

BELLINGHAM PLANNING BOARD
TOWN HALL ANNEX
BELLINGHAM, MASSACHUSETTS

Regular Meeting of the 24th of July, 1980

Members present: John P. Murray, Chairman
Gerald R. Brisson, Vice Chairman
James F. Brennan, Jr.
Carl Rosenlund
Sergio P. Rotatori

Chairman Murray opened the meeting at 7:40 p.m.

Thomas Clark appeared before the Board and requested release of his \$8000.00 certified check on Bellingham Industrial Park. He told the Board he had finished with the roadway. Berms and drainage were installed. Letter was received from Highway Superintendent Daigle approving the work. Brisson pointed out that an as-built plan has to be filed with the Board. A letter dated March 19, 1979 from Weld-Braze, Inc of 10 Robbins Road was brought up. Owner Edward Giovanella was complaining of a drainage problem on his property. Clark told the Board that the installation of berms had taken care of that problem. Brisson stated that he would inspect the property. On a Brisson-Brennan motion it was unanimously voted to release the \$8,000.00 cashiers check with the provision that another check in the amount of \$1,000.00 was deposited with the Town Treasurer to cover the as built plan, Murray and Rosenlund voting yes with Rotatori abstaining as he was not present at the beginning of the discussion with Clark.

Mr. and Mrs. Richard Robidous, 47 Lakeshore Drive, spoke with the Board stating that they had applied for a variance to build a garage on their property. Request was denied by the Zoning Board on June 24th. They had now changed the location and wished to again apply for another variance. Brennan stated that there was a change from the original variance and made a motion to recommend the reapplication for a variance, motion was seconded by Rosenlund, Rotatori voting yes, Brisson voting yes, Murray voting yes and Brennan voting yes. Letter to be sent to the Zoning Board of Appeals.

Gerald R. Brisson stepped down as member of the Board.

PUBLIC HEARING - SPECIAL PERMIT SKATEVILLE, INC/FORE COURT TENNIS CLUB.

See attached minutes

PUBLIC HEARING - ZONING AMENDMENT SKATEVILLE INC/FORE COURT TENNIS CLUB

See attached minutes

Vincent Thayer presented a revised version of his subdivision plan on Brookside Estates. Plan showed two dead ends with 19 lots in all. He explained that this was a pre-preliminary plan and the purpose of the dead ends was to avoid getting involved with the wetlands in the area. They had lost four lots in doing this. Brisson brought out that he did not feel that the Water Department would go along with the dead ends. Board was told they would give an easement. The Conservation Commission has not been in touch yet. Herr stated that delivery people or the Highway Dept. might not like the idea of a dead end. Board suggested that they speak with the Conservation Commission. Brisson felt he would rather see them loop the road, while Brennan stated he liked the idea of a dead end road. Rosenlund stated he would like to hear from the Fire Dept., Water Dept and Conservation Commission before he made any commitment. Brisson agreeded with Rosenlund. Thayer will get in touch with the above departments and meet with the Board again on August 28th.

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Member Gerald Brisson stepped down as Board member.

Brisson presented the Board with as-built plans on Rakeville Estates. He told the Board that bounds have been set, and suggested that the plan be registered with the Registry. Board agreed. On a Rosenlund-Rotatori motion, Board voted unanimously to sign the as-built plan on Rakeville Circe. On a Rotatori-Rosenlund motion, the Board voted unanimously to release the remaining \$2,000.00 bankbook still outstanding on Rakeville Estates. Letter to be sent to the Town Treasurer.

Member Gerald Brisson came back as Board member.

Vern Brown, South Main Street along with his engineer Everett Perry showed the Board a pre-preliminary plan showing 18 lots which would house duplex homes. Road would be a connector street between South Main Street and Mechanic Street before you came to the center. Duplex homes would be used as a condominium, with two owners. This type of home has worked out quite well in other surrounding areas. Area is zoned residential except for 400' in on Rte 140 which is B-1. Perry stated they were here tonight to get the Board's feeling as to whether or not they want to see such a connector street, or if they would want the street to deadend. Rosenlund stated that he was not crazy about duplex. There was no way the town could get any type of a guarantee. Board agreed and sited duplex homes on North St. as an example. Perry stated that they could only get 24 single lots out of the parcel. Engineer will go back and take another look at the parcel and will meet with the Board at the next hearing.

Perry presented an approval not required of two lots on South Main Street. Lot #2 is not to be a buildable lot and is so stated on the plan. If the proposed subdivision gets approved, then it could be built on using frontage on the new road. On a Brisson-Brennan motion the Board voted unanimously to sign the plan of two lots on South Main Street.

Gerry Brisson stepped down as Board member.

Board discussed the public hearing on the proposed rezoning amendment on the definition of a major commercial complex. Herr pointed out that the Board could go either way; they could bail out the building by approving the whole town and also in the process effect the whole town or not approve it thereby victimizing the 27,000 sq. ft. building. Herr did not recommend changing the whole by-law for one instance. Board was in agreement. Herr suggested that the proponents find another way around their problem. On a Rosenlund-Brennan, it was unanimously approved not to recommend the proposed zoning amendment.

On a Rotatori-Rosenlund motion the following bills were unanimously approved for payment:

Woonsocket, Call Advertising Sec 2400 change\$30.24
Milford Daily News " " " "\$32.85
Woonsocket, Call Advertising Special Permit\$22.68
Milford Daily News " " " "\$25.55
Jean Brewer, 2 tape cassetts @ \$2.75 ea = \$5.50 and salary for secretary for July and August \$76.66 each	

On a Rosenlund-Rotatori motion meeting was adjourned unanimously, at 12:35 AM.

Respectfully submitted

Gerald R. Brisson
Gerald R. Brisson, Clerk

BELLINGHAM PLANNING BOARD

PUBLIC HEARING - ZONING BY-LAW AMENDMENTS SECTION 2400 and ARTICLE V. DEFINITIONS

Chairman Murray called the public hearing to order at 10:05 P.M. Meeting was opened at 9:00 P.M. and was unanimously voted on a Rosenlund-Brennan motion to be adjourned until the finish of the previous public hearing.

Secretary read the notice as it appeared in the papers.

Murray stated that the proponents will be allowed to speak, then questions from the Board members, then the opponents with questions from the Board members.

Murray stated that Skateville, Inc/Fore Court Tennis Club, Inc. were seeking a by-law amendment which would exlude skating rinks from the definitions of a major commercial complx with the addition of the words (excluding recreational uses) after the first sentence. Under Sec 2400 applicants were seeking to add the word (skating) after Indoor commercial recreation.

Bruce Lord was recognized and was seeking a clarification as to whether they were seeking the changes for themselves alone or were they changing the entire by-law. Murray stated it would be for the whole town, and would have to be voted at a town meeting with a 2/3 majority. The Planning Board only makes a recommendation to the Town Meeting.

Attorney Baillargeon told the Board that the first request for the addition of the word skating under Section 2400 was being withdrawn. This was being done on the advice of town counsel. Town Counsel felt it would be too restrictive, and would indicate that indoor commercial recreation would only mean skating.

Baillargeon asked that the Board favorably recommend the change under definitions on a major commercial complex which would clearly exclude recreational uses. He felt it was the intent to only apply to retail uses, entertainment or consumer service establishment. He did not feel that a recreational complex would fall under any of these types of businesses. The addition of excluding recreational uses would make it clear. They realized that they had to gain approval of a town meeting and were currently seeking the necessary signatures. This would also be in line with Herr's findings in regard to the parking situation and the Building Inspectors determination that with parking spaces the site would fall under the definition of a major commercial complex. They are going to ask the people of the town to amend the bylaws with regards to the definition and exclude recreational uses from being a major commercial complex.

Rosenlund stated he realized that this hearing was in regards to skating and questioned if they had given any thought to the fact that they are talking about all recreational uses and not just skating.

Baillargeon stated that the reason they used the term recreational uses was that was the heading used in the zoning by-laws. The classifications were broken down into educational, recreational, commercial and residential and other principal uses. It would have to come under one of those headings. Rosenlund stated it covered a wide range. Baillargeon read the uses that came under recreational uses and since indoor commercial recreation was one of these headings, they felt that is what they had to use.

Murray asked for anyone in favor of the by-law to speak. No one spoke.

Murray asked for anyone opposed to the by-law.

Attorney Heller spoke against the zoning change stating it was an extremely dangerous step for the town to take. He again stated for the record that he represented Roland and Billiejean Lavallee. The applicants were trying to get in the back door because the front door was closed to them. They are going to change the by-laws. This will deny these people at this meeting here tonight an opportunity to be heard in the future. Then the town can have any facility that has 40,000 sq. ft. or more could have more than 100 parking spaces but if it falls within the majical classification of recreational uses then these people and other people in the future are going to be denied an opportunity to be heard before your Board or any other board as to whether or not they want 100 parking spaces in their

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neighborhood, or whether or not they want a building of over 20,000 sq. ft. He felt this change could effect a greater number of people than just the ones here tonight. He felt that the town has already bent over backwards for these people and rezoned land at the end of the street for a roller skating rink. This was not good enough for them. Now they want to come down to the congested part of that street for their rink. What about the people he questioned, don't they have some rights. If the Board were to recommend this at the town meeting, it could be almost any indoor or outdoor recreational use. He felt that these people were in a retail business, they could in part be classified as being in entertainment or even as a consumer service. Most likely they are going to be having a pro shop. If you take recreational uses out of the definition of a major commercial complex, you would be eliminating some of the important work that this Board does as a watchdog to the town. They could go under a B-1 or a B-2 district regardless of size. There is a difference between a B-1 and a B-2 zone. Most B-1 zones are in a residential neighborhood. He felt it was better to be more restrictive. He felt the Board has a responsibility to the community at large and not to some businessmen who have already been accomodated by this town with the previous rezoning.

Brennan told Heller he did not see where some of the recreational uses cited in the definitions would be effective with a building greater than 20,000 sq. ft. He asked for a clear idea so he could be able to see his point. Heller felt it was possible to have a club house that large. He just went thru the definitions of recreational uses and tried to point out the potential problems. He was not saying that all of these things were bad. Brennan pointed out that they were only talking about a B-1 district and not any residential areas. Although there are residents in a B-1 area. He objected to the specifying of any one area. The change in by-law was for all B-2 or B-1 zones not any residential zones. If the opponents wanted to keep their arguments in this one specific area he would go along with it, but he would like to see the whole of the zones involved discussed. The by-law would effect the whole town.

Brennan stated the criteria for a major commerical complex was a building over 20,000 sq. ft and 100 parking or more. You could have a 19,999 sq. ft building and 100 parking or more and it would not be a commercial complex.

Heller pointed out if the Board were to eliminate recreationsl uses from coming under a major commercial complex, he felt they would be watering down the bylaws.

Henry Riendeau, 32 Miron Avenue, questioned why all of the members of the Board did not see the letter signed by Attorney Baillargeon. Brennan stated the letter had been presented, but he just had not seen it.

Riendeau felt it was going to end up as a question at the town meeting as to just what kind of a complex this was going to be. He was a direct abuttor to the proposal and he feared for his property. He was only one abuttor to the proposal. He was only one voice in the town, one resident. If it were not for town bylaws they would have had a skating rink right now. He wished the Board to consider that when they sat down to discuss the amendment. He has only one home, he was not a rich person, he was proud of his property. Mr. Morin seems to ve very honored to say that his building has been vandalized, so has his property. It is not the neighbors, he did not know who it was and was sorry if Morin felt it was the neighbors. If the Board recommends this change, he did not feel they would be doing the town any good. Anyone who wants a major commercial complex will be able to obtain one, if you make this bylaw come true. The laws are now a protection to him, the small guy. He wished the Board to give this some consideration.

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Alice Purich, Pulaski Blvd., stated she was not against roller skating rinks. There were so many places in town where they could build a rink that they could support. She questioned why they insisted on putting it in their neighborhood. All the neighbors do not want it; they all worked hard for their property. She wanted the Board to consider their feelings. Both she and her husband are retired. She hoped she did not have to buy herself a pair of roller skates in her old age.

Roland Lavallee stated he felt it was an attempt to gain something thru the back door that they were not able to get thru the front. They want it in this one particular location. It really doesn't have anything to do with skating. He felt they would be more than willing to go along with the fact that they are a major commercial complex if they were in the right zone. They were trying to put a major complex in a B-1 zone. This is what they were against. He had called Herr and asked the difference between a B-1 zone and a B-2 zone. One of the main criteria would be traffic generation between the zones, according to Herr. The reason why there would be a B-1 zone in a particular place, would be that that street couldn't handle traffic. Another consideration might be the residential tone of the area. That is exactly what all of these people are talking about. He did not feel that the by-law was strict enough. He felt it should be anything over 20,000 sq. ft. and anything over 100 parking spaces and forge the category. Anything in that size could create disaster. He questioned where the traffic data was. The proponents stated that the kids would be dropped off and picked up. That generates traffic. Instead of people coming in once, they are coming in twice. It could also include any of the other commercial recreations.

Jeannette Trudeau, 40 Lowland Ave., stated that she has been living there for 30 years. Both are retired. She did not want to see people abusing her property. They were there before the present building was built. The building is empty right now and that is why they are willing to put anything in there.

Riendeau questioned if the Board had any jurisdiction over water run-off from the asphalt. Murray stated that this would come under a site plan review and was not a subject for this hearing.

Baillargeon stated that they were willing to consider changing the wording to include only "indoor commercial recreational" from the original proposal. He did not see the concern that a camping site or a golf course would ever come under a major commercial complex.

Herr stated that the request of word change could be made as it was less of a change than what was advertised and would not have to be readvertised.

Baillargeon, after consultation with his clients, decided to let the wording stay the way it was.

Consultant Herr stated that he was here when major commercial complex was written. The reason why it was drafted was because it was felt that developments that were likely to involve a lot of traffic, and a large structure, the run off associated with that, the lighting that is associated with that, a sign that would be likely to be large since it is orientated to the public as opposed to something some industry or business which is usually not as interested in as bright exposure. When facilities get over a certain size it was felt that it would be a good idea to have the possibility of a public hearing so that the people who would be effected by it, who would be served by it, could be heard. Somebody could then

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exercise the judgement that the location would or would not work for something that big. The Board cannot under a site plan review judge that this doesn't work, it is too big. The purpose of a major commercial complex category was to give somebody the authority to say no in light of the circumstances. He has not heard from the proponents themselves yet as to why it is logically appropriate to treat recreation different from retailing or different from other consumer enterprises. He could say, as one of the draftsmen of the major commercial complex, in his mind that it was the whole gamut of consumer services enterprises including bowling alleys, tennis courts, etc. He has not heard what is different about recreation from those other uses. Why should they be treated differently. Why should the town now decide that recreation should be treated differently than it treats these other forms of retailing and consumer services. It would be appropriate for the Board to ask for such an explanation and is it different if you simply narrow the category down to simply commercial and/or recreational. The Bellingham Plaza is the only new major commercial complex since that law came into being. Would that shopping center be of less concern to the town if all of the floor area in excess of the first 40,000 sq. ft. were to be occupied by a bowling alley, roller skating rink, commercial arcade, etc. Would that reduce the concern over traffic, lighting, visual change or over drainage? He felt that was what had to be heard in order to be able to see an argument to support such a change. If the argument is simply that it is not clear as to what the original intent was, it could be clarified by saying including recreational uses rather than excluding recreational uses.

Baillargeon stated he also felt that people who wished to operate such a business would not know by reading this by-law if they were excluded. It was their reading of that by-law that recreation was not a major commercial complex. He felt he could understand his philosophy as a planner, but he was not a planner. As a planner he could understand that Herr would be trying to protect the area from such uses as described such as retail business, consumer services, outlets, etc. On reading that they did not think they were any of these things. The fact is that it is totally confined indoors. There would be no signs other than the initial sign in the front. There are no other businesses associated with it. The fact that the noise is controlled within the building takes it out of that definition in this particular case. The facility is already there, it was a recreational building. It is allowed in a B-1 zone. What Herr was addressing was an argument as a planner. They were asking for an amendment to exclude recreation if the word recreation was too broad, then they could modify it to include indoor recreation only.

Herr stated that they were not just talking about Fore Court. This would effect the whole Town of Bellingham. His argument could not be based only on that one case. He was asking for a by-law amendment, not for a variance on that site. The particulars on what you allege will happen on that site is not what the town meeting should consider.

Baillargeon again stated that he did not feel that the Board's own definition of a major commercial complex answered the issue. That is why they were asking for an extension of the definition.

On a Rotatori-Rosenlund motion, the Board voted unanimously to close the hearing. On a Rosenlund-Rotatori motion the Board voted unanimously to take the matter under advisement.

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PUBLIC HEARING - Skateville, Inc./Fore Court Tennis Club, Inc., 441 Pulaski Blvd
Bellingham, MA Application for a Special Permit under Sec. 3310 d
and 3310E

Chairman Murray opened the public hearing on the application for a special permit at 8:00 p.m. in the Town Hall Annex. secretary read the notice of the hearing as it appeared in the papers. On a Rosenlund-Brennan motion, it was unanimously voted to adjourn the public hearing to the Upper Town Hall at 8:15 p.m., members voting were John Murray, James Brennan, Carl Rosenlund and Sergio Rotatori. It was noted that Board member Gerald R. Brisson was not acting as Board member. On a Brennan-Rosenlund motion it was unanimously voted to open the public hearing. Chairman Murray read the criteria for the permitting of a Special Permit under Sec. 1530. of the Bellingham Zoning By-laws. Rules were set down whereby the applicant will have his say with Planning Board members allowed to question. Opponents will then have their turn with Planning Board members allowed to question. Meeting was being taped, and all who wished to speak have to come to the front of the hall and speak. Applicant will have chance to answer opponents. Murray pointed out that Brisson is not acting as Board member and it will take a unanimous vote of the Planning Board for the issuance of the Special Permit.

Attorney Paul Baillargeon representing Skateville and Fore Court spoke stating the Building Inspector Henry Borowski had the remainder of the plans that he was submitting to the Planning Board tonight. Plan was dated May 27, 1980 with pictures attached.

Baillargeon stated the two things they were here for tonight were for a site plan approval. It was a unique situation whereby the structure was already existing. The plan showed the intended renovations planned for inside the structure. There would be no expansion of the existing building in terms of size. The only exterior changes would be the construction of additional parking spaces, for a total amount of parking spaces of 170 places.

The second phase of the hearing concerns the application under Section 3310 d and 3310 c of the by-laws. regarding parking space requirements. The conditions are outlined as set forth in the application. Baillargeon asked the Board if the application should be read thru or did they want to waive the reading. On a Rosenlund Brennan motion it was unanimously voted to waive the reading of the application, as it was read at the opening of the hearing as it appeared in the papers.

Letter dated July 24, 1980 was given to the Board along with exhibits. In the letter reference is made to their application dated July 3, 1980. First exhibit was a transcript of the decision of the Zoning Board of the City of Woonsocket dated January 14, 1980 on the application of Joyland Rollaway, Inc. in regard to the parking situation in Woonsocket.. They had a full capacity of 1500 people with parking permitted for 113 cars. The application was approved by the City of Woonsocket.

The second exhibit is a photostatic of a page from Rollerskating Facts Book of 1976 page 16. The article states that most roller skating rinks require 1 parking space for 220' of building area and in many cases one per 300 sq. ft. is adequate.

The third exhibit is an article from the Roller Skating Business Fact Book of 1980, page 12. This indicates that the industry guide lines is 6 parking spaces for every 1,000 sq. ft. of building area. In this application there is 27,000' of area which would equal in this particular application 162 parking spaces for every 1,000 sq. ft.

The fourth exhibit is a decision of the Zoning Board of Appeals of the Town of Milford on the application of Skating Place dated May 19, 1977. The Board in that case permitted 1168 occupants with 237 parking spaces which is the equivalent of

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1 parking space for every 4.9 occupants. Forty-two of the spaces in the Milford case are not located on the same property. There are seven other businesses permitted to utilize these same spaces. It is their contention that based on the skating rinks in the surrounding area and the experience factor which the state recognizes, with the exception of the roller skating rink in Woonsocket, that a parking ratio of approximately 1 space for every 4.9 occupants is reasonable and functionable. In their application they are dealing with an even lower factor because they have a greater parking area in view of the proposed occupancy of 800 people.

The Board of Health has under consideration the septic system and we are in the process of having an engineer review that. That would not be anything that they could review tonight.

Rosenlund questioned Baillargeon in regards to the application for the Special Permit which has to do with parking. He questioned if the figure that was talked about was 99 cars in lieu of. On the application it does not give a figure.

We are talking about site plan review, he did not see what site plan review had to do with the hearing, although ~~on a site plan review parking would have a hearing on site~~. What was before the Board was in regards to a special permit for parking. He did not see where one ties in with the other at a hearing for a special permit. What he is talking about is having the Board consider a site plan review during a hearing for a special permit in regards to parking.

Murray questioned Attorney Baillargeon if he was looking for a site plan approval tonight. Baillargeon stated he was but that the site plan approval did not need a public hearing. This he understood.

Murray asked if anyone else wanted to speak in favor of the special permit that was being proposed. No one answered.

Murray asked if anyone opposed to the permit wished to speak.

Attorney Warren S. Heller, 61 Exchange Street, Milford stated that he was representing Roland and Billiejean Lavallee. He had several issues some of which are procedural problems. Under Sec. 1422 of the by-laws the plan involved is supposed to be prepared a registered architect, a landscape architect or a professional engineer. According to the plan before the Board it was prepared by a registered land surveyor. He felt that the Board had an improper plan before them. On that basis along he felt the Board should cancel the hearing and have it annuled since it is not prepared by a proper person.

Rosenlund told the Chairman that he needed some clarification. They were talking again about site plan review. Parking does come under site plan approval, but what we are considering this evening is a special permit for parking. We are not talking about site plan approval. There is some confusion, it was brought out by the attorney for the applicant and now by Attorney Heller. Murray asked Herr for his comments.

Herr agreed that he also was confused and did not know just what the applicant was asking for in his Special Permit. He wanted to know what number of spaces were being asked for. It did not matter at this time who or what designed the plan shown. What was of importance was the request for a reduction in the usual number of parking spaces. He asked for a clarification of what the request was for. Attorney Baillargeon told Murray that he was asking for a reduction from the standard to 170 as outlined on the plan. He was looking for 170 spaces with an occupancy of 800 people.

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Heller stated he thought he had heard a number of 99 being used and the hearing notice and the application never addressed itself specifically to exactly what the proponents were looking for. He felt the by-laws also state that there has to be a brief, clear and concise request of the relief that is being sought. He did not think that this has been met by the notice of hearing that was posted at the town hall or in the papers. There was no reference at all as to the number of spaces. First it was 170 and then 99.

Baillargeon stated that he did not know where the number 99 came from, it did not come from him. He was looking for 170.

Heller wanted to know why that number was not included in the notices. He felt this could be a defect that could make this hearing an invalid one should the Board grant the relief that is being sought.

Heller said as he read the notice, the applicant is requesting site plan approval. Site plan approval whether it be regarding the parking or not still requires the plans to be done by certain professional people. Among whom is excluded a registered land surveyor. The reason is obvious that when town are dealing with plans of this nature, they require certain qualifications. Whether you are talking about site plan approval or submission of any plan, it is his understanding that it can only be done by certain people. Their own language deals with site plan approval in the application.

Heller gave the Board a letter written by Roland Lavalley to the Dept. of Communities and Development dated July 20th which asked if this Board had the right to issue a Special Permit to reduce the parking requirement for a major commercial complex in a B-1 zone and if a major commercial complex receives a variance or Special Permit to reduce the parking spaces to below 100, which is part of the defining criteria, does it cease to be such a complex.

An answer was received dated July 22nd written by Donald J. Schmidt. Copies of both letters were submitted to the Board. In part, Schmidt stated that the Board does not have the authority to reduce parking requirements for a use which is otherwise prohibited, stated Heller. Schmidt stated that the only way a major commercial complex can be authorized in a B-1 district is by the issuance of a use variance by the Zoning Board. It was suggested in the letter that the Board seek Town Counsel's opinion. Heller stated that there was no question in the minds of Henry Borowski, the Board of Selectmen and Town Counsel that the property in question is in a B-1 zone. There is no question that the proposed use is only allowed in a B-2 zone. Even if the Board were to grant a number of spaces below the 100 number or even to 170 they still under the present by-law need to be in a B-2 zone. They are in a B-1 zone with a B-2 use. He did not feel that this Board had jurisdiction in the case.

Heller stated that at the last hearing of the applicants before the Selectmen and this hearing, he felt they were putting the cart before the horse. The next hearing of this Board was for a zoning change which, whether or not the Board gives favorable or unfavorable approval, it is up to the Town Meeting to decide whether or not they are going to rezone that parcel of land. Now they are asking the Board to do something which the Board has no authority to act on. They want the Board to grant them permission to do something in a B-1 zone that is only allowed in a B-2 zone and it is clearly illegal and the Board cannot do it. If they want to get their property rezoned and if they are successful in doing that, they could probably be correct in coming before this Board and request such reduction in parking, etc. Until they do get the rezoning, he felt they were improperly before the Board.

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Heller again suggested that the Board seek Town Counsel's opinion and the Department of Communities and Development's opinion.

Murray recognized Consultant Herr who stated that he felt Town Counsel's opinion had already been sought and answered. To seek it again might be a little more effective than the last time. As far as Mr. Schmidt is concerned, what he is saying is that the Planning Board can't resolve this unless the use is allowed. If the use is not allowed the whole thing is moot. He felt the content of the request should be gotten on with and the Board should hear testimony whether or not 170 spaces is a good number or not. Subsequently if you hear from Town Counsel or the Special Town Meeting, you will know if you can grant a special permit. For tonight it seemed to him that you have all these people here and the Board should hear from them.

Murray stated even if the Board were to grant the special permit as requested, it would not give them the right to go ahead with their plans. The Board was well aware that they have another hearing coming up later.

Heller agreed with Herr saying he too hoped that the people here would be able to convince the Board that this was a terrible site to put in a roller skating rink. However, the whole thing would be moot if it is not a permitted use. This is a major thing before the Board. Whether you grant it or not, if it is improperly before you, you should just dismiss it and throw it out. It is their conviction that this Board lacks jurisdiction.

Brennan stated he felt whether or not Mr. Heller was right or wrong as far as procedure, did not carry any weight right now. He suggested they get on with the hearing to find out why they should reduce the parking spaces.

If the Board should find at a later date they do not have the authority they can then act on it.

Heller pointed out Sec. 3200 which points out environmental controls and noise pollution. This is one of the reasons why the neighbors do not want the rink. There is also the congestion factor. He asked where the back-up information was on these points. The applicants gave the Board documents which if anything justifies a larger number of spaces than what they have. Heller asked the Board to review the parking requirements under 3310 as to what the special circumstances are as to whether or not this Board should grant the reduction.

Under 3320, parking specifications, the figure of .08 per occupant was the design figure. If they have full capacity there, despite the argument they are going to give that people are dropped off, there are many times when there are spectator activities going on and you are going to get maximum capacity. You are going to get well over the number of cars that they are capable of handling. He was just giving the Board procedural arguments and would leave it up to the abutments to raise their objections.

Roland Lavalley, Pulaski Blvd. made a slide presentation showing skating rinks in the area. First slide was of the Milford rink. He pointed out there were not many homes in the area. There was a sub-shop and a substation for the electric company in the immediate area. Traffic flow was pointed out. Parking spaces were 280 with an occupancy of 1138.

Norwood rink on Rte 1 was shown. Traffic flow was shown along with the neighborhood. There were 127 spaces outlined just for the rink with an additional 22 spaces for a candy store, 24 for a rug store and 22 for a diner. Norwood rink was 21,000 sq. ft.

At 9:00 P.M. a short recess of 2 minutes was unanimously voted on a Brennan-Rosenlund motion.

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Murray reopened the public hearing at 9:05 P.M. and Lavallee continued his presentation with slides of the Hudson Acrean near Rte 1 and Rte 495. Traffic flow was shown. Rink was about 2 miles out of town. There were 101 spaces with room for another additional 30 spaces and a building of 22,000 sq. ft.

Next slide shown was the Acton rink which was a large complex housing racket ball, indoor tennis and a roller skating rink. There were 200 parking spaces with 14,000 sq.ft. There were no homes in the immediate vicinity. A slide showing the proposed location in Bellingham was then shown. Neighboring homes along with the nearby Crooks Cornor was pointed out. With the traffic congestion coming together at that point and the near proximity of the tennis court, he did not feel that this was the location for a skating rink in Bellingham.

Henry Riendeau, 32 Maron Avenue a direct abuttor, spoke against the special permit. He stated that at the last public hearing before the Selectmen, the applicants, thru their attorney stated that they had no plan at all of changing any of the parking. It was going to remain at the present 30 odd spaces. The Selectmen denied them their request. Now they are going to change the parking to 170 spaces. Should they have to increase the parking, it would mean paving more area and that would bring an increase in the run-off of water. He did not think this could be avoided. He was opposed to it. He was bothered by the possibility of the increased noise, vandalism and traffic. Murray pointed out he felt the question on the above would be better addressed at the next hearing.

Martha Archambault, 541 Pulaski Blvd, felt that the applicants were very good business people. If they have even half the parking spaces there was going to be pollution. We already have bad traffic ½ mile down the road at the intersection. Now they were talking about 170 parking spaces. They are good businessmen so they are going to promote their business. She felt they would be parking in front of her house as they already do it now for the drive-in. She has kids fighting in her yard now with garbage and noise too. She was opposed.

Edgar Robidoux, 50 Lowland Road, stated that the attorney spoke about the Woonsocket Rink that never materialized. They might have been given a special permit with 90 parking spaces, but noting was said about the additional parking at Walnut Hill which could park 1,000 more cars.

Alice Purich, 410 Pulasky Blvd. lived facing Fore Court. She asked the members if they would like to have a skating rink facing them. We had the tennis rink there; they were nice people. She told of the traffic that was lined up there already from the boulevard going into Crooks Cornor. With the skating rink, she did not feel that she could face that.

Murray asked if anyone else wanted to speak in opposition. None answered. Members questions were then entertained.

Rosenlund addressed the applicants stating that at the meeting of the Board in which this hearing was discussed, he thought it was the intent of the applicant to go for 99 spaces. The question arose under a major commercial complex calling for 100 parking spaces, that if they were to go for 99 spaces, it would not be a major

commercial complex. He was under the impression that this was the reason why they were requesting the Special Permit. He was also under the impression that the request before the Board tonight was for 99 parking spaces. That would be one thing to be considered. If you are not talking 170 they would be still talking major commercial complex and he questioned if the request was now moot before the Board at this time.

Attorney Baillargeon told the Board they had this request on for two phases. First to change the definition of a major commercial complex in its present form and the second thing in regard to reduced parking. If the Board based upon their presentation and also on the figures of the opponents, sees fit to only grant 99, then they were willing to accept that. They had presented the request for 170 based upon the request for the definition change in the next hearing. If the Board feels that 99 is OK for their occupancy number, then they would accept that.

Baillargeon stated in Milford Lavalley found 280 spaces, but he has given the Board a copy of the decision of the Board in Milford where they approved 230 spaces. In Norwood with 147 spaces, he was not sure of the occupancy. The facility itself is smaller in size than Milford, but is comparable to ours. Hudson has 22,000 sq.ft. of building area with 101 cars. That is in line with their proposal. Acton Rink has 14,000 sq. ft but there are other activities in that area with 200 spaces. The ratio of occupancy with parking is completely in line with the figures given to the Board by them. In Woonsocket the decision of the Board clearly indicates that Walnut Hill could not be used for parking. He felt that Lavalley figures clearly indicated that they did not need the .08 factor.

Rosenlund questioned Baillargeon in regards to the 170 spaces. If in fact the Board considers 170 spaces, are they then accepting that this is a major commercial complex.

Baillargeon stated he would have to get into the second phase of their request. Based upon the Building Inspector's determination, in a discussion with themselves and the Board at the last meeting, that they were limited presently to 99 spaces with going into a major commercial complex, he did not think that the Board had the authority to do that. The reason the plan is presented as it was is because it also covers the second phase of their presentation - the next hearing. This has to do with the fact that they believe this complex is an indoor recreational under your code, which is allowed in a B-1 district and is not major commercial. But the Building Inspector has already ruled that he did not feel this is so and we have to comply with his decision. In addition we are saying that we are seeking a change in the definition of a major commercial complex at the next hearing.

Mr. Riendeau spoke about the 99 parking spaces, where it was said that Hudson had 114 spaces. Hudson had no homes involved. Bellingham has schools, less than 1 mile away, there are no sidewalks and the street is not very good. He questioned if they took that into consideration.

Jean Trudel, Pulaski Blvd, spoke asking for a clarification, If the Board does decide on 170 spaces, is the Board the final authority. Murray stated if

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the special permit were to be granted, this would not allow them to start roller skating. They would still have to get a town bylaw change. If they did get that they could then go before the Selectmen for another licence request. There is also a 20 day appeal period on the Board's decision on the special permit which has to be appealed to the Superior Court after the decision is filed with the Town Clerk.

Trudel questioned if this Board can change a town bylaw that was voted in at a town meeting. If they decide that they will revise them, then the bylaws voted in by the town people can be changed by the Board. Rosenlund told Trudel that the bylaw, voted in by the people, also gives the Planning Board authority to waive the parking requirements under a major commercial complex. This Board cannot change the bylaws, but it can grant variances or waivers in certain instances.

Maurice Morin, Treasurer of Fore Court Tennis Club, spoke stating that he has had vandalism for 8 years. He has had his building stoned, and glass broken. These kids are neighbors. Four weeks ago they had meet with the Planning Board. They were business men seeking assistance. He did not think this Board was here to discourage business or to tell them to go out of town. Borowski told us if we wanted to open our doors for 120 people nobody could stop us. It was his decision that indoor tennis, volleyball, and roller skating are indoor recreation. Now the only problem is the parking. We have established by the building alone that it is not a major commercial complex. Unless we exceed 120 occupants, the building is not a major commercial complex. The problem is the parking, and it was suggested at the last meeting that we come before the Board. The plan the Board saw at their last meeting called for 170 spaces. We did talk about 99. At no time after leaving that meeting did we say anything about 99. It was in the newspapers. We established if we opened at 120 people it would not be a major commercial complex. We were advised that this was the procedure to follow regarding the parking. The Board at that time did not say what their decision was going to be.

Lavallee spoke pointing out that Rosenlund in answering Trudel's question, pointed out this Board had authority under special permit process. This came under the site plan review section. He did not think the Board could consider it since right from the beginning he had said it was an improper plan. The other thing was that sitting before us tonight, they are a major commercial complex. They are here on special permit request. Sec. 4700 states this is in a B-2 district only, and it stated that the applicant shall submit adequate documentation, including plans, calculations, etc. He questioned where the traffic study was. He felt that special permits cover a lot more than just parking. If he was a major commercial complex, he has to follow all of it. Another thing that confuses him, is the next hearing. This hearing is to determine whether this will be a major commercial complex. If it were to be approved by the town meeting, they would then not be a major commercial complex. They would then no longer need the special permit and no longer would need a site plan review. Murray stated if the parking was over 20 spaces they needed a site plan review. Lavallee stated he felt the only authority the Planning Board had was under a major commercial complex. If they were no longer a major commercial complex, the Board can no longer give a reduction.

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Heller stated that Baillargeon made reference to the slides by Lavallee. There was one substantial difference between all of the other skating rinks on the slides and the one proposed and this is the access to and from these facilities and the character of the neighborhood. They were completely different from Bellingham. This Board was well aware of the problems at the corner already. Under 1530 part of the criteria that this Board has to consider is traffic flow and safety. The Board had no data given to them regarding this. They stated that most of the people who come to the skating rink are dropped off and picked up. What does that mean to the traffic along Pulaski Blvd. The peak period is not in the summertime when kids are not going to the school, but in the spring and winter and fall, when the kids are going to be walking back and forth to school. He asked the Board to consider what this would do to the neighborhood character and structure. The people going to skating rinks are young as opposed to a more mature crowd for the tennis court.

Murray called for anyone who wanted to speak in favor of the rink. No one answered.

Consultant Herr stated that the request before the Board is to change the parking requirements from 640 to not more than 170 parking spaces on a Special Permit. The question before the Board is whether it would be better for the town and the neighborhood to require 640 or 170 parking spaces or maybe even fewer. This is what the hearing is about. Not whether or not it is a good idea to have a roller skating rink, not whether a change of use is good or not, but whether this reduction from 640 to 170 is a good number. It seemed to him the germane question is whether 640 spaces are in fact required or some lesser number would be adequate. The only testimony that he had heard was from the applicant and that was what other zoning boards had granted.

His office had contacted the Roller Skating Rink Operators Association in Lincoln, Nebraska. They were told that the standard number in the industry is exactly what is being proposed by the applicant; that is 6 parking spaces per 1,000 sq. ft. of floor area. For 27,000 sq. ft. of floor area that would mean 162 spaces. Based on the industry standard, the 170 is an acceptable number. The opinion of the association was generous. In many cases less than 6 were common; it was more like 5 or 5½. Using Mr. Lavallee figures and the applicants figures for the area, it would seem that the figure 6 would be more than adequate. Based on this the 600 figure would clearly be in excess. It would quadruple the industry standard. If you use their other standard of 20 sq. ft. of skating floor area per occupant, and the ratio of occupants to driver, if you take the evidence as shown in the cases by Mr. Lavallee and the other cases shown by the applicants, and the other rinks that they have looked at in other areas, there is good consistency. It would be hard to believe that it would be to the best interest of the municipality to require the 600 figure when the standard is more like 170. The pavement would just sit there. There are other grounds which the proposal could be stopped, but he did not think this was one of them. He felt the reduction from 640 to 170 was fully justified by the national standards as well as area experience. The further reduction of 170 to 99 is not supported by those standards. If you do your arithmetic there is no way you can grant under 130 spaces. You may see reasons beyond the functional demand for parking for denying the special permit, that being if in fact you have jurisdiction over

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a special permit. That is a question for down the road. He would suggest that in terms of the functional requirements for parking that what they requested, 170 spaces, was in fact generous. The other question that people have raised about traffic, noise, vandalism and recreation for the children, taxes for the town, good use of the building are all important considerations. But he felt they were not germane to this particular question before the Board tonight.

Lavallee asked if the applicants have in fact filed for a site plan review on this plan. Borowski stated that a site plan is not necessary at this time. The Building is already there. They will have to renovate the building if their permit is granted to the standards of the Mass. code.

Lavallee asked if they were granted a special permit would the applicants have to file for a site plan review before this Board for everything else, such as traffic, etc. Murray answered Lavallee that the Board would have to seek legal opinion before they were to act on the special permit. But he did feel that they would have to come back with a site plan review.

On a Rotatori-Rosenlund motion, it was unanimously voted to close the hearing at 9:50 P.M. Murray stated that it was his belief a decision will not be made on the question tonight.

On a Rosenlund-Brennan motion the Board voted unanimously to take the application under consideration.

Members in attendance at hearing were Chairman John P. Murray, James F. Brennan, Jr., Carl R. Rosenlund and Sergio Rotatori.

