

**City of Newburyport  
Planning Board  
June 16, 2021  
Approved Minutes**

The online meeting was called to order at 7:00 PM.

**1. Roll Call**

Attendance: Alden Clark, Beth DeLisle, Anne Gardner, Bonnie Sontag, MJ Verde, Rick Taintor, and Don Walters

Absent: Leah McGavern

Andrew Port, Director of Planning & Development, Katelyn Sullivan, Planner, and Linda Guthrie, note taker were also present.

**2. General Business**

*a) Request for minor modifications – 1 Boston Way (2016-SGD-01) and 3 Boston Way (2019-SGD-01)*

Director Port said he discussed the Board's request to transfer 1 Boston Way the paving condition to the 3 Boston Way project's decision with Karen Pollastrano, Project Manager at MINCO. He demonstrated where the paving extended 10 ft beyond the 1 Boston Way site on a satellite image. There will be a large number of construction vehicles going down to that end of the site for the 3 Boston Way project, therefore it made sense to remove the condition to repave of 1 Boston Way decision and add it to the 3 Boston Way project decision. Ms. Pollastrano discussed the matter with Lou Minicucci, MINCO president.

Bonnie Sontag said the new language for the 3 Boston Way decision in the staff report incorrectly states, "10 feet past the southern boundary with 1 Boston Way." It should say 3 Boston Way. Director Port said the revised letter of June 15 is correctly written and says, "10 feet past the southern boundary of 3 Boston Way."

Bonnie Sontag said it also says, "no later than the receipt of the final Certificate of Occupancy." The Board normally says, "before the receipt of the final Certificate of Occupancy." Director Port agreed to make that change in language.

Don Walters asked the approximate square footage. He's assuming we're not talking about paving the area because there will be construction on the second site. Director Port concurred. Now that construction on 3 Boston Way is beginning, he agreed with the development team that it makes more sense to tie the paving to that project.

Don Walters said the only risk we are taking on is that the project is not completed for technical, financial, or whatever reason. He is okay with the risk but wanted to make it known. Director Port said the surface is not bad now.

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Lou Minicucci said back when they were talking about the 1 Boston Way project, Boston Way was in poor condition. Unbeknownst to anyone, the MBTA completely resurfaced Boston Way just before project construction began and the ensuing construction did not affect the new paving very much. To complete 3 Boston Way, they will be digging up the road for a new water line and it will not be in as good a condition as it is now.

Don Walters made a motion to delete Special Condition #12 from the One Boston Way Smart Growth District (SGD) Plan Approval decision (2016-SGD-01). Anne Gardner seconded the motion, and all members present voted in favor.

Bonnie Sontag read the special condition for 3 Boston Way, “The applicant shall pave the full width of Boston Way from Parker Street to a point 10 feet past the southern boundary with 3 Boston Way before the receipt of a final Certificate of Occupancy for 3 Boston Way.”

Don Walters made a motion to add a Special Condition to the Three Boston Way Smart Growth District (SGD) Plan Approval decision (2019-SGD-01) regarding the paving of Boston Way. Alden Clark seconded the motion, and all members present 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) Correspondence – Letter from residents of Evergreen development re: proposed fence***

Bonnie Sontag said there is an update on the letter we discussed at the last meeting and a potential resolution and asked Director Port to explain.

Director Port demonstrated the #2 Well site on the GIS map. He demonstrated the two open space parcels discussed with Evergreen development team. Parcel A was carved off to protect the well. The agreement is that the portion of the open space in Parcel A would be conveyed to the City and this action is in process. The Water Department and the Conservation Commission have discovered some illegal dumping and want a barrier to prevent dumping on parcel A. The question is whether to place a split rail fence around that parcel. The residents expressed concern about that fence location. Director Port demonstrated on images that there is no demarcation between the open space and the homeowners’ property except for their private property fences. The residents are concerned about the location and aesthetics of that additional fence. The discussion was to shift the fence beyond the tree line so that it is hidden and make the fence 4 feet high with a brown vinyl coat. Because the maintenance of the swale in that grassy area is important to ensure that the drainage works properly, it does not make sense to put a fence there. There is logic to moving the fence to blend behind the tree line. That’s the compromise between all the parties involved.

Bonnie Sontag said this is just for our information. The Board will address the fence when the project returns with an application for this minor modification.

*c) Approval of minutes  
5/19/21 and 6/2/21*

Don Walters made a motion to approve the minutes of 5/19/21. MJ Verde seconded the motion, and 6 members present voted in favor. Rick Taintor abstained.

The minutes of 6/2/21 were postponed to the next meeting.

**Motion Approved.**

**3. Planning Discussions**

Bonnie Sontag said the discussion was a review of subsections in the Newburyport Zoning Ordinance for Site Plan Review to identify needed revisions.

Director Port said in a meeting with the Resiliency Committee the Chair David Chatfield asked the Planning Board to incorporate identifiable resiliency criteria. He suggested adding resiliency criteria to the Land Use Planning bullet or creating a new bullet under Purposes because if resiliency criteria serves a public purpose that would help with litigation.

Bonnie Sontag said she preferred a new bullet.

Don Walters agreed.

Beth DeLisle suggested referencing the 2001 Master Plan, as updated periodically. Director Port and Bonnie Sontag agreed and noted the 2017 Master Plan is the most recent plan.

XV-A Intent: No comments.

XV-B Purposes: No comments.

XV-C Applicability Bonnie Sontag asked about changing the determination of major or minor from 5 or more residential units, which refers to projects that are infrequent, to 4 or more residential units, which captures more projects.

Rick Taintor said there's clearly a difference between 1- and 2-family units and everything else. If the cut off is 4 or more, the 1- 2 units are by themselves, 3 units is by itself, and then 4 or more stands alone. That suggests an argument for changing the language to 3 or more units. He didn't know how many permits were in each category and said it would be helpful to understand the workload implications. Director Port could provide the data.

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Rick Taintor said Portsmouth revised their language from 5 or more unit to 3 or more units because there were so many 3 and 4-unit developments, and those were the ones that caused the most work in terms of making them good developments. Was there a reason for suggesting changing it to 4 units?

Bonnie Sontag said we have a lot of small developments. She considered that Site Plan Review for 3 units might constitute over-regulating. The Board would need to know that there's enough opportunity for potential problems with 3 units. There are likely to be more 4-unit projects than 5- unit projects.

Director Port said he and Zoning Administrator Jennifer Blanchet see is that the ZBA oftentimes has those smaller projects before them for review.

Bonnie Sontag asked how often the ZBA gets involved in stormwater management, lighting, or design, just to mention two obvious areas of Site Plan Review.

Director Port said the ZBA does have the authority to look at things like that based on the relief requested. The Planning Board has more recently been looking more closely at site and landscape conditions and neighborhood effects as part of their review, whereas they in the past they were normally focused more on the structure. There's a 10,000 sf threshold for a stormwater permit from DPS and they traditionally don't see the smaller projects as needing a stormwater review.

Bonnie Sontag asked staff to ensure that 3 or more units would not be over-regulating when it comes to stormwater.

Rick Taintor said 1,000 sf of construction is a very small dwelling unit. Should we increase that? Director Port agreed.

Rick Taintor said the minor project threshold is less than 5,000 sf. Should that be the threshold for a major project? Director Port agreed. The major projects (A) and minor project (B) don't capture everything. There's a little inconsistency.

Bonnie Sontag said Jennifer Blanchet mentioned that a modification to the site with no addition of sf for existing uses is not covered at all. Ms. Blanchet suggested adding, under Major for existing uses, "any modification to the site" in order to trigger Site Plan Review for curb cuts, parking, more traffic, and a whole list of items Ms. Blanchet had created. Ms. Sontag requested a placeholder for Ms. Blanchet to add that revision.

Rick Taintor asked if that would be a placeholder to talk about what kinds of changes would trigger Site Plan Review.

Bonnie Sontag said yes. It might become another number, XV-C-a-5.

Rick Taintor asked if that would relate to the past project on High Street at the back of Otis Place where the applicant was surfacing the rear parking area.

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Bonnie Sontag said yes. That project came before the Board as a modification to a previous Special Permit decision on the building.

XV-D Review Procedure:

Bonnie Sontag asked why the Completeness Vote on applications is necessary when staff makes all the determinations. Director Port said the office would have no problem eliminating that.

Bonnie Sontag said she would like to retain the option to request more information during the public hearing process.

Rick Taintor said the Board can waive required submissions during a Completeness hearing. Staff doesn't have the authority to waive any required submissions. He gave the example of an applicant requesting to waive a Community Impact Report because their project was not big enough to have a community impact. The applicant must wait for the Board's response before they can proceed with a hearing.

Director Port said agreed and said that is consistent with language in another zoning amendment package before the City Council that basically says an applicant needs to ask for the waiver in advance. An applicant cannot proceed with their application before the Board until they have made their waiver requests. The office can save the Board some time by determining whether the application is complete.

Bonnie Sontag said the problem she was trying to solve was avoiding long, drawn-out presentations of an entire application only to explain why the waivers are requested. She asked whether staff, when they reviewed an application before it was complete, could by exception bring the exceptions to the Board to vote on in the first meeting?

Rick Taintor said by doing away with the Completeness Vote, an application deemed complete by staff goes right to a public hearing. Is Ms. Sontag suggesting that if an applicant has a less than complete application, they have to come to a separate meeting to see if the Board will receive it?

Bonnie Sontag said yes, but the applicant would then need to go through the entire application to explain why they need the waiver. She is trying to avoid that. Is it inappropriate to open the public hearing and handle waivers as part of the first presentation of the whole application?

Don Walters said when an applicant requests waivers, the Board can still vote the application complete. And that doesn't prevent the Board, once the hearing is open, from requesting submission of any item the applicant requests to waive. An applicant does not have to come before the Board for an application completeness review, the applicant simply comes before the Board when the application is there.

Bonnie Sontag agreed. Is that procedurally viable and legal or would it cause potential problems? Director Port said the Board can save meeting time by letting staff determine when something is complete. You can reduce the amount of time the applicant presents if they do have to come

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before you to ask for a waiver by requiring a brief project overview for the rationale behind the waiver. As long as you make it clear when you are granting the waiver for the submission at the beginning, that it's just to allow the clock to start on the application when it is submitted, which is the purpose of the completeness vote.

Elizabeth DeLisle said her concern is making sure there's a procedure in place that ensures a formal determination for when the clock starts on an application. Director Port agreed.

Rick Taintor suggested, rather than a separate meeting for a completeness vote, when an application is on the agenda there is a completeness vote and then a vote to open the hearing the same night. That's how it was done in Portsmouth. Otherwise, the clock might start on something that's contentious.

Bonnie Sontag said the Board would not know if it's going to be contentious unless we have a presentation on the rationale on the waiver. If the clock starts ticking when staff says the application is complete, the applicant can always ask for a continuance if they run out of time over a major disagreement on a waiver request.

Rick Taintor said Section XV-F, about the waiver submission requirements, comes after this review procedure. It seems like it's out of order. How can you have a completeness review in XV-D if you wait until XV-F to look at waivers? He suggested merging XV-F into XV-D to make it clear what the process is for granting waivers. Staff can make sure the waiver is appropriate but can't approve the waiver.

Bonnie Sontag agreed. Director Port said an amendment before the Council overlaps with this. He was hoping to combine XV-D and XV-F into one section that deals with the administration part. It makes sense to consolidate them.

Bonnie Sontag said what was submitted to the Council is written the older way, saying before we accept a submission all waivers have to be approved. It will need to be rewritten if we're in agreement on hearing waivers at the first presentation. Director Port said some reports, like traffic studies, take time to prepare and present. Applicants like to find out early on whether or not the Board will require it so they can have time to prepare it. By holding off on hearing a waiver request until the night of the hearing you've not allowed enough time for that adjustment in preparing an adequate package.

Bonnie Sontag asked if this language is part of the mini reform. Director Port said yes, so we need to make the verbiage consistent. Chair Sontag said this section will be in 10-d.

Rick Taintor asked the reason for adding the language in the mini-form. It is stricter than our current Site Plan Review because it says the applicant can't come before the Board until the waivers are approved. Director Port said this is consistent with the way the ordinance should be interpreted and applied. The Board would not want staff to be stamping an application to start the clock if the application doesn't have everything the ordinance requires. There is no expectation that staff or the Board will spend time on applications that don't meet the minimum requirements. In this instance, we are noting that if an applicant wants to submit an application

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and avoid the ordinance requirements, they should ask the Board first so that the clock is not running. Otherwise, the Board could be penalized. It's not unusual for an applicant to meet with the Board 2 weeks in advance to ask for the waivers so that the clock is not running.

Bonnie Sontag said we've been talking about not doing that so that we don't have to listen to a good portion of the application presentation before we hear it again at the first hearing presentation. Why can't we deal with waivers when we begin the permitting process. If there needs to be an extension for a traffic study, we can agree to that. Director Port suggested there would be more conflict, debate, and time spent at meetings on legal interpretation than there would be otherwise. The applicant does not deserve an entire night to present a waiver when they can summarize the application in 5 minutes to explain the waiver and answer the Board's questions to determine whether or not a traffic study is needed.

Bonnie Sontag disagreed. She said if it's not legally possible, things should stay the way they are today if the Board needs to approve waivers before the formal application.

Rick Taintor said we can make it better procedurally if we don't have to hear from the applicant before the Board opens a public hearing, because the applicant can submit a written request from which the Board makes the waiver determination. It would force the applicant to be clear. The Board would be backed into a corner if we accepted an application that was incomplete, and the clock started.

Bonnie Sontag agreed and said that would be consistent with the language in the mini-reform. For XV-F we need to clarify that the waiver needs to be in writing.

Bonnie Sontag asked: Does the Board every use the action in Review Procedure XV-D-c-8 to request a joint public hearing with the ZBA? Should we keep that language? Director Port could not recall this provision being used.

Bonnie Sontag said she would pull that out. Director Port agreed because nothing precludes either board from asking for a joint public hearing.

Rick Taintor said the next one assumes the Board can grant Site Plan Approval before a variance is granted. That's not appropriate. The variance should happen before Site Plan Approval. He would delete that section as well. Director Port agreed.

XV-E Materials for Review:

MJ Verde suggested 5-i, exterior material, including trim and colors, should not include colors.

Bonnie Sontag said the Board had quite a discussion on colors for Boston Way. Director Port said you may want to consider colors in certain districts other than 40R, like the downtown and Storey Avenue.

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Bonnie Sontag suggested 5-vi should say, “ at the option of the Board,” rather than “at the option of the applicant.” Director Port agreed and would further suggest that the Board could also call for a 3D model. Waterfront West is an example of where we wanted to see a 3D model.

Rick Taintor said there is a disconnect between XV-E.a.5 which says, “the plan shall show pedestrian, bicycle, and vehicular patterns,” and XV-E.a.4 where it says just pedestrians and vehicular in b-iv referring to the traffic study. Director Port agreed.

Rick Taintor asked whether we want to say anything about a template to show trucks can make the turn. Director Port said the fire department and the peer review engineer would look at those plans, so we’re doing it, but we could call it out.

XV-G Site Plan Review Criteria:

Director Port said it would make sense to have a bullet here that speaks to resiliency. The Resiliency Committee will provide some appropriate language.

Bonnie Sontag said we should reference sustainable building standards, whether it’s a LEED rating and any other criteria from the Energy Advisory Committee to reach the net zero energy goal by the dates agreed by the City for the new category G. Even in smaller projects there could be some adjustable requirements, some with “shall” and other requirements with “may” to give the criteria more teeth. Director Port agreed.

Bonnie Sontag suggested also adding sustainable building standards in the section XV-H Development and Performance Standards.

Alden Clark asked if sustainability and resiliency standards would go under XV-L Mandatory Conditions. Director Port said the Mandatory Conditions section represents conditions the Board must place on a project as opposed to things the applicant has to do to get the Board’s approval.

Bonnie Sontag suggested a.5 under Community Character has a statement where it talks about being located within the national register historic district consistent with architectural style, scale, etc. That is not helpful because that district has 2,200 structures. Director Port agreed and suggested saying, “the neighborhood and the context” rather than the whole district.

Bonnie Sontag said a.6 already mentions neighborhood, the site, and the area around it. That language could also use some adjusting, but a-5 can be removed. Site Plan needs the specificity that’s covered in a.6. And even then, the immediate neighborhood and surrounding area doesn’t work when you think about what we might want to do with Storey Avenue.

Rick Taintor said if we’d followed immediate neighborhood and surrounding area, we’d never have the Institution for Savings on Storey Avenue because it certainly doesn’t fit in with its surroundings.

Bonnie Sontag said what will work varies by neighborhood and surrounding area. We need language that will allow us to work area by area.



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MJ Verde said the language in a-6 can be broken down and clarified. Director Port agreed.

Rick Taintor said a-4 needs to be rewritten to say, “in harmony with or better than the architectural style of adjacent buildings.” Director Port agreed.

XV-H Development and Performance Standards:

Rick Taintor said as a general point, Development and Performance Standards is a mix of standards with “shall” and guidelines with “should” and “where feasible.” There should be an introductory paragraph that says something like, “things that say shall are standards that all developments must conform to and things that say should are additional guidelines that tell you what we’d like to see.” Director Port agreed. We had to clarify things like that in the 40R District for the state, so they were clear enough to act upon.

Rick Taintor said he would take out everything before the word “no” in a-10. He couldn’t imagine where physical constraints would require you to park or park and load in your front yard. That provision applies to commercial and multi-family developments, not single family homes.

Director Port agreed.

Bonnie Sontag said the applicant who put up the new structure at Leo’s Pizza argued for parking in the front to show that they were in business.

Rick Taintor said they could not get a waiver under this provision because it wasn’t site configuration, safety considerations or physical constraints, it was just their desire to show parked cars.

Bonnie Sontag said the applicant could apply for a waiver and convince the Board it is necessary.

Rick Taintor said he didn’t think there was a provision for the Board to waive a zoning standard. Director Port suggested using similar language from the 40R District whereby the Board, if it chooses, can grant a waiver from a provision rather than force the ZBA to grant a variance.

Rick Taintor said if we use that language for a specific standard, we should do it for all standards. The strategic land use plan had buildings right up against the street with parking behind. By pushing the building back, we perpetuated an auto-oriented streetscape. It would’ve been nice if there had been stronger language. He suggested the introductory paragraph say something to the effect of, “In specific circumstances, if the Board finds that a public purpose would be served, the Board may waive individual standards set forth in this section.”

Rick Taintor said, at the very end of “b, Site Plan and Architectural Design,” there is a provision that says, “The Board may request dimensional and setback requirements.” Director Port said it is unenforceable as written because it doesn’t say, “The Board may require.”

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Rick Taintor said in the case of a special permit the Board has the clear ability to increase the setbacks, but for something that's an as of right use and just a site plan review, we can't use "the Board may require." He suggested deleting it. Director Port suggested keeping something that says the Board may require additional landscaping or screening, whether that's in this section or somewhere else.

Bonnie Sontag said that would be under landscaping, not here. On 7-v it should say, "the local historic district commission," instead of "historical commission." Director Port agreed.

Beth DeLisle asked about 7-vi. She wasn't clear why we would take away the ability to have a discussion with an applicant about whether they might be able to add additional setbacks. Maybe we can't require them but why would we take out language that would allow a back and forth dialogue?

Rick Taintor suggested saying, "The Board may request different setback dimensions other than those required by the ordinance," and ending it there because all the other language makes it sound like a requirement.

Bonnie Sontag said she thought that would be in conjunction with a special permit and assumed it was covered anyway.

Rick Taintor said the lighting section in c. could be beefed up to be dark sky friendly. Ms. Sontag agreed.

Rick Taintor said generally there's a lot to do on landscaping and screening. He is concerned about the introductory phrases in d.1 and d.2, "Except for zoning districts where the setback requirements are less than 20 ft" and "Except for zoning districts with no setback requirements." In the first case he preferred, "Except when the principal building is less than 20 ft from the street, a landscaping buffer strip shall be provided" to get away from parking in front of the building right against the street. For d.2 he preferred, "A continuous landscape buffer strip between business and industrial districts and any residential districts shall be provided in any case." The depth can vary but we want to beef up buffering residences from industrial uses. Ms. Sontag agreed.

Bonnie Sontag said the Board has talked about large parking lots that require landscaped islands every 20 spaces. Does that need to be improved to require trees and not just bushes? Bushes don't do anything to reduce the heat.

Rick Taintor said internal trees are important. There are studies that say a tree canopy that covers 40% is an appropriate standard to try and reduce the heat island effect. He suggested that trees be designed so that at maturity they will cover 40% of the parking lot. Director Port agreed.

Rick Taintor would also look at constructing islands to capture rainwater and stormwater rather than the traditional 6 inches of curbing that requires watering the plants and creating storm drains. Using rain gardens like the one at the Bresnahan School is more environmentally

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sensitive. We should think not just about the size and contents of the landscaped islands, but also how they work for stormwater. Director Port agreed.

Bonnie Sontag suggested adding a fourth bullet to section “e” Storm water runoff with language about adherence to industry standard low-impact development practices, and list them, such as rain gardens, rooftop rainwater capture, microscale controls, and anything that infiltrates, stores, evaporates, and/or detains runoff close to the source. Maybe someday pervious pavers can be listed.

Director Port suggested, in relation to recent conversations on the City’s water supply and capacity, that the bullet on utilities addresses concerns about being able to provide water for any buildout. It’s better to address these issues prior to Site Plan Review and to make sure that the ordinances do not effectively allow the amount of collective or district buildout that exceeds the water capacity in future decades.

Bonnie Sontag suggested mentioning water capacity in XV-G Site Plan Review Criteria. Director Port said XV-E Materials for Review is also a good place for the language on water capacity.

Rick Taintor asked if we require an applicant to contact private utility companies to confirm that utilities shown on the plan are serviceable by the private utility. An example he experienced involved a private utility not being able to service the transformer where it was located and that it had to be moved. Director Port had not seen an issue like that in Newburyport, but it’s a valid point because the City does not reach out to utilities in that way.

Don Walters suggested language that says the Planning Board has the right to require relocation, shielding, and things like that. As an example, we spent hours trying to make the Water Pollution Control Facility look nice, but when you walk down further you see a big transformer and a big generator. There was no consideration for fencing or shrubbery. We need some requirement in the form of shielding for things like that. Bonnie Sontag agreed that belonged under utilities in XV-G.

Director Port said there are 2 additional subsections for waterfront districts.

Rick Taintor said he thought the word “marine” is excess because they are both just waterfront districts.

Director Port said because these include some architecture considerations, the Board want to continue this dialogue for a wider discussion.

Bonnie Sontag said during the zoning rewrite project she was told that architectural design standards and guidelines is such a specialized area that the City would hire a consultant to work with us on these. She and Leah McGavern tried to work on it and got stymied right away. Putting more detail into Site Plan Review is probably not a good idea. She agreed it was a conversation for another day. Director Port said we will not lose the provisions that are in there today.

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Rick Taintor asked if the Waterfront Mixed Use (WMU) District was the same area as the Waterfront West District. Director Port demonstrated on the zoning map the Waterfront West District and the WMU.

Rick Taintor said the building height specified seem contradictory and some elements he would disagree with, such as putting in skylights. It's too detailed for tonight but should be looked at.

Bonnie Sontag said the Board would not look at parking right now because it links to many other parts of the ordinance, although it was incorporated into the staff report for tonight. But this is the time to speak up if there are items you want incorporated.

***Executive Session and Adjournment***

Don Walters made a motion to move into Executive Session pursuant to M.G.L. 30A Section 21, to discuss strategy with respect to litigation in the matter of Institution for Savings in Newburyport and its Vicinity v. City of Newburyport Planning Board (93 State Street), as an open meeting may have a detrimental effect on the litigating position of the public body. Following the Executive Session, the Planning Board will adjourn without returning to the public session. Alden Clark seconded the motion and all members voted in favor.

**Motions Approved.**

**4. Executive Session**

***Pursuant to M.G.L. 30A Section 21, to discuss strategy with respect to litigation in the matter of Institution for Savings in Newburyport and its Vicinity v. City of Newburyport Planning Board (93 State Street), as an open meeting may have a detrimental effect on the litigating position of the public body***