

NASHUA CITY PLANNING BOARD
June 4, 2009

The regularly scheduled meeting of the Nashua City Planning Board was held on Thursday, June 4, 2009 at 7:00 PM in the auditorium at City Hall.

Members Present: Ken Dufour, Chair
Daniel Latham, Secretary
Alderman Richard LaRose
Jody Wilbert, Esq., Mayor's Representative
Steve Dookran, City Engineer
William Slivinski
Cynthia Overby, Alternate
Raymond Jurewicz, Alternate

Chair Dufour said in the absence of two regular members Mrs. Overby and Mr. Jurewicz will be taking part and voting.

Also Present: Roger L. Houston, Planning Director
Matt Taylor, Deputy Planning Manager

Approval of Minutes

May 7, 2009

MOTION by Mrs. Wilbert to approve the minutes of May 7, 2009, waive the reading and place on file.

SECONDED by Mrs. Overby

MOTION CARRIED 7-0-1 (Mr. Slivinski abstained)

COMMUNICATIONS

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

- Revised Planning Board Agenda.
- Case #3, Andrea James Realty, LLC, 311/323 Daniel Webster Highway. There is a letter dated June 1, 2009 from Richard Maynard requesting that it be tabled until June 18, 2009.
- Technical Review Meeting sheet to determine regional impact.
- Communication from Mayor Lozeau to Ken Dufour relative to the process to review the Downtown Master Plan.

Mr. Dufour said in his packet that he had requested Staff give him a copy of the New Searles neighborhood and I put this map in front of everybody's place.

REPORT OF CHAIR, COMMITTEE & LIASON

None

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

1. **COPA Development, Inc. (Owner) - Application and acceptance of proposed Kincaid Lane Subdivision Plan to subdivide Sheet B Lot 187 into seven (7) single-family residential lots. Property located at 59 New Searles Road, Zoned "R9" - Suburban Residence. Ward 9. (Tabled from the May 4, 2009 Meeting)**

MOTION by Alderman LaRose to remove this case from the table.

SECONDED by Mr. Latham

MOTION CARRIED UNANIMOUSLY

Mr. Slivinski said although he was not at the meeting when the case was brought forward he has read the minutes of the meeting and has visited the site and feel he is well versed on participating in the decision tonight.

Mrs. Overby said she has something to disclose. At the site walk on Tuesday, May 12th, Mr. Maynard suggested the Board visit similar sites after the site walks. I called Mr. Maynard and left a message on his voice mail to please share the addresses of similar sites with the Board. He never returned my call, nor did I visit any of those sites. I also visited the site with a biologist. Some of the neighbors had concerns about lady slippers. Lady slippers are not a protected flower yet. Lady slippers take many years to be grown from mature seeds. They live up to 20 years. It takes them approximately 5 years to reach full maturity. They live in very picky ground. They have to have well mature ground to live on, humus and well drained soil.

Mr. Dufour asked if this contact warrants you recusing yourself this evening.

Mrs. Overby said no, I do not.

Mr. Dufour said this was tabled from our last meeting after 3 hours of testimony. We couldn't come to a resolve. Motion was made to have a site walk. We had that site walk. What I plan on doing this evening is as follows:

I will entertain a motion to reopen the public hearing for the sole purpose of entering into the record the facts that were presented to us by the applicant on our site walk on May 19, 2009. I will run through a series of statements made by the engineer based on my recollection. I will ask the Board members if I have missed anything. I will then invite the applicant to address my observations. I will take testimony in opposition and in favor. I will allow 2 members from either side to speak. I am not reopening this whole meeting. I will then ask the applicant if they wish to rebut any of the public's testimony and as customary I will then ask 1 member in opposition if they wish to rebut any testimony of those issues that we are going to discuss tonight. The public hearing will then close and we will enter into our deliberations and vote.

Mrs. Wilbert said as a point of clarification I know that at least 2 of us were not able to attend the visit that was conducted by Staff but I am also aware that the 2 of us who didn't did make site visits. I went alone and walked the site.

Mr. Dufour said he will recite his observations. Please correct me or add. Then I will ask Mr. Maynard to speak to those observations if he feels he has to correct us.

MOTION by Alderman Larose to reopen public hearing.

SECONDED by Mr. Jurewicz

MOTION CARRIED UNANIMOUSLY

Mr. Dufour said these were his observations. There were issues that were brought up during the hearing. The applicant was kind enough to have a site walk and allow the abutters to attend. Not a required action. When we were there I observed that the applicant had placed stakes on the site delineating the edge of the street, the corner of the existing house lot, the center of the cul-de-sac, the outline of the rear 2 lots and the footprint of those observations. It was commented that there were some rocks shown and that this may require blasting. We noted that the site which is mostly level will be raised another 18 to 24 inches. It had been stated that there were pipes that were running across the site for drainage from another neighborhood or the area above. No pipes were noted on this site. It was noted that there was a lot of instability to the hill behind it. It was observed that there were large mature trees there that are inconsistent with instability. There were comments that there was a lot of water running off that site. The engineer pointed out that they could

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see no evidence of that. Typically if there is a lot of runoff in any particular location those leaves get washed away. Those were my observations. Does anybody else have anything to add?

Alderman LaRose said he just wanted to reiterate what you just said. The first thing I observed when I went there and I looked closely was for water runoff, gullies, or anything like that and there was no evidence of any water problems.

Mrs. Overby said she observed the area as being a lot of dead fall. Years of accumulation of leaves and debris which has turned the back lot I would mostly say an absorbing area. It absorbs what is coming off the hillside there.

Mrs. Wilbert asked Mrs. Overby if she was saying it appeared that things were coming down from there. I didn't observe any rudding on the hillside or anything that indicated to me that the lower portion of the 2 back lots were accepting continuous feed from the upper hill.

Mrs. Overby said she visited 91 Westwood on another occasion to view the drainage. That puts you directly behind that back lot which is 31-39. I viewed many gullies and sheeting of the water coming down to that site. That site is able to currently absorb any drainage coming onto that site from Westwood because of the type of soils you are looking, it is mostly humus and absorbs it all. Once you clear that land for development it changes the dynamics of the whole area.

Mr. Dufour said just to clarify that. You noticed there was a lot of "dead stuff" on those back 2 sites and you explained that because that was there, there was a lot of absorption there. I accepted that. Then when you went to clarify, you said you had gone up to 91 Westwood, which is the directly behind this, you observed a lot of wash off in addition to your stated conditions at the bottom of the hill.

Mrs. Overby said your first question was what did we observe on the site walk and I clarified because I had gone back.

Mr. Dookran said in relation to what Mrs. Overby is referring to, that proposed lot, 31-39 it appears to me that the slope is a little bit more dramatic then I had thought. The location of that building foundation would be in relation to the property line and the property above it, it is a little bit worrisome and I intend to ask Mr. Maynard go into that and how it will work out.

Mrs. Wilbert said when she did her site walk she went up to Westwood as well but I didn't go back into any lots so I can't tell you if there is any runoff from there. I did note that I saw no runoff from down below. What I would be interested in hearing from engineer is a topographical comparison to the slope that you were just talking about with the slope at the back of Lone Star. I took a drive up Lone Star and walked around that cul-de-sac and I thought it was eerily reminiscent of what we were looking at for this new proposed cul-de-sac and noted that those most easterly I guess they would be lots go into the hill. The houses are sitting above grade and I believe the engineer described to us last time. Driveways driving straight into the garage. Foundations above the waterline and my thought was that's clearly been working there and I remember when those houses were new about 32 years ago. That is what I observed looking at the 2. I thought they were quite analogous. I would like to know how the topography compares this slopes at the back of the proposed cul-de-sac with the Lone Star cul-de-sac.

Mr. Maynard said pretty much what everybody has observed is fine. With regard to runoff, whatever runoff comes from the upper area shows no evidence on our property anywhere. So if there is erosion, gullies, whatever it is on the upper property there is absolutely is none on that slope. We all looked at that and you saw not 1 piece of erosion. So they can't possibly any water coming over the top of the hill and down that hill and down onto our particular property. I don't know what is on Westwood. I can only talk about my client's property. There is absolutely no evidence of that kind of runoff. All of you saw that. It is a reasonably steep slope and if there is water coming over, especially if it is concentrated in a gully from erosion you would for sure would see it. Even with sheet flow you would see loss of leaf cover. When we do drainage calculations we take into account factors for wooded areas with ground cover and leaf cover. That is accounted for in the way we do drainage. Unfortunately I did not go to Lone Star to check what those houses look back there. I only can imagine that is the same slope and ridge line so it has to be similar to our situation. This is a subdivision and we are getting a little far up field but I will get into it of micro designing individual house lots before we even know what a potential homeowner wants to build. We try to give you an illustration of something that is typical that might happen on these particular lots assuming they roughly like the house we laid out. There are all kinds of particular alternatives. In this particular case what we have is the lot on the upper right, which is the one into the slope, is essentially a reverse of the walkout basement situation. The front of the house is raised. The foundation is mostly above

existing grade. You bring in fill to build it up. The driveway stays down low. You typically see material across the front. You typically see stairs up to the front door from the driveway or you may see a split entry where you enter the house midway between two levels and there is interior staircases going to the living floor or down to the basement. There is those kinds of alternatives. There is the potential depending on the house to put in a 2 or 3 foot retaining wall in the back to create a little bit more level there but the point to be made is the cul-de-sac is being raised as the chairman says approximately 18 inches to 2 feet. So that grade is coming up. The house will sit above that with essentially a garage under situation where the garage is roughly at the basement level on either side. In this particular case it is on the left hand side which is the steeper section. The back of the garage acts as a full retaining wall and the living space is up above that. Depending on how the landscaping is, you probably see a 2 ½ story structure. A portion of the basement and 2 floors of living area. This is not particularly unusual in the community. I did not want to get into a full blown technical design of an individual site. Under the subdivision things are of a speculative nature before we even know the style of house, the kind of house, things like that. The point being I wanted to show you something that was possible and probable but not necessarily the only way it goes. Essentially you build the house up so you don't cut into the slope.

Mr. Dookran said Mr. Maynard first you said that what you showed on the plans were a representation of a probable building that you can do. I understand that changes can be made but there are certain things on a particular lot that you don't have a lot of choices. I would expect if you were going to show a probable building foundation you would probably do the best one that would fit to maximize the usage of the lot so that your client will be satisfied with what you are doing. I am going to assume that what you showed on the plan is what you really wanted in terms of foundation. I am not talking about a style of a house, I am just talking about the foundation and the site plans. I looked a little more closely after visiting the site, a little more closely at your elevation based on your survey and the proposed building and you, for that particular home, you are setting the foundation at 185 feet. You are setting the grade behind that foundation at 184. That is a foot lower. The plan also calls for grading around the foundation, away from the foundation so at some point the behind the building it will be lower then 184. I am presuming say you go back 10 feet, you go around 6 inches to a foot. You are down to 183. In the minutes you and I had discussions, pages 40-49 we talked about how far back you can go and how you can grade and you

talked about 20 to 25 feet. Which lead me later on discuss stipulating that you don't touch the trees for 20 feet or so from the property line. That would work out perfectly because 25 feet and 20 feet 45 feet, that is exactly where the property line is. Looking at your early elevation now we are down to 10 feet away from the house. We are down to elevation 183. Fifteen feet away the ground today rises another 10 feet or so. You mentioned a few minutes ago using a 2-3 foot retaining wall. We didn't talk about retaining walls last time. In fact you said if the homeowner wants to build a retaining wall then they can do so. But I am looking at this and you have pretty much 25 feet behind the building foundation to work with. If you are going to preserve 20 feet of trees untouched. I don't see how you can do that grading in a 10 foot elevation without proposing some significant retaining wall. That is my problem with this particular lot.

Mr. Maynard said lets differentiate between the garage which is on the left and is closest to the back line and the house itself. The foundation wall on the garage is very much different. The house is almost 50 feet from the rear property line. I think I talked about roughly a 20 foot backyard. I did not object to your suggestion of a 20 foot no cut, which is a reasonable suggestion. If you go 10 feet behind the house on that back rear corner, there are 3 contours there. If you read it, that is 6 feet, not 10. It is not a significant wall, if there is a wall. If somebody wants more then a simple backyard of 10 feet, or 20 feet, you could put a 4 foot or 5 foot retaining wall which is a basically simple wall that requires no particular special precautions. It is when you get above that elevation. Even so, if somebody wants to go further a 6 or 8 foot retaining wall is not particularly unusual. The whole idea to grade the things so the drainage goes away. Going 6 inches in 10 feet is more then sufficient when you are already a foot below the foot of the foundation (inaudible) there is more efficient to handle the particular drainage in that little isolated location and to direct it around the sides of the house. I am doing a subdivision, I am doing an illustration of an admittedly probable plan. If you want to stipulate because you are concerned about that Steve that during the permit process that we provide a more detailed design plan with more spot grades and things like that, that is fine and that is good practice. For me to debate and discuss and engineer something in front of you going back and forth I think that is not the proper way. The point being is houses on lots such as this are done all the time. You just have to make sure the proper plans are laid out and reviewed. If that is a concern I have no problem with that kind of stipulation.

Mr. Dookran said if there wasn't another home, an existing home, sitting on top of that hill I wouldn't be debating this with you. But you are telling me you are trying to build a backyard that is 20 feet deep with a retaining wall, whether it is 5 feet, 6 feet, whatever, which to me is still a significant wall, otherwise you will have a very steep backyard. I don't think you can mow it. You can't stabilize it or anything like that.

Mr. Maynard said he will raise the first floor elevation. Instead of 185 I will put it at 188. I will just lift the house up further if that is truly a legitimate concern. That is the answer to your question. Raise the house up even further. Make the foundation 1- $\frac{1}{2}$ foundations instead of (inaudible) from the basement to the first floor 12 feet. There are dozens of little things to do to address these kinds of things.

Mr. Dookran said to me that is a different plan.

Mr. Maynard said this is a subdivision, we are not doing site plans. This is not the purview of the Board to design a house site. I don't think the RSAs allow it.

Mr. Dufour asked if it is Mr. Maynard's position that you would allow a stipulation that the house design of that rear lot be to the satisfaction of the Engineering Department.

Mr. Maynard said he wants to know who the engineer is, but yes, something like that. Who is going to be able to look at it? I don't mind if you look at it.

Mr. Dufour said obviously someone would have to have to approve it.

Mr. Maynard said usually it is the Building Department and Planning Department.

Mr. Dufour said that could be the stipulation.

Mrs. Wilbert said she wanted to go back to whether it is a different plan or not. I think what we have here is a straight subdivision plan. We are dividing up the lots and if we are concerned about a particular lot I think that the way to address that concern about that particular lot is to put stipulation on what goes on that lot. I would like to know from Engineer Dookran if you think there is a way to do it and you want to be able to see the way to do it because from subdivision criteria I think it is sub-divideable into that lot.

Mr. Dookran said he agreed. It is a very sub-divideable piece of property, however, based on the subdivision plan I believe that lot is maybe unusable for what we may be proposing for a building.

Mrs. Wilbert said again I want to know if we can address that concern by saying it cannot be built until the precise plan is approved by the Planning Department and in consultation with the Engineer's Office.

Mr. Dufour said I think he alluded to the Building Department.

Mrs. Wilbert said I am sorry, the Building Department in consultation with the City Engineer's Office.

Mr. Dookran said he would refer to Staff because I don't think I have been down this road before.

Mr. Houston said normally the City Engineer's Office doesn't review the actual layout of the house. The Building Department will look at it to make sure it meets building code in terms of drainage away from the foundation. Other than that we don't get involved in the actual design of the house. If you want to make it a stipulation where if the City Engineer's department is willing to look at that and if there may be different options as Engineer Maynard has said on the type of the house, how they place it, and what size retaining wall is it going to be, and other issues then that is appropriate. Typically the developer's engineer or architect designs the house on the lot. We had a similar subdivision on Main Dunstable Road where we ended up with a sizeable retaining wall behind a single family lot on Evelyn Circle. It seems to work but we had to make some adjustments by coming back to the Planning Board with lot line relocation. It is up to the Board but there should be some criteria so Staff can look at it in terms of what is and what isn't acceptable in terms of grades.

Mr. Maynard said some of you might recollect on Majestic Heights. There were some rear lots with similar concerns. There was a stipulation that we design detail plans subject to review by the Planning and Building Department and they could consult with whoever they wanted. We did that for 4 particular sites along the back line there so they would all be coordinated and graded properly because they were steep. Partially Jon LeBrun in the City Engineer's Office looked at some of these things. He didn't necessarily review them in detail but he was available for Mike Yeomans to ask questions of.

SPEAKING IN OPPOSITION OR CONCERN

George Sawyer, 53 New Searles Road

Mr. Sawyer said he didn't realize when he was putting the information here that there was going to be specific restrictions on the presentation so please bear with me. Generally I believe after I had spoken to another homeowner out there that we are not fully opposed to the redevelopment of areas in south Nashua provided it is done in a manner where the near turn gains that are reaped by the people who are doing the development are balanced and are not compromising the quality of life for the investment that the other people in the area have in their own homes. Given the generally poor state of the economy and monetary values that have been suffered by most people any prospect of additional personal lost becomes a matter of pretty grave concern to most people.

Mr. Dufour said Mr. Sawyer I don't mean to cut you off but could you please just address those issues that were brought up tonight.

Mr. Sawyer said in terms of criteria, now I am going to go through a couple of the criteria for the Planning Board and hopefully each one of these has been discussed at some point during the discussion that I have heard.

Mr. Dufour asked if they apply to what has been said this evening concerning our site walk visit. That is all that we are discussing. I think I laid that out fairly clearly. I understand you had a prepared text but we opened the hearing simply for the purpose of getting into the record what we observed at the site walk.

Mr. Sawyer said he is going to have to go to a couple of items that were discussed here because I did spend some time with the city engineer during the site walk and we went back and observed the hillside up there and noted the fact that there wasn't any runoff. On the other hand that was a little bit strange considering the fact that there had been some fairly heavy rain during that previous time and I don't believe that anybody went back and checked whether some of the drainage ways that were made up there were blocked or not and whether or not that was stopping the water and if it was going down Westwood or the other drive as opposed to naturally coming over into that area of the proposed addition. The other thing is that I know some of the board members went up and looked at the area on Lone Star Drive and I know those houses have been there for a number of years and there is the

appearance it is largely the same as some of the areas that have been proposed there but I don't think that a simple visual inspection would be indicative of whether those homeowners have suffered water erosion or damage in the past. In viewing the storm water runoff issue this still remains one of the most significant concerns and I am not sure the site walk alleviated my concerns and the concerns of a number of people in this respect. There is a huge amount of it is a matured forested area with a covering of "doff" over the top soil. That is the accumulated leaves here and that from evidence there was quite squishy because it absorbs a huge amount of runoff water and we know the plan's engineer has developed some very elaborate methods for minimizing this stormwater runoff. Unfortunately it is done at the expense of more rapidly transferring all this runoff water to the underground much more quickly. We already heard from a number of homeowners previously that they have already experience sinkholes in their backyards due to underground waterflow and I can't help but think that this is going to increase that situation even more. The character of the neighborhood is an important issue and it is stated in the record there, there is a representative home there already and there is the issue of trying to build new homes to match this existing home all we have in the plan is a representative home. There is no commitment to that and therefore there is not much guidance to give in regards to is this going to match up as it progresses.

Bert Janz, 31 Syracuse Road

Mr. Janz said he is not here to speak on this but has an observation regarding runoff.

Mr. Dufour said this case is very important to these abutters. I want to make sure that 2 abutters get to speak. I will let Mr. Janz speak because he is already up here. But I want to give the abutters the opportunity to have 2 people. If you want to get together and decide who comes up that is fine.

Mr. Janz said Syracuse Road has 2 sides. There is a side that is low, that is basically level. The other side is graded up towards the road behind it. There is no evidence of runoff on that hill. There was no evidence of runoff on that hill until the rains of August of last year (inaudible) entered some of the basements on that side of the road. They have a 4 foot retaining wall. The mud came right over the wall and right into the basements. I suggest that a 4 foot retaining wall may not be sufficient.

Mr. Dufour asked Mr. Janz if he had been out to the site on New Searles.

Mr. Janz said no he has not been to the site. I making an observation about runoff, visibility of runoff, and whether or not a retaining wall is high enough to prevent damage.

Mr. Dufour said I only want to address those issues. I think I am trying to be fair about this. I want somebody to speak to those issues which we discussed this evening which were our observations from the site walk.

Ms. Martin said which I would be very happy to do although at some of the points I may stray a little because...

Mr. Dufour said we had 3 hours of testimony the last time.

Ms. Martin said it is not going to be anything repeated.

Mr. Dufour said as long as it pertains to the observations on our site walk that we eluded to this evening.

Maryellen Martin, 5 Lone Star Drive

Mr. Dufour said before you start, I am not looking to shut this person off, but if I allow her to introduce stuff that is not as I stated from the beginning then I have to open this meeting up all over again and I stated at the beginning that I wasn't doing that. So I am only going to take testimony pertaining to the issues that we talked about this evening as it pertains to our site walk and our observations.

Ms. Martin said at the site walk we were told to pick 2 or 3 people to speak for the rest of the group and that is what we did.

Mr. Dufour said to address those observations that we eluded to this evening. If you feel qualified to do that, that is fine. I didn't even have to reopen this hearing. I am trying to be fair to everyone. If you are going to speak for the neighborhood this is there last chance to be vocal to speak about it. I ask that you speak to those issues which were discussed this evening.

Ms. Martin said if I may some of my points would be in the form of questions if that is appropriate. I would like to introduce the question as to whether or not a certified soil scientist or certified wetland scientist had

Mr. Dufour said that was not something we spoke to this evening.

Mr. Martin said that is something we spoke to on the site walk.

Mr. Dufour said he didn't want to be a contrarian about this.

Ms. Martin said I based it on what the input was when we were all out there. Anyway that question we never got an answer to about soil scientist or wetland scientist and a question about whether or not the Planning Board was required to send a copy of the site plan to the state.

Mr. Dufour said that has nothing to do with what was spoken about this evening.

Ms. Martin said I would ask if an independent review of the plans is appropriate to bring up.

Mr. Dufour said that doesn't address anything we talked about this evening.

Ms. Martin said the drain pipe coming off the back off of Westwood Drive. Where does that drain pipe coming down from Westwood discharge into? I have been told that it is just into the air and then down onto 2 private properties.

Mr. Dufour said if you had been here for that part of the discussion you would have heard that there is no pipe on this subdivision. There are pipes back there. They are on another site.

Ms. Martin said the pipe that is above it discharges into the site.

Mr. Dufour said it is not on that site.

Ms. Martin asked if it discharges into the site.

Mr. Dufour said he is not answering that question.

Ms. Martin said after walking the site it would seem apparent that the bottom of the granite ledge at the rear of the site extends a considerable distance into and toward the front of the site. Is the extent able to be confirmed and would that not contend significant impacts to the current proposal?

Mr. Dufour said we are not the applicant here. The applicant may choose to answer the question.

Ms. Martin said previous testimony stated that the houses are not going to be 2 ½ stories in height. Is there anything binding to ascertain the site plan that affirms that? Is there anything binding in the site plan that the house illustrated is the one that will be built?

Mr. Dufour said again this evening as we discussed, first of all the size of the house is based on Nashua code. What ever size can go up there, what ever height that is based on Nashua code. The applicant, in his testimony this evening has said that was a representative sampling of the home that would fit in that scenario on that side of the hill.

Ms. Martin said for my enlighten then am I correct in understanding that in actuality the maximum size of a structure that could be put on any lot is determined by the amount of setback from the 2 sides and the front? Is that correct?

Mr. Dufour said it is based by Nashua ordinance and whatever size house fits on that lot, the applicant may choose what that answer is. They wouldn't built anything there that Nashua code would not allow. They couldn't.

Ms. Martin said Mr. Maynard said they were only obligated to not aggregate the problem of the drainage and that they will be reducing the runoff by 20%. Can the applicant be required to post a bond against the veracity of those possibilities as well as blasting damages?

Mr. Dufour said he didn't recall talking about that this evening as part of our observations but Mr. Maynard may choose to address that.

Ms. Martin said this is all based on stuff that was mentioned at the site walk. In previous testimony it was also stated that the apparent space left for a right of way was no right of way.

Mr. Dufour said that has nothing to do with anything we discussed this evening.

Ms. Martin said similarities to abutting sites was confirmed in previous testimony and I am sure was confirmed again tonight about the topography. Can you tell me if that is confirmed for the existing area residences?

Mr. Dufour said I don't understand the question. I wouldn't answer that, the applicant may. I don't understand what you are asking. We did discuss the topography this evening.

Ms. Martin said that may be true. In previous testimony and as well tonight in talking about the topography it was stated, a question was asked whether or not that topography was similar to the abutting sites. And that question was answered in the affirmative. So that question is regarding that may be true of the topography of the TOPO maps, but whether or not that question also goes to the similarity for existing area residences as the question was asked.

Mrs. Wilbert said we may blurring again subdivision approval with some kind of architectural review. We are evaluating this site under the subdivision criteria as to how it might be subdivided. I am not certain when you walked in, but there was great discussion about the possibility of putting condition on the back lot that says that particular house would have to undergo separate criteria approval for the exact design to the specifications of the Building Department in conjunction with the engineer. But we have no ability to see if they are going to build capes or garrisons or if there is going to be aboveground garages or underground garages. We are looking at subdivision criteria.

Ms. Martin said understood. A part of that subdivision criteria represented in the site plan forgive me if I am not familiar with how much of it is binding and how much of it is for demonstration or for selling.

Mrs. Wilbert said the engineer told us that was a representative picture. We had that discussion this evening and he said that is what could work here. There are a number of different designs that could work here and we went into that at some length. We ended with a discussion of whether or not he was willing or not to accept a stipulation that said the design of a particular house that is of concern would have to undergo another process.

Ms. Martin asked if the character and quality of life in the neighborhood part of what was addressed tonight.

Mr. Dufour said no.

Ms. Martin asked if the issue of an alteration of terrain permit from the state addressed.

Mr. Dufour said no.

Ms. Martin asked if the significant number of serious hydrology concerns addressed.

Mr. Dufour said you already asked that question.

Ms. Martin said that is my list of questions that apparently didn't get into the initial conversation but then again my understanding when we all put this testimony together the neighbors met, they elected their spokespersons and they reviewed the criteria of the Planning Board with the understanding that was what they were going to be able to address tonight and the fact that you have ruled..

Mr. Dufour said when we met, just so I can get this into the record, when we met for the site walk that the applicant was that happy that he had that many people there for liability reasons, doesn't have to have all the abutters there, but he did have to have the Planning Board there. It was a condition of the process. When we started the process I explained to everybody what we were doing. Someone said can we ask questions. I said no you can't. You can address your concerns at the next meeting. I was quickly told that the next meeting, which is now, that we may not go back into the public hearing. Immediately within a minute I corrected that. Everybody knew. I said to you, we may or may not go back into public hearing. Having a month to discuss this, to try and be fair to everybody, I made the determination that I was going to reopen the public hearing so we could get on the record, those observations that were made during the site walk. I explained the process that we would go through tonight. So if you were misled at the site walk to think that you could come back and ask any questions, it was only misled by a minute because I quickly corrected myself.

Ms. Martin said apparently we all misunderstood. In closing then I would like to address the question that was just mentioned about the walk on Lone Star Drive. Looking at the conditions on Lone Star Drive which is in the accessing the water thing and the fact that there is ledge up behind there and so forth. That is where I live on Lone Star Drive and yes there are mega problems on Lone Star Drive and have been for the 25 years I have lived there in that the neighbors consistently deal with sink holes forming in various parts of their yards because the natural flow of the water is to come down from that ridge and try to make its way across to Spit Brook, a little brook that is a tributary to Spit Brook, sorry I mean Salmon Brook. So yeah, I can testify to the fact that over 25 years there has been a lot of problems related to that in fact in one instance a 3 year old child scared the living devil out of his mother and he was running across the yard and the sink hole fell when he stepped on it or something but he went down when this thing just caved in. And what is the resolution for those

problems? There hasn't been any official action taken. The residents individually have filled the holes with rocks as many as they could stuff in and they added in addition dirt on that and tapped it down and filled it and of course the water just finds its way around that and meanders someplace else and it shows up someplace else.

Gerald Prunier, Esq.

Atty Prunier said he agreed with Atty Wilbert's analysis of the subdivision law that applies to this subdivision. However, I want to make it clear so if the board decides that it wants to make these conditions to the plan the applicant is in agreement with them and has no problem with them. One, the 20 foot no disturbance buffer and two, the review of the foundation plans for the 2 lots in the rear by both the Building Department and the City Engineer's Department.

Mr. Dufour asked foundation plans by who?

Atty Prunier said the Building Department and the City Engineer's Department.

Mr. Dufour said at issue is the foundation.

Atty Prunier said it is the (inaudible) and design of that house. My client, the applicant, wants to make sure that he doesn't have a problem during construction or after he sells the house so he is willing to do whatever is necessary to have the Building Department and the City Engineer review whatever plans they think are necessary for the foundations and site of that house.

Mr. Slivinski asked if you said the two back lots?

Atty Prunier said yes, that is what I think the Board has some concerns with.

Mrs. Wilbert asked the engineer to address the issue of sink holes. It would be my layman's understanding that given the number and the details of the drainage system on this site that we talked about that the water is being captured in a drainage system and then piped out. Am I wrong?

Mr. Maynard said they don't necessarily go together. Back in the 60's many builders would bury all their rubble, trees, and surplus lumber on the lot. When those rot away it would cause sink holes. I don't know if that is the problem there or not. Underground

water does not by itself cause sink holes. This is not Florida where the limestone is being eroded away. Groundwater does not flow such that it would carry away soil. It is a very slow migration unlike what you see on the surface. This ideas of underground stream eroding away and causing sink holes, I don't know what to tell you on that. I don't believe that is the cause of the groundwater, especially 30 years later. I suspect it is the rotting wood piles that the builders buried on the lot but I don't know that for sure either.

Mrs. Wilbert said the runoff on your site is to be captured by these different catch basins.

Mr. Maynard said what they were explaining over there was when the runoff comes off the slope through their lots before it gets to the street which is a similar thing we have here. It comes through the back of these 2 lots before it gets to the street to be captured. All the other lots in this project, except for the back, don't have that situation. Only the back 2 would have runoff coming from back to front. All the other ones, that would be exactly correct, but you know there is no evidence of that kind of situation on this particular property. We didn't see any runoff or any groundwater or anything seeking out of that slope and we had a normal spring. If there is going to be groundwater coming out of the slope we would have seen it. We didn't see anything like that. So I don't know what they are eluding to.

Mrs. Wilbert the state representative eluded to evidence of ledge. I think she may have been talking about the rock outcropping that someone mentioned earlier. Do you have any more information? Is that ledge? Do you have anything more to add to us about whether or not there will be blasting?

Mr. Maynard said there is likely to be some blasting. I just don't know the extent.

Mrs. Wilbert asked if it not a requirement that you post a bond when you blast?

Mr. Maynard said certainly. You go through a full permit and oversight process.

Mrs. Wilbert said she just wanted that on the record because it may not have been understood that you are required.

Mr. Maynard said it is required by state law and local ordinance to bond. When you have the potential for ledge you don't know for

sure what you have for the extent of the ledge whether it is boulders, or fractured, or solid ledge until you expose the ground cover off of that and see what you have. Then you know the degree of the ledge consideration, whether it is a few feet or 6 feet.

Alderman LaRose asked if it was true that you did take some bit samples of ledge.

Mr. Maynard said we did excavate test pits 6 to 8 feet down throughout the site. There is some ledge down 6 to 8 feet for sure. I don't know if those are large boulders or a ledge outcropping. Ledge can rise very quickly to the peaks. They are very rounded that gives me the impression that they are large boulders but I can't guarantee that either until we dig around them. We did dig down many places 6 to 8 feet. There is some ledge.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL

None

SPEAKING IN FAVOR OF THE PLAN

No one.

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

Mr. Dufour said above all we want to be fair to everyone and make the best possible decision based on the testimony presented and considering all applicable approval criteria established in Nashua Revised Ordinances for conditional/special use permits site plans and subdivision plans. I read this at every meeting. No one hears it because by the third paragraph I assume I have lost everybody attention. However, that is why we members are here today. Our function here is to review these plans and make sure they are and functional. In this process human nature dictates that we be fair the abutters and the applicant. However above all after all is said and done we have to apply the laws considering all applicable approval criteria established in the Nashua Revised Ordinances for in this case subdivision plans. I believe that the applicant has met all approval criteria. At the last meeting a motion was made to approve the plan, that didn't pass. A motion was made to deny the plan. Tonight I would like to review the grounds for denial which were stated at the time and why I feel they are incorrect. They were:

#6 - not enough municipal services to support the proposed use. We are in an established neighborhood that is serviced by public water, public sewer, natural gas, the city plows these streets, all municipal services support this neighborhood. This is not a valid legal ground to deny it.

#7 - subdivision plan does not adequate means of handling stormwater runoff. Is there a problem with the water runoff in the neighborhood? There appears to be. We hear that all the time. The city engineer eludes to it that it is an existing problem throughout most parts of the city. The problem is existing today without the existence of this small 7 lot subdivision. The applicant's engineer has shown to us on the plan and his testimony that the creation of this subdivision will not add to the problem. He further states it may even help it. Now this evening we heard concerns about the lots in the back and how it affects the stormwater runoff. The applicant has agreed to a stipulation that would require that the design of those back 2 lots be reviewed and approved by the city engineer's department and the building department. I don't feel that is a valid legal ground for denial.

#8 - that all areas provided for detention treatment infiltration and other handling of stormwater is designed so as to be safe in keeping with surrounding character of the neighborhood. This stipulation reflects the city's desire over the years to control stormwater runoff especially in environmental sensitive areas. Today in that neighborhood other the city drainage system there is very little stormwater runoff management. Why? Because these homes were built 30 to 50 years ago and there were no such standards in place. If this subdivision is built it will be one of the very few if not the only one in that neighborhood which will have stormwater management. Each home within the subdivision will have a system to catch the stormwater. The overall site has more ample drainage control on its street, an aggressive drainage control on the street. The applicant is building a stormwater detention area to further mitigate the concern. That does not exist in most of these neighborhood streets today. It likely does not exist on Lone Star Drive. If it did there would be no stormwater issues. So this is not a valid legal concern for denial.

#9 - not compatible with the existing character of the neighborhood. This is an issue often stated but almost impossible to support. This is a residential neighborhood in a R-9 zone comprised of single family homes. The proposed style of these homes may be different in that it is of 2009 building styles but we surely cannot mandate that they build small capes and splits. They have the right to build what is selling today as long as it

meets the criteria. The fact that it is not compatible with the neighborhood is not an excuse to deny the plan. The lot across the street may be bigger that is irrelevant. The courts will see it as I see it. The neighborhood of single family residential zones in a R-9 zone. That is the bottom line and I ask everybody to refer to their maps that you had in your packet tonight. If you look at those lots they are all the same. The ones across the street might be slightly bigger, they are all the same. They are single family homes built in an R-9 zone, 90 feet of frontage, 9,000 square feet. At the site walk I asked you to drive the neighborhood streets surrounding this subdivision. I also asked that you check out Lone Star Drive. I asked that you check out homes on Searles Road that were built on the side of a rock just so you can understand how a house is built to be compatible with the site. If you did drive the neighborhood you saw similar size lots as the map will attest. You saw lots that rose up 20 feet higher to the neighbor at the rear. There are many lots in that neighborhood, elevation here, the neighbor behind up here. That is the character of that neighborhood. You saw the lots which were not perfectly square to the streets on Lone Star. Classical example there was some concern about houses being oriented facing the front of the street. I personally like that. We can't dictate that. If you drive down Lone Star you saw several examples where those houses were made to fit the site. You also saw homes that were built on the rock. Lots that may not look pretty to some, but have been there for years and functioning perfectly. There is a house on Westwood, I don't know if it abuts this subdivision but I observed a fence to the back. Someone bought that house, they saw that and they said I can live there. They put the fence up for whatever reason, but they knew what they were buying when they bought that house. The backside of that lot did not fall off. That's how it was approved, that is how it was built. That is how that neighborhood looks today. Our focus is this plan, this subdivision and how it will interact with the existing neighborhood. The problems that exist in the neighborhood today are due to building standards that existed at this time this neighborhood was created. Not because of this plan. How can we deny this plan by today's standards, when this plan makes that street better than most streets in that neighborhood. We are not politicians, we are not neighborhood activists. We all volunteered to be here. At times it is a difficult job. It is tough to look your neighbor in the eye, and say your wrong, the developer has rights. We cannot get wrapped up in the emotions of the moment and disregard the plan before us. If we do, we are not fulfilling our responsibilities to which we have sworn to do. We may or may not like the ordinances, that is irrelevant as we have sworn to uphold and apply them. I don't know how the vote will go on this plan. We can all see

things differently, we can interrupt the laws differently, however we cannot approve or deny a plan on a whim. We cannot deny just because we don't like it. The reasons for approval or denial have to be supported in a court of law. If the motion is made to deny ultimately I ask that the maker of that motion be precise in their rationale and state exactly how this plan is in conflict with the city's subdivision regulations. I ask that you simply not state numbers as they were selections on a rolodex card or menu. That is not supportable in a court of law. You must be specific and it must be on legal grounds. To not do so would be a disservice to the city and the abutters because I feel in the end this subdivision will be built because it meets the criteria.

Mr. Dookran said Mr. Chair I am a bit amused by how you discuss the character of the neighborhood. For instance you said this subdivision is pretty much built on a rock, similar homes like a lot of them in the neighborhood and they function perfectly fine. I am pretty familiar with the neighborhood and my own personal opinion is that a lot of those homes aren't functioning perfectly fine. I drive down New Searles Road and there is a car down here and a car like right above it. I (inaudible) driveways wean off the drainage issues.

Mr. Dufour said right and those drainage issues exist because there were no water management plans in place when they designed that subdivision.

Mr. Dookran said right, my point is this maybe I don't agree with that analysis of the neighborhood character because I think people are living with the situation out there.

Mr. Dufour said but they made the conscious decision to live. What you would describe would be back lots sliding down into someone else's backyard. I don't see that to be the case as I drove through that neighborhood.

Mr. Dookran on our site visit we walked into the adjacent vacant property there and there was this building and it had a deck and a fence all perched up there and you wonder how long that would last. I don't know if you got that close to look at that.

Mr. Dufour said eluded to that on the house with the fence. The fact remains it does function.

Mr. Dookran said but not perfectly fine.

Mr. Dufour said perfectly fine by whose standards? The cases that you elude to have they had mud slides? We may not like them, we may not like the looks of them and we might be able to say those people might be very well sitting in this audience tonight, how can somebody live in that house? They look like if they fall off the deck they are in for a 30 foot drop. That is not our function.

Mr. Dookran said he understands. I am just talking about the way you describe it like it is the perfect example of a neighborhood that is working really well. I am not sure that is the case. I have personally observed a lot of issues in the neighborhood, especially drainage.

Mr. Dufour said he described the neighborhood as I saw it. I eluded to what I observed. Then I stated that this proposed subdivision which is what we are dealing with tonight would not add any adverse impact to that neighborhood. That was my comment.

Mrs. Wilbert said that is the comment I wanted to make. Engineer Dookran, again I would characterize that neighborhood as one that has problems in it. I mean those pictures of the water we saw a month ago were dramatic. Unfortunately the question isn't can we do something tonight that will elevate whatever problems may or may not exist in that neighborhood. We can't do anything tonight, but what we can do is look at whether or not this subdivision is going to add to the problems. We have testimony that it is not going to add to the problems. As to this site, the problems will be slightly alleviated and this site has apparently the groundwater treatment in place that the others didn't. I would like you sir if you don't mind to help me with whether or not a stipulation such as the developer has indicated they would agree to would alleviate your concerns about those 2 lots. My understanding is you were most concerned with the one on the far right, but now that they have included it to the two, does that alleviate your concern about the slope?

Mr. Dookran said but first take a moment I was just challenging the Chair's description of all the features because it attempts it is urging those people with concerns, that well your concerns are not quite that valid. What I am saying is there are some points in there that I don't agree with. But anyways getting back to you what would alleviate my concerns with regards to that building or that lot and probably the one adjacent it. The one adjacent is not as severe as the 31-39. I don't think what you do tonight, if you put a stipulation, would really alleviate my concerns that much because I tell you I would agree with the stipulation that the Building Department and the City Engineer Office take a look,

have to approve the plan, the site layout, and land uses, whatever that comes before building a building there but as it stands, as laid out by Mr. Maynard it is an ugly lot as it stands. I mean you look at it rises up from the cul-de-sac several feet, probably (inaudible) slope and you are a very short flat piece in the yard to get into the building and he was proposing tonight that he raise the foundation another 3 feet. Think about what I would do.

Mrs. Wilbert said yet is it not true that he said if that didn't satisfy?

Mr. Dookran said you are going from a terrible lot as it stands to an even worse lot front yard is going to push the building to what's the back even more. Think about it.

Mrs. Wilbert said yes I understand that. My point is only if he cannot satisfy on those 2 back lots the Building Department and the Engineer then he can't put structures up.

Mr. Dookran said yes and I think that will surely exist but we have to make sure the review and approval prior to any building in that subdivision because just to be fair to them I would like to give them the opportunity to take another look. If it is impossible to make the lot that you can put a structure in without compromising the existing neighbor. They would probably want to reorganize the subdivision so that it becomes a little more attractive and more saleable.

Mrs. Wilbert said prior to any building the foundation depth and location on the rear 2 lots are subject to the review and approval of the Building Department and consultation with the Engineering Department.

Mrs. Overby said she is not making a motion to approve or deny I am just giving my thoughts on the site. I was given permission by I can only assume the homeowner at 91 Westwood, Jackie Marque or Nancy Gilbert to enter the site and view the back lot 31-39 and I did that. Those are my only concerns with this development is that back lot. My concerns were more intensified after visiting 91 Westwood directly behind 31-39. 91 Westwood is mostly fill. There is a serious runoff coming from 91 Westwood clearly visible by numerous gullies. Currently 31-39 is in a natural state with a years of carpet of deadfall which has acted as a big sponge over the year absorbing everything coming down off the embankment. Once this area is stripped for development this will change dramatically the dynamics of the site and I believe serious runoff will occur. I believe that 31-39 is undevelopable for a dwelling

and should be preserved as a conservation lot left in its natural state. This would enable it to function as it currently is and for any runoff that would affect the rest of the development and to Mr. Maynard's own testimony 66 New Searles would be in danger of receiving runoff from this site in a big rain event which has happened annually. I site 190-63(b) Land of such character that cannot be safely used for building purposes because of exceptional danger to health or peril from fire, flood, or (inaudible) shall not be plotted for occupancy which may increase danger to health, life, or property until appropriate measures to eliminate the hazards have been taken by the owner or his agent. This falls under subdivision criteria #2, the site plan shall comply with all applicable requirements of Part 2, Part 4 through 8 of this chapter. This falls in part 8 and those are my thoughts.

Mr. Dufour said the applicant has agreed to review of the site and foundation plans for those back 2 lots and they have to be approved by the Building Department and City Engineer. If that were a stipulation would that alleviate your concerns?

Mrs. Overby said to Jody's testimony that if the Building Department deems the home designed for this lot is compatible or incompatible, yes.

Mr. Dufour said he would assume that if we have a stipulation to such and they can't come to terms, because the stipulation seems to be indicated by the engineer that it be prior to construction that if they can't come to terms with the Building Department and City Engineer then they will have to come back to us with a new plan. They can't move forward. A stipulation would be placed on this plan that it be agreed upon that those 2 lots with the Building Department and City Engineer's Office.

Mrs. Overby said she is in agreement. To see the site is only the developable property that is owned by the applicant is short-sided not to see the land that is affecting it above. I would say I would comply with that.

Mr. Slivinski said this is a subdivision that we are looking at. If we approve the subdivision does that automatically give the builder, the owner of the property, the right to put a building on any one of the pieces of the subdivision or must they still go and get all the approvals before they can put anything on it.

Mr. Houston said before the plan is recorded, the owner has to meet the stipulations. Once the plan is recorded then the developer can start selling the lots. If you have a condition of

approval that prevents that from happening until they have a design then that would have to occur first before we record the plan.

Mrs. Wilbert said that is the bottom line. You don't record the plan until all the stipulations are met?

Mr. Houston said that's correct for stipulations required prior to recording.

Mrs. Wilbert said so the short answer is they can't build until the plan is recorded.

Mr. Dufour said and the stipulations have been met.

Mrs. Wilbert said and it is not recorded until the stipulations are met.

Mr. Houston said subdivisions now expire after 1 year, which is something we are running into as well. They have to come back before this board if they have not satisfied the conditions of approval pertaining to recording the plan within 1 year.

Mr. Dufour said just to follow up on that our precedent has been to grant that extension 1 year at a time.

Mrs. Wilbert said we don't have to.

Mr. Dufour said we don't have to but we never have. That stipulation would still be in place whether its 2 years down the line, 3 years down the line they still have to satisfy the stipulations on the plan.

Mr. Slivinski said the Chairman has done a great job in taking the time to analyze this point by point by point. It certainly clarified a lot of the criteria that was reject upon or subsequently tabled from the original meeting a month ago.

MOTION by Mrs. Wilbert to approve New Business Subdivision #1, COPA Development, Inc. (Owner) proposed Kincad Lane. It conforms to NRO 190-138(G) with the following stipulations or waivers.

1. Prior to planning staff recording the plan, the stipulations of approval shall be included on the final plan.
2. Prior to planning staff recording the plan, the storm water operation and maintenance plan shall be recorded.

3. Prior to the plan being recorded, all required easements shall be submitted to and approved by the Planning Department and Corporation Counsel and recorded with the plan.
4. Prior to the start of construction bonding for work new work with in the public right of way shall be submitted to and approved by the Engineering Department and Corporation Counsel.
5. 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.
6. Prior to the plan being recorded, all drafting corrections shall be made.
7. All driveways shall enter and exit onto Kincaid Lane.
8. The Developer shall be required to meet with the owner of the lot opposite the entrance to the subdivision, across New Searles Road, and if requested, construct a hedge barrier on that lot to prevent glare from oncoming traffic.
9. No grading or tree removal within 20 feet from the property line shared with the neighbors on Westwood Drive at the rear of Lots 3138 & 3139.
10. Prior to the recording of the plan, the foundation depth, location and grading of lots 3138 & 3139 shall be subject to the review and approval of the Building Department in consultation with Engineering Department.

Mr. Dookran asked Staff if that stipulation satisfies what we were talking about before.

Mr. Houston said he thought so. The City Engineer's office will be involved. Certainly the case planner will be involved as well as the building department.

Mr. Dookran said in terms of the name of the plan, the foundation and depth and location. Does that show the grading around the lot, around the foundation? Because that is what I am interested in. The grading and if there is a need for a retaining wall, the dimensions of the wall, those kinds of things. Would that be shown on that plan?

Mr. Houston said it should be.

Mr. Dufour said it is subject to your approval. So when it gets to you, they have to satisfy your concerns.

Mr. Dookran said he was thinking that might be another plan in the planning and building process.

Mr. Houston said what you might want to do is specify the grading adjacent to the foundation and surrounding adjacent lot to grading plan for each lot as well.

Mrs. Wilbert said she was happy to amend stipulation #10 to read foundation, depth, location, and grading of the site for lots 3138 and 3139.

SECONDED by Alderman Larose

MOTION CARRIED UNANIMOUSLY

OLD BUSINESS - SITE PLANS

None

NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

NEW BUSINESS - SUBDIVISION PLANS

3. John J. Flately (Owner) - Application and acceptance of proposed subdivision plan to consolidate lots, relocate a lot line, and dedicate right-of-way for the extension of Tara Boulevard. Property is located at 100-300 Innovative Way. Sheet A, Lots 33, 651, 798, 991, and 995. Zoned "PI" Park Industrial, "R30" A-Suburban Residence, "R18" B-Suburban Residence. Ward 8.

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

SECONDED by Mrs. Overby

MOTION CARRIED UNANIMOUSLY

Jim Petropulos, Hayner/Swanson Inc.

Mr. Petropulos said with him tonight is Dick Kane, real estate consultant and Atty Prunier. As you just read into the record we are seeking approval primarily for the extension of Tara Boulevard and the relocation/merger of a couple of the existing lots upon this Exit 1 property. The Planning Board may remember on March 19th Mr. Kane appeared before the board under a discussion item and introduced the board to his thinking up to this point, his company's thinking about the development of the Exit 1 property

and the options they are currently considering. At that meeting he made note that we would be coming before the board shortly for a small extension of Tara Boulevard and that is what we are here for tonight. I would like to briefly go through the facts of the case and Dick may be needed to help out if there is any questions regarding the property. I brought with me an aerial on the left to try and help everybody get located. I have tried to outline in a black line the Exit 1 properties currently owned by John J. Flately. The photo is oriented south to north. Obviously the prominent feature is the FE Everett Turnpike which borders the property to the east. Spit Brook Road abuts the property to the south. To the west we have a number of residential communities. We have the Huntington, we have Shakespeare Road, I commonly call it poet's hill, a residential subdivision and to the north the property next down is some city-owned land and ultimately Long Hill Estates is the subdivision you see on the inside of the bend. In total Mr. Flately owns about 400 acres and that includes the office building complex that exists down along Spit Brook Road. As was communicated to you by Mr. Kane in March, Mr. Flately recently purchased the former HP site. That is the 3 building located in the southern tier of the property. Those 3 buildings, formerly a Digital property, then a Compaq HP property, consist of about 750,000 square feet. And you notice that there is a number of parking spaces. About 2100 parking spaces associated with the HP facility and that is located here. Mr. Kane is currently in the process of leasing space within those 3 buildings. Now this site is accessed off of Spit Brook Road by what is known as Tara Boulevard. Tara Boulevard is a road that comes in about 300 feet and makes a bend to the right in this public way services 10 Tara Boulevard and Radisson Hotel. Servicing the HP property is this snake like road, Innovative Way. It is a private road that is owned and maintained by the Flately Company. Research Drive swings up on the left side of the property. Also a public way. (inaudible) talk about the lower half of the property. It comprises about 194 acres of property. They own an additional 210, 200 acres up to the north of that. I want to call your attention also along the east end of the property to Dozer Road. Dozer Road is a right-of-way that is owned by the State of New Hampshire that Matt's staff report amply depicts the history of Dozer Road. It runs in a north south manner and ultimately it services all Flately lands to the north with the exception of a property way up top which is known as Proctor Park. It is a city-owned piece of property up at the tip. It is actually cornered in between the Long Hill subdivision and the Everett Turnpike. I suspect it was property donated to the city a number of years ago. Its only access is Dozer Road. It is a NH DOT Class 6 gravel road subject to gates and bars. There is also access up in that corner of the

property to one of the residential streets, Spindlewick, which is part of Long Hill Drive property. It is the goal to ultimately to discontinue all of Dozer Road and if we need to provide access to Proctor Park it could be from Spindlewick. As I mentioned Dozer Road is owned by the DOT. We are currently in the process of seeking a conveyance to the City of Nashua so that the city will have control of Dozer Road and be able to as this property is developed discontinue or make decisions about its discontinuance. You will see tonight on our plans representation for the discontinuance of Dozer Road. This board cannot do that. That is the Board of Alderman. We are making the representation that is our next stop on the way. The property is split zoned. It is park industrial for the HP buildings, but the 80 acres of land behind it is zoned residential. It is a combination of R-18 and R-30 and then the property to the north is all zoned park industrial. What we are proposing accomplishes several things. The drawing on the right is probably what I will speak of in this part of the presentation. The first thing it will do is extend Tara Boulevard approximately 650 feet. Tara Boulevard is a public road. We are proposing to build this in accordance with public road standards. It will be within the public right-of-way. It will connect up to Innovative Way, thus providing an interior loop for this particular project. The road will contain sidewalks, utilities you would normally see in a public subdivision. The second piece as I mentioned a minute ago in the shaded portion of the property is the area that we are going to be seeking discontinuance on from the board of Alderman once they control Dozer Road. That is represented on the plan of land. This subdivision cannot be perfected and there is notes on the drawings that reflect that until the Alderman make such a formal decision. If that section of road is discontinued there is a missing link between Tara Boulevard and the remainder of Dozer Road (inaudible) Here is the public road to be extended. Here is the piece of Dozer to be discontinued and that leaves a link between existing Dozer and Tara Boulevard and the public way. And that link is part of Innovative Way which is currently a private road and owned by the Flatley Company. We are proposing to house that in a public access easement and that road is to be maintained by the Flatley Company. What we are doing is substituting this gravel dirt Class 6 way with actually a paved way to get back to Dozer Road. The reasons for doing this are it is a big project. We don't know what is going to happen (inaudible). It will be developed based on market conditions. There is a number of challenges the Flatley Company has with regards to this property. Zoning issues. I mentioned it is zoned residential. Buffer issues with neighbors. Utility issues. Traffic issues. These are all issues that need to be developed. We wanted to come in with a small step at first with

this link of Tara Boulevard extended to create that internal loop from here to Innovative Way so that current traffic has the option to get down to get to the signal in this sense. It improves emergency access with the second connection through here. It also sets up a possibility for developable lots located here just east of Innovative Way. The plan also includes several lot line relocations and mergers. Essentially when we are complete we will have 2 lots out there in the front part of the property. Big lot 798, 184 acres and lot 995 which is approximately 12 acres in size. In concluding, I just want to identify that in the staff report and I submitted a letter to you regarding some waivers for the project I would like to go through those. There are 5 of them. First has to do with plan scale. Your subdivision regulations require 50 scale plans. The property that is before you tonight is 190 acres. We have proposed everything at 100 scale in order to fit on recordable sized sheets. That is a waiver that has commonly been approved for larger properties. The second waiver we are asking for is proper delineation of the entire 190 acres for wetlands. We have delineated all the areas in and around this proposed roadway extension, the 650 foot extension, but the vast 190 acres we have not done that. We will do that as we progress with development on the balance on the property.

Mr. Dufour asked if that was staff stipulation #3.

Mr. Petropulos said he wrote a letter. The conditions appear in a different order than my letter. The third waiver we have requested has to do with the requirement that all equipment pads, air conditioning pads of the buildings be shown. They have been surveyed. They are irrelevant to the extension of Tara Boulevard. Staff suggested we ask for a waiver.

Mr. Dufour said that is stipulation #5.

Mr. Petropulos said the next waiver is the roadway length. You have a requirement under 190-208(e) that roads can exceed 750 feet as long as they have legitimate second access to them. So Tara Boulevard will exceed 750 feet but it will be linked up to a paved Innovative Way therefore we are seeking a waiver.

Mr. Dufour said that is stipulation #6.

Mr. Petropulos said the last one has to do with what I think is a typo in your code. It requires subdivision applicants to show all physical features of 1,000 feet of the site to be show. I think it is 100. I noticed the last subdivision didn't show 1,000 feet either. I think the way the regulation is intended to read is 100 feet. It reads 1,000 feet. That would have been just a huge

expense to just about every applicant that comes before you. Those are our waivers. Again this is just a small step. It is the first step of probably many actions. I noticed there are some abutters here. They probably live up on poet hill. They are about 3,000 feet away from this road. Nothing is being proposed in that portion of the site. If there is obviously there is much, much work to do with regard to zoning action and public hearings. Dick has been very good about meeting with the neighbors and I am sure he will continue to do as we move forward. There are some communications from Traffic and Engineering that you may have in the packet. I think they have been both satisfied with the work we are proposing as part of this subdivision.

Mrs. Overby said the property seems to be under a state of construction. Is there construction going on?

Mr. Petropulos said there is a sign being built at the intersection of Tara Boulevard and Spit Brook Road. The Flatly Company received a variance of setback distance for sign. One of the first thing we talked about this park has no identity. If you go down there, there is no earmarking feature that this tremendous Nashua Office and Technology Park exist so they are constructing a sign at the intersection.

Richard Kane, John J. Flatly Company

Mr. Kane said the construction you see going on is the foundation for a sign that will say Nashua Technology Park. It is an on premise sign. It is a project identification sign. All of the sizes conform with the existing zoning. Since we do have some abutters here I have in the past met with about a dozen or 15 of the immediate abutters to just talk about some general ideas and thoughts we might have on the property. If some of the abutters or neighbors I have not met with yet and they would like to meet with me I will give you the card after and I would be happy to come to your home and sit down with you and get your ideas and thoughts also.

SPEAKING IN OPPOSITION OR IN CONCERN

No one

SPEAKING IN FAVOR OF THE PLAN

No one

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

MOTION by Mr. Slivinski to approve New Business #3 Subdivision. Applicant John J. Flately Company to relocate a lot line and merge several lots and layout an extension of Tara Boulevard at 100-300 Innovative Way, Zoned Park Industrial. It conforms to NRO 190-138(G) with the following stipulations or waivers:

1. The applicant understands that a future discontinuance of Dozer Road by the City requires a separate petition to the Board of Aldermen per NRO § 285-23 & 24, which requires a Planning Board recommendation (favorable or unfavorable) to the Board of Aldermen.
2. The request for a waiver of § 190-282(A), which specifies that the plan scale shall not be smaller than one inch to fifty feet, is granted.
3. The request for a waiver of § 190-282(B)(18), which requires that wetlands be delineated, is granted.
4. The request for a waiver of § 190-282(B)(9), which requires that the plan includes existing conditions within one thousand feet of the site, is granted.
5. The request for a waiver of § 190-282(B)(14), which requires that HVAC and equipment pads be shown on the plans, is granted.
6. The request for a waiver of § 190-208(E)(1), which sets a maximum length of a cul-de-sac at 750 feet, is granted. If this waiver is granted, Innovative Way shall not be gated, unless approved by the Planning Board.

SECONDED by Alderman LaRose

Mr. Dookran wanted to clarify that stipulation under discontinuance. It reads that the applicant understands that future discontinuance would be done by the Board of Alderman. It doesn't mean (inaudible) approved that this subdivision is not.

Mr. Kane said we would have to come back. I believe that the Board of Alderman will refer the discontinuance to this board. Until such time as #1 the deed is perfected from the state to the city and the Alderman then approve a resolution discontinuing Dozer Road which will be referred to the Planning Board this plan cannot be perfected. This is strictly, chicken and eggs situation. We wanted to at least get the process started before we went to the

Board of Alderman to say we presented it, the Planning Board knows what we are doing and we will be coming back once that discontinuance plan comes before the board.

Mr. Slivinski asked if you will absolutely do no construction until (inaudible).

Mr. Kane said correct.

MOTION CARRIED UNANIMOUSLY

OTHER BUSINESS

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

None

MOTION by Alderman LaRose that there are no issues of regional impact.

SECONDED by Mrs. Wilbert

MOTION CARRIED UNANIMOUSLY

DISCUSSION ITEM

1. Continued discussion on requested amendment to 2003 Downtown Master Plan as requested by the Board of Alderman through R-08-114, approved by Board of Alderman on October 28, 2008

Mr. Slivinski recused himself

Mr. Dufour said Alderman Deane came and people in the north end came before us to speak to Alderman Deane's legislation. That legislation received a favorable recommendation from this board. And it went to the Board of Alderman. Now with Alderman Deane's patience, it comes back to us. We have to make the decision whether we will change the master plan as requested by the legislation or not. Speaking to that this evening I have a letter from the Mayor relating to this. I will read it. Usually we just accept it. It is from the Mayor I am going to read it. Dated June 4th, addressed to me as the Chair regarding process to review downtown master plan. Last October the Board of Alderman passed Resolution R-08-114 requesting the Planning Board amend the downtown master plan by deleting the subsection titled "An Alternative through traffic extension of the outer loop" that

would result in removing the discussion of the master plan related to extending the Henry Burque Highway to a new river, Merrimack River crossing. Although I fully support the Board of Alderman's prerogative to request reconsideration of elements of the master plan, I am writing to emphasize my understanding that the actual planning process is entrusted to the Planning Board which has the duty under state law and the city charter to prepare and amend a master plan to guide the development of the entire municipality. After reviewing R-08-114 I am certain the Board of Alderman understood that row and I am confident that the Planning Board will meet that task with the comprehensive thoughtful deliberation that is required by this important function. I read this into the record. We have already taken public testimony. I feel that as a courtesy we should allow Alderman Deane to speak to his legislation one more time.

Alderman David Deane

Alderman Deane said he did speak with Chair Dufour on a couple of occasions and a couple of e-mails back and forth and I fully understand the workload that the Planning Board has. The resolution was pretty clear and I think if you look back in time at the testimony that was taken by the folks that live up in this area the process that was used and the way it was unfolded and those involved it was a perfect example of how not to do something. Between NRPC and members of this administration they went and started making offers to people, dollar offers for their houses and then a lot of people in the neighborhood didn't know what was going on. It was an unhealthy situation where you have people that are content. They live in a well developed neighborhood. They are friends and then there are things going on behind the scenes that some of them know about and some of them don't. It was a poor way to do something. I believe it was this board that actually approved all those subdivisions up in there. So the city's opportunity to do anything at the end of Henry Burque Highway ended long ago. The Town of Merrimack and the state had proposals further up the road that would have no impact to the residential areas in that town. In fact when they widened the highway they planned for another river crossing up there. The land was purchased and that process has been done. I did speak with the Mayor today about this resolution and the Mayor doesn't normally sign policy legislation that the Board of Alderman adopts. She just doesn't feel that is her place to do it. The board sets policy. I asked her if she signed this legislation into law and let it lapse into law without her signature. And she said she signed it. I did have a brief conversation with her about these master plans and it is not my intention to go in and slice and

dice up master plans that have been adopted but when there is something as clear as this that shouldn't exist in the master plan, I believe it should be removed. I respectfully request that this board take that action this evening.

Mr. Dufour said he didn't think it was appropriate to change the master plan without a complete and thoughtful deliberation over the master plan as a whole. I don't feel that portions of the master plan should be altered for political purposes. As I said when we discussed this in October or whenever it was last fall this is feel-good legislation. Whether this section of the 2003 Downtown Master Plan is deleted or not if the people that wish it and can control it they will extend that however unlikely they could still extend that. So I find this simply with respect to Alderman Deane, feel-good legislation. The master plan is a global plan, a wish list. It is used as a guide to develop the city but it isn't the final director. Earlier this evening we had the New Searles case. When we first heard that case back in May one of the first people to speak was the Alderman for that ward. Although it wasn't reflected in the minutes, I am sure it is reflected in the tape. He asked and I am paraphrasing what do we have to do to stop this process from moving forward in our ward? What do we have to do to stop this process from moving in our ward? I ask all of you, what if that answer was just get your alderman to change the master plan as it pertains to your street. That is basically what is being asked of us tonight. What kind of chaos would we have then? And for those reasons I don't feel it is appropriate and I think that case earlier tonight spoke to that better than anything I could have said.

Mrs. Wilbert said she agreed with the chairman's comments. For Alderman Deane and all the other residents of the north end and it is my neighborhood as well, my concerns are with that process. Slicing and dicing a process of master planning. I want everyone out there to know that we held a workshop on the master plan for members of the Planning Board who may not have ever served on a master plan. We reviewed the state statute on master planning. We reviewed the downtown Nashua master plan. We reviewed staff recommendations and discussion on this issue. We reviewed the Planning Board for New Hampshire handbook for local officials on the issue of master planning and the gist of it is that this master planning is not the same as approving a bridge through a neighborhood. Master planning is a global outlook on the whole community. The Mayor likened it in a conversation I had with her with playing a computer game called Sim City. If I could build the perfect community and I didn't have to be restricted by such issues as what's there now, how would I build this community? It

is a far range from on the ground development to a master plan. The master plan is with the input of a broad range of professionals and many member of the community who are volunteers over a period of a year, year and a half with a staff member assigned and statistical demographical analysis behind it, it is a written document. The section that we are being asked to look at is this little piece, just that. It isn't that piece. It is the sum of the whole. And the way to do it, to amend the master plan is to participate in the next master planning process which is overdue in this community. What I would ask is that rather than slice and dice the one we got, I would rather that we put our energies as a Planning Board into planning to do the next master plan and invite anybody who wants to participate out there to be part of that planning process. I also want to clarify that dollars being offered for houses, that had nothing to do with the master plan. I think you may be referring to a time when somebody had a kind of a pie in the sky idea of putting a toll road bridge across there. But to link that to this master plan that was designed to look at how our city might better function I don't think is appropriate. I think it misses the point of what a master plan is. I tell you what, I have served on 2 master plans from start to finish. The first one was almost 30 years ago and I was the first one we did and I walked away from that master planning process thinking that the things on that plan were going to happen. Dick was with me. There are lots of things on that plan that never happened and frankly never will happen. It is not about whether they will actually it is about if we could plan a community would it be a good idea to have a north river crossing? Would that make the downtown work better? Yeah, it would if somebody, a million years ago, or 50 years ago before those houses were built on the college named streets had extended Henry Burque that may have made our city function better. I doubt that in any of our lifetimes or even the next 3 or 4 generations that will happen. But to approach it politically would only invite us as a Planning Board to be asked over and over again. Take this little piece of park industrial out of my neighborhood, I don't want it. Take that little section where you think the master plan says there should be more commercial out of it because I don't want any more commercial. Take that little industrial out because I don't want the industrial. Keep this as recreational space because that is what I want in my backyard. It is just not what master planning is about. So I would vote against amending the master plan this way. I would certainly vote in favor of asking the Planning Staff to put together in their budget a proposal to begin funding, set aside funding so that we can do a full master plan within the next year or 2.

Mr. Dookran said he has seen in his tenure here at the city the master plan process. Like the revision to the Land Use Code, many parts of it, people get excited and interested. And many parts of it people just ignore because it is boring like crazy. And I have often heard where you have had sometimes great interest from certain segments of the public and no interest from other segments. I don't see this as slicing and dicing. In my last 5 ½ consecutive years on this board I don't think we have been faced with a request to change anything in the master plan. To me slicing and dicing means that everybody is coming with a little piece. The other thing about this is that what we are talking about here though as you stated Mr. Chair at the beginning that it really doesn't matter, it is significant to a very large area. It is important to a very large area of the city. I don't think it comes close to slicing and dicing and you can tell why its important because we have seen the kind of public participation we have had on this topic. The kind of public participation you want to have when you are going to a master plan development. Yes indeed I wish we could come up with the money to do another master plan document that can get the same kind of public participation so we can end up with a document that guides good planning in the city. That may or may not happen. But I tell you what I have seen, the kind of interest I have seen in this plus what happened according to Alderman Deane, what happened I that process in trying to put a project in there, unacceptable. I think this is worth considering at this time.

Mrs. Wilbert said what I meant just to clarify by slicing and dicing I mean if Alderman Deane in representing, I believe we all have roles. We are planners. Our role is planning. The alderman represents his constituents. If his constituents don't want a certain thing then he in representing them brings it before the body that can make it happen. What I meant is that to being to amend the master plan one, two paragraphs at a time will invite all other alderman to use that process to amend the master plan and that I believe when read in conjunction with the documents that we reviewed when we had our little workshop is not what master planning is about. Do I think that that should be removed? Probably should be. It is not a here nor there. It wasn't done in a vacuum. It was done as a global view and if it is going to be removed it shouldn't be an isolatation from one part to another. It is like cutting off your nose to spite your face. You may not like the nose but the face is a lot less comely without the nose.

Mr. Dookran said he understands perfectly what you are saying. I think you are pretty much saying you don't want to set precedent. You don't want to see one person after another appearing before

us, one alderman after another appearing before us and trying to encourage us to change the plan that guides the planning. I think it is an important item that should be addressed to satisfy the people who make up the city. People who show interest in what we do in the city. We shouldn't be afraid of the power being taken away from this board.

Mrs. Wilbert said she doesn't think it is about that at all.

Mr. Dookran said it is probably sitting in the back of some minds.

Mr. Dufour said first of all I agree with you that there are changes needed. The correct change is through proper funding so we can redo the plan so the plan can be done properly just as the Mayor eluded to. Comprehensive and thoughtful deliberation, not one little piece. And again, if we were to based our decision and I am almost offended but I know you didn't mean it that way, this is not a power issue. When we are up against the alderman, we can't win and I assure you we are going to think we lost if we deny this. However, I elude to that case before us. You said this should be done because there are a lot of people that want it changed. Well the New Searles development should be done to use that rationale because as many people wanted that changed.

Mr. Dookran said not the same, not the same, no.

Mr. Dufour said we cannot look at this from a political perspective. We have to look at it from a planning perspective. It is done globally and the alderman should set aside funds so we can start the process anew.

Mrs. Wilbert said she thinks it is interesting when you look exactly at what we are being asked to amend. This is a hypothetical plan. This is the section we are being asked to remove as part of the original circumferential connector the Henry Burque Highway was designed to provide a beltway around downtown. As if often the case with large road projects the planning process was slower then private development. As a result there is tense development, yada, yada, yada. The next paragraph extending Henry Burque was valid many years ago. It is still valid although be it highly unlikely and infeasible. It would allow traffic generated to go etc. Next paragraph extension of Henry Burque Highway is not likely. Acquisition costs in the foreseeable future are prohibited. Likewise New Hampshire DOT is in the process of issuing an SEIS on the circumferential highway north way of the Henry Burque. However, should conditions in the corridor change such that the extension of the highway becomes once again feasible

Nashua should pursue this option. That is a direct quote. What the heck is wrong with that? If it ever becomes feasible we should consider that option.

Mr. Dookran said Atty Wilbert I don't think its highly hypothetical because lets go back, it is less then 3 years now? Strong interest (inaudible) by people in this administration, by the DOT in pursuing a highway out there.

Mrs. Wilbert said that master planning doesn't mean it will happen and it also doesn't mean that something that is included in the master plan has some kind of information. It just doesn't. It means if you were planning a community this is how it would work. And if it were feasible to do this, you would do it.

Alderman LaRose said if it is not in the master plan it is not to say it couldn't happen.

Mrs. Wilbert said exactly. You can do it without the master plan as well.

Alderman LaRose said the master plan is a guide, a lot of it is a wish list, and some of it comes to pass and most of it doesn't.

Mrs. Overby said she has been thinking about the cause and effect. What caused them to want this and the effect of taking it out. When you read the range of duties and responsibilities, we are responsible for preparing and amending but we are up for review on the master plan. This project probably doesn't have funding like Atty Wilbert eluded to. It is not going to happen. I am inclined to support Alderman Deane's resolution, just not in this way. I suppose I am looking to have the master plan revised and have it taken out.

Mr. Dufour said and I think we have all said that this evening but we can't do that without the alderman's funding, that is the first step. With the alderman's funding it moves forward and we achieve that objective. That is the proper way to do that, comprehensive and thoughtful deliberation not in a vacuum.

Alderman Larose said he thinks we are taking about putting money aside for a study. I would move that the chairman send a letter to the Mayor stating that the Planning Board believes that in her next budget she should start putting some money aside for a comprehensive master plan review. It is time that we take a comprehensive look at the master plan.

MOTION by Mrs. Wilbert that we do not amend the master plan as requested by R-08-114 because that is not the process by which we should amend the Downtown Master Plan.

SECONDED by Jurewicz

MOTION CARRIED 6 to 1 (Mr. Dookran voted no)

Mr. Dufour asked Mr. Houston to draft a letter on the Planning Board's behalf requesting funding of a new downtown master plan.

Mr. Houston asked if it is a city wide master plan or downtown master plan.

Mr. Dufour said city wide.

Alderman LaRose asked if that would include the downtown.

Mr. Houston said yes it would. The downtown was a subset.

Mr. Dufour said we are talking the whole plan. The whole process is long and engaging that it is the City Master Plan.

Alderman Larose said maybe the letter should state the city wide and downtown master plan.

Mr. Dufour said he thinks a new master plan would automatically incorporate the downtown. It would be however they budget it.

MOTION by Alderman LaRose to adjourn.

APPROVED:

Ken Dufour, Chair, Nashua Planning Board

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Prepared by: Linda Panny

Taped Meeting