

NASHUA CITY PLANNING BOARD  
September 7, 2023

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

Members Present: Mike Pedersen, Mayor's Rep  
Scott LeClair, Chair  
Adam Varley, Vice Chair  
Ald. Patricia Klee  
Dan Hudson, City Engineer  
Bob Bollinger  
Larry Hirsch

Also Present: Sam Durfee, Planning Manager (Zoom)  
Linda McGhee, Deputy Planning Manager  
Scott McPhie, Planner I

**APPROVAL OF MINUTES**

August 3, 2023

**MOTION** by Mr. Hirsch to approve the minutes, as written

**SECONDED** by Mr. Hudson

**MOTION CARRIED 6-0-1 (Bollinger abstained)**

**COMMUNICATIONS**

Mr. McPhie went over the following items that were received after the case packets were mailed:

- **A23-0062, 310 Daniel Webster Hwy**
  - o Multiple abutter correspondence
  - o Updated traffic assessment, Greenman-Pedersen Inc.
- **A23-0114, 96 Wellington Street**
  - o Stamped stormwater letter

**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**

**A23-0062** EC NH Real Estate Holdings, Inc. (Owner). Proposed Conditional Use Permit to allow a casino gaming facility in the former Sears retail space. Property is located at 310 Daniel Webster Highway (Pheasant Lane Mall). Sheet A. Lot 733. Zoned GB-General Business and TODTransit Oriented Development. Ward 7. **[POSTPONED TO THE SEPTEMBER 7, 2023 MEETING]**

*Mr. Bollinger & Mr. Varley recused themselves.*

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

**SECONDED** by Mr. Pedersen

**MOTION CARRIED 5-0**

Atty. Morgan Hollis, Gottesman & Hollis, 39 E Pearl St, Nashua, NH 03060

Atty. Hollis introduced himself on behalf of the owner.

Atty. Hollis said this is with regards to the former Sears building in the Pheasant Lane Mall. The Board has received copies of the slides he is going to show, these are also for the audience to view. The proposal is to allow a charitable gaming facility in 169,000-sqft of the Sears building.

Atty. Hollis showed the general vicinity layout, the Sears building, and the nearby parking lots. There are other 1,000 parking spaces allocated to this retail center. The next slide shows the unique lot lines, this was how the mall was able to segregate shops for sale and financing. This lot's frontage is on Dan Chan. Just south of that is parking, which is owned by his client but is located in the town of Tyngsborough.

Atty. Hollis showed the exterior of the Sear's building. They are not proposing any exterior changes at this time. There will have to be a sign application made, which will have to meet the requirements of the ordinance. There may be changes to overhang or possible sidewalk improvements, some of which may have to go to Tyngsborough. At this time they are only proposing a change of use, which falls under the Conditional Use Permit process.

Atty. Hollis showed the interior layout. There will be two floors, and both will be used for a total of 62 tables, HHR machines, sports entertainment, bars, three restaurants, and a non-sports entertainment bar. There will be an area for non-gaming games, video arcade type of entertainment. This falls under the Land Use Code , table of uses, as games of chance, which is permitted by conditional use permits, which are governed by 190-133 of the land use code. There are no changes to the site proposed, so there is no site plan application being presented.

Atty. Hollis said the operator has four gaming facilities in Kentucky, so they are not new to the business. The principals are involved in over 30, and the management has 22 licensed gaming facilities. This is not a first timer, and they have acquired all of the necessary licenses.

Atty. Hollis addressed the criteria of the Conditional Use Permit, which are outlined in his April 20, 2023 letter. Criteria 9 does not apply, as they are not in the downtown district.

Atty. Hollis said the use is authorized in the use matrix. If completed, it will comply with 190-133(F) and specific conditions established for the building. The building exists, they are not creating a new one. There are conditions for the use; they have read the staff report and agree to all conditions within.

Atty. Hollis said the existing building and parking currently meet all codes, and any improvements would meet code. They will meet with the Fire Dept. to have building plans reviewed and approved, emergency exits and access. There will be up to 2,000 parking spaces available, up to 1,000 owned by his client and another 1,000 available to the south.

Atty. Hollis said criteria 2 is that the building structure or use will not endanger the public health or safety. This is an existing structure, there are existing utilities, the sewerage will be reviewed to make sure that the capacity can be accommodated. The proposed gaming is permitted by the ordinance and by statute, it will have its own security, and work with the Nashua police department to establish protocols. That is one of the conditions of approval by city staff.

Atty. Hollis said they have met with the Tyngsborough police and fire department, planning director, and town administrator. They discussed traffic and safety impacts, and agreed that if this is approved they will go back to them to discuss what their concerns might be. He spoke with the Nashua police and fire depts. If approved, the applicant will need to meet with the police to go over safety and security measures. We have provided both police and fire depts. a proposed draft of the protocol for emergencies. It also identifies the number of security personnel proposed, the training they undergo, it's an extensive document. They have indicated that if this is approved we will work with them and review it. It's in progress and will have to be agreed to, which is clearly identified in the conditions of approval. Other than that, there are no agreements in place.

Atty. Hollis said criteria 3 is that the structure or use will not materially endanger the public health or safety. Gaming is allowed by law. We've agreed to meet and discuss with the police, they have voiced their concerns. The one concern that they have received is from Nashua police, that they go out and paint the state line, which is 4-ft off the building. There is always a jurisdictional issue and in the event of a police situation, did the event occur in Massachusetts or New Hampshire? Who is responding? We agree to the condition of repainting the line.

Atty. Hollis said there is no record of the proposed operation being a criminal generator, as has been suggested in comments. The Lucky Moose and The River have been well received, well attended, and well run facilities. This would be the same. Outside of Nashua there are a number of large casinos located immediately adjacent to large shopping centers, there is no evidence that crime spills over or creates a safety concern.

Atty. Hollis said criteria 4 is that the structure or use will not substantially devalue surrounding properties. The abutting property is the mall, and the various owners, including the major tenants, and Simon Malls. An additional abutter is Zimmerman Sport and Ski, which has been there for two generations. They have received support from other owners and no objection to the use within the mall or from Simon. They have met with Zimmerman's. Condition one of the staff report is that they have to meet with Zimmerman's, the mall, the city, and the property owner as to the required improvements at Pheasant Lane.

Atty. Hollis said condition 5 is that the structure or use must be compatible with the neighborhood and abutting uses. A fair amount of the proposed use of this space is restaurants and lounges, which are also within the mall and nearby. The Lucky Moose is located in the Nashua Mall adjacent to restaurants and retail center. One of their competitors, Boston Billiards, was approved to be located in a hotel adjacent to commercial uses, retail, and near exit 1. This location is the farthest from anything from Daniel Webster Hwy and the farthest south building in Nashua. It's as far away from having impact on any residential or commercial activity as could possibly exist.

Atty. Hollis said the building structure or use will not have a substantial adverse impact on highway or pedestrian activity. The key is substantial. It won't have a substantial adverse impact. There is a parking lot, it was approved for Sears, there is no

change. There has not been a pedestrian safety issue with the current design, and it will remain the same. They have been working on this plan with the city since September, initially in the JC Penney. A traffic analysis was undertaken, and then earlier this year the focus shifted to Sears because it's an empty building. It's been empty for a number of years.

Atty. Hollis described the series of studies performed by the applicant, the city, and the city's peer review consultant. He described the challenges of the Daniel Webster Highway corridor and the Pheasant Lane Mall intersection and how the site is accessed. The unique intersection has been an issue, and the city wants them to address it as it is a traffic concern, which they have no issue with. We agree to the conditions, we believe we can comfortably state that there will be no adverse impact to highway safety. Pheasant Lane will be an improved intersection even after the proposed use, and will have a better level of service function. The Daniel Webster Hwy corridor safety will not be adversely impacted.

Atty. Hollis said criteria 7 is that the proposal will not have adverse impact on the natural or environmental resources of the city. They are using the existing infrastructure, and propose no changes to this.

Atty. Hollis said criteria 8 is that adequate public utilities and community facilities are available to ensure the proposed use will not necessitate excessive public expenditure to provide services. Again, it doesn't say no expenditure, just excessive expenditure. Public utilities are available. Private security will coordinate with police and fire to ensure that excessive public funds will not be needed for security. If the chief of police believes that extra police presence will be needed at certain times, the applicant agrees to pay for that as needed. They agree to meet with the fire dept. as part of the construction and have given them the proposed security plan.

Atty. Hollis said criteria 9 refers to parking within the downtown district, which doesn't apply here.

Atty. Hollis said they have met all the criteria by agreeing to all conditions staff has. The traffic engineer is available if anyone has questions.

Mr. LeClair asked for a summary of offsite improvements. The Pheasant Lane intersection is less busy than the other two?

Atty. Hollis said correct.

Mr. LeClair asked if there is already some level of coordination with police jurisdiction.

Atty. Hollis said yes. It's just more of what this facility is going to be, what challenges it presents. The site has been dormant for the past three years, so things have relaxed a little bit. Both chiefs indicated they just want to walk through the protocols.

Mr. LeClair said it looks like only one level of the mall has an entrance from the inside.

Atty. Hollis said correct.

Mr. LeClair asked how security in the parking lot works right now. Any changes to the layout of the traffic and those parking lots, any site plan changes, that's a Tyngsborough area that this Board does not have jurisdiction over.

Atty. Hollis said correct.

Mr. LeClair said he's trying to understand the Board's scope.

Atty. Hollis said that would be everything on the New Hampshire side. Having said that, it's proposed to have at least one security officer patrolling the parking lots at all times the venue is open, dedicated to that parking lot. There will be 47 security team members, 22 surveillance staff, staff posted at each entrance roaming each floor. There will be 270 cameras on the lowest floor, 150 cameras on the main floor, and 8 cameras outside. The operators will monitor all aspects of the business 24-hrs, 7 days a week. There will be panic alarms at all terminals. Security will coordinate with the police for appropriate staffing, reporting, and response.

Mr. LeClair said there are some proposed improvements to the Exit 91 interchange, the mall access road. What would those look like?

Atty. Hollis said they met with the town of Tyngsborough on several occasions, and they raised the issue that there is only one left turn lane turning north. They propose to turn one of the through lanes to a second left turning lane to alleviate the back-up problem. You have to make an application to MassDOT to make those improvements. If approved, they will make those improvements. If

not allowed, there will be a post-construction analysis of traffic to adjust the traffic signalization in Daniel Webster Hwy in Nashua. The applicant has agreed to pay for the study and adjustments, which would then allow people to get through the northern intersections. In terms of jurisdiction there is a question of whether this Board has the ability to order an improvement in the Commonwealth of Massachusetts, but they voluntarily agree to construct it within one year of MassDOT approval. With the adjustments they are making at the Zimmerman intersection there is addition capacity being created. The flow will be better and there is room to accommodate additional traffic.

Mr. LeClair asked if the funding for DW Hwy improvements happens regardless.

Atty. Hollis said correct, they are paying for that regardless of MassDOT approval. Post-construction traffic review will also happen regardless.

Mr. LeClair asked how the charitable component works.

Atty. Hollis said 10% of the gross revenue goes to the state. 35% goes to charitable organizations within the local region. After that the operator pays all its bills and hopes to make its money.

Mr. LeClair asked if that would be 45% of the gross revenue.

Atty. Hollis said correct. The rest goes to bills and profit. The hope is that you're operating efficiently.

Mr. LeClair asked how much has gone to charity from The River and Lucky Moose this year.

Atty. Hollis said in 2022, Lucky Moose and The River gave nearly \$1.8 million to 108 local nonprofits. The mall revenue is projected to be substantially higher. By 2025 they project to raise \$24 million for charity.

Ald. Klee asked if there will be no public expenditure, or no excessive public expenditure.

Atty. Hollis said none more than the usual police and fire safety that taxes pay for. They do not require any city contribution, payment, or obligation, they aren't requiring any new city amenities. That goes along with the traffic amenities; the city is

telling them that traffic has to be tweaked and they're going to pay for it.

Ald. Klee said they are always below staff with police, and the younger officers don't want excess duty. Is that going to be a problem?

Atty. Hollis said the chief indicated that concern to them. They offered to fund them, and the chief said they might have to go to outside towns to get someone. They are aware it might happen. If the chief says they need staffing, they have to get it.

Ald. Klee said she spoke to the chief and he wanted her to make it clear that he is always for more business coming into the city and has no casino issues. But the Tyngsborough line causes jurisdictional issues. She has concern about the conflict between Nashua and Tyngsborough and whether officers they call in from different towns will have jurisdiction.

Atty. Hollis said to the last one, that is between the two departments. In order to staff any police detail you may have to order outside of Nashua. For an emergency, that would be between Tyngsborough and Nashua. If it's in Tyngsborough, they get the call.

Ald. Klee asked if they would hire private.

Atty. Hollis said if you drove in the construction zones on Main Street the last few years you would see police details from Hudson, Milford, same thing.

Ald. Klee said in those cases they can't make arrests.

Atty. Hollis said he is leaving those details to the police departments.

Ald. Klee said her issue is the jurisdiction. You open the door and step on the sidewalk and you're in Tyngsborough. Someone comes out a little too drunk, Nashua police might be inside but there's nothing they can do outside.

Atty. Hollis said there's not nothing they can do, there are mutual aid compacts. Having said that, both departments have said they will revisit it.

NCPB

September 7, 2023

Page 10

Ald. Klee said the if bothers her. If they approve it, what happens if everyone is not happy?

Atty. Hollis said it's the same jurisdiction issues that have existed down there. Whether you have retail use or gaming use, you'll have the same issues. That requires getting worked out with both police departments.

Ald. Klee said she doesn't believe this will create criminal elements. But people will be staying later, they will be drinking, and we all know that many of us make mistakes. That's not going to be the same experience from retail.

Mr. Pedersen asked if patrons of the mall and general public will be allowed to use the restaurant and bar in the casino.

Atty. Hollis said 21 and over.

Atty. Pedersen said that was his second question, you don't want high schoolers going in and playing the slot machines.

Atty. Hollis said no slots, it's HHR.

Mr. Pedersen said in terms of future planning, have they thought of the ramifications if a commuter rail went in close to their facility.

Atty. Hollis said they don't know what the future will bring but they know what it is today, dead in the water. One of the proposed rail stations was the proposed Costco, the fall back was down in this area. It's an area with substantial parking. Casino activity occurs all day, but mostly in the evenings and on weekends. It offsets the mall activities, not the same peak times. He thinks that will not be an issue. If you've ever been down there, there are closed off lots now. The owners own an excess lot, which is currently fenced off. They believe there is plenty of parking, which would be the only issue to prevent.

Mr. Pedersen said that was his concern, competition for parking. They have thought this through where there are spare lots and there may never be a rail station to cause a problem.

Mr. LeClair said he would give each speaker four minutes.

**SPEAKING IN OPPOSITION OR CONCERN**

Bill Ohm, 18 Mountain Laurels Drive, Nashua NH

Mr. Ohm said he had a slideshow presentation to show the Board. He questioned the amount of money given to charity. He said in statute the operator gets 75% of the gross, and the rest is split 35% to charity and 65% to the state. If the developer projects \$24 million dollars going to charity by 2025, this site would make \$216 million. He asked how many players would have to come through this site to generate the revenue.

Mr. Ohm referred to the Master Plan. The Master Plan intends to retrofit the Daniel Webster Hwy corridor to be more attractive and promote business. He then described the Amherst Street corridor and what the Master Plan proposes there. He summarized the recommendations outlined for the DW Hwy corridor.

Mr. Hohm said he had five concerns related to the land use code and master plan.

Mr. LeClair said make it quick, you're approaching ten minutes.

Mr. Ohm expressed concern regarding the signage, which he expects to be large and flashy. He expressed concerns regarding gambling addiction and the crimes associated with addiction. He expressed concerns regarding the compatibility of the use with the surrounding mall and neighborhood. He said this is incompatible with the Master Plan. He expressed concerns regarding traffic volumes and pedestrian safety. He expressed concerns regarding expenditures for public services. He believes this is inconsistent with the Master Plan and does not meet criteria 2, 3, 4, 5, and 8 of 190-133(F) Conditional Use Permit.

Mr. LeClair said that was four people's time there, just so you know. He appreciates that Mr. Ohm has a lot to say, but there are a lot of people here that need to speak. So he will put a limit on this. It's 8:15PM now, he will give a maximum of 45 minutes of public comment. Of that time he will give 20 minutes more to those speaking in opposition, and 25 minutes to those speaking in favor. To those who wish to speak, try to be cognizant that if you take a lot of time you're cutting off your neighbors.

Ald. Richard Dowd, 8 Ascot Park, Nashua NH

Ald. Dowd said he would be short and sweet, no slideshow. He has concerns about the casino being in the mall. He is not opposed to

charitable gaming, but he thinks them being within 5,000-ft of another in the city is detrimental to the charities.

Ald. Dowd said he is the Board of Alderman liaison for the Police Commission. He concurs that there is no formal agreement between Nashua and Tyngsborough police, nor has there been any communication between the two departments. If something goes on within the casino, Nashua police will be called. There is something called active pursuit. If someone takes a swing at an officer and runs to the parking lot, the officer can follow them to Massachusetts and arrest them. If there's a disagreement between a few people and they bring it outside, now they can neither detain nor arrest them, it's up to Massachusetts. There's that concern, and there's also the concern that we are short staffed in the police department. If there are two casinos that close together they'll have to put another car in that area, which means taking a car away from some other part of the city, they just don't have the people.

Ald. Dowd said the other thing that concerns him is that The Lucky Moose and The River stop serving food at 10PM. They're going to be open until 4AM, that's 6 hours where you'll be drinking and gambling. You don't have to be drinking for 6 hours before you have an issue. As soon as you leave the door you're in Massachusetts. If he was on the Board he would want a written agreement between Nashua and Tyngsborough police on what happens when there is an issue. Sears didn't have any drinking, you're occasionally going to have a problem with somebody. He doesn't want to see that.

Kim Hazavardian, Traffic Engineer, TEPP LLC, 93 Stiles Rd Ste 201, Salem NH 03079

Mr. Hazavardian said he represents the Sheridan Hotel and Casino. He has looked over the materials provided by the applicant, and says there he a large amount of analysis, mitigation measures, and commitments that need to be fleshed out now while the project is before this Board, as opposed to a matter to be decided after as a condition.

Mr. Hazavardian referred to the projected trip generation and which direction they are projected to come from. He believes a full traffic study should be performed. He expressed concerns ranging from improvements along the corridor, trip generation, level of service at intersections, conflicting traffic from the nearby casino, and the location of the parking lot in relation to the

state line. He expressed concerns about impacts to traffic and access in Massachusetts, and the need for approval from MassDOT.

Daniel Oshenbeau, Boston Billiards, 55 Northeastern Blvd, Nashua NH

Mr. Oshenbeau said he is the security manager at Gate City Casino, and a retiree from the Nashua police department. He has two concerns. His first concern is public safety, and that there is no mutual aid between New Hampshire and Massachusetts except in emergencies. He is concerned about the traffic and reduction of response time for emergency services. He is concerned about security staffing levels, training, and availability of police details. They are currently putting together security for the move to the Sheraton hotel, if it happens, and it's hard to find qualified staff. He has been to the Lucky Moose, and he has never been carded and never even seen security at the door, he doesn't know how they will be able to do it at Sears.

Atty. Richard Lehmann, Lehmann Major List PLLC, 6 Garvin Falls Rd, Concord NH

Atty. Lehmann said he is here representing the Sheridan Gate City Casino. He spent the first 8 years of his career as a criminal prosecutor and has since done criminal defense work and police liability, and can address that. Ald. Dowd stated that if a police officer gets punched, he is allowed to chase the perpetrator over the state line to effectuate an arrest; that is incorrect. You are only allowed to make an arrest under the fresh pursuit statute for a felony level offense. Virtually all the crimes people are talking about or thinking about with this are misdemeanors, not felonies. Fights, destruction of smaller property, alcohol related events, virtually all misdemeanors. There is no ability to cross the state line right outside the door to make an arrest of someone who commits a misdemeanor.

Atty. Lehmann said second, the police chief wants to have a line painted on the sidewalk. That's fine, everyone will know the line is there. A stalker would be able to stand on the Massachusetts side of the line while their target is coming and going from the casino, and there is nothing NH police could do about it. They would have to have a Tyngsborough officer on scene. There are a great deal of unknowns about how this relationship is going to work. The devil is in the details, and until they see a written agreement they have no idea how it will operate, if it's going to

NCPB

September 7, 2023

Page 14

be effective, and if it complies with the mutual aid statute. The applicant is asking for an approval without knowing those details.

Atty. Lehmann said expressed concerns regarding liability, and the possibility of lawsuits towards officers acting outside of their jurisdiction. He would suggest they table the application until they can get some of these questions answered on the operating agreement, the agreement between Tyngsborough and Nashua, and make sure you are protecting citizens, employees, and police officers.

Judy Taylor, 111 Hawthorne Village Rd, Nashua NH

Ms. Taylor expressed concerns regarding traffic volumes and increased police activity.

Letters in opposition submitted by 4PM, September 6, 2023:

Nancy Webber, 296 Westford Rd, Tyngsborough MA

Bill Ohm, 8 Mountain Laurels Drive, Unit 403. Nashua, NH

Zach Taylor, 12 Cabot Dr, Nashua NH

Laura Telerski, 5 Shakespeare Rd, Nashua NH

Deanne Taylor, 12 Cabot Dr, Nashua NH

#### **SPEAKING IN FAVOR**

Bill Andrews, Address Not Given

Mr. Andrews said he is the treasurer of the Milford Area Seniors Organization. He said the money they have received from charitable gaming has allowed them to continue to help their members. Without this they could not exist.

Phil Leary, Painters and Allied Trades DC 35

Mr. Leary said he is the vice president of NH Building Trades. They haven't talked about who is building the project, who is the general contractor. He supports this project as long as the developer uses responsible contractors.

Stephen Hausberger, Zimmermans Ski & Snowboard Shop, 314 Daniel Webster Hwy, Nashua, NH

Mr. Hausberger said he is the second generation owner of Zimmermans, and has been since 1999, the business has been there since 1968. This is his perspective, based on having a front row seat and watching Daniel Webster Highway grow up around them. Over

the years they made a ton of concessions so the mall, the gas station, Costco, and everything else could go in, and they did it because they recognize that if you're not growing and moving forward you're dying. Retail has had challenges pre and post pandemic. Having a casino inside the mall is out of the box thinking but he believes in the end it will be a shot in the arm to Daniel Webster Hwy, all the retail and restaurants down there. He is sure there are some negative sides, some what ifs, some things you can't control. You could site there and what-if this thing to death. But the benefits far outweigh the risks. It will be a positive thing for the city and DW Hwy.

Mr. Hausberger said he would like to see if the intersection in front of his store could be made a little more safe. It is definitely a mess at times. Their parking lot is tricky and they have tried for years to find a better configuration. As long as those criteria are met he doesn't see how this wouldn't be a good thing.

Ted Luzsey, Operation Care for Troops, 14 West Hill Road, Brookline, NH

Mr. Luzsey said they have been around for 20 years. Without the support of charitable gaming revenue, they probably wouldn't be here today.

Debra Chicklowski, Operation Care for Troops, 14 West Hill Road, Brookline, NH

Ms. Chicklowski said they have shipped 125,543 care packages to deployed military. Right now NH has 297 National Guard deployed in the Middle East along with 120 regular army troops. Without having the money from the casino they couldn't do what they do. They send food, hydration drinks, quality products. They have also become involved with veterans at home. If anyone is deployed, send their APO and they'll send them a box.

Kermit Williams, 55 Burns Hill Rd, Wilton NH

Mr. Williams said he used to serve in the state legislature and wrote and passed bills about how charitable gaming works in favor of the players. His reason for doing that is because casino gaming is growing rapidly in New England and New Hampshire was heading towards being an also-ran, a place where people who wanted to gamble wouldn't go. It was important to change the rules so that charitable casinos had a chance to compete against the bigger

places. This is still low stakes gambling, smaller businesses. Discussions about gambling addiction are a lot less of an issue here, people who are really addicted are going to go to places where they can bet large sums as a time.

Mr. Williams said he is president of his local Lions Club. He believes that charitable gaming is the single largest contributor towards nonprofits in the state. It's essential to make sure nonprofits have access to the funds to do all the things they do. Each new facility adds to that number.

Mr. Williams said his last point is the location. He has lived in New Hampshire and gone to the mall many times, but his last two visits to Sears have been for his covid shots. He hopes this is a fitting coda to the end of the pandemic in Nashua, to go from an empty space with a few National Guardsmen and a whole lot of needles, to a place that has three restaurants, entertainment, and lots of people having a good time. This is an opportunity to do something with this empty space. We're not likely to see another big box store in that Sears location. What is more likely would be something that isn't open to the public, an office space or nursing home that doesn't necessarily bring people to the mall. This will bring people in, it's a destination, an attraction. He thinks this will be good for Nashua, New Hampshire, and charities. People are going to gamble somewhere, he would rather them do it in New Hampshire.

Rocky Morelli, Opportunity Networks, 116 Perimeter Rd, Nashua NH

Mr. Morelli said they are one of the original charities with The River, and it has been a good relationship. It makes a huge difference. He is here to represent the people he supports, people and families with disabilities. They work under tight budgetary constraints, and many things are not fully funded. They have been able to use charitable gaming funds in a non discretionary way, which has been very helpful to fund things not covered by grants or state funding.

Mr. Morelli said this charitable gaming income has made significant differences at all levels of income. Some of these operations might not even exist if it wasn't for the ability to access funding.

Mike Belagen, 11 Michael Bennet Rd, Brentwood NH

Mr. Belagen said he represents the NH Police, Fire, and EMS Foundation. They would not be able to do what they do without

charitable gaming. He asked the Board to approve this request so that more charities can be helped.

Bob Hesselstine, 41 Seminole Dr, Nashua NH

Mr. Hesselstine said he is the former president of Corpus Christi Food Pantry and Food Assistance, which has been affiliated with the casino since 2008. They have been able to expand their food pantry and develop an assistance program. He supports this expansion of the casino here.

Leslie Cooper, Hudson NH

Ms. Cooper said she is involved in the Lions Club. She listed various items and programs that have been funded by charitable gaming. She expressed her support for the proposal.

Alena Slattery, 77 Direct Ct, Manchester NH

Ms. Slattery said she is here representing the Nashua International Sculpture Symposium, which is a recipient of charitable gambling funds. As a result, the scope of their operation has expanded substantially, and this is vitally important to them. She hopes the Board will support this.

Christine Latino, 3 Squire Dr, Atkinson NH

Ms. Latino said she is the director of charity services for the Lucky Moose and The River. She is here to read two statements from charities unable to be here this evening. Before she does that, she wants to clarify some numbers. Since 2007, the Lucky Moose and The River have donated over \$8 million to over 160 local charities. If this is approved, the estimates for their first year of operation is over \$24 million, a big increase to charities. She has a waitlist of 40 charities, they are looking forward to having those charities added so they can help even more.

Ms. Latino read into the record two letters, from Less Leg More Heart, and the Nashua Lions Club Both express support for the proposal.

Chuck Emmons, 8 Strawberry Bank U-4, Nashua NH

Mr. Emmons said he submitted a letter from The Actorsingers, and in support as an individual. He is excited for the idea of this empty space being utilized. We now have a proposal to put this

square footage to use. As far as traffic, he spent 30 years on Silver Drive, and he can't imagine the traffic being any worse than during the heyday of the mall. He doesn't see an existence of a facility that would bring in traffic any worse than Sears.

Letters in favor submitted by 4PM, September 6, 2023:

Michelle Beeny, Gateways Community Services, 144 Canal St, Nashua NH

John York, John E. Coffey Post 3, The American Legion, 11 Court St, Nashua NH

Donald Vincent, John E. Coffey Post 3, The American Legion, 11 Court St, Nashua NH

Henry Och, Harbor Care, 77 Northeastern Blvd, Nashua NH

Wendy Hunt, Nashua Chamber of Commerce, 60 Main St Suite 200, Nashua NH

Richard Lannan, 7D Taggart Drive, Nashua NH

Gary Jensen, Bent-Burke Post 10, The American Legion, 24 Maple St, Wilton, NH

Susan Dignan, Corpus Cristi Food Pantry & Assistance, 3 Crown St, Nashua NH

David Villotti, Nashua Children's Home, 125 Amherst St, Nashua NH

Jonathan Sterling, Nashua Community Music School, 2 Lock St, Nashua NH

Thomas Green, Bedford Firefighters Association, 55 Constitution Dr, Nashua NH

Thomas Green, New Hampshire State Firemens Association, Bedford NH

Jacqueline Barry, Nashua Area Artists' Association, Nashua NH

Carol Powis, Rotary Club of Nashua West, Nashua NH

Joseph Reilly, The Actorsingers, 219 Lake St, Nashua NH

Priscilla Silva, 47 Intervale St, Nashua NH

*The Board adjourned for a five-minute recess.*

#### **APPLICANT REBUTTAL**

Atty. Morgan Hollis, Gottesman & Hollis PA

Atty. Hollis said he wants to clarify the charitable contribution split. Charities receive 35% of gross proceeds from table games, 8.75% of gross revenues from HHR machines. The state gets 10% of table games, and 16.25% from HHR. He doesn't think it is something this Board can even consider, but he wanted to be specific to the question. It is a profitable business. Their direct competitor Delaware North, sent three people up here, their lawyer, their security guard, and their traffic engineer, they don't want

competition. They don't have any standing to be here, and put forth arguments about what-ifs. That's not why we're here.

Atty. Hollis referred to the conditional use criteria. There isn't any doubt that there will be some police and fire expenditures, just remember that they are paying taxes. They are paying for service down there. There is no evidence that there will be unnecessary expenditure of services that have been speculated on by those in opposition.

Atty. Hollis said he would like to rebut some of the statements made by Mr. Ohm. In regards to the Master Plan, it's important to understand that the law of the state is clear. In *Rancourt vs Town of Barnstead*, that case says that the Board cannot use the Master Plan in absence of the town enacting ordinances in these areas. The Master Plan is designed to show the Planning Board's recommendations, and functions as a guide in the land use planning process to develop ordinances. What the Board is here tonight to do is deal with those ordinances as they exist, not as they might exist.

Atty. Hollis said they don't have a code that talks about all the issues Mr. Ohm raised, and it's inappropriate for the Board to consider the Master Plan in its decision. All of the elements raised in the Master Plan about what could or should be done in these corridors are all good points and what the city wants to do, and what it is moving forward to do. As it sits now, we have to deal with the code as it stands.

Atty. Hollis said in regards to concerns of signage, when they get to the signage part of this, it will meet the signage ordinance. If it does not, it will have to go to the Zoning Board.

Atty. Hollis said in regards to addiction and community crimes, there are other casinos in this town. The Board has already heard opposition from their direct competitor. It's specious to argue that the addiction will have impacts and those impacts have to be part of the safety analysis. There are no facts supporting that allegation.

Atty. Hollis said it is notable who was not testifying here today, either in opposition or support. Neither police department, and no one from the town of Tyngsborough. That speaks volumes. The police are going to work this out amongst themselves after the fact. He would urge the Board not to venture into forcing the police departments of either community to spell out what they are going

to do. The use will not materially endanger the public health or safety, there is no evidence of that. Adequate public utilities and community facilities are available, and this will not necessitate excessive public expenditures.

Atty. Hollis said in regards property values and claims that family friendly businesses will be hurt by the casino, he will point out Foxwoods. They are mutual, they get along.

Atty. Hollis said in regards to compatibility with surrounding uses, there has been no objection from the abutters. The mall and surrounding properties are in support. There are no facts to support the claim that they are incompatible.

Atty. Hollis said in regards to substantial adverse impacts on pedestrian and highway traffic, they already went through the conservative traffic reports. They followed the city's protocol, the Board has their recommendation on what they want to see. City staff has done their job and we have done what they asked us to do. In regards to traffic and risk of accidents, peer reviewed studies suggest not.

Atty. Hollis said in regards to additional emergency services calls at this location, this is going to be a large taxpayer. Any use will have fire safety. There is no evidence to support that gaming requires heavier EMT.

Atty. Hollis said it is true that security staff is not law enforcement. Crimes will be called in to the local police. They will run through that in their procedure and protocol. It is in the conditions of approval. This is a large professional organization, they have the security staff, they know what they are doing.

Atty. Hollis said the Board heard from their competitor, Delaware North, that they are working to get security developed with the Nashua police department after their Sheraton hotel approval. That's how it works.

Atty. Hollis said Ald. Dowd's concerns regarding police are certainly legitimate and only reiterate what the chief said. The chief is not here to object.

Atty. Hollis said last call at the bar will be 1:15AM. All alcohol is removed by 2AM.

Atty. Hollis said the next three speaking in opposition were all from their direct competitor. They must feel there is some concern, they raised concerns that could have been raised about their own operation in the Sheraton. The traffic engineer's biggest concern was that there might be a problem in Massachusetts, which is outside of this jurisdiction. City staff have determined there is a condition they want to see satisfied, and we are committed to it.

Atty. Hollis said in regards to concerns about staffing, everyone has concerns about staffing. We are not asking that this require additional staffing. If the police and city all decide that there is adequate taxation to supply that, that is their jurisdiction. There is no evidence anywhere that anyone other than their competitors are concerned about safety.

Atty. Hollis said Atty. Lehmann's comments on jurisdiction were good information, but this is something the police ought to work out. For this Board to require an agreement to dictate those terms is inappropriate. It's a condition of approval, if they can't come to an agreement this doesn't move forward.

Atty. Hollis said in regards to liability, this is interesting information about what could or may happen, but it was a robust Sears in there for a long time. There was shoplifting, there were thefts. Those issues are going to exist regardless of who goes in there. There is no evidence to suggest that the casino will generate anything of the level of materially endangering the public safety or health, or require excessive public expenditure to provide services.

Ald. Klee said she supports charitable gaming. She asked if the money given to charities has no strings attached.

Atty. Hollis said correct, no restrictions.

Ald. Klee asked how many charities they assist.

Atty. Hollis said it was 108 in 2022.

Ald. Klee asked if there are plans to close The River or Lucky Moose. Would that reduce the number of charities they can work with? She wants them to help as many people as possible.

Christine Latino, Director of Charity Services

Ms. Latino said they want to help as many as possible. They serve three charities between the two properties every ten days. The statute reads "up to ten days", but it can be fewer than that. Their hope is that because the amounts will be larger, they are consider going to seven days. That would allow them to keep the existing charities and hopefully add more. Some gaming halls go down to as few as five days.

Ald. Klee said she thought the limit was two.

Ms. Latino said two at the Lucky Moose, one at The River.

Mr. Hirsch said under stipulation 4, if they are unable to develop a life safety protocol between the two police departments, you would not be able to open a facility.

Atty. Hollis said correct. If they can't, they'll be back here to explain why and maybe ask for relief. That is the condition they are agreeing to last night.

Mr. Pedersen asked if they would need an agreement between the two departments.

Atty. Hollis said the condition is that they will establish a life safety police protocol in conjunction with Tyngsborough and Nashua police departments, which will be posted onsite and adhered to. If the police departments do not agree, we have a problem. But agreeing to a protocol is not an agreement between them. He wants to leave that in their hands. The protocol is about what happens when there is an event, who do they call, where do they go. This protocol is a plan that identifies all of the emergency exits, the security, who is responsible.

Mr. LeClair said that would be prior to the issuance of a building permit.

Ald. Klee said this does not address her concern over who has jurisdiction.

Atty. Hollis said correct.

Ald. Klee said when she spoke to the chief and asked him if he wanted to speak, he didn't want to. Whatever he could say would make it sound like he was against the casino, when he isn't against any new business coming in to this space. He did have concerns

about the jurisdiction. She would rather hear both police chiefs before voting on this.

Atty. Hollis said there was a store there, that's not the only store on the state line. When issues arise, this is not going to be the first time this happens. The police in either community have to deal with this constantly. It has arisen because it is a new operation, it's been dead down there, they need to renew their discussions. This is not new. Jurisdictional issues occur. There will be a call made to who it should be called to, and each department will respond the way that they want to respond. If they start wading in to tell them what they should agree to, that is not the business of the Planning Board or the applicant.

Ald. Klee said she would not demand anyone reach an agreement. She would feel more comfortable knowing what those issues are. This isn't the same business as Sears, there is more alcohol flowing, they are spending more time there, it's a completely different type of thing. She is not concerned about the parking, she is concerned about the line. Painting the line helps the officers know not to cross it. She would like to hear from these two police departments.

Atty. Hollis said it speaks to their position in it. They will have to work it out.

Mr. LeClair said this application has gone through the police department, and this process goes through them. There is a formal comment from them that there are no comments. Every application goes through all the city departments. We get plenty of comments, particularly from police and fire, on a lot of applications.

Mr. Hudson said further to that point, they had a discussion on whether this had regional impact. Planning staff has reached out to Tyngsborough so they would have an opportunity to comment on this. Staff has gone above and beyond in terms of making sure everyone is informed.

Mr. LeClair said there are no applications before the Board that don't go through the city departments for comment, and they require a response.

Ms. McGhee said correct, particularly in regards to public safety. She has not received any comments from Fire on this.

Mr. Pedersen said since the staff report has no comments from fire or police, either in Nashua or Tyngsborough, that leaves it to be determined if there is a cross border incident. There are no guidelines or rules defined.

Mr. LeClair said we can discuss that in the meeting.

Mr. Hudson asked if staff can speak to the traffic review.

Wayne Husband, Senior Traffic Engineer

Mr. Husband said with him tonight is Jason Plourde from VHB, the peer-review engineer for traffic impact assessment.

Mr. Husband summarized the review process, and said they came up with a traffic mitigation plan to address the impacts of the proposed casino. They propose to reconfigure the traffic intersection at Zimmerman's Ski Shop. The applicant has agreed to work with Zimmerman's to redo the parking lot to address parking and traffic movements at the ski shop, something they have been trying to get done for 25 years. The traffic coordination and signal timing of the traffic lights is based on information from 20 years ago; it is well past time to be readjusted. We had a box store in here two years ago that was going to do this same thing, whichever one comes first will do this mitigation and they will find something else for the other to do.

Mr. Husband said they have also requested to talk to MassDOT and Tyngsborough because 65% of the traffic is going south, they think some improvements need to take place down there. If this is approved, they have asked the applicant to come back in six months to reevaluate traffic volumes and determine what the impacts are, and come up with mitigation. If they can't fix the intersection in Massachusetts, we want to do something different for mitigation on DW Highway for the other mall intersections. We believe this will address traffic impacts in Nashua.

Mr. Hudson said the cost of retiming the intersections along the corridor is significant, \$92,000.00. The cost of redoing Zimmerman's could be more than \$50,000.00. These are not insignificant numbers. For the casino on Spit Brook they asked for two traffic cameras for \$50,000.00. To Mr. Husband's point, they engaged VHB as a consultant because the casino is fairly unique. They asked for conservative analyses and erred on that side. The six month check in to confirm what's happening after they're running is a boot and suspenders approach.

Mr. Husband said traffic studies typically have a 10-year forecast. For this they had the counts done based upon traffic volumes from a casino in pre-pandemic conditions. We might not be back to those conditions in ten years. We are confident in the traffic assessment performed.

Mr. Ohm said the procedures of the Planning Board call for a rebuttal from the public, not to exceed five minutes.

Mr. LeClair said he has been here twelve years and has not seen that happen.

Mr. Ohm said in the meeting last August it was allowed.

Mr. LeClair asked if he meant public rebuttal or applicant rebuttal.

Mr. Ohm said public rebuttal.

Mr. LeClair asked if he wants five minutes to rebut.

Mr. Ohm said yes.

Mr. LeClair asked if he feels that he speaks for everyone in the audience. It's one person.

Mr. Ohm said yes.

**SPEAKING IN OPPOSITION OR CONCERN - REBUTTAL**

Bill Ohm, 18 Mountain Laurels Drive, Nashua NH

Mr. Ohm said the revenue split he was referring to previously was horseracing. The table games are correct. The lottery commission allows 70% of the floor space to be for horse racing, 30% must be for other games. He believe it is inappropriate to compare a small casino to a large casino in regards to security and crime. He said Mohegan Sun in Connecticut is on tribal lands and is not a normal municipal zoning issue.

Mr. Ohm referred to 190-177 of the land use code, in regards to the duties and responsibilities of the Planning Board, that they Board must promote public interest in and understanding of the Master Plan, and shall do all things to promote and execute it.

They have statutory authority to take guidance from the Master Plan they produced and apply it to this application.

Mr. LeClair said historically we have shown that we take our Master Plan into account.

#### **PUBLIC MEETING**

Mr. LeClair closed the public hearing and opened the public meeting. They have been looking at this for a while, the Board is well aware of what is happening and going on. Some new stipulations have been added by staff. In terms of concerns, traffic comes up in everything they do in the Planning Board. His opinion is that in terms of traffic and location, there is no better place for traffic to be generated. It literally has interchange access. They have talked about other issues, the problem at the other casino being traffic. The interchange here is direct, which is a big benefit. There are three entrances, they're making some improvements. The mall traffic is not like it used to be. Vacant anchor stores in malls are not a great thing for the city. Any kind of use that can be productive seems valuable.

Mr. LeClair said the jurisdictional issues with the police, as far as he is concerned, he is hesitant to put any stipulation on our public safety officials. The Board gives them the opportunity for input, they take that whenever they need to. They know way better than the Board does about how to operate this stuff. Getting a commitment for the applicant to continue to talk to these authorities is valuable in making sure some protocol is developed. He is hesitant to place a stipulation on Nashua police, let alone across the border. That's not in their jurisdiction. If there is a problem with policing and charitable gaming, it may be an aldermanic issue. If the aldermen don't want this use in this city, address it. That's a political and aldermanic function, not a land use function.

Ald. Klee said she doesn't disagree that some of these are aldermanic issues. She can't get past the jurisdiction issue. She feels they are putting officers at risk. She wants to address a comment made that the state and charities get something and that the city gets nothing. That's not true, the city gets revenue through tax dollars. An empty building generates no taxes. When this casino goes in, the value of that will be realized to the city through taxes. She asked staff to forward letters from departments that have no comment. She believes there will be more traffic. This is not the same as Sears. She would have loved to

see either police chief here, they probably didn't want to come for political reasons, it might be taken that they are against this. The Nashua chief is not against this. There are a lot of what-ifs, and the potential for unintended consequences concerns her. She believes it is a land use issue when it comes to public safety. She cannot support this for that reason. Anywhere else in the city and she would support this.

Mr. Hirsch said he doesn't feel they should second guess public safety people. Despite the politics, if there were issues they would have brought it to our attention. The Board shouldn't put themselves in the position of making their decisions, they have to trust them.

Ald. Klee said she agrees. She has spoken to the chief and officers, and wishes their concerns had been put into a report. That is her issue.

Mr. Hirsch said they could have articulated a concern. It's something they will have to live with down the road. With their silence they have indicated they have no problem.

Mr. Pedersen said regarding the borderline issues, they don't have a well defined role as to who has jurisdiction and liability, and will just leave it up to police officers to work that out themselves. If something important happens, it comes down to a legal matter. We're just flying bad, to be determined.

Mr. Hirsch asked Mr. Pedersen if he has faith in the officers.

Mr. Pedersen said he has faith in officers to have good will toward each other. But if a legal matter pops up, then it's not a friendship matter.

Mr. Hudson said he agrees with the chair that the police were offered an opportunity to provide input, they offered some, but they didn't provide anything here as testimony that would tell the Board they shouldn't move forward. He's left wondering how he can be more concerned than the people who are going to be responsible to carry that out. If they had a concern, they would be here to voice that. They have probably made the same assessment that he has made, that there are concerns, there are pros and cons in any type of a development. He believes the pros outweigh the cons. If this was a new facility and they were going to build the parking lot for the first time, maybe they would spend more time on it. This is a preexisting condition, they are occupying an empty space.

He doesn't feel qualified to adjudicate the jurisdictional issues between police departments. He takes comfort in the fact that the applicant is going to work with both departments to develop protocols and build relationships.

Mr. Hudson said he agrees with the Chair in regards to traffic. Were it not for being on the border and have jurisdictional issues, it is an ideal place. If it was somewhere else in the city, it may be harder to accommodate. They have been through several iterations of traffic reports, and he doesn't know what more they could do with the traffic. They're not building more lanes. We are doing what we proposed to do, trying to bring as much capacity into our current system, make it work as efficiently as we can and make sure things are working as anticipated. He thinks the pros outweigh the cons and he is in support of the application.

Mr. Pedersen said this particular business, as compared to the other casinos in town, dwarfs them in size. It's a whole different level of size and complexity. They should take that into consideration. The jurisdictional issue is a big question, they're just hoping everything will work out. He thinks the Board has a responsibility to have a better definition of what is expected on each side of the border. If the Nashua police has to hire additional staff, the applicant should contribute toward that cost. The Nashua taxpayers would have to pay their benefits and retirements. He questions whether the revenue would cover the cost of that. He hasn't made up his mind yet.

Mr. LeClair said the mall has been functioning at that location. Maybe the size of the casino is significant, but it's not more significant than a fully occupied Pheasant Lane Mall, it's way more than the casino and has been. There's a heck of a lot more shoplifting in the mall than crimes happening in a casino, the casino has way more security. Any cross jurisdictional issues, if it hasn't been a showstopper for the mall at this point, he doesn't see how this facility makes it worse. It could even be better. The amount of security in the casino dwarfs the amount in the mall. It feels like the level of security in that zone is going way up. They haven't had these big issues, we're adding people but not more than the mall was at that point. The amount of security being there trumps any potential increase in issues.

Mr. Hirsch said this is going to bring new life to the mall, just the sheer amount of bodies going to the property there. It may invigorate, strengthen the existing mall tenants and bring new tenants in just by the sheer traffic.

Ald. Klee said while she has a big if, she did not miss the amount of security and cameras discussed. This is a secure area. It would bring a shot of life to that dead area, there is nothing worse than closed storefronts. If this was at the JC Penney she wouldn't have an issue. It's the distance to the state line she has an issue with. All of the positives that have been talked about makes it difficult for her to have concerns. She cannot help going back to her conversation with the chief. She thinks that the applicant has gone above their promises and commends them, and would have no issues if they were anywhere else in the mall. The applicant has done their due diligence.

Mr. Pedersen asked Ald. Klee if in her estimation the amount of revenue will cover the benefits of any new officers that may need to be hired.

Ald. Klee said she is not qualified to answer. As an aldermen, she can say any time they can start getting tax dollars is a positive. This is a strong potential earner.

Mr. Pedersen said it seems benefits would far outweigh expenditures. He remembers Daniel Webster Hwy in the 1980s, before online purchasing, and it was mobbed. If this facility introduces new evening traffic, that's manageable. They have done it in the past.

**MOTION** by Mr. Hirsch to approve Old Business - Conditional Use Permit A23-0062. It conforms to §190-133(F) with the following stipulations or waivers:

1. Prior to the issuance of a Certificate of Occupancy, the Applicant shall reconstruct the Pheasant Lane/Daniel Webster Highway Intersection, specifically at the corner with the Zimmerman's Skis, Boards & More business, as detailed in the attached memo from Wayne Husband, Senior Traffic Engineer, dated July 7, 2023, as modified by Wayne Husband.
2. Prior to the issuance of a Certificate of Occupancy, the Applicant shall have a line painted delineating the border between New Hampshire and Massachusetts.
3. Prior to the issuance of a Building Permit, inquire of MassDOT if the proposed improvements to Middlesex Road at the Exit 91 Interchange and Mall Access Road as suggested in the GPI analysis dated August 22, 2023, can be made, and if approved,

constructed by the Applicant within 1 year of approval by Mass DOT.

4. Prior to the issuance of a Building Permit, develop a life safety/police protocol in conjunction with the Nashua and Tynngsborough Police Departments. This protocol shall be posted on-site and adhered to.
- 5a. Prior to the issuance of a Certificate of Occupancy, the Applicant will fund the DW Highway and Spit Brook Road Signal Timing Adjustments Contract to be performed by VHB, the City's traffic Consultant.
- 5b. Post-Construction of the gaming facility (6 months after opening), the Applicant will perform a post-occupancy monitoring study to evaluate post-build traffic conditions and compare these conditions to those projected in the Updated Traffic Assessment prepared for the project. The Applicant shall be financially responsible for any necessary signal phasing/timing changes to the signal system at these locations as warranted by the monitoring study.
6. In the event the Police Departments of Nashua and/or Tynngsborough deem it necessary for the protection of public safety, the Applicant shall hire a police detail at its own expense to address any queuing of vehicles and/or customers, or other public safety purposes, at the Establishment that presents a danger to public health and safety.

**SECONDED** by Mr. Hudson

**MOTION CARRIED 4-1 (Klee opposed)**

*The Board held a five-minute recess.*

**OLD BUSINESS - SUBDIVISION PLANS**

**A23-0066** City of Nashua (Owner) - Blaylock Holdings, LLC (Applicant) - Proposed subdivision of a portion of the Veterans Memorial Parkway as part of the Mohawk Tannery Redevelopment project. Zoned "RC" Urban Residence, RB-Urban Residence, and VMPR-Veterans Memorial Parkway Redevelopment Overlay District. Ward 4. **[TABLED TO THE SEPTEMBER 21, 2023 MEETING]**

**A23-0067** J.K.S. Realty, LLC (Owner). Blaylock Holdings, LLC (Applicant) - Proposed two lot subdivision. Property is

located at "L" Fairmount Street. Sheet 62 - Lot 100. Zoned "RC" Urban Residence, "RB" Urban Residence, and "VMPR" Veterans Memorial Parkway Redevelopment Overly District. Ward 4. **[TABLED TO THE SEPTEMBER 21, 2023 MEETING]**

**A23-0068** City of Nashua, Fimbel Door Corporation, Chester Realty Trust, J.K.S. Realty, LLC and L.J.J. Realty LLC (Owners). Blaylock Holdings, LLC (Applicant) - Proposed consolidation of seven existing lots and subdivide into nine proposed lots along with a proposed public road. Property is located at "L" Fox Street, 66 Fairmount Street, 11 Warsaw Avenue, "L" Intervale Street, "L" Hughey Street and "L" Fairmount Street. Sheets/Lots 71-7, 70-14, 134-16, 70-13, 134-40, 134-41, 62-100 (portion of newly created lot 100-1). Zoned "RC" Urban Residence, "RB" Urban Residence, and "VMPR" Veterans Memorial Parkway Redevelopment Overly District. Ward 4. **[TABLED TO THE SEPTEMBER 21, 2023 MEETING]**

#### **OLD BUSINESS - SITE PLANS**

**A23-0069** City of Nashua, Fimbel Door Corporation, Chester Realty Trust, J.K.S. Realty, LLC and L.J.J. Realty LLC (Owners) Blaylock Holdings, LLC (Applicant) - Proposed Mohawk Tannery Redevelopment project involves the remediation and subsequent redevelopment of the former Fimbel Door/Mohawk Tannery sites and portions of adjacent properties into a total of 546 multi-family residential units along with associated site improvements. Property is located at "L" Fox Street, 66 Fairmount Street, 11 Warsaw Avenue, "L" Intervale Street, "L" Hughey Street and "L" Fairmount Street. Sheets/Lots 71-7, 70-14, 134-16, 70-13, 134-40, 134-41, 62-100 (portion of newly created lot 100-1). Zoned "RC" Urban Residence, "RB" Urban Residence, and "VMPR" Veterans Memorial Parkway Redevelopment Overly District. Ward 4. **[TABLED TO THE SEPTEMBER 21, 2023 MEETING]**

*Mr. Varley & Mr. Bollinger resumed position on the Board.*

#### **NEW BUSINESS - CONDITIONAL USE PERMIT**

**A23-0132** JP Irving, LLC (Owner). Ridgeline Defense MFG LLC (Applicant). Proposed Conditional Use Permit to amend NR1010 to allow for firearms, parts and accessories manufacturing and distribution. Property is located at

4 Bud Way, Suite 19 & 20. Sheet E. Lot 1349. Zoned AI.  
Airport Industrial. Ward 1.

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

**SECONDED** by Ald. Klee

**MOTION CARRIED 7-0**

Alex Hartmann, Ridgeline Defense MFG, 4 Bud Way, Nashua NH

Mr. Hartmann said Planning staff has been very helpful throughout this process. He summarized the nine criteria for the conditional use permit, as detailed his letter.

Mr. LeClair asked if there would be ammunition onsite.

Mr. Hartmann said there would be for testing, in accordance with ATF requirements.

Mr. LeClair asked if testing happens onsite.

Mr. Hartmann said no, it happens offsite. The ammunition onsite is minimal, for test fitting and basic reliability testing. They have a large facility up north they provide for. The number one concern is flammability, mainly for black powder, which they are not using. Only cased ammunition, modern smokeless powders, so there is much less concern.

Mr. LeClair asked if it is wholesale, no selling of the stuff to any retail.

Mr. Hartmann said correct. There is no retail onsite, it is done through wholesale distributors. No walk-ins, no customers.

Mr. Varley asked if they aren't manufacturing ammunition.

Mr. Hartmann said correct. They try to keep it to the minimum of best practices.

Mr. Pedersen asked if the site has an alarm system.

Mr. Hartmann said the site will have both video and alarm if approved, internal and external. The building has two large glass openings, which they will put in a wall and cages and secure

NCPB

September 7, 2023

Page 33

storage. Everything is in accordance with the Bureau of Alcohol, Tobacco, Firearms, and Explosives in terms of what they require for storage and the license to manufacture.

Mr. Hudson asked if people are manually assembling product, not machining parts.

Mr. Hartmann said correct. The loudest machinery is an air compressor or torque driver.

Mr. Bollinger asked if there are state or federal licenses beyond what BATFE requires.

Mr. Hartmann said yes, the ATF license.

Ald. Klee asked if their other location is in Nashua.

Mr. Hartmann said no, it is in Dalton, New Hampshire. They provide training to military and civilians.

Ald. Klee said they have something slightly similar to this on Canal Street, they needed approval from Planning and Zoning to get their license.

Mr. Hartmann said correct, they need this conditional use permit to get the ATF license.

#### **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 to be a straightforward request, he doesn't see any issues.

Ald. Klee said this is in a more commercial area than the other one, she has no concerns.

NCPB

September 7, 2023

Page 34

**MOTION** by Mr. Bollinger to approve Old Business - Conditional Use Permit A23-0132. It conforms to §190-133(F) with no stipulations or waivers

**SECONDED** by Mr. Hirsch

**MOTION CARRIED 7-0**

**NEW BUSINESS - SUBDIVISION PLANS**

**A23-0114** GIMAK Properties LLC (Owner). Proposed two-lot subdivision. Property is located at 96 Wellington Street. Sheet 65. Lot 200. Zoned RA-Urban Residence. Ward 3.

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

**SECONDED** by Mr. Varley

**MOTION CARRIED 7-0**

Dan Barowski, Surveyor, Fieldstone Land Consultants, 206 Elm St, Milford NH

Mr. Barowski introduced himself on behalf of the applicant.

Mr. Barowski described the subject lot. The proposal is to split the subject lot into 2 lots, both larger than the minimum required by zoning requirements. They are willing to work with Public Works to inspect the existing sewer line to make sure it will not require an easement and is in good repair. The existing lot contains several buried structures, which are proposed to be removed and filled. A single family home is proposed on the new lot. He described stormwater infrastructure.

Mr. Barowski said they are requesting three waivers, as detailed in the staff report.

Mr. LeClair asked if they understand the waiver to move forward before the appeal period is over is at their own risk.

Mr. Barowski said yes.

Ald. Klee asked if all of the structures will removed and the ground will be cleared. She thinks the neighbors would appreciate seeing a home.

Mr. Barowski said yes. He spoke with one of the abutters, who was much in favor of it.

Ald. Klee said she has spoken to some of the neighbors who have been viewing that eyesore for a long time, and she is glad to see it developed.

Mr. Hudson said he doesn't take objection to the sidewalk waiver, but there is sidewalk 40-ft away on Elliot.

Mr. McPhie said that it would have to be on the same side of the street as well.

Mr. Hudson asked if that is how they determine the jurisdiction.

Mr. McPhie described the criteria for determining the sidewalk waiver and calculations.

Ms. McGhee said she discussed it with the Planning Manager and determined that it would be Wellington Street for eligibility.

Mr. Bollinger said it looks like two staff reports made it online.

Mr. McPhie said that the first one would be the most recent.

Mr. Varley asked if Engineering has reviewed the most recent stormwater report, which was submitted today.

Mr. Hudson said no. The applicant has testified they have addressed them, and it is a condition of approval.

Mr. McPhie said the applicant went a little more than they needed to on the report, they got into the details.

**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 to be straightforward. This would be a definite improvement. He summarized the waivers, and sees no issues with them.

Mr. Hudson clarified the dates contained in the staff report.

**MOTION** by Mr. Varley to approve New Business - Site Plan A23-0114. It conforms to §190-146(D) with the following stipulations or waivers:

1. The request for a waiver of § 190-281(10), which requires physical features on site and within 1,000 feet be shown, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
2. The request for a waiver of Nashua Planning Board bylaws section 9.5 concerning waiting to file the approved subdivision plan at the Hillsborough County Registry of Deeds until after the statutory appeal period has passed is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation..
3. The request for a waiver § 190-212(A)(1), which requires a sidewalk be built along the lot frontage if an existing sidewalk is located within 250-feet of the property line on the same side of the road, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation. The applicant has agreed to pay \$8,521.00 in lieu of sidewalk construction pursuant to §190-212(D) (2), payment to be made prior to recording the plan.
4. Prior to the Chair signing the plan, all minor drafting corrections will be made.
5. 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.
6. Prior to the issuance of the first building permit, all easements will be submitted to City for review and approval and recorded at the Registry of Deeds at the applicant's expense.
7. Prior to the issuance of a building permit, all comments in the e-mails from Joe Mendola, Senior Staff Engineer dated

August 21, 2023 shall be addressed to the satisfaction of the Public Works Department.

8. Prior to the issuance of a building permit, all comments in the e-mails from Michael DuVarney, Inspector/investigator, Nashua Fire dated August 21, 2023 shall be addressed to the satisfaction of the Public Works Department.
9. Prior to the issuance of a building permit, stormwater documents will be submitted to City staff for review and approval and recorded at the Registry of Deeds at the applicant's expense.
10. Prior to the issuance of a certificate of occupancy, all on-site and off-site improvements will be completed or a financial guarantee will be posted.
11. Prior to issuance of the final certificate of occupancy for the development, a certified plot plan locating all roads, driveways, units, other buildings, utilities and site landscaping shall be stamped and certified by a professional engineer and submitted to the Planning Department. The as-built plan shall include a statement that all construction was completed in accordance with the approved site plan and applicable local regulations.
12. Prior to any work, a pre-construction meeting shall be held and a financial guarantee shall be approved.

**SECONDED** by Mr. Hirsch

**MOTION CARRIED 7-0**

**A23-0143** David Matthew Smith and Raisanen Homes Elite, LLC (Owners). Proposed lot line relocation plan. Property is located at 21 Columbia Avenue (Sheet 65. Lot 208) and 15 Bartlett Avenue. (Sheet 57. Lot 3). Zoned RA-Urban Residence. Ward 3.

**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**

Dan Barowski, Surveyor, Fieldstone Land Consultants, 206 Elm St, Milford NH

Mr. Barowski introduced himself on behalf of the applicant.

Mr. Barowski said this proposal consists of transferring 2,854-sqft of land from Lot A to Lot B. Both lots meet the minimum lot size requirements. This transfer is minor in nature.

Mr. Barowski said there is one waiver request, as per the staff report.

Ald. Klee asked if 21 Columbia Ave gains the land. Will it square off their property?

Mr. Barowski said yes. He indicated the land transfer on the plan for Ald. Klee. It doesn't quite square it off, but it makes it more regular.

#### **SPEAKING IN OPPOSITION OR CONCERN**

None

#### **SPEAKING IN FAVOR**

None

#### **PUBLIC MEETING**

Mr. LeClair closed the public hearing and opened the public meeting. This seems like a straightforward adjustment to make the lot more regular.

**MOTION** by Mr. Varley to approve New Business - Site Plan A23-0114. It conforms to §190-146(D) 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 be shown, 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, any drafting corrections will be made.

3. 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.
4. Prior to recording this plan, the 21 lot subdivision approved on February 2, 2023 shall be recorded.

**SECONDED** by Mr. Hirsch

**MOTION CARRIED 7-0**

**OTHER BUSINESS**

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

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

**SECONDED** by Mr. Bollinger

**MOTION CARRIED 7-0**

**DISCUSSION ITEMS**

**Revision of the sidewalk payment-in-lieu fee:** Postponed

**Land Use Code Update:** Ms. McGhee informed the Board that they have signed a contract with Principal Group.

**Online Packets:** The Board held a brief discussion regarding case materials.

**MOTION** to adjourn by Mr. Bollinger at 11:12 PM

**MOTION CARRIED 7-0**

DIGITAL RECORDING OF THIS MEETING IS AVAILABLE FOR LISTENING DURING REGULAR OFFICE HOURS. DIGITAL COPY OF AUDIO OF THE MEETING MAY BE MADE AVAILABLE UPON 48 HOURS ADVANCED NOTICE AND PAYMENT OF THE FEE.

KP - Taped Hearing