

EXPANDED DRAFT MEETING SUMMARY
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NASHUA CITY PLANNING BOARD
November 6, 2008

The regularly scheduled meeting of the Nashua City Planning Board was held on Thursday, November 6, 2008 at 7:00 PM in the auditorium at City Hall.

Members Present: Jody Wilbert, Mayor's Rep
 Ken Dufour, Chair
 William Slivinski, Vice Chair
 Steve Dookran, City Engineer
 George Torosian
 Mike Lowe
 Cynthia Overby

Due to the absence of regular Board Members, Mrs. Overby will be voting.

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

Approval of Minutes

October 16, 2008

MOTION by Mr. Lowe to approve the minutes of October 16, 2008, waive the reading and place on file.

SECONDED Mr. Slivinski

MOTION CARRIED 6-0-1 (Mr. Torosian abstained)

COMMUNICATIONS

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

- Case #1 letter from George Coupe dated November 6, 2008.
- Notice of Decision on the Ferson-Lake Case.
- Case #9 SAT SR Ltd Partnership and ITT Corporation has requested their site plan be withdrawn.
- Communication from George Coupe dated November 5, 2008.
- Communication dated October 30, 2008 concerning the discontinuance of a portion of Edson Street.

- Request dated November 3, 2008 from Attorney Prunier concerning the Pierkarsi case to have it continued to the next meeting.
- Technical Review Meeting Sheet.

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. 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

None

OLD BUSINESS - SUBDIVISION PLANS

None

Mr. Dufour said the first case before us this evening was tabled from our October 16th meeting.

William Slivinski

Mr. Chair, I have to recuse myself from deliberation on this case. I also did for the last meeting.

Mr. Dufour said when this was tabled at our October 16th meeting, we heard the case/presentation, had deliberation, we chose to table it to this meeting this evening for what I recall to be five (5) specific issues. It is those five issues and those five issues only that we are hearing this evening. The abutter, Mr. Coupe, I believe that I had also told him that if he wished to present his appraiser to address the appraisal that he had submitted before us that he would have that opportunity to do so, but that is our function here this evening.

We are not here to re-open the whole case, entertain new testimony on issues that we didn't hear the last time.

OLD BUSINESS - SITE PLANS

1. Roman Catholic Bishop of Manchester and Finance & Real Estate Office (Owners) - Proposed amendment to NR1817 for the construction of a 2,480 square foot outdoor school playground with associated site improvements. 62 Manchester Street, Sheet 64 - Lot 173 & 174, Zoned "RA" - Urban Residence, Ward 2. (Tabled from the October 16, 2008 Meeting)

MOTION by Mr. Lowe to remove from table

SECONDED by Mrs. Wilbert

MOTION CARRIED UNANIMOUSLY

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Mr. Dufour said who is speaking to this? I believe the engineer and council. Good evening.

Robert Cormier, Cuoco & Cormier

Mr. Cormier said I would like to pass out a few documents so we have them for discussion.

Mr. Dufour said sure, your handout pertains to those issues that...okay.

Mr. Cormier said I also colored the site plan to help explain some of the details that I guess there as confusion about at the last hearing.

Mr. Dufour said when I drove by the site today it was flagged. Did you do that?

Mr. Cormier said the Parish Committee for the playground flagged that. It is in the last set of photos to give you an idea of how it sits in the area where proposed.

Mr. Dufour said that is what I saw, thank you.

Mr. Cormier said if I may just bring you up to speed on the plan details that were there at the last meeting that may have been confusing. I took the liberty of coloring your plan in red for the existing topography so you can get an idea of the grade changes from the area we want to use all the way up to the rectory building. Please note the average grade in the area of where we are proposing our playground was 106 and the grade out behind the buildings in the treed areas is approximately 116, approximately 10 feet higher. Mr. Coupe's property and porch is also at elevation 116, pretty much the same as the rectory building.

I also darkened in the edge of the existing tree line just to give you an idea of the foliage, and, of course, I provided the photos to give you an idea of what the tree cover looks like in the various areas where we want to go and up closer to the rectory buildings. I did show the dark row along Mr. Coupe of proposed landscaping. We are proposing to buffer this playground from his view.

As requested at the last hearing, we provided I believe it is in your package, a couple of other concepts; A and B as opposed to the site plan. I may add that in doing this exercise one small

change I made to our site plan, which actually adds to the cost a little bit, is a longer sidewalk rather than having stairs in the original one that we were proposing just to keep all the concepts the same to have flat graded sidewalks. It makes it a little longer, but I wanted to take that into account.

Schemes A and B show two different alternatives for moving the playground. Now mind you we are maintaining the same area because the area is important. The playground equipment with kids coming off of slides and swinging on swings they need specific areas to get this equipment in and they also need an unstructured area for kids to queue up while waiting to get on the equipment. There is no flexibility in reducing that for the amount of children load that they plan on putting in the playground when the younger kids are playing in there. I noticed Mr. Coupe's engineer provided an alternative scheme; he shrunk that area down a little bit to squeeze it into the area he was trying to accommodate.

Mr. Dufour said before you go any further, you refer to Mr. Coupe's ...

Mr. Cormier said submission of today I guess. I just saw it ten minutes ago.

Mr. Dufour said I don't believe that is anything we are considering this evening. We are here...

Mr. Cormier said okay, fine, it was one of the arguments that Mr. Coupe was making that it could be sited somewhere else. I am just showing you that the dimensions that we need, the way we could fit them are these two alternative schemes. We tried to balance the cuts and fills to be reasonable. That is normally what we do; cut a little bit on the high side, fill a bit on the low side to keep the costs down. We provided alternative cost estimates for you based on where we could fit these areas for the size intended. I think you have that in your packet. The extra costs for this A or B is somewhere between \$14,000 and roughly \$22,000 depending on which one you pick so there is a substantial cost increase to do this size facility up on the hill. The other drawback is there is a substantial amount of trees that come down and open up that whole area whereas the area that we have flagged off in the photos is relatively clear.

Also, questions were asked about the tree wells around the existing trees. You can see from the photos and the distance of

the tape from the existing trees, there probably will not be too many tree wells if any needed.

The other question I guess that was raised why can't it go elsewhere - well there was the cost, there was the extra tree clearing, harder to access up on the hill, harder for the people at the school to view, maintain, and watch over the kids; it is up on the hill as opposed to being right across the parking lot. The church has other planned uses for that are behind their buildings. They are planning a prayer area there, and Father Kelley will speak more to that in a moment.

The playground use, it was asked what the use would be. The playground is only roughly to be used approximately 2.5 hours a day; 90 minutes a day roughly during a structured recess period and approximately an hour during the after school program from approximately 3:30 p.m. to 4:30 p.m. It is a very contained use. It is not used all day and it is not used all year, only while school is in session.

As far as the benefit to the neighborhood, I think what the committee intended to mention when they were mentioning that was that it is an attractive playground, they are going to landscape it, they are going to strongly buffer it along Mr. Coupe's property so as not to be a deterrent or a detraction from anybody's property, but it is a private school and it is intended to be a private playground. They are concerned about if they left it unlocked there would be liability issues, there would be maintenance issues. They are spending approximately \$35,000 just for this equipment not the other work that has to be done to get this playground in there. It is going to be an expensive proposition and they want to make sure that they can maintain it properly and keep it in good shape.

I do believe we got the conditional use permit at the last meeting establishing the fact that it is an allowed use and is not a deterrent to any of the properties in the area. I did ask the committee in meeting with them why they were considering this playground. They actually need this to compete with other schools. It is one of the things when people come and they are paying tuition they are looking for this type of an accessory use. They do need this playground.

I did have a chance, I don't know if now is the time to rebut Mr. Coupe's letter or should I wait until he presents his case?

Mr. Dufour said any testimony in opposition will simply address those issues that you bring out this evening. If you are referring to something, if you are about to refer to something that was not established at the last meeting then..

Mr. Cormier said I will wait. In closing and in summary, they have a right to use this area. It has been established. They have another use for the other area. The size and configuration of this has very limited other areas up on the hill, and we did cost estimates for that that add considerably to the cost of this project and takes down substantially more trees. It is very limited use timewise as far as offensive noises and is being heavily landscaped to protect the abutters.

The other issue I will bring up - when the grading again Mr. Coupe's porch is approximately up at elevation 116. Where we are proposing to put this it would be down an average of 106, 10 feet lower, and again if you are sitting on the porch your eye level is even that much higher, so you are 12-14 feet higher with your eye level as you look out over this playground, and it will be buffered with trees. That is all I have at the moment to address the concerns that were raised by you at the last hearing. If you have any questions I would be glad to answer them, and I know there are others that want to add a few comments.

Mr. Dufour said I am not 100% sure - our minutes are kind of abbreviated, but did I not say that the only two people that could speak to your issues were yourself and your attorney or your council?

Carol LaPlante, 34 Chester Street

Mrs. LaPlante said I am not really here as their attorney, I am here to ...

Mr. Dufour said I understand.

Mr. Cormier said I wasn't at the last hearing myself so you be the judge of that. Have I answered your points?

Mr. Dufour said do you have any questions of the engineer?

Mr. Torosian said first a comment for the record; I was not here at the last meeting. I have visited the site 3-4 times and have read the minutes so I am ready to partake in the conversation

and vote. Question - you say that Mr. Coupe will be looking down into the playground, but it will be buffered with new trees?

Mr. Cormier said correct.

Mr. Torosian said one of his concerns is the noise. What is the height of the new trees compared to the current tree? What is there now?

Mr. Cormier said now it is wide open - if you look at the photos. These trees will be at least 5 or 6 feet tall if I imagine.

Mr. Torosian said in your opinion, that is going to be an adequate buffer for the noise?

Mr. Cormier said again, even if we had this moved to this other area here, the noise is not going to be substantially changed. It will be at his level rather than down.

Mr. Torosian said thank you.

Mrs. Wilbert said the lineal distance between the porch on Mr. Coupe's house and Site Plan A versus the nearest point of Site Plan B, could you give me that?

Mr. Cormier said site Plan A to the fence is 40' from his porch.

Mrs. Wilbert said forty feet from the porch ...

Mr. Cormier said to the fence.

Mrs. Wilbert said to the fence outside to the outer edge, actually that is the inner edge of the playground isn't it?

Mr. Cormier said well it is the fencing to the playground.

Mrs. Wilbert said it is inside the track. Okay. The lineal distance from the porch to the nearest corner of concept B?

Mr. Cormier said about 76'.

Mrs. Wilbert said and the detriment between A and B boils down to the cost is that not - is there something else that I am missing?

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Mr. Cormier said cost, tree clearing, difference in elevations and access for the children to get up to that elevation.

Mrs. Wilbert said I have walked the site extensively as well. Isn't it true that a lot of what is up on the B site are not mature trees or if mature are scrubby and there is one that is dead?

Mr. Cormier said well they are fairly good size trees. They are on the photos there at the top of the hill. Let me look at my set of photos and we can see a picture...Photo #6 shows all of the standard trees in there. Photo #7

Mrs. Wilbert said this is #6 right?

Mr. Cormier said yup. Photo #7...

Mrs. Wilbert said excuse me I just want to make sure I have got the right perspective. This is #6 and Mr. Coupe's house is over here...

Mr. Cormier said to the left.

Mrs. Wilbert said yes to the left. So the playground you envision is from about here this way correct? So that doesn't show the trees.

Mr. Cormier said well it goes over towards the garage and all of those trees that are in there would be removed - in front of those lawn chairs.

Mrs. Wilbert said I think that makes my point yes.

Mr. Cormier said again you would see those trees over in picture #13 - is more of the same.

Mrs. Wilbert said that is as I remember it. They are not significant large old trees.

Mr. Cormier said it is a nice tree grove though for their prayer area that they were seeking.

Mr. Dookran asked Mr. Cormier, if Option A your largest cost differential is in granular fill?

Mr. Cormier said yes.

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Mr. Dookran said you have \$12,500.

Mr. Cormier said yes.

Mr. Dookran said is that for the walkway, the access?

Mr. Cormier said I believe most of it is we have a cut on the high side, a fill on the low side - there is some fill in there. It is probably partly in there.

Mr. Dookran said I am wondering why you designed it to be at 112' approximately elevation. If you were to lower that even further obviously there would be more cuts to the north corner, and that would reduce the regarding of the gravel access that much.

Mr. Cormier said it would be a little more earth moving so there would be some tradeoffs yes.

Mr. Dookran said you have a fill on the south side, south corner of 3' and a cut of 2' on the north corner as it stands.

Mr. Cormier said as I said earlier, I was trying to balance the work.

Mr. Dookran said right, I am thinking you can reduce a lot of your fill by even cutting even more on the north corner, which will reduce that price of \$12,500 if you have over what you prefer as a layout design. I don't think you looked at that any further...

Mr. Cormier said again, we didn't go into that extensive detail. We were trying to do some averaging here to get a feel for what the differences would be.

Mr. Dookran said that is all I have. Thanks.

Mrs. Wilbert said can I ask for a clarification of that? Are you saying Steve that by digging back in the north corner, reducing the fill in the front corner, the cost between A and B becomes much closer?

Mr. Dookran said actually the cost between A and the alternative that was presented before, the preferred alternative become closer.

Mrs. Wilbert said that is what I understood. Thank you.

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Mr. Dufour said are there any other questions?

Mrs. Overby asked would the church be opposed to a privacy stockade fence being put on the property line?

Mr. Cormier said I will let them address that when they come up and speak.

Mr. Dufour said any other questions? Thank you.

Mr. Cormier said thank you.

Ms. LaPlante said unless you have any particular questions for me, I don't have anything to add at this time before we hear from Mr. Coupe.

Mr. Dufour said okay.

Ms. LaPlante said I don't know if you have any particular questions for me as opposed to...

Mr. Dufour said, well the question is I kind of gave us the guidelines of how we would conduct this second hearing, and I had said that you and your engineer could speak to those five issues. Now within this conversation and the questions that have gone back and forth we seem to be open with the question what about a privacy fence along the abutter's lot line. The engineer couldn't answer that so now we are turning to you to see if you have an answer for that.

Ms. LaPlante you are talking about a stockade fence along - not around the playground, but in addition to the fence around the playground a stockade fence along Mr. Coupe's property line?

Mrs. Overby said yes.

Ms. LaPlante said I am not sure of the length of that or the cost of that. I imagine that would be very expensive to do.

Mr. Dufour said I guess we need a yes, no or not likely because we don't know the cost. We will vote on this this evening so we have to - give it your best shot.

Ms LaPlante said yes unless we learn that the cost was prohibitive, but we would try to do what we could to...

Mr. Dufour said if the...

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Ms. LaPlante said I don't know the cost of a stockade fence..

Mr. Dufour said just so you understand if the vote were to approve based on the installation of that stockade fence, then if you chose not to put in that stockade fence that decision would be void. Just so you understand.

Ms. LaPlante said and we are talking the fence along his entire property line or just in relation to where the playground is located? What is the question? What is the...

Mr. Dufour said the parameters?

Ms. LaPlante said the parameters?

Mr. Dufour said I don't know.

Ms. LaPlante said I am inclined to say yes because we would like to help Mr. Coupe if we can, and we would like to be able to put the playground where it serves the church and the school..

Mr. Dufour said why don't I ask the engineer to give us the dimensions of the whole property line versus that area where the playground is going to be?

Mr. Cormier said the playground fencing itself is 90 feet, which is the same area we are planning on the heavy landscaping.

Mr. Dufour said and the width of that left side boundary? That one that runs alongside Mr. Coupe's property?

Mr. Cormier said approximately 150 feet from the corner to the street.

Mr. Dufour said so we are talking an extra 60 feet. Thank you.

Mrs. Wilbert said can I ask you one question?

Mr. Dufour said sure

Mrs. Wilbert said thank you, the lot line, where is it relative to the slope? Can you tell me where it is? Is the lot line at the top of the slope; is the lot line at the bottom of the slope or somewhere up the middle?

Mr. Cormier said are you talking the existing slope?

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Mrs. Wilbert said Mr. Coupe's existing lot line.

Mr. Cormier said on the existing slope, the slope is grading through the property line. It in on the middle of the slope I guess is that best way...

Mrs. Wilbert said okay so then the next question would be if you put a privacy fence there at 6 feet the relative height you gave us I believe was 14 feet on his porch?

Mr. Cormier said eye level.

Mrs. Wilbert said eye level is 14 feet. I want to make sure I understand because I am not an engineer - if you are here half way up the slope and you put a stockade fence at 6 feet are you not looking right over the top of the stockade fence?

Mr. Cormier said actually the playground is actually going to be recessed below that. For the angle that you are talking about it is going to be sticking up on the slope and the playground will be cut lower.

Mrs. Wilbert said the question is would the stockade fence obscure the view from the porch of the playground or not?

Mr. Cormier said I don't know the height of the playground equipment so I can't answer that question.

Mr. Dufour said okay, thank you.

Mr. Cormier said they don't believe so.

Mr. Dufour said okay, thank you. They don't believe so what, that...

Mr. Cormier said that they will be able to see the equipment. It is not that high.

Mr. Dufour said okay, any other questions?

Ms. LaPlante said just so I am clear, Mr. Cormier and I would have an opportunity to respond to Mr. Coupe after he makes his presentation today on these issues?

Mr. Dufour said yes on those issues.

Ms. LaPlante said okay because I might be able to clarify some more once I understand what the conversation is.

Mr. Dufour said thank you. Is there anyone wishing to speak in opposition or concern to this plan? Is there anyone wishing to speak in opposition or concern to this plan relative to the testimony we have heard on those five issues?

Mr. Dufour said to Mr. Coupe before you start, I am aware that in our packet this evening we had alternate proposals by you and what appears to be to significant expense and time on your part, however, we are not dealing with those issues this evening. We are simply dealing with those five points that we had asked them to address to us this evening. If you can keep your testimony to those issues that they brought up this evening that would be great.

SPEAKING IN OPPOSITION OR WITH CONCERNS

George Coupe, 15 Brookline Street

Mr. Coupe said I understand.

Mr. Dufour said thank you.

Mr. Coupe said I would like to address the cost differential question and the plans that Cormier has provided on concept A, concept B and West Site Plan. I would like to point out that on the concept A playground of about 67 x 45 feet is on the part of the property, it is really the middle of that 150 feet that is sloping downward and requires grade. If you look to the right it is the unstructured play area, which all along in all of the drawings is something that does not need to be graded according to the west site plan that is being proposed. That is placed in a very flat area.

If you were to reverse those for example there would be much less grading involved, and put that unstructured play area on the west side, shift the playground to the right within that same diagram, you have automatically cut costs of at least half the grading. I think that in this site A, it appears to purposely be structured in such a way as to cost more to justify the assertion in the last meeting that it would cost 40% more I think was the percentage that was thrown out.

It also doesn't take advantage of the other flat areas to the right of that diagram. For example, north of it there is this big wide flat area that is simply not being used. You can shift

the whole playground all the way up to that spot and put this unstructured area over in that flat area as well, but I suppose that doesn't matter.

I can't remember what Mr. Cormier said if he addressed this, I was taking notes, but I couldn't quite pick it up, but it doesn't appear as though the tree wells will be necessary around these maple trees. That would save a significant amount of cost. In the comparatives they haven't - no credit has been given for that. Instead of costing \$13,000 more for or \$14,000 for concept A that could take \$5,000 off of it and now it is down to \$9,000 difference.

The other thing I would like to point out is I think much of the cost of concept A is building this road, all of this grading coming in from Brookline Street, but in fact access to the playground with no grading is possible by using the garage driveway for the rectory. If you look at the concept A drawing on the right side, you can see the garage and the rectory. The garage is the priests' garage, it is the rectory garage. There is a paved driveway leading up to that, and to the right of that it says rectory, but it is actually the previous convent - I am sorry north of the rectory building at the bottom right corner is another building. It says rectory. It really should say previous convent. Between that building, the corner of this annex to that building, the southwest annex, and the garage is a rather broad area, very flat.

The fastest way for emergency trucks to come down from the Amherst Fire Station is down Manchester. They are just going to turn left when they get to the rectory, which is the address of the whole school, 62 Manchester Avenue, and they can go right between the garage and the annex. It is a flat area. They could throw some gravel - very little grading, and they could access the playground immediately - much faster than at the corner of Cushing, turning left on Cushing going in front of the school, driving up Brookline Street and then driving up this road that has been built for emergency access into the west side of this site A.

If you take out that access road from the west side of concept A, you drop about I don't know \$15,000 of extra costs in their schedule where they talk about \$12,500 for granular fill, \$3,600 for spread, loam, fertilizer, and seed. That appears to be to build this road; to re-grade it and then seed it or possibly the fill is because the playground is on the sloping part instead of the flat part. If you put that together with the wells around

the trees, you've got a playground on the east side, which actually costs less - probably \$5,000 less than what they are trying to do next to my house.

I think well those specific points are addressed in the supplemental memorandum from the engineer that I have hired to propose the alternative and to study this from an engineering standpoint so I think I would like to let him speak to what he said, which is basically that it will cost less to put it in the east site, but shift it to the right as we have proposed it - shift it to the east.

Mr. Dufour said who is it that you want to speak?

Mr. Coupe said Dennis Moulton.

Mr. Dufour said your engineer?

Mr. Coupe said yes.

Mr. Dufour said and he will speak to...

Mr. Coupe said the issue of whether or not it costs more to put it in the east or not.

Mr. Dufour said the two different applicant concepts that they have submitted not amended proposals that you have submitted is that correct? I guess my question is this - I want to give everybody a fair hearing. I don't want to introduce new concepts here. We have introduced - the applicant has come before us and they have introduced - they have submitted a plan for us to either go yea or nay. Now through the conversation and through your testimony, members have asked well what happens if you put it here and what happens if you put it there. We tabled it until tonight to get those answers, and they have given their best answers as best as they can.

Mr. Coupe said yes sir.

Mr. Dufour said based on probably appears to be limited engineering work, but you know probably sufficient. In my packet this evening was other information from you, and I am questioning whether you are submitting other alternate proposals because if you are I am not going to allow that.

Mr. Coupe said okay.

Mr. Dufour said if your engineer wants to address their Option A or B, which was part of the answers that we were looking for this evening that is fine he can do that.

Mr. Coupe said well I guess I would like to ask a question of the Chairman. Last week we submitted, from that same engineering firm, a drawing to put this farther east than site A. I think the fair thing to do rather than ask them - well if you put it somewhere east how much more will it cost and let them pick where they want to put it and as I pointed out they pick places that are sloped instead of places that are flat, they are not going all the way east they have gone to the middle.

I think to give what we are suggesting a fair hearing, we have submitted - there is nothing new about the fact that we want to put it all the way on the east side and we want to orient it on north/south direction, and that allows access for emergency vehicles, it costs less. We're submitting that it will cost less and it seems to me that is exactly what you want to hear from our standpoint so...

Mr. Dufour said well I want you to rebut or address the answers that they gave us this evening not to introduce another plan. Quite frankly, the way we function here when a plan comes before us, we typically don't have plan A through D, and we help the applicants and the opposition pick one. This is kind of a unique situation here, and quite frankly I am not quite sure how we got to this point, but at issue is the applicant has submitted a plan, we had questions, and they answered them. Now your engineer can address their answers, but I don't think that we care to entertain another option because ultimately when all is said and done this evening we are going to vote to approve or deny the plan that was submitted before us.

Mr. Coupe said I would like the comparison to be to what we suggested in the last meeting. I thought that is a fair answer.

Mr. Dufour said but that is not what I told the audience was the purpose of the postponement and tonight's meeting.

Mr. Coupe said I thought it was the question - would it cost more to put it in the east side. The question is which east side are we talking about. I don't know why they should be able to pick where they want that and they can pick the most costly spot they want. I guess I would object to that.

Mr. Dufour said it is more than appropriate for them to place this playground wherever they so deem or request to place it wherever they so deem. It is up to us, based on the testimony presented, whether we allow them to do that or not.

Mrs. Wilbert said what I wanted to say Mr. Chairman is that the site plan criteria have to apply to their plan in order for us to approve it. The criteria that I in particular raised questions about had to do with the character of nearby buildings, the ability of this proposed use to co-exist with surrounding uses, and the impact that it would have on surrounding properties, which are all within the site plan criteria that we must bring to bear on a proposed plan. With that in mind then, it was my understanding at the last meeting in part because some of us had questions about those criteria, they were asked to address why the proposal they have made for a playground can or cannot be relocated on their site so that we may be more comfortable that it meets the site plan criteria, what the cost differential would be to do that in case we used that as a balancing point in our considerations, and to that end, it seems to me that it is - while I absolutely understand your reasoning that we have before us a plan, unless I am convinced that there is not a better way to accomplish what they want to do with their land that meets the site plan criteria, I may not be comfortable with voting to approve their plan.

I think it is reasonably fair, since we asked them to tell us why it couldn't be relocated somewhere else on their site and what the cost differential might be, that we at least allow a rebutter to say that he disagrees with their analysis of the cost differential.

Mr. Dufour said I think he has already done that. He is looking beyond that now and saying and look at my plan.

Mrs. Wilbert said I understand that.

Mr. Dufour said if the board wishes to entertain that realize that I am not sure where this is going to lead. Other people will want to speak to that. We are not dealing on that. At the end of whatever is all said and done, here is how I interpret what I have heard to date; the applicants come before us with a plan, we have asked them I think more than we do most applicants that we are not happy with the plan - why don't you put it here, why don't you put it there, and they have given us different reasons and they have pleased us by getting us this information.

I think I heard at the last meeting that they want that there because that is what their master plan calls for. They have other uses for the other space; a reflection area/meditation area doesn't go well along the side of the street, but if it is your wish to allow this gentleman to have his engineer speak to that other option trying to justify giving you a better understanding of the cost significance then I will allow that, but I don't...

Mrs. Wilbert said may I just say - I want to make it perfectly clear, we are not going to approve or disapprove Mr. Coupe's plan.

Mr. Dufour said right I understand that.

Mrs. Wilbert said it is not on the table. This one is on the table. I am reading over what we had in tonight's packet, and it appears to me that his engineer has two thoughts about Concept A that are probably well introduced in the record if I look at his letter. That does not take us to a plan that he is proposing. A plan that he is proposing is not on the table. He can't propose a plan because he doesn't own the lot.

Mr. Cormier said I did want to say that Mr. Chairman - if we don't want to talk about where Coupe would like the thing placed, I am more than willing and very happy - I would prefer to have my engineer speak to the issues in his letter that address site A and the cost of site A versus...I would be happy to do that.

Mr. Dufour said very good. Let's do that.

Mr. Coupe said do I have the opportunity to come back to discuss any **...audio inaudible - speaker away from microphone...**

Mr. Dufour said yes you do.

Mr. Coupe said within the scope of the five questions?

Mr. Dufour said well pay close attention to what he says. You have already spoken to what they had to say. After your engineer speaks to his answers to their recap, if you feel there is anything he forgot that you want to interject, you can come back. Have I answered your question? If there is anything else that you want to say relative to the issues that they have presented...

Mr. Coupe said I should say that now?

Mr. Dufour said yeah, that is a good idea. Take all the time you want, but let's try to keep it in order.

Mr. Coupe said I understand. There are five questions and I addressed just the first two. Question # 4 deals with why the private playground would benefit the neighbors. I just wanted to point out as indicated in my letter of October 29th, which I think you all have copies of, that place where they are building the playground has essentially been a public park that has been privately owned for probably 70 years. It has been a sledding hill for that entire time. What is happening because of the change in ownership and now an assertion of those ownership rights by the church is that is in fact what is happening is the neighborhood is losing something and the school children are benefiting at the expense of the neighborhood children as far as the use of that property.

They would start next to our porch, sled down our steep hill to get some speed up, and then they would slide the rest of the way on what became the church property 20 years ago.

Mr. Dufour said that was acceptable to you?

Mr. Coupe said that was acceptable to me.

Mr. Dufour said did that make noise?

Mr. Coupe said no, winter sledding on snow makes normal snow noise, plus the whole house is closed up and there are storms on and everything.

Inaudible background noise...

Mr. Dufour said okay, let's all be nice folks.

Mr. Coupe said I think the other issue is all we are talking about here is we have a school that is essentially faced with the same things every business is faced and that is getting students and being able to run the thing financially properly, and that is one of the reasons they want this playground. There is no argument with that at all. But I think they also have a responsibility to their neighbors to do the best they can as they put these things together to not harm the neighbors. If they have alternatives in order to achieve having a playground, which is the criteria here really more than anything else just to have it on the site, you would think that they could also

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find a remedy, find a way to accommodate the neighbors in their responsibilities to not harm the neighbors if they can in what it is they are trying to accomplish.

We're just looking for a reasonable approach by the church in order to achieve what they want to accomplish. I have offered - if they don't want to put a prayer garden next to Brookline Street I have offered to swap easements with them and they can have the southeast corner of our property in the trees where they could put that prayer garden if I could have the northwest corner of their property next to my porch. There they would have everything they want; they could have the prayer garden back in the trees in privacy away from the street.

All we are asking is that the church be reasonable in terms of fulfilling its mission to be a successful Catholic educational institution but to also reconcile that with the impact on the neighbors and do the best they can to accommodate both.

Mr. Dufour said before you turn it over to your engineer, I had also, at the last meeting, indicated that if your appraiser wanted to testify he could. Is that something that you entertained? Is he here?

Mr. Coupe said my appraiser his Father has cancer and I think he is having his second lung removed tonight or something. He is down at the Lahey Clinic. He was going to try to be here if his Dad was not accepted by the clinic tonight, but apparently he was, and he cannot be here. We have discussed with him the appraisal. We have discussed the methodology. We have discussed the points that you brought up in the last meeting that it would have been good to compare houses near playgrounds versus houses not near playgrounds and getting comp. differences, and that is why we went to the schools and provided to the committee the fact that this is the only place where there is going to be a playground 12 yards from a house, that the average school, throughout the city of all 12 schools, they are 60-70 feet away on average.

This playground is something like 5-6 times the size when you measure in terms of students per square yard. You look at the other 12 playgrounds at all the public schools and they are running 3, 4, 5, or 6 students per square yard. That sounds like a big number, but the top 3 or 4 grades don't use the playground. This playground as it gets bigger and bigger becomes harder and harder to accommodate in the size that they have, but it seems to be about 5 times as large as any of the public

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schools measured on that basis and the public schools are 5 times as far away. You can't get a comp. There isn't a single playground built 12 yards from a structure in this city. This will be the first time we do this.

An appraisal as I am sure you know is a judgment call. Any appraiser can argue or anybody can argue with another appraiser. It is an appraisal - it is a bunch of judgment calls. My appraiser has made a judgment call as to what he thought the impact would be, which is a reduction of \$30,000 in the value of our house. Anyone can argue with that if they want, but the fact is like any judgment, any assessment of value, antiques or whatever it is, it is a judgment call and he is a professional appraiser and in his opinion it will significantly decrease the value of my house to have that playground put so close to it.

In discussing it with him, he had told me originally when we sat down that is what he was going to try to do exactly what you described, but what we found was you can't do that in this town.

Mr. Dookran asked Mr. Coupe if the information you present here, the measurements, the proximity of school playgrounds to homes, those measurements the 12' for...

Mr. Coupe said the 12 yards from my house?

Steve Dookran said yards okay.

Mr. Coupe said yes, thirty six feet. It is 24 feet to my lot line from the porch and it is 12 feet to the playground. It is 36' or 12 yards.

Mr. Dookran said all of these measurements in yards are they the distance from the playground to buildings or...

Mr. Coupe said to the nearest home.

Steve Dookran said the buildings or the property lines?

Mr. Coupe said the buildings. Exactly the same way I measured the distance from my house.

Steve Dookran said and you got this information off the aerial...

Mr. Coupe said well if you look at the aerial photographs, there is a distance measurer key on the bottom right, typically 40 yards, so it is not difficult to measure distances on...

Mr. Dufour said before we go any further, are you referring to something that was in our packet this evening that...

Mr. Dookran said yes.

Mr. Coupe said twelve color pictures...

Mr. Dufour said...that were not ...

Steve Dookran said dated November 5th sir.

Mr. Dufour said this is not data that we are...

Mr. Coupe said well it addresses the whole idea of the appraisal and what you suggested in the last meeting. It addresses that directly and you just asked about it so...

Mr. Dufour said if that is your assessment that is fine.

Steve Dookran said yeah sure it is the ...

Mr. Dufour said that is fine.

Steve Dookran said I might want to remind you Mr. Chair that you are the one who appealed to the board the last time we met for us to have this item tabled...

Mr. Dufour said I most certainly did for those five items.

Mr. Coupe said plus the appraisal.

Steve Dookran said and the board went along with your request.

Mr. Dufour said that is correct, and so far we have done pretty good. What I am trying to do now is to avoid introducing information that is aside from that.

Steve Dookran said I haven't done that yet.

Mr. Dufour said okay.

Mr. Coupe said no more questions?

Mr. Dufour said we will hear your engineer.

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Mr. Moulton said good evening Mr. Chairman, members of the board. My name is Dennis Moulton an engineer with MSC Civil Engineers & Land Surveyors from Portsmouth, NH. I am a licensed practicing engineer in the State of New Hampshire specializing in site design. Most of our business is commercial site design.

I have been asked by Mr. Coupe to review the plan/documents presented by Cuoco & Cormier relative to the first two items on your list; whether or not the playground could be relocated and the cost differential to do so. I understand your concerns about introducing new evidence so I won't even go into that...

Mr. Dufour said thank you.

Mr. Moulton said ..arena. I will just try to limit my comments to basically what has been submitted by the applicant. I think it has been kind of alluded to by Mr. Coupe and one of the members, I think that if you look at one of the alternatives presented by Cuoco & Cormier specifically Alternative A, it would appear that with very slight modifications you could significantly reduce the cost differential of constructing that particular alternative compared to the originally proposed one. Those slight modifications would be basically to take the active play area and move it further to the east into the flatter portion of the site so as to reduce the amount of grading necessary and second would be to provide an access not from Brookline but from the area between the rectory and the convent. Those two items by themselves would significantly reduce, as far as I can tell, the cost differential between the two alternatives.

It seems relatively feasible. My site visit to the site it did appear that there would, of course, have to be some additional tree removal. There is tree removal required for both alternatives although I didn't really see a large different in terms of cost for the two alternatives.

I would be happy to answer any additional questions you might have.

Mr. Torosian said to Mr. Moulton, in your professional opinion, what would the impact of a stockade fence be on the property line?

Mr. Moulton said for this original proposal? Probably not much at all. The property line runs as Mr. Cormier has stated, on the down slope of the hill. By looking at the information

provided, it appears that the property line itself is about 6 feet below the level of the ground at Mr. Coupe's porch. If you had a 6 foot high stockade fence basically it would be level with the ground level at the porch. It would seem to me that from the porch over that distance you would be able to probably not see into the closest part of the playground, but certainly I think the far end of the playground. It would seem to me just looking at it from my site visit.

Mr. Torosian said thank you.

Mr. Moulton said but again that is the other wild care in that of course is the height of the plantings that are proposed also.

Mr. Dufour said any other questions for this gentleman? Thank you sir. Does the applicant wish to speak to any issues that were heard in opposition?

Mr. Cormier said yes briefly.

Mr. Dufour said before we do that, Mr. Coupe they are going to respond to your issues that you spoke to with your engineer and then you will be given an opportunity to speak to those issues that he spoke to if you so wish.

Mr. Coupe said thank you.

Mr. Cormier said comments have been made about Concept A. The east end of that where it is unstructured play we have on a slope. I didn't deliberately cut that. Moving the equipment over to that side would require some re-grading and there would still be cost to that.

Secondly, they keep talking about moving our play area to flatter areas that are up there. We moved it as close as we could to those buildings keeping the area that we needed. Mr. Coupe talked about the size of it and the student structure, the standards are 30 square feet per student, and with the amount of students they have they need this area so we can't shrink this fencing to squeeze it in between buildings and property lines to get it into this flat area that they are trying to get us into.

He brought up a point about these tree wells. We factored in our costs that we weren't constructing but 1 or 2 maybe tree wells at the most and took that into consideration when we came up with the differential cost estimates.

The access drive through the garage area is not that conducive according to the Pastor and would also be some more cost to grade up to get up into that area. To answer the question about fencing on the property line, the area on the property line is approximately at elevation 111 and our proposed floor of our playground is at 106 so the plantings or the fencing would be 5 feet higher to begin with plus another 6-7 feet in height above that with tree plantings or a 6 foot fence or 11-12 feet above the bottom of the playground with any kind of screening that we are proposing at a minimum.

Mr. Coupe mentioned that he thought this was a public park. The people in the parish say that is quite exaggerated. There are hardly ever any children that use that area now, but I find it interesting in the letter he submitted to you that he was okay with 365 days a year with, in his opinion, a lot of children playing there and he readily admits in another paragraph that we are reducing it substantially to 2.5 to 3 hours a day for a limited number of children for a limited amount of days a year so he is conflicting with his testimony that he welcomes the whole neighborhood in there, but yet 2-3 hours of limited use by the church is excessive.

He brought up the fact of property values and playgrounds being close to buildings. There are many city ball fields throughout the city with night lighting that are well in proximity to homes; Marshall Street field, Udicky Farm, Holman Stadium - all of these places have lights going on at night affecting properties and he is talking about a playground that is used 2-3 hours a day without any night use being offensive and that he is the only one being affected, but there are lots of residents in the city that are abutting city ball fields. I think I have addressed most of their rebuttal. Thank you.

Mr. Dufour said does anybody have any questions for the engineer before he walks away? Okay.

Ms. LaPlante said we didn't have an opportunity to address Mr. Coupe's other points that weren't technical in nature..

Mr. Dufour said that he addressed?

Ms. LaPlante said that Mr. Coupe addressed. Thank you. I appreciate it. I was leaving the technical stuff to the engineers, and I just wanted to address a few other things that Mr. Coupe mentioned. First I would submit that our site plan does satisfy the site plan approval criteria, and that criteria

really does not require us to debate whether there is a better way to satisfy the criteria. I think we just need to look and see if the plan that we submitted satisfies the criteria, and I think that it does and we have explained why that is so.

I would also say that we have been talking about how this playground is going to benefit the neighborhood and whether it is going to, and it is just not part of the site plan approval criteria that it needs to benefit the neighborhood. It is specifically intended not to as a private playground, and we have discussed those reasons why as well why we would not want it to be used by the entire neighborhood. It is not the school's obligation or the church's obligation to provide a neighborhood play area in building a playground for our school on our property or to maintain one on our property.

I think that as far as the property valuation issue, just one small remark on that; there are no comparables here and the analysis really just can't be made. Mr. Coupe purchased his house that close to the school, and I think it is reasonable to think that the school would be used as schools are used and a playground is a reasonable use for a school.

That area where we propose putting the playground we could throw up a fence right now or not a fence and we could have 135 kids out there playing making noise all day right where we are proposing putting the play structure. We are just trying to put something out there that will provide a more organized form of play for the children, and the noise issue really has nothing to do with whether or not we have a play structure it is just whether or not we choose to use our property and have 100 kids out there of 80 kids out there or 60 kids out there at various times throughout the day so I would submit that we have a right to use our property as we choose and to put the playground there.

I don't want to neglect to mention again that we need to look at the site as a whole and also the church's vision for the rest of the property, and by considering these other sites we are really negating the possibility the church can use its property for those other purposes as well. That is it for now. Thank you.

Mrs. Wilbert said I would like to make this two points; first of all you are quite right with regard to the site plan criteria, that you have submitted a plan and our job is to apply those criteria. Your opinion is that the criteria are met. My concern was, and I dare say some of the other members of this board, is

that I very much want you to have your playground. You have a school and you deserve to have a playground and you own the property.

I would be far more comfortable if I could believe that this was the only way to accomplish your goal. Without that information I am less than inclined to believe that you have addressed those specific items in the site plan criteria that I have expressed my concern about.

My other point and I really want to make this clear, is you have absolutely no obligation to build a public playground. The only reason that was addressed in last week's meeting requirements of you was because you told us that you were going to do something for the benefit of the community. That stuck with me, and I know it is not benefiting the community and now that we have it on the table and we know it is not I am happy.

Ms. LaPlante said I did not mean to suggest that we were attempting to benefit the community. I misspoke in saying that we were benefiting the community. What we really meant was that we were doing the best that we could not to detract in any way from the character of the neighborhood. We were building the type of fence that we could obscure not a wooden stockade fence that might be susceptible to graffiti or anything that could be written on that, but instead the kind of fence that we can obscure with natural landscaping so it would fit in with the character of the neighborhood.

In that respect, I must have misspoken and lead you in the wrong direction. We are not proposing that we attempting to benefit the community we just wanted to show you that we were doing everything that we could to make it fit in to the character of the neighborhood so that Mr. Coupe when he looked out onto the playground it would be obscured by some very beautiful landscaping and that it wouldn't be an eyesore in any way.

Mrs. Wilbert said therein lays our difference of opinion. Exactly therein lays our difference of opinion. Have you done all that you could do to minimize the impact on the community pursuant to those two specific criteria of the site plan? I think we probably have aired it, and I am sure the Chairman believes we have.

Ms. LaPlante said I would submit that we have. We have chosen to put, I think we can choose to put it on our property as long as we satisfy the site plan criteria. We have chosen to put it

in a place that works for a lot of reasons that we have all discussed, and in putting it there I think we have done everything we could to make it look - we are going to do everything we can to make it look very beautiful in that place.

You had mentioned numbers 3, 4, and 5 I believe on the site plan approval criteria.

Mrs Wilbert said nope

Ms. LaPlante said I think at the end of the last meeting were those the items that you had mentioned 3, 4, and 5?

Mrs. Wilbert said three, 4 and 5. I thought you said 2.

Ms. LaPlante said nope just 3, 4, and 5. I have them circled here on my notes. And this one talks about the aesthetic and visual character of the playground, and we will landscape it and it will have a fine aesthetic and visual character...

Mrs Wilbert said of the nearby buildings. It says the unique aesthetic criteria and visual character of nearby buildings or clusters of buildings shall be maintained and the site plan shall be in harmony with the character - the neighboring.

Ms. LaPlante said I don't know why this playground, which is going to be beautifully landscaped, would not fit in with the character of a school, which is the property that it sits on, and we are not even just throwing up a fence we are going to do lots of things we can with regard to the landscaping. I think that does fit in with the character of the nearby buildings. The school is a nearby building. I think it fits in with the character. I think it fits in with the character of the homes in the area. There is a school there and as we have discussed a reasonable use for the school to have a playground, and I think that the way we are going to do it will fit in with the character of the residences around us and of the school itself.

I think it does co-exist with the surrounding uses. It is a school neighborhood. It is a school. It is on the school property. I think when you buy a house in a school neighborhood you would expect that kids are going to be either out there running around on that property itself or out there climbing on a play structure that has been put on that property itself.

We could build a big fence right now and just have the kids running around. We are just trying to provide our school with a playground and provide the children with an organized means of

play. We can use that same area for the kids with or without the play structure. We need to have a play structure, and we would like to put it there. We still can use that property for all of those kids at any time.

It certainly doesn't have any significant health or safety impacts on the surrounding properties or the general population of the city, which is number 5. I don't know if you were concerned about the impact of the health of the children in that one or on the neighbors. I am not sure, but I don't see how it negatively impacts either population.

Mr. Dufour said okay, thank you. Mr. Coupe did you want to address any of the comments that the applicant has made during the rebuttal period?

Mr. Coupe said when I bought the house 23 years ago one of the things I liked about it was it was next to the church. We had a son who was going to go to that school. We became members of that church and very active members of that church and were for 15 years. But I didn't think that the church would put a playground 12 yards from my porch. In fact, the first thing the church did with me with that property was offer to sell it back to me within a year or two after I moved in. There was an indication that they really wanted to sell it back. They didn't intend to put anything there. I just didn't have the money at the time.

I just thought, I assumed I guess that the church would treat their neighbors, their actual neighbors like me, in a way that would have some concern for me if in the conduct of running a school, adding to the school, improving the school they had alternatives that wouldn't be so harmful to me. That they wouldn't do that.

Mr. Dufour said does the board have any questions of staff or the people that have testified before I close the public hearing and go on to our meeting? Does staff have anything to add?

Mr. Yeomans said nothing to add. Thank you.

Mr. Dufour said okay hearing no requests; this concludes the public hearing on this application. We will now carry our deliberations in to our public meeting. The board reserves the right to recall any party to this case for clarification.

I usually wait until last, but I would like to go first this time. First of all, I feel bad for Mr. Coupe. He is in defense of what he considers his right to privacy and to a sound buffer. I sympathize with the significant expense that he has gone through to this point to rebut this case. He has even offered the school money as I understand it. I think that he has done a valiant job presenting his case. To get that playground onto that site two things had to happen; we had to issue it a conditional use permit for the playground and we did that. Now tonight we have to approve the site plan. We may or may not do that.

But, I would like to start by addressing at the last meeting, and quite frankly I had hoped - I even prayed Father that the school would come back to us with another option. I couldn't suggest that, I couldn't say that, but I had hoped that they would have. They chose not to. That is their choice. That is their right.

When a motion was made to deny I think I tried valiantly to give you more time to arrive to that conclusion and you didn't do that you gave us the answers that we asked, and that is fine, that is your right, but the motion was made to deny based on basically three different criteria. Now from my perspective, I would like to go down that criteria. The first one was unique aesthetic architectural and visual character of nearby buildings or cluster of buildings shall be maintained. Nothing is happening to any aesthetic, architectural or visual character of nearby buildings. And that the site plan shall be in harmony with such character - existing today is a school. They even have a playground. They are using a parking lot. So how we can legally deny the plan based on that criteria to me I don't see it, but the majority of the board may.

The second one was that the proposed use shall be able to co-exist with surrounding uses and the proposed use shall not have significant impact on the surrounding uses. Well proposed shall be able to co-exist with surrounding uses - it is already doing that. There is already a school there; there is already a "playground/parking lot". To think that moving the play area 65-70 feet over to the left - as a matter of fact if you consider the boundaries of those two areas; the parking lot and their proposed playground, I think it is just a matter of feet. To think that they are going to - we would have that ground to deny it, to me, again from a legal basis, I don't see it. Now the rest of that is, and the proposed use shall not have significant

impact on the surrounding uses. Somehow that got onto value - house value.

Mrs. Wilbert said I believe that had to do with the noise and quality of life and the musician across the street.

Mr. Dufour said as I remember the conversation, when you were going down your list you referred to the appraisal that had been submitted to us, and I just wanted to - that is how I remember the conversation, and I just wanted to address that. Mr. Coupe says that an appraisal is, and I am not quoting him, but I have heard this before, somebody's wild guess. That is close to my heart, but in any case the issue is this, it could very well be somebody's guess, but it has to be based on criteria; here is the situation, here is my conclusion based on this criteria. As I looked at the appraisal that he submitted and I read it and I drove by all of the comps, I saw no rationale for the appraiser's conclusion.

Now Mr. Coupe, says tonight, well he couldn't give you those comps because they don't exist. That is true. I am not buying the difference between 12 feet or 15 feet or 50 feet. I don't see much significance from a value perspective within those guidelines. That is true it doesn't exist. That is why I was, and then they make the conclusion that, based on the data that we were presented, I make the conclusion that the subject property is going to devalue \$30,000, another house across the street \$10,000, another house across the street \$5,000 - they presented no information to support that educated guess. No information. Now, the appraiser may have it, but I would have thought he would have presented it to us.

To get down to the punch line on this appraisal conversation is if the gentleman used three residential homes not anywhere near a school, the subject property is near a school. As I look at the adjustments on the grid, I expected to see a location adjustment because if his rationale is that there is diminished value because it is near a school, which he makes that conclusion, then I would have expected on the appraisal that he submitted to us, a location adjustment lowering the values of those homes that he used as comparable sales. In other words, he is telling us because it is near a school it is less in value. Yet he shows comparable sales that were not near a school and he doesn't adjust them for not being near a school. You would have thought there would have been a location adjustment, you would have thought that he would have considered those sales superior.

That kind of baffles me, and I had wished that he had been here this evening, and I sympathize with his suggestion - on his rationale, his explanation for not being here, but you know the conclusions of the diminished value by the amounts that he concluded he presents no evidence of that. Had he been here this evening I would have asked him why he hadn't considered the comparable sales superior. I know this is complicated, but this is crucial. If you are saying that there is diminished value because you are near a school then those sales that he used as comparables for the purpose of this appraisal, the house appraisal - basically what he did was he appraised the house as existed today not as it would be once the playground was installed. That being the case, I would have thought that he would have made an adjustment to those sales because I have to believe that he considers them in superior locations because he concludes on the other hand that if you are near a school there is diminished value.

It was kind of - I didn't understand what that was saying, but I plead with this board that cases can be argued many ways, but if we start looking at appraisals every time an applicant comes to this, we are dead in the water. What we have to consider once they are here is what is the zoning like, is it permitted.

If you take 5 lots, 4 are treed and there is a house in the middle lot okay is that house worth more than it would be if the tree lots were developed? Yes of course it does because it adds more appeal, but those other 4 lots are owned by other people and they have the right to develop them. The decisions that we make here every day affects people's lives, they affect people's values. We have to factor in the laws of the city, the regulations of the city, and to me that is what we have to consider in this case. A school exists, a playground exists, we are moving it over. That is where I stand on that.

The one other issue that I thought we had discussed was part of the, and maybe we didn't, but was number 5 where it addresses health and safety concerns. Attorney Wilbert had concerns about the proximity of the playground to the street, but no one has really addressed that other than I guess they have told us it is in a fence, but I thought it was in a fenced in area earlier. But I would argue that was probably a non-starter to begin with because they already have a playground near that street. That is my take on it.

Mr. Dookran said can I ask you about your assessment on the using appraisals for property values? Are you advising that we do not want appraisals to be considered?

Mr. Dufour said what I am saying to you is when an applicant comes before us the first criteria that we should ask is what is legally permissible, and again I go back to those 5 lots with the trees on both sides. Are we going to deny the fellow that owns the lot with the trees the right to cut the trees and build a house?

Mr. Dookran said I don't have an opinion on that. My question is we are supposed to, according to the criteria here; look at the impact of the site plan on property values.

Mr. Dufour said it doesn't say property values.

Mr. Dookran oh yeah.

Mr. Dufour said it says impact on the surrounding uses.

Mr. Dookran said hold on...the introduction paragraph, second paragraph, distinctly talks about property values.

Mr. Dufour said okay. That is fine. And I would simply counter your comment by saying we have to look at allowed uses. Everything we do here impacts people's lives. One person leaves happy the other one doesn't.

Steve Dookran

If someone, an abutter brings in adequate information that assesses the impact on property values, how are we supposed to use that information?

Mr. Dufour said any way you want. My comment to you is I don't feel that in this particular case that has been done.

Mr. Dookran said is it because like you said the last time that you don't believe their process is right? That is how you described the information presented the last time. You didn't agree with the process.

Mr. Dufour said I didn't agree with the process on his conclusion. I saw no - realize that we had seen this appraisal about 10 minutes before the case started. I am not even sure if we didn't hear it during the case being heard. The process to determine whether there is a negative impact relocating a school

playground closer to the subject property I saw no data that convinced me of that. They used none. When I look at the appraisal that was submitted, what I see is an appraisal that reflected the value of the house the day of the appraisal. He doesn't even address the establishing a playground near the property line. He simply, when I look at this appraisal I look at this appraisal as an opinion of value of the subject property on October 16th.

It doesn't address the relocation of a playground or anything. But I even found that flawed because if he concludes that there is a negative impact on a playground near a school then why does he not adjust, and we are talking about two different things now; we are talking about his conclusion that it drops it \$30,000, \$10,000, and \$5,000, but now we are talking about the appraisal of that property on October 16th. If he really concludes that a playground has a negative value, why does he not treat his comparable sales as superior and make a superior adjustment for that? He does not. That baffled me, and I would have had that as a question for him. That is really neither here nor there because that appraisal did not reflect the impact of us approving this plan. In his mind, he was appraising, in his opinion, the value of that property as it sat on October 16th.

Mrs. Wilbert said I am going to be brief. I have had enough to say here. I would say to you that I disagree with your application of approval plan criteria 3 because both you and the applicant approached it from the point of view as the impact that this could have on the school. Well it is not going to have an impact on the school. I am talking about the impact it is going to have on the other buildings.

Mr. Dufour said what is it going to have though? What do you think it is going to have?

Mrs. Wilbert said well I think that based on number 4 it is going to have a visual impact on the abutters, it is going to have an audible impact on the abutters, and it is going to have an economic impact on the abutters. It is not that they bought a house that is near a school it is that Mr. Coupe in particular as well as other abutters are now going to be very near a playground - 12 yards from a house to playground, as I understand it 12 feet from lot line to playground. I am in no position to evaluate the appraisal. I am not a licensed appraiser. But I gather that Mr. Kastitus is a licensed appraiser according to the criteria that we have been presented. That said, I bring in only common sense, and it appears to me

that there will be an economic impact if 12 yards from your porch, 12 feet from your property line there is now a playground where once there wasn't. I absolutely believe you are correct sir that we can evaluate only this plan and determine if it meets the site plan criteria.

Maybe it does marginally, but I like you sir had really hoped that we would come in here with some very hard data and perhaps a more amenable way to reach a middle ground, and I think there were a lot of ways to reach a middle ground. Is that our job? No it is not our job to find the middle ground. We only vote on what is in front of us. So I will be voting on the site plan as it has been presented.

Mr. Dufour said okay and I don't mean to extend this either. I guess that I respect your comments and it is your contention that it devalues abutting properties, there is an economic impact. I think that that argument should have been made when we approved the conditional use permit because that is clearly a condition of approval. We have approved the conditional use permit where we said okay you can put a playground there. Now I get the sense that we are inclined to deny it based on site criteria. My comment is that I feel that that argument would have been better stated or substantiated when we were addressing the conditional use permit.

Mrs. Wilbert said and I need to respond just briefly.

Mr. Dufour said sure.

Mrs. Wilbert said I made the motion to approve the conditional use permit. I believe that there is enough land on that site, and that the school has the right to put a playground there. That is not the point. I didn't believe that the playground in a number of different locations would have a significant impact on the abutters. I do think that it is criteria that can be addressed when we look at the specific plan they have presented to us for exactly where they will avail themselves of the use that they have been permitted for the playground. That is what I am saying.

Mr. Dufour said anybody else have any comments?

Mrs. Overby said I am not making a motion I am just giving my comments. I was in favor of the plan, the original plan presented. I thought it was a well thought out plan. I understand the abutter has problems with the plan. I would like

to see the church follow through with their vision of the property. I felt that a fence would give the abutter privacy, but also give the church privacy from the abutter should he choose to have a cookout or a party when you are trying to use your meditation garden or your prayer walk. Those are just my thoughts, and that is how I felt. Thank you.

Mr. Dufour said thank you. Does anybody else have any comments?

Mr. Torosian said up until about 15 or 20 minutes ago I was inclined to vote with Attorney Wilbert, but after listening to the Chairman give us his, I don't want to say expert testimony, but a little bit more experience with regards to home values...I came in tonight looking at a \$30,000 decline in property value and then when you dig a little deeper in this you look and see that we have already granted the use permit and there is already a playground there. If the site plan is not approved, the playground is already there. Where does the \$30,000 come from in this? I don't know that number seems a little bit high.

I agree with Mrs. Overby. I think a stockade fence would add a little bit more privacy with regards to separating the - giving Mr. Coupe a little bit more privacy. However, I was hoping coming in tonight that the church was going to offer up an amended plan, but unfortunately that was not the case. It should be very clear that it is not the board's job to try and broker a deal either. We should vote on this site plan as it is presented. I will support the plan as proposed.

Mr. Dufour said just so I can state again for the record, your comment about my words - when Mr. Coupe came to us the last meeting and talked about his frustration finding an engineer he said all of those engineers stick together. Well I understand that, but I want to address what my comments were about the appraisal and the appraiser. It is simply that he makes the comment that it devalues the subject property \$30,000, it devalues a neighbor \$10,000 and another one \$5,000, but provides no data to support that. He has a line that says in my professional opinion - well that is good and fine, but you have to have data to support it and none was presented. Not seeing any, I have to assume that there probably is none. They had the opportunity to present it this evening, and through misfortune of the appraiser he can't be there, but my comment on the value is simply to state that he provides no supporting documentation that he used to base his conclusion on.

Does anybody else have anything to add? Well if not, I will entertain a motion. We have a plan before us for a site plan. We need a finding that it complies with 191-146D. There are two staff stipulations. If the maker of the motion is so inclined to make a motion in the affirmative, we discussed the installation of not only enclosing the playground as proposed but having the applicant install a fence along that property line. I am not quite sure if we got a real clear answer, but if that is our preference, we can condition that. They can choose to follow our request or not. If they don't then the approval would not be valid. Is someone working on a motion?

Mr. Torosian said I would make a motion to approve old business #1 Roman Catholic Bishop of Manchester and Finance & Real Estate Office, proposed amendments to NR1817 for the construction of a 2,480 square foot outdoor school playground with associated site improvements with the two staff stipulations and I would like to add stipulation #3 that the playground be enclosed.

Mr. Dufour said that I believe is already - they had talked about the possibility of putting a stockade fence along the property line.

Mr. Torosian said stipulation # 3 should read a stockade fence shall be installed along the property line at the expense of the church.

Mr. Dufour said the motion is before us for approval of what is this evening's old business site plan case #1, with the finding that it complies with 190-146D with the two stipulations noted on the staff report and a third one stating that a stockade fence shall be installed for 149.76 feet along the property line between Mr. Coupe and the applicant.

Mr. Lowe said I would like to add to that, where we say install, add the words "and maintained".

Mr. Dufour said the applicant shall install and maintain the stockade fence along the property line as I had reiterated.

MOTION by Mr. Torosian to approve Old Business #1 Roman Catholic Bishop of Manchester and Finance & Real Este Office, proposed amendments to NR1817 for the construction of a 2,480 square foot outdoor school playground with associated site improvements. It complies with NRO 190-146D with the following stipulations and waivers:

1. Prior to the start of construction the limit of tree clearing shall be identified and clearly marked. Trees to be saved shall be protected by orange fencing.
2. Prior to the start of construction erosion control shall be erected.
3. Stockade fence shall be installed and maintained for 149.76 feet along the property line between Mr. Coupe and the applicant at the expense of the church.

SECONDED by Mr. Lowe

Mr. Dookran said Mr. Chair, I too voted for the conditional use permit at the last meeting because I recognized that a conditional use permit is a separate and distinct permit from the site plan. That is why we have different criteria as required by different sections in the law. They may be related, but they are definitely different permits and we have to consider them differently.

Mr. Dufour said point taken. Are there further comments? Further discussion?

MOTION APPROVED 4 TO 2 (Mr. Dookran and Mrs. Wilbert voted no)

NEW BUSINESS - CONDITIONAL / SPECIAL USE PLANS

2. Wilfred Piekarski Revocable Trust & Wilfred Piekarski Trustee (Owners) Application and acceptance of proposed conditional use permit for automotive sales with associated site and access improvements. 4 Blackstone Drive, Sheet H - Lot 520, Zoned "PI" - Park Industrial. Ward 2. (Postponed until the November 20, 2008 Meeting.)

NEW BUSINESS - SUBDIVISION PLANS

3. Wilfred Piekarski Revocable Trust & Wilfred Piekarski Trustee and Piekarski Realty Holdings, LLC (Owners) Application and acceptance of proposed lot consolidation of 2 lots into 1. 559 Amherst Street and 4 Blackstone Drive, Sheet H - Lot 49 & 520, Zoned "PI" - Park Industrial. Ward 2. (Postponed until the November 20, 2008 Meeting)

NEW BUSINESS - SUBDIVISION PLAN

4. Red Fall, LLC & Hera Development Corporation (Applicants) Nicholas Heras, Jr. (Owner) - Application and acceptance of

proposed lot line relocation. 341 & 345 Amherst Street, Sheet G - Lots 28 & 30, Zoned "GB" - General Business, Ward 2.

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

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

Together with

NEW BUSINESS - SITE PLANS

7. Red Fall, LLC & Hera Development Corporation (Applicants) Nicholas Heras, Jr. (Owner) - Application and acceptance of proposed amendment to NR1699 for the construction of a 1 story, 9,830 square foot building for retail/restaurant use with associated access, parking and site improvements. 341 & 345 Amherst Street, Sheet G - Lots 28 & 30, Zoned "GB" - General Business, Ward 2.

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

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

Tom Pozerski, Merrill Associates, Inc.

Mr. Pozerski said they are proposing to relocate the property line. The plan presently complies with the land use intensity, and setback requirements and all requirements in the Land Use Code. Atty Prunier is also with Mr. Pozerski tonight. There are 133 spaces shown, 147 are required with 19 reserve spaces on the site plan. The stormwater management system has been designed and reviewed and can handle the 100 year storm.

Gerald Prunier, Esq.

Atty Prunier said this is the same plan that was approved in July 2008 and was subject to coming to an agreement on the traffic contribution and they have come to an agreement of a contribution of \$50,000 to take care of the traffic improvements.

Mr. Pozerski said they did some parking reconfigurations. Mr. Pozerski went over the five waiver requests.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

Chair Dufour said this concludes the public hearing on this application. They will now carry the deliberations into the public meeting. The Board reserves the right to recall any party to this case for clarification.

MOTION by Mr. Lowe to approve New Business #4 Lot Line Relocation, Red Falls, LLC, Lot 28 & 30, 341 & 345 Amherst Street. It conforms to NRO 190-138(g) with the following stipulations and waivers:

1. Prior to the subdivision plan being recorded the applicant shall submit an easement document for cross access and parking to the Planning Department and shall be recorded with the plan.

SECONDED by Mrs. Wilbert

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Slivinski to approve New Business #7 - Site Plan, Red Fall, LLC (owner) construct a new retain building at 341 & 345 Amherst Street. It conforms to NRO 190-146(d) with the following stipulations and waivers:

1. Prior to this plan being signed any final drafting corrections shall made and revised plans submitted. Drafting corrections requiring approval by the Division of Public Works, including pavement markings and signage, shall be obtained prior to submittal.
2. Prior to a final certificate of occupancy being issued all site work including final paving and landscaping shall be completed.
3. The waiver request for driveway design, Sec. 190-209 A.(1) and (4) is granted.

4. The waiver request for lighting, luminaire design, Sec. 190-89 B. is granted.
5. The waiver request for building design, facades, Sec. 190-172 B.(1) is granted.
6. The waiver request for building design, roofing, Sec. 190-172 C.(1)-(4), is granted.
7. The waiver request for construction of 19 parking spaces, Sec. 190-190 B., is granted.
8. With approval of this site plan the Planning Board approves the building materials used on this building.
9. Hours of deliveries 6:00AM to 11:00PM and dumpster pick-up not earlier than 6:00AM.
10. As set forth in the letter dated October 29, 2008 from Gerald Prunier, Esq. to Wayne Husband, Traffic Superintendent, the traffic contribution totaling \$50,000 shall be paid to the Traffic Department at the time of issuance of the final certificate of occupancy.
11. One Way signs and Do Not Enter Signs be placed on the right side of the front building to ensure the driveway is a one-way.

SECONDED by Mrs. Wilbert

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

6. Wilfred Piekarski Revocable Trust & Wilfred Piekarski Trustee (Owners) - Application and acceptance of proposed site plan amendment to NR1943 for automotive sales with associated site and access improvements. 4 Blackstone Drive, Sheet H - Lot 520, Zoned "PI" - Park Industrial. Ward 2 (Postponed until the November 20, 2008 Meeting)

NEW BUSINESS - SUBDIVISION PLAN

5. East Glen Properties, LLC (Applicant) Paul Jr. & Kathryn LaFlamme (Owners) Application and acceptance of proposed lot line relocation and subdivision of 2 lots into 4. 70 Burke Street & 36 Underhill Street, Sheet 13 - Lots 70 and 324, Zoned "RB" - Urban Residence, /Ward 7.

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

SECONDED by Mrs. Wilbert

MOTION CARRIED UNANIMOUSLY

Richard Maynard, Maynard & Paquette

Mr. Maynard said the purpose of this plan is a subdivision relocation line. There are 2 lots of record. Mr. Maynard showed on the plan where the lines would be relocated and the subdivision. They were given variances by the Zoning Board of Adjustment. The topography runs gently from Underhill towards Burke Street. Drainage will be handled by leeching catch basins connected to the roof drains. The amount of runoff after construction will be slightly less than there is today. There is a combined sewer. There is no city storm drainage in this area. They are requesting one waiver for construction of a sidewalk. If they were to construct sidewalks it would aggravate the puddling problem.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

Kathleen Walsh, 40 Underhill Street

Mrs. Walsh is an abutter. There is a sidewalk about 7 or 8 house lots up from where these lots are. Mrs. Walsh has lived in her house for 26 years. This will be a responsible way to handle the property and the best possible scenario for the neighborhood.

Chair Dufour said this concludes the public hearing on this application. They will now carry the deliberations into the public meeting. The Board reserves the right to recall any party to this case for clarification.

MOTION by Mrs. Wilbert to approve New Business #5, East Glen Properties, LLC (Applicant) lot line relocation and subdivision of 2 lots into 4. 70 Burke Street & 36 Underhill Street. It conforms to NRO 190-138(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 final drafting corrections shall be made and shown on the plan. Revisions requiring approval by the Division of Public Works shall be obtained prior to recording.
3. Prior to the plan being recorded the storm water operation and maintenance plan shall be reviewed and recorded with the plan.
4. Prior to the issuance of the certificate of occupancy for any new house all associated work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.
5. Prior to the issuance of the second certificate of occupancy for a new house on Underhill Street, street drainage improvements shall be completed to the satisfaction of the Division of Public Works.
6. The request for waiver of sidewalk construction and acceptance of a contribution is granted. If granted the contribution is to be applied to the N.E. Quadrant Sidewalk Fund.
7. Zoning Board conditions of approval are made a part of this plan and are incorporated herein.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLAN

8. Public Service Company of New Hampshire (Owner) - Application and acceptance of proposed site plan for the removal of existing power distribution equipment and the installation of new equipment with associated site improvements. 34 Pine Hill Road, Sheet E - Lot 70, Zoned "RC" - Urban Residence, Ward 1.

Mrs. Wilbert said that she represents an abutter to this site who has no opinion of this that she knows and is not present so she didn't think she would have a conflict.

Jeff Moran, TF Moran, Inc.

With Mr. Moran tonight is Kevin Duran from PSNH. The property is located on Pine Hill Road. They are proposing to replace the existing equipment to increase capacity and reliability of the substation Mr. Moran said part of the driveway will be used and it will split off and have two gates into the new yard area when finished. They are expanding the yard. All existing vegetation will remain except for two cluster of shrubs to be removed. Everything in the front and down the side will remain as it currently exists. They are requesting one waiver for overhead wires. There are no additional improvements. The station will remain active all through construction. Drainage patterns will remain the same. They have put in a slight depression with a leeching catch basin to recharge the runoff. Currently there are two pole-mounted floodlights. Those will be coming down and one light will be put back up. The lighting at this station is only used during an emergency. The fencing will be enlarged.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

MOTION by Mrs. Wilbert that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Lowe to approve New Business Site Plan #8, remove and replace electrical equipment, Public Service of New Hampshire (applicant), 34 Pine Hill Road. It conforms to NRO 190-146(D) with the following stipulations and waivers:

1. Prior to the issuance of a building permit the storm water operation and maintenance plan shall be recorded.
2. The waiver request for overhead wires, Sec. 190-233 E. is granted.

SECONDED by Mrs. Wilbert

MOTION CARRIED UNANIMOUSLY

OTHER BUSINESS

1. 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 Mrs. Wilbert

MOTION CARRIED UNANIMOUSLY

2. Referral from the Board of Alderman on proposed O-08-38, amending the Land Use Code with respect to Major Home Occupations - Day Care uses.

MOTION by Mrs. Wilbert for a favorable recommendation for O-08-38.

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

3. Referral from the Board of Alderman on proposed Street Discontinuance for a portion of Edson Street.

Mrs. Wilbert said she represents an abutter to this matter but said abutter has not contacted her and has as far as she knows an opinion one way or the other and does not feel she has a conflict.

MOTION for a favorable recommendation on the proposed street discontinuance.

SECONDED by Mr. Slivinski

MOTION CARRIED UNANIMOUSLY

DISCUSSION ITEMS

Mr. Dufour went over the following items:

- The city attorney has been successful in defending two Planning Board decisions. First was on Concord Street and the second was on Ferson-Lake.

NCPB

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- This will be Mike Yeomans last Planning Board meeting and thanked him for his service to the City.

Mr. Slivinski said he went to visit the camper site and there are 51 vehicles on that site now. The applicant had said they wouldn't have more than 17 of the RVs at a time. Mr. Dufour said he would have Code Enforcement review that site.

MOTION TO ADJOURN by Mr. Lowe at 9:49 p.m.

APPROVED:

Ken Dufour, Chair, Nashua Planning Board

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Taped Meeting