CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
April 21, 2016
1777 Broadway, Council Chambers

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PLANNING BOARD MEMBERS PRESENT:
Bryan Bowen, Chair
John Putnam
John Gerstle
Leonard May
Liz Payton
Crystal Gray
Harmon Zuckerman

PLANNING BOARD MEMBERS ABSENT:
N/A

STAFF PRESENT:
Susan Richstone, Deputy Director of Planning Housing & Sustainability
David Gehr, Deputy City Attorney
Lauren Reader, Administrative Specialist II
Holly Opansky, Administrative Specialist II

1. **CALL TO ORDER**
   Chair, **B. Bowen**, declared a quorum at 6:03 p.m. and the following business was conducted.

2. **APPROVAL OF MINUTES**
   On a motion by **J. Putnam** and seconded by **J. Gerstle** the Planning Board voted 7-0 approve the April 7, 2016 minutes as amended.

3. **PUBLIC PARTICIPATION**
   No one spoke.

4. **DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS / CONTINUATIONS**
   No items were set for discussion.

5. **PUBLIC HEARING ITEMS**
   A. AGENDA TITLE: Public hearing to consider a recommendation to City Council on an ordinance amending Title 9, "Land Use Code," B.R.C. 1981, to encourage the creation of more cooperative housing units.

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Staff Presentation:
D. Gehr presented the item to the board.

Board Questions:
D. Gehr answered questions from the board.

Public Hearing:

1. **Jennifer Farmer** spoke in support of equity co-ops however opposed to limited/rental co-ops and urged the Planning Board to slow down.
2. **Ken Farmer** spoke in support of private equity co-ops, but opposed to rental co-ops.
3. **Michelle Estrella** spoke in support of the ordinance.
4. **Rebecca Shog** spoke in opposition of the ordinance.
5. **Andy Schultheiss** spoke in support of the ordinance.
6. **Lois LaCroix** spoke in opposition of the ordinance.
7. **Nikki McCord** spoke in support of the ordinance.
8. **Sarah Massey-Warren** spoke in opposition of the ordinance.
9. **Elisabeth D. Bowman** spoke in opposition to the parking section of the ordinance.
10. **Rosemary Hegarty** spoke in opposition of the ordinance.
11. **Jill Marce** spoke in opposition of the ordinance.
12. **Jan Trussell** spoke in opposition of the ordinance.
13. **Lisa Marie Harris** spoke in opposition of the ordinance.
14. **Sam Schramski** spoke with concern regarding to the revocation of the ordinance as written.
15. **Mike Marsh** (pooling time with **Ron DePugh, Jeffrey Rosen, Anna Cereti**) spoke in opposition of the ordinance.
16. **Greg Wilkerson** spoke in opposition of the ordinance.
17. **Debra Biasca** spoke in opposition of the ordinance.
18. **Sarah Dawn Haynes** spoke support of the ordinance.
19. **Christina Gosnell** spoke in support of the ordinance.
20. **Zane Selvans** spoke in support of the ordinance.
21. **Rishi Raj** spoke in opposition of the ordinance.
22. **Lisa Spalding** spoke in opposition of the ordinance.
23. **Cedar Barstow** spoke in support of the ordinance.
24. **Eric Budd** spoke in support of the ordinance.
25. **Angelique Espinoza** spoke in support of the ordinance.
26. **Will Tour** spoke in support of the ordinance.
27. **Lindsey Loberg** spoke in support of the ordinance.
28. **Meredith Kee** spoke in support of the ordinance.
29. **Cha Cha Spinrad** spoke in support of the ordinance.
30. **Susan Ross** spoke in support of the ordinance.
31. **Alana Wilson** spoke in support of the ordinance.
32. **Michaela Rothschild** spoke in support of the ordinance.

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Board Comments:

- **B. Bowen** proposed a motion to recommend approval to the City Council with recommendations, seconded by **J. Putnam**. The board agreed to discuss the key issues, make their recommendations and tally votes based on each issue.
- **H. Zuckerman** appreciated the public and staff for all the work that has gone into the ordinance and contributions. He stated the job now is for Planning Board to ask Council to refine the ordinance, as proposed. He suggested that Council should review how to mitigate the impacts and what the licensure requirements should be. Different levels of intentionality should be recognized. He stated that co-ops could provide amenities and have lower environmental impacts. The strongest argument he heard was to eliminate the rent cap and that the licensure for rentals is fine. He felt that there should be a clear definition of co-ops and what goes into the licensure and certification.
- **J. Putnam** felt there is value and validity that this ordinance has been held back. He stated that it would be a mistake to not recommend ordinance to Council however, it does need adjustments. He suggested more guidance for the community regarding governance and ownership issues to give people an idea as to what is happening. He suggested that if a permit-type model were retained, it would need to be changed from a pure complaint type model. He would prefer the property-rights model than a permit-type model.
- **L. May** agreed with **J. Putnam** that equity models should be used and further outreach study on the rental model be done. He stated that co-ops need to be viewed from a co-op and neighborhood perspective and rentals need to be viewed from a property owner and neighborhood perspective. Co-op opportunities exist in higher density zones and not utilized because property values are high therefore, co-ops exist in low-density zones. Cheaper zones guarantee people will most likely migrate towards Martin Acres and Uni-Hill. Rental co-ops are undesirable because people do not have a stake in the property and are often more transient based. The fundamental goal of the ordinance is to enable a variety of living options and to achieve affordability where we can absolute affordability and permanent affordability and to allow a lower-carbon footprint living situation in a fashion that is not disruptive to the neighborhood. He stated that the proposed ordinance is headed in the right direction, however modifications are necessary. **L. May** disclosed that he also sits on the board of Plan Boulder County, which will eventually weigh in on this ordinance as well. In addition, he once lived in a co-op in Washington D.C but he does not feel it prejudices him from this matter.
- **L. Payton** informed the board that she was originally in agreement with focusing on equity co-ops, however now the urgency seems to be in the rental market. She declared that she is sympathetic to the neighbors. She said that a co-op might not benefit the surrounding neighborhood. She expressed concern regarding the ordinance and that the result could be a political mess if the neighborhoods are not considered. The focus should be on high-density and business zones and not on putting co-ops in single-family residential neighborhoods. She suggested the integrating of co-ops into new development projects (i.e. S'PARK). Finally, she questioned the number of co-ops proposed each year (15 per year) and why that number seemed so high as compared to other large cities in the United States.
- **J. Gerstle** agreed with **J. Putnam's** points distinguishing between the equity and rental co-ops. In regards to whether there should be a license vs. a property right, he support a

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license right perhaps with an extended period if it makes a big difference in respect to the ability to move ahead with financial and investment decisions for an individual. In regards to the other issues, he agrees with **L. Payton** in that it is clear that parts of Boulder are being redeveloping. He stated that those areas should have focus on additional options for living and that those developing areas would not have neighbors that would object. Focus on the locations of the co-op houses should be done, as they will compete with young families trying to provide options in Boulder and be counterproductive. He suggested establishing a working group to deal with these issues. He understands the urgency and Council's desire to move quickly, but wants to take time to serve the city best.

- **C. Gray** disclosed that she currently lives in a medium-density neighborhood within 600 feet of a co-op (Chrystalis) which is in a high-density neighborhood. In addition, she has met with members of the public and discussed this matter. She agrees with **L. Payton's** suggestion to broaden the zones where co-op communities could exist. At this time, there is not a requirement for separation in the medium or higher density zones and this could have an adverse affect on low-density zones. She would encourage a separation of 300 feet for the medium to high-density areas and 1,000 feet for the low-density neighborhoods to create a larger separation. In regards to rental co-ops, she sees more potential for abuse and loopholes. She approved of the governance suggestion from the co-op community. She stated that if there were a greater separation, then she would be agreeable with the numbers per year proposed. She recommended that parking permits should be the same for owners. She would be in support of a working group. Finally, she would like to recommend as a second phase to this ordinance that a hybrid to co-op housing be explored.
- **B. Bowen** mentioned that the testimony from informed individuals regarding co-ops was inspiring. This issue is based on housing and social justice. At the core of this is a huge lack of understanding of what intentional community is. He stated that he hears the concerns of the neighborhoods however; he believes the misunderstandings surrounding co-ops will go away. While there is an affordability component to it, the issue is centered on people wanting to live together in a different way than most of us do. He stated that people should be allowed to live how they want as long as the impact is controlled. Co-ops should be allowed in the RH-6 and MU-4 zones as well as the A-zone because there are people who want to do an agricultural co-op project. He disagreed that a public health argument exists to disallow for co-ops. He stressed that it is important to have stronger definitions regarding co-ops. The organizations that are certifying these groups should be renewing annually and rather than every four years. He stated that the tool is to have a strong process for co-ops to have support and protection.

<u>Recommendations to Consider:</u>

1. **Postponing the Consideration of the Rental Co-op Model?**
   - **B. Bowen** suggested keeping this item in the ordinance because it represents the co-ops that already exist.
   - **J. Putnam** explained that he would remove it but only if other categories are broadened to allow some rental models. The context is not to strip rentals out entirely, but take out the one-size-fits-all solution and to change to an annual renewal as opposed to a ten or fifteen year structure.

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- **L. May** recommended this move to a study group – either a working group of Planning Board or a subcommittee.
- **J. Gerstle** agrees with **J. Putnam's** idea in keeping the pure rental category separate but in the equity category, there could be room for rental participation.
- **H. Zuckerman** suggested regulating co-ops with the rental issue. He argued that if rental licenses were given to the actual co-ops, it would give co-ops a bargaining tool to live where they want and to find the best place for them. The rental issue needs to be handled now.
- **C. Gray** mentioned that she supports separating the rental issue because it does need more work. The rental option offers the biggest opportunity for being located around the city in different areas.
- **B. Bowen** stated that he is unclear what the rental issues are. If a third party is overseeing an intentional community, a rental license exists, an operational agreement that needs to be renewed and includes mitigating the impact on neighbors, he questions where the hole/loophole would be.
- **L. May** explained that with a rental license, a shared license goes hand in hand with rent caps. Not having a rent cap enables a house to be rented at market rate. The rental license co-op becomes an exclusive commodity, which derives a higher price on the market. This could create a situation for less affordable housing or family housing in neighborhoods. Marketing analysis needs to be done. He supports a rental cap; however, the number is unclear without analysis.
- **J. Putnam** declared that he does not approve of rental caps, as they would likely create more distortion and problems. His concern lies with the details of third party certifications, possible co-licensing, governance standards, and the other models are likely to be self-regulating and offer less opportunity for misuse of the tool.
- **B. Bowen** explained that he sees the renal issue as separate because the ordinance will not contain the certification process, governance standards or what defines a co-op.
- **J. Putnam** rebutted by saying the ordinance should provide more certainty to the broader community that those issues would be addressed.
- **L. May** added that it would offer a clearer pathway to the ordinance being passed and get a huge amount of pushback from the public who do not feel it has been adequately vetted.
- **J. Putnam** believes if there is a certainty around organizations and criteria by which they are chosen, it would be helpful. It would provide more comfort within the ordinance.
- **B. Bowen** clarified that we are not trying to strip rentals from the ordinance, but that we are just not ready to move forward and that rentals require some further study.
- **J. Putnam** agreed that a lack of knowledge around co-ops exists and reminded the board that they are only providing recommendations to Council. The right balance to get as much done, to build confidence, to make more possible and educate people is what needs to happen.
- **H. Zuckerman** examined the language regarding "*specified pre-established criteria*" in Section 10-11-4(b)(4)(1)(E). He suggested the "*specified pre-established criteria*" belong in the ordinance itself and should apply to all co-ops. Rental co-ops do not

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need to be pulled out as long as the "*specified pre-established criteria*" included in the ordinance are reviewed as part of the approval process.

- **B. Bowen** agreed.
- **C. Gray** agreed that it should be a recommendation to Council. This area needs to be developed. She suggested the formation of a group to develop a certification such as Housing and the four neighborhoods that are exempt in order to educate the public. She recommended that Council authorize further study on rentals and that it be done in a timely fashion. In regards to the "*specified pre-established criteria*" the Planning Board recommend that this becomes more defined with the assistance of Housing and the four neighborhoods that are exempt from enforcement.
- **B. Bowen** disagreed with establishing or limiting specific neighborhoods assigned to a working group.

    - D. Gehr informed the board that staff will propose to Council addition processes discussed tonight. In addition, with the ideas on how to improve the existing ordinance, staff will draft options in the coming weeks to address those.

- **L. May** summarized **D. Gehr's** comments by asking if the majority of the board would be inclined to recommend that the equity co-op are ready for Council to proceed, but that rental co-ops be deferred from the ordinance at this time and be subject to further study and analysis subject to any board recommendations.
- **B. Bowen** added that for clarification of the word "defer". His definition of "defer is that rental co-op would no longer be a part of the current process. He stated that what the comments have been centered on is to increase the level of study on rentals and resolve all questions prior to Council action.
- **L. May** disagreed. It should only mean that rental co-op would continue to be studied and Council should not delay passing something regarding equities.
- **H. Zuckerman** added that they are going to make a recommendation to Council and that staff will be working on modifications to the proposal. He would be comfortable with giving recommendations on all the issues and staff's ability to work with them.
- **L. May** explained that the board should give guidance to staff on whether to continue with equities and to pause with rental co-ops and form a study group to form those issues and conduct community outreach.
- **L. Payton** expressed her wish to have a single integral ordinance, which would go through Council at the same time, but everything needs more process before it is ready.
- **J. Putnam** gave three options for how to proceed. One option is to slow down on rentals and work on the options quickly. Slow down on the entire thing to clarify. Finally, address these items and work through them in the next month. There are risks and benefits to all options. He suggested the board move forward looking at the substance to better assist Council.
- **H. Zuckerman** advocated for rental co-ops and to advise Council for special attention be paid and may need a bigger and longer process. Council will understand the board's message.

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- **L. Payton** stated that as the process go on; discover that these processes are difficult to do separately.

***Straw Polls*:**

1) Rentals need further study and special attention?
   (*7-0, in favor*)
2) Should the entire process slow down?
   (*2-5, **L. Payton, J. Gerstle** in favor of the entire process slowing down*)
3) Should only the rental process slow down?
   (*4-3, **L. May, J. Putnam, L. Payton,** and **C. Gray** in favor of the rental process slowing down*)
4) Evaluate what characteristics certification might require / specified pre-established criteria?
   (*7-0, in favor*)

2. Allow Renters in Equity Co-ops?

- **L. May** recommended that where shareholders are offered as a majority within an equity co-op, 30% maximum rental occupant in an equity rental. This would for allow flexibility. He would not want to see that go any higher.

***Straw Polls*:**

1) Allow renters in equity co-ops?
   (*7-0, in favor*)
2) Should the percentage be decided now?
   (*0-7, failed*)

3. Enhancement of the Definitions of the Three Types of Co-ops?

- **B. Bowen** mentioned that people felt the definitions should be stronger. He asked the board if the BoCHA definitions be preferred over the city because they are more enforceable.
- **J. Putnam, L. May** agreed.
- **C. Gray** suggested a co-op definition of "one owner and four unrelated" and be "Co-op Like".
- **B. Bowen** opposed because of the level of the mindfulness of the community, and if it is removed, it stops working.
- **L. Payton** asked if staff should review the *501(c)(3)* requirement because people may organize as non-profit groups who may not necessarily be disadvantaged or otherwise categorized as a charity. The cooperative may not necessarily have a charitable purpose.
- **L. May**, in regards to "limited equities", added that he did not see the point of this being included, especially if rentals are allowed.
- **L. Payton**, on the "cooperation housing organization" definition, asked that "and the public interest" is added.
- **B. Bowen** suggested under "allowed occupancy" to allow a lower figure so that the home would scale with quantity.

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- **L. May** added that it makes sense to have occupancy calibrated to the zones instead of one-size-fits-all. Impacts on neighbors have more to do with the number of people on the lot than the number of people related to the size of the house. He suggested that the metrics be based on lot area.
- **B. Bowen** disagreed because of tying it to livability standards and safety.
- **J. Putnam** disagreed with **L. May** stating that it should be more structured based. He was not convinced that a flat 150 square footage limitation per person per unit size would work in all circumstances. He supports the greater number provided by the International Property Management Code as it at least creates a good benchmark and provides a leeway for different structures.
- **L. Payton** suggested setting a cap on the square footage per zone in a structure.
- **L. May** and **C. Gray** were in support of the 200 square footage limitation per person per unit size. **C. Gray** recommended that a larger lot, and then a higher occupancy be supported.
- **B. Bowen** stated that if the limitation is tied to lot size or setbacks then it would not occur when attempting to have co-ops in dense housing such as S'PARK.
- **L. May** explained that he was referring to specific zones of RL-1 and RL-2 where the focus is about neighborhood compatibility. He suggested that a modest approach where impacts are not as great and less friction might occur.
- **J. Putnam** offered his opinion that he is less concerned about the number of people and occupancy cap no matter what the zone, so long as the parking governance, maintenance upkeep, etc are done correctly. Slowing the rate and number of co-ops at any one location will be more helpful, and that existing ones have maximum flexibility to succeed.
- **L. May** suggested an alternative by increasing to one co-op per 600-foot radius and applying to all RL-1 and LR-2 zones. The concern may not be the proximity of each co-op in relation to each other, but rather how many are in a neighborhood.
- **J. Putnam** offered the suggestion of focusing on the number of co-ops per neighborhood per year. The definition of a "neighborhood" would need more analysis.
- **C. Gray** approved of the 600-foot radius separation in all RR, RE, and RL zones. A 300-foot radius separation should be required for the RM and lower end of RH (1-4) zones. She proposed the exemption of MU, Business and DT zones from allowing the proposed 300-600-foot separations.
- **B. Bowen** proposed establishing that separation is a point of discussion however, resolution is not apparent at this point.
- **L. Payton** stated that the proximity of the co-ops does not matter. What matters is the overall number of the co-ops rather than separation.
- **B. Bowen** advocated that having co-ops next to each other is not an inherently amoral concept and should not be treated as such.
- **L. May** rebutted stating that co-op housing is attempting to put higher density housing in a single-family neighborhood. The neighborhoods have legitimate concerns.
- **C. Gray** encouraged the separation explaining it would disperse rentals throughout the community.

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- **J. Gerstle** added limiting the rate at which co-ops can take place, and spreading them around the community, would be sensible. The distance of separation is difficult to determine at this point but the principle is reasonable.
- **J. Putnam** summarized that a split between the board exists between those that believe there should be some degree of separation of co-ops and the rate at which they grow and other who would keep the rate at the level identified in the ordinance. He supports some geographic separation around town.
- The board agreed there was an unresolved discussion surrounding separation.

***Straw Polls*:**

1) Prefer BoCHA's definitions to the City of Boulder's definition?
   (*7-0, in favor*)
2) Widen certifying authority to allow Colorado non-profit or legitimate other entities beyond the *501(c)(3)* requirement?
   (*7-0, in favor*)
3) Adding "and the public interest" to cooperative housing organization definition?
   (*5-2, in favor*)
4) In support of the 200 square footage limitation per person per unit size with a cap? Some were agreeable with less.
   (*7-0, in favor*)
5) In support of some separation of co-ops?
   (*3-4, in favor*)
6) In support of no separation of co-ops?
   (*4-3, in favor*)
7) In support of having co-ops around town?
   (*7-0, in favor*)

4. Differential Fines for Co-ops?

- **J. Putnam** proposed to have the fines the same regardless of the neighborhood. He suggested using the assurance of more enforcement within the neighborhood. The idea of lower vs. higher fines sends a bad message that one neighborhood is worth more than another.

***Straw Poll*:**

1) Make fines the same regardless of the neighborhood?
   (*7-0, in favor*)

5. Enforcement for Co-ops?

- **L. Payton** suggested recommending to City Council that enforcement will take place within the ordinance.
    - **D. Gehr** explained to the board that once the community agreement is in place regarding occupancy rules, then enforcement could take place consistently.

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- **L. Payton** stated that often the burden falls on the neighbor to complain in order for enforcement to occur. Ideally, enforcement should occur without it being the burden of the neighbor.
- **C. Gray** suggested building relationships with our co-op neighbors and discussing issues head on. She stated that she is uncomfortable with the defining of issues that need to be addressed by the neighbors such as parking, shoveling, weeds, and noise.
- **J. Putnam** explained the real issue with parking is not that a co-op may have more cars, but addressing the public good and defining the root cause.

***Straw Poll*:**

1) Recommend to Council to address the root cause of the issues with the neighbors? (*7-0, in favor*)

6. Annual Limit for Co-ops?

- **L. Payton** questioned the number of fifteen co-ops per year proposed in the ordinance. She proposed a slower approach. She would expect to see fewer equity co-ops than rental co-ops immediately.
- **J. Putnam** disagreed. He would like to manage the impacts, but there is value in having Boulder keep the annual limit at fifteen.
- **C. Gray** added that separation would keep the co-ops at a slower pace and agreed with **L. Payton's** approach.
- **J. Gerstle** and **L. May** agreed with **C. Gray**.

***Straw Poll*:**

1) In support of the proposed annual limit of fifteen (5+5+5) co-ops? (*4-3, in favor*)

7. Zoning Allowed for Co-ops?

- **B. Bowen** summarized that the board supports broadening the co-ops in other zones besides just single-family zones.
- The board agreed.
- **C. Gray** added all other zones allowed.
- **B. Bowen** proposed removing the limit for only applying to fee-simple properties.

***Straw Poll*:**

1) In support of broadening the allowed "by-right" zones to include RH-6, MU-4, and A, at a minimum. In addition to more dense zones, (all zones)? (*7-0, in favor*)
2) In support of removing the limit for fee simple properties? (*7-0, in favor*)

8. Property Rights?

- **J. Putnam** suggested that revocation should be held at a tougher level than complaints. In addition, if rental co-ops are included, fair housing and discrimination based issues should be addressed within the ordinance.

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- **L. May** discussed deed restrictions for equity co-ops to continue their affordability. In his opinion, living in a co-op is a privilege, therefore they should perpetuate the afford housing.
- **B. Bowen** added that it would be reasonable if co-op housing were a tool to coordinate affordable housing, however this ordinance is attempting to create cooperative housing and only some will be affordable.
- **J. Putnam** agreed with **B. Bowen**. He agreed that deed restrictions have a place in the cash-in-lieu program, but not as a condition for rental co-ops as it could be too much of a burden.
- **C. Gray** proposed recommending to City Council that the City Manager review the feasibility of an ECOPass because of a co-op.
- **J. Putnam** stated reluctance regarding this recommendation. A city based ECOPass should be done and it would be an extra cost for something people may already have.
- **L. May** explained the real issue is parking. If parking were limited, then it would incentivize the ECOPass recommendation to happen.
- **C. Gray** proposed if there is on-site parking, four vehicles allowed. If there is only off-site parking available, then three cars allowed.
- **L. Payton** approached the idea of tying co-ops into the potential to increase the landmark inventory by adding a bonus/incentive to co-ops that acquire historical properties and apply for landmark status.

***Straw Poll*:**

1) In support of revocability and to make it harder to deal with long-term equity? (*7-0, in favor*)
2) In support of parking for four vehicles? (*7-0, in favor*)
3) In support of exploring incentivizing co-ops to buy and preserve historic homes and apply for landmark status? (*7-0, in favor*)

Motion

On a motion by **B. Bowen** seconded by **J. Putnam** the Planning Board voted 7-0 to recommend approval to the City Council of an ordinance amending Title 4, "Licenses and Permits," Title 9, "Land Use Code," and Title 10 "Structures," B.R.C. 1981 to support the creation of cooperative housing units with recommendations.

6. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY

A. AGENDA TITLE: Planning Board Input on Potential Charter Amendment Related to City's Height Limit

The board agreed to table this discussion until the next Planning Board meeting scheduled for April 28, 2016 and possibly begin at 5:00 p.m. rather than 6:00 p.m.

7. DEBRIEF MEETING/CALENDAR CHECK

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8. ADJOURNMENT

The Planning Board adjourned the meeting at 12:56 a.m.

APPROVED BY

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Board Chair

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DATE

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