

NASHUA CITY PLANNING BOARD
February 2, 2006

A meeting of the Nashua City Planning Board was held on Thursday, February 2, 2006 at 7:00PM in the auditorium at City Hall.

Ken Dufour, Vice Chair, started the Meeting.

Members Present: Bette Lasky, Chair (7:50PM)
 Ken Dufour, Vice Chair
 Mike Lowe, Mayor's Representative
 Ald. Richard Larose
 Steve Dookran, City Engineer
 Steve Farkas
 George Torosian

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

Tape 1 (Backup Tape) is totally blank. Tape 1, Side #2 (Main Tape) is very scratchy - difficult to hear/understand what someone is saying. Same conditions for Tape 2 (Backup blank) and Main Tape scratchy.

Communications

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

Revised Planning Board agenda with a new discussion item, PKs Garden Center

Letter dated 1/29/06 from Peter & Jane Vincent, 67 Wellington Street in opposition to the first item on the agenda tonight

Memorandum dated 2/2/06 from him to the Board concerning Other Business Item R-06-05

Communication from Priscilla Giuffrida, 44 Tanglewood Drive concerning the same resolution (R-06-05) asking that the Board not rescind the ordinance

Preliminary Planning Board agenda for regional impact purposes

Article from N.H. Jobs in the City entitled Nashua Combines Recreation and Natural Resource Protection Needs at Lovewell Pond

Report of Chairman, Committee & Liaison

None

Mr. Dufour went into the procedure of the meeting as follows:

After the legal notice of each site plan or subdivision is read by the Chair, the Board will decide that the application is complete and ready for the Board to take jurisdiction of the application. If so, the applicant or representative will be given no more than fifteen minutes, at the Board's discretion to present an overview and description of their project. The applicant shall speak to whether or not they agree with recommended staff stipulations. The Board will then have an opportunity to ask questions of the applicant and staff.

The Chair will then ask for testimony from the audience. First anyone wishing to speak in opposition or with concern to the plan may speak. Come forward to the microphone, state their name and address for the record. This would be the time to ask questions they may have regarding the plan. Next testimony will come from anyone wishing to speak in favor of the plan.

The Board asks that both sides keep their remarks to the subject at hand and try not to repeat what has already been said and to be courteous at all times.

After the public testimony is given the Board will discuss the issue and render their decision.

He asked that everyone turn off his or her cell phones.

Approval of Minutes

MOTION by Mr. Lowe to hold the minutes of January 5, 2006 and not vote on them until the Board's next meeting.

SECONDED by Mr. Torosian.

MOTION CARRIED UNANIMOUSLY

MOTION by Ald. Larose to accept the communications and place them on file.

SECONDED by Mr. Lowe.

MOTION CARRIED UNANIMOUSLY

Mr. Dufour said the first item this evening is Old Business - Subdivision Plan, Kenneth & Maryann Berkins. He said two of the members present are recusing themselves because they did not hear the testimony from the previous meeting. He said they have discussed this with the applicant and they wish to proceed, but will wait until the Chair arrives at the meeting. The Chair is on her way from Concord now. In the meantime they will proceed to the next case. If the Chair has not arrived when they are finished with Case #2, they will proceed to Case #3, etc.

MOTION by Ald. Larose to proceed to Case #2.

SECONDED by Mr. Lowe.

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SUBDIVISION PLAN

2. Dean, Walter & Ariela Torgersen (Owners) - Proposed consolidation of Lots 3, 143 & 156 (also known as tracts I-VII) and re-subdivision of one lot into two, 6 Ashland Street, Sheet 64 - Lots 3, 143, & 156, Zoned "RA" - Urban Residence.

MOTION by Mr. Torosian that subdivision application is complete and that the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Lowe.

MOTION CARRIED UNANIMOUSLY

Paul Gildersleeve, Cuoco & Cormier Engineering. Mr. Gildersleeve said 6 Ashland Street is comprised of seven tracts for a total of .82 acres. He said the owners are proposing to consolidate the seven tracts into one lot and then re-subdivide the one lot into two. One of those lots will contain the existing house and will contain a little over 10,000 square feet of land area. The second lot will contain the proposed house and will have a little over 25,000 square feet of land area. The lots are located in the RA Zone. The 10,000 square feet for the existing lot is more than the 7500 square feet required in this zone.

He said they have already gone to the Zoning Board and obtained variances for lot width. There is a requirement that there be a 20' "no cut" buffer zone be on the southerly lot line.

Mr. Lowe said this was strange looking. He asked what they were going to do with all of it. (Tape is unclear) He said there is a 14' hole there.

Mr. Gildersleeve said it's going to be used for drainage.

Mr. Lowe asked how this would affect the surrounding properties.

Mr. Gildersleeve said they have designed the hole to contain the drainage in the area. He said currently a little over 2.7 acres drains to this depressed area. He said they took this area and provided the detention required. Now the 100-year water surface elevation is the same as the existing 100-year water surface elevation. Every other year storm is below the existing. He said they have actually improved the situation.

Mr. Lowe asked staff if this is under the old regulations.

Mr. Sawyer said it is.

Mr. Dookran asked what the depth of water would be in a two-year storm.

Mr. Gildersleeve said he thought it was at about 96. He pointed to a plan and pointed out the elevation. (He remarked about 2').

Mr. Dookran asked if the lot is going to be fenced.

Mr. Gildersleeve said he believes it might be between the existing house and the proposed house.

Mr. Dookran said there is a requirement that they have a 20' buffer per the Zoning Board of Adjustment. He said he finds it difficult to believe that they can grade to this hole and still have the 20' treed buffer.

Mr. Gildersleeve said it was hard, but they did design around the buffer. He said they expanded the hold up the hill a little bit and also pushed back the grade into the drive and they have a large wall that is by the driveway. That enabled them to get the volume required.

Mr. Torosian asked Mr. Gildersleeve to address the driveway that leads up to the second house in the back.

Mr. Gildersleeve said it starts off at about 2% and then goes down to about 7-½%. It's 12' wide.

SPEAKING IN OPPOSITION OR WITH CONCERN

No One.

SPEAKING IN FAVOR

MOTION by Mr. Lowe to approve the consolidation & resubdivision plan for 6 Ashland Street with the finding that it meets NRO Section 16-108 and with the following stipulations:

1. Prior to any work being conducted, a pre-construction conference shall be set up with the Planning Department to review erosion control measures and tree removal.
2. Prior to the plan being recorded, the storm water operation and maintenance plan shall be recorded.
3. Prior to the plan being recorded, bonding for all public improvements shall be submitted to and approved by the Engineering Department and Corporation Counsel.
4. Prior to a certificate of occupancy being issued, all public improvements shall be completed to the satisfaction of the Division of Public Works.
5. A note shall be added to the plan that states, "No basement plumbing drains allowed due to potential for surcharging."

SECONDED by Mr. Farkas.

MOTION CARRIED UNANIMOUSLY

3. **SBKA Properties, LLC (Owner) - Proposed subdivision of one lot into two, 6 Haines Street, Sheet 14 - Lot 95, Zoned "RB" - Urban Residence.**

MOTION by Mr. Lowe that the subdivision application is complete and that the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Farkas.

MOTION CARRIED UNANIMOUSLY

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said up until August 2004 this was two separate lots of record. It was merged for tax purposes into one lot with 10,600 square feet of land area. In order to subdivide it to bring it back into the original two lots they had to go to the Zoning Board to obtain the proper variances for lot area, lot width and lot frontage. The "RB" zone requires a lot to be 6,000 square feet for a single-family lot and these lots are each 5300 square feet as are the majority of lots in this particular neighborhood. In addition, the existing house needed variances for the lot coverage and the side setback. The variances were granted on December 6th. He said they are now at this level to re-create the lots that had been there as two lots forever.

He said sidewalk exists in front of the property. Storm water will be the typical infiltrating leaching basin attached to the roof drains.

Mr. Dookran asked if this was a combined sewer area.

Mr. Maynard said it is. He said they aren't making any storm drain connections. He said they are taking their drainage from the roof drains into a leaching basin.

Mr. Dookran asked if Mr. Maynard would be okay with asking that a note to the plan that indicates there be no basement plumbing.

Mr. Maynard said he would rather the wording be that there be no plumbing exiting below street level. He said they can ejector pump it up. He said most people have a washer in their basement that has an ejector pump.

Mr. Dookran asked if they would get an okay from the Building Department.

Mr. Maynard said this is correct.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Jerry Neuzil, 50 Marshall Street. Mr. Neuzil said they used to be on a combined sewer system and they are just down from this particular parcel under discussion.

He said their concern is that they now have a conforming lot that will be subdivided into two non-conforming lots on a

combined sewer system that already puts a strain on systems that they have talked to the Board about before.

He said in monitoring the Board's approvals over the last year, a lot of their approvals were based on hardship. He said in this case there isn't a hardship. It's a conforming lot. He said it was quite arrogant to see that they've already cut down all the trees on the lot in anticipation of the Board's "rubber stamp" approval.

He said they would like to see the Board uphold the requirements of the zoning regulations that the lot(s) contain 6,000 square feet and not approve the subdivision request.

Ald. Larose asked if Mr. Neuzil would be in favor of a duplex if the Planning Board denies this request. He said in this zone with this land they would have the right to build a duplex.

Mr. Neuzil said if the zoning ordinance permits it and the combined system can handle it, it would be up to the Board to evaluate it. He said they had him at an unfair advantage because he didn't know the capacity of the line. He said he just knows the history that they've been through over the past year on various topics. He said they'd like to see that they keep the conforming lots in the neighborhood and their ward.

Mr. Dufour said the issues that Mr. Neuzil spoke to are zoning issues. They have already received approval for whatever variances they needed from the Zoning Board.

Mr. Neuzil said they also have this step in the process to adhere to the zoning regulations that require they adhere to a lot with a minimum land area of 6,000 square feet.

Mr. Farkas said this is the jurisdiction of the Zoning Board and they have granted the applicant a variance already. That Board is where the hardship standard is applied. He said the Planning Board is reviewing the plan.

SPEAKING IN FAVOR

No One.

MOTION by Mr. Lowe to approve the proposed subdivision of one lot into two, 6 Haines Street with the finding that it meets NRO Section 16-108 and with the following stipulations:

1. Prior to the plan being recorded, the storm water operation and maintenance plan shall be recorded.
2. No basement plumbing to exit the house below street grade.

SECONDED by Mr. Torosian.

Mr. Farkas said the gentleman who spoke in opposition spoke about the combined sewer capacity in that area. He asked if there is a problem in that area.

Mr. Dookran said they don't have reports of sewer backups or street flooding due to combined sewerage during rainstorms, but a potential for that happening is always there, depending upon the size of the rainstorm. He said when they connect only sanitary sewer to combined sewer then they are talking about only dry water flow (unclear) coming from this new unit, which is essentially a drop in the bucket when there is a rainstorm. He said he didn't think there was a threat of the combined sewer having a capacity problem because of one single unit.

MOTION CARRIED UNANIMOUSLY

4. **Arthur W. & Patricia F. Gamache (Owners) - Brian D. Sutcliffe (Applicant) - Proposed lot line relocation, 47 Gilson Road, Sheet D - Lots 31 & 263, Zoned "R30" - Suburban Residence.**

MOTION by Mr. Lowe that the subdivision application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Torosian.

MOTION CARRIED UNANIMOUSLY

Richard Maynard. Mr. Maynard said as this lot exists today there are two lots of record, a front lot and a rear lot with no frontage and no access to Gilson Road - essentially a landlocked back lot.

He said the front lot has 42,458 square feet of land area and the rear lot has 52,968 square feet. The area is served by water, but not by sewer. The ordinance requires that when you have septic systems the lots must have a minimum of 40,000 square feet of land area.

He said for those who are interested, the Superfund site is to west of this property.

He said in November they received variances from the Zoning Board of adjustment for lot frontage and lot width for a 20' wide strip of land so they could bring their utilities up (public water) into the rear lot.

He said after the proposed lot line relocation, the front lot would have 40,000 square feet of land area (the minimum) and the rear lot would have 55,426 square feet of land area.

He said there is one stipulation and they are okay with that.

Ald. Larose said on one of the graphs there is a box and a notation that says 4,000 square feet reserved area. He asked what this is.

Mr. Maynard said the reserve area is the area in which they demonstrate to the State that there is ample location to place a leach field. Most leach fields are 600 or 800 square feet. To be safe the State wants to know that there is more than adequate space, but only $\frac{1}{4}$ of that will actually be occupied by the leach field.

Mr. Lowe asked how close the driveway is to the house on the next lot.

Mr. Maynard referred to the plan. He pointed out Rogers Mobil Home Park and the two lots that they were talking about. He said the house in the front lot appears to be within 5' of their own lot line.

Mr. Lowe asked if the driveway is 20' wide.

Mr. Maynard said it's a 20' strip of land with a 12' driveway in the middle of it.

SPEAKING IN OPPOSITION OR WITH CONCERN

No One.

SPEAKING IN FAVOR

No One.

MOTION by Mr. Lowe to approve the lot line relocation, 47 Gilson Road with the finding that it meets NRO 16-108 and with the following stipulation:

1. Prior to the plan being recorded, note number 11 will be amended to reflect the ZBA approval of November 22, 2005.

SECONDED by Mr. Farkas.

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

None

Other Business

1. **Review of tentative agenda to determine proposals of regional impact.**

MOTION by Ald. Larose that there are no issues of regional impact on the upcoming agenda.

SECONDED by Mr. Farkas.

MOTION CARRIED UNANIMOUSLY

2. **Referral from the Board of Alderman on proposed R-06-05, rescinding Resolution 05-270, which authorizes a conservation easement on certain city-owned land, and authorizing a similar conservation easement subject to a reserved right to withdraw land for municipal facilities on certain conditions.**

Ald. Brian McCarthy, Chair - Aldermanic Planning & Economic Development Committee, 65 Musket Drive. Ald. McCarthy said a resolution with an identical conservation easement in front of the Board tonight was passed by the Board numerous years ago on this same plot of land. The Society for the Protection of New Hampshire Forests, after seeing the conservation easement, refused to accept it. They believed it offered no protection whatsoever.

He said this is a plot of land that primarily surrounds Lovewell's Pond, which is collectively known as the Hugh Gregg conservation area and the lands on the opposite side of Ridge Road between there and Buckmeadow Road, which were donated to

the City by the Tamposi family when the Maplewood development started and are collectively known as Samuel A. Tamposi Park.

He said the Forest Society refused to accept the easement in that form because it did not offer lasting protection against those conservation areas.

He said at the last meeting of the last term of the Board of Alderman, the Board did pass a resolution, which passed a different conservation easement, namely the one that was originally authored by the Society for the Protection of New Hampshire Forests, which they know the Society will accept. He said the only difference is that if they leave it open, a similar organization, such as the Audubon Society might be the recipient of the easement rather than the Society for the Protection of New Hampshire Forests. The reason for that is that the Audubon Society has expressed some willingness to work with the locality on other issues in that area - potentially with the Nature of Things School, which is looking to locate across the street from the area from what is now the Gregg property.

Ald. McCarthy said the legislation that is before the Board is proposing to put the conservation easement back into the unacceptable condition, which allows the City at any time to withdraw properties from the terms of the conservation easement.

He what's different now from then is that there is less need to be able to do that. This is referred to as keeping the City's options open in case they need to site a City facility. He said with the aid of the Planning Board and the foresight that the City has expressed in planning for that quadrant, he is unable to find a need that they haven't addressed. He said if they were to need a school, they have a site that they acquired at the corner of Buckmeadow & Ridge Roads. If they need a fire station, one of the questions they would have to ask is if this would be the right place to put it. He said the only actual buildable upland that's in there of any substance is the plateau behind Lovewell's Pond, which is in the middle of a fairly large area of conservation. The road to get up to it is an old cart road that would be difficult to navigate by truck. The way out of it is Ridge Road, which is difficult to navigate by anything. A fire station located in the middle of that property would be two minutes away from the edge of that property. There is no benefit to having a station there with regard to the area of the highest new density of development, which is around the nexus of Maplewood where there are approximately 500 houses. Either the property the City already owns on Gilson Road or a property in

the Maplewood commercial center would be more appropriate for the siting for a facility like a fire station. He said they already have a Police substation at Maplewood. If they need space for the Parks & Recreation Department or Public Works Department, they are in the process of acquiring the Gilson Road waste site with a building that's on it, which would provide those needed facilities.

He said having spent a good portion of the taxpayer's money to acquire that land for conservation, they ought to make sure that it stays in that use for the foreseeable future.

Kathy Hersh, Community Development Director. Mrs. Hersh said the preservation of the open space in the southwest quadrant is a tribute to the long-term investment and vision of the community. She said many of the Board might remember the plans for Hall's Corner many years ago out in that area. She said that was actually proposed to be 3450 units of housing on 643 acres back in the 1980s. She said that never came to pass. In the middle of the 1990s the City worked diligently and adopted the Southwest Quadrant Master Plan. She said that plan recognized the importance of balancing the natural resources, the need for housing, economic development, preservation of view sheds and respected the beauty of that area as a part of Nashua.

Mrs. Hersh said the City then actually bonded 2.66 million dollars to purchase 168 acres, negotiated with the developers of Maplewood for an additional 125 acres, and put together a protection for open space in the southwest quadrant.

She said the purpose of putting a conservation easement on that land is to permanently protect it and is to do exactly what the intention was when it was purchased in the first place. She encouraged the Board to support a conservation easement in its original form.

Karen Archambault, 36 Edgewood Avenue. Mrs. Archambault said she is a member of the Conservation Commission. She read from a section of the Master Plan that was adopted by the City in 2001. She said it's under the conservation and preservation section. She said one of the objectives mentioned was to "target Lovewell's Pond as a high priority conservation area due to its presently unspoiled nature. The City should develop a management plan that aims to protect water quality and wildlife habitat while providing public access to this unique water resource".

She said a conservation easement in its appropriate form that is protecting the land from development would be the way to guard Lovewell's Pond in its current state and protect it.

Linda Bretz, 6 Tomolonis Drive. Mrs. Bretz said she is the Chair of the Conservation Commission. She said no longer in the City of Nashua can they go in their car on a Sunday afternoon to buy an ice cream cone at a local farm stand because there are no farms left in Nashua, but they can still go for a walk and enjoy nature.

She said if they restrict the easement on this piece of land they are removing that opportunity for themselves and future generations. She asked the Board to consider adopting the easement with a stipulation that any restrictions are removed from it.

Mr. Dufour said the Board is being asked to submit a favorable or unfavorable recommendation - they can't alter the language.

Mrs. Bretz said she was asking for an unfavorable recommendation.

Debbie Gleason, 15 Tanglewood Drive. Mrs. Gleason said she owns the Nature of Things Creative Learning Center. She said they are in the process of purchasing the Gregg property for an environmental education elementary school. She said their main goal is to encourage parents and their children to appreciate the environment and the land around them and to teach children to understand bio diversity and eco systems and if they don't keep the land around it in conservation, there won't be any eco systems for them to observe.

She said they have been working closely with the Audubon Society and they are looking to set up an operation in their school building or on the land that they are looking to build. She said she has personally spoken with them and they are interested in having a presence here in Nashua. They would not be interested under the circumstances if there is an opportunity to ever take this land out of conservation. Their main concern is that this land remain in conservation in perpetuity.

She said it's important for the residents of the City and for the children of the City to be able to know that this land will be left for all of them to enjoy.

MOTION by Mr. Lowe for unfavorable recommendation on R-05-270. He said he was around when this originally came up and it was supposed to be in perpetuity and that it would not be disturbed. He doesn't know how it got changed over time.

SECONDED by Ald. Larose.

Mr. Dufour said Mrs. Hersh and Ald. McCarthy spent a lot of time in getting this land accumulated for the City. He said years ago they thought that the conservation easement is in place. He said now it looks like the land is open for development at any time. He said that he wants to go back to six years ago and do what they were supposed to do.

MOTION CARRIED UNANIMOUSLY

Mrs. Lasky, Chair, arrived at meeting.

OLD BUSINESS - SUBDIVISION PLAN

1. **Kenneth J. & Maryann J. Berkins (Owners) Proposed lot line relocation, 73 Wellington Street & Elliott Street, Sheet 65 - Lots 31, 32 & 33, Zoned "RA" - Urban Residence. (Tabled from January 12, 2006 Meeting)**

MOTION by Ald. Larose to remove from the table.

SECONDED by Mr. Dufour.

MOTION CARRIED - Mr. Torosian & Mr. Lowe recusing

Mrs. Lasky said as she recalls, the main reason they tabled this was to deal with drainage issues.

Richard Maynard. Mr. Maynard said at the request of Mr. Slivinski and others, he was asked to take a look at the drainage situation that some of the neighbors talked about at this particular site.

He said he went to the site on Saturday, the 14th. He said there was a light rainstorm and drove around and walked around the neighborhood and made several observations. He produced a two-page report dated 1/15/06, which the Board should have in their packets. He said he also took a series of pictures, which he passed to the Chair.

He said the first group of pictures illustrates the drainage coming across the intersection of Wellington & Elliott Street goes down Elliott Street and goes into a man made ditch by the owner of the lot on #46 and dumps in his back yard and makes its way to Rockland Street. He said some members may remember that there was a picture taken that called it a river of water. He said actually it's a large puddle where the ditch goes from concentrated flow to sheet flow and spreads out and makes its way to Rockland Street.

Mr. Maynard said there was also a lot of discussion about some kind of water problems - he thinks it was #2 Rockland Street. He said he looked through the back yard and it was difficult to see that house because it's fenced in. However, there are retaining walls, which he pointed out to the Board in the photos. He said he can't see anything from the topography that causes any particular runoff to go in that direction. He said there is no runoff from the Berkins property to speak of.

He said in the last two pictures that he presented there is a catch basin in Rockland Street. He said the rim elevation of the catch basin is at least 5' below the elevation of this property. If there really are runoff problems, they need to grade the land or pipe it to direct the water to the catch basin.

Mr. Maynard said he doesn't know what the problems are, but they have nothing to do with the particular plan before the Board to create two conforming lots.

He said this is an older area of the City. Mr. Dookran asked him about sidewalks. He said there is a mish mash of sidewalks. There's some old broken up asphalt that's missing. There's some concrete. There's curbing in some areas. It's been allowed to get this way over the past forty years with nobody paying any attention to it. It seems to work okay, as do many of the neighborhoods without any particular drainage system.

He said this is a combined sewer area. They don't want to be adding any storm water to the system as Mr. Dookran explained earlier tonight. He said the houses in question will be outfitted with roof leaders and leaching catch basins to handle the drainage runoff.

He said the ordinance allows people to build up on their property to as much as 50% coverage, which means buildings and asphalt can cover 50% of the area. He said they are going to have roughly 70% green space so the impervious area will be

about 30%. He said when you look at what's being removed and relocated and added, the net addition is less than 1,000 square feet of impervious area on 20,000 square feet of land. He said they are adding minimal impervious area plus they are slightly improving the situation by providing roof leaders to both houses and recharging into the ground water instead of dumping it onto the ground.

Ald. Larose said he wanted to bring up the depth of the lot. He said the way he reads the ordinance they have to have 90' from Wellington and they also have to have 90' from Elliott Street, but they don't meet that.

Mr. Maynard said he would defer to the staff. He said they have said that it meets all the zoning requirements. The concern was expressed by an attorney, but it has not been the interpretation of the ordinance in thirty years. That can be appealed to the Zoning Board.

Mr. Yeomans said there is an appeal pending as a matter to be decided upon by the Zoning Board.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Ald. Dave Rootovich, President - Board of Alderman 5 Shelton Street, Nashua. Ald. Rootovich said he has been on the Board for twelve years and in that time he has only testified at one other subdivision plan. He said he believes this one is an injustice to the neighborhood and the property owners who live there.

He said when this was brought to his attention a few weeks ago he found that there were three major issues that he believes are substantial enough not to grant the request.

He said first of all the neighborhood has a very unique character to it, one that you don't see anywhere else in the City. It has a lot of rich history and tradition. If the subdivision is approved tonight, it will clearly start to change the unique character that would be a detriment to the neighborhood and to the City as a whole. He said there are over 85 people who signed a petition against the approval of this plan and they share the same feeling.

He said it will also significantly reduce the property values and open green character of this unique neighborhood. It also does not meet many of the conditions of the zoning ordinance

that was pointed out to the Board in a letter from Atty. Alfano dated November 14, 2005.

He said this sets up a precedent to continue this trend throughout this neighborhood. He said there are currently forty other properties that can request the same subdivision plan and if this one is granted it will start a precedent in the neighborhood.

Ald. Rootovich said there are many owners who have lived in this neighborhood for many years; in some cases for generations. He said he believes it will start to diminish the quality of life due to the significant change that is being proposed.

He said the third reason is the sidewalks. He said he has fought very hard to get sidewalks constructed in many neighborhoods to protect young children who otherwise would use the streets to walk and ride their bikes. It is hard to find funding to get these sidewalks projects built. To have a sidewalk removed for no apparent reason angers him.

He received a copy of a letter from Mr. Mark Ritter, which was submitted to each of the Planning Board members as well. In that letter it states that Mr. Berkins removed the sidewalk in front of his house. This is a clear violation of Section 19-24 of the City charter and ordinances. Section 112 of the Nashua Revised Ordinances says that a permit will be denied if any person is engaged in any course of conduct which violates any ordinance of the City and that same individual shall be denied any permit, license, or approval from any Board within the City until such time the sum of money is fully paid, including interest. He asked the Board to enforce these ordinances.

Ald. Rootovich said for these reasons he is opposed to granting an approval and asked the Board to deny the applicant's request.

Mr. Dufour said he has seen the site. He went out before they had their meeting two weeks ago. At the meeting he couldn't believe what he was hearing and wondered what he had missed so he went back out to the site. He said sections of this neighborhood are unique in the sense that they have older homes on bigger lots. There are other areas that do not have this uniqueness.

He said the zoning ordinance allows what is being proposed on this site. He said they recently adopted new zoning ordinances

and it's at that process where one could address the concerns that he has about preserving the unique character.

He said maybe the reduction in property values would happen, but maybe it wouldn't. He said he knows there is an appraisal that says it might. If an appraiser does not appraisal they're supposed to consider not just what is there and what they're looking at, but they're supposed to consider what the potential is for that site and the surrounding neighborhood. He said he read the report and he's not sure that the appraiser went into that area.

Mr. Dufour said as for the removal of the sidewalk, if the applicant removed that sidewalk and it's a violation of the City ordinances and it states the way Ald. Rootovich just read it, then on that very grounds they could be denied until they make restitution. He said he's not sure that the Board is the enforcer of that ordinance.

Mrs. Lasky asked Ald. Rootovich if he had any more details concerning the removal of the sidewalk.

Ald. Rootovich said there will be speakers that will follow up with respect to this issue.

Atty. Steven Nautinger, Bus. Add.: 402 Amherst Street, Nashua.
Atty. Nautinger said he represents the Donchess and Vincent families. They are abutters to the proposed site.

He said with regard to the sidewalk, he has two letters, one is from Mark Ritter, who is an abutter. He said Mr. Ritter wrote a letter essentially stating that in 1995/1996 when his daughter was young, the Berkins' dug up their sidewalk. He thought they were going to replace it and they haven't done so. The other letter is from Peter Vincent, which essentially says the same thing. He turned these letters in to the Board.

He said with regard to the law on this issue, there is a Nashua ordinance (19-24), which clearly states that it is unlawful for a person to break up or dig any sidewalk in the City. He presented a copy of this ordinance to the Board. There is a provision in Nashua's general ordinances, Section 112, that states if you violate an ordinance, punishment includes denial of permits, approvals and licenses. He passed out a copy of this section to the Board. He pointed out that the application for Planning Board action it states right on it the applicant is acknowledging that if he or she as an individual, partner, etc.

is in violation of any City or Nashua ordinances or owe any sums of money, including any tax on any property this plan may be denied. He said he thought it was clear from this that the Planning Board has the authority, if there is a violation of City ordinances, to deny the application.

Mr. Farkas said there are two allegations on the removal of sidewalk, both people reportedly having seen it. He asked if they had made an official report to the City about this.

Atty. Nautinger said he didn't know. He said from the letters his assumption is that they thought it would be replaced and it never was.

Kenneth Mayo, 96 Wellington Street. Mr. Mayo said he spoke at the last meeting on this case, but he spoke as a neighborhood person, not as an engineer. He said he is a registered professional engineer and has been for many years in both Massachusetts and New Hampshire. He said he grew up in an engineering environment. He said his father spent his entire professional career developing hydroelectric plants throughout the Northeast. He grew up watching and talking about flowing water. One of the techniques his father used in developing hydroelectric power was to look at topographic maps. He would look at the watershed and figure out how many acres or square miles of water shed there was in a particular part of the river. Then he'd look for a drop in the river. He'd go to the Town and look at the tax maps and figure out who owned that drop. He'd prepare a proposal and tell the property owner what kind of income he could have if he would pay for a dam. He said his father sold a lot of water turbines in this way. He presented his resume to the Board.

He said he was asked by the neighborhood folks to look at the water runoff issue in this neighborhood.

He said Mr. Maynard made some comments at the last meeting. He said they would probably be required to do core drilling to determine the sub soil conditions. He said the water flow courses and routes can't accurately be determined when the ground is frozen and covered with snow. (Mr. Mayo agreed with that statement.) He said Mr. Maynard said the Berkins property and nearby properties are likely to be under laid with ledge. He said he knows that these remarks were said off the cuff, but he thought about them quite a bit.

He said on January 18th there was a rainstorm where it rained heavily for a while. He said he went out to look at the streets. He said as Mr. Maynard said, the water was running diagonally across the intersection. He said he watched it run down on the northerly side of Elliott Street, cross diagonally across Wellington & Elliott and run down the northerly side of the Berkins' property (southerly side of Elliott Street). He said he observed the water running onto the Berkins' property from that run. Shortly after it got over there it flowed southerly onto the lawn. Some of it did carry on down beyond. He didn't go to look into the ditch, but he presumes that it's there.

Mr. Mayo said the pavement on Reservoir Hill, the pavement of the new roads, and the new houses all have increased the flow down Wellington Street & Elliott Street. He said this won't be resolved until the City takes a look at what these runoff conditions are.

He said he had five recommendations and he recommended that they be considered by the Board. He read them as follows:

- Proposed application be denied until property runoff issues have been properly studied and resolved.
- The City determine the necessary and proper surface water runoff remediation measures, including buildings, storm sewers and drains where they are appropriately required. He said this hasn't been studied in quite a long time and he has other neighbors that have water erosion problems along the side of the road as well.
- Core drillings to be made by the applicant under the supervision of a competent engineering firm to provide reliable data as to the possible ground water intrusions as suggested by Mr. Maynard and to provide data as to the possible blasting requirements for the proposed new construction.
- Plans and drawings for the proposed new construction and changes be required in sufficient detail to enable accurate assessment of the changes in water absorption areas or remaining soil area on the applicant's property as affected by construction that would be allowed by the approval of the application. He said they haven't seen how many square feet the house is going to take or what it's going to look like.

- No construction be allowed pursuant to the intent and purpose of the Berkins' application and until the issues above have been resolved.

Mr. Dufour said Mr. Mayo has cited a lot of water issues. He said he doesn't doubt that the water sheets down in this area. It's an existing problem and it looks like it might be a City problem.

He asked Mr. Mayo how significantly this would adversely affect the neighborhood as it pertains to the water if the Board were to approve the plan. He said Mr. Maynard has told the Board that the water is going to be contained in basins on both sites, which is an improvement over what they now have and he has said that after all is said and done they've increased the footprint by 1,000 square feet. He said he's at a loss as to how that would make an existing problem worse.

Mr. Mayo said he has no knowledge of what the new building or paving area will be because he has never seen a plan that shows a new building or driveways or garages or other paving.

He said if Mr. Maynard says that there are adequate sumps and absorption basins that they plan to put in that is new news to him tonight. He said he wasn't aware of that. It may be that it's adequate, but if the area is under laid with ledge it won't be too absorptive. He can't tell what the numbers are until the studies are done. He does know that the additionally increased runoff from upstream is adding to a problem that's probably been there for quite a while.

He said it's the City's responsibility to do storm drains and he thought it was time for them to take a look at this. He said somebody ought to spend the time and money and make the effort to figure out what the issue is because it's getting worse. He said there is testimony on record of injury and damage, regardless of whether it's a manmade ditch or not.

Mr. Mayo said he had not assessed that the entire issue is a problem the Berkins' have. He said the water is running down and some of it is going on the Berkins' property and some of it is going by it. He didn't see much going from the westerly side of Wellington Street onto the Berkins' property.

Ald. David Deane, 56 Manchester Street, Nashua, NH. Ald. Deane said he sees a couple of issues here and he understands the

neighborhood's concerns. He asked how many variances were granted by the Zoning Board in connection with this project. Someone from the audience answered "zero."

Ald. Deane asked if an administrative site plan review done.

Mrs. Lasky said they will have Mr. Yeomans answer this question.

Ald. Deane asked Mr. Dookran if this is a combined system here. Mr. Dookran said it is.

Ald. Deane said that putting any storm drainage in there would probably be an adverse situation.

Mr. Dookran said this is correct.

Ald. Deane asked the value of a lineal foot of a sidewalk installed today.

Mr. Dookran said it ranges between \$75 to \$100.

Ald. Deane said he is concerned over why the sidewalk was removed. He said it may be that Public Works may have to go out to look at it to understand why it was removed and loam and seed put in its place.

He said that what is going on in the City is kind of disgusting. He said he realizes that people have the legal right to do with their property as they see fit and they bring their plans to the Board for review. He said the City really has to start getting a handle on this. He said they are cramming everything in and in his opinion he thinks it's wrong.

Mr. Dufour said Ald. Deane has talked about what is happening with these back lots in the City. He said he agrees and he has complained for a long time, but he's stopped complaining because he's come to the conclusion that people have the legal right to do that. He said that legal right can only be altered by the Board of Alderman through the zoning laws.

Ald. Deane acknowledged that he knows what the Board is up against. When things are granted by another Board they have to accept that fact and that there's nothing they can do to change it. He said he knows that this Board is there for people to follow through the rest of the process.

Mr. Yeomans said in response to Ald. Deane's question, this plan did not go through the administrative review procedure. He said it went through a technical review procedure as any other project does that comes in. This group of people who does the review is made up of the Planning Staff, Public Works, Health Department, Traffic Department, etc.

Ald. Deane asked if anything else can be done until the appeal process is exhausted if this request is approved tonight.

Mr. Yeomans said technically this is correct. An appeal to the Zoning Board stays all proceedings so they cannot be issued building permits to construct new housing. He would presume that if they wanted to pick up their house tomorrow and move it to another portion of their lot they could do that by right and no variances or other approvals would be required. However, they would not issue any building permits to construct a new premises until the zoning issue is resolved.

Jim Donchess, 4 Rockland Street. Mr. Donchess said he wanted to go back to some of the points and a couple of the questions that have been asked. He said they are not asking the Board to deny this request based on some kind of general feelings. He said they are asking the Board to enforce the zoning ordinance, the planning ordinances, and the sidewalk ordinances of the City.

He said as far as the sidewalk ordinances go, it is an absolute violation to tear up the sidewalk. Based on the City Engineer's estimate, 150' of sidewalk is \$12,000 to \$15,000 of City money. He said Ald. Rootovich said this already and he knows from experience as a former City official that sidewalks cost a lot of money. They are an investment. They are a safety issue for kids and other pedestrians. It's hard to get budgets for sidewalks. For someone to go out and tear up a sidewalk is an extremely anti-social act. It's an act against the citizens and taxpayers of the City.

He said the ordinances are strict. They say that you can't tear up a sidewalk. If done, it is a continuing violation, i.e., it's a new violation every day. He said Mr. Farkas asked if anybody complained. He said probably not, but he doesn't think that the neighbors can be blamed.

He said Mr. Ritter's letter states that he saw this happen and that he went over to Mr. Berkins and told him that he couldn't remove the sidewalk, yet he continued to tear it up.

He said the ordinances also say that if someone is in violation of something like this they are not supposed to be granted a permit. He said they are asking that this ordinance be enforced. The application says, right on the face of it, that if they are in violation of the City ordinances, that they can be denied and they should be.

He said the other City ordinance that should be enforced is the one that Ald. Larose raised. He said their attorney, Paul Alfano, wrote a letter pointing out that the ordinance basically points out that you have to have 90' from both streets on a corner lot. The opposition said this the last time this case was heard. The applicant has stated that this is not the way it's done. He said no one on the other side of the argument has ever gone to the ordinances and pointed out why the opposition is incorrect.

Mr. Donchess said that Mr. Dufour pointed out that the City has a new zoning ordinance. The new ordinance still says you have to have 90' of depth for each lot. He said they've had this new ordinance for less than a month and it should be enforced. The purpose of the ordinance is to preserve open space and lot size.

Lynn Kisselbach, 29 Farley Street. Ms. Kisselbach said she is a relatively new resident to this neighborhood. She said the reasons they came to live here were because of the character of the neighborhood. She said the character of the neighborhood will be significantly changed if they allow this change to occur. She said it's not only this change, but they are opening the door for other lots to do the same thing.

Susan Vail, 2 Rockland Street. Mrs. Vail said in the time between the hearing that was held two weeks ago and tonight's hearing she doesn't see any revisions in the plan in regards to addressing the drainage. She said there are drainage issues on all of the properties, specifically the southwest side of Reservoir Hill. She said there is water coming across the Berkins' property and she can't see any revision in the plan for addressing that. She said she shares the same concerns as their engineer that they don't know what's down there and it could mean that there will be blasting.

She said as she said before, there has been significant damage to their property. She said there has to a stop to being responsible for that kind of damage throughout the neighborhood. She said she remembers Mr. Maynard saying that some things go to a storm drain. The storm drain catch basin that he is talking

about has been clogged for years. She said it's in front of a sidewalk that was put in five years ago - two years after they moved into their home. She said that drain has chronically been clogged. The water that comes down Rockland Street goes racing right past it and goes to the next one, which is also chronically clogged. There is no other place for it to go, except to pool everywhere.

She said the people in the neighborhood have walls and how the neighbors try to keep the water on their own property. The money that they have spent on their property at 2 Rockland Street is a significant amount (just under \$60,000). That keeps the water on her property. It does not direct water toward catch basins that are not attended to.

Mrs. Vail said she has a sidewalk in front of her house. The City knows it's there. She said if there's a sidewalk missing in front of the Berkins' property, she questions why it's the burden of an observer to say why it's not there. She questioned whether they City knows where it's invested it's money and what is missing and what is not, regardless of when the sidewalk might have been constructed.

Mr. Dookran asked if the other properties that were mentioned as possibly being subdivided are within a block of the property under discussion.

Mrs. Vail said absolutely, if they are to abandon the zoning issues with regard to size.

Mr. Dookran asked if Mrs. Vail knows any other property owner other than the Berkins that might be contemplating subdividing their property in this manner.

Mrs. Vail said not at this time. She said that precedent setting is going on all over Nashua and will go on all over north Nashua.

Deb Christianson, 19 Elliott Street. Mrs. Christianson said she has a 20,000 square foot lot. She said she moved to the north end for location. She is a real estate appraiser. She said this will, in time, affect the value of the homes. She said when an appraisal is done they want to find an exact location that is similar so she would have to find a house that got moved with another house built next to it and with similar value. She said people move to the north end for the location alone. They like the older homes and the larger lots. They do have a lot of

lots within ¼ mile that could subdivide. They may not do it because they moved there for the value. They may sell their house and the people who buy it may say they are going to subdivide.

She said they didn't go to the Zoning Board because someone on the staff approved it so now it's before the Planning Board to decide the case.

SPEAKING IN FAVOR

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier said he pointed out to the Board at the last meeting that they had approved two subdivisions with the same issue that has been raised in this case concerning the dimensional requirements. He said he called Atty. Alfano and said he should look at the ordinance because as far as he (Atty. Prunier) was concerned this meets the requirements. Attorneys may have differences of opinion, but that doesn't mean that they don't talk and don't do anything.

He questioned whether Ald. Dean or Ald. Rootovitch had called anyone to find out if this met all the requirements in the zoning ordinance. He said the lots that the applicants which to create meet the zoning ordinance. He said they are larger than the lots that are across the street from this lot. They are trying to do what anyone can do as long as they meet the zoning ordinance.

Atty. Prunier said his client did not remove any sidewalks. If the neighbors had a problem they could have brought it to the attention of the City and the City could have investigated. It wasn't done.

He said all they are asking for is to consolidate three non-conforming lots into two conforming lots. If someone has a problem with the zoning requirements it can be appealed to the Zoning Board of Adjustment, as Atty. Alfano mentioned in his testimony at the last meeting. He said as long as the Nashua Zoning Ordinance has been effect since 1974 they have interpreted the ordinance with reference to the dimensional requirements in the same way and if they ask the staff they will tell the Board just as they did at the last meeting on this case.

Mr. Dufour asked Atty. Prunier if the Berkins' told him that they did not remove any sidewalks.

Atty. Prunier said this is correct.

Mr. Dufour asked Atty. Prunier what the biggest concern of the opposition is.

Atty. Prunier said he thinks that the opposition has told the Board. He said he understands. This is an old and established neighborhood and there are some large lots. There are different-sized lots as well. He said he thought the neighbors just want to keep it as it exists.

Mrs. Lasky said they have testimony that the sidewalk has been removed. She said she believes that the application would not have been approved to be in front of the Board has that been known at the time.

Atty. Prunier said that the Board has also heard testimony that the sidewalk was not removed. He said it wasn't the Board's job to make the determination as to whether there was sidewalk or there wasn't any sidewalk, especially since it wasn't brought to this Board at the prior meeting and this meeting. He said there is no reason that the Board couldn't vote on this and send an enforcement action so that the sidewalk issue could be investigated.

Mr. Farkas said they have two allegations from the opposition that say they personally saw the sidewalk removal and the applicant states that they did not. He said he'd really like to have the applicant address this or, in absence of that, an administrative officer make a determination and he is recommending that the follow-up does get done.

Mr. Houston said he believes this is in the Board of Public Works jurisdiction. It's in the public right-of-way so it falls under the City Engineer's office. If somebody is removing City properties, damaging City streets, or property in the City's right-of-way, it is in their jurisdiction. It is not for a Code Enforcement Officer or Administrative Officer to determine. He said he would assume they would look at the situation first to determine if there was a sidewalk there and then consult with Corporation Counsel to determine what to do with the situation if they discover sidewalk had been removed.

Mrs. Lasky asked if this plan would have come to the Board if it had been determined in advance that sidewalk had been removed.

Mr. Houston said the comments they received from the City Engineer's Office did not indicate a problem with the sidewalks. If they had been aware of it, they would have passed it on to the City Engineer's Office.

Mr. Dufour said he isn't sure how sophisticated a sidewalk inventory would be going back in time. He said he isn't sure exactly how they can resolve this. They could have more people saying that the sidewalk was there and the applicant can still say that he didn't remove sidewalk. The Board is not the jury or the Sidewalk Police.

Mr. Dufour asked Atty. Prunier if the applicant is amenable to putting in sidewalk.

Atty. Prunier said he would put in sidewalk along the frontage of Wellington Street.

Mr. Maynard said he did a complete report and analyzed the situation with respect to drainage. He said this will be an improvement to the area. He said the pictures he presented clearly document where the drainage goes. It goes down Elliott Street to Lot #46 at the corner and splashes out. He said they are putting in roof drains and leaching basins and this will improve the situation.

He said this entire block has a mish mash of sidewalks. There are a couple of places where there is no sidewalk whatsoever. There's one place, maybe two where half the asphalt is missing because it is a forty-year-old sidewalk. There are some areas where the concrete has been rebuilt. He said when someone asked Mr. Dookran what the cost of constructing a sidewalk is, the cost is what a brand new sidewalk would cost. An old forty-year-old asphalt sidewalk which may or may not have been there would not have cost anywhere near today's cost.

He said the consolidation of three non-conforming lots into two conforming lots will not have a negative drainage impact on the downstream neighbors.

Mr. Dookran asked Mr. Maynard if the proposal is for one leaching basin per home.

Mr. Maynard said this is correct.

Mr. Dookran asked Mr. Maynard to maximize the size of the basins as much as he could.

Mr. Maynard said he thought he might be able to make it double beyond normal.

Mr. Dookran asked if it could be 8' in diameter and 10' deep. He said should make it so that everything stays on site.

Mr. Maynard said the stone around the leaching basin can be 8' in diameter, if that's what Mr. Dookran is asking. He said he would probably want 2' of stone underneath the structure, which would be part of the 10' depth. He said the typical structure is a 2' diameter perforated structure going down 7' with a foot of stone around it, which makes it a 6' diameter by seven vertical feet.

Mr. Dookran said the City uses much bigger ones on their projects.

Mr. Maynard said they have a much bigger drainage area.

Mr. Dookran said that he thinks there is a bigger problem here.

Mr. Maynard said not on his client's property. He said he has two simple little house lots with a minimal amount of square footage of impervious area. The additional impervious area is less than 1,000 square feet. Two substantial infiltration basins will more than offset that and slightly improve the situation. He said he isn't going to solve anyone else's problems, whatever they may or may not be. This is a combined sewer area and it works okay as it is now. Many people clean the catch basins that are in front of their homes. The catch basin on Rockland Street can work like it's supposed to work.

He said there's no abnormal drainage problems in this particular area. There's no groundwater problems. He said he stands by his report that they will not worsen the situation and will actually slightly improve it and, most certainly his client will have a better situation after it's implemented than it is today.

Mr. Dookran recognized that storm water passes through this property to get onto others.

Mr. Maynard said it's very limited.

Mr. Dookran said he said that they are slightly improving it, but he wants them to improve it a little bit more.

Mr. Maynard said he would increase the diameter of the stone to 8', but going down 10' down is way too far. He said 7' is more than enough.

Mr. Dookran said if they build a bigger chamber that can hold more water they could have a 6' diameter structure that wouldn't have to be really deep.

Mr. Maynard said he could consider it. He said that is a major change. He said the difference between a 2' structure or a 4' structure, or a 6' structure is substantial and costs twice as much and has more complications. He said there will only be a small single-family home built on the new lot. It's not a subdivision with new roads and other improvements.

Robert Trowbridge, 80 Wellington Street. Mr. Trowbridge said he lives across the street from the Berkins'. He said contrary to their saying otherwise, those sidewalks existed. He said when he (Mr. Trowbridge) moved there in 1977 they were there and they were there till about 1996. He said he and three of his children remember when they were removed. He found it interesting that Atty. Prunier asked his client if he would replace the sidewalk. He said replacement means an admittance that the sidewalk was there.

Atty. Steven Nautinger, Bus: 402 Amherst Street, Nashua, NH. Atty. Nautinger said he realizes that the Board is not the arbiter of the facts, but its pretty clear that if they had known about this, this application wouldn't have gotten this far. He said in his view that is how they should be looking at it. The sidewalk was removed and it shouldn't have been. Therefore, the application shouldn't have even been brought in front of them.

Mr. Dufour said it's not up to the Board to decide whether there were sidewalks or not. He said the applicant is putting in sidewalks so are they righting a wrong or are they being a good neighbor.

He said the water problem that they have been talking about is an existing neighborhood problem. The site they are talking about is part of that neighborhood. It's not the contributing factor to that neighborhood having all these issues.

He said as far as the precedent setting, they deal with this all the time. If it's precedent setting, it's precedent setting on

that street. If they vote to approve this tonight, it's not like they are going into unchartered waters.

He said the Planning Board can't make any decisions with regard to the zoning issue that's been brought up. If there is a problem with the zoning it has to be taken up with the Zoning Board or at the court level. If the opposition prevails it won't go anywhere.

Mr. Dookran asked that the leaching basins be made with a 6' in diameter structure so they can capture runoff on site. He said even though the runoff isn't created on the site, there's quite a bit of pass through. He said he was in the neighborhood and saw evidence of that happening. It won't hurt and it can only help. It is a combined sewer area. The more they can keep out of the combined sewer, the less problems they will have in that area.

Mrs. Lasky said personally she is having a difficult time with this. She is struggling with the fact that she doesn't believe that this should be in front of the Board. She's finding it hard to believe that a sidewalk was not destroyed, but she has no proof. She said it's not that she doesn't believe the people who have testified and she doesn't believe there is any reason for them to distort the truth.

She said as far as the water issue is concerned, this may be the way to get something done with Mr. Dookran's stipulation.

MOTION by Mr. Dufour to approve the lot line relocation at 73 Wellington Street & Elliott Street with the finding that it meets NRO 16-108 and with the following stipulations:

1. Prior to recording the subdivision plan any final drafting corrections shall be made.
2. Prior to recording the subdivision plan all structures shall be relocated or razed to comply with the property lines and setbacks shown on this plan.
3. Prior to the issuance of the certificate of occupancy all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.
4. Should this application be appealed this plan is subject to any final decision issued by the Court.

5. Leaching basins on site shall be 6' in diameter.
6. Applicant to install sidewalks along their entire site along Wellington Street.

No second.

Mr. Dookran asked staff if the applicant will have to record a storm water management plan.

No reply was heard.

Mr. Dookran asked how they enforce their compliance.

Mr. Yeomans said the City can enforce compliance. Realistically, they've done several hundreds of these. The City has an easement to enter the property and do the maintenance, if necessary. He said this is really a homeowner maintained system, but if there ever is a problem the City can come in and maintain it.

Mrs. Lasky said the evidence she has before her says that this particular homeowner doesn't seem to maintain anything.

Further discussion ensued about the sidewalk - whether there was one or not and what could be done or not done about it.

ABOVE MOTION SECONDED by Mr. Farkas.

MOTION CARRIED 3-2, Mr. Dookran & Ald. Larose opposed.

Discussion Items

1. PK's Garden Center Redevelopment

Mr. Yeomans said that he's asked the applicants that are involved in this project to come to the Board tonight to introduce the project to the Board so they can see what's being proposed for the completion of the redevelopment of PKs Garden Center. He said Atty. Prunier will be addressing the Board to describe the project. He said there is still some work to be done with respect to traffic and traffic analysis and some Zoning Board action.

Atty. Prunier pointed out the site on a plan. He also pointed out other sites - Pizza Uno and Tire Mart. He said there are three lots left on the PK property. He said they are proposing

a car wash, various retail stores, a Starbuck with a drive thru, and office space. He said there is a by-pass in the rear of the property that starts over on Ford, goes through Pizza Uno, in the back of Tire Mart and will continue through this area and come out at the light.

He said they are going for a variance for the drainage and the parking that is in the 75' buffer area. He pointed out the area on the plan. He said the staff will tell the Board that by bringing the drainage down in front they are going to improve the area instead of making it drain toward the back without being treated.

He pointed out the property that would be controlled by a light that's across from Celina Avenue. He showed the direction traffic would come in for the car wash and where they would go out. He said the tire store is already there. He said this is the last piece in that particular area.

Mrs. Lasky asked if Starbucks was going to have a drive-thru.

Atty. Prunier pointed the drive-thru out on the plan. He said it will meet the new zoning ordinance.

Mrs. Lasky asked if there were going to be other tenants on the land.

Atty. Prunier said there are going to be two small tenants. He pointed out the area where they would be located.

Mr. Dufour asked if there were going to be pumps with the car wash.

Atty. Prunier said it will only be a car wash.

He added that the total square footage for everything is 8,400 square feet.

Mr. Dufour asked how many square feet the office will have.

Atty. Prunier said the office is 2,980 square feet.

Mrs. Lasky said that they aren't allowed to ask who it's going to be, but it's getting to be important. She asked what if it's a Panera Bread and a Starbucks. It makes a big difference.

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Mr. Farkas said there shouldn't be any names on these any more because it shouldn't have any affect on the decision. You apply the law.

Mrs. Lasky said the traffic is different.

Mr. Farkas said the zoning laws don't differentiate based on if it's a Dunkin Donuts its that and if it's a Wal-Mart, its this and if it's a Building 19 it's something else.

Mrs. Lasky said the intensity on the site is different.

Mr. Farkas said the traffic reports are done based on the use. They don't differentiate.

Atty. Prunier said the building is 8,400 square feet. One of the tenants is Starbucks, but they don't know who the other two tenants will be.

Mr. Lowe asked if there is going to be any widening of Amherst Street in this area.

Atty. Prunier said they have taken this into consideration.

Mr. Dufour asked Atty. Prunier why they are going to the Zoning Board.

Atty. Prunier said the parking and drainage will be in the 75' buffer.

Mr. Dufour asked if all environmental issues were being addressed.

Atty. Prunier said "yes".

Mr. Dufour asked Atty. Prunier how staff reacted to traffic concerns - the impact of this site on 101A.

Atty. Prunier said the Traffic Superintendent has asked that a traffic report be done. He said there are Starbucks and car washes in other places. It isn't a destination - people are already on the road and they stop in on their way to someplace else. He said the Traffic Department wants them to look at the offset with the light to see what can be done.

Mr. Dufour agreed that the only destination will probably be the office building.

Ald. Larose asked if there is a tenant for the office building yet.

Atty. Prunier said they do not. He said the staff wanted to see and thought the Board would want to see what the proposal would be for everything on this site. The office building won't be seen from Amherst Street. It's way up in the back.

Mr. Dufour asked Mr. Dookran if there was anything special that he could see that might have to be done.

Mr. Dookran said he would want an extensive traffic report and he'd want to see Amherst Street widened to be as wide as it can be.

Mr. Yeomans said that the City has made very specific requests about circulation on the site that Mr. Kerouac has honored. He said they believe with the storm water improvements, which are being made on the site as a result of the redevelopment, they will end up with a much cleaner site overall.

Mrs. Lasky asked if there are any problems on the site.

Mr. Yeomans said they are pleased overall with the way the site functions and with what Mr. Kerouac has done on the site in the past. This work will be incorporated into the new system.

Other

Mrs. Lasky said that the by-laws have not be updated for some time and she thought that they should be done again.

Ald. Larose said they can get a copy of the current by-laws to the Board so they can review them. She said they might even want to change from Robert's Rules to Mason's Rules.

Mr. Dufour asked if there was a problem with the Board's process.

Mr. Lowe said that the difference between Mason's Rules and Robert's Rules is that in Robert's Rules you can break a tie. In Mason's Rules you can make a tie.

Mr. Farkas said the only way to break a tie is if you don't have a voting Chair.

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Ald. Larose said under Mason's Rules you don't need a second. All you need is a motion.

There was a discussion about the sound system and what it had been doing all night - noise, pops, etc. with Ald. Larose suggesting that the Chair address a letter to the Chairman of the Cable Advisory Committee because they get \$150,000 for the purchase of equipment and other things. He said they have a better chance of getting money from them then they will from the budget.

ADJOURNMENT at 9:53PM.

APPROVED:

Bette Lasky, Chair Nashua Planning Board

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Taped Meeting