

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

May 17, 2005

A meeting of the Planning and Economic Development Committee was held on Tuesday, May 17, 2005 at 6:30 p.m. in the Aldermanic Chamber.

Chairman David Rootovich presided.

Members of the Committee present: Alderman Kathryn D. Vitale (6:45 p.m.)
Alderman Richard LaRose, Vice Chair
Alderman David MacLaughlin
Alderman Rob Shaw

Members Not in Attendance:

Also in Attendance: Alderman-at-Large Brian S. McCarthy
Alderman-at-Large James R. Tollner
Alderman-at-Large David W. Deane
Mike Lowe, Planning Board Liaison
Larry Hersh, Chairman, Cable Television Advisory Board
Roger Houston, Manager/Planning Director
J. Bradford Westgate, Esq., Winer & Bennett
Mr. Bernard Plant

MOTION BY ALDERMAN LAROSE TO GO OUT OF THE REGULAR ORDER OF BUSINESS AND TAKE FROM THE TABLE O-05-80
MOTION CARRIED

O-05-80

Endorser: Alderman-at-Large David W. Deane
Alderman-at-Large James R. Tollner

REGARDING MUNICIPAL CHANNEL PROGRAMMING

MOTION BY ALDERMAN LAROSE TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

-
Alderman MacLaughlin

I have looked at the order that is being proposed by this ordinance, and I don't have any problems with it as it stands proposed or listed here. I further just want to comment that as I have waived the pros and cons of the municipal channel programming in light of certain meetings perhaps I would have liked to have seen – some meetings that I wanted to see and I did see – I really don't feel nor have I had any input from the constituents that it is being politicized in an overt manner. I am hoping that we can dispense with the idea that this is a politicized channel beyond the obvious the discussions and the debates that we have here.

I think that the Cable Advisory Board does a great job in putting the programming together, and I know that they are working with a limited amount of resources and a limited amount of staffing. I feel they are really doing a good job. I am aware of a growing number of Nashuans who are watching the proceedings not just at the full Board, but the many different standing committees as well. I feel that this is an acceptable proposal before us. Thank you.

Chairman Rootovich

Before I acknowledge anybody else every member of the committee and those that are on the committee have two amendments; one that is proposed by Alderman Deane and one that came back from the Cable Television Advisory Committee with another proposed amendment. Aldermen MacLaughlin and LaRose do you have both of those copies?

Alderman LaRose

I believe I only have the latest amended one.

Chairman Rootovich

Which is Alderman Deane's?

Alderman LaRose

Yes.

Chairman Rootovich

Let me make a copy of CTAB's recommendation.

Larry Hersh

We did discuss this at the Cable Television Advisory Board meeting last Friday, and I worked both with the input from the committee as well as with Attorney Clarke to put together the

proposed language that was sent out Friday afternoon for this committee's review. The two changes from the original legislation that were significant I thought in the version that we passed out were the order of the meetings were the direct order of the ratings that were passed out at the prior meeting of this meeting so that it reflected the actual citizens' input. The second significant thing was it set up a very small committee; a committee of three people one from the Aldermanic Office, one from the Administrative Office, and a third person to be chosen by the two of them preferably which we assume to be an impartial third person, to make any changes that are needed on an Ad Hoc basis. For example if the Governor came down to discuss commuter rail and specifically about potentially funding the Nashua Rail Station or something or if there was some big meeting on the water issue or something that the citizens at large and the government would want to prioritize above a Public Works meeting or a Human Affairs Committee or whatever – it gives that committee the ability to override this, but only in special circumstances.

Those are really the two thing that we thought were the significant changes, which is why we recommended that approach versus the original legislation.

Chairman Rootovich

Is there any further discussion?

Mike Lowe

I think maybe we should have in there as far as the Budget Review Committee Aldermen and other Budget Review Committee – you have left out the School Budget Review Committee and we really should be looking at that. Somebody should be looking at it. It is what 65% of our budget for the city?

Alderman Tollner

I have a question as far as the group that was surveyed – I know a survey went out correct?

Larry Hersh

The survey was on the web site for the month of April.

Alderman Tollner

What type of feedback did we get from the community? Would you say it was strong/weak?

Larry Hersh

I would say that I wasn't overwhelmed with the number of responses, but I thought it was indicative of at least we thought it was indicative of the experience – just generally talking to

people and etc. It was not that far off from the one we did five years ago relative to the priorities either or 7 years ago I guess it was.

Alderman Tollner

Really the only major difference as far as the order of priority would be – in Alderman Deane’s proposed amendment, would be he has the Board of Education. Really the only ones would be the Board of Education and Finance would be a little higher than the one you have listed.

Chairman Rootovich

The other amendment would be if you look at the last sentence...

Alderman Tollner

Hold on – no I am talking about just the order of committees right now. I do think it is very important to have the Board of Education at least in my mind the Board of Education in the top 4 or 5 for a number of different reasons; education as well as the role it plays in the overall city budget. Then the only difference as far as the body of the legislation is the last sentence. The last sentence did that come from recommendations from the survey or is that something that the committee itself...

Larry Hersh

That was the strong input of the committee that while there was an order that was recommended and that would be used as the guideline for the prioritization, we felt very very strongly that you don’t want to lock yourself into things when other issues that come up can come up – for example a meeting just last week that you are all familiar with that because of the established priorities by the administration there was a Board of Aldermen meeting that didn’t get shown live. That was based on some prior rules. I think that you would want the ability, and granted that was a Board of Aldermen meeting, but this would give it top priority, but if there was some other meeting that was deemed extremely important by this Board and by the Mayor and others then you would want to give that priority and over an arbitrary list – it is not arbitrary actually – I think it is the best list we could come up with based upon the input that we got. I think you do want the ability to be able to override that for special circumstances.

Alderman Tollner

How often does CTAB meet – is it every ...

Larry Hersh

Once a month. The priorities would not be established by ... the way the legislation that was proposed works would be that there would be a three-person committee that would determine

the priority on a monthly basis. That would be reviewed on a weekly basis. That doesn't say that, but that is an implementation issue of this. The purpose of that would be to basically go through and set the priorities. It would use this list as the primary guideline for those priorities and it would only be extraordinary circumstances that would overrule it. You would have a balanced three-member board. The idea is to have one citizen representative, one Aldermanic representative, and one administrative representative. Hopefully the citizen representative is impartial enough to be able to be the voice of reason between two other organizations.

Alderman LaRose

Is it just the Board of Education meeting that is taped or are all of their sub-committees taped?

Larry Hersh

Today none of the sub-committees are taped. Quite honestly there has been some times recently where the Board of Education in general hasn't been taped again due to the priorities and if there are multiple meetings scheduled in this building there might not be enough resources to cover that as well. We hope to rectify that very soon.

Alderman Shaw

I have a couple of issues. I appreciate the intent and that we are trying to avoid some of the aspects where it has appeared and it very well might be that various things have been done to alter what things are shown, but I guess two of my primary issues are if I read this literally I think what will potentially happen is that as you just basically work through this list as you kind of hit each stage of showing something live, of what you tape, what you play, and what you replay, you actually might essentially show one meeting multiple times. By the time you work through the Board of Aldermen and down you might essentially prevent yourself from showing a replay of even the ZBA or something like that depending on which list you go by. I guess that is a general concern I have.

The other thing is I think that what essentially will happen is relative priority of the various meetings will tend to change depending on the circumstances, depending on the very specific aspects of a given agenda, and I really would like to see that there is enough flexibility that allows for that to be comprehended. Recent times where there have been things like the methadone clinic in front of Planning and/or ZBA or there are times where quite frankly the Budget Review Committee that this Board has can be very critical, but quite frankly there are other times where the business that is in front of that committee at other times of the year is really not especially interesting and I think would rise above many of the other meetings that might be shown.

I guess that is where my struggles are with really any of the versions that are in front of us. I am not convinced of supporting any of them at the moment. Thank you.

Alderman Deane

Although comments have been made about the taping and replaying of meetings, I don't think the administration should have the authority to control the access of Channel 16, and that is what is going on. Correct me if I am wrong Larry, but the three-person group that gets together – when was the last time that they met?

Larry Hersh

We actually meet by e-mail once a month to set the priorities at the beginning of the month. However, changes during the month are never brought back to the committee.

Alderman Deane

How are changes made?

Larry Hersh

By the Administration administratively.

Alderman Deane

There you go. I rest my case. Alderman Shaw I can agree with you on what you said pertaining to the content of meetings and the way the prioritization is done with the agendas – as we get into for instance Budget once we are out of this and then basically it is retirement legislation, transfers, and funds and things of that nature. It wouldn't be sitting up that high in the priority list, but when you look at the gist of when the budget deliberations start and the same with the Finance Committee. I think anything to do with expenditures that affect people within the city I think the citizens should have a good idea of what is going on.

I do agree with you with the Planning and the Zoning Board as well. I think those two boards make decisions that affect the quality of people's lives in different neighborhoods and things of that nature. I think that should be looked at. I just don't think the Administration should take control of what they want to have replayed and taped or whatever or broadcast live. Currently that is what is going on. They meet at the beginning of the month and then .. I would like to see what was figured at the beginning of the month and what actually happened during the month as time went on. That is where I have some problems.

Larry as for your last sentence, I don't have an issue with leaving that in there so that for instance if something does come up where there is something out of the ordinary as you had stated that you wanted to make sure you had the availability to broadcast that whatever it may be. I think we should have an option there as well. What I had proposed and with the amendments – I would ask somebody to amend it and add that last sentence that CTAB had that stated "Except that the Municipal Programming Committee can override this order by a 2/3

vote.”

Chairman Rootovich

Alderman Deane is it your intention just to amend your legislation to add that last verbiage in the paragraph or is it also your intention – you don't want to change what Mr. Hersh has proposed with respect to the order of meetings?

Alderman Deane

I want to leave the order of meetings the way that I had sent them and take Mr. Hersh's last sentence and add it to what I had proposed.

Larry Hersh

I don't have a problem with that I just wanted to make one point of clarification – currently that three person board has a member as an Aldermanic representative and Administrative representative and a citizen representative, which happens to be me, however, it does not have the authority that this legislation would give it.

Chairman Rootovich

Mr. Hersh in your humble opinion who would initiate the conversation on what programs should be shown if using your example something were to happen in the Planning or the Zoning Boards? Who would start that process? Where would that come from? What is your intent where that would start from?

Larry Hersh

That could really come from anywhere. For example if it was in the interest of the Board I would think through the Board representative that would be something that your representative could call that meeting. If it was something that I noticed or the Administration noticed they could call the meeting. I think that it really could come from anywhere. It is up to the committee members, your representative and the others to make sure that they keep up on what is going on and listening to their constituents.

Alderman LaRose

Mr. Hersh if I am hearing you right at any time in the month you could decide to change the order is that correct? In other words if you go at the beginning of the month then two weeks into the month something happens – some controversial meeting happens – could you get together and that becomes a priority?

Larry Hersh

Yes – under this legislation yes.

Alderman LaRose

Okay.

Chairman Rootovich

Does anybody wish to make that amendment?

MOTION BY ALDERMAN LAROSE TO AMEND O-05-80 IN ITS ENTIRETY BY REPLACING IT WITH THE COPY PLACED ON OUR DESKS THIS EVENING

MOTION BY ALDERMAN LAROSE TO FURTHER AMEND O-05-80 BY ADDING “EXCEPT THAT THE MUNICIPAL PROGRAMMING COMMITTEE CAN OVERRIDE THIS ORDER BY A 2/3 VOTE” AFTER THE WORDS “SHALL BE AS LISTED BELOW”

MOTION CARRIED

MOTION BY ALDERMAN LAROSE TO RECOMMEND FINAL PASSAGE AS AMENDED

MOTION CARRIED

MOTION BY ALDERMAN LAROSE TO RETURN TO THE REGULAR ORDER OF BUSINESS

MOTION CARRIED

COMMUNICATIONS

From: Roger L. Houston, Planning Director

Re: Petition for Waiver of School Impact Fees – 160 Daniel Webster Highway

MOTION BY ALDERMAN LAROSE TO ACCEPT AND PLACE ON FILE

MOTION CARRIED

MOTION BY ALDERMAN LAROSE TO TAKE FROM THE TABLE THE COMMUNICATION FROM ATTORNEY WESTGATE REGARDING THE PETITION FOR WAIVER OF PUBLIC SCHOOL FACILITIES IMPACT FEES

MOTION CARRIED

From: J. Bradford Westgate, Esquire

Re: Petition for Waiver of Public School Facilities Impact Fees
Webster Lawn, LLC – 160 Daniel Webster Highway

J. Bradford Westgate, Esq.

Thank you Mr. Chairman. Good evening members of the Board. My name is Brad Westgate. I am a lawyer with Winer & Bennett here in Nashua representing Webster Lawn, LLC, which is the Petitioner and Applicant for this Waiver of School Impact Fee for its development known as Colliston Yard Condominium located at 160 Daniel Webster Highway. With me is Bernie Plant our in the audience. He and Kevin Slattery are the two principals of Webster Lawn, LLC, the developer.

I thank you Mr. Chairman for giving us the opportunity to come and speak with you this evening. I will try to be concise, direct, and straight to the point relative to this Petition. Just a little bit of background, as the committee I am sure is aware Section 16594 of the Zoning Ordinance allows for a developer of low income, moderate income, or elderly housing to seek waiver of the School Impact Fee, which would otherwise be imposed under the Ordinance. It is under that section of the Zoning Ordinance that we sought that Petition.

The standard set forth in that section is that any applicant may petition the Board of Aldermen for the waiver of the fee imposed by this Article if the proposed new development consists of low or moderate income housing or elderly housing, which can reasonably be expected not to require additional educational facilities. It is reasonably be expected not to require educational facilities – that is a standard. It also goes on to state that there can be a proration of that waiver based upon the component of a project that may generate a requirement for educational facilities versus that that doesn't.

This particular project consists of 77 units 1 of which will be in the old LaBombarde House, but 76 of the units will be in the new building being constructed, which is of course well along. It is a three story garden style type complex. The square footage of the units is in the 1,200 to 1,800 range. I think the average is around 1,400 sq. ft. Importantly though Mr. Chairman this project is set up under the State and Federal laws for 55 and older housing. There is a set of laws and regulations that essentially say that if you provide certain services that are commensurate with 55 and old living if you will then you may establish age restrictions on the community such that you can state that at least 80 percent of the units have to be occupied by at least one person 55 and older. That is what has been done in this particular case.

The condominium documentation, which is essentially finalized and will be reported fairly shortly – I think within a week or so once the final plans are ready for recording, state that at least 80% of the units are to have at least one occupant 55 or older. That does permit up to 20% to be occupied without someone 55 or older, but there are a couple additional factors that should be considered. First of all the developer is marketing the property to the 55 and older market base or demographic. Its intention is not to market it to under 55 residents even that particular 20% although the State law allows this 80/20 split. Also importantly the condominium documentation in its final form will include a provision to the affect that people who are 18 or younger cannot reside at the property for any period of time over two months so you can't be a guest or living

with a relative and be under 18 and stay there for more than two months. Frankly the Petition that we filed that the Planning Board also has commented on we didn't note that aspect of the Declaration. We were remiss in that. I apologize both to this Board and the Planning Board for not having included that specific provision and language that indicates the prohibition of under 18 for more than 2 months in any particular unit.

Just a little bit more background and information Mr. Chairman. I am of course happy to answer any questions. I realize that the Planning Department, the Director of Planning I believe issued a favorable memorandum for the passage of this particular Petition for Waiver. I know that the Planning Board did not so recommend favorably at its recent meeting, and I think part of that rationale again is our fault for not providing the 18 and under prohibition that I just mentioned. I would like to just pass out for the members, and I am not expecting people to take significant time to read this now and give each member a copy Mr. Chairman and one for the record – what I handed out Mr. Chairman is a letter with an attached Memorandum from Mark Bougere. Mark is a planning consultant who as some of the members of the Board may know actually worked in the Community Development Division of this City for some time. He has been involved in a number of these 55+ communities as have I in several other surrounding towns. My experience and Mark's bears it out is that even though this so called 80/20 rule applies for 55+ communities – that is one resident must be 55 or older in at least 80% of the units, his experience has been in gathering up data on similar type facilities that there are virtually no school aged children in these particular communities.

His letter that you will see from Mark indicates that in surveys that he has taken over some period of time not literally just in the last week, but from some of this data he has gathered up over a period of a year or two I believe, his memorandum will show that his survey out of 484 units in these number of communities he checked out I believe a total of 5 school age children are present. The marketing experience as well as the way in which these communities are populated I think indicates that school aged children are simply not the result of this type of a project. Again that has been my own experience as well in representing developers along these lines.

I am happy to answer any questions Mr. Chairman, and I would respectfully request that the committee provide a favorable recommendation to the full Board.

Chairman Rootovich

Mr. Houston please join us for a moment. We do have a Budget hearing so I would ask for some brief comments on what the recommendation was from the administration. The committee did not get copies of the minutes of the Planning Board. What was the primary reason that the Planning Board turned it down and further if this committee were to vote in the affirmative I would assume since it is not a resolution or an ordinance it doesn't require a 2/3 vote of the Board of Aldermen but a simple majority.

Roger Houston

I do have a copy of the draft minutes that we just completed. As of Monday morning they weren't ready. If you want those minutes I can give them to the committee. Generally speaking the board had a concern with those minutes. I know Alderman LaRose was at that meeting and Mr. Lowe a Planning Board member was at that meeting as well. They had some concerns and they probably expressed those concerns that there may be additional conceivably school age children generated by this development. They were not aware of the condominium's documents that were filed. Generally speaking currently the City Attorney's Office reviews those documents now, and I don't think that has been an issue. As Mr. Westgate pointed out these types of facilities and past actions of the Board of Aldermen have waived these for elderly housing projects. The Planning Board felt differently in the different discussions they had relative to that. I can hand that out if you like.

Mike Lowe

It is the 20% and the fact that it is in the document as the minutes state. If it is in the condominium document particularly the rules and regulations it almost is unenforceable. It has to be in the deeds. Even then some courts have overturned it. This is Mr. Farkas speaking who is also an attorney. We have run into this previously and it keeps getting scuffed off, but the courts keep saying that if a grandparent has a child and it is the only place for the child to go is in those condominiums that child can reside there and there is nothing that the condominium association can do about it. The Federal and State Courts and that is the problem. You have the 20% rule and that means they can definitely put 20% in and they can change the rules whenever they want to. We should at least have a 20% rule, which says that they should pay at least the 20%. It can go further and that is the problem that we are having with it. The other problem is we are having a fairness – if I own a piece of land, which I do and I want to put a house up on it and I am over 65 years old and I want to live in it I don't get a deduction of the school so why should anybody else? That is in the minutes too. It wasn't actually brought up by me it was brought up by Mr. Slivinski. Those are the two major reasons.

Chairman Rootovich

Are there any further questions of Mr. Westgate? Are there any further comments?

J. Bradley Westgate, Esq.

May I address Mr. Lowe's comments briefly?

Chairman Rootovich

Please.

J. Bradford Westgate, Esq.

Two thoughts – one is Mr. Lowe’s final point or that which he more specifically relating from the Planning Board meeting I should say, the standard is what the Ordinance establishes that is Section 16-594 of the Zoning Ordinance which basically again says that will the project be likely to generate the additional need of public school facilities. It is not a treatment of property owners equally or not equally it is how does this project fit within that section of the Ordinance. I think that the documentation that will govern it as well as the experience born out in similar projects indicates clearly that it won’t generate the need for additional public school facilities.

On the first couple of points, I am personally not aware of the court cases that have upheld the notion that the grandchild must be able to reside there. I just literally haven’t seen them. I wish they were cited because I would like to know them obviously. I have had sort of off line discussions with people about that including at one time somebody in HUD in Boston in their regional office. The enforceability of this is clear. If it is a covenant in the Declaration of Condominium as to the notion of who can live there and who can’t, these will be the age requirements, that is a recorded instrument and that is part of everybody’s Deed because everyone’s condominium unit is derivative from that recorded instrument. Everyone’s Deed is governed by that recorded instrument. The Association as well as the various unit owners have that enforcement right against each other and so does the sort of oversight if you will at the State level if somebody complains to the Human Rights Commission that the developer or the Association isn’t following the rules that govern who can live there and who can’t there is some recourse through that agency as well. Thank you.

Alderman MacLaughlin

More of a statement. I could support consideration of the waiver if there was a guarantee that there would be no meaning zero at any point school aged children even in the 20% where the occupants may be under 55. If there is one or more at any time and it is not known whether or not at this time there would be or not, then I would be inclined not to support the Waiver. Thank you.

Alderman Vitale

It says that it is within your Deeds that they can’t be there for more than 2 months is that correct?

J. Bradford Westgate, Esq.

In the condominium document.

Alderman Vitale

Within our school system I think I have heard in the past that there are children that come and maybe only stay within our school system for 2 months and then they leave – they come in and might go to school for a couple of months, and then they are gone out of the school system. Whether it would be the same people that would be buying in 55 and older I don’t know, but I

have heard that does happen. I don't know if that has any bearing on whether you could technically have the child that is there for only 2 months and gets put into the school system.

J. Bradford Westgate, Esq.

I guess the issue though really is does this transient sort of potential use by a 2 month resident school aged child or the possibility that a few school aged children could live there again somehow getting over the hurdle of this prohibition for under 18 beyond 2 months if somehow that occurs does even that minimal use rise to the level of generating the need for additional educational facilities because that is the standard. It is not any other standard it is does this project create a need for new educational facilities because of the demographic mix that will be there. I guess we simply think it doesn't both given the history of similar facilities, the Board's prior action in granting waivers on 55+ communities, and the nature of these covenants.

Chairman Rootovich

Are there any further questions or comments?

Mike Lowe

I have a question through the Chair for Mr. Houston. Mr. Houston how many units have we approved in the last 3 years? I know we approved the Hunt, which is ..

Roger Houston

Approximately 126 units.

Mike Lowe

This one is 177 units and I know there are a couple of others.

Roger Houston

The one over in Chestnut and we have had several Southern New Hampshire Services over the years, Nashua Crossing, I believe we had a few additional beds or units – I think most of them did come into this committee and did get waivers with the Board of Aldermen.

Alderman McCarthy

Who are the parties to the Condominium Document?

J. Bradford Westgate, Esq.

The creator of it if you will is the developer, Webster Lawn LLC. That entity established the

Condominium Document. The parties then become every unit owner in affect is governed by them once he buys a unit.

Alderman McCarthy

The owners as a group have the right to extinguish the Covenants under the terms of the Condominium Agreement do they not?

J. Bradford Westgate, Esq.

Two problems with that – one is the termination of the elderly housing covenants would require at minimum 2/3 unit owners and I have to note that I was not the draftsman of this particular set of documents another law firm was. In addition, I think the termination of those covenants frankly would violate the very zoning and planning approvals that were granted for this community. Without those covenants this doesn't constitute an elderly housing community for which it was approved.

Alderman McCarthy

Nevertheless we have had other cases in recent past where condominium associations have toyed with the idea of dissolving. In fact, I dealt with one a couple of years ago where they required 85% of the owners' approval to dissolve the condominium association and 100% to change the Bylaws, and consequently they were looking at dissolving the association instead because there was one person who wouldn't submit to a Bylaw change that was proposed. I guess my concerns are very much along the same lines as Alderman MacLaughlin of not understanding what gives us and this is actually one facet of a general problem I think we have with condominium agreements that I don't see where we have any protection in the long term that things that we approve can't be undone by the removal of the condominium document. I would want if we are going to do this to have some language in there that in fact made the condominium association permanent and gave the city the right to enforce that.

Chairman Rootovich

I guess the question Mr. Westgate is is it too late to put that language in the Deed?

J. Bradford Westgate, Esq.

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Having done quite a number of these outside of the city mostly the question has come up typically at the Planning Board level at the approval stage, and the usual remedy is to require that the provisions in the Declaration that govern the elderly housing demographic, the age requirements let's call them, can't be amended without the Planning Board approval of that municipality. Typically Planning Board and municipalities shy away from wanting to enforce the age requirement that is it is usually not greatly desired by an administration to have to be the one undertaking annual census, literally knocking on doors to verify age, obtain Affidavits and

documentation showing what age people are who live there, but rather require that these age restrictions can't be changed without the Planning Board approval. I suspect that the developer would not have a problem with that kind of concept. That is requiring in the condominium document no amendment to the age restrictions without Planning Board approval.

Quick aside termination of the condominium has to take 80% unit owner approval by the way, but also it must be noted condominiums aren't going to terminate as long as there are mortgage holders of units because banks are not going to allow their units to be terminated and no longer have a mortgage on a unit. That becomes the practical failsafe of all condominium projects. The only ones that every terminate are the little small ones that somehow have no mortgages on them or the mortgages get dealt with in some fashion. I don't believe Mr. Plant has any problem with requiring that the Planning Board would have to consent to any change in the age restriction requirements.

Chairman Rootovich

Mr. Plant could we get your response on the record please?

Bernard Plant

I have to ask Brad a question. Does that require going back to the Attorney General?

J. Bradford Westgate, Esq.

I don't think so no. It is always fun to give legal advice in public.

Roger Houston

There is another situation that needs to be thought about. This is a use variance since this property was not zoned residential to begin with and that did go before the Zoning Board of Adjustment and I will read directly from the minutes here and this is one of the reasons why staff did give this opinion to the Planning Board to recommend favorably – "Attorney Prolman said the plan they have is to maintain the house and install 76 elderly housing units age 55 and older." It doesn't say 80/20 it says age 55 and older. That is what they have a use variance for on this property. I think what we need to do certainly if there are going to be any changes this needs to go back to the Zoning Board of Adjustment as well as the Planning Board.

Chairman Rootovich

Are there any further questions?

MOTION BY ALDERMAN ROOTOVICH TO RECOMMEND GRANTING THE
PETITION FOR WAIVER OF PUBLIC SCHOOL FACILITIES IMPACT FEES
MOTION CARRIED

ADJOURNMENT

MOTION BY ALDERMAN LAROSE TO ADJOURN
MOTION CARRIED

The meeting was declared adjourned at 7:16 p.m.

Alderman Rob Shaw
Committee Clerk Pro Tem