

NASHUA CITY PLANNING BOARD
January 19, 2006

A special meeting of the Nashua City Planning Board was held on Thursday, January 19, 2006 at 7:00PM in the auditorium at City Hall.

Bette Lasky, Chair, conducted the Meeting.

Members Present: Better Lasky, Chair
 Ken Dufour, Vice Chair
 Ald. Richard Larose
 Ald. Mark Cookson (Alt) (not sitting)
 Steve Dookran, City Engineer
 George Torosian
 Steve Farkas
 Hugh Moran

Also Present: Roger Houston, Planning Director
 Mike Yeomans, Deputy Planning Manager
 Rick Sawyer, Deputy Planning Manager

Approval of Minutes

None

Communications

Mr. Houston said the following items were in the Board's folder tonight:

Tonight's agenda

Memorandum dated January 18, 2006 from Corporation Counsel, David Connell concerning the status of the City Engineer on the Planning Board

An Email from Planning Board member, Steve Farkas, to him dated January 17th and on the same page is the forwarding request to Corporation Counsel and Richard Seymour

The following pages and Email dated January 19th from Mayor Streeter to Rick Seymour, Division Director, Public Works

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A communication dated January 19, 2006 from Atty. Prolman representing Wal-Mart relative to a request for extension to the Board's February 3, 2006 meeting

Letter from Atty. Callen dated January 19th concerning the same matter objecting to the extension on the Wal-Mart case

He said in the Board's packet, at the request of Corporation Counsel, there is a sealed packet. He said they are requesting that it not be opened unless they determine that they wish to extend the case and re-open the public hearing. The information might be construed as testimony and the Board is deliberating the case right now.

Mrs. Lasky asked if everybody had read all the communications. Ald. Larose said he had glanced at them. Mrs. Lasky asked that he read them while she read the procedure of the meeting into the record.

Mrs. Lasky went into the procedure of the meeting as follows:

They will deal with the communications that they have received from the applicant. The public hearing portion is closed so there will be no testimony from the audience. Depending upon what the decision is on the communication from the applicant, they may possibly go into deliberations and render a decision.

She said there is no smoking in allowed in City Hall and asked everyone to turn his or her cell phones off.

OLD BUSINESS - SITE PLAN

- 1. Wal-Mart Stores Inc. (Applicant), AS-VR Realty LLC (Owner) - Proposed amendment to NR 1482 for the demolition of the existing Building 19 store and the development of a 147,080 square foot Wal-Mart store, with associated access, parking and site improvements, 420 Amherst Street, Sheet H - Lot 485, Zoned "AI" - Airport Industrial. (Tabled from January 12, 2006 Meeting)**

MOTION by Mr. Dufour to remove the site plan for 420 Amherst Street from the table.

SECONDED by Mr. Torosian.

MOTION CARRIED UNANIMOUSLY

Mr. Torosian said he wanted to make known for the record that he has listened to the tapes from the last meeting and has brought himself up to date on the developments of the last meeting. He feels that he is ready to take part in tonight's meeting.

Mr. Dufour said he is concerned that if they hear testimony from the people in the audience he's not sure that this opens them up to a violation of the rules. He asked if they be opening this up to a public meeting at this point.

Mrs. Lasky said "no." She said at issue is the request for an extension. Atty. Prolman is the one who is requesting that extension. She said she was going to give him time to speak to that request and also give Atty. Callen time to respond to that request as well.

Atty. Andy Prolman, Prunier, Leonard & Prolman. Atty. Prolman said he is representing Wal-Mart tonight. He said they submitted their letter today requesting an extension of two weeks until February 2nd for two reasons. He said they believe that they were presented with additional issues from both the last meeting as well as a memorandum they received yesterday questioning the Route 101A Corridor Master Plan. This will give the applicant a fair opportunity to address those issues. He said they believe that these are new issues that hadn't come up before and they seek an opportunity to address each of the points. He said they believe that given that opportunity they can address the Board's traffic concerns on Amherst Street.

He said everyone knows that this process has been a very long road to get here. He said they don't necessarily see any reason to rush this case toward a judgment with some open issues on the table.

He said they are very confused as to whether the City Engineer was speaking the last time or whether Mr. Dookran was speaking as an individual last time. He said they want an opportunity to address the issues and they believe they can get that done by February 2nd.

He said they didn't see that there was any need to rush this issue. The statutory language differs from the ordinance language. The ordinance states 45 days and the statute refers to 65 days. The time frame can be waived by the applicants. He said they would like the opportunity to address the new issues that came up and he suggested that it be a very limited scope - just dealing with the traffic issues and the points raised the

last time with the traffic. They do not want to reopen the entire hearing.

Atty. Jed Callen, Baldwin, Callen, & Ransom, Concord. Atty. Callen said he represents a large number of abutters and neighbors. He said he objects to the request to extend for several reasons.

He said the Board closed the public hearing on December 12th. Last week when Mr. Dookran spoke he spoke to his opinions as to the adequacy or acceptability of the plan. He did not ask questions of the applicant. He said he had questions in his mind as to the credibility of the report/whether it is believable. He said the record speaks for itself. When it was construed by some members as maybe questions that should be put to the applicant, the Board spoke to that explicitly. He said he took careful notes. Some of the comments were something like: "It's too late, the record's closed."

He said Mr. Dookran himself said that he didn't ask questions because they couldn't answer the questions; that what they need to do is a study to answer his concerns. He was clear that he wasn't asking the applicant any questions.

He said Mr. Moran said if they ask the applicant to respond, then the abutters and everybody else should have a chance to review what they say and respond as well. Others said that they had heard a lot of testimony and that it was time to simply vote and not reopen it for further testimony.

He said now they are being asked by the applicant to reopen the process. He reminded the Board that the process is as follows:

The applicant has infinite time to put together its application. They can take as long as they want to come up with a plan to present to the Board. When they present it to the Board it's supposed to be sufficiently complete that they could rule on it almost immediately. The purpose of having it all be there, even at the first meeting is so that the whole public has a chance to review it and comment.

He said if each time a Board member on the verge of voting well into the deliberations suggests that they have a problem with some aspect of it, the applicant is allowed to then ask that the Board not to vote and provide that additional information or more argument. The process can go on indefinitely. He said this is not fair to the public who has to attend meeting after

meeting and not fair to the Board who is entitled to have a complete application and judge it against their criteria.

He said it is a travesty to prolong this. He said Atty. Prolman indicated that he wanted the opportunity to answer some of the questions raised at the last hearing, primarily Mr. Dookran's comments, but also some memo he got yesterday on the corridor plan. He said he doesn't have that and doesn't know what that is and it probably should not be in the record because the record is closed.

He said who else in all of Nashua might want to comment on that. He said it's a very slippery slope and a terrible precedent when the Board is already two days into deliberations and on the verge of a vote.

Mr. Dufour said that Mr. Dookran raised some issues at the last meeting such as a faulty traffic study, incorrect shoulder widths - 2' instead of 11', traffic counts that were taken on one day in July, etc. He said they have a memo that explains the responsibility of the City Engineer on this Board. He said at the last meeting Mr. Dookran said that he is entitled, just as the other members are, to his own independent opinions. He said he relies on the City Engineer for direction and all the engineering stuff, especially as it pertains to the traffic reports. He said he would even argue that Mr. Dookran not only has the same right as the rest of them on the Board, but that he has more rights because he has the right to stop anything or at least let the applicant know before the project comes to the Board for approval, that he has a problem and the applicant is going to have to overcome it. He said at the last meeting he asked himself how they could be two minutes away from voting and the one person that they technically turn to for advice and direction has got all these issues.

He said not wanting to reopen the meeting he asked how they would go about having those valid concerns answered, knowing that this would have been the last meeting during the allotted time period. He addressed the fact that he didn't want to reopen the public meeting, but if there was a way to get Mr. Dookran's concerns answered how they would go about it. The hope was that somehow the staff could get those answers to the Board. He is assuming that because there is a sealed envelope that the members have, that the staff could not on their own.

Mr. Dufour said he still wants the answers to Mr. Dookran's concerns. He said he thought they were valid concerns. He said

he doesn't look at him as just a fellow Board member. He looks at him as the person he turns to for direction as he does the Police Chief, the Fire Chief, etc.

He said he wants to know how it is that after he listened to the bombs bursting in air at the last meeting a plan and presentation could be so flawed that after over a dozen of hours of testimony and a minute away from voting that these bombs are bursting in air and he just couldn't understand that and apparently they can't get those answers without extending and reopening the public meeting.

He said he never votes for a project or against it. When he leaves the meeting he never wins or loses. He said they listen to the testimony and they take a position, sometimes he is on the prevailing side and sometimes he is not. He said that's all he asks of the Board tonight. After having sat there through many meetings and the very serious concerns that the City Engineer brought up at the last meeting, that he relies on, especially about the faulty traffic report and the width of the shoulders, he wanted answers to those issues. The only way they can do this is by granting the applicant the extension and listening to what they have to say and opening up the sealed envelope and then allowing Atty. Callen to counter whatever they present. He said he didn't think it was unreasonable to ask the Board to grant their request.

Mr. Moran said as he remembers when they first started this testimony they accepted the application as being complete. Now they are saying that it is not complete. He said he thinks they have to go with their original position that the application is complete and that they proceed with what they have to do.

Mr. Dookran said in listening to Mr. Dufour's statement he talked about bombs exploding one minute before voting. He said he didn't think it was quite like that. He said he looked back at the minutes of December 8th, the first night they met on this case and he raised issues from that very night. What he did last Thursday a few minutes before voting was to summarize his position. He said if they go over the minutes they would see that he was asking questions of both sides - the same questions he was asking in his summary statement. He listed them as facts as he viewed them. He said he doesn't know why there was any surprise. He said he didn't think his statements swayed or influenced anyone's vote on the Board because from what he gathered the other Board members voted how they intended to

vote. He didn't think he influenced any votes at the last meeting except his.

He questioned reopening the public testimony. He said he would question whether he'd be in a real bad position tonight because there will be responses to his questions and he supposes he's being asked to make a determination based on what they will hear or what's in the sealed envelope. He said he doesn't want to be put in the position. If what he raised was as serious as it appeared to be at the last meeting, he didn't think that what was contained in the packet, nor what they hear from the public will be adequate for him to change his mind about his concerns. He said he would be put in such a tough position.

Mrs. Lasky said if the Board grants the extension they would not be hearing any testimony tonight. It would be extended to February 2nd. She said if the extension is granted they will close the meeting this evening and go on until February 2nd.

Mr. Dufour said he thought there were things that Mr. Dookran said at the last meeting that he had not heard before. He asked how it could hurt by granting the extension. Everyone can still vote the way they want.

Mr. Dookran said he is calculating in his head what it will take and in his view it will take a new plan with new information to really address the issues that he believes are of real concern.

Mr. Dufour said Mr. Dookran knows that the answers are not in here (referring to the sealed envelope).

Mr. Dookran said it's kind of thin.

Ald. Larose said his recollection is similar to what Mr. Dookran addressed. He said on December 8th the original vote the Board took was on the subdivision plan. It was a split vote, 4-4. The motion was made to table. He said they never took a vote on the site plan. They tabled the site plan. He said prior to getting the site plan his recollection is that the engineer did bring up some of these concerns that were aired last week, probably not to the same extent that he did on December 8th, but he did bring up concerns of some of their traffic counts and the widening of the road, etc. He said Mr. Dookran was trying to get them to commit to giving a wider strip of their land to the City of Nashua.

He said Mr. Moran is correct in stating that the Board voted to accept the plan as a complete plan. He said he is reluctant to vote for an extension.

Mrs. Lasky said the applicant is affording the Board the opportunity by asking for an extension. She said in her mind its about giving, at least this Board member, all the information she can have to make a reasonable and informed decision. He said the issues Mr. Dookran brought up were maybe not new concerns, but certainly presented in a different way. She has read everything on this case and she thought that the way that Mr. Dookran presented the concerns are things that need to be answered. She said for her to make a complete decision and be fair to both sides she is asking the Board to go with the applicant's request. She said she feels that it's the fairest thing to do. She said democracy is messy and justice takes times sometimes.

She said over her many years on the Board the Board has always given members courtesy of one form or another when its been possible to do so. She said on February 2nd they will have the minutes to look back on and help them with whatever questions have been raised. She said the scope will be limited. She said they can send out the public notices, but the public testimony will be limited to the Board's concerns/Mr. Dookran's concerns.

She said she feels there have been enough questions raised by the City Engineer. He is on the Board and has all the rights that the other members have. He's on the Board because he is the City Engineer. He's not appointed as a citizen representative. He carries a little bit more weight than the rest of them when it comes to his expertise. She said in her mind when he raises a concern or when he votes on a project it's a little different than the rest of them.

Mrs. Lasky asked the Board to consider the request. She said she doesn't see where there is any harm in doing this. In fact, it's probably more harmful to the applicant than not. After 45 days, if the Board was to come to another tie, the project would be in favor of the applicant.

Mr. Torosian said his concern with this is the letter from Atty. Prolman. He said it references a memo from Mr. Dookran that he sent yesterday. Mr. Dookran, in his memo, mentions the "Corridor Master Plan." In the memo to the Board this evening, it seems that the applicant is clinging to three words that Mr. Dookran mentioned at the last meeting - "Corridor Master Plan."

He said there have been 13 - 14 hours of testimony. He said he would have hoped that the Corridor Master Plan would have been addressed already. He said he thinks that if they open this up they are in for endless game of ping pong.

Mr. Farkas said that is a good point, but on the second page it says the person who did their plan actually authored the "Corridor Master Plan" and did address it. He said that he thinks that what they're asking is to address the issues that were raised and respond to Mr. Dookran. He said he didn't think anyone's asking to redo the plan. He said the feel that they were given assurances by the City that they had met all the requirements and had addressed all the concerns and that there were no more and they were surprised at the last meeting when issues came up. He said Mr. Dookran has addressed these issues. If you go back through Mr. Dookran's testimony it's clear that he was struggling with these. He said there were issues that were perhaps not as adequately addressed on either side as far as he was concerned as he was going through them and sifting them and weighing them and trying to decide which one he believed more. It came down to an issue of trust for him, both on the night when he thought he was going to support the plan and on the night he finally decided that he wasn't.

Mr. Farkas said as he understands the request they are asking for the opportunity to respond to those issues, particularly where they thought they had been given assurances that they had adequately addressed them.

He said he heard Atty. Callen and thought he made some good points as well, but on the whole this stops the clock and it gets the Board the information. He said a large part of his decision was based on what he understood to be the City Traffic Engineer's position, the City Engineer's position, their independent expert's position, and NRPC's position that the traffic was adequately addressed. He said he'd like to put this issue to bed. He told Mr. Dookran that the Board does listen to what he says.

Mr. Dookran said he was quite saddened that Mr. Farkas and others questioned the position he took last Thursday. He said it hasn't been the first time. It went as far as an Email to Corporation Counsel and the Director of Public Works as to why the City Engineer sits on the Board and what position he represents. He said he's been struggling the last seven days trying to figure out exactly what he's doing there if he is misrepresenting the position. He said he would rather have been

spending those days working on the issues - the issues that he has been struggling with in placing this retail outlet on Amherst Street that would have a lot of impacts. He said no one has come forward and given him the answers, maybe they are in the sealed envelope.

He said prior to the last meeting he struggled with the issues so he called Atty. Prunier and asked him how to figure out the traffic issues on 101A. Atty. Prunier said that the public testimony was closed at that point, but he told him that he was the City Engineer and that he was asking a question. He said he was open to a meeting and asked him to go back to the applicant and their engineers to sit down with him to work through the issues. He said he believes that was on January 9th. He said no one has offered him any help in the matter.

Mr. Dookran said he doesn't know how the attorney got the memo from him to his director. It got to his director who asked where he was with this. He said he wrote a memo to his director explaining where he was so that he would understand. He said that his director shouldn't be put in the middle of this. He said Corporation Counsel has given his opinion on what he should be doing on this Board. He said that he's been told that the City doesn't have a position; that they are neutral.

He said Mr. Farkas wants to point out that there's a division in the Public Works Division between the Traffic Superintendent and the City Engineer. He said there isn't. He said he respects Mr. Husband's work. Atty. Prunier introduced Mr. Husband to speak at the meeting. He said Mr. Husband regrets accepting an invitation to speak in favor of the project. It was at an inappropriate time. He did say that the information was based on the recommendation that the city's consultant had provided. He (Mr. Husband) didn't do anything wrong. He asked that deficiencies in his Division not be pointed out. He said it was very disheartening, these are the things he has to struggle with. He would prefer to get to the bottom of the issues and figure out if we want this applicant get this store at this location help us solve the issues the Board is faced with. Everyone wants to detract from what the problem is. It's not just his vote, he has one vote, everyone on the Board has a vote, it comes each members vote, and he is not counting votes. He only cares about his individual vote.

He said if the Board is to try and work the issues out he did not want the applicant to stand here and go down the list of

issue that he had and probably point to the fact that they are unfounded or provided some time ago, or that he made a different statement two years ago. He did not want to get to that.

Mr. Dookran said in his memo that somehow found its way to the applicant it talks about how it came down to a matter of following the principals/guidelines set forth in the Master Plan. He said he has pointed out that the applicant had made numerous references to following the Master Plan. On December 8th he counted at least seven or eight instances where they referenced that they were following the Master Plan.

He said the Master Plan is a guide for the Board to follow when they approve or when they are reviewing applications regarding that corridor. It is their obligation to do that. He said he hasn't seen that done and he doesn't know if that can be done in two weeks. He agreed that the Board can vote the way they feel today in two weeks. He said because the last seven days people have point to me... rather than to take away the attention from the issues and just focus on me has really change his whole outlook on where this is going. It takes away from the credibility of what the Board has in front of them, even further.

MOTION by Ald. Larose to accept the communications that have been received in the Board's packet and place them on file.

SECONDED by Mr. Dufour.

MOTION CARRIED UNANIMOUSLY

MOTION by Ald. Larose to deny the request for an extension as requested by Prunier, Leonard & Prolman.

SECONDED by Mr. Moran.

Mr. Dookran asked if there would be a special meeting for the case if the extension is granted.

Mr. Sawyer said the Board has a regularly scheduled meeting on February 2nd. He believes the memo talks about extending the time period to February 3rd. He said he supposed the Board could call a special meeting as late as the 3rd, but he thinks the intent was to have this on the regular agenda on February 2nd. He said they can send out notices. It would be a public hearing where testimony would be taken from all parties, on what he

hoped would be a limited scope if the extension is granted. He said right now the motion is to deny the request.

Mrs. Lasky said in her mind this isn't about Mr. Dookran. She said it's about a Board member who has raised issues that she personally doesn't feel were answered to her satisfaction. She said they've been given the opportunity to satisfy those who are on the Board that perhaps would like the extra time. She said she doesn't see the harm in extending the time frame.

She said the application, when it's accepted, is not perfect or why is the Board there. She said they rarely accept an application "as is" and certainly not one of this scope and magnitude. She said they have a 45 day time limit to work within, but they also have the opportunity to grant the extension if it is asked for.

Ald. Larose said Mr. Dookran brought up a lot of these concerns on December 8th and also December 28th. He may not have used the same language that he used last Thursday, but the applicant certainly knew that the City Engineer had some problems with the plan that they were presenting for the widening of Amherst Street and other traffic issues. They had an opportunity to redo, or ask for an extension at that point in time to take another look at their plans. What the Board got was banter from both sides about who was right and who was wrong about the traffic.

Mr. Dookran said he did not want this to be about him and he does not like the spotlight. By nature he is a meek and bashful person. He asked why they are just trying to answer his questions. He said there are other people here who have issues with the plan. He asked if those questions are going to be answered as well.

Mr. Dufour said the applicant has requested an extension solely for the purpose of the issues that Mr. Dookran brought up. He said for the Board to throw in concerns from other members at this point is not adhering to the request.

Mr. Dookran said he would agree to an extension if he is guaranteed that it won't turn into a character bashing of his office or of his position on the Board by either the applicant or other members of the Board.

Mrs. Lasky said she hoped that is not where anybody on this Board is coming from. She said she didn't believe anyone on the

Board has ever maligned any other member of this Board in any fashion. She said they have all stated and Corporation Counsel has stated that they regard Mr. Dookran highly and take his concerns more to heart than some of the other members of the Board. She said as Chair she would guarantee that no one will be allowed to malign Mr. Dookran or any other member of the Board in any fashion.

Mr. Dookran stated that it would include Mrs. Lasky and he reminded her that she visited his Director of Public Works over issues with his previous statements.

Mrs. Lasky stated that the visit had been in the past and was in regards to the procedure that had been followed and not about Mr. Dookran personally.

Mr. Moran asked Mr. Dookran if he had said that he had asked Atty. Prunier to review some of these questions he's had within the last several weeks.

Mr. Dookran said he did. He said he called Atty. Prunier on Monday, January 9th and advised him to bring in the experts to help him figure out the problems he is being faced with on Amherst Street. He said that nothing happened after that conversation.

MOTION FAILS - 3-4, Mrs. Lasky, Mr. Farkas, Mr. Dufour, Mr. Dookran opposed.

MOTION by Mr. Dufour to grant an extension to the applicant an extension to the next scheduled meeting on February 2nd. The extension is for the sole purpose of addressing Mr. Dookran's statements at the last meeting. He referred to the applicant's letter of January 19th. He said he is under the assumption that they would be opening this up to a public meeting, however limited in scope and will entertain testimony from both sides as it pertains to those limited issues.

Mr. Torosian said based on the memorandum they are talking about the Corridor Master Plan - they aren't going to be talking about water.

Mr. Dufour said they would be hearing testimony about traffic and the issues that Mr. Dookran talked about at the last meeting. Water was not part of those issues.

SECONDED by Mr. Farkas.

Mr. Dookran said he believes he is present to give his individual vote like every other member is entitled to. There is one meeting for the extension he'd like to find out how many members present would be available for that meeting.

Mr. Farkas asked for a show of hands. Nothing could be heard about how many indicated they would be present.

Mr. Dookran asked if the motion to approve the plan turned out to be a tie, what would happen.

Mr. Dufour said he didn't know. He assumes that if the applicant has granted the extension that they've relinquished their rights to that deadline, but he's not an attorney. He said the staff may be able to answer the question.

Mrs. Lasky said Corporation Counsel may be the only one who knows the answer to this question.

Mr. Dookran asked if there was anybody present who could help with the answer to this question.

POINT OF ORDER by Atty. Callen.

Atty. Callen said if the Board votes to grant the extension, an applicant is permitted to present new information/new argument/answers to what they deem to have been questions as opposed to objections to their plan. He said obviously some time is needed to respond is essential because he is not a traffic engineer. If the applicant's traffic engineer submits a bunch of technical information/clarification/response and justification for their study, not only he, but every other member of the public needs to have an opportunity to have that ahead of time and respond.

He said the opposition will have their traffic expert look at it and respond and be available. He said he can't do that if he gets the information on February 2nd at their testimony. He said he doesn't understand how this two week extension can possibly work when they are only about to send out a notice of opening the public hearing. The applicant submits their information. When does the opposition get a chance to review and comment. He said it does not work. Either the applicant gets the last word and the applicant doesn't get a chance to respond, except perhaps that night or the Board gives them the chance, but the clock runs out and they have a default approval. Under the State rules instead of the City's ordinance they get an order

from Corporation Counsel to make a decision in thirty days. He said what they are proposing can't work time wise and give his clients a fair opportunity to respond to their new information.

Mr. Dufour said if the Board votes to grant an extension this evening they would turn to Corporation Counsel to guide them as to how to deal with the issues that Atty. Callen presented.

Mr. Farkas said he thinks the applicant's attorney has approached the podium to address this issue.

Atty. Prolman said their intention is not to respond in such a fashion that Atty. Callen and those in opposition can't respond. He said if they need to go past February 2nd to allow an opportunity for Atty. Callen and others to respond that is fine. He said their intent is to answer what they believe were new questions and if that takes additional time, that is fine.

He said when Mr. Dookran asked who was going to be present on February 2nd, everyone raised his or her hands except for Mr. Moran. He said if they need to extend beyond that so that Mr. Moran can be present that would be fine. They just want to be able to address the questions that have been raised.

Mrs. Lasky said that it's her understanding that notifications will be sent out in the usual fashion. The same amount of time will be given to abutters as is the case when there is any hearing. She asked if she was correct.

Mr. Sawyer said the public notice portion would be the same.

Mr. Moran said that he would miss both February meetings.

Mr. Dookran asked how they could have a guarantee that every member present would be able to attend the final (so far) meeting.

Mr. Dufour said like all things in life, there are no guarantees. He said as the attorney alluded to, it's not about rigging the vote, it's about getting the facts out and he felt Mr. Dookran did not seem to believe that. That was he intent.

Mr. Dookran said he made his statements earlier. But the effort to discredit me over the last seven days...

Mr. Dufour said he thought Mr. Dookran was taking this personally.

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Mr. Dookran stated that he had to take it personally.

Mr. Farkas and Mr. Dufour stated that he did not have to take it personally.

MOTION FAILS - 3-4, Mr. Torosian, Ald. Larose, Mr. Moran, Mr. Dufour opposed.

Mr. Dufour said it had become too personal (for Mr. Dookran).

POINT OF ORDER by Atty. Prolman.

Atty. Prolman said the applicant is willing to amend their request till the end of February so that the Board can schedule additional meetings as it sees fit, if necessary so there is ample time to address the Board's questions.

Mr. Dufour said the applicant first asked for the 2nd, then there was an issue about that not being enough time for the opposition to respond. Now the applicant is coming back to say that if the Board needs to take another 15-16 days to take it. They take their vote and discover that Mr. Moran is not going to be present, which makes Mr. Dookran change his vote. The applicant then says if the issue is that you want the same Board that's here tonight and they can be all be healthy then they will wait till he gets back. Mr. Dufour said that he would venture to say that if the same body that's here tonight is going to be here when he comes back from vacation it will go down in defeat and he doesn't care either way. He just wanted all the answers.

Mrs. Lasky said she agreed. She said she has vacation plans as well and she is keeping them a secret.

Discussion ensued about what the next step would be.

Mr. Sawyer said the reason the Board made a motion for approval after the motion to deny is because the motion to deny failed. The second motion failed as well, meaning it's denied.

MOTION by Mr. Torosion to deny the request for an extension.

Mr. Farkas said this has been denied. That is what Mr. Sawyer just clarified.

Atty. Prolman said if the issue is the end of February and their meeting is March 2nd, that is fine. He said the point is not to

force this issue - they are just trying to answer new issues that they saw come up.

Atty. Callen said the motion to extend has been denied. He said he thinks that the majority of the Board felt it has the information it needs to vote. He said some members would like to have some more information. He said as a point of order he would suggest that a motion on denial of the site plan could resolve the issue and is the appropriate resolution of the issue because this has been debated and testified to and deliberated longer than most cases.

MOTION by Ald. Larose to deny the site plan for Wal-Mart Stores, Inc. (Applicant), AS-VR Realty LLC (Owner), 420 Amherst Street. He said the site plan does not meet all the requirements outlined in NRO Section 16-123 for the following reasons:

Nuisance - It is offensive and annoying to the general public.

Traffic - It will compound unsafe traffic. The development will generate excessive traffic. He quoted from the applicant's traffic report: "The site currently contains the existing Building 19, which although in operation, does not generate traffic volumes typical for a discount store as identified by ITE. As shown the proposed development represents an incremental increase in traffic over what the site should generate with a more active retail store in operation." What they are trying to tell them is that Building 19 isn't generating the traffic that it should so if they build their store and it's going to increase the traffic they're not really going to see that much more traffic. The fact of the matter is they have to look at the amount of traffic that's there now and what will be there.

Growth Rate - New Hampshire DOT indicates an annual 1.6% traffic volume increase in the past several years. He said the City of Nashua's recent study has a 1.5% growth rate. It is estimated that the proposed facility will generate peak hour traffic increases of between 1.1% & 4.7% on Route 101A.

Accident Analysis - NH DOT data indicates a total of 235 accidents at the seven study intersections. The 101A & Somerset Parkway intersection reported the largest amount of accidents - 77 - just under 33%.

He said the proposed site plan has safety issues, is a nuisance to the citizens of Nashua, and will generate excessive traffic conditions that are unacceptable to the general public.

SECONDED by Mr. Torosian.

Mr. Torosian said he believes Ald. Larose summed this up pretty well. He said when they look at a plan of this magnitude sometimes they get so wrapped up in all the details and all the analysis and all the reports that sometimes they have to take a step back and ask themselves if the proposal makes sense. He said when he looks at this proposal it doesn't make sense.

Mr. Moran said that he hopes that Ald. Larose's comments of last week where he indicated specific instances of traffic problems be included and also that Mr. Dookran's concerns be listed as part of the motion to deny.

Mrs. Lasky said those are in the record from last week. She said all the minutes will be included in one file.

Mr. Dookran said a few minutes ago when they were dealing with the extension issue, I asked that...I was hoping that it wouldn't turn into... in an effort to answer my questions it would turn into, hey Steve Dookran wanted this, we provided it, you forgot. He continued to say that Atty. Prolman got up and said they wanted to have the chance to address last minute issues. He said these were not last minute issues. They go back to December 8th and probably even before that. He said he's sorry that he can't be part of the Technical Review Team and help them figure those things out. He said, that's your job, you're the engineers you figure that out.

He said too often they find applicants come in and work within the shelter of the law, within the shelter of the guides. They want to be able to use the minimums and the minimums are still too restrictive and they want to be able to use even less. He said they have heard from both sides and Mr. Scully, the traffic engineer for the other side raised issues and those forced him to look further into the information that was before the Board. He said he became very uncomfortable with what was before him so the issues aren't last minute, no matter how many times the applicant says it. And the fact that they keep reiterating that it's a last minute issue points to me its Steve Dookran who brought up those issues last minute. Where was he two years ago when this whole thing started. So, Mr. Dufour it will become personal. I may, I am human, I will feel it, but it will be personal on the other side.

Dr. Dufour said it obviously has.

Mr. Dookran said it not about threats in the mail or whatever or anything like that. its about professional character assignation.

Mr. Dufour said can we just vote madam chair.

Mr. Dookran said he needed to finish his statement. He said he wanted to summarize the same way he did last week. He has a lot of information in front of him. He has listened to the applicant. They have made a lot of representations about following the Master Plan. It's a guide that was prepared by NRPC for planning boards throughout the community to follow. He said he does not believe, to this day, that the applicant is following what is required or stated as necessary within the Master Plan. If they go out there and construct the widening that they propose his firm belief is that the City will have to come back and spend City funds or State funds to redo those improvements to make it work properly and to meet the goals of the Master Plan.

He said that he was sorry that Mr. Dufour didn't have the patience for him this evening, but this is what his position is. He said he thought he was going to give the applicant the opportunity to answer the questions and bring him to a more comfortable level, but it didn't seem the way it was structured that it was going to work.

Mrs. Lasky said that one representation that she believes she remembers that was said by a member was that the traffic volumes were only done during one period/one month. She said the traffic report states they were in fact done in June, July, and August in 2005 and were not done over the course of a day, but were done over at least a 48-hour period and as much as a 72-hour period for a specific task, not just the volume count.

POINT OF ORDER by Atty. Prolman.

Atty. Prolman said he wanted to put this on the record before a vote is taken. He said this is not done lightly and with all seriousness, but the applicant objects to Mr. Dookran voting on the application because as he just said tonight this has now become personal. If that's the case, under the statute he does not meet the juror's standard to sit on a Board to make that decision. So he would put that objection to Mr. Dookran voting this before a vote is taken.

Mr. Dufour stated that the Board did not need to debate this.

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Mr. Larose stated the Board had made a motion and that he would like to take a vote.

Mrs. Lasky stated that she agreed and asked for a vote on the motion for denial.

**MOTION CARRIED 4-3, Mrs. Lasky, Mr. Farkas, Mr. Dufour opposed.
Site Plan is denied.**

Discussion Items

None

ADJOURNMENT at 12:10AM

APPROVED: _____

Bette Lasky, Chair, Nashua Planning Board

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Taped Meeting