members said Airbnbs were private transactions not open to the general public.

Chair Sontag heard more consistency than in previous comments and would synthesize members' comments for Director Port. Councilor Cameron would synthesize comments from Councilors and the public for Director Port. The primary concerns were neighborhood issues, affordable housing issues, and the long-term impact on rentals. Councilor Vogel said the Airbnb statistics should be posted on line.

Leah McGavern made a motion to continue the discussion to December 6. Tania Hartford seconded the motion and all members voted in favor.

Councilor Cameron supported managing growth of short-term rentals by a cap that could be modified. Councilor Eigerman asked for a distribution of the current law. Director Port agreed that Airbnbs were a separate category that needed its own definition for use. Councilor Tontar wanted clarity on the distinction between a business accessory use, as some courts had ruled, versus a private agreement residential use, on which the courts were divided. Councilor Eigerman said current code stated a residential accessory use was not allowed. Councilor Devlin suggested seeking an opinion from the City solicitor for the use definition.

Councilor Cameron made a motion to close the Planning & Development Committee's portion of the hearing. Councilor Eigerman seconded the motion and all members voted in favor.

Motions Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

3. General Business

- a) The minutes of 10/18/17 were approved as amended. Mary Jo Verde made a motion to approve the minutes. Tania Hartford seconded the motion and all members voted in favor.

Motion Approved.

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4. Public Hearings

- a) ***New England Development
83 Merrimac Street and 90 Pleasant Street
Definitive Subdivision (2047-DEF-02)
Continued from 7/5/17***

The applicant requested to continue to November 15.

Don Walters made a motion to continue the Definitive Subdivision to November 15. Joe Lamb seconded the motion and all members voted in favor.

Motion Approved.

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- b) ***Evergreen Commons, LLC
18 Boyd Drive and 5 Brown Avenue
Definitive Subdivision (2017-DEF-01)
WRPD Special Permit (2017-SP-05)
Continued from 10/4/17***

Attorney Lisa Mead, Mead, Talerman, & Costa LLC, 30 Green Street, was waiting for completion of peer reviews. Engineer Steve Sawyer, DCI, 68 Pleasant Street, had worked extensively with reviewers. Comments were received from the City solicitor on the conservation restriction. She distributed a color-coded plan delineating open space by conservation and passive or active recreation that was submitted. Members asked about the water feature? Mr. Sawyer said a small pond, pleasing to look at with surrounding vegetation, would be dug. It might dry out in the summer. Bridges crossed a newly functioning wetland currently not functional. It was not a pond. A center channel would hold water at least half the year, especially during a large storm event. Chair Sontag said there were questions on a draft conservation

restriction whose language was reviewed by the City solicitor. Attorney Mead sent comments to the solicitor Saturday. He was also waiting for a baseline documentation report that would be created after the open space work was completed because no baseline existed now. Director Port said the solicitor wanted to be clear about the intent of the open space. Attorney Mead said a list of activities prohibited in the conservation area was provided. Chair Sontag said the question about the central gathering place concerned its maintenance for health and safety issues. Attorney Mead said the solicitor had not had a copy of the plan and could not determine what the central gathering place was. The open space plan was in review by Horsley Whitten (HW) and the Conservation Commission (CC). Members asked if any perimeter woods or vegetation would remain? Attorney Mead said numerous plantings were part of the conservation plan. Mr. Sawyer said the existing tree line at the perimeter would not change. The perimeter along Interstate 95 should be named a conservation area. Members requested a designation on the plan.

Public comment open.

Jane Snow, 9 Coffin Street, asked for August meeting minutes and CSI's report to be posted. Director Port said Mr. Christiansen had been making revisions. Attorney Mead said Ms. Snow was referring to the answers to former Chairman McCarthy's questions.

Peter Hatcher, 15 Boyd Drive, asked if there was a second HW report? Director Port said yes. The second report would be posted when HW completed their review.

Public comment closed.

Attorney Mead said two different HW reports were due next week - one for the board and one for the CC. She requested a continuance to November 15.

Director Port said the second HW report would be a set of conditions appropriate to the project. Resolution to those conditions would be a revised set of plans requested by City engineers and HW for water supply protection. Members asked for a draft decision a week before the next meeting. Director Port said seasonal high groundwater was still undetermined. A draft decision by November 15 was unlikely until consultant feedback was in hand. Members said voting the same evening as the discussion would be difficult. Attorney Mead said peer review engineers could present the important conditions on November 15. Director Port would send a draft decision to the board within 24 hours of getting the second HW report.

Anne Gardner made a motion to continue the Definitive Subdivision and the WRPD Special Permit to November 15. Andrew Shapiro seconded the motion and eight members voted in favor. Tania Hartford abstained.

Motion Approved.

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c) *Berkeley Investments c/o Lisa Mead, Esq.*
260, 268-270, 275-276 Merrimac Street
Special Permit Amendment (2007-SP-03d2)
Continued from 10/4/17

Attorney Lisa Mead said the Massachusetts Historical Commission (MHC) approved the preservation restriction (PR) and restoration plan for the Samuel Morse House. Documents signed by the property owner would be submitted next week. Interpretive signage and placement submitted to the NHC was undergoing changes with the help of the Newburyport Preservation Trust (NPT). The NHC also requested interpretive signs for the Towle building describing the two structures' relationship. The plan showed a small, bricked sidewalk extension where people could step off and face each building. The Towle Building, owned by a different entity, was removed from the development in 2009 and was not part of the special permit. It had separate financing that would be affected by the PR now and in the future, with potential resale issues. The owner agreed to a PR on the Merrimac Street façade and window openings, but such a limited PR was not well received at a meeting between Erik Ekman, Berkeley Investments, 280 Congress Street, Boston, Director Port, and NPT members. Owners agreed to a PR on the whole building with conditions: a) The 9/27/17 Berkeley Investments letter listing items removed and accompanying photos shall serve as the inventory of items removed prior to construction, b) Install two interpretive signs on the property (details described), c) An NHC PR on the Towle Building, d) Upon approval of the decision, five occupancy permits may be issued, e) Upon recording the Samuel Morse House PR, the remaining four occupancy permits may be issued, and f) Upon completion of the Samuel Morse House restoration, installation of two interpretive signs, and recording of the Towle Building PR, the occupancy permit for the Samuel Morse House may be issued. She presented a list of key architectural features on the Towle Building.

Members asked if the signs were on land relating to the SP and owned by Berkeley Investments? Attorney Mead said yes. Was there a date certain to include on the restoration plan? Mr. Ekman did not have a firm date and expected restoration to take about five months. Attorney Mead said the Morse House buyers were waiting. Members asked about an interpretive sign along the water? Attorney Mead said interpretive signage along the water, required by Chapter 91, could be impacted by CC permissions. Members and Director Port suggested language changes for condition (c), from 'including' to 'which are' and from 'is' to 'are.' Director Port was reasonably confident there would be a permanent PR for the 1690 House. Members asked if the Towle Building NHC PR had a springing renewal? Could there be a renewal in perpetuity? Director Port said counsel believed there was enough case law to support that with the document's language. Members wanted to see more evidence. Attorney Mead said the grantee gave permission to the grantor to sign the document for renewal. Director Port said both parties agreed to the language. The springing restriction should cover any event.

Chair Sontag said all language could be replaced by specifying a perpetual PR. The applicant would come back before the board if necessary. Attorney Mead asked for a vote tonight that signed off on the series of occupancy permits. Members requested a completion date for the signs and asked for correspondence from NHC. Chair Sontag, who asked the NHC to add the Towle Building PR to their agenda, said they chose not to discuss it. The board agreed at the last meeting to make the decision if no word came from the NHC. She was uncomfortable releasing

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occupancy permits before any documents were recorded. Five occupancy permits had already been approved with the understanding that the board would not release any more until condition #11 was met or rectified. Attorney Mead said circumstances had changed significantly. The Towle Building was not a part of that conversation. Chair Sontag said the Towle PR was a result of non-compliance with Condition #11. Members asked if there had been restitution and if loopholes had been closed that would let the PR expire? The board wanted an absolute guarantee the PR was in perpetuity. A member was in favor of approving the decision as written.

Public comment open.

Tom Kolterjahn, 64 Federal Street, co-president, NPT, said the Trust made a number of accepted changes on the 1690 House exterior restoration plans. He worried about execution, specifically contractors chosen and quality of work. They should not get credit for meeting Condition #11. He would delete Condition a). The signs were good. The problem with Condition c) was that a permanent PR should go through the MHC, who had expressed their interest. The escape clause should be deleted. It was reasonable to release five occupancy permits, but no more.

Stephanie Niketic, 93 High Street, supported releasing five occupancy permits only and no more.

Rick Taintor, 10 Dexter Street, asked if the document envisioned whether future owners could upgrade or was that prohibited?

Jeanette Isabella, 1 Lime Street, supported withholding occupancy permits to maintain leverage.

Public comment closed.

Members discussed removing the escape clause. Attorney Mead said it was illegal to rely on the actions of a third party or be subjected to someone else's discretionary actions. Director Port said the 'or' in the escape clause sentence should be changed to 'and.' Attorney Mead agreed and would add language about a non-profit third party holding the PR. Enforcement was built in by the need to finish the Samuel Morse House because it was under contract. Mr. Ekman said the occupancy permits would recoup funds used to make reparations on the 1690 House. \$1 million, or 10% of total construction costs, had been retained. Construction loans had to be paid down. There was every incentive and intention to work with the City and the NPT to finish the work properly. Three members suggested holding back two of the four occupancy permits with the 1690 House. Chair Sontag said the PR must be recorded to begin restoration. Director Port said removing Condition a) would address the integrity issue.

Leah McGavern made a motion to approve Condition #11 as revised: remove a), wording of c) in escape clause change "or" to "and" plus add language about seeking a non-profit to hold the PR, e) three occupancy permits, f) occupancy permit for Samuel Morse House and one remaining unit. Ann Gardner seconded the motion and eight members voted in favor. Tania Hartford abstained.

Motion Approved.

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- d) Newburyport Manager, LLC c/o New England Development
Brown's Wharf, 58 McKay's Wharf, 72 Merrimac Street,
86-90 Merrimac Street, and 92 Merrimac Street
Definitive Subdivision (2017-DEF-02)
Continued from 10/4/17**

The applicant requested to continue to November 15.

Joe Lamb made a motion to continue the Definitive Subdivision to November 15. James Brugger seconded the motion and all members voted in favor.

Motion Approved.

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- e) Gorman Homes LLC
32 Union Street
Definitive Subdivision (2017-DEF-03)
Continued from 10/4/17**

The applicant requested to continue to December 6.

Mary Jo Verde made a motion to continue the Definitive Subdivision to December 6. Leah McGavern seconded the motion and all members voted in favor.

Motion Approved.

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- f) David Pierre, West Row Café and Bar
35 Market Square
DOD Special Permit (2017-SP-83)**

Andrew Shapiro read the notice. David Pierre, owner, said extensive renovations were done because the rear door to the kitchen was not to code. A fire inspection required removal of the

deteriorated side door. Work proceeded for over four months before regulations came to his attention. He went before the NHC. The incorrect mortar would be redone. The brick was supposed to match over time, but was an eyesore today. A professional mason would act as consultant. The NHC agreed the new door could stay for the service entry. Staff needed to see through the doors. The NHC recommended covering the side door with black wooden panels.

Member comments: If current staff had been in place would the incident have been prevented? Director Port said abutter notifications were still relied upon, but the primary trigger would have been application's need for approval from another board before proceeding. A zoning denial form would have been issued. Members said downtown projects required a pre-construction meeting to understand the DOD. Did the NHC ask for a fake façade over the door? Mr. Pierre said yes, replicating the existing door in black. Would bricks be taken away? Mr. Pierre said yes. Members said the door would be in the wrong location if set in from the brick. Cleaning up the brickwork and filling the space with brick was a better solution. Chair Sontag said the door used by servers was an all glass, metal-framed industrial door. She suggested something similar to what other Inn Street restaurants used. Members said seating facing the door would cause it to read like an entrance. Chair Sontag said the door was similar to backside doors on State Street. This door would have a front. She proposed replacing the door.

Public comment open.

Tom Kolterjahn, 64 Federal Street, co-chair, NPT, said Katy Ives, who noticed the work, contacted Jared Eigerman, who filed a complaint. Work done in downtown Newburyport without Planning Board or NHC approval was a concern. He showed a picture of the doorway filled in with the wrong kind of brick. The loss of original brick around the repositioned rear doorway was disturbing. New brick did not match original brick that was sandblasted long ago. He showed a photo of the brick front, in need of replacing soon. He concurred with the two NHC recommendations. Inappropriate bricks should be removed and replaced with Federal Period bricks using lime mortar. Also, sign attachments should go through mortar joints rather than historic brick, under supervision of a professional mason consultant. Richard Irons, in particular, had the skill to match the mortar. He agreed with comments about what should have happened.

Mr. Pierre said his intention was to have all new brick repointed.

Jeanette Isabella, 1 Lime Street, could not understand how this happened. Chair Sontag said the new process starting in January would catch this type of occurrence. Ms. Isabella asked how the patio area was given to Mr. Pierre? Director Port said the City Council licensed the use of public space for outdoor seating.

Laura Cortland, owner, 26 and 28 Inn Street, said five years ago she made significant changes to her building. Mr. Calderwood stopped by daily to check on his numerous requirements. She did not understand how this happened. Why wasn't she consulted about the taking of public space? Director Port said that was not a decision the board controlled.

Jane Snow, 9 Coffin Street, said the entire front of the building was poorly done.

Public comment closed.

Member comments: Should the board accept NHC conditions? Members agreed historic bricks should be used. The most egregious brickwork was over the back industrial door. Everything should be re-mortared. Mr. Pierre said removing the brick would shut the restaurant down. The bricks would not stand out so much if re-mortared. Members wanted the door and the brick on the back replaced. Some members thought the side door should match the door on the back. Would the recommended consultant be used for all work? Mr. Pierre said yes. Chair Sontag said the original contractor would do the work under the consultant's supervision. Some members did not like the filled in arch. The majority were okay with leaving it. Another treatment could be used on the interior so the restaurant would not have to close while that brick was replaced. Replacement of the back door would be subject to review by the Planning Office.

Leah McGavern made a motion to approve the DOD Special Permit with the revised conditions. Mary Jo Verde seconded the motion and five members voted in favor.

Motion failed.

Members agreed the archway would be replaced with historic brick instead of a wooden door.

Leah McGavern made a motion to approve the DOD Special Permit with the newly revised conditions. Mary Jo Verde seconded the motion and seven members voted in favor. James Bugger and Joe Lamb were opposed.

Motion Approved.

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4. Planning Office/Subcommittees/Discussion

a) 92 Merrimac Street (2017-SPR-05)

Chair Sontag said the applicant's information was not received in time to be reviewed. A process for continuing should be discussed. Karen Pollastrino, MINCO, 231 Sutton Street, North Andover, requested an application completeness vote. Director Port said waivers were too substantial to schedule a hearing last time. This time, there was insufficient time for reviewing information. The application was still incomplete. Members suggested reworking the process, wherein the Planning Office reviewed completeness and content reviewed by the board during the site plan review, forgoing the informal process. Substantive discussions should be made with public input, but the ZBA wanted the board's input beforehand. Did the application meet criteria for the Waterfront West Overlay District? Should the applicant go to the ZBA first? Director Port said the Special Permit Granting Authority (SPGA) for the district was the board. Members

had concerns about any variances ahead of the NED overlay district proposal. The architectural scale and features had already been determined acceptable. A member opposed a precedent for a fifth story. Members wanted to know what specifically the applicant could not do under the Mixed Use zoning that they could do under the Waterfront West zoning?

Joe Lamb made a motion to consider the site plan review and special permit incomplete. Don Walters seconded the motion and all members voted in favor.

James Brugger made a motion to continue the site plan review, the special permit, and the ZBA recommendation. Tania Hartford seconded the motion and all members voted in favor.

Motions Approved.

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b) Waterfront West Update

The next joint public meeting had a tentative date of November 29.

c) Master Plan Final Version

The final version of the Master Plan was not ready yet.

d) Complete Streets Policy

The issue was carried to the next meeting.

e) Updates

Director Port said a second round of hearings for two zoning amendments would be scheduled.

5. Adjournment

Tania Hartford made a motion to adjourn. Anne Gardner seconded the motion and all members voted in favor.

The meeting adjourned at 11:24 PM.

Respectfully submitted -- Linda Guthrie