

NASHUA CITY PLANNING BOARD  
November 5, 2009

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

Members Present: Ken Dufour, Chair  
Jody Wilbert  
Alderman Richard LaRose  
Bob Canaway, Vice Chair  
Steve Dookran, City Engineer  
William Slivinski  
Muriel Corcoran  
Cynthia Overby  
Raymond Jurewicz, Alternate  
Sandra Belknap, Alternate

Mr. Dufour said Mr. Latham, a regular member absent and Cynthia Overby will be filling in. We have one vacancy and Mr. Jurewicz will be filling in for that vacancy.

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

**Approval of Minutes**

October 15, 2009

**MOTION** by Alderman LaRose to approve the minutes of October 15, 2009, waive the reading and place on file with the correction on page 3 the it was Mrs. Belknap not Mrs. Corcoran speaking.

**SECONDED** by Mr. Slivinski

**MOTION CARRIED 7 to 0 (Mr. Jurewicz and Mrs. Wilbert abstained)**

**COMMUNICATIONS**

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

- Revised Planning Board Agenda
- Memorandum dated November 5<sup>th</sup> to the Board from Matt Taylor on Old Business Item #1, Nashua Baptist Church
- Corrected Sheet on Staff Report on New Business Item #2

- Memorandum to Ken Dufour from Roger Houston regarding Ordinance O-09-81
- Information items on 169 Daniel Webster Highway
- Majestic Heights approval letter dated August 20, 2002
- Technical Review Meeting Sheet

**REPORT OF CHAIR, COMMITTEE & LIASON**

None

**PROCEDURES OF THE MEETING**

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

After the legal notice of each conditional, special use permit, site plan or subdivision plan is read by the Chair, the Board will determine if that the application is complete and ready for the Board to take jurisdiction. The public hearing will begin at which time the applicant or representative will be given time to present an overview and description of their project. The applicant shall speak to whether or not they agree with recommended staff stipulations. The Board will then have an opportunity to ask questions of the applicant or staff.

The Chair will then ask for testimony from the audience. First anyone wishing to speak in opposition or with concern to the plan may speak. Please come forward to the microphone, state their name and address for the record. This would be the time to ask questions they may have regarding the plan.

Next public testimony will come from anyone wishing to speak in favor of the plan. The applicant will then be allowed a rebuttal period at which time they shall speak to any issues or concerns raised by prior public testimony.

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

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

Above all, the Board wants to be fair to everyone and make the best possible decision based on the testimony presented and all applicable approval criteria established in the Nashua Revised Ordinances for conditional, special use permits, site plans and subdivisions. Thank you for your interest and courteous attention. Please turn off your cell phones and pagers at this time.

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

None

**OLD BUSINESS - SUBDIVISION PLANS**

None

**OLD BUSINESS - SITE PLANS**

1. **Nashua Baptist Church (Owner) - Application and acceptance of proposed amendment to Site Plan #NR1428 to allow construction of a 3,137 square foot addition to existing church. Property is located at 555 Broad Street. Sheet F, Lot 859, "Zoned "R-9" Suburban Residence. Ward 1. (Tabled from the October 15, 2009 Meeting)**

**MOTION** by Alderman LaRose to remove from the table.

**SECONDED** by Mr. Canaway

**MOTION CARRIED UNANIMOUSLY**

Both Mrs. Wilbert and Mr. Jurewicz said for the record that although they weren't at the last meeting they did review the staff report and the minutes and are prepared to participate and vote.

Mrs. Overby was at the last meeting but did not participate.

Mr. Taylor said in your packet you do have a memorandum dated November 5, 2009 from myself. Attached to that are several items. There is a revised plan set submitted by Mr. Maynard. An e-mail is attached from Fire Marshal Richard Wood. You will recall the occupancy load of the building was an issue at the last meeting. In the e-mail Fire Marshal agrees with the occupancy load that is reflected on the plan and the parking that is provided on the site does meet the Land Use Code based on the maximum occupancy load. Also in your packet you will find a memo from Jon Lebrun regarding stormwater management. We had a meeting with Mr. Maynard on this

issue. We had reached some resolution but not complete resolution and that is reflected in the memo and Jon Lebrun's letter. In your packet there was a discussion regarding the sidewalk. There is a section of road frontage about 150 linear that is missing a sidewalk. There was testimony at the last meeting that the trees were one of the issues of putting in the sidewalk. We have a memo and e-mail from Nick Caggiano, City Tree Warden, as well as Chris Sullivan who is Planning Staff Landscape Expert basically questioning the value of the trees. There is also a photo sheet of the trees. Finally there is an aerial photograph showing the missing section of sidewalk.

Mr. Slivinski said it looks like nothing has been changed.

Mr. Taylor said there are signs that are shown on the detailed sheet that show that 5 aisle on the Hollis side of the property designated as a fire lane. There is also the occupancy load on the first sheet of the site plan reflects the maximum occupancy based on the building code and life safety code. Those changes have been made to satisfy of the fire marshal.

Richard Maynard, Maynard & Paquette

Mr. Maynard said with regards to occupancy and parking, the fire marshal does a life safety code type calculation from which he decides methods of egress and emergency exits from the building. He had some concerns regarding the number. He now agrees that the maximum potential occupancy in the entire building would be 737 people. The congregates of this church are 200 or less. If we go into our code for parking requirements, parking requirements is 1 space per 1.15 people or 1 space for 8 people. No matter what numbers you use the parking provided, the 115 spaces, meet all those requirements. The fire marshal had no further problems with that. One of the concerns of the fire marshal was that people would tend to park improperly and he is concerned about keeping this lane open. We have added a fire lane and no parking signs. Fire lane signs are enforceable on private property. The next thing is the decision of the Planning Board with regard to the sidewalk in two respects. On Broad Street we have a full sidewalk on the other side of the street and we have a sidewalk up to this point up to a crosswalk with a handicap ramp and a section with no sidewalk of approximately 150 feet. That is the first question to the board, is a sidewalk necessary on both sides on Broad Street. The next point to be made if you are going to require that sidewalk then you have to understand these 3 large trees have to come down. As you saw in some of the memos there is somewhat of a discussion about what condition they are, what is there usefully

life, whether they are vital. That is your choice as a Board, take the trees down, build a sidewalk, or it is not necessary. There are several waivers. The waiver for the parking is no longer necessary because of the way it is (inaudible). As you folks know it is a steel building. We need two waivers, one for the 30 foot addition. We want to match the existing materials. Because the ordinance only allows masonry type materials we need a waiver. The ordinance requires the all buildings to have a doorway facing the street. Our entrance is a side entry. We need a waiver for that. This is a redevelopment site. We are adding 30 feet on to a previously existing building and site that was approved by the Planning Board over 20 years ago. One of the waivers has to do with landscaping that applies to the new addition. By today's code the existing building requires more landscaping which has not been provided. The next property over is a long driveway with a house to the rear. There is already a heavy line of trees and brush on our property. There is also a solid fence all the way up to the back. In my judgment we have satisfied the buffer but it is a subjective matter.

Mr. Dufour asked if that which you just spoke to is part of the landscape waiver you are looking for?

Mr. Maynard said correct. We are adding some 70 watt bulbs at the doorways which does not result in any lighting glare or going over the property line and we are just asking for a technical waiver of the lighting plan that shows all the lighting contours. The next items has to do with stormwater. This is one of the bigger issues here. We have a redevelopment site. The ordinance doesn't define very well what redevelopment means. It doesn't tell you if you are going to add 1%, 40%, or redoing it completely, it doesn't define what a redevelopment means. In this case we are adding on a 30 foot addition or by footprint it is a 40% addition. We have a pre-existing parking lot. If we had to retrofit everything 100% to meet today's requirements it means all the runoff from the parking lots must be treated. Usually that is not that big of a deal. In this case the runoff is directed to the middle of the parking lot, not to the edges and run into a series of catch basin pipelines down to the street. In this case by added hooded catch basins before it leaves the site it provides treatment and prevents it from leaving the site. With regard to stormwater we are also suppose to treat roof drainage. The question becomes should we be required to go back and retrofit an existing building with some kind of drainage system to be able to direct it to a treatment system. In this case it is extremely difficult. What we have proposed is along the drip line of the roof there is a stone infiltration trench with a pipe in it so that what doesn't

recharge into the ground will overflow into our shallow stormwater management basin. The runoff from this new area will run off into this area. The question becomes do we have to go back and treat everything that exists today regardless of the addition or do we have to only handle what is new on the site. Is what previously existed vested and grandfathered? Or do we have to go back and redo our entire pre-existing site so that all of it now meets the code not just the addition? In this case that is substantially a lot of work and will kill the project. If we have to do something to treat the parking lot that is tens of thousands of dollars to get that done. If we have to treat the roof drainage, all the landscaping that screens the front of the building all will have to be removed. With regards to roof drainage it is not clear. Our ordinance thinks the roof drainage is a terrible pollutant. In reality all that is on the roof is what comes out of the air. Our stormwater management program one of the principle things is treatment of runoff. Our runoff from the roof is minimal to no pollutant load in that regard. The pollutant load from any paved surface is proportional to the amount of use and traffic that it gets. This is principally a once a week operation for a few hours on Sunday. We have provided some treatment and we have provided treatment for the addition. The question to the Board is that sufficient with regard to a redevelopment site.

Mr. Dufour asked how many hooded catch basins.

Mr. Maynard said one on each outlet. You put it on the last pipe that leaves the site so it is contained.

Mr. Dufour asked why you wouldn't put it on the other catch basins.

Mr. Maynard said because it is redundant. If you trap it before it leaves the site, what good does it do? The pipe leaves the site. There are 2 different drainage systems. Those 2 are providing the treatment for all of the parking lot. The other item is the treatment for the runoff from the building roof and the new entrance area, retention and recharge basin.

Mr. Dufour said the only thing that is different from this plan from the last time as far as stormwater treatment are the 2 hoods?

Mr. Maynard said and the pipe system.

Mr. Dufour said lets talk about the sidewalk. If the Board determines that in the interest of safety and finishing the

NCPB

November 5, 2009

Page 7

sidewalk system in that neighborhood, you are saying we have to determine we want the trees removed first. Is that your position?

Mr. Maynard said that is the consideration.

Mr. Dufour said wouldn't another consideration be the applicant grant us an easement so that we can bring those sidewalks to the high side of those trees?

Mr. Maynard said that is a possibility, it would be 4 feet.

Mr. Dufour said he went back out there.

Mr. Maynard you would have to bring it up somewhere in the vicinity of the setback line, come across and come back down. It is a rise of 3 to 4 feet. It is highly unlikely that it will ever be used. It is highly unlikely it will be used as you heard in testimony from the neighbors. There is very little pedestrian traffic at this end of the city near the Hollis line. It is still your determination. The argument is from some of the city staff is that the trees aren't worth saving.

Mr. Dufour said one option would be to put the sidewalk on the high side.

Mr. Maynard said I don't think that is a very viable option. It is possible, but not viable. You end up walking up hill. Who is going to do that?

Mr. Dufour said there are 2 times on this project that you allude to what is not going to happen.

Mr. Maynard said in my opinion it is not going to happen.

Mr. Dufour said we are charged with approving this plan. Granted it is a redevelopment plan, which it is a modification of the existing site. We still have to make that as much in compliance with our current regulations as possible. What happens many times with a site like this there are compromises along the way but a consideration is it is going to cost tens of thousands of dollars and it is a dead deal, that is not our consideration. I want the people from the church to hear that. That is not our primary consideration. So what can we do? We have sidewalk? I feel the sidewalk should go in. There is a lot of compromises here. For 150 feet of sidewalk, if that is the only thing we are stuck on, I am not sure that's it. Obviously the waivers that you request, the lighting, the building design, we are not unreasonable. We are not

going to request the whole building be redesigned. The stormwater management, I don't know if that fixes it. Do you feel fixes any stormwater concerns we may have as a result of this addition?

Mr. Maynard said 100% of the addition. We are slightly improving what already exists.

Mr. Dufour said if we had a problem out there, we would have it today. If you are handling 100% of the new addition.

Mr. Maynard said you wouldn't know if you had a problem there today. The problem is pollutant load, not volume of water, not peak flow of water. The consideration only right now has to do with pollutant load. Are there sufficient pollutants coming from this site that you need to do more than what is there today? That is why I made the point about there is very little if any that come off the roof and this is a low traffic parking lot. It's not volume and its not peak rate. There are no stormwater problems out there.

Mrs. Wilbert said with the repeated mantra it is a redevelopment of the site. A lot of what we do today on this Board is redevelopment of a site and certainly we are not unreasonable. I don't think this Board has ever been flat out unreasonable. If you want to change your site plan that is the time that this Board and City has the authority to bring you up to what is the current code. It is like saying you don't have (inaudible).

Mr. Maynard said no. That is life safety. That is a whole different issue.

Mrs. Wilbert said I read the minutes from the last meeting and the whole argument was life safety and you took the position and you are free to take it and I am not arguing with whether or not you took the position, but that it wasn't a life safety code. I am just suggesting that when you amend a site plan that is the one and the only time that this Board and this City gets to look at what you got there and say well we are smarter now then we were 20 years ago when you did this and this is our code today and we need you to bring it up to our code today. That is my only comment there. I would really like to hear from the City Engineer about the pollutant issues.

Mr. Dookran said I think the discussion started last time as to what does the code require in terms of redevelopment. We heard from Engineer Maynard that it should be what can be reasonably expected. We heard from Matt that the code probably read the

NCPB

November 5, 2009

Page 9

maximum extent possible. We do have presented tonight an opinion from Steve Bennett that it should be...

Mr. Taylor said reasonable and proportionate.

Mr. Dookran said I read it as it is left up to us. I can say what is reasonable and proportionate tonight is well you are increasing your building size by 40% therefore I am expecting 40% improvement in your drainage. But that may not be reasonable. I think we should start now, today to fix problems of the past. We should have started yesterday but in any event we shouldn't make an example of any applicant. That isn't fair. Yes there is a good attempt here to do the infiltration that Mr. Maynard proposes through I believe a rain garden.

Mr. Maynard said it is an open basin. A standard open retention basin with grass area.

Mr. Dookran asked with special plants?

Mr. Maynard said it doesn't need any special plants in this particular case.

Mr. Dookran said he has infiltration trenches. I wanted to ask you about those. Those are right along the foundation of the building?

Mr. Maynard said they are at the drip line of the roof. There is only about a 6 inch to foot overhang of the roof.

Mr. Dookran said you propose that. People like that, having infiltration right in the foundation?

Mr. Maynard said first of all this is below the first floor of the building on this particular and that is why there is a pipe in there to carry it away. I have talked with the architect and contractor and they agree it was ok to do.

Mr. Dookran said I believe that is a good attempt to deal with your roof runoff.

Mr. Maynard said when you do this trench over here they are going to waterproof coat the foundation so it will be water tight.

Mr. Dookran said my knowledge of the coating is it breaks down over years.

Mr. Maynard said if you do the right coating they last 30 to 40 years.

Mr. Dookran said in terms of the parking areas, even though it is not loaded heavily today, our expectation that could change. Your pastor said last time that he would welcome any increased attendance. Any institution would do that. You are proposing hoods on 2 catch basins as they leave the driveways. My opinion is that just 2 wouldn't be adequate for a lot this big. You have a lot of runoff coming off today and what I know about hoods and other types of treatments is if you don't maintain them frequently they just wouldn't work so what you will have the oils, whatever, build up and if you have a huge storm and everything gets flushed down to the City's system. The best thing to do is distribute the pollutant loading in as many areas as possible. I don't know what your frequency of maintenance is because I haven't seen your maintenance plan, if it is once every 6 months then at least there will be expectations that they would function properly within that 6 month period. I propose that you look at some other catch basins to put in, either sand separators, or whatever you are using for your catch basin treatments.

Mr. Maynard said he wouldn't be opposed to adding 2 or 4 more. That is not a big item in this case. I don't think it is needed, but I am not opposed either.

Mr. Dufour asked where would those be located.

Mr. Maynard said further up. This pipeline runs down here so you would end up with another one here.

Mr. Dufour asked if that were the motion you wouldn't be opposed to working that out with DPW?

Mr. Maynard said he had no problem.

Mr. Taylor said that when staff met with Mr. Maynard the understanding was that all the catch basins would have hoods. I believe there are 6 on the site. Also you will note in Jon Lebrun's letter he has consistently recommended a rain garden as Engineer Dookran had alluded to which basically involves having wetland type plants in the infiltration basin. Those were really the 2 items which didn't seem like significant items as part of this redevelopment.

Mr. Maynard said in this particular situation don't do anything but provide a decoration function. That is all they are. They do

not provide any treatment and they are not needed here. It is an unnecessary expense. It is a fancy catch word, rain garden. It is not the plantings which are the rain garden, it is the infiltration system with the stones and sand.

Mrs. Wilbert said this almost brings us to the cusp of the discussion that we had earlier this summer about, we have one expert here and he is telling us something and we don't have our own expert telling us. Now, Jon Lebrun is the Deputy City Engineer and I am looking at his letter and he implies at least that he wants a rain garden. That is not my expertise but I am not going to rely on the applicant's expertise and I may have to invoke our right to have the applicant pay for an expert for us.

Mr. Maynard said why doesn't City Engineer Dookran be the tie-breaker?

Mr. Dufour said I think that Jon Lebrun typically reviews these and we get our guidance from him as part of his normal review.

Mr. Maynard asked if he has ever explained to you what this so called rain garden actually does?

Mrs. Overby said currently if you have a property that abuts wetlands and you remove wetland plantings you enable that area to then be absorbent and or flooding on your property. These plantings to add to the absorption of the area and that is why they are proposed.

Mr. Dufour asked the plantings in the rain garden?

Mrs. Overby said yes.

Mr. Dookran said the fact is Jon Lebrun works under my direction. However I don't get involved in the technical review. Simply I don't have the time to do that. I am listening to Mr. Maynard and I agree with him that based on what he has presented here as the runoff gets to the location that he proposes, based on that, if it is different I would have to change my opinion, the runoff that is getting to that location is roof runoff, practically clean. It appears that his parking lot runoff is getting to the catch basins which he intends to treat partially by hoods and so on. The purpose of the rain garden to my knowledge is to use the plants for uptake and it helps a little bit of stormwater but it is also mostly helps in the removal of pollutants. If the roof runoff doesn't have the pollutants like Mr. Maynard claims we don't necessarily need a rain garden to treat the roof runoff. If we

NCPB

November 5, 2009

Page 12

were directing parking lot water to this stormwater area then I think it would be mandatory for us to require something like a rain garden.

Mr. Dufour said I am still hung up on the sidewalk.

Mrs. Wilbert said I share your opinion with regard to the sidewalk particularly because it is between 2 paved driveways. It occurs to me even though I understand from looking at the plan and going out to the site the main egress is going to be on the east side and that there is sidewalk up to essentially that point on the east side I don't understand why we would leave it blank. I just don't understand why we would. It stops at a crosswalk and it should go down as far as the next drive. With regard to the trees, we got 2 different opinions here from 2 people who should know and they say that the 2 outer trees are essentially dying or dead and are not worth saving and perhaps the only tree worth saving is the inner tree, perhaps but they not, I would think the tree warden, he ranks them as fair, average and poor. I am not sure they are worth keeping and I think the sidewalk is something that is worth keeping. We need to put it in.

Mrs. Corcoran said I have heard people say there are no pedestrians walking there. I am a walker and I have to tell you when you get off the sidewalk and you have to walk in the street that is why we don't walk in certain areas because you are putting pedestrians like myself at risk. So I believe we should have the sidewalk put in.

Alderman LaRose said I concur. We have been putting in sidewalks where ever we can I think in this case we should give them the option of either taking the trees down or going around the trees to put in the sidewalk, which ever they prefer to do. It may be more beneficial for them to take the trees down since they don't seem to be in such great shape. It is probably more cost effective for them to take the trees down and continue the sidewalk.

Mr. Maynard said those trees belong to the city, they are in the right-of-way.

Mrs. Wilbert said and this City doesn't seem to be particularly concerned about those trees.

Mr. Dufour said there has be to be a mechanism in place, we need an easement to move the sidewalk up.

NCPB

November 5, 2009

Page 13

Alderman LaRose said that is true we would need an easement but if they don't want to give it to us we can't force them into giving an easement.

Mr. Slivinski said when we were here the first time on this case it seems to me we spent 85% of our time with the fire chief talking about the safety and the parking. I asked about what has changed. The only thing that seems to me that has changed is what they had agreed to do and that is they are going to designate the fire lane and stuff like that and we have made a new calculation. Is that the only thing we have done in that new calculation now that it is safe? I thought it was safe the first time, but what happened there?

Mr. Maynard said the thinking of the fire marshal to some degree. The fire marshal is very concerned about the occupancy of a building with regard to egress and alarms and things like that. He assumed that my number with regard to congregates for this church had to do with occupancy. He was concerned that wasn't correct and it was never meant to be. He went through a large exercise to demonstrate some day, some where with some possible use, not this one, this building could possibly have if all the rooms were filled some 700 and odd...

Mr. Slivinski said I thought it was 500.

Mr. Maynard said he said 500, our architect went through the life safety code and provided him with an accurate number and it went up to 700 and something. That is life safety code. With regard to parking, there is a whole different method of considerations. You do a parking lot for what is reasonably expected in the foreseeable future and not for something that is a lifetime and doesn't include all kinds of other types of uses. This is a church and will be a church until this Board allows a change of use to something else. Because it is in a residential neighborhood it would require some kind of variance to be something other than a church or single family house. The likelihood of some other use...

Mr. Slivinski said so you were vindicated on your calculations.

Mr. Maynard said to some degree. It was a misunderstanding. The parking lot has never been full over the past 5 years. That is the prime indication, no matter what I say or what they estimate.

Mr. Slivinski said the trees given their condition ought to be removed. If they were healthy trees that would be a different situation. New trees grow back. My vote would be to make the

sidewalk straight and take the trees out. I leave it up to the city engineer on the drainage. His feeling might be that if we add 2 to 4 more catch basins it could help out. The applicant made a strong case that it is not a heavily used parking lot. It is used just once a week. It is not like a retail area where people are coming in all the time. If the city engineer thinks that might help the problem they have certainly solved the problem with the new addition anyhow.

Mrs. Overby said she has been a neighbor of the church for 20 years. They have only hovered around 200 as their records indicate. I think their requests are valid.

Mrs. Wilbert said she would like us to take note of Planner Sullivan's letter that indicates that if the trees are removed the applicant should plant a minimum of 2 to 3 new 2-½ caliper trees located away from Broad Street.

Mr. Dufour said stipulation number 5 is no longer needed. We have talked about adding 4 catch basins. Maybe we can work that in with stipulation number 8. We have talked about installing a sidewalk.

Mrs. Wilbert said I think that is under the waiver request.

Mr. Taylor said in this instance actually the sidewalk isn't a waiver because it is discretionary.

Mr. Dufour said we talked about the marking of the fire lanes. It is on the plan proposed to us this evening. There is some difference in how they are handling the stormwater management and that language may not be reflected in this original staff report.

Mrs. Wilbert said I am wondering if in waiver request number 4 we can fill the hoods in there. The request for waiver is granted provided that 4 additional hoods are added.

**MOTION** by Mrs. Wilbert to approve Old Business Site Plans #1. It conforms to 190-146(D) with the following stipulations and waivers:

1. The request for a waiver from 190-88(E) and 190-275, which requires that the applicant submit a lighting plan, are granted.
2. The request for a waiver from 190-172(D), which sets specific requirements for building materials, are granted.
3. The request for a waiver from 190-172(E), which establishes design standards for entryways, are granted.

4. The request for a waiver from 190-215(D&E), which set specific requirements for stormwater management is granted provided that the plan is amended to reflect 4 additional hoods on the catch basins be provided.
5. The request for a waiver of Article XXVII, which set specific landscape requirements for site plans, is granted provided that the plan reflects 3 new 2 ½ inch caliper trees as recommended by staff.
6. Prior to the issuance of a building permit, minor drafting changes shall be made to the plan.
7. Prior to the issuance of a certificate of occupancy, all site work shall be completed.
8. Prior to the issuance of a building permit, the stormwater operation and maintenance plan shall be recorded.
9. The sidewalk will be constructed to the recommendations of the Public Works Department and to be completed prior to the certificate of occupancy.

**SECONDED** by Alderman LaRose

**MOTION CARRIED UNANIMOUSLY**

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

None

**NEW BUSINESS - SUBDIVISION PLANS**

None

**NEW BUSINESS - SITE PLANS**

2. **Dicker-Warmington Properties (Owner) - Application and acceptance of proposed amendment to Site Plan #NR1703 to permit a change of use from retail sales to sales-secondhand, with associated site improvements. Property is located at 224 Daniel Webster Highway. Sheet A, Lot 107. Zoned HB-Highway Business. Ward 8.**

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

**SECONDED** by Mr. Jurewicz

**MOTION CARRIED UNANIMOUSLY**

Brian Pratt, CLD Consulting Engineers

Mr. Pratt said he is representing the applicant. The site is located at 224 Daniel Webster Highway. It is the Circuit City site located between Best Buy and Applebee's. The purpose of the site plan is to convert the Circuit City to a Savers. Savers is a second hand store but more of an upscale second hand store. They sell clothing, books, house ware, shoes and seasonal merchandise. They do accept donations at the site. They process and sell only the highest quality goods. More of an upscale Salvation Army. There are a few minor changes to the site but for the most part is it going to stay the same. The changes to the site were proposed to meet the current regulations and the applicant's needs for circulation and access. The largest change will be the building façade and the sign. On the board is a rendering of the colors of the new site will look like. The building will be painted neutral earth tones and the signage on the building will be changed. They will also change the large sign by the street. It will say Savers. Other changes will be the addition of a loading dock in the place where there is a trash compactor. It is already laid out for a loading dock. We will be relocating that trash compactor to the side of the building. Because of the relocation we need to meet the circulation requirements around the compactor so we are just blacking out some of the parking spaces. There are 12 parking spaces shown on the north side of the plan that will be blacked out and we will have some re-stripping to direct traffic around. The last change is a connection to the Applebee's parking lot. Zoning regulations require that interconnecting parking lots for single tenant facilities connect to each other for circulation. We are connecting to the stub on the Applebee's parking lot. Basically just adding some flares, tying the pavement together and adding some signage to direct traffic up towards the Daniel Webster Highway to make sure that people don't go behind the building. The construction of this connection will allow traffic all the way from Poisson Avenue to Spit Brook. Both of those, as listed in the staff report are signalized intersections. We need the Planning Board to accept the easement because the easement will be granted to the city. The last thing we are adding is an operation and maintenance plan for the stormwater management. That will also be an easement to the city which will allow the city to come in and inspect and make sure the site is keeping up with their operation and maintenance of that stormwater.

Mr. Dufour asked if that is on the plan.

Mr. Taylor said it is reflected on the plan.

Mr. Pratt said he has reviewed the staff report and the recommendations and agrees with the recommendations of city staff.

Mr. Dufour asked if we can talk about the drop off for clothing.

Mr. Pratt said Circuit City currently had a merchandise pick up area. It is shown on the left side of the plan. It says Community Donation Center. There is a separate door. The inside of the building will be reconfigured.

Mr. Dufour asked if anything will be left outside?

Mr. Pratt said no. I don't believe there are any proposed boxes.

Mr. Dufour asked if people are going to leave boxes of merchandise outside to be picked up.

Mr. Pratt said they shouldn't. The goal is to have people come in and drop it off at the counter.

Mr. Dufour asked on the loading dock itself that is just for internal, trucks and deliveries?

Mr. Pratt said correct. The addition of the second loading dock is for a bale trailer where they load up the goods as they sort them and they ship them off to one of their warehouses. And then the next one is a local truck for deliveries to local charities.

Mr. Canaway asked if the applicant would be opposed to putting signage that states not to drop stuff off after hours.

Mr. Pratt said sure. That would be basically a small metal sign. I think they would be ok with that.

Mr. Dufour asked where there is one loading dock now, there is going to be two?

Mr. Pratt said there are going to be two loading docks. They are just going to park a larger truck on one of them and a smaller truck will come and go on the other one.

Mr. Dufour asked if the second one that is going to be added is it going to leave as it is filled or does it stay there and serves as a workstation.

Mr. Pratt said he wasn't sure.

Mr. Dufour said someone is going to have to answer that because we have a situation in another location where there is moss growing around the wheels of that second one and that is not acceptable.

Mr. Pratt said I don't believe it is permanent. They just fill it up, it leaves, a new one comes, they fill it up, it leaves.

Mr. Dufour said if that is all you are representing that it how we are going to expect it.

Mr. Pratt said I believe that is the case.

Mr. Dufour asked if there is someone from Savers that can speak to that.

Mr. Pratt said I don't believe so. The applicant is based out of Seattle and the owner is based out of California. I can call them.

Mr. Dufour said as long as the minutes reflect that we are not looking at a permanent warehouse built to the side of this building, that will not be acceptable.

Mr. Pratt said he is fairly confident that it is not a permanent trailer. I believe it just stays there for a few days until they fill it up and I believe it leaves and a new one comes.

Mr. Slivinski asked if the merchandise is donated. In theory like a Salvation Army place they come in at 3 am in the morning and unload stuff. They are just going to leave it there. It is not like a consignment shop where an appointment is made. People donate this stuff.

Mr. Pratt said yes it is all donated. I do have a little bit of background information about Savers that I got from their website. They have 220 stores world wide in USA, Canada, and Australia. They started in 1954. Since 1954 they have donated over a billion dollars to charity. Last year, 2008, they donated \$117 million. With their local facilities they do support local charities in the area that the store is located in.

Mr. Dufour asked if they have picked one.

Mr. Pratt said I don't know. They sell the highest quality items they receive in the store. The rest of the items that are not up

NCPB

November 5, 2009

Page 19

to their high quality they donate to local charities or developing nations. This was on their website.

Mr. Dookran said one of your neighbor's is Best Buy. Are you prepared for the holiday shopping season in regards to parking?

Mr. Pratt said we have done a parking calculation and we have more then enough. Are you saying Best Buy's parking is going to spill over to us? We have plenty for us. I understand it gets pretty busy down there.

Mr. Dookran said you might have to have some kind of arrangement. My understanding is that because Circuit City and Best Buy had comparable items that they sold they had agreements among themselves. You might have to be prepared to come up with such an agreement or parking restrictions.

Mrs. Overby asked if you are approaching the property from Applebee's in the new entrance there is no way to verify this right now is the site. When you are making that turn would you be able to see? Do they have clearance to see when they are making that turn if someone was approaching that property it is hard to check that out now because it is nonexistent. The sighting I am worried about.

Mr. Taylor asked the cross access from Applebee's? Any traffic that would be going down there unless it was truck traffic going to the loading dock most likely would be turning on that cross-access and there is signage proposed for that but I have gone out and looked and there is a decent line of sight there. There are some issues on the Applebee's side. They are using a dumpster located on their side of the cross access. The city is going to have to work out that issue. The Applebee's cross-access is constructed and this would connect it.

Mrs. Wilbert said my last round on this board there were no cross-access and it is really incredible that we have been able to piece these things together. The link that is missing is the difference between Best Buy and Circuit City because of the elevation.

Mr. Dufour said they are connected.

Mrs. Wilbert said but that was the hard one and I remember it well. I am delighted that you will be able to continue that. Anything that keeps people interconnecting between these single sites without having to go on and off Daniel Webster South is an incredible advantage to us. It seems to me this is a reasonable

NCPB

November 5, 2009

Page 20

re-use of something that was going to be sitting there empty for a long, long time.

Mr. Taylor said why the applicant is before the board is specifically for that cross-access. In order for the city to accept the easement for cross-access it has to come to the planning board.

Mrs. Overby said that particular site for it looks narrow to me. As I approach it I drove behind the building and approached the site so the turn would have been on my left and I thought it looked narrow. I wasn't sure if I had enough distance so that is why I brought it up. I thought it looked tight down there.

Mr. Taylor said it is a little tight to the building but it will provide cross-access which is a benefit to the city.

Mr. Canaway asked if you have thought through site flow if somebody is going to cut across the site if somebody is going to go around the back side of the building. Is it safe?

Mr. Pratt said it should be. There are adequate driving lanes for two-way traffic around the building.

Mr. Canaway asked what about lighting?

Mr. Pratt said I believe there is lighting all around the building. If you look at the rendering of the façade you can see in the background lighting that pop up around the building. We are proposing to put some signs that when cars are coming from Applebee's they are discouraged to take a right turn around the back of the building. As vehicles approach from the Daniel Webster Highway going down towards the Applebee's connection there is another sign that discourages people from going around that building. I don't have any of those signs going around the north side of the building.

Mr. Jurewicz said I think Mr. Slivinski had a pretty good point or concern about drop offs occurring after hours. I don't know if any of the other Savers have mechanisms built within the exterior walls. I think his concern is we would have drop offs after hours and it would be unsightly.

Mr. Pratt said I am not aware.

Mr. Slivinski said it would have been nice to have somebody from the store here address that problem. Our experience has been

NCPB

November 5, 2009

Page 21

people are going to drop stuff off there 24 hours a day. It is going to be on the dock or where it is most convenient.

Mr. Pratt said I don't think they would be opposed to a box.

Mr. Dufour said we would have to show it on the plan somewhere.

Mrs. Wilbert said I am not sure a box is a good idea because it again I am thinking of sites around town the box is full and the stuff is sitting in array. I am pleased that you would leave signs out there but I think what Mr. Jurewicz is suggesting is a way to put things in the building.

Mr. Dufour said that is awful dangerous.

Mrs. Wilbert said it is awfully dangerous. I am thinking that the best thing we could possibly do is signage.

Mr. Dufour said we can stipulate it and they will have to come back if there is an issue and tell us how they are going to address that problem.

Mrs. Overby asked if you could please address the snow removal or snow storage on the site.

Mr. Pratt said he didn't have specific snow storage areas on the plan. Around the side and back there is plenty of area to push to snow. Same thing in the front parking lot. There is a large island and some landscaped areas on the side. I can add a note that says if snow storage becomes full it will be removed from the site if that is what you like.

Mrs. Overby said I probably wouldn't like to see snow storage in the parking lot area.

Mr. Pratt said I am saying off into the landscaped areas. Like everyone else does it.

Mrs. Corcoran said am I correct in talking 18 wheelers coming through this parking lot.

Mr. Pratt said there will be some for the bale trailers but for the most part the deliveries will be smaller. The local deliveries will be box trucks.

Mrs. Corcoran said I am so familiar with this area and I think it is going to be a nightmare.

NCPB

November 5, 2009

Page 22

Mr. Dufour asked if it is more of a nightmare than the delivery trucks that Best Buy would get?

Mrs. Corcoran said I am just thinking about this cut through. Knowing how the traffic is and knowing how people of Nashua, myself including drive and this is going to be such a convenience.

Mr. Dufour said it is probably going to be one of our most challenging cross access easements. I think the delivery trucks have to come in through their main entrance. That is the only way they can get in. I am assuming that the trucks that they get are their own trucks. I don't think you get a delivery of used merchandise from 18 different sources.

Mr. Pratt said that is correct. I did speak to them about their trucking and they receive most deliveries. They receive the occasional 18 wheeler. I checked the circulation and 18 wheelers have no problem making it around the building. It will be limited truck traffic, probably less than Circuit City received.

Mr. Slivinski asked where their nearest store is.

Mr. Pratt said I believe it is in Worcester.

Mr. Dufour said they have one in Danvers.

Mr. Canaway said the drop off still concerns me. The sign is a positive. The Salvation Army has signs on West Hollis Street. I am going to drive by it on my way home tonight and there will probably be a pile of stuff in front of the boxes. It would be interesting to hear from one of these other stores how they deal with it. It might be worth tabling it until we find out.

Mr. Dufour said I think we should keep the conversation going and then decide.

Alderman LaRose asked if they have a regional representative in the area.

Mr. Dufour said you would think so. I thought they would have sent someone up.

Mr. Dookran said I think the problem we experience at the other locations in Nashua is because they have boxes. People go there with the intention of putting stuff in there and either your stuff can't get in or it is full and you leave it. If we didn't those boxes people wouldn't be encouraged to leave anything after hours.

Alderman LaRose said probably with the Salvation Army is they don't pick up enough.

**SPEAKING OPPOSITION OR WITH 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.

Mr. Dufour said I am very familiar with Savers and have been a customer. As a member of this Board I am charged with protecting the city's assets. I can't tell you how disappointed I am that we are putting a used merchandise store in the crown jewel of this city that generates a lot of revenue for the city. If our ordinances approve it we usually have to ok it. That is where I stand with this but it is really disappointing. I have been to the Danvers store on more then one occasion and what I see is a clean operation. That is as upscale as it gets. Your upscale suite is probably \$11. Racks of shoes. There is no dimension to this. You walk in and it is nothing but racks. Off to the side there are a few book cases. There are some used kitchen appliances in the corner, an old computer. They have a seasonal department. They have a separate entrance and it is a room that is not open to the store. There is a door that accesses the main part of the store or their backroom. So someone must receive them. I have never noticed a drop off. That concerns me. If you go by Sears at the Pheasant Lane Mall they have a tire tractor storage compactor that has been there for years. It is 6 inches into the ground and there is moss going around it. I think someone should be here to address those issues, the drop off, the add on bin. Short of them not having the right answers I am obligated to vote for it. The ordinance allows it. They are just changing the use. It is a permitted use. There are a lot of businesses in the south end that have millions of dollars of investment and in the middle of it we are putting in a used clothing store. To me that is embarrassing.

Mrs. Wilbert said I don't think we have any business caring about what it is as long as it under the ordinance allowed.

NCPB

November 5, 2009

Page 24

Mr. Dufour said I spoke to that from the perspective that I felt it was our obligation on this board to protect city assets and I view that whole south end as city assets.

Mrs. Wilbert said it could be given this economy and the number of empty of store fronts it could be many years before it is used for anything and it will at least transformed from an empty Circuit City to a use.

Mr. Dufour said we can't deny it unless they can't comply with the loading dock and the drop off situation.

Mr. Dookran said whether we are embarrassed is yet to be scene. If the embarrassment factor was high we would have people standing there today.

Mr. Dufour said I don't think they have any clue what's going in.

Ms.Overby said what about the businesses around here? Do they know what is going on?

Mr. Dufour said it is much like this. Their home offices are in Seattle, Washington. The message never trickles in. Even if the businesses were in here and sounded much like I just did, the ordinance allows and our hands are tied.

Mr. Slivinski said I agree with you but what goes into a facility like that is not our concern. What our concern is that it is maintained well. I would vote to either table it or deny it. I have no assurance on how they are going to handle the merchandise and I think it is our responsibility to make sure we are confident that the merchandise is going to be handled in a proper way.

Mr. Dufour said it probably would be more appropriate if someone were to come in to the next meeting and explain how that second loading is going to function. How are the overnight drop offs going to be controlled? Is there any lighting? We don't have too many of those answers.

Mr. Taylor said the engineer did just rely to me that he did talk to someone from Savers.

**MOTION** by Mr. Slivinski to re-enter the public hearing for the purpose of listening to the applicant's engineer.

**SECONDED** by Mr. Jurewicz

**MOTION CARRIED UNANIMOUSLY**

Mr. Pratt said he just made a phone call to one of the company's reps. The bale trailer is not permanent. Once it fills up they take it out and bring in a new one in. It will not be growing any moss and it is not permanent. As far as the after hour drop offs, they use to have their drop offs in the back of the building and they did have a problem with people leaving things. They have been moving all their drop offs to the front of the building and they do have signs that say No Illegal Dumping, No After Hour Drop Offs. They do have multiple signs and have cameras and do prosecute any body that drops off anything illegal.

Mr. Dufour asked where would the drop off be so if it becomes unsightly so we are not looking at it from the road. Are they putting boxes outside?

Mr. Pratt said no, they discourage after hour drop offs with signs and cameras. If you need me to add more lighting I would be comfortable with that. I believe there is adequate lighting. The original site plan was approved in 93. It appears the site has adequate lighting. I am not aware of any existing issues with the Circuit City site.

Mr. Jurewicz said if I am not mistaken you did say when you talked to the rep the other stores had drop off areas in the back of the building?

Mr. Pratt said they use to and they moved them.

Mr. Jurewicz said they moved them to the front of the building?

Mr. Pratt said and he said they virtually had illegal after hours dumping almost completely stopped.

Mr. Jurewicz said are these like dumpsters in the back of the building that they moved to the front of the building?

Mr. Pratt said no I believe it is similar situation where they had a separate entrance.

Mr. Jurewicz said they changed how they coordinated their drop offs?

Mr. Pratt said yes to address that specific issue where people were leaving illegal stuff. He said it is almost gone now.

Mrs. Wilbert said it occurs to me that we can address the concerns with lighting with a stipulation that says to the satisfaction of staff. The issue of the drop offs and whether it is unsightly or not I don't think is addressable by a stipulation except that we do know that we do have codes that the city codes could re-use to enforce an unsightly messy drop off. I am not sure and I would ask staff if we can stipulate that there be security cameras as he has indicated they have used in other places. Can we add that to the plan?

Mr. Taylor said you could certainly add that.

Mrs. Wilbert said we could make a stipulation that says there are functioning security cameras added to the exterior of the building at the discretion of staff.

Mr. Taylor said I think that would be appropriate.

Mr. Pratt said they won't want an unsightly drop off area either. The first employees in would probably remove it because that is going to hurt their business. We can add a stipulation that any accumulated donations would be removed first thing in the morning.

Alderman LaRose said unlike some other places where they drop off stuff and just leave it there and the reason it stay there so long is nobody picks it up everyday. It just accumulates. It appears to me what would happen here is if somebody left something there during the night the next morning that stuff would disappear. It would be brought into the store and taken care of in the same manner that if I brought something there during regular hours and left it in the proper place.

Mrs. Wilbert said I have to ask why the Salvation Army employees don't go out there and clean it up.

Alderman LaRose said it is because they don't come often enough.

Mr. Dufour said a lot of stuff that gets put in the bins gets picked up by truck. It doesn't even do in the building. That is probably the case here too because I am sure they send everything out to be cleaned.

Mr. Pratt said they do have a sorting facility on half of it. They do take the clothes, cut it out of the bags and sort it. They do process the materials. That is another reason why it won't sit out there all day.

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 Alderman LaRose to approve New Business #2 Site Plan Dicker-Warmington Properties, site plan amendment. It conforms to 190-146(D) with the following stipulations and waivers:

1. The cross access easement shall be reviewed and approved by the Planning Department and Corporation Counsel and recorded by the City at the applicant's expense prior to the issuance of a building permit.
2. All site improvements, including the construction of the cross access connection, shall be completed prior to the issuance of a certificate of occupancy.
3. Light review with Planning Department to ensure there is adequate lighting around the building especially in front of the drop off area.
4. Security cameras in the drop off area and signage of no drop off of goods during off business hours.

**SECONDED** by Mrs. Wilbert

**MOTION CARRIED 8 to 1**

**OTHER BUSINESS**

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

None

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

**SECONDED** by Mr. Canaway

**MOTION CARRIED UNANIMOUSLY**

2. Referral from the Board of Alderman on proposed request for petition for Abatement of School Impact Fee - 122 Coliseum Avenue.

Kevin Slattery, One Parke Place LLC

Mr. Slattery said Staff made their recommendation for approval. The points that the Staff weighed in on were represented in the petition and it will be moved to the Alderman.

Mr. Dufour said you are looking for a favorable recommendation on this.

Mr. Houston said it was not legislation, it is a petition for a waiver and so it requires a letter to the Board of Alderman as a petition. Atty Westgate provided that to the Board. It has been referred to the Planning Board for recommendation to Staff, Administrative Officer for recommendation. Staff made a favorable recommendation on it. Based on the information submitted and based on past cases as well as the fact that the site plan clearly states elderly housing, age 62 and over. If it were ever to change it would have to come back before the Board with a change of use. We recommend a favorable recommendation.

**MOTION** by Alderman Larose for a favorable recommendation.

**SECONDED** by Mrs. Wilbert

**MOTION CARRIED UNANIMOUSLY**

3. Referral from the Board of Alderman on proposed O-09-81, expanding the boundary of the Historic Overlay District.

Alderman LaRose said this hasn't even come up to the Planning and Economic Committee. November 17<sup>th</sup> they will be hearing this.

**MOTION** by Mrs. Wilbert to table

**SECONDED** by Mr. Canaway

**MOTION CARRIED UNANIMOUSLY**

4. Referral from the Board of Alderman on proposed R-09-249, authorizing the acceptance of a pedestrian easement deed on the northerly side of the Nashua River for public access as Class A and B trails under RSA 231-A.

Mr. Houston said Staff recommends approving this Resolution. It is the Planning Board Staff that has initiated this as part of the downtown master plan and the city wide master plan. This is one of the last missing links on the riverwalk on this side of the Nashua River. The Board secured a 20 foot easement from the Nashua Corporation back in the mid 90's. We have two willing

participants, Public Service of New Hampshire and Brad Hill of Goodale's Bike Shop that are willing to work with us and make it happen. If the city has the opportunity to construct this river front trail in the future we can with these easements.

**MOTION** by Mr. Slivinski to send a favorable recommendation

**SECONDED** by Mr. Jurewicz

**MOTION CARRIED UNANIMOUSLY**

**DISCUSSION ITEM**

1. Request from Atty Prunier to discuss 167 Daniel Webster Highway proposed parking lot adjacent to NHDOT property.

Atty Prunier said the property is located on Daniel Webster Highway South across from the new condominiums. This was a single story building and we added a couple of stories to the building. As part of the negotiation we talked to the State of New Hampshire who has a vacant lot next door to our building to being able to put in a small parking lot to help with the parking. After a couple of years of talking to the State, the State is in the process of trying to get some of their property either sold or leased. We were able to obtain a lease. However we couldn't purchase the property because the State doesn't know what they are going to do with it. They are willing to lease us the property for a lease term of one year, terminable in 30 days.

Mr. Dufour asked are you going to put pavement on there?

Atty Prunier said I am. In discussion with my client and his deciding that this was a business risk that he was willing to put in a paved parking lot in that area. He is willing to take the risk against my recommendation to do that. Mr. Houston and I have had some discussions about the problems that this presents. One of which you require the State to sign a site plan. They aren't going to sign it. They said they will lease it to you on a year to year basis but we can terminate it in 30 days and you have to get all the approvals. I would prefer the State come in and do this and lease it to us because the State wouldn't have had to come before you. However we have to because we have to get the approvals. The problem comes up that the lease is a 30 day lease. State statute says if you have a lease, and the lease is for more then 7 years, it is a subdivision. We would have to come in for a subdivision but the State doesn't want a subdivision because they want to keep this piece of property. They are not going to lease it to us for

more then 30 days at a time. I feel this is a land lord's estate. They can terminate it at any time. We are coming in and are saying we are putting this parking lot in but it may not be there very long.

Mr. Dufour said the reason we are having this conversation is because the State won't sign.

Atty Prunier said the question is subdivision. You can look at it. Roger brought it out and we discussed it. If it goes for a long period of time it could be. The intent of the legislative state statute is if you have a lease, a ground lease, for a long period of time and it is defined as 7 years, that was being used for coming around for a subdivision. This is not. This is called termination for convenience. The landlord may terminate the lease at any time by giving 30 days notice thereof in writing and may take full and complete possession of (inaudible). This is a 30 day lease.

Mrs. Wilbert said just for clarity it is a year to year lease with a 30 day termination.

Atty Prunier said they say it is a one year lease.

Mrs. Wilbert said with a 30 day termination. I guess I want to know from Staff for purposes of discussion is there a way for them to comply with our requirements or not.

Mr. Houston said typically the board requires the owner to sign the application and site plan. The State refuses to do that. The State didn't put a sidewalk in this section because they were short of funding with the Turnpike system when they constructed the bridge over D W Highway. The NHDOT property is the missing link where we don't have a sidewalk. There are an existing sidewalk on the Tulley Dealership and the Remax Building (169 DW Highway) that connect to the NHDOT property. The Board should be aware that Staff doesn't have a major concern with this other then the fact they are using another property and those property owners are not willing to sign the plan.

Mrs. Wilbert asked if there is any possible way that they can comply with our requirements that the owner sign and I guess the answer to that is no because the State won't. So what do we do in that instance?

Atty Prunier said we ask for a waiver.

NCPB

November 5, 2009

Page 31

Mr. Canaway asked if this is the first time something like this has happened in the State of New Hampshire?

Atty Prunier said yes. We have been involved in trying to get this straightened out to get the State to lease it to us. It is the problems we have in getting them to sign the plan and they won't sign it.

Mr. Canaway said the State imposed a 7 year limit for leasing before it becomes a subdivision. He asked if you were just speculating that people who have connections with the State were able to take advantage of leasing land to the State and not having to go through subdivision plan that the State or whoever created that rule wouldn't that have met that somebody would have had to brought plans previously.

Atty Prunier said no that is more for the commercial world. That rule has nothing to do with the State except for the fact that it is there. The State didn't create it for this particular case. The violations of lease and land and avoiding the subdivision regulations were mostly for in other commercial developments.

Mr. Dufour asked how do you light the parking lot? Are you putting electricity on the site?

Atty Prunier said they will connect it from our building. It connects to a lot that we have on our property.

Mr. Dufour said what about the sidewalk issue.

Atty Prunier said I have been hearing sidewalk issue and I would assume you are going to say put a sidewalk in. If I come back and say the State is going to want one then you are going to say maybe we don't want you here. I don't think that is a problem the State will have because it doesn't cost them anything.

Mrs. Wilbert said we are not reviewing his site plan for approval tonight. We are discussing whether or not we will entertain a plan that is not signed by the owner and my question would be do we have the authority to waive that or do we have to ask Corporation Counsel.

Mr. Houston said that they would send a request to Corporation Counsel for an opinion. Generally the landowner has the right to the property unless he conveys or sells it to someone else. You are dealing with a short term lease. It poses an interesting question. Although the Board should be aware that June 17, 2004

you approved an addition approximately 10,800 square foot addition to this site and prior to that they went to the Zoning Board of Adjustment to get a special exception to reduce the required parking spaces from 50 to 40. I don't want to mislead you that if we do go to this stage and go before you this information will be before this Board that this has been before the Board previously on the Remax site. They need additional parking on the State's property. I don't see any issue with the parking lot there and I think it works. The question is what is the Board's reaction to the sidewalk issue. Should the State be taking the money for lease and constructing a sidewalk? I am not even sure the State is going to abide by the original letter that is in your information packet. We couldn't get a response from the State. We asked, we wrote and they said no about signing the plan. I am not sure who is signing the lease for the State?

Atty Prunier said they have hired a independent leasing company. The State will have to sign it, the Administrative Bureau of Right-of-Way.

Mr. Canaway asked how can we take up a plan without concurrence of the owner of the property?

Atty Prunier said we have provided the State with the plan and they are aware of the plan. We would also put in a copy of the lease that says they are leasing to us this piece of property.

Mrs. Wilbert said it seems to me what we need to do here is remember we are not approving or disapproving this. We are just trying to figure if we can get over the first hurdle of can we even look at the plan. I suggest we solicit the opinion of Corporation Counsel as to whether or not we can accept a plan that isn't signed by the owner. I figure he is going to come up with a way that we can accept it but right now we don't know it.

Mr. Houston said the State has its own powers and immunity. If they build their own parking area, you make an arrangement with them, they are immune, they can build it, connect it and lease it to you. If that can happen and then the city is not involved at all?

Atty Prunier said this goes far back. To try and get them to agree with us to lease us a small piece of property, we tried to get them to let us buy it. We said we would lease it because they said they wouldn't sell it to us. I am frustrated with the fact that if they approve a site plan why can't they say as owners they will sign it.

Mr. Slivinski asked if in the lease it says you are putting in a parking lot or what happens if they terminate in 30 days are you responsible for moving the blacktop or lights. Do they acknowledge a parking lot is going in?

Atty Prunier said the site plan is an attachment as Exhibit A which says it will be used as parking for parties doing business with the lessee exclusively and utilized in conjunction with the lessee. They are aware by the lease.

**MOTION** by Mrs. Wilbert to request an opinion of Corporate Counsel as to whether or not we have the authority to waive the signature of the owner and proceed with reviewing this site plan based on the fact that the applicant has a lease that was signed by the State as an attachment to that lease is reference to the plan which will be implemented on the leased premises.

Mr. Dookran said he doesn't understand why this is before us. It sounds like Remax can deal with the state.

Mr. Dufour said yes I agree but how does that act impact the site that we approved.

Atty Prunier said this is State land. They say we can build a parking lot, why are we here? Because we live in the city and we have to deal with you on other occasions and we don't want to be in an adverbial relationship.

Mr. Dufour said we approved that site to function the way it is. Why are they here? They propose to alter the sit next door to them and that act will impact what we have approved. Do we approve of putting another 45 cars going through that one entrance approved? I think it should come through this Board.

Mr. Dookran said I say go build this parking lot, deal with the State, and then come to this Board and let us approve the connection.

Atty Prunier said my client is willing to take a very big risk but I don't think he wants to take that extra step.

Mr. Houston said he did attached the governmental use of property section of state law and I highlighted those sections. The property is actually taxable when taken out of governmental use as well as it is subject to local land use regulations.

Mr. Dufour said we have a property that would function a lot better with the additional parking. So how do we get it done? First step is lets see what Corporation Counsel has to say.

2. Request for the last certificate of occupancy in the Majestic Heights Subdivision

Atty Prunier said he got thrown into this about a week ago but didn't know it was on the agenda. When this site plan was approved there was a stipulation that said the final certificate of occupancy will not be issued until all the work is completed to the satisfaction of the Department of Public Works. Because of the situation we are in, if you wanted to put in stipulation such as that it probably should have been the last building permit. What has happened is the building permit has been issued, the house has been built. There is a buyer here tonight and there is still some work to be done. There has been work that has been ongoing for the past couple of weeks, street works. There is work that has to be done in the drainage area, landscaping, fencing, different things that haven't been completed but is ongoing. There was a performance bond issued but expired a few years ago, so there is no bond. We have a builder who has completed a house, a buyer who needs to move in, no bond and a stipulation.

Mr. Taylor said the only thing that I would add is the developer and the builder had been aware of what needs to be done for the road for a number of years which is reflected in the file.

Mr. Dufour said when you say the work is ongoing I thought this subdivision was done. To think that it is ongoing and doing work all the time I am not sure I am buying that one.

Atty Prunier said when they went to get the CO and that stipulation was brought out and they hadn't finished the work so that work has to get done.

Mrs. Wilbert asked when is the work going to be done.

Mr. Dufour said we have no enforcement arm. If we were to ignore #12 we have no enforcement arm that the work will ever be done.

Atty Prunier said I am not here before the Board to argue. I was here and someone asked what is the problem so I am trying to explain the problem. As I see it the answer to the problem is finish the work and the Board modify that stipulation and allow a bond to be placed. We have tried to work these things out. Everyone is sympathetic to the situation of the buyer. I think

NCPB

November 5, 2009

Page 35

Staff is satisfied and we still have to satisfy Public Works. I think the buyer has met with Steve as well.

Mr. Dufour said if you are asking a bond to be placed why don't you just get it.

Atty Prunier said you have a stipulation and it is not that easy. The stipulation is that the final CO cannot be issued until the work is done. If the Department of Public Works says we are satisfied that the work is done to a certain point and the bond will cover the balance of it that is fine. I don't know if Steve is willing to take that step.

Mrs. Wilbert said what I think is we want the work done. I bet we will hear from the gentlemen who wants to buy the house and his broker and they can't understand why we are taking a hard line here. There is no guarantee that work will ever be done. This is the applicant who has other issues with the city and I figured out why Mr. Fredette is here probably to tell us that there is an arrangement with the taxes owed.

Mr. Dookran said may I suggest for us to fully understand the extent of the problem if the homebuyer or his representative explain the situation they are in.

Mrs. Wilbert said I am sure my heart will be rent. I am not suggesting we don't hear from him. I am just pointing out we find ourselves once again in a situation where we don't want to create an undue hardship on somebody but in order to do that we are letting somebody else skate who should have done what he should have done many years ago.

Mr. Dookran said we are talking out of turn because we don't exactly understand where we are. There are solutions without putting in the City in great risk. It happens that stipulation #12 is not a typical one during under normal circumstances.

Michael O'Keefe, Remax

Mr. O'Keefe said we got into the project in July, 57 & 55 were still up for sale. My buyer decided to go for the one more unfinished. It was about 75% unfinished. In hind sight if he had known it was going to be held up because of the issue with the City he would have most likely gone with the other home. We got into the contract. We tried to get an end of August closing and they asked us for a middle of September closing. We went forward and signed the purchase and sale for a mid September closing. From

that point it got delayed through different issues to the end of September. At the end of September they asked us for an extension through the middle of October. He again was ok with it. He has a condo in the city that he moved forward on getting someone to lease it. He decided to give the builder plenty of time thinking he would move in middle October. Come the middle of October the builder told us we couldn't move in and we didn't understand. Then we found out the CO was being held up. The builder is telling us he has done his part and he is working with the city to get all this done. We never found out anything upfront that this could happen. He is out of a house. He has no where to go. He has been out since last Friday. They are staying with relatives, a hotel. The mover had to charge extra to put his stuff in storage. He has also lost his rate lock with his lenders. It has been suggested he get an attorney to fight the builder or who ever can help us out here. The bottom line is a family is out of a house. He understands the impact of giving him his CO and the builder walking away and not completing the project. All his deposits are with the builder. He is out of pocket about \$65,000 at this point. We are pleading with you to get his occupancy permit.

Mrs. Wilbert said it is not his fault and it is wrong.

Mr. Dookran said I think we have a problem here. We have an extreme hardship and it is because of a stipulation and I understand from Staff is not a normal way this is stipulated for other subdivisions. This was done around 2003 and for some reason it was stated this way. There are 2 problems here. The stipulation calls for completion of the work prior to issuing the CO. The other problem has been expired. I understand they are working to renewing it. It is for about \$100,000 according to Jon Lebrun. That should be adequate. I don't know what kind of progress they are making towards completing the rest of it. We have been requested to sign off so that they can get a CO but we cannot because the stipulation calls for all work completed. If the developer walks away that is what the bond exists for. In a case like this, the homeowner has been held responsible for the builder.

Mr. Dufour said I feel as bad as everyone else but can we legally change the stipulation and if we do can the developer use that against us. The fact that no one knew how is that different if someone is buying a parcel of land in an approved site plan don't you pull the plan and read the stipulations?

Mr. Houston said this is a recorded document. These conditions are recorded at the Registry of Deeds.

NCPB

November 5, 2009

Page 37

Mr. Dufour said the bond, I am not convinced the builder will do it. When was the last time we pulled a bond in this city? Every time I ask I am told never.

Mrs. Wilber asked what needs to be done.

Mr. Dookran said Matt might know better. I haven't seen the list but most are minor according to what Jon Lebrun told me.

Mr. Taylor said there is a punch list that Jon Lebrun has for this project. I was out there a couple of weeks ago and it looks like most of had been done. The big item, and I am not sure how Engineering is going to deal with this, one of the detention basins hasn't been constructed according to plan. That is on the punch list. Didn't look like any work had been done on that. There has been some work done. A lot of the issues were related to catch basins not abutting up against the curbing. It looked like most of those issues had been corrected. The water shut off valve not being graded at grade. Those have been corrected. The detention basin I see as the biggest one outstanding.

Mrs. Wilbert said we need to remember that if we help this gentlemen we are also helping the scofflaw who didn't do it because he is selling his property and making a profit. This guy didn't do what he was suppose to do and he had years to do it. Now he has this stupid punch list and we are going to take a bond so we guarantee he is does it, but he probably won't do it anyway or he will do it if he feels like doing it. The only reason I see him wanting to do it is so he can finalize this transaction and make his profit on the house. He can't do it without the CO.

Atty Prunier said there are two different parties here, the developer who is responsible for the work to be done and the builder. The builder thought that all the conditions will be satisfied when he talked to the Planning Department by planting some \$8,000 worth of trees. He did, he satisfied the Planning Department. The problem was there was one more department that had to be satisfied, the Department of Public Works. That is where we are.

Mr. Dufour said is the developer of the development and the builder of this not the same person.

Atty Prunier said no.

Mr. Taylor said just to clarify on that because we had this discussion. The builder of this particular home, the individual

NCPB

November 5, 2009

Page 38

responsible for the LLC has been involved in this project at least back to 2005. There is an e-mail in the file of this particular individual acknowledging that this work needed to be done in the right-of-way prior to getting the final CO. So there was acknowledgement these things needed to be done. It seems a little disingenuous to separate the two because both the builder and the developer have been involved in the project for a number of years. I sympathize with the home buyer as well in the situation and it is very unfortunate.

Atty Prunier said they are two different groups. The builder thought it was being satisfied. There are two departments that you had to satisfy. He only satisfied one by doing the trees and didn't satisfy the Department of Public Works.

Mr. Dufour asked if the builder and the developer one in the same?

Atty Prunier said they are two separate entities. In all due respect to the developer he has been having a crew out there working.

Mrs. Wilbert asked how long to complete it? Why don't we just make him complete it?

Atty Prunier said I am not an engineer. If you want to ask Richard Maynard you can allow him to step up here, that is fine. I haven't found out a way of solving this issue and all I am doing is explaining to you.

Mr. Dufour said you eluded to a 2005 e-mail where a person acknowledged that the work had to be done. Who is that person?

Mr. Taylor said that was Bob Pace.

Mr. Dufour asked in 2005 what was his function with this development.

Mr. Taylor said he was working for Starter Homes, LLC.

Mr. Dufour asked if Bob Pace involved with Grape Vine Construction?

Mr. Taylor said yes, he is a representative from Grape Vine Builders, LLC. We met with him and Gerry a couple of weeks ago.

NCPB

November 5, 2009

Page 39

Mr. Slivinski asked how did the first bond expire if the work wasn't done? Who is responsible? Who dropped the ball and let the bond expire?

Mr. Dufour said that may be irrelevant.

Mr. Slivinski said if we dropped the ball and we should have done something, I hate to see that guy get screwed.

Mr. Dufour said do you realize how many bonds are out there?

Mr. Dookran a valid bond or an expired bond I think we would be in the same position tonight with respect to the issue at hand.

Mr. Slivinski said you are willing to settle if there was a new bond for \$100,000. That would be a solution for you?

Mr. Dookran said yes.

Mr. Slivinski said if you hadn't let the first one expire...

Mr. Canaway said DPW couldn't say the work had been done in the public right-of-way to their satisfaction with or without a bond.

Mr. Slivinski said why bother with bonds then? It is just a waste of money.

Mr. Dookran said I don't think the question tonight is bonds. Yes, we need a bond to protect the city. That is not the question we are addressing tonight. I want to go back to the stipulation. Why was the stipulation phrased in this matter?

Mr. Dufour said I am not questioning why this was placed back in 2003. It was acceptable to this Board at this time.

Mr. Dookran said their must have been discussion. Emerald Estates was built 2004, 2003 around the same time frame. We haven't accepted that street yet.

Mr. Slivinski said on this one right here there was a lot of work to be done. The guy had to sell houses beforehand. People had to occupy them. We finally said you can't sell that last house until you get the work done, but you will be able to sell some to generate money and finish up the streets and lights. That is why that stipulation was that. He might have asked for that.

NCPB

November 5, 2009

Page 40

Mr. Dookran said Atty Prunier said it might have been better placed with the building permit.

Mr. Slivinski said he sort of insinuated it was a bad stipulation.

Mr. Dookran said it is possible that we made an error and we can correct it.

Mr. Slivinski said I am not so sure it was an error.

Mr. Dufour said I don't think we can correct it. For us today without a public hearing start changing stipulations. Then this applicant knowing since 2005 that he had to do this and I had to yank from Staff that he is one in the same person we don't have any assurance he will get the work done.

Mr. Dookran said we will have the bond. They have to come to the city to accept the street. They have to maintain the street.

Mr. Dufour said that leads us to the next question. Without the proper bond are they obligated to maintain the street? By your testimony there is bond. It has expired. Typically there is a bond and until the street gets accepted the developer is responsible for it and maintains it. Do we dig ourselves into a deeper hole by accepting a bond for \$100,000 in effect putting that builder on the hook for just \$100,000 and all of a sudden he decides I am not going to do anything to that street. We have never pulled a bond. I feel bad, I wish I could correct it tonight. I don't see how it happens and we still protect the city.

Mrs. Wilbert asked if you looked at the minutes?

Mr. Taylor said he did and brought some copies. There really wasn't a discussion that I saw. The big discussion seemed to revolve around homeowner association.

Mrs. Wilbert asked if that recommendation was a staff recommendation.

Mr. Houston said you might have something at building permit which might have been more appropriate whether it was a certificate of occupancy. Usually there would be a bond in place. In some cases on larger projects you might say the last 10 building permits. The city does not own the detention ponds. They are owned by the homeowner's association except on paper. At some point the City will need to get the homeowner's association or the developer to relinquish those 2 detention ponds. That was a new idea that was

put up by the city engineer at during the approval of the subdivision who drove a lot of this discussion about how we are going to do things like we did in California and we are going to have a homeowners association take over the detention ponds. The Planning Staff recommended against it at that point in time and the Board felt it was a good idea because then they would maintain the detention ponds.

Mrs. Wilbert said but there is no homeowners association.

Atty Prunier said Roger is correct in saying there was a different City Engineer at the time. They should be owned by the city. That is where the big discussion was.

Mr. Dufour asked if he has the original staff report and was it part of it.

Mr. Taylor said he does have it.

Mr. Maynard said yes it was.

Mrs. Wilbert said possibly Staff had a very good reason for putting it in. We are stuck here with this potential buyer stuck in a bad situation. Is there another way we can hold this developer responsible to complete in a timely manner. I am not happy with the bond issue.

Mr. Houston said the only way to do it, and you can consider it, is do a temporary certificate of occupancy. I haven't been a part of the discussion about the bond but it is an issue for the person who owns the house but it would require concurrence from Public Works.

Mrs. Wilbert said I don't know if you can close.

Mr. Houston said you could probably close in escrow.

Mr. Dufour said I can't see the lender closing in escrow.

Mr. Slivinski said if he doesn't close the builder owns the property. If he had a temporary CO he would have a place to live.

Mr. Dufour said he is left with the same issue. His rate lock expired, he has paid to extend his rate lock. My concern is in our effort to try and work this out for this gentlemen we dig ourselves a bigger hole, with the whole street situation. We got a bond for \$100,000 and I don't have any confidence in the

NCPB

November 5, 2009

Page 42

developer. I had to get out of Staff that it is the same person. I don't understand why it was told it was two different people. It might have been two different LLC but it was the same person.

Mr. Taylor said getting a bond in place certainly would be an improvement from the situation we are in now. If it was a bond that could be called relatively soon if the work isn't done, and the amount is sufficient that is an issue for Engineering to decide. Whether you can do this here or at a public hearing or how you do it I don't know but getting a bond in place would be an improvement.

Mr. Dufour asked on a project like that typically what would the bond be for the whole project.

Mr. Dookran said I spoke with Mr. Lebrun in 2005 when it was reduced at first it was in the \$300,000 or \$400,000 range. Then they had done enough work, Jon Lebrun reviewed the work and his final number was \$100,000. That is usually and he told me that is inflated because the city needs to protect itself. To pull a bond there is more costs and you want to make sure it is enough to cover that contractor. Since then work has continued in some fashion so it is even more then adequate now.

Mr. Dufour said the last one in place was for \$100,000.

Mr. Dookran said it was reduced to \$100,00.

Mr. Dufour said so what if we made the builder get a \$200,000 bond. Does he want to work with us or not? We are trying to bail him out.

Mrs. Wilbert said that is a key point. We are condoning what he did because we will be helping this gentlemen. We are helping him as well.

Mr. Canaway said we place the city and all the other residents at risk if the work doesn't get done.

Mr. Slivinski said Steve, you can say the work is all done and shake the builder's hand, he is a good guy, that is what you are asking us to do.

Mr. Dufour said that is in effect what we are being asked to do. I say if there is any way we can try to work this is to try and get a \$200,000 bond. Once he provides that with the city we issue him his final CO. I feel better running this by corporation counsel.

NCPB

November 5, 2009

Page 43

Mr. Houston said city ordinance requires 10% of the performance guarantee for any street shall be held until the Board of Alderman accept the street. I think the original bond was around one million so the \$100,000 was the 10% Jon Lebrun came up with.

Mr. Dufour said I am saying \$200,000. Do we require the bond from the builder or developer?

Mrs. Wilbert said I know where my vote would be on that one. On the developer. He got the approval.

Mr. Dufour said it is the same person.

Mr. Maynard said for the record the house builder and the developer builder are separate.

Mr. Dufour said that is my suggestion, a \$200,000 bond.

Mr. Slivinski asked Steve what he thinks.

Mr. Dookran said I don't appreciate what you were insulating earlier. I wasn't asking the Board to do what they didn't want to do.

Mr. Slivinski said if you would have done it, or if we would have done it without protection it would have been silly. I didn't mean to be disparaging to you.

Mr. Dookran said my whole issue here was we had approached it differently. Roger and Atty Prunier said it had to do with the prior city engineer who tried to put in here California standards and we went along with it. It is a possible issue.

Mrs. Wilbert said we still wouldn't have our stuff done.

Mr. Dufour said I wouldn't acknowledge an error. That is what the city engineer wanted at the time.

Mr. Dookran said overall we shouldn't do this in the future.

Mrs. Wilbert said what might have happened they would have come in and begged for the building permit to generate cash to pay for the improvements. We probably would have said ok but you don't get your CO until everything gets done. Those things do happen. We don't do these things because of the personal elements. When this guy comes back again I will be here I hope to remind everybody what he created and did to this man.

NCPB

November 5, 2009

Page 44

Mr. Dookran said the question to me was what do I think about the \$200,000 bond and issuing the last CO if that is in place. I think the city will have its protection but it won't be a 100% guarantee the developer wouldn't do something that is expected. There is always the first time the city can pull a bond.

Mr. Dufour asked who pulls that, the tax collector?

Mr. Dookran said I am sure it goes through our legal office to make sure everything is done properly

Mr. Houston said your office would notify corporation counsel to pull the bond. They would work with the Financial Office.

Mrs. Wilbert said why don't we put a deadline and the bond will be pulled by date certain unless the work is completed. If we are going to issue the CO contingent upon the posting of a \$200,000 said bond to be pulled by 6 months and then pull the bond.

Mr. Dufour said I don't know what the mechanics are.

Mr. Houston said the bond should be determined by the calculation of what is estimated to be done.

Mr. Dufour said the estimate has been that the last time it was bonded in 2005 it was \$100,000. A comment was made last have the Board of Public Works determine what the bond will be. They might determine that it is \$35,000. They are not looking at it from my perspective. We call the shots, they agree to it or it doesn't happen. That can be our condition if we change the stipulation and it has to be done in 6 months.

Alderman LaRose said it is not the developer that has asked to change stipulation #12. It is the homeowner.

Mr. Dufour said if we do this tonight and the developer says I had no part of that. You had no right to do that.

Mrs. Wilbert said I don't think we have to have the developer's concurrence to change a stipulation. If we are amending a condition on a site plan I think that requires a public hearing.

Mr. Houston said you are amending a condition of the subdivision that has been recorded. You should remove that stipulation if it is going to be modified.

Mr. Slivinski asked don't we let you handle things administratively or is this to radical.

Mrs. Wilbert asked can you do an administrative review?

Mr. Houston said I don't think I can answer that from a legal perspective. You are in a discussion session tonight.

Mrs. Wilbert said if it is just discussion you are saying we can't change this for this gentlemen tonight.

Mr. Houston said unless you can think of a creative way to say to Steve to say issue a temporary certificate of occupancy and he accepts the bond in whatever amount his office determines.

Mrs. Wilbert said I don't think he can close with a temporary CO.

Mr. Houston said I don't know how you can change a stipulation that is recorded without having a public hearing.

Mr. Dufour asked if any of this has been run by corporation counsel.

Mr. Dookran said no.

Mr. Houston said it is a recorded document.

Mr. Canaway said there isn't even an application to amend the site plan. Wouldn't the owner have to amend the site plan?

Mrs. Wilbert said we are here trying to help this gentlemen.

Mr. Taylor said you can't formally amend the subdivision stipulation that were recorded. That would require a new subdivision application. The only way you could do this is to give direction to the City Engineer is the Board concurs that a bond would satisfy that condition. You can't formally amend a subdivision here tonight as a discussion item.

Mrs. Wilbert said I don't see how the bond will satisfy stipulation #12. It doesn't satisfy it.

Mr. Houston said it does if the City Engineer is satisfied that the work is completed to the satisfaction of Public Works.

Mrs. Wilbert said I would be willing ask that the board vote a consensus provided there is a bond placed, \$200,000 by the

developer that the Department of Public Works could determine that the work is completed its satisfaction provided that bond would be pulled if it is not completed in its entirety by a certain date.

Mr. Canaway said I don't see it as my jurisdiction or responsibility to tell the DPW what they can or cannot do.

Mrs. Wilbert said I said we could vote a consensus that he could find it satisfactorily completed provided he had a bond.

Mr. Canaway said couldn't he do that anyway.

Mr. Wilbert said yes but he has indicated he doesn't want to do that.

Mr. Slivinski said I think it is in the hands of the Department of Public Works. They are the ones who are going to say it is ok to their satisfaction. Whatever satisfies them.

Mr. Dookran said the reason why Public Works has been stuck on this is because stipulation #12 is not what we normally see. What did the Board mean back in 2003. What is satisfaction?

Mr. Dufour said what does it mean? To the satisfaction to the Department of Public Works. If I was in your position I wouldn't consider it satisfactory because I wouldn't want the responsibility for that project being unbonded and unfinished.

Mrs. Wilbert said if we get a bond, it has teeth and we are prepared to call it if he doesn't do the work, if Public Works is satisfied that there is good faith and the work is being done then #12 is to your satisfaction.

Mr. Dufour said we feel bad for your situation but we are caught in a legal situation. We have to protect the interest of the city and at the same time try and make your situation better. We try and get a \$200,000 bond with a time certain and revocation.

Mrs. Overby said she would support Mrs. Wilbert's proposal as long as it gets support from counsel.

Mrs. Wilbert said we can't remove the stipulation.

Mr. Slivinski said I don't think it is our decision. It is the Department of Public Works decision. We can't release the certificate of occupancy. They work with the developer to make sure the work is progressing.

Mr. Canaway said I concur with Mr. Slivinski.

Mrs. Wilbert said Staff suggested we give Public Works Department so that is where my proposal comes in.

Mr. Canaway said if Public Works is satisfied with the work and or have assurances the work can get done, that check box can be checked.

Atty Prunier said I was going to suggest what Bob and Bill suggested, to leave it up to Public Works. If there are minor things left to do, he can cover it by a bond it that is your intent. If you are going to modify a stipulation you have to go to a public hearing and you don't have the authority to set the bond. That would be Public Works. Unfortunately we put the burden on him.

Mr. Dufour said I think the reason we established an amount for the bond the amount is way in excess of the work to be done. We just want to make sure it gets done. So we are looking at DPW establishing what the bond amount should be.

Atty Prunier said what I am saying is if enough work gets done and there is just a minor bit left and Steve would be happy with a bond that would be ok with you.

Mr. Dookran said I have heard a lot of discussion. It is all on record and I will take it back to the department. Satisfaction could be that the developer could finish the work. I will take this back and work with it.

Mr. Dufour said we are concerned with your exposure.

Mr. O'Keefe asked what about a temporary CO?

Mr. Dufour said we can't do that. I don't know how you could close with a temporary CO.

Mr. O'Keefe said I am not saying close, just allow him in temporary. In the future we were never notified.

Mr. Dufour said I am in the business. You should have pulled the site plans and read the stipulations.

Mr. O'Keefe said it was never told to us that this would be held up. Site plans aren't pulled by real estates. It should have been

mandated that this has to be disclosed to the last buyer. It is not fair to find out weeks after the fact.

Mrs. Wilbert said it is your seller, your developer. The guy you are doing business with who is the root of all evil here, not us.

Mr. O'Keefe said even the title company that did the research to make sure the title was clear never told us that anything like this was held up.

Mr. Canaway said it is the same as if the owner knows there is asbestos on their property and does not disclose it to the perspective buy it is not the city's responsibility.

Mr. O'Keefe said the buyer has a right to know it upfront so he could have made his decision properly.

Mrs. Wilbert said we did put it on a recorded site plan.

**MOTION** to adjourn by Alderman Larose

**APPROVED:**

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Ken Dufour, Chair, Nashua Planning Board

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Prepared by: Linda Panny

Taped Meeting