

**CITY OF WOBURN
OCTOBER 5, 2010 - 7:30 P.M.
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

Anderson	Gately
DiTucci	Haggerty
Drapeau	Mercer-Bruen
Gaffney	Raymond
Denaro	

Motion made and 2nd that Joyce M. Gray be named Clerk of City Council Pro-Tem in the absence of the Clerk of City Council, all in favor, 9-0.

I do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts and will support the constitution thereof as Clerk of City Council Pro-Tem, so help me God.

I do hereby accept the position of Clerk of City Council Pro-Tem, to act in this capacity for the purpose of the City Council meeting of October 5, 2010, and do hereby promise to act in accordance with statutes and ordinances to the best of my ability.

Joyce M. Gray

Sworn before me this 5th day of October, 2010.

Paul J. Denaro
President Woburn City Council

The City Council observed a moment of silence in memory of Police Sgt. Paul Connolly who passed away recently.

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

MAYOR'S COMMUNICATIONS:

A communication dated September 29, 2010 with attachments was received from His Honor the Mayor Scott D. Galvin as follows:

Dear President Denaro and Members of the City Council,

I am enclosing copies of four separate, proposed administrative consent orders with penalties and notice of noncompliance, for work performed by the Department of Public Works prior to September 2009.

The state Department of Environmental Protection conducted site inspections at four different locations, and determined that the City performed activities in areas subject to jurisdiction of the Wetlands Protection Act without filing a Notice of Intent and receiving an Order of Conditions or without filing a Request for Determination of Applicability or receiving a Determination of Applicability.

The City has agreed to address the violations identified by the DEP, which will be both time-consuming and costly. However, we are still negotiating the terms of the monetary penalty.

If you have any questions, please feel free to call my office.

Sincerely, s/Scott D. Galvin, Mayor

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

Motion made and 2nd to take the next three matters collectively, 9 in favor, 0 opposed.

ORDERED That the sum of \$117,341.75 be and is hereby appropriated as so stated from Overlay Reserve Acct #01-356000 \$117,341.75 to Sick Leave Buy Back Teamsters Local Union 25 \$117,341.75.

I hereby approve the above: s/Scott D. Galvin, Mayor
I have reviewed the above: s/Gerald W. Surette, City Auditor

s/Alderman Denaro

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

ORDERED That the sum of \$25,000.00 be and is hereby transferred as so stated from Senior Center Boiler Acct #0112158-586590 \$25,000.00 to Senior Center Acct #0154158-581590 \$25,000.00.

I hereby approve the above. s/Scott D. Galvin, Mayor
I hereby recommend the above. s/Joanne Collins, Director, Senior Center
I have reviewed the above. s/Gerald W. Surette, City Auditor

s/Alderman Denaro

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

ORDERED That the sum of \$25,000.00 be and is hereby transferred as so stated from BLS Ambulance Receipts Acct #39359-595000 \$25,000.00 to Ambulance Maintenance Acct #122054-544300 \$25,000.00.

I hereby recommend the above. s/Paul Tortolano, Chief, Fire Department
I have reviewed the above. s/Gerald W. Surette, City Auditor
I hereby approve the above. s/Scott D. Galvin, Mayor

s/Alderman Denaro

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

PUBLIC HEARINGS:

On the petition by Mishawum Properties LLC, 275 Mishawum Road, Woburn, Massachusetts 01801 to amend the 1985 Woburn Zoning Ordinances, as amended, as follows: Paragraph 5.f of Section 21 entitled "Mishawum Station Transit Oriented Development Overlay District" shall be amended by deleting the existing language in Section 21 5.f which states: "Parking: Parking shall be provided as set forth in Section 8.2. For mixed-use projects, parking requirements may be varied by special permit as provided under Section 8.2 All parking and circulation driveways shall meet the design and dimensional requirements of Section 8 of this Ordinance." and replacing with the following language: "Parking: 1.55 spaces per unit. For mixed-use projects, parking requirements may be varied by special permit as provided under Section 8.2. All parking and circulation driveways shall meet the design and dimensional requirements of Section 8 of this Ordinance." PUBLIC HEARING OPENED. A communication dated September 23, 2010 was received from Attorney James J. Mawn, Mawn and Mawn, P.C., 275 Mishawum Road, 4th Floor, Woburn, Massachusetts 01801 as follows:

Re: Proposed Amendments to Section 21 entitled Mishawum Station Transit Oriented Development Overlay District of the 1985 City of Woburn Zoning Ordinance as amended

Dear Sir or Madam:

Please accept this letter as request to withdraw the petition of Mishawum Properties LLC without prejudice.

Very truly yours, s/James J. Mawn

IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the MATTER be GIVEN LEAVE TO WITHDRAWN WITHOUT PREJUDICE, all in favor 9-0.

On the petition to determine the need for repairs of that portion of a private way traveling from Russell Street to Lexington Street and shown on Assessors Map 65 as a forty (40) foot right of way. PUBLIC HEARING OPENED Alderman Drapeau stated that the order should be adopted as is, that the DPW patch only what needs to be patched and that the abutters be billed accordingly. Alderman Gately stated that signs be put up on both end of the private way that the road is “Not a Public Way” and that the DPW keep track of what work was done and the cost. IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the ORDER be ADOPTED, all in favor 9-0.

Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

On the petition by Alderman Richard Gately concerning the structure or structures located in the City of Woburn, County of Middlesex, Commonwealth of Massachusetts known and numbered as 320 Main Street aka 286 Main Street, Woburn, Massachusetts, commonly referred to as the Woburn Armory, for the purposes of determining whether said structure or structures 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. Carol Seitz, Co-Chair of the Historical Commission presented an information packet to the Alderman, motion made and 2nd to receive documents, all in favor 9-0. The packet includes a letter stating that the Woburn armory is included in MHC’s inventory of Historic and Archaeological Asset of the Commonwealth and that it holds an historic covenant as a result of its conveyance from the Division of Capital Asset Management to Woburn Armory LLC which requires the MHC’s to review and approve prior to the implementation of any major alterations to the Woburn Armory. Alderman Gately stated that the property has been vacant for 14 years that it is very dangerous and it needs to be looked at before someone gets injured. Why now is the Historical Commission coming forward now? We have asked all of the organizations what can be done with the building and no one came forward. The building can not be fixed it would cost millions of dollars. The front of the building is the only

part that does not need repair the back of the building is about to fall down. The property is split zoned the front being zoned B-N and the back portion zoned R-1, the most that could be built on the property is a two family house. Carol Seitz stated that the Historical Commission was never notified of any meetings and that no City Council member showed up at the Historical Commission meetings that they were invited to. Alderman Bruen stated that an application be filed to forgo the work, that a list be made of what we want done, that we declare the building a nuisance and send the bill to the owners. With the documents we have received we need to see what the recourse would be to the City of Woburn. This has been in front of the City Council for a long time maybe the owners want us to demo the building so it will make it easier for them. Alderman DiTucci stated that the building is a Historic Treasurer to the City of Woburn to demolish it is not the answer a lien could be put on the property with what needs to be repaired. Alderman Drapeau state that it will be hard for anyone to come forward to do anything with the building with all the restrictions and the cost to fix it. Alderman Anderson stated that nuisance issues are deeply troubling if the property is to be maintained and nothing has been done in years, that the commonwealth have not been in the property, that information needs to be provided to the council. The city should take the property. Alderman Ditucci stated that the City of Woburn has a Delay Demo Order. The order will go before the Historic Commission and they can put a year delay to demo the property. Motion made and 2nd that the property located at 320 Main Street aka 286 Main Street be DECLARED a PUBLIC NUISANCE, AS AMENDED with the amendments as follows: 1. The owner is given 90 days to come back to the City Council with a plan; 2. That the following three lines be deleted from the final order received in City Council; that the entire building shall be demolished within ninety (90) days from the date of this order; that the demolition shall consist of razing the entire building and removing the foundation; that all debris from the demolition be removed from the site and disposed of in a proper manner; 3. That the City Council submit a request to the Massachusetts Historical Commission that they provide the City Council with all correspondence and information that they have regarding the property located at 320 Main Street, Woburn, Massachusetts that relate in any way to the conditions of the premises, whether the property is/or has been adequately maintained, what efforts and/or inquiries have been made by the Massachusetts Historical Commission as to whether the property has been adequately maintained, what recourse the Massachusetts Historical Commission has if the owner of the subject property does not adequately maintain the property as required in the covenant set forth in the deed to the Owner and all information and correspondence to and from the owner, and that the foregoing information be provided to the City Council within 14 days. 4. A communication be sent to the City Solicitor requesting a legal opinion on the deed restriction, how this will affect the City of Woburn and if the property can be taken by eminent domain. 5. That a communication be sent to the City Assessor requesting a fare market value appraisal of the property located at 320 Main Street aka 286 Main Street and REFERRED TO COMMITTEE ON LIAISON, all in favor 9-0.

Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

On a petition by Alderman Mark Gaffney to further amend the 1985 Woburn Zoning Ordinances, as amended, by amending the present zoning district of a certain parcel of land owned by the City of Woburn containing approximately 30,900 square feet of land shown on the assessors' map and designated as 42-8-16, located on Plympton Street and the site of the former Plympton Elementary School from the R-2 zoning district to the O-S zoning district. PUBLIC HEARING OPENED. Alderman Gaffney stated that the request is to change the zoning of the Plympton School property from R-2 to OP IN FAVOR: Catherine Shaughnessy, 31 Scott Street, Woburn stated that she has lived in the Hammond Square area and went to the Plympton School. The original school burnt down in 1964 a new building was built it was open for ten years then closed in 1976 and given to the City. Many business have come and gone, currently the YMCA occupies the building and has a lease with the city. The building is in need of repair. There was a fire in the building this past summer with the fire truck not being able to make the turn onto the street. The area is very congested. Joseph Donahoe, 23 Flagg Street, Woburn stated that the City Council needs to keep an open mind and take the building down. Joyce Shaughnessy stated that what ever goes into the building will not be feasible, the road is to narrow, my sons has almost gotten hit. Dolores Amirault, 29 Scott Street, Woburn, in favor, Sheila Edmonds, 16 Scott Street, Woburn stated that Alderman Gaffney is not in favor of the rezoning, that it is a cut through with cars driving up and down the street, that the city has to maintain the property and that the neighbors were told that the building was going to be used as a warehouse. Alderman Denaro stated several times that the building is not up for discussion the hearing is for the rezoning the parcel from R-2 to OS. Candice Donahoe, 23 Flagg Street, Woburn, in favor; Denis Caprio, 29 Hudson Street, Woburn stated that the property needs to be rezoned OS to protect it so that nothing else can be done with the property ten years done the road. OPPOSED: None. Alderman Gaffney stated that there are a lot of issues with the site. As to the building being demoed that is the Mayors decision. The city council does not know if the building is a detriment to the City. Currently the building is being looked at for city offices. Alderman Drapeau supports rezoning; Alderman Raymond supports rezoning; Alderman DiTucci supports rezoning and that in the future the Mayor will take down the building. Motion made and 2nd that the ORDER be ADOPTED, all in favor 9-0.

Pursuant to Rule 13 of the Rules and Orders of the City Council, Alderman Anderson filed a notice of intent to move for reconsideration at the next regular or special meeting of the City Council of his vote on this October 6, 2010 at 3:49 p.m.

Motion made and 2nd to take the next two matters collectively, 9 in favor, 0 opposed.

On the petition by NASDI, LLC, 62 Holton Street, Woburn, Massachusetts 01801 for a special permit pursuant to the 1985 Woburn Zoning Ordinances, as amended, for the storage of building equipment pursuant to Section 5.1.43, storage and parking of commercial motor vehicles pursuant to Section 5.1.57b, and storage of storage containers and trailers pursuant to Section 5.1.57a, at 62 Holton Street. PUBLIC HEARING

OPENED. A communication dated October 4, 2010 was received from Planning Director Edmund P. Tarallo as follows:

Re: NASDI, LLC – 62 Holton St. – To allow for storage of commercial vehicles, building equipment, and storage containers & trailers pursuant to Sections 5.1.57b, 5.1.57a, and 5.1.43

Dear Mr. Campbell and members of the City Council:

At the meeting held on September 28, 2010, the Planning Board voted to forward an unfavorable recommendation to the City Council on the Special Permit application of NASDI, LLC, regarding the property at 62 Holton Street to allow storage of commercial vehicles, building equipment, and storage containers & trailers pursuant to Sections 5.1.57b, 5.1.57a, and 5.1.43, because of the inadequate infrastructure on Holton Street. 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 September 28, 2010 to Edmund Tarallo, Planning Director was received from Brett F. Gonsalves, Senior Engineer as follows:

Subject: 62 Holton Street, Storage of Commercial Vehicles, Building Equipment, Storage Containers, and Trailers Special Permit – Special Permit Application Dated September 2, 2010 – Site Plan dated August 31, 2010

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

The petitioner is seeking permission to allow for storage of commercial vehicles and storage containers at the above referenced location.

The submitted plan shows existing conditions for the site which includes parking, and the location of the proposed outdoor storage.

It would appear that there are no proposed site changes or utility work and upon reviewing the submitted application, 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.

Appearing for the petitioner was Attorney Geoffrey A. Curtis, 8 Cedar Street, Suite 55, Woburn, Massachusetts 01801 and he stated that the petitions for NASDI, LLC and Yankee Environmental are for the storage of commercial vehicle and containers. Both companies moved into 62 Holton Street in May 2010 that a lease agreement was entered

into with the owner of the property with the idea that they could go in by right and that it is tied in with the closing purchase and sale of the building. A Special Permit is required. Alderman Bruen held a neighborhood meeting on September 22nd with the neighbors many questions we asked and answered. Motion made and 2nd to receive document, all in favor 9-0. The building was built about 40 years ago many different companies have been at this location. NASDI, LLC is a site development and demolition company that has been in business for many years, that there are 3 trucks that will only make three trips a day between the hours of 7:00 a.m. and 5:00 p.m. that there have been no complaints made on the drivers that there is a large parking area on the site and that no construction debris will be coming back to the site everything is hauled to licensed disposal facilities. Two storage containers are needed to store tires, parts for the vehicles and tools. Yankee Environmental Services LLC is an environmental remediation company. Yankee has approximately 14 motor vehicles, 2 dump trucks, 7 box trucks and 5 pick-ups. There will be 13 departures a day with smaller trucks and no construction debris or hazardous materials will be coming back to the site other than a small amount of asbestos in sealed plastic bags and transported under strict environmental laws. A locked storage container will store the bags until they can be hauled off for disposal. There will be no weekend traffic except for an emergency, no manufacturing, no carrying of noxious materials and the property will be owner occupied. Mike Tiber, Director of Health & Safety stated that the trucks leave empty and return empty same with the Dumpsters, that the Asbestos equipment is decontaminated at the site, that no equipment will come back contaminated and that the trailer on the site will have sealed asbestos no longer than 30 days. No asbestos is currently stored on the site. At any one time there will be less than a trailer full stored. Alderman Mercer-Bruen stated that when American Crane moved out their Special Permit was not transferable. Complaints were made to the building department no name change was requested and the planning Board gave an unfavorable recommendation. The trucks are very large for a street that is only 17 feet wide. Holton Street is not a street for this type of business. Alderman Raymond stated that with all the training a driver receives it is the driver on the other side of the road that is of concern. Asbestos is a hazardous material. It only takes one accident. IN FAVOR: None. OPPOSED: Ron Porter, 85 Nashua Street stated that it is time for us to take back our neighborhood. The DEP considers asbestos very hazardous. The neighborhood has enough problems to get home the traffic takes 45 minutes to 1 hour in the afternoon. We do not need more traffic on Holton Street. Dave Larson, 70 Nashua Street stated that he has lived on Nashua Street for 30 years. The neighbors keep coming up with issues on Holton Street that is only 17 feet wide. Help us do what we can. Karen Hunt, 147 Green Street stated that now the neighborhood has to deal with the Winchester Hospital parking. This is a residential area with a lot of school age children. If a truck tips it will be dangerous please consider our feelings. George Harris, 49 Nashua Street stated that there is always a chance that an accident could happen. Al Kozachuk, 147 Green Street stated that asbestos is dangerous, it should not be allowed, it takes time for asbestos to show signs possible 20 years later. Paul Meaney, Woburn Business Association state that asbestos is not good. I would work with the companies to find them another location if they want to locate in Woburn, but not on Holton Street this is a residential area. Motion made and 2nd that the SPECIAL PERMIT be DENIED for the following reason: 1. Satisfactory provision and arrangement of ingress and egress to property and proposed

structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe. If traffic due to the proposed use is projected to exceed the capacity of existing roadways, a service road or divided entrance drive may be required by the City Council. 2. Adequacy off-street parking and loading areas where required with particular attention to the items in Section 11.5.1 and the noise, glare, or odor effects of the proposed use on adjoining properties and properties generally in the district. 3. Satisfactory provision of refuse collection, disposal and service areas, with particular reference to impact on adjacent uses. 4. The proposed use or structure will not be adverse to the general purposes of the ordinance. 5. The Council shall also impose such additional conditions of those specified in this Ordinance as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this Ordinance, including but not limited to the following: Front, side or rear yards greater than the minimum required by this ordinance, screening, buffers, or planting strip, fences, or walls, as specified; limitation upon the size, number or occupants, method and time of operation, or extent of facilities; regulation of number and location of drives, accessways, or other traffic features, and off-street parking or loading, or other special features beyond the minimum required in the ordinance, all in favor 9-0.

On the petition by Yankee Environmental Services, LLC, 62 Holton Street, Woburn, Massachusetts 01801 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended, for the storage of its commercial vehicles pursuant to Section 5.1.57b and for the storage of containers pursuant to Section 5.1.57a, at 62 Holton Street. PUBLIC HEARING OPENED. A communication dated October 4, 2010 was received from Planning Director Edmund P. Tarallo as follows:

Re: Yankee Environmental Services, LLC – 62 Holton St. – To allow for storage of commercial vehicles, and storage containers pursuant to Sections 5.1.57b and 5.1.57a

Dear Mr. Campbell and members of the City Council:

At the meeting held on September 28, 2010, the Planning Board voted to forward an unfavorable recommendation to the City Council on the Special Permit application of Yankee Environmental Services, LLC, regarding the property at 62 Holton Street to allow storage of commercial vehicles, and storage containers pursuant to Sections 5.1.57b and 5.1.57a, because of the inadequate infrastructure on Holton Street.

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

SEE RECORD NOTES FROM THE PRECEDING MATTER. Motion made and 2nd that the SPECIAL PERMIT be DENIED for the following reason: 1. Satisfactory provision and arrangement of ingress and egress to property and proposed structures

thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe. If traffic due to the proposed use is projected to exceed the capacity of existing roadways, a service road or divided entrance drive may be required by the City Council. 2. Adequacy off-street parking and loading areas where required with particular attention to the items in Section 11.5.1 and the noise, glare, or odor effects of the proposed use on adjoining properties and properties generally in the district. 3. Satisfactory provision of refuse collection, disposal and service areas, with particular reference to impact on adjacent uses. 4. The proposed use or structure will not be adverse to the general purposes of the ordinance. 5. The Council shall also impose such additional conditions of those specified in this Ordinance as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this Ordinance, including but not limited to the following: Front, side or rear yards greater than the minimum required by this ordinance, screening, buffers, or planting strip, fences, or walls, as specified; limitation upon the size, number or occupants, method and time of operation, or extent of facilities; regulation of number and location of drives, accessways, or other traffic features, and off-street parking or loading, or other special features beyond the minimum required in the ordinance, all in favor 9-0.

Motion made and 2nd for a five minute recess, 9 in favor, 0 opposed.

President Denaro called the meeting back to order.

On the petition by Hughes Entertainment dba Lasercraze, 1600 Osgood Street, North Andover, Massachusetts 01845 for a special permit pursuant to Section 5.1.17b, 5.1.29 and 5.1.64 of the 1985 Woburn Zoning Ordinances, as amended, to allow for an indoor commercial playground for laser tag and containing automatic amusement devices and a snack bar at Suite C, 15 Presidential Way. PUBLIC HEARING OPENED. A report was received from the Committee on Special Permits as follows “ought to pass, as amended, with the amendments as follows: 1. That the special permit shall be for Hughes Entertainment dba Lasercraze only and shall not be transferable, 2. That the petitioner shall file a snowplow plan with the City Clerk, and 3. That the hours of operation shall be established at the continued public hearing.” A communication dated October 4, 2010 was received from Planning Director Edmund P. Tarallo as follows:

Re: Hughes Entertainment dba Lasercraze – 15 Presidential Way Suite C – To allow for an Indoor Commercial Playground for laser tag and containing automatic amusement devices and a snack bar pursuant to Sections 5.1.17b, 5.1.9, and 5.1.64

Dear Mr. Campbell and members of the City Council:

At the meeting held on September 28, 2010, the Planning Board voted to forward an unfavorable recommendation to the City Council on the Special Permit application of Hughes Entertainment dba Lasercraze, regarding the property at 15 Presidential Way

Suite C to allow for an Indoor Commercial Playground for laser tag and containing automatic amusement devices and a snack bar pursuant to Sections 5.1.17b, 5.1.9, and 5.1.64, because of the lack of parking. This proposal is 53 spaces short of the 91 spaces required.

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

Sincerely, sEdmund P. Tarallo, Planning Director

Appearing for the petitioner was Attorney Joseph Tarby, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 and he stated that to allow an indoor commercial playground for laser tag, automatic amusement devices and a snake bar at 15 Presidential Way that is in an IP2 zone an allowed use with a Special Permit is required. This will be their fourth facilities with one currently in North Andover. There will be birthday parties, laser tag, bounce houses, video skill area and pizza café. The hours of operation will be 7 days a week with 85% of the business on Saturday and Sundays. This will create about 40 new jobs to the city. At the committee meeting a police correspondent was submitted from North Andover stating that there have been no issues with the facility. The parking will be shared with the owner. Motion made and 2nd to receive proposed conditions to special permit, all in favor 9-0. IN FAVOR: Paul Meaney, Woburn Business Association stated that this business will be a good fit for this location. The building is the original Undercover Wear. OPPOSED: None. Alderman Bruen stated that she would like to make sure that the special permit that is issued is for Hughes Entertainment Inc. only and that it will not be sold to another party down the road but keep the same name. For six years permits did not run with the land permits were issued because of who you were and what you did. President Denaro stepped down Alderman Drapeau assume the position of chair. President Denaro stated that there are very large implications having a special permit tied to one person. Putting a condition on a Special Permit to the owner only is not good business. Alderman Gately stated that the city has to be protected if he sells the business the City Council should be notified in writing. Motion made and 2nd that the SPECIAL PERMIT be GRANTED AS AMENDED with the amendments as follow: 1.) The Plan of Record shall be the plan entitled "15 Presidential Way, Woburn, Middlesex County, Massachusetts" Prepared for: LaserCraze, 1600 Osgood Street, North Andover, Massachusetts, prepared by Allen & Major Associates, Inc. dated July 27, 2010 as revised on September 2, 2010 (the "Plan"). 2.) All dumpsters and waste containers shall be enclosed, by means of a fence, wall or landscaping in compliance with the Woburn Zoning Ordinance. 3.) That the hours of operation shall be Monday through Thursday 9:30 a.m. to 10:00 p.m., Friday and Saturday 9:30 a.m. to 12 midnight, and Sunday 9:30 a.m. to 10:00 p.m. 4.) The Petitioner shall provide a snow storage area as shown on the Plan. 5.) The special permit granted hereunder is to Hughes Entertainment, Inc. and is not transferable. If a change of ownership occurs, the City Council will be notified in writing. 6.) No alcohol will be served at the site, all in favor 9-0.

CITIZEN'S PARTICIPATION: None.

COMMITTEE REPORTS:

On the request for approval of exemption pursuant to M.G.L. Ch. 268A, §29(b) for Anthony Giglio, committee report was received “back for action”. Motion made and 2nd that the EXEMPTION be APPROVED AS AMENDED with the amendment as follows: That the requirements of M.G.L. Chapter 268A Section 20(b) are followed, all in favor 9-0.

Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

On the request for approval of exemption pursuant to M.G.L. Ch. 268A, §29(b) for Roy N. Cudmore, committee report was received “back for action”. Motion made and 2nd that the EXEMPTION be APPROVED AS AMENDED with the amendment as follows: That the requirements of M.G.L. Chapter 268A Section 20(b) are followed, all in favor, 9-0.

Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

On the request for approval of exemption pursuant to M.G.L. Ch. 268A, §29(b) for John J. Loughlin III, committee report was received “back for action”. Motion made and 2nd that the EXEMPTION be APPROVED AS AMENDED with the amendment as follows: That the requirements of M.G.L. Chapter 268A Section 20(b) are followed, all in favor, 9-0.

Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

On the request for approval of exemption pursuant to M.G.L. Ch. 268A, §29(b) for John Golles, committee report was received “back for action”. Motion made and 2nd that the EXEMPTION be APPROVED AS AMENDED with the amendment as follows: That the requirements of M.G.L. Chapter 268A Section 20(b) are followed, all in favor 9-0.

Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

NEW PETITIONS:

Petition by Capelo's Auto Service, Inc., 22 Winn Street for transfer of a Second Class Motor Vehicle Sales License to Capelo's Garage, Inc. at 22 Winn Street. Motion made and 2nd that the MATTER be REFERRED TO COMMITTEE ON POLICE AND LICENSES, all in favor, 9-0.

Petition by Francis Sindoni, 76 Marlboro Road, Woburn, Massachusetts 01801 for a special permit pursuant to Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, to alter an existing non-conforming use, three (3) residential units and one (1) commercial unit on the first floor, to four (4) residential apartments at 58 Fowle Street. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

Petition by Oliveiras Steak House, 428 Main Street, Woburn, Massachusetts 01801 for a special permit pursuant to Section 5.1.29 and Section 5.1 Note 16 of the 1985 Woburn Zoning Ordinances, as amended to allow a restaurant at 428 Main Street. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

COMMUNICATIONS AND REPORTS:

A communication dated September 22, 2010 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 a report to you on the parking violations in the City of Woburn for the period ending August 2010: number of parking violations issued 896, number of violations paid 465, number of violations outstanding 314, amount collected and submitted to the Office of the Collector \$36,589.00. There exists a backlog of 5,201 tickets for 1982 through 2009. Demand will be sent until all tickets have been paid. Parking violations referred to the Handicapped Commission to date \$7,400.00.

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 September 29, 2010 with attachments was received from Joanne Collins, Director, Woburn Council on Aging along with the minutes of the September meeting of the Council on Aging and the Director's report for the month of September. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

A communication dated September 20, 2010 was received from City Solicitor John D. McElhiney as follows:

Re: Legal Opinion – Condominiums vs. Apartments

Dear Members of the Council:

This is in response to a request generated by the Committee on Ordinances, asking for an opinion on whether the City Council can condition a Special Permit for a multi-family use by limiting the use to condominiums versus apartments, and/or by imposing a restriction that the units are to be owner occupied.

It is my opinion that the Council may not impose such a restriction as to “condominiums versus apartments,” and may also not generally require that large multi-family use be owner-occupied.

Appellate courts in Massachusetts have ruled in a series of cases decided in the early 1980s that condominiums are a form of ownership, and not a separate “use,” for zoning purposes. See *CHR General, Inc. v. City of Newton*, 387 Mass. 351 (1982), and *Bannermann et alls v. City of Fall River*, 391 Mass. 328 (1984). While those particular cases involved efforts to require a Special Permit for conversion of apartments to condominiums, the Courts, in rejecting those efforts, made it clear that they do not consider the use of multi-family property to be different for zoning purposes merely because the properties are in a condominium form of ownership, versus apartments. The cases held that the general zoning powers granted to cities and towns by Chapter 40A do not include the right to regular “condominiums” versus “apartments.”

Based on that line of cases, therefore, I conclude that there is no authority under zoning to attach conditions to a multi-family Special Permit which would require that the units be maintained as condominiums, versus apartments.

“Owner occupancy” is a slightly different issue, of course, in that condominiums themselves, though separately owned, may still generally be rented.

As to the imposition of a condition that a multi-family use be “owner occupied,” however, I do not see how such a condition would be upheld, since it essentially attempts to require, at a minimum, that the units be condominiums, a requirement that itself, for the reasons previously stated, cannot be imposed. Thus the Council could seemingly not do indirectly (through an owner-occupied condition), what it cannot do directly (require that units be maintained as condominiums, versus apartments).

I would not that Courts have seemingly upheld “owner-occupied” ordinances and permits, but these cases have usually involved very small, accessory apartments in single family dwellings, for example, or conversion of a single family to a two family, wherein either an ordinance or a special permit condition requires that one of the units be owner occupied. I do not feel that such cases provide any expanded authority for the imposition

of a similar condition on a larger development, as such a condition would run afoul of the general principle cited above, to the effect that condominiums, per se, are not a "separate use" which may be regulated by zoning.

I trust this addresses the question posed by the Council, but if I can be of further assistance in this regard, please do not hesitate to contact me.

Sincerely, s/John D. McElhiney

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

A communication dated September 13, 2010 was received from Frederick J. Gonsalves, 119 Winn Street relative to review of a special permit issued for the property located at 107 Winn Street. Motion made and 2nd that MATTER be REFERRED TO COMMITTEE ON SPECIAL PERMITS, all in favor 9-0.

A communication was received from Joseph P. Bell, 2 Ellis Street relative to the 9/11 terrorist attack in New York City. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

A communication dated September 30, 2010 with attachments was received from Stephen M. Richmond, Beveridge & Diamond PC, 15 Walnut Street, Suite 400, Wellesley, Massachusetts 02481 relative to New England Transrail. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

A communication dated September 27, 2010 was received from Town of Wilmington relative to objection and comments of Town of Wilmington to New England Transrail, LLC's status report. Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

UNFINISHED BUSINESS OF PRECEDING MEETING:

On the Order to authorize the execution of an Access Agreement allowing the installation of groundwater monitoring wells in a portion of New Boston Street. Motion made and 2nd to TAKE THE MATTER FROM TABLE, all in favor, 9-0. Motion made and 2nd that the ORDER be ADOPTED, all in favor, 9-0.

APPOINTMENTS AND ELECTIONS:

A communication dated September 27, 2010 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 Angela Amato, 289 Washington St., to the Woburn Council on Aging to fill a term set to expire Dec. 31, 2010; subject to approval by the City Council.

The appointment fills the vacant seat of Barbara McCauley, who recently resigned from the Woburn Council on Aging.

Respectfully, s/Scott D. Galvin

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

MOTIONS, ORDERS AND RESOLUTIONS:

ORDERED That in accordance with Massachusetts General Laws Chapter 54, as amended, the City Clerk is hereby authorized and directed to notify and to warn such of the inhabitants of the City of Woburn as are qualified to vote in the State Election to assemble at the polling places in the City of Woburn as designated herein, on TUESDAY, the SECOND DAY OF NOVEMBER, 2010 from 7:00 a.m. to 8:00 p.m., then and there to cast their votes in the State Election for the candidates for the following offices at the following polling places:

- GOVERNOR/LT. GOVERNORFOR THIS COMMONWEALTH
- ATTORNEY GENERALFOR THIS COMMONWEALTH
- SECRETARY OF STATE.....FOR THIS COMMONWEALTH
- TREASURERFOR THIS COMMONWEALTH
- AUDITOR.....FOR THIS COMMONWEALTH
- REPRESENTATIVE IN CONGRESSSEVENTH DISTRICT
- COUNCILLOR.....SIXTH DISTRICT
- SENATOR IN GENERAL COURT.....2nd MIDDLESEX DISTRICT
(Ward 2)
- SENATOR IN GENERAL COURT.....4TH MIDDLESEX DISTRICT
(Wards 1, 3, 4, 5, 6, 7))
- REPRESENTATIVE IN GENERAL COURT...15th MIDDLESEX DISTRICT
(Wards 1, 7)
- REPRESENTATIVE IN GENERAL COURT...30th MIDDLESEX DISTRICT
(Wards 2, 3, 4, 5, 6)
- DISTRICT ATTORNEYNORTHERN DISTRICT
- SHERIFF.....MIDDLESEX COUNTY

<u>Ward-Precinct</u>	<u>Polling Place Location</u>
1-1	Joyce Middle School Library 55 Locust Street
1-2	Clapp Elementary School Cafeteria 40 Hudson Street at Arlington Road
2-1	Shamrock Elementary School Gymnasium 60 Green Street
2-2	Shamrock Elementary School Gymnasium 60 Green Street
3-1	Hurld Elementary School Gymnasium 75 Bedford Road
3-2	Hurld Elementary School Gymnasium 75 Bedford Road
4-1	Wyman Elementary School Auditorium 679 Main Street at Eaton Avenue
4-2	White Elementary School Gymnasium 36 Bow Street
5-1	Kennedy Middle School Gymnasium 41 Middle Street
5-2	Kennedy Middle School Gymnasium 41 Middle Street
6-1	Altavesta Elementary School Gymnasium 990 Main Street
6-2	Altavesta Elementary School Gymnasium 990 Main Street
7-1	Reeves Elementary School Gymnasium 240 Lexington Street
7-2	Reeves Elementary School Gymnasium 240 Lexington Street

QUESTION 1: LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives before May 4, 2010?

SUMMARY

This proposed law would remove the Massachusetts sales tax on alcoholic beverages and alcohol, where the sale of such beverages and alcohol or their importation into the state is already subject to a separate excise tax under state law. The proposed law would take effect on January 1, 2011.

A YES VOTE would remove the state sales tax on alcoholic beverages and alcohol where their sale or importation into the state is subject to an excise tax under state law.

A NO VOTE would make no change in the state sales tax on alcoholic beverages and alcohol.

QUESTION 2: LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives before May 4, 2010?

SUMMARY

This proposed law would repeal an existing state law that allows a qualified organization wishing to build government-subsidized housing that includes low- or moderate-income units to apply for a single comprehensive permit from a city or town's zoning board of appeals (ZBA), instead of separate permits from each local agency or official having jurisdiction over any aspect of the proposed housing. The repeal would take effect on January 1, 2011, but would not stop or otherwise affect any proposed housing that had already received both a comprehensive permit and a building permit for at least one unit.

Under the existing law, the ZBA holds a public hearing on the application and considers the recommendations of local agencies and officials. The ZBA may grant a comprehensive permit that may include conditions or requirements concerning the height, site plan, size, shape, or building materials of the housing. Persons aggrieved by the ZBA's decision to grant a permit may appeal it to a court. If the ZBA denies the permit or grants it with conditions or requirements that make the housing uneconomic to build or to operate, the applicant may appeal to the state Housing Appeals Committee (HAC).

After a hearing, if the HAC rules that the ZBA's denial of a comprehensive permit was unreasonable and not consistent with local needs, the HAC orders the ZBA to issue the permit. If the HAC rules that the ZBA's decision issuing a comprehensive permit with conditions or requirements made the housing uneconomic to build or operate and was not consistent with local needs, the HAC orders the ZBA to modify or remove any such condition or requirement so as to make the proposal no longer uneconomic. The HAC cannot order the ZBA to issue any permit that would allow the housing to fall below minimum safety standards or site plan requirements. If the HAC rules that the ZBA's action was consistent with local needs, the HAC must uphold it even if it made the housing uneconomic. The HAC's decision is subject to review in the courts.

A condition or requirement makes housing "uneconomic" if it would prevent a public agency or non-profit organization from building or operating the housing except at a financial loss, or it would prevent a limited dividend organization from building or operating the housing without a reasonable return on its investment.

A ZBA's decision is "consistent with local needs" if it applies requirements that are reasonable in view of the regional need for low- and moderate-income housing and the number of low-income persons in the city or town, as well as the need to protect health and safety, promote better site and building design, and preserve open space, if those requirements are applied as equally as possible to both subsidized and unsubsidized housing. Requirements are considered "consistent with local needs" if more than 10% of the city or town's housing units are low- or moderate-income units or if such units are on sites making up at least 1.5% of the total private land zoned for residential, commercial, or industrial use in the city or town. Requirements are also considered "consistent with local needs" if the application would result, in any one calendar year, in beginning construction of

low- or moderate-income housing on sites making up more than 0.3% of the total private land zoned for residential, commercial, or industrial use in the city or town, or on ten acres, whichever is larger.

The proposed law states that if any of its parts were declared invalid, the other parts would stay in effect.

A YES VOTE would repeal the state law allowing the issuance of a single comprehensive permit to build housing that includes low- or moderate-income units.

A NO VOTE would make no change in the state law allowing issuance of such a comprehensive permit.

QUESTION 3: LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives before May 4, 2010?

SUMMARY

This proposed law would reduce the state sales and use tax rates (which were 6.25% as of September 2009) to 3% as of January 1, 2011. It would make the same reduction in the rate used to determine the amount to be deposited with the state Commissioner of Revenue by non-resident building contractors as security for the payment of sales and use tax on tangible personal property used in carrying out their contracts.

The proposed law provides that if the 3% rates would not produce enough revenues to satisfy any lawful pledge of sales and use tax revenues in connection with any bond, note, or other contractual obligation, then the rates would instead be reduced to the lowest level allowed by law.

The proposed law would not affect the collection of moneys due the Commonwealth for sales, storage, use or other consumption of tangible personal property or services occurring before January 1, 2011.

The proposed law states that if any of its parts were declared invalid, the other parts would stay in effect.

A YES VOTE would reduce the state sales and use tax rates to 3%.

A NO VOTE would make no change in the state sales and use tax rates.

s/Alderman Denaro

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

Presented to the Mayor: October 7, 2010 s/Scott D. Galvin

ORDERED That due to the State Election the Regular Meeting scheduled for November 2, 2010 is canceled.

s/Alderman Denaro

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

ORDERED That the Committee on Ordinances re-evaluate Title 12 of the 1989 Woburn Municipal Code, as amended with respect to requiring that unless work conducted by utilities on underground service is repair only then a permit must issue from the City Council, and further that any work in

excess of forty (40) linear feet shall not be considered repair but work requiring City Council approval.

s/Alderman Gately

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

Presented to the Mayor: October 7, 2010

s/Scott D. Galvin

Motion made and 2nd to take the next four matters collectively, 9 in favor, 0 opposed.

RESOLVED That in the interests of public safety, the Traffic Commission take the steps necessary to establish a four-way stop sign restriction at the intersection of Garfield Avenue and Jefferson Avenue.

s/Alderman Gately

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

Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

RESOLVED Whereas all work has been completed in the roadway of Prospect Street and Eastern Avenue, that His Honor the Mayor advise the status of when both public ways will be repaved.

s/Alderman Gately

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

Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

RESOLVED That His Honor the Mayor instruct the Superintendent of Public Works to repave Fairmount Street side to side from Montvale Avenue to High Street.

s/Alderman Gately

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

Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

RESOLVED Whereas all work on Carter Street has been completed, including curbing and sidewalk, cement-lined water main completed, drainage improvements completed and sewer problems have been addressed and resolved, and the street is ready for a final course of hot top, that His Honor the Mayor instruct the Superintendent of Public Works to repave Carter Street from Garfield Avenue to Bryant Street.

s/Alderman Gately

Motion made and 2nd that the RESOLVE be ADOPTED, all in favor, 9-0.
Presented to the Mayor October 7, 2010 and ten days having elapsed without same being approved, said Order became effective without his signature on October 19, 2010.

Motion made and 2nd to ADJOURN, all in favor, 9-0. Meeting adjourned at 10:10 p.m.

A TRUE RECORD ATTEST:

Joyce M. Gray
Assistant City Clerk and
Clerk of the City Council, Pro Tem