

NASHUA CITY PLANNING BOARD
June 15, 2023

The regularly scheduled meeting of the Nashua City Planning Board was held on June 15, 2023 at 7:00PM in the 3rd floor auditorium in City Hall AND via Zoom virtual meeting.

Members Present: Scott LeClair, Chair
 Adam Varley, Vice Chair
 Maggie Harper, Secretary
 Dan Hudson, City Engineer
 Ald. Derek Thibeault, Alt.
 Bob Bollinger
 Larry Hirsch

Also Present: Sam Durfee, Planning Manager
 Linda McGhee, Deputy Planning Manager
 Christine Webber, Department Coordinator

APPROVAL OF MINUTES

June 1, 2023

MOTION by Mr. Bollinger to approve the minutes, as written

SECONDED by Mr. Hirsch

MOTION CARRIED 6-0-1 (Harper abstained)

COMMUNICATIONS

Ms. McGhee went over the following items that were received after the case packets were mailed:

- **A21-0299, A21-0300, A21-0301 - 145-149 Temple Street**
 - o Revised staff report for subdivision and site plans
 - o Engineering comments dated June 7th.
- **Other Business #3**
 - o Easement deed, Pennichuck Water Works

REPORT OF CHAIR, COMMITTEE, & LIAISON

None

PROCEDURES OF THE MEETING

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. Be courteous to those who are speaking.

OLD BUSINESS - CONDITIONAL USE PERMITS

None

Mr. LeClair said he will hear case A23-0096 first

NEW BUSINESS - SUBDIVISION PLANS

A23-0096 GIMAK Properties, LLC (Owner) - Application and acceptance of proposed one year extension of proposed 29-unit multi-family townhouses subdivision with

associated condominium documents. Property is located at 4, 6, & 8 Dumaine Avenue. Sheet H - Lots 76, 80 & 109. Zoned "GB" General Business & "PI" Park Industrial/MU-Mixed Use. Ward 2.

MOTION by Mr. Bollinger that the application is complete and the Planning Board is ready to take jurisdiction

SECONDED by Mr. Hirsch

MOTION CARRIED 7-0

Nathan Chamberlain, Civil Engineer, Fieldstone Land Consultants,
206 Elm St, Milford NH

Mr. Chamberlain said this was approved for one year and they are looking for an extension. The applicant is already working on a similar project on the opposite side of the street, once those units start selling he'll move onto this project. He anticipates getting started in the next month or two.

Mr. LeClair asked if there were any changes to the plan.

Mr. Chamberlain said no.

Mr. LeClair asked if they accept the current stipulations in the staff report.

Mr. Chamberlain said yes.

SPEAKING IN OPPOSITION OR CONCERN

None

SPEAKING IN FAVOR

None

PUBLIC MEETING

Mr. LeClair closed the public hearing and opened the public meeting. He said this seems like a pretty straightforward extension of something approved before. No changes to the plan, no changes to the stipulations.

MOTION by Mr. Bollinger to approve New Business - Site Plan A23-0096. It conforms to §190-138(G) with the following stipulations or waivers:

1. All prior conditions of approval are incorporated herein and made a part of this plan, unless otherwise determined by the Planning Board. in an e-mail from Joe Mendola, Street Construction Engineer, and dated, February 25, 2022 shall be addressed to the satisfaction of the Engineering Department.
2. Prior to the issuance of a building permit, all easements shall be updated and submitted to the Planning Department and Corporation Counsel for review and approval and recorded with the plan at the applicant's expense.

SECONDED by Ms. Harper

MOTION CARRIED 7-0

Mr. LeClair said he would take Other Business #2 next.

2. Referral from the Board of Alderman on proposed Petition - L Deerwood Drive, Lot H - Sheet 103. **(Tabled until the June 15, 2023 meeting)**

MOTION by Ms. Harper to remove from the table

SECONDED by Mr. Varley

MOTION CARRIED 7-0

Atty. Daniel Muller, Cronin Bisson & Zalinsky, 722 Chestnut St, Manchester, NH

Atty. Muller introduced himself on behalf of the applicant. He said they are here because by statute when you file a petition with the Board of Aldermen under 674:41 there has to be a referral to the Planning Board for comment.

Atty. Muller said Ms. Adams owns a 3.25 acre parcel on Deerwood Drive, formerly known as Bloods Crossing Road. It has been determined to be Class VI. In 2021 she obtained a frontage variance from the Zoning Board to allow for construction, but because the frontage is on a Class VI road we need relief under 674:41. This parcel is the only one in the area likely to be developed. Most of the land around is either wet or in conservation. If you go further

north, that section of Deerwood Drive was discontinued. The Board has seen comments from city departments, we got one round of Fire Marshal comments before the variance and agreed to abide by those. We have received more from Public Works and Fire, and will also abide by them. Some comments are dependent on what is actually built there. The specific requirements may vary depending on whether sprinklers are installed and would be finalized when someone goes to build the house. They are looking for the ability for a building permit to be issued for this property.

Mr. Bollinger said there were some questions raised at the last meeting about whether this was scattered and premature development. Has Engineering had substantial time to review whether this is something that should go forward?

Mr. Hudson said Engineering issued comments in January and hadn't heard anything since. The plan received needs work, but that can be secondary to the approval. To build comes with certain requirements, it depends on what they are going to build. The question of premature and scattered development is a Planning question, and one that needs to be answered by the Board.

Mr. Hudson asked how far out on the Class VI road is the house.

Atty. Muller said they would have to come off of Massasoit Road.

Mr. Durfee said it is approximately 585-ft.

SPEAKING IN OPPOSITION OR CONCERN

Sherry Dutzy, 18 Swart Terrace, Nashua NH

Ms. Dutzy said she is a member of the Conservation Commission. If they are talking about the land on Deerwood Drive that is basically surrounded by conservation land, conserved in 2002 to protect the watershed, and on the other side of the airport. She asked if anyone on the Board has viewed that land. The Commission walks that area every year for monitoring and she has a lot of questions. The street that dead ends there, that is going to have to be developed. She assumes that would be at the city's expense. The Class VI road is basically a trail that they walk right now. At the head of the trail begins the conservation land. She understands where that parcel is, and it's pretty far down. Is that going to be maintained as a dirt road? How much of a commitment does the city have to make to be creating and paving a road to get a house in an isolated area that's surrounded by conservation land? Has

this land been looked at for wetlands? This area is quite wet. She believes this was also a parcel of land offered to the Commission, and considered a price they did not wish to pay.

Ms. Dutzy asked the Board to research this a little bit more to be sure that they know what the cost would be to the city and whether there are any wetlands onsite.

SPEAKING IN FAVOR

None

APPLICANT REBUTTAL

Atty. Dan Muller

Atty. Muller said a Class VI road would technically be a public highway. This was laid out in 1807. However, it is one that the city does not have a duty to maintain. Under 674:41, as a precondition to getting a building permit he will have to file in the Registry of Deeds a notice of limit on municipal responsibility and liability, which says that the person who is getting the approval to do this has to maintain the road. The city has no responsibility. Absent a change in the status of the road, that will remain the rule. It's the responsibility of the owner to make sure the way is passable. The Fire Code requires at least 20-ft of width, and there has to be a sufficiently durable surface to support emergency vehicle apparatus. This is not something that is a cost to the city. The maintenance and liability lie with the owner.

Mr. LeClair asked about wetlands.

Atty. Muller said he hasn't been made aware of any wetland issues on this lot. From a development standpoint, wetlands usually come up when you go to build. There is a setback. Right now all we're looking to do is have this lot be buildable. We're not looking for approval for a specific project. At that time they would want to verify. He does not believe the GIS showed wetlands on this parcel. That's an issue that would be addressed when they get a permit.

Mr. Varley said asked if this would require subdivision approval.

Atty. Muller said no, this is a lot of record. There is no subdivision involved. The notion of scattered and premature development comes up in the context of subdivision. We are looking

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to get a building permit for a lot of record. This would be single family, which is outside of their purview. He doesn't see how this would come back to the Board as contemplated.

Mr. Bollinger asked staff if the Conservation Commission would need to review this, given that it abuts conserved land.

Mr. Durfee said no. This process is laid out in state statute and there is no provision laid out in that statute for Conservation Commission review.

Mr. Hudson said as part of the driveway plan they will be required to delineate wetlands. If there are wetland impacts they will need a state permit and the Conservation Commission would have an opportunity to comment.

Mr. LeClair said the Board's role in this is a referral.

Ald. Thibeault said he is concerned about the conservation part of this. He is worried about the conservation land, and he still wants the commission involved at some point to make sure we are doing the right thing.

Mr. LeClair said they can attach a recommendation to this that the Board of Aldermen involve the Commission. It's up to the Aldermen, but if we feel it is an important aspect they can attach it as a recommendation.

Mr. Varley said this is a lot of record, there's no site plan or subdivision. That's typically the context in which you would have Commission review. He would suggest that they ask the Board of Aldermen take into account the proximity of the lot to conservation land and consider that in the building permit.

MOTION by Mr. Varley to provide a favorable recommendation of Other Business #2 to the Board of Aldermen, with the recommendation that they take into account the proximity of the lot to existing conservation land and any potential impacts that building on that lot could have on conservation land

SECONDED by Mr. Hirsch

MOTION CARRIED 7-0

Mr. LeClair said he would hear Other Business #3 next.

3. Referral from the Board of Aldermen on proposed amended Resolution R-23-123, authorizing the granting of an Easement to Pennichuck Water Works, Inc. for the construction and maintenance of a water line. **(Tabled until the June 15, 2023 meeting)**

MOTION by Mr. Varley to remove from the table

SECONDED by Ms. Harper

MOTION CARRIED 7-0

Atty. Andy Prolman, Prunier & Prolman, 24 Trafalgar Square, Nashua NH

Mr. Prolman said he represents Raisenen Home Elite, which purchased 15 Bartlett Ave for the Bella Estates Project in 2022. This year they went through the subdivision process to create 22 new lots. At that time we knew we had water pressure issues, but didn't know how severe. As a result, earlier this year they worked with Pennichuck on this, who said the best solution would be to take a water line off of the high pressure line on the east side of Manchester Street, run it through Greeley Park, to get to the project at the end of Bartlett.

Atty. Prolman said the benefit of this would be to provide water to the Raisenen project and the hydrant pressure. The real upside of running this water line through the project and down to the intersection means that 40 plus homes in this neighborhood will have their water pressure doubled. There is very low water pressure here, 18PSI, and by going through this process is that their water pressure will double.

Atty. Prolman said they originally proposed a water line to run through the field where the disc golf course is because they thought it would have the least impact on mature trees. Ms. Fauteux and Mr. Husband were concerned about the visibility of the tree cuts from Manchester Street, so they had a site walk and all agreed that we would run the water line where it is currently proposed on this plan. The agreed route runs along the existing Greeley Park road and tie into the Raisenen property. Raisenen is to install the waterline, and the city will pave the impacted portion of the road. Then Pennichuck will upgrade the lines in Bartlett and Wellington.

Atty. Prolman said the easement in front of them is a quitclaim from the city to Pennichuck, which has been approved by Legal. They are looking for a positive recommendation to the Board of Aldermen.

Mr. Hudson said they appreciate the willingness of the applicant to revise their water line, and are supportive of this route.

SPEAKING IN OPPOSITION OF CONCERN

None

SPEAKING IN FAVOR

Ald. Patricia Klee, Ward 3, 9 Maywood Drive, Nashua NH

Ald. Klee said she is the chair of the Pennichuck special water committee. This changes the original impact on Greeley Park of 2,700-sqft to 650-sqft. It's a much better way. It goes down the fire road across from Bueaview. It is a better plan, and from Manchester Street you will still have trees. This is truly the best compromise and she appreciates them coming to the table. She has gotten a lot of emails and phone calls from people thinking that they were building a road to this property and that it would be a cut through. This will not be a new road, this is emergency access. Pennichuck has a blanket easement there. This is a good compromise.

Mr. Varley said it seems everyone has agreed this is the best layout, and the applicant has come forward and worked with the city to come to the arrangement. He is in favor of making a favorable recommendation.

MOTION by Mr. Bollinger to provide a favorable recommendation of Other Business #3 to the Board of Aldermen

SECONDED by Ms. Harper

MOTION CARRIED 7-0

Mr. LeClair said the last items on the agenda are in relation to 145-149 Temple Street. Those items were tabled from May 4th, 2023. To summarize, they have taken a couple of presentations from the applicant, two public testimonies of multiple hours. They have received new information from the applicant. The way this is going to work tonight is, if they take jurisdiction, he will have the

applicant present the new information since May 4th to the Board. The Board will have an opportunity to ask questions. At that point he will open for public testimony for 45 minutes maximum. They have had multiple hours of public testimony, as well as hundreds of pieces of information sent into the Board more than a week ago. The Board has had ample time to review what has been sent in to us. After testimony the applicant will be given a rebuttal period to respond to that new testimony and any questions. He would remind the public that the intent is to receive comment on new information, not the same comments they received the last two times around. We're looking for new comments on new information. At that point, the Board will move into public meeting.

Mr. LeClair said that is the lay of the land for tonight's meeting. There will probably be some points where staff is asked to provide some comments during the hearing. That is how the agenda is going to be laid out.

OLD BUSINESS - SUBDIVISION PLANS

A21-0299 145 Temple Street, LLC (Owner) - Greenridge LLC (Applicant) - Proposed three lot subdivision. Property is located at 145-149 Temple Street. Sheet 38 - Lot 93. Zoned "GI" General Industrial/"TOD" Transit Oriented Development. Ward 7. **[TABLED TO THE JUNE 15, 2023 MEETING]**

OLD BUSINESS - SITE PLANS

A21-0300 145 Temple Street, LLC (Owner) - Greenridge LLC (Applicant) - Proposed site plan to show a 4-bay garage, office and storage. Property is located at 145-149 Temple Street. Sheet 38 - Lot 93. Zoned "GI" General Industrial/"TOD" Transit Oriented Development. Ward 7. **[TABLED TO THE JUNE 15, 2023 MEETING]**

A21-0301 145 Temple Street, LLC (Owner) - Greenridge LLC (Applicant) - Proposed site plan to add asphalt manufacturing. Property is located at 145-149 Temple Street. Sheet 38 - Lot 93. Zoned "GI" General Industrial/"TOD"-Transit Oriented Development. Ward 7. **[TABLED TO THE JUNE 15, 2023 MEETING]**

MOTION by Mr. Varley to remove A21-0299, A21-0300, and A21-0301 from the table, and to reopen the public hearing

SECONDED by Ms. Harper

MOTION CARRIED 7-0

Mr. LeClair asked the applicant to focus on presenting the new information, they don't need a summary of where they've been, they are familiar with it.

Atty. Andy Prolman, Prunier & Prolman, 24 Trafalgar Square, Nashua NH

Atty. Prolman introduced himself as representative for the applicants. With him is the full team, the DeFelice family, project engineer Richard Maynard, traffic engineer Jason Plourde, co-counsel Tom Hildreth from McLane Middleton, and toxicologist Laura Green by Zoom. We are open to questions.

Atty. Prolman said his initial comments will be brief. Then he will come back and provide comments for what was submitted from those in opposition and summarize the presentation. Since we were here last we had two formal submittals and some follow-up submittals as a result of questions received from Mr. Husband and Mr. Mendola, and we will walk you through that.

Atty. Prolman said the first thing they submitted following the last hearing, submitted May 1st, that was two reports. One was from Dr. Edmund Crouch and Dr. Laura Green at Green Toxicology LLC, and in that report Dr. Green summarized her prior testimony and provided additional evidence to the Board. There were some questions about diesel exhaust fumes, Dr. Green spoke to that. There was back and forth with the Sanborn Head letter of April 4th, we addressed that issue with Dr. Green's letter. He believes it's fair to said that Dr. Green and Dr. Zemba from Sanborn Head are largely on the same page of the toxicology and dispersion issues that have been presented with this application.

Atty. Prunier said secondly there were outstanding questions from traffic and Mr. Husband. Mr. Plourde submitted his report, dated April 3rd, that we supplied with the May 1 transmittal addressing outstanding concerns that Mr. Husband had. We talked to truck idling factors, truck start emission factors, and address questions that came up during their presentation.

Atty. Prolman said they submitted May 26th co-counsel from John Weaver from the McLane Middleton office, it was a cover letter to the submittal on May 26th. That covered a lot of information we talked about and presented with respect to site plan review. In

addition, Atty. Weaver provided the Board with a compliance chart where we went through every criteria of the site plan approval, criteria of the transit overlay criteria, and each and every component of the ordinances and address how we meet or exceed every component of the ordinances. He'll come back to this when he does a summary.

Atty. Prolman said following those submittals there were additional questions coming from Mr. Mendola and Mr. Husband, a letter dated June 7th. Project engineer Richard Maynard answered a number of questions and we have updated plans to include contours. Anything that city staff has sent our way we have answered, and would be happy to answer any questions at this time.

Mr. Varley said he thinks there was a suggestion that the applicant would respond to the comments. He would suggest that they hear from the public first, and then have a consolidated rebuttal from the applicant. He wants to clarify that.

Mr. LeClair said that is correct.

Atty. Prolman said yes, that is what we want to do.

Mr. Hudson said one of the responses from Mr. Maynard was that revised plans would be sent out shortly. That was on June 9th and we haven't received those to date. He asked if he missed something.

Atty. Prolman said he did not. The plans are due back to them.

Mr. LeClair said he will go ahead at this point and open it up to public testimony. If anyone wishes to speak in opposition or concern, line up on the wall over there. When you come up, name and address for record. We have a time limit, hopefully we won't use it. Try to keep your questions and comments to the new information that's been presented.

SPEAKING IN OPPOSITION OR CONCERN

Atty. Amy Manzelli, BCM Environmental & Land Law PLLC, 3 Maple St, Concord NH

Atty. Manzelli said the Board should have the recent letter they submitted, so she will jump in on a few points. The first thing she will do is what lawyers call rehabilitating the witness. In particular she is talking about Dr. Durant's testimony on April 6th. This is the big point she is going to cover tonight, because

it's important that the Board knows that Dr. Durant knows his stuff. He read the application before he prepared his comments and materials submitted to the Board.

Atty. Manzelli said Dr. Durant's materials are visual in nature. There's numerical data that underlies how he created these visuals, but it's very easy for the Board to look at these visuals and see exactly what areas would be predominantly affected by the pollution based on prevailing winds. Dr. Durant came here and told the Board he prepared these materials because when he reviewed the application materials he saw that the applicant had not presented this data in visual form. He never said the applicant did not present this data. Now, Dr. Green testified later that evening and she did say some nice things about Dr. Durant, and we are appreciative of that. But she also said that Dr. Durant must not have had time to read the application, he must not have read the whole thing. Otherwise, he would have known that she presented the data. That is not true. He did know she presented the data. Dr. Green went on to explain that she presented the data in spreadsheet form and that she obviously knows the direction of the wind.

Atty. Manzelli showed the materials provided by Dr. Durant. It's so big it's not going to stay up there. It's fourteen pages, and she printed out on large paper so they can see there's a lot of numbers on it. Every page looks like this first page. She looked at this with three PhDs, and we think, but we're not sure, that this is the same data plotting out the prevailing wind and where the pollution will flow across the neighborhoods on this plan. The reasons she says we think is because it is not clear. This data is incredibly difficult to interpret. The spreadsheet refers to and relies on information that is housed on a private location outside of the planning board's record, and requires specialized software to access. We have found that most of the applicant's underlying technical data seems designed to be difficult to interpret. Why would you provide a spreadsheet like this when you could provide a visual format like that, when with one glance you could provide the Board with exactly the impact on the community? That was the entire point of Dr. Durant's presentation of this visual. It doesn't matter if Dr. Green knows the direction of the wind, it's not about her. It's not about Dr. Durant. The point is to put the Planning Board to have in its record, for its benefit, evidence about the impacts of this project to the adjacent community in a way that you can readily understand. That's what we were trying to accomplish.

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Atty. Manzelli said we know Dr. Green put in the underlying data, we wanted to put it in a way that was readily consumable. She will pass over to staff, just in case there's any remaining question about our expert's credentials, she brought their CV's so that it would be in the record.

Atty. Manzelli said the record has some really important uncontroverted expert testimony. The proposed plant will be developed in an environmentally and socioeconomically disadvantaged area, where Nashua residents already experience some of the most adverse, greater than 90th percentile, environment conditions in NH. The applicant has not provided any evidence to refute these preexisting conditions. With respect to the socioeconomic disadvantage in this area, and Imagine Nashua's vision to improve these existing situations, the applicant has completely ignored Imagine Nashua. Having uncontradicted expert testimony in favor of denial, puts the Planning Board in a strong defensible position to deny this application in case there is an appeal of a denial.

Atty. Manzelli said she wanted to point out that they provided the Board with a noncompliance chart in their letter, and she would urge the Board to have that handy in their deliberations.

Atty. Manzelli said she would like to conclude her remarks and overall position in this case. The applicant has had plenty of opportunity to build a record that would support an approval, but hasn't done so. Rather, the record contains ample, credible evidence to support voting to deny. On behalf of her client, Riverfront Landing, and everyone else here that opposes this application, she urges the Board to vote to deny this application. She thanks the Board for their time and attention to this difficult application and taking the time to listen to her client's concerns. A hot mix asphalt plant is the wrong welcome for the Gate City.

John Naso, 117 Gilson Rd, Nashua NH

Mr. Naso said it's hard to believe they are still entertaining the idea of allowing in a populated area an asphalt producing plant, where trucks are going in and out of streets, they've heard it all for a year now. Three or four meetings he's attended, are they trying to wait us out until no one cares anymore? You've heard the facts, he won't belabor them. We can argue about the wind blowing, we can argue about smells, but experts have determined that the making of asphalt is dangerous to the surrounding environment. Why are we doing this in this area? Why are we entertaining this? He

doesn't understanding it. An asphalt producing plant would spew dangerous chemicals through our downtown, contaminating our homes, businesses, schools, and places of worship. Toxic substances, including several carcinogens, are released from asphalt producing facilities with known negative effects on human health. He doesn't hear any of these things addressed. He sees little erasers on the plan, he does through the pdfs online and sees little things changed, we're gonna add a door. None of the issues have been addressed. Nothing has been said.

Mr. Naso said he will describe two of the chemicals, because he hasn't heard enough about them. He won't go on to the list, because there's dozens produced in the material. Hydrogen sulfide is a poisonous colorless gas associated with the characteristic smell of rotten eggs. People who live near an industrial facility that emits hydrogen sulfide may be exposed, and exposure to lower concentrations of hydrogen sulfide can result in less severe neurological and respiratory effects such as in coordination, loss of smell, nasal symptoms, sore throat, cough, dryness. We have little children in that area, we have a school in the area. Is this what we want to bring to Nashua. Another chemical is benzene, which is a colorless liquid with a sweet odor. The Department of Health and Human Services, the International Agency for Cancer Research, and the EPA have all determined that benzene causes cancer. So what are we talking about? Why are we still entertaining this? He asked the Board to act and stand up and say no. A man has a right to do what he wants to his property, but he can't take our air. He asked the Board to go back to the Master Plan, which is completely in opposition of this plan, what elected officials and a committee that we put in power to devise a future for us. Things are changing in Nashua, Nashua is a community of electrical engineers. People come out and go to dinner, outdoor dining has been a big thing and hopefully that'll continue. You sit outside at Penuche's, enjoy Nashua and go shopping. It's hit some bumps, but this could be a wonderful downtown. Is this what we want when we're sitting outside? To smell asphalt? At worst they'll smell it, maybe he'll get used to it in a few years. Worse than smelling it is the toxic chemicals that our children and his grandchildren will be breathing in. He has been at meetings over the past year, and asks what we are waiting for. Let's move on with this property. They have already approved with Imagine Nashua these beautiful apartments, multiuse. A person like himself, he could buy an apartment, live downstairs, go to the store and walk. Maybe get on a train. Young singles will come in and travel to this whole corridor on Route 3. None of these things have been addressed, and he feels the applicant in that introduction opened the door to all

those issues again. There was a lot of talk about what they did and some papers they filed, and didn't address a single concern. He hopes the Board will stand up for the citizens of Nashua and reject this application. Let them build a lumber yard. That area is going to change. You got a train station, think about the plan, you're gonna have multiuse housing, little shops are going to open, you're gonna have stores, think ahead. You really have to have a vision for where this town is going, and it's not going to trucks, diesel trucks and dump trucks spewing little particulates as one of the attorneys called it, it sounded like cartoon characters when they talked about it for god's sake. They're gonna float in the air and the smoke stacks are higher than the little children. Come on, we're all adults in this room. He asked the Board to stand up and reject this application. This is the wrong thing for Nashua.

Laura Colquhoun, 30 Greenwood Drive, Nashua NH

Ms. Colquhoun said she is embarrassed that she has to come here tonight, that this has been going on, that the Board has not killed this. Has anyone gone in a three mile radius and asked the neighborhood what they want to do? Maybe they're old, maybe they can't come. This would destroy that area particularly, and all of downtown. It's sad. She can assure the Board that the owners do not live anywhere near this, and probably don't care about them, but we do. She doesn't live near that area, but she's heard people already say they'll be able to smell it. Give me a break, we're spending money for housing, this that and the other thing, put another low income housing there. Do not put this asphalt plant in there. We cannot afford to have it. We're at a stage where we're closer to dying than living, but if you put this in there, you would kill our grandchildren. That is unacceptable.

Tim Sennott, 62 Underhill St, Nashua NH

Mr. Sennott said he lives in the Crown Hill neighborhood. He's illustrated his proximity to the asphalt proposed site a number of ways. Today he learned that it is less than a four minute ride by electric scooter to the site. He's spoken at length up here and on the big screen, so he won't belabor the point and will be as brief as he can.

Mr. Sennott said something he has tried to bring to this lectern every time he has come up is that people live here. That's an emphasis that he sees glossed over in this application time and time again. He's going to, per the Board's direction, point to the new information received on May 26th. Line 146-D4 on the response

chart, wherein they respond that the proposed use is "consistent with the other industrial uses in the area, and the permitted uses of the underlying GI zone. The existing uses, with emphasis on existing, include aggregate and road construction materials, manufacturing, auto repair, construction yards, multiple companies, stoneworks, and junk removal." Very conspicuously absent from this list is residential use. People live here. If you were present or watching last meeting when he presented via Zoom, you saw his pictures that shifted mere feet away from pictures provided by the applicant that showed when you go just to the left of a junkyard, you find residents. When you go just beyond the proximity of the property line, you find residents. And it's residents that area staying there.

Mr. Sennott said we've heard the applicant say we're not going anywhere, and no one is asking them to. He's spoken to numerous people about this plant, and not once has he heard a single person say, well Newport's gotta go. Newport has been there for years. But this proposed use of the property is not consistent with the neighborhood, and not consistent with the master plan, Imagine Nashua.

Mr. Sennott said another item he would like to point to is a few lines down, 146-D6. It refers to a quote from Mr. Hudson about a year ago, on June 2, 2022, citing that traffic volumes proposed on the streets are fairly low and from a capacity standpoint on Commercial Street and Temple Street is not a concern. A year ago that may have been accurate, but we're focused on new information today. When he first stood up here he spoke about concerns of neighborhood children in the areas of Bridge Street and adjoining side streets walking to Dr. Crisp school. We have since learned and seen large exploration of redistricting of the elementary schools in Nashua. Proposed plans include the closure of Mount Pleasant as well as plans that would redistrict the area in the event that it stays open. In either plan, those neighborhoods are removed from the Dr. Crisp districting and are sent to schools that are further than the district's proximity for walking. The traffic is going to increase, not only in addition to the applicant's trucks coming in and out, but now with school buses bussing children to the Mount Pleasant school in the event that it stays open, if not then to further schools such as Charlotte Ave and beyond. These are the considerations that we need to make. We've heard before that we need to think in the here and now, but Nashua doesn't stop here and now. Nashua doesn't exist a day at a time, Nashua exists in the past, present, and future. These considerations do need to be made, otherwise we wouldn't have a

Master Plan. Without these considerations, the Master Plan wouldn't be listed as the number one criteria for this Board's review of plans and whether or not they should be approved.

Mr. Sennott said he thinks sufficient evidence has been given to show that in spite of the applicant's responses, this is not consistent with the Master Plan or the overall scope of where Nashua is headed. He thinks it needs to be voted down tonight.

Paula Johnson, 15 Westborn Drive, Nashua NH

Ms. Johnson said she is on the Board of Education. She is here speaking as a resident. She hasn't come to very many of these meetings, but she thinks it's sad that we the people of this city have to come and fight for our neighborhoods time in and time out. We've been called the NIMBY's, not in my neighborhood, but to put something like this in a neighborhood. She grew up in New York, and when she used to go to Queens and Manhattan she would see the smog, and she got used to that and the smells. Why should we have to get used to the smells of this asphalt and all the toxicity that comes with this? Why should we the people have to say that a neighborhood is going to be broken up by this? A project like this should be on the outside of the city in its own area, not in the downtown. Yes we have kids in the neighborhood, and whether or not they continue at Dr. Crisp or not, it's about we the people. She doesn't see any aldermen here tonight, the ward aldermen, or the six aldermen at large, and shame on them. They're the ones that were elected to represent these people and this audience here tonight. They were elected, and they should be here supporting their beliefs here, especially the ward aldermen. As she sees the group of people, and she would assume that these are the men representing at this company, and you look at them, it's a business. She gets it, it's a business to make money. But that business to make money can hurt this whole city in the future and now. That we again, the people who pay the taxes for our neighborhood so we can live in the neighborhood, and what are they going to do, they're going to pollute the neighborhood. They're going to pollute this city.

Ms. Johnson said if you look at New York and the orange fog, we don't need to have a black fog in this city over our heads. What we the people need to do is stop having to come to the Planning Board and begging whether you live on the north side or west side or whatever part of this city, that smell is going to resonate. If there's a spill or something, forget it. She remembers talking with DPW about the new facility, we didn't want the trucks going

up and down West Hollis Street because of the amount of traffic it's going to be. She asked the Board to do the right thing and not allow this plan to come into this city. She asked the Board to think about us, we the people who pay taxes on our property and that we have to come here no matter what part of the city to defend and protect the people in this neighborhood. Stop it now.

Jordan Thompson, Conservation Law Foundation, 11 Lovewell St, Nashua NH

Mr. Thompson said he will try to keep this short. He's sure that many noticed in this room that there are people at the back. We had an interpreter in the back throughout this entire session, this is not the first meeting that we have interpreted. He is the environmental justice advocate for the Conservation Law Foundation, and we have been working with the Granite State Organizing project to get interpreters for these meetings. We are here in this room talking about an asphalt plant, this proposed site is in a neighborhood that is predominantly people who have English as a second or third language. They're speaking Spanish, they're speaking Portuguese. Were any of the applicant's materials translated for those people to read, to understand? Was the agenda for this meeting translated for the people of this neighborhood to understand? You're ultimately making decisions and deciding policy for people without them at the table because you're not considering them as people. This is something that he hopes to work with all of them on, but it's something that needs to be taken under consideration in the first place.

Atty. Heidi Trumarco, Conservation Law Foundation, Address Not Given

Atty. Trumarco said they have submitted letters, and she wants to address some of the new issues that have come up. The Board has heard from the community this continuous and unanimous opposition to the plant. She thinks that's really telling, and the Board needs to use this toward whether this plant fits in to the community and will it have an impact, which is one of the required criteria. No amount of conditions is going to make this plant fit and make it safe. You can't condition it into a permit, it's not safe for the community. The Board cannot impose enough conditions to make it work. The plant has failings and the applicant hasn't met their burden to demonstrate, conditions aren't going to save this application. The burden is on the applicant. You've heard from many people and many experts about the fatal flaw with this plant. They haven't met that burden, they haven't demonstrated enough to

get the permit here. That is their problem. They haven't shown it, they don't get the permit. The Board isn't going to condition it into a permit.

Atty. Trumarco said you can see this in the first staff memo. Those gaps were pointed out, and those gaps remain. The May submittal doesn't address those fatal flaws. For instance, the lack of complying with the Master Plan, you've heard that over and over again. Their recent submittal, the only thing she could see that was new there is the applicant is telling the Planning Board that because the proposed area is supposed to be pedestrian friendly and walkable and bikeable, that because they are producing asphalt they are encouraging walking and biking. This is laughable. There is no reason why the asphalt production has to happen in the walkable and bikeable area. They can produce the asphalt elsewhere and then lay it down. They haven't met the burden of saying they are complying with the Master Plan, they aren't advancing the walkability or bikeability of the neighborhood. They aren't complying with the Transit Overlay District.

Atty. Trumacro said the application is full of these conclusory and unsupported statements. You saw that in the most recent submittal that they referred to the plant as "state of the art" with no evidence. But they said it was like a plant in Massachusetts that some people have said is the cleanest permit in Massachusetts. That is not evidence on the record, that is somebody saying that somebody said it was great, and the Board should just take their word for it that this will also be great. That's not enough.

Atty. Trumarco said she laid out in her comments why this doesn't meet the criteria, it's listed there, there is plenty of evidence for the Board to deny the application. It is incompatible with the Master Plan, the TOD, and it will harm the health and safety of the neighborhood. She urged the Board to deny the application.

Peter Schaefer, 15 E St, Nashua NH

Mr. Schaefer said he was on the Master Plan Committee, and two members of the Board were on the committee as well. They know what is in the plan and what the city would like to do, where it is moving and where it has been moving. We are finally getting out of the industrial age and into the new age in this area.

Mr. Schaefer said they have also heard from a lot of school kids before. School kids know whether we should have an asphalt plant

here or not. There's been a lot of rational arguments here for months now, so he's going to give the Board a break. He's not going to give any rational arguments. What he is going to ask is that they think about this plant, which would be here 10, 20, 30 years or more, if approved. He asks the Board, what are they going to tell their kids when they come home from school? In 10 years, what are you going to tell your grandkids? What are your kids going to tell your grandkids when they come home from school? Everyone knows this is wrong. Think about it.

Robert Feder, 26 Marion Drive, Hollis NH

Mr. Feder said he lives in Hollis and is a member of the medical society consortium on climate and health, which is a national physician organization concerned with climate change and air pollution issues. He feels that the applicants have not made a sufficient case for the air pollution impacts of this plant. They continually refer to the work done by Dr. Green, which showed the effects of only a few potential pollutants from this plant and also the diesel exhaust pollution from the trucks involved. There are multiple other pollutants that come from asphalt that were never addressed by Dr. Green, many of them are carcinogens. We do know that the incidents of cancer and pulmonary diseases are much higher in people within a close radius of asphalt plants, than it is in other areas. The pollution issues have not been adequately addressed by the applicant.

Mr. Feder said the other issue is the potential impact of this plant on the businesses of Nashua. As a Hollis resident he enjoys coming frequently to Nashua to dine at the many good restaurants on Main Street. This plant is going to emit a foul smell, which is sometimes going to go right to those restaurants. There is no way right now that anyone can predict the wind direction in the future. Climate change has altered weather and wind directions in a significant way. The recent brown fog that was inundating the east coast and major cities was a result of smoke coming down from the fires in Canada, blowing southerly and westerly, which is the opposite way that wind normally travels. That's the same direction that will blow asphalt from this plant onto Main Street. If those restaurants always smell like asphalt, nobody will keep going to them, and the businesses of this city will suffer significantly. He urges the Board to deny this application.

Denis Frediani, 9 Cottage Ave, Nashua NH

Mr. Frediani said he lives about three blocks away from the proposed site. He has multiple concerns. He lives there, he walks the city all the time. The kids on bikes and scooters and skateboards and texting while they're on them. He almost got run over by a kid on a bicycle because he was looking down on the sidewalk today. They fill that neighborhood. He doesn't want to see someone sitting up in a truck that's going to miss these kids. That danger isn't talked about. He can't believe that they said it's going to hold the traffic. If you have been on East Hollis, trying to get across the Bridge, any time or in rush hour, it's insane. They must have done their calculations during Covid, when no one was on the road. Now it's horrible. Also, he doesn't want to have to smell that, he has allergies. If you really want to do your job, put scrubbers in there that scrub every pollutant out, clean it up so that nothing will get into the environment. If they're willing to put that money in, let them put the asphalt plant in. He doubts they're willing to do that, they want to make money, not serve our community.

Mr. Frediani said the Fire Dept. next to it has artwork on the back because the future plan is to walk right across the site that they want to put an asphalt plant at. They want to extend the bike and walking lane. It's already laid down, they already put the artwork in. That's the future plan, right across the old railroad bridge. Now the asphalt plant is going to come in the middle of that. The Master Plan, that's what we're here for. We want to make Nashua a beautiful place, not a smelly dangerous place. He would just say no. They have no place downtown. He asked the Board to reject this plan.

Shelley Devine, State Representative, 7 Timothy Drive, Nashua NH

Rep. Devine said she is here to oppose this. She had a thought about business and what this would do if this goes through, say the Board votes to allow it for whatever reason the city of Nashua doesn't want to go up against any sort of lawsuits against the part that wants to put this in. But her perspective as a business person is, if you're putting this in long term, wouldn't there be legal repercussions with the community. You have young children playing there. She would think at some point in the next few years they would suffer some litigation from some family member. Her feeling is as a business person it doesn't make sense to be in continuous litigation, always litigating for something that makes no sense within a community. She gets the business perspective that they have a business down south, it's running well, it's operable, I did all this work and went through years of litigation

to get it approved to go in. It's a huge surrounding, they have all the quarries there, all that. But now you want to put it into a small community, inside a city that she's sure the business person who owns it goes and dines and eats on Main Street. Do you really want to smell your own? The objective is as a business person, in the long term you're going to turn around and sell that property somehow. Then we as a city are stuck with a plant, and what do we do with it? She doesn't think that's a smart business move. As a business owner it might be time to rethink what he's doing with that property instead of putting in a plant that's harmful. They probably know it's harmful and wouldn't even want to be there themselves in the long term. She hopes that the Board decides to vote on this issue and put some ease to the people's minds in that community instead of dragging it out. If they can't make a decision tonight, then the person who owns it tonight should rethink or reimagine the property that they own. There's kids that live there, would you want your kids living there too?

Mr. LeClair said we have about 3-4 minutes left. He sees two more people, he's going to take those two people and then end the public comment.

Deidre Thurber, 37 Gilson Road, Nashua NH

Ms. Thurber said she works on Temple Street. When she heard about the proposal she had concerns for herself and her coworkers. The bigger concern is that the building she works in, the bottom floor there is an early headstart. That means there is a playground there. Early headstart means infants and toddlers. Those infants and toddlers are out on that playground every day for extended amounts of time. They also have strollers where they take the kids out for walks in the neighboring area. She wants to raise awareness about that building, the business, and the kids that are there on a daily basis and take that into consideration.

Joanne St John, 25 Beauview Ave, Nashua NH

Ms. St John said she has been a community activist in this city for many years. She moved her in 1977 and between then and 1980 the area that the applicant is in discussion about was a busy area, mostly commercial walkin businesses. There was a lumberyard, a kitchen design place, the stoneyard, it was a version of a chopped up Lowes and Home Depot, all at once.

Ms. St John said when she first heard about this she was one of the people who spearheaded a campaign to stop this. She knw it was

bad for this city. We started with 6 people in her sunroom, that was in 2022. As we all know, that has developed. The grassroots grew and continues to grow. When we first started on Main Street, handing out fliers about what was going on, there was no one that was aware that this was being proposed. This was in August and September. Grass roots does work.

Ms. St John said she knows that Mr. DeFelice said he is not going anywhere. She can assure them that herself and the grass roots people in this city who care about their children are not going anywhere. We are not going to be worn down or scared away, we will continue to grow until the right thing is done. She can't honestly say if she was on this Board that she would have any doubt in her mind that this is the wrong thing in this city. The Board has put in an awful lot of work and an awful lot of time, she's been on many committees, she knows how much it takes out of you. She sounds angry, but not at the Board. We have gone back and forth with stalls, and new evidence, and half-baked scientific ideas, and we've put up with it for quite a long time.

Ms. St John said tonight when the applicant supposedly had new information, she wondered if that information was pertinent. She finds it not to be. The information she would have wanted was that the acreage had expanded from less than 3 to 17 acres, which is what he has in Westford Massachusetts. Speaking of that, if took them six years for that approval. That is in an area right next to a highway. When it was approved, there was a stipulation that those trucks were not to go on certain roads. They have to go directly onto that highway and no other way. This is a whole different situation. She thinks that Mr. DeFelice knows that. She knows he's a good businessman, that he thought he saw his opportunity, but in his heart he must know that this is not good for this city going forward. She begs him to reconsider his choice going forward for the benefit of these citizens and their children.

Ms. St John said the other new information she thought they would have besides 17 acres, quick access to the highway, no traffic on our roads, would be that we have taken away all the children and the schools, and they would be taken to a little peaceful place in a bubble and all protected. That's what she thought that the good news would be. She could go on, but she has said enough. She begs the Board to do the right thing tonight, and begs Mr. DeFelice to reconsider. He has to know it doesn't belong here in this part of Nashua.

Letters received before 4PM, June 14, 2023:

Adam Pereira, 42 Vespa Lane, Nashua, NH
Zach Taylor, 12 Souhegan Drive, Nashua, NH
Arthur Bjork, 9 Marsh Avenue, Salem, NH
Donald Leisman, 11 Coolidge Avenue, Nashua, NH
Yvonne Goodwin, 4 Montclair Drive, Nashua, NH
Chris Boyle, 48 Pioneer Drive, Nashua, NH
Derek Gilmore, 7 Morningside Drive, Nashua, NH
Nadine Parker, 30 Walden Pond Drive, Nashua, NH
Kelly Friedland, 9 Warner Street, Nashua, NH
Arthur & Karen Corazzini, 12 Beasom Street, Nashua, NH
Maria & Dan Reynolds, 20 Berkeley Street, Nashua, NH
Cliff Anderson, 75 Walden Pond Drive, Nashua, NH
Diane Raymond, 6 Fifield Street, Nashua, NH
James Pyle, 14 Elystan Circle #5, Nashua, NH
Ronald Vander Mallie, 9 Monias Drive, Nashua, NH
Mary Jacobbe, 8 Westray Drive, Nashua, NH
Ben Mercuri, 101 Chestnut Street, Nashua, NH
Kathi Martinage, 300 Candlewood Park #31, Nashua, NH
Linda Petrin, 645 Center Rd, Goshen, NH
Sam Alkhoury, 76 Allds Street, Nashua, NH

Mr. LeClair thanked everyone for their input. What he will do is take a five minute recess here.

[Unintelligible in audience]

Mr. LeClair said he had 45 minutes for everybody. At this point all they are doing is extending the meeting. He would like to move through the meeting. So he will go into recess for five minutes. At that point he will have the applicant for consolidated rebuttal and final comments. Then the Board will have questions and talk to staff.

****Five minute recess****

Mr. LeClair said at this point he will have the applicant come forward for rebuttal and give the Board an opportunity to ask any final questions.

APPLICANT REBUTTAL

Tom Hildreth, McLane & Middleton, 900 Elm St, Manchester, NH

Atty. Hildreth introduced himself as co-counsel with Atty. Prolman. His colleague Atty. John Weaver submitted the materials

to supplement the filing. He wants to touch on a few of the things Atty. Weaver mentioned in his filing, one of which is for legal reservation of rights issues. We maintain on behalf of the applicant that there is no basis to apply the provisions of the Transportation Oriented District overlay zone to this site. The ordinance, in its own terms of defining what that overlay district means, says that it's within proximity of some kind of bus station, train station, or something in the district. There is none in this location, and there is no reasonably foreseeable chance that there will be. There is no basis to apply that overlay district to this application.

Atty. Hildreth said nevertheless, we believe we comply with all of the standards. Similarly, we reserve the right to contest that the Mixed Use provisions of the ordinance don't apply to the district, they only go on a tag-along basis to the TOD, and if that one doesn't apply than neither do the mixed use provisions apply. But again, they contend that the proposal satisfies all of those requirements.

Atty. Hildreth said we maintain that under NH law a Master Plan is not a binding document to which a site plan application has to adhere. There is case law to the effect that aspirations that haven't yet made their way into a zoning ordinance can't bind an applicant or the Planning Board. Nevertheless, we maintain that the application does comply with substantial provisions of the Master Plan and East Hollis Street area plan.

Atty. Hildreth said lastly we reserve our right to contest that a municipality can regulate emissions from a hot mix asphalt plant, which are already regulated by the NHDES Resources Division, a permit for which we'll issue for this site, with which the operations will be fully compliant. Those are our statements of reserved rights, briefly by way of rebuttal.

Atty. Hildreth said every person who came here tonight for this meeting walked on, rode on, or drove on asphalt. Asphalt is everywhere, and it has to come from somewhere. The applicant isn't proposing this location because it is an environmentally and socioeconomically disadvantaged area. That has nothing to do with it. The applicant is proposing this application because it owns the property, it's in the business, and smack dab in the middle of the General Industrial zoning district where the use is expressly permitted.

Atty. Hildreth said the DeFelices have lived in the city for a long time. They love and care for this city, its residents, its children, its elderly, its ambiance and environment, as much as anyone who lives in this city, raises their family in this city, or owns a business in this city. As a matter of fact, many members of the DeFelice family will be as impacted as anyone by the operation of this plant because it will occur immediately adjacent to the Newport Construction site, where many of them work on a full time basis. While many people work out of the neighborhood, the DeFelices will be on the property either working at this plant or the adjacent property while the plant is in active operations. They're not asking anybody to suffer anything that they themselves aren't willing to endure. They know because they operate a state of the art facility in Westford that nothing will have to be endured that will be of the kind of imagined horrors that you heard tonight.

Atty. Hildreth said we maintain, as we say in the supplemental filing, that as a permitted use it simply cannot be denied at the site plan review process. The most that can occur is reasonable conditions are introduced to ensure that any potential deleterious impacts are mitigated to the fullest extent possible.

Atty. Hildreth said for example, he is referring to RSA 674:44, site plan review regulations, where it says that a Planning Board may, by its site plan review regulations regulate "undesirable and preventable elements of pollution, like noise, smoke, soot or other discharges". Every time you start your car, every time you turn on a light, every time you start a leaf blower, you are committing some kind of pollution. Some of it's preventable, some of it's not, none of it is desirable. Site plan review regulations can control preventable forms of pollution, not all forms of pollution. We submit that the state of the art facility that's being proposed here, to the greatest extent possible, controls all of the controllable pollution.

Atty. Hildreth said a number of people have talked about the master plan, but nobody has pointed to a single specific provision of the plan to say, "this is a line with which this proposal is inconsistent". When we went through the master plan and East Hollis Street area plan, we found lots of places where this proposal is fully consistent. He is going to read one of them to you. The East Hollis Street area plan is older than the master plan, and expressly incorporated by reference into the master plan. In it, there's this paragraph. "Most of the East Hollis Street area plan is zoned General Industrial. This zoning evolved from the historic

uses of this district, which were primarily heavy industry, situated to take advantage of the rail transportation in the area. The uses allowed in this zone includes businesses and a range of industrial uses, including heavy industrial uses, construction materials, distribution and processing, outdoor storage of materials of vehicles, research and development and manufacturing." At the time that this was written there was an active Redimix concrete plant operating in the same vicinity. Then it importantly ends by saying "these uses are viewed as playing an important role in the district and the city's future."

Atty. Hildreth said several people have spoken, he thinks it started with the Mayor's statement from December 2022, as if they have a particular vision in mind for what this area could become. Of course, a master plan is a visioning document. But everybody brings to that their own vision, what's in their own mind. There are over 290 permitted uses in the Table of Uses in the zoning ordinance, more than 90 of them are permitted in the General Industrial district. None of them are residential uses. There is not a single residential use that's permitted in by right in the GI zoning district. Any residential uses that exist there, exist by virtue of some other way, they weren't permitted by right. But the district does exist to port exactly the kind of industry that manufacturing of asphalt, which is listed line 177 of the ordinance, is expressly permitted.

Atty. Hildreth said when people talk about somehow this is inconsistent with the notion of a mixed use district, what they fail to do is define what a mixed use district means. If you look through the ordinance, you won't find any direct definitions of that. We have suggested in the supplemental materials at least two ways to do that. One is the 96 uses that are permitted in the GI district. They range in quite a variety, we have a footnote in the materials Atty. Weaver prepared. When the city adopted that zoning ordinance, bringing all those uses together, they clearly decided that those uses could coexist in a mixed use kind of way. That's one way you can do it.

Atty. Hildreth said the second way is at the mixed use district itself, the overlay. It's not us, there's a district just to the north where there's a mixed use and general industrial district. The way that district works is every underlying use is permitted, including asphalt manufacturing, and on top of that you can layer on some creative residential districts. The Nashua zoning ordinance, its master plan, its East Hollis Street area plan, they contemplate a mixed use district. They're not inconsistent with

what is proposed here. It's an industrial use, it's straight in the middle of the fairway, it's expressly called out as a permitted use, it belongs in this district and that's why it's proposed here.

Atty. Hildreth said the applicant has offered to staff to bring in the engineering firm that's designing the actual components of the plant. The applicant has offered to staff to bring in the firm that has prepared the Resources Division permit filing. We can bring in someone from the air resource division themselves. The fact of the matter is, these uses are very minor sources of pollution. It's going to be regulated and permitted by the NHDES. The applicant invited Board members and others to come to their operating plant in Westford to see for themselves, experience for themselves that it doesn't smell, that it doesn't produce the kind of noxious effects that have been talked about here. Some of the Board did that, and he hopes their memories are with them as they deliberate on this proposal.

Atty. Hildreth said Atty. Prolman is going to talk about the condition of approval that we have been working with staff on since Friday afternoon. There are 26 of them. We are 85% of the way in agreement with staff. Atty. Prolman will speak to the last little bit of distance that we think will require some further conversation.

Atty. Hildreth said he is sorry that so many people got ginned up on the notion that this was some kind of a political process, that if they came out in great numbers they could overwhelm the law, overwhelm the facts, and they could carry the day. That's not the way it works, and he is afraid many people were misled by the role of the site plan process. We have the statements in our letter about what the Supreme Court has said in terms of the limits of site plan review-

Mr. Varley asked that the audience give the same courtesy to the applicant while they are speaking.

[Unintelligible in audience]

Mr. Varley said that's enough. No further comment from the audience please.

Atty. Hildreth said it's not intended as an insult, he's sorry if someone took it that way. From an applicant's perspective, rhetorically it's insulting when hyperbolic statements about dead children and everyone getting cancer and people being put in a

hermetically sealed bubble, as if that's new information that's going to be germane to the case, that's insulting to the applicant. It's insulting to the process. The process is well defined, the law is clear, it's a permitted use. We have done everything that city staff has asked in terms of conditions. We stand by the fact that we have a state of the art proposed facility. If any board member thinks there is an element of this plant that could be made better, we'd like to hear it. We would be happy to do it. The applicant is in the business, they know the industry. They know what they're doing, they do it successfully in other places. They want to do it here in the community where they live and work.

Mr. LeClair said he has a question. Is it their position that a Transit Overlay District can exist without the station? It seems like there would never be any use for a TOD.

Atty. Hildreth said you have-

Mr. LeClair said let me finish and then you can respond. He's been on this Board for a decade or more, and dealing with these types of districts for a long time as well. The TOD in our view is a planning tool for us to be able to put a vision on an area and to say that I would have to put that vision on after the area already exists seems kind of backwards to him.

Atty. Hildreth said you have a bus station right behind us here. It's perfectly appropriate to put an overlay district around that, if you want planning relative to the orientation of that bus station. If there were a train station in this city, it would be perfectly appropriate. You don't have to have an overlay district to have a train station, a train station is transportation infrastructure, the city can assert its sovereign immunity and decide we're going to put it here. You can put it somewhere in proximity to an existing track presumably. That doesn't mean you have to have an overlay district, the overlay comes on top of that and say, we have this transportation related amenity, now we want to do some creative planning around it to take advantage of its presence.

Atty. Hildreth said there is clear case law, and we cite it in the material that a municipality's mere plan to do something in the future isn't a basis to regulate or deny a present application with which the city thinks it may be inconsistent. He would argue, and they did argue, that the proposed asphalt plant isn't inconsistent with a passenger rail station or a transportation overlay oriented district. We pointed to the area in Watertown

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Mass, where there is a multiplicity of uses, residential, commercial, retail, so forth, in close proximity to a much larger plant. We mentioned that at the terminal end of the BTA is a gigantic Boston sand and gravel operation, around which are hundreds of millions of dollars of investments being made in residential and offices and biopharmaceutical research facilities, all within close walking distance.

Mr. LeClair said he's not making that point. The point that he thought he heard from him was you could not put a TOD down without that in place.

Atty. Hildreth said he's speaking from the line in the ordinance that states locational criteria, the TOD overlay district shall be located within a reasonable walking distance to a transit station. There is no transit station in this neighborhood. The only transit station in the city that he knows of is the bus station next door, or the one at exit 8. There you could do whatever you want. They don't have to come first, you can have a train station without an overlay district surrounding it.

Mr. LeClair asked if he was saying you can't have a TOD without a train station.

Atty. Hildreth said without some kind of reasonable walking distance to a transit station, yes. At least, that's enforceable. We are reserving our right to make that claim.

Mr. LeClair said he is wondering if that's what they think.

Atty. Hildreth said yes, that's the basis of the reservation. We still go through the criteria and show that we meet it nonetheless.

Mr. Varley said on another one of the legal points they raised he wants to understand, is it their testimony that if a use is a permitted use in a zoning district, that by definition the Planning Board does not have the authority to deny an application that is a permitted use?

Atty. Hildreth said that's right. He maintains that. You can regulate it.

Mr. Varley asked what would be the basis for that position.

Atty. Hildreth said uh, the case law that says what is the role of a site plan review process. He can read the text.

Mr. Varley said he did read the text. He also reviewed the town of Hanover case Atty. Hildreth cited, apparently for that proposition. He doesn't understand how you can read that case to support that expansive of a position. He would note that if you go on to review the entirety of that case, he doesn't see anywhere where the Supreme Court says that the Planning Board is deprived of the authority to deny an application, simply because the use is a permitted use in the district.

Atty. Hildreth said he agrees that it doesn't say that as expressly, and this may be the case that makes that law. But if you read the cases, and there's only a handful of them, where a site plan application has been denied, it has been denied because an applicant has been unwilling to fulfill a reasonable condition of approval. Look at the basin properties, the Hannaford project in Lebanon, where the project proponent thought that a 25-ft landscape buffer was too big and refused to accede to that condition approval, and the site plan application was denied. The Supreme Court said that was not an unreasonable exercise of the Planning Board's site plan power. This is why we've been asking, we asked staff and this Board, if you have reasonable conditions, whether it relates to elements of our plant, the operations, that you'd like to see, let us know, because we would like to abide by them. To Mr. Varley's point, he does not think if the applicant is willing to do that, you can deny an expressly permitted use on the basis of site plan review regulations unless you're going to apply some condition of approval that the applicant can't or won't agree to.

Mr. Varley said he respectfully disagrees that the case law says that. The town of Hanover case suggests that the prior precedence is that the Board's decisions can't be based upon personal opinions or vague concerns, the implication is that if the decision is based upon objective criteria and specified concerns, that there would be a basis for denial. He understands Atty. Hildreth's position and the right they are reserving, but he wanted to express the view of himself, not speaking for any other Board members, that he simply doesn't see that as being supported in the case.

Atty. Hildreth said his office represented Dartmouth college in that case, he worked on that case and is familiar with the facts and the law. He agrees that it only comes up to the edge and doesn't make the statement as starkly as he wishes it did. This may be the case that does that. When you read the decision where it says that a Planning Board's review does not give the Board the

authority to deny a particular use, simply because it does not feel that the proposed use is an appropriate use of the land, and when you look at the basis on which they denied it, this was individual board members saying, well maybe it's permitted there, because the indoor practice facility complied with the zoning ordinance, but there are people who didn't like it. They thought it was going to cast too big of a shadow, overshadow the adjacent residential neighborhood. The Supreme Court said you can't do that, this is a permitted use. That's what we're saying here. Again, we'd like to get to the stage where we're talking about conditions, because that's where we think the action is. He'll let Atty. Prolman speak to that.

Andy Prolman, Prunier & Prolman PA

Atty. Prolman said the folks in the room will be happy to know that he is the last speaker for this application. He wants to respond to a couple of points made in recent submittals and wrap up the three applications that they have before the Board.

Atty. Prolman said the city of Nashua's Health Dept. provided a letter to them, dated June 8th, where they expressed their concern about any mitigation measures and possible pollution. He would just say on behalf of the applicant, we agree. We have the same concerns, we want to address any and include all mitigation measures. Our applications, we're going to make sure they work, and we do not disagree with this concern. We work and live in the city as well. Based upon the expert evidence and Dr. Green and Dr. Zemba, who are largely in agreement, the asphalt plant will have no, from their testimony, all of the health impacts are below all regulatory thresholds as Dr. Green testified and provided in her report. We don't take issue with the Health Dept's letter, we agree to address all mitigating factors.

Atty. Prolman said secondly, Atty. Manzelli's letter raised a couple of points tonight in her letter. He wanted to speak to one point that was not discussed tonight but is in her letter, because it was a last minute hail mary. There's an argument made by Atty. Manzelli and Gregory Indruk, somehow arguing that we're not a permitted use, that we should be coded under use 172, which requires a Conditional Use Permit as opposed to use 177, which is a permitted use. First off, this issue has been decided over a year ago, our application came in December 2021, and throughout the entire time, throughout the entire process we've been working under Land Use Code #177. Second of all, it's just plain not true, the argument is we're not making asphalt, we're just mixing asphalt

with products. We're manufacturing asphalt, combining aggregate and all sorts of products, manufacturing onsite. He just wanted to call that out for the Board, we plain didn't see that as an accurate statement.

Atty. Prolman said if you look to the land use code, the Land Based Classification Standards, those little numbers next to the land use codes, if you follow under that #3310, we don't see that this is a genuine issue.

Atty. Prolman said he wants to summarize a couple of points that have not been talked about. There were reports with respect to property values provided to the Board, and there were a couple of reports. We provided two, dated February 15, from MINCO Corporation, a Keller Williams opinion letter dated March 20. The MINCO report largely focuses on the Watertown plant we talked about, the Watertown plant is owned by Aggregate Industries and has been there forever, at least 75 years, and the entire city has grown up around it. The MINCO report tells us that there is no impact on property values, in fact there has been a lot of investment around this plant as it has grown up with residential, commercial, retail, stores, restaurants, offices. We have that with respect to property values. The Keller Williams report speak to actual comps, home sales around existing asphalt plants like the Continental plant in Londonderry, Newport's Westford plant, the Watertown plant. The Keller Williams report shows that the actual value of home sales, single family homes and condos, the asphalt plants have had no impact, this just appreciate the values of the residential properties around asphalt plants. If you compare that to the city's BBG appraisal report, it really didn't look at the local plants. It looked at plants from North Carolina, Washington, same for the cost benefit group analysis from Atty. Manzelli. It talks about dairy farms in Wisconsin, or an article about quarries, really just apples and oranges, really missed the mark. We have property values, evidence before you that works in our favor.

Atty. Prolman said there's a lot of concern about all these horrendous trucks, and all these trucks coming and going as a result of this asphalt plant. He would remind the Board that when Mr. Plourde did the initial traffic impact threshold worksheet, we didn't even have to do a traffic study because our traffic counts were so low. We didn't meet the city's threshold to do a traffic study. Nevertheless, Mr. Husband requested additional information all about the traffic intersection impact, we would appreciate if you could fund some gridsmart cameras, that's fine. But again, our

traffic counts are so low for this site that we don't even hit the threshold to require a study.

Atty. Prolman said please don't forget that the DeFelices paid for a sound study by Cavanaugh Tochi, and their conclusion was that while Nashua doesn't have a sound ordinance, if you take the nuisance threshold we're going to be under it. Mr. Maynard's plans have been presented and revised, and we have another draft coming. To the extent that there is any smell coming from the actual asphalt itself, the Descent odor reduction material is going to be processed into the asphalt and the trucks are going to be covered. The loading area where the trucks are going in is enclosed, most asphalt plants don't have an enclosed loading area where the trucks get loaded from the silos dropping down, that's all enclosed. Garage doors go down, minimizing any impact to the neighbors.

Atty. Prolman said finally Green Toxicology. Again, everyone talks about all the horrible pollution, but it's as if no one even paid attention to look at the green toxicology report. We believe the expert evidence supports the application.

Atty. Prolman said getting to the application, we have three applications before the Board. We have a subdivision application, a site plan application for the Newport Construction site at 145 Temple St, and the asphalt plant site plan for 147 Temple St.

Atty. Prolman said the subdivision plan is straightforward, one lot into two. It meets all dimensional criteria. Typical utilities, city sewer, Pennichuck water, Eversource electric. We will have cross access easements addressing parking and access to and from both lots to Commercial and Temple. We have one waiver request, and that's a waiver from the requirement of 190-280(D)(10), to show existing conditions within 1,000-ft of the site. We believe it presents an unnecessary hardship and would require the applicant to provide information largely because and in addition. All of the information they have been provided, all the information raised by the neighbors, the area is well known, it would be a hardship to do this. There is really no gain the Board. Because of all the information presented we believe we meet the spirit and intent of that regulation. We agree to all conditions of approval as proposed by staff.

Atty. Prolman said the Newport site, proposed lot 93 at 145 Temple Street, the site meets all dimensional requirements. It's Newport's offices, operations, their garage repair bays. Parking is out front, and really it is the same use they are doing today

with one exception. That exception is if the asphalt plant goes in, all of the contractor yard that they have spread out across the entire site is going to have to go elsewhere to make room for the asphalt plant. Again, parking works, 37 spaces are required, 45 provided. Utilities, cross access easement, the same stuff.

Atty. Prolman said there was initially a request for a waiver from providing a lighting plan, but we have since provided that. A waiver is not needed for that. We have a waiver request from 190-279(EE) to show existing conditions on adjacent parcels. For the same reasons on the subdivision within 1,000-ft we believe this would be an unnecessary hardship. Because of the information the Board has we believe the spirit of the regulation has been met. We agree with all the proposed conditions from staff for the Newport site plan for the proposed lot 93.

Atty. Prolman said he won't belabor the point on the asphalt plant. You've heard enough. He just has one comment, and that is we agree with the staff recommendations on the proposed asphalt plant with three exceptions. The first is on the proposed condition #2, the hours of operation. The proposed condition has the hours of operation from 7AM-6PM, and we are asking that the start be 6AM. We do that because the Board will recall that all of our materials submitted from the start of this case had our opening at 6AM, from the initial plans until we saw this proposed recommendation. The reason for that is, is because our customers, the paving companies, have to be onsite at their job site typically by 7AM. They can't be at Temple Street at 7AM, they gotta be at their job site be it 10 minutes away or an hour away, they gotta be at their job sites as early as possible, typically 7AM. So if we can get them loaded and out the door by 6:30AM, then we are satisfying the customer's needs. That is our request, that is our reasoning.

Atty. Prolman said secondly, as to conditions 19 and 25, the proposed conditions, and we had a good talk with Mr. Durfee late this afternoon, the proposed conditions speak to proposed monitoring of the site. It was fence line monitoring, and certain chemical monitoring. Please understand that we're not opposed to any monitoring, monitoring the system that the DeFelices will be installing, We believe in it, it's going to work, it works in Westford, we're not going to have any issues. So we're not opposed to monitoring. However, we believe that the level of detail in these two conditions are premature. What he means by that, is we would like to have a more general condition here so we can scope out the exact detail and expert requirements for these type of conditions. This is analogous to a traffic study, which are set by

a scoping standard. One part just doesn't declare, here is the traffic study. That's not the way it works. An applicant's traffic engineer will say, here is what I propose to be the traffic study, and then the city or third party will discuss it, let's talk about a scope before you conduct your study. That's what we want to do here. We want to bring in Dr. Zemba, Dr. Green, we also want to bring in the true experts, the NHDES Air Quality, so we can scope out these monitoring systems. We agree with the concept, we just think the level of detail in these conditions are unworkable. What we're saying is, let's get the experts in a room together, scope out the proposed monitoring, and we're good with that.

Atty. Prolman said that's it. We have an industrial use, surrounded by industrial uses, in a historically industrial district. It's permitted under #177 in the land use code, we ask for your approval. He'd be happy to answer any questions, he'd be happier to be done.

Mr. LeClair said he has a couple of questions for staff. One he'd like to hear their opinion of the compliance with the Master Plan for this particular project, and he would like to hear comments regarding, in your opinions, that the Planning Board does not have the right to disapprove a plan, all we can do is just keep putting stipulations essentially is the way he read it. He would like their opinion on whether a TOD can be used as a forward looking planning tool, versus an after the fact district once a transit place has been constructed.

Mr. Durfee said he will start in reverse order with the TOD. He understands the point the applicant is making, the language in the ordinance, and this is the location language, the district shall be within a reasonable walking distance of a transit station. That is how the language reads. He would like to state that the transit station that is right behind city hall is just about half a mile from the TOD district, he would say that is a reasonable walking distance. We also have two bus routes that go through this district with multiple stops. He believes that meets the intent of the ordinance, therefore he believes that the TOD is rightfully established and is defensible. Then we would venture into a realm of legal of debate, which the court can settle if we enter that realm. He'll leave it at that on the TOD.

Mr. Durfee said regarding the Master Plan, he wants to start with a rudimentary analysis of RSA 674:18. This is part of the land use regulations in state statute. Zoning, land use regulation can only be can only be adopted by a municipality if a master plan has been

adopted. He thinks that sets the master plan as the basis for any land use regulatory framework from which a zoning ordinance is crafted. The Nahsua city zoning ordinance goes as far as to call out the goals, the vision, the objectives of the master plan in multiple sections, most importantly in this case the site plan approval criteria, the site plan suitability report that's required in the TOD, which is applicable to this application. The ordinance itself calls into consideration with this Board the goals of the master plan. By referencing even in the applicant's package, it states "unless and until a municipality enacts an ordinance to implement the recommendations of visions proposed in the master plan, the master plan itself remains merely an unenforceable document". The zoning ordinance references the master plan directly, and the goals and objectives. Therefore, he feels that is compliant with the intent.

Mr. Durfee said the case law referenced he thinks is not applicable, it's regarding growth management goals. The master plan for Barnstead set a 3% growth management goal and that wasn't based on fact, and the court did not uphold the trial court's upholding of the denial of the application. He doesn't think this is relevant to this case.

Mr. LeClair asked about the concept of a Planning Board not being able to deny a permitted use, or only being able to essentially layer on stipulation after stipulation.

Mr. Durfee said he categorically disagrees with that. He doesn't really have anything else to add to it unless they would like him to embellish. He just doesn't think that is a reasonable assessment of that case, and he absolutely feels the Board has the basis to deny specifically where the zoning ordinance calls into consideration the goals and objectives of the master plan, in the land use code, as an approval criteria for site plans.

Mr. Durfee said in regards to the conditions. The Board all got a piece of paper about the conditions for 19 and 25. He will speak about 19 first. #19 does talk about a fence line monitoring system. This was a recommendation from our consultant with Sanborn Head. We value our consultant's input, that was the Board's direction that we seek input from a technical professional in the field. We did that, and he does agree with the applicant to the extent that some of these details may be a little too fleshed out in their current iteration. He would be happy to walk back the language regarding a fence line monitoring system. He thinks they can have a conversation with experts on both sides, a representative from

NHDEs to fairly establish a system that will be effective. He thinks incorporating a representative from NHDES Air Resources Division is appropriate.

Mr. Durfee said regarding condition #25, he does agree that some of the details may be premature. He would say that these details came from our environmental consultant. That is why they made their way into our conditions. He would concede that it is fair to have a conversation with NHDES, with the applicant's expert to make sure that these are appropriate. However, he will not advise the Board to walk back the establishment of a monitoring fund that the applicant funds at their expense. He does not want to walk that back because if we remove that, we will have to reargue that point at a future point. If we can set that condition now, that will be set in stone. He thinks that is an important piece because the applicant has stated their willingness to do monitoring, even willingness to pay for the monitoring. He strongly believes that while those details may need to be finalized, and he thinks they can flex some of those, we need to enshrine the language that a monitoring fund is set up at the applicant's expense.

Atty. Prolman said we agree. We have no issue with that.

Mr. Hudson asked if the appropriate trigger still prior to certificate of occupancy, or would that be a different point in time that fund should be set up.

Mr. Durfee said occupancy is acceptable. He would not be opposed to conditioning a building permit on that though.

Mr. Hirsch said if the pollutants are found to be in excess of what is permitted, what happens? Is the plant automatically shut down, or do we go into an enforcement situation?

Mr. Durfee said we do have a condition in here, while it's not necessarily speaking to if pollutants are found in excess of regulations, and there is a DES permit if they're in violation of that they have their own state regulations, but we have a condition that if any of the mitigation measures that are being proposed are found ineffective, operations shall be shut down until those mitigation measures are restored to full operation.

Mr. Hirsch asked what happens, the city issues an order to shut down? Subject to litigation?

Mr. Durfee said he would say not, but he believes he is speaking prematurely. He thinks they would need to figure out the process. This is something that would be handled by our code enforcement office. The process for how that would be handled, he is not prepared to speak on at that moment.

Mr. LeClair said he had a question for the applicant. Logistically speaking, there's a subdivision plan and two site plans. Subdivision plan has precedent, nothing can go forward without the subdivision plan. The site plans are independent of each other. In their application, this package is a package. Hypothetically, he has no idea what the Board is going to do or what is going to happen, but do they have a desire to approve a subdivision plan or continue with a subdivision application if the site plans are not approved.

Atty. Prolman said yes. It's funny, he was thinking about this when he wasn't sleeping last night. He believes that the Board should take up the subdivision, and make a decision on the subdivision. Then, take up the Newport Construction 145 Temple Street, because frankly that's low hanging fruit, and then take up the asphalt plant. If one of the two site plans are denied, we don't necessarily have to record a subdivision plan. We could ultimately withdraw it if it doesn't work. But we're here, you make a decision on the three applications, and then how it plays out we will keep you folks informed.

Mr. Durfee said he would make just one final point on the conditions. We provided conditions of approval as part of the process. We have a duty to assist the applicant, this is part of that duty. But by no means do the fact that we have provided conditions of approval represent that this is a suitable use for the site, or that we feel that the conditions adequately mitigate the concerns that have been raised by the public and by experts. He wants to make that clear, that the conditions are just there to help guide the Board in their decision. But do not take it as staff's recommendation of approval or anything of that sort. He also did not comment on the hours request. As written, it is 7AM-6PM, and the ask is 6AM-6AM. Staff does not support that request.

PUBLIC MEETING

Mr. LeClair closed the public hearing and opened the public meeting. Obviously we have been doing this for a while. He thinks there's been a lot of input from the city and the applicants. He appreciates that, it's excellent. It can be frustrating to people

watching this Board move methodically from meeting to meeting, but trust him when he says that if we don't do that we'll be right back here very quickly being remanded to do this again. His goal as Chair of this Board is regardless of how long it takes, to get through the process in a manner that is consistent with our bylaws, land use codes, and ability to support the final decision and not go backwards in these things. That's his two cents on that. He knows that sometimes takes a long time, but this is not the longest application they have seen before, not even close. We've had some long ones.

Mr. LeClair said he is interest in comments here. Logistically speaking they do have to walk through all of these. He would like to take the subdivision plan first, because essentially the other plans are moot if they don't have the subdivision.

Mr. Varley said on the process point, he wants to reiterate what Mr. LeClair described in terms of understanding people's frustration that this is taking a long time. The reason that all the members of the public are here and have had the opportunity to comment on this plan and express their views is because the Board took a slow and deliberate approach to give everyone the opportunity to have that input and request that additional resources be brought to bear, including to evaluate health and environmental impacts. In his view the Board has done right by the public and the applicant in terms of extending this process for the period it has.

Mr. Varley said he does agree with the applicant in terms of their expression that this Board is not a political body. When we review applications, we don't simply determine whether the application is acceptable or not based on whether it is publicly popular or not. Our obligation is to review the criteria of the ordinance and determine whether based on those criteria the application can be approved or not, with or without conditions. With that in mind, there were four criteria he looks at the basis for the Board's evaluation. He is going to speak more specifically to the site plan applications, understanding that we would have to approve the subdivision application first. Really all of the substantive considerations that the public has raised and the applicant has spoken to relate to the site plan.

Mr. Varley said as he sees it, there are really four criteria that come into play. One is consistency with the master plan. Two is the environmental impacts. Three is the traffic. Four is coexistence with surrounding uses. There's been an awful lot of

testimony on the health impacts and environmental impacts but from his perspective he's heard conflicting testimony. We heard from Dr. Green on behalf of the applicant, we heard from Sanborn Head, who was retained by the city on the Board's request, and we heard from Dr. Durant, who spoke to essentially the abutter and public concerns. In his view, we have at best inconclusive testimony when you put it all together. We have conflict between where those experts come out, including Sanborn Head, who did not ultimately conclude that the environmental or health impacts were so significant that they were unacceptable.

Mr. Varley said in terms of the traffic impact, the conditions speak to excessive traffic. To the applicant's point they may not have excessive traffic in terms of volume, however, he doesn't think that volume alone speaks to the qualitative impact. We've heard testimony from the applicant that essentially all of the traffic would be heavy truck traffic, the trucks receiving the asphalt and delivering it out to customers. In his view, it is relevant to consider that as an impact separate and apart from the number of trips generated. It's heavier traffic, there are noise and odor issues and impact on surrounding roads that is not captured by the volume of traffic.

Mr. Varley said in terms of the coexistence with surrounding uses, one issue there is property values. In his view they have heard competing and conflicting testimony on those points with expert testimony from the applicant saying there won't be any effect on property values, and expert testimony from representatives of the public who say there will be. In his view, it's hard for the Board to conclude affirmatively one way or the other. However, he does think in terms of both the intensity of the use here and the other existing uses, he thinks there is a real question in this mind whether this plant can coexist with those surrounding uses. He thinks this proposed use, although there are other industrial uses in this area currently, they don't have the same impact that this use would have in terms of traffic considerations, the potential odors, the potential noise considerations that have been raised by the public.

Mr. Varley said furthermore, and this gets to his last point, consideration with the master plan. He thinks the applicant is speaking to historically what the uses have been here, and maybe what that means in terms of their view of what is consistent, but he thinks we have to look at the neighborhood and what it is transitioning to. He agree with Mr. Durfee wholeheartedly in terms of the application of the master plan here. Notwithstanding the

fact that the city has not adopted additional specific ordinances related to the master plan, we do have an existing ordinance that says that the plan shall be consistent with the goals, objectives, and strategies adopted as part of the city's master plan. It's important to keep in mind that this East Hollis Street corridor was one of six specific areas that were identified and addressed in the master plan. He and Mr. LeClair were a part of that committee that considered and discussed that master plan. In his view, when the master plan discussed mixed use it was really talking about mixed use as in uses that would be ancillary and supportive of residential uses. Retail, for example, where you would have an apartment use above and retail uses on the ground floor. And, transportation uses that would support the residential uses and increase residential uses. A principal goal of the master plan was to provide for additional housing. That aligns well with the East Hollis Street corridor segment of the master plan, which he thinks is focused on a transition to greater residential use and frankly, away from an industrial use.

Mr. Varley said when he looks at the provisions of the master plan and considers the tie in the specific ordinance, in his view this project is simply not consistent with the goals of the master plan, as it envisions what the East Hollis Street corridor is to look like. To the extent that the applicant were to suggest that the Board cannot consider that goal of the master plan, he thinks that is inconsistent with the expressed language in our ordinance. Where he comes out in this is, he thinks there are several basis as he described in terms of the master plan, traffic, coexistence with surrounding uses, that in his view do not support the approval of the site plans. He's happy to consider the subdivision plan separately, but that would be his view on the site plan.

Ald. Thibeault said Mr. Varley had some great points. The one thing he wants to say before he went over his quick points is, he is slightly disappointed that if the attorneys of the applicant believed that the law is on their side, they wouldn't have taken digs at the constituents and people in the city that were just trying to come and speak from their heart because they're not coming at it from a law side, they're coming at it that it's their neighborhood. So he is disappointed in that.

Ald. Thibeault said the master plan is one of his biggest things he is thinking about whether he should support this or not. It doesn't fit. Maybe the master plan 100 years ago, 50 years ago we had a tannery. We would never put a tannery back in this city. He thinks we want to go to a different type of Nashua based on that

plan. We've changed, we're no longer a mill town. We're completely different. He thinks the surrounding areas, the applicant has not taken that into account. We've talked about people, and he thinks a couple of people spoke today about the types of people that live in that neighborhood, and they haven't really gone out to them. He thinks that is important, and he's talking about the people who don't speak English. He thinks that's a critical part of coexisting with the neighborhoods that this is in. He doesn't think that has been done.

Ald. Thibeault said in regards to traffic, it seems like every traffic study he sees never comes up with anything significant. But to Mr. Varley's point, excessive traffic doesn't mean as Atty. Prolman said, "a million trucks". No one said a million trucks, we said 250-350, something like that. It's excessive for the size of the trucks on those roads. It's not excessive for a million trucks, but to him it's excessive to what's being put on that pavement. Maybe it's a way for them to go out and put asphalt down on the road that's already being destroyed. He doesn't believe the traffic study tells me the story that it needs to tell. Again, conflicting reports on all this stuff, whether it's the pollution, the traffic study. One side will say one thing, one side will say the other, which do you believe. In his eyes, when he sees lots of trucks going down the road and they add 250 trucks, that's a lot of trucks going down the road. Just in the last ten years we've seen how many vans go down our streets just because of the whole buy online phenomenon that's occurring. This is just going to add to it, trucks after trucks, and big trucks. At the end of the day, and points by our Planning Dept. and Mr. Varley, similar to what Mr. Varley was saying, he doesn't think he can support this either.

Mr. Hudson said he'll speak a little bit about traffic. He knows Mr. Husband made the statement about capacity, and that was purely about a roadway capacity, can that many vehicles get through. In the same documents, we also did reference the issue, that it's not the amount of traffic it's the type of traffic. There are different types of impacts there, with air emissions, noise, and slow moving vehicles. He wants to make that point, because the applicant seized on that one statement about the capacity.

Mr. Hudson said the East Hollis Street Corridor study, they referenced where it talks about industrial uses and that sort of thing, and it does. It also talks about other things, like potentially raising the grade of Commercial Street to reconnect the neighborhoods, which may be difficult right now. It talks about additional residential development in various areas. He thinks the

applicant has pulled out the one thing that lent towards their argument without looking at it in totality. He thinks Mr. Varley's comments were well stated. To him, it's the totality of things. We have to look at these four categories, but in each category he thinks there is a record here that would indicate there is a concern at some level. Maybe it's moderate noise impact, maybe it's moderate traffic impact, maybe it's moderate health impact, so on and so forth. To him, the totality of all that is concerning. You pick out each one and look at it individually, but when we look at it as a whole project, those things in his mind add up. He does have concerns.

Mr. Hirsch said he agrees with Mr. Varley, his points are well taken. He is opposed to the project. He thinks it has too many problems.

Mr. LeClair said he would like to talk about the subdivision specifically here. The subdivision is essentially a division into a couple of lots here. He's looking for comments, does anyone have any issues?

Mr. Varley said for his perspective he would not necessarily be opposed to approving the subdivision independently of the site plans. Given the testimony from the applicant that they would still like the Board to consider it as an independent application, understanding that it could be combined potentially with a denial of the site plan applications. He doesn't think standing independent of the site plan, he would have the same concerns or view as being the same basis for denying the subdivision application on a standalone basis. He thinks the Board does as a matter of responsibility have to consider the subdivision plan separately. He doesn't think he would have opposition to the site plan on that independent basis.

Mr. Hudson said he would like clarification on the conditions. Conditions 3 and 4 refer to emails and letters from Joe Mendola and Wayne Husband, and he believes they cosigned the same letter. He would suggest that the letter reference both of them as signatories and that 4 be stricken, unless he is confused.

Ms. McGhee said that is fine.

MOTION by Mr. Varley to approve Old Business - Subdivision Plan A21-0299. It conforms to §190-138(G) and §190-23(F) with the following stipulations or waivers:

1. The request for a waiver of § 190-282(B)(9), which requires physical features on site and within 1,000 feet, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
2. Prior to the Chair signing the plan, all minor drafting corrections will be made.
3. Prior to the Chair signing the plan, all comments in a letter from Joe Mendola, Senior Staff Engineer and Wayne Husband, P.E. dated June 7, 2023 shall be addressed to the satisfaction of the Division of Public Works.
4. Prior to recording of the plan, all conditions from the Planning Board approval letter will be added to the cover page of the final mylar and paper copies submitted to the City.
5. Prior to recording of the plan, the existing building on Lot 93 and Lot 98 shall be removed.
6. Prior to the recording of the plan, agreements to convey easements for cross access and cross parking easements shall be submitted to City Staff and recorded at the applicant's expense.

SECONDED by Mr. Bollinger

MOTION CARRIED 7-0

Mr. LeClair said the second order of business here is the two site plans. The first one is A21-0300, and this is specific to the site plan to show the new office, storage, and repair garage, located at 145 Temple Street. This is not the asphalt plant, this is an office, storage, and repair facility, theoretically on this new lot created by the subdivision they have approved. He is interested in people's thoughts. He's gone back over the notes, he doesn't remember one objection to this particular facility.

Mr. Varley asked staff, he's assuming that like the subdivision, where our approval does not obligate the applicant to record the subdivision plan, similarly, if we were to approve this site plan, that's limited to the office and does not involve the asphalt plant? That does not compel the applicant to construct the office right? They don't have to act on the approved site plan.

Mr. Durfee said that is correct.

Mr. Varley said with that clarification, he would agree with Mr. LeClair. He doesn't think any of the objections, any of the considerations, any of the testimony or materials submitted have related to the construction of the office space, that component of the application. Considering that application independently and based on the site plan approval criteria, he would not be opposed to approving that limited site plan that relates only to the office space.

Mr. LeClair said he would go further that office space, storage, and repair, that's pretty consistent with the mixed use the Board talked about. It doesn't bring the traffic load and other components we've been talking about, so he would agree.

Mr. Hirsch asked about access from Temple Street. That would be through the other site. Is that correct? How does that work? They'll be able to use that site for access, or there will be no access onto Temple Street?

Mr. Durfee said they have a condition on all of these plans that there would be agreements to convey easements. Right now the applicant is the owner of record of all lots, they don't need to grant cross access easement to themselves. If they were to sell the lot and the subdivision was to occur, they would then be crossing over someone else's lot and those easements would be recorded prior to the sale. That's why they have the agreement to convey those easements.

Mr. LeClair said that's stipulation 8 in this staff report.

Mr. Hudson said the project description speaks to 6AM-6PM hours, Monday through Saturday, but it's not a condition of approval. He doesn't know if that refers to the asphalt plant. Is the current operation under any current hour limitations or not?

Ms. McGhee said no.

MOTION by Mr. Varley to approve Old Business - Subdivision Plan A21-0300. It conforms to §190-146(D), §190-23(F), and §190-280 with the following stipulations or waivers:

1. The request for a waiver of § 190-279 (EE), which requires showing existing conditions on and off site, is granted,

finding that the waiver will not be contrary to the spirit and intent of the regulation.

2. Prior to the Chair signing the plan, all comments in a letter from Joe Mendola, Senior Staff Engineer and Wayne Husband, P.E. dated June 7, 2023 shall be addressed to the satisfaction of the Division of Public Works.
3. Prior to the Chair signing the plan, stormwater documents will be submitted to City staff for review and recorded at the applicant's expense.
4. Prior to the chair signing the plan, minor drafting corrections will be made.
5. Prior to the Chair signing the plan, all conditions from the Planning Board approval letter will be added to the cover page of the final mylar and paper copies submitted to the City.
6. Prior to any work on site, a pre-construction meeting shall be held and a financial guarantee shall be approved, if required.
7. Agreements to convey easements for cross access and cross parking shall be submitted to City Staff and recorded at the applicant's expense.

SECONDED by Mr. Bollinger

MOTION CARRIED 7-0

Mr. LeClair said the will move to A21-0301, 147 Temple Street site plan, for the asphalt manufacturing facility.

MOTION by Mr. Varley to deny Old Business - Subdivision Plan A21-0301. This is with the finding that the site plan does not meet the requirements outlined in §190-146(D), §190-23(F), §190-280. More specifically, the application fails to satisfy those criteria in the following respects:

1. The application is not consistent with the goals and objectives of the master plan adopted by the city. Considering the specific provisions in the master plan, with respect to the East Hollis Street corridor where this site plan would be located, and the inconsistency of this plan with the

contemplated uses and objectives of the master plan as it relates to this area, and noting in particular that although the city has not adopted ordinances specifically with respect to the master plan, that the city has adopted an ordinance that indicates one of the criteria of approval for a site plan is that it be consistent with goals, objectives, and strategies adopted in that master plan.

2. The project would generate excessive traffic. Specifically, this excessive traffic would be of a qualitative nature, rather than a quantitative nature. Given the considerations that the traffic would consist almost exclusively of heavy truck traffic that would generate excessive noise, odors, and impact on the surrounding area and the surrounding roads.
3. The site plan as proposed cannot coexist with the surrounding uses. Taking into account the intensity of the use here, in particular that it is of a greater impact and more significant than the existing uses, including any of the existing industrial uses, taking into consideration the impacts of the truck traffic, concerns about odors that would be emitted from the plant, concerns about other noise with respect to the operations of the plant. The site plan would be inconsistent with the existing uses, meaning the surrounding residential uses, and be more intense and not similar in nature with the other industrial uses. But also, inconsistent with the transitional nature of the neighborhood to residential and mixed use, meaning mixed use that is ancillary and supportive of those residential uses.

Mr. Varley said with those factors in mind, he would make the motion to deny the application.

SECONDED by Mr. Hirsch

MOTION CARRIED 7-0

OTHER BUSINESS

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

MOTION by Mr. Bollinger that there are no items of regional impact.

SECONDED by Mr. Hirsch

NCPB

June 15, 2023

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MOTION CARRIED 7-0

DISCUSSION ITEMS

Packets: Mr. Durfee outlined changes to the Planning packet creation and distribution, as Christine Webber is retiring.

MOTION to adjourn by Mr. Hirsch at 10:18 PM

MOTION CARRIED 7-0

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KP - Taped Hearing