

NASHUA CITY PLANNING BOARD
January 10, 2008

The regularly scheduled meeting of the Nashua City Planning Board was held on Thursday, January 10, 2008 at 7:00 PM in the auditorium at City Hall.

Members Present: Ken Dufour, Chair
William Slivinski, Vice Chair
Bob Canaway, Secretary
Alderman Richard LaRose
Steve Dookran, City Engineer
Hugh Moran
Mike Lowe
Cynthia Overby (Alt)
Peggy Trivilino (Alt)

Voting in George Torosian's place will be Cynthia Overby.

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

Approval of Minutes

November 15, 2007

MOTION by Mr. Lowe to approve the minutes of November 15, 2007, waive the reading and place on file. Mr. Canaway made the correction on Case 4, the Motion to Amend carried 7 to 1 and the original motion carried 5 to 3.

SECONDED by Mr. Moran

MOTION CARRIED UNANIMOUSLY

COMMUNICATIONS

Mr. Houston went over the following items that were received after the mailing went out.

Communication from TF Moran, Inc., Deborah Brewster concerning case number 1 and 2 on the agenda. They request that those 2 cases be postponed until the next meeting.

Letter from Kenneth A. Brunini and Patricia Collins-Brunini concerning case number 4, the Guiterman subdivision.

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Letter dated December 5, 2007 from Attorney Gerald Prunier concerning Cumberland Farms Gulf Station.

Letter from Robert Cormier, Cuoco & Cormier dated February 12, 2007. This is a copy of the approval letter for the inspections on the drainage systems that the Board requested at the last meeting.

Technical Review Meeting for the February 7, 2008 meeting to determine regional impact.

Copy of the ordinance requiring training for Planning Board Members.

Communication from Nashua Regional Planning Commission from iTRaC conducting a session on Steep Slopes.

iTRac goes electronic for updates.

Notice for the Nashua River Watershed Association Auction.

Planning Board has been invited to the 26th Annual Legislative Forum.

REPORT OF CHAIR, COMMITTEE & LIASON

Chairman 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 as well as write your name and address on the sign in sheet provided. 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. This will also be the time for the applicant to address any issues or concerns raised by prior testimony.

The Board will then ask any relevant follow-up questions of the applicant if need be.

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.

Above all, the Board wants to be fair to everyone and make the best possible decision based on the testimony presented and all applicable approval criteria established in the Nashua Revised Ordinances for site plans or subdivisions. Chairman Dufour noted that the Planning Board does not make zoning decisions.

Zoning determinations are made by the Administrative Officer prior to the Board's legal public notice being sent to abutters.

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

Chairman Dufour thanked everyone for their interest and, courteous attention and asked that everyone turn off his or her cell phones and pages.

OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

1. Woody & Michael Realty Investments, 96M Alosa (Owners) - Application acceptance and proposed conditional use permit for a change of use from school bus parking, repair and service facility (NR263). 233 Main Dunstable Road, Sheet E - Lot 111A, Zoned "PI" - Park Industrial. (REQUESTED CONTINUATION UNTIL FEBRUARY 7, 2008 MEETING)

OLD BUSINESS - SUBDIVISION PLAN

None

OLD BUSINESS - SITE PLAN

2. Woody & Michael Realty Investments, 96M Alosa (Owners) - Application acceptance and proposed amendment to NR263 for a change of use from school bus parking, repair and service facility to RV sales, repair and service facility. 233 Main Dunstable Road, Sheet E - Lot 111A, Zoned "PI" - Park Industrial. (REQUESTED CONTINUATION UNTIL FEBRUARY 7, 2008 MEETING)

NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

NEW BUSINESS - SUBDIVISION PLANS

3. **Gerald & Madeline Bergeron (Owner) - Application acceptance and proposed subdivision of one lot into 2. 23 Gosselin Road Sheet C - Lot 68, Zoned "R9" - Suburban Residence.**

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

SECONDED by Alderman LaRose

MOTION CARRIED UNANIMOUSLY

Peter Weeks, Cuoco & Cormier

This is a two-lot subdivision, owned by Gerald & Madeline Bergeron, 23 Gosselin Road, Sheet C, Lot 68. The purpose is to subdivide lot 68 into two lots. Prior to the subdivision, Lot 68 had 52,564 square feet. After the subdivision Lot 68 will have 22,679 square feet. The new lot (Lot 2977) will have 39,884 square feet. Both lots meet the minimum area. Lot 68 meets all Zoning requirements. The Lot 2977 needed a variance for frontage and width. On July 24, 2007 the Zoning Board of Adjustment granted approval for both variances. There were also four stipulations. Back on September 27, 2005 this same project came to the Zoning Board for a similar variance and was granted and one of those stipulations is part of the approval of the Zoning Board in 2007. The conditions are as follows:

1. Provide a 20-foot buffer along the southwesterly property line (3 Hazel Avenue).
2. A vegetative nondisturbed buffer along the northeasterly property line. The distance is to be stipulated by the Planning Board and applicant.
3. Snow storage easement to be established between Lots 2977 and 68. They are proposing a 10-foot snow storage easement.
4. No increase in off-site drainage.

There is a sidewalk that goes along the other side of the street.

Chairman Dufour asked where the curb would be put in. Mr. Weeks showed on the plan where the curb would be. It is proposed to be bituminous Cape Cod, about 30 feet in length.

Chairman Dufour asked how they would have the snow stacking ability with the different elevations. Mr. Weeks said the easement is all on Lot 68. The contours blend in with the existing grade so it shouldn't be an issue.

Mr. Lowe asked if there would be a stipulation on the snow easement if the house changes hands. Mr. Weeks said there would be an easement recorded on the deed.

Mr. Moran asked about the sidewalk. Staff explained that the sidewalk is on the opposite side of the road. This will extend it down to the next street and will be approximately 170 feet. The sidewalk extension would be towards West Gate Village. There is plenty of room in the right-of-way to do this.

Chairman Dufour said the options are to build a sidewalk or make a contribution. Staff said that was correct.

Brian Polley, Cuoco & Cormier

Mr. Polley explained that a headwall is a retaining wall about 2 feet high on the upper part of the driveway. They want to make a consistent grade and had to do a little of fill in one area and a little bit of cut off the top. The water flows down the middle of the driveway then transitions to the lower end where the 30-foot bituminous curb is, picks up the runoff and direct it into the tension container and recharges back to the ground water.

Chairman asked if at the end of the driveway there is a receptacle with a grate. Mr. Polley said it is an opening filled with two or three feet of stone.

Mr. Lowe asked if they had to be cleaned. Mr. Polley said there is a sediment filter on top and the filter would have to be cleaned. The homeowner would have to do this.

Mrs. Overby asked the City Engineer if he was comfortable with the drainage they are proposing. Mr. Dookran replied yes. It was reviewed and this would capture the runoff and the drainage shouldn't go beyond the edge of the driveway into the roadway. The only issue he has is will this infiltration system work. Mr. Polley replied that test pits were conducted and the soil had a 2-minute perk rate.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one

SPEAKING IN FAVOR OF THE PLAN

No one

MOTION by Mr. Slivinski to approve New Business #3 two lot subdivision, applicant Gerard & Madeline Bergeron, subdivide one lot into 2, 23 Gosselin Road, "R9" - Suburban Residence. It conforms to NRO 16-440(g) with the following stipulations and waivers:

1. Prior to the plan being recorded bonding for work in the public right-of-way shall be approved by the Division of Public Works and Corporation Counsel, if required.
2. Prior to the plan being recorded the stormwater operation and maintenance plan shall be reviewed and recorded with the plan.
3. Prior to the plan being recorded the easement for snow storage and removal shall be submitted and recorded with the plan.
4. 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
5. This subdivision plan is subject to the Zoning Board of Adjustment conditions of approval.
6. The applicant will in lieu of constructing a sidewalk a contribution in the amount of \$8,150 to the Sidewalk Fund.
7. On the northeast side of the property there be a 20-foot buffer zone.

SECONDED by Mr. Canaway

MOTION CARRIED 7 TO 1 (Mr. Lowe voted no)

NEW BUSINESS - SUBDIVISION PLANS

4. **Judith A. Guiterman Trustee of Judith A. Guiterman Revocable Trust (Owner) - Application acceptance and proposed subdivision of one lot into 3. 3 Swart Street, Berkeley Street and Concord Street Sheet 48 - Lot 59, Zoned "RA" - Urban Residence.**

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

SECONDED by Alderman LaRose

MOTION CARRIED UNANIMOUSLY

Jamie Bodwell, Cuoco & Cormier

This is a 3-lot subdivision for Judith Guiterman. It is zoned "RA" and partially located in the Historic Overlay District. This project is boarded on Berkeley, Swart and Concord Street. The existing house is going to remain and with the two lots accessing Concord Street. All the lots after the subdivision will meet the required square footage. Lot 334 will have 12,220 square feet, Lot 335 will have 13,073 square feet. The remaining lot will have 33,765 square feet. The proposed houses will access Concord Street. There is a dedication of land rounding on the corner lot to the City. They are asking for no waivers or variances.

Chairman Dufour asked if the applicant has reviewed the recommended staff stipulations.

Mr. Vaudwell said no, they received them this evening and would like to speak to stipulation numbers 7 and 10. Stipulation #7, since there is no development occurring on the remaining lot and one of the stipulations is to extend the sidewalk they do not want to do that. Stipulation #10 is in regards to the house orientation, the applicant requested both addresses be for Concord Street. Staff would like to house oriented to Swart Street, but the applicant would prefer it face Concord Street.

Mr. Lowe asked if the Historic District Commission has written a report on this.

Chairman Dufour said that the Historic District does not get involved until the architectural is designed. This is a subdivision.

Mr. Vaudwell said that he unofficially spoke to the Historic District and had the plan reviewed. It was looked at it and said that they don't review it until ready to build.

Mr. Slivinski asked who he spoke to.

Mr. Vaudwell said Carter Falk and he brought it to the Historic District.

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Mr. Slivinski said he has been on the Historic District Commission for seven years and there has been no new home construction in the Historic District. That location is probably the premier Historic District area of Nashua and should be kept in mind while talking about what is proposed and subdividing the lots.

Mr. Canaway said in regards to stipulation #10, are you opposed?

Mr. Vaudwell said they would like to keep it oriented the way it is, but would be open to discussion.

Mr. Canaway asked what their responsibilities are to the Historic District. Is the Board only to consider the RA Urban Residence or also the Historic District?

Chairman Dufour said this is a 3-lot subdivision within that process they refer to the Subdivision Plan Approval Criteria. Staff recommends that the house referred to in stipulation 10 be oriented towards Swart Street and the reasons. If the approval is moot on that issue then they could face Concord and they have to meet the setbacks.

Mr. Slivinski said that as a member of the Historic District he disagrees with Staff about the positioning of the house. All of the houses that are in that fact face Concord Street as well as the corner houses. From a Historic point of view he would disagree.

Alderman LaRose asked where the driveway will be for the corner house.

Mr. Vaudwell said on Concord Street.

Alderman LaRose asked why.

Mr. Vaudwell said the stormwater management issue they have, the design ends up for both lots on the corner lot and they went that way so it doesn't take away from the backyard. They didn't want to position the house, move the driveway and take away from the backyard.

Alderman LaRose asked if they were trying to get the driveway off Concord Street. He asked if the driveway is going to have a turnaround or back out onto Concord Street.

Mr. Vaudwell said there is a turnaround.

Chairman Dufour asked that everyone read the letter from the Bruninis.

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Mr. Slivinski from 7:00 AM to 8:30 AM it is a chance go get out onto Concord Street from any of the homes. There is a school and many cars coming out of Swart Terrace.

Chairman Dufour asked Staff if the driveway would still be on Concord Street if they had the house face Swart Street.

Mr. Yeomans said no, the driveway would be on Swart as well.

Pete Weeks, Cuoco & Cormier

Mr. Weeks asked if the Board be in favor if they did change the driveway, but have the house face Concord Street.

Chairman Dufour said they would consider it.

SPEAKING IN OPPOSITION OR WITH CONCERN

Gene Porter, 77 Concord Street

Mr. Porter also previously owned the home at 72 Berkeley Street so he is familiar with the character of the neighborhood. He feels the issue before the Planning Board is the preservation of the character of the Historic District. Many people in the neighborhood have invested heavily in their own property on the expectation that the character of the neighborhood would be preserved. He would urge the Board not to approve the application to subdivide. Two small lots of a quarter acre in addition to the traffic problems would reduce the values of other properties in the neighborhood and change the character of this Historic District. The Supreme Court of Massachusetts as reported in the Telegraph said Boards of this type have a responsibly and authority to consider preserving neighborhood characteristics irregardless of master plan zoning when they make their judgment.

Peter Hambleton, 50 Berkley Street

Mr. Hambleton abuts Concord Street and abuts the Historic District because it was important for his property values and maintains the character of the neighborhood. He is concerned about the size of the lots. If you take the homes from 77 to 94 Concord Street you will find there are 12 lots that could be subdivided into smaller lots. This opens the door for others to carve it out. If someone were to say this isn't likely to happen look at the west end of Columbia Avenue. It runs about 5 blocks and on the far west end was a reservoir. That reservoir was

dugout and filled in and on that piece of land 11 homes were built with frontages of less than 75 feet and depths of property exceeding three times the frontage, it really circumvented the idea of density. On the last 20% of Columbia Avenue, half the number of homes that are on the entire length of Columbia. Columbia is second only to Concord Street as one of the beautiful streets in the north end. Each home doesn't face squarely to Concord Street. In order to meet the setbacks, the only way to get a 50-foot wide home into that area is to canter it to the property. If the Board decides that the house should face Concord Street, then those homes are no longer 1400 square foot bases, but considerably less and take away from the character of the neighborhood by putting in smaller homes. What is trying to be done here is out of character with the neighborhood. He would welcome the property being divided into two properties, but subdividing it into such small lots doesn't seem to make sense.

Michelle Swallow, 92 Concord Street

She lives directly across from the proposed subdivision. She agrees with her neighbors and urges the Board to take into consideration the preservation of the Historic District. She hopes the Board takes into consideration those that are committed to the community and staying. This plan appears to be maximizing the financial return of the property and not with regard to the negative impact on the neighbors.

Chairman Dufour read part of the letter from Kenneth Brunini and Patricia Collins Brunini into the record.

SPEAKING IN FAVOR OF THE PLAN

David Morin, 18 Bedford Street

Mr. Morin is a real estate agent and has been working with Judith Guiterman to sell her property. Up until 1993 these lots were already subdivided lots and she and her husband had consolidated them into one lot. At one time it was four different lots. Had they not merged the lots they wouldn't be here today. Mrs. Guiterman has lived here for 32 years. She wants to maximize the value of her property. In this RA district these lots are not as large as some lots on Concord Street but there are some that are 12,000 to 15,000 square feet. He didn't think this would affect Concord Street adversely. People could build a 3,000 square foot house there under the guidance of the Historic District Commission. There are a number of properties

on Berkeley Street that aren't huge lots. These lots meet the requirements in terms of size. It doesn't have anything to do with the Historic District Commission at this point in time.

Mr. Slivinski asked Mr. Morin if those small lots he referred to have 90 feet of frontage.

Mr. Morin said he didn't know what the frontage is but as long as it meets the 12,000 or 75 square feet. In this case these two lots are the same size as the ones Kevin Slattery built on Berkeley Street a few years ago and those are not large houses.

Mr. Slivinski said it was more than 90 feet.

Mr. Vaudwell said the proposed lots meet the requirements of the RA zone.

Mr. Lowe said he didn't think it met the Historic District overlay value of use. If the Board allows this to happen then nothing is to stop 10 or 12 properties from being subdivided. It doesn't meet the criteria of the other homes in the area. It would be a smaller home on a smaller piece of land and it wouldn't be in keeping with the same character as the other houses in the area. The subdivision has to be compatible with the existing character of the neighborhood.

Mr. Slivinski said part of the characteristics of that neighborhood is the land. There are different architectural designs, but part of that neighborhood is the land. All the other houses on Concord Street are parallel to Concord Street and putting in houses that do not face Concord Street break up the characteristic of that neighborhood. If this lot division is approved then the Board is also approving their ability to put those type of houses in there. The Historic District can only approve the style of that house. All the other lots in that neighborhood, have much more than 90 feet of frontage. There are a lot of aspects that do not conform to the characteristics of the neighborhood.

Mr. Canaway asked if stipulation #9 the angle, has been brought up, the amount of frontage and size of lots in proportion of other lots in the neighborhood and size of the house would these be out of character. Another question is stipulation number 10 is adhered to that may cause some character issues, would that create other issues like drainage, moving the driveway, that would have to be addressed at a later date.

Mrs. Overby said she thought the Board needed to set a precedence on how they are allowing developments treading on delicate land. She wasn't going to tell the applicant how to develop the land however facing a house towards Swart would be best.

Mr. Moran said the character of the neighborhood overpowers the fact that they can legally put those houses there based on the code of ordinances. He wouldn't vote in favor of this proposal because the character of the neighborhood trumps the legal responsibility.

Mr. Houston said that there was some reference under the criteria 1 and 2 relative to the master plan and access to Concord Street and some reference to condition number 7 whether the applicant wanted to comply with that and that's a condition criteria the Board would have to find under item number 2 which requires that sidewalk to be done.

Chairman Dufour said the applicant is looking to propose lots that can legally go within that zone. The people are speaking in opposition that it is out of character with the neighborhood because of the lot size. That would be the wrong way to go. If the Board denies subdivisions because of lot size then this Board won't be able to get anything done. The Alderman pass zoning laws and have minimum lot sizes for different zones. If it meets the minimum lot size the Board cannot say the lot needs to be bigger because the lot next to it is bigger. If the Board if going to deny this, do not use that as an excuse or reason. However, what is at issue is the Historic District. That district should be preserved and he referred to Article 3 in the Zoning Book, 16-35 where it describes Historic Districts and preserving the district and conserving property values. The Historic District creates an image of Nashua. Although they may have had 4 lots at one point but they chose not to keep it that way. By approving this subdivision it is the first step in creating an image of that part of the Historic District that they don't want. He urged the Alderman to change the zoning for the minimum lot sizes in the Historic District so this won't have to be discussed.

Mr. Slivinski said that in looking at #9 that says the subdivision is compatible with the existing character of the neighborhood.

Mr. Slivinski said that there are homes in the Historic District that are small.

Mr. Slivinski read #9 it has nothing to do with the architectural design or structures. If the subdivision doesn't talk about the building, the subdivision is compatible with the existing character of the neighborhood. If we have 1-acre lots and someone wants to put in many houses, the Board would say the subdivision is not in character with the neighborhood. And it goes on to say and to ensure that it preserves the natural features of the area. Part of that beauty are the grounds up there that give it the history of the town. It is not just the building, but also the grounds. This seems to him to cover the subdivision aspect of the neighborhood.

Chairman Dufour said if the Board starts dealing with the character of the neighborhood and preserving natural features, saving mounds and trees but no problem with one house on two lots who will decide which is the natural feature. We should deal with the Historic feature.

Mr. Houston as a point of clarification reminded the Board that the applicant has not agreed to condition number 7, which is required by NRO 16-617. There is a short piece of sidewalk on Berkeley Street that needs to be completed and the applicant has told the Board on the record that they did not agree with that.

Chairman Dufour asked the applicant if she would agree to finish the sidewalk. She agreed to finish it.

Chairman Dufour asked about the house orientation facing Swart Street. The applicant agreed to that as well.

MOTION by Mr. Canaway to deny New Business - Subdivision Plan #4 Judith A. Guiterman Trustee, (Applicant) subdivide one lot into 3, 3 Swart Street, Berkeley Street and Concord Street based on the fact that it does not meet NRO 16-440(g), specifically application criteria number 2 that the subdivision does not comply with all applicable standards of Articles 3 and 5-16, more specifically it doesn't comply with purpose of 16-35 pertaining to Historic Districts and number 9 it is not compatible with the existing character of this neighborhood, specifically based on frontage amount of lot square footage and orientation of the homes.

SECONDED by Mr. Lowe

MOTION by Alderman LaRose to amend Mr. Canaway's motion to delete reference to Subdivision Criteria 9 reference from the motion.

NO SECOND. THE ORIGINAL MOTION STANDS

MOTION DENIED UNANIMOUSLY

NEW BUSINESS - SUBDIVISION PLANS

5. Marcos Baczynski and Solange Karas (Owners) - Application acceptance and proposed waiver request of Stipulation #9 requiring payment of \$20,800 in lieu of construction of sidewalks concerning the subdivision plan of 25 West Adelaide Avenue, Sheet 54 - Lot 51, Zoned "RA" - Urban Residence. (Approved October 20, 2006)

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

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

Attorney Russell Shannon

Atty. Shannon is representing the applicants in regards to their waiver request for a sidewalk contribution. This is in respect for an application for a subdivision approval that went before the Board on October 20, 2005. The owner of the property at that time was Theresa Buckley. The applicants for the subdivision approval were Debbie Buxton and Nancy Ergmann. At the time of the approval there were a number of stipulations. The two stipulations pertinent to this evening request for a waiver concern stipulation numbers 7 and 9. Stipulation 7 states prior to the issuance of the final Certificate of Occupancy, the sidewalk contribution shall be paid to the Planning Department, unless the sidewalk is to be constructed. Stipulation 9 stated the sidewalk contribution of \$20,800 is accepted in lieu of construction of the sidewalk. Since that application was approved, a review of the documents recorded at the Registry of Deeds reflect a Declaration of Covenants concerning stormwater management as well as the plan. No where either on the plan or Declaration of Covenants or any other document recorded did it reflect the sidewalk contribution. The land was sold to a third party for \$725,000. That owner took one of the lots and sold it to the Marcos Baczynski and Solange Karas for \$135,000 and they took out a construction loan for \$285,000. At the time the applicants purchased the lot there was no reference of this sidewalk contribution requirement prior to the issuance of the final Certificate of Occupancy. It didn't state if the owner

was to sell the lot that she or the applicants would be required to pay the sidewalk contribution at the time. The general contractor has gone "belly up" and taken funds from the lender and did not pay the subcontractors. Atty. Shannon said that he was initially approached by his client to deal with the mechanics liens that were placed on the property by subcontractors for which the lender had disbursed funds to the general contractor. They have been forced to deal with the liens to pay them off or go to Court. They have now gone over budget and are trying to finish the house up by themselves. When Mr. Baczynski asked Mr. Yeomans what he needed to do to get a Certificate of Occupancy, at that point he found out the \$20,800 would need to be paid and that was the first time he became aware of it.

The Board is entitled to do or take into consideration a waiver, as strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of the regulations. It would be an unnecessary hardship placed upon the applicants to pay the sidewalk contribution. If they are forced to pay that, they would have to give up on the project and result in a foreclosure of the property. The person who applied for the subdivision had received \$725,000 and is not responsible for the sidewalk contribution. He felt the Board did not want the homeowners to be responsible for paying this contribution and if they were, there should have been some type of documentation recorded that would have alerted them prior to the purchase that this fee would have to be paid and they could have taken that into consideration before purchasing the property. There is another homeowner that has purchased another lot in the subdivision. They would also have a problem. Hopefully something can be done so they can complete their home and pay their property taxes without having to deal with foreclosures.

Mr. Slivinski said that the Board clearly stated that the \$20,800 was to be paid by the applicant and the applicant was Debbie Buxton and Nancy Ergmann. He said that what they should have done is before any lot could be sold they had to make the contribution before they sold the property.

Mr. Canaway said were you inferring that stipulation #9 was not recorded with the site plan.

Atty. Shannon said he looked at the site plan on-line with the Registry of Deeds and did not see that stipulation recorded on the plan.

SPEAKING IN OPPOSITION OR CONCERN

No one.

SPEAKING IN FAVOR OF THE PLAN

Mr. Michaud, 122 Allds Street

He works with Mr. Baczynski and in the last 3 to 4 months he has been helping him finish this project. Mr. Baczynski is paying 2 rents. There are house lots in that development and even if it were some of his responsibility it would be a portion at best. It is really the responsibility of the contractor or lender that was involved. This is a big obstacle.

Mr. Yeomans said that when parties come to the Board they make deals with contractors to develop land. Staff reviews the plans and prepare the stipulations based upon the expectations. The homes are sold to the public and the system has worked pretty well, but we have here a situation where it didn't work well out of thousands of lots and this is one time that it failed. The homeowner never sees those costs because they are usually factored into the cost of the lot. Theoretically they have already paid for their share of the contribution. It was a condition of approval and it is public record, but they don't get recorded. The question is do we tailor another set of procedures in the case this occurs again? Maybe we can do a better job on working out the conditions of payment prior to bringing the application to the Board so this doesn't happen again.

Chairman Dufour said that staff did it like they always do it. We will see more developers go "belly up" and be careful how we handle these. One of the criteria was to have a sidewalk built or a sidewalk contribution. We would have to modify this site plan approval to state that the department would accept \$5,200 upon each individual Certificate of Occupancy.

Mr. Dookran asked Atty. Shannon what is the land worth today.

Atty. Shannon said the owners purchased the land November 2, 2006 but didn't know exactly what the land is worth but in his opinion about what they paid for it a year ago.

Mr. Dookran asked if he thought the developer factored in the contribution into his property.

Atty. Shannon didn't know. He wasn't the applicant. When the person who sold the property to his client did they factor the \$20,800 into the purchase price? He doesn't know, but would hope that they would have.

Mr. Dookran asked if the owner has completed other public improvements that were part of the approval that benefit the entire subdivision.

Atty. Shannon said there were some issues regarding the sewer line but believes all the other stipulations are going to be complied with provided some type of consideration can be made for the sidewalk contribution.

Chairman Dufour asked Mr. Baczynski what off-site improvement he has made since purchasing the property.

Mr. Baczynski said the sewer line connection from the street to the house wasn't complete. The connection wasn't inspected by the City, some work still needed to be done, so they brought someone else to finish the sewer line.

Mr. Dookran asked if the sewer line only benefits Mr. Baczynski.

Mr. Baczynski said it benefits all three homes.

Mr. Dookran asked how much was spent to benefit the whole development.

Mr. Baczynski said he paid \$1600, which was money he had already paid to the general contractor.

Mr. Michaud said the sewer line was not completed and not paid to Hudson Paving who put in the main line on Adelaide up until a certain section on the property. It was capped off. The deflection test wasn't done. He had the project finished. This benefits the whole development. The other houses have a lot of issues. The woman who made the application should have paid the contribution.

Atty. Shannon said it is a four lot subdivision. One existing house on one lot, and the three new lots.

Chairman Dufour said he feels bad for the people, the money needs to be collected. Perhaps there is a procedural issue with how the Board goes about collecting it then suggested it be tabled and discusses it with corporation counsel and then

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resume. There are 4 lots but only 3 certificate of occupancy. The \$20,800 should be divided by four and modify this approval so each lot have to pay \$5,200.

Mr. Dookran said it would be fair to use the frontage for each lot.

Chairman Dufour said there is more frontage on the existing home and don't see why that one should be penalized.

Mr. Dookran said it based on frontage.

Mr. Slivinski asked if it was too late for them to put in the sidewalk.

Chairman Dufour said it wasn't too late but cheaper to take the contribution.

Chairman Dufour asked if the \$20,800 was calculated on how much?

Mr. Dookran said it was \$50 per foot.

MOTION by Mr. Moran to table this until the next meeting (February 7, 2008) so it can be discussed with corporation counsel.

SECONDED by Alderman LaRose

MOTION DENIED (3 TO 5)

MOTION by Mr. Lowe to amend the site plan to charge each of the four lots \$50 linear per foot for frontage at the time the certificate of occupancy is issued. To amend the site plan approved on October 6, 2005 meeting subdivide one lot into four, 25 West Adelaide and Boylston Street, Staff Stipulation #9 to now read prior to each individual certificate of occupancy in lieu of sidewalk contribution \$50 per linear foot of frontage prior to the certificate of occupancy is issued.

SECONDED by Alderman LaRose

MOTION CARRIED (7 TO 1)

NEW BUSINESS - SUBDIVISION PLANS

6. Bradley and Elizabeth Kreick (Owner) - Application acceptance and proposed voluntary revocation of recorded approval of

subdivision plan per NRO 16-406 and RSA 676:4-a., approved on September 9, 2004. Indian Rock Road, South Deerwood Drive and Pine Hill Road, Nashua Sheet F - Lot 41 and Hollis Sheet 39 - Lot 1, Zoned "R30" - Suburban Residence and "R&A" - Residential Agricultural.

MOTION by Alderman LaRose that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

Gerald Prunier, Esq.

The applicant wants to change back to the original lot and eliminate the subdivision. It is allowed by Statute if the applicant desires it.

Mr. Canaway asked what was planned for this site.

Atty. Prunier said a single family house.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one

MOTION by Mr. Lowe to approve Bradley and Elizabeth Kreick, subdivision revocation, Indian Rock Road, South Deerwood Drive and Pine Hill Road Zoned "R30" - Suburban Residence and "RA" Residential/Agricultural

SECONDED by Mr. Canaway

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

None

OTHER BUSINESS

Review of tentative agenda to determine proposals of regional impact.

None

MOTION by Mr. Slivinski that there are no issues of regional impact.

SECONDED by Mr. Moran

MOTION CARRIED UNANIMOUSLY

DISCUSSION ITEMS - OTHER BUSINESS

Earlier this evening Mr. Houston alluded to a Cumberland Farms issue that the Board wanted to review after six month. Atty Prunier wishes to speak to that. They would be added as under Other Business this evening.

MOTION by Mr. Moran to add to Other Business

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

OTHER BUSINESS

When the Board approved the renovation of the Exxon Cumberland Farm station on Broad Street there was a Dunkin Donuts going in to it. One of the conditions the Board placed on the project was they had to come back to the Board after six months. There are no problems but it was a condition.

Chairman Dufour asked Staff if there have been any phone calls on this approved site about any issues.

Mr. Yeomans said no and he spoke with the Traffic Department and they had no issues.

Chairman Dufour said the only problem he saw that the pumps are too close to the curb.

MOTION by Alderman LaRose to acknowledge that the applicant has come before the Board and the Board acknowledges that there are no significant issues worthy of further discussion.

SECONDED by Mr. Lowe

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MOTION CARRIED UNANIMOUSLY

MOTION TO ADJOURN by Mr. Lowe at 9:55 p.m.

APPROVED:

Ken Dufour, Chair, Nashua Planning Board

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Taped Meeting