

NASHUA CITY PLANNING BOARD  
March 2, 2006

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

Ken Dufour, Vice Chair, conducted the Meeting.

Members Present: Ken Dufour, Vice Chair  
Mike Lowe, Mayor's Representative  
Ald. Richard Larose  
Steve Dookran, City Engineer  
William Slivinski  
Steve Farkas (7:09PM)  
Hugh Moran  
George Torosian

Also Present: Mike Yeomans, Deputy Planning Manager  
Rick Sawyer, Deputy Planning Manager

Note, both tapes fade in and out or have a humming noise so there may be some testimony that is missed, as it cannot be heard.

**Approval of Minutes**

January 5, 2006

**MOTION** by Mr. Lowe to approve the minutes of January 5, 2006, waive the reading and place on file.

**SECONDED** by Ald. Larose.

Mr. Dookran said there are a couple of possible errors. He said on Page 9 in the second to last paragraph it states Mr. Dufour said, but it was something that he (Mr. Dookran) said. He said there are two other situations where the same thing happened - Page 32 in the fourth paragraph down and in the fifth paragraph it should be him again, not Mr. Dufour.

**MOTION CARRIED UNANIMOUSLY**

**Communications**

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

Preliminary Planning Board Agenda for the Board's next meeting on March 16, 2006

Registration form the N.H. Office of Energy & Planning for the Spring Planning & Zoning Conference to be held on April 1, 2006 - Registration by Friday, March 24<sup>th</sup>. There is a \$30 fee. Historically the Planning Department has had funds available for reimbursement. He said he didn't know if that was the case this year given the current budget conditions. He said that the members could check back with the staff on this.

A document from OEP dated February 23, 2006 - A Handbook for Local Officials

**Report of Chairman, Committee & Liaison**

None

**MOTION** by Mr. Lowe to approve the minutes of February 2, 2006, waive the reading, and place on file.

**SECONDED** by Mr. Torosian.

**MOTION CARRIED 5-0-2, Mr. Slivinski & Mr. Torosian.**

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.

**OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS**

None

**OLD BUSINESS - SUBDIVISION PLAN**

None

**OLD BUSINESS - SITE PLAN**

None

**NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS**

**Taken together:**

1. Richard Raisenen (Applicant) Theresa Trottier (Owner) - Application acceptance and proposed special use permit for one single family home, Catherine Street & Lawndale Avenue, Sheet 126 - Lot 148, Zoned "RA" - Urban Residence.
2. Richard Raisenen (Applicant) Theresa Trottier (Owner) - Application acceptance and proposed special use permit for one single family home, Catherine Street & Lawndale Avenue, Sheet 126 - Lot 158, Zoned "RA" - Urban Residence.

**MOTION** by Mr. Moran that the special use application (Case #1) is complete and that the Planning Board takes jurisdiction of the application.

**SECONDED** by Mr. Lowe.

Ald. Larose said according to Section 16-8 - Part B, it states the Planning Department, Division of Public Works, Fire Rescue, Environmental Health Department and applicable public utilities shall review and make recommendations on the application and forward these to the Planning Department for consideration by the Planning Board. He asked if this had been done.

Mr. Yeomans said the application goes through the normal technical review process. All agencies are notified and they all have the opportunity to participate.

Mr. Dufour said this is the first time the Board is taking a presentation. He asked the staff to explain how this is a little different from what they've looked at in the past.

Mr. Yeomans said this is part of the innovative land use controls that was adopted under the new code. Up until now the Zoning Board of Adjustment handled special exceptions. Special Use Permits are under the jurisdiction of the Planning Board. It gives the Board an opportunity to have additional input. There are some specific criteria that have to be met by the applicant. The six criteria are set forth in Sec. 6-8 and on the Board's reference card.

He said as he understands it, this came about as a result of similar land use issues occurring on the Oakland Avenue properties and people thought there should be some additional scrutiny and review of development on paper streets. Up until this time there really was no standards on which to evaluate applications with regards to access, utilities, drainage, etc.

Mr. Dufour asked if these would come back to the Board if they approve the request.

Mr. Yeomans said it would not come back. If the Board approves the request it will be subject to the six criteria for special use permits and the Zoning Board criteria.

Mr. Lowe asked who owns the property - the City or the two adjoining properties.

Mr. Dufour said they would let the applicant speak to this.

**MOTION CARRIED UNANIMOUSLY**

**MOTION** by Mr. Torosian that the special use application (Case #2) is complete and the Planning Board takes jurisdiction of the application.

**SECONDED** by Mr. Lowe.

**MOTION CARRIED UNANIMOUSLY**

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said Atty. Brad Westgate is with him tonight to speak to legal aspects of the case.

Mr. Maynard said the property in question is at the intersection of Lawndale Ave. & Catherine St., a paper street for which the rights of access still remain. A plan was recorded at the Registry in the early 1900s.

He said the land is located in the "RA" zoning district where lot size is 7,500 square feet. The lots were originally 25' strips of land that are being put together. There is one 36,000 square foot lot to the north and a 23,657 square foot lot to the south. Beyond the property are the wetlands associated with Salmon Brook, which also roughly approximates where the 100-year flood zone of Salmon Brook is located.

Mr. Maynard said in August 2005 they went to the Zoning Board for variances of the frontage and width requirements for both lots. The variances were granted with stipulations.

He said they are proposing separate driveways to each of the homes on either side of the paper street or the access easement. It's a 12' driveway into both lots. There will be individual water services and individual sewer services.

He said with regard to drainage, there is already a drainage system in the area that serves the Lawndale/Catherine Street area. There are storm drains in Lawndale Ave. There are two catch basins in the paper street at their entrance, which are connected to the storm drain system. That drain goes down the paper street to a headwall and eventually into the Salmon Brook associated wetlands.

He said they are also working with the City Engineer's Office as they've graded the driveway such that public drainage from Catherine Street & Lawndale Avenue will be directed to the existing catch basins and not down the private driveway. The private driveway drainage will be handled on site. He said on the site to the north, the drainage will drain down the driveway and into the lawn, plus the house will have the typical roof drain leaching cisterns. He referred the Board to the plan where these are shown. The net effect is that there would be less runoff after the fact than there is today.

Mr. Maynard said with regard to the house on the lot to the south, they would direct the water in a similar fashion. The

water will come down the driveway. They will have three leaching cisterns - one at the driveway and two tied into the roof liters for the house.

He said these are essentially driveways. Trash pickup will be typical as everybody else's. They'll have to wheel their trash bin up to the street. These are private driveways so they will have to do their own snow plowing. There is more than adequate room for snow removal from the two driveways. Both will be 12' wide and paved, with shoulders.

He said the Zoning Board of Adjustment approved their request for variances with several conditions. The first one was no building in the wetlands buffer. There is nothing shown to be built within the buffer. The next stipulation concerned sewer and drainage plans, which have been proposed and reviewed by Engineering. The third stipulation was to consolidate the lots. That document has been prepared and signed. It is waiting to be recorded subject to the outcome of tonight's hearing. He said there's a stipulation for one curb cut. He said they are providing one. He said they also have utility easements. He said the utilities would come through an overhead pole and then go underground. He showed where this would be on the plan.

Mr. Maynard said the stipulations suggested by staff are acceptable.

Mr. Dufour said the testimony indicated that there were going to be two separate driveways. He asked if he could assume that the front part closest to Lawndale will look as one.

Mr. Maynard said that this is correct. He said they are side by side and look as one to a certain point. Then they split. He referred the Board to the plan.

Mr. Dufour asked if he is correct in making the assumption that Lot 152 becomes part of Lot 148.

Mr. Maynard said the upper area is Lots 148 - 157 and the lower area is Lots 158-162. He said he thinks that Mr. Dufour is correct.

Mr. Lowe asked why this just isn't made into a street.

Mr. Maynard said after twenty years one is no longer are able to make a public street. You can only have private.

Mr. Dookran said he knows that Mr. Maynard will be presenting the final drainage design for approval per the stipulations from the Zoning Board of Adjustment. Looking at the longer driveway - the one to the south - it will be picking up some roadway drainage from Lawndale Ave. & Catherine. That drainage today goes through wooded land, grass, etc. Now it will be traveling down a paved driveway. He asked about erosion.

Mr. Maynard said they are required to have an upslope at the beginning of the driveway so that public drainage would not go down the driveway. The first 20' - 30' goes up 1.7% and then it goes down. He pointed out the area on the plan. He said they are putting in asphalt curbing in the beginning so they can keep their drainage on their driveway. He pointed out a low spot on the plan. He said all the drainage will sheet drain onto the lawn area and perk into the ground. He indicated these were well-drained and sandy soils. Any drainage from the house will go through the leaching cistern. Similarly, this drainage will end up coming down the driveway and off the back of the driveway into the low area before it sheet flows. It is not a lot of drainage. They are talking about a couple of hundred feet of driveway. There will be a leaching catch basin strictly for the driveway.

Mr. Maynard said with regard to erosion, the whole area is vegetated. There is a 75' buffer that will remain undisturbed. There is little or no opportunity for erosion nor is there the amount of flow that might be considered to cause erosion.

Mr. Dookran asked if there's drainage now that makes it's way down the paper street area.

Mr. Maynard said that more than likely there is.

Mr. Dookran asked if they are going to try to contain that within the existing roadway.

Mr. Maynard said this is correct. He said they would direct it to the existing catch basins at the intersection. He said right now it slopes down the paper street without any adverse grades.

Mr. Dookran asked Mr. Maynard if he was saying they are going to be directing more storm water into the combined sewer that suffers from capacity problems today.

Mr. Maynard said it is not a combined sewer. He said this is a dedicated drain. He showed where it is on the plan.

Mr. Torosian asked with reference to the driveway to the south if the pavement is going to continue past the driveway.

Mr. Maynard said "no." He said they are not supposed to disturb beyond the 75' buffer, even though the paper street goes all the way to the end of the buffer. He said this is just a slightly longer than normal driveway. There are plenty of driveways in Nashua that are longer than this one.

Mr. Slivinski asked who owned the land now.

Mr. Maynard said he would let Atty. Westgate answer this question.

Ald. Larose asked if the driveway for the house on the southern lot would be on the south side.

Mr. Maynard said it hugs the middle, but is on the south side of the paper street.

Ald. Larose asked if both houses would be on City sewerage.

Mr. Maynard indicated they would be.

Ald. Larose asked if the drainage that's on the two catch basins at the intersection of the paper street is being diverted into the wetlands.

Mr. Maynard said it's a normal storm drain that drains to a watercourse known as Salmon Brook.

Ald. Larose asked where the hookup for the sanitary drains for the two houses is located.

Mr. Maynard referred the Board to their plans. He said they should see some lines that have "S's" on them. They come out of the houses and up the middle of the street and into the sanitary sewer in Catherine & Lawndale. Each house will have a small ejector pump. There's an elevation difference of 5' - 6'.

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate said when they have referred to the paper street; they mean that portion of Catherine Street running from Lawndale on the east to the westerly edge of the property near Salmon Brook on the right. The northerly half of the paper street on the easterly side is owned by Mr. Duhamel, the abutter to the north, but only for the length of frontage for which he

abuts. Mrs. Wardner owns the southerly portion of the easterly part of Catherine Street. She abuts to the south so she owns that portion along the paper street to which she abuts. On the northerly side, Mrs. Trottier owns the lion's share of the paper street. On the southerly side Mrs. Trottier owns a bit less than half of the westerly edge of the paper street. At Mr. Dufour's request he used markers to outline the location of the paper street and to show the ownership per his testimony.

He said these lots were created on a plan recorded in 1923 with the Registry of Deeds. They are actually small lots - 25'X100' and they accumulate together. When the plan was recorded, it created a dedication of public servitude of all the streets shown on the plan. At the time it meant that the City had a twenty-year period by which it could accept these dedicated ways. In a typical case, the City accepts streets that are built. Also, in a typical case the City doesn't accept streets that aren't built.

He said in this neighborhood, by and large most of the streets were built and accepted by the City, but there were a couple of examples where they weren't and this is one of those examples. In mid 1943 (after the twenty years passed) there was no longer the ability for the City (on its own) to accept the paper street and make it a City street.

Atty. Westgate said that generally speaking, City's doesn't own the fee interest (the ownership) in a roadbed or paper street. The basic concept is that City's have easement rights for the benefit of the public to travel over streets. The recording of the plans establishes easements in favor of the public to travel over the land shown as streets, but it doesn't vest ownership of the streets into the City.

He said there's a concept in the law that says when a person who is subdividing and sells a lot, unless they state unequivocally otherwise, not only do they convey the ownership of the lot to the buyer, he or she also conveys ownership of the adjoining street up to the center line. The ownership is subject to easement rights - the right of the public to use it in the first twenty years and forever the right of the private parties who abut it to use it.

He said it's important to keep the notion of ownership and easements separate. The rights of use are far more important than the right of ownership. He said the way that Mrs. Trottier has access rights to these properties is because they were shown

on a plan recorded at the Registry of Deeds and the City did not accept the road during the twenty-year time frame. The law unequivocally states that private rights of access are granted to all those people who need it to access their property by way of these paper streets.

Mr. Slivinski asked if the northern property owners and the southern property owners continue to own the property and if they continue to pay taxes on it.

Atty. Westgate said they continue to own the property. He said he doesn't think the tax part is in effect. He said he believes in these cases that the Assessor's Office has not integrated the pieces that he had outlined in markers to their respective lots. He said he believes these landowners are only being assessed on the "normal lot."

Mr. Dufour asked Atty. Westgate if it was his opinion that even if they had been taxed that they would still have access to that land for private use.

Atty. Westgate said they would. He said ownership is irrelevant in terms of the right of access.

Mr. Dookran asked if the property owners in the back have the right to run utility lines, sewer lines, etc. - everything that's proposed on the plan.

Atty. Westgate said he believes they do. The establishment of the subdivision plan creating the streets grants the private rights of access to all lot owners if the street is never developed. Secondly, this was a subdivision for residential purposes. It was laid out and developed to accommodate homes. There's a concept in the easement law that is essentially known as the "rule of reason" or "reasonableness" rule. The basic idea is that when you're granted an easement as Mrs. Trottier's properties have, what comes with it are the necessary related rights to implement the purpose of the plan from which the easement is granted. Therefore, if there is an access right (an easement) by way of a paper streets in a residential subdivision it makes no sense to merely have simple access, but also to have with it necessary easement rights to use the property for which the plan was established - residential purposes. The "rule of reason" tags along with it the necessary easement rights to service a single-family dwelling on a lot configuration that's appropriate.

Atty. Westgate said the "rule of reason" has bounds to it. He said if they created a truck terminal in the back for some reason and it generated 400 vehicle trips a day, the "rule of reason" would probably say "no, you can't take the easement to that extreme" or they couldn't create a sewer plant back there and build a 12" main leading into it, but it's logical that the "rule of reason" says that they can do what's necessary for a single-family dwelling.

Mr. Dookran said he assumes that the "Duhamel" property and the "Wardner" property have the same rights. He asked if there would be conflicting rights of access.

Atty. Westgate said they would not. He said they have the right to drive on the driveway that they will be establishing. If Mr. Duhamel wants to access his side yard from the common driveway he may do that.

Mr. Dufour asked if this is incorporated into the common driveway agreement.

Atty. Westgate said he didn't right it that way, but it can be acknowledged, if that's a concept that the Board would like to have stated. He said it's implicit to him, but he would be happy to make it explicit.

Mr. Dookran said there is a property drainage line that runs down. He asked how that is being considered now that they know that the paper street is in the process of being converted back to private property. In other words, would the City need an easement because their line would be on private property?

Atty. Westgate said he thinks that the line Mr. Dookran has referred to have been there on the order of thirty years. He indicated he didn't know why, when or who might have authorized it. He said he didn't know the total answer to the question and guessed it would be a function of the comfort level of the City in operating a line it's had for thirty years without the benefit of written documentation. He said they have no problem granting an easement to the City to maintain the line that's been there all these years. He said he's not sure that it's necessary given the longevity of its use. He guessed it was the City's call.

Mr. Torosian said he thought they were asking Atty. Westgate questions that they should be asking Corporation Counsel. He said this is unchartered territory for the Board.

Mr. Dufour said that after the presentation and discussion if the majority of the Board feels more comfortable in waiting until they get direction from Corporation Counsel, then they would do that.

#### **SPEAKING IN OPPOSITION OR WITH CONCERNS**

John Koutsos, 3 East Dunstable Road, Nashua. Mr. Koutsos distributed some documents to the Board. He said he lives in the neighborhood and he is one of the people who helped to have the paper street law passed. He said one of the reasons that he wanted this ordinance on the books was to give the Planning Department or people involved with planning could take a look at the general surroundings of the neighborhood because there are other issues other than those of just the applicant. He said abutting lot owners have future development rights as well.

He said if the Board passes these requests in their present form, there are going to be a lot of legal issues that will have to be dealt with later on - probably by the City, the "Trottier's" and Mr. Duhamel as well. He said there's no dispute that after twenty years the road reverts to the owners to the centerline and rights of access may exist. They also may not exist, but he isn't going to argue that point tonight. These are implied easements; they aren't recorded easements. The case that everybody cites on that is the "**Dushenier**" ????? case. He referred the Board to the material he passed out earlier. He said this reads that implied easements arise, if at all. This kind of implies that they may not, but he wasn't going to argue this with the Board tonight.

He said he thinks the Trottier's have a right of access over that land. He said where they are going to get into a big mess is if the type of easement is realistic for this development to occur. He said if they look at it from a logical standpoint and said that the road happened to be 500' longer and there were ten more lots that could be developed, would it be reasonable to say they could all hook up with private sewer connections and private water connections. It couldn't be done.

Mr. Koutsos said the original intent of the easement was to create a road to service future development. The plan that has been presented probably will serve the two homes, but if they look at Mrs. Wardner's lot, she has 209' of frontage on that paper street. He said there needs to be a common sewer and common water in order for Mrs. Wardner to hook up when she wants to subdivide her land.

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Mr. Koutsos said there has to be a 10' separation between all water and sewer lines. He said that works out well when there are two lots there, but what happens when Mrs. Wardner subdivides her land and they start to dig up and they run into the other water and sewer lines.

Mr. Dufour asked Mr. Koutsos to show the Board where the potential subdivision exists.

Mr. Koutsos pointed out the land Mrs. Wardner owns on the plan that was displayed. He said she had 209' of frontage and that the land is in the "RA" zoning district where only 7,500 square feet of land area is required for a single-family home and he thought there was is 16,900 square feet, exclusive of the 20'X200' strip.

Mr. Koutsos said Section 16-302 of the zoning code states that non-contiguous lots conforming land cannot be separated without subdivision approval. He said if they look at Mr. Maynard's plan they will see that the paper street has been incorporated into the "Trottier's" lot.

He said there was some testimony about taxes on the land. He said if they were to go to the GIS mapping for the City of Nashua they would see that the City has moved the boundaries to the center of the road and his land is touching the "Trottier's." If they go by that premise, all of the "Trottier's" land (the land that encompasses where both homes are) is all contiguous land because they are touching to the centerline. In order for this to go forward with two homes, it needs subdivision approval. If they ignore the fact that it needs subdivision approval, it's like an admission that the right of the City to step forward and build the road still exists.

He said the Zoning Board granted two homes on one lot. Their approval identifies the lots to identify where the houses on the land were going to be. He referred to the section he highlighted. He said it states there's to be one common driveway with easement for right of access that was to be placed on file with the deed. Now it looks like there are two driveways so they aren't following the stipulations.

He said he thought the Board needed to postpone this until they obtain subdivision approval.

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He said the Board should have a copy of an Email from Carter Falk to Jon LeBrun dated July 25, 2005. This communication states that one home was approved here in 1994 with stipulations and one of them was to consolidate all lots into one lot. It also states **unintelligible** **????** existing drainage pipe from Lawndale to Salmon Brook. He asked who the owner of the pipe is. He said he believes the "Trottier's" own the part that runs over their land and Mrs. Wardner owns the part that is on hers.

He said also back in 1994, the owners of Lots 145, 146 & 147 shall grant a utility and access easement across the portion of Catherine Street that they abut. He said that is Mr. Duhamel's lot.

Mr. Koutsos said Mr. Lebrun replied to Mr. Falk that everything applies. In addition, since there are now two lots, the sewer shall be public and a 20' wide easement or provide separate sewers to Lawndale Avenue.

He referred the Board to the minutes of the Zoning Board meeting. He said Atty. Paul Alfano brought up the fact that Mrs. Wardner could subdivide her land if she wishes. He (Atty. Alfano) mentioned this only in connection with utilities. They would have to get a utility easement, but it should in no way impact her ability to subdivide her land. He (Mr. Koutsos) said maybe it still doesn't impact her ability to subdivide her land; it's just going to cost her a ton of money and the "Trottier's" or whoever owns the house some day when they all start fighting over what's happening to the pipes in the ground.

He referred the Board to the "Ducheneyer" case again. He said this is the reason why what's being presented isn't logical. He said the last page indicates that the trial court ruled that the defendant had the right to develop the street from end to end for everyone's use for the purpose of going to and from his or her property. It doesn't say that they have the right to build driveways and to take what was once a public access for a private driveway. He said in this particular case there were other lots abutting the street (he thought about ten).

He said the City has the right to come in during the twenty-year time frame to come in and build the road. After twenty years they lose that right. He said the private parties don't lose the right to get together and say they want to build the road. He asked what they would do if the paper street had ten or twelve lots on it. They'd have to build a road because they couldn't support the build - out. They need to have common

utilities. If they had an aerial of the property and looked down ½ mile in all directions they won't find one thing like this in the City of Nashua. They are in the City and they are meant to have streets. There wouldn't be any argument here if they just put the street in. More than likely Mrs. Wardner will subdivide her land as most green space in Nashua is being developed.

Mr. Dufour said that Mr. Koutsos' contention is that the lot to the south belonging to Mrs. Wardner presents the ability for further subdivision and he's saying that the utility infrastructure on the private drive would not support that extensive development.

Mr. Koutsos said this is correct.

Mr. Dufour said hypothetically Mrs. Wardner may subdivide her property at some point. He said it seems to him that the common manner in which to run the utilities to what would be a hypothetical subdivision would be straight through to Lawndale. He asked why one would want to connect onto the north.

Mr. Koutsos said because it would be a subdivision somebody else would want and why would they burden another home with another easement when the spot for the easement is over the paper street. Mrs. Wardner owns the land on the paper street and if anybody has the right to the connection there, it would certainly be her. He said he could not agree that she should go somewhere else to get her hookup.

Mr. Dufour asked Mr. Dookran for his comments concerning the sewer hookup.

Mr. Dookran said looking at the way Mrs. Wardner's parcel is shaped, they would want to subdivide such that there would be a back parcel and a front one where the existing house is located today. He tends to believe that Mr. Koutsos' is correct. You would want to go through what is today a paper street because everyone abutting that section has that right of access and you typically don't want to create more individual easements.

Mr. Dufour asked if the size of the infrastructure that's going in for the two homes now would be big enough to accommodate a third home - assuming that Mrs. Wardner subdivides and a house built on the rear of that lot.

Mr. Dufour said he would be taking a wild guess, but he thinks there would be some difficulty. He said sewer lines have to be located at least 10' from water lines. It's a 24' wide drive with two sewer force mains and two separate water lines. If they're looking at a third force main as well as a water line and maybe a gas line, they are talking about really crowding it. He said it probably wouldn't be a good arrangement.

Mr. Dufour said in order to make that presentation work would the lines have to be bigger.

Mr. Dookran suggested that one of the water lines be such that it could be sized for a future home and maybe the driveway could be constructed such that they could accommodate another force main sewer line and whatever else is in there. Further, if they are talking about using the driveway for access to a future home, it should be designed such that it could accommodate an additional driveway. He said he didn't know exactly what that meant. Right now he sees the driveway is split way up front.

Mr. Dufour said he thought both could share the driveway to the south.

Mr. Koutsos said he thought this was a huge mess - just what the Board just talked about concerning the driveway and the water line. He said if the water line fouls and it's not public and there have been no agreements worked out, who is going to fix it. Who is going to plow the driveway if two people are there. Who is going to maintain not only the driveway, but also the strips of land next to it. Nobody has asked Mr. Duhamel or Mrs. Wardner about input about the size of the driveway or the pavement. He said the lots have been consolidated and the easement for the driveway, the utilities and maintenance is ready to be recorded. He assumes they are going to record some self-serving document that says they have the right to pass over other people's land. They are going to tell them how they are going to maintain the driveway, the utilities, etc. with no input from the people who own the land. He questioned if this is legal. He said the Board should, at the very least, table these cases and discuss the issues with Corporation Counsel.

Jeanne Dunphy, 57 Lawndale. Mrs. Dunphy said she is an abutter. She said there is an existing sewerage problem and from her conversation with Mr. Dookran the sewerage on Lawndale goes to a holding tank at the Nashua Country Club, which has been separated. She said their street is on a one-pipe system so when there is a lot of rain she gets sewerage in her basement. It's

only those neighbors who have basement plumbing. She has a marine valve that she has to shut off all of the water. She hopes that when there's a heavy rain she is home so that she can be there to shut the valve because otherwise she comes home to a mess. She said Mr. Dookran is aware of the situation on Lawndale. She asked if these two homes will make her situation worse.

Mike Siciliano, 95 Taylor Street. Mr. Siciliano said he had a couple of concerns about the plan. He said it really doesn't show much topography on the plan. It shows a wetland setback of 75', but it doesn't show much of the existing and/or future topography of the development.

He said they are probably going to build two upscale homes, which would involve some decent looking landscaping. There's going to be a lot of green space and it's probably going to be maintained with fertilizers and pesticide programs. He asked what type of control is going to be set forth for the future property owners about how far they can apply pesticides or fertilizers towards the wetland. He asked what type of an effect will the surface water have with a large thunderstorm from chemicals that are applied on the turf. Without having existing topography and future finished topography on the plan it's hard to determine which way the water is going to flow and how that's going to affect any type of chemical applications to these sizeable lots. One lot is almost 24,000 square feet and another that's 36,000 square feet.

He said the other concern he has is that the lot has been consolidated and the easement for driveway utilities and maintenance is ready to be recorded. He said he agrees with Mr. Koutsos with regard to that recording. His question is if all the parties (the Trottier's, Mr. Duhamel, Mrs. Wardner, the City of Nashua, utility companies) are in agreement with these easements that are going to be recorded. He asked if Pennichuck Water Works, PSNH, Verizon, and Comcast are going to run their infrastructure over land that may or may not have an easement. If it's not stipulated on the recorded deeds he doesn't know if they would want to get involved with a possible legal mess.

He said his brother has lived on Lawndale Avenue for eleven years. He said he has seen situations where he has seen raw sewerage come up into the street right out of the manhole covers with large thunderstorms. It's left there for the residents to clean up. He said his brother is at the northerly section of Lawndale, but history has show them that the sewerage problem

consists right down to the southern tier of the road heading towards Burnett Street in the direction of this proposed subdivision. The sewerage is of major concern for the abutting neighbors and also the people to the north.

Mr. Siciliano said as a lifelong citizen of Nashua he looks to the Planning Board and the Zoning Board to pay attention to these current and upcoming subdivisions. He said he travels the City frequently during the day and goes into a lot of neighborhoods. He sees a lot of the subdivisions affecting high-end neighborhoods like the north end, Lake Street area; Crown Hill. He said he isn't against development, but do it in a tastefully done manner that's acceptable to the City, to the law and also to the taste and harmony of the existing neighborhoods.

Ald. Robert Dion. Ald. Dion said Salmon Brook abuts his property so this is very similar to his property. He said if you look across Lawndale where Salmon Brook comes in that is where he lives. He said he knows how beautiful it is to look in your back yard towards the brook and see the birds, pheasants, ducks and geese. Now they are looking at paper streets being developed. He said this is so horrible that he can't begin to tell the Board how badly he feels about it.

He said Mr. Duhamel is 77 years old. Mrs. Wardner is 75 years old. They have lived in their homes for thirty-five years. This is going to upset their quality of life. He is totally against this and asked the Board not to grant these requests.

He said if the Board decides not to vote on this tonight and he is not at the next meeting on these requests he wants the Board to know that he is not going to change his mind.

Cindy Gale, 4 Catherine Street. Mrs. Gale said she wants the Board to know that she is very sensitive about Mr. Duhamel's and Mrs. Wardner's rights. She said they are senior citizens on a fixed income. They have not had legal representation. She said she knows for a fact that this whole legal process in front of the Board is intimidating to her as well as to these people. She said their rights are not being heard and they count.

Mr. Dookran said he presumed that Ms. Gale was speaking on behalf of Mr. Duhamel and Mrs. Wardner and Ms. Gale confirmed this.

Mr. Dookran asked Ms. Gale if she believes Mrs. Wardner values Salmon Brook as Ald. Dion just spoke to.

Ms. Gale said "absolutely."

Mr. Dookran asked Ms. Gale if she knew whether Mrs. Wardner had any intention of subdividing her lot.

Ms. Gale said she does not know the answer to this.

Ruth Lyons, 6 Catherine Street. Mrs. Lyons said this is a confusing issue. She said she is confused and she thinks a lot of the other neighbors are as well.

She said she has been coming to these meetings for almost a year because of another situation and she has had quite an education - not only attending the Planning Board meetings, but the ZBA meetings, and the Board of Aldermen meetings. Such terms as non-conforming lots, easements, variances, back lots, subdivisions, paper streets and the lack of buildable lots in Nashua has been mind-boggling.

She said as a property owner for the past twenty-three years on Catherine Street, it seems that the only term that will give the long-established neighborhoods equal consideration is a moratorium on building. Other places have done it - what's wrong with Nashua.

She said until they get the ordinances and these questions all figured out they are going to have a terrible mess. She said she thought some of the subdivisions and some of the other things that have happened in Nashua definitely fall in that category.

She said before this even came to the Planning Board they had equipment go right through Mrs. Duhamel's garden (something they've had for the last thirty years or so) and they dug holes. She said they even went into the wetland and dug holes. She said Mr. Duhamel was not home and no one has even talked to him about that. She said she doesn't know too much about the law, but she has studied adverse possession a little bit and she is raising the question to the Board.

Mrs. Lyons said the Zoning Board and the Planning Board have the power to say "no" to an applicant when their plan will have an adverse affect on an already established neighborhood. She also

understands that by saying "no", down the line there will be a lawsuit.

She said she thinks the applicant has agreed to stipulations and as concerned residents they should watch closely. If this is approved, they should make sure it's done right. She said she wants to go on record as being opposed to the requests.

Rita Wardner. Mrs. Wardner said she does not intend to add anything else in the back of her property. She said it's going to stay just like it is.

Mr. Dufour said he wanted to address the moratorium suggestion made by Mrs. Lyons. He said this is not within the purview of the Planning Board. He said that is under the jurisdiction of the Board of Alderman.

Mrs. Lyons said she understands that.

Ald. Larose said last Tuesday at the Aldermanic meeting they received a letter from a Mrs. Vincent from Wellington Street. It was sent to the Planning & Economic Committee. The letter addressed how the north end was being chopped up, etc. It was published in the newspaper either yesterday or today. All the members of the Board of Aldermen are concerned with what they are seeing happening to the City of Nashua. He expects that the Planning & Economic Committee will be looking at this very closely and trying to resolve what some people perceive as the City being chopped up.

Mr. Koutsos said Mrs. Wardner doesn't really quite understand the situation here.

#### **SPEAKING IN FAVOR**

No One.

Mr. Dufour asked if the applicant would like to address the issues that have been brought up by those people who spoke in opposition or who had concerns.

Richard Maynard. Mr. Maynard showed where there would be another lot created from Mrs. Wardner's lot and the location of the house on that lot assuming that she received the required variances. He explained that they would go the shorter distance to connect because of the cost involved.

He said it's possible that there would be a gravity sewer connection as opposed to a force main. He said he didn't know that answer.

Mr. Maynard said Mrs. Wardner has rights to the entire 40' paper street, just like everybody else. He said there's more than adequate room in that 40' strip to locate a 2" force main if she or whoever else wanted to subdivide down the road. He showed where else it could be placed. He said there is an alternate to the 10' separation for sewer (horizontally) is that be separated 18" vertically and they can be closer than 10'. The other alternative is to connect together into the force main. He said what they are doing here does not preclude any of Mrs. Wardner's potential future development rights if the appropriate variances are obtained.

He said there was a point made about sewers backing up. He said the sewers back up because this is a combined sewer neighborhood. He said they will not be contributing to this with regard to the drainage. He said when there are combined sewers, it's the storm drainage component that causes the sewers to become overwhelmed. Storm runoff is ten to twenty times of normal sanitary sewerage. He said people who have connections out of their basements below the elevation of the street in combined sewer neighborhoods (wherever they are) will have this concern, but this development is not contributing to that. He said they are taking care of their own ground water and their own storm water.

Mr. Dufour asked Mr. Maynard to address the sensitivity of the wetlands and the fertilizer issue.

Mr. Maynard said they have an extensive tope plan. He said it identifies the wetland and the 75' buffer line, which has to stay as wooded and undisturbed. The wetland buffer provides an area for the runoff to be treated by running over the land and allowing it to percolate into the ground.

Mr. Dufour said what Mr. Maynard is saying that fertilizer is allowed, but that because of the site design and the distance it filters itself.

Mr. Maynard said it filters itself and ends up in the ground.

He said this is not Salmon Brook. He said it's a wooded swamp associated with Salmon Brook. It gets kind of dry in the late

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fall, but is wet during the rest of the year. He said Salmon Brook itself may be 500 to 1000 yards away.

Mr. Dufour said in the two times he's been out here he didn't see it.

Mr. Maynard said you can't see any true wet, but it is a wooded swamp and falls under the wetlands regulations.

Mr. Farkas asked the size of the pipes for water and sewer connections needed to support the two houses.

Mr. Maynard said for water it's 1" - 1 1/2". It's a normal service line that everybody has from the street to his or her home. He thinks there's an 8" water line in the street itself. The sewer line is also 8".

Mr. Farkas asked what size they would use if they were doing three houses.

Mr. Maynard said when you talk about water, it's a combination of pressure and pipe size. Eight inches is the typical pipe size in the street. It serves hundreds of homes at a time. For sewer it depends on the slope of the pipe on it's capacity, but an 8" sewer can handle about 200 homes before it would have to be upgraded to a 10" or 12" pipe. He said there's more than enough capacity for both sewer and water in this particular area.

Mr. Farkas asked a question about the pipes in the street and the capacity to handle a third home.

Mr. Maynard said they are not putting anything in the street, but if anyone wanted to put in a third or fourth home there is adequate capacity within the municipal pipes in the street.

Mr. Dufour said he thought Mr. Farkas' question related to the private drive.

Mr. Maynard said those are private services that each individual has to pay to bring to their home. They are not public lines.

Mr. Dufour asked Mr. Maynard if he is saying that because of the size of the street there is adequate room on the street to accommodate the service for another home.

Mr. Lowe asked a question that was unintelligible.

Mr. Maynard said it was highly unlikely the next owner is going to get another variance to do anything on that particular land because it's all consolidated and it has to be a subdivision.

Mr. Lowe said a 10' separation between sewer lines makes it impossible to do this because 10', 10', 10', and 10' are 40'.

Mr. Maynard said they can go vertical and the water lines can be side by side as the 2" sewer force mains can be and they would fit in the street. These are not huge pipes. It's not that every pipe is 10' from each other.

Atty. Brad Westgate. Atty. Westgate said when Mr. Koutsos referenced everything consolidated into one lot and two houses on one lot, that is not what the 2005 Zoning Board variance approval contemplated. In 1994 there was not a variance technically, but another statutory process was followed to allow a building permit to be issued under certain conditions on a consolidation of all of the properties. That was never acted upon so it lapsed.

He said the variance that was issued by the Zoning Board on August 9, 2005 did not contemplate the consolidation of all four lots. He passed out some paperwork to the Board. The variance was for one home on Lot 158, which is the southerly parcel and one home on the consolidated lots (148, 152 & 155) to be known as Lot 148. This is the northerly parcel. He asked the Board to take a look at the second page of the approval letter from the Zoning Board, Item 3 says Lots 148, 152 & 158 shall be consolidated into one lot. This is an error - the intent was Lots 155, 152 & 148 to be the one lot.

He said the consolidation documents are ready for recording pending this process. They have prepared and the City has executed two consolidation documents, one consolidating the lower parcel with it's little portion of the paper street and the other consolidating the other three parcels. Presently these are shown as four lots on the Assessor's map.

He said that they have established and Mrs. Trottier has executed a common driveway and common utility easement instrument. It has not yet been recorded pending this process. He said they have parceled out the respective rights to use the existing easements between the two properties. One of the Zoning Board conditions is that they have a common driveway instrument.

Mr. Dufour asked if it is required or if there is a need for the people to the north and south of the common driveway to have input into this easement agreement.

Atty. Westgate said he didn't believe it is. He said the applicant has the rights of access and utility rights from the paper street concept that he discussed earlier. He said they can only use them in a manner that does not preclude others from their common usage as well. They can create their driveways, but they have to honor Mrs. Wardner's and Mr. Duhamel's right to use the driveways too, which they acknowledge and understand. He said they don't need to join in their document or their input into the establishment of the document, but they have to honor their common usage rights over that paper street and they do so with the design, as Mr. Maynard has described.

Mr. Dufour said he read over the agreement. It requires maintenance and resurfacing, etc. He asked if the people to the north and south at any point in time required to make a contribution to the successful utility of this private road.

Atty. Westgate said "no." He said if they use it the "Trottier" properties can request that they contribute their appropriate share attributable to their use. He suspects that in practical terms that probably would not happen. For example, if Mr. Duhamel just used the beginning leg of the common driveway to go behind his house for whatever reason, he doubts highly that anyone would look for a contribution from him for that small limited use. In theory, the "Trottier" properties could request that Mr. Duhamel make some contribution to the maintenance of the common driveway commensurate with the use that he puts to it.

Mr. Farkas said they could request it, but is it required.

Atty. Westgate asked if, in theory, they could go to court and try to say they should pay 1% of the snowplowing. He said he supposes that one could. He said it isn't going to happen in practical terms. The lawyer fees would wipe out the issue.

Mr. Farkas said earlier Atty. Westgate said he'd have no problem acknowledging the rights of 145 & 164 to continue to have the same use rights.

Atty. Westgate said "absolutely." He said if that is a condition of the Board they will do that.

He said he's come to a lot of meetings on these cases over the last year or so too. He said he doesn't know how many times he has to say that this is a paper street and they have access rights to it that he has described. It's not a debatable point. Anybody who has studied in this area could be asked and they'll all have that same conclusion. He has a hard time squaring this type of concern. He said tonight they heard a comment that it would probably be high end homes that will be built out here, but the City has to guard against the degradation of existing neighborhoods because building homes on these kinds of lots perhaps will be deleterious to property values. He said it can't be both ways. The concerns have to be consistent in some fashion.

He said lastly, it's important to remember the ordinance that they are addressing tonight. He said they are here because the Board of Alderman passed an ordinance to give the Planning Board the authority to grant special use permits for homes off paper streets. They have to meet six criteria under that regulation, Section 16-8 of the Land Use Code. He said by passing that ordinance the Board of Alderman contemplated that it was possible to build houses off paper streets. Otherwise there would be no purpose in having an ordinance to regulate the building of houses off paper streets.

He said secondly, the Board of Alderman saw fit to figure out what six criteria it thought important for this Board to consider. Those six criteria do not contemplate an analysis of impact on adjoining properties and how the integration of one development may affect another nor do they require a legal treatise on what is and isn't a paper street or what the implied easements are that go with it. It only required the six criteria referenced in Section 16-8 of the Land Use Code, which are fundamentally practical concerns as to how you property develop the land from a land use perspective, not a legal analysis perspective.

He said a lot of what's been discussed this evening is really not germane to the six points under Section 16-8. It may be germane to civil disputes that are outside of the planning process that may or may not arise. They don't go to the heart of what the Planning Board should do, which is to make findings on the six criteria.

Mr. Dufour said some of the people speaking in opposition felt that in addition to the process that they are going through tonight, that a subdivision approval was also needed.

Atty. Westgate said he didn't think that was the case given the variance that the ZBA granted. It recognized one house on one parcel and one on the combination of the other three. Couple that with the action by the Tax Collector and the Planning Department to sign the two separate consolidation instruments recognizing the existence of the southerly lot and the combined northerly lot.

Mr. Torosian referred to the handout that Atty. Westgate passed to the Board. He said the second to last paragraph talks about what Mr. Dufour just said - that the granting of the variance does not relieve the owner/applicant of the requirement to obtain Planning Board approval for a site plan or subdivision plan.

Mr. Yeomans said he didn't believe that this language was intended to imply that they had to go through the process.

Mr. Torosian said if you're going to buy one of these pieces of land wouldn't it have to be subdivided.

Mr. Yeomans said a platted street separated the lots. The applicant is consolidating all the common lots on opposite sides of the street per Zoning Board approval. He said the staff believes this to be correct. That portion of the driveway has been included in those lots as well.

Mr. Dufour said this new process in Section 16-8 has changed and replaced the old process with this process. He said this is the way he views it.

He said it was noted that on Page 2, Item 3 it states that Lots 148, 152 & 158 shall be consolidated into one lot. He asked if it was Atty. Westgate's statement that these lot numbers were incorrect.

Atty. Westgate said Lot 158 is incorrect. It should be Lots 148, 152 & 155. Those are the three upper lots. It wouldn't make sense to consolidate two of the three upper lots with the lower lot.

He said with reference to the second to last paragraph on Page 2, he believes that the paragraphs shown under "Important

Information" are the standard paragraphs that are part of every Zoning Board approval letter.

Mr. Dookran said he is sure they will be looking at the six criteria under Section 16-8 to make a decision on this case, but he thinks its also important that the Board understands ownership and rights of easement/access issues. Otherwise it would be irresponsible of them to make a decision without knowing the answer to those questions.

He said that Mr. Koutsos said that the implied easements are a "maybe." He asked Atty. Westgate why Mr. Koutsos had doubts.

Atty. Westgate said he didn't know, but he (Atty. Westgate) has no doubt.

John Koutsos. Mr. Koutsos said what he's had a problem with is how they refer to the paper street when it suits their argument. He said they're saying they don't have to subdivide because the land on one side of the street is separate from the lots on the other side. He said all you have to do is go to the GIS map. He said they took Oakland Avenue off the map and all the land is touching. He said they are all in agreement that after twenty years the City lost its rights to develop the street. Therefore, they are saying that it needs subdivision approval under Section 16-302 because the entire piece is contiguous non-conforming land. The paper street does not split it. If it is, it would be like saying the "Trottier's" don't own to the centerline of the street.

He said what the Board is not seeing is the history. He said he thought if they went back to the original deeds from Earl Rice to Theresa Trottier, which transferred in 1969, there were no reservations made for utilities in the original deed in 1915 and 1923. There were only provisions made that showed the street. He said there are a lot of legal issues that he thought the Board needs to get clarification on.

Mr. Slivinski said he doesn't know what the legal rights are with regard to the access. He said he'd feel better if he had a letter from the City's Corporation Counsel saying they had the legal rights to do this. He said if what they heard tonight about this work being done without being in contact with the two abutters is deplorable. He said he is not going to vote on this project until he knows exactly what their legal rights are.

Mr. Dufour asked if Mr. Slivinski if he is suggesting that they go to Corporation Counsel to ask if the ownership and usage of the private drive is what was presented to them tonight.

Mr. Slivinski said "yes." He said maybe they have access, but maybe that access doesn't include putting pavement down to where they want to go.

Mr. Farkas said if they are going to get information from Corporation Counsel they should be very clear and specific on what they are asking.

Mr. Slivinski said he wants to hear from City Corporation Counsel that the applicant has the legal right to put permanent pavement, access, and utilities without consideration. If he has that then he knows they can legally do what they want to do.

Mr. Farkas said in the final analysis City Corporation Counsel cannot say with any definiteness what rights may or may not be determined in the future by a court of law. A court could interpret it differently. For instance, Atty. Westgate said that they would be entitled to ask for a pro-rata share if the abutters were to use the drive. A court might side with that or it might not. That is the type of thing that City Corporation Counsel won't be able to give a definite answer on. If the parties agree to it, then it's clear and there's nothing to argue about.

Mr. Dufour asked Mr. Farkas if it was his thought that the party to the north and the party to the south could be exempt from the requirement to pay based on the language of the documents.

Mr. Farkas reply could not be understood.

Mr. Dufour said it seems that they would be an innocent third party to this so he doesn't see why they should be encumbered with any responsibility for this in the future. He asked if that is something that could be stipulated.

Mr. Yeomans said he thought that Atty. Westgate indicated they would be willing to put an agreement together and if all parties agree to it, that's fine.

Mr. Torosian said he would feel a lot more comfortable getting an opinion from Corporation Counsel. He said he also would like to find out if it needs a subdivision.

Ald. Larose said he also had this question. He said if twenty years after the paper street was created and it wasn't used any more, the lot lines get to the middle, isn't it now a continuous piece of land and why is it that they don't need to get subdivision approval. It seems like they have it two ways. It's a street, but then it's not a street. It's a paper street, it's not a paper street. It was said that now it's a special use permit so they don't have to go through the other exercise and he's not sure that is correct.

Mr. Dufour said in addition to owns the street and who has to maintain it is the question of whether a subdivision approval needed in addition to the special use permit approval.

Mr. Farkas said if they are asking what the intent of the NRO is, in addition to asking Corporation Counsel what his opinion is of what the Alderman meant when they did this legislation, that they ask the Aldermen for an opinion of what the legislative intent was when they drafted the legislation.

Mr. Dufour said it appeared to him that they are heading in the direction of tabling this in pursuit of more answers from Corporation Counsel.

Mr. Lowe asked a question about site distance from the driveway and made some other comments, but his remarks were unintelligible.

Richard Maynard. Mr. Maynard said that in the new ordinance there's a section that talks about safe site distance for driveways and it specifically tells you what the distances are for the different speed limits. There are three tables in the ordinance for the different situations - street intersections, driveways, and other things. For this situation the required site distance is 130'. It states this on Sheet 2 of the plan. He said this has been reviewed by the Traffic Department.

Ald. Larose said that he is hoping that the abutters listened to what the Board has been saying and that they at least try to seek some kind of legal assistance or legal advice to make sure they know what their rights are. He said if they can't afford such, hopefully some lawyer in Nashua might be watching this program tonight and might help them out a little bit.

Mr. Dufour asked that they try to get the questions together for Corporation Counsel.

Ald. Larose asked if the applicant need a subdivision or site plan approval. He said as far as he's concerned the lot lines got changed when the paper street was no longer in existence. The abutters own to the centerline, which consolidates all the lots.

He said the other suggestion that he would make is that if they are going to table this, it should be tabled to the meeting after their next meeting so that Corporation Counsel has a chance to look over the written minutes and answer some of the other questions that have come up. He said a lot of questions were asked and both sides gave valid arguments. He said for the Board to do their job properly they need some answers.

Mr. Dufour said the first question is that in addition to the special use permit that's being sought, does the applicant need site plan or subdivision plan approval because in the 1940's the paper street disappeared, forming one lot.

Ald. Larose said this is correct.

Mr. Yeomans asked if it would be amenable to the Board to have a workshop, if staff could arrange one with Corporation Counsel prior to their next meeting so they could hash this all out at one time rather than writing memos, etc.

Mr. Dufour said that would be fine if they weren't speaking about this application specifically because that would be, in effect, holding a side meeting on this. Because this is new legislation and a new way of looking at parcels of land, they could probably schedule a workshop asking for direction and pose some of the very questions that have come up tonight. However, he thought they should continue with their specific questions on this case.

Mr. Dufour said the next question pertain to ownership rights of the four parcels involved - the two that will be created and the one to the north and south of the common drive. He said Mr. Slivinski's concern is that it's been represented that in that area the back lots are taking privileges from the two front lots that may or may not be allowable problems. Another question is: Is there a way by the wording of the easement where they can exempt the existing parcel to the north and south from incurring any financial responsibility to maintain that private drive.

He said it's been represented tonight through the color-coded paper street that all four sites have equal access and usage to

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that paper street. The question is: Do all four sites have equal rights of access and usage to that paper street.

Mr. Lowe said everybody is saying that this is a paper street. The applicant is putting in two driveways.

Mr. Dufour said it is his understanding that at one time there was a paper street there that the City could have turned into a public right-of-way.

Mr. Lowe said what they are putting in is two private driveways, not a street. He said everybody is calling it a paper street, but it's not a paper street - it's a private drive.

Mr. Dufour said this is correct.

Mr. Lowe said his question for Corporation Counsel is: Is it a paper street or a private drive?

Mr. Farkas had another question: What was the legislative intent of the special use permit relative to subdivision approvals and does it circumvent it or not. He said the Board wanted Corporation Counsel's opinion on this question and he wanted the Aldermen's opinion of what it is they passed as legislation. Part of what Corporation Counsel is going to try to have to do to give a legal opinion of what the effect of the statute that's been passed or the ordinance that's been passed is to look at the legislative intent.

Mr. Dufour said he didn't know if those people who were Aldermen at the time are still on the Board.

Ald. Larose said ten of the fifteen are still sitting on the Board of Alderman.

Mr. Dufour said he wasn't sure that they would get a unified answer to that question. He said he thought they should leave that to Corporation Counsel.

Mr. Dookran said all legislation goes through Corporation Counsel's office so he is sure Atty. Connell is very familiar with the background.

**MOTION** by Ald. Larose to table Case #1 until the Board's meeting on April 13, 2005 for the purpose of getting answers to the questions that were presented tonight.

Mr. Dufour said they will hear this item first on the agenda.

**SECONDED** by Mr. Lowe.

**MOTION CARRIED 7-1, Mr. Farkas opposed.**

**MOTION** by Ald. Larose to table Case #2 until the Board's meeting on April 13, 2005 for the purpose of getting answers to the questions that were presented tonight. He said they will hear this item first on the agenda, taken with Case #1.

**SECONDED** by Mr. Lowe.

**MOTION CARRIED 7-1, Mr. Farkas opposed.**

**NEW BUSINESS - SUBDIVISION PLAN**

3. Roger P. Picard (Owner) - Application acceptance and proposed subdivision of one lot into two, 148 East Dunstable Road, Sheet B - Lob 1752, Zoned "R9" - Suburban Residence.

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

**SECONDED** by Mr. Farkas.

**MOTION CARRIED UNANIMOUSLY (Mr. Lowe not present)**

Testimony on this case could barely be discerned from both Main and backup tapes. Therefore, this transcription may be very sketchy.

William Belanger ????. Mr. Belanger said that each lot will have over 16,000 square feet of land, almost double of what's required in this zoning district.

He said that in December they received approval for lot width of 50.07 feet where 75 feet is required and for lot frontage of 50.07 feet where 90 feet is required. He said the site is almost entirely open. He pointed out the lawn area. He said part of the Zoning Board approval was to fix the fence along the rear property line.

Mr. Dufour asked was it to fix the back fence or to replace it.

Mr. Belanger said to replace it.

He said the utilities are pretty straightforward. He indicated the location of a broken telephone pole and said that was going to be replaced.

He said there is overhead service to the existing house and the applicant would prefer to go underground.

He said to mitigate their increased runoff from storm water they are proposing three small recharge basins. There is no increase in storm water runoff.

He said there were concerns raised about the site distance because of the dividing hedge. The road is straight, but they are proposing to remove and relocate one of the shrubs.

He said they are showing sidewalks on the plan. He said the applicant has indicated he would prefer to make the donation of \$50 per linear foot of frontage instead of constructing sidewalk. If they were to build the sidewalk there would be a gap in the sidewalk as the sidewalk ends at Judith, about 160' away from the subject lot.

Mr. Dufour said the fence is in disrepair all the way around the site. He said he thought the fencing should be replaced. He said they have already replaced the fencing to the west so he is talking about the fencing to the east and south, resulting in new fencing around the new lot.

Mr. Belanger said the hedge is pretty dense and he didn't believe it would need a fence in that area.

Mr. Dookran asked if the sidewalk introducing any drainage puddling issues on East Dunstable Road.

Mr. Belanger said he didn't believe so. He said there seems to be a pretty good pitch there.

Mr. Dookran asked if the reason they are asking to make the contribution instead of constructing sidewalk is because they would like to see it completed through Judith Drive.

Mr. Belanger said this is correct.

**SPEAKING IN OPPOSITION OR WITH CONCERNS**

Walter Fitzpatrick, 5 Jensen Street. Mr. Fitzpatrick said he abuts to the rear of the property. He said this is another continuation of ruining the neighborhood. He said there aren't any lots around like this.

He said he knows his lot size is smaller than these, but it does conform to the neighborhood. He said he doesn't feel that this one does.

Karen Yau, 3 Judith Drive. Mrs. Yau said they don't know how big and high this house is going to be. Right now she has a deep and sunny back yard and they are afraid that this house may take away some of their sunlight. It looks like the house is going to be right in their back yard.

Mr. Dufour said it actually looks like its going to be more to the opposite side of the lot, but they will have the applicant address this.

Mr. Belanger said that end of it was going to be a garage. He said the maximum height of permitted structures is 2 ½ stories so he didn't think it was going to overshadow anything.

Mrs. Yau asked what the distance is from her house to the house that is proposed for the lot.

Mr. Belanger said the "Yau's" are about 40' away from the property lot line and there is a 10' setback plus they have to put in the drive for the house that would be built in the back.

Mr. Dufour asked Mr. Belanger how many feet there would be from the property line to the proposed structure.

Mr. Belanger said 20'.

Mr. Dufour said there is 20' here and from the edge of Mrs. Yau's house to the lot line there is 40'

Jeanne Fitzpatrick, 5 Jensen Street. Mrs. Fitzpatrick said she and her husband's property abut lot. She said the variance was granted with the special condition about the fence. It was supposed to be replaced across both back lots. She asked when that would take place.

Mr. Dufour asked when Mrs. Fitzpatrick would want it to be done.

Mrs. Fitzpatrick said once it's approved.

She said right now the existing house is for sale. She asked what would happen if that house would get sold before all of this gets approved. She asked if everything is just carried over to the new owners or if they would have to start all over again. In other words, who is responsible for putting up the fence.

Mr. Dufour said the applicant is responsible.

Mrs. Fitzpatrick said she understands that there are a couple of catch basins that will be going in. She said she would like to make sure that it's not going to affect the drainage easements. There is a drainage easement between their property and 3 Jensen. In the back of 3 Jensen out to Judith there's another drainage easement.

She said they've had a water problem all along, both in the front yard as well as in the back. She would like to make sure with a new building going in on the lot that it wouldn't interfere with any of that.

Mr. Dufour asked what the drainage easement entails.

Mrs. Fitzpatrick said they have a manhole cover between their lot and the lot next to it - 3 Jensen and there's a manhole cover out in the street. She said they don't have a swale - everything is underground. In the back of 3 Jensen all the way out to Judith there is another easement.

Mr. Dufour said he's not sure that what Mrs. Fitzpatrick interprets as being there is something that actually affects keeping her site dry. He said he thought it was some type of utility easement.

Mrs. Fitzpatrick said it states right on it that it's a drainage easement. She said it is on their deed.

Mr. Farkas said those types of easements that are on deeds run with the land and can't be affected by what ???? unintelligible.

Mr. Dufour said Mrs. Fitzpatrick's concern is if her wet back yard going to be any wetter once the house is built.

Mrs. Fitzpatrick agreed. She said now there would be less land for the water to drain.

Mr. Dufour asked Mr. Belanger to explain how they are treating the water runoff.

Mr. Belanger said they are draining onto the subject lot, not vice versa. He pointed out the high point on the lot. He said they are grading kind of a swale to make sure the roof runoff comes off the building and goes over to what is a low point. He showed this location. He said they are putting in an infiltration basin. The water goes in and penetrates back into the ground. He said these are sandy soils and this will happen rapidly.

She said they keep hearing that the lot is bigger than their lot and it conforms to the lot size. She said it's the configuration of the house that's going on the property that's changing what they are used to seeing in the twenty-seven years they have lived there. She said to her this house is being squeezed in that configuration in order to conform to the lot. She said their home has one story. The three houses on Jensen behind these are all one story. From the plan she has it looks like the new house is going to be 2 ½ stories tall. She asked if this was correct.

Answer could not be understood.

Mrs. Fitzpatrick had a question on the setbacks. She said on the plan she has it indicates that 10' is required. She said the existing house will have a 9' setback. She asked if this was accurate.

Mr. Belanger said there is a minor encroachment in the corner. He pointed it out on the plan. He said this is an existing condition.

Mrs. Fitzpatrick asked if this needs a variance.

Mr. Dufour said it does not because it is already existing.

Mrs. Fitzpatrick indicated there's a new telephone pole on the property. She showed it's location on the plan. She said there's nothing on it. She said she heard there was a pole on Judith Street that was broken and was going to be replaced. She said she couldn't see a pole there, but she only looked from the street. She asked if the services would be coming from overhead.

Mr. Belanger pointed out the location of the existing pole that is broken. He said the other pole that Mrs. Fitzpatrick may have been a guide pole, but he doesn't really know that for sure. He indicated the applicant wants to go underground for his services.

Mr. Dufour said the new home will be put on the lot where it can fit. The zoning laws allow for certain structures in different zoning areas so they really can't control the size.

Bill Daley, 1 Judith Drive. Mr. Daley said a new pole has been set. He said about a month ago they experienced high windstorms and they had a tree come down across their property that's right at the edge of the location for the new driveway. It took out the power all around the neighborhood, except for his house.

He said the feed comes from across Dunstable Road through the back yard of 1 Judith Drive to a pole set at 3 Judith Drive to feed back out to the existing property at 145. He said the pole has been snapped for about a month now. He said he's not sure who reset the pole, but it has been reset at the location that has been pointed out on the plan. The feed still comes from across East Dunstable Road.

Mr. Dufour asked Mr. Daley if he knows anything about the pole that Mrs. Fitzpatrick spoke of.

Mr. Daley said it may be for temporary service since it's been stated that the utilities will be underground, which brings up another point for him. He said he is the abutter at 1 Judith Drive. He said there are a series of very tall/very aged pine trees there and they have already experienced one tree coming down, which did not cause any property damage as it was closer to the street. He said some of the interior trees are huge and have the potential to go either way. He said they are so big that they can reach his home as well as what will be the new property and the current property.

He said when he first moved into this home he had the opportunity to call Public Service to come over and look at these trees and he was told that they were fine. Six months later the tree came down and put power out throughout the neighborhood.

He said he's pleased to hear that new fencing will be put around the property because the fence in his back yard is pretty beat. He asked if this is the proper forum to ask what type of fencing this will be.

Mr. Dufour said he would expect it to be the same type of fence that's there on the other side (similar to the new fence).

Karen Yau. Mrs. Yau said she heard testimony that there's going to be a basin in the lower corner of the new lot.

Mr. Belanger pointed out the low point of the lot. He said this is where all the water is going today.

Mrs. Yau asked if it was going to affect the side of her yard if it overflows.

Mr. Belanger said it shouldn't.

Mr. Dufour asked how this is constructed.

Mr. Belanger said it's a small, perforated basin. It's below grade so they won't even see it.

Mr. Dufour said it's an improvement over what's there now.

Mr. Dookran said Mrs. Fitzpatrick mentioned the possibility that all the drainage from the upper properties drain through this new property today. He asked if the drainage calculations have included drainage from outside properties that may be running through this site today.

The answer was unintelligible.

Jean Fitzpatrick, 5 Jensen Street. Mrs. Fitzpatrick said there has been a history of problems with drainage there. She said there were extra catch basins put into the front of 11 Jensen and at 3 Jensen they had to put in an extra drain in their driveway because water was backing up into their garage.

She also submitted a picture of the new telephone pole to the Board. She said it also shows some of the fencing. She said the new fencing that was put up seems to attach to the end of the existing garage. She asked if this where the boundary is or if it was only hooked up in this location temporarily.

Mr. Dufour said a fence doesn't have to put along a property line. He commented that the picture of the pole seems to a temporary service pole.

**SPEAKING IN FAVOR**

No One.

Ald. Larose asked staff if they know why there is a 20' wide right-of-way.

Mr. Sawyer said he couldn't find an exact answer. He said in looking at the history of the property, there was an old farmland and the subdivision that created Judith Drive & Jensen Street came from this land. This was just one means of access/egress that was reserved for that parcel. He said the property has been subdivided a few times since then. He said he doesn't see that it serves any purpose.

He said the request for the sidewalk waiver that was mentioned tonight is something new. He said that would have been included in his staff report if he had known that was going to be addressed. He said there appears to be sidewalk within the 250' "magic number." The regulations state they should not be waiving the sidewalk construction if there's a sidewalk within 250'.

Ald. Larose said not long ago the Board approved something a little further down on the left hand side. He asked if they were building sidewalks there.

Mr. Sawyer said he believes so. He said that was under the old ordinance with priority streets. He said this is one of the sections that has changed in the new code. The "priority street" verbiage is no longer in the new code. There are new requirements under Section 16-617, which essentially simplified it so all streets are treated the same. He said if the Board grants the waiver, conditions #3 & #4 would not be necessary since they deal specifically with the construction of the sidewalk.

Mr. Farkas asked Mr. Dookran about what he thought of accepting the contribution of \$7,600 instead of having the applicant construct the sidewalk.

Mr. Dookran said the same case that the Board saw a couple of weeks ago that Ald. Larose referred to also had the same option presented. He stated then and he will state now that East Dunstable Road is in dire need of sidewalks and the City does not have the resources to put sidewalks throughout at this point in time.

He said the calculation of \$50 a foot results in the \$7,600 figure. He said it costs the City somewhat more than this, depending upon the construction bid. He said he preferred to see the sidewalks built by the applicant.

**MOTION** by Mr. Farkas to approve proposed subdivision of one lot into two, 148 East Dunstable Road with the finding that it meets NRO Section 16-440(g) and with the following stipulations:

1. Prior to ANY work being conducted, a pre-construction conference shall be set up with the Planning Department.
2. Prior to the plan being recorded, the utility and 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. Fencing shall be replaced on the southern and eastern property lines prior to a building permit being issued.

**SECONDED** by Mr. Moran.

Ald. Larose said he knows that it appears that under the law this is permitted. They are getting to the point where they are seeing a lot of these types of "fill-ins." It seems like when there is a large lot in the City, somebody purchases it, subdivides it to put in new housing and puts everything up for sale. He said unfortunately the Zoning Board is giving the variances that are required. He said they really don't meet the intent of the law. He asked if they are developing Nashua to start to look like Hampton Beach.

He said he knows that he has voted for some of these, but it is getting to the point where they have to take a second look at what's happening to the City of Nashua. This is almost like putting two houses on one lot, which is illegal in the City of Nashua, so they subdivide their land.

Mr. Dufour said he shared in Ald. Larose's frustration. He said he just heard him echo something that he himself has said at least two or three years ago. He voted against a lot very similar to this, only to have the City go through considerable expense defending the Board's actions, and only to lose.

He said these lots are going in and the Board is seeing more and more of them because they can legally go in. He said it's his

belief that they can't legally deny them. There is a process, however, to make the creation of these flag lots go away and that's through the Aldermanic process.

Ald. Larose said as he indicated earlier tonight, the letter they received this past week at the Aldermanic meeting has been referred to the Planning & Economic Committee and hopefully they will be taking positive action. He said there are members of the Board of Aldermen starting to see that this is becoming a problem in the City of Nashua.

Mr. Slivinski said Atty. Prunier has basically said this goes far beyond the City or the County. It goes up to the State Supreme Court level so it doesn't matter.

Mr. Dufour said he was at the last Aldermanic meeting. There were people there who were speaking against the Planning Board so he listened to their concerns. He said he agreed with some of them and some were way out of line. The bottom line is that they have rules and regulations and right now the Aldermen are hearing one side of the story. What Mr. Prunier said is the other side of the story and that's not going to get heard until those people that own property that think they have rights and can work with their property hear that's been taken away.

He said the outcry right now is to stop this. The reality of the situation is that State law overriding City law may not permit it. This isn't something the Board decides. That fight has to occur somewhere else.

Mr. Lowe made some comments, but there were unintelligible.

Mr. Farkas said there are things that come to the Planning Board that have already been decided that are not under their purview. To that extent it is no longer up to them to make a decision. He said they apply the land use regulations based on the case in front of them, based on the law, and the facts presented. The Zoning Board has already granted a variance so it's not something they can re-debate. He said they can talk about it all they want, but there's nothing they can do because they don't have the authority to change it.

He said the Aldermen who come into their meetings now and then say that the Planning Board should or shouldn't do this or that. He said the Planning Board is a quasi-judicial body. They apply the law based on the facts and circumstances presented to them. There are certain criteria that they can take in that are

discretionary, but that's not enough. If they want to change the way the law is written is with the Aldermen or the land use regulations.

He said he sat on the Zoning Board for a while and approximately five or six years ago there was a change in what constituted a hardship and that made getting a hardship determination a lot easier and that was determined by the State Supreme Court so the Zoning Board's hands are tied in some respects.

Ald. Larose said they have criteria they have to use when they are making a decision and not what they feel personally about a particular project. He said there are many times when they vote "yes" on something that in their heart they don't want to, but they don't have a choice. They have to go by the law.

**MOTION CARRIED 7-1, Mr. Lowe opposed.**

**NEW BUSINESS - SITE PLAN**

None

**Other Business**

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

**MOTION** by Mr. Farkas said there are no issues of regional impact.

**SECONDED** by Mr. Moran.

**MOTION CARRIED UNANIMOUSLY**

2. **Referral of the FY 2007 Capital Improvements Program from the Capital Improvements Committee to the Nashua City Planning Board.**

Mr. Dufour said at the last meeting they had the opportunity to go over part of the Capital Improvements Program for 2007. He would like to move this forward tonight, if possible. He said if there are no questions, he is asking for somebody to make a favorable recommendation.

**MOTION** by Ald. Larose for a favorable recommendation on the FY 2007 Capital Improvements Program.

**SECONDED** by Mr. Farkas.

**MOTION CARRIED UNANIMOUSLY**

3. **Referral from the Board of Alderman on proposed O-06-05, amending temporary sign setback language of the Zoning Ordinance.**

Mr. Yeomans said as he understands the genus of this request, it was a result of an enforcement action out of the old zoning ordinance. It dealt with temporary signage placed along the highway right-of-way. Under the new code that issue is pretty much resolved with the current language under Section 16-257. Subpart (b)(6) will be modified that to cross out the word "setbacks" as a means of clarification. The setback criteria is in subpart (3).

**MOTION** by Ald. Larose for favorable recommendation to the Board of Alderman on O-06-05, amending temporary sign setback language of the Zoning Ordinance.

**SECONDED** by Mr. Lowe.

**MOTION CARRIED UNANIMOUSLY**

4. **Referral from the Board of Alderman on proposed O-06-06, increasing Environmental Health Department fees.**

Mr. Yeomans said they have an ordinance from the Health Department that is going to change Chapter 9, but part of this does deal with Chapter 16, Subpart 15 that deals with the fee for subdivision plan review of individual sewage disposal systems. It is increasing from \$20 to \$40.

He said they are asking for a favorable recommendation.

Ald. Larose said he went through the ordinance and he looked at what the City was charging prior to the new list. He concurs that this should be given a favorable recommendation. He said he knows that people don't like to have increases, but the City periodically needs to increase their fees. The City's costs go up just like everybody else's. He said he believes the increase is not so substantial that it's going to hurt any business financially.

He said he noticed that the only new fee was "restaurant with common seating (mall)" - \$200. He said he thought this was a good idea.

**MOTION** by Ald. Larose for favorable recommendation on proposed O-06-06, increasing Environmental Health Department fees.

**SECONDED** by Mr. Lowe.

Mr. Lowe had some comments, but they were unintelligible.

Other discussion ensued about who pays these fees.

**MOTION CARRIED UNANIMOUSLY**

#### **Discussion Items**

Mr. Dufour said Ald. Larose has alluded to a communication that was presented to the Board of Alderman at their last meeting that he thought primarily is driven from the Wellington Avenue decision. He said the full Board heard their concerns about that particular plan and their concerns about the City's direction in general.

He said that letter was forwarded to the Planning & Economic Development Committee who is going to hear the concerns at their meeting. He said he has also talked to the Director of the Planning Department, Mrs. Hersh. They have many new aldermen. There's a feeling that there's misunderstanding of the process by the public, and more importantly, by the Aldermen. He said he didn't think the meeting was going to be until April 17<sup>th</sup> or 18<sup>th</sup> and the Planning Board members will be notified.

He said they have talked about having a workshop on right-of-way issues. He said this is very much needed. They have more than a month to have the workshop. He asked if the Board wants to wait until Corporation Counsel has seen and heard the issues, come up with their answers and then schedule something before the meeting.

Ald. Larose thought this was probably the way they should go. He said there was a lot of testimony and a lot of questions. He said he thought Corporation Counsel will be in a better position to answer the Board's concerns after reading the minutes of the meeting.

Mr. Dufour pointed out that the workshop that they are going to have with Corporation Counsel will not be specifically to discuss the cases that have been tabled tonight, but to discuss the new legislation and the interpretation of paper streets.

Ald. Larose said he thinks that by reading the minutes of the meeting Corporation Counsel will have a better understanding of what the Board is thinking and what was presented by an attorney to the Board.

Mr. Farkas said he'd like to have the meeting after they have received input from Corporation Counsel. He said to have a workshop prior to receiving his input and prior to deciding on the case, they will discuss that case so they would be in violation of the law.

Mr. Dufour said than it's best that they have the workshop after the case has been resolved. He said it might be a good idea for Corporation Counsel or his representative to be at that meeting because if they're not having a workshop there might be additional questions.

Mr. Dufour said the Board's next meeting is March 16<sup>th</sup>.

ADJOURNMENT at 10:50PM

**APPROVED:** \_\_\_\_\_  
Ken Dufour, Vice Chair, Nashua Planning Board

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Taped Meeting