

**CITY OF WOBURN
FEBRUARY 16, 2016 – 7:00 P.M.
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

| | |
|-----------|--------------|
| Anderson | Gately |
| Campbell | Higgins |
| Concannon | Mercer-Bruen |
| Gaffney | Tedesco |
| Haggerty | |

VOTED to dispense with the reading of the previous meeting's Journal and to APPROVE, all in favor, 9-0.

MAYOR'S COMMUNICATIONS:

ORDERED That the sum of \$11,200.00 be and is hereby transferred as so stated from COA Paving Acct #112158-589158 to Election Workers Acct #0116251-512005 \$11,200.00

I hereby approve the above: s/William C. Campbell, City Clerk
I have reviewed the above: s/Charles E. Doherty, City Auditor
I hereby recommend the above: s/Scott D. Galvin, Mayor

s/President Haggerty

Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON FINANCE, all in favor, 9-0.

PUBLIC HEARINGS:

On the petition by NSTAR Electric Company dba Eversource Energy for a grant of right in a way to install conduit in Washington Street as follows: 1. At and northeasterly from Dewey Avenue at pole 228/88 a distance of about 10 feet, and 2. At and northeasterly from Olympia Avenue at pole 228/91 a distance of about 17 feet. PUBLIC HEARING OPENED. A communication dated February 12, 2016 was received from Superintendent of Public Works John Duran as follows:

Subject: NStar Electric Company d/b/a Eversource Energy – 369 Washington Street

Pursuant to the petition filed by Eversource for the installation of Grant of Right in a Way at 369

Washington Street, I have performed a site visit and offer the following. The work appears to be strictly related to work within the grassed portion of the right of way. However, snow cover makes it difficult to see if there are any sidewalks in the areas of proposed work. It does not appear that any work is proposed and it should NOT be permitted within the paved section of Washington Street.

I recommend that the City Council allow this petition subject to the additional following conditions. All grassed areas shall be restored to the pre-existing elevations and loamed and seeded in the spring. Any sidewalks (if any) should be replaced to City of Woburn and Mass DOT standards and specifications. Eversource should also secure all necessary permits prior to any excavation. Based upon our records, this work also will require a Mass DOT Permit as it appears to be within the state layout. However, it is difficult to tell if it is also within a portion of a city right of way.

In addition, there are double poles are in the immediate vicinity of this work along Washington Street that should be eliminated as part of this approval. I will defer to the City Council on the limits imposed as to not confuse the prior approval for the Special Permit that was granted for the parcel to be serviced by these modifications.

Please feel free to call with any questions or concerns.

Appearing for the petitioner was Jacqueline Duffy, Right of Way Agent and she stated that the petition is for a 27 foot conduit for the project at 369 Washington Street, that the petitioner can address the double pole issue, and that the petitioner will communicate with MassDOT to determine if additional permissions are necessary. Alderman Mercer-Bruen stated that the two double poles near the property south of the bridge should be addressed and not just looked into. PUBLIC COMMENTS: None. Motion made and 2nd that the GRANT OF RIGHT IN A WAY be APPROVED, AS AMENDED with the amendments as follows: 1. That the two double poles near the project shall be completed and that the City Council be notified when the extra poles have been removed, 2. That the petitioner contact MassDOT for any necessary permission to excavate in the Washington Street right of way, and 3. That the conditions recommended by the Superintendent of Public Works be adopted as conditions of the grant, all in favor, 9-0.

Presented to the Mayor: February 18, 2016 s/Scott D. Galvin February 18, 2016

On the petition by Enterprise Fleet Management Inc. 248 Mishawum Road, Woburn, Massachusetts 01801 for a Second Class Motor Vehicle Sales License at 248 Mishawum Road. PUBLIC HEARING OPENED. A report was received from the Committee on Public Safety and Licenses as follows: “ought to pass.” No one appeared for the petitioner. PUBLIC COMMENTS: None. Motion made and 2nd that the public hearing be closed, all in favor 9-0. PUBLIC HEARING CLOSED. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

Presented to the Mayor: February 18, 2016 s/Scott D. Galvin February 18, 2016

On the petition by East West Imports, Inc., 50 Silsbee Street, Lynn, Massachusetts for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended, Sections 5.1.42, 5.1.57b and 7.3 to allow for a distribution business and overnight parking of Petitioner's commercial vehicles at 160 Olympia Avenue. PUBLIC HEARING OPENED. A communication dated February 11, 2016 was received from Neil Cronin, City Planner/Grant Writer as follows:

Re: Planning Department comments on special permit application for East West Imports, Inc. at 160 Olympia Avenue

Dear Honorable Council:

The Planning Department has reviewed the request to allow for a wholesale establishment (warehouse and distribution center) with accessory overnight storage or parking of commercial motor vehicles at 160 Olympia Avenue pursuant to Sections 5.1.(42), 5.1.(57b), and 7.3 of the Woburn Zoning Ordinance (WZO). The property is located in the I-P zoning district and the requested uses are allowed by City Council special permit.

A discussion with the petitioner's attorney and review of the provided plan indicates the petitioner would employ four (4) employees on the largest shift and would plan to park a box truck (10'x26'), a tractor trailer (10'x53'), and a van (typical) used in conjunction with the warehouse and distribution business on a portion of the site. The petitioner intends to use the site and the vehicles to store and deliver groceries to its markets and establishments in the area.

The petitioner plans to occupy approximately 6,000 square feet of the building at 160 Olympia Avenue. An existing tenant, Nardone Electrical Corporation, received a Special Permit to allow for the outside storage and parking of commercial motor vehicles and contractor's equipment for the site on May 14, 2015. The Plan of Record for that permit indicates there are 59 spaces on site with 58 spaces required for the office and warehouse needs of Nardone per the WZO as shown below:

- 8,000 sq. ft. of office space (1 space / 350 sq. ft.) requires 23 spaces
- 27,912 sq. ft. of warehouse (1 space / 800 sq. ft.) requires 35 spaces

In order to find the true number of spaces required for the entire site, the 6,000 square feet East West Imports Inc. is seeking to occupy, must be subtracted from the 27,912 square feet of warehouse space currently occupied by Nardone. Thus, Nardone requires 50 spaces as shown below:

- 8,000 sq. ft. of office space (1 space / 350 sq. ft.) requires 23 spaces
- 21,912 (27,912 minus 6,000) sq. ft. of warehouse (1 space / 800 sq. ft.) requires 27 spaces

As a warehouse use, East West Imports Inc. requires eight (8) spaces per the WZO:

- 6,000 sq. ft. of warehouse space (1 space / 800 sq. ft.) requires 8 spaces

The site therefore has enough spaces to comply with the uses of both Nardone and East West Imports according to the WZO. However, it is the opinion of Building Commissioner, Tom Quinn, that a site needs to have additional parking spaces equal to the number of vehicles that will be stored onsite. Therefore, the site would need a total of sixty-one (61) parking spaces to accommodate both tenants and their respective commercial vehicles. The plan is therefore “short” two spaces.

Lastly, with respect to the petition under Section 7.3, please see the attached memo from Building Commissioner Tom Quinn explaining the preexisting nonconformity.

If the City Council chooses to grant the special permit, the Planning Department recommends the Council consider imposing the following as conditions of the Special Permit:

1. Unless otherwise authorized, all construction shall conform to the Plan of Record which for this project shall be “160 Olympia Avenue Parking Plan; Prepared for Nardone Electrical Corp., 100 Winchester Street, Medford MA; Scale 1”=20’; Date: March 10, 2015, Revised April 2, 2015; Project Number: 1411; Drawing Number: C.1.”;
2. All vehicles that will be parked on site overnight must be registered in the City of Woburn;
3. All signage must comply in all respects with the provisions of Section 13 (Sign Regulations) of the Woburn Zoning Ordinance. All signage is subject to a separate application and approval process by the Department of Municipal Inspections;
4. The hours of operation shall be 6 a.m. through 6 p.m. Monday through Friday only (Councilors should note that the special permits granted to Nardone limit the hours of operation for that business to 6:00 a.m. to 7:00 p.m.); and
5. The Special Permit shall be issued to East West Imports, Inc. only and shall not be transferrable.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely, s/Neil Cronin, City Planner/Grant Writer

Appearing for the petitioner was Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 and he stated that the property is located in the I-P zoning district, that a special permit is required for a warehouse use and for overnight parking of commercial vehicles, that from the 1980s to 2013 the property was use as the 99 Restaurant executive office, warehouse and commissary, that in May

2015 Nardone Electrical Corporation was issued a special permit to allow overnight parking of commercial vehicles at the locus, that the 99 Restaurant delivered food product by truck to its restaurants from the locus, that the parking requirements for a business service use are those required by the special permit granting authority, that it was determined twenty parking spaces were sufficient for the business service use of Nardone Electrical Corporation, that the petitioner is a small grocery chain with four locations in eastern Massachusetts, that the locus will be used as a small distribution center for four grocery stores, that there will be four employees on site, that there are three commercial vehicles with two parked at the loading docks, that a 26 foot box truck will leave the site at 6:00 a.m. and return to the locus between 9:00 a.m. and 10:00 a.m., that the box truck will be reloaded and leave the locus again returning by 3:00 p.m., that a 53 foot tractor trailer truck would leave on Wednesdays between 6:30 a.m. and 7:00 a.m. to travel to New York, pick up products, deliver product to the four stores, return to the locus by 8:00 p.m. and then remain on the locus until the next Wednesday, that a van will be used for small deliveries to the store, that the petitioner will use the present onsite former 99 Restaurant refrigeration system, that the petitioner has the required Massachusetts and federal food handler licenses, that the hours of operation will be Monday, Tuesday, Thursday and Friday from 6:00 a.m. to 6:00 p.m., Wednesday 6:00 a.m. to 8:00 p.m. and no hours of operation on Saturday or Sunday, that the petitioner has been operating in Lynn for twelve years without any issues with the operations, that the petitioner disagrees with the Planning Department report, that Nardone Electrical Corporation is a business service use, that the petitioner disagrees with the analysis that 59 parking spaces are needed for Nardone Electrical Corporation, that Nardone Electrical Corporation requires 28 parking spaces for the employees and trucks and the petitioner requires eight parking spaces, that there is a surplus of 23 parking spaces, that the Building Commissioner could be requested for an opinion on the required parking, that there will be no retail sales at the location, that the locus will be used by the petitioner strictly for distribution, that the tractor trailer truck is not a freezer truck, that the petitioner owns the vehicles, that Nardone Electrical Corporation will plow snow from the entire parking lot, that because the loading docks face the street those are nonconforming allowing the petition to proceed under Section 7.3, that all three loading docks face the street, that the visual impact will be the same as that of the 99 Restaurant, and that the box trucks will not conflict with the tractor trailer truck due to hours that each vehicle will be in operation. Attorney Tarby offered a copy of the special permit issued on May 14, 2015 to Nardone Electrical Corporation and a copy of the minutes of the City Council Regular Meeting of April 7, 2015 to the City Council for review. Motion made and 2nd that the documents be received and made part of the record, all in favor, 9-0. PUBLIC COMMENTS: None. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON MARCH 15, 2016 AND THAT THE MATTER BE REFERRED TO THE COMMITTEE ON SPECIAL PERMITS, all in favor 9-0.

On the petition by Mikes Pizza/Breakers, 106 Winn Street, Woburn, Massachusetts 01801 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended, as follows: 1. To allow for a fast food restaurant pursuant to Section 5.1.29, and 2. To allow

for a reduction in parking spaces mixed use pursuant to Section 8.2.5 at 106 Winn Street. PUBLIC HEARING OPENED. A communication dated February 11, 2016 was received from Neil Cronin, City Planner/Grant Writer as follows:

Re: Planning Department comments on special permit application for Mike's Pizza/Breakers at 106 Winn Street

Dear Honorable Council:

The Planning Department has reviewed the above-referenced Special Permit request submitted by Mike's Pizza/Breakers which seeks permission to operate a fast food restaurant under Section 5.1(29) of the Woburn Zoning Ordinance (WZO) and to reduce the number of required parking spaces under Section 8.2(5). The property is located in the Business Highway (B-H) district and the requested use (fast food establishment) is allowed by special permit from the City Council.

After speaking with the petitioner's attorney, the Planning Department determined the following:

- The planned hours of operation are 9:30 a.m. to 10 p.m., 7 days a week;
- The petitioner plans to employ six (6) employees on the largest shift, including delivery drivers;
- Deliveries to the site will occur between 7 a.m. and 9 a.m.; and
- There is no proposed snow storage onsite, as it will be removed by a third party instead.

With respect to the request to reduce the number of required spaces by one-third (1/3), the WZO requires 33 parking spaces for the proposed use and the site plan only shows 27 spaces. The applicant is therefore seeking permission to have six less spaces than zoning requires.

The Planning Department notes a number of issues related to the proposed site plan:

1. The parking area to the rear of the building is being expanded and reconfigured and an existing driveway opening at this location is being eliminated. One of these new parking spaces (labeled as Space "A" on the attached plan) violates zoning setback requirements. Space A is also unsafe in that a driver will have to drive in reverse for a distance of about 60' in order to either access or leave the space if cars are parked in the other spots. If driving in reverse to exit, the driver will be backing blindly into the path of oncoming vehicles.
2. Similarly, Spaces B – D on the attached plan will also require drivers to travel some distance in reverse (into the path of oncoming traffic if doing so when exiting). If some of the parking spaces along the eastern property line are vacant (spaces H, I and J on the attached plan), motorists in some of the spaces may be able to make three point turns so they are facing forward as they exit the site. If empty parking spaces

aren't available these motorists will not be able to turn around and will instead need to travel in reverse for the length of the main driveway and then back into Winn Street.

On these two points, the Planning Department recommends the Council require the parking area at the rear of the site be reconfigured to meet the minimum setback requirements and to ensure cars can safely enter and exit individual parking spaces and the site. This may require a further reduction in the number of on-site parking spaces.

3. The dumpster may not be accessible for servicing if vehicles are in Spaces G, H and I on the attached plan. The plan suggests there will be an enclosure around the dumpster but no specifics about the enclosure have been provided. Additionally, the relocated dumpster will now be plainly visible from Winn Street. The Planning Department recommends the Council require the applicant to provide details about the height and material of the proposed dumpster screening, ensure the enclosure is opaque, and to relocate it to a place that is not visible from Winn Street.
4. The application does not provide any information regarding the intensity, type or location of existing or proposed lighting on the building or the site. The Planning Department recommends the Council require this information be added to the plan/application for review.
5. The applicant is proposing the hours of operation be 9:30 a.m. to 10:00 p.m. Monday through Sunday, but previous special permit decisions for this property have limited the hours to 10:00 a.m. to 10:00 p.m. Monday through Sunday.

If the City Council grants the Special Permit, the Planning Department recommends the Council consider imposing the following as conditions:

- a. The Plan of Record for this petition shall be "Proposed Parking Plan 106 Winn Street Woburn, Mass.; Scale: 1"=30', Dated January 12, 2016; Prepared By Edward J. Farrell Professional Land Surveyor 110 Winn Street Suite 203 Woburn, MA";
- b. Any parking spaces created at the rear of the building (along the southern and western property lines) shall be reserved for use by employees only. The spaces shall be clearly marked with signage that restricts their use to employees only, and all employees and delivery vehicles shall be required to only use these spaces. (This recommendation is based on the theory that employees who report to the site on a regular basis will be better informed/equipped to deal with parking lot design "challenges" than would be casual visitors);
- c. Snow shall be removed from the site after every snowfall that requires the parking lot to be plowed;
- d. Deliveries to the site shall occur only between the hours of 7:00 a.m. and 9:00 a.m.;

- e. All signage must comply in all respects with the provisions of Section 13 of the Woburn Zoning Ordinance. All signage shall be subject to a separate application and approval process by the Department of Municipal Inspections;
- f. The Special Permit be issued to Mike's Pizza/Breakers only and shall not be transferrable;
- g. That exterior dining tables and chairs shall be located as shown on the plan of Record, with no others allowed, and shall be protected by a guardrail, be handicapped accessible and meet all ADA requirements;
- h. That the exterior ramp shall be at least six (6) feet in width and ADA compliant;
- i. That food service may be offered from either the interior windows or the exterior windows but never both and there will no service window at the front of the facility; and
- j. That no banner shall be allowed on the exterior of the building.

If members of the City Council have any questions or concerns regarding the foregoing recommendation please feel free to contact me.

Respectfully, s/Neil Cronin, City Planner/Grant Writer

Appearing for the petitioner was Attorney Mark Salvati, 10 Cedar Street, Suite 26, Woburn, Massachusetts 01801 and he stated that the locus is the former location of Kravings and Crazy Karry's restaurants, that there was an agreement to have seven parking spaces on a neighboring lot but those spaces were never used, that the petitioner wants to eliminate the requirement for those seven parking spaces, that the petitioner will concentrate the business on takeout, that the petitioner has a current location in Beverly, that the petitioner will reduce parking from 33 spaces to 26 spaces, that there will be 24 seats inside the restaurant, and that the petitioner would be willing to have the parking reviewed in seven months. Attorney Salvati offered a plan entitled "Proposed Parking Plan, 106 Winn Street, Woburn, Mass." dated February 16, 2016 prepared by Edward J. Farrell, Professional Land Surveyor to the City Council for review. Motion made and 2nd that the document be received and made part of the record, all in favor, 9-0. Mike Parianos stated that he currently operates a restaurant at 377 Cabot Street in Beverly, that the menu includes soups, salads, pizza and sandwiches, and that the ice cream business will remain at the location. Alderman Gately stated that the it makes sense to locate the dumpster in the proposed location shown on the plan, that the lighting, Americans with Disabilities Act compliance, dumpster and parking does not change from the previous restaurant operations, that there is on restaurant leaving the locus and a new restaurant occupying to locus, and that the petitioner could store some snow on site where access to adjacent property for parking is not necessary. Alderman Gaffney stated that he visited the site, that he is comfortable with the reduction in parking as pizza restaurants are generally takeout, that there is sufficient room to maneuver vehicles on site, and that the

dumpster location is good. Alderman Anderson stated that he would like to see the current operation in Beverly, and that the special permit should not restrict the number of employees allowed. Alderman Concannon stated that he would like the employees to park in the spaces recommended by the Planning Board and that the employees back into the parking spaces. Alderman Campbell stated that the records do not show where the seven parking spaces be eliminated were located, that she is concerned about snow storage where there are seven parking spaces being eliminated, and that she would prefer the petitioner remove the snow from the site. PUBLIC COMMENTS: None. Motion made and 2nd that the public hearing be closed, all in favor, 9-0. PUBLIC HEARING CLOSED. Motion made and 2nd that the SPECIAL PERMIT be GRANTED, AS AMENDED with the conditions as follows:

1. That the hours of operation shall be 9:30 a.m. to 10:00 p.m. seven days per week;
2. That deliveries to the site shall be between 7:00 a.m. and 9:00 a.m.;
3. That the special permit is granted to Mikes Pizza/Breakers only and shall not be transferable;
4. That no banners shall be allowed on the exterior of the building;
5. That the dumpster as shown on the plan of record;
6. That the petitioner shall remove snow from the site;
7. That the plan of record shall be the plan entitled "Proposed Parking Plan, 106 Winn Street, Woburn, Mass." dated February 16, 2016 prepared by Edward J. Farrell, Professional Land Surveyor;
8. That Committee on Special Permits shall review the parking ten months after issuance of the special permit and the City Council reserves the right to impose additional parking spaces if required;
9. That the six rear diagonal parking spaces shall be for employees only and shall be subject to the review by the Committee on Special Permits ten months after the issuance of the special permit;
10. That the exterior dining table and chairs shall be as shown on the plan of record and no others shall be allowed and shall be protected by a guardrail, be handicapped accessible and meet all Americans with Disabilities Act requirements.,

all in favor, 9-0.

On the petition to amend the 1985 Woburn Zoning Ordinances, as amended, by deleting Section 26 Solar Overlay District, amending Section 2 Definitions, and inserting a new Section 26 entitled Solar Photovoltaic Installations as set forth in the petition. PUBLIC HEARING OPENED. A report was received from the Committee on Ordinances as follows: "ought to pass, as amended, as follows:

Be it ordained by the City Council of the City of Woburn that the 1985 Zoning Ordinances, as amended, be further amended by deleting therefrom Section 26, Solar Overlay District; and amending Sections of said 1985 Zoning Ordinances as follows:

By amending Section 2, Definitions, to insert the following definitions in alphabetical order:

PHOTOVOLTAIC SYSTEM (also referred to as Photovoltaic Installation): An active solar energy system that converts solar energy directly into electricity.

RATED NAMEPLATE CAPACITY: The maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC).

SOLAR ACCESS: The access of a solar energy system to direct sunlight.

SOLAR COLLECTOR: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

SOLAR ENERGY: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

SOLAR ENERGY SYSTEM: A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

- a) **SOLAR ENERGY SYSTEM, ACTIVE**: A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.
- b) **SOLAR ENERGY SYSTEM, CARPORT/CANOPY**: An accessory structure designed and utilized principally for the support of a solar energy system. For purposes of this Ordinance, a Solar Carport/Canopy is considered to be ground-mounted.
- c) **SOLAR ENERGY SYSTEM, GRID-INTERTIE**: A photovoltaic system that is connected to an electric circuit served by an electric utility.
- d) **SOLAR ENERGY SYSTEM, GROUND-MOUNTED**: An Active Solar Energy System that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).
- e) **SOLAR ENERGY SYSTEM, LARGE-SCALE**: An Active Solar Energy System that occupies more than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 250kW DC or greater).
- f) **SOLAR ENERGY SYSTEM, MEDIUM-SCALE**: An Active Solar Energy System that occupies more than 1,750 but less than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 10 - 250 kW DC).
- g) **SOLAR ENERGY SYSTEM, OFF-GRID**: A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility.

- h) SOLAR ENERGY SYSTEM, PASSIVE: A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.
- i) SOLAR ENERGY SYSTEM, ROOF-MOUNTED: An Active Solar Energy System that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium- or large-scale).
- j) SOLAR ENERGY SYSTEM, SMALL-SCALE: An Active Solar Energy System that occupies 1,750 square feet of surface area or less (equivalent to a rated nameplate capacity of about 10 kW DC or less).

SOLAR THERMAL SYSTEM: An Active Solar Energy System that uses collectors to convert the sun's rays into useful forms of energy for water heating, space heating, or space cooling;

YARD, FRONT: An open space extending for the full width of the lot between the front line of the structure wall and the front lot line. On corner lots having frontage on two or more streets, each such street shall have a front yard.

YARD, REAR: An open space extending the full width of the lot between the rear line of the structure wall and the rear lot line.

YARD, SIDE: An open space extending for the full length of a structure between the structure wall and the side lot line. On triangular-shaped lots, each side yard setback shall be paralleled and extended to a rear point of intersection within the lot.”

By amending Section 2, Definitions, to revise the definition of Height of a Building, as follows:

HEIGHT OF A BUILDING: The vertical distance measured from the average ground elevation around the exterior walls of the building, determined without regard to any attached accessory building or attached parking structure, or the underside of the floor slab of the building above any parking facilities contained within the structure, to the highest point of the roof surface in the case of a flat roof, and to the mean height between eaves and ridge in the case of a pitched roof except that the measurement of height shall not include appurtenant roof structures such as chimneys, service equipment and penthouses or spires, smokestacks, flag poles, aerials, roof-mounted energy systems, and the like, nor shall it include any parking facilities contained within the building.

By amending Section 5.1, Table of Use Regulations, to insert the following new uses:

| | | R-1 | R-2 | R-3 | R-4 | B-N | B-H | B-D | B-1 | I-P | IP-2 | I-G | S-1 | S-2 | O-P | OP-93 | O-S | Notes/other Sections |
|----|-----------------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|-------|-----|----------------------|
| | Solar Photovoltaic Systems | | | | | | | | | | | | | | | | | |
| 87 | Roof-Mounted | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | - | Section 26 |
| 88 | Solar Carport/Canopy | - | - | - | - | - | - | - | - | X | X | X | - | - | X | X | - | Section 26 |
| 89 | Ground – Mounted, Small-Scale | - | - | - | - | - | - | - | - | X | X | X | - | - | X | X | - | Section 26 |
| 90 | Ground-Mounted, Medium-Scale | - | - | - | - | - | - | - | - | X | X | X | - | - | X | X | - | Section 26 |
| 91 | Ground-Mounted, Large-Scale | - | - | - | - | - | - | - | - | X | X | X | - | - | X | X | - | Section 26 |
| 92 | Off-Grid | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | - | Section 26 |
| 93 | Passive | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | - | Section 26 |
| 94 | Solar Thermal System | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | - | Section 26 |

By inserting a new Section 26 entitled “Solar Photovoltaic Installations” as follows:

26.1 Purpose

The purpose of this ordinance is to promote the creation of new solar photovoltaic installations in accordance with M.G.L. c.40A, §9B and the Green Communities Act, M.G.L. c.25A, §10, by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

26.2 Applicability

This ordinance applies to all solar energy systems and to physical modifications that materially alter the type, configuration, or size of these systems or related equipment. Solar energy systems on municipal and school properties, except for O-S (Open Space), may be allowed in all zoning districts, but only by Special Permit from the City Council, and said solar energy systems shall comply with all setback requirements as outlined in Section 26.5.

26.3 General Requirements for all Solar Photovoltaic Installations

The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

1. **Compliance with Laws, Ordinances and Regulations:** The construction and operation of all solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code and shall be installed only by electricians licensed by the Commonwealth of Massachusetts. Failure to use licensed personnel in all aspects of construction and installation of a solar photovoltaic installation shall be grounds for revocation of any approval granted under site plan review and/or any building permit issued.
2. **Permits and Inspections:** No solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining all required building, electrical and plumbing permits.
3. The total capacity of all existing and proposed ground-mounted solar photovoltaic installations on the lot shall be measured in determining whether an installation is large-scale or small-scale.
4. All solar carports/canopies and ground-mounted solar photovoltaic installations shall be screened from view of abutting properties and streets, to the extent practicable. Screening may consist of fences, vegetation, evergreen plantings, topography and earthen berms so long as they do not interfere with or encroach upon sight lines or violate other provisions of the Woburn Municipal Code, Woburn Zoning Code or the Woburn Land Subdivision Rules and Regulations.
5. Security fencing shall be required around any medium-scale or large-scale ground mounted solar energy systems. Security fencing associated with ground mounted solar photovoltaic installations shall not be subject to the provisions of Section 5.3.2. of this Ordinance.

26.4 Use Regulations

26.4.1 Residential District Uses

(a) Uses Permitted as of Right

- i. Roof-Mounted Solar Energy Systems

26.4.2 Non-Residential District Uses

(a) Uses Permitted as of Right

- i. Roof-Mounted Solar Energy Systems
- ii. Small-Scale Ground-Mounted Solar Energy Systems

(b) Uses Allowed through Site Plan Review

- i. Medium-Scale Ground-Mounted Solar Energy Systems
- ii. Large-Scale Ground-Mounted Solar Energy Systems
- iii. Solar Carport/Canopy

26.5 Dimensional and Density Requirements

26.5.1 Setbacks – Residential and Non-residential Districts

For all ground-mounted solar photovoltaic installations the front, side and rear setbacks shall be as follows:

- | | |
|--------------|----------------------------------|
| Residential: | Front Setback: at least 50 feet; |
| | Side Setback: at least 50 feet; |
| | Rear Setback: at least 50 feet. |
| All others: | Front Setback: at least 25 feet; |
| | Side Setback: at least 25 feet; |
| | Rear Setback: at least 25 feet. |

26.5.2 Maximum height - The height limit for all solar carports/canopies shall be twenty (20) feet and all other ground-mounted solar photovoltaic installations shall be ___ (xx) feet. (Awaiting Building Commissioner's comment)

26.5.3 All other yard, and space and height requirements of the underlying zoning district shall also apply, except that no ground-mounted solar photovoltaic installations shall be installed in front yards.

Along each boundary of a district that allows Ground Mounted Solar Photovoltaic installation which adjoins any Residential District in the City of Woburn there shall be a buffer zone of 70 feet in addition to the minimum side and rear yard setbacks

26.5.4 Appurtenant Structures

All appurtenant structures to a ground-mounted solar photovoltaic installation shall be subject to the requirements of this Zoning Ordinance concerning yard, space, height and setback requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation. Security fencing associated with ground mounted solar photovoltaic installations shall not be subject to the provisions of Section 5.3.2 of this Ordinance.

26.6 Solar Photovoltaic Installation Site Plan Review.

For purposes of this Section, Site Plan Review shall be conducted by the City Council prior to the construction, installation or modification of certain Ground Mounted Solar Photovoltaic Installations as provided below and, where applicable, Section 12 of this Ordinance. In accordance with Section 22(c) of the Massachusetts Green Communities Act, Solar Photovoltaic Installation Site Plan Review shall be expedited and no decision shall be rendered more than six (6) months after the date of receipt of a complete application as determined by the City Council.

26.7 Application and Plan Requirements.

A completed application for Solar Photovoltaic Installation Site Plan Review shall be filed with the City Council, along with the applicable review fee. Upon receipt of an application, the City Council may engage, at the applicant's cost, professional and technical consultants, including legal counsel, to assist the City Council with its review of the application, in accordance with the requirements of M.G.L. c.44, §53G. The City Council may direct the applicant to deposit funds with the City Auditor for such review at the time the application is determined to be complete, and may direct the applicant to add additional funds as needed upon notice. Failure to comply with this section shall be grounds for denying the application. Upon approval of the application, any excess amount attributable to the application processing by the City Council shall be refunded to the applicant.

1. Plans: All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.
2. Required Documents: the project proponent shall provide the following documents:
 - (a) A site plan showing:
 - i. Property lines and physical features, including roads, for the project site;
 - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
 - iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
 - vi. Name, address, and contact information for proposed system installer;
 - vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any; and
 - viii. The name, contact information and signature of any agents representing the project proponent.

- (b) Documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation;
- (c) An operation and maintenance plan which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation including provisions to prevent reflection of glare and/or concentrated energy onto adjacent structures and properties;
- (d) The underlying Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- (e) Proof of liability insurance;
- (f) Description of financial surety that satisfies Section 26.11.3;
- (g) Proof that the utility company that operates the electrical grid where the installation is to be located has been informed of the installation owner or operator's intent to install an interconnected customer-owned generator as well as documentation from said utility that it will connect the proposed customer-owned generator into its power grid. Off-grid systems shall be exempt from this requirement; and
- (h) The Applicant and owner shall execute a Right of Entry Form for the benefit of the City, in a form to be approved by the City Solicitor, to permit entry and removal in the event of Abandonment as provided in Section 26.11.2.

26.8 Design Standards

26.8.1 Dimensional and Density Requirements

See Section 26.5 above.

26.8.2 Lighting

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar photovoltaic installation shall be directed downward and inward and shall incorporate full cut off fixtures to reduce light pollution.

26.8.3 Signage

Signs shall comply with Section 13 of this Ordinance. A sign consistent with Section 13 shall be required to identify the owner and provide a 24-hour emergency contact phone number shall be made visible from a right of way where the property has frontage. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

26.8.4 Utilities

Reasonable efforts, as determined by the City Council during site plan review, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

26.9 Safety and Environmental Standards

26.9.1 Emergency Services: The solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

26.9.2 Land Clearing, Soil Erosion and Habitat Impacts: Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large – scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

26.9.3 The approval of an application shall neither constitute the granting of an easement to sunlight over neighboring property nor a right to solar access.

26.10 Monitoring and Maintenance

26.10.1 Solar Photovoltaic Installation Conditions: The solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

26.10.2 Modifications: All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the City Council.

26.11 Abandonment or Decommissioning

26.11.1 Removal Requirements: Any solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Section

26.13.2 of this ordinance shall be removed. The owner or operator shall physically remove the installation no more than one hundred and fifty (150) days after the date of discontinued operations. The owner or operator shall notify the Building Commissioner and City Council by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site;
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The City Council may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

26.11.2 Abandonment: Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one (1) year without the written consent of the City Council. If the owner or operator of a solar photovoltaic installation fails to remove the installation in accordance with the requirements of this Section within one hundred and fifty (150) days of abandonment or the proposed date of decommissioning, the City may enter the property and physically remove the installation.

26.11.3 Financial Surety: Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the City must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the City Council, but in no event to exceed more than one hundred and twenty five (125) percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer, which shall be reviewed and verified by the City Engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

A communication dated February 16, 2016 was received from Building Commissioner Thomas C. Quinn Jr. as follows:

Re: Woburn Zoning Ordinances Section 26

With regard to the above section of the Woburn Zoning Ordinances and the communication dated February 10, 2016 requesting information on the height limit for ground mount structures other than carports/canopies I offer the following.

The Woburn Zoning Ordinances section 6.2 additional dimensional regulations item 3 allows for detached accessory structures in residential districts a maximum height of 20 ft. the WZO does not specify the same requirement for all other zoning districts. Upon research it would be my view that language similar to below be the requirement for all ground mount structures:

Height: No component of a solar installation (ground mount) shall exceed 20 feet from the mean grade of the site at the location of the installation to its highest point above mean grade. This language also is used in the definition of height of a building.

If this is the desired height it should be clearly identified to include all zoning districts that would allow ground mounted solar either by right or with appropriate site plan approval.

In closing as always if I can be of further assistance do not hesitate to contact me.

s/Thomas C. Quinn Jr., Building Commissioner

Motion made and 2nd that the communication be received and made part of the record, all in favor, 9-0. A communication dated February 16, 2016 was received from City Solicitor Ellen Callahan Doucette as follows:

Re: Proposed Amendment of WZO Section 26 – Solar Photovoltaic Installations

I received two requests from the City Council (the "Council") regarding the above zoning amendment (the "Amendment"). One request is simply to review the Amendment as revised by the Committee on Ordinance (the "Committee") and referred back to the full Council for action. The other request seeks an opinion as to the Council's authority to limit or prohibit a specific photovoltaic system in this case, solar carports/canopies, and also asks whether its authority is limited to regulating same by site plan review or special permit. Copies of the Council's requests are attached hereto for context.

1. Review of the Amendment

a. Section 5.1, Table of Use Regulations

Save for the inclusion of Section 5.1, Table of Use Regulations, the Amendment was based largely upon the model solar ordinance prepared by the Department of Energy Resources ("DOER") in an effort to assist communities in adopting ordinances/bylaws

to facilitate the development of solar photovoltaic installations in accordance with M.G.L. c.40A, §3. (Commonly referred to as the "Dover Amendment Section".) Section 3, which identifies "uses which zoning may not regulate", specifically provides in ¶9 that, "[n]o zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare."

Other §3 uses which "zoning may not regulate" include, *inter alia*, child care facilities, religious and educational uses, agricultural uses and antennae used by federally licensed amateur radio operators. However, §3 also makes a distinction between those other protected uses which "shall not be prohibited" and solar energy systems, by the inclusion of modifying language stating that solar energy systems cannot be prohibited or unreasonably regulated "except where necessary to protect the public health, safety or welfare."

In reviewing the Committee's revisions to Section 5.1, Table of Use Regulations the obvious question is whether prohibiting solar energy systems in all residential zoning districts, as well as in the B-N, B-H, B-N, B-I and S-1 and S-2 zoning districts, would have the effect of unreasonably regulating or prohibiting solar energy systems. If that question is answered in the affirmative, then the ordinance might be successfully challenged as violative of §3. To this point, there is no decisional law interpreting this particular provision of §3, and the requirement that prohibition or regulation be based upon the protection of public health, safety or welfare makes those cases that have been decided under §3 not instructive regarding solar energy systems.

Nevertheless, I must ask what "public health, safety or welfare" considerations were given to support the outright prohibition of all but roof-mounted solar energy systems in certain zoning districts. Though a cogent argument might be made in support of the prohibition in residential districts (as suggested by the Planning Board) or in the congested B-D zoning district, it is unlikely that the same can be said with respect to other zoning districts, at least not as a broad proposition.

The special protection granted solar energy systems by §3 together with commentary from the DOER, formed the basis for proposing that the WZO be amended to permit such systems by right in most zoning districts, subject to site plan review to ensure compliance with established density and dimensional regulations and performance standards. (I also drafted the proposed Section 5.1 allowing all systems by right with the understanding that the zoning amendment process would generate discussion by the Planning Board and Council as to which systems should be by right as opposed to site plan review or indeed, by special permit.) The discretionary element which accompanies the special permit granting authority under c.40A, §9 (allowing for the denial of a use thus distinguishing a special permit from site plan review) is not, as a general proposition, the manner by which §3 uses are regulated. However, if the Council is of the opinion that the installation of solar energy systems in certain zoning districts should be allowed but with additional oversight, then I would ask that the

Council consider allowing such uses by special permit in the B-N, B-H, B-I and S-1 and S-2 zones as an alternative to an outright prohibition. In that way the Council can weigh each application and make a decision based upon the individual facts and circumstances.

b. Section 26.2 Applicability

As submitted, the Amendment exempted solar energy systems installed by the City and/or its School Department (i.e., municipal uses). The Committee revised this section of the Amendment to require a special permit for municipal uses. It is not clear to me why the Committee would suggest that the City/School Department should be more stringently regulated than private property owners especially, where the purpose for the installation of solar energy systems on municipal properties is the reduction of energy costs borne by the taxpayers.

c. Section 26.3 General Requirements for all Solar Photovoltaic Installations

I note that the Committee removed a portion of Section 26.5.4, Appurtenant Structures, regarding screening and fencing to Section 26.3 resulting in the addition of new subsections (4) and (5). However, the language regarding screening and fencing remains in Section 26.5.4 and should be deleted to avoid inconsistencies.

d. Section 26.5.3 of Dimensional and Density Requirements

(i) To address aesthetic and safety concerns regarding solar carports/canopies, the Planning Board suggested prohibiting them in front yards. The Committee restored the ability to locate solar energy systems in front yards (where allowed by the revisions to Section 5.1), but did not remove the Planning Board's prohibiting language which remains in Section 26.5.3 creating an inconsistency in the Amendment.

(ii) The new second paragraph of Section 26.5.3 calls for a buffer zone in addition to the setback requirements. Buffer zones are particularly useful in providing additional separation between adjacent districts in which the uses permitted in each district might not be compatible with those of the other district. However, the way this provision is drafted will likely result in unintended consequences. As written, the buffer zone requirement will not apply solely to solar energy system projects, but will arguably be required for any project located in a district which allows Ground Mounted Solar Photovoltaic Installations, whether or not the project itself is a solar energy system.

Furthermore, the requirement for a buffer zone in addition to the setback and screening requirements might be argued to be an unreasonable regulation which has the effect of prohibiting solar energy system uses in violation of §3.

2. Prohibition of Solar Carports/Canopies and Authority to Regulate

To reiterate, §3 provides that, "[n]o zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare." The adoption of a prohibition against installing solar canopies/carports in all districts would be subject to the same scrutiny discussed above that is, is the prohibition related to a particular concern regarding "public health, safety and welfare" and if not, is it an unreasonable regulation?

As to the regulation of solar energy systems by special permit or site plan review, it is helpful to note the distinction between two processes. M.G.L. c.40A, §9 authorizes the regulation of uses that are permitted by the zoning ordinance/bylaw but which have been determined to require additional oversight. The authority to issue or deny a special permit is subject to the discretion of the special permit granting authority, but that authority is not unlimited.

Judicial review on appeal from a grant or denial of a special permit requires an analysis of whether the grant or denial was arbitrary, capricious, whimsical, unreasonable or legally untenable. In comparison, site plan review (a local, not statutory regulation) is reserved for uses that are allowed as of right but subjected to review only to ensure compliance with already established dimensional/density requirements and performance standards. Site plan approval cannot be withheld unless the use presents problems that are so "intractable", no condition would make the use acceptable. As stated previously, uses protected by §3 are generally permitted as of right or are subject to site plan review, not the issuance of a special permit.

In conclusion, I strongly suggest that this ordinance be sent back to Committee for further discussion. I am available to discuss any or all of the above at the Council's convenience.

Sincerely, s/Ellen Callahan Doucette

Motion made and 2nd that the communication be received and made part of the record, all in favor, 9-0. President Haggerty stated that the matter should be returned to committee in view of the new information provided by the City Solicitor and the Building Commissioner. PUBLIC COMMENTS: Lucas Toffoli, Energy Manager, Cummings Properties, 200 West Cummings Park stated that under Section 26.4.2 there are uses allowed by right and under site plan review, and that this section needs clarification that small-scale ground mounted solar energy systems includes solar car ports and canopies and are allowed by right. Chris Owen, 3 Florence Terrace stated that the City Solicitor raises issues that neighbors are worried about, that there are inconsistencies, that the issue of carports is troubling, that these are not carports but solar panels on stilts that cars can park under, and that he hopes the matter is referred to committee for further work. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL MARCH 15, 2016 AND THAT THE MATTER BE REFERRED TO THE COMMITTEE ON ORDINANCES and that a

communication be forwarded to the City Solicitor asking that she attend the next Committee on Ordinances meeting concerning the matter, all in favor 9-0.

On the petition by President Haggerty and Alderman Anderson to further amend the 1985 Woburn Zoning Ordinances, as amended, as follows: By deleting in its entirety Section 14.5, Paragraph 3 and by inserting in its place the following: 3. All land shown on a plan for which a Special Permit is granted under this Section, which is not included in the building footprints, roadways or easements shall comprise one contiguous tract. The open space parcel shall be conveyed to the City for the purpose of conserving open space and promoting passive recreation/naturalist uses of the premises which may include the use of some or all of the property as a cemetery. Use of some or all of the property as a cemetery shall only be permitted provided that (1) no gravestones, monuments, or ornate tombs shall interrupt the landscape and instead memorials, monuments, markers and gravestones shall only be permitted if they are flush with the ground; and (2) such use does not interfere with the passive recreation/naturalist uses of the property including use of trails, scenic areas for viewing, preservation of natural resources and the general use of the premises as Open Space. The Conservation Commission shall have jurisdiction over said parcel to promote the use of the premises as Open Space and, in the event that some or all of the premises is used for a cemetery, then the Cemetery Commission shall have jurisdiction over that portion of the premises allocated to the cemetery subject to the same mandate to promote the use of the premises as Open Space. PUBLIC HEARING OPENED. PUBLIC COMMENTS: Joan Byington, 36 Dix Road Ext. stated that her property abuts Shannon Farm, that she wants to see the property developed properly, that she wants to know the land that the city will receive in conveyance will be useable for the intended purposes such as bike trails, walking trails and cemetery. President Haggerty stated that a petitioner would come forward with a plan under the special permit process, that the City Council and public will have a role in review, and that there would be no conveyance of property to the city for a single family development. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON MARCH 15, 2016 AND THAT THE MATTER BE REFERRED TO THE COMMITTEE ON ORDINANCES, all in favor 9-0.

CITIZEN'S PARTICIPATION: None.

COMMITTEE REPORTS: None.

NEW PETITIONS:

A Conservation Easement and Restriction was received from Hammond Place Condominium Trust, pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws granting, with quitclaim covenants, to the City of Woburn in perpetuity and exclusively for conservation purposes a Conservation Restriction on a

parcel of land located in the City of Woburn, Massachusetts, approximately 138,230 square feet, being shown on a plan entitled "Conservation Easement for land located at 201 Bedford Road, Woburn, Massachusetts" dated September 30, 1994, prepared by North Shore Survey Corporation and Patrowicz Land Development Engineering said area being shown as shaded area depicted as "CR" (the Premises). Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON INFRASTRUCTURE AND PUBLIC LANDS, all in favor, 9-0.

A communication dated February 11, 2016 with attachment was received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Minor Modification to Special Permits Granted to (1) Woburn Foreign Motors and 394R Washington Street Realty Trust, 394R Washington Street; (2) Woburn Foreign Motors; and Thomas E. Hogan Inc. for 394 Washington Street, Woburn, Massachusetts

Dear Mr. Campbell:

Please be advised that I represent Woburn Foreign Motors of 394R Washington Street, Woburn, Massachusetts. On August 11, 2015, the City Clerk's office issued two separate Special Permit Decisions. One Special Permit Decision was granted to Woburn Foreign Motors and 394R Washington Street Realty Trust for the construction of a new car dealership at 294R Washington Street. The second Special Permit was issued to Woburn Foreign Motors for the alteration of the existing nonconforming structure at 394 Washington Street.

This past week, the building permit for the construction of the new car dealership was issued by the Building Department. In connection with the Building Permit review process, it was discovered that the Plan reference in both of the above-referenced Special Permits referenced the Madison Properties plan rather than the Woburn Foreign Motors plan as the plan of record.

As you know, both of the above matters as well as the Madison Properties matter were reviewed in conjunction with each other. In reviewing our files, the proposed conditions that we submitted to the Special Permits Committee meeting for the Woburn Foreign Motors matters included the Madison Properties plan reference rather than the plan of record for Woburn Foreign Motors.

Therefore, on behalf of Woburn Foreign Motors I respectfully request that Condition 1 be amended by deleting the reference to the "Site Plan" set forth therein and replaced with the following language: "Site Plans for Woburn Foreign Motors Proposed Redevelopment, 394 Washington Street, Woburn, MA 01801" dated August 7, 2014 revised May 1, 2015, Sheets EX-1, ABB1, C-1, C-2A, C-2B, C-3, C-4, C-5, C-6A, C-6B, C-7, C-8, C-9A, C-9B, D-1-D-5, prepared by Allen & Major Associates, Inc., 100

Commerce Way, Woburn, MA 01801 (hereinafter the "Site Plan"). This clearly is a scrivener's error on our part. I have included ten (10) copies of the cover sheet for your convenience.

On behalf of Woburn Foreign Motors I respectfully request approval by the City Council at its meeting on February 19, 2016 of a minor modification to the Decision by correcting the plan of reference. If you have any questions please do not hesitate to contact me. Thank you.

Very truly yours, s/Joseph R. Tarby III

Motion made and 2nd that the communication be accepted and the MINOR MODIFICATION be APPROVED, all in favor, 9-0.

A communication dated February 11, 2016 with attachments was received from Attorney Mark J. Salvati, 10 Cedar Street, Suite 26, Woburn, Massachusetts 01801 as follows:

Re: 6 Albany Street

Dear President Haggerty and Council Members:

Request is made to Modify a Special Permit issue to Huong Vong and My Thi Vong, dated September 3, 2015 allowing for a garage over 900 square feet at 6 Albany Street. This request is made to reference a new plan of record as attached hereto. The type of construction required the addition to be constructed slightly higher than the approved plan at approximately 22 feet; which is 2 feet higher than the approved plan. Also, the garage doors are 3 feet wider (but no higher) than the approved plan.

Thank you for your attention to this matter and please call with any questions.

Very truly yours, s/Mark J. Salvati

Alderman Mercer-Bruen stated that the building is two feet higher than approved as are the doors wider than approved, and that the petitioner should refile to amend the special permit. Alderman Gately stated that the petitioner should refile to amend the special permit with a new site plan, that this is a change from what was approved, that there should be no occupancy approved until a change is approved, and that the went forward with the project. Motion made and 2nd that the communication be approved and that the REQUEST FOR MINOR MODIFICATION be DENIED, all in favor, 9-0. Motion made and 2nd that a communication be forwarded to the Building Commissioner stating that his office should not issue an occupancy permit and should issue a cease and desist order regarding the project, all in favor, 9-0.

Petition by NSTAR Electric Company dba Eversource Energy for a grant of right in a way to install approximately 1563 feet of conduit in Presidential Way easterly from MH30183 (new MH) approximately 498 feet east of Woburn Street and to install three new manholes MH30183, MH30184 and MH30185. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

Petition by Enterprise Fleet Management Inc., 248 Mishawum Road, Woburn, Massachusetts 01801 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended, Section 5.1.45 to allow the sale of automobiles and trucks at 248 Mishawum Road. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

Petition by New Creek II LLC, 3333 New Hyde Park Road, New Hyde, New York 11042 for special permits pursuant to 1985 Woburn Zoning Ordinances, as amended, Sections 5.7.6, 7.3, 8.2.5, 8.6.3 and 13.5 to allow for the alteration of the existing nonconforming structure and use (shopping center) to provide for: 1. Medical office building containing approximately 4,500 square feet more or less; 2. Reduction in required parking from 535 parking spaces to 481 parking spaces; 3. Alterations to the petitioner's nonconforming signage; and 4. Exception to landscaping and area requirements to provide for alternative screening devices at 425 Washington Street. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

Petition by Kiwanis Club of Woburn, 10 Cedar Street, Suite 26, Woburn, Massachusetts 01801 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended, Section 5.1.75 to allow for the annual Flag Day celebration and carnival on Jun 17, 2016 and June 18, 2016 at Library Park, 0 Harrison Avenue. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

COMMUNICATIONS AND REPORTS:

A communication dated February 10, 2016 was received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: A.L. Prime Energy, 1 Hill Street, Woburn, MA

Dear Mr. Campbell:

As you know, on January 27, 2016 I filed a request to extend the Landowner's Decision and Notice of Special Permit issued by the City Clerk on August 2, 2012 as extended by the Permit Extension Act of 2012 (the "Special Permit"). A request was made to extend

the Special Permit to August 2, 2018. In reviewing the Permit Extension Act of 2012, the Special Permit dated August 2, 2012 was already extended by said Act to August 2, 2018.

The Permit Extension Act of 2012 states in part that: “the Act automatically extends for four years beyond its otherwise applicable expiration date, any permit or approval that in ‘in effect or existence’ during the qualifying period beginning on August 15, 2009 and extending through August 15, 2012.” Since the Special Permit was issued on August 2, 2012 its “otherwise applicable expiration date” was August 2, 2014. The Act automatically extended for four years the Special Permit to August 2, 2018.

If you need any further information please do not hesitate to contact me. Thank you.

Very truly yours, s/Joseph R. Tarby, III

Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

UNFINISHED BUSINESS OF PRECEDING MEETING: None.

APPOINTMENTS AND ELECTIONS:

A communication dated January 29, 2016 was received from His Honor the Mayor Scott D. Galvin as follows:

Dear City Clerk Campbell:

By the power vested in me as Mayor of the City of Woburn, I hereby appoint Alfred Autenzio, 9 Arbor Lane, to the Woburn Board of Cemetery Commissioners, subject to approval by the City Council. Mr. Autenzio’s appointment fills a five-year term, vacated by William Kerns, which expires on April 1, 2019.

Respectfully, s/Scott D. Galvin, Mayor

Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON PERSONNEL, all in favor, 9-0.

A communication dated January 27, 2016 was received from His Honor the Mayor Scott D. Galvin as follows:

Dear City Clerk Campbell:

By the power vested in me as Mayor of the City of Woburn, I hereby appoint Joseph A. DiMatteo, 1 Revere Road, to the Woburn Golf and Ski Authority, subject to confirmation by the City Council, with a term to expire December 31, 2017.

Mr. DiMatteo's appointment fills the unexpired term of Barry M. Aldoriso, who recently resigned from the Authority.

Respectfully, s/Scott D. Galvin, Mayor

Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON PERSONNEL, all in favor, 9-0.

MOTIONS, ORDERS AND RESOLUTIONS: None.

Motion made and 2nd to ADJOURN, all in favor, 9-0. Meeting adjourned at 8:05 p.m.

A TRUE RECORD ATTEST:

William C. Campbell
City Clerk and Clerk of the City Council