

NASHUA CITY PLANNING BOARD  
February 5, 2009

The regularly scheduled meeting of the Nashua City Planning Board was held on Thursday, February 5, 2009 at 7:00 PM in the auditorium at City Hall.

Members Present: Jody Wilbert, Mayor's Rep  
Ken Dufour, Chair  
Bob Canaway, Vice Chair  
Daniel Latham, Secretary  
Alderman Richard LaRose  
Steve Dookran, City Engineer  
Mike Lowe  
William Slivinski  
Cynthia Overby

Also Present: Roger Houston, Planning Director  
Lucy St. John, Deputy Planning Manager  
Chris Sullivan, Planner II

Chair Dufour said in Mr. Torosian's absence this evening, Mrs. Overby will be partaking in conversation and voting.

**Approval of Minutes**

December 11, 2008

**MOTION** by Mr. Lowe to approve the minutes of December 11, 2008, waive the reading and place on file.

**SECONDED** by Mrs. Wilbert

**MOTION CARRIED (9-0-2 Alderman LaRose and Mr. Latham and Mrs. Overby abstained)**

January 8, 2009

**MOTION** by Mr. Lowe to approve the annual minutes of January 8, 2009, waive the reading and place on file.

**SECONDED** by Mr. Canaway

**MOTION CARRIED (4-0-5 Mr. Lowe, Mrs. Wilbert, Alderman LaRose and Mr. Slivinski abstained)**

January 8, 2009 (Annual)

**MOTION** by Mr. Canaway to approve the annual minutes of January 8, 2009, waive the reading and place on file.

**SECONDED** by Mr. Lowe

**MOTION CARRIED (4-0-5 Mr. Lowe, Mrs. Wilbert, Alderman LaRose and Mr. Slivinski abstained)**

**A correction was made for Mr. Latham to second the motion as Mr. Lowe abstained.**

### **COMMUNICATIONS**

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

Case #1 subdivision on 78 Cox Street and this is concerning a letter from James Crowley from Maynard and Paquette to Lucy St. John and the second communication is a copy of the approval letter for the same case #1 which was approved January 15, 2009 by the Zoning Board of Adjustment and the City of Nashua with the stipulations that are referred to and that will be discussed during the meeting. The third item I have in the packet is pertaining to case #2 which is 91 Gilson Road. This is concerning the access, the visibility of one of the driveways on the proposed subdivision and this is a communication from Lucy St. John and Wayne Husband, the city's traffic engineer and that discusses that issue of the blind driveway and that is all I have.

Mr. Houston said there is one thing I would like to add since the recording secretary is taking pretty thorough minutes. It is important to pause when you are speaking when you mean to have a period at the end of your sentence. Linda Panny will type what you actually say. It is especially important for you to identify yourself when you speak and speak directly into the microphone. Thank you it is appreciated.

### **REPORT OF CHAIR, COMMITTEE & LIASON**

Chair Dufour said the Capital Improvements Committee has wrapped up. They are working hard on getting the report out for everyone to review and it should be ready for us at the next meeting.

**PROCEDURES OF THE MEETING**

Chairman Dufour went into the procedure of the meeting as follows:

After the legal notice of each conditional, special use permit, site plan or subdivision plan is read by the Chair, the Board will determine if that the application is complete and ready for the Board to take jurisdiction. The public hearing will begin at which time 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 or 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. Please 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 public testimony will come from anyone wishing to speak in favor of the plan. The applicant will then be allowed a rebuttal period at which time they shall speak to any issues or concerns raised by prior public testimony.

One public member will then be granted an opportunity to speak to those issues brought by the applicant during their rebuttal period. The Board will then ask any relevant follow-up questions of the applicant if need be.

After this is completed the public hearing will end and the Board will resume the public meeting at which time the Board will deliberate and vote on the application before us. The Board asks that both sides keep their remarks to the subject at hand and try not to repeat what has already been said.

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 conditional, special use permits, site plans and subdivisions. Thank you for your interest and courteous attention. Please turn off your cell phones and pagers at this time.

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

None

**OLD BUSINESS - SUBDIVISION PLANS**

None

**OLD BUSINESS - SITE PLANS**

None

**NEW BUSINESS - SUBDIVISION PLANS**

1. Daniel Bergeron Building & Development, Inc. (Owner) - Application and acceptance of proposed subdivision plan to subdivide Sheet 137 - Lot 190 into two (2) lots. Property located at 78 Cox Street. Zoned RA - Suburban Residence, Ward 2.

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

**SECONDED** by Mr. Canaway

**MOTION CARRIED 8-0 (Mrs. Wilbert recused herself)**

Richard Maynard, Maynard & Paquette

Mr. Maynard said the project before you tonight is on Cox Street, across from Hastings Drive. It is in the RA Zone, which is 7500 square foot lot. The proposal is to subdivide this parcel outlined in yellow from one into two. The front lot would be 7500 square feet and the rear lot would be 27,150 square feet. Back in November we received a variance for frontage and lot width for this particular lot because frontage is measured here and lot width is measured here even though we are 27,000, almost 4 times the minimum lot size for the district. The drainage will be handled by leeching cisterns connected to the roof drain system. The soils here, drainage wise, are excellent. They are very rapid permeability and the entire storm will perk into the ground without any trouble. There is an old paper street, which expired way back in 1947. It use to be called Hooker Street. The other item of concern is two clarifications on the staff report. The actual stipulation with regard to the accessory structures will be added in the setback areas and that is why you have a January 15<sup>th</sup> ZBA letter is a revised or amended letter the proper stipulations. The zone on the plan is fine in that regard. Sidewalks were waived when we did the previous subdivision in this area. The sidewalk contribution was made for all the sidewalks involved for the properties in here so that is

not an issue tonight. Fire department has weighed in and they ask for an extra wide driveway so you see on the plan we are providing 14 feet of pavement which is what they ask as opposed to the normal 9, 10, or 12. With regard to the driveway to the rear they also ask for sprinklers which will be a building code requirement if everything passes in the city in the year 2011 unless the city exempts residential houses from the sprinklers. I think at the moment that is premature so we decline that suggestion of the fire department. The other thing I would like to comment about is the suggestion that we put a T-turnaround for the lot in front and any of you folks that had a chance to visit Cox Street all of the driveways back up directly onto Cox Street. We are willing to put a T-turn around but it would end of being in the front yard of the house. It is not really necessary. It is superfluous. Cox Street is a very low traffic street. Just about the only people on Cox Street are the people who live on Cox Street. It is not a through street in any manner or collector or anything like that. It is very low traffic. Traffic people had no problems with the way our driveway backed out onto the street either. I would suggest to the Board that the suggestion, stipulation #6 be deleted and just for the record stipulation 7, there are no other permits (inaudible). Just to amend the attachments to include the Zoning Board letter of January 15<sup>th</sup> instead of November 12.

Chair Dufour asked Mr. Maynard to speak to that last sentence about January 15<sup>th</sup> instead of November 12<sup>th</sup>.

Mr. Maynard said the first letter was issued November 12<sup>th</sup> by the Zoning Board, their letter of approval which had an error in it. They reissued it January 15<sup>th</sup> to clarify that accessory structures in the setback is what they meant.

Mr. Slivinski said he had a couple of questions. As he remember this is the same land area that we had approved a 6-lot subdivision. Is that right?

Mr. Maynard said that was correct.

Mr. Slivinski asked if that was the last lot?

Mr. Maynard said that is the big 6 lot that will remain. If you remember at the time I discussed that we would be coming back at a later date.

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Mr. Slivinski asked on the driveway going in, there appears to be a retaining wall due to the elevation that will be on one side of the driveway?

Mr. Maynard said no.

Mr. Slivinski asked if you will need it?

Mr. Maynard said no you won't need it. The grade of the street is on the order of 198. The grade down where we are is on the order of 192. It's on the 6 foot differential.

Mr. Slivinski asked if there was nothing in the cross thing there?

Mr. Maynard said there is some grading but no walls. There are 2 grading contours. There is 4 feet there, but it is 20 feet. We can go as close to the lot line itself but we left 20 feet between the driveway and lot line for grading. The grade of the driveway will be 5% or 6% which is a moderate grade.

Chair Dufour asked if that would sheath to the lot next because of the way you are grading that?

Mr. Maynard said no, yes that will, that little bit but we are taking the rest of the water, all of the water that use to go this way and bringing it down this way. We are cutting 2/3 of the drainage out.

Mr. Dookran said a couple of things you just said according to the plan I have don't agree with what you just said. The grade on the street according to this plan is around 200 in front of the driveway.

Mr. Maynard said the 198 contour goes (inaudible)

Mr. Dookran said the (inaudible) street is 200.

Mr. Maynard said the grade right after the beginning of the driveway is 198. Regardless it is only 6%.

Mr. Dookran said well again I am looking at that and my estimation is going to be 10%.

Mr. Maynard said we are over 100 feet long with this driveway. From here down to the bottom is 150 feet.

Mr. Dookran said lets talk about the first 50 feet or so.

Mr. Maynard asked the first 50 feet?

Mr. Dookran asked based on the proposed grading that you drew on the plan?

Mr. Maynard said yes, the beginning grade in this particular area is on the order of 10.

Mr. Dookran asked what is 10%? What does that look like?

Mr. Maynard said he didn't know what to tell you. Majestic Heights had some 10% road grade. That is the public road, not the driveway. In the city we are allowed on public roads as much as 10% grade. Occasionally on driveways you have 12 to 15%. Its not preferred. If you would like me to flatten that a little that's not a big deal either.

Mr. Dookran said Mr. Slivinski asked about retaining walls. I was just pointing out (inaudible)

Mr. Maynard said no, that is part of the reason for getting the grades down. If you flatten the road and keep the drain up you have more slope so instead of having 4 feet here I have kept the grade up another 4 feet I would have a 8 foot thing. It is a compromise between grading the side yard and the driveway. The higher you put the driveway the grader the side slope is for the neighbor. So it is a compromise.

Mr. Dookran asked Mr. Maynard what his estimation of the side yard grading to the proposed house?

Mr. Maynard asked our house?

Mr. Dookran said yes, your house.

Mr. Maynard said the side grading is anywhere from 4 to 6 feet depending on where you are on the house.

Mr. Dookran said according to this plan I couldn't tell from out there, there is a utility pole right at the edge of the driveway.

Mr. Maynard said it is right off the driveway, correct, within 3 feet.

Mr. Dookran asked if he saw that as a problem with the driveway.

Mr. Maynard said no. The driveway is going to go around. Remember now we are putting in an excessively wide driveway only because the fire department is asking for these things. The normal driveway in here would have been 10 feet. So we have with a 14 foot wide driveway for a single family house that is excessively wide.

Chair Dufour said getting back to that turnaround, it's the fire department that requested that? Or was that staff that requested that? Who requested that?

Mr. Maynard said strictly staff suggested that. The fire department had nothing to say about that and neither did traffic.

Mr. Dufour asked as far as number 7, there are no other approvals that need to be obtained.

Mr. Maynard said for the record there are no other approvals. I don't care if you leave that it.

Mr. Dufour asked if staff had anything to add.

Mrs. St. John said no.

**SPEAKING IN OPPOSITION OR WITH CONCERNS**

No one

**SPEAKING IN FAVOR OF THE PLAN**

No one

Mr. Slivinski asked that back house the way it is designed wasn't it stiped by the Zoning Board that is was only suppose to be a single story?

Mr. Maynard said that is correct. That is on the last note as part of the stipulations.

Mr. Slivinski asked if they were going to pull into their garage and go down? That is going to be on the first story and the second story is going to be the house?

Mr. Maynard said no, that is in the basement. It is a walkout basement.

Mr. Slivinski said as he is looking at the house is he going to see it as a typical one story house?

Mr. Maynard said correct. You will see one story. You won't be able to see the back.

Mr. Dufour said the garage under is access from the end of the building.

Mr. Maynard said it is a side entry, a garage under. That is the exact same plan we proposed to the Zoning Board.

Mr. Lowe asked for staff to read to us the actual grading because I think the grading was 8 and 10. I am not sure.

Mr. Dufour said he didn't understand the question.

Mr. Lowe said to ask staff to read the part of our ordinances or whatever you want to call it. Actual grading because I know it is in there.

Mr. Dufour asked if it is the grading requirements?

Mr. Maynard said the grading requirements for a driveway is what they are asking for.

Mr. Lowe said right.

Mr. Maynard said it didn't believe it was in there and he knew for sure that city streets are 10 so that driveways are that or slightly more. Don't forget that is a private driveway in a subdivision. It is really not part of the Board's jurisdiction.

Mr. Dufour asked Mr. Lowe is he still wanted to know that.

Mr. Lowe said he wanted to know.

Mr. Dufour said if it's in there we will give him a minute to research that for you.

Mr. Houston said that they weren't aware of any provision in the code on grades on private driveways but they will review the code in the next few minutes. There is a standard for public streets.

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Mr. Lowe said he thought when they were talking about that "heights" but there were driveways in it too. There is a state reg but I am not sure what it is. That was brought up.

Mr. Maynard said state regs allow roads to be as much as 15% in circumstances. The state is less restrictive in that regard. There are no state regs for driveways per se. The only thing anybody regulates from the state is the section of the driveway that is in the public right-of-way.

Alderman LaRose asked if the paper street is still in existence or has that land been subdivided?

Mr. Maynard said the paper street expired in 1947. Under the old law it automatically reverts through the middle to each side.

Alderman LaRose asked if it has been accomplished.

Mr. Maynard said correct. That is to make the plan complete. There is no subsequent plan for Hooker Street until this one.

Alderman LaRose said that is why we have a Hastings Street because that was Hooker Street.

Mr. Maynard said probably, yes, he thought he remembered that in the research.

Mr. Dufour said so Mr. Lowe staff advises us that there are no grade requirements for private driveways. Is that an accurate statement?

Mr. Houston said that in their quick review of code that the staff did not find a provision for private driveways. It is up to the Board review the plans and say if that is excessive. For short distances grades are not that problematic and in this case the driveway is 14 feet wide.

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.

Mr. Slivinski said he lives up in that area and has gone down Fox Street to know that traffic is extremely light on Cox Street. It is not a through street in any way so I would be inclined to not to put the turn around on lot 195.

Chair Dufour said he would concur with that for a couple of reasons. Number one is we didn't require it when we approved it in the front and number two is there are similar driveways to everything else that is on that street. As we deliberate we need a finding and there are 8 staff stipulations. One of them is the turnaround so if the motion is to require the turnaround then we will leave it the way it is. If its not then we would have to remove that and renumber. Number 7 can stay there; it is just kind of there.

**MOTION** by Mr. Slivinski to approve New Business #2 Subdivision Plans, Dan Bergeron Building & Development, 78 Cox Street, Sheet 137 - Lot 190. Zoned RA - Suburban Residence. It conforms to NRO 190-138(G) with the following stipulations and waivers.

1. Prior to any site work being conducted on the property, including the clearing of trees and vegetation, grading or other activities which change the character of the site, a preconstruction conference shall be held between the Planning Department staff and the owner(s)/owner's general contractor, or project manager. Mature trees and vegetation which are to remain shall be protected with orange construction fencing and the root zone of the vegetation protected from infringement by construction equipment. Construction fencing shall be placed before construction activities begin and shall be maintained during the on-site work. Vegetation which is shown on the plan as the proposed edge of woods shall remain. Construction fencing shall be placed along the edge of the vegetation/tree line that is to remain. It is the responsibility of the owner to contact the Planning Department to arrange this meeting.
2. Prior to any site work being conducted on the property, the owner is responsible for providing all contractors and others engaged in work on the property with a copy of the signed approved plan.
3. Concurrent with the recording of the plan, the storm water operation and maintenance plan, declaration of covenants and restrictions and easement shall be recorded.
4. Prior to the plan being recorded, all stipulations of the Planning Board shall be noted on the plan.
5. Prior to the plan being recorded, any outstanding fees, including all required recording fees shall be paid by the current owner.

6. The owner is responsible for providing a copy of any applicable state and federal approvals which may be required to the Planning Office upon receipt of said permits.
7. Prior to the issuance of the final certificate of occupancy all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.

**SECONDED** by Mr. Lowe

**MOTION CARRIED UNANIMOUSLY**

**NEW BUSINESS - SUBDIVISION PLANS**

2. **Lehoullier, Peter and Krista (Owners) - Application and acceptance of proposed subdivision plan to create a three (3) lot subdivision including one lot with the existing single-family home. Property located at 91 Gilson Road, Sheet D - Lot 378. Zoned "R-30" - Suburban Residential, Ward 5.**

**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**

Bob Cormier, Cuoco & Cormier

Mr. Cormier said they have a 3.2-acre parcel on the corner of Countryside Drive and Gilson Road. The existing house is to remain. This is a R-30 zone. The existing house will remain on a 40,370 square foot lot. The lot in the middle will be 54,686. The lot on the end 47,024 square feet. You will see on this plan is a stream that goes through the property. On the backside of the fence is a mobile home park. If you recall we presented this plan in October to the Planning Board for a discussion of the sewer issue. Under the zoning ordinance we can subdivide off one additional lot without having to provide dry sewer in the street. We have asked the Board to consider waiving that at this time so we subdivide. In two years we could come back and subdivide the third lot. To avoid having to come back to the Planning Board we asked that be considered to do the two new lots at this time, waive the dry sewer, in exchange for providing the city with a sewer easement to they can get sewer from Jensen's into this area of the city in the future. Otherwise we would not be required to give a sewer easement and

construct sewer in the street. That goes back to October. At that time we had an indication that you would consider that so we went forward with the 3-lot subdivision. We are proposing septic systems. There is an existing house on a septic system. We are proposing septic systems for the new homes. We have tested the lot and have provided that data to the planning staff. We have also provided a 20-foot permanent sewer easement through here. Initially we were going to put it here but Jon LeBrun then asked us to put it on the left side. Subsequently he asked us to bring it back to the east side. We have been cooperating, trying to put it where he thinks its best suited. We have also provided temporary construction easements for that sewer easement. In the event the sewer ever does come through these two homes can connect to that sewer without having to go into the street which is another thing to be considered. We also have over 700 feet of frontage and the sidewalk fee for that would be \$37,000 plus dollars, at \$50 a foot. Initially our client was going to propose building a sidewalk but we had asked the city engineer to waive building it across the brook. We have this brook here which across it requires a dredge and fill permit from the state and a massive undertaking of redirecting drainage because we not only have the culvert from across the street to contend with. The drain runs to Gilson Road comes down this side of the road and is quite an extensive headwall system here with two culverts coming in. This will add substantially to the project just to put the sidewalk across. On either end of the guardrail to curb the sidewalk into the road and for a distance of 20 - 30 feet you would walk on the road and get back on the sidewalk. Jon LeBrun did not agree with that and said it should go all the way through. So at that time our client proposed to pay the fee in lieu of building the sidewalk. Staff is recommending not to waive that and we are asking for consideration in that regard to let us pay the fee or at least give us some relief (inaudible) in addition to doing the sidewalk. We have gotten prices which I can give to the Board from Jennings Excavation to do the dry sewer. The dry sewer and repaving Gilson Road after the sewer project, we have gotten a price of \$147,000 to do that work. Add to that the \$37,000 for the sidewalk, Jennings has given us a total estimate of \$184,000 to date without crossing the brook.

Mr. Dufour asked to show this to Mr. Dookran.

Mr. Cormier said the client has informed him that his tax land value is \$121,000. Right now we have estimates of \$184,000 without crossing the brook. Plus all the other expenses that he incurred with special studies. We have been asked to study the

brook for the 50-year flood because the engineer's office was concerned about what elevation we would set the houses at. We did do that study and we put the grades on the plan to alert homebuilders of the grades they to build these houses to keep them out of the 50-year storm. We also have an issue that came up recently on the site distance with the driveway at this home. There is a low point here at the brook. There is a high point here at the house. There was concern with vehicles heading east that if someone was stopped here to take a left turn into that driveway they may not see them. We have provided profiles for Wayne Husband to show that you can see the top of the car and for 2-foot object you can see it for a 190 feet rather than the 200 recommended. Wayne has asked that we agree to install a sign for the west that indicates a blind driveway with a flashing light be powered by solar panel. Our client has agreed to install that at his expense somewhere in the range of \$2,000 to \$3,000 for that installation. He believed that is the memo Mr. Houston referenced at the start of the meeting. We worked that out today. Mr. Cormier would be happy to answer any other questions but given the nature of the project, where it is in the city, and all of the things we are trying to get done here we are looking for some relief. We would like to offer the sewer easement in lieu of the dry sewer. If you do not agree with the refusal for that waiver and either accept a \$37,000 check for sidewalks or at least direct the engineering department to consider waiving crossing the brook so we aren't also doing a drainage project as well at the same time.

Mr. Dufour said he remembered you coming in for the discussion item. What is different then how it was presented to us? At the time you were only going for two lots?

Mr. Cormier said they had an option. Jon LeBrun felt the rules were the rules. He wants the dry sewer no matter what. He said we had to come to the planning board to get that waived. Before we went through the engineering exercise we came to the board at the meeting for a conceptual discussion. The issue being under the zoning we can cut off one lot and not have to do dry sewer. We wait two years to come back for the other lot and be considered a new lot and not have to build a dry sewer. Not to have to come back to the planning board every two years, since it was only one additional lot, to do them both at the same time and to give the city a sewer easement so that will be available to the city for future extensions. We have the ability for these two houses to connect to the easement without evening needing the sewer in the road. We ask that be waived and be given some strong consideration. The other thing we want you to consider is

given the amount of approved capital improvements here, the sewer, the sidewalk, this is not a 40 or 50 lot subdivision like some of the other projects. It is 2 new lots. Given the value of the property, they already have \$75,000 or \$80,000 sidewalk investment here there is not much value to get out of this.

Mr. Dufour asked what were our thoughts at that meeting concerning the sidewalk.

Mr. Cormier said as the way the minutes read Chair Dufour said his thought was to get the easement to do build the dry sewer and have them put in septic. Mr. Canaway said this was a discussion without all the information it sounds reasonable and was leaning towards Chair Dufour's opinion. Mr. LeBrun comes back with material that would sway his opinion it could change his opinion.

Chair Dufour asked when they would be back.

Mr. Cormier said they attempted to come back within a couple of months but other issues came up, hydraulic studies on the brook, site distance issue so it has taken a little more (inaudible)

Mrs. Wilbert said she is looking at the staff report to our ability to grant a waiver of 190-212 which is the sidewalk and it says that we can take a contribution in lieu only when all of the following conditions are met. It doesn't appear that one of the conditions is met of putting to the report existing street adjacent to the proposed lot has no sidewalk for a distance of 250 feet on the same side as the new lot. The staff report goes on to say that there are sidewalks within 250.

Mr. Cormier asked to address that. That was one of the other waivers that he wasn't sure they needed now. They asked us to locate the sidewalk. The sidewalk on Countryside Drive is here, going westerly. There is a little piece of sidewalk on the opposite side of Gilson Road here that was done by a little subdivision there and this is the entrance to the rail trail parking lot. The rail trail is down here and you can see it on the large-scale map. We would contend it would probably more appropriate to build a sidewalk on the southerly side of the road and continue this piece down to the rail trail as opposed to being on our side and having people cross. It seems to be flip-flopped. You have a piece here then a piece on our side. We would contend to donate the money and have it be done on the other side of the road.

Mrs. Wilbert asked what effect would that have on your wetlands?

Mr. Cormier said if they had any relief, we would still need to cross the brook. It may be less involved because the drainage is on the other side of the road. We have to deal with this culvert coming in plus the one across the street. Here we would be just crossing the channel. It might be a little less intensive.

Mrs. Wilbert asked if you would still need the same state approval?

Mr. Cormier said yes, it would be very involved and effort like that is \$2,000, \$3,000 just to go through the permitting, not to mention the cost of construction.

Mrs. Wilbert asked you are telling me that there are sidewalks within 250 feet?

Mr. Cormier pointed out the corner of their property and right across the street there is. They are just maintaining it would be better on the other side of the road.

Mrs. Wilbert said she wants to know from staff if in fact they have the authority to accept a contribution in lieu based on the literal reading of this section in the staff report that says all conditions must be met.

Mr. Cormier said he wanted to make it clear. His client will build that sidewalk. He is just looking for relief. This could be another \$10,000 to \$20,000 just for the drainage work and permit. So he is willing to do the sidewalk, he just wants a little (inaudible) can he make a contribution just on the stretch? We offered that to the engineering department and they wouldn't consider it. I think it belongs to this Board to make that decision, but if we could get a little relief crossing that brook and not have to get permits, he would put the rest of the sidewalk in the entire frontage.

Mr. Lowe asked what this actually cost to put in that sidewalk. I mean you are talking about a 1,000 feet?

Mr. Cormier said 750 feet.

Mr. Lowe said 750 feet, as the length gets longer, the cost gets less. Has anybody done a cost analysis to see if it meets the \$50 or could it be less than \$50?

Mr. Cormier said in this case the client went to Jennings Construction and gave us that estimate without the brook crossing and offered them \$37,000 to just build the entire thing and cross the brook and they wouldn't accept the project. They know it's going to get involved. There is a lot of drainage work. He wouldn't even quote it. So \$37,000 wasn't enough for him to even think about it.

Mr. Dufour asked Mrs. Wilbert if her question got answered. We were looking for direction from staff.

Mr. Houston said the ordinance does not give that authority to the Board. However, that ordinance I believe can be waived. Anything in the subdivision regulations can be waived. The ordinance is very clear that it doesn't meet that test. It is in the staff report and that is what the ordinance states.

Mrs. Wilbert asked Mr. Houston that the Board can waive the sidewalks, but they could not literally accept a contribution in lieu of sidewalks?

Mr. Houston said that is what the ordinance says. It says you cannot accept a contribution. If you don't meet that test, you have to build the sidewalk.

Mrs. Wilbert asked if they would have the authority to waive say that 20 foot piece, if we so deemed it to be reasonable?

Mr. Houston said if you felt that or you could waive the dry sewer and have them do the entire sidewalk. There is different combinations the Board can look at if you want to make it more reasonable.

Mrs. Wilbert said she understands their authority now. We can't accept the contribution because all of the conditions aren't met, but we could waive the entire sidewalk requirement or make some combination thereof.

Mr. Houston said that was his understanding.

Mr. Dufour said as it pertains to the dry sewer, have any conditions changed since that October meeting as far as information? Our inclination at that meeting if I recall, we were going to get the easement and waive the dry sewer. Have we gotten any other information that would say that doesn't apply anymore because now we know this and the dry sewer is going to go in. What I am trying to do is trying to avoid blindsiding the

applicant. They come in for a discussion item. If they leave here with the general consensus that yeah, we will take the easement and will forgo the dry sewer, as long as nothing else changes between now and then, then that is still my position. My question is did anything change that would now require us to have those dry sewers put in? Have we obtained any other information that we didn't have in October?

Mrs. St. John said as she stated in the staff report here I referenced other subdivisions and streets where it had been required in the past. I don't know if you had that specific information.

Mr. Dufour said he is sure that is correct.

Mr. Cormier said that is usually a given. He knew it had been waived in the past. He heard today there is a subdivision on Groton Road, 34-lot subdivision where it was waived. He believed they had most of issues covered. Again there was one waiver request for material within 1,000 feet. We provided those sidewalks (inaudible).

Mr. Dufour said before you leave, there are 18 stipulations.

Mr. Cormier said a lot of them are housekeeping, bonding, site inspections, and all the typical. I don't believe we have any other issues.

Mr. Dufour said other than the dry sewer and sidewalk...

Mr. Cormier said (inaudible) They have agreed with today's discussion with Wayne Husband to provide a sign and flashing light to warn people about the blind driveway. I think that would make the traffic department happy.

Mr. Dufour asked if there is a traffic department provision?

Mr. Cormier said right. One thing they would (inaudible) is on the sidewalk if they could pay the fee or build the sidewalk that could be done when the building permit is issued rather than the time of recording of the plan. It is always difficult for the applicant to get the money to do these things until they have sold the lot and to come up with the money or build the sidewalk before you record the plan is difficult. So if they could have that stipulated I believe there is one of your conditions that stipulate all infrastructure to be done before building permit I think that is one of your stipulations anyway.

We would like to include the sidewalk in there so they can at least have the chance to get some funds from the sale of one property to raise the money.

Mrs. St. John said the reason she stated it that way I think its important as we find the current ownership assumes the responsibility of putting that sidewalk in so we don't have a lot sold and then somebody comes in to get their building permit and we go by the way did you realize you have to pay a certain amount of money because the sidewalk needs to be put in so we would prefer that it be done at the time, prior to recording of the plan because it is more of a housekeeping thing and then it doesn't shift the responsibility to the proposed new property owner.

Mr. Cormier asked what if they put a note on the plan, on the subdivision plan that is recorded, to specifically state no transfer of land until construction of a sidewalk. So the attorney doing the closing and the person buying the property it would be on the recorded plan. It would be noticed that this is an encumbrance and has to be taken care of or they are going to get the liability.

Mr. Dufour said that seemed to work for him.

Mrs. St. John said that is an option to consider. She didn't know if that has been done that here in the past.

Mr. Dufour asked what stipulation are we talking about. What stipulation addresses this?

Mr. Houston said the Board may want to consider whether you are going to be getting a contribution in this case. It is more of a construction of the sidewalk which is probably the more pertinent question in had here. Whether the applicant wants to put it on his side of the street or the opposite of the street. If that happens then they would be require normally bond, they do construction drawings of the sidewalk and then bond that if its not done prior to issuance of the building permit. Before we record it we would have to have a bond in place.

Mr. Dufour asked how do we send them across the street to build a sidewalk on somebody else property?

Mr. Cormier said if they can get relief on the massive drainage issue they will build it on their side of the street and that issue will go away.

Mrs. Wilbert said it appears to make more sense on this side of the street. Would it then be the city that is building it?

Mr. Dufour said then we would have to take the contribution and we can't take the contribution. We have already established that.

Mr. Cormier said one of the conditions, condition 18, is prior to the issuance of certificate of occupancy, all work within the public right-of-way shall be completed to the satisfaction to the Division of Public Works. Sidewalks are one of those issues in the public right-of-way.

?? said that depends on us knowing that sidewalk would be in the right-of-way, but didn't know if they have done the surveying.

Mr. Houston said some of the information on this plan was a little vague. We didn't have the full street right-of-way on both sides of the streets. Different things were left off when they submitted the plan to us in the first place. That was part of the problem staff had in reviewing this. I think Lucy can explain some of the difficulties staff had trying to get this plan because it wasn't a complete submittal initially and the sidewalks weren't showing on the plan on Countryside and other issues like that. We had to go and tell them to put it on. That was up to the engineer to show, pursuant to the codes and ordinances.

Mr. Cormier said initially they were going to pay the fee and then they offered to put in on and then after discussions with engineering we took it off again.

Mr. Houston said Mr. Cormier is capable of reading the ordinance and it states you can't make a contribution when the sidewalk is within 250 feet of an existing sidewalk. The Planning Board is the body that interprets these regulations or ordinances and you may do so how you see fit and you should be consistent in your interpretations, but that is what it states.

Mrs. Wilbert said she didn't know how you can interpret it any other way, Roger. I would love to because it seems a bit, it seems to take discretion away from the Planning Board, but if that is the correct quote of the ordinance we don't have the discretion to do that.

?? asked are you saying Roger they have the discretion to possibly waive a small piece of it to get out of the drainage work?

Mr. Houston said he thinks they have. It is the board's decision. The board can waive sections of the ordinances under the waiver provisions if there is good cause. Maybe Engineer Dookran can add to this conversation because it involves the public right-of-way there are guardrails that were recently put up in this location. Anyone on that sidewalk would have to transition from that sidewalk back to the street in front of the section of the guardrail and then back to the other section of sidewalk. Whether the city would ever entertain or do that work over the brook is doubtful. So you may be left with a permanent gap.

Mrs. Wilbert asked if the guardrails are on the far side of the street?

Mr. Cormier said there is a guardrail in front of the brook on our side and the other side. We would transition the sidewalk from one end of the guardrail and stop at the other end of the guardrail.

Mr. Houston said there is an issue as well with the dry sewer. If the Board is looking to waive some of the requirements, one suggestion would be to get the complete sidewalk done along their frontage, and forgo the dry sewer. There is different ways you can look at this to be reasonable.

Mrs. St. John said they didn't show those details on the plan obviously because they wanted waivers of those. So if you are going to require those elements the plan would need reflect those engineering elements as well.

Mr. Slivinski said in his observation looking at that location the sidewalk belongs on the other side of the street in order to hook up to the trail and so forth. That's the most logical place for the sidewalk. Personally I don't like the idea of having a sidewalk end, having people go out into the street and back. The applicant has agreed to make a voluntary contribution.

Mr. Dufour said they can't take it.

Mr. Slivinski said \$37,500 to the sidewalk fund anybody can do that.

Mr. Dufour said the ordinance doesn't allow that because there are sidewalks within the 250 feet threshold.

Mr. Slivinski said we have the ability to waive the sidewalk.

Mr. Dufour said no, we can't accept the fee.

Mr. Slivinski said he is making a voluntary contribution.

Mr. Dufour said we can't accept that.

Mrs. Wilbert said she would like to know what the legal department would say about that. Not that I want to hold you up in any way. We can waive the entire requirement but according to the strict reading of what's before us, we cannot say we will take dollars instead of. But as Roger said apparently we have the ability to do some kind of combination. It strikes me that we get the sidewalk or the funds to build the sidewalk on the side of the street it makes sense. On not their side of the street. If there is enough public right-of-way to construct the sidewalk across the street from them then I would vote to have them construct that sidewalk. I would also vote in favor of waiving the dry sewer requirement.

Mr. Dufour said how can they go on someone else's property.

Mrs. Wilbert said if it is public right-of-way. That's what I am saying.

Mr. Dufour asked if we can do that? We can send them over?

Mr. Dookran said he thought there isn't enough information on the plan to show that it can be done on a public right-of-way. Just looking at the width of the right-of-way I would presume there is enough within the public right-of-way.

Mrs. Wilbert said we wouldn't be on private property.

Mr. Canaway asked if they would have to fashion a motion? He thinks a sidewalk through there, Gilson Road has become much busier then when I was a kid. It continues to get busier, as you are building more houses of course. Would we have to word this motion so that it was, if we have enough room on the opposite side, the sidewalk will be built, otherwise it will be built on their side? That's point 1. Point 2, is a lot of that land appears to be part of the park, I am not sure, or is that what this indicates right here?

Mr. Cormier said it is all wetlands.

Mr. Canaway said then that might become even more difficult just having wetlands that you have to mitigate. Or do we wait until the next meeting and you come back with that part of the plan evaluated.

Mr. Cormier said right now he is willing to build it on his side and just get relief so we are not doing the drainage project at the same time.

Mr. Dufour said or he will build the whole thing and we don't require the dry sewers. Is that correct? And we don't get the easements?

Mr. Cormier said that is why they are giving you the easement in lieu of the dry sewer and this project is going to be quite involved with all the permitting. That does a lot more than the \$37,000 option of \$50 a foot.

Mr. Dufour said he gets a little nervous when all of a sudden we are part of the cost negotiation. Either we want the sidewalks in or we don't. That's really for us what it comes down to. I understand there are costs and we may request things that no longer make this feasible.

Mr. Cormier said that is the shame of it. This gentleman is a carpenter by trade, work is not (inaudible) He is trying to get some property to sell to keep himself going and by the time he gets done with sidewalk, dry sewer, and drainage projects there is no land value. It's gone. He is willing to do the sidewalk less the drainage work and give the city a sewer easement. He feels for the 2 lots he is getting that is a fair share of his contribution to the city.

Mrs. St. John said part of the question she has here is we sort of debate this. What is really most important to the city, the dry sewer easement or location of the sidewalk if you are trying to decide which one, if you want to do it one for another type of thing I maybe that is a question Mr. Dookran can answer on behalf of the Public Works Department. But I am not comfortable saying what is more important the dry sewer because we want to hook it up to this and that or the sidewalk. The sidewalk certainly has its benefit there as far as providing more pedestrian access and access the rail trail bike path down there. There are certain issues related to the wetland crossing. Those are all factors that must be considered when you are

trying to subdivide a piece of property. It certainly isn't an easy answer but I am not in a position here to evaluate or suggest to you what might be more important.

Mr. Cormier said (inaudible) has always maintained the value to the sewer easement and he is giving that to the city for consideration.

Mrs. St. John asked Lucy when it says in our report that other subdivisions had been required to comply, Caitlyn Circle, Emerald Estates, and Hadley Estates how many lots are we talking there? Here we are talking two, a total of three.

Mrs. St. John said to be perfectly honest I don't really have the answer to that question. I would have to look those subdivisions up.

Mr. Houston said the sidewalk benefits the lot owners, especially if there are children in any of those three homes. They can get on that sidewalk, walk to Countryside, cross over Gilson and use the Nashua River off-street trail system. It would be safer. It is a safety issue because that road is busier now than it use to be and you have an intersection with Countryside. From a safety point of view I think with children and others using the sidewalk that is probably rises to a higher-level than dry sewer, which may never be hooked up depending on whether lines get extended or septic systems fail.

Mr. Cormier said again they are willing to build this but they also don't want to have to undertake a major drainage project at the same time.

Mr. Dufour said to extend Roger's conversation as to where the sidewalks should go; the sidewalks should go on the same side as the houses to use that argument because they are really the ones living out there.

Mr. Dookran said Mr. Chair like you mentioned a few minutes ago the cost issues, we don't really want to negotiate on cost. I would rather treat each of the issues independently with respect to requirements of law and the intent of the law. If we just look at the dry sewer, if anyone here who knowledgeable about what the intention was when we put that in ordinance. Can we talk about that for a minute? Because I want to make sure we are serving that intent. If we are going to waive then we are not. Or we can waive based on if there is no need to address that intent at this time.

Mr. Cormier said many times dry sewer goes in on a new development where you are building a new road and the city doesn't want to have to come back later and rip up that road, trench it, put all the sewer service connections in, and repave it. So if there is a chance that sewer will someday get out there so that the street doesn't have to be dug up again they ask that the dry sewer be put in. In this case these houses will be serviced from the sewer easement without touching the street and this is an existing street. There is not one that is being constructed where the sewer can easily be put in while it is all open up. This street was paved within the last three years which also requires them to do a full (inaudible) overlay on top of the sewer. That is why we got a quote of \$147,000 for this sewer. We are repaving the road too. This is not a new subdivision. It is an existing city street that has to be dug up for sewer that really is not needed at the present time. They can do septic and if they ever need sewer they can go to the side to the easement and they are not benefitting from the sewer in the street themselves.

Mr. Dookran said to go back to what I was asking, you put in a dry sewer so that you don't have to in the future but because the dry sewer is suppose to be within the frontage of your property it is pretty much to serve you and I think that is why you made reference to hook up from the side. You would be looking for in the future should you have sewer out there to hook up the three homes to the sewer to be constructed by some other in the future?

Mr. Cormier said they would be responsible for their own service connections and I believe it was made mentioned to us that we would have to pay the sewer connection fee at that time.

Mr. Dookran said he is talking about the sewer to be installed in the future. So if you need sewer service in the future, because of your failed septic system, how would you get it?

Mr. Cormier said if the city extends down that easement we would have that available to us as (inaudible) we can easily connect to that sewer.

Mr. Dookran asked why would a city extend (inaudible) that easement?

Mr. Cormier said for somebody else if possible. I don't know what the long term plans of the city are whether they want to get

down to Route 111A in sometime, 20 years from now, whatever their intentions are.

Mr. Dookran said I think the plan is sewer extensions are being done by those doing subdivisions. Isn't that how it been done? Or how it has been done for the last couple of decades?

Mr. Cormier said they have the big subdivision that is being built now on Route 111A. They have to dry sewer their own streets but they haven't done anything to get the existing sewer out to that subdivision. They are waiting for somebody else to do it. The city to do it, another major project. We are talking two lots here.

Mr. Dufour said just to follow up on the words that I have heard you don't want to connect those sidewalks over the brook because of the costs involved. The permitting and everything. Correct?

Mr. Cormier said yes.

Mr. Dufour said you don't want to connect those two because of the costs. They are into sensitive areas and everything, but isn't that the area you want to grant us an easement on?

Mr. Cormier said no. The easement runs along side the brook.

Mr. Dufour said if we were to accept that, that any future connections could be done across, would you have to grant an easement when this is drawn up allowing that second lot. Those two would be an easy shot but how is that one get over?

Mr. Cormier said they could provide an easement.

Mr. Dufour said you would have to. Yes Lucy?

Mrs. St. John said that is exactly what I was going to mention.

Mr. Dufour asked what the lot number on the existing home?

Mr. Cormier said 378.

Mr. Dufour said it would be an easement over 513.

**SPEAKING IN OPPOSITION OR WITH CONCERNS**

Al Chabot, 83 Gilson Road

Mr. Chabot said he is a direct abutter to this proposed project. He said he would like to state that he is not in opposition to the project but he does have some concerns. The first concern is the septic systems. I know this land was perk tested several years ago and would not pass a perk test at that time. They were attempting to purchase 22,000 square feet of our land. We have about 3 ¼ acres and they wanted to purchase 22,000 square feet in order to build a septic system on our property because our property would perk test ok. We didn't want to go along with that, losing that amount of land so we didn't do it. So that is one of the questions I have because there are wetlands back there. There is a little brook going through there. It is not a very active brook, but it does exist. The second question I have is concerning the sidewalk issue. The guardrails were installed just within the past 6 months. I don't have an exact length on the guardrails, but they are probably somewhere around 50 feet I would assume. They did build them pretty close onto the paved section of road and it does create a bottleneck there. If a sidewalk were put in and not included into that guardrail section you would have a situation where you would be coming off a sidewalk and you would be traveling directly in the travel area of the road because the way the guardrails are really so close to the paved area. The third concern I have is the erection of a caution light. I don't know how many times you people are involved in traveling on Gilson Road but it has changed quite a bit over the years. There is a lot more traffic there now. The traffic that is on that road is high speed. It is not uncommon at all for cars to be going 40 - 50 mph and there is quite a hump in the road right there. It does concern me that cars traveling at that speed and someone going to make a left turn into a driveway could very well wind up getting rear ended if not a head-on collision. These are the concerns I have. I can understand the Lehoulliers wanting to do something with the land. It is a nice piece of land. It is wide open. It is flat. It appears to be very buildable. I have no direct opposition but I do have some concerns that I would hope that you would take into consideration.

Mrs. Overby (??) asked that you have lived close enough to the property that you have observed it. During high water, high rain, flood season, the brook that runs through the property, has it overflowed onto the property?

Mr. Chabot said he didn't believe he has ever seen it overflow, but it's very low when it's not active and it's not a lot of

rain. The brook is extremely low to a point where it probably doesn't even move. During the worst of times you will see a decent flow but didn't recall ever seeing it overflow.

**SPEAKING IN FAVOR OF THE PLAN**

No one.

Mr. Cormier said they have perk tested all the lots and found suitable test pits with proper distance setbacks from the wetlands and the brook and have provided that to the staff and health board. The issue he mentioned in the road with the little hump, that was the issue that the traffic department was investigating with us. We provided profiles that you could see the tops of cars even sitting in that low point but for added caution Wayne Husband did want us to put also a warning sign with a flasher so people that are going excessive speeds would take caution through that part of the road and the clients agreed to pay for and install that for him.

Mr. Dufour asked if that caution sign was motion activated.

Mr. Cormier said he believed it is constantly on. Its run by a solar panel, it's charged by a solar panel as a yellow beacon I believe.

Mr. Dufour asked as far as the septic systems, that is permitted through the state, correct?

Mr. Cormier said correct. Once they decide on the number of bedrooms they will submit those plans to the state to be approved, but initially you need approval for subdivisions which we have as a result of the test pits.

Mr. Dufour asked if you come back in with those permits?

Mr. Cormier said correct.

Mr. Dufour asked if the location could change a little bit?

Mr. Cormier said the test pit needs to be in the location of the leech field or they would have to do another test pit. The health board has to approve the plans before we can get a building permit we are going to have satisfactory septic designs that are approve.

Mr. Dufour asked if you could speak to, confirm that those new guardrails that recently went up went pretty much to the edge. Mr. Cormier said he believed that are pretty close to the edge of the pavement. Probably one of the reasons is the brook is right there and they had to stay out of the brook themselves.

Mr. Dookran said he would like to talk a little bit about the driveway in question. He went out there and drove back and forth, up and down and couldn't really position a driveway exactly because it is different on the plan. It appears to be a very bad location. Yes you mentioned that you can see the tops of cars that is probably what, 2 ½ - 3 feet?

Mr. Cormier said probably.

Mr. Dookran said if one be going fast that could be a problem. Did you attempt to move the driveway to a safer location?

Mr. Cormier said one of the options would be to have a cross easement and combine it with one of the others and working it out with the traffic department, given the profiles that we had, they felt they would be satisfied with the warning light and the transmittal letter that you have states that they can accept the driveway location based on providing the sign.

Mr. Dookran said he agreed. (inaudible) locations anywhere you go that there are signs that say blind driveway, I don't know how much attention people pay to those. We look at the traffic department's comments on all these applications and every time they look at driveways and they ask that you meet site distance requirements.

Mr. Cormier said they meet the city's requirements. We meet ASHTOV for the stopping site distance. What we don't meet is the requirement that you see a two foot object in the road and we miss that by 10 feet, instead of 200 feet we provide 190. So I think Wayne took that into account that we meet most of the regulations and we miss one by 10 feet. Because we didn't have the 10 feet he asked for the sign.

Mr. Dookran asked what traveling speed that was based on?

Mr. Cormier said 30 mph, which is what is the posted speed limit for that road.

Mr. Dookran said we know very well that people drive (inaudible) out there.

Mr. Cormier said enforcement isn't our issue.

Mr. Dookran said right, but safety is our issue. It's never a good situation and that is why I go back to the traffic department's comments. They always address site distance issues. You don't normally come across a vertical site distance issue. It is usually horizontal, bushes, other obstructions and so on. But that bump in the road is the problem and I don't think we should approve the plan with a driveway in an unsafe location. The first time somebody gets in trouble there we look bad.

Mr. Cormier said we discussed this for a week's length of time with the traffic department and Lucy was at the meeting. We had a number of people, in fact Jon LeBrun from your office was there.

Mr. Dookran said he heard from Mr. Husband and he said he conceded but he wasn't comfortable in doing so. He considered a flashing light solar power, I don't know if that is going to be an issue in the neighborhood. I don't think we have anybody, except the gentlemen back there talk about it, but I don't know if the flashing light is going to be a problem.

Mr. Dufour said that is why he asked if it was motion activated.

Mr. Dookran said but again, flashing light tells you what? Your driving and you see a blind driveway sign, what do you do? Take caution, I suppose? Yes, the tops of cars are visible, but what about the little child, an animal, something coming out of the driveway. Would you see that?

Mr. Cormier said again, the two foot high object required site distance was 200 feet and we can see for 190. I believe we are using existing curb cuts. There is an existing curb driveway through there and we are using that existing curb cut.

Mr. Canaway (??) asked what the average speed is on Gilson Road, not the posted speed?

Mr. Cormier said he didn't know, he wouldn't venture to guess.

Mr. Canaway (??) said he can. He uses it a lot. It is faster than the posted speed limit. The way the ordinance is, and maybe staff can help me here, is that it isn't posted speed, the speed that is used on that road, usually dictates how the site distances are calculated. Is that correct?

Mrs. St. John said all these issues were discussed recently and in the past with the traffic department and part obviously this was trying to be a compromise solution because they were trying to use, their position was there is existing driveways out there already and so they were trying to utilize those and then our position was the fact now you are going to have a house there and you may have children and the balls run into the street, the dog, the cat, all of those sort of things so the posted speed limit in an e-mail that I got from Jean Marie was 35 although they have a picture of a sign that says 30 but it was discussed that people do go considerably faster out there and then there are the actual geometrarity of the road where the hump is and the concern about that so that the e-mail of today basically is more or less a compromise from the Traffic Department and if you move forward with this I would specifically ask that those requirements be included in a stipulation because there are still obviously concerns out there and one of the things we did talk about was about maybe changing the location of the driveway and they had basically would like to use the existing driveway that was there. It was discussed maybe trying to change the location and then you would have to have a cross easement across another person's piece of property and the applicant at this point didn't really want to go with this angle and so they were in a position that they would like to present this to the board as is presented this evening so that is where it is at this point. There is definitely traffic concerns and the traffic department as you know feel that there may be some outstanding safety issues but this is the compromise at this point that has been arrived at.

Mrs. Wilbert said she has a stronger opinion of the cautionary use of a blinking light. She thought if you are traveling at 30, 35, or maybe 45 mph if there is a flashing yellow light, that is enough to slow you down. I mean we can't stop the random completely uncautious person but I am comfortable if that thing is situated properly before you come up over that little rise that it will slow people down and alert them that there is reason for caution there.

Mr. Dookran said he has a simplistic response to that. It has become common place for people to take flashing yellow lights as speed up. You see that all the time as you go through traffic signals, but as you get older I think you start paying more attention to flashing lights. The problem is, Mr. Husband, Traffic Superintendent, will tell you that when you have something on all the time, whether is it a flashing signal, or flashing yellow, flashing green, whatever, flashing red, people

become complacent and they ignore it. In fact my proposal for cross walks where we need flashing lights, is to use pedestrian activated flashing lights and we intend to install a set this coming summer where it will be a changed condition where the pedestrian wants to cross, he presses the button, the light comes on, it is something different here and they take caution so it is not your constant flashing light.

Mr. Cormier said he thought there is a difference between a stand alone flashing light and one at intersections where people are trying to beat the red light.

Mr. Dufour said we could argue that point. I think of all the things that I think of when I think of this particular light in that location is that if I am living there, that light is on all night, flash, flash, flash.

Mrs. Wilbert said she didn't know how far back these houses are set but in her experience is these lights are not going to be into anybody's bedroom window. It doesn't sit that high. It sits at traffic line of view.

Mr. Cormier said the stretch where it is in front of the parking lot for the rail trail. He didn't believe that is going to be much of an issue there.

Mr. Dookran said last comment. What I find a little bit disheartening is that I heard Lucy say they made a compromise. I don't think you can make compromise on safety issues. Even though words were used marginally meeting or missing the site distance requirements, I don't think it marginal. If you go out there you convince yourself that is not marginal. You can see the tops of cars, you wouldn't see that two foot object, even while sitting in a high vehicle like I was driving.

Mr. Cormier said he was out there at the same time as you Steve. I saw you at the corner. When I was hitting the low point in front on the lots I could see your car. So that is the judgment call I made. I could see right through there. It is not a big hill. There is a hump.

Mr. Dufour said the comment on the safety, as much as he is right, obviously Traffic made that compromise because they said that the 190 was acceptable. We are sitting here saying that sidewalk short of that crossover area that could be acceptable, so we do make compromises on safety. Just as a note, we do. We

try to make the best decision we can factoring in all the conditions, but we do make it.

Mr. Lowe said the rail trail starts at his house. It runs all the way up here. They plow it. There is a 40 foot snow bank on either side and there is a little hole in the middle of it. People use it everyday. More and more people are going to be using it. Putting the sidewalk on rail trail side of that road is probably the best thing for the city right now. I don't know how we go about doing it.

Mr. Dufour said if it within the right-of-way we can do it. We just waive that section. We can't take a contribution. Somebody's comment was well the people that will get daily use out of that sidewalk are the occupants of those three homes. So maybe we are better off putting the sidewalks on that side because those are the people that are out there all the time.

Mrs. Wilbert said as well as it having been pointed out to use it will tie in with the Countryside sidewalk. I have changed my mind. I don't believe it belongs on the undeveloped side.

Mr. Dufour said again we are compromising safety by putting it, we are compromising somebody's safety here. Is it the hikers or is it the occupants? I would rather see the occupants of those 3 lots have service of those sidewalks. But we can continue that conversation.

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.

Mr. Dufour said there are a bunch of issues, but just to spell them out, we can't take a donation of the sidewalk fund, a contribution, but we can waive that section. So we can waive that section or we can require them to put everything in. The applicant is saying that is probably going to cause too much hardship and that's not going to happen. If that's the case, but those are our options. We can't take the contribution, but we can require them to build the sidewalk. As a matter of fact if we don't take the contribution we have to require them to build the sidewalk. I suppose we could waive it all together. So that is one issue. Sidewalks all the way or cut off over the brook. The next issue is dry sewers or no dry sewers and if there are no dry sewers in lieu of that the applicant is going to give us that easement, which may or may not be worth anything to the

city at some point in the future. When the applicant was last here, we led them to believe that as it pertains to the dry sewer and easement they left here pretty much thinking that we would accept that. They would give us the easement, we would forgo the dry sewer.

Mr. Dookran asked if that was true.

Mr. Dufour said that was his recollection of that meeting.

Mr. Canaway said just for the record that was what the members present had indicated and it was made clear that there were members not present who may be here as well.

Mr. Dufour said absolutely so.

Mrs. Wilbert said her personal opinion that she would like to add that when someone comes for information we are happy to listen to them, but when we have the complete plan that is when we consider all (inaudible).

Mr. Dufour said correct, they were told that. So, some of the side issues are we have to decide what we want to do with the sidewalks and we should probably discuss that first. Then if we go with the contribution of the easement in lieu of the dry sewer, then however we craft that we have to make sure an easement is granted to lot 513 from lot 378. So why don't we tackle the worst one first, I guess, is the sidewalk. What are our thoughts?

Mrs. Wilbert(??) said after listening to everything my thought is we require them to build it and we waive the section across the brook. We require them to build it on their side.

Mr. Dufour said that is his feeling.

Mr. Slivinski said with regard to the sidewalk, he is against waiving that little section. Quite frankly the applicant brought up that land was valued on the tax records for \$139,000. It is valued as a single building lot. Most people in this city have land valued for a single tiny little building lot. Possibly this particular piece of property can't be subdivided economically and maybe that is why it is valued like that. In keeping with the law and ordinance the sidewalk would have to be completed along the entire front of the property.

Mr. Canaway asked which driveway is the one we had so much discussion around.

Mr. Slivinski said the middle driveway.

Mr. Canaway said that is what he thought. He agrees with Mr. Slivinski mostly for that reason. We are concerned about the safety of that driveway, which I will actually get to later, putting people on the street in the proximity of that driveway also concerns me. I am against waiving any of that frontage from the sidewalk.

Mr. Dufour said right, but it goes beyond that. Then we have to talk about locations of driveways. If you view that as a major safety issue and you are saying because it is a major safety issue I am not for forgoing the sidewalk over the brook. They got to put the sidewalk in over the brook. Then I say to you if that applies to the sidewalk, then it should be a concern for that center lot as to where the driveway is.

Mr. Canaway said he believes it may be but he wants to take these in your sections. The only thing I want to say here is if you can't see cars you are not going to see that the sidewalk ends and you are not going to take that into account if you are driving down that road. Kids are certainly in that area quite a bit. A lot of cyclists on the road and if we build sidewalks, or if the applicant builds sidewalks somebody is going to see a sidewalk and expect it to continue down through the road if not familiar with the area.

Mr. Dufour asked Mr. Lowe what his feeling is.

Mr. Lowe said he is still on the other side of the street. If we do build it or (inaudible) you got to put a crosswalk in somewhere. We are talking about safety. You got a flashing light at the corner.

Mr. Dufour said we could put a crosswalk. I don't know if that is the applicant's responsibility or the city's responsibility to put a cross walk from the park to Countryside Drive. I think we are talking a gallon of paint here. I don't think it is a big issue. What is everybody's feeling about the dry sewer versus the contribution of the easement.

Mrs. Wilbert said she is ready to weigh in on that. I have great respect for staff and the fact that other subdivisions have had to construct the dry sewer but I see but one additional lot that creates this burden on this piece of land. He could give us two

lots and there wouldn't be a dry sewer discussion. Three lots puts them over the edge and I think its ownerance to put that burden on it without reducing it simply to dollars from the landowner it just simply isn't warranted. There is no other, nothing else gets subdivided on this side of the road. The odds of the city actually bringing that sewer in are kind of slim it seems to me. I think we take the easement, hope that when Jensen does it, that's just that little piece from Jensen's coming down that allows them to hook up to construct just across the easement and hook up from there. I can't see it going anywhere else. So I would waive the dry sewer requirement.

Mr. Dufour said he feels the same way on that. Again if that were to be the motion we have to make sure we get the easement granted from one lot to another.

Mr. Lowe said he concurs. It is sort of the sewer to no where.

Mr. Dufour said for now.

Mr. Lowe said we are asking it to be done. Put a sewer in and 10, 15 years from now somebody decides to and you got another place to hook it up at the same time.

Mr. Dufour said the ordinance is in place to allow for future development. They say lets get in now but what else is happening on Gilson Road.

Mrs. Wilbert (??) said the other side is all wetlands.

Mr. Dufour said the city owns most of that. They own the contaminated site, that's ours so nothing is happening there and then across from that I think as wet.

Mr. Lowe said (inaudible).

Mr. Dufour said right and to get back to what isn't wet, I recall, belongs to the city because when we develop that subdivision, I forget what it is called now, that will come back as a conversation someday, that whole perimeter of that subdivision is surrounded by soccer fields. City land that is destined to be soccer fields.

Mr. Lowe said a huge park.

Mr. Dufour said right.

Mr. Slivinski asked the city engineer's opinion on that (inaudible) really representing the Department of Public Works.

Mr. Dookran asked what's the question?

Mr. Slivinski said he wanted Mr. Dookran's opinion on the waiver of the dry sewer.

Mr. Dookran said his past 9 plus years with the city they have connected sections of dry sewers. They are in service. One of the most recent ones was on Ridge Road where a piece of dry sewer was put in with an existing street and that is now in service and that is happening to the residents in that area. They have been able to eliminate a pump station because they are now using sewer. In any event, I have wished that the discussions with the city might have looked at we know that Jensen's is pursuing vigorously sewerage their residential development so they will be in close proximity to where this subdivision is. While I started asking about intent and requirements of the law is this the law requires if the city extends sewers and people connect to that sewer, that they pay based on the frontage. The city took made a decision not to extend sewers because the existing ordinance is prices that betterment charge are very low cost and it is not affordable. The city just can't afford to extend sewers. So that is why I was saying over the last decade or so we haven't seen any public sewer extensions because it is too costly for the city to do so and that is why private development has been doing that. Now if you think about it the dry sewer follows the same principle because it is the same frontage. Now you are paying the cost. Instead of paying what the ordinance for public sewer extension you are paying for it now. Which means that it is providing sewer for your service, for your connection. So I wish maybe we look for the dry sewer within that easement to service those three homes. Not along Gilson Road, even though that is where the ordinance is pointing us to. I was looking at intent. So 20 years from now, maybe those perk tests are wrong. Maybe less than 20 years. Their septic systems aren't working. That is why Jensen's is going after sewerage because their septic systems are not working and they will have the ability to connect to a public sewer. It will work like this, Jensen's will get their sewer in, we will have an easement and we may never, never have put in a public sewer at city's cost within that easement and these folks, now individual homes in the future, would not have the opportunity. I hope that answers your question Mr. Slivinski.

Mr. Slivinski said yes sir and no.

Mr. Dufour said we heard convincing arguments from both sides on both of these issues. Someone is going to have to make a motion crafting one of those arguments.

**MOTION** by Mrs. Wilbert to approve New Business #2 Subdivision Plans, Peter and Krista Lehoullier (Owners), application and acceptance of proposed subdivision to create a three lots. It conforms to NRO 190-138(G) with the following stipulations and waivers:

1. The waiver request to Section 190-223 construction of a dry sewer main and service connection is granted provided however that a plan be recorded showing an easement from lot 378 across 513 to sewer easement.
2. The waiver request to Section 190-282 (B) (9) to show existing physical features within 1,000 ft. of the site is not granted.
3. The waiver request to Section 190-212 sidewalks along one side of the street is not granted. The sidewalk to be constructed the entire length of the applicant's property including where the wetlands cross.
4. Prior to the plan being recorded, the plan shall be modified to address the concerns of the Traffic Department as outlined in the memo of January 13, 2009 and said changes reviewed and approved by the Traffic Department and Planning. If a share driveway is presented, the area of the cross easement shall be noted on the plan, and a separate description of the easement area recorded concurrently with the plan.
5. Prior to the plan being recorded, a note shall be added to reference the 50-year flood analysis report, specifically the conclusion statement: "Proposed homes on the two new lots should be placed above the anticipated high water flow elevation. The computer model indicates a flow elevation of 178.8 (NAVD 1988) across the site. We recommend a minimum habitable floor elevation for new houses to be set at elevation 180.00 (NAVD 1988) or higher. (Given the high seasonal water table elevations on site and the requirement for raised septic systems, the building floor elevations needed to meet septic requirement will require floor elevations well above the 180.00 minimum)."
6. Concurrent with the recording of the plan, the storm water operation and maintenance plan, declaration of covenants and restrictions and easement shall be recorded.

7. Prior to plan being recorded, all stipulations per the Planning Board approval shall be noted on the plan.
8. 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.
9. Prior to the recording of the plan, documents pertaining to the sewer easement shall be reviewed and approved by Corporation Counsel and the dry sewer details shall be shown on the plan in accordance with City Engineering requirements.
10. 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 and Traffic shall be obtained prior to recording.
11. Prior to the plan being recorded, the dog house and wood shed on lot 378 and 513 be relocated to meet setback requirements, and the new locations are shown on the plan.
12. Prior to the plan being recorded, any outstanding fees, including all required recording fees shall be paid by the current owner.
13. The owner is responsible for providing a copy of any applicable state and federal approvals which may be required to the Planning Office upon receipt of said permit.
14. Prior to any site work being conducted on the property, including the clearing of trees and vegetation, grading or other activities which change the character of the site, a preconstruction conference shall be held between the Planning Department staff and the owner(s)/owner's general contractor, or project manager. Mature trees and vegetation which are to remain shall be protected with orange construction fencing and the root zone of the vegetation protected from infringement by construction equipment. Construction fencing shall be placed before construction activities begin and shall be maintained during the on-site work. Vegetation which is shown on the plan as the proposed edge of woods shall remain. Construction fencing shall be placed along the edge of the vegetation/tree line that is to remain. It is the responsibility of the owner to contact the Planning Department to arrange this meeting.
15. Prior to any site work being conducted on the property, the owner is responsible for providing all contractors and others engaged in work on the property with a copy of the signed approved plan.

16. Prior to the issuance of the final certificate of occupancy all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.
17. That the building permits include provisions that the buildings have no openings in their foundations below the elevation of the 50-year flood elevation. The 50-year flood elevation shall be determined by their engineers and certified by a NH Professional Engineer (PE) and stamped. That the foundations be waterproofed against groundwater seepage.
18. Prior to the issuance of the certificate of occupancy all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.
19. Per the request of the Traffic Department as noted in the e-mail of February 5, 2009. (see attached email)

**SECONDED** by Mr. Lowe

**MOTION CARRIED 6 to 3 (Mr. Latham, Mrs. Overby and Mr. Dookran voted no)**

**NEW BUSINESS - SUBDIVISION PLANS**

3. Application and acceptance on proposed modifications to a subdivision plan approved by the Planning Board May 15, 2008 owned by Marcia DeSantis, Sheet 59/Lot 157 and Sheet 59/Lot 178 on Beauview Avenue to clarify existing trees and other vegetation which were identified on the plan to remain. The purpose of this plan is to propose a landscape plan to replace the trees and vegetation which were to remain, but were removed during the site construction preparation.

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

**SECONDED** by Mr. Canaway

**MOTION CARRIED UNANIMOUSLY**

Mr. Lowe said he had a comment. There is no drawing or plan or shows us how to get there. It was suppose to be on (inaudible)

Mr. Dufour said he would note it to staff. They would like to have some kind of directional map.

Mrs. St. John said what they tried to do here is included one page of that plan because it was recently approved so it was an oversight on our part not to include a map but will make sure to do so with every application that we have.

Andrew Prolman, Prunier & Prolman

Atty Prolman said he is here for the applicant tonight, Marcia DeSantis. With him tonight is Bob Pace the contractor on the site. Mr. Lowe I agree with you. When I got these plans the other day I had to kind of figure out where I was going. Which end of Beauview I would be looking at. But this plan is just a modification of a plan. The plan was recorded, construction got going and some trees were taken down that perhaps shouldn't have been taken down. That's what happened. I am not making any excuses for it. There was a tree out front, a shade tree along the street that was taken down. That is going to be replaced with a shade tree that (inaudible). It is a big shade tree that is going to be on Beauview Avenue. That was taken down because there was some problems with the waterline coming in from the street and perhaps if we had called into the city and said we are going to be taking this down and we will be replacing it perhaps it wouldn't have been a problem with (inaudible) tonight. But it happened and we will be replacing that tree. It (inaudible) the other issue that we have is trees were taken down towards the back of the property. There is a tree that fell and came down on the Lembree house which is to the rear of the lot, to the south of Beauview. What we are proposing is installation of 5 spruce trees to the back of the lot and work with Mr. Sullivan who came up with what we believe to be a good plan, a good plan to remedy how we got here today. I will tell you Mr. Chairman that we change the plan on you tonight. I know Board's love it when we do that at the last minute but we were just outside talking with Mrs. Lembree, the owner back here. We want to accommodate her concerns. We have been talking with Mr. Caterino who was the excavator who had been talking to Mr. Lembree. We want to accommodate their concerns. We have agreed to install 5 trees on this lot. We will install them anywhere the Lembrees want. If they want them shifted over to 11 Beauview on lot 157 that's fine. If they want them kept where they are here that is fine. Whatever the pleasure of the Lembrees may be. In addition what is not shown on the plan there is some question where the tree that fell on the Lembree property where that originated from, whether it was on our property, their property. We have agreed to install an additional tree on Lembrees property when all these other trees go in. That is not shown on the plan, its kind of a private side deal but I wanted to tell

you about it. Whatever the pleasure or location of the trees in the back of the lot we are willing to do.

Mr. Dufour asked if this woman you mentioned, she abuts both of those parcels?

Atty Prolman said yes.

Mr. Lowe asked what was the caliper of the trees removed.

Atty Prolman didn't know but Mr. Caterino is here tonight.

Wayne Caterino, 48 Indian Rock Road

There were a couple of different trees taken down ranging in caliper, the one out front was a 12 inch spruce or what not and that was necessitated by the fact that there was a bell in the road and we had to bring the water and sewer in. We spoke with Chris regarding that and we are going to replace some trees up front with regards to that and as far as the back of the lot, again the caliper of the tree was 10 to 12 inches, that was kind of leaning over and kind of leaning on the fence. We attempted to take that down when a portion of that or a another part of the tree unfortunately hit the Lembrees' household and we have agreed to make restitution and repairs.

Mrs. Overby asked what the species of the tree that was in the front that was taken down, what was that?

Mr. Caterino said the species of the tree? I think Mr. Sullivan probably would be served.

Mr. Sullivan said there was a spruce that was removed. A blue spruce and also a red maple that was up in the corner as well.

Mrs. Overby asked what you are replacing it with?

Mr. Caterino said he basically took this recommendation and had a meeting with Mr. Sullivan and basically said to him upon your recommendation we are going to bring this back to engineer and have them present this landscape design.

Mrs. Overby said it seems like a trivial question but I just thought it would be nice to replace it with the one that was taken down. I am not making a recommendation at all.

Mrs. Wilbert said she would like to know what staff's comment is on that.

Mr. Sullivan said the reason he chose those trees was because of the wires that are there. The alcoves stay tight and smaller. It is a better street tree than the red maple. The red maple tends to get into the wires and cause problems.

Mrs. Overby asked if there is an existing fence on the back of the property.

Atty Prolman said he believed so. There is a chain link fence.

Mrs. Overby asked when the tree came down, did it damage the fence?

Atty Prolman said he didn't know.

Mr. Slivinski asked how big are the trees you are putting back in? I mean I am able to go out there in July and be able to sit under the shade tree?

Atty Prolman said he doubts it. There will be new trees going in. The plant list is shown on the plan (inaudible) 3, 3 ½ inch caliper. It will take some time to grow in.

Mr. Slivinski said this is like a headline that doesn't go away. I have been doing this for nine years and we go through all this and we say the trees are going to be saved or this is going to be done or the snow is going to be removed from the site and it never gets done. I think you guys are getting off easy.

?? said they agreed.

Mr. Dufour said he didn't mean to interrupt, but there are two or three things here. They can't replace an in kind tree. You can't show up with a 12 inch diameter tree. They are trying to replace it as best as they can. But the truth be told, when we approved this plan if they had told us they were cutting the trees they would have been within their rights to cut the trees and we would likely would have approved the plan. I would carry that one step further as to when everybody is content here and they sell that home, that homeowner can walk into that house, grab his saw and cut those trees down.

Mrs. Wilbert said there is no doubt about that Mr. Chairman, however when we had a public hearing on this last time the abutters had input and they had a plan to look at. We had specific landscaping in that plan and at least in the first generation, i.e. when this developer is doing this project and

it hasn't yet changed hands I agree with Mr. Slivinski. We are entitled to be able to look abutters in the eye and say we put it there on purpose and they have to keep it there at least until they sell it and the next guy comes with a chainsaw.

Mr. Dufour said they messed up, so now they have met with some of the affected abutters and they are here trying to remedy it.

Mrs. Wilbert said exactly. It is a done deal now.

Atty Prolman said it was an error.

Mr. Dufour said it is not going to prevent that headline that Mr. Slivinski is referring to.

Mr. Slivinski said it happens too often.

Mr. Dufour said he would rather see some type of tree ordinance where we would require that everything get tagged before they even start the process. We have done that on specific trees, I know a few.

Mr. Lowe said a 3 inch caliper tree is a sapling.

Mr. Dufour said they are putting more than one.

Mr. Lowe said the problem is they take down 12 caliper tree, 5 or 6 make more sense than a 3, which is a sapling.

Atty Prolman said they are talking out front here, as opposed to out back. We have 5 going out back, 5 spruce plus the one out front.

Mr. Lowe asked the size of the one out front, 12?

Mr. Dufour said that is what he stated that he took down.

Mr. Lowe said he is going to have to dig the hole and dig the root up if he is going to put it back in the same spot.

Atty Prolman said they probably have.

Mr. Lowe said his comment is don't go with a 3" caliper tree, go with a 5" or 6" caliper tree, which is more appropriate to the site as originally planned.

Mr. Sullivan said he doesn't know what the quality of the tree was. From what I see in aerial views, it wasn't great. That is why I went with the size of the trees I did. There are actually two trees I put in front, they are 3" caliper. It is not just the one tree. They will be five in the back as well. We have actually arborvitae at the corner as well. It is not just the one tree. There are numerous trees that they have added to this property.

Atty Prolman said there is a dogwood also being installed in front of the house.

**SPEAKING IN OPPOSITION OR WITH CONCERNS**

Ashland Lembree, 84 Manchester Street

Mrs. Lembree is the abutter to the rear. Their lot abuts both lots and it does extend to the west and east.

Mr. Dufour asked if it were her lot that we have talked about as far as relocating the trees that are shown on the plan.

Mrs. Lembree said she would like to thank the Board for the May 15, 2008 decision approving the subdivision plan including recognizing the ordinance criteria stating that preservation of natural resources should be accomplished. In that light I don't know who did it, there were trees tagged, including the approximately 12" tree that was taken down with a backhoe. There were other trees also. I just want to clarify because I don't think this came out in the applicant's presentation that the trees that were removed, I am almost positive, were on the lot 157 side, which is the east lot, with the existing house which is why we generated this settlement out in the hallway because our concern was less the trees that they removed at the back of lot 178 because we already have trees in that corner. Behind lot 157 there is a very thin line of trees. That is why the original subdivision plan included the trees at the back of lot 157 because the driveway comes up pretty close to the fence. So that is why the agreement to put the trees wherever we want, we were concerned about the owner coming in with a chainsaw, so we might ask them to put them on our side. We do want a barrier. A lot of the barrier between the two and now two and one houses is completely stripped away. This would help with that. Also as was mentioned a tree fell down on our side of the lot. The fence was not damaged. The guy with the backhoe dug up the trees and almost immediately a tree on our side of the fence fell over and landed, or scraped our house and damaged the siding. I think it

was a root damage problem. In fact we are concerned about some other trees on our side of the fence as a result. I suspect that is not for your concern today. In light of the nature of the tree removal I applaud the staff recommendation for use of orange fencing. I think that is a good choice.

Mr. Dufour asked if the trees we are seeing on the plan, you want them moved?

Mrs. Lembree said yes, she would love it if they put trees all along the back and trees all along the side.

Mr. Dufour asked where do you want those trees moved?

Mrs. Lembree said mostly over to 157 so that thin part, the thin barrier, thin vegetation barrier between our lot and their lot is populated.

Mr. Dufour said they will probably make that stipulation that you and staff will work out the location of the trees.

Mrs. Lembree said she would be happy to do that.

Mr. Dufour said that would be with Chris and he would like to get that done soon so the applicant can move on. Just so it is reflected on the plan. Atty Prolman referenced a private side deal, that one tree they are going to install on your lot, you are comfortable with the words you have had with Atty Prolman?

Mrs. Lembree said she would like to state for the record what she understands it to be, which is 6 trees are anywhere we want them to be is basically the understanding. Part of the reason for freedom of placement, which I think is a good idea to include Mr. Sullivan in this, is because we are not exactly sure where to tell you tonight where to put it on the thin area is on our side. The secondary concern is the chainsaw concern, that the new owners will chainsaw down whatever they put up. We may elect to put them on our side. There is suppose to be a total of 6, maybe 5 on their side, one on our side.

Mr. Dufour said that is not how the applicant presented it to us. He was going to put the 5 trees he was likely saying we will likely shift them over depending on where the abutter wants them and we are going to put another tree which is a side deal on her lot. That is a side deal. We have to deal with the site plan. If you want them left or right you will have to work that out with Chris where you want them.

Mrs. Wilbert wanted to clarify one thing. She believes we are actually talking about a total of 7 trees. Five trees in back, one on her lot, and one tree in front.

Mr. Sullivan said there are 2 trees in front.

Mrs. Wilbert said 2 trees, so a total of 8 trees. Just so we don't have something that says 6 trees.

Mrs. Lembree said when she says six trees she is just referring to the back part of the lot. That 6<sup>th</sup> tree doesn't include anything in the front.

Alderman LaRose asked if the tree that fell down on your lot, was that a dead tree?

Mrs. Lembree said no, it was a good tree. It wasn't really huge, it wasn't a 12 inch tree.

Mr. Dookran asked if after all this excessive that wasn't suppose to take place happened, was there any significant rainfall?

Mrs. Lembree said there was snow, no rain. What happened the snow covered up the hole, all the roots came out.

Mr. Dookran asked if you are downhill from this lot?

Mrs. Lembree said no, its pretty much level across the chain link fence.

Mr. Dookran asked where you are, you are pretty much down from the most of the lot on Beauview. Are you concerned there may be runoff and erosion to your lot or any of the surrounding property?

Mrs. Lembree said she didn't think so. She said she isn't an expert, but it is fairly level between those two lots coming over to her property. Beauview is high but they are pretty high too. It's a long driveway off of Manchester. We face everybody's backyard.

#### **SPEAKING IN FAVOR OF THE PLAN**

No one.

Atty Prolman said he just wanted the board to understand this was certainly not intentional. It was an accident on their part.

A total of 7 trees on our property are intended to be installed and plus an additional tree on our neighbor's lot. The staff stipulations are fine. There is a bonding requirement for the landscaping. We expect it is going to be \$1,500 to \$2,000. The shifting tree to whatever lot will be worked out with the neighbor and Chris and get that done. I do expect to try and make it happen very quickly to get that done. I believe your understanding of what we are offering with the trees being on our property and not the neighbor's property is accurate.

Mr. Dookran asked is with the change of landscaping and so on did we look at the runoff calculations and those kinds of things we normally do?

Mr. Sullivan said no we didn't. All I saw were trees missing. I didn't look at the runoff coming off the other properties at all.

Mr. Dookran said no he means calculations. Are we concerned that now that they have altered the characteristics there could be a problem even during and after constructions.

Mr. Sullivan said he can't speak to that at the moment. It is all snow covered.

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 #2 Subdivision Plans, on proposed modifications to subdivision plan approved May 15, 2008 owned by Marcia DeSantis, Sheet 59 - Lot 157 and Sheet 59 - Lot 168 on Beauview Avenue. It conforms to NRO 190-138(G) with the following stipulations and waivers:

1. Prior to ANY site work or construction on either lot 59-157 or 59-178 the applicant shall install orange construction fence to protect the roots zone of the existing trees to remain. The installation of this fence will be inspected by the planning staff prior to any additional work occurring on the site.
2. The existing property owner shall submit an estimate to replace the trees on the site and submit a letter of credit escrow, or a landscape bond in the amount of the estimate. This is to be submitted by the current owner to the Planning

Department and be held until October 31, 2009. The security shall not be released until all new planting are inspected by the Planning staff.

3. A total of 8 trees, 2 in front 5 in back on the applicant's property and a sixth at the applicant's expense will be located as approved by staff in consultation with the abutter.

Mr. Lowe added the trees will be at least 4" caliper.

Mr. Dufour asked Mrs. Wilbert if she wished to amend the motion.

Mrs. Wilbert said she is comfortable with the motion she made.

**SECONDED** by Mr. Canaway

Mr. Lowe said he there should be a specific caliper.

Mr. Dufour said you can make a motion, when you made the comment, I asked her if she wanted to amend her motion she said no.

Mr. Lowe said his motion is to add a stipulation number 4 that the trees be a minimum caliper of 4". Right now they could put a twig in there. I don't think staff would let them.

Mr. Dufour said we have a motion to amend the motion that the trees shall be a minimum of 4" in diameter.

Mr. Sullivan they require in the ordinance that 2" to 2 ½" inch tree. A 3" to 3 1/2 " tree is adequate in this case. I think 4" is a little excessive.

Mr. Dufour said we have a motion that the trees shall be 4" in diameter. This is a motion to amend Mrs. Wilbert's motion. Is there a second?

**SECONDED** by Mr. Dookran

**MOTION FAILS 3 to 6**

Mr. Dufour said now we go back to the original motion which is for passage for this modification of the subdivision plan. It was seconded.

**MOTION CARRIED 6 to 3 (Mr. Dookran, Mr. Lowe and Mr. Slivinski voted no)**

**NEW BUSINESS - SITE PLANS**

None

**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 Mr. Canaway

**MOTION CARRIED UNANIMOUSLY**

2. Referral from the Board of Alderman on proposed O-09-57, amending the Zoning Ordinance to add medical and dental clinics as a permitted principal use in the PI and AI Districts.

Mr. Dufour asked if anybody is here to speak to that?

Alderman LaRose said his understanding that this came in because it really is a housekeeping measure. When the new land code came in part of this ordinance was passed by the Board of Alderman and it didn't get into the Land Use Code. There will be a public hearing March 3<sup>rd</sup>.

Mr. Dufour asked if the intent was for inclusion?

Alderman LaRose said yes, that was the intent.

Mr. Dufour asked if they are still going through the public hearing.

Alderman LaRose said yes, they have to.

Mrs. Wilbert said it certainly makes sense to allow this in park and airport industrial.

Mr. Houston said that staff concurs with Alderman LaRose. That is why Alderman McCarthy brought this in. There was an ordinance that was passed in 2004 which was approved by the Board of Alderman to include it. Half of it did get included. This part was not inserted into the new Land Use Code.

Mr. Dookran asked if this is just simply a housekeeping measure, why did Alderman LaRose say it has to have a public hearing?

Mr. Dufour said what he stated when we rewrote the code and it was approved the intent was intent was to have this use in that. Apparently there must be some attempt to create that use in that zone and now they are seeing that is not in the code. So to clarify that, correct that, they are required to have a public hearing. So whether the intent was there or not, they are looking to change it and they are having a public hearing. That is basically it. We can say it is a housekeeping issue and it was an oversight, but yes they are changing the code and they have to have a public hearing.

Mr. Dookran asked if the approval by the board years ago doesn't mean anything?

Mr. Dufour said apparently it was never carried over into the new code.

Mrs. Wilbert said it is a simple matter as she looks at the referral and use chart on the back it didn't make it into it but that it wasn't formally approved because it wasn't on the chart. All that aside, it seems to me it is most reasonable to have professional buildings in PI and AI.

Mr. Canaway said just a point of order or process how we typically have taken these. We typically take these after public hearing and I was just looking at the calendar. Our meeting is 2 days or 3 days after the public hearing for this ordinance. In the likely event that some information comes to light during the public hearing, we would have the benefit of that information on the March 5<sup>th</sup> meeting. I am comfortable waiting until March 5<sup>th</sup>. I don't know that this is on a fast track to get passed.

Alderman LaRose said not that he knows of. His understanding is there may be a meeting that evening of the planning and economic committee right after the public hearing and they would have a vote on it. They would be looking for our input.

Mr. Dookran said they could wait for the next meeting. They don't have to vote that same day.

Mr. Houston said it is not necessary that the Board has to wait. This is the board's opinion; it's not a public hearing opinion. It's the Planning Board's opinion on the Land Use Code and what you as a Board feels is appropriate. This Board, unless you listen to the public hearing by the Board of Alderman, or get the minutes, you probably wouldn't hear that testimony or have the testimony anyway. Alderman LaRose, I believe, this was introduced under suspension of rules. So there was some urgency by Alderman McCarthy to get this on.

Mr. Canaway said he was comfortable with that.

**MOTION** by Mr. Lowe for a favorable recommendation.

**SECONDED** by Mrs. Wilbert

**MOTION CARRIED (8-0-1 Mr. Dookran abstained)**

#### **DISCUSSION ITEMS**

Mr. Dookran said Mr. Slivinski said earlier about indiscriminate clearing of land. I think it is a serious problem. We observe it, we hear about it and I know you talked about the chainsaw effect. I know that exists as well. There is something that we can do as a Board, I am thinking there is something we can do.

Mr. Dufour asked if he has a suggestion?

Mr. Dookran said no.

Mr. Dufour said he has a suggestion. The suggestion is to recommend to the Alderman that they set forth an ordinance so that when we approve the site plan, subdivision plan we have the ability to tag the trees and then if they cut them, there is an ordinance that says here is the fine. Short of that there is not a whole lot we can do.

Mrs. Wilbert said there is a flip side to that Steve, too. It was more prevalent in the past when I was last on this Board is that they don't necessarily cut them, but they damage them or bury them up so high that then they die. So you buy a house with a great looking tree and you don't know that the bottom 4 feet are under fill. I think you are probably right. If we could suggest to the Board of Alderman that they pass some kind of

ordinance with a fine attached that requires builders to adhere to the landscape plans that we have approved to include not damaging the trees.

Mr. Dufour said that would mean those trees would have to be identified so they could be placed on the plan before they get here.

Mrs. Wilbert said many of them are.

Mr. Dufour said he is just talking this through. So then what happens to the homeowner's right to cut the trees if they want.

Mrs. Wilbert said that is different. The homeowner has the right. We are talking about the obligation of the developer. If there is not a plan before us and you want cut down your trees, then you cut down your trees. If we have approved a plan that says these are the trees that are to remain or be planted then I agree we have to have a way to enforce it.

Mr. Dufour said that would have to be the way, the legislative process.

Mrs. Wilbert said the only other way she could think of is if we had a black list.

Mr. Houston said that we still have that list under the code. It is really not enforceable on other properties. The city has been reluctant to try and enforce it. You can't hold another property hostage for some other property the same owner owns. Corporation Counsel's office has issued opinions on this section in city code.

Mr. Dufour said is it the pleasure of the majority of the Board to consider something like this? If it is, my working with Staff would probably draw up something that we could open up for discussion and then pass it on to our Aldermanic representative so he could move it forward.

Mr. Canaway said do we have the authority on the plan, this tree is suppose to be there. They get all the way to the point of CO, staff will see that the tree is not there because it was on the plan and now its now on the property. The CO gets held correct?

Mr. Houston said typically yes it would. Typically with a single family lot when you approve a lot you don't necessarily have a building envelope yet because the person who is going to build

the house hasn't done it yet. In some cases, especially today, where you might have a buyer in hand they may have a concept plan of where the house is going exactly on the lot. If you are saying these trees are to remain and it is going to constrain the size of the house they put on the lot, or where they put it on the lot that is something you need to consider too. If you are subdividing a lot and it's in the built up part of the city and there are trees on it and the abutters have concerns and they are mature trees how do you protect those? Typically in the past we have made stipulations or suggested to the board that you make a stipulation you put a snow fence or some other fence around the tree root zone to protect those. That would be typically done before they issue a building permit.

Mr. Canaway said he thinks it's the Board's duty to ensure if these trees are part of the natural, protect certain natural things that are in these areas, this is one of these character of neighborhood type definitions. We are duty bound to do that. So if we identify a tree, I agree with everything that has been said here. The only thing I want to ask is do we want to go one step beyond trees here. Are there other things that have been marked on site plans that come back later when you guys go out to inspect and oh wait now you have moved that boulder or you have filled in that whatever. There are a million things that could change from site plan to inspection.

Mr. Dufour said nothing is ever cut and dry. Realize that what happens if you say you can't cut any of these trees 10 feet out and as they are digging the foundation it weakens the root system and the tree falls through no fault of their own. There is always consequences on both sides. I thought where you were going with your initial comment about us having the right, we already have that right, but we don't have the right to fine. Without the ability to fine, they will be back in here for every time something happens.

Mr. Slivinski he doesn't have to deal with this much longer, but you guys will with all this inner city building I don't care what the neighborhood is when you take a piece of land that has been open for a while and they put a home in there it is a traumatic experience not only for the abutters but the whole neighborhood. We do have a lot of influence and over the time I have been here we have specified trees that have to remain or we have had staff go out and tag the trees and stuff like that. As far as enforcement goes on the trees and everything else that has always been a problem. But I think we have that power now and as long as they come in and cut trees out we can withhold

the certificate of occupancy because they are on the plans or we have specified it.

Mrs. Wilbert said she doesn't think they will. I think we will be stuck in the same position we were here tonight where you know, this guy, sits in here and says I'm sorry, but he took down mature trees. We basically what are we stuck with? We let him put in new trees.

Mr. Slivinski said he thinks you are going to have trouble passing an ordinance.

Mrs. Wilbert said you are probably right. I think it might be helpful for us to express that opinion.

Mr. Canaway said he thought there might be more care. If it is cheaper to barge a back through and just clear it out and not be so careful.

Mr. Lowe said that is what he was trying to do tonight. Make them replace kind with kind.

Mr. Dufour said the closest we have come with kind to kind was at the church on Broad Street when they cut those trees along the route going up Parish Hill and we couldn't even do that there because there just wasn't trees that big that you can haul in.

Mr. Lowe said the alderman could specify an ordinance.

Mr. Dufour asked is it the majority of the board's wish that we pursue this? If it is, we will start at the first step would be I in conjunction with staff would say what is done else where? What can we do? We present it to you realizing full well that however we craft it, isn't necessary how it is received or accepted or even positively received once it gets to the aldermanic chamber. Do you want to do a show of hands? Is there enough interest that we should pursue some kind of tree ordinance or tree protection? It's fairly unanimous. We will take it to the next level.

Alderman LaRose said recently his neighbor's property was sold. He had a lot of trees. The developer that bought the house and remodeled it took every single tree down. And you know what, most of the neighbors are happy. What we had tonight we are ending up with a nicer lot because the guy knocked down a lot of

those trees. Like that woman that was here, her backyard isn't that great. It's all saplings.

Mr. Dufour as there is some type of design is what you are saying as opposed to random trees.

Mrs. Wilbert said the bottom line though is if we actually looked at a plan, looked at trees and we want this one, and we don't care about this one and this one is integral to the plan then we ought to be able to count on that happening. Too many times the stuff just disappears.

Mr. Slivinski usually most of what we deal with and what we have had problems with the abutters want protection. There are tree lines and stuff like that. 95% of the people when they come in here with their application they are willing to do an awful lot and agree to an awful lot of things.

Alderman LaRose said he thought it was a good idea to look into it and find out how other city's handles it.

Mr. Dufour said he agrees with Alderman LaRose. Sometimes you are better off without the trees. So what if we pass ordinance that requires the trees be kept up? Aldermanic process will take care of itself.

Alderman LaRose said he has a lot of trees on his lot and is happy with them. I have had to take some down because they were old and rotting.

Mr. Canaway wanted to make one thing clear. We aren't just talking about trees. We are talking about enforcing something that the Board has very carefully deliberated on. We said these specific trees will stay and care was not taken and or work with our staff in order to ensure that every measure taken to mitigate damage to those trees and they don't come back with a new plan if they can't, for example if a water pipe is in the way, they should come back under perhaps an administrative decision or Planning Board decision is made. We aren't just talking about trees.

Mrs. Wilbert said she agrees.

Mr. Dufour said he is talking about trees. We have two people working in that department. We cannot make someone the tree police. Just requiring Chris to coordinate the location of those trees on the back of that lot given his schedule is a strain.

Mrs. Wilbert said she agrees. So what do we do? We say we are putting a condition on and we don't care if you follow it or not? You talk about an element of the landscape so if it's a stone wall or a tree or a clump of Rhode drum that's an element of the landscape plan that we specifically noted on our approval.

Mr. Slivinski said he raised a couple of months ago about the guy with the trailers.

Mr. Dufour said just for the record he is coming back in. We are talking about the RV place. They were going to convert RV and we specifically laid out where the display pieces were going to be.

Mr. Slivinski said when he was here I said I have never seen an RV place that two weeks after they get it you can't even move on the site.

Mr. Dufour went out there and brought it to staff's attention. Now they are coming back in for a modification.

Mrs. Overby said we approve something and after it was built she was horrified. I believe the city has gone through a lot of trouble to make the downtown more of a New England traditional look. If this development had been on Daniel Webster or Amherst Street it wouldn't have made any difference. This particular development when it was shown, it was shown in black and white. I didn't realize what a sore thumb it looks like on Main Street.

Mr. Dufour asked if it anything we had architectural control over.

Mrs. Overby said yes we did. We could have said something.

Mr. Dufour asked where is this property.

Mrs. Overby said it is Taco Bell. It doesn't fit in with the traditional look.

Mr. Lowe said it is nicer one than the one out on Amherst Street.

Mr. Dufour said Burger King is the bookend. How is that different?

Mrs. Overby said just on Main Street they try to keep that New England traditional look and I felt like we kind of failed.

**MOTION TO ADJOURN** by Mr. Lowe at 10:00 p.m.

**APPROVED:**

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Ken Dufour, Chair, Nashua Planning Board

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Prepared by: Linda Panny

Taped Meeting