

**City of Newburyport  
Planning Board  
June 1, 2022**

The online meeting was called to order at 7:02 PM.

**1. Roll Call**

Planning Board Attendance: Alden Clark, Bob Koup, Jamie Pennington, Heather Rogers, Bonnie Sontag, Rick Taintor, Don Walters, and Richard Yeager

Absent: Beth DeLisle

Planning Director Andy Port, the City's general counsel Attorney Lane, KP Law, and note taker Linda Guthrie were also present.

**2. General Business**

*a) 276-278 Water Street (ANR-22-1)*

Director Port demonstrated on an aerial photograph the backyard area being swapped with an abutting lot. The Planning Office recommends endorsement.

Rick Taintor made a motion to endorse the ANR Plan for 276-278 Water Street (ANR-22-1). Alden Clark seconded the motion, and all members present voted in favor.

**Motion 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. Public Hearings**

*a) Institution for Savings in Newburyport c/o Lisa Mead, Mead, Talerman, & Costa LLC  
93 State Street and 12 Prospect Street  
PBSP-22-5 and SPR-22-1*

Bonnie Sontag read the remand order from the court, explaining that the settlement agreement is contingent upon the remand of this evening's new consolidated public hearing. The settlement is not a private agreement. The outcome requires a public hearing on the agreed changes for the design for the IFS addition.

Attorney Tom Lane, KP Law, said the court extended the time for a decision to June 24. Tonight is a new review under the order of remand.

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Attorney Adam Costa, Mead, Talerman and Costa LLC, 30 Green Street, presented the timeline of events starting from Jan 2020, continuing for 15 months of public hearings culminating in March 2021 when applications for a special permit and site plan review were denied approval. He noted there was inconsistent feedback and 7 separate site plan revisions to re-work aesthetics, massing, height, and architectural details. The applicant appealed the denial in land court where the judge proposed mediation that the City council approved. Mediation took place in two sessions in the fall of 2021. The request to remand the mediation settlement agreement was rejected by the City Council in November 2021 and the land court case proceeded. The City reached out to reconsider the proposed settlement agreement. The remand procedure was approved by the City Council in April 2022.

Attorney Adam Costa recapped the density standards for the B2 and showed a table of lot area frontage, front setback, left side setback, rear setback, lot coverage, height, gross floor area, required parking, and parking provided for each plan set submitted. The table contains an error in the 3.8 ft front setback listed for the remand plan. The actual front setback is between 4.1 and 4.5 ft. Everything is within the confines of what is allowed. The proposed 5 components of the new plan include a lower cornice height through the connector and making the cornice copper. The central bay along the Prospect St. façade has a recessed appearance created by extending the building facades toward Prospect St. to provide an 18" return. The addition façade uses different color variation of brick than the 1980 addition so to distinguish it visually. The brick façade of the connector will be consistent with the brick of the 1980 addition. The Prospect St. façade's first floor on-grade windows will be Spandrel glass so as not to reflect headlights onto the residential buildings across the street. Lastly, a revised landscape plan includes a comprehensive planting plan along Prospect St. and Otis Place. The increased density of plantings and beds are approximately 6" above the sidewalk grade. He demonstrated the proposed features and details on the site plans, elevations, renderings, and landscape plans, reviewing the history. Remands are usually one night. As a more contentious project with a lot of feedback from neighbors, the matter needs to be handled expeditiously.

Alden Clark asked for details on the copper panel and whether the connection to the new addition is lower or the same height. Chris Angelakis, Architectural Resources Cambridge/ARC, 501 Boylston St., Cambridge, said the copper is completely vertical. The connection's flat roof is the same height but to reduce the appearance of massing the front slants down with peaks at the corners. The copper panels align with the windows and the spaces between the windows.

Richard Yeager asked about showing air handling equipment. Mr. Angelakis said the pitched areas of the building will screen the mechanical systems. Larger systems are in a well on the 1980s addition's roof. The only things on the new roof are shown.

Bonnie Sontag asked if the cornice was lower than the previous plan. Mr. Angelakis said the cornice was 12 inches higher to help manage the massing and it is lower by removing the lintels.

Bob Koup is concerned about how the arrival and queuing for the stacked parking of 62 cars during a short window of time twice a day affects circulation and the potential back-ups on

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Prospect St. Mr. Angelakis said that the time lapse from when the first car moves in and finds a spot is noticeably short. The next car in line comes in fairly quickly.

Attorney Adam Costa said the traffic analysis showed no queuing except on site.

Bob Koup asked how the mechanical systems provide fresh air? Mr. Angelakis said fresh air comes from inside of those volumes and the sloped roof will have louvers, but he didn't know how large they would be.

Bob Koup said Spandrel glass is an unfriendly material at a pedestrian scale. Would they consider using louvers or other alternatives? Mr. Angelakis said they looked a lot of ideas, including a corridor. The spandrel glass fronts an insulated area with structural wall insulation behind it because there are concerns about light and sound intrusion. Mr. Koup suggested there would be room to make a little bit of depth behind the glass and encouraged the applicant to explore that so it would not look so flat.

Bob Koup expressed concern about the palette of materials and how they work together, as well as the windows trying to look like typical masonry windows. Are the windows recessed? Do they have other traditional brick detailing? Mr. Angelakis said the inset panel is a natural limestone and the brick is real brick. The windows pick up details from the rest of the site and have not been selected yet.

Public comment open.

Ann Gardner, 239 Water St., former Planning Board member, said the applicant's characterization of substantial re-workings of plans during the first 15 months is inaccurate. For many people it came down to scale and massing which was not addressed satisfactorily in any of the 5 revised plans. The project impacts the character of the abutting neighborhood.

Charles Nutter, 30 Columbus Ave., an architect for many IFS projects. This is a fine looking building although it was hard to work with the various stakeholders. The design is less than 75% of the allowed height. The juxtaposition of a 3-4 story commercial brick building against smaller clapboard residential neighborhoods is common throughout Newburyport. It does not take away from the historic structure. He encouraged approval of the settlement agreement application.

Glenn Richards, 6 Kent St, Newburyport Historical Commission (NHC) chair speaking as a resident, said the process has been fair, although the applicant does not feel that it was. We can agree the eave height is 4 inches lower. It's opinion whether that's sufficient, not a matter of fairness. Two lots put forth as comparable, were huge lots and one abutted woods. These lots were clearly not comparable. The mean height or cornice height mentioned conveniently glosses over the 4 inch change in eave height. The Board has been fair to the deference of the applicant.

Tom Kolterjahn, 64 Federal St., co-chair, Newburyport Preservation Trust, said the NPT still opposes this project in its current form. It is still detrimental to the neighborhood and not in harmony with the intent of the Downtown Overlay District (DOD). The size and massing are not reduced. Only minimal cosmetic changes have been made. A small reduction does not make it

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any more palatable. The neighbors deserve relief and a resolution of their concerns. We hope you will vote no.

Mark Griffin, 3 Orange St., said the remand order is a challenge for the Board, especially without the NHC report required by the ordinance which was omitted from the settlement. The project was denied by this Board because of size and massing. This plan does nothing to address size and massing. Another difficulty is that the settlement agreement was reached only after the City agreed not to request a reduction in the bank's usable square footage. That was a significant concession by the City and the major reason neighbors objected to the project. The settlement remand order does nothing to address the reasons this Board denied the applications – size and massing. He hoped when the Board considers the criteria set for in the DOD and the many comments, that the application will be denied.

Steve McGuire, 4 Otis Place, adjacent to the project, is opposed because of the scale. The NHC and many residents are opposed because it's not harmonious with the neighborhood. This Board rightfully denied this application last year. The changes in the proposed settlement are superficial and do nothing to address neighborhood concerns that our neighborhood will forever be damaged. Please deny the application.

Jim Poulin, 45 ½ Market St., supports the project. Rules and regulations are part of life, like building codes and standards. The proposed plan meets the requirements of the code. This commercial property should be judged according to the code.

Tara Cederholm, 20 Fruit St., is opposed to the project and agrees with Ann Gardner. The Board does not have the benefit of a NHC report to understand the Secretary of the Interior standards on subordination. This new addition is not subordinate to the older addition or the historic building. Please deny this application.

John Belly, 5 Russell Terrace, is in support and agrees with Jim Poulin. The IFS is still here when other companies have closed their headquarters and taken their people out of the downtown. Too many businesses have already suffered. Please approve this application.

Megan Ashe, 1 Boylston St., is in support. The plans meet the City's ordinance. It doesn't take away from the historic building and is consistent with the architecture, style, and size of other commercial buildings downtown. It's important to support business partners that consistently support our community. She encouraged the Board to approve the plans.

Art Currier, 100 State St., is in support. It's time to think about the community and not just the neighbors. The project requires collaboration and holistic thinking. Please approve the project.

Donald Nelson, 43 Prospect St., is in support. Change is a reality. The plan, in addition to meeting the code, is consistent with other structures in the area. If IFS were to leave that property we might be faced with a much worse alternative. Mediation implies that there is agreement in the works. He encouraged approval of the project.

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John Elwell, 266 High St, is in support. The plan, based on a number of revisions, is the result of 2 days of intense mediation with City officials. The bank is located in the business district which comprises much of downtown. The bank wants to keep the addition on their land and that is a convenience to residents. The IFS is a major benefactor to the City.

Claire Papanastasiou, 3 Orange St., is opposed. This has been debated for 2 years but the applicant has refused to reduce the size with a more sensitive design. The NHC said the design fell short the first time around, yet the one-sided settlement excludes the NHC's input on the remand plan. This is a loss of needed input. Approving this project out of fear of losing in court sets a dangerous precedent for the City, shows developers and businesses how to circumvent the DOD ordinance, erodes trust in the City government, and erodes the City's historic character.

Anne Clausen, 3 Otis Place, is opposed. She agreed with Ann Gardner and Mark Griffin. She regrets the loss of the NHC input this time around. She asks the bank to minimize the size of a design that is detrimental to the City. Please do not approve this application.

Sean Sullivan, 9 Prospect St., is opposed due to the size and scale. The evolution of plan revisions can be measured in inches. It's essentially the same size and scale and will make an enormous impact on the quality of life inside his home by blocking the sun most of the day during winter. His top floor windows only go halfway up this building. Would you want this on your street blocking the sun from your house?

Peter Mackin, 11 and 13 Prospect St., is opposed. Residents don't oppose the ability for IFS to grow. We oppose a building this large in such a small location. After 15 months of plans and presentations this Board ruled it was too massive, too high, did not meet the DOD requirements, not subordinate to the 1870 historic structure, and not compatible with the neighborhood. The NHC repeatedly asked the IFS to make the addition smaller and to meet with the neighbors. They never did. Nor did the IFS consider other corporate options for size or location. The remand plan has cornice and landscaping changes. It is not smaller, lower, subordinate, or compatible. Please deny the application.

Bruce Vogel, 5 Bromfield Court, City Councilor At Large, spoke as a resident and City Councilor, is opposed. He heard too massive, too large, over and over again from his constituents. He voted against it on the City Council and agrees with others speaking in opposition to the project. The IFS should diminish the scale to honor the community.

Richard Milosky, 16 Prospect St., is opposed to the size and scale. The abutters are a vocal minority and more sensitive to the impact of the project. Please do not approve this project.

Jean Costello, 522 Merrimac St., is opposed. The plan was rejected by three City bodies. The issue of precedent is important. She doesn't want Newburyport in the position of regretting the decision 10 years from now.

John Boyd, 14 66th St., is in support. He does not want this to go back to Land Court

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Patty Myers, 14 Sylvester St., is opposed. It is too big and will impact the neighborhood negatively. The City Council, NHC, and this board have already rejected this design. Approval sets a dangerous precedent for developers with deep pockets. What will stop them if this is allowed to go through?

Rita Mihalik, 53 Warren St., is opposed. She hopes the Board denies the project as designed. It is the bank's privilege to build this addition, but it is not their right, but a privilege.

Pam Kipp, 11 Tremont St., is opposed. She urged the Board to vote no again because of the addition's size, mass, and non-compliance with the Secretary of the Interior standards for subordination to the 1870s historic structure and compatibility with the neighborhood. She agreed with previous comments against the project. The NHC should be able to review the remand plan. The addition is too close to neighbors, who could become flooded from all the new impervious surface area as she experienced when there was development in her neighborhood. Please respect the DOD.

Mark Cendron, 91 High St., an indirect abutter, is opposed. The project mars the character of Newburyport. It's unfortunate the IFS has been deaf to the comments of the community and persists with this unacceptable design. What is the absolute height of the building, not the mean height? He urged the Board to vote against the project.

Paula Renda, 16 Otis Place, is opposed. The addition is too massive and out-of-step with the historic neighborhood and district. There will be questionable access by emergency vehicles in winter. The neighborhood already deals with limited parking, crisscrossing wires, and inadequate sidewalks. It restricts neighborhood buildings' access to the sun. She urged the Board to vote no.

Public comment closed.

Attorney Adam Costa said neighbors are entitled to their opinions. He heard comments that the eave height is only 4 inches lower, and the IFS has not made sufficient concessions. The IFS could not make the building lower and accommodate their program needs. There is not one single height in the proposal. We are still at less than 75% of the height requirement. The comment that the NHC did not have an opportunity to issue a report or opine is not accurate. There is no mandatory referral to the NHC because a remand is a streamlined process, and the prior plan did receive a NHC review. The IFS hired two historic consultants whose written opinions state that this project meets the Secretary of the Interior standards. Another comment is that the project is not legal until it's approved by the Planning Board. The dimensional and density requirements demonstrate that the project is legal. It meets all the requirements as well as the subjective criteria of the DOD. The Board's limited issues with this project are related to size and massing. The IFS is limited by the available square footage but tried to minimize the size of the structure. The Board's limited issues are satisfied with the new proposal and it's a better project than it was at the time of denial.

Chris Angelakis said the highest point of the building is the ridge height at 33 ft 4 inches. The top of the brick coping is 28 ft and 24 ft 2 inches to the cornice. The mean height is the average between the ridge and the eave.

### Planning Board Deliberation

Alden Clark asked whether previous designs referenced the eave heights across the street and in the neighborhood. Attorney Costa said they did not have all their material on hand. He recited the addition's eave height which was 24 ft 6 inches in the last iteration and is now reduced to 23 ft 6 inches. The 1870s building has an eave height of 30 ft 8 inches. He recited a cross section of six neighboring eave heights., the highest of which is 23 ft 6 inches. The shortest neighborhood eave height is 21 ft 2 inches. The addition is generally consistent with the surrounding properties.

Bob Koup continues to be concerned about the way the parking functions because it's an unknown. He would like to see the traffic analysis as he needs more information. There are some details to work out on the mechanical systems such as details of roof structures and louvers. A project like this relies on details other than massing and siting, such as the quality of materials, some of which have not been identified. There is architectural quality that needs to be matched. Newburyport is a wonderful mixture of building types and scales. This project has the potential to be another wonderful example. At the site visit, he paced about 40 ft between the new IFS facade and the residential building facades across the street. The IFS addition's eave height of 24 ft is not a bad proportion for Prospect St. There should still be sun at the street level. He's less concerned about massing.

Attorney Adam Costa said the information on the materials is part of the public record already and he would resubmit the materials and to provide the traffic study.

Alden Clark liked the plans presented tonight better than some previous presentations. His concerns include the size and overall square footage, which are precluded by the mediation. He would like to have seen what could've been done to lower the first level by going deeper into the grade, although he understands the City engineer has spoken to that. Subordination to the 1870s building is achieved by the addition's distance from the historic building. Attorney Costa said efforts to reduce the addition's height occurred throughout mediation. Complications with stormwater and the site determined that the idea wasn't feasible.

Alden Clark is disappointed that offsite parking was not relied upon to address some of the issues. Attorney Costa said the original proposal incorporated offsite parking, but it was objectionable to the community.

Heather Rogers said the structure is larger than she wanted to see, but that it's smaller than it could be for the commercial district. The addition complements the 1870s building.

Jamie Pennington said the General special permit (SP) findings are easy to satisfy and straightforward. The big challenge are the subjective aspects of the DOD. When you can build something large, how large should you go? How much should the applicant have gone down in size? What are the alternatives to too big? Locating the addition further from the 1870s building than it would be if the addition was located on State St. is a good move. An impervious structure replacing an impervious parking lot is roughly the same surface area and it's not too big. The pocket garden is nice. He agreed with his colleagues that the devil is in the details. He advocated

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for a standing seam metal roof. The way the addition is executed and built will be a big part of its success. He leans in favor of the remand plans.

Richard Yeager said the roofscape details need more fleshing out. A site mock-up with the materials to be used would be helpful. He is interested in the quality and color of the brick, the mortar, and the assembly of the window because the details will make or break the project. He appreciates the site difficulties. The proposal is in character with the area, and he is supportive.

Don Walters said nothing he's heard tonight would reverse his decision to support the project as he did on the previous vote. The five plan modifications are minimal. Even if the DOD was not in existence, the scale and massing has not changed. Someone may have implied that because there was mediation, we don't have the ability to deny this plan. That is not true. The Board could deny, and the matter would go back to Land Court. In addition to fine tuning the mechanical equipment. please make sure the electric company doesn't put a transformer someplace they shouldn't. Bank employees should be required not to park on the street.

Rick Taintor said it's important that the settlement agreement was supported by the Planning Board chair, Planning Director, and the former and current City Council presidents. Seven City Councilors reversed the prior City Council's decision so that the project could come back before the Board. It bothers him that much of the conversation is about aesthetics, materials, and design details and not about the items that the decision was based on last year which are size, scale, and massing. The changes reflected in the settlement decision do not address the comments this Board made last year. He would like to soften the appearance of the structure. During the site visit, neighborhood residents raised concerns about views being blocked, but he observed that adding two houses on the site would have a similar impact on views. That gave him a different perspective. He's not sure where he is right now but he has a more nuanced view of this development than he did prior to the site visit.

Bonnie Sontag said because she was part of the settlement agreement team and had to agree to something to get the proposal remanded doesn't mean she supports this design. She is still opposed for all the same reasons she was opposed previously. The ordinance doesn't speak to appearance and aesthetics as an alternative to looking at the actual numbers. The site walk clarified for her that there are at least 3 different heights on the 1870s building. Looking down the eave line of the proposed structure toward the wings of the 1870s building showed her that the addition is definitely not subordinate to the historic building. The Planning Board has a responsibility to protect the downtown's historic character. The abutting neighborhood in which the applicant's building sits that is different from the commercial district. We have to take the needs of the applicant, the well-being of abutters and the interests of the City's Master Plan into consideration. There is not enough substantive change for her to support the remand application.

Bonnie Sontag said if the remand plan is denied and goes back to Land Court, the judge could find the DOD invalid. In that case, everything could be thrown out and the applicant could build anything they wanted, as long as it meets the underlying zoning regulations. If the Board denies this proposal the City would have to find another way to protect the historic nature of the downtown going forward.



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Rick Taintor did not know how much of the City Council's decision was about preserving the DOD. He said if the Planning Board votes to approve, the Board will need different reasons for the approval than the reasons we specified for denying the project.

Bob Koup said this proposal creates a street wall that is similar in height and width on each side of the street. It's not a terrible proportion. The roof slopes help get daylight down into the street. He's still concerned about parking. The programmatic requirements that dictate a need for parking 62 cars in the smallest possible space are what's driving the mass and height. Offsite parking could have relieved some of that. The impact of parking all those cars on this site is enormous and what a lot of people are concerned about.

Bonnie Sontag said parking offsite would overload public parking in the neighborhood.

Bob Koup said the impact on the scale of this neighborhood and the impact on the public parking should be weighed against other possible parking solutions.

Heather Rogers asked why more parking could not go underground. Attorney Lisa Mead, Mead, Talerman, & Costa, said the fire chief said no to putting parking further underground. There were also engineering problems with that idea.

Don Walters said if the DOD were to be overthrown and this proposal came back to the Planning Board and is allowed by right, there would still be a site plan review. A year ago, it was clear that several features in the proposal violated the Board's site plan review criteria. If the DOD was ruled invalid, the site plan review would protect some of the concerns expressed by the community.

Rick Taintor said the remand application before the Board doesn't include many of the things that are in the full record, but if we do not refer to anything from the prior review, is it irrelevant or of interest?

Attorney Tom Lane, KP Law P.C., 101 Arch St., said the whole packet is all still before Board, including the early history.

Rick Taintor said some people have raised requests for more information, such as the louvers. Do we have the ability to make requests to have those materials by the 22<sup>nd</sup>? Director Port said yes.

Richard Yeager said if the Board approves the proposal in concept, can we continue to work with the applicant on site details? A lot of these details will be clarified once they get into construction documents. Director Port said deferring details to approve at a later point is difficult. It's better to be clear about what's before you.

Rick Taintor agreed. Because this is a sensitive site, if National Grid added a transformer to the project after approval that could have a very big impact on the neighborhood. Director Port said the language could specify that any changes would come back to the Board for review.

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Bonnie Sontag said Mr. Taintor is suggesting language that goes beyond our standard language. New information requested tonight includes the traffic analysis, the location of mechanical systems, and a general list of materials. Do the attorneys have that list?

Attorney Adam Costa said some details are unknown at this point. Requiring construction level details isn't possible at this stage. The mechanical details are as shown. Anything beyond that is a plan change for which we could need to come back before the Board. A site mock-up was requested by Mr. Yeager. He would need more information about what that entails.

Bob Koup said a site mock-up shows the materials to be used and the relationship of the materials. The progressive process begins with submitting the actual materials and how they would be used. A mock-up would come later, a little closer to construction details.

Richard Yeager said it's pretty common for a contractor on a large project to submit a mock-up.

Bonnie Sontag said the Board would consider that for a condition. She would like to see materials as well.

Attorney Adam Costa would find the materials list submitted previously and see if they could improve upon it.

Jamie Pennington said the Spandrel glass is harsh in appearance and is of significant concern. It's important to add depth behind the windows. Mr. Angelakis said it may not be possible for every window because of the way the machinery works. There is room for a shadow box on Prospect St. because the setback was pulled in. There may or may not be room in other places around the building. He doesn't know for sure yet.

Director Port demonstrated the mock-up used for the 1 Boston Way project.

Heather Rogers asked if the building could be pulled out further on Otis Place because of the pocket park. Wouldn't it be easier to improve the square footage by that number of inches? Mr. Angelakis said yes, but the applicant has been challenged for a year and a half to pull the building in and make it smaller. Now you're asking to pull the building out to make it larger?

Bob Koup said we're only talking about inches.

Bonnie Sontag said the most key area is along Prospect St. because it's the most visible.

Bob Koup said the building doesn't have to grow in size to provide a remedy for Spandrel glass.

Rick Taintor said, normally the Board votes and then looks at the language.

Bonnie Sontag said 98% of the language can be done before the meeting. The Board could be crafting language during the vote. It depends on whether the applicant can provide the materials by the 15<sup>th</sup>. We'll have another special meeting on the 22<sup>nd</sup>. Individual members can submit language they would like incorporated into the draft decision to Director Port.

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Rick Taintor said any conditions the Board has need to reflect that we're pretty much done with the project.

Rick Taintor made a motion to continue the DOD Special Permit and Site Plan Review applications submitted for 93 State Street to June 22, 2022. Bob Koups seconded the motion, and all members present voted in favor.

**Motion 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.*

**4. General Business**

*a) Approval of Minutes*

5/4/22 and 5/18/22 are moved to the next meeting because they are not available.

*b) Other updates from the Chair or Planning Director*

Director Port said he and Jennifer Blanchet are planning to bring forward some zoning language changes. Bonnie Sontag requested a draft ordinance to reduce Board membership from 9 to 7 members with two alternatives. A revised proposed Short Term Rentals amendment will be considered in a joint public hearing with the City Council on June 15.

**5. Adjournment**

Alden Clark made a motion to adjourn. Rick Taintor seconded the motion, and all members present voted in favor.

**Motion Approved.**

Meeting adjourned at 10:37 PM

Respectfully submitted -- Linda Guthrie