

**CITY OF WOBURN
MARCH 18, 2008 - 7:30 P.M.
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

Denaro	Gately
Drapeau	Gonsalves
Dwyer	Mercer-Bruen
Galvin	Raymond

Doherty

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

Motion made and 2nd to suspend the rules for taking the following matter out of order, all in favor, 9-0.

RESOLVED Whereas, The Woburn High Schools Scholarship Fund was incorporated as a non-profit corporation by the Commonwealth of Massachusetts on May 5, 1957; and

Whereas, the purpose of the organization is to assist deserving students who graduate from Woburn Memorial High School and the Northeast Metropolitan Regional Vocational Technical School in pursuing higher education; and

Whereas, the first awards of scholarships totaling \$6,820.00 were granted to twenty-three students in 1957; and

Whereas, in 2007 one hundred and sixty-eight students received scholarship awards totaling \$134,800.00; and

Whereas, since it founding fifty years ago over four thousand two hundred and fifty Woburn students have received scholarship awards in excess of \$2,810,000.00 to assist them in attending colleges, universities and technical schools throughout the country;

Now, Therefore, the City Council of the City of Woburn hereby recognizes the efforts of the many volunteers who have worked to establish, strengthen and expand The Woburn High Schools Scholarship

Fund with the sole purpose of encouraging the continued education and personal growth of the youth of the city.

s/Alderman Dwyer

Motion made and 2nd that the RESOLVE be ADOPTED, all in favor, 9-0.

Presented to the Mayor: March 21, 2008 s/Thomas L. McLaughlin March 28, 2008

Motion made and 2nd to return to the regular order of business, all in favor, 9-0.

MAYOR'S COMMUNICATIONS:

A Veto Message with attachment was received from His Honor the Mayor Thomas L. McLaughlin in the office of the city clerk on March 14, 2008 at 12:27 p.m. as follows:

Dear President Doherty and Members of the City Council:

Re: D.P.W. Superintendent's Salary Ordinance

Please find a written legal opinion from Kopelman & Paige regarding the proposed salary ordinance that received a majority vote of the City Council at its meeting on March 4, 2008. This opinion points out some obvious conflicts with this proposed ordinance and MGL c. 44 Section #32 33A and Section 2-179 of our Municipal Code.

In light of this opinion, I have no choice but to veto this measure. I respectfully request that the Council sustain this veto so that the city does not serve to violate the state statutes, along with the protection to all of our employees under our Municipal Ordinance 2-179.

Sincerely, s/Thomas L. McLaughlin

Attached thereto was a communication dated March 14, 2008 from City Solicitor March R. Reich as follows:

Re: Reduction in Salary of Superintendent of Public Works

Dear Mr. McLaughlin:

You have requested an opinion as to whether the City Council may enact an ordinance reducing, at this time, the base salary of the Superintendent of Public Works (the "Superintendent").

In my opinion, the City Council may make appropriations, including amendments to the municipal budget, only upon recommendation of the Mayor. As such, in my further

opinion, once the City Council has adopted the annual budget, it may not later make amendments thereto, or make other appropriations, without such matters being initiated by the written recommendation of the Mayor. For that reason, in my opinion, the City Council may not enact an ordinance reducing the salary of the Superintendent at this time, unless the Mayor initiates such reduction. Further, Section 2-179 of the Municipal Code contains language requiring that payment of yearly salaries be made at an equal rate throughout the year. In my opinion, this provision prohibits the City Council from reducing the salary of an employee or official after the salary has been established.

The provisions of G.L. c.44, §§32 and 33A govern the process for adoption of budgets in cities. General Laws c. 44, §32 provides, in part:

The mayor shall submit to the city council the annual budget which shall be a statement of the amounts recommended by him for proposed expenditures of the city for the next fiscal year... The city council may by majority vote make appropriations for the purposes recommended and may reduce or reject any amount recommended in the annual budget. It shall not increase any amount in or the total of the annual budget nor add thereto any amount for a purpose not included therein except on recommendation of the mayor, and except as provided in section thirty-three... Nothing in this section shall prevent the city council, acting upon the written recommendation of the mayor, from voting appropriations, not in excess of the amount so recommended, either prior or subsequent to the passage of the annual budget... [emphasis added].

The underlined text, above, makes clear that it is the Mayor, and not the City Council, who is authorized to initiate, formulate and present the budget and other financial matters to the City Council for its action. The City Council's role with regard to such matters is limited, therefore, to action on those matters recommended to it by the Mayor. A proposed ordinance reducing an aspect of the budget, such as the salary of a particular employee, would thus intrude upon budget-setting authority as reserved by statute to the Mayor. Thus, in my opinion, in order to reduce the salary of the Superintendent, such action would need to be initiated by the Mayor.

Further, where a salary is fixed by ordinance, G.L. c.44, §33A requires that the annual budget include sums sufficient to pay said salary. In this case, Sections 2-8(33) and 2-194 of the Municipal Code provide that the Mayor appoints the Superintendent for a term of two years to serve as the department head of the Public Works Department. Section 2-181 of the Municipal Code establishes the salary of the Superintendent. Pursuant to the provisions of G.L. c.44, §33A, therefore, the annual budget must include sums sufficient to pay the salary.

In this case, the annual budget, which provides for the salaries of Town officers and employees set by ordinance, has already been adopted the City Council. Therefore, in my opinion, to make any changes relative thereto, including a reduction in the salary of

the Superintendent, such action would require an amendment to the budget on the recommendation of the Mayor.

Moreover, Section 2-179 of the Municipal Code provides, in part, “The officers and employees while in the service of the city shall receive [a salary] yearly as established by statute, ordinance or contract, and at the same rate for any portion of a year...” [emphasis added]. In my opinion, the underlined language prohibits the City Council from decreasing the salary of an officer or employee once established. Such an interpretation is consistent with the general principals of contract and employment law, and, for that reason, similar language is commonly used in employment contracts. A proposed ordinance reducing the salary of an employee would be inconsistent with the provisions of Section 2-179 and the general principles of contract and employment laws, in my opinion.

Please contact me with any further questions regarding this matter.

Very truly yours, s/Mark R. Reich

A communication dated March 17, 2008 was received from Alderman Scott D. Galvin as follows:

Dear Mayor McLaughlin:

Although I heard you intended to veto the salary ordinance the city council approved for the newly appointed superintendent of public works, I am disappointed that you did so behind the cover of a legal opinion that lacks common sense and has questionable legal basis.

The legal opinion prepared by Kopelman & Paige cites sections 32 & 33A of c. 44 of the M.G.L.'s, which deal with the annual budgetary process and INCREASING SALARIES of municipal employees.

The Purpose of MA Finance Laws is clearly to Limit expenses so as not to Exceed Budgeted Revenue. Section 32 & 33A were enacted in furtherance of this stated purpose.

By setting the salary of the NEW superintendent of public works at \$77,600.00 the city council did not attempt to change or increase any line item in the previously approved fy 2008 budget. The city council's action to DECREASE the superintendent's salary by ordinance would not effect the FY 2008 budget. The salary decrease would simply result in an increase in the free cash balance at the end of the year, which could be appropriated by the Mayor with city council approval for a more justified use. Furthermore, there would be a budgetary savings in FY 2009. Therefore, I find any suggestion that the council violated the budgetary process outlined in section 32 puzzling.

After reviewing the candidates experience and qualifications, the City Council determined that the compensation of the new superintendent of public works would be set

at a much lower rate than previously established by ordinance. Since section 33A deals only with increases in salary, its application to this situation (A SALARY DECREASE) is misplaced.

Section 2-179 of municipal code was intended to give incumbent employees (those employed at the beginning of the fiscal year) protection from having their salaries reduced during year after budget approved. Since the Superintendent is a new employee this section would not apply to him.

The City Council's authority to set the compensation of the New Superintendent of Public Works appointed by the mayor is found in chapter 172 of the acts of the year 1897 as amended by chapter 372 of the acts of 1914 (collectively the "city charter"):

"The superintendent of Public works shall be sworn to the faithful duties by the Mayor AND SHALL RECEIVE SUCH COMPENSATION AS THE CITY COUNCIL, WITH THE APPROVAL OF THE MAYOR, SHALL DETERMINE"
Section 6.

This is the source of power for the city council to regulate the superintendent's salary.

It makes no sense and violates ones fiduciary duty to conclude as the Mayor and his legal counsel have, that every new employee who fills a vacated position is entitled to that salary. A number of factors determine a new employee's salary, with qualifications and experience topping the list.

s/Scott D. Galvin, Alderman Ward Three

President Doherty stated that the matter will be reconsidered pursuant to the provisions of the City Charter. Alderman Gonsalves stated that she agrees with the principles espoused by Alderman Galvin in his communication, that previous City Councils have reduced the salary paid to new employees from that paid to their predecessors against the recommendation of the Mayor, and that for example the salary of the treasurer position was reduced. Alderman Galvin stated that the compensation of the treasurer/collector was reduced at hire on a vote nine in favor and none opposed when the Mayor was an Alderman, that as Alderman the Mayor voted in favor of the reduction in salary, that the legal opinion of the City Solicitor is wrong and he knows it, that the Mayor did not have to pay for a legal opinion, and that the Mayor could have just vetoed the matter without the legal opinion. Alderman Mercer-Bruen stated that she is not sure which of the two legal opinions is correct, that she concedes that in the private sector a new hire does not usually start at the high end of the pay scale, that there should be collaboration to determine a fairer salary, that \$77,600.00 is too low and she cannot support that amount but \$103,000.00 is too high, and that she will look for a fairer salary for the position at budget time. President Doherty stepped down from the chair and Alderman Galvin assumed the chair. President Doherty stated that there has been a lengthy discussion on this matter for several months, that the issue is not about the incumbent Superintendent of Public Works, that the City Council has a fiduciary

responsibility to assure that the city is being operated appropriately and fairly, that the City Council has the responsibility to set the salary, that the salary of \$77,600.00 is 75% of the maximum for that position, that this is not the highest salary nor the lowest salary paid for this position, that there are serious challenges to the city which may impact the ability of the city to provide services to the community, that the city needs to work to keep employees on the books, that the Charter supercedes any ordinances, that the opinion of the City Solicitor does not provide any case precedence concerning the issue, that it is not clear whether the matter is being vetoed because it is illegal to reduce the salary or because the Mayor did not recommend the reduction in salary, that this is a unique situation, that a full-time employee left his position half way through the budget year, that it does not make sense that you have to hire someone at the highest possible salary for six months and then be able to reduce the salary at budget time, and that it has not been stated how much compensation the new Assistant to the Mayor is receiving since he moved up from the Veteran's Agent position. Alderman Drapeau stated that some people are making passionate pleas about reducing the salary but he did not hear these people making these type of comments during the last budget review cycle, that the city is saving \$20,000.00 to \$30,000.00 by the incumbent Superintendent of Public Works taking the position as he is not taking health insurance nor longevity payments, that the opinion of the City Solicitor indicates that the appointment is only valid for two years and therefore the incumbent has no certainty as to his term in office, and that when the budget is reviewed for the next fiscal year it should be kept in line so that taxes are not increased a single dollar next year. Alderman Raymond stated that he does not know how the \$77,600.00 figure was determined, that he never received the memorandum as to how this amount was set, and that he believes that the salary currently being paid to the Superintendent of Public Works is fair. President Doherty stated that an employee cannot say that he will not take health insurance as it is a mandate to have health insurance in Massachusetts, that health insurance is built into everyone's compensation and if an employee wants health insurance it will have to be provided, and any new incumbent in the position would not be entitled to longevity. Alderman Gately stated that a salary of \$77,600.00 is not adequate for the position of Superintendent of Public Works, that whether a salary of \$103,000.00 is too high for the position can be taken up during the next budget review, that he accepts the opinion of the City Solicitor, that the name of the incumbent Superintendent of Public Works should not be brought into this discussion, and that this should be about procedure. Motion made and 2nd that the MAYOR'S VETO be SUSTAINED, ROLL CALL: Denaro – No, Drapeau – Yes, Dwyer – No, Gately – Yes, Galvin – No, Gonsalves – No, Mercer-Bruen – Yes, Raymond – Yes, Doherty – No, MOTION FAILS. Motion made and 2nd to OVERRIDE THE MAYOR'S VETO, ROLL CALL: Denaro – Yes, Drapeau – No, Dwyer – Yes, Gately – No, Galvin – Yes, Gonsalves – Yes, Mercer-Bruen – No, Raymond – No, Doherty – Yes. MOTION FAILS. ORDER FAILS.

ORDERED That the sum of \$193,495.00 be transferred as follows from Account #31342-595000 BLS Ambulance Receipts to \$60,000.00 Fire Overtime #0122051-513100, \$98,495.00 Ambulance Salary #0122051-511500, \$35,000.00 Ambulance Maintenance #0122054-544300.

s/Chief Paul Tortolano
s/Auditor Gerald Surette
s/Mayor Thomas McLaughlin

s/President Doherty

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 and Verizon New England, Inc. for a grant of right in a way to install conduit on Mishawum Road southeasterly approximately 280 feet southwest of Industrial Parkway, a distance of about 52 feet and to install one joint occupancy pole and guy wire and remove one joint occupancy pole (P30/28). PUBLIC HEARING OPENED. A communication was received from Deputy Superintendent Thomas Quinn as follows: "Approved". Appearing for the petitioner was Jacquelyn Duffy and she stated that this is to provide new service to a new bank that will locate at 275 Mishawum Road. IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the public hearing be closed, all in favor, 9-0. Motion made and 2nd that the GRANT OF RIGHT IN A WAY be APPROVED, all in favor, 9-0.

Presented to the Mayor: March 21, 2008 s/Thomas L. McLaughlin March 28, 2008

On the petition by Andrew G. Eromin and Mary Eromin, both of 13 Waverly Road, Woburn, Massachusetts 01801 for a special permit pursuant to Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, to alter and change a pre-existing non-conforming structure, by razing the same and constructing a new, two-family structure which will conform to all dimensional requirements excepting lot size at 7 Richmond Avenue. PUBLIC HEARING OPENED. A copy of a communication dated March 10, 2008 to Edmund Tarallo, Planning Director from Brett F. Gonsalves, Senior Engineer, Engineering Department was follows:

Subject: 7 Richmond Avenue – Two Family Special Permit – Special Permit Application
Dated February 12, 2008

This office has reviewed the special permit application for the above referenced location and offers the following comments.

The petitioner is seeking permission to raze and existing single family dwelling and construct a two family structure on the same lot. It will meet all dimensional requirements except lot area and the lot resides in an R-2 zoning district.

The utilities should be disconnected prior to demolition and if possible existing utility service be reused and brought up to city standards. If the existing services are found not to be sufficient, they will need to be cut and capped at their respective mains in Richmond Avenue and new services installed.

After reviewing the submitted materials, this office takes no exception to the special permit application as submitted.

If you or the board have any questions concerning this information, do not hesitate to contact this office.

A communication dated March 17, 2008 was received from Attorney John D. McElhiney, McElhiney and Matson, 607 Main Street, Woburn, Massachusetts 01801 as follow:

Re: Special Permit – Andrew and Mary Eromin – 7 Richmond Ave., Woburn, MA

Dear Members of the Council:

Please consider this a request that the hearing on the above-matter be continued until April 15, 2008. I found it necessary to request that the Planning Board continue their deliberation on this matter, and they will not therefore be hearing the matter until March 25, 2008. Accordingly, it made sense to request you to also continue the matter.

Thank you for your anticipated cooperation in this matter.

Sincerely, s/John D. McElhiney

Alderman Raymond stated that he wants the Woburn Historical Commission to look at the property and that the house is approximately 120 or 130 years old. Motion made and 2nd that a communication be forwarded to the Woburn Historical Commission to review the matter and comment on the proposal, all in favor, 9-0. IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON APRIL 15, 2008, all in favor 9-0.

On the petition by William Highgas, III, Arpie E. Highgas, individually and as trustees of B.A.R. Realty Trust, landowners, to amend the 1985 Woburn Zoning Ordinances by adding the following: 1. Section 5.1 Table of Use Regulations line 42a self-storage warehouse facility – no storage of high hazard materials, trailers, motor vehicles or any outside storage shall be amended by deleting the “-“ under the B-I column and replacing with “P”; 2. Section 6.1 Table of Dimensional Regulations shall be amended by adding to the Floor Area Ratio column for the B-I Zoning District of the following: “(Note 5)”; 3. Section 6.1, Table of Dimension Regulations shall be amended by adding “Note 5” which shall state as follows: “The Floor Area Ratio for a self-storage warehouse facility as defined in this Ordinance shall be 2.0.” PUBLIC HEARING OPENED. A

communication dated March 10, 2008 was received from Attorney Joseph Tarby, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Petition of William Highgas III and Arpie Highgas/420, 422 and 424 Washington Street, Woburn, Massachusetts

Dear Mr. Campbell:

I respectfully request that the City Council public hearing on this matter be continued from March 18, 2008 to the City Council meeting on April 1, 2008. If you need any further information, please contact me. Thank you.

Very truly yours, s/Joseph R. Tarby III

IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON APRIL 1, 2008, all in favor 9-0.

On the petition by Lowe's Companies, Inc., 15 Commerce Way, Woburn, Massachusetts 01801 for special permits pursuant to Section 5.1.45, 5.1.57a and 5.1.57b to allow for the rental of moving trucks; accessory storage or parking of storage containers, storage trailers or commercial trailers; and the accessory storage or parking of commercial motor vehicles at 15 Commerce Way. PUBLIC HEARING OPENED. A communication dated March 11, 2008 was received from Attorney Joseph Tarby, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Petition of Lowe's Companies, Inc., 15 Commerce Way, Woburn, Massachusetts

Dear Mr. Campbell:

I respectfully request that the City Council public hearing on this matter be continued to the City Council meeting on April 15, 2008. The Planning Board will be reviewing this matter on March 25, 2008 and I understand that your April 1, 2008 agenda is full. If you need any further information, please contact me. Thank you.

Very truly yours, s/Joseph R. Tarby III

IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON APRIL 15, 2008, all in favor 9-0.

On the petition by Michael Tyminski, 14 Otis Street, Woburn, Massachusetts 01801 for a special permit pursuant to Section 5.5 of the 1985 Woburn Zoning Ordinances, as amended, to allow earth removal or filling to level off yard at 14 Otis Street. PUBLIC

HEARING OPENED. A communication dated March 11, 2008 was received from Mike Tyminski as follows:

To: Woburn City Council

I Mike Tyminski am requesting more time to work out a plan for my yard permit. There have been conflicting stories of what I need to supply the Board and Council. We are working with a engineer on my third set of plans. I am requesting to be on the agenda for the Planning Board on 4/8. Could I get on the agenda for 4/15? Please let me know.

Thanks, s/Mike Tyminski

IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON MAY 20, 2008, all in favor 9-0. Motion made and 2nd that a notice of the continued public hearing date be forwarded to all abutters who appeared at the prior public hearings, all in favor, 9-0.

On the petition by Alderman Dwyer and Alderman Galvin concerning the building or buildings located in the City of Woburn, County of Middlesex, Commonwealth of Massachusetts known and numbered as 10 Lowell Street, Woburn, Massachusetts for the purposes of determining whether said building or buildings are a public nuisance, a nuisance to the neighborhood, a dilapidated or dangerous building or other structure, as said terms are used in Massachusetts General Laws Ch. 139, Sec. 1, and if so, enter an order adjudging it to be a nuisance to the neighborhood, or dangerous, and prescribing its disposition, alteration or regulation. PUBLIC HEARING OPENED. IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the communication from Building Inspector Thomas Quinn be received and made part of the record, all in favor, 9-0. Motion made and 2nd that the MATTER be REFERRED TO THE COMMITTEE ON LIAISON, all in favor, 9-0.

On the petition by Michael Colameta and Douglas Lynch, 247 Salem Street, Woburn, Massachusetts 01801 for a special permit to allow three metal storage bins at 247 Salem Street. PUBLIC HEARING OPENED. A report was received from the Committee on Special Permits as follows: "ought to pass, as amended with the following conditions: 1. that the Planning Board recommendations as amended be adopted by amending condition 1 to read: That the storage bins shall not be moved or rented and that the storage bins on the easterly side of the property shall be screened from Salem Street." IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the public hearing be closed, all in favor, 9-0. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, AS AMENDED by adding an additional condition as follows: 3. That the special permit is for Michael Colameta and Douglas Lynch only and is not transferable, all in favor, 9-0.

On the petition by Ztek Corporation, 300 West Cummings Park, Woburn, Massachusetts 01801 for a special permit pursuant to Section 5.1.41 of the 1985 Woburn Zoning Ordinances, as amended, to allow research and testing laboratory at 300 West Cummings Park. PUBLIC HEARING OPENED. A communication dated March 13, 2008 was received from Edmund P. Tarallo, Director, Woburn Planning Board as follows:

Re: ZTek Corporation – 300, 390, & 395 West Cummings Park – To allow under Section 5.1.41 Research and Testing Laboratory Use.

Dear Mr. Campbell and members of the City Council:

At the meeting held on March 11, 2008, the Planning Board voted to forward an unfavorable recommendation to the City Council on the Special Permit application of ZTek Corporation, regarding the property at 300, 390, & 395 West Cummings Park based on the public safety concerns of the Fire Chief and the lack of authorization of the property owner to file the Special Permit application.

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

Sincerely, s/Edmund P. Tarallo, Planning Director

A report was received from the Committee on Special Permits as follows: “That the special permit be denied based on the recommendation of the Woburn Fire Chief due to safety issues at the location.” Motion made and 2nd that the committee report be received, all in favor, 9-0. Appearing for the petitioner was Michael Hsu and he stated that he will continue to look for a suitable location to bring new fuel technologies to fruition, and that he will work with the fire department as new locations are sought. Motion made and 2nd to receive a letter dated March 18, 2008 from Craig J. Zaidy, General Counsel, Cummings Properties, 200 West Cummings Park, Woburn, Massachusetts 01801 and make it part of the record, all in favor, 9-0. IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the public hearing be closed, all in favor, 9-0. Motion made and 2nd that the SPECIAL PERMIT be DENIED based solely on the lack of authorization of the property owner to file the petition and due to the concerns of the fire chief, all in favor, 9-0.

On the petition by Barry Callahan, 6 Valley Road, Woburn, Massachusetts 01801 for two special permits pursuant to the 1985 Woburn Zoning Ordinances, as amended, as follows: 1. Pursuant to Section 5.1.29 to allow for a fast food establishment, and 2. Pursuant to Section 8.2.5 to allow for a 30% reduction in parking, both at 229 Main Street. PUBLIC HEARING OPENED. A communication date March 13, 2008 was received from Edmund P. Tarallo, Planning Director, Woburn Planning Board:

Re: Barry Callahan – 229 Main St. – To allow for a Fast Food Restaurant under Section 5.1.29 & allow for a 30% reduction in parking pursuant to Section 8.2(5).

Dear Mr. Campbell and members of the City Council:

At the meeting held on March 11, 2008, the Planning Board voted to forward a favorable recommendation to the City Council on the Special Permit application of Barry Callahan, regarding the property at 229 Main Street, subject to the following conditions:

1. That the Special Permit shall be to Barry Callahan and shall not be transferable;
2. That the principal use of the 1200 S.F. identified as "Callahan Del." on the plans submitted shall be as a delicatessen;
3. That the fast food restaurant seating shall be limited to twenty seats;
4. That the hours of operation shall be limited to 6 A.M. to 6 P.M.; and
5. That 39 parking spaces shall be provided in accordance with the plan prepared by Edward J. Farrell dated February 6, 2008.

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

Sincerely, s/Edmund P. Tarallo, Planning Director

A copy of a communication dated March 10, 2008 from Brett F. Gonsalves, Senior Engineer, Engineering Department to Edmund Tarallo, Planning Director was received as follows:

Subject: 229 Main Street – Fast Food Restaurant & Reduction in Parking Special Permit – Special Permit Application Dated February 13, 2008 – Development Impact Statement Dated March 7, 2008 – Traffic Report Dated February 15, 2008

This office has reviewed the special permit application for the above referenced location and offers the following comments.

The petitioner is seeking permission to install a fast food restaurant (delicatessen) where the existing Sweet Spot Bakery was and a 30% reduction in site parking. The building which this delicatessen is proposed also has several other retail uses. The provided parking summary outlines the required parking for each use. The total number of parking spaces required for the 6 uses is 56 spots. The petitioner is seeking a reduction of 17 spaces to a total of 39 onsite parking spaces.

It would be the discretion of the board and the zoning board of appeals whether to support the reduction in parking for the site.

The applicant submitted a traffic report summarizing the traffic patterns for the site. This report was generated by using Institute of Transportation Engineers (ITE) manual and not an actual field count. Based on the report there would be an increase in AM peak hour traffic over the previous use and decrease on the PM peak traffic.

The applicant has submitted a letter in place of a development impact statement, in accordance with Section 18 of the Woburn Zoning Ordinance. The engineer stated that there would be minimal if any impact to the infrastructure and that they propose a \$500 fee for the project mitigation. This office assumes that the amount stated would be 3% of the total project cost; but we do not have a build-out cost summary.

If you or the board have any questions concerning this information, do not hesitate to contact this office.

Appearing for the petitioner was Attorney Mark Salvati, 10 Cedar Street, Suite 26, Woburn, Massachusetts 01801 and he stated that the petition is for a fast food use, that the operation will be a deli, that the petitioner will sell sandwiches and meat by the pound, that the hours of operation will be 6:00 a.m. to 6:00 p.m., that there will little change from the bakery use, that this is a similar use to the bakery, that the traffic will have minimal impact, that the area is approximately 1,200 square feet in the strip mall, that the use requires ten parking spaces, and that the petitioner would like the hours of operation to be 6:00 a.m. to 8:00 p.m. seven days per week to allow flexibility. IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the public hearing be closed, all in favor, 9-0. Motion made and 2nd that the SPECIAL PERMIT be GRANTED, AS AMENDED, with the conditions as follows: 1. That the recommendations of the Planning Board be accepted as conditions of the special permit except as amended with condition number 4 to read; 4. That the hours of operation shall be limited to between 6:00 a.m. and 8:00 p.m. seven days per week, all in favor, 9-0.

On the petition by Michael DeVincent dba Custom Auto Recreation, 10D Roessler Road, Woburn, Massachusetts 01801 for a special permit pursuant to the 1985 Woburn Zoning Ordinances, as amended, Section 44 to allow automobile and truck repair garage, auto restoration, auto body shop, full restorations on older cars, body work, bondo, fiberglass, sheet metal work, prime and paint work at 10D Roessler Road. PUBLIC HEARING OPENED. A communication dated March 13, 2008 was received from Edmund P. Tarallo, Planning Director, Woburn Planning Board as follows:

Re: Michael DeVincent DBA Custom Auto Recreation – 10-D Roessler Rd. – To allow an automobile and truck repair garage under Section 5.1.44

Dear Mr. Campbell and members of the City Council:

At the meeting held on March 11, 2008, the Planning Board voted to forward an unfavorable recommendation to the City Council on the Special Permit application of Michael DeVincent DBA Custom Auto Recreation, regarding the property at 10-D Roessler Road because the proposal is not in character with the building and that the space is not designed to accommodate such a use.

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

Sincerely, s/Edmund P. Tarallo, Planning Director

A copy of a communication dated March 10, 2008 from Brett F. Gonsalves, Senior Engineer, Engineering Department to Edmund P. Tarallo, Planning Director was received as follows:

Subject: 10D Roessler Road Auto Restoration, Auto Body Special Permit – Special Permit Application Dated February 4, 2008

This office has reviewed the special permit application request for the above referenced project and offers the following comments.

The applicant is seeking approval to operate a business to perform auto body restoration, auto body shop and other related auto body work and painting. The supplied building plan does not indicate where the auto body shop would be located in the building or how it will be accessed.

The applicant will need to contact the fire department to determine if any hazardous material permits are required based on the proposed use.

This office will complete its review upon submittal of the above referenced information.

If you or the board have any questions concerning this information, please do not hesitate to contact this office.

Appearing was the petitioner Michael DeVincent and he stated that he rented space from Cummings Property, that he moved his business from Reading to Woburn, that he restores older cars, that the landowner showed him available spaces for the business, that he signed a lease for the property, that he contacted the building department after he occupied the property and was told that this was not an allowed use, and that he is seeking a special permit to be allowed to continue business on the site. Alderman Gately stated that the auto painting component was an issue at the Planning Board meeting. Motion made and 2nd that Cummings Properties be requested to attend a Committee on Special Permits Review of the property, all in favor, 9-0. IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the public hearing closed, all in favor, 9-0. Motion made and 2nd the SPECIAL PERMIT be DENIED for the reason stated in the Planning Board recommendation, all in favor, 9-0.

CITIZEN'S PARTICIPATION: None.

COMMITTEE REPORTS:

POLICE AND LICENSES:

On the petitions by Checker Cab of Woburn, Inc. for renewal of Taxi Cab License and Livery License, committee report was received “ought to pass”. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

Presented to the Mayor: March 21, 2008 s/Thomas L. McLaughlin March 28, 2008

On the petition by Heruinder Singh dba Rai Limo for a new Livery License, committee report was received “to deny”. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

On the petition by Marc E. Dionne for renewal of a Billiard Table License, committee report was received “ought to pass”. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

Presented to the Mayor: March 21, 2008 s/Thomas L. McLaughlin March 28, 2008

On the petition by Woburn Bowladrome Inc. for renewal of a Bowling Alley License, committee report was received “ought to pass”. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

Presented to the Mayor: March 21, 2008 s/Thomas L. McLaughlin March 28, 2008

PERSONNEL:

On the appointment of Bryan Melanson to the Historic District Commission, committee report was received “ought to pass”. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

Presented to the Mayor: March 21, 2008 s/Thomas L. McLaughlin March 28, 2008

FINANCE:

On the Order to appropriate the sum of \$50,000.00 from the Affordable Housing Stabilization Fund Account to the Library Park/Affordable Housing Pre-Development Account, committee report was received “ought to pass”. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

Presented to the Mayor: March 21, 2008 s/Thomas L. McLaughlin March 28, 2008

MUNICIPAL LANDS/HIGHWAYS:

On the request to accept Charles O’Neill Drive, committee report was received “that the matter be referred to public hearing.” Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

SPECIAL PERMITS:

On the matter of Gibbs Oil Company Limited Partnership v. Scott Galvin, et. al., found at Massachusetts Land Court Case No. 04-MISC-295602 (KFS), committee report was received “That the special permit be granted as amended with the conditions set out in Exhibit A dated December 16, 2003 of the Land Court Decision being adopted as further amended 1.) by removing from Condition #6 the clause stating ‘except in an emergency’ and ‘except for an emergency’, 2.) by adding a new Condition #23 stating ‘That the construction materials from the gas station at 119 Winn Street must be removed’, and 3.) by adding a new Condition #24 stating ‘No snow shall be stored on site or stored on city property.’” Alderman Gonsalves stated that the court order indicated that the special permit could be granted with conditions and that the committee report adopted the original conditions and recommended some small matters as conditions. Alderman Denaro stated that this matter will end back up in court if the decision is contrary to the order of the court. Motion made and 2nd to suspend the rules for the purposes of hearing from counsel for the petitioner, all in favor, 9-0. Appearing was Attorney Joseph Tarby, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 and he stated that there were extensive proceedings during the review of the special permit, that conditions were offered to address each and every concern, that the Land Court judge came to Woburn, visited the site and the neighborhood, heard testimony and at the end of the trial found that the application of Gibbs Oil Company Limited Partnership should be granted conditioned upon the list of conditions in Exhibit A attached to the court’s decision, that in December 2007 the Court of Appeals affirmed the Land Court decision, that this is not a remand where the game can be played again, that the conditions are those imposed by the court Order, that he discussed the committee report with his client, that taking the “emergency” language out of the conditions put the petitioner in a difficult position and is thereby treated differently than other gasoline stations in the city, and that he is not aware to what the proposed construction material condition refers. Alderman Galvin stated that the construction material was from earlier development at the site, that a neighbor had offered to remove the material, and that he then decided that he could not do so. Attorney Tarby stated that there is sufficient space on the property to move the snow, that the petition cannot agree to the conditions, that the petitioner filed an appeal, that the city decided to appeal the matter to the Court of Appeals, and that it has been costly for the petitioner to proceed with the litigation. Alderman Gonsalves stated that the City Council is communicating to the petitioner what being a good neighbor is and which may not require additional legislation. Alderman Dwyer stated that it is difficult to amend a judge’s Order, and that he is concerned about how more litigation will cost the city and may not be fruitful. Alderman Galvin stated that it appears that now there are many “emergency” deliveries to the locus, that it is difficult to determine what an emergency is, that the gasoline stations tend to receive deliveries to meet their needs, and that the condition can be amended if the petitioner abuses the emergency right. Attorney Tarby stated that currently there are no delivery hour restrictions but with the special permit the delivery hours become established, and that if these hours are abused by emergency deliveries then the City Council can call the petitioner before the Committee on Special

Permits Review. Alderman Denaro stated that this matter has run its course. Motion made and 2nd to return to the regular order of business, all in favor, 9-0. Motion made and 2nd that the SPECIAL PERMIT be GRANTED, AS AMENDED with the condition set out in Exhibit A dated December 16, 2003 and attached to the decision of the Land Court, all in favor, 9-0.

NEW PETITIONS:

Petitions for renewal of Livery Licenses by Frances L. Lucas dba Professional Livery, 4 Maura Drive; American Classic Limousine Inc., 215 Salem Street, Suite 8; and Pike Executive Transportation, 10 Draper Street, Unit 15. Motion made and 2nd that the MATTERS be REFERRED TO COMMITTEE ON POLICE AND LICENSES, all in favor, 9-0.

Petition by City of Woburn Recreation Department, Woburn City Hall, 10 Common Street, Woburn, Massachusetts 01801 for a special permit pursuant to Section 5.1.79 of the 1985 Woburn Zoning Ordinances, as amended, to install recreational improvements to Ferullo Field, including the rehabilitation of the existing public pool, installation of a new tennis court and basketball court, and landscaping the areas disturbed by the construction activities at 885 Main Street. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

Petition by 112 Commerce Way LLC, c/o National Development, 2310 Washington Street, Newton Lower Falls, Massachusetts 02462 for a special permit pursuant to Section 5.1.35 of the 1985 Woburn Zoning Ordinances, as amended, to modify a special permit granted November 22, 2007 which allowed for a Pet Care Facility to allow for 1.) an amended floor plan and 2.) an amended site plan, at 112 Commerce Way/Lot 40C Commerce Way. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

Petition by 112 Commerce Way LLC, c/o National Development, 2310 Washington Street, Newton Lower Falls, Massachusetts 02462 for a special permit pursuant to Section 5.1.22c, 5.1.23, 5.1.29 and 5.1.57b to modify a special permit granted November 22, 2007 which allowed for 1.) a retail shopping center in excess of 15,000 square feet (47,010) and 2.) a fast food restaurant to allow for 1.) an amended site plan, 2.) an additional 6,999 square feet of gross floor area for the retail shopping center allowing for a total of 54,009 square feet of gross floor area, 3.) the fast food restaurant as originally approved by the Decision, and 4. the accessory parking of commercial vehicles at 112 Commerce Way/Lot 40C Commerce Way. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

Petition by Resources for Responsible Site Management Inc., Trustee of the Industri-Plex Site Interim Custodial Trust, P.O. Box 487, Chestnut Hill, Massachusetts 02467 to amend the Zoning Map of the City of Woburn by amending a parcel of property known as Lot 40C, Commerce Way from the I-P zoning district to the B-I zoning district. 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 Section 5.1.75 of the 1985 Woburn Zoning Ordinances, as amended, to all for the Flag Day Festival on June 13, 2008 and June 14, 2008 at Library Park. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

Petition by Michael Han, 5 Waldo Avenue, Unit 3, Somerville, Massachusetts 02143 for a special permit pursuant to Section 8.3.2 of the 1985 Woburn Zoning Ordinances, as amended, to allow for seven off-site parking spaces at 106-110 Winn Street. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

COMMUNICATIONS AND REPORTS:

A communication dated was received from Charles L. O'Connor, Parking Clerk, Police Headquarters, 25 Harrison Avenue as follows:

In accordance with Massachusetts General Laws Chapter 90, Section 20½, I am submitting this report on the parking violations within the City of Woburn for the period ending February 2008: number of parking violations issued 270, number of violations paid 104, number of violations outstanding 155, amount collected and submitted to the Office of the Collector \$13,655.20. There exists a backlog of 5,046 tickets for 1982 through 2007. Demands will be sent out until all tickets have been cleared. Parking violations turned over to Handicap Commission to date \$1,950.00.

Respectfully submitted, s/Charles L. O'Connor, Parking Clerk City of Woburn

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

A communication dated March 11, 2008 was received from Jonathan Silverstein, Kopelman and Paige as follows:

Subject: Gibbs Oil Special Permit

I have received the Council's request for guidance regarding the above-referenced matter. As you know, the City Council originally denied Gibbs Oil's special permit request. However, the Land Court annulled the Council's decision and ordered the Council to issue the special permit, subject to certain conditions that were specified in the Court's decision. The Appeals Court subsequently upheld the Land Court's decision.

Therefore, the Council is now required to issue the special permit as requested, but it may impose the conditions listed in the exhibit to the Land Court's Decision, a copy of which I am attaching for your reference.

Please feel free to contact me should you have any further questions.

Best Regards, Jonathan M. Silverstein

Motion made and 2nd that the MATTER be RECEIVED AND MADE PART OF THE SPECIAL PERMIT RECORD, all in favor, 9-0.

A communication dated February 28, 2008 was received from Attorney Joyce Frank relative to processing/disposition of claims and lawsuits; notice to insurers. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

A communication dated March 6, 2008 with attachment was received from Mark LaLumiere, Inspectional Services as follows:

Re: 40-42 Porter St

I spoke to Alderman Doherty today regards to some changes to the special permit for 40-42 Porter St. He asked me to provide you copies of the proposed changes (attached). If you have any questions please give me a call.

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

A communication dated March 13, 2008 was received from Mark J. Cavanagh, Executive Director, Massachusetts State Lottery Commission, 60 Columbian Street, Braintree, Massachusetts 02184-1738 relative to a new venture entitled "KENO to go" in which KENO tickets will be sold at all existing agents rather than the limited number who currently offer the game, that there will not be any KENO screens added to any establishment in the city, that they are willing to discuss this issue with local officials in greater detail, and that communities reserve the right to opt out of the "KENO to go" program. Motion made and 2nd that the communication be received and placed on file, all in favor, 9-0. Motion made and 2nd that a communication be forwarded to the Massachusetts State Lottery Commission denying all "KENO to go" licenses and

indicating that the city is willing to hear from the Massachusetts State Lottery Commission and may review the matter further at that time, all in favor, 9-0.

Presented to the Mayor: March 21, 2008 Returned Unsigned March 31, 2008

A communication dated March 5, 2008 was received from Ann Catania requesting that the zoning district for her property at 131 Main Street be changed from residential only to business neighborhood. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

A communication dated March 4, 2008 to Alderman Scott Galvin was received from Beth Dwyer as follows:

Scott:

I would appreciate it if you could share this email at the City Council meeting and provide a copy to the school committee. Thank you.

For the first time in many years Woburn High School Sports had fans. It has been an awesome year! Winning or Losing is not important to me. The Superfans chose to support their teams rather than drink or use drugs. They were in a safe, positive environment.

The Superfans are made up of the finest kids Woburn High School has seen in the past 8 years. These fans have shown up to every football and basketball game without incident. There were no drugs, alcohol, fights, criminal acts, etc at football or basketball. The Superfans became a part of the football and basketball teams. The Superfans are the players best friends, fellow students, girlfriends, sisters and brothers. These are the kids the players have known their whole lives through youth and recreation basketball, soccer and baseball. I personally know and love most of these kids.

Everyone agrees tennisballs should not be thrown at hockey games, it is the handling of the situation that is in question.

Jim Duran was unable to do his job at the hockey game and failed to properly supervise the crowd, shame on him. He should not have taken it out on the basketball team and certainly not the entire student body at Woburn High School.

Jim Duran and Bob Norton took the easy, lazy way out of proved they are not capable of doing their jobs by banning the entire student body from the basketball game. They could have chose to do their jobs and supervise the fans at the game.

So, not only did they not do their job at the hockey game they chose not to do it at the basketball game.

I was not at the hockey game, but I have been told there was no supervision of the crowd at all. I was at the basketball game and it was a complete fiasco. I am furious that all of the administrators came to their first basketball game of the year while the true fans remained outside in the cold. My son had to play his last game at Woburn High School while a 3 ring circus was being run by Jim Duran and Bob Norton. The attention was all on the fans, police, news cameras, administrators and last but not least Bob Norton and Jim Duran.

Below is an email I received from the MIAA, I would like to make sure that everyone responsible for this disgraceful decision receives proper credit – unanimously supported by the school committee, the supt and the mayor.

Apparently, there is not one administrator in the City of Woburn that would stand up to Bob Norton and support the basketball team and the student body of Woburn High School. No one did what was best for the athletes, student body, parents or the City of Woburn. It was a complete disgrace and they should all be ashamed of themselves.

Sincerely, Beth Dwyer

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 March 14, 2008 was received from His Honor the Mayor Thomas L. McLaughlin as follows:

Re: Barbara Ridley – Council on Aging

Dear Mr. Campbell:

By the power vested in me as Mayor of the City of Woburn, I hereby appoint Barbara Ridely of 129 Place Lane as a Member of the Council on Aging for a period of three years.

Ms. Ridley's appointment will be effective subject to the date of confirmation by the City Council.

If you have any questions, please feel free to contact me.

Sincerely, s/Thomas L. McLaughlin, Mayor

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

MOTIONS, ORDERS AND RESOLUTIONS:

RESOLVED Upon completion of the water improvements on Auburn Street that His Honor the Mayor direct the Superintendent of Public Works to install new curbing and repave the street side to side the entire length from the intersection with Jefferson Avenue to the intersection with Montvale Avenue; and

Be It Further Resolved, that the Superintendent of Public Works as Tree Warden hold a public hearing for the removal of four shade trees that are growing in the sidewalk.

s/Alderman Gately

Motion made and 2nd that the RESOLVE be ADOPTED, all in favor, 9-0.

Presented to the Mayor: March 21, 2008 s/Thomas L. McLaughlin March 28, 2008

Motion made and 2nd to ADJOURN, all in favor, 9-0. Meeting adjourned at 8:58 p.m.

A TRUE RECORD ATTEST:

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