

TOWN OF WEYMOUTH

PLANNING BOARD

MINUTES

There was a Planning Board meeting held on Monday, February 24, 1997 at 7:30 P.M. at the Town Hall.

Members present: Paul M. Dillon, Chairman
Paul F. Lynch, Sr, Vice-Chairman
Paul Hurley, Clerk
Susan Abbott
Robert S. Lang
Mary S. McElroy
Mary Sue Ryan

Staff present: James Clarke, Director of Planning & Community Development
Roderick M. Fuqua, Principal Planner

The meeting was called to order at 7:30 P.M. by Chairman Dillon.

1. Form A Plans

a. Victoria Avenue - Sheet 55, Block 604, Lots 15, 16, 17, 18

The Board reviewed the Form A Plan for Victoria Avenue which is located in the Pine Grove area, and is for one lot that is being created out of tax title property.

Upon motion made by Mr. Lang and seconded by Mr. Hurley, it was:

UNANIMOUSLY VOTED: to approve the Form A Plan for Victoria Avenue - Sheet 55, Block 604, Lots 15, 16, 17, 18.

b. Pond Street - Sheet 62, Block 642, Lot 3

The Board reviewed the Form A Plan for Pond Street which is currently one lot and is being subdivided into five lots.

There was a concern raised by Mrs. Ryan over the condition of the property, and Mrs. Ryan requested that the Form A Plan be postponed.

Mr. Martin Murphy stated that he has purchased the property and is aware of its history. He has spent thousands of dollars to clean up the site. He presented a copy of the 21E Report to the Board.

Upon motion made by Mrs. Ryan and seconded by Mr. Lynch, it was:

UNANIMOUSLY VOTED: to table this Form A Plan until the Planning Board meeting on February 26, 1997 at 7 P.M.

c. Summer Street - Sheet 32, Block 358, Lot 6

The Board reviewed the Form A Plan for Summer Street which is currently one lot and is being subdivided into five lots.

Upon motion made by Mr. Lang and seconded by Mrs. McElroy, it was:

UNANIMOUSLY VOTED: to approve the Form A Plan for Summer Street - Sheet 32, Block 358, Lot 6.

d. Park Avenue West

Mr. Fuqua stated that this plan was before the Board previously and has been amended because one parcel has been deeded to the Conservation Commission. Lot 3D would go to Conservation. The plan is for three buildable lots.

Mr. Tom Tanner, applicant, stated that Conservation indicated that they would like to connect their two conservation parcels so the owner has agreed to deed this lot to Conservation. The Conservation Commission accepted this parcel at their last meeting.

Upon motion made by Mr. Lang and seconded by Mrs. McElroy, it was:

UNANIMOUSLY VOTED: to approve the Form A Plan for Park Avenue West.

e. Wright Street

The Board reviewed the Form A Plan for Wright Street which is a land transfer between two neighbors.

Upon motion made by Mr. Lynch and seconded by Mr. Lang, it was:

UNANIMOUSLY VOTED: to approve the Form A Plan for Wright Street.

2. Public Hearing - 7:45 P.M. (cont.)

Petr: Weymouth Green Realty Trust

Locus: 582-590 North Street

Sheet 13, Block 184, Lots 11, 24, 58, 59

Zoning: B-2

Request for a special permit for drive through for proposed "Honey Dew Donuts"

Upon motion made by Mrs. McElroy and seconded by Mr. Lang, it was:

UNANIMOUSLY VOTED: to continue the public hearing at 7:55 P.M.

Present on behalf of the special permit application were: Anthony Gallo, applicant; Chip Nylen, attorney; Eugene Mattie, project engineer; and Frank Ching, traffic consultant.

Mr. Nylen stated that he is representing the applicant, Weymouth Green Realty Trust. At the last hearing there were some remaining issues to be reviewed. He has provided the Board with a letter this evening which he will briefly go through, and then Dr. Frank Ching is here to talk about traffic issues.

Mr. Nylen stated that in terms of the letter the Board has the answer to the question regarding tax assessment would be in the range of \$250,000. The second question was whether the abutter owning the gas station had been notified. They checked the records and determined that they had given notice of the meeting to the Board and the Board had sent out notices so they believe they met that requirement. The Chairman specifically asked about the lights. They have attached the specifications that show the lighting on the property. The Chairman and Mr. Lynch both asked about the MBTA extension and whether it was taken into account. Dr. Ching said that while he did not factor specific numbers, he is aware of what they are doing with the project. Mr. Nylen stated that he spoke directly with Andrew Brennan who is a senior official at the MBTA. Mr. Brennan indicated that: (A) they were not channeling anyone down North Street, and (B) some mitigation has been proposed on Green Street relative to some grading and would not impact North Street. Mr. Nylen stated that with respect to engineering, while they haven't seen it, they understand there will be a letter this evening outlining issues relative to the granite curbing and matters the Engineering Department has concerning the special permit request. One item that is not included in the letter is drainage. He indicated to the Board at the last meeting that they were going to take care of drainage on site. Their hearing before the Conservation Commission was continued. They are proposing a storm water program that will take care of the storm water on site, and consistent with DEP's policy that regulates both peak and volume. They would expect that would be a condition of the Conservation Commission. They were supposed to be in front of the Conservation Commission this week, but they are asking that it be continued so that they can further define their plan.

Dr. Ching stated that at the last meeting on January 27, 1997 there was a

presentation by Paul Hajec from Hajec Associates concerning some issues. At that time, he also asked, and he subsequently asked for a copy of the calculations particularly those relating to Mr. Hajec's contention that this intersection operates at a LOS F. He would like to note for the record that he did finally receive those documents. They were faxed to his office on 5:15 P.M. on February 14, 1997. The information was also supposed to be priority mailed to him, but the envelope was postmarked February 18th and he didn't receive the actual documents until February 20th. Dr. Ching stated that there was no other data in the submission by Mr. Hajec other than the actual calculations. He would like to talk about the calculations and what they actually say, and what they actually look at in terms of the capacity of this intersection, particularly as analyzed by Mr. Hajec.

Dr. Ching stated that as the Board knows, one of the criticisms Mr. Hajec mentioned of the previous work was that the calculation methodology was one that was in use when it was submitted, but that there is new methodology that has come out since then, and that is what Mr. Hajec based his conclusions on. Dr. Ching stated that he has had the opportunity to review Mr. Hajec's calculations, and he would like to point out a couple of things. First of all Mr. Hajec did in fact use the computer calculations that are the new methodology. Mr. Hajec did in fact use the same type of length as the original analysis - 114 seconds on the full cycle length. Mr. Hajec did in fact use the same numbers as they used in terms of the actual trips coming in and out for the build condition for this intersection. Dr. Ching stated that what the calculations show is in fact out of all the four approaches to this intersection only one of those approaches under those conditions is a LOS F. The other three approaches are LOS B on the eastbound Church Street approach, LOS C on the northbound North Street approach, LOS C on the North Street southbound approach. What that says is that the problem is actually on the Green Street approach and not necessarily on the North Street approach. What the calculations tell you is probably only half the story. The other half of the story is that if you have a problem on an approach, and you have relatively good conditions on the other three approaches, that says the timing sequence is a little off. In their traffic engineering business they have something called optimization where you try to balance off the actual traffic flows according to the numbers and try to portion the green time throughout the intersection so that you can have a balanced intersection rather than having one approach totally fail, and the other three relatively good. Dr. Ching stated that he did discuss this possibility with Barry Porter from BSC. Mr. Porter is not present this evening, but there is a representative from BSC present. Dr. Ching stated that the obvious solution is the optimization issue. BSC did in fact deduct under the new methodology an analysis using a shortened cycle length from the 114 seconds down to an 80 second cycle length, portioning the green time to different approaches and also to try to cycle through the entire four approaches a little quicker during the peak hour. What those calculations will show is the LOS of service under those conditions and after the build conditions that the intersection will go to a LOS

C & D under all of the approaches. There is no LOS F in the intersection. What that suggests is if this signal is able to be retimed, you can in fact achieve a high level of service, particularly on the Neck Street approach in the morning, which is not the approach that is affected by their traffic, nor is it affecting the queue that builds up to this intersection back in front of the site. It is the Green Street approach that is experiencing failure. Dr. Ching stated that he then tried to determine what kind of controller was actually used. He stated that he spent this afternoon with the Director of Planning who got the key from Sgt. Newell and opened up the box. What they found was a semi actuated signal. He explained how the semi actuated signals work. The controller is a newer model and can be changed by moving some pins inside the system to change the timing.

Dr. Ching stated that he thinks it's important to understand that under existing conditions only one approach goes to LOS F. Under future conditions, if the Town desires, they can work with the traffic department to come up with an optimal timing that has been suggested by BSC that could be workable, and it could get down to a C & D which is acceptable for a peak hour condition. Dr. Ching stated that as Mr. Nylen mentioned Andrew Brennan from the MBTA was contacted. It is Mr. Brennan's contention that the mitigation measures they are proposing will tend to take the traffic away from this particular intersection.

Mr. Dillon asked the BSC representative if he was present at the meeting this afternoon to look at the signal box. Mr. Charles Kalauskas from BSC replied that he was contacted but he couldn't make it.

Mr. Dillon asked Mr. Hajec if he was present at the meeting this afternoon. Mr. Hajec replied that he was not contacted about the meeting.

Mr. Lang asked about the timing of the cycle with regards to the queuing. Dr. Ching replied that the queuing data looks at what the backup will be. He believes that the approach on North Street was analyzed as one lane, and in fact the numbers as submitted by Mr. Hajec looked at a queue length with the 114 second cycle. The underlying basis of the traffic analysis is that a shortened cycle will drop the queue length dramatically. The calculations Mr. Hajec submitted on the North Street approach show approximately 18 vehicles on a queue, but it is clearly a one lane approach when it is wide enough for two lanes. The cycle length if optimized down to 80 seconds will also dramatically reduce the queue length.

Mr. Lang asked about the queue on site - will it back out onto the road. Dr. Ching replied that in his original calculations, he did talk about looking at the service time and doing queuing analysis in terms of service time. In looking at the length of the queue on the plan, there is a schematic of five cars shown queuing up behind the pickup window. There are an additional approximately five cars beyond that before you actually get to the mouth of the entranceway.

You have an 8 to 10 queue length that far exceeds most of these types of drive through in terms of actual capacity. The Board may recall that people from Honey Dew talked about service times of approximately 20 to 30 seconds, but in fact there was an order that took more than that time there is ample space beyond the pay window where a person could wait and someone would bring the order out to them so that they don't have a long queue. They need quick efficient service at the drive through.

Mrs. McElroy stated that she doesn't care what they do with the light at the intersection, it's going to be dangerous until they stop letting Green and North Street go at the same time. Also the gas station at the corner has two exits.

Dr. Ching stated that those types of issues raised by Mrs. McElroy can be addressed. There is additional flexibility to the signal system. With regards to the gas station, it is a condition that exists today. In fact it can only be addressed at another circumstance beyond this hearing.

Mrs. Abbott stated that they still do not have on the plan the mall across the street. Honey Dew's entrance and Christy's entrance, she still feels it causes quite a problem. Dr. Ching replied that the entrances are as close as practical across from each other. One of the conditions of the previous decision was to place signs saying right or left turn only, no cross traffic. There is no such prohibition on people coming from the other side that has been placed or will be placed by this Board. With regards to the entrance, they wanted to move it as far away as practical from the intersection to give as long a queue length as they could before reaching their driveway. Secondly they discussed moving the entrance as close as they could opposite Christy's entrance. They also said they would be willing to schedule their deliveries to the site to off peak hours, when the signs, but there is no enforcement. Dr. Ching replied that he understands that, in fact there is no such restriction on the other side of the road.

Mrs. Ryan stated that she appreciated their comments with regards to putting up but all they can do is to try to comply with the Board's request.

Mrs. Ryan stated that she is still concerned with traffic; it is a bad intersection.

Mrs. Abbott asked if it was correct that Mr. Hajec was not asked to be present to look at the control box. Dr. Ching replied as of this afternoon, that is correct. It was on short notice. It was thought that with Mr. Clarke there to witness the actual opening of the box that would be sufficient. The only issue was whether the box and the light could be changed. They didn't change the light to see how the queue was affected. They only opened the box to determine that it could be altered. There was no intention of precluding anybody, and there were no findings other than you can change the face of the signal for the light.

Mr. Lynch asked what they are talking about for times for deliveries on off peak

switched over to Green Street. In that case the LOS during the morning peak hour turned out to be LOS C so there was improvement. In fact the Green Street approach then operates at LOS B. As Dr. Ching said by switching the phasing/timing, you can optimize. They were also unaware of the ability to make these changes with the controller. That would have to be discussed with whoever was in control of the signal to make sure those changes could be made. It is up to the Town to make the determination whether they want to implement those changes.

Mrs. Ryan stated that you can't do any recalibration without negative impacts on other intersections.

Mr. Kalauskas asked Mrs. Ryan what other intersections. Mrs. Ryan asked how it would affect North Street. Mr. Kalauskas replied that North Street would remain the same, it's just the two side street approaches.

Mr. Dillon asked Mr. Hajec if he had any comments.

Mr. Hajec stated that he wanted to make sure that everyone understood that he did send Dr. Ching and BSC what he understood to be asked for at the last meeting which was the morning peak hour build condition. He did send the information in a fax and by mail. He apologized that the mail was not sent priority mail. As far as the proposed changes to the signals on North Street at the intersection, he would like to know what would happen to the queues on North Street during the morning peak hour. If he's understanding things correctly it sounds like the maximum cycle is being reduced to 80 second. He is wondering what the split will be, if it will still be maintained as three phases. He asked if the 80 second cycle would have any effect during the P.M. peak hour.

Dr. Ching stated that he did not do the calculations, but from his experience, the issue of redistribution and the operation of the North Street approach significantly reduce the potential for queues along the northbound approach. Similarly in the P.M. peak the demands on the approaches will change, but the timing is adjustable through the demand of the cars going over the routes. The effect of the P.M. peak hour is already taken care of by the semi-actuated nature of the signal.

Mr. Kalauskas stated that they didn't do a queuing analysis; all they can say is the delays were reduced so you can infer that the queues would also be reduced if the delays for each approach were reduced, but they don't have an exact number.

Mr. Lang stated that his question is what is the problem with the mall. He asked Mr. Hajec if they were afraid there was going to be a queue either on North Street that would interfere with vehicles coming/going to Christy's. Mr. Hajec replied in the affirmative. Basically with the calculations he presented BSC and the Board with there would be a LOS problem on Green Street during

the morning peak hour. The queuing analysis which he used did indicate there was the potential for problems with cars backing up along the site at least for the duration of the morning peak hour. Mr. Lang asked to what extent there would be a back up. Mr. Hajec reviewed the figures and his projections for a back up. Mr. Lang asked if it means that Christy's customers couldn't get out of the site. Mr. Hajec replied in the affirmative. Mr. Lang asked how long Christy's customers would have to wait to get out of the site. Mr. Hajec replied that northbound there would be a 17 second delay and southbound there would be an 18 second delay per vehicle.

Mr. Dillon asked for comments from the staff.

Mr. Fuqua stated that this afternoon he received comments from Andrew Fontaine, Town Engineer, regarding his comments on the review of the proposal. He read the comments from the Town Engineer, dated February 24, 1997. Mr. Fuqua stated that as a comment to the Town Engineer's letter, this afternoon he did speak to the Conservation Administrator and under the storm water management guidelines, they will not be able to increase the rate of runoff, so the concerns the Town Engineer did have for retaining the runoff or reduction of runoff will be handled through the Conservation application.

Mr. Dillon asked for comments/questions from the public.

Ms. Barbara Johnson, 41 Massasoit Road, stated that she remembers when they put in the delay light. Traffic used to back up so far on Commercial Street that it became a danger when the Green and North Street lights were equal. It was a dangerous situation. She questioned changing the lights and its affect on Church Street.

Dr. Ching stated that is why the semi actuated signal was put in to address the issues raised by Mrs. Johnson. There is unused capacity under a pre-timed signal. Where in fact a semi actuated signal can differentiate between a car being there and a car not being there, and can portion out the green time to handle the demand.

Mr. Jack Youngclaus, Town Meeting Member, 230 Green Street, stated that public safety is an issue to him. He opposed the drive through previously and again now. It is a dangerous intersection. He explained how there was the potential for grid lock under certain circumstances. He understands the property is zoned for business and people have a right to put a business in but his major concern is safety. There are children walking to school in the morning which is the peak time for a donut shop. He has a serious problem with this proposal. It is not on the property that is the problem - it's off the property that is the problem. He is opposed to the drive through and he essentially opposes the donut shop - he does not feel it is the proper location.

Mr. David Kelly, attorney for Christy's, stated that for the record Mr. Hajec appeared this evening representing Christy's Market. There has been

substantial discussion from experts regarding the traffic with differing views, concluding with our opposition. In closing, he will leave the Board with this thought. The store can be built by right tomorrow. This application process has been going on now for over three years. The testimony last time, said the drive through would add incrementally 10%, the suggestion being not material. He questions the 10% increment for a drive through service. This building could be built by right. The special permit is solely for the drive through. This process has been in excess of three years with still no building on the site.

Upon motion made by Mr. Lynch and seconded by Mrs. McElroy, it was:

UNANIMOUSLY VOTED: to close the public hearing at 8:45 P.M.

Mr. Lang stated that the history of the site was - the Board had a presentation on the request, the staff could find no reason to turn it down, the Board voted it down, it went to court and the court said the Board had better take another look at it. Our second traffic consultant said there was no problem. We had three studies, Mr. Ching and our own expert testified. As far as he's concerned, we should vote in favor of it.

Mrs. Ryan stated that traffic is a matter of interpretation. It has not been demonstrated to her that there will not be a serious hazard or impact to that area. She does not believe that a drive through will not have serious problems. She will make the motion to deny the special permit.

Mrs. Abbott seconded Mrs. Ryan's motion to deny.

Mr. Dillon asked what the reasons are for denial.

Mrs. Ryan stated that she based her denial on the criteria for a special permit - that there will be no nuisance or serious hazard. It has not been demonstrated to her that this will not occur by granting a special permit for a drive through at this location.

Mrs. Abbott stated that it will be detrimental to the character of the neighborhood or town.

Mrs. Ryan stated that she will include Mrs. Abbott's reason in her motion.

Mr. Lang stated that those were the same things that were discussed previously. When the special permit was returned by the court, the Board voted approval.

A motion was made by Mrs. Ryan and seconded by Mrs. Abbott to deny the special permit for a drive through service at 582-590 North Street for the following reasons:

(1) it has not been demonstrated that there will not be any nuisance or serious hazard by granting a special permit for a drive through at this location and (2)

it will be detrimental to the character of the neighborhood or town.

Mr. Dillon called for a roll call vote.

Mary Sue Ryan - yes

Susan Abbott - yes

Robert S. Lang - no

Mary S. McElroy - yes Because there will be a hazard to children, pedestrians and vehicles.

Paul F. Lynch, Sr. - yes

Paul Hurley - no

Paul M. Dillon - no

The vote was 4 to 3 and the special permit for a drive through service at 582-590 North Street is denied.

3. Public Hearing - 9:00 P.M. (cont.)

Petr: Searles Builders

Locus: Neck Street

Sheet 5, Block 13, Lot 24

Zoning: R-1 (Flood Hazard Zone A4)

Request for floodplain special permit for day care center

Upon motion made by Mr. Lynch and seconded by Mrs. McElroy, it was:

UNANIMOUSLY VOTED: to continue the public hearing at 9:00 P.M.

Present on behalf of the special permit application were Attorney Michael Morisi, Attorney Paul Bijkersma from Morisi & Associates; Sonny Searles, applicant; Walter Watson, engineer from Genesis Engineering; and Rob and Tammy Campbell, future owners of the property.

Mr. Morisi stated that this is the fourth public hearing on this matter; only the second hearing he has attended. He was not present for hearings one and two. He would like to back up for a moment and present a background overview of what he thinks is before this Board. On October 31st the application for special permit was submitted by Walter Watson from Genesis Engineering for a special permit to build a child care facility on the subject property which lies in the Weymouth floodplain, therefore they are seeking a special permit under Weymouth Zoning Bylaw 120-38.4. What is proposed is a cape style house consistent with the residential structures in the neighborhood, consisting of two floors with approximately 2,600 square feet for a maximum capacity of fifty-three children with eight staff people when the school is at full enrollment. That use is subject to licensing by the Office for Children, a State agency. Consistent with the precedence from this Planning Board on prior applications for special permits in the exact same floodplain, the proposed improvements have incorporated the following

features. 1. There is no habitable or storage space within the building that is below the floodplain elevation. That is entirely consistent with the floodplain bylaw and with the prior precedent from this Board with at least four recent cases considering and granting special permits in the Weymouth floodplain. 2. The top of the foundation for the structure will be at least one foot above the floodplain elevation. Again that is highly consistent with the floodplain bylaw and the prior precedent of this Board. 3. The total fill proposed for the site is approximately 268 cubic yards. Again he would submit that is within both the floodplain bylaw and within prior precedent of this Board. There were four prior cases where this Board considered and approved special permits in the floodplain. In one case the total proposed fill was quoted to this Board to be 200 to 300 cubic yards. In the second case no fill was proposed. In the third case 225 cubic yards of fill was proposed. In the fourth case 740 cubic yards of fill was proposed. Mr. Morisi read from the record of the four cases, specifically who the applicant was, location, date submitted, date approved, and how much fill was proposed. Mr. Morisi stated that those are the only four they could find. They searched the Weymouth public records to try to get an idea of what the precedence was from this Board on prior applications for special permits regardless of the proposed use and they found those four cases. Mr. Morisi stated that he will come back to that later, but he will respectfully submit that in this particular case, because they are proposing a child care facility that the interpretation of prior enforcement by this Board of the floodplain regulation is relevant to what is a reasonable interpretation and enforcement of the floodplain regulation as to this proposed use.

Mr. Morisi stated that the proposed improvements include grading and improvements that will not alter the storm water flow across the property. He does not have a copy, but he believes the Board has the letter from engineer Fontaine confirming the amount of increased discharge to the system is negligible. The Board has materials that have been submitted by engineer Watson which confirms the direction of storm water flow will not be altered by proposed improvements or by the proposed grading changes; that the storm water will flow in the same direction and it will absorb into the soil and carry into the adjacent river as presently, and that any changes will be negligible.

Mr. Morisi stated that what they are proposing is a child care facility to be operated by Tammy Campbell who is currently certified as a pre-school director and is currently the operator of a home child care center. The operation of this facility, which will be called Bear Cove Children's Center, will be subject to license by the Office for Children, and Tammy Campbell will be the proposed operator of that system. The neighborhood where the proposed improvements are located can be described as a mixed use neighborhood. In the immediate area is a school, church, a bingo hall, condominiums, houses, beach with public access boat ramp, a marina, State park, and businesses.

Mr. Morisi stated that his understanding is that this Board has requested

materials relevant to the application, both at the last hearing and at the hearings before he got involved. It is his understanding that all those materials have been submitted. His understanding is that they did submit those materials timely; they did submit sufficient copies and they did submit everything the Board requested. He would ask if he's not correct in that assumption that some member of the Board bring it to his attention because it is his assumption they have now submitted all material that was requested, notwithstanding that with respect to some of those materials, it will be his contention they are not within the purview of this Planning Board for consideration of this special permit. Nevertheless they have submitted them. They came forward with all the information they think the Board has asked for; perhaps more information than asked for. There have been submitted to this Board over 100 signatures in petition form in support of the application. They have submitted the plan dated January 13, 1997, which at a prior meeting had not submitted timely so was not considered part of the record at meeting number 3. The Board has a letter on his law firm's letterhead dated February 19, 1997, which speaks to some of the issues under MGL Ch. 40A, Sec. 3. The Board now has an evacuation plan with a copy submitted to the Fire Chief. They have not received any comments either favorable or unfavorable. They have submitted lighting details in plan form that were requested at the prior hearing. They have submitted updated drainage calculations that were requested at the prior hearing. As stated earlier, he thinks the bottom line on the drainage calculations is that they are not increasing or changing the direction of any of the storm water runoff. He would respectfully submit that the law that is applicable to this application, at this stage, is that which is summarized in his February 19, 1997 letter to the Board, and it speaks to the property rights which are as fundamental under our constitution as any other rights of a citizen in this town, state or country. The property rights under Ch. 40A, Sec. 3 expressly provides that a child care facility is authorized to exist as of right in any zone, and not be unreasonably prohibited. The law goes on to say that reasonable regulations relating to bulk and height, yard size, lot area, setbacks, open space, building coverage requirement and the like are permissible if properly balanced against the legislatures pre-determination that child care facilities are a protected use in any zone in this town or in this state. The test that is applied by the court which mandates accommodation by this Board is a test that requires this Board to first identify a legitimate municipal concern. They will concede there is a legitimate municipal concern and that is the floodplain. The town has a bylaw; they don't quarrel with it. They stepped forward and submitted the application in October seeking a special permit from this Board. They concede that the floodplain issues are a legitimate municipal concern, and are within the purview of this Board relating to the proposed improvements. The Weymouth Zoning Bylaw, namely the floodplain bylaw must relate to the legitimate municipal concern. Mr. Morisi stated that next is where he wants to focus his attention. The application of that bylaw governing the legitimate municipal concern, namely floodplain regulations, must bear some rational relation to the legitimate municipal concern. There must be a rational relation where this Board interprets and enforces the

floodplain regulation with respect to this child care facility. That is where he believes and submits those precedences are relative because in prior cases this Board has considered applications for special permits under the Weymouth Zoning Floodplain Bylaw and has granted those with enumerated conditions and based upon consideration of various factors summarized in those cases establishes the baseline of what this Board has determined reasonable with respect to those applications. In Ch. 40A, Sec. 3, it states in some cases even to hold a child care facility to the same requirements could violate the statute. In some cases accommodation of a child care facility is mandated beyond that which this Board may have considered with respect to other uses. They are not asking to go beyond what this Board may have done in other cases. They understand the precedent, they will honor it, will abide by it and should be given the same treatment and no more rigorous treatment. Legislation has determined that child care facilities are a protected use. The legislation has determined with respect to zoning, you are mandated to accommodate day care facilities. You cannot go further when considering a child care facility than you would have gone to some other use under the same bylaw. The Board has set the standard with regards to residences in the area. In this case they agree that the floodplain is a legitimate municipal concern but many of the factors that have been discussed before this Board in the prior hearings are outside the purview of what the Board has considered when the Board has considered special permits applications in the floodplain for prior uses.

Mr. Dillon stated that Mr. Morisi has made his point very clear. We know our jurisdiction - it is the floodplain. He would like to make one comment before Mr. Morisi continues. Mr. Morisi has commented on special permits in the floodplain that were granted in 1989, 1990, and 1996. He wants to bring to the applicant's attention that the make-up of this Board has changed since then.

Mr. Morisi stated that the floodplain bylaw talks about four purposes in general. Item A. speaks to occupants. Items B., C. and D. speak to the community. Item A. relates to the children. Items B. through D. he respectfully submits there is no basis to hold the child care facility to any requirements that are more restrictive than those he enumerated. They have incorporated those features which they think are important under the floodplain bylaw that protect the community. The Board has the letter from engineer Fontaine which relates to their drainage calculations. Item A. speaks to the occupants. He would submit that they have provided an evacuation plan. They respectfully contend that the evacuation plan is consistent with that which would be required by the Office for Children, a state agency whose whole purpose is to protect children. Point #2, they searched for another day care facility in the floodplain. They found none in Weymouth. They did find one in Quincy - Virginia's Day Nursery at 368 Quincy Shore Drive that had been in business for forty years at that location without a single floodplain incident. Virginia's Day Nursery did state they had an evacuation plan. As the Board may know the Wessagussett

Elementary School is located in the same floodplain, and it currently serves about 650 students plus staff.- The Wessagussett School has an evacuation plan. Mr. Morisi stated that as he understands the school's evacuation plan, it calls for the students and the staff to walk from the school to the nearby parish hall. He would submit, with all respect, that they meet Part A. of the floodplain zoning bylaw which protects the occupants with an evacuation that is at least as extensive, and respectfully submits more extensive, than that which is currently used by the Wessagussett Elementary School which serves more than ten times the number of students they will be serving at their facility.-

Mr. Morisi stated that he would respectfully submit that based on those submissions which he summarized and his contentions as to what is the appropriate issue for this Board's consideration, that they have met those standards, and they would respectfully request favorable action on the application at the conclusion of tonight's public hearing.

Mr. Dillon asked Mr. Clarke if he had a copy of the evacuation plan for the Wessagussett School. Mr. Clarke replied that he did not have a copy of that evacuation plan.

Mr. Dillon stated that the Wessagussett School is a half mile away from the proposed location of the day care facility. Mr. Dillon stated that we will get a copy of the school's evacuation plan.

Mr. Dillon asked for comments/questions from the Board.

Mrs. Ryan stated that she does not have any questions.- With regard to Mr. Morisi's comments, she does not agree with his assessment with regards to the past approvals in the floodplain. We are talking about children and this is a very unique situation. She does agree with regards to the floodplain bylaw that it is to protect the health, safety and welfare of occupants against the hazards of flooding. Small children will be susceptible to all of the dangers associated with flooding. She does not find their evacuation plan reasonable in the sense that it will apply safely to children who are under the age of three. As a Board member who has to make a determination on an issue that concerns the floodplain, and it is strictly a matter of the health, safety and welfare of the occupants, there is nothing that has been said this evening that has convinced her that this is the correct location. The fact that it is a residential area is not the issue, but it is in the floodplain and that is why they are here for a special permit. She does not believe that the location of a child care facility that is going to provide for the safety and well being for up to fifty-three children can be properly located in this particular floodplain area with the evacuation procedures that have been submitted. As far as the child care facility on Quincy Shore Drive, she can't judge that. She is talking about the location on Neck Street. When you look at evacuation procedures, and so on with everything concerning Neck Street, and the fact that as Board members, we have to promote the health, safety and welfare of the occupants

against the hazards of flooding. Her own feeling that to locate a day care facility for small children in the floodplain does not meet the criteria.

Mrs. Abbott stated that she agrees with Mrs. Ryan. The day care in Quincy is a different floodplain area. The idea that this area is subject to flooding, is a fact. The DPW on January 10 filed an incident report to the Department of Environmental Protection because of overflows in this area. The cause of the incident was extremely high tides that came up onto the street. She would agree that the amount of fill might be negligible when you are talking about the ocean but the velocity of water that would go across the site has an impact on the floodplain. With regards to the evacuation plan, she did read it quite thoroughly. She is a little scared by the words "may", "generally" and things like that. The plan seems to say it is sufficient, but she must go by the criteria which is to promote the health, safety, and welfare of occupants. There will be occupants of fifty-three children plus staff members. In this evacuation plan, it also talks about clerical staff and floating clerical staff. She takes that to mean that they will have people coming more frequently and not floating on site. With regards to the properties that were mentioned as setting a precedent for a decision by the Board, she wants to state that the Board is a different making. The prior special permits in the floodplain didn't have fifty-three occupants involved. She does see a difference in the special permits that were previously approved in the floodplain - none of them had fifty-three occupants.

Mr. Lang asked Mr. Morisi if he considered the nature of the use beyond the purview of this Board. Mr. Morisi replied that the use is a child care facility - that is a given. It is not something we are debating. Mr. Lang stated that the Board approved the house next to this lot. Mr. Morisi replied that is correct. Mr. Lang asked if Mr. Morisi was saying this day care is beyond the purview of the Board. Mr. Morisi replied that he respectfully contends that the Board cannot hold a different standard for Michael Nasuti's child than the

Mr. Lang asked if the same is true for parking. Mr. Morisi replied that there cannot be a different Board uses for some child who is a student at the center. standard for this application. Ch. 40A, Sec. 3 says that if there is a reasonable rational relation between the regulation of parking to the legitimate municipal concern which is the floodplain, then the Board can regulate it, but after that rational relation, you can't. The Board cannot regulate parking the way they would in a site plan or other special permit application.

Mrs. McElroy stated that she does not know how they dare compare the single houses with one or two children that the Board approved to a home that is going to have fifty-three or maybe more plus staff with regards to evacuating them in the floodplain. She thinks they are way off base on that. The program director at the Office for Children sent a letter in response to someone's complaint saying that they had no local authority over the local zoning issues.

Our local zoning and what we consider pertinent to this application, we can govern. Mr. Morisi replied that he disagreed. Ch. 40A, Sec. 3 has taken that out of the Board's hands. Mrs. McElroy stated that it does not take jurisdiction out of our hands, in our hands are the safety of the occupants.

Mrs. McElroy stated that there is no way she can vote for a day care center on Neck Street in the floodplain.

Mr. Lynch stated that he thinks the first criteria of the floodplain bylaw which is to promote the health, safety and welfare of occupants against the hazards of flooding says it all.

Mr. Hurley stated that he had no questions.

Mr. Dillon asked for comments from the staff.

Mr. Fuqua stated that a letter was received late this afternoon from Andrew Fontaine, Town Engineer. Mr. Fontaine's comments were related to the drainage calculations that were submitted to the Planning Board dated February 5, 1997. Mr. Fuqua read the letter dated February 24, 1997 from the Town Engineer.

Mr. Dillon stated that the Board has received several letters which he asked the Clerk to read.

Mr. Hurley read a letter from the Board of Selectmen regarding correspondence they received regarding the day care center.

Mr. Hurley read a letter to the Board of Selectmen from Ruth S. Amos dated February 13, 1997 expressing concerns over the day care and enclosing copies of two petitions from residents located on or near Neck Street.

Mr. Hurley read a letter from Ruth S. Amos dated February 19, 1997 to the Board of Selectmen enclosing a copy of a letter from the North Weymouth Civic Association's Board of Directors opposing the proposed day care center on Neck Street.

Mr. Hurley read a letter to Sandy Amos dated February 14, 1997 from the North Weymouth Civic Association opposing the proposed day care center on Neck Street.

Mr. Hurley read a letter from Senator Robert L. Hedlund dated February 13, 1997 expressing concern over the proposed day care center on Neck Street.

Mr. Hurley read a letter from Nancy Graham dated February 24, 1997 in favor of the proposed day care center on Neck Street.

Mr. Dillon stated that the Board has also received petitions both for and

against the day care.

Mr. Dillon opened the meeting for questions/comments from the public, but asked that people focus on the floodplain.

Mr. Frank Hawkins, 4 Colasanti Road, spoke against the proposed application. He stated that he is a Town Meeting Member and he had received calls from many people against this proposal. Their main issue was the floodplain and the fact that this area is subject to flooding. He felt the Board should deny this special permit application.

Ms. Theresa Marino, 426 Neck Street, spoke against the application stating her main concern was over sewerage with regards to over taxing the system which is already over burdened.

A resident at 395 Neck Street spoke against the proposal and asked that people take a ride through that area after a rain storm.

A resident at 357 Neck Street asked what the house will look like and how it would fit into the neighborhood. He also asked how many children are in the Quincy day care center that is located in the flood zone. Mr. Searles explained that the proposed house was a cape style house with dormers.

A resident of Neck Street expressed concern over the proposal with regards to sewer and stated that the sewer overflows whenever it rains.

Ms. Barbara Johnson, Town Meeting Member, spoke with regards to the floodplain.

Ms. Mary Mundie, 267 Neck Street, spoke regarding concerns over safety with regards to traffic on Neck Street. She asked if there would be no parking signs placed on Neck Street to prevent people from parking on Neck Street, dropping their children off at the day care center and then getting on a T bus and leaving their car parked on Neck Street.

A resident of 33 Parnell Street stated that if the day care center would commit to their contribution of the runoff to the replacement of sewerage it would seem like a solution.

Ms. Barbara Landman, 267 Neck Street, stated that with regards to the applicant's claim that there is a need for day care in the area, she called other day care centers in Weymouth and everyone said they had vacancies. She asked how many children they expect in the morning. Mr. Morisi replied that the school is designed for fifty-three children.

Mr. Rob Campbell stated that between the hours of 7 A.M. and 9 A.M. there could be fifty-three children.

Ms. Landman questions how fifty-three people can park in eight spaces. She stated that she feels there is going to be a terrible, terrible problem with regards to parking and safety.

Ms. Karen Graham, 267 Neck Street, stated that with regards to other day care centers, they may have openings, but they don't have openings for children over six.

She has been appalled that the community has put things in the paper and that the Campbells have been threatened.

Ms. Susan Williams, 17 Athens Street, stated that she is a single parent. The day care center is there for working parents. There won't be fifty-three cars converging on the center all at one time - it will be throughout the day. Fifty-three is the maximum capacity of the center but it does not mean there will be fifty-three children there at all times.

Mr. Chris Cazeault, 19 Davids Island Road, stated that his concern is traffic.

Ms. Mary Fallon, 24 Julia Road, stated that her understanding is that the Weymouth Public Schools provide an after school day care program.

Mr. John Mulveyhill, Civil Defense Director, stated that the Wessagussett School is in the floodplain and they do have an evacuation plan that calls for the children to walk to St. Jeromes with a backup plan that calls for the children to be bussed to the Abigail Adams School which is the primary shelter for the Town of Weymouth. There is an evacuation plan in place for every special needs facility in town which includes all of the schools, and day care centers. As for this proposed facility, he has not seen an evacuation plan. As for the flooding issue, there is a major issue on Neck Street during storms at high tide. To add a special needs facility, he believes is wrong, but he has not seen their evacuation plan.

Ms. Sheilah Shea, 267 Neck Street, expressed concern over flooding and stated that on January 10th the area experienced water from a storm. She also expressed concern over increased traffic, low water pressure and sewer problems.

Ms. Karen Graham stated that she would like to respond to the statement with regards to an after school day care program at the public schools, to have your child at school all day is very difficult for the child.

A resident of 274 Neck Street stated that there are four school buses, and 2 city buses that go down Neck Street. Traffic is terrible and she is afraid someone is going to get hurt.

Ms. Tammy Campbell stated that there is one bus at 7 in the morning and one bus at 8 in the morning. The buses are not going down Neck Street one after another.

A resident of Neck Street expressed concern over flooding conditions on Neck Street and stated that she would not want to see a child have to walk through that water.

Mr. Rob Campbell stated that he thinks there is a general misconception. The A4 flood zone states there is no rapid water movement. The water rises slowing with plenty of notice. Puddling on the street does not present a problem for the day care since it is above the floodplain.

Ms. Dorothy O'Sullivan, 267 Neck Street, stated that she has lived here since the late 40's. She has seen how northeasters come up and this area is noted for northeasters.

Upon motion made by Mr. Lang and seconded by Mr. Hurley, it was:

UNANIMOUSLY VOTED: to close the public hearing at 10:10 P.M.

Mr. Morisi stated that he would like to respond to the public testimony. He would like to point out, with all respect to some of the members of the community who spoke, that their testimony, he submits that it relates to sewer and not storm water. There was testimony about the smell, etc. and that is a subject for the DPW. He believes that when the engineer, Mr. Fontaine spoke about negligible amounts he was speaking to exactly what the purview of his charge was which was storm water.

A motion was made by Mr. Lang and seconded by Mr. Hurley to take the special permit application under advisement.

The Chairman called for a roll call vote.

Mary Sue Robert Ryan - no

Susan Abbott - no

S. Lang - yes

Mary S. McElroy - no

Paul F. Lynch, Sr. - no

Paul Hurley - yes

The motion fails on a 2 to 4 vote.

A motion was made by Mrs. Ryan and seconded by Mr. Lynch to deny the special permit application for a day care center in the flood zone based on the following reason. It is a floodplain district and criteria for decisions in the floodplain include health, safety and welfare of the occupants. The area is subject to flooding and a day care center for fifty-three children in the floodplain is hazardous to the well being of those children and not an appropriate location.

The Chairman called for a roll call vote.

Mary Sue Ryan - yes

Susan Abbott - yes

Robert S. Lang - no

Mary S. McElroy - yes - her reason is the safety and welfare of the children

Paul F. Lynch, Sr. - yes

Paul Hurley - abstained

The motion carries on a 4-1-1 vote; the special permit is denied.

4. Review of transfer station landfill permit

Mr. Clarke stated that when there is a request for an earth fill permit, the Planning Board has twenty days to review and comment. This is a proposal to bring in clay material to be used to cover the landfill. He pointed out where the material would be stored and stated that most of the area is above the floodplain. There is about 15' to 24' area they are proposing to fill to stockpile material.

Mr. Lang asked why the Planning Board is involved. Mr. Clarke replied that the Zoning Bylaw says the Planning Board has twenty days to comment on earth fill permits.

Mrs. Ryan asked how long a process this is. Mr. Clarke replied that he does not know. He tried to speak to Joe Mazzotta today, but Mr. Mazzotta was not available. He will let the Board know how long the process will be.

5. Subdivision Update Schedule

Mr. Clarke stated that there are a couple of preliminary plans that have been submitted which will be scheduled for the March 10th meeting.

Mr. Clarke stated that he received a call from a resident regarding naming a street for Gilbert Newton Lewis.

7. Other Business

- a. Radio Towers. Mrs. Abbott asked about radio towers. Mr. Clarke replied that he thinks it is something the Board needs to look at; it will require some research. The Planning Directors have a conference coming up in April where this issue will be discussed.

Mrs. Abbott stated that there is nothing you can do to control towers, but you can cite it properly.

Mrs. Ryan stated that her concern with the FCC ruling is that it makes us really vulnerable unless we have zoning in place.

- b. Greenbush Mitigation. Mr. Lang stated that there is a second mitigation meeting on February 26th. He asked what the MBTA is proposing so far. Mr. Clarke replied that they have been meeting with the MBTA since May or June of last year. The MBTA has just given us their mitigation plan. The Greenbush Mitigation Committee will be meeting on Wednesday to go over the mitigation plan. The committee will be looking at all aspects of the mitigation plan, and when we feel comfortable with it, they will go to the Board of Selectmen with their recommendation.

Mr. Clarke stated that the Greenbush Mitigation Committee has requested \$6,000 from the MBTA to do a study of the parking lot in the Landing.

8. Delegate Reports

- a. Zoning Bylaw Committee. Mrs. Ryan stated that the Zoning Bylaw Committee met to review zoning articles for the Annual Town Meeting.

Mr. Fuqua stated that the Zoning Bylaw Committee voted to recommend no action on the article for 25,000 square foot lots. They did review the parking and rejected any changes for medical offices. The Zoning Bylaw Committee recommended favorable action on the other parking requirements with the only exception being restaurants. There was some support for restaurants, and Mr. Fuqua stated that he will be meeting with Jeff Coates in terms of working it out so that there is a way to calculate for a seating restaurant versus a take out restaurant. There will be one criteria for the number of seats and a criteria for the square footage. The Zoning Bylaw Committee will be meeting again on March 4th and will be discussing the pork chop lot bylaw.

Mrs. Ryan stated that she would like to thank Bob Lang for the information he passed out at the Zoning Bylaw Committee meeting with regards to the 25,000 square foot lot article. She feels the article is worthwhile and the Board should go forward with it. The Zoning Bylaw Committee wanted more information on the article for pork chop lots.

- b. Open Space Plan Committee. Mr. Hurley thanked the Board for their support in allocating CDBG funds for the Open Space Plan. They sent out 250 surveys, mostly to organizations. They only got about 20 responses back; it was very disappointing. Mr. Hurley stated that they held two public hearing and only had three people at each meeting. He noted that they need an Open Space Plan in order to be able to apply for grant money.

Upon motion made by Mrs. McElroy and seconded by Mr. Lang, it was:

UNANIMOUSLY VOTED: to adjourn the meeting at 10:50 P.M.

This is to certify that the foregoing is a true and complete statement of all actions and votes taken at this meeting on February 24, 1997.

Paul M. Dillon

Paul M. Dillon, Chairman

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