

**City of Newburyport  
Planning Board  
October 18, 2017**

The meeting was called to order at 7:03 PM.

**1. Roll Call**

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

In attendance for the City Council Planning & Development Committee and Committee of the Whole: Ed Cameron, Barry Connell, Greg Earls, and Charles Tontar

Absent: Jared Eigerman

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

Chair Sontag introduced the newest member of the board, Tania Hartford.

**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) Off-street Parking Regulations***

Councilor Cameron opened the Planning & Development Committee portion of the hearing.

Councilor Cameron co-sponsored the amendment with Councilor Eigerman. The goal was to try to avoid new business uses that create issues with off street parking because they do not have adequate accommodation for parking. Proposed were a payment in lieu of parking for new development and a special permit.

Director Port proposed language corrections for the section being modified. He explained the rationale for the use of surface lots in the existing ordinance. The City, not wanting a sprawl of parking lots downtown for new businesses, allowed downtown businesses to take advantage of available public parking but did not guarantee the spaces. The amendment added an impact fee based on calculations for parking needs and availability. The calculations were not allowed to include use of the parking garage. The City wanted adequate financial compensation derived from the calculation. Councilor Cameron noted the missed opportunity if this was in place for the Ale House at \$7,500 per space. Councilor Connell asked about the proximity requirement and what would be different going forward? Director Port said it was not uncommon for the special permit granting authority (SPGA) to be the Planning Board rather than the council. There was a clear set of requirements for the board to follow. The radius would extend from 300 to 600 feet in order to access more spaces. Parking consultant John Burke had not yet commented. He was studying the fee structure and how long spaces were available. The rate structure would be updated next year. Councilor Connell asked what would prevent another large, new restaurant from making an adverse impact on neighborhood parking? Existing neighborhood parking

Planning Board  
October 18, 2017

problems should not be exacerbated. Director Port said the issue concerned surface lots and trying to consolidate downtown parking into a smaller footprint. Councilor Connell asked to see the areas of impact on a map and Director Port demonstrated the radius and showed an example of residential streets that might be impacted. He said Councilor Connell made a good point. He would ask John Burke about a reasonable radius for parking and walking.

Councilor Tontar asked whether a 600-foot radius from a pedestrian entrance in a building next to the Black Cow would it extend to the Titcomb Street vacant lot? Director Port said yes. Councilor Tontar said NED seemed short of their required parking spaces. Chair Sontag said NED's eight acres was unrelated to the ordinance. Director Port said NED had talked about being 40-60 spaces short if they applied under a special permit. If NED were to build something smaller, they could potentially argue that parking within 300 feet could be used. The ordinance would not allow them to use the parking garage. Councilor Earls said that would force NED to put more surface lots on their property. Councilor Cameron suggested Councilor Eigerman would think going to 300 feet was absurdly tight. Tweaking the 300-600 foot radius might make it less likely to cramp development, but he was unsure \$7,500 was adequate compensation. Director Port said the amendment to offset some parking expenses by preventing the use of public parking without any compensation to the City, but would not generate significant income. He could support a higher number, but \$7,500 was a good starting point.

Members said reimbursements for using public parking would not change the way people parked downtown. A physical impact would occur when businesses built spaces downtown instead of paying \$7,500 per space. Chair Sontag said the amendment could create more surface parking. Director Port said the zoning enforcement officer would review an applicant's parking calculations to see if it met requirements. If not, the applicant would come to the board for a special permit. A single-family dwelling converted into a two-family would trigger the ordinance. Enlarging a single-family house that had no off street parking would not trigger it. Members asked if there was any tie in to the Airbnb ordinance? Director Port expected there could be a requirement for on site parking or something similar. The right to use a shared parking arrangement would occur at the beginning of the permitting process. Proof of at least a five-year lease with a private lot could be changed to 10 years. The restriction does not necessarily go along with the use of a building, but some type of restriction needed to be recorded. Members said that removing surface parking from the Central Waterfront would restrict available parking for the ordinance by over 200 spaces. What was a space in the garage worth? Director Port said \$30-35,000. A member suggested not eliminating the garage if the goal was to reduce surface parking lots. Should the ordinance be amended with "except Waterfront West?" Chair Sontag said Waterfront West was required to provide its own parking, even if the current overlay district was used. Only subdivision regulations would allow off site parking. Members said visitors to Waterfront West could not be regulated. Director Port clarified. Waterfront West could become an overlay district, but if they were to develop using the underlying district, the size of a parcel needed to be four acres. A smaller project would allow them to utilize offsite parking. Members were concerned that \$7,500 was fairly low considering the \$30-35,00 for a garage parking space. Chair Sontag said all the examples so far were retail and commercial. The amendment also applied to residential when onsite parking could not be provided, therefore \$7,500 would be added to a residential development. There was no way to know if there would be more commercial or residential situations. Members said the market rate of a parking space was

Planning Board  
October 18, 2017

extremely low, but there is a point of diminishing returns if the incentive was too high. Chair Sontag said there was no enforcement provision. How would the City know about expansions? Director Port said expansions would fall into the existing permitting and enforcement processes. Small projects here and there might escape notice, but not downtown.

Councilor Cameron asked whether the amendment encouraged, discouraged, or was neutral toward cooperative agreements between owners of existing private lots and developers? What if a developer presented a five-year lease for the Immaculate Conception parking lot? Director Port said the way ordinance was structured now, there was an existing provision that allowed the board to look at shared parking arrangements on a case-by-case basis. It would be beneficial to encourage the use of lots like that during off peak hours. Councilor Cameron said the purpose of the amendment was for the larger Ale House-type projects. Michael's Harborside had 400 seats and people parked privately there. Cars park once and go to two or three different places. Parking was not always a scarce resource. Councilor Connell supported express ordinance language for Waterfront West. Parking at Cashman and Cushing Parks could be impacted by neighborhood developments. How many times did a single-family house convert to condo units and use Cushing Park parking? Director Port had found only one decision that made reference to using Cushing Park for parking. Councilor Connell specifically recalled more than one, but there was no record of more than one. Director Port said based on height and set back regulations, there might be a few smaller ones that fell under the ordinance. There would be a trigger process. If there were a desire to call out Waterfront West separately, the underlying district would have to be referenced as well. Councilor Connell said if Park Lunch decided to expand and there was no additional parking, they would reference public parking at Cushing Park.

Public comment open.

Rob Germinara, 2 Ashland Street, asked if Waterfront West was in the WMD? Chair Sontag said yes. Mr. Germinara said the Waterfront West Overlay District overflow parking could push into the private parking at about Michael's Harborside. That was a loophole that left a million dollars on the table.

Jane Snow, 9 Coffin Street, asked how the City would monitor repeated references to the same parking lot in calculations? People using the same lot everyday for parking would be penalized.

Jeanette Isabella, 1 Lime Street, asked about a house that added another unit, paid for one parking spot, but the unit's residents had two or three cars? Director Port said the requirement was two spaces per unit for the first few units. There was a calculation in the ordinance. Most communities did not require three or four spaces per unit. Two spaces per unit was the norm. Chair Sontag said because the issue required a special permit, people would come before the board for discussion and review.

Public comment closed.

Councilor Cameron said the amendment provided more regulation and was a big improvement. Many existing residential units had no parking, but today developers go to great lengths to provide nearby parking. He accepted a 600 feet radius and supported language changes

Planning Board  
October 18, 2017

recommended by the Planning Office.

Chair Sontag said amendments could be revisited. Trying something, to see if it worked, even though it might not be perfect was acceptable. One member was not in favor of including municipal parking structures. Other members would leave it in as a special permit and allow the developer to pay the ITIF fee. A member supported including Waterfront West as a 'special exclusion' from the municipal garage because removing 200 waterfront spaces would be unproductive if the loss was not transferred to the garage. Chair Sontag asked if two-tiered pricing for surface and garage parking was appropriate? Members asked if there were other municipal lots within 600 feet of Waterfront West? Director Port said yes. One member said it made no sense to exclude Waterfront West from the garage. On the other hand, if a more restrictive ordinance been in place at the time of the Ale House application, the restaurant would have only 200 seats. Slowing the process for further consideration would result in a better amendment. Chair Sontag said one amendment modification would include structured parking.

Members favored shared parking with existing, privately owned surface lots to discourage lot expansion. A study of existing surface lots would identify those viable for shared use. The 600 feet radius should not apply for shared arrangements. Payment was \$7,500 per space or the shared agreement fee. Director Port said, in today's language, if a development had more than one use, spaces could serve both uses as long as one use occurred during off peak hours. He supported adding the use of shared parking, regardless of radius. Members asked what would happen if a restaurant's shared private parking arrangement fell apart, leaving the City without compensation for spaces used? Director Port said the restriction would be recorded and guaranteed for a five-year period. Chairman Sontag said amendment now had two major changes: 1) include structured parking in the calculation and 2) the private parking agreement was not limited to 600 feet. Members asked about enforcement of shared parking? It would not be possible to account for all situations. The \$7,500 rate was too low and should start at \$10,000. As the SPGA, the board should review another iteration of the amendment. Director Port would redraft the language. Chair Sontag said recapped the issues: cost per space, enforcement, use of parking structures, calling out Waterfront West, and agreements for shared parking.

The Planning Board scheduled further discussion for November 15.

Councilor Cameron did not think the tweaked language was essential. The amendment should be completed tonight. Director Port said if the council wanted to act before the end of the year, the board could make a recommendation with the adoption of items agreed upon. He would draft a memo, recommending the draft that came out of the committee for the council. Members said with agreed upon changes incorporated, another conversation would be fairly quick. The board's role was advisory only, despite the desire to make further improvements.

Joe Lamb made a motion to recommend adopting the ordinance with the documented changes. Leah McGavern seconded the motion and eight members voted in favor. Don Walters abstained.

Councilor Connell made a motion to refer the amendment with no recommendation to the full council, outlining the issues the board cited for discussion on the council floor. Councilor Cameron 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.*

***b) High Street Residential Districts***

Councilor Cameron and Councilor Connell sponsored the amendment. Councilor Eigerman previously recused himself because he lived in the area. The purpose was to preserve the character of the High Street ridgeline by preventing lots from being chopped up. Director Port said increasing the lot size for development on any land behind High Street houses would limit development and protect many historic structures. Frontage requirements, open space requirements, and lot coverage requirements would all increase too. The districts were choppy and his primary concern was interpretation of the term that addressed existing building alignment. A development was allowed to mimic the set back of adjacent structures in the existing, typical front set back requirement, but the language was complicated. He suggested either adding a diagram to clarify interpretation or modifying existing ordinance language. He had spoken to Councilor Eigerman, who agreed and preferred continuity with the entire streetscape. Interpretation and application would be fairly complicated for one district area. Director Port made a recommendation to use the two adjacent structures that face the street. He would clean up the language before submitting to City Council.

Councilor Connell agreed with the intent and wanted an ordinance that was consistent and understandable to preserve the historic appearance of High Street. There were examples that should not be repeated.

Director Port showed areas that would not be captured by the Demolition Control Overlay District (DCOD) consisting of the National Register district and downtown. Members asked if the amendment still allowed putting in a private way and developing the back of some houses? Director Port said the language would not preclude that from happening, but it would be harder and less economically viable. Members asked for an example that would not be approved today? Director Port said Twomey Drive, and the Wine Subdivision called Hamilton Estates that added homes at the front of a preserved historic home. Chair Sontag said special permits could get through. Some houses had five acres in back. The proposed would not allow building in front.

Public comment open.

Tom Kolterjahn, 64 Federal Street, co-president, Newburyport Preservation Trust, said the trust strongly supported preserving the High Street's historic landscape that would be degraded by additional driveways and subdivisions. It was time to give the City's true gateway and historic neighborhoods the protection they deserved.

Mark Bilodeau, 63 High Street, was in support. The ridge was one of the few places not degraded. Putting the City first was more important than property development rights. Several of

Planning Board  
October 18, 2017

his neighbors did not have the frontage required. He would not be able to rebuild on 1.46 acres if his house burned down. Director Port said he was allowed to rebuild an existing structure.

Marc Cendron, 91 High Street, was in support and concerned that his historic house was not included, along with historic homes at 87, 89, and 93 High Street.

Reginald Bacon, 21 Strong Street, was in support.

Mary Haslinger, 299 High Street, was in support. Nothing should ever be built on the sweeping front lawns. The Federal period was the most affluent time in Newburyport history, but the Colonial period homes were also important, and would be included if the district extended to Atkinson Common. Houses could not be rebuilt with the old forest wood.

Rita Mihalik, 53 Warren Street, read a letter to Planning & Development Committee from Stephanie Niketic, whose house was in R3 and asked if the ordinance could be amended to remove the word R2 so that the entire ridge could be protected?

Jeanette Isabella, 1 Lime Street, was in support. She asked why not make it impossible rather than just difficult for developers to do things? The ZBA would find the loopholes.

Public comment closed.

Chair Sontag asked about changes in the High Street B section? Director Port showed the area on a map. The proposed captured the most of the area, but the district was not contiguous. A perfect solution could not be found, no matter what changes were made. One option was to add other parcels. Members asked if there was a downside to making the district completely contiguous? Director Port said small lot structures were unlikely to be demolished because they would not accumulate enough land. Making the district contiguous would cut through the middle of parcels, placing them in two different districts. Some lots that were so small they did not show well on the map. They could all be combined, but that would unnecessarily incorporate other properties. Members asked if there were any lots on High Street that were not included? Chair Sontag asked if there was any reason not to include the four house numbers that wanted to be included in High Street A? Director Port would revise the map and change the text to reference the revised map.

Don Walters made a motion to recommend adoption of the amendment with the changes. James Brugger seconded the motion and all members voted in favor.

Councilor Cameron liked version 2 of the map and including the four addresses. Director Port said one concern was to leave some flexibility for an opportunity to clean up the language.

Councilor Connell made a motion to recommend adoption of the amendment with technical language changes. Councilor Cameron seconded the motion and all members voted in favor.

**Motions Approved.**

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Councilor Cameron closed the Planning & Development Committee portion of the hearing.

### **3. Public Hearings**

***a) Clipper City Car Wash  
74 Storey Avenue  
Major Site Plan Review (2017-SPR-03)  
Continued from 10/4/17***

Attorney Adam Costa, Mead, Talerman, and Costa, LLC, 30 Green Street, recapped project details. Engineer Paul Avery, Oak Consulting Group, PO Box 1123, Newburyport, walked through plan changes. The new building was moved 70 feet forward, away from abutting residents and closer to Storey Avenue. The driveway at back of site came another 10 feet forward and was about 50 feet from residents. An existing self-service bay was taken out of service for an equipment room and the existing equipment room removed. Landscaping for the rear included a row of arborvitaes, existing evergreens, and one large deciduous would remain. The scrub growth would be removed. Existing fencing would remain. Other landscaping elements included a large red maple and some crab apple trees. Dead vegetation would be removed and a designated snow storage area added. He distributed updated plans. The elevations included the Clipper Way House, evergreens, arborvitae, fence, light pole, and the new tunnel building. He showed the traffic pattern when the tunnel was open, a directional sign, and cones. The tunnel's hours were 7 AM-7 PM. An aerial photograph displayed showed four sound points measured on Clipper Way and a chart of decibel numbers. The range was 54-80 decibels for background noise. The dryer blower was 57-97 decibels, and the tunnel was 84 decibels. Readings were taken from a similar facility in Augusta, ME. He showed updated photometrics with the fences and plantings. There were no light impacts offsite using the existing lights. He did not provide a cut sheet. He showed photographs of the all glass building and the new vacuum booths. Glass reduced the anxiety people had about going into a tunnel.

Member comments: Would lights shine directly out of the tunnel building in the dark? Mr. Avery said yes. The noise ordinance was reviewed. Would decibel readings exceed the ordinance? Mr. Avery said the ordinance delineated noise at levels of detail that required specialized equipment to measure. The applicant did not have access to that equipment. Members requested improvements to the viewscape from Storey Avenue, especially the view of the glass tunnel, which was not more closed-in as requested at the last meeting. Mr. Avery said the building was moved and landscaping addressed instead of closing up the tunnel. Members said the fence appeared to protect the vacuum cleaners instead of the tunnel. Which side of the building was higher? Mr. Avery showed the image and said the highest side measured 10 feet. Members were concerned about the need for a noise barrier. The deciduous green barrier would not work in the winter. Mr. Avery said the arborvitaes would provide a winter screen with the evergreens.

Planning Board  
October 18, 2017

Members asked if moving the building forward 70 feet increased construction costs? Mr. Avery said no. Members said moving the building forward was not a compromise. Why not add a sound barrier? Attorney Costa said by moving the new building forward the applicant gave up one of the carwash bays to be used as an equipment building, which was formerly at the rear of the site. Daytime noise levels were not that loud. The 80 decibels of background noise was from the highway. The location was one of the quieter spots in the neighborhood. Chair Sontag corrected Attorney Costa and said removing a bay had been in the original plan. No concessions were made. Mr. Avery said the new vacuum would be quieter. The continually running main producer was enclosed and only ramped up as hoses were used. Members said fencing needed to be maintained. Was it on the applicant's property? Mr. Avery said yes. Director Port showed photos looking across the property to the high-rise apartments. Members said the landscape was scrubby and unattractive. Pavement went to the edge of the property.

Public comment open.

Paul O'Neil, 23 Clipper Way, said Clipper City had been a great neighbor. His living and sleeping quarters were at the back wall that faced the carwash. He asked to see the sound level chart and asked if the readings from Augusta were from an identical tunnel? Mr. Avery said yes. The Augusta site had greater background noise.

Felicia Miller, 21 Clipper Way, wanted a sound barrier. A tunnel conveyor car wash emitted a constant roar, whether or not a car was inside. She did not want to hear that noise 12 hours a day, seven days a week. Vacuum hoses could all be in use at the same time. That was not represented on the sound chart. Cars would queue up below her living, dining, and bedroom windows with engines running. She could hear the automated voice from self-service machines.

Jim Divola, 15 Clipper Way, agreed and said car wash activities should be monitored.

Jane Nocera, 25 Clipper Way, agreed and said the car wash activities affected 27 families.

Sandra Barnes, 19 Clipper Way, agreed. The roadway was still 30 feet from the property line. Increasing the number of vacuums would increase the traffic. Headlights shone into her windows. Families wanted to enjoy their outside decks. Screening plants would muffle up to 5 decibels of noise only. A sound barrier fence would make a difference. Chair Sontag asked Ms. Barnes if she could see headlights through the stockade fence? Ms. Barnes said yes.

Ann Veronelli, 5 Woodman Way, agreed. She was concerned about light from the tunnel building and requested eliminating the automated voice noise.

Mary Higdon, 5 Woodman Way, said cars pulled in at 3 AM with blaring radios. Why did vacuums need to operate until 10 PM? Why not 7 PM? She wanted a traffic study.

Attorney Costa acknowledged concerns about the noise and said Clipper City was an existing operation. The new vacuum was quieter, even though it served more people. Automated conveyor doors closed behind each vehicle. Noise decibels were not especially high. Extensive landscaping was added at the rear. A preference for a fence instead of plantings could be



Planning Board  
October 18, 2017

discussed. The ordinance favored open space and landscaping was more open than a new fence.

Members said Lowes had arborvitae plantings for \$29.99. That was not a hardship item. Chair Sontag said abutters wanted the stockade fence replaced. Clipper City Car Wash owner Armand Sancier, 104 State Street, said he expanded the abutters fence with an extension on stilts from his property. Chair Sontag said replacing the fence with a legitimate noise-reduction barrier was necessary to protect the neighbors from the noise. Members agreed. Additional greenery was needed as well as restricting the vacuum hours of operation from 7 AM to 7 PM to eliminate evening machinery noise and reduce car headlights and engine noise. There was a big opening in the back, as seen on the aerial photo. Chair Sontag said the existing fence was on the side with the high-rises and did not belong to the carwash. A fence extension would not do anything for a high rise. Members said the viewscape from Storey Avenue of the translucent building was a concern. Was the viewscape from the street managed under site plan review? Director Port said screening the viewscape was within the board's jurisdiction, but not the building itself. There were some parking spaces on an adjacent property. Bumpers of some type were needed on that property line. Mr. Sancier said he wanted customers to see the tunnel. Chair Sontag asked if there was room for any more screening trees? Mr. Sancier said no. Director Port said visibility of the new structure would stand out more than the existing building. Without room for screening, maybe too much was being crammed onto the site? Attorney Costa said the conveyor was originally located further back from Storey Avenue but it was moved closer to Storey Avenue to be good neighbors. It was not so much within the board's purview to consider the viewscape from the street, but was within their purview to request screening.

Director Port summarized the conditions: hours of operation for all equipment and lights would be 7 AM to 7 PM, a fence at the rear should be the full length and height, and the applicant should adhere to the noise ordinance. Some members were concerned with restricting business hours in the B1 zone. Other members said the business relied on noisy equipment and abutted residential property. A solid 10-foot high noise reduction barrier was needed. The residential neighborhood was built in a B1. Mr. Sancier agreed to shut down at 9 PM and would consider limiting the loud speakers. Attorney Costa asked for clarification on the fence properties. Members wanted a fence with acoustic properties for sound reduction.

Andrew Shapiro approved the site plan review with three changes. Anne Gardner seconded the motion and six members voted in favor. Don Walters voted against. Tania Hartford and Joe Lamb abstained.

**Motion Approved.**

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#### **4. General Business**

##### ***a) Request for minor modification – 40 Merrimac Street (2013-SPR-03)***

Joseph Leone, 272 Water Street, owner, Ale House, had 10 modifications. 1) Remove a staircase on the rear of the building for security reasons, 2) increase the screening wall on the 3<sup>rd</sup> floor, upper level deck, 3) install two cement planters by May 1, 2018, instead of using lattice on the alley side facing the mill building, 4) two handicap spaces approved on the Waterfront Trust side closest to Merrimac Street needed to be relocated and marked, 5) remove lattice on the north elevation, 6) a wall that wasn't on the proposal had to be installed to retain the sidewalk and a 36" iron fence is proposed for the top, 7) install the same style of fence to surround the mechanical equipment on the west side, 8) install an awning no later than April 1, 2018, 9) signage revisions, and 10) the power company would not allow a fence around the transformer.

Chair Sontag pointed out the history of modifications. Members said changes were minor, but there was no rendering for the sign.

Mary Jo Verde made a motion to consider nine of the proposed as minor modifications. Leah McGavern seconded the motion and all members voted in favor.

Mr. Leone said the wrought iron retaining wall was five feet at one end and two feet on the other end, and faced Merrimac Street. It was not the same as the other wrought iron fence. He wanted to do a better job with the awning and needed more time for research. Director Port suggested the awning could be a condition. The transformer was in the alleyway between the two buildings.

Leah McGavern made a motion to approve nine minor modifications adding two dates and eliminating the sign. Don Walters seconded the motion and all members voted in favor.

#### **Motion Approved.**

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#### **4. Public Hearings - continued**

- b) Parker 2 Realty Trust  
2 Parker Street and 151-155 State Street  
Definitive Subdivision (2017-DEF-04)  
Major Site Plan Review (2017-SPR-06)  
VI.C Special Permit (2017-SP-07)  
Continued from 9/20/17 – Request to continue to 11/1/17***

The applicant requested to continue to November 1.

Andrew Shapiro made a motion to continue the Major Site Plan Review and VI.C Special Permit to November 15. Don Walters seconded the motion and all members voted in favor.

**Motion Approved.**

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**4. General Business - continued**

***b) Approval of Minutes (10/4/17)***

Don Walters made a motion to approve the minutes of 10/4/17 minutes as amended. Anne Gardner seconded the motion and all members voted in favor.

**Motion Approved.**

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**5. Planning Office/Subcommittees/Discussion**

***a) Waterfront West Update***

The NED Joint Public Meeting on traffic and fiscal impact was at the Nock School Auditorium, Thursday, October 26 at 7 PM.

***b) Other Updates***

Members re-endorsed an ANR plan for 83-90 Merrimac Street.

**6. Adjournment**

Don Walters made a motion to adjourn. James Brugger seconded the motion and all members voted in favor.

Meeting adjourned at 11:00 PM.