

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
February 10, 2009

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 10, 2009 at 6:30 PM in the Auditorium at City Hall.

Jack Currier, Chair, conducted the meeting.

Members present were:

Jack Currier, Chair  
Sean Duffy, Vice Chair  
Rob Shaw, Clerk  
Kathy Vitale  
Bob Carlson (arrived at 6:40 p.m.)  
Gerry Reppucci  
Carter Falk, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

There are two cases on the Agenda. The Board decided to hear Case #2 first.

- 1. Bonnette & Picard LLC (Owner) 502 West Hollis Street (Sheet E Lot 83) requesting the following: 1) use variance to allow a 4,200 square foot office professional use in the existing, unoccupied residential building formerly used over 4 years ago as a radio studio/office (former WSMN building); 2) use variance to allow 3 (three) three-story multi-family buildings, 36-units per building (total of 108 multifamily units); 3 stories of living and one story of ground level parking; 3) variance to exceed maximum building stories, 2.5 stories permitted, 3 stories requested; 4) variance to exceed maximum building height, 35 feet permitted, 47 feet requested; 5) variance to exceed maximum density, 4 dwelling units permitted per acre, 9.62 dwelling units requested (a total of 116 residential dwelling units and a total of 4,200 square feet of professional office space on approximately 12.05 acres);**

**and 6) variance to exceed maximum number of principal structures permitted on a R9 residentially zoned lot, 1 principal structure permitted, 12 principal structures requested (1 office building, 3 multi-family buildings and 8 single-family homes). R9 Zone, Ward 5.**

Voting on this Case:

Jack Currier  
Sean Duffy  
Rob Shaw  
Kathy Vitale  
Gerry Reppucci

Attorney John Edwards, K&L Gates, Boston, MA. Atty. Edwards stated that this case was heard in December, but was withdrawn to try to alleviate concerns by neighbors, and as a result of other meetings with the neighbors. He said the current application is similar to the previous one, and asked if they can incorporate the evidence and materials and testimony both for and against the case, into the record for purposes of this application.

Mr. Currier said it is a reasonable request, and wanted the testimony heard in favor and in opposition at the last meeting to be incorporated into this meeting.

Atty. Edwards said there are use variances and area variances for this request. One use variance is to allow the restoration of the old WSMN building to office space, and one to allow 108 multi-family units, in three buildings. The area variances are for building stories, building height, the density, and the number of principal structures in an R9 zone.

Atty. Edwards said for the hardship, the ledge is the reason why. He submitted a package, and in tab 5 it indicates the ledge issues and study. He said the ledge makes the site economically impossible to develop single-family residential development, and achieve any type of return. He said over a million dollars has been spent already trying to excavate and understand the impact of the ledge on this site. He said there was a serious effort to develop the site under the R9 standards, but wasn't possible due to the ledge.

Atty. Edwards said the specific restrictions on the property are to ensure orderly, aesthetic developed land in this portion of the city. He said that by allowing multi-family will not undermine the goals of this zone, as the request is residential, it is not commercial. He said the scale of the buildings has been reduced from the last meeting, and they are three story structures, and will not exceed 35 feet in height. He said there will be over 7 acres of open space, and assures the funding needed to develop the property, and make it more aesthetically pleasing, and put it back on the tax rolls in a short amount of time. He identified other non-residential uses in the neighborhood, and said it will allow for work-force housing in the city. He said in tab 10 there are clear numbers to support the need for workforce housing. He said that by prohibiting development of this type will leave this site in its present condition for quite some time. He said the variances requested will not injure the public or private rights of others, there is no evidence of adverse property value impact, other than the assertions of a handful of residents in the area, in fact, the development that is proposed, with the green space available, and the landscaping that is proposed, will enhance values, and a property appraisers analysis is provided indicating that in tab 9. He said that traffic impacts will not be significant, because of the changes made to the proposal, as the medical use has been removed from the request, which was a significant contributor to the traffic. He said the WSMN building will be office use. He said tab 8 indicates the traffic impacts. He said that significant landscaping will be added to the site, as shown in tab 19. He said the proposal will help the Greek Church with their traffic as well.

Mr. Currier stated that an Alderman is present who would like to testify before his 7:00 p.m. meeting downstairs.

**MOTION** by Mr. Duffy to suspend the rules to allow testimony from an Alderman.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

Brian McCarthy, 65 Musket Drive, Alderman-At-Large. Ald. McCarthy said that Ald. Tabacsko would have been here as well, but is on a business trip. He said that in relation to the hardship, and whether the applicant should have known about it,

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based upon the amount of truck traffic, that the Board look at topographic maps of the site, both now and prior to the approval of the subdivision for the 40 homes, and examine how much material has been removed. He said that he is one of the commissioners on the Nashua Regional Planning for workforce housing. He said that Nashua has about 30% of the regions population, and over 70% of the housing that is categorized as workforce housing, and Nashua's existing housing and zoning laws meet the workforce housing act, and don't need to make changes to meet this law. He stated that the applicant identified other uses, but they were in the Park Industrial zone, not in a residential zone. He said if the Board looks at some of the surrounding residential neighborhoods, such as Kensington Ridge, that there are numerous properties there that fit into the definition of workforce housing. He questioned how many of those people actually walk to any of the services nearby, they all drive cars to where they need to go. He said the argument for hardship is not met, and there will be substantial issues against the surrounding single-family neighborhoods.

Mr. Duffy asked if there is a study done for the new workforce housing definitions, or have the zoning maps been looked at for which areas or which districts will have workforce housing.

Ald. McCarthy said it is premature to do that, but believes that the findings by NRPC is that the existing provisions of the Nashua Zoning Code meet the requirements of the new workforce housing.

Atty. Edwards stated that he heard the removal of material from the site somehow created the hardship, he said that is not the case. He said what was removed from the site, in massive quantities, and at great expense, was ledge. He said it must be removed, to allow for grading and construction. He said there was nothing useful about the ledge. He said that the traffic impact analysis makes no assumptions about increased pedestrian traffic associated with this property, it is a conventional analysis of traffic with automobile use, nothing else.

Mr. Reppucci said that he heard that over a million dollars was spent removing ledge from this site. He asked if there is any kind of record or documents attesting to this.

Atty. Edwards said they have the invoices, but they were not submitted in the package.

Mr. Reppucci asked about the incursions on the 30-foot setback, and if it was violated in the development of the property. He said that he heard testimony from Mr. Picard that that never happened. He said there is documentation from abutters that the buffer was encroached upon, and asked if there is any evidence on that.

Atty. Edwards said he is not sure which abutter has raised this issue.

Mr. Reppucci said the violation of the setback can be clearly identified. He said the applicant should be able to show this and prove it.

Atty. Edwards said this assertion has been made by only one abutter on Pitary's Drive. He said there is no evidence that this encroachment has taken place. He said they have enclosed in the package all the invoices from Cuoco & Cormier about all the staking and survey work, located in tab 16, and there were extensive efforts made that no encroachment would take place.

Mr. Reppucci asked about the correspondence that took place back at the end of last year with Mr. Houston, Planning Director, and in one of the letters, it stated that the access road is located on the church's property, not on your property, and it mentions a traffic signal. He said the sole burden of the cost of a traffic signal would be up to the applicant, not the City.

Atty. Edwards said the applicant is willing to work with the City, and has made a good-faith gesture by pledging \$150,000 towards the traffic light. He said it is unclear on West Hollis Street about the impacts on the street, especially with turning lanes.

Mr. Carlson asked about the money required for the planting of trees, and asked if the project is in the hands of the Bonnette & Picard, or the work-out firm at this point.

Atty. Edwards said it is in the hands of Bonnette & Picard.

Mr. Carlson said that Bedford is the work-out firm.

Atty. Edwards said that Bonnette & Picard is the applicant, and Bedford Lending is providing funds to make the project go, they have nothing to do with the bankruptcy at all.

Louis Knapp, 40 South River Road, Bedford, NH. Mr. Knapp said there was a preliminary work-out plan, and an explanation that the firm is a representative of HUD, and many work-outs have been done in the 1980's.

Mr. Carlson asked about their role, and stated that if they're lending money to the project, they may not have final say or oversight into the project.

Mr. Knapp said they are a direct HUD lender, so we are a lender and underwriter, we are the arms, ears and eyes for HUD. They've been doing it for over 12 years, and have over 100 million dollars in the pipeline. He said once they bring a project to where we submit it, the company has a 100% success rate. He said they do a lot of due diligence to make sure a project is successful. He said they are similar to a conventional lending institution.

Ms. Vitale asked about the involvement with the Greek Church, and how they've committed to the small section for the access.

Atty. Edwards said they've been in negotiations with them for some time, for a swapping of easements, the easement is negotiated, but said it is not finalized yet, but should be very soon. He said there is another easement for a Pennichuck water line as well. He said they are close to finalizing the agreements.

Ms. Vitale asked if it doesn't go through, is there a back-up plan.

Atty. Edwards said there is an existing road in place on the property, they could use it.

Ms. Vitale asked about the Pennichuck line, and asked if they could get it if this project is denied.

Atty. Edwards said he is not sure, the infrastructure is there.

Mr. Duffy said exhibits 1-4 are similar to the last request, but 5-19 are pretty new.

Atty. Edwards said tab 5 is not new, it is a compilation of photographs we distributed, they were distributed at the last meeting. He said the Sanborn Head & Associates info in tab 6 was provided the last time as well.

Mr. Duffy asked about tab 9, the real estate value impact analysis, he said there are two appraisals. He asked if this is an adequate opinion relative to the property values, or defensible.

Atty. Edwards said that that is what we have.

Mr. Duffy said in tab 10, it is the same letter relative to workforce housing.

Atty. Edwards said that should be in tab 9. He said that also the traffic assessment is materially different from last December.

Mr. Duffy asked about the trip generation, of 1,200 trips per day, and if it incorporated the property access of the Greek Church.

Atty. Edwards said the traffic engineer should speak to this, but thought that the accessway should have no impact to the number of trips to the site.

Kim Hazarvartian, TEPP LLC, Salem, NH. Mr. Hazarvartian said they completed a traffic assessment for this project, but the site and traffic has been considerably downsized from the last submittal.

Mr. Duffy asked if the traffic report was done by a model, or actual drive-by traffic counts.

Mr. Hazarvartian stated that it was done by the Trip Generation from the ITE Trip Generation Handbook.

Mr. Duffy asked about the easement to enter the project.

Mr. Hazarvartian said the easement does not apply to the number of trips, it applies to the number of units on the property, and the church's traffic is already counted.

Mr. Duffy asked if any of the traffic report is based upon the easement in existence.

Mr. Hazarvartian said whether the easement is there or not, it does not affect the number of trips on the roadway.

Mr. Shaw asked about the significance of the 1,200 daily trip threshold.

Mr. Hazarvartian stated that the City has a threshold of the number of trips per day, and if you are under 1,200 trips per day, you do not have to do a traffic impact report, and that is the daily threshold, and said that we are below that number.

Mr. Shaw said the report indicates a notable reduction in trips from the site plan, and asked if that reflects the current proposal. He said there is a greater than 2X times traffic from the approved subdivision.

Mr. Currier asked what the equivalent number of homes, traffic-wise, that this site as proposed now will generate.

Mr. Hazarvartian said there are two ways in looking at it. The first is the total trip generation, the morning peak hour is 78 trips, and the afternoon peak hour is 91 trips. He stated that previously, we had an approved site plan that would allow for 37 and 47 trips, and that was for 40 housing units. He said for rough numbers, the new plan is good for approximately 80 houses. He said the delta is roughly 40 houses.

Mr. Hazarvartian said single-family houses generate one trip during the peak hours, and apartments generate less. He said this plan has more apartments, but they generate less traffic trips per day than single-family homes do.

Mr. Shaw said it would generate about 88½ single-family homes.

Mr. Duffy asked about the building height, and if it would be 35 feet at the roof line.

Atty. Edwards said that is correct.

Mr. Duffy said it appears that the ledge in the back corner and front area is still not going to be used by the positioning of the buildings.

Atty. Edwards said there is a huge ledge problem on this site, and pointed it out on the drawing.

Mr. Shaw asked about the removal of the ledge, and asked what amount of material that was "non-ledge" that was removed from the site.

Atty. Edwards asked if Mr. Picard can answer that question.

John Picard, 502 W.Hollis Street. Mr. Picard said nothing but ledge has been removed from the site, it was 40 trucks of clean fill needed a day for the site. He said it is all documented.

Mr. Shaw asked about the test pits, but it appears as if the boulders and ledge were about at least ten feet below the surface.

Mr. Picard said wherever the report suggested, it may not be exactly where the ledge is, the test pit is only a narrow drilled hole.

Ms. Vitale said it is tab 6, near the end, for the details. She said it looks like the big rocks are between 32 and 108 inches. She said the topsoil goes down about six inches, the sub-soils between six and 36 inches deep, and then big rocks below that. She said that each test pit is slightly different.

Mr. Shaw said it is Appendix C.

Mr. Picard said it was \$12,000 for just a few test pits. He said they are not responsible for the ledge you hit that you don't find. He said it's hard to generate an accurate x-ray, because the subsurface is different, and can only be known until an excavator goes in.

Mr. Duffy said Kensington Ridge, Pitary's Drive, and White Plains Drive, and Larchmont, these are all houses that have been put into areas of ledge. He said it looks like a lot of work has been done to determine the amount of ledge, assuming it's the same underneath.

Mr. Picard said they are using an 8-inch water line to the back of Pitary's Drive, and Nynex had to blast their way into the

site. He said that Keyspan had a harder time as well, time-wise, to do their work.

Mr. Currier said that there was a lot of earlier discussion about the buffers, and maintaining them along all sides. He asked if that was for all sides of the property for the approved subdivision.

Mr. Picard said it was added at the Zoning Board level.

Mr. Currier said when the ZBA approved the cluster subdivision, it was a commitment on the back, to keep it wooded as a buffer, but the position of the two buildings is close to the abutting residences.

Mr. Picard said the cluster development had topography issues. He said the homes next to White Plains, would be 15 feet closer to the Keaney property. He said the current plan would have the buildings further away, and there would be very large new trees planted to help buffer, about 18 foot high trees, so the buffer would be effective. He said there are no decks either, and no parking either. He said they are making sure that the building is 35 feet in height, plus, there would be two acres of green space, never to be built upon.

Mr. Reppucci said that at the last meeting Mr. Picard said that he didn't encroach into the 30-foot buffer. He asked if it's still his position that the buffer has not been encroached upon.

Mr. Picard stated that the setback was not violated. He said that exhibit 16 shows the staking of the property, and kids were taking them, and they had to be re-staked.

Mr. Currier read a list of numerous abutters who wrote letters in opposition to the request. He said the Board has read all of them.

**SPEAKING IN FAVOR:**

John Picard, 502 West Hollis Street. Mr. Picard said they now have a plan to allow for workforce housing and the rebuilding of the old WSMN building. He said they've reduced the number of units, and the height of the buildings. He said they have 7.5 acres of open space, with parking underneath the buildings as well. He said the new plan allows fire trucks to gain access

around the buildings, have planned for large buffer trees, and they have met with abutters about the buffer zone. He described other uses in the area that are not residential.

Kim Hazarvartian, TEPP, LLC, Salem, NH. Mr. Hazarvartian stated that based upon his research of the vehicle trips, that the proposal will not have a significant impact on West Hollis Street, based upon experience and guidelines, and the applicant is also proposing mitigation of \$150,000 towards a traffic light, and the applicant is proposing to re-align Hollow Ridge Drive with Panther Drive, which will help clean up West Hollis Street and reduce the number of intersections, and produce a net benefit for the area.

Mr. Shaw asked if Mr. Hazarvartian has been at the site to observe morning or evening commute traffic patterns.

Mr. Hazarvartian said he has, during the midday, and during the course of his regular driving.

Mr. Shaw said there are difficulties making left turns from West Hollis Street.

Mr. Hazarvartian stated that this project should not be a problem for that.

Mr. Currier said the report speaks to numbers going into and out of the site, and if a traffic light is there, it may help the subject site, but down the street, there is no language that speaks to other roads that will be impacted, and asked what impact it will have on other streets.

Mr. Hazarvartian said all of his documents advocate for a light, it is warranted, so it should not hold up the traffic on the street.

Mr. Shaw said the problem with the warrants and numbers, is it's like a cookbook formula, and sometimes doesn't take into account the special circumstances of a street or its traffic patterns and operations. He asked if it's fair to say that if the numbers do not meet a traffic warrant for a signalized intersection, or stop signs, there are other factors that will lead a traffic engineer to recommending that something like this will be placed there, and a lot of times it depends on the circumstances.

Mr. Hazarvartian said with signals, the exact language in the manual is that signals should not be placed if they are not warranted, there would have to be extraordinary circumstances. He said the sight lines are adequate here.

Mr. Louis Knapp, 40 South River Road, Bedford NH. Mr. Knapp said the applicant has addressed the comments that have been made from last month in his attempt to bring the project forward this evening. He said he is endorsing the project in its validity.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

John Bois, 247 Main Dunstable Road, Nashua, NH. Mr. Bois said he is representing his mother's property. He said for the hardship on this property, he identified a building on the proposed plan and said it is the most heavily ledged piece of the property. He said the applicant dug down 18 feet, and blasted most of it, to get water. He said the houses that are already there are built on pure rock. He said the applicant could have built the previously approved plan, as there were five or six houses would have major ledge, but could have put them on slabs. He said he didn't understand how they can build the apartment building with garages under them. He said there is plenty of rock available on site to build a rip-rap wall to alleviate the slope. He said this property is rural, and don't want all this traffic coming in here. He said by being right across from the Police station, it will impact the emergency services, and said this plan is a hazard. He said no matter what, the City will get their taxes. He said he wants to see the test pits, and where exactly they did them, and he never saw them. He said that at least 15-20 loads of loam were trucked out.

Michael Gallagher, 9 Old Coach Road, Nashua, NH. Mr. Gallagher stated that he is concerned about the legality of this meeting, relative to the taxes. He said that for the hardship, he believes the applicant should go above and beyond what is expected. He said he is also concerned about the traffic. He said that the workforce housing is just a buzzword, it is not legal yet, and said that Nashua already meets the minimum requirements. He said that workforce housing is a figure of 30% of your income, maximum, can be spent on housing/rent. He said it would be less than \$1,000/month. He said the R9 status has

been confirmed by the Aldermen, and doesn't believe a hardship has been demonstrated.

Cheryl Walley, 12 Briarcliff Drive, Nashua, NH. Ms. Walley stated that the current proposal doesn't meet the zoning regulations, and is opposed to the application.

Bill Keaney, 39 White Plains Drive, Nashua, NH. Mr. Keaney identified his home's location. He said the back end of one of the apartment buildings would be right in back of his home. He stated it would be about 75 feet back, and 47 feet high. He said the width of it would be 72 feet. He said that any buffer there now is a few maple saplings, and some white pines, but their foliage starts at 35-40 feet in height. He said the new plantings will take a long time to mature and provide buffer. He doesn't think these buildings will make his property values increase at all. He said his property values will go down with the size and scale of this development.

Sue Phillips, 39 White Plains Drive, Nashua, NH. Ms. Phillips said Mr. Picard has been given an arrangement to come to the Board, for six variances, when he owes \$100,000 in back taxes. She said the general neighborhood is about 40 years old, and the neighbors here contribute to the City's welfare. She said the applicant has already ruined this land, and is asking for numerous variances. She said 12 windows would be looking into the back of our house, violating our privacy rights. She said that not only rocks and soil, but numerous trees have been removed from this site.

Paula Johnson, 15 Westborn Drive, Nashua, NH. Ms. Johnson said that taxpayers money will be used to pay the taxes.

Mr. Currier said the Board is a land use Board, and doesn't get involved with the taxes.

Ms. Johnson said the traffic is backed up very bad, especially when school gets out, it is almost impossible to make a left turn. She read Section 1-11 into the record.

Mr. Currier said the Board believes it is reasonable for the applicant to work out a plan with the City to obtain the taxes.

John Fisher, 101 Shore Drive, Nashua, NH. Mr. Fisher said the ITE traffic model stems from more of an inner-city analysis

where apartment dwellers are more likely to walk to work or shopping. He said this property is not located in an urban environment. He said this property is more suited to single-family rather than multi-family. He said the traffic, and left hand turns, will back up traffic. He said there is no evidence to support that property values will rise. He said that with six variances being proposed, it is really a rezoning of the land. He said this is not an issue of hardship, it is an issue of timing. He said this is a bad plan.

Michael Rubino, 5 Hammar Road, Nashua, NH. Mr. Rubino said he lives about a mile to the west. He said the peak hour traffic on West Hollis Street is very difficult, if not impossible, as you really have to go across four lanes of traffic. He said it's not fair for the residents to come here time and time again and defend their land and this zoning district from this developer. He said this project is one where the hardship isn't proven, he has been given an approval, but doesn't want it because it will not give the profit numbers he is looking at.

Diane Lowthrop, 10 Elsie Lane, Kensington Ridge, Nashua, NH. Ms. Lowthrop stated that her concern is the heavy traffic that she encounters every day getting out of Kensington Ridge.

Joe Marshall, 23 Gendron Street, Nashua, NH. Mr. Marshall submitted a handout for the Board. He said there are ten points on the handout, and briefly touched upon them. He said the density of Ledgewood Hills, Westgate Village and Kensington Ridge is about, on average, 3.5 dwelling units per acre, and this proposal is 9.6 dwelling units per acre, almost three times the amount of the nearby developments, and much more than the R9 zone allows. He said the R9 zone allows only 1 principal structure, and they are asking for twelve times that amount. He said the traffic will be tied up much more with this proposal. He said the traffic number are deceiving, because he said it was a peak of only one hour, instead of a two-three hour period. He said the numbers are all based upon statistics, not real life numbers. He said this should have real traffic value counts.

Sandy Desharnais, 36 White Plains Drive, Nashua, NH. Ms. Desharnais stated that the applicant doesn't meet the hardship based upon the topography of the site. She said it is apparent that the applicant is having a problem, like the rest of the nation, with obtaining bank financing. She said the Master Plan for the City establishes the zoning, and the Board of Aldermen

adopted the Land Use Code, and the citizens can then choose areas of the city and lifestyles for which they can live in. She said those of us living here chose to live in the suburbs, and to grant this variance would be an injustice to all the neighbors, and would drastically change the neighborhood, reduce property values, increase traffic and create an urban environment that we chose not to live in. She said the R9 zone needs to be preserved for our families, and this request is not in character with the neighborhood.

Kathleen Rivard, 26 Briarcliff Drive, Nashua, NH. Ms. Rivard said the hardship that the applicant has identified is not unique to this area, and it sits on the very ledge of Westchester Estates, Pitary's Homes and Ledgewood Hills. She said the applicant has not brought to light any new facts that support his case. She said the Triangle Credit Union case was denied, in which Judge Sullivan found no hardship, so, reasonable use in the building of 40 homes is that it more than meets the criteria of reasonable and fair use of the land, contrary to what Atty. Edwards stated, that there is no established neighborhood near this tract of land. She said that Westchester Estates abuts this land, and will be negatively impacted by this proposal. She said there will be more noise, traffic, and lights that will abut our neighborhood. She said the spirit in this case is mean, and the intent is to fight him in his plight to sell land to the Credit Union. She said that the hardship has not been proven in this case.

Arnold Kanner, 34 Laurel Court, Director, Ledgewood Hills, Nashua, NH. Mr. Kanner stated that Ledgewood Hills has 376 housing units, and estimates that more than 100 of those units meet the workforce housing definition. He said he wanted to incorporate his testimony from the last meeting. He said the hardship is not in the land, it is from business decisions that have been made, and in looking at this proposal, it looks like there have been many key missteps that have been made with this development from the very beginning, and as a result, the request for numerous variances are a result of inadequate planning. He said that Ledgewood Hills has three-story apartment buildings. He said he agreed with what everyone else has said. He said the traffic study does not appear credible, and the left hand turning traffic will be very difficult.

Attorney Steven Boyd, Wadleigh, Starr & Peters, Manchester, NH. Atty. Boyd stated that he is here on behalf of Harold Vickerry

Realty. He said that they own a 1/3 undivided interest in a parcel of land that abuts the property to the west side of West Hollis Street. He pointed out the location on a map. He said that he is not here on behalf of Athenian Realty. He said they have issues with the traffic, the first is that it is already a busy street, and the original variance called for forty houses, now it is the equivalent of eighty houses, so it is double the traffic. He said their second concern is that there is a potential use of the radio station building as a commercial use, and it is not known what type of use would go there, and the third issue is that the traffic study that was done made a lot of assumptions about studies on other pieces of property that are similar, but didn't have an actual count for this road, and didn't take into account that there may be a traffic light in the future, and the peak hours of this property for traffic may not be the peak traffic hours of another piece of property.

Warren Gilman, 20 Briarcliff Drive, Nashua, NH. Mr. Gilman said the neighborhood is R9, with single-family homes, and this project will be high-density multi-story apartment complex, with commercial office space, which is not R9. He said it is not known what type of office space it will be. He said it could have four times the amount of cars that the original approval would have. He said the height variance is confusing, the advertisement said it is three stories requested, the last request said it was going to be four stories. He said that the request is really trying to change the zoning, and this is not the place to do that.

Sandra Teets, 16 Larchmont Drive, Nashua, NH.

Mr. Currier stated that Ms. Teets submitted a letter that the Board had previously read, and it was submitted in their package.

Ms. Teets said it's been a great neighborhood. She said her biggest concern is the traffic coming into White Plains or Valhalla through the side streets. She said there are quite a bit of people who walk their dog and children on the streets, and there will be added traffic going through.

Tom Gordon, 14 Larchmont Drive, Nashua, NH. Mr. Gordon said his house sits on ledge, and he will see the entire length of the proposed apartment buildings from his house. He said his property values will be negatively affected, too, and no one

will want to buy it. He said the dirt/rock piles are a safety hazard, too, as children can get hurt if they play there. He said there is no guarantee that the large trees that are proposed to be planted will live.

Jane Ebel, 20 Westborn Drive, Nashua, NH. Ms. Ebel questioned how many bedrooms will be in each unit, because the assumption is that there will be two adults, with cars, per unit, but what if they have families, and teenagers, and there will be more cars driving around. She said this request will cost the City money, as they are already at their limit with the number of children per class, and they could be districted out.

Arthur Matsis, 515 Candlewood Park, Nashua, NH. Mr. Matsis said many years ago, a supermarket was proposed at this general location. He said it was voted down. He said the Aldermen reaffirmed the zoning as R9 in this area as well. He said to the surprise and disappointment of all the abutters, a 40-lot cluster single-family subdivision was passed, now, they want multi-family condos for workforce housing. He said that municipal employees and teachers could afford to live in these units, and could walk to work, where, in all actuality, professionals do not generally walk to work.

Robert Desharnais, 36 White Plains Drive, Nashua, NH. Mr. Desharnais said the applicant does not meet the criteria for a variance. He submitted a letter in which he itemized concerns about this site, he said the site is zoned R9 residential, and it violates the spirit and intent of the ordinance to support this case.

Sharon Berry, 28 Gendron Street, Nashua, NH. Ms. Berry said she is a teacher at Ledge Street Elementary, and cannot imagine the extra number of children in the school that would be generated from this development. She said the school is a Title 1 school, and she is a Title 1 teacher. She asked how many more bedrooms this project will have, and how many additional children will be coming from this project.

Jim & Denise Dale, 37 White Plains Drive, Nashua, NH. Mr. Dale asked if anyone on the Board would like this development as their back-yard neighbor. He said the applicant has failed to utilize any alternative construction methods to alleviate any purported hardship. He said it is clearly reasonable and feasible to construct a portion, if not most, of the 40-unit

cluster homes on top of ledge, or compacted soils, or bedrock, it is common practice nationwide, including Nashua, to pour footings on top of compacted soils or bedrock, which is ledge, followed by foundation walls, basement floors and traditional framing on top the foundation. He said the development is possible without the removal of the 7,000 - 8,000 cubic yards of ledge.

Denise Dale gave a letter of opposition to the Board members.

Brian Safarewitz, 14 Millbrook Drive, Nashua, NH. Mr. Safarewitz said he will not have visual contact with this site unless he is out for a walk. He said he is concerned that the property values will decrease, and the noise and light pollution will be worse than it is now. He asked who would buy the eight single-family homes next to Section 8 HUD housing.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. John Edwards, K&L Gates, Boston, MA. Atty. Edwards said he is licensed to work in the State of New Hampshire. He said he heard a lot of testimony about the hardship, and how the project has been mismanaged, and the delay associated between the approval and construction start, and that there is nothing unique about the project.

He stated that there was no delay, the excavation work is like the peeling of an onion, the amount of ledge that had to be moved, blasted and shipped away, and the amount that continues to need to be moved, blasted and shipped away, drives the economics of this site, regardless of the market, and the financial numbers have been presented to the Board. He said the numbers affect the ability to obtain any rational economic return on the development of this property, and a number of the houses under this proposal simply cannot be built, notwithstanding assertions to the contrary, because of the grade issues and because of the safety and the engineering issues associated with creating a grade, or a slope, or a retention wall that will work, and then, will the houses be sale-able when they abut four, eight, ten feet into a 20 or 30 foot wall or a rip-rap slope - they're not, as a practical matter, you lose the return on six to eight structures on the 40-unit development. He said it makes it economically impossible to proceed with this kind of proposal, regardless of the market.

He said a lot of testimony was that if 40 homes cannot be built, how can a large apartment building be built with underground parking. He said it will be difficult, but not as much as forty distinct unique separate homes. He said it is not economically feasible for the individual homes, he said they are looking for a reasonable use that strikes a compromise, and not maximizing, under this proposal, what could be done.

Atty. Edwards said the reason why it took four years, for the delay, is that the property was tied up in litigation for about 2½ years after the site approvals, by Athenian Realty and Mr. Keaney, also, as to who had a right and title to this property with Harold Vickerry Realty. He said that Harold Vickerry wants this property.

Atty. Edwards said for the stewardship issue, he asked the Board to look at the packet he gave out before.

Mr. Currier said that the 5 minutes is up, and wanted to give Atty. Edwards additional time.

**MOTION** by Mr. Duffy to suspend the rules to allow five more minutes for Atty. Edwards, as long as the people speaking in opposition can be afforded a full ten minutes as well.

**SECONDED** by Mr. Shaw.

**MOTION APPROVED UNANIMOUSLY 5-0.**

Atty. Edwards said for the stewardship issue, the evidence in tab 14 shows that this site, during it's construction phase, was in complete compliance with the State and Federal government, in fact, when City officials asked the State to analyze whether the site was in violation of discharge permits, stormwater runoff requirements, the State came out to the site and concluded that there were no problems, and that occurred this summer, and there is no demonstrable evidence, other than assertions, that this site has been operating in violation of the environmental regulations or of any other City ordinances, or the site plan. He said there is concrete evidence in tab 14 that shows that the permits were obtained and the State was satisfied with the status of the site. He stated that since the applicant filed for bankruptcy protection, the site has been sitting, but until a plan of reorganization is ultimately approved by the Court,

there's nothing that can be done by the applicant on the property, and everything is locked in place right now.

Atty. Edwards said another issue that was raised is the magnitude and size of the apartment buildings being out of character with the area, which isn't the case. He said that Ledgewood Hills, (and passed out pictures taken today) showing these multi-unit buildings and their mass, and they make a profile that is larger and taller, these buildings are between 47-50 feet high, from grade, not the parking garage level, and ours will be 35 feet from grade. He said it's been suggested by the abutters to the property that they will be looking at twelve windows and a massive structure. He said the conceptual drawings and elevations, in tab 2 and 3, they will be looking at eight windows, and a structure profile that is not that dissimilar from a good sized center entrance colonial.

Mr. Duffy asked about the Simplex criteria, and the Harrington v. Warner case. He said his understanding is that it was a connection between reasonable return on investment as long as it doesn't alter the essential character of the neighborhood.

Atty. Edwards said it was much more involved than that. He said that Mr. Picard has worked hard for the past two years to get this property developed, and the evidence that it cannot work is evident, because of the applicants position, in Federal Bankruptcy Court.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:**

Arnold Kanner, 34 Laurel Wood Court, Nashua, NH. Mr. Kanner said they have three concerns, he said there is considerable belief among those who oppose the project that Mr. Picard has not fully pursued all reasonable alternative construction techniques, Mr. Dale brought out one. He said if there is unstable soil, or ledge, a construction technique calls for filling the land with sufficient solid materials, he said on Broad Street, just after the rotary on the right, there is a development there in which all the homes were built on fill, and the backfill behind it creates the landscape. He said this technique is often used in Florida.

Mr. Kanner said the second argument they have is they have evidence that there will be a diminution of value of surrounding properties, he submitted a letter from someone from Century 21 a

professional appraiser. He said the will and concerns of the neighbors who may not be able to express their arguments as cogently as a trained attorney may speak, but we leave to the Board their skill in interpreting our wants, our frustrations, our concerns, and to apply the five criteria in which the Board must decide on, and we have faith that the Board will do that.

Mr. Reppucci said eight times the issue came up about the tax issue. He said he believes it is irrelevant to the Board's consideration, and is in no way any part of his consideration whether they owe taxes or not. He said it shouldn't be part of land use law.

Mr. Reppucci said the primary point is the hardship, and believed the applicant had a hard time with establishing it. He said he didn't believe there was hardship. He said there's no doubt in his mind that forty units that were approved on that property could be built, that slab structures are built in Nashua regularly. He said he confirmed this with the City's Building Department, and there's one being built right now off of Prescott Street. He said he feels 100% confident that forty homes could be built here.

Mr. Reppucci said the second item that is relevant to the hardship issue, referencing *Harrington v. Town of Warner*, and he asked specific questions, about giving any evidence on how much money has been expended in investing into this property, that would justify creating a hardship, and said he was shocked with the answer, it's not in the documentation, there's no evidence, to substantiate the amount. He said in the decision, in *Harrington v. Warner*, the Court says very clearly, that reasonable return requires actual proof, often in the form of dollars and sense evidence. He said the applicant's hardship is based upon the fact that they spent a million and a half dollars on this project, and they have a responsibility to demonstrate that to the Court, to produce evidence of it. He said no effort has been made by the applicant to prove this, and they haven't shown any evidence at all. He said he rejects the hardship issue.

Mr. Reppucci said for the spirit and intent of the ordinance, he said that there is actually an ordinance approved by the Alderman confirming that this is an R9 zone. He said he can't imagine a clearer case of what the spirit and intent of keeping that land R9, and how can the Board even suggest that it is not

that zone. He said if this case is approved, the Board would be rezoning that land, which is beyond our purview.

Mr. Carlson said he expects to find people testifying with civil and respectful comments. He said he was concerned about the traffic assessment, he said he drove around a couple times, but really did the study from out of the book, which is fine, but to really know the neighborhood, you have to go there and see it, park your car and observe, and physically count cars.

Mr. Carlson said for the plan, there has already been hardship on the neighbors, the church, and the community, and to leave it, it will be tied up in court, and nothing will happen for years. He said when the Board of Aldermen approved a Resolution for this property to stay at R9, they meant it.

He said there is a lot of uncertainty in this plan, as there are a lot of banking people involved in it, but if they run into another problem, they'll just come back, again. He said they're keeping coming back until they get the answer they want to hear, and this has happened several times now.

Ms. Vitale said she agrees with what she's heard so far. She said that it's been known that the ledge has been there, and the Board has information in the packet that there is ledge in the area. She said she didn't believe the hardship issue with the applicants testimony, they knew it was there.

Mr. Duffy said his initial thoughts on the case, with all the testimony received, as it is a use variance with the Simplex case, and the area variances under the Boccia cases. He said for the use variances, the testimony tried to speak to the rational equitable return issue. He stated that there are other reasonable uses, given the essential character of the R9 zone. He stated that he thinks the Harrington v. Warner case applies in a certain level, but believes that reasonable return, but not to affect the neighborhood, so the whole application needs to be looked at. He said he wasn't convinced that this is the site for workforce housing. He said he found the property appraisals lacking. He said he's not in favor of the use variances, and the area variances as well.

Mr. Shaw said that Mr. Keaney had three realtors state that the property values would be decreased. He stated that it was a Resolution just re-establishing and reinforcing the zone as R9.

It was already R9, but the key point was that the Board of Aldermen overwhelmingly reinforced that position with this statement in the Resolution, and that has continued to be testified by other Aldermen. He said it is a statement of desire and intent, nothing changed in the Code. He said relative to the ledge, and where it is on the property and the depth of where it is, he said there is a reasonable amount of topsoil, subsoil and the till that is not ledge, present, in typically the first six to ten feet of the soil, and, consistent with all of the other topography of the region, said he didn't see a unique setting of this property with the hardship.

Mr. Shaw said there was other testimony of the property value diminution, and believes that it is quite reasonable to expect that if you have a small neighborhood of homes with a 72-foot wide structure, as high as it is, that it might be similar to a large colonial, but in reality, the depth of the structure is hundreds of feet long. He said there will be negative impacts to the property values, especially on White Plains and Larchmont.

Mr. Shaw said he is concerned about the traffic impact as well, it will be over two times as intense as what has been approved before. He said that the applicant has not met the points of law.

Mr. Currier asked the Board about property values of the surrounding parcels.

Ms. Vitale said either way, property values will be affected, the homes that are the immediate abutters to the property, having a multi-unit apartment building right there, will change the property values, versus a single-family house being built there. She said if the request is voted down, she said she didn't imagine anything being built here anytime soon, having a property that looks like this, as testified by the abutters, that doesn't help them either. So, either way, it affects the property values. She said the single-family homes that were approved would be better for property values.

Mr. Carlson stated that he'd like to see soil replaced at the site, and trees put back in, but that's probably not going to happen. He said if the development is finished, and there's forty units there, and it's well-treed, and the ingress/egress is nice, it could enhance the surrounding property values. He

said the current proposal with the apartments, or workforce housing, will drive down the property values based upon the size and style of the development, and the amount of traffic into and out of the site, as well as the overload to the schools. He said he is not in favor of the request, as it will drop property values, notwithstanding any real estate appraisal reports.

Mr. Reppucci said the applicant is in bankruptcy. If it cannot be approved, it will be liquidated by the Court, someone else will buy it, and it is beyond our purview. He said long-term, the property will be developed into forty single-family homes, just like the Board approved it, unless someone else comes up with a better plan. He said this property is uniquely a R9 property, and the people abutting this property will suffer greatly if it is developed as proposed.

Mr. Currier asked if there is any thought on the area variances with regard to the building height, as compared to the Ledgewood Hills development.

Mr. Carlson said that he believes the use and area variances go together, the area variances are based on building those three/four story buildings, and the area variances become null and void if the use variances are denied.

Mr. Duffy stated that for the height, Ledgewood Hills has somewhat different topography, but the applicant didn't have much testimony about the density of the dwelling, but the proposed density of the surrounding neighborhoods is in the 3-4 density zone, and this proposal is 9.62 per acre.

Mr. Reppucci said it seems from a common sense point of view, some kind of traffic control will be necessitated here, there are a lot of problems that come up, such as Panther Drive is a one-way road, with access to the Police Department, and the High School, and this proposal talks about an easement, and going through someone else's property, and they have not participated in this process in any way, and that easement is not even in place, and \$150,000 for the traffic signal is only a drop in the bucket to the amount of money the City would have to spend in setting up an intersection in this area. The City cannot approve a plan that would call for City funds and expenditures on traffic.

Ms. Vitale said there are definitely traffic concerns here, specifically west-bound traffic on West Hollis Street, making a left hand turn, during the high-traffic times, the left hand turns out of the development onto West Hollis Street at all times, the contribution of the \$150,000, with or without the Greek Orthodox Church, she said with the way the traffic counts are, the amount of traffic that is proposed does not constitute a light at this time, they can contribute the money, and all the contributions from certain projects can go together to fund a light. She said her main concern is the traffic itself for this proposal.

Mr. Currier said he appreciates the fact that the applicant met with the abutters at the Salvation Army. He said he believes the applicant has been very straightforward. He said he struggles with the traffic report, and it is equivalent to a lot of homes, he said that 80 homes, or 88 homes, as was testified to earlier, versus 40, in that congested corridor, is troubling. He said the photos of Ledgewood Hills, he said he's driven by there countless times, and never knew they were that big. He said the proposed multi-family buildings, with their height, is not what the single-family homeowners on White Plains expect.

Mr. Currier asked if anyone had any other thoughts on the points of law, he believed that they went over them all.

Mr. Shaw said even if an applicant cannot meet one of the points of law, it doesn't matter, they must meet all of them.

Mr. Reppucci said for this case, it would serve us well to discuss all the points.

Mr. Duffy suggested they make a motion for the two use variances separately, and a separate motion for the area variances.

**MOTION** by Mr. Duffy to deny the use variance for the 4,200 square foot office professional use in the existing, unoccupied residential building formerly used over four years ago as a radio studio/office, the former WSMN building. He said the motion is to deny, there is no zoning restriction that interferes with the landowners reasonable use of the property, there is nothing unique about the setting of this property, or its environment to the other items in the R9 zone, in fact, the radio station was a nonconforming use in the R9 zone, so by the single-family home request of the forty individual single-family

homes, it made that request a more conforming use. He said that no information that was substantially presented that denied the applicant reasonable use, given the current zoning of ordinances for this piece of property.

Mr. Duffy said there was no discussion in the applicant's testimony regarding the radio station about the uses of the prior use as compared to the proposed office professional use, there was no presentation about radio tower use in their application.

Mr. Duffy said there was no information specifically in their application regarding the spirit and intent of the ordinance adversely affecting property values, and not contrary to the public interest, other than we understood the argument that this was a prior use that should be grandfathered, but in his opinion, it was pre-placed by the passing of the last 2003 variance request.

**SECONDED** by Mr. Reppucci.

Mr. Reppucci said he thought there was presentation by the applicant that the use of this building as it's being proposed would be similar to the use when it was the WSMN radio station. He said he believed that the applicant said it was a similar use.

Mr. Duffy said he tried to represent that there was nothing substantial in how it was represented in the Motion. He said there was some discussion in it in the traffic study, and it also makes a minor note, in footnote "c", we're not going to include those in the numbers. He said there is some information and discourse there, but didn't find it as compelling, or as substantially different that would re-grandfather it back, given that there was already approved for the reasonable uses of up to a 40 cluster homes.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**MOTION** by Mr. Duffy to deny the use variance to allow three three-story multi-family buildings, 36 units per building, a total of 108 multi-family units, with three stories of living and one story of ground level parking. He said he is moving to deny this use variance, as nothing interferes with the property owners reasonable use of the property, considering some of the

testimony that was given, that there is no specific restrictions of the property that haven't already been granted.

Mr. Duffy said that reasonable use has as noted as it had one prior commercial use, which is a reasonable use, you can have one single-family home as a reasonable use, you could have eight single-family homes as a reasonable use, you can have up to forty homes as a reasonable use for this piece of property.

Mr. Duffy said the general purpose of the ordinance indicates that, and the Master Plan, indicate that this is an R9 zone, and the Resolution passed by the Aldermen tried to indicate their support of that.

Mr. Duffy said the applicant's argument for spirit and intent of the ordinance of not adversely affecting surrounding parcels indicated in their application generally that it was important to grant an easement into the abutting property of the church, so the applicant has a reasonable use of the property.

Mr. Duffy said it is within the spirit and intent of the ordinance that this Board look at the essential character of the neighborhood as R9, even though the argument was made for *Harrington v. Warner*, while the applicant did spend a really wonderful amount of time giving us all that information, there are other reasonable uses, and it's been testified there's a lot of ledge in this area, there's nothing unique to this property, it's different, it's maybe a little higher and deeper, but those are self-created hardships that the applicant bumped into, and therefore the ordinances understand that, and the zoning map understands that, as they were drawn and codified.

Mr. Duffy said there was testimony about adversely affecting the property values of surrounding parcels on both sides, and said he found that lacking on both sides, the appraisers that had some information, but found them not compelling or substantial or even up to the standard of a good appraisal.

**SECONDED** by Mr. Reppucci.

Mr. Shaw asked about the public interest, and serving substantial justice.

Mr. Duffy said we could speak to those, and asked if he should amend the motion.

Mr. Shaw said he'd prefer to hear them addressed.

**MOTION to AMEND** the motion by Mr. Duffy, with regard to the test of not contrary to the public interest, and this was testimony from both sides by the applicant, direct abutters and people in the R9 district, different people affected in different ways, including letters of testimony from Aldermen, and one testimony this evening from an Alderman, who speak to in their comments public interest, and their interests seem to lean, even though there were two abutters at least that the applicant had in favor of the application, stating that public interest would not be served, based upon the development of a long linear three-story building, which is significantly different than single family homes, so substantial justice may have been met that the applicant doing the development may have had reasonable uses, but not proven, other than the financial hardship, which is an important piece, but not any other hardship that had not been there for the last fifty years.

**SECONDED** the **AMENDMENT** by Mr. Reppucci.

**MOTION CARRIED UNANIMOUSLY 5-0 (for the Amendment).**

**MOTION CARRIED UNANIMOUSLY 5-0 (for the Use Variance).**

**MOTION** by Mr. Duffy to deny the area variances (all taken together), given that this Board found that the two use variances were not in support, and denied, the area variances are also hereby denied. He said that there was discussion during this testimony on both by the applicant, abutters, and those in the area of the R9 zone that talked about density and significantly, there were no special conditions to the property other than the financial hardship items that were discussed, which don't meet the Boccia test requirements regarding all the area variances.

Mr. Duffy stated that it is within the spirit and intent of the Ordinance then, that by the denial of the use variances, we don't have to rule in total on the area variances, since they become moot.

**SECONDED** by Mr. Currier.

Mr. Currier said he wanted to add to the motion about the discussion of the size of the buildings and the neighborhood, that specifically, it was intrusive to the abutters, and believes it will adversely affect property values, and is contrary to the public interest.

**MOTION** to add Mr. Currier's language to the original motion.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY 5-0, AS AMENDED.**

2. **Raymond R. & Brenda L. Gagnon (Owners) 10 Blossom Street (Sheet 96 Lot 81) requesting variance for minimum lot area, 5,410 square feet existing, 18,668 square feet required, to convert a two-family dwelling into a three-family dwelling. RB Zone, Ward 6.**

Voting on this case:

Sean Duffy  
Rob Shaw  
Kathy Vitale  
Bob Carlson  
Gerry Reppucci

Raymond Gagnon, 15½ 7<sup>th</sup> Street, Nashua, NH. Mr. Gagnon stated that there was a fire in the building, and it's a big building, so they are trying to make it into a three-family. He said the area variance is needed for the land area, as the lot is only 5,410 square feet, and 18,668 square feet is required. He said there is no other land that they could add to the lot. He said there are lots in the neighborhood that are smaller, and have four units in them. He said the building is "L" shaped, so there is a back yard and a two-car garage, and parking on either side of the house.

Mr. Gagnon said this request will not be against the spirit and intent of the ordinance, there is enough parking for six cars. He said all the work is internal, the exterior of the building will not change. He said there are numerous multi-unit buildings on the street, and in the neighborhood as well. He said there are many three-family units right near the house.

Mr. Gagnon said there will be no impact to property values, the house will be completely redone, so it will look very nice. He said they've lived in the house for over 30 years, and raised their family in it. He said the public benefit is that the two units are very large, and it would be too expensive for people to live there, and with this proposal, the units will be a more affordable and reasonable size in the neighborhood.

Discussion ensued between the Board and the applicant.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No One.

**MOTION** by Mr. Carlson to grant the area variance on behalf of the applicant. Mr. Carlson stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than by area variance.

Mr. Carlson said that the request is within the spirit and intent of the ordinance, it will not adversely affect the property values of surrounding parcels, it will actually improve them, it is not contrary to the public interest, and substantial justice is served.

**SECONDED** by Mr. Reppucci.

**MOTION CARRIED 4-1** (Mr. Duffy).

**OTHER BUSINESS:**

Mr. Falk said that Staff made the few technical changes to the By-Laws, and stated that the Board officers must sign the updated By-Laws, to be placed on file with the City Clerks Office.

**REGIONAL IMPACT:**

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

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The Board did not see any items of Regional Impact on the next agenda.

**MINUTES :**

January 27, 2009:

**MOTION** by Mr. Currier to approve the minutes, waive the reading, and place the minutes, as presented, in the file.

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**ADJOURNMENT :**

Mr. Currier called the meeting closed at 11:45 p.m.

Robert Shaw  
Clerk

CF  
Taped Hearing