

BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

WILLIAM M. WOZNIAK, CHAIRMAN

RICHARD V. DILL

PAUL CHUPA

EDWARD T. MOORE

ANNE M. MORSE

MINUTES OF REGULAR MEETING

SEPTEMBER 10, 1998

Meeting commenced at 7:00 p.m. All members were present except AM was absent. Minutes recorded by Planning Coordinator Jill Karakeian.

GENERAL BUSINESS

Payroll was signed for Clerk for September. Jill gave Board Members updated pages for their Zoning Bylaw books to be replaced.

Jill told the Board that she is getting calls from Rawson Road regarding the street lights and the residents are wondering what the status of those are?

WW said to give Don DiMartino a call and see where Ted is with getting prices on street lights because that is where it was left. The Board needs to know so that they can go forward with the situation.

Cindy Allaine is a concerned citizen on Susan Lane and has a few questions regarding the 81-P that was signed at the last meeting. She wants to clarify the notation that was put on the plan per Town Counsel. Is that so they have to go by the current Zoning Bylaws or 1972 or the current?

WW the note says that they have to go by the Zoning Bylaws of today.

C. Allaine says that when she purchased that house she was told that all the open land was conservation and wetlands and it would never be built on. Now, they have brought stakes up and sectioned off where they are looking to put a driveway from Susan Lane back to that land. The land that they are proposing to build on is an acre back from Susan Lane. The Realtor has been telling people that there are four house lots back there.

WW says that there is no four lots at this time. The plan that we signed said it was not a subdivision. It could possibly be two because they had frontage for two. They could possibly get four by going to the Zoning Board and getting a variance, but not from this Board.

Ann Odabashian said if you go back through the years, I think we can find that Conservation put a hold on the Deed when it was originally owned by Joe LePlant because they had tried to dig drainage ditches to dry out the land. I spoke to Cliff Matthews and he is concerned because there are alot of wetlands.

PC says that he believes back then, they wanted to go in down at the end of the cul-de-sac where the land actually fronts on. They couldn't do it.

A. Odabashian asked how far back they have to go. People bought these homes years ago and there are no easements shown on their Deeds that they have. According to what they have been told by the person who bought the land, there is an easement in between the property #26 and #22 Susan Lane.

EM says that you cannot take land from a piece of property and make it non conforming. As far as an easement, they all have to be recorded at the Registry of Deeds. It will only show it on the lot that has the easement.

HONEY DEW DONUTS – Site Plan Review

Michael Perry, Beacon Holdings, owner of the Plaza and Theofilis Gergos owner of Honey Dew Donuts are infront of the Board to review Site Plan for the location at 15 North Main Street.

T. Gergos said there was some questions about the parking spaces and some information missing from the last plan. According to Mr. Herr, we went through his checklist and revised the drawing and I believe Mr. Herr made recommendations with regards to these plans and said that there should be some items waived.

ED reads the General Comments from the checklist dated September 7th. Item #1: Since this application involves reuse of an existing building and a site previously paved, a number of submittal requirements can reasonably be waived: drainage, topography, exterior lighting, erosion control measures, and architectural elevations. With those waivers, submittals would be complete. #2: For the same reason, some rules that would apply for new development are not applicable in this case: illumination limitations, foundation grade, parking within 20' of a street, egress sight distance, egress separations from drives and intersections, landscaping requirements, and dimensions of existing parking spaces.

WW says that he thinks some of that has to do with waivers. Where he highlights on illumination limits. What goes to say that they put more lighting outside the building? If they add to what was originally there, then there would be an issue. Are you adding more lights to the building?

T. Gergos says that the exterior lights that are under the soffits are there. The one side near the D.Q. is a new soffit and there has been lights put under for the drive thru.

WW says that the lights need to be shinning to the ground. Bill lets the Board know that Jill talked to Don DiMartino regarding the curb cuts. Route 126 is not a state road, therefore they would never come in an close it up. Don said that neither would the DPW.

RD continues reading the General Comments. Item #3: The number of parking spaces can be found to be adequate for the seating proposed only if leased off-premises spaces are counted. We find no rule stating that off-street spaces must be on the same lot or in the same ownership as the use they serve, only that they must be within 300 feet of the building entrance they serve. I recall no Bellingham president for accepting off-premises spaces for meeting parking requirements, but it is not uncommon elsewhere. In this case, there are two things that should be insisted upon: a. The owner of the premises on which the off-site leased parking is to be located should document this assent to that parking being assigned to this use for as long as this use continues. B. The owner of the premises on which the off-site leased parking is to be located should also document that the Town's parking requirements are still met for the remaining floor area and uses of the Mall after these spaces are taken away. It may take considerable time to do that documentation for the Mall as it would be at full occupancy. However, it is obvious that at this point the proposed leased spaces are not functionally needed for the Mall at present occupancy. For that reason, the burden of documenting parking adequacy across the entire Mall site can if necessary be deferred until additional occupancy is sought for buildings other than this one. Given the large (1"=10') scale of the site plan, it is possible to measure land and aisle widths at various points. On that basis, it appears that the Board's "Parking Design Standards" of September 21, 1988 are satisfied for all newly configured spaces, except that the use of spaces #4 through #8 (on the north property line) isn't feasible when a stream of cars is using their access lane. Arguably, those spaces could be limited to employee parking, or better, be removed, still leaving a number of satisfying the Bylaw.

RD says that Phil is making a reference to and point to the parking spaces on the plan that is being presented to the Board. Asked if Mr. Gergos is painting lines.

M. Perry said that the parking lot will be repainted.

RD finishes reading Phil's letter. The Board may judge that parking to the rear of the building won't effectively serve the use, but that location violates no adopted rule, and the Development and Site Plan regulations presently give the Board no discretion to judge the quality of plans, even using "common sense." Rather, the Board is empowered only to test whether or not plans meet standards. Longer-term members may recall that the Board has historically accepted site plan review responsibility only reluctantly and in small incremental steps, so that Bellingham's rules allow the Board less authority than do similar rules in most other Towns. This may be a good occasion to reconsider adopting approval criteria going beyond those now in place.

EM says that the question is the five parking spaces along the building on the Dairy Queen side. Phil said that they don't really work unless they are used as employee parking. I don't think we

should make them remove them, but the front space where it is close to the exit should be removed.

WW asked how many spaces are they up to now?

M. Perry said that Beacon Holdings is giving them 16 extra spaces in the back.

WW says that is 30 spaces if you remove the front space on the side of the building near Dairy Queen. He asked if they have a lease agreement? He asked Michael Perry if he understands what Phil is saying in his letter about giving up the parking spaces by lease to Honey Dew? Before you lease out anything else, you have to come before the Planning Board and show them you have enough parking. We have different uses require different parking. We don't have a site plan for that plaza. We don't know what is down there and what is required. You are leasing parking spaces when you don't know really what is down at the plaza. For everything that is in the plaza right now before another business opens you need to show that you have enough parking for what is there now and what is coming in.

M. Perry says that what I need to do is get you a site plan.

WW says, exactly.

RD says that he has one last concern. What happens if I'm on my way to work one morning and I see the cars backed out around the building out the entrance like Dunkin Donuts in Franklin. Is there anything we can put in the decision?

EM not really.

WW says that understanding is two remove the front parking space on the side of the building. Put get signs put up on the remaining four spaces "Employee Parking Only".

EM asked if the table in front of the building went away?

T. Gergos said yes.

RD motions to approve the site plan for Honey Dew Donuts located on North Main Street per plan S1 dated with a revision of September 1, 1998 providing parking space #4 is eliminated and spaces #5, 6, 7 8 will have "Employee Parking Only" signs are erected on four spaces on the side of the building. EM seconds. Unanimous vote of 4 (WW, RD, EM and PC) AM was absent.

MAPLEBROOK COMMONS – Discussion

EM abstains and leaves the room.

Chris Emeleous, engineer with GEOD Consulting for Gail Fallon is here to present plans. We received a letter from Phil Herr to the Planning Board and also gave a copy to myself. There are

alot of legal issues that Phil is raising and we are aware of that. Gail has gotten a lawyer to talk with Lee Ambler and start to answer the questions. We have answered Phil's questions about the plans as well as Don DiMartino and the Fire Chief's concerns about the plans. I would like to resubmit the plans and have Phil review them. I talked to Phil and he said he didn't want to review the plans because there are so many legal issues to deal with. We understand that, but we are confident the legal issues will be resolved and we don't want three months down the road if the legal issues are resolved then now lets review the plans.

WW says that at the same time, if the legal issues aren't resolved then you just wasted our consultants time.

C. Emeleous said that Phil expressed to him that they could be resolved. We are just requesting that Phil reviews the plans. We gave a fee for him to review.

Jill said that she spoke to Lee Ambler and he said that he couldn't give anything in writing at this time. There is alot involved and the parcel is still as one. To split it up there is a lot that would have to be done.

WW says that you can go ahead and submit the plans.

C. Emeleous says that Gail's lawyer looked at Phil's letter and knows the issues behind this. He feels that Gail is going to work with the Town and the abutter's. She would like to put this thing through. Phil said that he didn't want to look at the plans until the Board directs him to look at them.

WW says that you can submit a set to the Board tonight and send a complete set to Phil's office.

C. Emeleous says that he will send a copy to Phil's office. He asked about another date to get on the agenda. Says that we should be able to discuss Phil's comments in two weeks. I need to have Phil look at this submittal and give his comments.

WW says that it is going to have to be October 8, 1998 at 9:00 pm.

81-P SUBMISSION – ANP BELLINGHAM ENERGY CO.

EM returns to the meeting.

Alan Gotlie is here for Neal Roach who is on vacation. He is presenting to the Board is a for A plan consolidating some of the multiple lots.

EM reads memorandum from Phil dated August 31, 1998. We have reviewed the "Plan of Lands Maple Street" prepared for ANP by SMC, dated August 13, 1998. Upon careful review, it does not show a subdivision, and therefore should be so endorsed by the Board as requested. In reviewing the plan we noted some minor discrepancies and confusions. Those have been conveyed to SMC, and the plan is being revised. If by September 9th I have not received a

satisfactorily revised and re-dated plan I will call and notify the Board. If you do not hear before your meeting on the 10th, it means that I will have reviewed the revised drawing and found that it, too, does not show a subdivision and so deserves endorsement.

Steve Springer presented to the Board the updated plan per Phil's comments and the plan has a revised date of August 31, 1998.

EM motions to sign the 81-P plan for ANP on Maple Street. PC seconds. Unanimous vote of 4 (WW, RD, EM and PC) AM was absent.

ANP Bellingham Energy Co. – Development Plan Review – Public Hearing continued

Alan Gotlie, Esq. is in front of the Board for Neal Roach who is on vacation. He says that at the last meeting they were requested of the Storm Water Management materials.

Robert Dokens passed out to the Board a copy of the Design Calculations, Drawings and a narrative that Mr. Herr had suggested.

A. Gotlie tells the Board that the Storm Water Design package had been reviewed and approved by Walter Amory. Last night we were in front of the Conservation Commission and they have seen the same information and approved the project and voted to issue the Order of Conditions. One detail on the plans that are submitted in connection with the Site Plan Review is there are some detention basins and two of the detention basins are built in an area that has a high water table. So, in that area the plans show some fill and the change in grade to get the detention basin higher up above the water table. It isn't clear whether the Subdivision Regulations apply under the Site Plan Review or not. Just in the event that they might, we are requesting a waiver from the Subdivision Requirement with regard to detention basins and filled materials. He submitted the waiver for the Board's approval.

WW asked how deep the detention basins were?

R. Dokens said that they are very shallow. They are the ones that are close to Maple Street on the side of the entrance road. Once grass grows you won't even be able to tell that they are basins.

WW mentions the drawings of the proposed signs mentioned in a memorandum from Phil Herr dated September 1, 1998.

R. Dokens refers to the artists drawing of the entrance shown to the Board at the last meeting. There is a sign in the entrance stone wall that he is referring to. We need to show you exactly what it is going to look like before we erect it.

RD reads memorandum from Phil Herr dated September 1, 1998. We have reviewed the materials submitted by ANP for Development Plan Review. There are some minor submittal details that should be augmented, but I find no basis for denial of approval, with certain

stipulations. 1. A narrative description of erosion control measures should be provided to the Board. That probably exists within the July 15, 1998 "Stormwater Management Plan" cited by Walter Amory but not included in the materials provided to the Planning Board. I personally do not need a copy. 2. Drawings of proposed signs (those visible from off-premises) should be submitted to the Board for review prior to erection. It should be noted that there is An aggregate limit of 100 square feet on all freestanding signs, and of 3 square feet per foot of frontage (or not more than about 450 square feet) in total for all signs. 3. Approval should be based upon the understanding that aside from warning lights and illumination only for safe access, the buildings and equipment will not be floodlit or otherwise made night-visible. We note incidentally that the engineers have chosen high pressure sodium, notoriously damaging to night sky blackness, for their exterior lighting. The Town has no regulation applicable to illumination source type. If it did, high pressure sodium would be a candidate for limitation. Substantial materials dealing with stormwater management exist but have not been submitted to this Board. However, Water Amory has confirmed that such materials have been submitted to and approved by him. That is good enough for me, but the Board could certainly require that those same materials be provided to this Board. We have resolved the confusion over State vibration limit regulations that have changed since those referenced in the Zoning. The newer regulations express the limits in a different form than the old. The Zoning-referenced limit is based on frequency and amplitude, while the newer limit is based upon frequency and velocity. Both, however, are based upon 1980 US Bureau of Mines recommendations, are functionally equivalent, and are equally stringent. The Town obliges development to create vibration not exceeding 2/3rds that specified in the State regulation. This facility is automatically shut down if reaching about half the Town's limit measured at the plant equipment, assuring vastly less vibration at the boundaries of the site. The comparison is reassuring regarding the reasonability of the Town's regulation, which perhaps should be updated but not otherwise revised. This review, including the several conferences with the applicants prior to submittal, has consumed fewer of my hours than has roughly concurrent review of a proposed donut shop. This is in part attributable to the ANP process of pre-submittal review, applicant use of your checklist, and his knowledge that departures would be unacceptable. To be fair, their engineering costs probably also exceed those for the donut shop by several orders of magnitude.

WW asks how you read that part in Phil's memo about the lighting?

EM says that what Phil is saying about the lighting is if we had a rule. But, I guess about the flood lights there should be no additional other than what is on the plan.

EM motions to approve the Development Plan Review for ANP Bellingham Energy Co. PC seconds. Unanimous vote of 4 (WW, RD, EM and PC).

Neal Roach's office submits Preliminary Subdivision plan and application for ANP Bellingham Energy Co. to be located on Maple Street. We are dropping off a copy to Mr. Herr's office and go into discussion with him then we will call to be on an agenda at a later date.

WW asked if they would please drop off a copy of the plan at the Library.

ZONING AMENDMENT AND ZONING CHANGES – Public Hearing
-Sponsored by Petition

Brian Sutherland is in front of the Board to present the Zoning Amendment and Zoning Changes. Articles for October 14, 1998 Special Town Meeting are Article 2, 3 and 4.

B. Sutherland is representing the people who signed these petitions to restrict future power generating facilities. It has come about because of the number of plants that have come up. Not just in Bellingham but in the Blackstone Valley area. Long term residents are concerned about the development that is taking place and whether it is necessary. It is the number of plants that concerns people. We already have one plant here in Bellingham, one just over the border in Milford, there is a plant in Blackstone that has been sited and two more in Bellingham on Depot Street and Maple Street. Most of the people we spoke to feel that they have no say in what's going on. The first amendment is to say in the future that if all the plants are sited no matter what than no more be sighted.

WW asks what article is being presented right now?

B. Sutherland says he is doing Article 3.

WW asks that he stays with one article at a time.

B. Sutherland says that the general prohibition is because of the number of plants. The difference between Conservation's article and ours was that we had said that we wanted to stop the ability to go to the Zoning Board of Appeals. Zoning Board of Appeals can override the right of the people. People just want their voice to be heard and to say yes or no. If it goes to the Zoning Board of Appeals and they get a variance then that takes the voice of the people away. I have spoken to the Conservation Commission last evening and barring any objections from Town Counsel they are more than willing to have our Article supported on the floor and pass over theirs. They are waiting to hear from Town Counsel. They have already done this in Mendon and the Attorney General has already approved it.

EM reads letter from Phil Herr dated September 5, 1998. The article being heard on September 10th to prohibit electrical generating facilities appears to be clear on its face. The substance is reasonably in accord with the newly adopted *Master Plan*, which in its "Economic Strategy" element points out the danger of over-reliance on electric generation as an economic base and declares an intention to pursue economic diversification, not concentration (Economic Strategy, page 12). Those words might support eliminating electric generation as a permitted use. There has been much discussion about the actual consequence of adopting this or a similar proposal, in light of projects already in various stages of development. Here is our non-lawyer's understanding of what happens if the article is approved. The existing IDC facility on Depot Street would become a non-conforming use. That would require gaining a special permit for any future changes, extension, or alteration. The basis for approval, as stated at Section 2310 of the Zoning Bylaw, would be a finding that the change is no more detrimental than the existing use. It is believable that new technology and finances in a decade or two would allow changes to the

facility that would make more money for the owner, reduce noise, and reduce pollution. Gaining a special permit in that case should be no problem. Gaining a special permit to expand capacity and with it expanding noise and pollution would not be so simple. The ANP proposed facility on Maple Street appears to have secured vested rights by having obtained special permits and having applied for Development Plan Approval under current zoning. By the time of the Town Meeting ANP may well also have gained further vested rights by filing a subdivision plan for the property. It therefore appears that for construction of the Maple Street facility the adoption of this article would have no regulatory impact, nor would it have impact for eight years following definitive subdivision plan approval. Following that, the use would become legally non-conforming, in the same circumstance as the existing IDC plant discussed above. The site of the IDC facility proposed on Depot Street has had a preliminary subdivision plan filed, enabling it to be governed by existing zoning for eight years after the resulting definitive plan is approved. After that, it too becomes a non-conforming use, subject to a special permit for change, expansion, or alteration as above. The article has no impact upon electric generation as an accessory use. Should the ghosts of early settlers return and propose capturing the hydro potential of the Peters River to power a mill, this zoning would not impede them. It would not impede a farmer erecting a windmill to power a pump to draw water for cows. It does not preclude electric transmission, or switching and transformer yards, since they are not "generation". However, it would preclude all forms of electric generating as a principal use, including wind energy, solar energy, and geothermal energy. None of those are likely soon in this region. We have only tiny editorial comments. The proposed footnote designation of "****" probably should be, "15". The row heading "Electrical generating facility of powerplant" probably has two typos, instead meaning "Electrical generating facility or power plant". A closely similar article heard in August differs only in that it seeks to explicitly exclude the currently proposed plants from its provisions. Perhaps the authors could be persuaded to agree on passing over one or the other article to avoid splitting positive votes or having both adopted, giving us endless trivial confusions later on. The substantive differences between the two articles, given the facts in this case, seem very small.

EM says that apparently Phil is saying that it is a good article.

B. Sutherland said that they went to the Conservation Commissions meeting last night and they were going to speak with Town Counsel, but they voted and agreed to pass over theirs.

EM motions that the Board recommends Article 3 Amend Zoning By-Laws to Prohibit Electric Generating Power Plants. PC seconds. Unanimous vote of 4 (WW, RD, EM and PC).

B. Sutherland presents Article 2 on the Special Town Meeting Warrant – Rezone Electric Generating Power Plant Site Area off Maple Street. In addition to the prohibition to the Power Plants people felt that they had wanted to make sure they had a vote in what ever happens in the future as well. We will be changing the Industrial Zoning on both Maple Street and Depot Street to go to a zoning which is consistent with the zoning throughout the rest of the area. Therefore it was requested that this area on Maple Street was changed to Suburban. We are aware that it will not stop the plants from going in but it will be up to the people.

EM reads letter from Phil Herr dated September 5, 1998. The article being heard on September 10th to rezone land on Maple Street is clearly incorrect at least in its description of compass orientation and, we fear, more. The words cannot be made to describe any area that we can visualize or draw, even with mentally rotating the compass. The article refers to an unnamed undated map of anonymous authorship with yellow markings as the description of the area proposed for rezoning. Since the words do not describe an intelligible area, the map is the sole basis for knowing now and in future years what is actually being voted upon. For that reason, it is critical that the map be clear and precise regarding exactly what land is and is not proposed for rezoning, and how that relates to existing zoning. It is equally important for the map to have been available during the notice period so that those affected can in fact have known what is proposed and, for example, whether or not their property is included. Was the yellow-marked map on file with the Town Clerk? The notice gives no hint. Were copies of it provided to the Planning Board at least six weeks prior to the hearing as required at Section 2.2.2 of the Planning Board's "Procedural Rules"? Is the map present at the hearing? Is it legible to those attending? Will it be possible the next day to know that this and not some other map shows the actually proposed changes? How does the Board know that this map really reflects the proponents' intent? If the map has not been available during the notice period and if others share our inability to determine the exact area of the proposed zoning from the words, then our suggestion is that counsel be sought regarding the propriety and legality of proceeding with the consideration for rezoning. To vote down the article because of procedural unclarity is unfair to proponents, since it handicaps resubmittal. To approve without real notice is unfair to those having property interests at stake. If the map has been available, we strongly suggest that the Planning Board have it marked in a way that unequivocally indicates that it is the map referred to in the notice and article, and that the Board retain the map or a copy it makes of it. It is impossible to offer much comment on the substance of the article without knowing the extent of area involved. In 1995 the Planning Board at the request of the Town Administrator had us prepare an article to rezone land in the same vicinity to Suburban (see attached materials). The Board supported its approval, but Town Meeting did not agree. Circumstances have since changed. Further, the area not proposed may be very different than that previously recommended. The questions to be addressed here are basically the same as on Depot Street. 1. Is this location well-suited to industrial use generally? Is it well suited to industrial use than other industrially zoned areas, such as that reached by Farm Street? 2. Would rezoning be consistent with the newly adopted *Master Plan*? The "Future Land Use" map in the *Plan* shows this location as an "Opportunity Area," stating that in such areas "any one of several types of use might be welcomed" and that "Current zoning may well be inappropriate." (Lane Use page 5). The "Economic Strategy" element points out the danger of over-reliance on electric generation as an economic base and declares intent to pursue economic diversification, not concentration (Economic Strategy, page 12). Those words might support eliminating electric generation, as a permitted use here, but don't really speak one way or the other to the basic rezoning. 3. If the answer is that the North of 495 Maple Street land is now viewed by the Planning Board as a poor industrial location, then the Board should support its rezoning, but needs to assure that the configuration of that rezoning will have a reasonable result, and not simply "spot-zone" out of the Industrial District land now planned for a "target" use. 4. If the answer is that the North of 495 Maple Street area is a fine location for industry generally, but that certain uses are not appropriate there, then the Board should consider whether there are means of precluding the objectionable uses without throwing out all industrial uses. For example,

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it is our understanding that there are two articles on the special town meeting warrant proposing to do exactly that. Beyond Zoning, the Board could seek to have its voice heard in other arenas, such as the Energy Facilities Siting Board (where the Chair of the Conservation Commission has become a major actor). Rezoning some 200 or so acres, within which there has been a major investment of planning and engineering predicated on current zoning, deserves careful consideration before approval. Without better information, we cannot be of much help in that consideration. Without real notice with adequately clear geographical description, acting as at least unfair, and possibly unsustainable.

EM says that we also have correspondence regarding this article from Goulston & Storrs, Counselors at Law dated September 10, 1998 regarding Charles River Center. Ladies and Gentlemen: I am writing to you on behalf of our client, Charles River Bellingham LLC, the owner of Charles River Center. We have recently learned that Article 2 from the Warrant for the Special Town Meeting would rezone a portion of land in the Town of Bellingham from the Industrial District to the Suburban District. The land described in the Warrant Article includes Charles River Center. Charles River Bellingham LLC opposes the Article to the extent that it seeks to rezone of the land comprising Charles River Center including any adjacent land over which Charles River Bellingham LLC has an easement for access to its site from an Industrial District to a Suburban District. Charles River Bellingham LLC was unaware of this proposed rezoning until today. As the Planning Board is aware, Charles River Center is a properly permitted shopping center portions of which are currently open to the public, and the remaining portions of which are under construction. A rezoning of Charles River Center would adversely affect the property and would not afford the petitioners any purported benefit as the property is currently under development and operating as a shopping center. Thank you for your consideration of this letter. If you have any questions or comments, please contact Dick Marks of this office or me B. Andrew Zelermeyer.

WW asked if the map marked with yellow that Phil refers to is at the meeting tonight.

B. Sutherland said no, he thought it was submitted to the Board.

WW says that what you are asking us to recommend to night, we don't even know how much land is involved.

B. Sutherland says that he understands.

EM asked if the map colored up was available for review at the Town Clerk's office?

B. Sutherland says yes.

WW says that in the Article it is not a legal description of the property you want to rezone. I understand what you are doing. I'm not against you, but if we go and approve something on behalf of our board and it's not right, then we don't look very good.

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Don Keller, concerned citizen. I'm in favor of this article and I can see there are apparently some problems with it. What can we do at this point to get it corrected? What is your recommendation so that we can still have it on the Town Meeting warrant?

EM says that if it isn't done correctly and it is voted down at Town Meeting you can't come back for a number of years. You want to have it all in order. You need to find out if everything is correct. Was it your intent to rezone the Charles River Center?

B. Sutherland says that we were trying to be consistent with the zoning and not have it as spot zoning.

EM that would really be a burden. That would make everything down there pre-existing non-conforming. When ever they need to do anything they would have to go to the Zoning Board for a hearing. That is what this does, it burdens existing development.

B. Sutherland says that wasn't their intent.

EM says that you can proceed. This is just a public hearing as to whether the Board does or doesn't recommend it.

Jim Caddick says that the questions I have about the current landowners, especially the ones that haven't been developed or pending development. There could be monitory repercussions because that land could be alot more valuable as Industrial.

John Vignone, Atty. for Russ Cobb and Glockner's. They are against the zoning change for many reasons. How did you come about in picking how you would describe the property.

B. Sutherland said that we just took the industrial land that was there in that area on the zoning map, so it wasn't a type of spot zoning. Not taking into fact that Charles River Center was part of that.

J. Vignon asked what the purpose of this change?

B. Sutherland said that the purpose was to limit the amount industrial growth, particular the power generation. We are told that the power generating facilities are going in no matter what you say. We, the people don't have any say. We want to have some impact, by having some control.

Russell Cobb, lives on Maple Street. Just bought another piece of Industrial land on Maple Street, now your going to change it. That is why I moved there, it is zoned Industrial. That is what I want. I went there so I wouldn't have problems with my business.

Burt Rhodes, lives on Lake Street. I bought the land being changed because it was Industrial. I took it to the Town to have it rezoned to Suburban. The Town turned me down. They said that we want Industrial, we don't want anymore homes. I got someone for this piece of land, now you

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want to reverse it back to Suburban. The power plant is taking 25 acres and the rest of the land is going back to the town as a gift. There is no way the power plant can expand because it is going to be Town land.

Tom Guerin, asks if the intent of this rezoning is the Power Plant. You don't want the Power Plant to expand. If that is the case, ask for that piece of land to be rezoned. Leave all the rest of the land alone. Your first article seems to take care of that except for possible expansion.

WW says that if Article 3 passes then what do you need Article 2 and 4 for? I would think that Article 3 is the way to go. I would put all my ammunition to Article 3. What about the Master Plan. I'm sure alot of the people that you got to sign the partitions voted for the Master Plan. Thousands of people voted for the Master Plan to be done. It cost the town thousands of dollars and that Master Plan says that this area should be Industrial zoned for development. I think you are really reaching. I don't want to see power plants. That is my own personal feeling. What you are going here is trying to eliminate everything in town.

PC says that as it stands right now he could not recommend this article.

Jacquelyn Smith says that this discussion of power plants has gotten me through the roof. We came here to a Suburban Town. We have one already in town and two more coming. Do we want to be the Power Plant Capital of New England.

WW Article 3 takes care of Power Plants. By taking Industrial land throughout the Town and rezoning it isn't the way to go. We can take a consensus of this Board right now regarding this Article and I don't think your going to get our approval.

EM says that doing away with all the Industrial land is not going to benefit the Town. Article 3 is the one you want to stop Power Plants.

J. Smith says that she is not against industrial growth, but healthy industrial growth is what she wants no unhealthy.

EM says that we are talking about Power Plants again and this hearing that we are talking about right now is rezoning.

D. Keller is that his understanding was the intent of the rezoning was to send a message to everybody including the Siting Board and the Legislature that the people in this valley are fed up with concentration of Power Plants. I understand your point.

RD says that what sounds wrong here is you have 400 people saying that we want to change this thing. You look at the town meeting record and the vote was 386 total. 76 people said no. What happened back then? This is why it is so important to come to Town Meetings.

EM says why are we spending the whole night on this. Do we recommend it or not?

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Joyce Moran, you keep saying what happened at that Town Meeting? What happened at the meeting was that an 8 million dollar donation was dangled in front of people so that we could get a high school. That's why the zoning was changed.

RD motions to not recommend Article 2 Rezone Electric Generating Power Plant Site Area off Maple Street as it is worded. PC seconds. Unanimous vote of 4 (WW, RD, EM and PC).

B. Sutherland presents Article 4 on the Special Town Meeting Warrant – Rezone Electric Generating Power Plant Site on Depot Street. This is to change the land that had been previously voted from Agricultural/Suburban to Industrial to change it back to Agricultural/Suburban. Two months after the zone got passed a much larger facility was proposed than what was talked about at the Town Meeting. The rezoning will not prohibit that plant from going in. It will make it more non-conforming.

EM it is so clear that all you want to do is reverse what was done. From a Planning Board's point of view. I have to say, well does it make more sense to either make it Agricultural or Suburban. Why have it split?

RD reads letter from Phil Herr dated September 5, 1998. The article being heard on September 10th to rezone land on Depot Street draws its language and map almost verbatim from Article 19 as proposed at the 1997 Annual Town Meeting. It therefore omits a critical area of land that by the motion under the 1997 article was included in the resulting rezoning although it had not been included in the article, shown on the referenced map, or mentioned during the hearing process. The result of the current proposal relying on the old article's language is that the rezoning being heard proposes to rezone as Agricultural or Suburban a great deal of land, but leaves in the Industrial District a 200 foot strip of land intended in the 1997 article and promised in the 1997 hearings to be a buffer for Box Pond Road. If adopted, this article will take the land least near Box Pond and rezone it, leaving the closest land available for industry. Although that surely was not the intent of the proponents, disinterested counsel should be sought before quickly agreeing to now propose rezoning of land, not included in the article or the notice of this hearing. Attached are the article and motion from 1997, the February 23, 1995 map referenced in both the current hearing and the 1997 article; a revision made today to that map to highlight the "buffer area" proposed but eliminated in 1997 and currently proposed to remain industrially zoned; and the current Zoning Map for that vicinity. We did not attend the 1997 Annual Town Meeting, nor did we have any hand in drafting the motion made under the Article involved, although we did draft both the language of the article and map it references. It is unusual but no unprecedented to be differently worded than an article. In the 1997 case, however, the substance of the motion went beyond the content of the article. We first became aware of the disparity between article and motion in 1997 while preparing materials for routine submittal to the Attorney General. Those submittals did nothing to draw attention to the disparity, and it is unlikely that the reviewers were aware of it or considered the acceptability of eliminating in the motion a buffer that had been prominent in consideration of the article. The reviewers likely did as we did initially and perhaps others did, assume that the words and map were in agreement. We informally mentioned the "confusion" to the Town Clerk and Planning Board last year, but did not pursue it further, since it appeared that the issue would be moot, given the plans to convey that land to the Town. We

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were reminded of the disparity when the Preliminary Subdivision Plan submitted for Depot Industrial Park shown an industrial plant at a location that would not have been allowed had the buffer been retained. Our reason for suggesting at the August Planning Board meeting that no action be taken on the plan was because of concern about this issue. The disparity between the 1997 motion was either the result of sloppy motion writing by whoever wrote the motion, or was an intentional effort to remove a protection that had been promised during the hearings. If the drafting was not sloppy and the difference was not made clear at the Town Meeting, very serious issues of ethics are raised. Had the 1998 article been clear in extending the rezoning to Box Pond Road, any regulatory consequences of the 1997 disparity would have been removed through adoption. The awkwardness continues now because the current article mirrors the 1997 article. ("Why no," one might think, "was that not what we are trying to undo?" No quite.) Although the current article is a little confusing in that it references a map that proposes as "Industrial" land that the proponents intend as non-industrial, it in fact reasonably conveys intent. We interpret the article to intend returning to the pre-1997 zoning situation, with the Suburban/Agricultural boundary exactly where it was at that time. My guess is that the Attorney-General and any humane judge would find that inclusion of the "buffer" in the current action, if orally proposed at the Planning Board hearing, would reasonably be considered within the scope of the hearing and article and to be permissible. On that basis, the substance of the proposed article merits consideration. The Planning Board proposed rezoning of this area to industrial in 1995, based upon the appropriateness of the vicinity for industrial development. The proposal was defeated in 1995, but in 1997 with the prospect of the power plant the rezoning was again recommended by the Board and this time approved. The Master Plan studies and discussions surfaced no hint of disagreement with that zoning. At this point, the reasons heard for reversing course yet again are not based on the area being unsuitable for industrial development, but based on opposition to the power plant not proposed. The rezoning's effect on the power plant proposal will be non-regulatory. The landowners have secured "grandfather" rights for up to eight years. A Town vote to rezone, however, might well be a consideration in other proceedings, such as those of the Energy Facilities Siting Board. The industrial park image shown to the Planning Board at its August meeting indicates what current zoning makes possible there if the power plant proposal does not materialize. In making its recommendation, the Board should consider: 1. Is this location well-suited to industrial use generally? Is it less well-suited to industrial use that other industrially-zoned areas, such as that reached by Farm Street? 2. Would rezoning be consistent with the newly-adopted *Master Plan*? The "Future Land Use" map in the *Plan* shows this location as an "Opportunity Area," stating that in such areas "any one of several types of use might be welcomed" and that "Current zoning may well be inappropriate." (Land Use page 5). The "Economic Strategy" element points out the danger of over-reliance on electric generation as an economic base and declares an intent to pursue economic diversification, not concentration (Economic Strategy, page 12). Those words might support eliminating electric generation as a permitted use here, but don't really speak one way or the other to the basic rezoning. 3. If the answer is that the Depot Street land is now viewed by the Planning Board as a poor industrial location, then the Board should support the article, and explore how the rezoning can properly be extended to include the buffer area. 4. If the answer is that the Depot Street area is a fine location for industrial generally, as thought in 1995 and 1997, but that certain uses are not appropriate there, then the Board should consider whether there are means of precluding the objectionable uses without throwing out all industrial uses. For example, it is our understanding

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that there are two articles on the special town meeting warrant proposing to do exactly that. Beyond Zoning, the Board could seek to have its voice heard in other arenas, such as the Energy Facilities Siting Board (where the Chair of the Conservation Commission has become a major actor). 5. If on that or some other basis the Board determines that it does not support removing industrial zoning from this area, the Board should aggressively pursue the 200 foot buffer question. Zoning for that buffer is of no consequence if a power plant is built as proposed, but it becomes critical if the power plant does not happen and the zoning remains. For example, it is likely that if the Board opposes rezoning, the current land owners would not agree to a restriction on land within 200 feet of Box Pond Road that would preclude inappropriate development there, pending getting Town Meeting to embed that protection in the Zoning at a later town meeting. The question for reason and responsibility for the 1997 "article versus motion" disparity may be interesting but is not as important as reaching a sound recommendation on this article, since it is substantively of great importance to the Town.

EM says that he is sure everyone understood that but I think I can explain. On the zoning map, the proposed rezoning of this article to change to zoning back to Agricultural/Suburban, the buffer strip would not be affected by the description. Apparently the Article and the description somehow got construed or misconstrued. But, right now if it was to be rezoned, the 200' buffer strip would stay Industrial. That is not what you want. Right now with the land being Industrial, people that come in with plans for an industrial use, the Board can say that they want that 200' buffer to stay to protect the people on Box Pond Road.

Jim McCandless lives on Box Pond Road. That disparity between the May 1997 motion and the article. Doesn't that in some way invalidate that vote? Because people didn't vote for what actually transpired?

EM no. What it does is people did vote for what transpired. People voted on the basis of what was described or amended at the Town Meeting but it wasn't what was advertised and discussed at Public Hearings. The question is, is it suited for Industrial use or isn't it. We aren't discussion Power Plants. Depot Street is a brand new wide road with a wide entrance on Hartford Ave. which gets you to Route 495. That word to the road was done because it was Industrial land.

WW reads letter from Varney Bros. Sand & Gravel dated September 9, 1998. As the owner of the property on Depot Street which is being considered for rezoning, I wish to go on record as being opposed to this proposal of rezoning the land from Industrial to Suburban and Agricultural. From time to time, town officials have formed committees such as the Industrial Development Commission to attract industrial growth to the community in order to lessen the tax burden on homeowners. At present, most of the industrial land in Bellingham borders Interstate 495 and has been or is currently in the process of being developed. With the exception of a few smaller industrial areas still available, this Depot Street parcel is one of the only large parcels zoned for Industry. If the town determines it would like an industrial tax base, it must have areas where industry can locate. This Depot Street parcel is across the street from an industrial zone, it abuts railroad, and has power and gas easements within its boundaries. Infrastructure Development Company is proposing a power plant for this site. Your recommendation on this rezoning article will not effect IDC's current proposal. There is also a by-law being considered that has been

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proposed by the Conservation Commission which, if passed, will prevent future power plants from locating in Bellingham. However, there are many uses permitted in an Industrial zone which would not be permitted in an Agricultural and Suburban zone such as medical clinics, manufacturing operations, warehouses and outdoor recreational facilities. For this reason, I am asking your consideration of not recommending the proposed rezoning. Varney Bros. Sand & Gravel, Inc. has been operating a business in Bellingham for over fifty years, employing local residents, using local suppliers for our products and services. We support local organizations and are proud of our community participation. The Town of Bellingham has taken several of our parcels of land in order to build the wells that supply a good portion of the towns drinking water. We are a major property owner in this town and recently have begun a development program which we are proud of and believe that we have brought responsible developers to enhance our land as well as provided needed services to the Town. We recognize the need for clean, safe producers of electricity and we fully support the Roy family in their endeavor to build such a plant on Depot Street. Having worked with the Roy group since before the first plant was built, we have found them honest and concerned with the community and their neighbors. We would expect that as they proceed in their permitting process for their power plant on the Varney Depot Street property, that they will continue to respond to questions raised by the community and its officials. It is our hope and desire that they become successful in their permitting process. Their proposal, however, has nothing to do with the rezoning of the property that is the subject of this hearing. We, therefore, request that you give your due consideration to not recommending the rezoning article as an endorsement that this land is a proper location for Industry. Very truly yours, Linda L. Varney.

Ken Hamway, lives on Weathersfield Road. Why do we have to make everything easy for power plants? If we rezone this, they have an eight year freeze because of the Preliminary Subdivision. What is wrong with a non-conforming use in that area? The 8 million dollar gift that everyone got suckered into a year ago and now is under review. The 700 megawatt plant is now a 1,035 megawatt. This man is honest, this man is upfront?

EM we are not making it easy for the power plant. What you are doing is making it hard for the property owner. You are hurting everybody but who you want to. By rezoning it, you are saying that you don't want industry. If you take the two largest industrial parcels that we have that are accessible and undeveloped and do away with them. You are saying that you don't want industry. It's not doing what you want to do.

K. Hamway says that it is time in this town and somebody steps up to the plate and hits a home run. All the town officials have stepped up and struck out.

WW asks if houses on the land would be better than a business? I don't think so. That is what you have to look at and weigh it out. The power plant is frozen for eight years. If the Roy family doesn't build a power plant. Your article 3 went through to ban power plants. You rezoned the land on Depot Street to Agricultural/Suburban. Now we need tax revenue in town. What are we going to put on that land, houses?

D. Keller says that the bottom line is that we were lied to and we want to reverse it.

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EM says that this is not going to do that. Changing this land is not going to do that.

D. Keller says that, that is all we have the power to do.

RD says that changing that piece will not do what you want, you will only hurt other people.

B. Sutherland says that we have nothing against the individual who owns the land. This is not an in my backyard issue. The people that has signed this is from one end of this town to the other.

EM says that we are not stopping it from going to the Town Meeting, but we just want to do what is right for the Town.

K. Hamway says that he was one of the guys that went out and knocked door to door to get these signatures. They would have signed anything to stop the plants from coming in here. It is time to give the voters that put you in those chairs. Think about your constituency and what they want. I am trying to influence you to recommend this article to Town Meeting.

EM says that you aren't going to influence me to vote on something that I know is wrong. This does not do what you want it to do. All it does is hurt the town and land owners. It is not good for the town.

K. Hamway says that there is violation of trust. We trusted Steven Roy, if that is who it is with a one stack, 700 megawatt, 8 million dollars. Now it is gone.

WW asked if Steven Roy owned this land? No, Varney owns this land. You aren't going to hurt Steven Roy by rezoning this land you are going to hurt Varney.

EM makes a motion to not recommend Article #4 Rezone Electric Generating Power Plant Site on Depot Street. RD seconds. Unanimous vote of 4 (WW, RD, EM and PC)

D. Keller wants to make a statement. He had done alot of research on these Power Plants. What alot of people don't understand is the IDC plant all by itself will be producing 5% of all the electricity that's required in all of New England. If you take all 8 plants from Burreville, R.I. through to Medway. There are four existing plants and four proposed. If they all go in that is 25% of all the electricity required in New England. This stuff is huge and out of control.

RD wants to make his own statement. I am apauled to here people infront of me say vote the way your constituance wants you to and the people that put you there. The Master Plan was based on two years of my time, non paid, because I wanted to see and tell my views of how the town was supposed to be and how I want it to be. I'm new to Bellingham, probably 5 years. I'm going to build here and reside here. Now you come and say, do what we tell you to do? I'm doing what I thought is right and I think the rest of the Board is doing in the best interest in the Town. In this particular situation I am with you 150%. We gave you the Article to band Power Plants, but I am not for the other articles.

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VICTORY HEATING & AIR-CONDITIONING Revised Landscape Plan

David Dalpe and Mike Dubeau, owners of Victory Heating and Air-Conditioning is in front of the Board with a revised Landscaping Plan for their location in Mendon Street.

M. Dubeau says that Phil Herr's letter outlines everything. What we are proposing is that all the tree's along the road will stay, there is one in the way of our sign that we want to back up a little bit. There is an existing oak that we are going to keep. The row of burning bushes, we are asking for the latitude to omit them because we've invested in a rod iron fence on top of our retaining wall that we don't want to cover up because we spent a lot of money putting the fence there and it is more appealing than the shrubs. There are shrubs around the dumpster area. The trees on the side of the building that is a heavily wooded lot we would like to omit. We would like to get the bond released so that we can install everything. Part of the money that was put in the bond was for the irrigation system that is being put in now.

D. Dalpe said that the original proposal was done by Glen Gerrier. The plantings that were included in his proposal was his choice. We actually never met with him to go over the shrubs. We have received proposals from other contractors that have made other recommendations that we find more appealing because of color scheme and type of shrubs.

EM apparently you are showing plantings that are not required, but they are shown. Where are the plantings, is this the plan?

D. Dalpe said that this plan in front of you is a proposal that is received for a shrubbery selection that we want to put in the front of the building. We are more concerned that you probably are about the appearance of this building. We have put a lot into this building and it is very important to us as far as the appearance goes.

EM what I'm getting now is that you're saying one thing but it sounds like you're trying to cheap out on the plantings.

M. Dubeau says that the plan that was prepared was over engineered. Asking for shrubbery around the dumpster section is not required but he put it there. The final hour we were told, by the way you need a landscape plan if you want to get a building permit. Our project manager made a phone call and Glenn Gerrier made one up for us.

EM said, yes that got you through the Planning Board. You were happy that night, but know that you have to do it isn't that great. Do you want to change from one plant to another or do you want to do away with them? What is it you want to do?

D. Dalpe said that everyone of the issues are numbered and everyone is identified in Phil's letter to us.

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EM in order to do something like this, this is an amendment to the Site Plan. We have to have a real plan with a real stamp on it.

WW says that he wants the \$11,000.00 too.

EM says that he gets that after the plantings are in. The money was put in so you could get an occupancy permit. If we give the money back, do the plants get planted?

M. Dubeau says that all we want is it looks like what Phil had said is acceptable. Go ahead and do your landscaping. The Board can go look at it if you want and review it and then if it is okay, you can release the funds at that time. Item #1 is to relocate the tree that is to be planted by the sign. Item #2 says omit burning bush plantings on retaining wall. Item #3 says omit plantings in the back corner of the dumpster. Item #4 omit plantings to right of building. Item #5 omit foundation plantings at the east end of the building. Item #6 plantings to be different but not omitted.

D. Dalpe, says that leave the \$11,000.00 in escrow, we will do the plantings, revise the plan and you review.

WW says to go ahead and start planting.

RD motions that the landscaping should be as per modified plan with the omission of one tree, omission of #2 which is the Burning Bush, omission of #3 which is the rear corner by the dumpsters, omission of the property line trees, and #5 is on west side of building. EM seconds. Unanimous vote of 4 (WW, RD, EM and PC).

WW says that Stuart said that the Planning Board has to send me something in writing because the landscaping isn't done. We are holding the \$11,000.00 until the landscaping is done. When the landscaping is done we need to send Stuart a letter letting him know that the landscaping is done.

TOWN COMMON ESTATES – Bond Posting

Tony Marinella is in front of the Board for Lot Releases on Town Common Estates.

Clerk lets the Board know that she doesn't have the letter from Grace Devit letting us know that the Bond has been posted. It was posted on Wednesday before the meeting and Grace was not in the office today. Tony Marinella has the Form and Don DiMartino has sent his letter with the checklist for the amount of the bond.

WW asked what he is asking to be released?

Tony Marinella says that he is asking for 6 lots to be released, which is half. He has posted half of the bond \$65,000.00.

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EM motions to sign the Lot Release for Town Common Estates for Lots 1, 2, 3, 5, 8, and 10. Jill will hold the Form G until she receives the letter from the Town Treasurer. RD seconds. Unanimous vote of 4 (WW, RD, EM and PC).

81-P SUBMISSION

Lucielle Remy submits an Approval Not Required plan for one lot #4 on Blackstone Street. A fee of \$10.00 was paid.

EM motions to sign the Approval Not Required plan on Lot #4 Blackstone Street for Lucielle Remy. RD seconds. Unanimous vote of 4 (WW, RD, EM and PC)

BAINBRIDGE WOODS

Phil Herr sent the Decision for the Definitive Subdivision for Bainbridge Woods for the Boards approval.

WW asked if the 2" binder coat needs to be down on the roadway prior to, is it occupancy permits or building permits?


EM says before occupancy permits. If you make them pave it before building permits then the bust it all up while there doing construction. Our bylaw doesn't have that in it yet, to put a binder coat down prior to construction. You can't make them do something that isn't in our bylaws.

RD motions to endorse the Decision pending Town Counsel's approval. EM seconds. Unanimous vote of 4 (WW, RD, EM and PC).

RD moves to adjourn at 11:30 am. EM seconds. Unanimous vote of 4 (WW, RD, EM and PC) AM was absent.


William M. Wozniak, Chairman


Richard V. Dill


Paul Chupa

Edward T. Moore

Anne M. Morse