

NASHUA CITY PLANNING BOARD
April 13, 2006

A meeting of the Nashua City Planning Board was held on Thursday, April 13, 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
Steve Dookran, City Engineer
William Slivinski
Hugh Moran
George Torosian

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

Approval of Minutes

March 2, 2006

MOTION by Mr. Lowe to approve the minutes of March 2, 2006.

SECONDED by Mr. Torosian.

Mr. Dufour said he noticed that Mr. Dookran and he seemed to be interchanged from place to place in the minutes. He said on Page 11 where it states Mr. Dookran asked if this is incorporated into the common driveway agreement. He said he believes he (Mr. Dufour) asked that. On Page 16 the first two paragraphs where it starts Mr. Dufour he believes it should be Mr. Dookran. Mr. Dookran said he didn't believe he wanted to take responsibility for those questions so Mr. Dufour said that those would be left as a question since he isn't sure that he was the one who spoke.

MOTION CARRIED UNANIMOUSLY

MOTION CARRIED UNANIMOUSLY.

MOTION by Mr. Lowe to approve the minutes of March 16, 2006.

SECONDED by Mr. Slivinski.

MOTION CARRIED 3-0-3, Mr. Torosian, Mr. Dookran, & Mr. Moran abstaining.

Communications

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

Letter from John Lewis Malkowski dated 4/12/06 concerning New Business Item #3 that the Board will be hearing tonight relating to the improvements the City of Nashua is proposing along Daniel Webster Highway and Spit Brook Road.

REPORT OF CHAIR, COMMITTEE & LAISON

None

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

After the legal notice of each site plan or subdivision is read by the Chair, the Board will decide that the application is complete and ready for the Board to take jurisdiction of the application. If so, the applicant or representative will be given time 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

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

MOTION by Mr. Lowe to remove Case #1 from the table.

SECONDED by Mr. Moran.

MOTION CARRIED UNANIMOUSLY

Mr. Dufour said the Board tabled these two cases at their March 2nd meeting because they had questions for Corporation Counsel. They have met with Corporation Counsel and will now continue with the case.

MOTION by Mr. Lowe to approve the special use permit for one single family home, Catherine Street & Lawndale Avenue, Sheet 126 - Lot 148 with the finding that it meets NRO 16-8 and with the following stipulations:

1. Prior to the issuance of a building permit the storm water operation and maintenance plan shall be reviewed by the Planning Department and recorded.
2. Prior to the issuance of a building permit the applicant shall record the common driveway, utility easements and maintenance agreement.
3. Prior to the issuance of a building permit final approval of drainage shall be obtained from the Division of Public Works.
4. Prior to any work being started, the applicant and their contractors shall hold a pre-construction conference with Planning staff to review scheduling and erosion control. All erosion control shall be installed along the 75-foot wetland setback as shown on the plan prior to the start of construction on either lot.

SECONDED by Mr. Moran.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Lowe to remove Case #2 from the table.

SECONDED by Mr. Moran.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Lowe to approve the special use permit for one single family home, Catherine Street & Lawndale Avenue, Sheet 126 - Lot 158 with the finding that it meets NRO 16-8 and with the following stipulations:

1. Prior to the issuance of a building permit the storm water operation and maintenance plan shall be reviewed by the Planning Department and recorded.
2. Prior to the issuance of a building permit the applicant shall record the common driveway, utility easements and maintenance agreement.
3. Prior to the issuance of a building permit final approval of drainage shall be obtained from the Division of Public Works.
4. Prior to any work being started, the applicant and their contractors shall hold a pre-construction conference with Planning staff to review scheduling and erosion control. All erosion control shall be installed along the 75-foot wetland setback as shown on the plan prior to the start of construction on either lot.

SECONDED by Mr. Moran.

MOTION CARRIED UNANIMOUSLY

OLD BUSINESS - SUBDIVISION PLAN

None

OLD BUSINESS - SITE PLAN

None

NEW BUSINESS - CONDITION/SPECIAL USE PERMITS

None

NEW BUSINESS - SUBDIVISION PLAN

3. City of Nashua (Applicant) Thomas J. Flatley, Rubin Nashua, LLC, Nashua H Group, LLC, Jeanette D. Jones Martial Trust, Kenwood C. Jones Sr. & Gerald R. Prunier, Trustees, GEM Realty Corporation, Toys 'R' Us, Inc., 278 Daniel Webster Highway, LLC, Kimco Webster Square, LLC, Allisan Realty Corporation, G.M.C. Group Limited Partnership & Hausberger Associates (Owners) - Application acceptance and proposed right-of-way dedication and lot line relocation, Spit Brook Road & Daniel Webster Highway, Sheet A - Lots 30, 128, 214, 259, 127, 133, 18, 188, 227 & 532, Zoned "GB" - General Business & "HB" - Highway Business.

Mr. Dookran recused from hearing and voting on this case since it comes out of his Department.

Mr. Dufour asked if Mr. Dookran would provide testimony and he said he would do so, if needed.

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

SECONDED by Mr. Lowe.

MOTION CARRIED UNANIMOUSLY

Ted Setas, Deputy Manager - Engineering, Division of Public Works. Mr. Setas said John McDonald from Rizzo Associates is also present tonight. He said this is the consultant working with the City on this project.

He said the reason for these impacts is to allow the construction of this project that will take place on Daniel Webster Highway & Spit Brook Road. It includes upgrades of signalization and roadway improvements. He said Mr. McDonald will provide details to the Board.

John McDonald, Rizzo Associates. Mr. McDonald said this project can be broken into two segments. One of them is roadway improvements and the other is signal improvements. They are both in the same area, but they have different limits.

He referred the Board to a map and pointed out the State Line between New Hampshire and Massachusetts. He said the project starts a few hundred feet south of the state line at the

signalized intersections with the ramps. It extends from there up to and just beyond the intersection with Daniel Webster Highway and Spit Brook Road. On Spit Brook Road the improvements extend from the intersection with Daniel Webster Highway back up to the intersection with the Royal Ridge Shopping Center driveway.

He said the improvements on Daniel Webster Highway consist mainly of overlay of existing pavement, reconstruction of the median and a few changes to the lane configurations. There is no widening taking place on Daniel Webster Highway. He said there are a few areas where they are looking at acquiring right-of-way for changes they are making that will improve capacity. One is down at the mall drive/Costco Drive intersection near Zimmerman Ski Shop. The next area is up at the south driveway to Webster Square Shopping Center across from Danforth Road. They are looking at realigning the driveway to come in more perpendicular to allow the intersection to operate more efficiently. On Spit Brook Road they are adding a lane at the intersection as you approach Daniel Webster Highway. They are acquiring right-of-way at the Zimmerman's location because they are making some changes to the driveway. The driveway now intersects actually into the signalized intersection. They are removing the driveway from there and reconstructing the front of the property and reconstructing the sidewalk there. The City is looking to acquire the right-of-way to include the whole sidewalk. Right now the right-of-way line is in the sidewalk.

He said moving north from that location, they have the Webster Square driveway - the south driveway. He said they are doing a re-alignment. He said most of this work is taking place on private property with temporary easements to do the work. In the course of reconstructing this driveway they are also reconstructing the crosswalk across the driveway and the sidewalks approaching it. In order to maintain the sidewalks and the crosswalk on City property they are asking to acquire additional right-of-way here for three parcels.

Mr. McDonald said at Spit Brook Road where they are adding a lane they now have a left through lane and two right turn lanes. He said they are going to end up with two right turn lanes, a separate left and a separate through lane. In order to do this they have to widen the road. They are also going to add a little bit of width to the lanes because they are substandard at this time. They will provide a 2' shoulder off the curb to the lanes. They will be reconstructing the sidewalk on the south side. The right-of-way line now is not behind the existing

sidewalk. In order for the City sidewalk to end up in the City right-of-way, they will be acquiring right-of-way from all the parcels along the south side. With the widening pushing out on the north side they will be looking to acquire a strip of right-of-way from the parcels on the north side.

Mr. McDonald said in addition to the roadway improvements, the project includes improvements to nineteen signalized intersections in the same area. The signalized intersection improvements start at the Costco Mall Drive on Daniel Webster Highway and extend all the way up to Graham Drive on Daniel Webster Highway with all the signals in between. On Spit Brook Road, they start at Daniel Webster Highway and go all the way out to Oracle Drive.

He said the improvements consist of updating the hardware for the controllers as well as software and control system in order to make the signals work together and more efficiently.

He said he had just read the letter regarding the crosswalks. He said they are not proposing to add any crosswalks to Daniel Webster Highway. They are maintaining the crosswalk at Danforth Road. There's another crosswalk at Poisson Avenue and a crosswalk at Royal Ridge Center intersection. There are crosswalks on the side driveways, but they are not adding any to Daniel Webster Highway. He pointed out to a section of the map and said the reason they aren't adding crosswalks is that the improvements they are doing will make the intersection operate better than it does today. By adding a "ped" phase to this signal and adding that time to the cycle it would wipe out any of the benefit of the improvements they are doing and actually end up make up making the signalized intersection operate worse. In order to make the intersection work with a "ped" phase in it, they'd actually have to do even more improvements/more lane widening. There would be more impact and it would be out of the scope of this project.

He said this project is actually an interim improvement with the thought there are other possible projects in the background, like a parallel road or an interchange to the south. If something like that did happen in the future, there could possibly be less congestion here and they could go with the "ped" phases.

Mr. Slivinski asked where Lot 211 - the lot that is not included in this request - is located.

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Mr. McDonald said that's the Barnes & Noble site. He pointed out the location on the map.

Mr. Setas said although Barnes & Noble is agreeable to the project, they would like to get compensation and they feel that the best way to do that would be to go through a different course and get assessments, while still allowing the City to do the work.

Mr. Sawyer said that would be through the eminent domain process.

Mr. Slivinski said they will be getting all this additional right-of-way really for the future because as he understands it the road isn't being widened.

Mr. McDonald pointed out the parcels where the City is obtaining additional right-of-way. They are doing this so the City will own the sidewalks and the improvements they are doing in those areas. He pointed out the area where they are doing some widening and the sidewalks.

Mr. Slivinski asked if they are going in and re-doing all the signals.

Mr. McDonald said they are. He said those really don't have any impact on the right-of-way. They are using the same control cabinet. They are just switching the hardware.

Mr. Dufour asked if the map shows where the takings are.

Mr. McDonald said it does, but it's a small scale. He pointed out a section where it's a strip about 1 ½' wide.

Mr. Dufour asked how big it is on the Barnes and Noble site.

Mr. McDonald said it's on the order of about a 10' to 12' strip, tapering down to about 6'.

Mr. Dufour asked if the widening on Spit Brook Road will be done in the near future.

Mr. Setas said they would like to begin construction in June/July on this project. He said the negotiations with Barnes & Noble would take place during construction.

Mr. Lowe asked if Bernie & Phyl's had already granted a 10' right-of-way to the City when their project was approved.

Mr. Setas said they have agreed to give the City a future strip of right-of-way. He said he believes that the City has already taken a portion of that. He said they did not ask for compensation.

Mr. Dufour asked if this is above and beyond what the City has already granted.

Mr. Sawyer said that this is correct. He said this is in addition to what they already agreed to.

Mr. Moran asked if there is a crosswalk at Spit Brook Road now.

Mr. McDonald said there's no crosswalk at Spit Brook Road. He pointed out Daniel Webster Highway and Spit Brook Avenue. He pointed out the location of a crosswalk at Poisson Avenue and one at Danforth Road. He said they are not removing any crosswalks.

Mr. Houston said Lowe's will be pending for the Board's next meeting and they may have a future project on the Dow Chemical site. The question is how the signals and the timing of those signals is going to be coordinated with those projects or are they going to have to come back and re-do some of that work later on or if this is just the hardware and it can be easily changed at some point in the future. He said he'd hate to see them do all the signal re-timing and then have to go back and change it all again.

Mr. McDonald said this project is basically the hardware and software upgrade. There are timings involved with this project. As other projects come along that impact this, the new hardware will be better able to adapt to whatever changes need to be made.

Mr. Dufour asked if what Mr. McDonald is saying is that if additional uses in the south end warrant reconfiguration of the intersections, the hardware and software will already be there and it would just be a matter of tweaking. He asked if they are going to hear that they need another \$500,000 for an upgrade.

Mr. McDonald said he didn't believe this would be the case. He said he believes the hardware that's going in will be able to handle any changes for improvement.

SPEAKING IN OPPOSITION OR WITH CONCERN

No One.

SPEAKING IN FAVOR

No One.

Mr. Sawyer said the staff report indicates that the Zoning Board had to act on some variances in connection with this project. He said they did approve all the necessary variances at their meeting on Tuesday night.

MOTION by Mr. Torosian to approve the proposed right-of-way dedication and lot line relocation for the lots along Spit Brook Road & Daniel Webster Highway (Sheet A Lots 30, 128, 214, 259, 127, 133, 18, 227 & 532 with the finding that it complies with NRO 16-440(g) and with the following stipulation:

1. Prior to the plan being recorded, a note reflecting the Zoning Board of Adjustment action of April 11, 2006 shall be added to the plan.

SECONDED by Mr. Moran.

MOTION CARRIED 5-0, Mr. Dookran recusing.

NEW BUSINESS - SUBDIVISION PLAN

4. Catherine W. Gregg Revocable Trust (Owners) - Application acceptance and proposed consolidation of two lots and lot line relocation, 17 Gregg Road, Sheet D - Lots 3, 4, & 65, Zoned "R40" - Rural Residence. (To be heard at the May 4, 2006 Meeting)

NEW BUSINESS - SUBDIVISION PLAN

5. Vigilant Properties, LLC (Owner) - Application acceptance and proposed lot line relocation, 22 Edson Street, Sheet 47 - Lots 349 & 401, Zoned "RA" Urban Residence.

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

SECONDED by Mr. Moran.

MOTION CARRIED UNANIMOUSLY

Atty. Gerald Prunier. Atty. Prunier said there are people here tonight who have some concern about what is going to be constructed on these particular lots. He said he has indicated to them that he would state on the record that the construction on these two lots will be two single-family homes. He said he has also indicated that if something other than single-family homes were to be constructed, they would have to go to the Zoning Board of Adjustment for approval and probably back to the Planning Board as well and that they would all be notified.

Steve Auger, Project Manager, Hayner/Swanson 3 Congress Street, Nashua. Mr. Auger said he is speaking on behalf of Vigilant Properties, who are present as well as Atty. Prunier.

He said the request is for a lot line relocation. The parcel consists of .71 acres.

He said this whole neighborhood was created by a subdivision plan back in 1948. The land they are dealing with is shown as two lots - Lots 93 & 94. He showed the Board a plan and said these are identified with the dashed blue line. He said in 1954, for whatever reason, only a portion of Edson Street was accepted by the City. He said that is identified by the green line shown on the plan. Because the remaining portion of the Edson Street right-of-way was not maintained for a period of twenty years, the right-of-way reverted back to the adjacent landowners. He pointed out the adjacent lots.

He said when Edson Street was constructed, it was not built along the entire accepted right-of-way so at the present time the pavement on Edson Street ends at the limit of the orange line shown on the plan.

Mr. Auger said the two lots that comprise the applicant's property were never consolidated, although it is represented on the GIS map as one lot. In order to obtain the required legal frontage they need to extend Edson Street. He referred the Board to the yellow on the plan. They also need to relocate the existing lot line. He referred the Board to the dashed blue line and the red line. He said these would give them the required lot frontage and lot width on new Lot 401.

He referred the Board to another plan that was a topographic plan. He said it shows what the extension of the street will look like. Single-family homes are proposed on each lot.

He said the total lot line relocation transfers 2,040 square feet between the two lots.

Mr. Moran asked if the trees on the line with 20 Edson Street are going to be maintained.

Mr. Auger said the trees that are on their property are going to be maintained. The majority of the trees are on the applicant's property and they have to remove a significant amount of them to put in a driveway.

SPEAKING IN OPPOSITION OR WITH CONCERN

Mary Daly, 21 Edson Street. Mrs. Daly said she has lived here since 1971. She is the pie shaped lot across from the lots under discussion.

She said the Vigilant Properties extension of Edson Street beyond the paved part is a paper street. She said the street was built in 1948 and accepted in 1954. More than twenty years has gone by and under State law and City ordinances/RSA 231-51 she should be the owner of ½ of that street - beyond that part of the paved street. She said she does not consent to Vigilant Properties using part of the land for the street for his proposed building lots. She said these two lots are non-conforming lots with no road frontage.

She asked what they are going to do with the snowplows and the trash trucks. She asked what the mailman was going to do. She asked what is going to happen to her end of the property. She said it's probably end up being somebody else's trash collection.

She said the Zoning Board of Adjustment denied a variance on 8/9/2005 on the "paper street". She is in opposition.

Cynthia Gaudette, 59 Wood Street. Mrs. Gaudette said she is an abutter to the proposed lot line relocation. She said she purchased her home from the Priscilla St. Laurent Trust. She closed on the property on December 15, 2005.

She said to say they were dismayed upon receipt of the abutter notification is putting things mildly. She said they relied heavily on public record when they made the decision to purchase this home. At the time the public record revealed a plan for a single-family home on a single lot. She said the St. Laurent's had applied for that variance. She said they never would have

made this purchase if they had known the intent of the current owners to subdivide the lot and put two single-family homes on each lot.

She referred to the destruction of the north end of Nashua and the countless articles that they are seeing about this issue. She asked the Board to respect them as property owners who currently reside in the north end. It's part of what makes Nashua beautiful. She said she lives directly behind this land and it will ruin her view of the Merrimack River.

Mr. Dufour asked whom Mrs. Gaudette would put the responsibility of notification on.

Mrs. Gaudette said she thinks the previous owners of the home they bought (the St. Laurent's) gave them the information that at that time was true. She checked with the City and she took her tape measure and went out with the realtor and she tried to imagine where this single-family home (that had been approved) would fit behind them so that when they paid \$400,000 for their house they she would still be able to see the river. She said she likes living in the City and she isn't going to be able to sell her house if there are two houses crammed in behind it.

Mr. Slivinski said it appears that there are two lots.

Mrs. Gaudette said she has that information from 1948 showing that it's two lots. She said the information she was given at the time to help her make her decision was that it was a single site. She was provided with the GIS map and this is what was approved by a Board within the City for a single-family home. When they made their investment they relied on the public record.

Ruth Lyons, 6 Catherine Street. Ms. Lyons said she had a question about the "yellow" part on the map. She asked if that is the extension. She asked if this means it's going to be paved as part of the street.

Mr. Dufour said they will have the applicant address this question.

Tom Pappas, 12 Swart Terrace. Mr. Pappas said he is present on behalf of his parents, John & Sirmo Pappas, who live at 20 Edson Street and are abutters to this site.

He said the site is part of the old Laton Farm from which this area was developed. This was in 1948. He said this particular parcel from the time the Laton's developed the property until now was always in one owner until the St. Larent's split it between the Gaudette's and the current applicant. The deed from the Laton heirs first went to a couple named the "Shamps???". That deed had deed restrictions and had what's known as a "reverter." The Laton family had the property back in the 1840s and 1845. They developed it in 1948.

He said the restrictions they placed on the deed for this parcel and the Gaudette parcel had three restrictions. They are that the lot that the lot never be used for business purposes, that only one dwelling house, not less than two-stores in height shall be erected on said lots and that all buildings, including all bay windows and **unintelligible** fronts shall be set back 40' from the street line. He said that deed restriction was placed in the deed from the Latons to the Shamps who first purchased the combined parcel. He said in the Board's packet they will probably see a map that has 1948 written on it. He said it has 92, 93, & 94 - the Vigilant parcel and it also has 91 & 90, which is the Guadette's parcel. From the time in 1948 until recently those parcels were under one ownership. He said the deed had the restrictions that he had just referred to as well as a "reverter."

He said the reverter indicates that in case of failure to perform any of the above conditions, the property is to revert to the grantors, their heirs and assigns. He said he considers those restrictions to be covenants that run with the land.

He said after the Shamps, the five parcels were transferred to the Stevens and from the Stevens. Those deeds also had the same restrictions. It then went from the Stevens to the St. Laurent's. The deeds had the same restrictions.

Mr. Dufour said he wanted to make sure that Mr. Pappas knows that the Board cannot make a decision based on the information concerning deed restrictions that he is providing to the Board. He said they will have the applicant address this and he could continue with his testimony.

Mr. Pappas said he believes it is something that the Board can take this information into consideration when making their decision and he would explain why.

He said the property goes from the St. Laurent's and they split it to the Gaudette's and to Vigilant. He said Vigilant's deed, which goes to those lots - 92, 93, & 94, contains the same restriction. The important one says that only one dwelling house, not less than two-stories in height, shall be erected upon said lots. He said this is clear.

He said it is not good public policy for a public Board to approve an application if it's contrary to law. He said he thought the Board needed to take this into consideration in making their decision on this case. He said at a minimum the Board should get Corporation Counsel's advice on this issue. He said he thinks that the prior owners, Mr. & Mrs. St. Laurent, recognized that restriction as they had submitted a request to the Zoning Board for approval of a single-family home on the parcel. He said this did not get acted on.

Mr. Pappas said there is no need to relocate the lot line if they are going to build one dwelling. If they are going to build one dwelling, Edson Street can be extended to where they wish to extend it and there is more than enough frontage to build one dwelling on the parcel. He said he also understands that there's no need to move the lot line as far as it's being moved in order to provide enough access to build two houses. What they need for frontage is just a few feet on the plan to the left of the hashed line. He said it doesn't need to go all the way to where the red line is.

He said if the Board is inclined to act upon this application, he didn't think it was good public policy to create one small lot and one oversized lot when there's no need. He said his understanding that you could have sufficient frontage on both those parcels if you extend Edson Street to where it is shown on the plan and the hashed line is moved just a couple of feet to the left - not the distance that's shown. He said this raises the question of why one would do that. The concern is why they would be expanding the envelop of the very large lot if all they are going to build is one house. He said he appreciates that Atty. Prunier stated that the intent is to build one house on each lot, but he would be concerned whether any subsequent buyer would be bound by that.

Mr. Pappas said when the City accepted the street in 1954 it only accepted 100' past where the street ends now. He said if you look at the map it shows hash lines through the lot line. You could infer that at the time the City may have recognized the deed restriction and felt it was sufficient to accept Edson

Street to a point sufficient to allow one dwelling to be built on that parcel and there would be no need to extend it further.

He said someone asked a question about the trees between 20 Edson Street and 22 Edson Street. He said since the applicant is going to use the minimum setback of 10' on the small lot, it appeared most of the trees are going to have to come down. There are very few trees within the 10' strip. There is no need for this small lot. There is more than enough land to not approve a very small lot that fits very tightly within this neighborhood and is not consistent with any of the other lots on the street. The other lots on the street are larger.

Paul Corriveau, 9 Edson Street. Mr. Corriveau said he doesn't see a hardship where one has to have one parcel .22 acres and the other one be .44 acres. He said when you read the City's staff report it says that single-family houses are currently proposed. He doesn't know if that means that by having a small lot it will set a precedent for the other lot.

He said he had a subdivision on a dead end street and if he wanted to do it he had to put in a hammerhead turn around for the bus or plow and everybody else to turn around. He doesn't see anything like this proposed for this plan.

SPEAKING IN FAVOR

Atty. Prunier said he was involved all along with the variance request involving the St. Laurent's up through to this present request. He said the variance request was granted, not denied.

He said people rely upon individuals who are more concerned in selling a lot so that they can get their money than in really informing the people what their rights are. He said some day buyers will consult attorneys before they sign purchase and sale agreements.

He said the Chair has correctly stated that the Board is not determining restrictions on properties, etc. They are not involved in public policy decisions. If there is an interest in proving that issue, it has to be taken to Court. He said he disagreed with Mr. Pappas' interpretations.

He said both of the lots are much larger than some of the other lots that exist on the same street. He said the St. Laurent's were not concerned with extending Edson Street. Mr. St. Laurent was sick and he was concerned about what was the easiest and

fastest. He said he came to him and he advised him that he could extend Edson Street or that he could go to the Zoning Board of Adjustment and obtain a variance for a driveway into the lot and waive the frontage requirements, but there would only be one lot, not two. The variance request was made because Mr. St. Laurent didn't want to extend Edson Street.

He said the person who bought the lot said they would extend the street in order to get the frontage for two lots. That's why they are here tonight. He said concerning the question of the lot line, the width of lots has to be almost the same as the frontage. It has nothing to do with the size of the lot.

Mr. Dufour confirmed that the line is where it is proposed so they could get the required frontage that they need in order to develop two lots.

Atty. Prunier agreed.

Mr. Dufour asked if the road that is going to be extended has to be accepted by the Board of Alderman.

Atty. Prunier said after it's done it would have to be accepted by the Board of Alderman. The work has to be bonded. It's just like a regular subdivision.

Mr. Dufour asked if there is sufficient room for a turn-around.

Atty. Prunier said the street is wide enough to turn around in, but he would leave it up to their engineer who dealt with the Dept. of Public Works.

Steve Auger, Hayner/Swanson. Mr. Auger said he has spoken to Jon Lebrun of the City Engineering Department. He said his request is that they leave 20' beyond the farthest driveway in order for a plow to stack the snow. That is how they have drawn it on the larger lot and there is a note on the plan to that affect. With regards to lack of a turn-around, they submitted the plan to Engineering as part of the review process and Mr. Lebrun had no problem with it. He said he also spoke with Asst. Chief Brian Morrissey and also had no problem with it.

Mr. Slivinski said he didn't think any of the streets up in this area had turn arounds. He said they just sort of end.

Mr. Auger said if you look at the whole neighborhood subdivision plan they all are dead ends, just like this one.

Mr. Dookran said Atty. Prunier disagreed with the conclusions made by Atty. Pappas. He said he imagines the most recent deed is that of Vigilant Properties. According to Atty. Pappas that deed states one of the conditions is that there be one building.

Atty. Prunier said his interpretation is that one building is permitted on each lot. He said there are three restrictions. One is that there be no business. No business is being proposed. There is a restriction that only one dwelling house, not less than two stories in height shall be erected upon said lots.

Mr. Dufour interrupted Atty. Prunier and said that the Board recently had a conversation with Corporation Counsel about this very issue. He said that Corporation Counsel has indicated that the Planning Board is not the settler of those issues. It's not something that they can use in their decision making process.

Mr. Dookran said he asked the question because he was trying to get a feel for what requirements they're dealing with. He said a statement was made about public policy. He said that he knows that the Board doesn't make decisions based on that. He said there is interpretation to information that's been presented. He said as long as the information is presented the Board should have a good understanding of that information.

Mr. Slivinski said he thinks what they are proposing is acceptable.

MOTION by Mr. Lowe to approve the lot line relocation for 22 Edson Street 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 Edson Street improvements shall be approved by the Board of Public Works.
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 the second certificate of occupancy being issued, all public improvements shall be completed to the satisfaction of the Division of Public Works.

SECONDED by Mr. Slivinski.

MOTION CARRIED UNANIMOUSLY

6. Louis C. Juris (Owner) - Application acceptance and proposed subdivision of one lot into two, 54 Haines Street, Sheet 13 - Lot 57, Zoned "RB" - Urban Residence.

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

SECONDED by Mr. Moran.

MOTION CARRIED UNANIMOUSLY

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said this site is one lot down from the intersection of Arlington Street and across from the Arlington Street Methodist Church across the street.

He said the current lot has a three-family home on a lot of about 15,656 square feet. He said they went to the Zoning Board of Adjustment in February for a variance to subdivide the lot to create a lot for a single-family home. A single-family home in the "RB" Zone requires 6,000 square feet.

He said the site is fairly level as most of Crown Hill is. He said they have asked for a waiver of the topographic plan because there really isn't any topography to show. The drainage for the site will be handled by the typical leaching catch basin connected to the roof leader on the new house. He said there are existing sidewalks on the other side of the street.

He said there are three suggested staff stipulations. They are acceptable.

Mr. Lowe asked about the fence on the far left.

Mr. Maynard said there used to be a pool back there. That was the play yard. The fence is coming down. He showed where the driveway is located. There will be a new driveway to service the new house.

SPEAKING WITH OPPOSITION OR WITH CONCERN

No One.

SPEAKING IN FAVOR

No One.

MOTION by Mr. Lowe to approve the subdivision of one lot into two at 54 Haines Street with the finding that it meets NRO Section 16-440(g) and the following stipulations:

1. With approval of the plan the waiver of Section 16-1100, B-37(b)(9) that requires existing topography to be shown has been granted.
2. Prior to the plan being recorded, the storm water operation and maintenance plan shall be recorded.
3. Prior to the issuance of the certificate of occupancy all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.

SECONDED by Mr. Torosian.

Mr. Slivinski said he knows there is no sidewalk on that side of the street. He asked if that negates the sidewalk issue all together.

Mr. Yeomans said the original of this plan indicated that they should extend the sidewalk down in front of the premises. It was a judgment call. A lot of the frontage on the site is eaten up by driveways - it's almost continuously paved across the entire site as it is and there wouldn't be much of a contribution as far as the sidewalk is concerned.

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLAN

7. City of Nashua (Owner) - Application acceptance and proposed amendment to NR 1425 to show the construction of a 18,000 square foot transit garage with associated access, parking and site improvements, 11 Riverside Street, Sheet 75 - Lot 17, Zoned "PI" - Park Industrial.

Mr. Dookran said he would be stepping down on this case.

MOTION by Mr. Moran that the site plan application is complete and that the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Torosian.

MOTION CARRIED UNANIMOUSLY

Jeff Morey, CMA Engineers, Portsmouth, NH. Mr. Morey said as many of the members may be aware, there is an existing commercial facility off of Riverside Street that is being renovated for use by the Department of Public Works for their offices, for administrative office for the Nashua Transit Department and also storage for the Police Department. He said the site plan amendment includes changes to the parking areas, drainage and construction of a new 18,000 square foot maintenance and storage facility for the Nashua Transit System and City Bus.

He said the proposed modifications on the westerly side of the site include a revised driveway entrance, some expanded parking for DPW staff, a new entrance from the back lot of the Police Department to provide access for storage for an impound lot on the back side of the parcel and also some additional overflow parking.

He said there is existing parking for the commercial facility located on the site. He said that is going to be removed. He showed the location of this parking. A building will be put in its place. Parking for transit garage employees and drivers is being moved to the back of the site. The traffic off of Riverside Street is going to be in a counter clockwise pattern. Drivers will stage the buses along the right hand side. The buses will be serviced and maintained in this building, which will also include a drive through wash bay. There are going to be three service bays for maintenance of equipment. There is going to be office space for the general manager of the maintenance facility as well as a break room/lunch room. The building will be protected with a sprinkler system.

He said storm water will be managed in a variety of different ways. Some of the runoff from the existing parking lots is going to shed onto the existing drainage on Riverside Street. There's going to be a rain guard, which is an infiltration system with plantings. The back parking lot associated with the impound lot associated with the Police Department is going to have a section of porous pavement to increase infiltration of runoff. There will be an underground storage system as well. Overflow from that will discharge into an underground storage system associated with the transit garage facility.

He said storm water runoff to be managed on the transit garage portion is with hooded catch basins. There isn't much green space for a detention pond so there is an underground storage system on the westerly portion of the paved area. All of the storm water runoff will be combined into a storm water treatment device prior to discharge off site.

He showed where there will be landscaping with trees that match the existing plantings and trees and growth in the area, such as oaks and rhododendron. He said there is going to be landscape planting on the east side, which abuts a commercial parking area. There are also landscape plantings on the back. He said the Board should have a landscape plan in their packet.

He said they are asking for two waivers of the building design standards. One is for a recess on the facades in excess of one hundred fifty feet. The building is 104'X174' and it's function is a garage/storage. The façade is going to be broken up with the overhead doors. There are a number of overhead doors for entrance and exit for the buses into the facility.

He said they've also asked for a waiver on the requirement for parapets at the roofline. He said this building is going to be twenty-two feet high, essentially to facilitate bus service within the building so they can get a bus on the lift and still have clear space to the steel. The rooftop structures will include emergency exhaust fans and stacks for the wash bay equipment for exhaust of heating units. These are going to be 23' above existing grade, which is at elevation 170 and 4' higher than the existing road. The line of sight from traffic on Riverside Street won't have an angle to see anything above the roof. That's the reason they have asked for this waiver. Those wouldn't be visible from anywhere on Riverside Street, except from (maybe) 1,000' down to the east where elevations provide for some viewing of rooftop structures, but at that point they'd look really small.

Mr. Houston said they have tried to find a location for the transit facility for a number of years. He said Mr. Newman, who is now retired from the City, is here tonight and he wanted to thank him for making this a reality and pulling this site together.

SPEAKING IN OPPOSITION OR WITH CONCERN

No One.

SPEAKING IN FAVOR

No One.

MOTION by Mr. Lowe to approve the site plan amendment to NR 1425 to show the construction of an 18,000 square foot transit garage with associated access, parking and site improvement, 11 Riverside Street with the finding that it meets NRO Section 16-450(d) and with the following stipulation:

1. With approval of the plan the two waivers of Section 16-542 - Building Design, have been granted.

Mr. Slivinski said to ask the people that make the laws.

SECONDED by Mr. Torosian.

MOTION CARRIED UNANIMOUSLY

Mr. Dufour thanked Mr. Newman for his determination in finding a place for the buses. It has resulted in benefiting the City in more ways than one. It benefits Public Works and the Police Department as well.

8. **Mile High Real Estate, LLC (Owner) - Application acceptance and proposed 1 - year extension of site plan NR2086 for the demolition of two existing single-family homes and the development of two, 5-unit multi-family apartment buildings with associated access, parking and site improvements, 5 & 9 Lake Street, Sheet 98 - Lots 10 & 11, Zoned "D-3/MU" - Downtown - 3/Mixed Use. Previously approved on June 16, 2005.**

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

SECONDED by Mr. Moran.

MOTION CARRIED UNANIMOUSLY

Atty. Gerald Prunier. Atty. Prunier said the applicant in this case wasn't able to get the construction started this year and they are coming back and asking for a one year extension so they can get it done this year.

Mr. Lowe asked if there were any changes.

Atty. Prunier said there are no changes.

SPEAKING IN OPPOSITION OR CONCERN

No One.

SPEAKING IN FAVOR

No One.

MOTION by Mr. Lowe to approve the 1-year extension of site plan NR2086 for the demolition of two existing single-family homes and the development of two, 5-unit multi-family apartment buildings with associated access, parking and site improvements, 5 & 9 Lake Street with the finding that it meets NRO Section 16-123 and with the following stipulation:

1. All stipulations imposed by the Planning Board on June 16, 2005 shall continue to be in effect.

SECONDED by Mr. Moran.

MOTION CARRIED UNANIMOUSLY

OTHER BUSINESS

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

MOTION by Mr. Moran that there are no issues of regional impact on the tentative agenda.

SECONDED by Mr. Torosian.

MOTION CARRIED UNANIMOUSLY

2. **Referral from the Board of Alderman on proposed petition for Street Discontinuance for a portion of Myrtle Street.**

Jeff Merritt, Engineer, Keach Nordstrom Associates. Mr. Merritt said they are the Civil Site Engineers for the Bronstein Apartments redevelopment project.

He said they came before this Board in December 2005 to receive site plan approval for the Master Plan and Redevelopment Plan for this apartment complex. He said that site plan was conditionally approved in December. One of the conditions was

to complete the discontinuance procedure for a portion of Myrtle Street. He showed the plan that reflected the area to be discontinued with hatch marks. He said he sent a letter to the Board dated March 2, 2006 that details the discontinuance.

Mr. Lowe asked if basically this stops Myrtle Street from being a loop.

Mr. Merritt referred to the plan. He showed where Myrtle Street terminates. He said there is a small portion of the right-of-way that protrudes south. Specifically it's a turnaround/hammerhead. He said the reason they are discontinuing the turnaround is that the whole site is getting modernized. As part of the modernization they are expanding the parking. There are only 47 or 57 parking spaces on the site right now. The ordinance calls for 84 spaces and they have proposed 85 spaces. He showed where they are re-aligning the existing parking in order to achieve the additional parking.

He said they recognize that the City is going to need the right to turn around in that area. They have proposed a turn around easement. He referred the Board to the plan. He said that easement will line up with the re-aligned portion of the east parking lot.

Mr. Dookran asked what the process is for the easement to the City.

Mr. Merritt said he is assuming that a condition of the discontinuance would be that an easement document be recorded with the Registry. He said they are scheduled for the 26th - the next Board of Alderman meeting.

SPEAKING IN OPPOSITION OR WITH CONCERN

No One.

SPEAKING IN FAVOR

No One.

MOTION by Mr. Lowe to send a favorable recommendation to the Board of Alderman on proposed petition for Street Discontinuance for a portion of Myrtle Street.

SECONDED by Mr. Torosian.

MOTION CARRIED UNANIMOUSLY

Discussion Items

1. Lowe's Packard Development at Shaw's Plaza, 143 Daniel Webster Highway

Atty. Gerald Prunier. Atty. Prunier showed a picture to the Board that shows the Shaw's Store and the retail space on the site as well as the BJ's site. It also showed Tully's.

He said the Shaw's plaza is going to be taken down and the parking spaces will be removed. They will dig down and provide the piping and whatever else is necessary and build up the hill. The end result will be Lowe's and their parking area in front of their store. He showed the location of the proposed Lowe's and the parking area on the plan.

He said they are in front of the Board to discuss traffic. Over the years Tully's has grown and BJ's has become more successful and their engineer has indicated that the intersection should be modified. He said their position is that the traffic the new site is going to generate is no more than what was approved for Shaw's and the other retail spaces in the plaza.

He said the problem they're running into is that because of what the State did and didn't do when they put the light in at Tully's has caused some problems that they feel are beyond their responsibility. They will do their fair share.

Giles Hamm, Geness & Associates. Mr. Hamm said they've been working closely with City staff and they (the City) has actually hired a consultant to review this project. That review is essentially complete. He said he believes they have an agreed upon improvement plan for the area and what needs to get done to fix some existing deficiencies, but the question is how they pay for the improvements that need to be out there today.

He said if Lowe's could fit into the Shaw's building they probably wouldn't have to come to the Board and Lowe's would probably be open by now, but Lowe's is a big warehouse building and it can't fit into a smaller building.

He said they looked at traffic counts that were conducted in 2000 when Shaw's was open. If you compare those counts to what the projections are with Lowe's you find that the traffic is similar. Lowe's is a bigger building, but it generates a small

amount of traffic per square foot. They are talking about filling in space with the same amount of traffic.

He said the City did a corridor study in 2002 that identified that there are some left turn storage problems. The lanes that provide left turns into this site are inadequate and improvements haven't been proposed there. He said when the State constructed the Circumferential Highway westbound ramps, there was a missed opportunity between the State and the City to fix a problem that's out there. There's just not enough storage for the left turns.

He said he provided the Board with a copy of the improvement plan that they have worked on with the City. He pointed out Veterans Drive and the driveway entering the site. The site is up on the hill. He said they need to have three lanes coming out and two lanes coming in. The real problem that exists today is that there is a left turn lane that goes up into the plaza. He pointed it's location out to the Board. He said it's not long enough. At peak times the left turn backs up into the through lane.

Mr. Dufour asked Mr. Hamm to describe the yellow line that is shown.

Mr. Hamm said there are left hand lanes that are kind of back-to-back to each other and there's not enough storage for the left turn. They have developed a plan that makes the left turn lanes be side by side so that there would be storage of about six hundred feet that would go up to this site. Then there is left hand storage that goes to the westbound ramps. That's what should have been built when the ramps were built. He said the yellow line is a painted island to protect the left turns.

He said they have a plan that when they fix the existing deficiencies, turns out to be about 1500 feet of widening/construction area and cost about $\frac{3}{4}$ of a million dollars.

Mr. Dufour asked if it was two or three lanes when he is approaching Veterans Drive and he wants to make a left into Shaw's plaza.

Mr. Hamm said there are two through lanes and as you approach the intersection there's about two hundred twenty feet of left hand storage. If it exceeds that it starts to go back into the through lane.

Mr. Dufour asked how they are finding enough room for another lane.

Mr. Hamm said by widening the roadway out so they can get left turn lanes that are side by side versus back to back. He said there is right-of-way to do that.

Mr. Dufour asked if the width of the island is being modified.

Mr. Hamm said the island is staying about the same width, but they have to modify it.

Mr. Slivinski asked how much they would be widening the road.

Mr. Hamm said it takes about 12' to add a lane. They have added shoulders, but they've also used some of the shoulder width that's out there today. It's a significant project. They are getting into some signal mast arms that may need to be modified and moved.

Mr. Dufour said the information they have talks about it taking three minutes to come out of the site. He asked how many light cycles it would take.

Mr. Hamm said they have 150' back from the stop bar. He showed where this was on the plan. They have widened it out so they have a full three lanes. There's a double left turn lane so when the two lanes stack up with left turns, the right turns can get around them.

He said there will be some stacking and some queuing back from coming down the hill, but they'll be nowhere near those types of numbers. He said when you go back to when Shaw's was open they never had those types of queues. There will be some queuing, but what you basically see there are what the programs tell them what the queues will be, but they know they aren't going to be that long. They've never been that long. It's really the same amount of traffic as when Shaw's was open, it's just going to be different shoppers.

Mr. Dufour asked if the intersection is signed. He asked if there is going to be anything that says they can't block the intersection.

Mr. Hamm said there's a four-way stop (he showed the location). One of the changes that they have made is a four way stop at the bottom of the intersection. They've channelized a right turn (he

showed the location of this right turn) and put in an island so that if people want to turn right, people who want to come out aren't delayed by the right turns because they don't conflict.

He said operationally he thought the intersection would work fine. He said they've agreed with City staff and the consultant that these changes make sense. The real issue is how they are going to share the cost with the City. He said their position is that given it's an existing deficiency out there today that wasn't fixed by the State so they are looking for some cost sharing.

Mr. Dufour pointed out the location of a raised median. He said it is there today, but he asked if it is to that extent.

Mr. Hamm said it is. He said they are changing it because it's slightly offset and it doesn't allow them to have a nice approach.

Mr. Dufour asked if it's striped where the pocket is where one would turn right.

Mr. Hamm said it is.

Mr. Dufour asked if there would be an issue with a truck coming out of the site.

Mr. Hamm said it will work fine. He said through other hearings they can bring templates to show how the truck works here.

He said the cost of all the improvements is around $\frac{3}{4}$ million dollars. If you look at the amount of new traffic they would be adding to the site, there really is no impact.

Atty. Gerald Prunier. Atty. Prunier said in reality there shouldn't be any traffic problems because Shaw's and Lowe's, for all practical purposes, generate the same amount of traffic. All the experts agree that the intersection has got to be changed. Under the statute they are required to pay their fair share. In this particular instance, they are saying that they don't want to construct, but they are willing to give their fair share of money to make the improvements.

Mr. Dufour asked if this isn't something that should be presented to the Board of Alderman rather than to the Planning Board.

Atty. Prunier said that under the Statute, the Planning Board can allocate the fair share cost for improvements that are necessary.

Mr. Dufour said how do they address the fact that there are no funds that the City can commit to this project. He asked how the project could go forward.

Atty. Prunier said many times when he has come to the Board and the City asks for a contribution to traffic improvements. It goes into whatever the fund is. He said they could take the position that they are not adding any more traffic than what was approved with Shaw's. They are not taking that position, but on the other hand the cost of the improvements is so large that they are beyond the scope of the project. They have determined that the fair share would probably be in the range of \$200,000. He said his client is willing to go beyond that and donate a half million dollars.

Mr. Dufour said if it costs \$750,000 to do the improvements and the applicant gives \$500,000 toward that, it still leaves them \$250,000 short. He said if the Board were to approve this, he doesn't know how the Board can commit City funds to the tune of \$250,000.

Atty. Prunier said it can't. All the Board can do is make a determination as to whether the contribution that's being offered is fair in this situation.

Mr. Dufour said if the Board indicated they would accept that as a fair contribution what would then happen.

Atty. Prunier said he thinks it would go to the Department of Public Works Capital Improvement budget to come up with the difference to make the improvements.

Mr. Dufour said they can't tell them to do that. He said he assumes that if they made the finding that this was a fair contribution some body other than the Planning Board has to go along with that in order for the plan to move forward. He asked if that was correct.

Atty. Prunier said "no". He said the Planning Board can make that determination and doesn't need the concurrence of any other body.

Mr. Slivinski said to assume that the City doesn't come up with the \$250,000 difference. That improvement would not be made. He asked if the applicant would go ahead and build (tape runs out and rest of question is lost).

Atty. Prunier said all the Board has to do is determine what a fair contribution is.

Mr. Dufour said he still doesn't grasp what the next logical step would be if Department of Public Works says there's no money. He said if the Board determined that \$500,000 was the applicant's fair share, what would that money get the City.

Atty. Prunier said they've already seen this done wrong once with the State because they didn't do what should have been done. It would have been a lot easier and cheaper for them when they rebuilt it to do it right.

He said he thinks that the City can take the \$500,000 and the City can do all the improvements that they want down there or the City could come up with a plan that says they want the applicant to do certain things which would add up to \$500,000 and that would be their contribution and when the City could get to the rest when they were able to do so.

Mr. Dufour said he always is nervous about discussion items because he always fears that the applicant thinks that they've made the biggest hurdle. Once the case comes to the Board they receive testimony that may be in opposition and other things could come up that they aren't hearing under the discussion item. He said he would be leery of approving the contribution without some definition of what the improvements are ultimately going to be.

Atty. Prunier said they are not here asking the Board to approve it because he didn't believe the Board could do that tonight. He said they are trying to get a consensus to help them determine whether the project is going to go forward or not. He said when he comes to the Board with a discussion item it is to find out where the Board may have certain problems or ideas as to how the project might be done so that when the applicant does come with their application he either has the answers as to why certain things couldn't be done or that they are done. It's an attempt to find out whether the Board has any concerns and to see if they can be addressed at the time the case is heard.

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Mr. Lowe said when Tully came to the Board for their expansion, they had to pay a good part of the cost of improvements to their entrance to their facility.

Atty. Prunier said that intersection was paid for by the State, but he doesn't know how much Tully paid.

Mr. Dufour said Tully, whether through lobbying or whatever, was able to get an intersection directly across from the highway. He said he can't believe the State paid for the entrance onto the Tully property. He would think that the State paid for the roadwork and Tully paid for his entrance.

Mr. Moran asked whether the State would help in this situation. He said the Board should refer this to Public Works and see what can be worked out for \$500,000 and have them make a presentation when the case comes to the Board for a hearing.

Mr. Dufour said he wasn't sure that this was a process that they could control. He said he's trying to make this work, within the confines of acceptability, because it's been a problem for a long time and it's not going to get any better. He didn't think that the State would make any sort of contribution.

Mr. Slivinski said he wouldn't depend upon the City or the State to provide any funds toward the improvements. He said the applicant said that the site won't work the way it is and that it has to change in order to work. They have shown they are willing to spend \$500,000 on the improvements and they may be able to spend between \$300,000 to \$500,000 to get a smaller widening of the lanes. The Board is going to have to vote on it knowing the funding is there or that the work is going to be done to their approval.

Mr. Torosian asked where the \$750,000 estimate is coming from.

Atty. Prunier said the project improvements were put out to bid. He said if someone is willing to do the work for less, they are willing to put up the money - up to \$500,000.

Mr. Torosian said he's more worried that the work would cost more than \$750,000.

Atty. Prunier said he thinks the Board of Public Works wants some other work done in that area, especially on shoulders, that would cost more.

Mr. Houston said in the past contributions have been given for projects. There is between \$850,000 - \$900,000 sitting in an account with contributions that have been given over the years for the Daniel Webster Highway corridor. He said he understood that there might be some funds left over. He said there are other alternatives to look at such as the entire Daniel Webster Highway corridor project the City is working to complete. There is a major project being proposed in Hudson. That may impact this interchange and some other interchanges. They also have under discussion another project on the Dow Chemical site. There are some issues that might have to be threaded together to have a solution. There's nothing worse than building something and then tearing it out two or three years later to correct something.

Mr. Lowe asked how much of the funds that Mr. Houston mentioned are designated for a specific items.

Mr. Houston said he couldn't tell them. He said the City share of the CMAQ grant is a 20% match. He said there should be, depending upon the cost estimates, \$300,000 - \$400,000 left over.

Mr. Lowe asked if this money could be used on these road improvements.

Mr. Houston said that's a question that the Board can direct to the Division of Public Works. He said there are funds that the Planning Board received as contributions for work for projects on the Daniel Webster Highway corridor. Maybe the two projects could be coordinated in some way.

Mr. Dufour asked if bringing a Lowe's into the site if it was worse than what's up there now. He said in his mind the answer is "no". Because of the way the State re-did the roadway everybody seems to be of the consensus that the way the work was done, it wouldn't work right. Lowe's is saying that they are willing to absorb 2/3 of the projected cost of reconstructing the area. The question is if this is a fair share when they consider all of the other businesses that will benefit from those improvements.

He said this is a pretty good deal, but he's leery because the process seems to go away from them. Apparently the law says they are supposed to make a determination about accepting the offered contribution. They could say that 2/3 is more than their fair share. Then he is leery about where the rest of the

money is going to come from. What happens if Lowe's comes in because they have accepted their contribution and the City, as they have seen before, doesn't do the work. They may be adding to a situation that none of them want any part of. He's not sure what happens if the City decides not to make those improvements because they all agree that without those improvements it doesn't work right. If Shaw's was up there today it wouldn't work right either, but Shaw's isn't up there today so they aren't feeling the impact that this stretch of road would likely have if they were there.

He said they could accept a contribution and use it toward some improvements, but they've already torn this intersection apart once and it's not right. He asked how many hundreds of thousands of dollars do they want to spend re-doing it and re-doing it.

Atty. Prunier said they did a detailed report that he thinks everybody accepts that would solve the problem. It might not solve problems created by other projects that might be coming in the future, but it would solve the problem that's out there today. All of them can only do the best they can to get something done.

Mr. Dufour said a lot of the members seem to be very apprehensive making a determination that is fair and they all probably feel that it's fair, as he does, but what if it never happens. He asked what control they would have if it didn't happen.

Mr. Slivinski said if the Board approves the plan, the improvements have to happen.

Mr. Moran said he is not in favor of the Board approving the \$250,000.

Mr. Dufour said he didn't think the law required the Board to do that. It requires them to make a determination that the contribution the applicant is making is proportionately correct.

Mr. Moran said there's also the \$250,000 that is hanging out there.

Mr. Dufour asked if Mr. Moran was also leery about making a determination that the contribution is fair and then the improvements not being made.

Mr. Moran said that this is correct.

Mr. Dufour said they all share that.

Mr. Dookran said he knows that the applicant has been having discussions with the Traffic Superintendent and the Planning Department. He said he's sure that question has been posed to them. He asked what their response was.

Atty. Prunier said they informed them that they are willing to make a substantial contribution, but he doesn't believe they know the amount that they were offering. No one has said anything about going ahead with it.

Mr. Dufour said it definitely makes a contribution to this community. He said it's just a matter of how to make it happen. They are leery about the balance. He asked if they can get more direction from the Department of Public Works between now and the time of the presentation to see what their commitment would be, would they be able to stipulate it. He said he doesn't know.

Mr. Moran asked when the case would be coming to the Board.

Mr. Dufour said they haven't decided whether they would go forward yet because of this issue with the improvements.

He said there seems to be talk about who is going to pay for the final layer of pavement. Lowe's is amenable to widening the roads and reconfiguring, but when all that was done, the City would want the rest of it all resurfaced, not just a piece as Lowe's would probably do. He asked if this would total \$250,000.

Atty. Prunier said he is not a road contractor and would not know. All he knows is that you have to look at prices every week because everything is going up.

Mr. Dufour said if the \$250,000 was the difference and the applicant could do all the improvements and pave their section and all that was left was the final topcoat, the City could work that into any future plans they have as long as what was done in the interim was more than acceptable and workable.

Mr. Lowe said he thinks that Public Works has to look at it and other members agreed.

Atty. Prunier said that he would talk to whoever is going to be assigned at Public Works to discuss this matter with him and he will ask about the funds that Mr. Houston talked about.

Mr. Dufour asked about the wall and if it is going to go all the way up and what material was going to be used.

Paul Cincotta, Packard Development. Mr. Cincotta said they don't have the material to quarry out of the site so they don't have the ability to use that kind of material to build the wall. He said the wall will be constructed out of cement masonry units. They are referred to as segmental block retaining walls.

Mr. Dufour asked how big these are.

Mr. Cincotta said they are on the order of 18" wide and 12" high. He said it will be a vertical wall that travels alongside the approach road that comes up to the site as well as if you were to draw an extension of the entrance drive that defines the property boundary between the Shaw's site and the Tully site, it also extends there. The wall will be higher than the extent of the wall that exists today. Today there is a wall section and a slope section. They have a more vertical wall with no sloping segment to it.

He said in addition to some of the drainage related issues that have caused slope failures as well as sinkholes up on the top, a lot of that stems from the fact that much of the material that is under the site was fill material that was poorly placed. In the tests they conducted for sighting the proposed building, they found that the fill material is not properly compacted, etc. He said much of the exercise is pulling that fill material out and putting it back properly. There will isolated pockets where some of the material will be found to be a little bit unsuitable and will be replaced with a better gravel. For the most part the material that underlies that whole building and parking areas is suitable fill material, just improperly placed.

Other

Mr. Dufour said that as he was reading the last few week's minutes he made the assumption that the quality of the recordings is not very good. He said these are legal records and if they can't be understood it's embarrassing. He asked if something could be done to improve the situation.

Mr. Houston said he thinks a lot has to do with some of the equipment. There are only two microphones. He said it is important that when they are speaking to grab the mike and speak into it clearly. When you are 3' - 4' away it doesn't pick up as well. When the door to the auditorium opens and there's noise out there and other background noise, sometimes it sends a garbled message. Occasionally the wiring is not right. That's under the control of the Administrative Services Department. He said the Planning Department buys the tape recorders.

Mr. Dufour asked if the issue might be that they need more microphones.

Mr. Houston said he wasn't sure. He said every time they have a tape recorder that goes or isn't recording properly they have to find another one. They aren't making anymore.

Mr. Dufour said he would contact Maureen Lemieux to see if there is anything that can be done.

Mr. Lowe asked if there is any money in the video account.

Mr. Dufour said he would talk to Maureen Lemieux to see what she says. He said he's worried about court cases where there is no record.

ADJOURNMENT at 9:39PM

APPROVED: _____
Ken Dufour, Vice Chair, Nashua Planning Board

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