

**Providence/Bristol County Superior Court**

**Case Summary**

**Case No. PC-2004-0803**

**R AND K BUILDING CORP V CITY OF  
WOONSOCKET ZONIN** §

Location: **Providence/Bristol  
County Superior  
Court**

§

Filed on: **02/13/2004**

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**Case Information**

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Case Type: Agency Appeal

Case Status: **02/24/2005 Closed**

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**Party Information**

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**Plaintiff R AND K BUILDING CORP**

**NOONAN, ELIZABETH MCDONOUGH  
*Retained***

**Defendant BEGIN, RALPH**

**CARROLL, JOSEPH P.  
*Retained***

**FRECHETTE, NORMAN**

**CARROLL, JOSEPH P.  
*Retained***

**GENDRON, DANIEL**

**CARROLL, JOSEPH P.  
*Retained***

**MOREAU, ROBERT**

**CARROLL, JOSEPH P.  
*Retained***

**PRISTAWA, WALTER**

**CARROLL, JOSEPH P.  
*Retained***

**WOONSOCKET ZONING BOARD**

**CARROLL, JOSEPH P.  
*Retained***

## Case Events

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02/13/2004 Complaint Filed  
02/16/2004 Fees Assessed (Conversion)  
02/16/2004 Payments Received (Conversion)  
02/26/2004 Answer Filed  
02/26/2004 Entry of Appearance  
02/26/2004 Summons Proof of Service Filed  
03/18/2004 Other  
04/22/2004 Stipulation Filed Extension of Time  
05/14/2004 Stipulation Filed  
06/11/2004 Brief Filed  
07/09/2004 Brief Filed  
08/23/2004 Motion to Assign  
08/23/2004 Granted  
08/23/2004 Order Agency Appeal Assigned  
08/23/2004 Granted  
08/23/2004 Motion to Assign  
02/11/2005 Judicial Decision Filed  
02/24/2005 Order Entered During Discovery  
02/24/2005 Granted

**OFFICIAL RECEIPT**  
State of Rhode Island  
Supreme Court  
Judicial Records Center  
5 Hill Street  
Pawtucket, RI 02860  
(401) 721-2641(phone)  
(401) 721-2653(fax)

Payor  
walk in

Receipt No.  
**RC-2023-01592**

Transaction Date  
11/06/2023

| Description           | Amount Paid |
|-----------------------|-------------|
| Miscellaneous Payment |             |
| Certified Copy Fees   | 3.00        |
| Certified Copy        | 3.00        |
| <b>SUBTOTAL</b>       | <b>3.00</b> |

**PAYMENT TOTAL** **3.00**

Cash Tendered 3.00  
Total Tendered **3.00**  
Change 0.00

11/06/2023  
11:20 AM

Cashier  
Station SURC2

Audit  
18474655

**OFFICIAL RECEIPT**

DOCKET EVENT LISTING

CASE NO.: PC2004 0803 TYPE AGENCY APPEAL  
TITLE: R AND K BUILDING CORP V CITY OF WOONSOCKET ZONING BD  
FILING DATE: 02-13-2004 ASSIGNED TO TRIAL POOL:  
DESIGNATED TO ARBITRATION:

|                         |     |                             |     |
|-------------------------|-----|-----------------------------|-----|
| BEGIN, RALPH            | DEF | Carroll, Joseph P           | AOR |
| FRECHETTE, NORMAN       | DEF | Carroll, Joseph P           | AOR |
| GENDRON, DANIEL         | DEF | Carroll, Joseph P           | AOR |
| MOREAU, ROBERT          | DEF | Carroll, Joseph P           | AOR |
| PRISTAWA, WALTER        | DEF | Carroll, Joseph P           | AOR |
| R AND K BUILDING CORP   | BPL | Noonan, Elizabeth McDonough | AOR |
| WOONSOCKET ZONING BOARD | BDF | Carroll, Joseph P           | AOR |

| <u>DOC. ID.</u>   | <u>DATE</u> | <u>JUDGE</u>      | <u>OUTCOME</u> | <u>EFFECTIVE DATE</u> |
|---|-------------|-------------------|----------------|-----------------------|
| TML   | 02-26-2004  |                   |                |                       |
| ANSWER TO COMPLAINT FILED FOR DEFENDANTS  |             |                   |                |                       |
| TML   | 02-26-2004  |                   |                |                       |
| ENTRY OF APPEARANCE FILED Carroll, Joseph P FOR DEFENDANTS  |             |                   |                |                       |
| SF  | 02-26-2004  |                   |                |                       |
| SUMMONS, PROOF OF SERVICE FILED FOR CITY OF WOONSOCKET  |             |                   |                |                       |
| NM  | 03-18-2004  |                   |                |                       |
| OTHER CERTIFIED COPIES OF THE DOCUMENTS   |             |                   |                |                       |
| NM  | 04-22-2004  |                   |                |                       |
| STIPULATION FILED, EXTENSION OF TIME PLF HAS UNTIL 05-14-04 TO FILE THEIR BRIEF   |             |                   |                |                       |
| PAO   | 05-14-2004  |                   |                |                       |
| STIPULATION FILED PLFT'S BRIEF IS DUE ON OR BEFORE 6/9/04; DEFT. SHALL HAVE THIRTY DAYS AFTER THE FILING OF PLFT'S BRIEF; R&K MAY FILE A REPLY WITHIN 10 DAYS |             |                   |                |                       |
| SXH   | 06-11-2004  |                   |                |                       |
| BRIEF FILED   |             |                   |                |                       |
| PAO   | 07-09-2004  |                   |                |                       |
| BRIEF FILED OF APPELLEES CITY OF WOONSOCKET.  |             |                   |                |                       |
| LBP   | 08-23-2004  | Krause, Robert D. |                |                       |
| MOTION TO ASSIGN OTE ; B=4 GIBNEY   |             |                   | GRANTED        |                       |
| NM  | 08-23-2004  | Krause, Robert D. |                |                       |
| ORDER, AGENCY APPEAL ASSIGNED CASE ASSIGNED TO JUDGE GIBNEY   |             |                   | GRANTED        |                       |
| NM  | 02-11-2005  | Gibney, Alice B   |                |                       |
| RESCRIPT FILED THE APPELLANTS APPEAL IS DENIED & THE DECISION OF THE ZONING BD. TO UPHOLD THE PLANNING BD. DENIAL IS AFFIRMED.                                |             |                   |                |                       |



STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

R & K BUILDING CORP.,  
Plaintiff,

v.

C.A. No. 2004-0803

CITY OF WOONSOCKET ZONING BOARD  
OF REVIEW and RALPH BEGIN, NORMAN  
FRECHETTE, DANIEL GENDRON, ROBERT  
MOREAU and WALTER PRISTAWA, etc.,  
Defendants

**ORDER AFFIRMING DECISION  
OF CITY OF WOONSOCKET  
ZONING BOARD OF REVIEW**

This matter came on for hearing before this Honorable Court, Gibney, J., on the 11th day of February, 2005, on the Plaintiff's appeal of a decision of the Defendants Zoning Board of Review, and after consideration of the record and memoranda of the parties, it is hereby

ORDERED

That the Plaintiff's appeal is denied and the decision of the Defendants Zoning Board of Review to uphold the Planning Board's decision is affirmed.

ENTERED as an Order of this Court this 24<sup>th</sup> day of Feb., 2005.

ENTER:

Gibney, J.  
Judge

BY ORDER OF:

Dorise M. Sheehan  
Clerk  
2-24-05

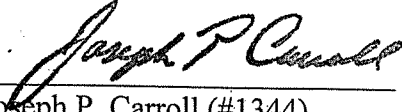
SUPERIOR COURT  
FILED  
HENRY S. RICHES  
05 FEB 24 PM 12:27

ORDER

R & K Building Corp. v. City of Woonsocket Zoning Board of Review  
2004-0803

Page 2

Presented by:



Joseph P. Carroll (#1344)

City Solicitor

169 Main Street

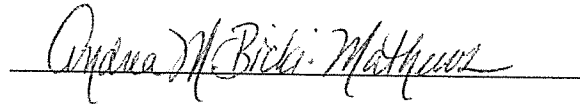
Woonsocket, RI 02895

(401) 767-9201

(401) 769-0316 FAX

**CERTIFICATION**

I hereby certify that on the 22<sup>nd</sup> day of February, 2005, I mailed a true copy of the within Order to Elizabeth McDonough Noonan, Esq., Adler Pollock & Sheehan P.C., One Citizens Plaza, 8<sup>th</sup> Floor, Providence, RI 02903.





designated as Assessor's Plat 53, Lots 13 and 16. The edges of the right-of-way thus form one side lot line of each of Lots 13 and 16. At the time the subject property was conveyed by the 1962 deed, there were no structures on Lot 13 or Lot 16, which are located in an R-2 Low Density Single-Family Residential District. Pursuant to setback requirements in an R-2 district, homes built on Lots 13 and 16 are required to have a minimum setback of ten feet from the side lot lines. Woonsocket, R.I. Rev. Ordinances app. B, § 7.3-5.2 (2002). In 1965, homes were built on Lots 13 and 16. While the home on Lot 16 was built in compliance with the side setback requirement, the home on Lot 13 was built just eight feet from the side lot line abutting R&K's right-of-way, and is thus dimensionally nonconforming as it stands.

The present controversy arose because the appellant desires to develop the subject property and create a nine lot residential subdivision. As part of this project, R&K wishes to convert its forty foot wide right-of-way into a public street so that the lots on its parcel have a means of egress to Mendon Road. If the right-of-way were converted to a public street, Lots 13 and 16 would then be corner lots. As such, the side setback requirement on the side of each house facing the new street would be twenty feet — the same as a front setback. See Woonsocket, R.I. Rev. Ordinances app. B, § 7.1.1. The home on Lot 16 would thus become dimensionally nonconforming, and the nonconformity of the home on Lot 13 would be increased, through no fault of the owners of those lots. The problem came to light in the course of the first stage review of the appellant's plans.

The Development Review Act, §§ 45-23-25 et seq. sets forth the procedure to be followed in applying for approval of a new subdivision. Because R&K seeks to divide its property into nine individual lots, the project qualifies as a "major subdivision" under the terms of the Act. Section 45-23-32(22). The initial step in the application process is to hold one or

more pre-application meetings for the purpose of allowing the applicant to meet with relevant officials and agencies to receive guidance and advice as to navigating the approval process. § 45-32-35.

Consistent with this provision, R&K appeared before the Planning Board in March of 2001 for a pre-application meeting. At that time, there were no objections to R&K's proposed designation of the right-of-way as a public street. Following the pre-application meeting, the appellant filed an application for approval of its subdivision master plan in accordance with § 45-23-40 in July of 2002. On September 11, 2002, the Woonsocket City Solicitor, Joseph Carroll, sent a memorandum to a member of the Planning Board advising him that the application could not be approved because construction of a street where the right-of-way was would create a dimensional nonconformity on abutting lots. At an October 1, 2002 meeting of the Planning Board, the appellant's application was tabled indefinitely by the Board, in reliance on Carroll's opinion that the Board "cannot approve a subdivision without Zoning Board approval of any necessary variances." (Minutes of Planning Bd. Mt'g 10/1/02 at 1.)

The appellant sought reconsideration of the application, which the Planning Board denied in a letter dated September 3, 2003, determining that the application could not be approved unless the owners of Lots 13 and 16 obtained the proper variances. (Letter from Keith A. Brynes, City Planner to Mr. Raymond Bourque of 9/3/03.) R&K then appealed the denial to the Zoning Board of Review pursuant to § 45-23-67. Public hearings were held on January 12, 2004, and January 26, 2004, before the Zoning Board. The decision of the Zoning Board to uphold the Planning Board was issued on February 13, 2004. R&K timely filed this appeal on February 13, 2004, pursuant to § 45-23-70.

The Zoning Board upheld the denial of the appellant's application by a vote of three-to-two, citing the rationale relied upon by the Planning Board, that "[t]he plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.11 of the City's Zoning Ordinance, which states that 'The side yard requirements for all buildings on corner lots shall be such that principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot.'" (Zoning Board of Review Public Hearing of 1/26/04 Minutes at 11.) The plaintiff timely appeals this decision on several grounds.

### **STANDARD OF REVIEW**

Under the Development Review Act, review of a planning board's decision is limited. A zoning board reviewing the decision of a planning board may reverse the lower body only if the zoning board finds that there was prejudicial procedural error, clear error, or a lack of support by the weight of the evidence in the record. § 45-23-70(a). When the Superior Court reviews a zoning board's decision, "the 'traditional judicial review' standard that is applied in administrative-agency actions" is utilized. Therefore, the Court must not consider witness credibility, weigh the evidence, or make findings of fact. Munroe v. Town of E. Greenwich, 733 A.2d 703, 705 (R.I. 1999) (citing Kirby v. Planning Board of Middletown, 634 A.2d 285, 290 (R.I. 1993)). The standard of review is provided by statute:

"The court shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions or decisions which are:

- (1) In violation of constitutional, statutory, ordinance or planning board regulations provisions;
- (2) In excess of the authority granted to the planning board by statute or ordinance;

- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Section 45-23-71(c).

The Court’s review is thus confined to a search of the record to ascertain whether the board's decision “rests upon competent evidence or is affected by an error of law.”

Munroe, 733 A.2d at 705 (citing Kirby, 634 A.2d at 290).

### **THE DENIAL OF APPELLANT’S APPLICATION**

The appellant argues that the Planning Board’s failure to act on the subdivision application in a timely manner resulted in the proposed subdivision being “deemed” approved, nullifying the later denial by the Planning Board and Zoning Board. R&K claims that pursuant to §45-23-40(e), because the Planning Board neither approved nor denied its application within 120 days of the application being certified complete, the application was approved by operation of law.

After the pre-application meeting, R&K submitted the required master plan application materials to an administrative officer for the first step of the review process. Section 45-23-40(2). The administrative officer should then have certified the application as complete or incomplete within sixty days. Section 45-23-40(3)(b). There is, however, no evidence in the record that the appellant’s application was ever certified. The Development Review Act provides that “[i]n the event the certification of the application is not made within the time specified in this chapter for the type of plan, the application is deemed complete for purposes of commencing the review period” unless the administrative officer has notified the applicant, in writing, of deficiencies in the application. Section 45-23-36(b). Here, there is no evidence that the administrative officer notified the appellant of any deficiencies in its applications; more,

there is no evidence that the application was ever certified complete or incomplete. Therefore, the Court concludes that the application was deemed to have been complete as of sixty days after the application was submitted to an administrative officer. Id. The appellant claims and the appellee does not dispute that the appellant submitted its application in July of 2002; thus the very latest it could have been deemed complete was September 30, 2002.

From that date the Planning Board had 120 days (until January 28, 2003) or “a further amount of time that may be consented to by the applicant,” to approve the master plan as submitted, approve it with changes and/or conditions, or deny it. Section 45-23-40(e). The Planning Board did none of these things. Instead, based on a memorandum from the Woonsocket City Solicitor, the Planning Board voted to table the application indefinitely. The appellant argues that tabling of its application by the Planning Board did not satisfy the requirement set forth at § 45-23-40(e) that it act within 120 days to either approve or deny R&K’s application. The failure to take appropriate action, R&K asserts, “constitute[d] approval of the master plan;” although the appellant never requested that the approval issue. Section 45-23-40(f). The appellees argue that after the application was tabled, R&K should have either sought the variances the Planning Board believed it required, appealed the decision to table the application to the Zoning Board, or waited forty five days and sued for declaratory relief in the Superior Court. Instead, the appellees argue, R&K did nothing but apply for reconsideration of the decision, and thereby implicitly consented to a longer period for decision, and knowingly and voluntarily waived the time limits provided by statute.

The Rhode Island Supreme Court has held that “a party or parties for whose benefit a right is provided by constitution, by statute, or by principles of common law may waive such right, regardless of the plain and unambiguous terms by which such right is expressed.” Gallucci



v. Brindamour, 477 A.2d 617, 618 (R.I. 1984) (noting some of the many rights which have been held waivable, including the right to remain silent and private contractual rights). This Court concludes that the strict time limitations imposed on Planning Board action are for the benefit of individuals applying for Planning Board approval and intended to protect them from “the caprice and arbitrariness associated with protracted and unjustified delays by the government.” Bickel v. City of Piedmont, 946 P.2d 427, 431 (Cal. 1997). The right to have an application deemed approved may therefore be waived. See id. (holding that time limits on a planning commission’s actions were waivable as they primarily benefited applicants).

However, the Court need not determine whether the appellant waived its rights under § 45-23-40(f) because by failing to raise the argument earlier, the appellant is precluded from raising the issue for the first time in this Court. “All persons are charged with knowledge of the provisions of statutes and must take note of the procedure adopted by them; and when that procedure is not unreasonable or arbitrary there are no constitutional limitations relieving them from conforming to it.” Texaco, Inc. v. Short, 454 U.S. 516, 532 (1981) (citing North Laramie Land Co. v. Hoffman, 268 U.S. 276, 283 (1925)). The appellant, charged with knowledge of his rights under the Development Review Act, failed to request the issuance of an approval after the 120 days had passed, affirmatively requested reconsideration of the Planning Board’s decision to table the application, and after the Planning Board had denied its application, appealed its decision to the Zoning Board. R&K had ample time during the pendency of these proceedings to raise the issue and assert its rights. “Having thus failed to raise such issue[] at the administrative level in a timely fashion, plaintiffs may not now, upon judicial review. . . complain of [this matter] for the first time.”<sup>1</sup> Citywide Education Action Project v. The Community Svcs. Admin.

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<sup>1</sup> The appellant’s action in seeking a reconsideration of the Planning Board’s decision to table the application was wholly inconsistent with this new argument that its application had in the meantime been approved. It is analogous

of the United States, 497 F.Supp. 1239, 1250 (S.D.N.Y. 1980) (citing United States v. L.A. Tucker Truck Lines, 344 U.S. 33, 36-37 (1952) (“orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts”).

Next, the appellant argues that the Planning Board and Zoning acted in violation of statutory and planning board provisions, and that their respective decisions are in excess of their statutory authority and evidence a clear error of law because the proposed subdivision does not contravene the requirements of the Development Review Act.

Chapter 2.3 of the Regulations, pursuant to § 45-23-60 of the Rhode Island General Laws, requires that bodies reviewing subdivision applications consider certain factors. The approving authorities must

“make positive findings on the following standard provisions, as part of the proposed project’s record prior to approval:

a) All local regulations shall require that for all administrative, minor, and major development applications the approving authorities responsible for land development and subdivision review and approval shall address each of the general purposes stated in § 45-23-30 and make positive findings on the following standard provisions, as part of the proposed project's record prior to approval:

(1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;

(2) The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance;

(3) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;

(4) The subdivision, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. (See definition of Buildable lot). Lots with physical constraints to development may be

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to a situation where an applicant “precludes himself” from challenging the validity of a statute or ordinance after following its terms, thus admitting its validity. See Sweck v. Zoning Bd. of Review of N. Kingstown, 77 R.I. 8. 11, 72 A.2d 679, 680 (1950).

created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and

(5) All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.

(b) Except for administrative subdivisions, findings of fact must be supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted.”

The Planning Board denied the appellant’s application because the subdivision, as proposed, would cause surrounding properties to either become dimensionally nonconforming with regard to the City’s Zoning Ordinance or increase their nonconformity, and the appellant had made no attempt to mitigate this. Essentially, the Planning Board found that the proposed development would not be “in compliance with the standards and provisions of the municipality’s zoning ordinance.” See § 45-23-60(2).

The appellant argues, citing no authority, that the Planning and Zoning Boards should not have considered the effect of the proposed subdivision on surrounding properties. It contends that the subdivision itself was in compliance with zoning requirements, and that should have been sufficient for approval. This Court is not persuaded. The interpretation offered by the appellant – that its subdivision, by rendering neighbors’ properties non-conforming, would comply with the zoning ordinance – defies credulity. When interpreting an unambiguous statute, this Court must “determine and effectuate the Legislature’s intent and attribute to the enactment the meaning most consistent with its policies or obvious purposes. In doing so, it is firmly established that [the Court] ‘will not construe a statute to reach an absurd result.’” Jeff Anthony Props. v. Zoning Bd. of Review, 853 A.2d 1226, 1230 (R.I. 2004) (citing Keystone Elevator Co. v. Johnson & Wales University, 850 A.2d 912 (R.I. 2004) (quoting State v. Burke, 811 A.2d 1158, 1167 (R.I. 2002))). The Court concludes that the Development Act should not be

interpreted in a manner that results in development that is inconsistent with the City's zoning ordinance and comprehensive plan. The Planning Board acted within its authority, consistent with the Development Review Act, and its decision was not affected by a clear error of law. The Zoning Board, too, was well within its authority pursuant to § 45-23-70(a), to affirm the decision of the Planning Board.

Next, the appellant argues that the Planning Board and Zoning Board penalized it for the preexisting dimensional nonconformity of Lot 13 and that such claimed penalization was reversible error. R&K argues that the abutting landowner should be held responsible for his noncompliance, and that, the owners of Lot 16, whose home presently meets minimum setback requirements, should be held responsible for knowing that the right-of-way could one day be used as a road and their lots converted into corner lots.

This argument is without merit. This Court has no authority to reverse a decision of the Planning Board or the Zoning Board because it is "unfair" in the estimation of the applicant. See § 45-23-71(c). The abutting owners must have sought and received building permits, the grants of which are now unassailable, final administrative actions; they were never parties to this proceeding, and truly are innocent bystanders in this controversy. Furthermore, the Planning Board and Zoning Board have no authority to hold abutting property owners responsible for noncompliance that would result from the appellant's proposed development.

The appellant further argues that the Boards' denial of R&K's application should be reversed because the Planning Board and Zoning Board conditioned approval of the subdivision on R&K obtaining variances for Lots 13 and 16. The appellant asserts that this condition is evident from the language of Joseph Carroll's September 11, 2002 memorandum. The Court is unconvinced that any "condition" was imposed. The Planning Board merely informed the

appellant that there was a problem with its application so that R&K might remedy it; the appellant was free to take any measures it felt efficacious or appropriate. The Court finds the argument to be without merit.

Finally, R&K argues that there should have been no discussion during the hearing before the Zoning Board regarding the possibility of R&K purchasing the abutting land in order to resolve the existing and potential nonconformities.<sup>2</sup> A review of the record reveals that the Zoning Board simply inquired into the alternatives available to the appellant. The Board did not, as the appellant charges, require conveyance of a property as a condition of subdivision approval. Compare Sako v. Desesto, 688 A.2d 1296, 1297 (R.I. 1997) (noting that such a requirement is in excess of a board's authority). The Zoning Board did not exceed its authority in this instance.

### CONCLUSION

After review of the entire record, the Court concludes that the decision of the Planning Board is not in contravention of relevant statutes, ordinances, and regulations, did not exceed its authority, and that the appellant was precluded from asserting certain rights for the first time on appeal. Substantial rights of the parties were not prejudiced by the decision. The appellant's appeal is denied and the decision of the Zoning Board to uphold the Planning Board's denial is affirmed. The parties shall submit an appropriate order for entry.

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<sup>2</sup> The appellants cite Sako v. Delsesto, 688 A.2d 1296, 1297 (R.I. 1997) to support the proposition that a local zoning board lacks the authority to require conveyance of property as a condition of subdivision approval. While it does support that proposition, such are not the facts of the present case, where the Zoning Board simply inquired into the feasibility of R&K purchasing one of the abutting lots.

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

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R&K BUILDING CORP.,  
Plaintiff,

v.

CITY OF WOONSOCKET ZONING BOARD  
OF REVIEW and RALPH BEGIN, NORMAN  
FRECHETTE, DANIEL GENDRON, ROBERT  
MOREAU and WALTER PRISTAWA, in their  
capacity as Members of the Woonsocket Planning  
Board,

Defendants.

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C.A. No. 2004-0803

**BRIEF OF APPELLANT**  
**R&K BUILDING CORPORATION**

Respectfully Submitted,

Elizabeth McDonough Noonan (#4226)  
Jaime J. LaPorte (#6668)  
Adler Pollock & Sheehan P.C.  
2300 Financial Plaza  
Providence, RI 02903  
401-274-7200  
401-351-4607  
Dated: June 11, 2004

## INTRODUCTION

This matter is before the Court on an appeal of R&K Building Corporation (“R&K”) of the decisions of the City of Woonsocket (“City”) Zoning Board of Review (“Zoning Board”), pertaining to property located off Mendon Road, further identified as Assessor’s Plat 53, Lots 1 and 32 (“Subject Property”). The Zoning Board denied R&K’s appeal of the Planning Board’s decision to deny the Master Plan application for a nine lot residential subdivision on the Subject Property (“Proposed Subdivision”). The Planning Board denied Master Plan approval on the sole basis that the use of an existing right of way leading to the Subject Property as a public street would create a nonconforming lot with respect to one abutting property and would increase the existing nonconformity to another abutting property. As set forth below, the Planning Board erred in denying the Master Plan approval based on the potential zoning implications on abutting properties, when the Proposed Subdivision fully conformed with the City of Woonsocket Subdivision & Land Development Regulations (the “Regulations”) and the dimensional requirements of the Woonsocket Zoning Ordinance (“Ordinance”). Further, the Zoning Board erred in upholding the Planning Board’s decision.

## PROCEDURAL BACKGROUND

In March 2001, R&K appeared before the Planning Board for a pre-application conference on the Proposed Subdivision. Access to the Subject Property from Mendon Road was through a 40 foot right-of-way which benefits the Subject Property. At the time of the pre-application conference, the issue of the access was not raised as a potential problem. In July 2002, R&K submitted an application to the Planning Board for a Major Subdivision in accordance with R.I. Gen. Laws § 45-23-40 and §§ 6.1 and 6.2 of the Regulations. On September 11, 2002, Joseph Carroll, the City Solicitor, sent a letter to the City Planner, Keith A.

Brynes, regarding R&K's subdivision application. In that letter, Mr. Carroll stated that the subdivision application could not be approved by the Planning Board because construction of the road over the right-of-way leading to the Proposed Subdivision would create dimensional nonconformity on abutting lots, necessitating those landowners to apply for zoning variances. On October 1, 2002, the Planning Board met to consider R&K's subdivision application for Master Plan approval. During the October 1, 2002 meeting, Mr. Carroll's letter was read into the record. The Planning Board then voted to table R&K's subdivision application indefinitely based solely on the content of Mr. Carroll's September 11, 2002 letter. Thereafter, R&K sought reconsideration of its subdivision application. On September 2, 2003, the Planning Board denied R&K's request for reconsideration and denied Master Plan approval based on its conclusion that it could not grant such approval absent obtaining zoning variances on the abutting parcels. On October 6, 2003, R&K appealed the decision of the Planning Board to the Zoning Board, sitting as the Board of Appeals. Public hearings were then held on January 12, 2004 and January 26, 2004, before the Zoning Board. On February 3, 2004, R&K received notification from the Zoning Board upholding the decision of the Planning Board. On February 13, 2004, R&K timely filed the instant complaint appealing the decision of the Zoning Board.

#### ISSUE ON APPEAL

1. Whether the Planning Board and Zoning Board erred by denying Master Plan approval based on the non-conforming dimensions of abutting parcels.
2. Whether the Planning Board and Zoning Board erred in penalizing R&K for the pre-existing dimensional non-compliance of Plat 53, Lot 13.
3. Whether the Planning Board and Zoning Board erred by requiring R&K to seek dimensional variances on the abutting property owned by independent third parties.



4. Whether the Planning Board's inaction on the Proposed Subdivision application resulted in an implied approval of the Proposed Subdivision, thereby nullifying the later denial by the Planning Board and Zoning Board.

#### STATEMENT OF FACTS

R&K submitted a major subdivision application to the Planning Board to subdivide the Subject Property that consists of approximately 4.5 acres for Lot 1 and 28,018 square feet for Lot 32. The Subject Property is located off Mendon Road and is landlocked except for a 40-foot right-of-way that extends from Mendon Road to the Subject Property. A copy of a map outlining the Subject Property, the right-of-way and the surrounding area is attached as **Exhibit 1**. The right-of-way was expressly granted to R&K's predecessor in interest in a deed executed on July 13, 1962. The deed states that the grantor conveyed "to the grantees, their heirs and assigns, the right to pass and repass on foot and with vehicles of all kinds over a strip or parcel of land forty (40) feet in width along the southerly line of the above described premises from Mendon Road." A copy of the deed establishing the right-of-way is attached as **Exhibit 2**.

The right-of-way abuts two independently owned parcels, Plat 53, Lot 16 and Lot 13. A copy of photos depicting the right-of-way in relation to Lots 13 and 16 is attached hereto as **Exhibit 3**. At the time of the conveyance of the right-of-way, Lot 16 and Lot 13 were vacant. Three years later, in 1965, homes were built on the abutting parcels. A copy of the tax assessor records for Lot 16 and Lot 13 are attached as **Exhibit 4**. Both Lots 13 and 16 are located in an R-2 Low Density Single-Family Residential District. As the homes currently stand, without consideration of the subdivision application, or use of the 40-foot right-of-way as a public street, Lot 16 conforms to local R-2 zoning requirements. Lot 13, however, does not conform to local R-2 zoning requirements.

Lot 13 is a nonconforming lot because it does not meet the side setback requirements for property in a R-2 zoning district. Currently, the home on Lot 13 sits 8 feet from the side lot line, which directly abuts the 40-foot right-of-way. The side setback requirement for property in the R-2 zoning district, however, requires a minimum side setback of 10 feet. See Ordinance at § 7.3-5.2. Consequently, the home on Lot 13 is dimensionally nonconforming as it currently stands, without consideration of the Proposed Subdivision.

Although Lot 16 is a dimensionally conforming lot, utilization of the right-of-way as a public street to access the Proposed Subdivision would cause Lot 16 to become a nonconforming lot and would increase the existing nonconformance of Lot 13. Specifically, conversion of the right-of-way into a public street would cause Lots 16 and 13 to become corner lots for zoning purposes. As corner lots, the side yards must meet the front yard setback requirements on the side street. See Ordinance at § 7.1-1. In this case, that means the setback from the right-of-way would change from the side yard setback requirement of 10 feet to the front yard setback requirement of 20 feet. Id. at § 7.3-5.1. As they stand, neither Lot 13 nor 16 would meet the requisite 20 foot setback. The home built on Lot 16 sits only 15 feet away from the 40-foot right-of-way. The home on Lot 13 is only 8 feet from the right-of-way. Therefore, use of the right-of-way as a public street would increase the nonconformance of Lot 13 and create a dimensional nonconformance on Lot 16.

Upon receipt of R&K's subdivision application, the Planning Board sought a legal opinion from the City Solicitor as to whether it could approve the Proposed Subdivision when it would cause Lot 16 and Lot 13 to become dimensionally nonconforming. On September 11, 2002, the City Solicitor, Mr. Carroll, sent a letter to the City Planner, stating that the Planning Board could not consider the subdivision application because it would result in Lots 13 and 16

becoming non-conforming lots, and that absent receipt of variances by the owners of those lots, the Planning Board could not consider the application. Mr. Carroll's letter failed to recognize that Lot 13 was already a nonconforming lot. A copy of the September 11, 2002 letter is attached hereto as **Exhibit 5**.

On October 1, 2002, the Planning Board held a public meeting. Upon consideration of R&K's subdivision application, the Planning Board did nothing more than read into the record the September 11, 2002 letter of Mr. Carroll, and on that basis alone, voted to table indefinitely consideration of R&K's subdivision application. A copy of the minutes from the October 1, 2002 Planning Board meeting are attached hereto as **Exhibit 6**.

Thereafter, R&K sought reconsideration of its subdivision application. On September 2, 2003, the Planning Board held a public hearing concerning R&K's subdivision application. A copy of the minutes from the September 2, 2003 Planning Board meeting are attached hereto as **Exhibit 7** and for a discussion of R&K's Master Plan approval, see pages 24-27 of Exhibit 7. At the September 2, 2003 hearing, counsel for R&K, Lloyd Gariepy, argued that the Master Plan was improperly denied for several reasons. First, it was improper to deny the Master Plan on the basis that the abutting lots would become nonconforming lots. *Id.* at 25-26. As explained by Mr. Gariepy, the subdivision itself was in full compliance with local zoning, and it was improper to consider whether abutting property would become nonconforming. *Id.* Second, it was inappropriate for the Planning Board to deny the subdivision application on the basis that it created nonconforming lots, when Lot 13 was already a nonconforming lot. *Id.* at 24. Third, R&K could not be forced by the Planning Board to go before the Zoning Board to obtain variances on the abutting parcels, because R&K was not the owner of those parcels. *Id.* at 26. In

spite of the issues raised, at the conclusion of the September 2, 2003 hearing, the Planning Board voted unanimously to deny Master Plan approval. Id. at 27.

On September 3, 2002, R&K received a letter from the City Planner, Keith Brynes, stating that the subdivision application was denied. A copy of the September 3, 2003 letter is attached hereto as **Exhibit 8**. The September 3, 2003 letter stated that the subdivision application was denied on the basis that “the plan as proposed would create an abutting lot to be dimensionally non-conforming” and further that “the project is unable to proceed without the appropriate zoning relief, which can only be obtained by the abutter.” Id.

R&K filed a timely appeal of the Planning Board decision to the Zoning Board and on January 12, 2004, the Zoning Board heard the appeal and decided to table the motion until such time as all board members had an opportunity to review the full record. The Zoning Board reconvened on January 26, 2004. During the January 26, 2004 public hearing the Zoning Board discussed the fact that conversion of the right-of-way into a street would increase the nonconformance of one lot and create nonconformance as to the other. A copy of the minutes from the January 26, 2004 Zoning Board meeting are attached as **Exhibit 9**. According to one board member, the fact that one home would be 8 feet from the road was not acceptable. Specifically, Mr. Del Rossi stated that “in his opinion 8 ft. is too close, where do we draw the line.” Id. at 8. Mr. Carroll further pressed that due to the increased nonconformity and the creation of nonconformity, the abutting property owners would be required to request zoning relief. Id. The Zoning Board then discussed whether R&K had tried to work out an arrangement with the abutting landowners or would consider buying the land in order to seek a variance for the properties. Id. at 8-9. At the close of the hearing the Zoning Board voted by a margin of 3 to

2 to uphold the decision of the Planning Board denying R&K's subdivision application. Id. at 10.

### STANDARD OF REVIEW

Judicial review of a decision of a local zoning board, sitting as a planning board of review, is governed by R.I. Gen. Laws § 45-23-71. Under R.I. Gen. Laws § 45-23-71, this Court is precluded from substituting its judgment for that of the board of review as to questions of fact. However, this Court has authority to remand a case or to reverse a decision of the board of review, if the decision is:

- (1) In violation of constitutional, statutory, ordinance or planning board provisions;
- (2) In excess of the authority granted to the planning board by statute or ordinance;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

R.I. Gen. Laws § 45-23-71(c).

### ARGUMENT

A. The Zoning Board Of Review Erred In Denying R&K's Subdivision Application On The Grounds That The Subdivision Would Result In Non-Conforming Abutting Lots

Under Rhode Island law, the Planning Board is precluded from approving a subdivision application unless consideration is given to the general purposes of land development and subdivision review set forth in R.I. Gen. Laws § 45-23-30 and certain required findings are

made. See R.I. Gen. Laws § 45-23-60. Chapter 2.3 of the Regulations provide the same guidelines. Under State and local law, the approval of all major development applications is contingent upon the following required findings:

- (1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;
- (2) The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance;
- (3) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;
- (4) The subdivision, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. (See definition of Buildable lot). Lots with physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and
- (5) All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.

R.I. Gen. Laws § 45-23-60.

Here, neither the Planning Board nor the Zoning Board found that the Proposed Subdivision was in contravention of any of the preceding requirements. The sole issue relied upon by the Planning Board and the Zoning Board in their denials was the resulting dimensional non-conformance and increased nonconformance of abutting parcels. Although it is evident that a proposed development itself must comply with local zoning, there is no requirement that land surrounding a proposed development must comply with local zoning in order for a subdivision

application to be approved. In regard to zoning issues, approval simply requires a finding that the “*proposed development* is in compliance with the standards and provisions of the municipality’s zoning ordinance.” R.I. Gen. Laws § 45-23-60(2) (emphasis added). Contrary to the actions taken in this case, State and local law do not require or authorize the Planning Board or Zoning Board to look beyond the subject property to determine whether the subdivision application is in compliance with local zoning. Accordingly, the Planning Board and Zoning Board acted in violation of statutory and planning board provisions, acted in excess of their authority and were affected by clear error of law in denying the subdivision application based on a requirement that simply does not exist under state or local law.

B. The Planning Board And Zoning Board Erred In Penalizing R&K For The Pre-Existing Dimensional Non-Compliance Of Plat 53, Lot 13

In addition to imposing a zoning requirement on R&K not provided under law, the Planning Board and Zoning Board penalized R&K for the existing non-conforming dimensions of one of the abutting parcels, Plat 53, Lot 13. As stated continuously throughout the Planning Board and Zoning Board hearing transcripts, it is clear that Plat 53, Lot 13, as it currently stands, is not in conformance with local zoning. The owners of Plat 53, Lot 13, or their predecessors in interest, built a home on the lot with a side setback of only 8 feet, in contravention of the 10 foot setback requirement. Although the nonconformance exists independent of R&K’s subdivision application, the Planning Board and Zoning Board premised its denial of the subdivision application on the lack of setback between the right-of-way and the home on Plat 52, Lot 13. As stated by Mr. Del Rossi, “8 ft. is too close, where do we draw the line.” **Exhibit 9** at 8.

In addition to the fact that the owners of Plat 53, Lot 13 created the existing nonconformance and the limited 8 foot setback, owners of both Lots 13 and 16 knew of the 40 foot right-of-way at the time they purchased their parcels, and therefore, were well aware that the

right-of-way could potentially be used as a road. In fact, the current owners of Lot 16 use the right-of-way, through use of an easement, to access Mendon Road with their vehicles. Here, instead of holding the abutting property owners responsible for the resulting noncompliance, the Zoning Board burdened R&K with the consequences of the actions beyond its control. By penalizing R&K for use of the right-of-way as a road when the right-of-way was evidenced in a recorded deed at the time both abutting homes were built and the right-of-way is currently used to access Mendon Road by one of the abutting lot owners, the Zoning Board acted in violation of controlling statutory and planning board provisions, acted in excess of its authority and were affected by clear error of law.

C. The Planning Board and Zoning Board Erred In Putting Upon R&K The Impossible Task Of Seeking Variances On Property Owned By Independent Third Parties

The Planning Board and Zoning Board also acted in violation of statutory and planning board provisions, acted in excess of their authority and were affected by an error of law in relying on the City Solicitor's letter and denying R&K's subdivision application on the basis that "the Planning Board cannot approve a subdivision without Zoning Board approval of any necessary variances." See Exhibit 5. Conditioning approval of R&K's subdivision application on receipt of zoning variances put upon R&K a legally impossible task – obtaining zoning variances on independently owned property. As acknowledged by the City Planner, R&K does not have the authority to seek a variance on property that it does not own. See Exhibit 7.

Moreover, discussion by the Zoning Board of whether R&K would purchase the neighboring lots to resolve the nonconformity was improper. The Rhode Island Supreme Court has established that a local zoning board lacks the authority to require conveyance of property as a condition of subdivision approval. Sako v. Delsesto, 688 A.2d 1296, 1297 (R.I. 1997). In



putting upon R&K the impossible task of seeking a variance on independently owned property, and suggesting that R&K should purchase the neighboring properties violates controlling state and local law and is in excess of the authority possessed by those entities. Therefore, the decision of the Planning Board and Zoning Board denying the Proposed Subdivision should be reversed.

D. The Planning Board's Failure To Act On The Subdivision Application Resulted In An Implied Approval Of the Proposed Subdivision Nullifying The Later Denial By The Planning Board And The Zoning Board

Under both state and local law, failure of a planning board to act on a master plan application within a proscribed period of time results in an implied approval of the application. See R.I. Gen. Laws § 45-23-40(f); Regulations § 6.6.2.1. State law provides that the "planning board shall, within one hundred and twenty (120) days of certification of completeness, or within a further amount of time that may be consented to by the applicant, approve of the master plans as submitted, approve with changes and/or conditions, or deny the application...." R.I. Gen. Laws § 45-23-40(e) (emphasis added). Under the Regulations, the "planning board shall, within forty-five (45) days after the certification of completeness, or within such further time as may be consented to by the applicant, approve or deny the final plan as submitted." Regulations § 6.6.2.1 (emphasis added).

Here, the Planning Board failed to act within the time proscribed by both State and local law. At the October 1, 2002 meeting, the Planning Board voted to table the subdivision application indefinitely. See **Exhibit 6**. Thereafter, the Planning Board did not act on the subdivision application until a motion for reconsideration was heard on September 2, 2003. Although there is no evidence in the record that the Planning Board issued a certificate of completeness as required under R.I. Gen. Laws § 45-23-40(b) and Regulations § 6.6, it is evident

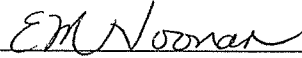
that the Planning Board treated the application as complete in scheduling the matter for a Master Plan hearing and rendering a final decision denying such approval.

Regardless of the Planning Board's later action, the eleven month delay in making a final determination on the application was in violation of procedural requirements and resulted in an implied approval of the subdivision application. As set forth above, under State and local law, the Planning Board must approve, approve with changes, or deny a subdivision application within a minimum of forty-five days. In this case, the Planning Board made a decision to table the subdivision application indefinitely on October 1, 2002 and did not vote to deny the application until September 2, 2003, well beyond the forty-five day period. Accordingly, the Planning Board acted upon unlawful procedure in tabling the subdivision indefinitely. In addition, the prolonged delay in making a definitive decision of the subdivision application resulted in an implied approval of the Proposed Subdivision, thereby nullifying the later denial by the Planning Board. Accordingly, the Zoning Board decision is clearly erroneous.

CONCLUSION

For the foregoing reasons, R&K respectfully requests that his Court reverse the Decision of the Zoning Board of Review, grant Master Plan approval for R&K's Proposed Subdivision and remand the matter to the Planning Board for the next stage of the subdivision process, preliminary plan approval.

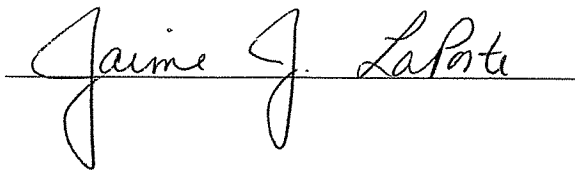
Plaintiff, R&K Building Corp.  
By its attorneys,



Elizabeth McDonough Noonan, #4226  
Jaime J. LaPorte, #6668  
ADLER POLLOCK & SHEEHAN P.C.  
2300 Financial Plaza  
Providence, RI 02903  
Tel: (401) 274-7200  
Fax: (401) 351-4607/751-0604  
Dated: June 11, 2004

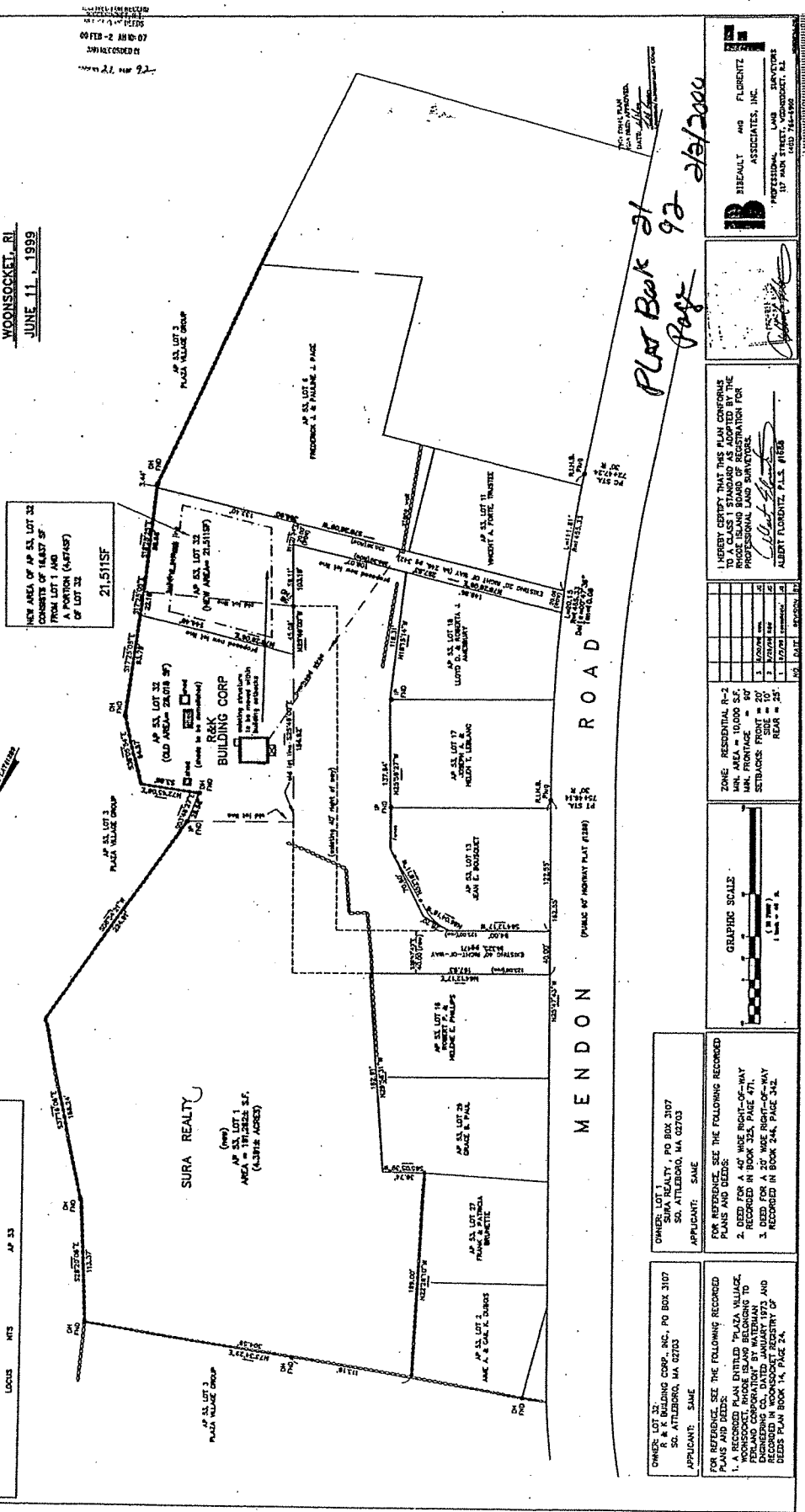
CERTIFICATE OF SERVICE

I hereby certify that a copy of the within was mailed to Joseph P. Carroll, Esq., City Solicitor, 169 Main Street, Woonsocket, R.I., 02895-4379 on this 11<sup>th</sup> day of June, 2004.



ADMINISTRATIVE SUBDIVISION  
FOR  
R & K BUILDING CORP. &  
SURA REALTY

WOONSOCKET, RI  
JUNE 11, 1999



NEW AREA OF AP 53, LOT 32  
CONSISTS OF AT LEAST 5'  
FROM LOT 1 AND  
A PORTION (APPROX)  
OF LOT 32  
21,515 SF

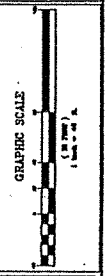
Plot Book 92  
Page 20/200

ALBERT FLORENTZ, P.L.L.C.  
17 MAIN STREET, WOODSOCKET, RI  
02896  
PROFESSIONAL LAND SURVEYORS

I HEREBY CERTIFY THAT THIS PLAN CONFORMS TO A CLASS 1 STANDARD AS ADOPTED BY THE PROFESSIONAL LAND SURVEYORS ASSOCIATES, INC.

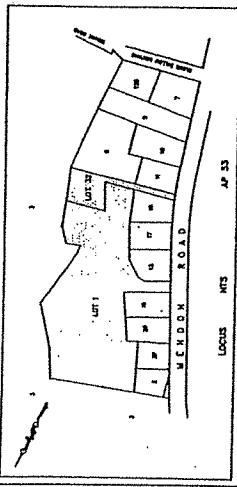
ALBERT FLORENTZ, P.L.L.C.

TABLE WITH 4 COLUMNS: ZONE, RESIDENTIAL R-2, MAX. AREA, 100,000 SQ. FT., MIN. FRONTAGE, 30', SETBACKS FRONT, 10', SETBACKS REAR, 10'. Includes a 'NO. LOTS' column with values 1, 2, 3, 4.



OWNER: LOT 32  
R & K BUILDING CORP., INC., PO BOX 3107  
50 ATLBERG, WA 02703  
APPLICANT: SAME

FOR REFERENCE, SEE THE FOLLOWING RECORDED PLANS AND DEEDS:  
1. A RECORDED PLAN ENTITLED 'TRAZA VILLAGE, WOODSOCKET, RHODE ISLAND BELONGING TO ISLAND CORPORATION' BY WATERMAN RECORDED IN WOODSOCKET REGISTRY OF DEEDS PLAN BOOK 14, PAGE 24.  
2. DEED FOR A 40' WIDE RIGHT-OF-WAY RECORDED IN BOOK 248, PAGE 242.



REVISIONS  
NO. DATE  
1 06-11-99  
2 06-11-99

BOOK 325 PAGE 471

I, RUTH D. CARR, of the City of Woonsocket, in the County of Providence and State of Rhode Island, for consideration paid, grant to JANICE L. FLINTON, of the Town of Bellingham, in the County of Norfolk and Commonwealth of Massachusetts, CHARL MOSKALENKO, of said Town of Bellingham, and RUTH A. CLARK, of said City of Woonsocket, as tenants in common, with QUITCLAIM COVENANTS

A certain lot or parcel of land, with all buildings and other improvements thereon, situated on the easterly side of Mendon Road between Diamond Hill Road and Elder Ballou Meeting House Road, in the City of Woonsocket, County of Providence, State of Rhode Island, bounded and described as follows, viz:-

Beginning at a point on the easterly side of said Mendon Road which point is forty (40) feet measured N.  $06^{\circ} 19'$  W., from the northwesterly corner of land of Bruno and Helen Salbego, said point being the southwesterly corner of the lot hereby described; thence N.  $06^{\circ} 19'$  W., with said Mendon Road one hundred ninety and eight tenths (190.80) feet to land of Francis M. and Theresa Dubois; thence N.  $86^{\circ} 52'$  E., with said Dubois land and other land of this grantor one hundred fifty-four and eighty-two one hundredths (154.82) feet; thence S.  $10^{\circ} 18'$  E., one hundred eighty-two and sixty-five one hundredths (182.65) feet; thence S.  $83^{\circ} 41'$  W., one hundred sixty-seven and twenty-eight one hundredths (167.28) feet to the point of beginning. Containing 29,988 sq. ft. more or less.

The grantor also conveys to the grantees, their heirs and assigns, the right to pass and repass on foot and with vehicles of all kinds over a strip or parcel of land forty (40) feet in width along the southerly line of the above described premises from Mendon Road, in an easterly direction for one hundred twenty-five (125) feet. Said right of way is bounded and described as follows, viz:-

Beginning at a point on the easterly side of said Mendon Road at the southwesterly corner of the above described premises; thence N.  $83^{\circ} 41'$  E., with the southerly line of the above described premises one hundred twenty-five (125) feet; thence S.  $06^{\circ} 19'$  E., forty (40) feet; thence S.  $83^{\circ} 41'$  W., one hundred twenty-five (125) feet to the aforesaid Mendon Road; thence N.  $06^{\circ} 19'$  W., with said Mendon Road forty (40) feet to the point of beginning.

The grantor acquired her title under the will of her mother, Lottie G. Clark, who died a resident of said City of Woonsocket on December 14, 1960.

The consideration for this conveyance is such that documentary stamps are required.

I, Ruth D. Carr, covenant to and with the grant that I am now unmarried.

IN WITNESS WHEREOF I have hereunto set my hand this 13<sup>th</sup> day of July, A. D. 1962.

Ruth D. Carr

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Woonsocket, on the 13<sup>th</sup> day of July 1962 before me personally appeared Ruth D. Carr, to me known by me to be the party executing the foregoing instrument and she acknowledged said instrument by her executed to be free act and deed.

Dickinson H. [Signature]  
Notary Public

Received for record July 16, 1962 at 2:40 P.M.

W. Chester [Signature]  
CITY CLERK

We, ODILON PELLETIER and LAURA PELLETIER, his wife, both of the City of Woonsocket, County of Providence and State of Rhode Island

for consideration paid, grant to RAYMOND PELLETIER and ELLEN M. PELLETIER, his wife, both of the Town of Blackstone, County of Worcester and Commonwealth of Massachusetts as JOINT TENANTS and not as Tenants in Common, with WARRANTY COVENANTS

A certain lot or parcel of land with all the buildings and improvements thereon situated on the easterly side of Mendon Road, in the City of Woonsocket, County of Providence and State of Rhode Island, being laid out and designated as lot numbered No. 1 on that unrecorded plan entitled, "Subdivision For Odilon Pelletier Woonsocket, R.I. November, 1962 Scale: - 1 inch equals 20 feet G. Bertrand Bibeault, Civil Engineer, 99 Main Street, Woonsocket, R.I.", which plan was approved by the Planning Director of said City of Woonsocket on January 10, 1963. Said lot is particularly bounded and described as follows:

Beginning at a point in the easterly line of said Mendon Road at a corner of land of Ruth D. Carr and at the southwesterly corner of the lot hereby conveyed; thence N. 06° 19' W., bounding westerly on said Mendon Road, ninety-five and 80/100 (95.80) feet to land of Leo Lesieur and others (being lot numbered two (2) on said plan); thence N. 83° 41' E., bounding northerly on said Lesieur land, one hundred sixty and 61/100 (160.61) feet to said Carr land; thence S. 10° 18' E., ninety-six and 3/10 (96.3) feet; thence S. 83° 41' W., one hundred sixty-seven and 28/100 (167.28) feet to said Mendon Road at the point of beginning, the last two (2) lines bounding on said Carr land.

Being a portion of the premises conveyed to said Odilon Pelletier by deed from Myra E. Clark dated November 16, 1962 and recorded in the Registry of Deeds in said City of Woonsocket in Deed Book 327 at page 112.

Said premises are hereby conveyed TOGETHER WITH a right of way set forth and granted in deed from Ruth D. Carr to Janice L. Flinton and others dated July 13, 1962 and recorded in said Registry of Deeds in Deed Book 325 at page 471.



I, said Laura Pelletier,

release to said grantees all my right of ~~ownership~~ and dower and all other interest in the afore described premises.

Witness our hands and seals this 10th day of July, 1963

In presence of:

*[Signature]*

*Odilon Pelletier*  
*Laura Pelletier*



State of Rhode Island }  
COUNTY OF Providence }  
In Woonsocket

before me personally appeared on the 10th day of July, 1963

Odilon Pelletier and Laura Pelletier

to me known and known by me to be the parties executing the foregoing instrument, and they acknowledged said instrument, by them executed, to be their free act and deed.

*[Signature]*  
*[Signature]*

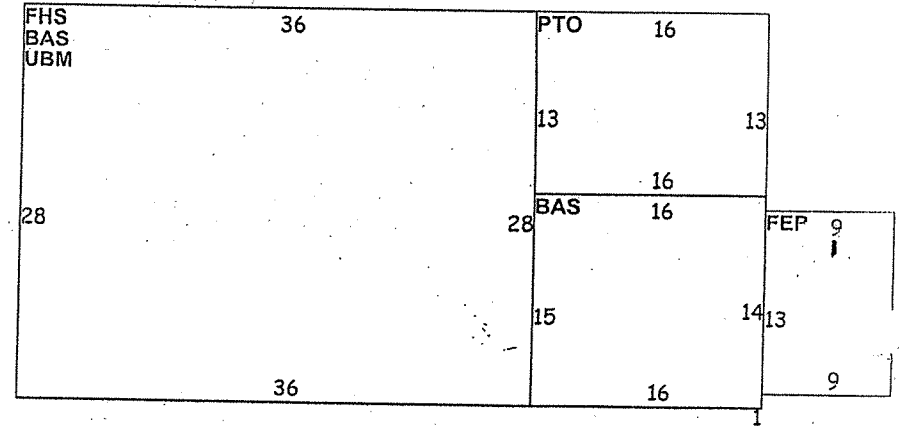




**CONSTRUCTION DETAIL**

**SKETCH**

| Element          | Cd. | Ch. | Description    | Commercial Data Elements      |      |             |             |
|------------------|-----|-----|----------------|-------------------------------|------|-------------|-------------|
| Element          | Cd. | Ch. | Description    | Element                       | Cd.  | Ch.         | Description |
| Style/ Type      | 04  |     | Cape Cod       | Heat & AC                     |      |             |             |
| Model            | 01  |     | Residential    | Frame Type                    |      |             |             |
| Grade            | 03  |     | Average        | Baths/Plumbing                |      |             |             |
| Stories          | 1.5 |     | 1 1/2 Stories  | Ceiling/Wall                  |      |             |             |
| Occupancy        | 01  |     |                | Rooms/Prtns                   |      |             |             |
| Exterior Wall 1  | 11  |     | Clapboard.     | % Common Wall                 |      |             |             |
| 2                |     |     |                | Wall Height                   |      |             |             |
| Roof Structure   | 03  |     | Gable/Hip      | <b>CONDO/MOBILE HOME DATA</b> |      |             |             |
| Roof Cover       | 03  |     | Asph/F Gls/Cmp | Element                       | Code | Description | Factor      |
| Interior Wall 1  | 03  |     | Plastered      | Complex                       |      |             |             |
| 2                |     |     |                | Floor Adj                     |      |             |             |
| Interior Floor 1 | 14  |     | Carpet         | Unit Location                 |      |             |             |
| 2                | 12  |     | Hardwood       | Number of Units               |      |             |             |
| Heating Fuel     | 02  |     | Oil            | Number of Levels              |      |             |             |
| Heating Type     | 05  |     | Hot Water      | % Ownership                   |      |             |             |
| AC Type          | 01  |     | None           | <b>COST/MARKET VALUATION</b>  |      |             |             |
| Bedrooms         | 03  |     | 3 Bedrooms     | Unadj. Base Rate              |      | 84.00       |             |
| Bathrooms        | 2   |     | 2 Bathrooms    | Size Adj. Factor              |      | 0.96627     |             |
| Total Rooms      | 6   |     | 6 Rooms        | Grade (Q) Index               |      | 1.01        |             |
| Bath Type        | 02  |     | Modern         | Adj. Base Rate                |      | 81.98       |             |
| Kitchen Style    | 02  |     | Modern         | Bldg. Value New               |      | 176,913     |             |
|                  |     |     |                | Year Built                    |      | 1965        |             |
|                  |     |     |                | Eff. Year Built               |      | (G) 1982    |             |
|                  |     |     |                | Nrml Physcl Dep               |      | 20          |             |
|                  |     |     |                | Funcnl Obslnc                 |      | 0           |             |
|                  |     |     |                | Econ Obslnc                   |      | 5           |             |
|                  |     |     |                | Specl. Cond. Code             |      |             |             |
|                  |     |     |                | Specl Cond %                  |      | 75          |             |
|                  |     |     |                | Overall % Cond.               |      |             |             |
|                  |     |     |                | Deprec. Bldg Value            |      | 132,700     |             |



**MIXED USE**

| Code | Description | Percentage |
|------|-------------|------------|
| 1010 | SINGLE FAM  | 100        |

**OB-OUTBUILDING & YARD ITEMS(L) / XF-BUILDING EXTRA FEATURES(B)**

| Code | Description    | L/B | Units | Unit Price | Yr.  | Dp Rt | %Cnd | Apr. Value |
|------|----------------|-----|-------|------------|------|-------|------|------------|
| FPL1 | FIREPLACE 1 ST | B   | 1     | 2,200.00   | 1982 | 1     | 100  | 1,800      |
| SPL2 | VINYL/PLASTIC  | L   | 512   | 15.00      | 1995 | 0     | 70   | 5,400      |
| SHD1 | SHED FRAME     | L   | 96    | 8.00       | 1995 | 0     | 70   | 500        |

**BUILDING SUB-AREA SUMMARY SECTION**

| Code                             | Description               | Living Area  | Gross Area   | Eff. Area    | Unit Cost   | Undeprec. Value |
|----------------------------------|---------------------------|--------------|--------------|--------------|-------------|-----------------|
| BAS                              | First Floor               | 1,248        | 1,248        | 1,248        | 81.98       | 102,311         |
| FEP                              | Porch, Enclosed, Finished | 0            | 117          | 82           | 57.46       | 6,722           |
| FHS                              | Half Story, Finished      | 605          | 1,008        | 605          | 49.20       | 49,598          |
| PTO                              | Patio                     | 0            | 208          | 21           | 8.28        | 1,722           |
| UBM                              | Basement, Unfinished      | 0            | 1,008        | 202          | 16.43       | 16,560          |
| <b>Tot. Gross Liv/Unacc Area</b> |                           | <b>1,853</b> | <b>2,500</b> | <b>2,150</b> | <b>17.7</b> | <b>176,913</b>  |

| CURRENT OWNER   |  |  |  | TOPO.    | UTILITIES | STRT/ROAD | LOCATION   | CURRENT ASSESSMENT |       |          |          |              |         |                 |                |
|---|--|--|--|----------|-----------|-----------|------------|--------------------|-------|----------|----------|--------------|---------|-----------------|----------------|
| PHILLIPS ROBERT P +<br>HELENE E<br>586 MENDON RD<br>WOONSOCKET, RI 02895-2435 |  |  |  | 1        | Level     | 1         | All Public | 1                  | Paved | 2        | Suburban | Description  | Code    | Appraised Value | Assessed Value |
|   |  |  |  |          |           |           |            |                    |       | RES LND  | 0100     | 40,300       | 40,300  |                 |                |
|   |  |  |  |          |           |           |            |                    |       | RESIDNTL | 0100     | 134,500      | 134,500 |                 |                |
|   |  |  |  |          |           |           |            |                    |       |          | RESIDNTL | 0100         | 5,900   | 5,900           |                |
| <b>SUPPLEMENTAL DATA</b>  |  |  |  |          |           |           |            |                    |       |          |          |              |         |                 |                |
| Account #   |  |  |  | 16323000 |           |           |            |                    |       |          |          |              |         |                 |                |
| STATE CD  |  |  |  |          |           |           |            |                    |       |          |          |              |         |                 |                |
| OTHER   |  |  |  |          |           |           |            |                    |       |          |          |              |         |                 |                |
| WARD  |  |  |  |          |           |           |            |                    |       |          |          |              |         |                 |                |
| PREC.   |  |  |  |          |           |           |            |                    |       |          |          |              |         |                 |                |
| CENSUS TRACT  |  |  |  |          |           |           |            |                    |       |          |          |              |         |                 |                |
| GIS ID: 0053A 0000 0016 0047  |  |  |  |          |           |           |            |                    |       |          |          |              |         |                 |                |
|   |  |  |  |          |           |           |            |                    |       |          |          | <b>Total</b> |         | 180,700         | 180,700        |

5416  
WOONSOCKET, RI

**VISION**

| RECORD OF OWNERSHIP |  |  |  | BK-VOL/PAGE | SALE DATE  | q/u | v/i | SALE PRICE | V.C. | PREVIOUS ASSESSMENTS (HISTORY) |               |                |         |               |                |         |               |                |        |
|---------------------|--|--|--|-------------|------------|-----|-----|------------|------|--------------------------------|---------------|----------------|---------|---------------|----------------|---------|---------------|----------------|--------|
| PHILLIPS ROBERT P + |  |  |  | /           | 01/01/1987 |     | I   | 0          |      | Yr.                            | Code          | Assessed Value | Yr.     | Code          | Assessed Value | Yr.     | Code          | Assessed Value |        |
|                     |  |  |  |             |            |     |     |            |      |                                | 2003          | 0100           | 40,300  | 2003          | 0100           | 40,300  | 2002          | 0100           | 25,300 |
|                     |  |  |  |             |            |     |     |            |      |                                | 2003          | 0100           | 134,500 | 2003          | 0100           | 134,500 | 2002          | 0100           | 90,000 |
|                     |  |  |  |             |            |     |     |            |      |                                | 2003          | 0100           | 5,900   | 2003          | 0100           | 5,900   | 2002          | 0100           | 5,900  |
|                     |  |  |  |             |            |     |     |            |      |                                | <b>Total:</b> |                | 180,700 | <b>Total:</b> |                | 180,700 | <b>Total:</b> |                | 200    |

| EXEMPTIONS    |                  |        | OTHER ASSESSMENTS |             |        |        |            | This signature acknowledges a visit by a Data Collector or Assessor |  |   |  |  |  |  |                       |  |  |
|---------------|------------------|--------|-------------------|-------------|--------|--------|------------|---|--|---|--|--|--|--|-----------------------|--|--|
| Year          | Type/Description | Amount | Code              | Description | Number | Amount | Comm. Int. |   |  |   |  |  |  |  |                       |  |  |
| <b>Total:</b> |                  |        |                   |             |        |        |            | <b>APPRAISED VALUE SUMMARY</b>                                      |  |   |  |  |  |  |                       |  |  |
|               |                  |        |                   |             |        |        |            |   |  | Appraised Bldg. Value (Card)            |  |  |  |  | 132,700               |  |  |
|               |                  |        |                   |             |        |        |            |   |  | Appraised XF (B) Value (Bldg)           |  |  |  |  | 1,800                 |  |  |
|               |                  |        |                   |             |        |        |            |   |  | Appraised OB (L) Value (Bldg)           |  |  |  |  | 5,900                 |  |  |
|               |                  |        |                   |             |        |        |            |   |  | Appraised Land Value (Bldg)             |  |  |  |  | 40,300                |  |  |
|               |                  |        |                   |             |        |        |            |   |  | Special Land Value                      |  |  |  |  |                       |  |  |
|               |                  |        |                   |             |        |        |            |   |  | Total Appraised Card Value              |  |  |  |  | 180,700               |  |  |
|               |                  |        |                   |             |        |        |            |   |  | Total Appraised Parcel Value            |  |  |  |  | 180,700               |  |  |
|               |                  |        |                   |             |        |        |            |   |  | Valuation Method:                       |  |  |  |  | Cost/Market Valuation |  |  |
|               |                  |        |                   |             |        |        |            |   |  | <b>Net Total Appraised Parcel Value</b> |  |  |  |  | 180,700               |  |  |

NOTES  
BROWN IA  
ECO=TRAFFIC

| BUILDING PERMIT RECORD |            |      |             |        |            |         |            | VISIT/CHANGE HISTORY |          |    |     |                          |
|------------------------|------------|------|-------------|--------|------------|---------|------------|----------------------|----------|----|-----|--------------------------|
| Permit ID              | Issue Date | Type | Description | Amount | Insp. Date | % Comp. | Date Comp. | Comments             | Date     | ID | Cd. | Purpose/Re.              |
|                        |            |      |             |        |            |         |            |                      | 3/17/03  | SS | 50  | vba                      |
|                        |            |      |             |        |            |         |            |                      | 4/12/96  | JF | 12  | LISTED, FINAL PASS       |
|                        |            |      |             |        |            |         |            |                      | 5/1/95   | AD | 11  | Contract List 3 attempts |
|                        |            |      |             |        |            |         |            |                      | 2/7/95   | HW | 03  | Meas+Card Left           |
|                        |            |      |             |        |            |         |            |                      | 12/12/94 | HW | 01  | Measur+1Visit            |

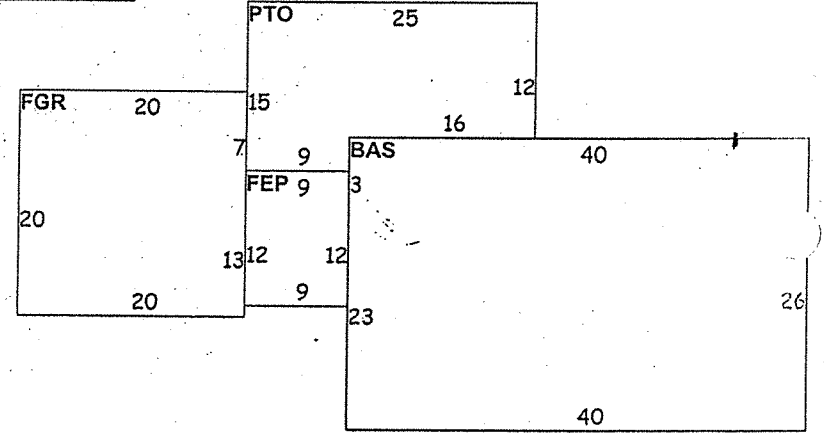
| LAND LINE VALUATION SECTION  |          |             |      |   |          |       |           |            |                                |      |           |       |      |                            |                 |            |
|------------------------------|----------|-------------|------|---|----------|-------|-----------|------------|--------------------------------|------|-----------|-------|------|----------------------------|-----------------|------------|
| #                            | Use Code | Description | Zone | D | Frontage | Depth | Units     | Unit Price | I. Factor                      | S.I. | C. Factor | Nbhd. | Adj. | Notes- Adj/Special Pricing | Adj. Unit Price | Land Value |
|                              | 1010     | SINGLE FAM  | R2   |   |          |       | 10,000.00 | SF         | 3.60                           | 1.10 | 5         |       | 1.00 |                            | 3.96            | 39,600     |
|                              | 1016     | SINGLE FAM  | R2   |   |          |       | 0.13      | AC         | 5,000.00                       | 1.10 | 5         |       | 1.00 |                            | 5,500.00        | 700        |
| <b>Total Card Land Units</b> |          |             |      |   |          |       | 0.36      | AC         | <b>Parcel Total Land Area:</b> |      |           | 0.36  | AC   | <b>Total Land Value</b>    |                 | 40,300     |

**CONSTRUCTION DETAIL**

**SKETCH**

| Element          | Cd. | Ch. | Description    | Commercial Data Elements      |      |             |             |
|------------------|-----|-----|----------------|-------------------------------|------|-------------|-------------|
| Element          | Cd. | Ch. | Description    | Element                       | Cd.  | Ch.         | Description |
| Style/Type       | 01  |     | Ranch          | Heat & AC                     |      |             |             |
| Model            | 01  |     | Residential    | Frame Type                    |      |             |             |
| Grade            | 03  |     | Average        | Baths/Plumbing                |      |             |             |
| Stories          | 1   |     | 1 Story        | Ceiling/Wall                  |      |             |             |
| Occupancy        | 01  |     |                | Rooms/Prtns                   |      |             |             |
| Exterior Wall 1  | 26  |     | Aluminum Sidng | % Common Wall                 |      |             |             |
| Roof Structure   | 03  |     | Gable/Hip      | Wall Height                   |      |             |             |
| Roof Cover       | 03  |     | Asph/F Gls/Cmp | <b>CONDO/MOBILE HOME DATA</b> |      |             |             |
| Interior Wall 1  | 03  |     | Plastered      | Element                       | Code | Description | Factor      |
| Interior Floor 1 | 12  |     | Hardwood       | Complex                       |      |             |             |
|                  | 2   |     | Carpet         | Floor Adj                     |      |             |             |
| Heating Fuel     | 03  |     | Gas            | Unit Location                 |      |             |             |
| Heating Type     | 04  |     | Forced Air-Duc | Number of Units               |      |             |             |
| AC Type          | 03  |     | Central        | Number of Levels              |      |             |             |
| Bedrooms         | 03  |     | 3 Bedrooms     | % Ownership                   |      |             |             |
| Bathrooms        | 1   |     | 1 Bathroom     | <b>COST/MARKET VALUATION</b>  |      |             |             |
| Total Rooms      | 5   |     | 5 Rooms        | Unadj. Base Rate              |      | 84.00       |             |
| Bath Type        | 01  |     | Old Style      | Size Adj. Factor              |      | 1.08750     |             |
| Kitchen Style    | 01  |     | Old Style      | Grade (Q) Index               |      | 1.01        |             |
|                  |     |     |                | Adj. Base Rate                |      | 92.26       |             |
|                  |     |     |                | Bldg. Value New               |      | 143,926     |             |
|                  |     |     |                | Year Built                    |      | 1965        |             |
|                  |     |     |                | Eff. Year Built               |      | (E) 1987    |             |
|                  |     |     |                | Nrml Physcl Dep               |      | 15          |             |
|                  |     |     |                | Functl Obslnc                 |      | 0           |             |
|                  |     |     |                | Econ Obslnc                   |      | 5           |             |
|                  |     |     |                | Specl. Cond. Code             |      |             |             |
|                  |     |     |                | Specl Cond %                  |      |             |             |
|                  |     |     |                | Overall % Cond.               |      | 80          |             |
|                  |     |     |                | Deprec. Bldg Value            |      | 115,100     |             |

FBM[416]  
 UBM[624]



**MIXED USE**

| Code | Description | Percentage |
|------|-------------|------------|
| 1010 | SINGLE FAM  | 100        |

**OB-OUTBUILDING & YARD ITEMS(L) / XF-BUILDING EXTRA FEATURES(B)**

| Code | Description    | L/B | Units | Unit Price | Yr.  | Dp Rt | %Cnd | Apr. Value |
|------|----------------|-----|-------|------------|------|-------|------|------------|
| FPL1 | FIREPLACE 1 ST | B   | 1     | 2,200.00   | 1987 | 1     | 100  | 1,900      |

**BUILDING SUB-AREA SUMMARY SECTION**

| Code | Description               | Living Area | Gross Area | Eff. Area | Unit Cost | Undeprec. Value |
|------|---------------------------|-------------|------------|-----------|-----------|-----------------|
| BAS  | First Floor               | 1,040       | 1,040      | 1,040     | 92.26     | 95,950          |
| FBM  | Basement, Finished        | 0           | 416        | 146       | 32.38     | 13,470          |
| FEP  | Porch, Enclosed, Finished | 0           | 108        | 76        | 64.92     | 7,012           |
| FGR  | Garage, Finished          | 0           | 400        | 140       | 32.29     | 12,916          |
| PTO  | Patio                     | 0           | 327        | 33        | 9.31      | 3,045           |
| UBM  | Basement, Unfinished      | 0           | 624        | 125       | 18.48     | 11,533          |

| CURRENT OWNER   | TOPO.   | UTILITIES    | STRT./ROAD     | LOCATION   | CURRENT ASSESSMENT |      |                 |                |
|---|---------|--------------|----------------|------------|--------------------|------|-----------------|----------------|
| BOUSQUET JEAN E<br>508 MENDON ROAD<br>WOONSOCKET, RI 02895  | 1 Level | 1 All Public | 2 Semi-Improve | 2 Suburban | Description        | Code | Appraised Value | Assessed Value |
|   |         |              |                |            | RES LND            | 0100 | 40,300          | 40,300         |
|   |         |              |                |            | RESIDENTL          | 0100 | 117,000         | 117,000        |
| <b>SUPPLEMENTAL DATA</b>  |         |              |                |            |                    |      |                 |                |
| Account # 2541880<br>STATE CD<br>OTHER<br>WARD<br>PREC.<br>CENSUS TRACT<br>GIS ID: 0053A 0000 0013 0010 |         |              |                |            |                    |      |                 |                |
|   |         |              |                |            | <b>Total:</b>      |      | 157,300         | 157,300        |

5416  
WOONSOCKET, RI

# VISION

| RECORD OF OWNERSHIP | BK-VOL/PAGE | SALE DATE  | q/u | v/i | SALE PRICE | V.C. | PREVIOUS ASSESSMENTS (HISTORY) |      |                |               |      |                |               |      |                |
|---------------------|-------------|------------|-----|-----|------------|------|--------------------------------|------|----------------|---------------|------|----------------|---------------|------|----------------|
| BOUSQUET JEAN E     | 1038/0121   | 06/27/1996 |     | I   | 103,000    |      | Yr.                            | Code | Assessed Value | Yr.           | Code | Assessed Value | Yr.           | Code | Assessed Value |
|                     |             |            |     |     |            |      | 2003                           | 0100 | 40,300         | 2003          | 0100 | 40,300         | 2002          | 0100 | 25,300         |
|                     |             |            |     |     |            |      | 2003                           | 0100 | 117,000        | 2003          | 0100 | 117,000        | 2002          | 0100 | 84,500         |
|                     |             |            |     |     |            |      | <b>Total:</b>                  |      | 157,300        | <b>Total:</b> |      | 157,300        | <b>Total:</b> |      | 800            |

| EXEMPTIONS    |                  |        |      | OTHER ASSESSMENTS |        |        |            | This signature acknowledges a visit by a Data Collector or Assessor   |  |  |  |
|---------------|------------------|--------|------|-------------------|--------|--------|------------|---|--|--|--|
| Year          | Type/Description | Amount | Code | Description       | Number | Amount | Comm. Int. |   |  |  |  |
| <b>Total:</b> |                  |        |      |                   |        |        |            | <b>APPRAISED VALUE SUMMARY</b><br><br>Appraised Bldg. Value (Card) 115,100<br>Appraised XF (B) Value (Bldg) 1,900<br>Appraised OB (L) Value (Bldg) 0<br>Appraised Land Value (Bldg) 40,300<br>Special Land Value<br><br>Total Appraised Card Value 157,300<br>Total Appraised Parcel Value 157,300<br>Valuation Method: Cost/Market Valuation<br><br>Net Total Appraised Parcel Value 157,300 |  |  |  |
|               |                  |        |      |                   |        |        |            |   |  |  |  |

**NOTES**  
 WHITE IA  
 FBM=F  
 ECO=TRAFFIC  
 FOR SALE 95

| BUILDING PERMIT RECORD |            |      |             |        |            |         |            | VISIT/CHANGE HISTORY |          |    |     |               |
|------------------------|------------|------|-------------|--------|------------|---------|------------|----------------------|----------|----|-----|---------------|
| Permit ID              | Issue Date | Type | Description | Amount | Insp. Date | % Comp. | Date Comp. | Comments             | Date     | ID | Cd. | Purpose/Res.  |
|                        |            |      |             |        |            |         |            |                      | 3/17/03  | SS | 50  | vba           |
|                        |            |      |             |        |            |         |            |                      | 2/29/00  | CW | 50  | vba           |
|                        |            |      |             |        |            |         |            |                      | 12/12/94 | HW | 00  | Measur+Listed |

| LAND LINE VALUATION SECTION  |          |             |      |   |          |       |           |             |                                |      |           |       |      |                            |                         |            |        |
|------------------------------|----------|-------------|------|---|----------|-------|-----------|-------------|--------------------------------|------|-----------|-------|------|----------------------------|-------------------------|------------|--------|
| #                            | Use Code | Description | Zone | D | Frontage | Depth | Units     | Unit Price  | I. Factor                      | S.I. | C. Factor | Nbhd. | Adj. | Notes- Adj/Special Pricing | Adj. Unit Price         | Land Value |        |
|                              | 1010     | SINGLE FAM  | R2   |   |          |       | 10,000.00 | SF 3.60     | 1.10                           | 5    | 1.00      |       | 1.00 |                            | 3.96                    | 39,600     |        |
|                              | 1010     | SINGLE FAM  | R2   |   |          |       | 0.13      | AC 5,000.00 | 1.10                           | 5    | 1.00      |       | 1.00 |                            | 5,500.00                | 700        |        |
| <b>Total Card Land Units</b> |          |             |      |   |          |       | 0.36      | AC          | <b>Parcel Total Land Area:</b> |      |           |       | 0.36 | AC                         | <b>Total Land Value</b> |            | 40,300 |



**CITY OF WOONSOCKET  
LAW DEPARTMENT**

**MEMORANDUM**

**TO:** Keith A. Brynes, City Planner  
**FROM:** Joseph P. Carroll, City Solicitor  
**DATE:** September 11, 2002  
**SUBJECT:** Major Subdivision Plan for R & K Builders – Mendon Road

*Joseph P. Carroll*

---

I have reviewed your memorandum and the attached plan regarding the above-referenced matter. My understanding is that the construction of the roadway would place two existing houses, which currently meet Zoning Ordinance requirements, into non-conformance, as their side yard setbacks would become their front yard setbacks.

As you know, the Planning Board cannot approve a subdivision without Zoning Board approval of any necessary variances. It is my opinion that the owners of the properties that would become non-conforming would have to apply to the Zoning Board for variances for those properties. Absent that happening, or a change to the subdivision that would make Zoning Board approval unnecessary, the Planning Board cannot consider the request for the subdivision. I have, however, been advised that both of the lots front on Mendon Road, that one lot (on the right, when facing the subdivision) is only nine feet from the right-of-way, and that the other lot is fifteen feet from the right-of-way. Please check these facts.

JPC/abm

cc: Joel D. Mathews, Director of Planning and Development  
Owen Bebeau, Chairman, Planning Board

APPROVED  
11/12/02

PLANNING BOARD MEETING  
WOONSOCKET, RHODE ISLAND  
TUESDAY, OCTOBER 1, 2002  
7:00 P.M.

Members Present: Owen T. Bebeau, Chairman  
Daniel R. Peloquin  
John Monse  
Michael Del Rossi

Also Present: Michael S. Przybylowicz, Deputy Director  
Pauline Washington, Recording Secretary

Absent: David M. Soucy

1. Consideration of Master Plan Approval for major Subdivision Plan for R&K Builders—Map B7, Lots 53-1 & 53-32 Mendon Road

Mr. Bebeau read a memo (9/11/02) to the City Planner from Joseph Carroll, City Solicitor, which states that...“the construction of the roadway would place two existing houses, which currently meet zoning ordinance requirements, into non-conformance, as their side yard setbacks would become their front yard setbacks.” The memo further states, “...the Planning Board cannot approve a subdivision without Zoning Board approval of any necessary variances.” It is the Law Department’s opinion that the owners of the properties that would become non-conforming would have to apply to the Zoning Board for variances for those properties. Absent that happening, or a change to the subdivision that would make Zoning Board approval unnecessary, the Planning Board cannot consider the request for the subdivision.

Mr. Bebeau recommended TABLING the above-named application until such time that action is taken enabling the Planning Board to consider the application.

A MOTION was made by Mr. Monse and seconded by Mr. Peloquin to TABLE the application indefinitely.

|                 |               |              |
|-----------------|---------------|--------------|
| Roll Call Vote: | Mr. Peloquin  | Yes to Table |
|                 | Mr. Monse     | Yes to Table |
|                 | Mr. Del Rossi | Yes to Table |
|                 | Mr. Bebeau    | Yes to Table |

The MOTION carried and the above-named application was TABLED INDEFINITELY.

2. Consideration of Approval for Administrative Subdivision Plan for Arlean Burt—Map C5, Lots 39-37, 39-40 & 39-42 Cass Avenue

Mr. Brynes stated that at the September 3, 2002 Planning Board meeting the above-named application was TABLED due to concerns regarding drainage, grading, parking spaces and the retaining wall. As a result of those concerns the Board requested that the applicant provide a special site plan (scale: 1”-10’), which would address the above concerns. After review and approval from the appropriate departments, the Planning Board could issue an Administrative Approval with a stipulation that the previous combination administered by the Zoning Officer be rescinded prior to the applicant recording the Subdivision Plan.

**PLANNING BOARD MEETING  
WOONSOCKET, RHODE ISLAND  
TUESDAY, SEPTEMBER 2, 2003  
7:00 P.M.**

**Members Present:**

Owen T. Bebeau, Chairman  
Michael A. Del Rossi  
John R. Monse, Jr.  
Daniel R. Peloquin  
David M. Soucy

**Also Present:**

Keith A. Brynes, City Planner  
Pauline Washington, Recording Secretary

1. Public Hearing for Minor Subdivision Plan Entitled "Vivian Street Multi-Family Concept" for Regional Development Corp.—Map G6, Lots 45-2, 45-5, 45-6 & 45-29, Vivian Street

Mr. Bebeau opened the public hearing by stating that representatives of the applicant would make their presentation first, followed by questions and comments from the Board members. After the presentation is over everyone in attendance would have an opportunity to comment and ask questions. Mr. Bebeau requested that everyone give his or her name and address before speaking.

• Attorney Peter Ruggiero, Esq., Representative

Attorney Ruggiero stated that a few months ago a public hearing was held regarding the above name application and that this is a continuation of that meeting. He stated that during that public hearing a number of expert witnesses testified regarding the proposed plan and several questions were raised by the Planning Board and the general public. Attorney Ruggiero stated that since that meeting the design team has revised the plan. Originally the plan called for 27 dwelling units but has since been reduced to 20 units as a result of that input. The units will be rental as previously discussed.

Attorney Ruggiero stated that he would first review the proposed changes and then take questions from the Board and the general public.

• George Gifford, President, Gifford Design Group, Environmental Planners & Landscape Architects, Mendon Road, Cumberland, RI

Attorney Ruggiero stated that with him tonight are three expert witnesses as well as other members of the design team to answer questions. Attorney Ruggiero introduced George Gifford of Gifford Design Group to explain the proposed changes to the plan as a result of the last public hearing. Mr. Gifford stated that he is a licensed landscape architect with offices located at 1621 Mendon Road, Cumberland, RI. Mr. Gifford stated that the Planning Board may recall that the last proposal the design team presented was for 27 units with a total of seven buildings, the majority of them being four unit buildings and one building consisting of three units. The property is located at the edge of a gravel excavation with a change in topography from Lucille

Street in a downward fashion, towards the quarry. The existing topography of the subject property is formed in a terraced fashion (*a high plateau*) on the eastern side of the property that drops down eight to ten feet to a low plateau on the western side of the property.

Mr. Gifford stated that the proposal most recently submitted is a 20 unit multi-family project; the number of buildings has been reduced to 5 consisting of 4 units each; the main street would remain a public right-of way with improvements to City standards. There would be 8 units, (2 four-unit buildings) to the north of Vivian Street and twelve units (3 four unit buildings) to the south of Vivian Street.

Mr. Gifford stated that the new proposal allows them to maintain the same 65 ft. vegetated woodland buffer along the east side of the development as proposed in the old plan. It also provides for the area of undisturbed open space on the south side of the property. Mr. Gifford stated that there is one small area of note to the southwest corner where the gravel operation has encroached somewhat. The area of encroachment is the proposed site for placement of the storm water facility, which will be discussed in further detail by the civil engineer.

Mr. Gifford stated that the east side of the property will be buffered by evergreen vegetation, there will be evergreen plantings along Vivian Street to buffer Vivian Street from the most northerly multi-family structure; there will be evergreen plantings on the west side to buffer the ground excavation properties from the westerly buildings. As discussed at the last meeting the design team feels that this is an improved transitional use between the high-intensity use of the gravel excavation property and the low-intensity use of single-family homes.

Mr. Peloquin asked what is the actual size of the Lot. Mr. Gifford stated that the actual size of the Lot is 3.6 acres, a little more than 56,000 sq. ft.

Mr. Bebeau asked how many single-family homes could be built on the site. Mr. Gifford stated that Mr. Thalmann (Thalmann Engineering Co., Inc.) did a yield plan that indicated 12 Lots could be generated.

- Joseph D. Lombardo, AICP, Planning Consultant, JDL Enterprises

Attorney Ruggiero introduced Mr. Joseph D. Lombardo, AICP, JDL Enterprises. Mr. Lombardo stated that he is a land use planning consultant with offices located at Hope Valley, RI. His educational background includes a bachelor's degree in natural resources and a master's degree in planning from the University of RI. Mr. Lombardo stated that he has been involved with municipal planning for over 25 years, working with municipal planning departments and also as a planning consultant.

Mr. Lombardo stated that he was retained by the applicant to perform a fiscal impact assessment on this proposal, to compare the proposed development scheme to that of single-family homes for the site.

Fiscal Impact Study Conclusions: Mr. Lombardo presented a document entitled "*Fiscal Impact Study & Population and School Age Children Projection, Comparison: A 12 Lot Single*



*Family Home Development V.S Twenty Apartment Unit Development," City of Woonsocket, RI, prepared for: Regional Development Corporation, prepared by: JDL Enterprises. The document was accepted and marked Exhibit "A."*

Mr. Lombardo stated that he would briefly review the study in order that the Board and the public might understand the methodology. He stated that in essence a standard methodology was used whereby they look at the impact per person of the development, it can be used in any type of development in any place in the State. Mr. Lombardo stated that he would be looking specifically at the future revenues and expenses of the 20-unit development and compare that with a 12-Lot single-family home development. He stated that this comparison would give everyone an idea of the differences from a fiscal impact on the community.

Mr. Lombardo stated that the first thing they did was establish baseline information, which usually comes from two sources: the municipality itself and the US Census Bureau. Page two shows the enrollment in the public school system, the municipal budget, the school budget, the year 2000 census, the year 2000 population, and the year 2000 housing units. From that information they were able to calculate the per capita multipliers that are indicated at the bottom of page two. For example, the municipal budget per capita per person is \$959; the school budget per capita is \$8,455; the multiplier per household is 2.37; and the school age multiplier per household is .36 students per household, which is a city-wide average. Mr. Lombardo stated that these budget numbers are current fiscal year numbers from the City of Woonsocket's Finance Department.

Mr. Lombardo stated that one of the first things they did was to estimate the proposed population for the development, taking into account that there would be 20 units; 2.37 persons per unit would generate 47 persons living in the development. However, that would be a Citywide average and they would like to do a more precise calculation. Mr. Lombardo stated they are looking at two-bedroom apartments; two-bedroom apartments typically will generate far less school age children than the average home or a single-family home. Mr. Lombardo cited three housing developments as examples: Villa Del Rio in Warwick, Springfield in Cranston, and the Winsor at Brentwood. He stated that all these housing developments produced less than .10 pupils per unit. If we were to apply the .10 pupils per unit to the proposed 20 units we would have two school-aged children living in the development, which is less than .36 pupils. Mr. Lombardo stated that for the purposes of this Fiscal Impact Statement the two school age children would be projected to be residents of the proposed development.

Mr. Lombardo stated that page four of the FIS recalculates the population, which will not be 47 using the citywide average; the calculation would actually be 42 or 2.1 per capita. Located at the bottom of page 4 is the single-family home projection. He stated that typically three to four-bedroom single-family homes tend to generate far more than the city average of .36 pupils, its closer to 1 school age child per unit. Mr. Lombardo stated that when you add these numbers of 3 persons per unit you have a total of 36 persons occupying the 12 units.

Mr. Lombardo stated that the second half of the FIS is the expense estimates. He stated that they plug in the number of school age children times the number of dollars per student (\$8,455) per total expense of \$16,910. Similarly with the municipal budget with a capita of \$959

per capita, they generate expenses of \$40,278. Mr. Lombardo stated that the 20-unit apartment complex would generate an expense of \$57,188 to the City of Woonsocket.

Mr. Lombardo stated that next we would look at what happens in a 12 unit single-family home development applying the same methodology of using 12 school age children times the multiplier gives you a total expense of \$101,460. Utilizing the population at \$959 per person is a total expense of \$135,984 for both municipal and school expenses. Mr. Lombardo stated that the difference between the 20 unit apartment at \$57,188 vs. the 12 single-family homes at \$135,984.

Mr. Lombardo stated that to estimate the revenue we look at the valuation of the units as they are being constructed. He stated that the developer is estimating an apartment unit's value of \$200,000 each. Taking the current tax rate (\$23.30/1,000) times 20 units at \$4,660 per unit would generate approximately \$93,200 in revenue to the City of Woonsocket.

Mr. Lombardo stated that page 6 uses the same calculation for the 12 single-family homes. Estimating that those homes would be valued at \$300,000, however with the 45% reduction in the Homestead Act, a home would only be valued at \$165,000. Again, applying the same tax rate and number of units would generate \$46,134 in revenue to the City of Woonsocket. He stated that an apartment complex would generate \$93,200; 12 single-family homes would generate \$46,134.

Mr. Lombardo stated that page nine is projected revenue and expense comparison on an annual basis with the build out of the proposed 20 apartment units. He stated that the total cost to the City would be \$57,188; total revenue would be \$93,200, with the City of Woonsocket realizing a net tax revenue gain of \$36,012.

The final page, page ten, gives the same process for a single-family home with a cost to the City of Woonsocket of \$34,524, revenue of \$46,134, a negative of -\$89,850. Mr. Lombardo stated that the single-family development would create a loss of revenue for the City of Woonsocket.

In summary, Mr. Lombardo stated that the 20-unit apartment complex is estimated to have a positive tax revenue gain of approximately \$36,000 in the year 2003. This projected estimated is based on all the multipliers and assumptions included in the Fiscal Impact Study.

Mr. Monse asked Mr. Lombardo how did he come up with the projected numbers utilized in the FIS. Mr. Lombardo stated that having worked in municipal government for over 12 years, working at town halls and with tax assessors and he is very familiar with valuations and how they work. He stated that these calculations, which are a snap shot in time, are very close to what can be expected assuming that the values are correct. Mr. Lombardo stated that he could say with relative certainty that the numbers that he has quoted are a very close estimate to the amount of money that would be saved. Mr. Monse asked Mr. Lombardo if the methodology one that he has used over a period of years. Mr. Lombardo said yes.

Mr. Peloquin stated that the FIS is based on dollars and not on land use. The Lot is zoned R-2, Low Density Single-Family Residential District, and the developer is proposing an

apartment complex, the developer is justifying the development based on dollars not on land use. Mr. Peloquin stated that he recently drove through the neighborhood and clearly the makeup of the neighborhood is approximately 95% single-family homes. He stated that based on the makeup of the neighborhood its very clear that the FIS is based solely on dollars. Mr. Lombardo stated that the purpose of the FIS is strictly to give the City the dollars and cents of the two housing options, one that is available by right and one that is being requested.

Mr. Bebeau asked if the plan takes into consideration the elderly population and the fact that the homes could be sold to an elderly population without children? Mr. Lombardo stated that traditionally new single-family homes tend to generate the highest number of school age children. But 15 to 20 years later those same 12 homes might have half the number of school age children that it had during the first three to four years. He stated that another cycle could occur, it really depends on what the people want and need. But he stated that clearly the newly built 12 (3-4 bedrooms) single-family homes would attract families with the highest population in that time period. Mr. Lombardo stated that it is true that if you were to visit a single-family neighborhood that is about 20, 30, 40 years old you would have an entirely different picture.

- James N. Salem, Traffic Consultant, Barrington, RI

Attorney Ruggiero introduced James N. Salem the traffic consultant for the project. Mr. Salem distributed copies of his resume that was marked *Exhibit "B"* by the Board. Mr. Salem stated that he has a Master of Science Degree in Transportation Planning and Engineering; he was the Assistant Traffic Engineer for the City of Providence (now retired); he is currently the traffic consultant to the Town of Richmond, and he also provides consultations to its Planning Board.

Attorney Ruggiero asked Mr. Salem if he was retained by the applicant to perform a traffic impact analysis on the proposed project? Mr. Salem said yes. Attorney Ruggiero asked Mr. Salem to explain the tasks he undertook and his subsequent findings and conclusions. Mr. Salem stated that when he first undertook the traffic analysis it was predicated on 27 units but was subsequently reduced to 20 units. Mr. Salem stated that in analyzing the neighborhood he determined that Lucille Street is a two-way street with about 32 ft. of width with speeds of about 25 miles per hour with high intensity ramps located on Lucille Street. Mr. Salem stated that they conducted several traffic counts on Lucille Street at the intersection of Vivian Street during peak hours as well as during school time activities. He stated that they found these streets to have the traffic characteristics consistent with a residential neighborhood. Mr. Salem stated that these two streets would be servicing a neighborhood of about 400 vehicles per day. He stated that Lucille Street is about 32 ft. wide and has the same characteristics as Vivian Street. Again, he stated that they conducted traffic counts primarily during school time and during peak hours.

Mr. Salem stated that for the second part of the study they reference the ITE Trip Generation Manual to obtain an appropriate trip generation rate for the proposal's use. Mr. Salem stated that the ITE is the "Institute of Transportation Engineers" that conducts traffic studies throughout the country: industrial, commercial, residential, etc. From these studies the Institute is able to formulate trip generation rates.

Mr. Salem stated that under the initial application of 27 units the proposed use would have generated 190 trips per day; with the reduction in units the number of trips per day was reduced from 190 trips per day to 120 trips per day. What does that do to the impact on the existing traffic? Mr. Salem stated that in the next phase of the study he conducted a "capacity analysis" or "impact analysis." He stated that a capacity analysis measures the level of service or vehicular movement. He stated that an "A" level of service indicates a little delay; level "F" indicates congestion.

Mr. Salem stated that in reviewing the proposed parking plan for the use he found that the proposed parking plan meets the good engineering standards as set forth by the Federal Highway Administration. He stated that the stall depth as well as the stall width and the aisle width exceed the minimum standards set by the Federal Highway Administration.

Mr. Salem stated that it is his conclusion based on the traffic study that the proposed condominium use would not have an adverse affect on traffic.

Mr. Bebeau asked Mr. Salem if he had a copy of the traffic study for the Board's review. Mr. Salem said no, he does not have a copy of the traffic study, just the oral presentation.

Mr. Del Rossi asked what is the number of increased trips for Vivian Street and Lucille Street based on the proposed subdivision? Mr. Salem said under 27 units would generate 190 trips; with the reduction from 27 units to 20 units the number of trips was reduced by 50, down to 140 trips. Mr. Salem stated that the trips are down to 140 as a result of the revised proposal. Mr. Del Rossi asked what street the count was conducted on. Mr. Salem said the intersection of Lucille Street and Vivian Street.

Mr. Del Rossi asked if the capacity analysis for both Vivian Street and Lucille Street both "A"? Mr. Salem said yes. Mr. Salem stated that the 27-unit proposal and the 20-unit proposal would both provide an "A" level of service.

Mr. Del Rossi asked Mr. Salem if he did an analysis for single-family homes? Mr. Salem said no, but he could answer questions on the subject. Mr. Del Rossi asked if there would be an increased number of trips with the development of single-family homes? Mr. Salem said no, that twelve single-family homes would generate 120 trips per day as opposed to 140 trips with the development of 20 condo units. He stated that the level of service would also be "A"; that 20 units, 27 units or 12 single-family units would maintain an A level of service.

Mr. Del Rossi asked what is the highest or best level of service. Mr. Salem said the best is level "A" the worst level is "F," which is congestion. Mr. Salem stated that each level of service has a range: Level A is 1 to 500 vehicles in a one-hour period; Level B is 501 to 1,000 vehicles and so on until you reach the last level, Level F, which is congestion. Mr. Salem stated that with the current traffic pattern and the current traffic volume on these roadways and the superimposed projected traffic, we were able to maintain an "A" Level of service. He stated that even though they added to the current volume of traffic it was not enough to reduce the traffic to a "B" Level.

Mr. Del Rossi asked hypothetically the number to trips (during peak hours) needed to reduce the Level to B. Mr. Salem stated that peak hour trips would need to be increased by at least 150 vehicles per hour in order to lower the level of service to "B."

Mr. Ruggiero asked Mr. Salem to explain the peak hour travel based on the proposed use. Mr. Salem stated that during the morning peak hour the volume of traffic is not high because this is a residential neighborhood. He stated that during the morning peak hour he observed one left turn movement of five, another left turn movement of zero, three left turn movements of zero, and one left turn movement of zero. Mr. Del Rossi asked what time this traffic count occurred. Mr. Salem said between 7:00 A.M. and 8:00 A.M. Mr. Salem stated that this is not the traffic pattern for the entire day, only what he has calculated to be the morning peak hour. He stated that the P.M. or afternoon peak consisted of one left turn, two left turns, two approaches that had one left turn each, and two approaches with zero left turns. Mr. Salem stated that the afternoon peak is between 4:00 P.M. and 5:00 P.M. Mr. Salem stated that these are actual numbers; they were not extracted from a study or from State sources. He stated that an individual physically sat in his car and made these counts on October 4, 2002 and October 9, 2002.

Mr. Brynes asked if this traffic study was only for the intersection of Vivian Street and Lucille Street? Mr. Salem said yes.

Mr. Bebeau opened the hearing to questions and comments from the public. He requested that everyone please give his or her name and address before speaking.

- Joyce Fox, 363 Lucille Street (corner of Vivian Street)—Ms. Fox stated that during the last public hearing (June 3, 2003) there were various issues raised that she has not heard addressed tonight. She stated that one item of concern is a proposed detention pond; another is water and sewer concerns and safety issues. Ms. Fox stated that traffic going by the corner of Lucille Street turning left onto Vivian Street because most people reverse their direction and Larch Street, down Talcott Street and egress onto Mendon Road. She stated that if you were going onto Rte 99 during the A.M. this is the route you would take because you would be able to turn right with the traffic. She stated that when traffic does come up Talcott Street and approach the corner of Mendon Road it is sensitized by the State of RI and will trigger a green light to allow traffic to exit the neighborhood. Ms. Fox stated that this is one of the concessions that her neighborhood was granted when Rte 99 cut the neighborhood in half. Ms. Fox stated that the study of traffic existing Lucille Street turning left onto Vivian Street is totally irrelevant to the traffic problems this development would cause.

Ms. Fox also stated that the corner of Vivian and Lucille Streets is presently a school bus stop for an elementary school. She stated that Mr. Salem testified that the study was done at 8:00 A.M.; students are not picked up before 8:00 A.M.

Ms. Fox stated that her neighborhood would be paying a very high price in order for the City of Woonsocket to get a few tax dollars. She said that the number of tax dollars this project can generate should be irrelevant; she would hope that the City of Woonsocket is concerned enough about the residents and existing taxpayers and not sell them out for a few extra tax dollars.

Ms. Fox also stated that she is concerned about the ownership of the remainder of the undeveloped land. She stated that if Regional Development Corporation also owns this land they could build more homes.

Ms. Fox stated that Mr. Bebeau alluded to the fact that single-family homes could be built targeting older persons. She said that this proposal would be much more palatable; age restricted to persons age 55 plus. Ms. Fox stated that age restricted developments is a growing trend throughout Rhode Island and Massachusetts. She stated that an age-restricted development would not be a traffic burden or a tax burden on our school system. She stated that if the proposal were changed to an age restricted, single-family development the developer would not encounter as much resistance from the neighborhood property owners.

- Steven Girard, 339 Lucille Street—Mr. Girard stated that he is in agreement with Ms. Fox regarding issues raised during the June 3, 2003 public hearing that have not been addressed tonight. He asked what changes have been made to the project since that meeting. Mr. Girard stated that one item of concern was blasting; the developer was not sure if blasting would be required. Another issue concerned only one means of ingress and egress and parking for the tenants.

Mr. Girard stated that he and Ms. Fox would be most affected by the development because their property is located at the corner of Vivian and Lucille Streets.

Mr. Girard stated that he and the other property owners received only a one-week notice regarding tonight's meeting, which is not enough time.

Mr. Brynes stated that these notices are normally mailed at least 14 days before a public hearing, but due to the fact that the meeting could not be held at City Hall and the alternative meeting site, the Harris Public Library, was being used by the City Council, the Planning Board had to re-advertise the change in venue, the Woonsocket High School Library, which allowed for only a seven day notice. Mr. Brynes apologized for any inconvenience this may have caused.

- Steven St. Jean, 102 Vivian Street—Mr. St. Jean stated that the residents are also concerned about emergency vehicles accessing the area. He stated that if access to Vivian Street were blocked for whatever reason, there would be no second means of ingress. Mr. St. Jean stated that if this were a single-family development he would not be in opposition to it.

- Theodore Brodeur, 93 Vivian Street—Mr. Brodeur asked what is being proposed regarding the 10 ft. drop at the end of Vivian Street? Attorney Ruggiero stated that Curtis Ruotolo, E.I.T., Project Engineer, Thalmann Engineering, would answer Mr. Brodeur's question. Mr. Ruotolo (using the submitted plans) pointed out the area in question that represents the existing grades and the same area displaying the proposed grades. He stated that the original plan did show the area with an approximate 10 ft. drop but the proposed plan calls for the area to be filled to a depth of 3 ft.

- Richard Rainville, 154 Talcott Street—Mr. Rainville stated that there are only two means of ingress into this neighborhood and all of this traffic would pass by his house every day. Mr.

Rainville asked what is the turnover rate for rental units. He stated that the majority of the existing neighborhood residents grew up in this neighborhood, but rental units will consist of people moving in and out on a regular basis. He stated that single-family homes would produce a much lower turnover rate.

- Steven St. Jean, 102 Vivian Street—Mr. St. Jean stated that the proposed grade of the street could prevent rescue vehicles from accessing the neighborhood. Mr. Ruotolo stated that the proposed street grade would not be a problem for any vehicle.
- Kathy Murphy, Larch Street—Ms. Murphy asked if a traffic study could be done for Larch Street and Talcott Street before the project moves forward.
- Lori Dion, 123 Burrington Street—Ms. Dion requested that the Lot's zoning designation remain R-2.
- Michael Heroux, 147 Louise Street—Mr. Heroux stated that the City Administration should realize that you cannot put a price on children being able to play in the street, or the peace they all share from living in a quiet, secluded neighborhood where everyone knows their neighbors.
- Donald Harnois—Mr. Harnois stated that he has lived in Oak Grove for nearly 40 years. He stated that the Oak Grove residents do not want this housing development in their neighborhood.
- Gerald Durand, 136 Larch Street—Mr. Durand stated that the testimony tonight from the developer's representative regarding the financial impact and the traffic study are merely assumptions or theories not facts. Mr. Salem disagreed with Mr. Durand regarding the traffic study. Mr. Salem stated that the traffic study consists of actual counts and techniques used in the industry. He stated that actual counts were conducted, not a secondary source. Mr. Salem stated that the ITE trip generation manual was used to extract approximate trip generation rates for the course of the day as well as during peak hours. He stated that the capacity analysis is the Highway Capacity Analysis 2000, which is used by the Federal government and the State of Rhode Island. He stated that the methodology used in evaluating this residential use is a process that is accepted in the industry by the RI Department of Transportation and the Federal Highway Administration. Mr. Salem stated that the methodology is a standard of the industry; its not magical, its approximate, but there is enough information to give him an idea as to what type of impact any type of use would have in any particular area. Mr. Salem said, as stated during his earlier testimony that whether the development is residential, industrial or commercial, they all have different trip generation rates, they all have different traffic characteristics, depending on the use. Ms. Salem stated that the only thing that won't change is the width of the street, the numbers that were counted on that day and the capacity analysis results. He stated that the results of the capacity analysis would be the same for 12 units, 20 units, or 27 units.

Mr. Bebeau read a letter to the Planning Board dated September 2, 2003 from Joel D. Mathews, Planning Director, stating that it is the City Administration's understanding that this "proposal is for luxury/high-end housing units and specifically not for subsidized units. This

*communication is not intended to clearly support or request rejection of the proposal, but to strongly suggest to the Planning Board that if for any reason that you decided to approve this proposal or any modified version that the approval should restrict the use to nonsubsidized housing units that has been previously included as part of the testimony the developers."*

Mr. Bebeau asked if anyone else would like to speak. There were no further comments or questions. Mr. Bebeau gave Attorney Ruggiero an opportunity to respond to the questions and comments by the Oak Grove residents.

Attorney Ruggiero thanked the Board members and the residents for their questions and recommendations. He stated that he and the design team are aware that this is a very difficult and opinionated project before them tonight. He stated however that he is compelled to remind the Board that the applicant is asking for a Minor Subdivision approval with a street extension; the applicant is not asking for a zone change. Attorney Ruggiero stated that the design team has presented their proposal in a candid and frank manner, fully divulging what their intentions are. Attorney Ruggiero stated that he is asking the Planning Board to contemplate this proposal within the framework of the Board's decision standards enumerated in the City's Subdivision Regulations. Attorney Ruggiero stated that it is his opinion that the applicant and design team has presented much more than most applicants would at this level of development. He stated that the evidence presented by the design team tonight is sufficient for the Board to make a positive finding. However, Attorney Ruggiero stated that he is aware that the Board's decision will be tempered with the reality that the Oak Grove residents are not in favor of the proposed land use change. Attorney Ruggiero stated that this is not the time to make that decision that it should be made at another time and by another board. Attorney Ruggiero stated that he understand that the public maybe frustrated by this type of process and the Board members maybe equally frustrated, but he must ask the Board to remember why the applicant is here tonight and the relief the applicant is seeking.

A MOTION was made by Mr. Peloquin seconded by Mr. Del Rossi to close the public hearing. The MOTION carried and the public hearing closed.

Mr. Bebeau stated that the Board has heard testimony from representatives of the applicant and the Oak Grove residents; he asked Board members if they had any further questions or comments, there were none.

Mr. Brynes stated that he would like to know if blasting would be required and to what extent. Mr. Ruotolo stated that test pits were dug sometime near the end of June and soil evaluations were conducted in accordance with Class 4 Soil Evaluation Procedures by RI Department of Environmental Management Standards. He stated that these tests revealed no ledge to a depth of ten ft., and a ground water table greater than 7 ft. Mr. Ruotolo apologized for not have this documentation with him tonight.

Mr. Del Rossi asked if these studies were done in the area where the detention pond would be located. Mr. Ruotolo said yes, the tests were done throughout the area.



Mr. Del Ross again asked if ledge was found in any of the holes. Mr. Ruotolo said that he is aware that outcroppings of ledge does exist in the area but none was found in the test holes that were dug. Mr. Del Rossi asked Mr. Ruotolo if he has a copy of the Class 4 Soil Evaluation report. Mr. Ruotolo said no, he does not have a copy with him tonight. Mr. Del Rossi asked who did the soil evaluation. Mr. Ruotolo said Brian Gomes.

Mr. Byrnes asked Mr. Ruotolo to elaborate on the drainage plan and the proposed detention pond. Mr. Ruotolo stated that basically it is a typical detention pond; all drainage from surfaces would be captured by a series of catch basins and routed to the detention pond. He stated that the detention pond would capture the water and give the water time to infiltrate into the ground. In summary, he stated that the water would leech into the ground.

Mr. Del Rossi asked the depth of the detention pond? Mr. Ruotolo stated that at this point they have not done a complete analysis of the detention pond but he would assume that it would be approximately 4 ft. deep.

Mr. Del Rossi stated that a detention pond would be needed even if single-family homes were built. He stated that the main concern is Vivian Street, which would be a public road, but he asked who would maintain everything south of Vivian Street, the detention pond and the access road? Attorney Ruggiero stated that maintaining this property would be the responsibility of the owner of the rental units, who is presently his client and has no intention of selling the property, but if he should sell the property, the new property owner would assume this responsibility. He stated that the owner could provide easements to the City.

Mr. Del Rossi stated that he feel that it would be a lot easier if the entire road were public. Regarding ingress and egress a cul de sac could be located to the south of the property. Maintaining the road wouldn't be an issue and in addition the detention ponds must be cleaned periodically. He stated that the City Administration prefer to have public roads developed. Attorney Ruggiero stated that his client is amenable to a public road if it is a condition of approval.

Mr. Brynes stated that private roads are prohibited according to the City's Subdivision Regulations in all areas of the City other than Planned Residential Neighborhood Developments.

Mr. Brynes asked Mr. Ruotolo to elaborate somewhat on the proposed sewer system. Mr. Ruotolo stated they have taken a preliminary look at the existing grade, the sewers would be connected via a utility easement; they would be connected to an existing sewer line down at the end of Larch Street, by gravity. The sewer line would travel westward down Vivian Street into the cul de sac then northward via gravity. Mr. Del Rossi asked Mr. Ruotolo if he had considered pumping upward. Mr. Ruotolo said no.

Mr. Brynes asked Attorney Ruggiero to elaborate on the proposed landscaping, the buffer plan in particular. Mr. Gifford stated that the design team is cognizant of the fact that there is a gravel operation located adjacent to the proposed development site. He stated that the design team felt that it would be prudent to provide in the overall master plan some evergreen plantings along the western property line. Mr. Gifford stated that it is impractical to plant 30 ft. trees on

day one as mentioned earlier by an Oak Grove resident. However, he stated that it is not inappropriate to plant trees such as cypress that can grow as fast as three ft. per year to provide an evergreen buffer within a very short time.

Mr. Peloquin asked if the owner had investigated a single-family development vs. the apartment complex development, and if yes, why did the owner pursue the apartment complex development? Attorney Ruggiero, speaking on behalf of the applicant, stated that the owner had considered developing single-family homes on the site but given the proximity of the gravel quarry they believe that from a marketing standpoint that the project would be unfairly prejudiced in the value of homes. He stated that an Oak Grove resident asked why would anyone rent an apartment located adjacent a gravel pit, but a more serious question is why would someone buy a home adjacent to a quarry. Attorney Ruggiero stated that gravel excavation can be carried out at anytime, and it would be very difficult to sell single-family homes near such a site. He stated that the idea of a multi-family development came as a transitional use between the quarry and the single-family home development. Attorney Ruggiero stated that the owners believe, from a marketing standpoint, that a multi-family development of the land makes sense.

Mr. Peloquin asked Attorney Ruggiero how long his client has owned this land. Attorney Ruggiero stated that he does not know but he could find out. Mr. Peloquin asked Attorney Ruggiero if the Board could assume that his client purchased the property fully aware of the location and existence of the gravel bank. Attorney Ruggiero said yes.

Earl Marchand, President of Regional Development Corp. (840 Smithfield Avenue, Lincoln, RI) introduced himself. Mr. Marchand stated that Regional Development Corp. purchased this property from James Forte who once owned the quarry and sold it in 1992 to Todesca Bros. Mr. Marchand stated that his company is not affiliated with the quarry operation in any way.

Mr. Del Rossi stated that the detention pond would be necessary regardless of which development is pursued because the drainage in that area is difficult. He stated that based on the soil evaluation by the engineer of record, it would appear that no ledge was found. However, Mr. Del Rossi stated that he would recommend that more testing for ledge be done. He stated that due to the proximity of the gravel pit he would assume that ledge outcroppings should exist and for that reason he is recommending that additional test holes be dug, especially in the vicinity of the drainage pond.

Mr. Del Rossi stated that water and sewer would also have to be provided regardless of which development is pursued. He stated that the water issue must be discussed with the City's Water Division to make sure that correct pressure exists. He stated that the sewer issue must also be resolved. Regarding the access route, he stated that there is only one way in and one way out, but with the proposed cul de sac located at the end its possible to locate an access route near the back. He stated that this is a concern of the City Administration.

Mr. Del Rossi stated that all these issues would be addressed whether a single-family development or a multi-family development is pursued. He stated that his main concern is the area located to the south of Vivian Street; who will maintain this area? Will it be a private road?

Mr. Del Rossi stated that the City would prefer that the entire road be public due to previous problems in maintaining private roadways, and for this reason he is recommending that the entire length of Vivian Street be a public right of way.

Mr. Bebeau stated that the proposal before the Board is more than just the consideration of a street extension. He stated that he had stated during the last public hearing that the proposed development fits in with the neighborhood in regards to the type of housing that is being proposed. Mr. Bebeau stated that since the initial public hearing the developers have come back with a somewhat scaled down version of the same development. Mr. Bebeau stated that he appreciates all the expert testimony from the development team but he still feels that the project does not fit this area, this neighborhood. Mr. Bebeau stated that he reviewed the City's Subdivision and Land Development Regulations, specifically the Declaration of Purpose, which speaks of "Encouraging local design and improvements standards to reflect the intent of the City's Comprehensive Plan with regard to the physical character of the various neighborhoods and districts of the City." Mr. Bebeau stated that the plan before the Board does not do this, whether it is 27 units or 20 units. Mr. Bebeau stated that he is also dissatisfied with the traffic issue, which can be horrendous in that area. He stated that he can understand the marketing issue of multi-family apartments vs. single-family homes but the Board must look at the project from a design and planning perspective. Mr. Bebeau stated that it is his opinion that the proposed development of multi-family apartments does not belong in this neighborhood and he cannot support the plan as it is presented tonight.

A MOTION was made by Mr. Monse and seconded by Mr. Peloquin to DENY the application. The reasons for denial include the plan's failure to conform with the Declaration of Purpose under the General Provisions in the City's Subdivision of Land Development Regulations that address the following purposes: "*Promoting design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure.*" (Section 1.2.4) and "*Encouraging local design and improvement standards to reflect the intent of the City's Comprehensive Plan with regard to the physical character of the various neighborhoods and districts of the City*" (Section 1.2.5).

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| Roll Call Vote: | Mr. Soucy     | To Deny |
|                 | Mr. Del Rossi | To Deny |
|                 | Mr. Peloquin  | To Deny |
|                 | Mr. Monse     | To Deny |
|                 | Mr. Bebeau    | To Deny |

The application was DENIED.

A brief recess was taken at this time.

2. **Public Informational Meeting for Major Subdivision of Land Entitled "Trinity Village" for Trinity Village, LLC—Map G5, Lots 33-1, 33-2 & 31-7, Wanda and Thibeault Avenues**

Mr. Bebeau stated that the above plan has been revised; the City Planner received the revised plans today. Mr. Bebeau stated that he would read a portion of a letter dated September 2, 2003, addressed to the Planning Board from Joel D. Mathews, Director of Planning and Development. *"The City Administration approximately two years ago negotiated the number of acceptable single-family units to 39 based upon the wetlands delineation shown to us at the time and the usable acreage that remained. Based upon the recent RIDEM wetlands approval, it would appear that there should be a corresponding reduction in the number of units to approximately 32-33. In addition to this issue, the construction of additional driveways to service the individual single-family units will increase and produce additional storm water runoff. Both the City Administration and the City's Public Works Department will need time to review the amended plan and have the ability offer corrective comments prior to a vote by the Planning Board."*

Mr. Bebeau stated that as per Mr. Mathews' letter, the Board would delay voting on this subdivision in order to give the City Administration and the Public Works Department time to review and comment on the revised plan.

- Kevin Morin, P.E., DiPrete Engineering Associates, Inc., Two Stafford Court, Cranston, RI, represented the applicant.

Mr. Morin stated that DiPrete Engineering Associates has been involved with this project since 2002; the last time the applicant was before the Board was for a Pre-application hearing during the spring of 2003. Since then they have proceeded with various items in order to reach the Master Plan phase. One item that received attention was detailed topography of the site; another was a wetlands edge verification, which they received one month ago and submitted to the City, and a traffic study was performed. Mr. Morin stated that the plans have been revised since the Pre-application hearing, the Master Plan drawings were submitted to the City Planner with the layout that reflected both detached single-family and attached single-family duplex units. Mr. Morin stated that he understands that there is an issue with the attached units as indicated in Mr. Mathews' letter. Mr. Morin stated that the design team is submitting a revised plan that the City Administration and Public Works Department has not had time to review. He stated that the revised plan reflect single-family units only with a similar road layout in terms of the entrance from Wanda Avenue and Thibeault Avenue. Mr. Morin stated that the right-of-way extension utilizing existing right-of-ways from those roads that would access the site and merge at this intersection located at the southern end and continue as a loop for the remainder of the development.

Mr. Morin stated that the eastern portion of the site has not changed since the submittal of the Master Plan; detached single-family units were always shown in that area. He stated that the western portion of the site has been revised with a slightly different road layout that looks similar to the Preapplication plans that were reviewed earlier.

Mr. Morin stated that the plan calls for a total of 36 lots based on the wetlands edge verification and based on the provision of three drainage areas, one north of Lot 26, one east of Lots 19 and 20 essentially within the drainage easement, and one between Lots 17 & 18 in the northeastern portion of the loop road.

Mr. Morin stated that they have not had time to revise the drainage narrative to reflect these changes; they have run the analysis and have established that the ponds would average about 3½ ft. in depth. He stated that they would submit this revised narrative to the Public Works Department for its review.

Mr. Morin stated that he has elaborated on the major changes to the plans. He stated that a perimeter buffer would remain to the south on adjacent land that is owned by the City. There have been no changes to the proposed property line to the west or to the north that would establish 19+ acres that would be deeded to the City. He stated that the area to the east would remain relatively unchanged with the exception of the eastern portion of the drainage pond near the adjacent property on Thibeault Avenue. (*Mr. Morin distributed reduced size copies of plans detailing that area.*) Mr. Morin stated that the plan calls for 36 detached single-family units with garages. Mr. Morin stated that due to a rush to present the plans during tonight's meeting the plans do not reflect driveways.

Mr. Morin stated that the plan that he just distributed basically details the eastern portion of the detention pond near Lot 26. Depicted is a 25 ft. vegetated buffer for the benefit of the adjacent property so that the pond embankment and slopes aren't directly abutting the adjacent property. He stated that details of the vegetated buffer would appear in the landscaping plans. Mr. Morin stated that as the project moves forward they plan to produce detailed designs of the topography of this area to ensure that when the final detention pond design is produced that discharge from the pond would not impact any of the adjacent properties.

Mr. Peloquin asked why the detention pond is not located on Lot 26, away from the abutters vs. locating the detention pond on the property line. Mr. Morin stated that the main reason for the location of the pond is topography; it's located in the lower area of the site allowing for control of drainage from the roadway. He stated that if the pond were relocated to Lot 26 most likely a portion of the proposed roadway extension would not discharge into the detention pond. The drainage would continue to the east towards Thibeault Avenue and the existing roads. However, he stated that the flow would be minor.

Mr. Bebeau asked if he is correct in assuming that the roadway would be a public right of way? Mr. Morin said yes, this issue was discussed during the Preapplication meeting. The proposed road would meet City standards for a public roadway: 45 ft. right-of-way, 32 ft. pavement with 6" granite curbing to both sides.

Mr. Soucy asked what house style is being proposed? Mr. Morin stated that the developer, HL George Development could answer that question.

Hebert George stated that houses proposed for this development includes small to mid-size ranch homes, farmhouses, and garrisons with garages. Mr. George stated that about seven

people have expressed an interest in purchasing one of these homes. He stated that he has not advertised the development yet, that interest has spread via word of mouth. He stated that four people interested in purchasing a home are in attendance tonight.

Mr. Bebeau asked for a ballpark price of these homes. Mr. George said \$175,000 for a house without land up to \$300,000.

Mr. Monse asked what is the approximate minimum square feet of a living area? Mr. George said about 1,500 to 2,800 sq. ft.

Mr. Del Rossi stated that whereas the detention pond has been reviewed and discussed with the City Administration, he would like the public to know that both the City and DEM would review the drainage plans; DEM must first approve the drainage plans.

Mr. George stated that the development is staying 50 ft. from the wetlands and 100 ft. from the nearest stream in the area; the development would not encroach on the wetlands.

Mr. Brynes asked if permits for the detention ponds are the only permits that would be required from DEM. Mr. George said yes. Mr. Del Rossi asked if they would be submitting a preliminary determination? Mr. Morin said yes, when they have detailed drainage plans with a preliminary determination application, which would verify that the limits of work resulted in no or negligible impact on wetlands; and the storm water management design addresses water quality requirements that the State has as well as managing storm water runoff. This is to ensure that the wetlands are not flooded. He stated that he expects DEM will ultimately issue an "Insignificant Alteration" permit.

Mr. Del Rossi asked Mr. Morin to briefly explain the reason for the detention pond and the reason for the zero impact so that the public will understand the process. Mr. Morin stated that detention ponds are required under current DEM regulations as well as federal regulations. One reason is to improve storm water quality by containing a certain amount of the water runoff from roads, it allows for sediment to remove and allows for any associate contaminants (it removes 80% of solids, as well as improves the quality of the runoff by removing nitrogen and phosphorus). He stated that the second reason and most important from most people's perspective is that the pond acts as a temporary holding area during a rainstorm; it contains the huge initial peak of runoff. The detention pond is to provide a location, a volume for that initial peak of storm water run off to be held and metered out more slowly than it would naturally flow. Mr. Morin stated that a detention pond is basically a reservoir that allows you to meter out how much water comes out of the pond vs. how much water goes in. He stated that detention ponds are heavily reviewed by DEM for performance capability.

Mr. Peloquin asked Mr. Morin to elaborate on the maintenance of the detention pond. Mr. Morin stated that there are a few different types of detention ponds: an infiltration pond that holds water for up to 72 hours, which is a significant amount of time; the extended detention pond that is designed to hold water up to 36 hours. Mr. Morin stated that they are proposing the extended detention pond for this project. He stated that the pond would fill up then slowly drain out; the pond would not hold a permanent volume of water that would attract mosquitoes, etc.

Mr. Bebeau asked who would maintain the detention ponds—this is an important question. Mr. Morin stated that initially during the Pre-application process the developer was proposing a private road with a reduced right-of-way width with private sewers, utilities, roadway and drainage, but since that time the directives they have been receiving from the City Administration is that the improvements, the roadway and drainage would be City-owned.

Mr. Bebeau stated that the City would maintain the detention ponds. He stated that the original proposal called for a private road, but the Planning Board and the City Administration felt strongly that the road should be public for the benefit of the residents living in this neighborhood.

Mr. Morin stated that the wetlands proposal and future preliminary plans to the City would spell out the maintenance requirements for the detention pond. He stated that typically the pond would require mowing of the grass annually or semi-annually, and an occasional cleaning of the trash racks.

Mr. Brynes asked Mr. Morin to explain the land swap with the City and how the land swap is affecting the project.

Mr. Morin stated that the project is proposed as a planned residential development under the City's Planned Residential Development Overlay District regulations. He stated that there has been no land swap with the City to date, but the proposal was reviewed by the City Council several years ago. Mr. Morin stated that the City owns a parcel of land to the south of the proposed development (see sheet no 3 of the plans). He stated that there are also two other properties involved: one located to the northeast and the other located to the northwest. Mr. Morin stated that various plans were created several years ago by other consultants that essentially showed different development schemes. He stated that the City would use the land that it received in the swap as open space.

Mr. Bebeau stated that the Planning Board received a letter dated September 2, 2003 from Joel Mathews, Planning Director, regarding the land swap. Mr. Bebeau read the following paragraph from Mr. Mathews' letter addressing the land swap. *"Part of the land for this proposed subdivision is 3.9 acres deeded by the City which is currently part of the Booth Pond Conservation Area. Ordinance 01-0-93 was submitted and approved by the City Council that authorizes this land swap; and, as a result, the applicants were able to proceed with the development and submission of the subdivision plan currently under your review."* Mr. Bebeau stated that the developer has entered into an agreement with the City whereby the land swap will be used to develop single-family homes on individual lots.

Mr. Brynes stated that the City Administration and City Council have agreed to grant 3.9 acres of the Booth Pond Conservation Area to the developer in exchange the developer would grant a much larger acreage back to the Booth Pond Conservation Area. He stated that as a result of the land swap the conservation area would grow in size. Mr. Brynes stated that the City Council would approve the land swap if this development were to be approved by the Planning Board and eventually the City Council. He stated that the land swap has been theoretically

approved if the development is subsequently approved although it has not happened yet. Mr. Brynes stated that the City still owns a large section of land in the vicinity of the proposed development site.

Mr. Brynes stated the hearing tonight is the first of three hearings before the Planning Board that are required in order for the proposed subdivision to move forward. He stated that a joint meeting with the City Council and the Planning Board, which is a public hearing, would also be held.

Mr. Brynes stated that the applicant is applying for the subdivision under the Planned Residential Development Overlay District as described in the City's Zoning Ordinance. Mr. Brynes stated that the regulations allows the development of land that are equal or greater than ten (10) acres in size and which are located within the R-1 and/or R-2 districts. He stated that the developer is given flexibility in regards to lot sizes and setback requirements as long as the overall density is maintained.

- Paul Bannon, Beta Group, 6 Blackstone Valley Place, Lincoln, RI.

Mr. Bannon stated that his company was retained to do conduct an impact study on the proposed residential development. Mr. Bannon stated that in order to determine the potential impacts of the development certain tasks had to be completed. They conducted a review of the site plans that were prepared by DiPrete Engineering Associates for access to the local street system that leads to Manville Road, the primary access road to the neighborhood; they conducted numerous site visits at various times of the day and various days of the week to observe traffic operations. Mr. Bannon stated that they did an inventory of the project area including land use, existing roadway conditions including horizontal and vertical geometry; site distances of main intersections including Manville Road. They conducted a traffic counting program, 24-hour, five-day count on Manville Road; they conducted peak hour turning move counts at two intersections (Gadoury Boulevard and Manville Road, and Gadoury Boulevard and Lydia Avenue); they obtained traffic accident information for the area roadways from the Woonsocket Police Department; they developed trip estimates based upon the development of the proposed project to include 39 duplex units and 9 residential units, which has since been changed.

Mr. Bannon stated that they analyzed existing conditions at the two main study intersections and then superimposed the projected volumes at those two locations to determine what impact additional traffic would have on those two roadways. He stated that Manville Road services approximately 7,300 vehicles per day; the A.M. peak occurs between 7:00 and 8:00 A.M. and the P.M. peak occurs between 4:30 and 5:30. He stated that the peak hour services approximately 600 to 665 vehicles. The local neighborhood streets: Lydia Avenue, Wanda Avenue and Gadoury Boulevard are low-volume residential streets into this neighborhood. Stopping sight distances were reviewed from main access points to ensure the minimum design criteria for safe stopping sight distances. The main intersection of Gadoury Boulevard and Manville Road sight distance is in excess of 450 ft.; 250 ft. is required for the posted speed limit.

Mr. Bannon stated that according to the Woonsocket Police Department records only two minor traffic accidents have occurred within this area during the past three year period.



Mr. Bannon stated that on completing a review of existing conditions, future traffic volumes were estimated. He stated that this report was prepared several months ago under the assumption that 30 duplex units and 9 single-family homes would be developed; previous to that there was a proposal for 39 single-family residential units. Mr. Bannon stated that the study as it stands now during the daily peak hour show 35 total trips to and from the site; P.M. peak hour show 23 vehicles entering and 12 vehicles existing; the total daily volume would be 320 vehicles. He stated that the difference in the proposal before the Board, the development of 36 single-family homes, the daily total would increase to 360 trips per day; approximately 40 people over the course of the day. He stated that during the peak hour that difference would be negligible, 1 or 2 vehicles. Mr. Bannon stated that when you look at the capacity analysis and when you analyze impacts the focus is on peak hour; the difference in peak hour volume is negligible.

Mr. Bannon stated that the results of the analysis relative to how the proposed traffic would affect the study intersections is essentially the same, there would be negligible increase in delays. Mr. Bannon stated that the Beta Group used the Highway Capacity Manual Techniques to conduct the level of services analysis that was done at the intersections of Gadoury Boulevard and Manville Road and Lydia Avenue and Gadoury Boulevard, the two major intersections. He stated that the study concluded that there was no major increase in delays.

Mr. Bannon stated that the conclusions of the report found that the proposed residential development as it was prepared in his report and as it stands before the Board tonight show a negligible effect on traffic operations in the neighborhood.

- Gary Letourneau, 327 Thibeault Avenue—Mr. Letourneau questioned the accuracy of the traffic study. He stated that he is very disturbed about the land swap between the applicant and the City of Woonsocket. He stated that if the City has already agreed to swap land with the applicant as long as the applicant builds single-family homes this is a done deal. Mr. Letourneau stated that his property directly abuts the proposed development; there are six houses located in the immediate area and these six families have lived in this neighborhood between 35 and 43 years. If you include Wade Avenue and Thibeault Street approximately 9 out of 15 families have lived in this neighborhood over 35 years. They live here because there is no traffic and no crime, and people take pride in their property.

Mr. Letourneau stated that in the Late 50s and 60s Gadoury Plat was built and at that time the Lower Bernon was developing at a fast rate, which is why this area was rezoned with very low density. At that time the residents of this area informed the City that if the development of this area did not slow down they want their own Fire Station. Since that time Hawthorne Circle, Blue Stone Drive, upper Lydia Avenue, Manville Road, Marian Lane, Miles Avenue, etc. has been developed. He stated that if this proposal moves forward and 36 additional homes are built this neighborhood would want its own Fire Station.

Mr. Letourneau stated that he has a petition that has been signed by 40 residents of Thibeault Avenue, Wade Road, Flora Avenue and Marian Lane, all strongly opposed to the proposed road connecting the Trinity Village Development and Thibeault Avenue. He requested

that the petition be accepted and made an official part of the minutes. Mr. Bebeau accepted the petition.

Mr. Letourneau stated that the residents are worried that Wanda Road would be all hills and no one will want to use this road during the winter months, which will result in all this extra vehicular traffic using Thibeault Avenue. He stated that he and the other residents do not see a need for a second means of egress; the adjacent Lydia Avenue, Hawthorne Circle and Blue Stone Drive only have one means of egress as does other neighborhoods in the City. He stated that he and his neighbors strongly oppose this road.

Mr. Letourneau stated that the proposed road makes no sense whatsoever; in addition he stated that his neighbor has lived in her home for 43 years and now she will be bothered by a road located within fifteen ft. of her backdoor!

Mr. Letourneau also stated that since he and his two neighbors' properties were built they have all had water problems. He stated that the land is slightly pitched, but the real problem is that from their back property line to approximately 100 ft. into the woods their properties are pitched. Mr. Letourneau stated that according to the plans of the proposed development only a 50 ft. buffer zone is proposed. He stated that a 50 ft. buffer zone is totally unacceptable; his land would be under water. As it stands now his neighbor, Mr. & Mrs. Ray Pepin (353 Thibeault Avenue) have spent extensive amounts of time and money this summer in trying to finally get a backyard that will actually stay in place. He stated that all their previous efforts resulted in the land being washed away. He stated that during the winter and spring months he cannot use his backyard for weeks at a time due to a water problem. Mr. Letourneau stated that another neighbor Mr. & Mrs. Detonnancourt (313 Thibeault Avenue) must use a pump to keep water out of their cellar during the winter and spring months.

Mr. Letourneau stated that he and his neighbors, the Pepins and the Detonnancourts are asking for two things: (1) that the buffer zone is moved back 100 ft., which will take it to the top of the hill; and (2) they would like to know if there are any plans to handle the current drainage problems? Mr. Letourneau stated that he and his neighbors have lived on the side of Mr. Grenier's land for 43 years, they have never misused his property, they respected his land, but they believe that 80% of their water problems come from Mr. Grenier's land. Mr. Letourneau stated that he and his neighbors understand that Mr. Grenier has a right to develop his property but not at the expense of the abutting property owners.

Mr. Letourneau stated that he is inviting members of the Planning Board, the City Administration and the Developers to visit their homes so that they can see first hand what the problem is.

Finally, Mr. Letourneau stated that he has not heard any mention of blasting, but everyone knows that the Bernon Area of the City is loaded with ledge. He stated that several years ago about eight to nine new homes were built on Miles Avenue. These homes were built on slabs without cellars because there was so much ledge, blasting would have cost a fortune. Mr. Letourneau stated that the City was not happy with the project but did not have the ability to stop it, and therefore the project was developed.

Mr. Letourneau stated that if blasting is allowed he and his neighbors are requesting that the developer post a bond to protect their properties from damage caused by blasting; it would be a miracle if not blasting is required. Mr. Letourneau stated that if this project moves forward he and his neighbors are requesting that restrictions be placed on work hours. He stated that these are just some of the issues that must be addressed.

- Frederick Nesta, 55 Marian Lane—Mr. Nesta raised concerns regarding drainage in the Thibeault Avenue area. Mr. Morin stated that presently there is no drainage infrastructure located in this area, the nearest drainage infrastructure is located near Flora Avenue. He stated that the developer is working with the City Administration to resolve any drainage problems. He stated that a question was raised about off-site drainage impacting some of the existing homes; this also would be looked into as the project develops.

Mr. Bebeau stated that a drainage runoff review would be undertaken by the City's Public Works Department when and if the project moves forward.

Mr. Nesta asked what type of drainage protection the developer to protect their properties from water runoff once the development is underway would provide? Mr. Morin stated that they would provide hay bales and silt fences in areas where water runoff drains onto other properties.

Mr. Nesta stated that another concern is the proposed buffer zone, the location of the buffer zone and what type of vegetation is being proposed. Mr. Morin stated that the buffer zone requirements are spelled out in the City's Planned Development Regulations, it requires a 50 ft. buffer zone for this particular project. The area is intended to be a buffer between the adjacent properties with no activity taking place within the buffer area. He stated that its possible that additional vegetation would be required within this area, but the vegetation material is usually some species of evergreen.

- Lucille Pepin, 353 Thibeault Avenue—Mrs. Pepin asked who would own the buffer zone one the project has been developed? Mr. Morin stated that ownership of the buffer zone would likely be associated with the lots, be it a conservation easement set up and established with markers that would delineate the property line. He stated that the buffer zone is proposed as part of the future lot owners. The buffer zone would be part of the new lot owners land with a conservation easement that would restrict any type of development. He said that for the most part this area would remain, as is now, a wooded area, unless some types of drainage improvements are required.

Mr. Letourneau requested that someone from the City Administration please come out to look at their properties to verify that they have water drainage problems. Mr. Bebeau stated that the City Engineer would visit the properties that Mr. Letourneau feels has water drainage problems.

Mr. Letourneau again requested that the buffer zone be moved back 50 ft. Mr. Bebeau stated that the City Zoning Regulations allows for a 100 ft. buffer in this particular zone. Mr. Letourneau stated that he is familiar with the City regulations but he and his neighbors are asking

Mr. Grenier to please move the buffer zone at least 50 ft. back. Mr. Grenier stated that he would take Mr. Letourneau's request regarding the buffer zone under consideration.

- Jacqueline Croteau, 387 Thibeault Avenue—Mrs. Croteau stated that she has put a deposit on one of the proposed lots; however, she stated that she also owns a home at the corner of Thibeault and Wanda Avenue. Mrs. Croteau stated that there is not doubt that the development would bring additional traffic into the neighborhood. She stated that she has concerns regarding Wanda Avenue due to its steepness and feel that extensive excavation would be needed to bring it to an acceptable grade. Mrs. Croteau said that sewers could also pose a problem on some lots due to the topography of the land. She also stated that her preference would be single-family homes; City schools are already overcrowded and an additional 40 families will definitely have an impact on the Bernon School district.

- Christine Riel, 56 Flora Avenue—Ms. Riel stated that in 1992 her family moved to Gadoury Boulevard and the year 2000 they purchased a home on Flora Avenue and therefore the proposed development will not directly affect her family due to the location of their home, however, she would like to know why the developer changed the development proposal from a "retirement living" concept with the road through Gadoury Boulevard; if the reason is paying more money in terms of taxes to the City of Woonsocket she would hope that the City Administration would take into consideration the wishes of the taxpayers who have lived in this neighborhood and paid taxes for well over 35 years.

Mr. Bebeau requested that someone from the development team answer Ms. Riel's questions.

Mr. John Robinson (*Registered Architect & Registered Design Engineer, Robinson Design, Inc.*), stated that he was involved in the early planning process of this project and he has continued to be involved with the project through the Master Plan Phase of the development. Mr. Robinson stated that initially the developers had envisioned the idea of accessing Gadoury Boulevard but as they moved further into the project and more data was developed with respect to right-of-ways in particular; they found that they had two different approaches to the buildings. The Planning Board had initially favored the idea of single-family residential homes as opposed to senior housing, attached senior housing and assisted living facilities; that is why the development was altered to what is presently zoned, single-family housing.

Mr. Robinson stated that as they gathered additional information regarding the wetlands they now viewed the development as single-family homes. One possibility was to develop the entire 40 acres, building in four to five different areas and crossing wetlands. After meeting with the City Administration, and environmental consultants they opted to do what is considered the most environmentally sound development; and that is what led to the land swap with the City of Woonsocket.

Mr. Robinson stated that the proposed development is a layout where instead of going through various wetland areas, which they have a right to do, they are swapping nine acres of buildable land for four acres of buildable land; and in addition to that the owners is providing the additional wetlands. Mr. Robinson stated that before the land swap could be considered by the

City Administration and the City Council it had to be reviewed by the State DEM and the federal government to determine if the proposal is a sound environmental approach to developing this project.

Ms. Riel stated that the proposed development would disrupt a neighborhood that has been established for over 40 years for what Mr. Robinson is calling an environmentally sound development. She stated that Mr. Robinson has stated that the owner has a right to build in the wetlands; she suggested that the homes are built closer to the wetlands as opposed to interrupting this quiet, peaceful neighborhood. Mr. Robinson clarified his statement regarding the owner's right to build in the wetlands by stating that any building in the vicinity of wetlands would require RI DEM's review. He stated that they had to base their decisions on wetland consultants that work with DEM in terms of what their recommendations were.

Mr. Bebeau stated that the Board could require the applicant to submit an application for Gadoury Boulevard to go through the DEM process.

Mr. Letourneau stated that the key point that he and his neighbors would like to make tonight is that they do not want Thibeault Avenue attached to Trinity Village. He stated that he and his neighbors all feel that it does not make any sense to connect Thibeault Avenue.

Mr. Robinson stated that as a designer he must be responsive in changes in design criteria, e.g., requirements from the City, input from the neighbors, and DEM's criteria in developing the land in a suitable manner. With respect to the two points of access, sometimes the criteria change: initially the project was developed as "assisted living" and the mindset could have changed due to different City Officials, etc. Someone could have recommended two points of access for rescue vehicles, this could have been the initial reason for the two points of access. Mr. Robinson stated that the two points of access could be reconsidered as a result of updated input. He stated that if the Traffic Engineer for this development can say that perhaps one means of access is more than reasonable they would definitely discuss the idea with the City.

Mr. Brynes stated that the Planning Department had requested comments from various City Departments regarding impact on City Services. He stated that he received a response from the Education Department stating that it supports the effort to expand the City's tax base but cautions against additional classroom space and operating costs.

Mr. Bebeau stated that he expects to receive a response from the Fire Department for a project of this size.

Mr. Brynes stated that abutters would be notified of the next two public hearings but for regular consideration of developments public hearings are not required. Mr. Brynes stated that the Planning Board meet the first Tuesday of every month, this is the first public hearing and that is why you were notified. He recommended that residents contact the Planning Department to inquire about a meeting.

Mr. Brynes stated that he is not sure when the next meeting will be scheduled with the applicant, it could be next month or the following month because there are a number of things that the City and DEM must review.

Mr. Grenier thanked the Board and the residents for their participation. He stated that he and the design team would do their best to accommodate the residents and the City.

There were no further questions of comments. A MOTION was made by Mr. Soucy and seconded by Mr. Peloquin to close the public hearing. The MOTION carried and the public hearing closed at approximately 10:30 P.M.

A brief recess was taken at this time.

4. **Consideration of Master Plan Approval for Major Subdivision Plan for R & K Builders—Map B7, Lots 53-1, & 53-32, Mendon Road**

Attorney Lloyd R. Gariepy represented the applicant.

A MOTION was made by Mr. Bebeau and seconded by Mr. Peloquin to remove the above name application from the Table. The MOTION carried.

Mr. Bebeau stated that the last time the above application was on the Board's agenda it was tabled based on a legal opinion from Joseph P. Carroll, City Solicitor. Mr. Bebeau asked if anyone would like for him to read said letter. He received a response of "No."

Attorney Gariepy stated that it is his opinion that what Attorney Carroll states in his legal opinion does not apply here at all. Attorney Gariepy called the Board members' attention to the area off Mendon Road (the right-of-way) that is proposed to be developed. Attorney Gariepy then indicated an existing driveway and stated that this person's property is 9' from the boundary line. He stated that this person has not met the side setback requirements yet he is concerned about this driveway being turned into a road; the contention being that now he would have a 20 ft. setback. Attorney Gariepy stated that this would not happen for any number of reasons: the driveway would remain the same, access to all of the lots would come directly from the proposed 40 ft. right-of-way that already exists on Mendon Road. Attorney Gariepy stated that this issue raised by Attorney Carroll can be dispelled because no changes are being made to that lot; the lot is not being developed.

Mr. Bebeau stated that Attorney Gariepy is offering basically a different legal opinion. Attorney Gariepy stated that he is offering a legitimate opinion. He stated that he is offering the applicant's opinion, which up until this time has not been heard.

Attorney Gariepy stated that Attorney Carroll's opinion states that by allowing this subdivision we would create a corner lot thus violating the zoning setback requirements. Attorney Gariepy stated that if you look at the City's Zoning Ordinance under Front Lot Line, it is a line separating a lot from the street right-of-way, either one.

Attorney Gariepy said that in the case of a corner lot, which is what this is, or would be. The front line shall be considered that line separating the portion of the lot, which the principal building fronts from the street right-of-way.

Attorney Gariepy stated that this structure has a Mendon Road address and it is clear to him that the only front lot line is the one on Mendon Road. Mr. Bebeau stated that if you create this road it would then become the front entrance for the home. Attorney Gariepy said no, it becomes a corner lot; and a corner lot is only critical in case of an accessory building. He stated that if this property owner wants to put a building here he would have to meet the front setback requirements, that does not do any injustice to the structure that is already created there.

Mr. Brynes stated that technically the property owner would be in nonconformance because he would have to meet whatever the front setback requirements are on both sides. Attorney Gariepy said only for the front lot line and not on both sides.

Mr. Peloquin stated that the City's Zoning Ordinance Section 7.1-1 Yard Requirements for Corner Lots for Residential Districts states that "*The side yard requirements for all buildings on a corner lot shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot.*" Attorney Gariepy stated that the Board must realize that the front lot line is Mendon Road; if in fact it were something else it would have a street address. Attorney Gariepy stated that to take a subdivision ordinance and create lots that meet all the requirements of zoning, yet put another property in a setback situation is not the subject of any Subdivision Regulations. He stated that if this were the case a property owner could easily encroach on the side lot line and prevent development in an adjacent area.

Attorney Gariepy stated that as long as the proposed subdivision meets the City's Zoning Ordinance, how could you then legislate a parcel of land that is not a part of the subdivision, which may for their own reason, have created their own setbacks. Attorney Gariepy stated that this does not make sense to him.

Mr. Brynes stated that he understands Attorney Gariepy's argument but the Planning Board must use the City Solicitor's legal opinion as a basis for making their decision.

Mr. Bebeau stated that the City Administration also received a legal opinion from Attorney Jeffrey M. Gibson that was considered more or less useless. Attorney Gariepy stated that he is aware of the legal opinion from Attorney Gibson, which the City paid a lot of money for but received basically no help. However, Attorney Gariepy stated that in that entire letter from Attorney Gibson there is not one provision that deals with a subdivision court case. Everything mentioned is zoning issues, it is very clear that the Planning Board has no jurisdiction whatsoever regarding Zoning Board matters. He stated that this is why there is a Section in the Subdivision Regulations that states the Planning Board can give consent subject to...and the Board make decisions on many subdivisions subject to Zoning Board of Review approval and then come back to the Planning Board. Attorney Gariepy stated that it is inconceivable to him whereby a subdivision that is being proposed, meets all the zoning requirements and yet the Planning Board would deny the subdivision based upon nonconformance of another lot; this does

not make sense to him. Attorney Gariepy stated that the other lot is not before the Board; the applicant cannot be forced to go to the Zoning Board of Review; when the applicant file a zoning application the owner must sign or the project cannot go forward.

Mr. Peloquin stated that as he understands it Attorney Gariepy is stating that you cannot build a house closer than 20 ft. to a lot line but you can build a road within 20 ft. of a structure. Attorney Gariepy said yes because he is dealing with existing lot lines. He stated that the applicant did not create or alter these lot lines; these lines were already in existence.

Mr. Peloquin asked if the 40 ft. strip might have originally been intended for a driveway and eventually a house. Attorney Gariepy stated that he does not know but if the property owner or predecessors did this, the situation was caused by their own actions. Mr. Peloquin stated that there was a side lot line back then. Attorney Gariepy agreed. He stated that when you make this a corner lot the only thing it restricts is the ability to put an accessory structure on the lot. However, he stated that it is not likely that the Zoning Officer is going to enforce the regulation. Attorney Gariepy stated that it's the same situation when taking land for adverse possession. If the State or the City wants to widen a street and your house is within the setback because of that action does it mean that you cannot move forward, it should not.

Mr. Soucy stated that he and the other Board members are not lawyers; they must rely on the City Solicitor's legal opinion. Attorney Gariepy stated that the Planning Board members are familiar with the City's Subdivision Ordinance and he does not see anything in the Subdivision Ordinance other than the fact that the subdivision must comply with the zoning regulations, which apparently it does. He stated that you cannot take into account the abutting property owners because they are not the applicants.

Mr. Bebeau stated that he feels somewhat bound by the legal opinion presented by Attorney Carroll, to be used as a source for the Board's decision.

Attorney Gariepy stated that as soon as the Board says that any subdivision that creates a zoning variance for an abutting neighbor has to be denied then you are in essence (*remainder of Attorney Gariepy's statement was inaudible*).

Mr. Del Rossi asked how far is each house away from the proposed road. Mr. Peloquin said one house is about 15 ft. away and the other house about 8 ft. Mr. Del Rossi said that in his opinion 8 ft. is too close; where do we draw the line? Attorney Gariepy said that if you do not allow it you would violate the side setback requirement; the zone allows for 10 ft. Attorney Gariepy stated that he does not think that these two property owners complained. Mr. Brynes stated that one property owner did complain however he does not meet the setback anyway.

Mr. Peloquin asked if there are any records indicating when the 40 ft. strip was established and what was the intent. Mr. Brynes stated that 40 ft. at one time was the minimal required frontage to build a house. He stated that the intent could have been to build a driveway or to put a house on the lot.



Mr. Brynes stated that if a road is not allowed a house could still be built there theoretically. Attorney Gariepy asked how? Mr. Brynes stated that the property owner could request zoning release for frontage.

Mr. Soucy asked what is the next step. Attorney Gariepy stated that if the application were denied approval by the Planning Board he would appeal the Board's decision to the Zoning Board of Review.

Mr. Peloquin stated that if it were not for the road there would not be a real issue. Mr. Monse said the issue is the access road and the homeowners in the area do not want any more houses in their neighborhood. Attorney Gariepy agreed with Mr. Monse, the residents do not want any more houses in their backyards.

There being no further questions or comments a MOTION was made by Mr. Peloquin and seconded by Mr. Del Rossi to DENY the application.

|                 |               |         |
|-----------------|---------------|---------|
| Roll Call Vote: | Mr. Monse     | To Deny |
|                 | Mr. Peloquin  | To Deny |
|                 | Mr. Soucy     | To Deny |
|                 | Mr. Del Rossi | To Deny |
|                 | Mr. Bebeau    | To Deny |

The application was DENIED approval.

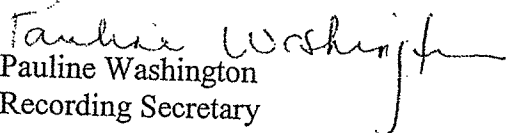
#### Consideration of Minutes

Minutes of the May 6, 2003 Planning Board meeting were submitted for review. A MOTION was made by Mr. Peloquin and seconded by Mr. Monse to approve the minutes as submitted. The MOTION carried.

#### Adjournment

A MOTION was made by Mr. Monse and seconded by Mr. Peloquin to adjourn the meeting. The MOTION carried and the Planning Board meeting adjourned at 11:05 P.M.

Respectfully submitted,

  
Pauline Washington  
Recording Secretary



CITY OF WOONSOCKET, RHODE ISLAND  
DEPARTMENT OF PLANNING & DEVELOPMENT

September 3, 2003

Mr. Raymond Bourque  
R&K Builders  
P.O. Box 3107  
South Attleboro, MA

Re: Master Plan for Major Subdivision for R & K Builders – Plat 53, Lots 1 & 32,  
Mendon Road

Dear Mr. Bourque:

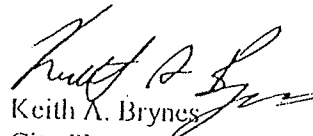
This letter is to inform you that the Woonsocket Planning Board at their September 2, 2003 meeting voted to deny the above-referenced application.

The Board's reason for denial is that the plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.1.1 of the City's Zoning Ordinance which states that "The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot." According to the enclosed communication from the City Solicitor, the project is unable to proceed without the appropriate zoning relief, which can only be obtained by the abutter.

Revised plans may be submitted to the Planning Board under a new application. An appeal from the Planning Board's decision may be requested from the Zoning Board of Appeals within twenty days as detailed in the Subdivision of Land Development Regulations.

Please call with any questions or concerns.

Sincerely,

  
Keith A. Brynes  
City Planner

Enclosure: Memo from City Solicitor to Planning Board dated 5/1/03

cc: Mayor Susan D. Menard  
Joel D. Mathews, Director of Planning and Development  
Owen T. Bebeau, Planning Board Chairman  
Michael Del Rossi, Deputy Director of Public Works / City Engineer  
Lloyd R. Garipey, Esq.

FORWARD WOONSOCKET  
"A CITY ON THE MOVE"

**ZONING BOARD OF REVIEW  
WOONSOCKET, RHODE ISLAND  
PUBLIC HEARING, JANUARY 26, 2004  
7:30 P.M.**

MEMBERS PRESENT:      Raymond Aubin, 2<sup>nd</sup> Alternate  
                                Ralph Begin  
                                Norman Frechette  
                                Daniel Gendron  
                                Robert Moreau, Vice Chairman  
                                Walter Pristawa, Chairman  
                                Peter Vosdagalis, 1<sup>st</sup> Alternate

ALSO:                         Martin E. Loiselle, Jr., Zoning Officer  
                                Joseph Carroll, City Solicitor  
                                Pauline Washington, Recording Secretary

Pauline Washington took roll call that showed the above members as indicated.

1.      Application (#5128) of R & K Builders Corp., P.O. Box 3107, South Attleboro, MA, applicant, appealing the Woonsocket Planning Board decision to deny a major subdivision at Mendon Rd., Plat 53, Lots 1 and 32, lot area of 4.4536 acres and 28,018sf respectively, located in an R-2 Low Density Single-Family Residential District.

Lloyd R. Gariepy, Esq., 68 Cumberland Street, Woonsocket, RI represented the applicant.

Mr. Frechette quoted from a Planning Board correspondence to Raymond Bourque, dated September 3, 2003 that stated: "This letter is to inform you that the Woonsocket Planning Board at their September 2, 2003 meeting voted to deny the above referenced application." Mr. Frechette stated that according to said letter the Planning Board's reason for denial "is that the plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.1.1 of the City's Zoning Ordinance that states "The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot." Mr. Frechette asked Attorney Gariepy to respond to the Planning Board's opinion that approval of the subdivision would increase the nonconformity with respect to one lot and would create a non-conformity with respect to a second lot.

Attorney Gariepy stated that in his opinion the Planning Board did not have authority to deny the above-referenced application. He stated that the Planning Board is attempting to impose zoning issues on abutting properties that are not included in the developer's subdivision plan.

Mr. Frechette stated that the Planning Board's September 3, 2003 letter also stated "*the project is unable to proceed without the appropriate zoning relief, which can only be obtained*

by the abutters.” Mr. Frechette asked if the applicant is requesting the Zoning Board to overturn the Planning Board’s decision to deny the above-reference application. Attorney Gariepy said yes. Attorney Gariepy further stated that if the two abutting properties were in non-compliance with the City’s zoning regulations the matter should have been brought before the Zoning Officer, not the Planning Board. He stated that under the subdivision regulations if there is a zoning issue said issue must be heard by the Zoning Officer or the Zoning Board of Review.

Mr. Frechette asked Attorney Gariepy to explain future plans for the 40 ft. right-of-way. Attorney Gariepy stated that the right-of-way is part of the parcel that the applicant would like to develop; the lot would provide access to the development. He stated that the abutter located to the left of the right-of-way, whose home is facing the right-of-way and would be in violation of the front setback, was given permission to use this land by virtue of an easement granted to him when the property was sold during the 1960s.

Mr. Frechette, does the right-of-way appear on the deed? Attorney Gariepy said yes, a copy of the deed was included in the information packets given to the Zoning Board members.

Attorney Carroll interjected at this time, he stated that he has not read the Planning Board minutes verbatim, but he does not believe that a copy of said deed was ever submitted to the Planning Board (*he asked Attorney Gariepy to correct him if he is wrong*); and therefore according to Section 13.3.5 of the Subdivision Regulations, the Zoning Board cannot discuss the deed, which would be considered new evidence. Attorney Carroll stated that the Zoning Board must decide if the application merits an appeal based on the evidence submitted to the Planning Board; consideration of additional information is not permitted.

Attorney Gariepy called the Board’s attention to the September 2, 2003 Planning Board minutes whereby he tried on several occasions to put forth a credible argument that supported approval of the subdivision, but his arguments were met with statements from the Board members like “we are not lawyers” and “we must rely on the City Solicitor’s opinion.” Attorney Gariepy noted that this opinion was not read into the minutes yet the Planning Board’s decision was based on that opinion. Attorney Gariepy stated that he was not made aware of the existence of Attorney Carroll’s opinion until the September 2, 2003 meeting.

Mr. Frechette stated that he and other Zoning Board members did not receive a copy of the September 2, 2003 Planning Board minutes, during the January 12, 2004 Zoning Board meeting the Board members requested a copy of said minutes. Mr. Pristawa stated that copies of the September 2, 2003 Planning Board minutes were distributed tonight.

Attorney Gariepy stated that Attorney Carroll is referencing a request for a written determination from the Zoning Officer, from which an appeal could be generated. However, he stated that the Planning Board did not send its decision to the Zoning Officer; therefore there is no written determination to go by.

For the Board’s edification, Attorney Gariepy stated that the minutes of the September 2, 2003 Planning Board were somewhat lengthy due to two extensive public hearings prior to his client’s application being heard. He stated that his application was heard about 10:30 that

evening, and the Board members were probably anxious to dispense with the remaining applications, which is why his application was quickly disposed of. Attorney Gariepy stated that prior to that meeting neither he nor the applicant was furnished with a copy of the legal opinion. He stated that the Board must make a decision using the records on hand.

Attorney Carroll suggested that under the regulations that pertain to review of a Planning Board decision, the Zoning Board, as the appellate board, must follow a set of procedures that precludes the Zoning Board from receiving new evidence. The Board must decide based on the records at hand. He stated that if the Zoning Board members cannot make a decision, based on the information that it has, the Board has remand authority whereby they can ask the Planning Board to clarify and/or explain its position, but the Zoning Board cannot utilize information that was not presented for consideration to the Planning Board during its consideration of the above-mentioned application.

Mr. Pristawa recommended adjourning the meeting in order to give the Board members time to read the September 2, 2003 Planning Board minutes.

A MOTION was made by Mr. Frechette and seconded by Mr. Moreau to TABLE the above-mentioned application in order to act on the last item on the agenda, and to also take time to read the September 2, 2003 Planning Board minutes. The MOTION carried.

A MOTION was made and seconded to reconvene the meeting. The MOTION carried.

Mr. Pristawa stated that after reading the September 2, 2003 Planning Board minutes he has concluded that the project would increase the nonconformity of one lot and would create a nonconformity of the second lot. Attorney Gariepy stated that this was also the City Solicitor's opinion.

Mr. Pristawa mentioned the deed but Attorney Carroll reminded him that the deed could not be used to meditate this case because the deed was not presented as evidence to the Planning Board and is therefore considered "new evidence." Attorney Gariepy stated that officially the deed was not submitted to the Planning Board; however, he was not given the opportunity to address the deed because he was not privy to the existence of the City Solicitor's legal opinion. Attorney Gariepy stated that if the Zoning Board deems the deed inadmissible, that is acceptable to him; however, he stated that if the Zoning Board should deny the appeal and uphold the Planning Board's decision, he would like the ability to present the deed to the Zoning Officer to argue his case; he would request that the deed be submitted to the Zoning Officer.

Mr. Pristawa asked if the Planning Board minutes make reference to the 40 ft. right-of-way. Attorney Gariepy stated that the right-of-way was mentioned several times during meetings with the Planning Board, he assumed that mention of the right-of-way was sufficient reason to discuss the deed; he does not view the deed as new evidence. Mr. Pristawa stated that in his opinion just mentioning the deed is not considered new evidence, it just reaffirms that there is a 40 ft. right-of-way.

Attorney Carroll stated that there is no question that the 40 ft. lot is mentioned in the Planning Board minutes, however, he asked Mr. Pristawa after reading the September 2, 2003 Planning Board minutes if the deed were submitted and made a part of the record. Mr. Pristawa said no.

Attorney Carroll stated that Attorney Gariepy's statement that a deed does exist is not cause for the Board to draw any conclusions, or cause for the deed to be considered evidence. Mr. Pristawa stated that it is obvious that the 40 ft. right-of-way does exist. Attorney Carroll stated that this is quite evident. Attorney Gariepy stated that the Board members could draw whatever inference they choose from the existence of the 40 ft. right-of-way, which exceeds the width of some City streets. Attorney Carroll stated that perhaps the area was a driveway; Attorney Gariepy stated that it is unlikely that this parcel's intended use was a 40 ft. driveway.

Mr. Moreau asked Attorney Carroll if his mission during tonight's meeting is to assist the Board regarding the procedure it must take regarding the abovenamed application. Attorney Carroll said yes, he is not here tonight to argue the pros and cons of this application. He stated that the Zoning Board, as the appellate board, must make a decision, and the areas of decisions are exceedingly narrow. Attorney Carroll stated that he is in attendance at tonight's meeting to make sure that the Board adhere to set procedure. He stated that the Board members are allowed to look at only the record(s) of the above-named application in making a decision to uphold or overturn the Planning Board's decision. The Zoning Board can overturn the Planning Board's decision if it find that there was "prejudicial procedure error," "clear error," or "lack of support by weight of evidence and the record." Attorney Carroll stated that the Zoning Board can overturn the Planning Board's decision, it can remand it to the Planning Board for further proceedings, or it can agree with their decision.

Mr. Pristawa asked why would the Zoning Board remand the application to the Planning Board if they have already denied its approval. Attorney Carroll stated that if the Zoning Board finds that the record of the above-named application is incomplete or in error it can remand it to the Planning Board. He also stated that if the Board feels that there is no basis for the appeal they could uphold the Planning Board's decision; if the Board feels that the application merits approval they can overturn the Planning Board's decision, these are the options that are available.

Mr. Moreau stated that it appears that the Planning Board based their decision entirely on the City Solicitor's legal opinion.

Mr. Begin asked the Zoning Officer if he had anything to offer that would help the Board in rendering a decision. Mr. Begin also stated that he was very unhappy with the delay in receiving the September 2, 2003 Planning Board minutes; how are they expected to make informed decisions without all the information. Mr. Loiselle apologized regarding the delay in delivering the minutes, but he had just received the minutes from the City Planner.

Mr. Begin asked the Zoning Officer if he feels that additional information is needed in order for the Board members to vote on the application. Mr. Loiselle stated that it is his opinion that the Board has all the evidence it needs to render a decision.

Attorney Carroll stated that the decision regarding the application was based on two countering legal opinions; two opinions were presented. Attorney Gariepy argued in favor of his client but the Planning Board advocated the City Solicitor's opinion over Attorney Gariepy's opinion.

Mr. Pristawa stated that one of the homes abutting the 40 ft. right-of-way appear to be 15 ft. away and the other house appear to be about 8 ft. from the right-of-way. Attorney Gariepy stated that with respect to the property located to the right (*which is 8 or 9 ft. from the lot line and facing Mendon Road*) this is considered a side setback. Attorney Gariepy stated that this property is already in non-conformity with the side setback requirements.

Attorney Gariepy stated that the property located to the left and facing the 40 ft. right-of-way do not front on Mendon Road, although it has a Mendon Road address. The City Administration contention's is that by making this a corner lot the property would be in non-conformance because it is not 20 ft. back. Attorney Gariepy stated that prior to the revision in the City's Subdivision Regulations 20 ft. was the accepted setback on a corner lot, which this was; the lot is in nonconformity even before it is developed.

Attorney Gariepy stated that his argument in response to Attorney Carroll's legal opinion that the subdivision would put those properties in nonconformance is that this would be impossible because the properties are in nonconformance without the development, and therefore the applicant's actions cannot make the properties nonconforming.

Mr. Pristawa asked if the driveway for the house located to the left of the right-of-way gained from Mendon Road. Attorney Gariepy said yes.

Mr. Pristawa asked if it is a fair statement that the two property owners built their homes within 8 ft. and the other 15 ft. from the 40 ft. right-of-way. Attorney Gariepy stated that this is the only explanation that he has at this time. He stated that the property located to the left of the right-of-way was granted an easement and it is clear that this is how he gained access to his property. Attorney Gariepy stated that he has no knowledge regarding the property located to the right, however it is clear that this property was constructed in violation of the side setback requirement.

Mr. Begin asked Attorney Carroll if the City gives a right-of-way the same attention that it gives a public street, i.e., maintenance, sweeping, snow plowing, etc. Attorney Carroll said no. He stated that the right-of-way in question extends into the woods; the Administration considers it just a piece of property.

Mr. Begin asked if it is a fair assessment that the parcel was never intended to be a roadway. Attorney Carroll stated that he cannot say; he advised Mr. Begin to look at the records, the evidence, the records are to be used to make a decision.

Attorney Gariepy stated that he do not believe that the City has a responsibility to maintain this land as it presently exists because it is not part of the City's roadway system. He

stated that if the subdivision is approved a road would be put in and the City would be asked to accept the road as a public street.

Mr. Begin asked what year were the two houses built. Attorney Gariepy stated that the property was conveyed in the early 60's—he would guess about 40 years ago. Mr. Begin stated that the zoning ordinance was in place at that time—the Zoning Board or the Building Inspection Division should have been aware of the setback violations.

Attorney Gariepy stated that no one can testify as to why these properties were allowed to build in violation of the zoning ordinance, we only know what the zoning regulations were at that time.

Attorney Gariepy stated that the bigger issue before the Board is whether or not the zoning requirements in a subdivision can extend to abutting property owners when the applicant for the subdivision do not own the abutting properties. He asked if any Board could impress upon an abutting owner's property a non-conformity, which in fact affects the subdivision; he does not believe that this is the case. Attorney Gariepy stated that this is why we have nonconforming status under the zoning code; if the lot is not non-conforming then it legally exists and the use is allowed. Attorney Gariepy stated that to say to a property owner who wants to develop his property in accordance with the Zoning Ordinance that because your development may create a nonconformance with regard to abutting properties is very unfair. He stated that when the abutting property owners built their homes they could have been in conformance with the subdivision regulations at that time.

Mr. Gendron, who presently owns the 40 ft. piece of land? Attorney Gariepy, my client, the principal applying for the subdivision.

Mr. Gendron, when you talk about a "right-of way" is this right-of way extended to the abutters property? Attorney Gariepy, yes. Mr. Gendron, then this is not a right-of way to the rear property, the owner does not need a right-of way to gain access to his own property.

Attorney Gariepy, it is a right-of-way only with respect to the individuals who have been given access thru some sort of conveyance. In this case it is only the property owner located to the left whose house faces the right-of-way. The property owner to the right, based upon my review of the claim, does not have a right-of-way and does not utilize the right-of-way to gain access to his property.

Mr. Gendron, when we talk about a right-of-way my original thought is that it was a right-of-way for access to the rear property. Attorney Gariepy, no, not for that property. The person who owns the real estate can grant the right-of-way to someone else but he does not need the right-of-way to access his own property.

Mr. Gendron, at this point with that 40 ft. piece of land, is the house that is located to the left in compliance with the City's zoning ordinance. Attorney Gariepy, no, the argument is that this house is located only 15 ft. away from the right-of-way.



Mr. Gendron, what is the side setback for this house? Mr. Pristawa stated that what Mr. Gendron is calling the side of the house is actually its front. Mr. Gendron disagreed with Mr. Pristawa. Attorney Gariepy stated that this is not the front of the house. He stated that this is a good question and has been asked before. He stated that this would be a corner lot if in fact the road were built. If the subdivision is allowed and the 40 ft. lot becomes a City street that lot becomes a corner lot.

Mr. Loiselle stated that if the subdivision is allowed the lot would become a corner lot. He stated that the regulations state, "*the corner lot must comply with the setback requirements from the street.*" Mr. Gendron, I understand the regulations, my question is "at this point in time is this 40 ft. piece of land considered a street or is it just a 40 ft. piece of land, right now, as we speak tonight. Attorney Gariepy, that is correct. Mr. Gendron, then this is not a "corner lot." Attorney Gariepy, there are members of the Planning Board and the Planning Department who believe that because this is a private street or a private road right now, that this is considered a "corner lot." Attorney Gariepy, there is a difference of opinion, however, I would agree with Mr. Gendron's assessment.

Mr. Gendron asked Mr. Carroll where does the Zoning Board go from here if indeed as Attorney Gariepy has stated that some members of the Planning Board and the Planning Department recognize the area in question as a corner lot? Mr. Gendron, I realize that the City's Law Department has provided a legal opinion and the Planning Board voted to deny the application.

Attorney Carroll, I am not at tonight's meeting to advocate a position, I am advocating a "procedure," and that procedure is very simple. Attorney Carroll stated that if the Zoning Board feels that it needs additional information in order to make a decision they should request additional information, but if the Board is satisfied with the information before it tonight they should make a decision.

Attorney Gariepy again stated that he does not believe that the Planning Board was the proper authority to decide this issue; this is a zoning issue and should be decided by the Zoning Officer or the Zoning Board of Review.

Attorney Carroll, if the Zoning Board feels that the Planning Board's decision was made via an unlawful or irregular procedure it should be remanded, thereby instructing the Planning Board to ask the Zoning Officer to make a decision, whereby the applicant would have to abide by the Zoning Officer's decision. Attorney Gariepy, the Zoning Officer has testified tonight that the Board has enough information to make a decision; he stated that it would serve no useful purpose to remand the application to the Planning Board.

Mr. Gendron, as I understand it, the 40 ft. piece of land is thought of only as a piece of land, and the left hand house is in compliance. Mr. Loiselle, yes, I believe that this house is in compliance as it stands now.

Mr. Gendron, what about the house located to the right? Mr. Loiselle, this house is one foot short of being in compliance.

Mr. Gendron, if a road were put in both these houses would be in noncompliance with the zoning regulations. Mr. Loïselle, the road would put one house in noncompliance and would increase the noncompliance distance of the second house.

Attorney Gariepy stated that he has tried to address this issue with the City Planner. He stated that suppose the owner maintains the 40 ft. right-of-way as a "private street" for the developer; the Zoning Officer stated that the City Administration does not advocate private streets; private streets are not allowed and therefore would not be an option.

Mr. Gendron stated that Attorney Gariepy had stated earlier that the proper procedure regarding the above-named application is that the Planning Board should have issued conditional approval and then forwarded the application to the Zoning Board for review and. Attorney Gariepy said yes, that is correct. Mr. Gendron questioned Attorney Gariepy regarding that procedure considering that the application required Zoning Board approval, not Planning Board approval. Attorney Gariepy stated that the application should have been sent to the Zoning Officer; if the Zoning Officer felt that the application was in compliance the application would then go back to the Planning Board. Attorney Gariepy stated that if in fact the Zoning Officer felt that the application was not in compliance the applicant would require zoning relief anyway, and the only difference is that there would be a stenographic record of what transpired between the Zoning Officer and himself during that meeting.

Mr. Frechette, quoting from the Planning Board minutes, stated that Mr. Del Rossi asked, "how far the two houses would be located from the proposed road,"—Mr. Peloquin stated that "one house would be about 15 ft. from the road and the other house would be located 8 ft. from the road." Mr. Del Rossi stated that "in his opinion 8 ft. is too close, where do we draw the line." Attorney Gariepy stated that the 40 ft. roadway exists now because an individual or predecessor decided to build closer to the lot line than allowed—unfortunately this is what we have to deal with now.

Mr. Frechette asked if two means of egress is required. Attorney Gariepy stated that the developer does not want to inconvenience anyone any more than is absolutely necessary—there would be limited access only for those people that would live in the new houses that are created.

Mr. Moreau asked Attorney Carroll how would this application change what presently exists on the site. Attorney Carroll stated that the City's position is that the application would create a nonconformity of the property located to the left and a further nonconformity of the property located on the right; these two property owners would be required to request zoning relief.

Mr. Moreau asked Attorney Gariepy if his client had approached the two property owners in an effort to work out an agreeable solution to this problem. Attorney Gariepy said yes, his client has communicated with the two property owners. He stated that there are a number of ways to approach the problem: 1) The applicant could abandon the subdivision, which is not likely; 2) The applicant could physically move both structures back on the lots, which is not something that anyone would recommend; and 3) The applicant could purchase both properties.

Attorney Gariepy asked what would be gained if the applicant bought both properties? He stated absolutely nothing; the reason nothing would be gained is because the properties would still be in noncompliance according to the zoning ordinance, and the applicant still could not build because the Planning Board has denied the applicant a subdivision based upon the Board's assessment that the two properties are in non-conformance.

Attorney Gariepy stated that by denying the applicant the use of his property the City Administration has in fact condemned this land.

Mr. Moreau stated that if the applicant were to buy the two properties he would then have the ability to petition the Zoning Board for a variance. Attorney Gariepy agreed with Mr. Moreau's statement, however he stated that the cost associated with the purchase of these two properties is probably unnecessary; and it would not solve the problem the next time this type of situation occurs.

Mr. Pristawa stated that in a September 11, 2002 communication from Attorney Carroll to the City Planner, Attorney Carroll states that if the road were built the two abutting property owners would need to petition the Zoning Board for a variance. Mr. Pristawa asked Attorney Carroll why would a variance be required, would not the two properties have grandfather rights, the City allowed the predecessors to build there (9 ft. from one property line to the right-of-way and the other 15 ft. from the right-of-way). Attorney Carroll reiterated that he does not want to advocate a position regarding the application. Mr. Pristawa stated that he would refer the question to Attorney Gariepy.

Mr. Pristawa stated that the property line on the left side of the 40 ft. easement is 15 ft. from the right-of-way, as indicated in the deed. He stated that during the construction of this house someone had to come before the City with plans that were approved by the City, and subsequently a house was built within 15 ft. of the 40 ft. right-of-way. Attorney Gariepy agreed with Mr. Pristawa's statement, the plans would have been reviewed and approved by the City.

Mr. Pristawa stated that in his opinion the two properties would not need a zoning variance because they have grandfather rights. Attorney Gariepy stated that he is in agreement with Mr. Pristawa, these two homes enjoy legal non-conformance status for dimension, which is allowed in the zoning ordinance.

Mr. Gendron stated that when the property owner built the house located to the left of the right-of-way, the 40 ft. right-of-way was irrelevant. The property owner applied for a building permit and the area was considered a "lot" at that time not a "street." The only guideline that the owner had to consider at that time was the "side setback," and the side setback was met. Mr. Pristawa, 8 ft. does not meet the required side setback. Mr. Gendron stated that he is referring to the house located to the left of the right-of-way; this house met the required side setback, but the house located to the right was in non-conformance of the side setback by 1 ft.; if the right-of-way were considered a road the lot would be in non-conformance by 12 ft.

Mr. Gendron stated that the question is “when the house was being built was the 40 ft. parcel considered a road or a lot?” Mr. Pristawa stated that he does not know, no one can answer that question, but 40 ft. is the legal width of a road.

Mr. Moreau disagreed with Mr. Pristawa. Mr. Moreau stated that in his opinion the 40 ft. parcel is a “lot,” whereby the owner granted a right-of-way to his neighbor in order to gain access to his property.

Mr. Loiselle stated that it is his opinion that the 40 ft. parcel is a lot. He stated that the property owner granted an abutting property owner an access easement thru that lot to access his property.

Attorney Gariepy stated that the answer to if the 40 ft. parcel is considered a “lot” or a “road” is a matter of opinion. He stated that certain members of the City’s Planning Department feel that the parcel is a “corner lot” as it exists; if this is the case we could look at prior subdivision records that show a 20 ft. setback. Attorney Gariepy that there is no question that the house was built on that roadway.

Mr. Pristawa stated that now the required street frontage is 50 ft., depending on the zone; he stated that perhaps at that time the parcel was considered a “lot.”

There were no further questions of comments; Mr. Pristawa closed testimony from the floor.

Mr. Pristawa asked Attorney Carroll to explain the voting process. Attorney Carroll stated that to “*accept*” the appeal and rule that the decision made by the Planning Board was proper, you would need three votes to “*Uphold*” the Planning Board’s decision; to “*Overturn*” the Board’s decision would require three votes.

Attorney Croll also advised the Board that they have the ability to remand the application to the Planning Board.

A MOTION was made by Mr. Pristawa and seconded by Mr. Begin to **Overturn** the Woonsocket Planning Board’s decision to DENY a Major Subdivision at the above location.

|                 |               |   |
|-----------------|---------------|---|
| Roll Call Vote: | Mr. Begin     | <b>Overturn</b> the Planning Board’s decision |
|                 | Mr. Frechette | <b>Uphold</b> the Planning Board’s decision   |
|                 | Mr. Gendron   | <b>Uphold</b> the Planning Board’s decision   |
|                 | Mr. Moreau    | <b>Uphold</b> the Planning Board’s decision   |
|                 | Mr. Pristawa  | <b>Overturn</b> the Planning Board’s decision |

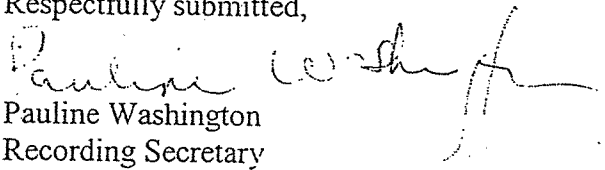
The MOTION DID NOT CARRY; the application to appeal the Planning Board’s decision was DEFEATED by a vote of 3-2.

Attorney Gariepy thanked the Chairman and the Board members.

Reason for Denial: The Board cited the Planning Board's September 2, 2003 reason for denial of the above-referenced application as follows: The plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.11 of the City's Zoning Ordinance, which states that *"The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot."*

Chairman Pristawa adjourned the meeting at 9:40 P.M.

Respectfully submitted,

  
Pauline Washington  
Recording Secretary

Advertise once:  
The Woonsocket Call  
January 11, 2004

Executive Decisions Filed:  
January 29, 2004

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

R & K BUILDING CORP.

v.

C.A. No. 2004-0803

CITY OF WOONSOCKET ZONING BOARD  
OF REVIEW and RALPH BEGIN, NORMAN  
FRECHETTE, DANIEL GENDRON, ROBERT  
MOREAU and WALTER PRISTAWA, in their  
capacity as Members of the Woonsocket Planning  
Board

**BRIEF OF APPELLEES CITY OF WOONSOCKET, ET ALS**

The Appellee offers in contradiction to the introduction of the procedural history as stated by the Appellant the following.

A) **THE CITY WAS PROPERLY WITHIN ITS AUTHORITY TO  
CONSIDER NEIGHBORHOOD IMPACT**

All of the issues as presented by the Appellant can be crystallized into one general issue. In acting upon a major subdivision application, what is the responsibility of the Planning Board to ensure compliance with the Zoning Ordinance as it pertains to abutting properties? In the instant case, it is undisputed that the approval of the proposed subdivision would render a conforming lot to be non-conforming and would dramatically increase the non-conformity of another lot. Conversely, if the plan were denied, there would be a status quo relative to the two lots and the Appellant would still own a conforming, buildable lot.

Chapter 2.3 of the Subdivision Ordinance is a mandate for the Board to consider the effect of the proposed subdivision as it pertains to property in the area, especially with respect to zoning. Similarly, RIGL §45-23-40(2) requires consideration by the Planning

Board of the natural and built features of the surrounding neighborhood. That same section requires the Board to assess the potential neighborhood impacts. The statutes contain many other references to the duty of the Board to weigh the impact of the proposed subdivision on its abutters. (RIGL §45-23-30(3), RIGL §45-23-31). Therefore, for the Appellant to make the unsupported assertion that “there is no requirement that land surrounding a proposed development must comply with local zoning in order for a subdivision to be approved” (Appellant’s Brief, P. 9) flies in the face of the statutory scheme for zoning and planning.

Quite simply, the Appellant could utilize the property for a single-family residence with a driveway to Mendon Road. Such a use would not increase or create additional non-conformity. The Appellant is now taking exception to the fact that the Zoning Board is adhering to its duty to weigh the effect on the abutters.

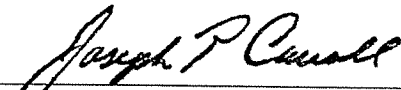
B) THE ACQUIESCENCE OF THE APPELLANT CONSTITUTES A WAIVER

It is the position of the Appellant that, because the Board did not take definitive action within the forty-five-day statutory period, the application was granted. The City takes exception to this position.

On October 1, 2002, the Planning Board made it perfectly clear to the Appellant that there was a need for Zoning Board relief. Rather than deny the application, it afforded the Appellant a chance to rectify the situation. At this point, the Appellant was presented with several choices: it could appeal the decision to the Zoning Board, it could wait the forty-five-day period and then file for declaratory relief in Superior Court, or it could do nothing. It chose the latter.

The Appellant, after eleven months of inactivity, re-submitted the matter to the Planning Board. It is the City's position that such a motion by the Appellant was knowing and voluntary and constituted a waiver by it of any prior procedural irregularities.

Respectfully submitted,  
City of Woonsocket, et als,  
By their Attorney,



---

Joseph P. Carroll (#1344)  
City Solicitor  
169 Main Street  
Woonsocket, Rhode Island 02895  
(401) 767-9201  
(401) 769-0316 FAX

Dated: July 7, 2004

**CERTIFICATION**

I hereby certify that on the 7th day of JULY, 2004, I mailed a true copy of within Memorandum of Law to Elizabeth McDonough Noonan, Esq., and Jamie J. LaPorte, Esq., Adler Pollock & Sheehan P.C., 2300 Financial Plaza, Providence, RI 02903.





STATE OF RHODE ISLAND

SUPERIOR COURT

PROVIDENCE, SC.

R+K Building Corp.

VS

PC/ 2004-803

City of Woonsocket Zoning Bd.

O R D E R

UPON THE REPRESENTATION OF COUNSEL THAT THE ENTIRE RECORD PERTAINING TO THE ABOVE APPEAL, INCLUDING ALL EXHIBITS, HAVE BEEN FILED WITH THE COURT. THERE IS NO EVIDENCE TO BE PRESENTED BY ANY PARTY IN CONNECTION WITH THE ABOVE APPEAL AND A STIPULATED STATEMENT OF ALL PERTINENT FACTS HAS BEEN FILED: IT IS HEREBY ORDERED:

THIS MATTER IS ASSIGNED TO JUSTICE

Gibney FOR DECISION AND THE CLERK IS HEREBY DIRECTED TO TRANSMIT THE FILE FORTHWITH.

ENTER:

BY ORDER:

Kearney

Linda B Parson



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

OMNIBUS CALENDAR ASSIGNMENT FORM

SUPERIOR COURT

PROVIDENCE/BRISTOL KENT WASHINGTON NEWPORT

1. R & K BUILDING CORP. VS. CITY OF WOONSOCKET, et al. 2. CASE NO. 2004-0803

3. REQUESTED CALENDAR ASSIGNMENT TRIAL CALENDAR Non-Jury Trial

4. FORMAL AND SPECIAL CAUSE CALENDAR AGA Agency Appeal AOD Assessment of Damages CNA Confirm Arbitration CNP Contempt Proceedings DEJ Declaratory Judgment EOJ Entry of Judgment FFR First and Final Report FRR Foreclosure of Right of Redemption FRS Friendly Suit OPC Oral Proof of Claim MNJ Mandatory Injunction MEL Mechanic's Lien MAT Motion to Attach PRT Partition Proceedings PAT Petition to Appoint Temporary Receiver PEN Petition to Enforce PIN Petition for Instructions PRE Petition to Reclaim PES Petition to Sell PPI Preliminary Injunction POC Proof of Claim RCP Receivership Proceedings SUP Supplementary Proceedings TRO Temporary Restraining Order TIP Title Proceedings TSP Trustee Proceedings VAR Vacate Arbitration WOM Writ of Mandamus WOR Writ of Replevin OTH Other FSC Matter Motion to Assign

DISPOSITIVE MOTION CALENDAR (TUESDAYS, PROV. ONLY) MTD Motion to Dismiss, Under Rule 12 MJP Motion for Entry of Judgment on Pleadings MTN Other Dispositive Motion MPS Motion for Partial Summary Judgment MSJ Motion for Summary Judgment HEARING DATE 8-23-04 FSC/MOTION CAL. CLERK DATE 7-19-04

5. SPECIAL MASTER CALENDAR CIC Criminal Injury Compensation HEARING DATE CLERK

6. METHOD OF ASSIGNMENT Motion to Assign Stipulation to Assign Court Order Pursuant to Temporary Ex Parte Order BASED ON METHOD OF ASSIGNMENT, STATE ANY RELEVANT INFORMATION BELOW

7. ATTORNEYS DATE 7/19/04 Signatures Jaime J. LaPorte (Plaintiff's) Defendant's Print Name Jaime J. LaPorte

8. DATE / TIME STAMP SUPERIOR COURT FILED HENRY S. WINCH JR., CLERK 2004 JUL 19 P 3 21

HEARING DATE: August 23, 2004

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

R&K BUILDING CORP.,  
Plaintiff,

v.

CITY OF WOONSOCKET ZONING BOARD  
OF REVIEW and RALPH BEGIN, NORMAN  
FRECHETTE, DANIEL GENDRON, ROBERT  
MOREAU and WALTER PRISTAWA, in their  
capacity as Members of the Woonsocket Planning  
Board,

Defendants.

C.A. No. 2004-0803

**MOTION TO ASSIGN**

Plaintiff R&K Building Corp. ("R&K") hereby requests that this matter be assigned to a Judge for decision. R&K states that briefs have been filed by all parties and requests this matter be heard in an expedited fashion in accordance with R.I. Gen. Laws § 45-23-73.

Plaintiff,  
R&K BUILDING CORP.

By its attorneys,

*Jaime J. LaPorte*

Elizabeth McDonough Noonan, (#4226)

Jaime J. LaPorte (#6668)

Adler Pollock & Sheehan P.C.

2300 Financial Plaza

Providence, RI 02903

Tel: (401) 274-7200

Fax: (401) 351-4607/751-0604

Dated: July 19<sup>th</sup>, 2004

SUPERIOR COURT  
FILED  
HENRY S. KINCH JR., CLERK

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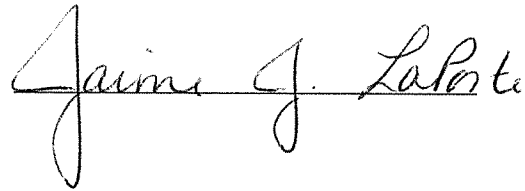
**NOTICE OF HEARING**

Please take notice that the within Motion shall be called for hearing on the 23<sup>rd</sup> day of August, 2004. The foregoing Motion shall be deemed to be granted as a matter of course, unless objection is served and filed at least three days prior to the time specified for hearing.

**CERTIFICATION**

I hereby certify that on July 19<sup>th</sup>, 2004, I caused a true copy of the within to be sent by first class mail, postage prepaid, to the following counsel of record:

Joseph P. Carroll, Esq.  
City Solicitor  
169 Main Street  
Woonsocket, RI 02895



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STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

R & K BUILDING CORP.

v.

C.A. No. 2004-0803

CITY OF WOONSOCKET ZONING BOARD  
OF REVIEW and RALPH BEGIN, NORMAN  
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SUPERIOR COURT  
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Board of the natural and built features of the surrounding neighborhood. That same section requires the Board to assess the potential neighborhood impacts. The statutes contain many other references to the duty of the Board to weigh the impact of the proposed subdivision on its abutters. (RIGL §45-23-30(3), RIGL §45-23-31). Therefore, for the Appellant to make the unsupported assertion that “there is no requirement that land surrounding a proposed development must comply with local zoning in order for a subdivision to be approved” (Appellant’s Brief, P. 9) flies in the face of the statutory scheme for zoning and planning.

Quite simply, the Appellant could utilize the property for a single-family residence with a driveway to Mendon Road. Such a use would not increase or create additional non-conformity. The Appellant is now taking exception to the fact that the Zoning Board is adhering to its duty to weigh the effect on the abutters.

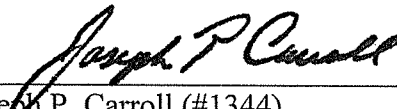
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It is the position of the Appellant that, because the Board did not take definitive action within the forty-five-day statutory period, the application was granted. The City takes exception to this position.

On October 1, 2002, the Planning Board made it perfectly clear to the Appellant that there was a need for Zoning Board relief. Rather than deny the application, it afforded the Appellant a chance to rectify the situation. At this point, the Appellant was presented with several choices: it could appeal the decision to the Zoning Board, it could wait the forty-five-day period and then file for declaratory relief in Superior Court, or it could do nothing. It chose the latter.

The Appellant, after eleven months of inactivity, re-submitted the matter to the Planning Board. It is the City's position that such a motion by the Appellant was knowing and voluntary and constituted a waiver by it of any prior procedural irregularities.

Respectfully submitted,  
City of Woonsocket, et als,  
By their Attorney,



Joseph P. Carroll (#1344)  
City Solicitor  
169 Main Street  
Woonsocket, Rhode Island 02895  
(401) 767-9201  
(401) 769-0316 FAX

Dated: July 7, 2004

**CERTIFICATION**

I hereby certify that on the 7th day of July, 2004, I mailed a true copy of within Memorandum of Law to Elizabeth McDonough Noonan, Esq., and Jamie J. LaPorte, Esq., Adler Pollock & Sheehan P.C., 2300 Financial Plaza, Providence, RI 02903.

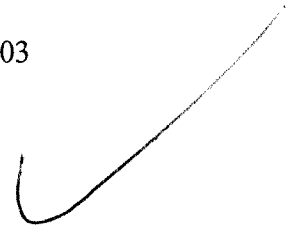


STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

\_\_\_\_\_  
R&K BUILDING CORP.,  
Plaintiff,  
  
v.  
  
CITY OF WOONSOCKET ZONING BOARD  
OF REVIEW and RALPH BEGIN, NORMAN  
FRECHETTE, DANIEL GENDRON, ROBERT  
MOREAU and WALTER PRISTAWA, in their  
capacity as Members of the Woonsocket Planning  
Board,  
\_\_\_\_\_  
Defendants.

C.A. No. 2004-0803



**BRIEF OF APPELLANT**  
**R&K BUILDING CORPORATION**

Respectfully Submitted,

Elizabeth McDonough Noonan (#4226)  
Jaime J. LaPorte (#6668)  
Adler Pollock & Sheehan P.C.  
2300 Financial Plaza  
Providence, RI 02903  
401-274-7200  
401-351-4607  
Dated: June 11, 2004

SUPERIOR COURT  
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## INTRODUCTION

This matter is before the Court on an appeal of R&K Building Corporation (“R&K”) of the decisions of the City of Woonsocket (“City”) Zoning Board of Review (“Zoning Board”), pertaining to property located off Mendon Road, further identified as Assessor’s Plat 53, Lots 1 and 32 (“Subject Property”). The Zoning Board denied R&K’s appeal of the Planning Board’s decision to deny the Master Plan application for a nine lot residential subdivision on the Subject Property (“Proposed Subdivision”). The Planning Board denied Master Plan approval on the sole basis that the use of an existing right of way leading to the Subject Property as a public street would create a nonconforming lot with respect to one abutting property and would increase the existing nonconformity to another abutting property. As set forth below, the Planning Board erred in denying the Master Plan approval based on the potential zoning implications on abutting properties, when the Proposed Subdivision fully conformed with the City of Woonsocket Subdivision & Land Development Regulations (the “Regulations”) and the dimensional requirements of the Woonsocket Zoning Ordinance (“Ordinance”). Further, the Zoning Board erred in upholding the Planning Board’s decision.

## PROCEDURAL BACKGROUND

In March 2001, R&K appeared before the Planning Board for a pre-application conference on the Proposed Subdivision. Access to the Subject Property from Mendon Road was through a 40 foot right-of-way which benefits the Subject Property. At the time of the pre-application conference, the issue of the access was not raised as a potential problem. In July 2002, R&K submitted an application to the Planning Board for a Major Subdivision in accordance with R.I. Gen. Laws § 45-23-40 and §§ 6.1 and 6.2 of the Regulations. On September 11, 2002, Joseph Carroll, the City Solicitor, sent a letter to the City Planner, Keith A.

Brynes, regarding R&K's subdivision application. In that letter, Mr. Carroll stated that the subdivision application could not be approved by the Planning Board because construction of the road over the right-of-way leading to the Proposed Subdivision would create dimensional nonconformity on abutting lots, necessitating those landowners to apply for zoning variances. On October 1, 2002, the Planning Board met to consider R&K's subdivision application for Master Plan approval. During the October 1, 2002 meeting, Mr. Carroll's letter was read into the record. The Planning Board then voted to table R&K's subdivision application indefinitely based solely on the content of Mr. Carroll's September 11, 2002 letter. Thereafter, R&K sought reconsideration of its subdivision application. On September 2, 2003, the Planning Board denied R&K's request for reconsideration and denied Master Plan approval based on its conclusion that it could not grant such approval absent obtaining zoning variances on the abutting parcels. On October 6, 2003, R&K appealed the decision of the Planning Board to the Zoning Board, sitting as the Board of Appeals. Public hearings were then held on January 12, 2004 and January 26, 2004, before the Zoning Board. On February 3, 2004, R&K received notification from the Zoning Board upholding the decision of the Planning Board. On February 13, 2004, R&K timely filed the instant complaint appealing the decision of the Zoning Board.

#### ISSUE ON APPEAL

1. Whether the Planning Board and Zoning Board erred by denying Master Plan approval based on the non-conforming dimensions of abutting parcels.
2. Whether the Planning Board and Zoning Board erred in penalizing R&K for the pre-existing dimensional non-compliance of Plat 53, Lot 13.
3. Whether the Planning Board and Zoning Board erred by requiring R&K to seek dimensional variances on the abutting property owned by independent third parties.

4. Whether the Planning Board's inaction on the Proposed Subdivision application resulted in an implied approval of the Proposed Subdivision, thereby nullifying the later denial by the Planning Board and Zoning Board.

#### STATEMENT OF FACTS

R&K submitted a major subdivision application to the Planning Board to subdivide the Subject Property that consists of approximately 4.5 acres for Lot 1 and 28,018 square feet for Lot 32. The Subject Property is located off Mendon Road and is landlocked except for a 40-foot right-of-way that extends from Mendon Road to the Subject Property. A copy of a map outlining the Subject Property, the right-of-way and the surrounding area is attached as **Exhibit 1**. The right-of-way was expressly granted to R&K's predecessor in interest in a deed executed on July 13, 1962. The deed states that the grantor conveyed "to the grantees, their heirs and assigns, the right to pass and repass on foot and with vehicles of all kinds over a strip or parcel of land forty (40) feet in width along the southerly line of the above described premises from Mendon Road." A copy of the deed establishing the right-of-way is attached as **Exhibit 2**.

The right-of-way abuts two independently owned parcels, Plat 53, Lot 16 and Lot 13. A copy of photos depicting the right-of-way in relation to Lots 13 and 16 is attached hereto as **Exhibit 3**. At the time of the conveyance of the right-of-way, Lot 16 and Lot 13 were vacant. Three years later, in 1965, homes were built on the abutting parcels. A copy of the tax assessor records for Lot 16 and Lot 13 are attached as **Exhibit 4**. Both Lots 13 and 16 are located in an R-2 Low Density Single-Family Residential District. As the homes currently stand, without consideration of the subdivision application, or use of the 40-foot right-of-way as a public street, Lot 16 conforms to local R-2 zoning requirements. Lot 13, however, does not conform to local R-2 zoning requirements.

Lot 13 is a nonconforming lot because it does not meet the side setback requirements for property in a R-2 zoning district. Currently, the home on Lot 13 sits 8 feet from the side lot line, which directly abuts the 40-foot right-of-way. The side setback requirement for property in the R-2 zoning district, however, requires a minimum side setback of 10 feet. See Ordinance at § 7.3-5.2. Consequently, the home on Lot 13 is dimensionally nonconforming as it currently stands, without consideration of the Proposed Subdivision.

Although Lot 16 is a dimensionally conforming lot, utilization of the right-of-way as a public street to access the Proposed Subdivision would cause Lot 16 to become a nonconforming lot and would increase the existing nonconformance of Lot 13. Specifically, conversion of the right-of-way into a public street would cause Lots 16 and 13 to become corner lots for zoning purposes. As corner lots, the side yards must meet the front yard setback requirements on the side street. See Ordinance at § 7.1-1. In this case, that means the setback from the right-of-way would change from the side yard setback requirement of 10 feet to the front yard setback requirement of 20 feet. Id. at § 7.3-5.1. As they stand, neither Lot 13 nor 16 would meet the requisite 20 foot setback. The home built on Lot 16 sits only 15 feet away from the 40-foot right-of-way. The home on Lot 13 is only 8 feet from the right-of-way. Therefore, use of the right-of-way as a public street would increase the nonconformance of Lot 13 and create a dimensional nonconformance on Lot 16.

Upon receipt of R&K's subdivision application, the Planning Board sought a legal opinion from the City Solicitor as to whether it could approve the Proposed Subdivision when it would cause Lot 16 and Lot 13 to become dimensionally nonconforming. On September 11, 2002, the City Solicitor, Mr. Carroll, sent a letter to the City Planner, stating that the Planning Board could not consider the subdivision application because it would result in Lots 13 and 16

becoming non-conforming lots, and that absent receipt of variances by the owners of those lots, the Planning Board could not consider the application. Mr. Carroll's letter failed to recognize that Lot 13 was already a nonconforming lot. A copy of the September 11, 2002 letter is attached hereto as **Exhibit 5**.

On October 1, 2002, the Planning Board held a public meeting. Upon consideration of R&K's subdivision application, the Planning Board did nothing more than read into the record the September 11, 2002 letter of Mr. Carroll, and on that basis alone, voted to table indefinitely consideration of R&K's subdivision application. A copy of the minutes from the October 1, 2002 Planning Board meeting are attached hereto as **Exhibit 6**.

Thereafter, R&K sought reconsideration of its subdivision application. On September 2, 2003, the Planning Board held a public hearing concerning R&K's subdivision application. A copy of the minutes from the September 2, 2003 Planning Board meeting are attached hereto as **Exhibit 7** and for a discussion of R&K's Master Plan approval, see pages 24-27 of Exhibit 7. At the September 2, 2003 hearing, counsel for R&K, Lloyd Gariepy, argued that the Master Plan was improperly denied for several reasons. First, it was improper to deny the Master Plan on the basis that the abutting lots would become nonconforming lots. *Id.* at 25-26. As explained by Mr. Gariepy, the subdivision itself was in full compliance with local zoning, and it was improper to consider whether abutting property would become nonconforming. *Id.* Second, it was inappropriate for the Planning Board to deny the subdivision application on the basis that it created nonconforming lots, when Lot 13 was already a nonconforming lot. *Id.* at 24. Third, R&K could not be forced by the Planning Board to go before the Zoning Board to obtain variances on the abutting parcels, because R&K was not the owner of those parcels. *Id.* at 26. In

spite of the issues raised, at the conclusion of the September 2, 2003 hearing, the Planning Board voted unanimously to deny Master Plan approval. Id. at 27.

On September 3, 2002, R&K received a letter from the City Planner, Keith Brynes, stating that the subdivision application was denied. A copy of the September 3, 2003 letter is attached hereto as **Exhibit 8**. The September 3, 2003 letter stated that the subdivision application was denied on the basis that “the plan as proposed would create an abutting lot to be dimensionally non-conforming” and further that “the project is unable to proceed without the appropriate zoning relief, which can only be obtained by the abutter.” Id.

R&K filed a timely appeal of the Planning Board decision to the Zoning Board and on January 12, 2004, the Zoning Board heard the appeal and decided to table the motion until such time as all board members had an opportunity to review the full record. The Zoning Board reconvened on January 26, 2004. During the January 26, 2004 public hearing the Zoning Board discussed the fact that conversion of the right-of-way into a street would increase the nonconformance of one lot and create nonconformance as to the other. A copy of the minutes from the January 26, 2004 Zoning Board meeting are attached as **Exhibit 9**. According to one board member, the fact that one home would be 8 feet from the road was not acceptable. Specifically, Mr. Del Rossi stated that “in his opinion 8 ft. is too close, where do we draw the line.” Id. at 8. Mr. Carroll further pressed that due to the increased nonconformity and the creation of nonconformity, the abutting property owners would be required to request zoning relief. Id. The Zoning Board then discussed whether R&K had tried to work out an arrangement with the abutting landowners or would consider buying the land in order to seek a variance for the properties. Id. at 8-9. At the close of the hearing the Zoning Board voted by a margin of 3 to

2 to uphold the decision of the Planning Board denying R&K's subdivision application. Id. at 10.

### STANDARD OF REVIEW

Judicial review of a decision of a local zoning board, sitting as a planning board of review, is governed by R.I. Gen. Laws § 45-23-71. Under R.I. Gen. Laws § 45-23-71, this Court is precluded from substituting its judgment for that of the board of review as to questions of fact. However, this Court has authority to remand a case or to reverse a decision of the board of review, if the decision is:

- (1) In violation of constitutional, statutory, ordinance or planning board provisions;
- (2) In excess of the authority granted to the planning board by statute or ordinance;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

R.I. Gen. Laws § 45-23-71(c).

### ARGUMENT

A. The Zoning Board Of Review Erred In Denying R&K's Subdivision Application On The Grounds That The Subdivision Would Result In Non-Conforming Abutting Lots

Under Rhode Island law, the Planning Board is precluded from approving a subdivision application unless consideration is given to the general purposes of land development and subdivision review set forth in R.I. Gen. Laws § 45-23-30 and certain required findings are

made. See R.I. Gen. Laws § 45-23-60. Chapter 2.3 of the Regulations provide the same guidelines. Under State and local law, the approval of all major development applications is contingent upon the following required findings:

- (1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;
- (2) The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance;
- (3) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;
- (4) The subdivision, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. (See definition of Buildable lot). Lots with physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and
- (5) All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.

R.I. Gen. Laws § 45-23-60.

Here, neither the Planning Board nor the Zoning Board found that the Proposed Subdivision was in contravention of any of the preceding requirements. The sole issue relied upon by the Planning Board and the Zoning Board in their denials was the resulting dimensional non-conformance and increased nonconformance of abutting parcels. Although it is evident that a proposed development itself must comply with local zoning, there is no requirement that land surrounding a proposed development must comply with local zoning in order for a subdivision



application to be approved. In regard to zoning issues, approval simply requires a finding that the “*proposed development* is in compliance with the standards and provisions of the municipality’s zoning ordinance.” R.I. Gen. Laws § 45-23-60(2) (emphasis added). Contrary to the actions taken in this case, State and local law do not require or authorize the Planning Board or Zoning Board to look beyond the subject property to determine whether the subdivision application is in compliance with local zoning. Accordingly, the Planning Board and Zoning Board acted in violation of statutory and planning board provisions, acted in excess of their authority and were affected by clear error of law in denying the subdivision application based on a requirement that simply does not exist under state or local law.

B. The Planning Board And Zoning Board Erred In Penalizing R&K For The Pre-Existing Dimensional Non-Compliance Of Plat 53, Lot 13

In addition to imposing a zoning requirement on R&K not provided under law, the Planning Board and Zoning Board penalized R&K for the existing non-conforming dimensions of one of the abutting parcels, Plat 53, Lot 13. As stated continuously throughout the Planning Board and Zoning Board hearing transcripts, it is clear that Plat 53, Lot 13, as it currently stands, is not in conformance with local zoning. The owners of Plat 53, Lot 13, or their predecessors in interest, built a home on the lot with a side setback of only 8 feet, in contravention of the 10 foot setback requirement. Although the nonconformance exists independent of R&K’s subdivision application, the Planning Board and Zoning Board premised its denial of the subdivision application on the lack of setback between the right-of-way and the home on Plat 52, Lot 13. As stated by Mr. Del Rossi, “8 ft. is too close, where do we draw the line.” **Exhibit 9** at 8.

In addition to the fact that the owners of Plat 53, Lot 13 created the existing nonconformance and the limited 8 foot setback, owners of both Lots 13 and 16 knew of the 40 foot right-of-way at the time they purchased their parcels, and therefore, were well aware that the

right-of-way could potentially be used as a road. In fact, the current owners of Lot 16 use the right-of-way, through use of an easement, to access Mendon Road with their vehicles. Here, instead of holding the abutting property owners responsible for the resulting noncompliance, the Zoning Board burdened R&K with the consequences of the actions beyond its control. By penalizing R&K for use of the right-of-way as a road when the right-of-way was evidenced in a recorded deed at the time both abutting homes were built and the right-of-way is currently used to access Mendon Road by one of the abutting lot owners, the Zoning Board acted in violation of controlling statutory and planning board provisions, acted in excess of its authority and were affected by clear error of law.

C. The Planning Board and Zoning Board Erred In Putting Upon R&K The Impossible Task Of Seeking Variances On Property Owned By Independent Third Parties

The Planning Board and Zoning Board also acted in violation of statutory and planning board provisions, acted in excess of their authority and were affected by an error of law in relying on the City Solicitor's letter and denying R&K's subdivision application on the basis that "the Planning Board cannot approve a subdivision without Zoning Board approval of any necessary variances." See **Exhibit 5**. Conditioning approval of R&K's subdivision application on receipt of zoning variances put upon R&K a legally impossible task – obtaining zoning variances on independently owned property. As acknowledged by the City Planner, R&K does not have the authority to seek a variance on property that it does not own. See **Exhibit 7**.

Moreover, discussion by the Zoning Board of whether R&K would purchase the neighboring lots to resolve the nonconformity was improper. The Rhode Island Supreme Court has established that a local zoning board lacks the authority to require conveyance of property as a condition of subdivision approval. Sako v. Delsesto, 688 A.2d 1296, 1297 (R.I. 1997). In

putting upon R&K the impossible task of seeking a variance on independently owned property, and suggesting that R&K should purchase the neighboring properties violates controlling state and local law and is in excess of the authority possessed by those entities. Therefore, the decision of the Planning Board and Zoning Board denying the Proposed Subdivision should be reversed.

D. The Planning Board's Failure To Act On The Subdivision Application Resulted In An Implied Approval Of the Proposed Subdivision Nullifying The Later Denial By The Planning Board And The Zoning Board

Under both state and local law, failure of a planning board to act on a master plan application within a proscribed period of time results in an implied approval of the application. See R.I. Gen. Laws § 45-23-40(f); Regulations § 6.6.2.1. State law provides that the “planning board shall, within one hundred and twenty (120) days of certification of completeness, or within a further amount of time that may be consented to by the applicant, approve of the master plans as submitted, approve with changes and/or conditions, or deny the application....” R.I. Gen. Laws § 45-23-40(e) (emphasis added). Under the Regulations, the “planning board shall, within forty-five (45) days after the certification of completeness, or within such further time as may be consented to by the applicant, approve or deny the final plan as submitted.” Regulations § 6.6.2.1 (emphasis added).

Here, the Planning Board failed to act within the time proscribed by both State and local law. At the October 1, 2002 meeting, the Planning Board voted to table the subdivision application indefinitely. See Exhibit 6. Thereafter, the Planning Board did not act on the subdivision application until a motion for reconsideration was heard on September 2, 2003. Although there is no evidence in the record that the Planning Board issued a certificate of completeness as required under R.I. Gen. Laws § 45-23-40(b) and Regulations § 6.6, it is evident

that the Planning Board treated the application as complete in scheduling the matter for a Master Plan hearing and rendering a final decision denying such approval.

Regardless of the Planning Board's later action, the eleven month delay in making a final determination on the application was in violation of procedural requirements and resulted in an implied approval of the subdivision application. As set forth above, under State and local law, the Planning Board must approve, approve with changes, or deny a subdivision application within a minimum of forty-five days. In this case, the Planning Board made a decision to table the subdivision application indefinitely on October 1, 2002 and did not vote to deny the application until September 2, 2003, well beyond the forty-five day period. Accordingly, the Planning Board acted upon unlawful procedure in tabling the subdivision indefinitely. In addition, the prolonged delay in making a definitive decision of the subdivision application resulted in an implied approval of the Proposed Subdivision, thereby nullifying the later denial by the Planning Board. Accordingly, the Zoning Board decision is clearly erroneous.

CONCLUSION

For the foregoing reasons, R&K respectfully requests that his Court reverse the Decision of the Zoning Board of Review, grant Master Plan approval for R&K's Proposed Subdivision and remand the matter to the Planning Board for the next stage of the subdivision process, preliminary plan approval.

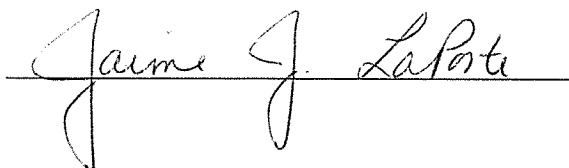
Plaintiff, R&K Building Corp.  
By its attorneys,



Elizabeth McDonough Noonan, #4226  
Jaime J. LaPorte, #6668  
ADLER POLLOCK & SHEEHAN P.C.  
2300 Financial Plaza  
Providence, RI 02903  
Tel: (401) 274-7200  
Fax: (401) 351-4607/751-0604  
Dated: June 11, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within was mailed to Joseph P. Carroll, Esq., City Solicitor, 169 Main Street, Woonsocket, R.I., 02895-4379 on this 11<sup>th</sup> day of June, 2004.



ADMINISTRATIVE SUBDIVISION

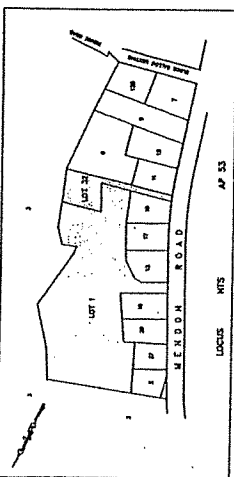
FOR R & K BUILDING CORP. &

SURA REALTY

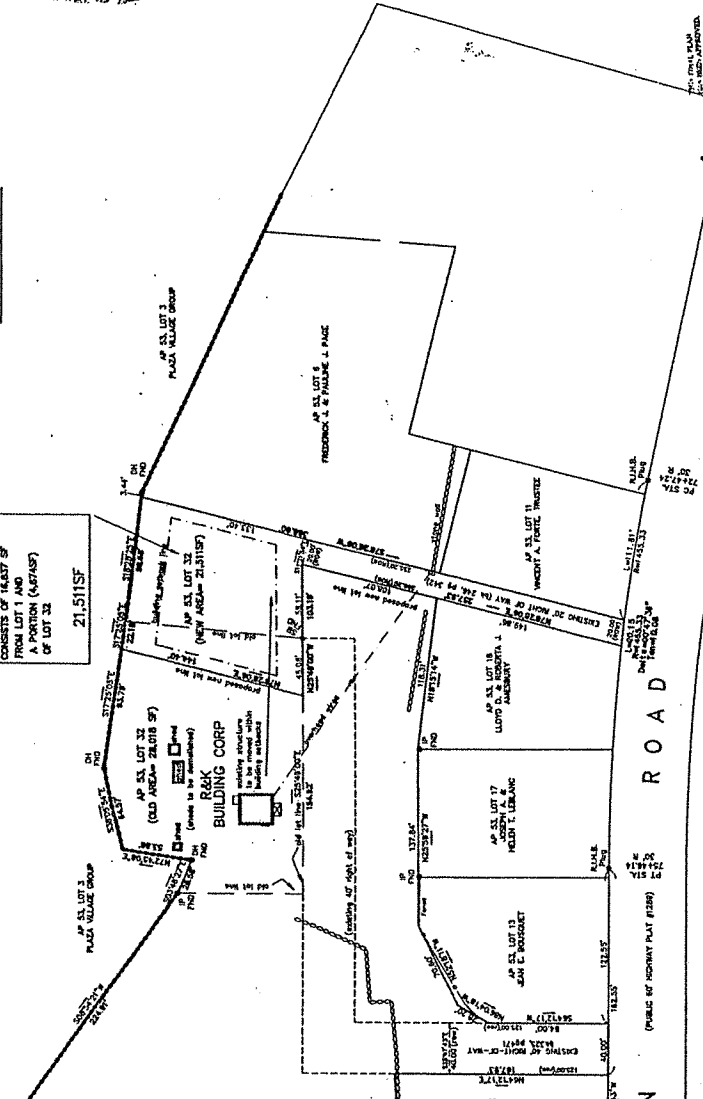
WOONSOCKET, RI

JUNE 11, 1999

OFFERED FOR RECORD  
APRIL 11, 1999  
APRIL 11, 1999



NEW AREA OF AP 53, LOT 32  
CONSISTS OF 16,837 SF  
FROM LOT 1 AND  
A PORTION (14,875 SF)  
OF LOT 32  
21,515 SF



Plot Book 92  
Page 21/200

OWNER: LOT 32  
R & K BUILDING CORP., INC., PO BOX 3107  
50, ATTLEBORO, MA 02703

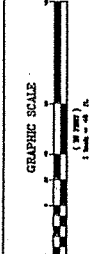
APPLICANT: SAME

OWNER: LOT 1  
SURA REALTY, PO BOX 3107  
50, ATTLEBORO, MA 02703

APPLICANT: SAME

FOR REFERENCE, SEE THE FOLLOWING RECORDED PLANS AND DEEDS:  
1. DEED FOR A 40' WIDE RIGHT-OF-WAY RECORDED IN BOOK 325, PAGE 171.  
2. DEED FOR A 30' WIDE RIGHT-OF-WAY RECORDED IN BOOK 246, PAGE 242.

FOR REFERENCE, SEE THE FOLLOWING RECORDED PLANS AND DEEDS:  
1. DEED FOR A 40' WIDE RIGHT-OF-WAY RECORDED IN BOOK 325, PAGE 171.  
2. DEED FOR A 30' WIDE RIGHT-OF-WAY RECORDED IN BOOK 246, PAGE 242.



ZONE: RESIDENTIAL R-2  
MIN. AREA = 10,000 SF  
MIN. SETBACKS: FRONT = 20'  
SIDE = 10'  
REAR = 25'

I HEREBY CERTIFY THAT THIS PLAN CONFORMS TO A CLASS 1 STANDARD AS ADOPTED BY THE PROVIDENCE BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS.  
Albert Florentz  
ALBERT FLORENTZ, P.L.S. #1888

ALBERT FLORENTZ, P.L.S. #1888  
PROFESSIONAL LAND SURVEYOR  
117 MAIN STREET, WOODBRIDGE, CT 06097  
BIBEAULT AND FLORENTZ ASSOCIATES, INC.  
2/19/2000

BOOK 325 PAGE 471

I, RUTH D. CARR, of the City of Woonsocket, in the County of Providence and State of Rhode Island, for consideration paid, grant to JANICE L. FLINTON, of the Town of Bellingham, in the County of Norfolk and Commonwealth of Massachusetts, CHARLES MOSKALENKO, of said Town of Bellingham, and RUTH A. CLARK, of said City of Woonsocket, as tenants in common, with QUITCLAIM COVENANTS

A certain lot or parcel of land, with all buildings and other improvements thereon, situated on the easterly side of Mendon Road between Diamond Hill Road and Elder Ballou Meeting House Road, in the City of Woonsocket, County of Providence, State of Rhode Island, bounded and described as follows, viz:-

Beginning at a point on the easterly side of said Mendon Road which point is forty (40) feet measured N.  $06^{\circ} 19'$  W., from the northwesterly corner of land of Bruno and Helen Salbego, said point being the southwesterly corner of the lot hereby described; thence N.  $06^{\circ} 19'$  W., with said Mendon Road one hundred ninety and eight tenths (190.80) feet to land of Francis M. and Theresa Dubois; thence N.  $86^{\circ} 52'$  E., with said Dubois land and other land of this grantor one hundred fifty-four and eighty-two one hundredths (154.82) feet; thence S.  $10^{\circ} 18'$  E., one hundred eighty-two and sixty-five one hundredths (182.65) feet; thence S.  $83^{\circ} 41'$  W., one hundred sixty-seven and twenty-eight one hundredths (167.28) feet to the point of beginning. Containing 29,988 sq. ft. more or less.

The grantor also conveys to the grantees, their heirs and assigns, the right to pass and repass on foot and with vehicles of all kinds over a strip or parcel of land forty (40) feet in width along the southerly line of the above described premises from Mendon Road, in an easterly direction for one hundred twenty-five (125) feet. Said right of way is bounded and described as follows, viz:-

Beginning at a point on the easterly side of said Mendon Road at the southwesterly corner of the above described premises; thence N.  $83^{\circ} 41'$  E., with the southerly line of the above described premises one hundred twenty-five (125) feet; thence S.  $06^{\circ} 19'$  E., forty (40) feet; thence S.  $83^{\circ} 41'$  W., one hundred twenty-five (125) feet to the aforesaid Mendon Road; thence N.  $06^{\circ} 19'$  W., with said Mendon Road forty (40) feet to the point of beginning.

The grantor acquired her title under the will of her mother, Lottie G. Clark, who died a resident of said City of Woonsocket on December 14, 1960.

The consideration for this conveyance is such t  
documentary stamps are required.

I, Ruth D. Carr, covenant to and with the grant  
that I am now unmarried.

IN WITNESS WHEREOF I have hereunto set my hand  
this 13<sup>th</sup> day of July, A. D. 1962.

Ruth D. Carr

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In Woonsocket, on the 13<sup>th</sup> day of July  
1962 before me personally appeared Ruth D. Carr, to me kno  
known by me to be the party executing the foregoing instr  
and she acknowledged said instrument by her executed to be  
free act and deed.

Dickerson H. Taylor  
Notary Public

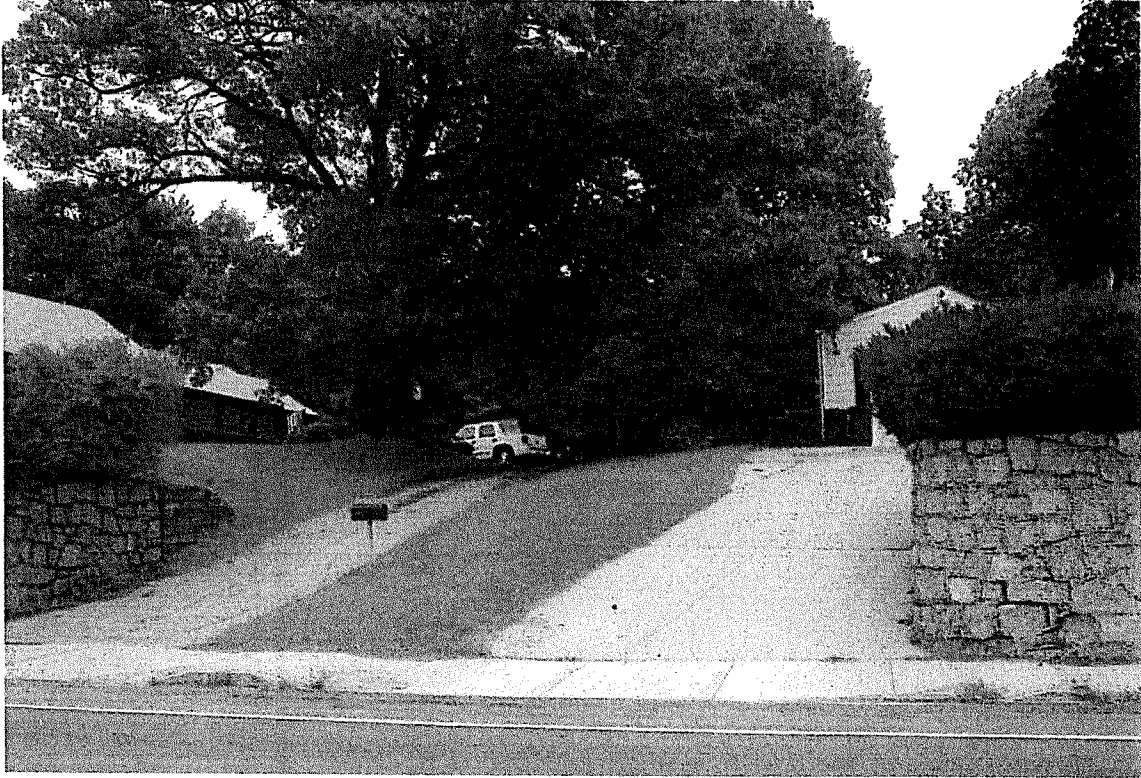
Received for record July 16, 1962 at 2:40 P.M.

W. Chester Rose  
CITY CLERK





8.8.14



|   |  |             |                  |                   |                 |
|---|--|-------------|------------------|-------------------|-----------------|
| <b>CURRENT OWNER</b>  |  | <b>TOPO</b> | <b>UTILITIES</b> | <b>STRT./ROAD</b> | <b>LOCATION</b> |
| BOUSQUET JEANE<br>608 MENDON ROAD<br>WOONSOCKET, RI 02895       |  | 1 Level     | 1 All Public     | 2 Semi-Improved   | 2 Suburban      |
| <b>SUPPLEMENTAL DATA</b>  |  |             |                  |                   |                 |
| Account #<br>STATE CD<br>OTHER<br>WARD<br>PREC.<br>CENSUS TRACT |  | 2541880     |                  |                   |                 |
| GIS ID: 0053A 0000 0013 0010                                    |  |             |                  |                   |                 |

|                                       |  |                    |                  |                       |            |                   |                       |
|---------------------------------------|--|--------------------|------------------|-----------------------|------------|-------------------|-----------------------|
| <b>RECORD OF OWNERSHIP</b>            |  | <b>BK-VOL/PAGE</b> | <b>SALE DATE</b> | <b>q/u</b>            | <b>w/</b>  | <b>SALE PRICE</b> | <b>V.C.</b>           |
| BOUSQUET JEANE                        |  | 1038/0121          | 06/27/1996       | 1                     |            | 103,000           |                       |
| <b>PREVIOUS ASSESSMENTS (HISTORY)</b> |  | <b>Yr.</b>         | <b>Code</b>      | <b>Assessed Value</b> | <b>Yr.</b> | <b>Code</b>       | <b>Assessed Value</b> |
|                                       |  | 2003               | 0100             | 40,300                | 2003       | 0100              | 40,300                |
|                                       |  | 2003               | 0100             | 117,000               | 2003       | 0100              | 117,000               |
| <b>Total</b>                          |  |                    |                  | 157,300               |            |                   | 157,300               |

|                   |  |               |             |                    |               |               |                   |
|-------------------|--|---------------|-------------|--------------------|---------------|---------------|-------------------|
| <b>EXEMPTIONS</b> |  | <b>Amount</b> | <b>Code</b> | <b>Description</b> | <b>Number</b> | <b>Amount</b> | <b>Comm. Htl.</b> |
| Year              |  |               |             |                    |               |               |                   |
| <b>Total:</b>     |  |               |             |                    |               | 157,300       | 157,300           |

|                          |  |               |                    |               |               |                   |
|--------------------------|--|---------------|--------------------|---------------|---------------|-------------------|
| <b>OTHER ASSESSMENTS</b> |  | <b>Amount</b> | <b>Description</b> | <b>Number</b> | <b>Amount</b> | <b>Comm. Htl.</b> |
| <b>Total:</b>            |  |               |                    |               |               | 109,800           |

**NOTES**

WHITE 1A  
RBM=F  
ECO=TRAFFIC  
FOR SALE 95

**APPRaised VALUE SUMMARY**

Appraised Bldg. Value (Card) 115,100  
 Appraised XF (B) Value (Bldg) 1,900  
 Appraised OB (L) Value (Bldg) 0  
 Appraised Land Value (Bldg) 40,300  
 Special Land Value

|                               |  |               |                   |                |                   |                 |             |           |            |                       |
|-------------------------------|--|---------------|-------------------|----------------|-------------------|-----------------|-------------|-----------|------------|-----------------------|
| <b>BUILDING PERMIT RECORD</b> |  | <b>Amount</b> | <b>Insp. Date</b> | <b>% Comp.</b> | <b>Date Comp.</b> | <b>Comments</b> | <b>Date</b> | <b>ID</b> | <b>Cd.</b> | <b>Purpose/Result</b> |
| Part. D                       |  |               |                   |                |                   |                 | 3/17/03     | SS        | 50         | vba                   |
|                               |  |               |                   |                |                   |                 | 2/29/00     | CW        | 50         | vba                   |
|                               |  |               |                   |                |                   |                 | 12/12/94    | HW        | 00         | Measur+Listed         |

|                                    |                    |              |                   |                 |             |                  |              |             |                                   |                        |                   |
|------------------------------------|--------------------|--------------|-------------------|-----------------|-------------|------------------|--------------|-------------|-----------------------------------|------------------------|-------------------|
| <b>LAND LINE VALUATION SECTION</b> |                    | <b>Units</b> | <b>Unit Price</b> | <b>I Factor</b> | <b>S.I.</b> | <b>C. Factor</b> | <b>Nbhd.</b> | <b>Adj.</b> | <b>Notes- Adj/Special Pricing</b> | <b>Adj. Unit Price</b> | <b>Land Value</b> |
| <b>Use Code</b>                    | <b>Description</b> | <b>Zone</b>  | <b>D Frontage</b> | <b>Depth</b>    |             |                  |              |             |                                   |                        |                   |
| 1 1010                             | SINGLE FAM         | R2           |                   |                 |             |                  |              | 1.00        |                                   | 3,96                   | 39,600            |
| 1 1010                             | SINGLE FAM         | R2           |                   |                 |             |                  |              | 1.00        |                                   | 5,500.00               | 700               |
| <b>Total Card Land Units</b>       |                    |              | 0.36 AC           |                 |             |                  |              |             |                                   |                        | 40,300            |
| <b>Parcel Total Land Area:</b>     |                    |              | 0.36 AC           |                 |             |                  |              |             |                                   |                        |                   |
| <b>Parcel Total Land Area:</b>     |                    |              | 0.36 AC           |                 |             |                  |              |             |                                   |                        |                   |
| <b>Total Land Value</b>            |                    |              |                   |                 |             |                  |              |             |                                   |                        | 40,300            |



**CURRENT OWNER**  
 PHILLIPS ROBERT P +  
 HELENE E  
 586 MENDON RD  
 WOONSOCKET, RI 02895-2435

**TOPO.** 1 Level  
**UTILITIES** 1 All Public  
**STRT./ROAD** 1 Paved  
**LOCATION** 2 Suburban

**SUPPLEMENTAL DATA**  
 Account # 16323000  
 STATE CD  
 OTHER  
 WARD  
 PREC.  
 CENSUS TRACT

**RES IND** 0100 40,300 40,300  
**RESIDENTL** 0100 134,500 134,500  
**RESIDENTL** 0100 5,900 5,900

5416  
 WOONSOCKET, RI

**RECORD OF OWNERSHIP**  
 PHILLIPS ROBERT P +

**GIS ID:** 0053A 0000 0016 0047

**BK-VOL/PAGE** / **SALE DATE** 01/01/1987 **w/ SALE PRICE** 0

**PREVIOUS ASSESSMENTS (HISTORY)**

| Yr.           | Code | Assessed Value | Yr.           | Code | Assessed Value |
|---------------|------|----------------|---------------|------|----------------|
| 2003          | 0100 | 40,300         | 2003          | 0100 | 40,300         |
| 2003          | 0100 | 134,500        | 2003          | 0100 | 134,500        |
| 2003          | 0100 | 5,900          | 2003          | 0100 | 5,900          |
| <b>Total:</b> |      | 180,700        | <b>Total:</b> |      | 180,700        |

**EXEMPTIONS**

| Year          | Type/Description | Amount | Code | Description | Number | Amount | Comm. Int. |
|---------------|------------------|--------|------|-------------|--------|--------|------------|
| <b>TOTAL:</b> |                  |        |      |             |        |        |            |

**OTHER ASSESSMENTS**

| Year          | Type/Description | Amount | Code | Description | Number | Amount | Comm. Int. |
|---------------|------------------|--------|------|-------------|--------|--------|------------|
| <b>TOTAL:</b> |                  |        |      |             |        |        |            |

**NOTES**

BROWN 1A  
 ECO-TRAFFIC

**APPRaised VALUE SUMMARY**

Appraised Bldg. Value (Card) 132,700  
 Appraised XF (B) Value (Bldg) 1,800  
 Appraised OB (L) Value (Bldg) 5,900  
 Appraised Land Value (Bldg) 40,300  
 Special Land Value

Total Appraised Card Value 180,700  
 Total Appraised Parcel Value 180,700  
 Valuation Method: Cost/Market Valuation

Net Total Appraised Parcel Value 180,700

**BUILDING PERMIT RECORD**

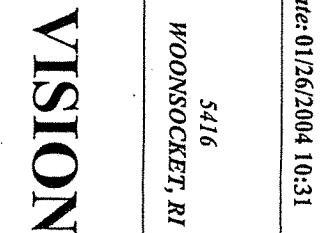
| Per.          | D | Issue Date | Type | Description | Amount | Insp. Date | % Comp. | Date Comp. | Comments |
|---------------|---|------------|------|-------------|--------|------------|---------|------------|----------|
| <b>TOTAL:</b> |   |            |      |             |        |            |         |            |          |

**VISIT/CHANGE HISTORY**

| Date     | ID | CA | CD | Purpose/Result           |
|----------|----|----|----|--------------------------|
| 3/17/03  | SS | 50 |    |                          |
| 4/12/96  | JR | 12 |    | LISTED, FINAL PASS       |
| 5/1/95   | AD | 11 |    | Contract List 3 attempts |
| 2/7/95   | HW | 03 |    | Meas+Card Left           |
| 12/12/94 | HW | 01 |    | Measur+1Visit            |

**LAND-LINE VALUATION SECTION**

| B#                             | Use Code | Description | Zone | D | Frontage | Depth | Units     | Unit Price | I Factor | S/L | C Factor | Nbid. | Adj. | Notes-Adj/Special Pricing | Adj. Unit Price | Land Value |
|--------------------------------|----------|-------------|------|---|----------|-------|-----------|------------|----------|-----|----------|-------|------|---------------------------|-----------------|------------|
| 1                              | 1010     | SINGLE FAM  | R2   |   |          |       | 10,000.00 | 3.60       | 1.10     | 5   | 1.00     | 1.00  | 1.00 |                           | 3.96            | 39,600     |
| 1                              | 1010     | SINGLE FAM  | R2   |   |          |       | 0.13 AC   | 5,000.00   | 1.10     | 5   | 1.00     | 1.00  | 1.00 |                           | 5,500.00        | 700        |
| <b>TOTAL CARD LAND UNITS</b>   |          |             |      |   |          |       |           |            |          |     |          |       |      |                           |                 |            |
| <b>0.36 AC</b>                 |          |             |      |   |          |       |           |            |          |     |          |       |      |                           |                 |            |
| <b>Parcel Total Land Area:</b> |          |             |      |   |          |       |           |            |          |     |          |       |      |                           |                 |            |
| <b>0.36 AC</b>                 |          |             |      |   |          |       |           |            |          |     |          |       |      |                           |                 |            |
| <b>TOTAL LAND VALUE</b>        |          |             |      |   |          |       |           |            |          |     |          |       |      |                           |                 |            |
| <b>40,300</b>                  |          |             |      |   |          |       |           |            |          |     |          |       |      |                           |                 |            |





**CITY OF WOONSOCKET  
LAW DEPARTMENT**

**MEMORANDUM**

**TO:** Keith A. Brynes, City Planner  
**FROM:** Joseph P. Carroll, City Solicitor *Joseph P. Carroll*  
**DATE:** September 11, 2002  
**SUBJECT:** Major Subdivision Plan for R & K Builders – Mendon Road

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I have reviewed your memorandum and the attached plan regarding the above-referenced matter. My understanding is that the construction of the roadway would place two existing houses, which currently meet Zoning Ordinance requirements, into non-conformance, as their side yard setbacks would become their front yard setbacks.

As you know, the Planning Board cannot approve a subdivision without Zoning Board approval of any necessary variances. It is my opinion that the owners of the properties that would become non-conforming would have to apply to the Zoning Board for variances for those properties. Absent that happening, or a change to the subdivision that would make Zoning Board approval unnecessary, the Planning Board cannot consider the request for the subdivision. I have, however, been advised that both of the lots front on Mendon Road, that one lot (on the right, when facing the subdivision) is only nine feet from the right-of-way, and that the other lot is fifteen feet from the right-of-way. Please check these facts.

JPC/abm

cc: Joel D. Mathews, Director of Planning and Development  
Owen Bebeau, Chairman, Planning Board

APPROVED  
11/12/02

PLANNING BOARD MEETING  
WOONSOCKET, RHODE ISLAND  
TUESDAY, OCTOBER 1, 2002  
7:00 P.M.

Members Present: Owen T. Bebeau, Chairman  
Daniel R. Peloquin  
John Monse  
Michael Del Rossi

Also Present: Michael S. Przybylowicz, Deputy Director  
Pauline Washington, Recording Secretary

Absent: David M. Soucy

1. Consideration of Master Plan Approval for major Subdivision Plan for R&K Builders—Map B7, Lots 53-1 & 53-32 Mendon Road

Mr. Bebeau read a memo (9/11/02) to the City Planner from Joseph Carroll, City Solicitor, which states that...“the construction of the roadway would place two existing houses, which currently meet zoning ordinance requirements, into non-conformance, as their side yard setbacks would become their front yard setbacks.” The memo further states, “...the Planning Board cannot approve a subdivision without Zoning Board approval of any necessary variances.” It is the Law Department’s opinion that the owners of the properties that would become non-conforming would have to apply to the Zoning Board for variances for those properties. Absent that happening, or a change to the subdivision that would make Zoning Board approval unnecessary, the Planning Board cannot consider the request for the subdivision.

Mr. Bebeau recommended TABLING the above-named application until such time that action is taken enabling the Planning Board to consider the application.

A MOTION was made by Mr. Monse and seconded by Mr. Peloquin to TABLE the application indefinitely.

|                 |               |              |
|-----------------|---------------|--------------|
| Roll Call Vote: | Mr. Peloquin  | Yes to Table |
|                 | Mr. Monse     | Yes to Table |
|                 | Mr. Del Rossi | Yes to Table |
|                 | Mr. Bebeau    | Yes to Table |

The MOTION carried and the above-named application was TABLED INDEFINITELY.

2. Consideration of Approval for Administrative Subdivision Plan for Arlean Burt—Map C5, Lots 39-37, 39-40 & 39-42 Cass Avenue

Mr. Brynes stated that at the September 3, 2002 Planning Board meeting the above-named application was TABLED due to concerns regarding drainage, grading, parking spaces and the retaining wall. As a result of those concerns the Board requested that the applicant provide a special site plan (scale: 1”-10’), which would address the above concerns. After review and approval from the appropriate departments, the Planning Board could issue an Administrative Approval with a stipulation that the previous combination administered by the Zoning Officer be rescinded prior to the applicant recording the Subdivision Plan.

**PLANNING BOARD MEETING  
WOONSOCKET, RHODE ISLAND  
TUESDAY, SEPTEMBER 2, 2003  
7:00 P.M.**

**Members Present:**

**Owen T. Bebeau, Chairman  
Michael A. Del Rossi  
John R. Monse, Jr.  
Daniel R. Peloquin  
David M. Soucy**

**Also Present:**

**Keith A. Brynes, City Planner  
Pauline Washington, Recording Secretary**

**1. Public Hearing for Minor Subdivision Plan Entitled "Vivian Street Multi-Family Concept" for Regional Development Corp.—Map G6, Lots 45-2, 45-5, 45-6 & 45-29, Vivian Street**

Mr. Bebeau opened the public hearing by stating that representatives of the applicant would make their presentation first, followed by questions and comments from the Board members. After the presentation is over everyone in attendance would have an opportunity to comment and ask questions. Mr. Bebeau requested that everyone give his or her name and address before speaking.

- Attorney Peter Ruggiero, Esq., Representative

Attorney Ruggiero stated that a few months ago a public hearing was held regarding the above name application and that this is a continuation of that meeting. He stated that during that public hearing a number of expert witnesses testified regarding the proposed plan and several questions were raised by the Planning Board and the general public. Attorney Ruggiero stated that since that meeting the design team has revised the plan. Originally the plan called for 27 dwelling units but has since been reduced to 20 units as a result of that input. The units will be rental as previously discussed.

Attorney Ruggiero stated that he would first review the proposed changes and then take questions from the Board and the general public.

- George Gifford, President, Gifford Design Group, Environmental Planners & Landscape Architects, Mendon Road, Cumberland, RI

Attorney Ruggiero stated that with him tonight are three expert witnesses as well as other members of the design team to answer questions. Attorney Ruggiero introduced George Gifford of Gifford Design Group to explain the proposed changes to the plan as a result of the last public hearing. Mr. Gifford stated that he is a licensed landscape architect with offices located at 1621 Mendon Road, Cumberland, RI. Mr. Gifford stated that the Planning Board may recall that the last proposal the design team presented was for 27 units with a total of seven buildings, the majority of them being four unit buildings and one building consisting of three units. The property is located at the edge of a gravel excavation with a change in topography from Lucille

Street in a downward fashion, towards the quarry. The existing topography of the subject property is formed in a terraced fashion (*a high plateau*) on the eastern side of the property that drops down eight to ten feet to a low plateau on the western side of the property.

Mr. Gifford stated that the proposal most recently submitted is a 20 unit multi-family project; the number of buildings has been reduced to 5 consisting of 4 units each; the main street would remain a public right-of way with improvements to City standards. There would be 8 units, (2 four-unit buildings) to the north of Vivian Street and twelve units (3 four unit buildings) to the south of Vivian Street.

Mr. Gifford stated that the new proposal allows them to maintain the same 65 ft. vegetated woodland buffer along the east side of the development as proposed in the old plan. It also provides for the area of undisturbed open space on the south side of the property. Mr. Gifford stated that there is one small area of note to the southwest corner where the gravel operation has encroached somewhat. The area of encroachment is the proposed site for placement of the storm water facility, which will be discussed in further detail by the civil engineer.

Mr. Gifford stated that the east side of the property will be buffered by evergreen vegetation, there will be evergreen plantings along Vivian Street to buffer Vivian Street from the most northerly multi-family structure; there will be evergreen plantings on the west side to buffer the ground excavation properties from the westerly buildings. As discussed at the last meeting the design team feels that this is an improved transitional use between the high-intensity use of the gravel excavation property and the low-intensity use of single-family homes.

Mr. Peloquin asked what is the actual size of the Lot. Mr. Gifford stated that the actual size of the Lot is 3.6 acres, a little more than 56,000 sq. ft.

Mr. Bebeau asked how many single-family homes could be built on the site. Mr. Gifford stated that Mr. Thalmann (Thalmann Engineering Co., Inc.) did a yield plan that indicated 12 Lots could be generated.

- Joseph D. Lombardo, AICP, Planning Consultant, JDL Enterprises

Attorney Ruggiero introduced Mr. Joseph D. Lombardo, AICP, JDL Enterprises. Mr. Lombardo stated that he is a land use planning consultant with offices located at Hope Valley, RI. His educational background includes a bachelor's degree in natural resources and a master's degree in planning from the University of RI. Mr. Lombardo stated that he has been involved with municipal planning for over 25 years, working with municipal planning departments and also as a planning consultant.

Mr. Lombardo stated that he was retained by the applicant to perform a fiscal impact assessment on this proposal, to compare the proposed development scheme to that of single-family homes for the site.

Fiscal Impact Study Conclusions: Mr. Lombardo presented a document entitled "*Fiscal Impact Study & Population and School Age Children Projection, Comparison: A 12 Lot Single*



*Family Home Development V.S Twenty Apartment Unit Development," City of Woonsocket, RI, prepared for: Regional Development Corporation, prepared by: JDL Enterprises. The document was accepted and marked Exhibit "A."*

Mr. Lombardo stated that he would briefly review the study in order that the Board and the public might understand the methodology. He stated that in essence a standard methodology was used whereby they look at the impact per person of the development, it can be used in any type of development in any place in the State. Mr. Lombardo stated that he would be looking specifically at the future revenues and expenses of the 20-unit development and compare that with a 12-Lot single-family home development. He stated that this comparison would give everyone an idea of the differences from a fiscal impact on the community.

Mr. Lombardo stated that the first thing they did was establish baseline information, which usually comes from two sources: the municipality itself and the US Census Bureau. Page two shows the enrollment in the public school system, the municipal budget, the school budget, the year 2000 census, the year 2000 population, and the year 2000 housing units. From that information they were able to calculate the per capita multipliers that are indicated at the bottom of page two. For example, the municipal budget per capita per person is \$959; the school budget per capita is \$8,455; the multiplier per household is 2.37; and the school age multiplier per household is .36 students per household, which is a city-wide average. Mr. Lombardo stated that these budget numbers are current fiscal year numbers from the City of Woonsocket's Finance Department.

Mr. Lombardo stated that one of the first things they did was to estimate the proposed population for the development, taking into account that there would be 20 units; 2.37 persons per unit would generate 47 persons living in the development. However, that would be a Citywide average and they would like to do a more precise calculation. Mr. Lombardo stated they are looking at two-bedroom apartments; two-bedroom apartments typically will generate far less school age children than the average home or a single-family home. Mr. Lombardo cited three housing developments as examples: Villa Del Rio in Warwick, Springfield in Cranston, and the Winsor at Brentwood. He stated that all these housing developments produced less than .10 pupils per unit. If we were to apply the .10 pupils per unit to the proposed 20 units we would have two school-aged children living in the development, which is less than .36 pupils. Mr. Lombardo stated that for the purposes of this Fiscal Impact Statement the two school age children would be projected to be residents of the proposed development.

Mr. Lombardo stated that page four of the FIS recalculates the population, which will not be 47 using the citywide average; the calculation would actually be 42 or 2.1 per capita. Located at the bottom of page 4 is the single-family home projection. He stated that typically three to four-bedroom single-family homes tend to generate far more than the city average of .36 pupils, its closer to 1 school age child per unit. Mr. Lombardo stated that when you add these numbers of 3 persons per unit you have a total of 36 persons occupying the 12 units.

Mr. Lombardo stated that the second half of the FIS is the expense estimates. He stated that they plug in the number of school age children times the number of dollars per student (\$8,455) per total expense of \$16,910. Similarly with the municipal budget with a capita of \$959

per capita, they generate expenses of \$40,278. Mr. Lombardo stated that the 20-unit apartment complex would generate an expense of \$57,188 to the City of Woonsocket.

Mr. Lombardo stated that next we would look at what happens in a 12 unit single-family home development applying the same methodology of using 12 school age children times the multiplier gives you a total expense of \$101,460. Utilizing the population at \$959 per person is a total expense of \$135,984 for both municipal and school expenses. Mr. Lombardo stated that the difference between the 20 unit apartment at \$57,188 vs. the 12 single-family homes at \$135,984.

Mr. Lombardo stated that to estimate the revenue we look at the valuation of the units as they are being constructed. He stated that the developer is estimating an apartment unit's value of \$200,000 each. Taking the current tax rate (\$23.30/1,000) times 20 units at \$4,660 per unit would generate approximately \$93,200 in revenue to the City of Woonsocket.

Mr. Lombardo stated that page 6 uses the same calculation for the 12 single-family homes. Estimating that those homes would be valued at \$300,000, however with the 45% reduction in the Homestead Act, a home would only be valued at \$165,000. Again, applying the same tax rate and number of units would generate \$46,134 in revenue to the City of Woonsocket. He stated that an apartment complex would generate \$93,200; 12 single-family homes would generate \$46,134.

Mr. Lombardo stated that page nine is projected revenue and expense comparison on an annual basis with the build out of the proposed 20 apartment units. He stated that the total cost to the City would be \$57,188; total revenue would be \$93,200, with the City of Woonsocket realizing a net tax revenue gain of \$36,012.

The final page, page ten, gives the same process for a single-family home with a cost to the City of Woonsocket of \$34,524, revenue of \$46,134, a negative of -\$89,850. Mr. Lombardo stated that the single-family development would create a loss of revenue for the City of Woonsocket.

In summary, Mr. Lombardo stated that the 20-unit apartment complex is estimated to have a positive tax revenue gain of approximately \$36,000 in the year 2003. This projected estimated is based on all the multipliers and assumptions included in the Fiscal Impact Study.

Mr. Monse asked Mr. Lombardo how did he come up with the projected numbers utilized in the FIS. Mr. Lombardo stated that having worked in municipal government for over 12 years, working at town halls and with tax assessors and he is very familiar with valuations and how they work. He stated that these calculations, which are a snap shot in time, are very close to what can be expected assuming that the values are correct. Mr. Lombardo stated that he could say with relative certainty that the numbers that he has quoted are a very close estimate to the amount of money that would be saved. Mr. Monse asked Mr. Lombardo if the methodology one that he has used over a period of years. Mr. Lombardo said yes.

Mr. Peloquin stated that the FIS is based on dollars and not on land use. The Lot is zoned R-2, Low Density Single-Family Residential District, and the developer is proposing an

apartment complex, the developer is justifying the development based on dollars not on land use. Mr. Peloquin stated that he recently drove through the neighborhood and clearly the makeup of the neighborhood is approximately 95% single-family homes. He stated that based on the make up the neighborhood its very clear that the FIS is based solely on dollars. Mr. Lombardo stated that the purpose of the FIS is strictly to give the City the dollars and cents of the two housing options, one that is available by right and one that is being requested.

Mr. Bebeau asked if the plan takes into consideration the elderly population and the fact that the homes could be sold to an elderly population without children? Mr. Lombardo stated that traditionally new single-family homes tend to generate the highest number of school age children. But 15 to 20 years later those same 12 homes might have half the number of school age children that it had during the first three to four years. He stated that another cycle could occur, it really depends on what the people want and need. But he stated that clearly the newly built 12 (3-4 bedrooms) single-family homes would attract families with the highest population in that time period. Mr. Lombardo stated that it is true that if you were to visit a single-family neighborhood that is about 20, 30, 40 years old you would have an entirely different picture.

- James N. Salem, Traffic Consultant, Barrington, RI

Attorney Ruggiero introduced James N. Salem the traffic consultant for the project. Mr. Salem distributed copies of his resume that was marked *Exhibit "B"* by the Board. Mr. Salem stated that he has a Master of Science Degree in Transportation Planning and Engineering; he was the Assistant Traffic Engineer for the City of Providence (now retired); he is currently the traffic consultant to the Town of Richmond, and he also provides consultations to its Planning Board.

Attorney Ruggiero asked Mr. Salem if he was retained by the applicant to perform a traffic impact analysis on the proposed project? Mr. Salem said yes. Attorney Ruggiero asked Mr. Salem to explain the tasks he undertook and his subsequent findings and conclusions. Mr. Salem stated that when he first undertook the traffic analysis it was predicated on 27 units but was subsequently reduced to 20 units. Mr. Salem stated that in analyzing the neighborhood he determined that Lucille Street is a two-way street with about 32 ft. of width with speeds of about 25 miles per hour with high intensity ramps located on Lucille Street. Mr. Salem stated that they conducted several traffic counts on Lucille Street at the intersection of Vivian Street during peak hours as well as during school time activities. He stated that they found these streets to have the traffic characteristics consistent with a residential neighborhood. Mr. Salem stated that these two streets would be servicing a neighborhood of about 400 vehicles per day. He stated that Lucille Street is about 32 ft. wide and has the same characteristics as Vivian Street. Again, he stated that they conducted traffic counts primarily during school time and during peak hours.

Mr. Salem stated that for the second part of the study they reference the ITE Trip Generation Manual to obtain an appropriate trip generation rate for the proposal's use. Mr. Salem stated that the ITE is the "Institute of Transportation Engineers" that conducts traffic studies throughout the country: industrial, commercial, residential, etc. From these studies the Institute is able to formulate trip generation rates.

Mr. Salem stated that under the initial application of 27 units the proposed use would have generated 190 trips per day; with the reduction in units the number of trips per day was reduced from 190 trips per day to 120 trips per day. What does that do to the impact on the existing traffic? Mr. Salem stated that in the next phase of the study he conducted a "*capacity analysis*" or "*impact analysis*." He stated that a capacity analysis measures the level of service or vehicular movement. He stated that an "A" level of service indicates a little delay; level "F" indicates congestion.

Mr. Salem stated that in reviewing the proposed parking plan for the use he found that the proposed parking plan meets the good engineering standards as set forth by the Federal Highway Administration. He stated that the stall depth as well as the stall width and the aisle width exceed the minimum standards set by the Federal Highway Administration.

Mr. Salem stated that it is his conclusion based on the traffic study that the proposed condominium use would not have an adverse affect on traffic.

Mr. Bebeau asked Mr. Salem if he had a copy of the traffic study for the Board's review. Mr. Salem said no, he does not have a copy of the traffic study, just the oral presentation.

Mr. Del Rossi asked what is the number of increased trips for Vivian Street and Lucille Street based on the proposed subdivision? Mr. Salem said under 27 units would generate 190 trips; with the reduction from 27 units to 20 units the number of trips was reduced by 50, down to 140 trips. Mr. Salem stated that the trips are down to 140 as a result of the revised proposal. Mr. Del Rossi asked what street the count was conducted on. Mr. Salem said the intersection of Lucille Street and Vivian Street.

Mr. Del Rossi asked if the capacity analysis for both Vivian Street and Lucille Street both "A"? Mr. Salem said yes. Mr. Salem stated that the 27-unit proposal and the 20-unit proposal would both provide an "A" level of service.

Mr. Del Rossi asked Mr. Salem if he did an analysis for single-family homes? Mr. Salem said no, but he could answer questions on the subject. Mr. Del Rossi asked if there would be an increased number of trips with the development of single-family homes? Mr. Salem said no, that twelve single-family homes would generate 120 trips per day as opposed to 140 trips with the development of 20 condo units. He stated that the level of service would also be "A"; that 20 units, 27 units or 12 single-family units would maintain an A level of service.

Mr. Del Rossi asked what is the highest or best level of service. Mr. Salem said the best is level "A" the worst level is "F," which is congestion. Mr. Salem stated that each level of service has a range: Level A is 1 to 500 vehicles in a one-hour period; Level B is 501 to 1,000 vehicles and so on until you reach the last level, Level F, which is congestion. Mr. Salem stated that with the current traffic pattern and the current traffic volume on these roadways and the superimposed projected traffic, we were able to maintain an "A" Level of service. He stated that even though they added to the current volume of traffic it was not enough to reduce the traffic to a "B" Level.

Mr. Del Rossi asked hypothetically the number to trips (during peak hours) needed to reduce the Level to B. Mr. Salem stated that peak hour trips would need to be increased by at least 150 vehicles per hour in order to lower the level of service to "B."

Mr. Ruggiero asked Mr. Salem to explain the peak hour travel based on the proposed use. Mr. Salem stated that during the morning peak hour the volume of traffic is not high because this is a residential neighborhood. He stated that during the morning peak hour he observed one left turn movement of five, another left turn movement of zero, three left turn movements of zero, and one left turn movement of zero. Mr. Del Rossi asked what time this traffic count occurred. Mr. Salem said between 7:00 A.M. and 8:00 A.M. Mr. Salem stated that this is not the traffic pattern for the entire day, only what he has calculated to be the morning peak hour. He stated that the P.M. or afternoon peak consisted of one left turn, two left turns, two approaches that had one left turn each, and two approaches with zero left turns. Mr. Salem stated that the afternoon peak is between 4:00 P.M. and 5:00 P.M. Mr. Salem stated that these are actual numbers; they were not extracted from a study or from State sources. He stated that an individual physically sat in his car and made these counts on October 4, 2002 and October 9, 2002.

Mr. Brynes asked if this traffic study was only for the intersection of Vivian Street and Lucille Street? Mr. Salem said yes.

Mr. Bebeau opened the hearing to questions and comments from the public. He requested that everyone please give his or her name and address before speaking.

- Joyce Fox, 363 Lucille Street (corner of Vivian Street)—Ms. Fox stated that during the last public hearing (June 3, 2003) there were various issues raised that she has not heard addressed tonight. She stated that one item of concern is a proposed detention pond; another is water and sewer concerns and safety issues. Ms. Fox stated that traffic going by the corner of Lucille Street turning left onto Vivian Street because most people reverse their direction and Larch Street, down Talcott Street and egress onto Mendon Road. She stated that if you were going onto Rte 99 during the A.M. this is the route you would take because you would be able to turn right with the traffic. She stated that when traffic does come up Talcott Street and approach the corner of Mendon Road it is sensitized by the State of RI and will trigger a green light to allow traffic to exit the neighborhood. Ms. Fox stated that this is one of the concessions that her neighborhood was granted when Rte 99 cut the neighborhood in half. Ms. Fox stated that the study of traffic existing Lucille Street turning left onto Vivian Street is totally irrelevant to the traffic problems this development would cause.

Ms. Fox also stated that the corner of Vivian and Lucille Streets is presently a school bus stop for an elementary school. She stated that Mr. Salem testified that the study was done at 8:00 A.M.; students are not picked up before 8:00 A.M.

Ms. Fox stated that her neighborhood would be paying a very high price in order for the City of Woonsocket to get a few tax dollars. She said that the number of tax dollars this project can generate should be irrelevant; she would hope that the City of Woonsocket is concerned enough about the residents and existing taxpayers and not sell them out for a few extra tax dollars.

Ms. Fox also stated that she is concerned about the ownership of the remainder of the undeveloped land. She stated that if Regional Development Corporation also owns this land they could build more homes.

Ms. Fox stated that Mr. Bebeau alluded to the fact that single-family homes could be built targeting older persons. She said that this proposal would be much more palatable; age restricted to persons age 55 plus. Ms. Fox stated that age restricted developments is a growing trend throughout Rhode Island and Massachusetts. She stated that an age-restricted development would not be a traffic burden or a tax burden on our school system. She stated that if the proposal were changed to an age restricted, single-family development the developer would not encounter as much resistance from the neighborhood property owners.

- Steven Girard, 339 Lucille Street—Mr. Girard stated that he is in agreement with Ms. Fox regarding issues raised during the June 3, 2003 public hearing that have not been addressed tonight. He asked what changes have been made to the project since that meeting. Mr. Girard stated that one item of concern was blasting; the developer was not sure if blasting would be required. Another issue concerned only one means of ingress and egress and parking for the tenants.

Mr. Girard stated that he and Ms. Fox would be most affected by the development because their property is located at the corner of Vivian and Lucille Streets.

Mr. Girard stated that he and the other property owners received only a one-week notice regarding tonight's meeting, which is not enough time.

Mr. Brynes stated that these notices are normally mailed at least 14 days before a public hearing, but due to the fact that the meeting could not be held at City Hall and the alternative meeting site, the Harris Public Library, was being used by the City Council, the Planning Board had to re-advertise the change in venue, the Woonsocket High School Library, which allowed for only a seven day notice. Mr. Brynes apologized for any inconvenience this may have caused.

- Steven St. Jean, 102 Vivian Street—Mr. St. Jean stated that the residents are also concerned about emergency vehicles accessing the area. He stated that if access to Vivian Street were blocked for whatever reason, there would be no second means of ingress. Mr. St. Jean stated that if this were a single-family development he would not be in opposition to it.

- Theodore Brodeur, 93 Vivian Street—Mr. Brodeur asked what is being proposed regarding the 10 ft. drop at the end of Vivian Street? Attorney Ruggiero stated that Curtis Ruotolo, E.I.T., Project Engineer, Thalmann Engineering, would answer Mr. Brodeur's question. Mr. Ruotolo (using the submitted plans) pointed out the area in question that represents the existing grades and the same area displaying the proposed grades. He stated that the original plan did show the area with an approximate 10 ft. drop but the proposed plan calls for the area to be filled to a depth of 3 ft.

- Richard Rainville, 154 Talcott Street—Mr. Rainville stated that there are only two means of ingress into this neighborhood and all of this traffic would pass by his house every day. Mr.

Rainville asked what is the turnover rate for rental units. He stated that the majority of the existing neighborhood residents grew up in this neighborhood, but rental units will consist of people moving in and out on a regular basis. He stated that single-family homes would produce a much lower turnover rate.

- Steven St. Jean, 102 Vivian Street—Mr. St. Jean stated that the proposed grade of the street could prevent rescue vehicles from accessing the neighborhood. Mr. Ruotolo stated that the proposed street grade would not be a problem for any vehicle.
- Kathy Murphy, Larch Street—Ms. Murphy asked if a traffic study could be done for Larch Street and Talcott Street before the project moves forward.
- Lori Dion, 123 Burrington Street—Ms. Dion requested that the Lot's zoning designation remain R-2.
- Michael Heroux, 147 Louise Street—Mr. Heroux stated that the City Administration should realize that you cannot put a price on children being able to play in the street, or the peace they all share from living in a quiet, secluded neighborhood where everyone knows their neighbors.
- Donald Harnois—Mr. Harnois stated that he has lived in Oak Grove for nearly 40 years. He stated that the Oak Grove residents do not want this housing development in their neighborhood.
- Gerald Durand, 136 Larch Street—Mr. Durand stated that the testimony tonight from the developer's representative regarding the financial impact and the traffic study are merely assumptions or theories not facts. Mr. Salem disagreed with Mr. Durand regarding the traffic study. Mr. Salem stated that the traffic study consists of actual counts and techniques used in the industry. He stated that actual counts were conducted, not a secondary source. Mr. Salem stated that the ITE trip generation manual was used to extract approximate trip generation rates for the course of the day as well as during peak hours. He stated that the capacity analysis is the Highway Capacity Analysis 2000, which is used by the Federal government and the State of Rhode Island. He stated that the methodology used in evaluating this residential use is a process that is accepted in the industry by the RI Department of Transportation and the Federal Highway Administration. Mr. Salem stated that the methodology is a standard of the industry; its not magical, its approximate, but there is enough information to give him an idea as to what type of impact any type of use would have in any particular area. Mr. Salem said, as stated during his earlier testimony that whether the development is residential, industrial or commercial, they all have different trip generation rates, they all have different traffic characteristics, depending on the use. Ms. Salem stated that the only thing that won't change is the width of the street, the numbers that were counted on that day and the capacity analysis results. He stated that the results of the capacity analysis would be the same for 12 units, 20 units, or 27 units.

Mr. Bebeau read a letter to the Planning Board dated September 2, 2003 from Joel D. Mathews, Planning Director, stating that it is the City Administration's understanding that this "proposal is for luxury/high-end housing units and specifically not for subsidized units. This

*communication is not intended to clearly support or request rejection of the proposal, but to strongly suggest to the Planning Board that if for any reason that you decided to approve this proposal or any modified version that the approval should restrict the use to nonsubsidized housing units that has been previously included as part of the testimony the developers."*

Mr. Bebeau asked if anyone else would like to speak. There were no further comments or questions. Mr. Bebeau gave Attorney Ruggiero an opportunity to respond to the questions and comments by the Oak Grove residents.

Attorney Ruggiero thanked the Board members and the residents for their questions and recommendations. He stated that he and the design team are aware that this is a very difficult and opinionated project before them tonight. He stated however that he is compelled to remind the Board that the applicant is asking for a Minor Subdivision approval with a street extension; the applicant is not asking for a zone change. Attorney Ruggiero stated that the design team has presented their proposal in a candid and frank manner, fully divulging what their intentions are. Attorney Ruggiero stated that he is asking the Planning Board to contemplate this proposal within the framework of the Board's decision standards enumerated in the City's Subdivision Regulations. Attorney Ruggiero stated that it is his opinion that the applicant and design team has presented much more than most applicants would at this level of development. He stated that the evidence presented by the design team tonight is sufficient for the Board to make a positive finding. However, Attorney Ruggiero stated that he is aware that the Board's decision will be tempered with the reality that the Oak Grove residents are not in favor of the proposed land use change. Attorney Ruggiero stated that this is not the time to make that decision that it should be made at another time and by another board. Attorney Ruggiero stated that he understand that the public maybe frustrated by this type of process and the Board members maybe equally frustrated, but he must ask the Board to remember why the applicant is here tonight and the relief the applicant is seeking.

A MOTION was made by Mr. Peloquin seconded by Mr. Del Rossi to close the public hearing. The MOTION carried and the public hearing closed.

Mr. Bebeau stated that the Board has heard testimony from representatives of the applicant and the Oak Grove residents; he asked Board members if they had any further questions or comments, there were none.

Mr. Brynes stated that he would like to know if blasting would be required and to what extent. Mr. Ruotolo stated that test pits were dug sometime near the end of June and soil evaluations were conducted in accordance with Class 4 Soil Evaluation Procedures by RI Department of Environmental Management Standards. He stated that these tests revealed no ledge to a depth of ten ft., and a ground water table greater than 7 ft. Mr. Ruotolo apologized for not have this documentation with him tonight.

Mr. Del Rossi asked if these studies were done in the area where the detention pond would be located. Mr. Ruotolo said yes, the tests were done throughout the area.



Mr. Del Ross again asked if ledge was found in any of the holes. Mr. Ruotolo said that he is aware that outcroppings of ledge does exist in the area but none was found in the test holes that were dug. Mr. Del Rossi asked Mr. Ruotolo if he has a copy of the Class 4 Soil Evaluation report. Mr. Ruotolo said no, he does not have a copy with him tonight. Mr. Del Rossi asked who did the soil evaluation. Mr. Ruotolo said Brian Gomes.

Mr. Bynes asked Mr. Ruotolo to elaborate on the drainage plan and the proposed detention pond. Mr. Ruotolo stated that basically it is a typical detention pond; all drainage from surfaces would be captured by a series of catch basins and routed to the detention pond. He stated that the detention pond would capture the water and give the water time to infiltrate into the ground. In summary, he stated that the water would leech into the ground.

Mr. Del Rossi asked the depth of the detention pond? Mr. Ruotolo stated that at this point they have not done a complete analysis of the detention pond but he would assume that it would be approximately 4 ft. deep.

Mr. Del Rossi stated that a detention pond would be needed even if single-family homes were built. He stated that the main concern is Vivian Street, which would be a public road, but he asked who would maintain everything south of Vivian Street, the detention pond and the access road? Attorney Ruggiero stated that maintaining this property would be the responsibility of the owner of the rental units, who is presently his client and has no intention of selling the property, but if he should sell the property, the new property owner would assume this responsibility. He stated that the owner could provide easements to the City.

Mr. Del Rossi stated that he feel that it would be a lot easier if the entire road were public. Regarding ingress and egress a cul de sac could be located to the south of the property. Maintaining the road wouldn't be an issue and in addition the detention ponds must be cleaned periodically. He stated that the City Administration prefer to have public roads developed. Attorney Ruggiero stated that his client is amenable to a public road if it is a condition of approval.

Mr. Brynes stated that private roads are prohibited according to the City's Subdivision Regulations in all areas of the City other than Planned Residential Neighborhood Developments.

Mr. Brynes asked Mr. Ruotolo to elaborate somewhat on the proposed sewer system. Mr. Ruotolo stated they have taken a preliminary look at the existing grade, the sewers would be connected via a utility easement; they would be connected to an existing sewer line down at the end of Larch Street, by gravity. The sewer line would travel westward down Vivian Street into the cul de sac then northward via gravity. Mr. Del Rossi asked Mr. Ruotolo if he had considered pumping upward. Mr. Ruotolo said no.

Mr. Brynes asked Attorney Ruggiero to elaborate on the proposed landscaping, the buffer plan in particular. Mr. Gifford stated that the design team is cognizant of the fact that there is a gravel operation located adjacent to the proposed development site. He stated that the design team felt that it would be prudent to provide in the overall master plan some evergreen plantings along the western property line. Mr. Gifford stated that it is impractical to plant 30 ft. trees on

day one as mentioned earlier by an Oak Grove resident. However, he stated that it is not inappropriate to plant trees such as cypress that can grow as fast as three ft. per year to provide an evergreen buffer within a very short time.

Mr. Peloquin asked if the owner had investigated a single-family development vs. the apartment complex development, and if yes, why did the owner pursue the apartment complex development? Attorney Ruggiero, speaking on behalf of the applicant, stated that the owner had considered developing single-family homes on the site but given the proximity of the gravel quarry they believe that from a marketing standpoint that the project would be unfairly prejudiced in the value of homes. He stated that an Oak Grove resident asked why would anyone rent an apartment located adjacent a gravel pit, but a more serious question is why would someone buy a home adjacent to a quarry. Attorney Ruggiero stated that gravel excavation can be carried out at anytime, and it would be very difficult to sell single-family homes near such a site. He stated that the idea of a multi-family development came as a transitional use between the quarry and the single-family home development. Attorney Ruggiero stated that the owners believe, from a marketing standpoint, that a multi-family development of the land makes sense.

Mr. Peloquin asked Attorney Ruggiero how long his client has owned this land. Attorney Ruggiero stated that he does not know but he could find out. Mr. Peloquin asked Attorney Ruggiero if the Board could assume that his client purchased the property fully aware of the location and existence of the gravel bank. Attorney Ruggiero said yes.

Earl Marchand, President of Regional Development Corp. (840 Smithfield Avenue, Lincoln, RI) introduced himself. Mr. Marchand stated that Regional Development Corp. purchased this property from James Forte who once owned the quarry and sold it in 1992 to Todesca Bros. Mr. Marchand stated that his company is not affiliated with the quarry operation in any way.

Mr. Del Rossi stated that the detention pond would be necessary regardless of which development is pursued because the drainage in that area is difficult. He stated that based on the soil evaluation by the engineer of record, it would appear that no ledge was found. However, Mr. Del Rossi stated that he would recommend that more testing for ledge be done. He stated that due to the proximity of the gravel pit he would assume that ledge outcroppings should exist and for that reason he is recommending that additional test holes be dug, especially in the vicinity of the drainage pond.

Mr. Del Rossi stated that water and sewer would also have to be provided regardless of which development is pursued. He stated that the water issue must be discussed with the City's Water Division to make sure that correct pressure exists. He stated that the sewer issue must also be resolved. Regarding the access route, he stated that there is only one way in and one way out, but with the proposed cul de sac located at the end its possible to locate an access route near the back. He stated that this is a concern of the City Administration.

Mr. Del Rossi stated that all these issues would be addressed whether a single-family development or a multi-family development is pursued. He stated that his main concern is the area located to the south of Vivian Street; who will maintain this area? Will it be a private road?

Mr. Del Rossi stated that the City would prefer that the entire road be public due to previous problems in maintaining private roadways, and for this reason he is recommending that the entire length of Vivian Street be a public right of way.

Mr. Bebeau stated that the proposal before the Board is more than just the consideration of a street extension. He stated that he had stated during the last public hearing that the proposed development fits in with the neighborhood in regards to they type of housing that is being proposed. Mr. Bebeau stated that since the initial public hearing the developers have come back with a somewhat scaled down version of the same development. Mr. Bebeau stated that he appreciates all the expert testimony from the development team but he still feel that the project does not fit this area, this neighborhood. Mr. Bebeau stated that he reviewed the City's Subdivision and Land Development Regulations, specifically the Declaration of Purpose, which speaks of "Encouraging local design and improvements standards to reflect the intent of the City's Comprehensive Plan with regard to the physical character of the various neighborhoods and districts of the City." Mr. Bebeau stated that the plan before the Board does not do this, whether it is 27 units or 20 units. Mr. Bebeau stated that he is also dissatisfied with the traffic issue, which can be horrendous in that area. He stated that he can understand the marketing issue of multi-family apartments vs. single-family homes but the Board must look at the project from a design and planning perspective. Mr. Bebeau stated that it is his opinion that the proposed development of multi-family apartments does not belong in this neighborhood and he cannot support the plan as it is presented tonight.

A MOTION was made by Mr. Monse and seconded by Mr. Peloquin to DENY the application. The reasons for denial include the plan's failure to conform with the Declaration of Purpose under the General Provisions in the City's Subdivision of Land Development Regulations that address the following purposes: "*Promoting design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure.*" (Section 1.2.4) and "*Encouraging local design and improvement standards to reflect the intent of the City's Comprehensive Plan with regard to the physical character of the various neighborhoods and districts of the City*" (Section 1.2.5).

|                 |               |         |
|-----------------|---------------|---------|
| Roll Call Vote: | Mr. Soucy     | To Deny |
|                 | Mr. Del Rossi | To Deny |
|                 | Mr. Peloquin  | To Deny |
|                 | Mr. Monse     | To Deny |
|                 | Mr. Bebeau    | To Deny |

The application was DENIED.

A brief recess was taken at this time.

2. **Public Informational Meeting for Major Subdivision of Land Entitled "Trinity Village" for Trinity Village, LLC—Map G5, Lots 33-1, 33-2 & 31-7, Wanda and Thibeault Avenues**

Mr. Bebeau stated that the above plan has been revised; the City Planner received the revised plans today. Mr. Bebeau stated that he would read a portion of a letter dated September 2, 2003, addressed to the Planning Board from Joel D. Mathews, Director of Planning and Development. *"The City Administration approximately two years ago negotiated the number of acceptable single-family units to 39 based upon the wetlands delineation shown to us at the time and the usable acreage that remained. Based upon the recent RIDEM wetlands approval, it would appear that there should be a corresponding reduction in the number of units to approximately 32-33. In addition to this issue, the construction of additional driveways to service the individual single-family units will increase and produce additional storm water runoff. Both the City Administration and the City's Public Works Department will need time to review the amended plan and have the ability offer corrective comments prior to a vote by the Planning Board."*

Mr. Bebeau stated that as per Mr. Mathews' letter, the Board would delay voting on this subdivision in order to give the City Administration and the Public Works Department time to review and comment on the revised plan.

- Kevin Morin, P.E., DiPrete Engineering Associates, Inc., Two Stafford Court, Cranston, RI, represented the applicant.

Mr. Morin stated that DiPrete Engineering Associates has been involved with this project since 2002; the last time the applicant was before the Board was for a Pre-application hearing during the spring of 2003. Since then they have proceeded with various items in order to reach the Master Plan phase. One item that received attention was detailed topography of the site; another was a wetlands edge verification, which they received one month ago and submitted to the City, and a traffic study was performed. Mr. Morin stated that the plans have been revised since the Pre-application hearing, the Master Plan drawings were submitted to the City Planner with the layout that reflected both detached single-family and attached single-family duplex units. Mr. Morin stated that he understands that there is an issue with the attached units as indicated in Mr. Mathews' letter. Mr. Morin stated that the design team is submitting a revised plan that the City Administration and Public Works Department has not had time to review. He stated that the revised plan reflect single-family units only with a similar road layout in terms of the entrance from Wanda Avenue and Thibeault Avenue. Mr. Morin stated that the right-of-way extension utilizing existing right-of-ways from those roads that would access the site and merge at this intersection located at the southern end and continue as a loop for the remainder of the development.

Mr. Morin stated that the eastern portion of the site has not changed since the submittal of the Master Plan; detached single-family units were always shown in that area. He stated that the western portion of the site has been revised with a slightly different road layout that looks similar to the Preapplication plans that were reviewed earlier.

Mr. Morin stated that the plan calls for a total of 36 lots based on the wetlands edge verification and based on the provision of three drainage areas, one north of Lot 26, one east of Lots 19 and 20 essentially within the drainage easement, and one between Lots 17 & 18 in the northeastern portion of the loop road.

Mr. Morin stated that they have not had time to revise the drainage narrative to reflect these changes; they have run the analysis and have established that the ponds would average about 3½ ft. in depth. He stated that they would submit this revised narrative to the Public Works Department for its review.

Mr. Morin stated that he has elaborated on the major changes to the plans. He stated that a perimeter buffer would remain to the south on adjacent land that is owned by the City. There have been no changes to the proposed property line to the west or to the north that would establish 19+ acres that would be deeded to the City. He stated that the area to the east would remain relatively unchanged with the exception of the eastern portion of the drainage pond near the adjacent property on Thibeault Avenue. (*Mr. Morin distributed reduced size copies of plans detailing that area.*) Mr. Morin stated that the plan calls for 36 detached single-family units with garages. Mr. Morin stated that due to a rush to present the plans during tonight's meeting the plans do not reflect driveways.

Mr. Morin stated that the plan that he just distributed basically details the eastern portion of the detention pond near Lot 26. Depicted is a 25 ft. vegetated buffer for the benefit of the adjacent property so that the pond embankment and slopes aren't directly abutting the adjacent property. He stated that details of the vegetated buffer would appear in the landscaping plans. Mr. Morin stated that as the project moves forward they plan to produce detailed designs of the topography of this area to ensure that when the final detention pond design is produced that discharge from the pond would not impact any of the adjacent properties.

Mr. Peloquin asked why the detention pond is not located on Lot 26, away from the abutters vs. locating the detention pond on the property line. Mr. Morin stated that the main reason for the location of the pond is topography; it's located in the lower area of the site allowing for control of drainage from the roadway. He stated that if the pond were relocated to Lot 26 most likely a portion of the proposed roadway extension would not discharge into the detention pond. The drainage would continue to the east towards Thibeault Avenue and the existing roads. However, he stated that the flow would be minor.

Mr. Bebeau asked if he is correct in assuming that the roadway would be a public right of way? Mr. Morin said yes, this issue was discussed during the Preapplication meeting. The proposed road would meet City standards for a public roadway: 45 ft. right-of-way, 32 ft. pavement with 6" granite curbing to both sides.

Mr. Soucy asked what house style is being proposed? Mr. Morin stated that the developer, HL George Development could answer that question.

Hebert George stated that houses proposed for this development includes small to mid-size ranch homes, farmhouses, and garrisons with garages. Mr. George stated that about seven

people have expressed an interest in purchasing one of these homes. He stated that he has not advertised the development yet, that interest has spread via word of mouth. He stated that four people interested in purchasing a home are in attendance tonight.

Mr. Bebeau asked for a ballpark price of these homes. Mr. George said \$175,000 for a house without land up to \$300,000.

Mr. Monse asked what is the approximate minimum square feet of a living area? Mr. George said about 1,500 to 2,800 sq. ft.

Mr. Del Rossi stated that whereas the detention pond has been reviewed and discussed with the City Administration, he would like the public to know that both the City and DEM would review the drainage plans; DEM must first approve the drainage plans.

Mr. George stated that the development is staying 50 ft. from the wetlands and 100 ft. from the nearest stream in the area; the development would not encroach on the wetlands.

Mr. Brynes asked if permits for the detention ponds are the only permits that would be required from DEM. Mr. George said yes. Mr. Del Rossi asked if they would be submitting a preliminary determination? Mr. Morin said yes, when they have detailed drainage plans with a preliminary determination application, which would verify that the limits of work resulted in no or negligible impact on wetlands; and the storm water management design addresses water quality requirements that the State has as well as managing storm water runoff. This is to ensure that the wetlands are not flooded. He stated that he expects DEM will ultimately issue an "Insignificant Alteration" permit.

Mr. Del Rossi asked Mr. Morin to briefly explain the reason for the detention pond and the reason for the zero impact so that the public will understand the process. Mr. Morin stated that detention ponds are required under current DEM regulations as well as federal regulations. One reason is to improve storm water quality by containing a certain amount of the water runoff from roads, it allows for sediment to remove and allows for any associate contaminants (it removes 80% of solids, as well as improves the quality of the runoff by removing nitrogen and phosphorus). He stated that the second reason and most important from most people's perspective is that the pond acts as a temporary holding area during a rainstorm; it contains the huge initial peak of runoff. The detention pond is to provide a location, a volume for that initial peak of storm water run off to be held and metered out more slowly than it would naturally flow. Mr. Morin stated that a detention pond is basically a reservoir that allows you to meter out how much water comes out of the pond vs. how much water goes in. He stated that detention ponds are heavily reviewed by DEM for performance capability.

Mr. Peloquin asked Mr. Morin to elaborate on the maintenance of the detention pond. Mr. Morin stated that there are a few different types of detention ponds: an infiltration pond that holds water for up to 72 hours, which is a significant amount of time; the extended detention pond that is designed to hold water up to 36 hours. Mr. Morin stated that they are proposing the extended detention pond for this project. He stated that the pond would fill up then slowly drain out; the pond would not hold a permanent volume of water that would attract mosquitoes, etc.

Mr. Bebeau asked who would maintain the detention ponds—this is an important question. Mr. Morin stated that initially during the Pre-application process the developer was proposing a private road with a reduced right-of-way width with private sewers, utilities, roadway and drainage, but since that time the directives they have been receiving from the City Administration is that the improvements, the roadway and drainage would be City-owned.

Mr. Bebeau stated that the City would maintain the detention ponds. He stated that the original proposal called for a private road, but the Planning Board and the City Administration felt strongly that the road should be public for the benefit of the residents living in this neighborhood.

Mr. Morin stated that the wetlands proposal and future preliminary plans to the City would spell out the maintenance requirements for the detention pond. He stated that typically the pond would require mowing of the grass annually or semi-annually, and an occasional cleaning of the trash racks.

Mr. Brynes asked Mr. Morin to explain the land swap with the City and how the land swap is affecting the project.

Mr. Morin stated that the project is proposed as a planned residential development under the City's Planned Residential Development Overlay District regulations. He stated that there has been no land swap with the City to date, but the proposal was reviewed by the City Council several years ago. Mr. Morin stated that the City owns a parcel of land to the south of the proposed development (see sheet no 3 of the plans). He stated that there are also two other properties involved: one located to the northeast and the other located to the northwest. Mr. Morin stated that various plans were created several years ago by other consultants that essentially showed different development schemes. He stated that the City would use the land that it received in the swap as open space.

Mr. Bebeau stated that the Planning Board received a letter dated September 2, 2003 from Joel Mathews, Planning Director, regarding the land swap. Mr. Bebeau read the following paragraph from Mr. Mathews' letter addressing the land swap. "*Part of the land for this proposed subdivision is 3.9 acres deeded by the City which is currently part of the Booth Pond Conservation Area. Ordinance 01-0-93 was submitted and approved by the City Council that authorizes this land swap; and, as a result, the applicants were able to proceed with the development and submission of the subdivision plan currently under your review.*" Mr. Bebeau stated that the developer has entered into an agreement with the City whereby the land swap will be used to develop single-family homes on individual lots.

Mr. Brynes stated that the City Administration and City Council have agreed to grant 3.9 acres of the Booth Pond Conservation Area to the developer in exchange the developer would grant a much larger acreage back to the Booth Pond Conservation Area. He stated that as a result of the land swap the conservation area would grow in size. Mr. Brynes stated that the City Council would approve the land swap if this development were to be approved by the Planning Board and eventually the City Council. He stated that the land swap has been theoretically

approved if the development is subsequently approved although it has not happened yet. Mr. Brynes stated that the City still owns a large section of land in the vicinity of the proposed development site.

Mr. Brynes stated the hearing tonight is the first of three hearings before the Planning Board that are required in order for the proposed subdivision to move forward. He stated that a joint meeting with the City Council and the Planning Board, which is a public hearing, would also be held.

Mr. Brynes stated that the applicant is applying for the subdivision under the Planned Residential Development Overlay District as described in the City's Zoning Ordinance. Mr. Brynes stated that the regulations allows the development of land that are equal or greater than ten (10) acres in size and which are located within the R-1 and/or R-2 districts. He stated that the developer is given flexibility in regards to lot sizes and setback requirements as long as the overall density is maintained.

- Paul Bannon, Beta Group, 6 Blackstone Valley Place, Lincoln, RI.

Mr. Bannon stated that his company was retained to do conduct an impact study on the proposed residential development. Mr. Bannon stated that in order to determine the potential impacts of the development certain tasks had to be completed. They conducted a review of the site plans that were prepared by DiPrete Engineering Associates for access to the local street system that leads to Manville Road, the primary access road to the neighborhood; they conducted numerous site visits at various times of the day and various days of the week to observe traffic operations. Mr. Bannon stated that they did an inventory of the project area including land use, existing roadway conditions including horizontal and vertical geometry; site distances of main intersections including Manville Road. They conducted a traffic counting program, 24-hour, five-day count on Manville Road; they conducted peak hour turning move counts at two intersections (Gadoury Boulevard and Manville Road, and Gadoury Boulevard and Lydia Avenue); they obtained traffic accident information for the area roadways from the Woonsocket Police Department; they developed trip estimates based upon the development of the proposed project to include 39 duplex units and 9 residential units, which has since been changed.

Mr. Bannon stated that they analyzed existing conditions at the two main study intersections and then superimposed the projected volumes at those two locations to determine what impact additional traffic would have on those two roadways. He stated that Manville Road services approximately 7,300 vehicles per day; the A.M. peak occurs between 7:00 and 8:00 A.M. and the P.M. peak occurs between 4:30 and 5:30. He stated that the peak hour services approximately 600 to 665 vehicles. The local neighborhood streets: Lydia Avenue, Wanda Avenue and Gadoury Boulevard are low-volume residential streets into this neighborhood. Stopping sight distances were reviewed from main access points to ensure the minimum design criteria for safe stopping sight distances. The main intersection of Gadoury Boulevard and Manville Road sight distance is in excess of 450 ft.; 250 ft. is required for the posted speed limit.

Mr. Bannon stated that according to the Woonsocket Police Department records only two minor traffic accidents have occurred within this area during the past three year period.



Mr. Bannon stated that on completing a review of existing conditions, future traffic volumes were estimated. He stated that this report was prepared several months ago under the assumption that 30 duplex units and 9 single-family homes would be developed; previous to that there was a proposal for 39 single-family residential units. Mr. Bannon stated that the study as it stands now during the daily peak hour show 35 total trips to and from the site; P.M. peak hour show 23 vehicles entering and 12 vehicles existing; the total daily volume would be 320 vehicles. He stated that the difference in the proposal before the Board, the development of 36 single-family homes, the daily total would increase to 360 trips per day; approximately 40 people over the course of the day. He stated that during the peak hour that difference would be negligible, 1 or 2 vehicles. Mr. Bannon stated that when you look at the capacity analysis and when you analyze impacts the focus is on peak hour; the difference in peak hour volume is negligible.

Mr. Bannon stated that the results of the analysis relative to how the proposed traffic would affect the study intersections is essentially the same, there would be negligible increase in delays. Mr. Bannon stated that the Beta Group used the Highway Capacity Manual Techniques to conduct the level of services analysis that was done at the intersections of Gadoury Boulevard and Manville Road and Lydia Avenue and Gadoury Boulevard, the two major intersections. He stated that the study concluded that there was no major increase in delays.

Mr. Bannon stated that the conclusions of the report found that the proposed residential development as it was prepared in his report and as it stands before the Board tonight show a negligible effect on traffic operations in the neighborhood.

- Gary Letourneau, 327 Thibeault Avenue—Mr. Letourneau questioned the accuracy of the traffic study. He stated that he is very disturbed about the land swap between the applicant and the City of Woonsocket. He stated that if the City has already agreed to swap land with the applicant as long as the applicant builds single-family homes this is a done deal. Mr. Letourneau stated that his property directly abuts the proposed development; there are six houses located in the immediate area and these six families have lived in this neighborhood between 35 and 43 years. If you include Wade Avenue and Thibeault Street approximately 9 out of 15 families have lived in this neighborhood over 35 years. They live here because there is no traffic and no crime, and people take pride in their property.

Mr. Letourneau stated that in the Late 50s and 60s Gadoury Plat was built and at that time the Lower Bernon was developing at a fast rate, which is why this area was rezoned with very low density. At that time the residents of this area informed the City that if the development of this area did not slow down they want their own Fire Station. Since that time Hawthorne Circle, Blue Stone Drive, upper Lydia Avenue, Manville Road, Marian Lane, Miles Avenue, etc. has been developed. He stated that if this proposal moves forward and 36 additional homes are built this neighborhood would want its own Fire Station.

Mr. Letourneau stated that he has a petition that has been signed by 40 residents of Thibeault Avenue, Wade Road, Flora Avenue and Marian Lane, all strongly opposed to the proposed road connecting the Trinity Village Development and Thibeault Avenue. He requested

that the petition be accepted and made an official part of the minutes. Mr. Bebeau accepted the petition.

Mr. Letourneau stated that the residents are worried that Wanda Road would be all hills and no one will want to use this road during the winter months, which will result in all this extra vehicular traffic using Thibeault Avenue. He stated that he and the other residents do not see a need for a second means of egress; the adjacent Lydia Avenue, Hawthorne Circle and Blue Stone Drive only have one means of egress as does other neighborhoods in the City. He stated that he and his neighbors strongly oppose this road.

Mr. Letourneau stated that the proposed road makes no sense whatsoever; in addition he stated that his neighbor has lived in her home for 43 years and now she will be bothered by a road located within fifteen ft. of her backdoor!

Mr. Letourneau also stated that since he and his two neighbors' properties were built they have all had water problems. He stated that the land is slightly pitched, but the real problem is that from their back property line to approximately 100 ft. into the woods their properties are pitched. Mr. Letourneau stated that according to the plans of the proposed development only a 50 ft. buffer zone is proposed. He stated that a 50 ft. buffer zone is totally unacceptable; his land would be under water. As it stands now his neighbor, Mr. & Mrs. Ray Pepin (353 Thibeault Avenue) have spent extensive amounts of time and money this summer in trying to finally get a backyard that will actually stay in place. He stated that all their previous efforts resulted in the land being washed away. He stated that during the winter and spring months he cannot use his backyard for weeks at a time due to a water problem. Mr. Letourneau stated that another neighbor Mr. & Mrs. Detonnancourt (313 Thibeault Avenue) must use a pump to keep water out of their cellar during the winter and spring months.

Mr. Letourneau stated that he and his neighbors, the Pepins and the Detonnancourts are asking for two things: (1) that the buffer zone is moved back 100 ft., which will take it to the top of the hill; and (2) they would like to know if there are any plans to handle the current drainage problems? Mr. Letourneau stated that he and his neighbors have lived on the side of Mr. Grenier's land for 43 years, they have never misused his property, they respected his land, but they believe that 80% of their water problems come from Mr. Grenier's land. Mr. Letourneau stated that he and his neighbors understand that Mr. Grenier has a right to develop his property but not at the expense of the abutting property owners.

Mr. Letourneau stated that he is inviting members of the Planning Board, the City Administration and the Developers to visit their homes so that they can see first hand what the problem is.

Finally, Mr. Letourneau stated that he has not heard any mention of blasting, but everyone knows that the Bernon Area of the City is loaded with ledge. He stated that several years ago about eight to nine new homes were built on Miles Avenue. These homes were built on slabs without cellars because there was so much ledge, blasting would have cost a fortune. Mr. Letourneau stated that the City was not happy with the project but did not have the ability to stop it, and therefore the project was developed.

Mr. Letourneau stated that if blasting is allowed he and his neighbors are requesting that the developer post a bond to protect their properties from damage caused by blasting; it would be a miracle if not blasting is required. Mr. Letourneau stated that if this project moves forward he and his neighbors are requesting that restrictions be placed on work hours. He stated that these are just some of the issues that must be addressed.

- Frederick Nesta, 55 Marian Lane—Mr. Nesta raised concerns regarding drainage in the Thibeault Avenue area. Mr. Morin stated that presently there is no drainage infrastructure located in this area, the nearest drainage infrastructure is located near Flora Avenue. He stated that the developer is working with the City Administration to resolve any drainage problems. He stated that a question was raised about off-site drainage impacting some of the existing homes; this also would be looked into as the project develops.

Mr. Bebeau stated that a drainage runoff review would be undertaken by the City's Public Works Department when and if the project moves forward.

Mr. Nesta asked what type of drainage protection the developer to protect their properties from water runoff once the development is underway would provide? Mr. Morin stated that they would provide hay bales and silt fences in areas where water runoff drains onto other properties.

Mr. Nesta stated that another concern is the proposed buffer zone, the location of the buffer zone and what type of vegetation is being proposed. Mr. Morin stated that the buffer zone requirements are spelled out in the City's Planned Development Regulations, it requires a 50 ft. buffer zone for this particular project. The area is intended to be a buffer between the adjacent properties with no activity taking place within the buffer area. He stated that its possible that additional vegetation would be required within this area, but the vegetation material is usually some species of evergreen.

- Lucille Pepin, 353 Thibeault Avenue—Mrs. Pepin asked who would own the buffer zone one the project has been developed? Mr. Morin stated that ownership of the buffer zone would likely be associated with the lots, be it a conservation easement set up and established with markers that would delineate the property line. He stated that the buffer zone is proposed as part of the future lot owners. The buffer zone would be part of the new lot owners land with a conservation easement that would restrict any type of development. He said that for the most part this area would remain, as is now, a wooded area, unless some types of drainage improvements are required.

Mr. Letourneau requested that someone from the City Administration please come out to look at their properties to verify that they have water drainage problems. Mr. Bebeau stated that the City Engineer would visit the properties that Mr. Letourneau feels has water drainage problems.

Mr. Letourneau again requested that the buffer zone be moved back 50 ft. Mr. Bebeau stated that the City Zoning Regulations allows for a 100 ft. buffer in this particular zone. Mr. Letourneau stated that he is familiar with the City regulations but he and his neighbors are asking

Mr. Grenier to please move the buffer zone at least 50 ft. back. Mr. Grenier stated that he would take Mr. Letourneau's request regarding the buffer zone under consideration.

- Jacqueline Croteau, 387 Thibeault Avenue—Mrs. Croteau stated that she has put a deposit on one of the proposed lots; however, she stated that she also owns a home at the corner of Thibeault and Wanda Avenue. Mrs. Croteau stated that there is not doubt that the development would bring additional traffic into the neighborhood. She stated that she has concerns regarding Wanda Avenue due to its steepness and feel that extensive excavation would be needed to bring it to an acceptable grade. Mrs. Croteau said that sewers could also pose a problem on some lots due to the topography of the land. She also stated that her preference would be single-family homes; City schools are already overcrowded and an additional 40 families will definitely have an impact on the Bernon School district.

- Christine Riel, 56 Flora Avenue—Ms. Riel stated that in 1992 her family moved to Gadoury Boulevard and the year 2000 they purchased a home on Flora Avenue and therefore the proposed development will not directly affect her family due to the location of their home, however, she would like to know why the developer changed the development proposal from a "retirement living" concept with the road through Gadoury Boulevard; if the reason is paying more money in terms of taxes to the City of Woonsocket she would hope that the City Administration would take into consideration the wishes of the taxpayers who have lived in this neighborhood and paid taxes for well over 35 years.

Mr. Bebeau requested that someone from the development team answer Ms. Riel's questions.

Mr. John Robinson (*Registered Architect & Registered Design Engineer, Robinson Design, Inc.*), stated that he was involved in the early planning process of this project and he has continued to be involved with the project through the Master Plan Phase of the development. Mr. Robinson stated that initially the developers had envisioned the idea of accessing Gadoury Boulevard but as they moved further into the project and more data was developed with respect to right-of-ways in particular; they found that they had two different approaches to the buildings. The Planning Board had initially favored the idea of single-family residential homes as opposed to senior housing, attached senior housing and assisted living facilities; that is why the development was altered to what is presently zoned, single-family housing.

Mr. Robinson stated that as they gathered additional information regarding the wetlands they now viewed the development as single-family homes. One possibility was to develop the entire 40 acres, building in four to five different areas and crossing wetlands. After meeting with the City Administration, and environmental consultants they opted to do what is considered the most environmentally sound development; and that is what led to the land swap with the City of Woonsocket.

Mr. Robinson stated that the proposed development is a layout where instead of going through various wetland areas, which they have a right to do, they are swapping nine acres of buildable land for four acres of buildable land; and in addition to that the owners is providing the additional wetlands. Mr. Robinson stated that before the land swap could be considered by the

City Administration and the City Council it had to be reviewed by the State DEM and the federal government to determine if the proposal is a sound environmental approach to developing this project.

Ms. Riel stated that the proposed development would disrupt a neighborhood that has been established for over 40 years for what Mr. Robinson is calling an environmentally sound development. She stated that Mr. Robinson has stated that the owner has a right to build in the wetlands; she suggested that the homes are built closer to the wetlands as opposed to interrupting this quiet, peaceful neighborhood. Mr. Robinson clarified his statement regarding the owner's right to build in the wetlands by stating that any building in the vicinity of wetlands would require RI DEM's review. He stated that they had to base their decisions on wetland consultants that work with DEM in terms of what their recommendations were.

Mr. Bebeau stated that the Board could require the applicant to submit an application for Gadoury Boulevard to go through the DEM process.

Mr. Letourneau stated that the key point that he and his neighbors would like to make tonight is that they do not want Thibeault Avenue attached to Trinity Village. He stated that he and his neighbors all feel that it does not make any sense to connect Thibeault Avenue.

Mr. Robinson stated that as a designer he must be responsive in changes in design criteria, e.g., requirements from the City, input from the neighbors, and DEM's criteria in developing the land in a suitable manner. With respect to the two points of access, sometimes the criteria change: initially the project was developed as "assisted living" and the mindset could have changed due to different City Officials, etc. Someone could have recommended two points of access for rescue vehicles, this could have been the initial reason for the two points of access. Mr. Robinson stated that the two points of access could be reconsidered as a result of updated input. He stated that if the Traffic Engineer for this development can say that perhaps one means of access is more than reasonable they would definitely discuss the idea with the City.

Mr. Brynes stated that the Planning Department had requested comments from various City Departments regarding impact on City Services. He stated that he received a response from the Education Department stating that it supports the effort to expand the City's tax base but cautions against additional classroom space and operating costs.

Mr. Bebeau stated that he expects to receive a response from the Fire Department for a project of this size.

Mr. Brynes stated that abutters would be notified of the next two public hearings but for regular consideration of developments public hearings are not required. Mr. Brynes stated that the Planning Board meet the first Tuesday of every month, this is the first public hearing and that is why you were notified. He recommended that residents contact the Planning Department to inquire about a meeting.

Mr. Brynes stated that he is not sure when the next meeting will be scheduled with the applicant, it could be next month or the following month because there are a number of things that the City and DEM must review.

Mr. Grenier thanked the Board and the residents for their participation. He stated that he and the design team would do their best to accommodate the residents and the City.

There were no further questions of comments. A MOTION was made by Mr. Soucy and seconded by Mr. Peloquin to close the public hearing. The MOTION carried and the public hearing closed at approximately 10:30 P.M.

A brief recess was taken at this time.

4. **Consideration of Master Plan Approval for Major Subdivision Plan for R & K Builders—Map B7, Lots 53-1, & 53-32, Mendon Road**  
Attorney Lloyd R. Gariepy represented the applicant.

A MOTION was made by Mr. Bebeau and seconded by Mr. Peloquin to remove the above name application from the Table. The MOTION carried.

Mr. Bebeau stated that the last time the above application was on the Board's agenda it was tabled based on a legal opinion from Joseph P. Carroll, City Solicitor. Mr. Bebeau asked if anyone would like for him to read said letter. He received a response of "No."

Attorney Gariepy stated that it is his opinion that what Attorney Carroll states in his legal opinion does not apply here at all. Attorney Gariepy called the Board members' attention to the area off Mendon Road (the right-of-way) that is proposed to be developed. Attorney Gariepy then indicated an existing driveway and stated that this person's property is 9' from the boundary line. He stated that this person has not met the side setback requirements yet he is concerned about this driveway being turned into a road; the contention being that now he would have a 20 ft. setback. Attorney Gariepy stated that this would not happen for any number of reasons: the driveway would remain the same, access to all of the lots would come directly from the proposed 40 ft. right-of-way that already exists on Mendon Road. Attorney Gariepy stated that this issue raised by Attorney Carroll can be dispelled because no changes are being made to that lot; the lot is not being developed.

Mr. Bebeau stated that Attorney Gariepy is offering basically a different legal opinion. Attorney Gariepy stated that he is offering a legitimate opinion. He stated that he is offering the applicant's opinion, which up until this time has not been heard.

Attorney Gariepy stated that Attorney Carroll's opinion states that by allowing this subdivision we would create a corner lot thus violating the zoning setback requirements. Attorney Gariepy stated that if you look at the City's Zoning Ordinance under Front Lot Line, it is a line separating a lot from the street right-of-way, either one.

Attorney Gariepy said that in the case of a corner lot, which is what this is, or would be. The front line shall be considered that line separating the portion of the lot, which the principal building fronts from the street right-of-way.

Attorney Gariepy stated that this structure has a Mendon Road address and it is clear to him that the only front lot line is the one on Mendon Road. Mr. Bebeau stated that if you create this road it would then become the front entrance for the home. Attorney Gariepy said no, it becomes a corner lot; and a corner lot is only critical in case of an accessory building. He stated that if this property owner wants to put a building here he would have to meet the front setback requirements, that does not do any injustice to the structure that is already created there.

Mr. Brynes stated that technically the property owner would be in nonconformance because he would have to meet whatever the front setback requirements are on both sides. Attorney Gariepy said only for the front lot line and not on both sides.

Mr. Peloquin stated that the City's Zoning Ordinance Section 7.1-1 Yard Requirements for Corner Lots for Residential Districts states that "*The side yard requirements for all buildings on a corner lot shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot.*" Attorney Gariepy stated that the Board must realize that the front lot line is Mendon Road; if in fact it were something else it would have a street address. Attorney Gariepy stated that to take a subdivision ordinance and create lots that meet all the requirements of zoning, yet put another property in a setback situation is not the subject of any Subdivision Regulations. He stated that if this were the case a property owner could easily encroach on the side lot line and prevent development in an adjacent area.

Attorney Gariepy stated that as long as the proposed subdivision meets the City's Zoning Ordinance, how could you then legislate a parcel of land that is not a part of the subdivision, which may for their own reason, have created their own setbacks. Attorney Gariepy stated that this does not make sense to him.

Mr. Brynes stated that he understands Attorney Gariepy's argument but the Planning Board must use the City Solicitor's legal opinion as a basis for making their decision.

Mr. Bebeau stated that the City Administration also received a legal opinion from Attorney Jeffrey M. Gibson that was considered more or less useless. Attorney Gariepy stated that he is aware of the legal opinion from Attorney Gibson, which the City paid a lot of money for but received basically no help. However, Attorney Gariepy stated that in that entire letter from Attorney Gibson there is not one provision that deals with a subdivision court case. Everything mentioned is zoning issues, it is very clear that the Planning Board has no jurisdiction whatsoever regarding Zoning Board matters. He stated that this is why there is a Section in the Subdivision Regulations that states the Planning Board can give consent subject to...and the Board make decisions on many subdivisions subject to Zoning Board of Review approval and then come back to the Planning Board. Attorney Gariepy stated that it is inconceivable to him whereby a subdivision that is being proposed, meets all the zoning requirements and yet the Planning Board would deny the subdivision based upon nonconformance of another lot; this does

not make sense to him. Attorney Gariepy stated that the other lot is not before the Board; the applicant cannot be forced to go to the Zoning Board of Review; when the applicant file a zoning application the owner must sign or the project cannot go forward.

Mr. Peloquin stated that as he understands it Attorney Gariepy is stating that you cannot build a house closer than 20 ft. to a lot line but you can build a road within 20 ft. of a structure. Attorney Gariepy said yes because he is dealing with existing lot lines. He stated that the applicant did not create or alter these lot lines; these lines were already in existence.

Mr. Peloquin asked if the 40 ft. strip might have originally been intended for a driveway and eventually a house. Attorney Gariepy stated that he does not know but if the property owner or predecessors did this, the situation was caused by their own actions. Mr. Peloquin stated that there was a side lot line back then. Attorney Gariepy agreed. He stated that when you make this a corner lot the only thing it restricts is the ability to put an accessory structure on the lot. However, he stated that it is not likely that the Zoning Officer is going to enforce the regulation. Attorney Gariepy stated that it's the same situation when taking land for adverse possession. If the State or the City wants to widen a street and your house is within the setback because of that action does it mean that you cannot move forward, it should not.

Mr. Soucy stated that he and the other Board members are not lawyers; they must rely on the City Solicitor's legal opinion. Attorney Gariepy stated that the Planning Board members are familiar with the City's Subdivision Ordinance and he does not see anything in the Subdivision Ordinance other than the fact that the subdivision must comply with the zoning regulations, which apparently it does. He stated that you cannot take into account the abutting property owners because they are not the applicants.

Mr. Bebeau stated that he feels somewhat bound by the legal opinion presented by Attorney Carroll, to be used as a source for the Board's decision.

Attorney Gariepy stated that as soon as the Board says that any subdivision that creates a zoning variance for an abutting neighbor has to be denied then you are in essence (*remainder of Attorney Gariepy's statement was inaudible*).

Mr. Del Rossi asked how far is each house away from the proposed road. Mr. Peloquin said one house is about 15 ft. away and the other house about 8 ft. Mr. Del Rossi said that in his opinion 8 ft. is too close; where do we draw the line? Attorney Gariepy said that if you do not allow it you would violate the side setback requirement; the zone allows for 10 ft. Attorney Gariepy stated that he does not think that these two property owners complained. Mr. Brynes stated that one property owner did complain however he does not meet the setback anyway.

Mr. Peloquin asked if there are any records indicating when the 40 ft. strip was established and what was the intent. Mr. Brynes stated that 40 ft. at one time was the minimal required frontage to build a house. He stated that the intent could have been to build a driveway or to put a house on the lot.



Mr. Brynes stated that if a road is not allowed a house could still be built there theoretically. Attorney Gariepy asked how? Mr. Brynes stated that the property owner could request zoning release for frontage.

Mr. Soucy asked what is the next step. Attorney Gariepy stated that if the application were denied approval by the Planning Board he would appeal the Board's decision to the Zoning Board of Review.

Mr. Peloquin stated that if it were not for the road there would not be a real issue. Mr. Monse said the issue is the access road and the homeowners in the area do not want any more houses in their neighborhood. Attorney Gariepy agreed with Mr. Monse, the residents do not want any more houses in their backyards.

There being no further questions or comments a MOTION was made by Mr. Peloquin and seconded by Mr. Del Rossi to DENY the application.

|                 |               |         |
|-----------------|---------------|---------|
| Roll Call Vote: | Mr. Monse     | To Deny |
|                 | Mr. Peloquin  | To Deny |
|                 | Mr. Soucy     | To Deny |
|                 | Mr. Del Rossi | To Deny |
|                 | Mr. Bebeau    | To Deny |

The application was DENIED approval.

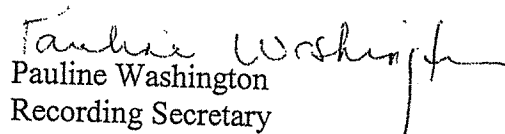
#### Consideration of Minutes

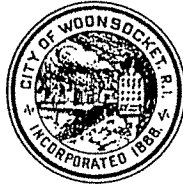
Minutes of the May 6, 2003 Planning Board meeting were submitted for review. A MOTION was made by Mr. Peloquin and seconded by Mr. Monse to approve the minutes as submitted. The MOTION carried.

#### Adjournment

A MOTION was made by Mr. Monse and seconded by Mr. Peloquin to adjourn the meeting. The MOTION carried and the Planning Board meeting adjourned at 11:05 P.M.

Respectfully submitted,

  
Pauline Washington  
Recording Secretary



CITY OF WOONSOCKET, RHODE ISLAND  
DEPARTMENT OF PLANNING & DEVELOPMENT

September 3, 2003

Mr. Raymond Bourque  
R&K Builders  
P.O. Box 3107  
South Attleboro, MA

Re: Master Plan for Major Subdivision for R & K Builders -- Plat 53, Lots 1 & 32,  
Mendon Road

Dear Mr. Bourque:

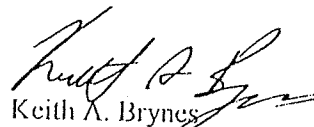
This letter is to inform you that the Woonsocket Planning Board at their September 2, 2003 meeting voted to deny the above-referenced application.

The Board's reason for denial is that the plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.1.1 of the City's Zoning Ordinance which states that "The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot." According to the enclosed communication from the City Solicitor, the project is unable to proceed without the appropriate zoning relief, which can only be obtained by the abutter.

Revised plans may be submitted to the Planning Board under a new application. An appeal from the Planning Board's decision may be requested from the Zoning Board of Appeals within twenty days as detailed in the Subdivision of Land Development Regulations.

Please call with any questions or concerns.

Sincerely,

  
Keith A. Brynes  
City Planner

Enclosure: Memo from City Solicitor to Planning Board dated 5/1/03

cc: Mayor Susan D. Menard  
Joel D. Mathews, Director of Planning and Development  
Owen T. Bebeau, Planning Board Chairman  
Michael Del Rossi, Deputy Director of Public Works / City Engineer  
Lloyd R. Gariepy, Esq.

FORWARD WOONSOCKET  
"A CITY ON THE MOVE"

**ZONING BOARD OF REVIEW  
WOONSOCKET, RHODE ISLAND  
PUBLIC HEARING, JANUARY 26, 2004  
7:30 P.M.**

MEMBERS PRESENT:     Raymond Aubin, 2<sup>nd</sup> Alternate  
                              Ralph Begin  
                              Norman Frechette  
                              Daniel Gendron  
                              Robert Moreau, Vice Chairman  
                              Walter Pristawa, Chairman  
                              Peter Vosdagalis, 1<sup>st</sup> Alternate

ALSO:                     Martin E. Loiselle, Jr., Zoning Officer  
                              Joseph Carroll, City Solicitor  
                              Pauline Washington, Recording Secretary

Pauline Washington took roll call that showed the above members as indicated.

1.     Application (#5128) of R & K Builders Corp., P.O. Box 3107, South Attleboro, MA, applicant, appealing the Woonsocket Planning Board decision to deny a major subdivision at Mendon Rd., Plat 53, Lots 1 and 32, lot area of 4.4536 acres and 28,018sf respectively, located in an R-2 Low Density Single-Family Residential District.

Lloyd R. Gariepy, Esq., 68 Cumberland Street, Woonsocket, RI represented the applicant.

Mr. Frechette quoted from a Planning Board correspondence to Raymond Bourque, dated September 3, 2003 that stated: "This letter is to inform you that the Woonsocket Planning Board at their September 2, 2003 meeting voted to deny the above referenced application." Mr. Frechette stated that according to said letter the Planning Board's reason for denial "is that the plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.1.1 of the City's Zoning Ordinance that states "The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot." Mr. Frechette asked Attorney Gariepy to respond to the Planning Board's opinion that approval of the subdivision would increase the nonconformity with respect to one lot and would create a non-conformity with respect to a second lot.

Attorney Gariepy stated that in his opinion the Planning Board did not have authority to deny the above-referenced application. He stated that the Planning Board is attempting to impose zoning issues on abutting properties that are not included in the developer's subdivision plan.

Mr. Frechette stated that the Planning Board's September 3, 2003 letter also stated "*the project is unable to proceed without the appropriate zoning relief, which can only be obtained*

by the abutters.” Mr. Frechette asked if the applicant is requesting the Zoning Board to overturn the Planning Board’s decision to deny the above-reference application. Attorney Gariepy said yes. Attorney Gariepy further stated that if the two abutting properties were in non-compliance with the City’s zoning regulations the matter should have been brought before the Zoning Officer, not the Planning Board. He stated that under the subdivision regulations if there is a zoning issue said issue must be heard by the Zoning Officer or the Zoning Board of Review.

Mr. Frechette asked Attorney Gariepy to explain future plans for the 40 ft. right-of-way. Attorney Gariepy stated that the right-of-way is part of the parcel that the applicant would like to develop; the lot would provide access to the development. He stated that the abutter located to the left of the right-of-way, whose home is facing the right-of-way and would be in violation of the front setback, was given permission to use this land by virtue of an easement granted to him when the property was sold during the 1960s.

Mr. Frechette, does the right-of-way appear on the deed? Attorney Gariepy said yes, a copy of the deed was included in the information packets given to the Zoning Board members.

Attorney Carroll interjected at this time, he stated that he has not read the Planning Board minutes verbatim, but he does not believe that a copy of said deed was ever submitted to the Planning Board (*he asked Attorney Gariepy to correct him if he is wrong*); and therefore according to Section 13.3.5 of the Subdivision Regulations, the Zoning Board cannot discuss the deed, which would be considered new evidence. Attorney Carroll stated that the Zoning Board must decide if the application merits an appeal based on the evidence submitted to the Planning Board; consideration of additional information is not permitted.

Attorney Gariepy called the Board’s attention to the September 2, 2003 Planning Board minutes whereby he tried on several occasions to put forth a credible argument that supported approval of the subdivision, but his arguments were met with statements from the Board members like “we are not lawyers” and “we must rely on the City Solicitor’s opinion.” Attorney Gariepy noted that this opinion was not read into the minutes yet the Planning Board’s decision was based on that opinion. Attorney Gariepy stated that he was not made aware of the existence of Attorney Carroll’s opinion until the September 2, 2003 meeting.

Mr. Frechette stated that he and other Zoning Board members did not receive a copy of the September 2, 2003 Planning Board minutes, during the January 12, 2004 Zoning Board meeting the Board members requested a copy of said minutes. Mr. Pristawa stated that copies of the September 2, 2003 Planning Board minutes were distributed tonight.

Attorney Gariepy stated that Attorney Carroll is referencing a request for a written determination from the Zoning Officer, from which an appeal could be generated. However, he stated that the Planning Board did not send its decision to the Zoning Officer; therefore there is no written determination to go by.

For the Board’s edification, Attorney Gariepy stated that the minutes of the September 2, 2003 Planning Board were somewhat lengthy due to two extensive public hearings prior to his client’s application being heard. He stated that his application was heard about 10:30 that

evening, and the Board members were probably anxious to dispense with the remaining applications, which is why his application was quickly disposed of. Attorney Gariepy stated that prior to that meeting neither he nor the applicant was furnished with a copy of the legal opinion. He stated that the Board must make a decision using the records on hand.

Attorney Carroll suggested that under the regulations that pertain to review of a Planning Board decision, the Zoning Board, as the appellate board, must follow a set of procedures that precludes the Zoning Board from receiving new evidence. The Board must decide based on the records at hand. He stated that if the Zoning Board members cannot make a decision, based on the information that it has, the Board has remand authority whereby they can ask the Planning Board to clarify and/or explain its position, but the Zoning Board cannot utilize information that was not presented for consideration to the Planning Board during its consideration of the above-mentioned application.

Mr. Pristawa recommended adjourning the meeting in order to give the Board members time to read the September 2, 2003 Planning Board minutes.

A MOTION was made by Mr. Frechette and seconded by Mr. Moreau to TABLE the above-mentioned application in order to act on the last item on the agenda, and to also take time to read the September 2, 2003 Planning Board minutes. The MOTION carried.

A MOTION was made and seconded to reconvene the meeting. The MOTION carried.

Mr. Pristawa stated that after reading the September 2, 2003 Planning Board minutes he has concluded that the project would increase the nonconformity of one lot and would create a nonconformity of the second lot. Attorney Gariepy stated that this was also the City Solicitor's opinion.

Mr. Pristawa mentioned the deed but Attorney Carroll reminded him that the deed could not be used to meditate this case because the deed was not presented as evidence to the Planning Board and is therefore considered "new evidence." Attorney Gariepy stated that officially the deed was not submitted to the Planning Board; however, he was not given the opportunity to address the deed because he was not privy to the existence of the City Solicitor's legal opinion. Attorney Gariepy stated that if the Zoning Board deems the deed inadmissible, that is acceptable to him; however, he stated that if the Zoning Board should deny the appeal and uphold the Planning Board's decision, he would like the ability to present the deed to the Zoning Officer to argue his case; he would request that the deed be submitted to the Zoning Officer.

Mr. Pristawa asked if the Planning Board minutes make reference to the 40 ft. right-of-way. Attorney Gariepy stated that the right-of-way was mentioned several times during meetings with the Planning Board, he assumed that mention of the right-of-way was sufficient reason to discuss the deed; he does not view the deed as new evidence. Mr. Pristawa stated that in his opinion just mentioning the deed is not considered new evidence, it just reaffirms that there is a 40 ft. right-of-way.

Attorney Carroll stated that there is no question that the 40 ft. lot is mentioned in the Planning Board minutes, however, he asked Mr. Pristawa after reading the September 2, 2003 Planning Board minutes if the deed were submitted and made a part of the record. Mr. Pristawa said no.

Attorney Carroll stated that Attorney Gariepy's statement that a deed does exist is not cause for the Board to draw any conclusions, or cause for the deed to be considered evidence. Mr. Pristawa stated that it is obvious that the 40 ft. right-of-way does exist. Attorney Carroll stated that this is quite evident. Attorney Gariepy stated that the Board members could draw whatever inference they choose from the existence of the 40 ft. right-of-way, which exceeds the width of some City streets. Attorney Carroll stated that perhaps the area was a driveway; Attorney Gariepy stated that it is unlikely that this parcel's intended use was a 40 ft. driveway.

Mr. Moreau asked Attorney Carroll if his mission during tonight's meeting is to assist the Board regarding the procedure it must take regarding the abovenamed application. Attorney Carroll said yes, he is not here tonight to argue the pros and cons of this application. He stated that the Zoning Board, as the appellate board, must make a decision, and the areas of decisions are exceedingly narrow. Attorney Carroll stated that he is in attendance at tonight's meeting to make sure that the Board adhere to set procedure. He stated that the Board members are allowed to look at only the record(s) of the above-named application in making a decision to uphold or overturn the Planning Board's decision. The Zoning Board can overturn the Planning Board's decision if it find that there was "prejudicial procedure error," "clear error," or "lack of support by weight of evidence and the record." Attorney Carroll stated that the Zoning Board can overturn the Planning Board's decision, it can remand it to the Planning Board for further proceedings, or it can agree with their decision.

Mr. Pristawa asked why would the Zoning Board remand the application to the Planning Board if they have already denied its approval. Attorney Carroll stated that if the Zoning Board finds that the record of the above-named application is incomplete or in error it can remand it to the Planning Board. He also stated that if the Board feels that there is no basis for the appeal they could uphold the Planning Board's decision; if the Board feels that the application merits approval they can overturn the Planning Board's decision, these are the options that are available.

Mr. Moreau stated that it appears that the Planning Board based their decision entirely on the City Solicitor's legal opinion.

Mr. Begin asked the Zoning Officer if he had anything to offer that would help the Board in rendering a decision. Mr. Begin also stated that he was very unhappy with the delay in receiving the September 2, 2003 Planning Board minutes; how are they expected to make informed decisions without all the information. Mr. Loiselte apologized regarding the delay in delivering the minutes, but he had just received the minutes from the City Planner.

Mr. Begin asked the Zoning Officer if he feels that additional information is needed in order for the Board members to vote on the application. Mr. Loiselte stated that it is his opinion that the Board has all the evidence it needs to render a decision.

Attorney Carroll stated that the decision regarding the application was based on two countering legal opinions; two opinions were presented. Attorney Gariepy argued in favor of his client but the Planning Board advocated the City Solicitor's opinion over Attorney Gariepy's opinion.

Mr. Pristawa stated that one of the homes abutting the 40 ft. right-of-way appear to be 15 ft. away and the other house appear to be about 8 ft. from the right-of-way. Attorney Gariepy stated that with respect to the property located to the right (*which is 8 or 9 ft. from the lot line and facing Mendon Road*) this is considered a side setback. Attorney Gariepy stated that this property is already in non-conformity with the side setback requirements.

Attorney Gariepy stated that the property located to the left and facing the 40 ft. right-of-way do not front on Mendon Road, although it has a Mendon Road address. The City Administration contention's is that by making this a corner lot the property would be in non-conformance because it is not 20 ft. back. Attorney Gariepy stated that prior to the revision in the City's Subdivision Regulations 20 ft. was the accepted setback on a corner lot, which this was; the lot is in nonconformity even before it is developed.

Attorney Gariepy stated that his argument in response to Attorney Carroll's legal opinion that the subdivision would put those properties in nonconformance is that this would be impossible because the properties are in nonconformance without the development, and therefore the applicant's actions cannot make the properties nonconforming.

Mr. Pristawa asked if the driveway for the house located to the left of the right-of-way gained from Mendon Road. Attorney Gariepy said yes.

Mr. Pristawa asked if it is a fair statement that the two property owners built their homes within 8 ft. and the other 15 ft. from the 40 ft. right-of-way. Attorney Gariepy stated that this is the only explanation that he has at this time. He stated that the property located to the left of the right-of-way was granted an easement and it is clear that this is how he gained access to his property. Attorney Gariepy stated that he has no knowledge regarding the property located to the right, however it is clear that this property was constructed in violation of the side setback requirement.

Mr. Begin asked Attorney Carroll if the City gives a right-of-way the same attention that it gives a public street, i.e., maintenance, sweeping, snow plowing, etc. Attorney Carroll said no. He stated that the right-of-way in question extends into the woods; the Administration considers it just a piece of property.

Mr. Begin asked if it is a fair assessment that the parcel was never intended to be a roadway. Attorney Carroll stated that he cannot say; he advised Mr. Begin to look at the records, the evidence, the records are to be used to make a decision.

Attorney Gariepy stated that he do not believe that the City has a responsibility to maintain this land as it presently exists because it is not part of the City's roadway system. He

stated that if the subdivision is approved a road would be put in and the City would be asked to accept the road as a public street.

Mr. Begin asked what year were the two houses built. Attorney Gariepy stated that the property was conveyed in the early 60's—he would guess about 40 years ago. Mr. Begin stated that the zoning ordinance was in place at that time—the Zoning Board or the Building Inspection Division should have been aware of the setback violations.

Attorney Gariepy stated that no one can testify as to why these properties were allowed to build in violation of the zoning ordinance, we only know what the zoning regulations were at that time.

Attorney Gariepy stated that the bigger issue before the Board is whether or not the zoning requirements in a subdivision can extend to abutting property owners when the applicant for the subdivision do not own the abutting properties. He asked if any Board could impress upon an abutting owner's property a non-conformity, which in fact affects the subdivision; he does not believe that this is the case. Attorney Gariepy stated that this is why we have nonconforming status under the zoning code; if the lot is not non-conforming then it legally exists and the use is allowed. Attorney Gariepy stated that to say to a property owner who wants to develop his property in accordance with the Zoning Ordinance that because your development may create a nonconformance with regard to abutting properties is very unfair. He stated that when the abutting property owners built their homes they could have been in conformance with the subdivision regulations at that time.

Mr. Gendron, who presently owns the 40 ft. piece of land? Attorney Gariepy, my client, the principal applying for the subdivision.

Mr. Gendron, when you talk about a "right-of way" is this right-of way extended to the abutters property? Attorney Gariepy, yes. Mr. Gendron, then this is not a right-of way to the rear property, the owner does not need a right-of way to gain access to his own property.

Attorney Gariepy, it is a right-of-way only with respect to the individuals who have been given access thru some sort of conveyance. In this case it is only the property owner located to the left whose house faces the right-of-way. The property owner to the right, based upon my review of the claim, does not have a right-or-way and does not utilize the right-of-way to gain access to his property.

Mr. Gendron, when we talk about a right-of-way my original thought is that it was a right-of-way for access to the rear property. Attorney Gariepy, no, not for that property. The person who owns the real estate can grant the right-of-way to someone else but he does not need the right-of-way to access his own property.

Mr. Gendron, at this point with that 40 ft. piece of land, is the house that is located to the left in compliance with the City's zoning ordinance. Attorney Gariepy, no, the argument is that this house is located only 15 ft. away from the right-of-way.



Mr. Gendron, what is the side setback for this house? Mr. Pristawa stated that what Mr. Gendron is calling the side of the house is actually its front. Mr. Gendron disagreed with Mr. Pristawa. Attorney Gariepy stated that this is not the front of the house. He stated that this is a good question and has been asked before. He stated that this would be a corner lot if in fact the road were built. If the subdivision is allowed and the 40 ft. lot becomes a City street that lot becomes a corner lot.

Mr. Loiselle stated that if the subdivision is allowed the lot would become a corner lot. He stated that the regulations state, "*the corner lot must comply with the setback requirements from the street.*" Mr. Gendron, I understand the regulations, my question is "at this point in time is this 40 ft. piece of land considered a street or is it just a 40 ft. piece of land, right now, as we speak tonight. Attorney Gariepy, that is correct. Mr. Gendron, then this is not a "corner lot." Attorney Gariepy, there are members of the Planning Board and the Planning Department who believe that because this is a private street or a private road right now, that this is considered a "corner lot." Attorney Gariepy, there is a difference of opinion, however, I would agree with Mr. Gendron's assessment.

Mr. Gendron asked Mr. Carroll where does the Zoning Board go from here if indeed as Attorney Gariepy has stated that some members of the Planning Board and the Planning Department recognize the area in question as a corner lot? Mr. Gendron, I realize that the City's Law Department has provided a legal opinion and the Planning Board voted to deny the application.

Attorney Carroll, I am not at tonight's meeting to advocate a position, I am advocating a "procedure," and that procedure is very simple. Attorney Carroll stated that if the Zoning Board feels that it needs additional information in order to make a decision they should request additional information, but if the Board is satisfied with the information before it tonight they should make a decision.

Attorney Gariepy again stated that he does not believe that the Planning Board was the proper authority to decide this issue; this is a zoning issue and should be decided by the Zoning Officer or the Zoning Board of Review.

Attorney Carroll, if the Zoning Board feels that the Planning Board's decision was made via an unlawful or irregular procedure it should be remanded, thereby instructing the Planning Board to ask the Zoning Officer to make a decision, whereby the applicant would have to abide by the Zoning Officer's decision. Attorney Gariepy, the Zoning Officer has testified tonight that the Board has enough information to make a decision; he stated that it would serve no useful purpose to remand the application to the Planning Board.

Mr. Gendron, as I understand it, the 40 ft. piece of land is thought of only as a piece of land, and the left hand house is in compliance. Mr. Loiselle, yes, I believe that this house is in compliance as it stands now.

Mr. Gendron, what about the house located to the right? Mr. Loiselle, this house is one foot short of being in compliance.

Mr. Gendron, if a road were put in both these houses would be in noncompliance with the zoning regulations. Mr. Loiselle, the road would put one house in noncompliance and would increase the noncompliance distance of the second house.

Attorney Gariepy stated that he has tried to address this issue with the City Planner. He stated that suppose the owner maintains the 40 ft. right-of-way as a "private street" for the developer; the Zoning Officer stated that the City Administration does not advocate private streets; private streets are not allowed and therefore would not be an option.

Mr. Gendron stated that Attorney Gariepy had stated earlier that the proper procedure regarding the above-named application is that the Planning Board should have issued conditional approval and then forwarded the application to the Zoning Board for review and. Attorney Gariepy said yes, that is correct. Mr. Gendron questioned Attorney Gariepy regarding that procedure considering that the application required Zoning Board approval, not Planning Board approval. Attorney Gariepy stated that the application should have been sent to the Zoning Officer; if the Zoning Officer felt that the application was in compliance the application would then go back to the Planning Board. Attorney Gariepy stated that if in fact the Zoning Officer felt that the application was not in compliance the applicant would require zoning relief anyway, and the only difference is that there would be a stenographic record of what transpired between the Zoning Officer and himself during that meeting.

Mr. Frechette, quoting from the Planning Board minutes, stated that Mr. Del Rossi asked, "how far the two houses would be located from the proposed road,"—Mr. Peloquin stated that "one house would be about 15 ft. from the road and the other house would be located 8 ft. from the road." Mr. Del Rossi stated that "in his opinion 8 ft. is too close, where do we draw the line." Attorney Gariepy stated that the 40 ft. roadway exists now because an individual or predecessor decided to build closer to the lot line than allowed—unfortunately this is what we have to deal with now.

Mr. Frechette asked if two means of egress is required. Attorney Gariepy stated that the developer does not want to inconvenience anyone any more than is absolutely necessary—there would be limited access only for those people that would live in the new houses that are created.

Mr. Moreau asked Attorney Carroll how would this application change what presently exists on the site. Attorney Carroll stated that the City's position is that the application would create a nonconformity of the property located to the left and a further nonconformity of the property located on the right; these two property owners would be required to request zoning relief.

Mr. Moreau asked Attorney Gariepy if his client had approached the two property owners in an effort to work out an agreeable solution to this problem. Attorney Gariepy said yes, his client has communicated with the two property owners. He stated that there are a number of ways to approach the problem: 1) The applicant could abandon the subdivision, which is not likely; 2) The applicant could physically move both structures back on the lots, which is not something that anyone would recommend; and 3) The applicant could purchase both properties.

Attorney Gariepy asked what would be gained if the applicant bought both properties? He stated absolutely nothing; the reason nothing would be gained is because the properties would still be in noncompliance according to the zoning ordinance, and the applicant still could not build because the Planning Board has denied the applicant a subdivision based upon the Board's assessment that the two properties are in non-conformance.

Attorney Gariepy stated that by denying the applicant the use of his property the City Administration has in fact condemned this land.

Mr. Moreau stated that if the applicant were to buy the two properties he would then have the ability to petition the Zoning Board for a variance. Attorney Gariepy agreed with Mr. Moreau's statement, however he stated that the cost associated with the purchase of these two properties is probably unnecessary; and it would not solve the problem the next time this type of situation occurs.

Mr. Pristawa stated that in a September 11, 2002 communication from Attorney Carroll to the City Planner, Attorney Carroll states that if the road were built the two abutting property owners would need to petition the Zoning Board for a variance. Mr. Pristawa asked Attorney Carroll why would a variance be required, would not the two properties have grandfather rights, the City allowed the predecessors to build there (9 ft. from one property line to the right-of-way and the other 15 ft. from the right-of-way). Attorney Carroll reiterated that he does not want to advocate a position regarding the application. Mr. Pristawa stated that he would refer the question to Attorney Gariepy.

Mr. Pristawa stated that the property line on the left side of the 40 ft. easement is 15 ft. from the right-of-way, as indicated in the deed. He stated that during the construction of this house someone had to come before the City with plans that were approved by the City, and subsequently a house was built within 15 ft. of the 40 ft. right-of-way. Attorney Gariepy agreed with Mr. Pristawa's statement, the plans would have been reviewed and approved by the City.

Mr. Pristawa stated that in his opinion the two properties would not need a zoning variance because they have grandfather rights. Attorney Gariepy stated that he is in agreement with Mr. Pristawa, these two homes enjoy legal non-conformance status for dimension, which is allowed in the zoning ordinance.

Mr. Gendron stated that when the property owner built the house located to the left of the right-of-way, the 40 ft. right-of-way was irrelevant. The property owner applied for a building permit and the area was considered a "lot" at that time not a "street." The only guideline that the owner had to consider at that time was the "side setback," and the side setback was met. Mr. Pristawa, 8 ft. does not meet the required side setback. Mr. Gendron stated that he is referring to the house located to the left of the right-of-way; this house met the required side setback, but the house located to the right was in non-conformance of the side setback by 1 ft.; if the right-of-way were considered a road the lot would be in non-conformance by 12 ft.

Mr. Gendron stated that the question is “when the house was being built was the 40 ft. parcel considered a road or a lot?” Mr. Pristawa stated that he does not know, no one can answer that question, but 40 ft. is the legal width of a road.

Mr. Moreau disagreed with Mr. Pristawa. Mr. Moreau stated that in his opinion the 40 ft. parcel is a “lot,” whereby the owner granted a right-of-way to his neighbor in order to gain access to his property.

Mr. Loiselle stated that it is his opinion that the 40 ft. parcel is a lot. He stated that the property owner granted an abutting property owner an access easement thru that lot to access his property.

Attorney Gariepy stated that the answer to if the 40 ft. parcel is considered a “lot” or a “road” is a matter of opinion. He stated that certain members of the City’s Planning Department feel that the parcel is a “corner lot” as it exists; if this is the case we could look at prior subdivision records that show a 20 ft. setback. Attorney Gariepy that there is no question that the house was built on that roadway.

Mr. Pristawa stated that now the required street frontage is 50 ft., depending on the zone; he stated that perhaps at that time the parcel was considered a “lot.”

There were no further questions of comments; Mr. Pristawa closed testimony from the floor.

Mr. Pristawa asked Attorney Carroll to explain the voting process. Attorney Carroll stated that to “*accept*” the appeal and rule that the decision made by the Planning Board was proper, you would need three votes to “*Uphold*” the Planning Board’s decision; to “*Overturn*” the Board’s decision would require three votes.

Attorney Croll also advised the Board that they have the ability to remand the application to the Planning Board.

A MOTION was made by Mr. Pristawa and seconded by Mr. Begin to **Overturn** the Woonsocket Planning Board’s decision to DENY a Major Subdivision at the above location.

|                 |               |   |
|-----------------|---------------|---|
| Roll Call Vote: | Mr. Begin     | <b>Overturn</b> the Planning Board’s decision |
|                 | Mr. Frechette | <b>Uphold</b> the Planning Board’s decision   |
|                 | Mr. Gendron   | <b>Uphold</b> the Planning Board’s decision   |
|                 | Mr. Moreau    | <b>Uphold</b> the Planning Board’s decision   |
|                 | Mr. Pristawa  | <b>Overturn</b> the Planning Board’s decision |

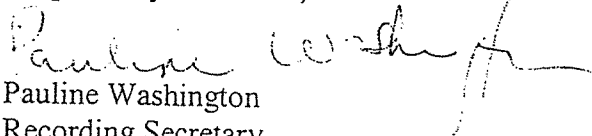
The MOTION DID NOT CARRY; the application to appeal the Planning Board’s decision was DEFEATED by a vote of 3-2.

Attorney Gariepy thanked the Chairman and the Board members.

Reason for Denial: The Board cited the Planning Board's September 2, 2003 reason for denial of the above-referenced application as follows: The plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.11 of the City's Zoning Ordinance, which states that "*The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot.*"

Chairman Pristawa adjourned the meeting at 9:40 P.M.

Respectfully submitted,

  
Pauline Washington  
Recording Secretary

Advertise once:  
The Woonsocket Call  
January 11, 2004

Executive Decisions Filed:  
January 29, 2004



**CERTIFICATION**

I hereby certify that on May 14, 2004, I caused a true copy of the within to be sent by first class mail, postage prepaid, to the following counsel of record:

Joseph P. Carroll, Esq.  
City Solicitor  
169 Main Street  
Woonsocket, RI 02895

Carol Viardue

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

R&K BUILDING CORP.,  
Plaintiff,

v.

CITY OF WOONSOCKET ZONING BOARD  
OF REVIEW and RALPH BEGIN, NORMAN  
FRECHETTE, DANIEL GENDRON, ROBERT  
MOREAU and WALTER PRISTAWA, in their  
capacity as Members of the Woonsocket Planning  
Board,  
Defendants.

C.A. No. 2004-0803

**STIPULATION**

By agreement of the parties, the following stipulation shall enter:


1. Plaintiff R&K Building Corp.'s ("R&K") brief is due on or before May 14, 2004;
2. The brief of the Zoning Board of Review of the City of Woonsocket ("City") shall be filed thirty (30) days after the filing of the R&K's brief; and
3. R&K may file a reply brief within ten (10) days of the filing of the City's brief.


Plaintiff,  
R&K BUILDING CORP.

Defendants,  
CITY OF WOONSOCKET  
ZONING BOARD OF REVIEW, ET AL.

By its attorney,

By their attorney,

  
 Elizabeth McDonough Noonan, #4226  
 Adler Pollock & Sheehan P.C.  
 2300 Financial Plaza  
 Providence, RI 02903  
 Tel: (401) 274-7200  
 Fax: (401) 351-4607/751-0604  
 Dated: April 14, 2004

  
 Joseph P. Carroll, # 1344  
 City Solicitor  
 169 Main Street  
 Woonsocket, RI 02895  
 Tel: (401) 767-9201  
 Fax: (401) 769-0316  
 Dated: April 14, 2004

FILED  
 HENRY S. KINCH JR., CLERK  
 2004 APR 22 P 4 10



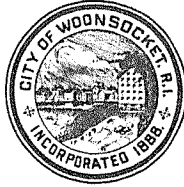
**CERTIFICATION**

I hereby certify that on April 22, 2004, I caused a true copy of the within to be sent by first class mail, postage prepaid, to the following counsel of record:

Joseph P. Carroll, Esq.  
City Solicitor  
169 Main Street  
Woonsocket, RI 02895

Carol Velardue

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CITY OF WOONSOCKET  
RHODE ISLAND

LAW DEPARTMENT  
169 Main Street  
Woonsocket, R.I. 02895-4379

March 17, 2004

Tel. (401) 767-9201  
Fax (401) 765-4569

RI Superior Court  
Office of the Clerk  
250 Benefit Street  
Providence, RI 02903

Re: R & K Building Corp. v. Zoning Board of Review of the City of Woonsocket  
C.A. No. 04-0803

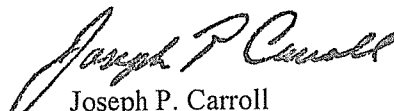
Dear Clerk:

Enclosed for filing are certified copies of the documents contained in the record of the above-referenced appeal of a decision by the Woonsocket Zoning Board of Review, which include the following:

- 1) Appeal/Complaint (to Zoning Board) of R & K Building Corp., with attachments;
- 2) Minutes of September 2, 2003, Planning Board meeting, with attachments;
- 3) Letter of denial to applicant regarding Planning Board's decision, from Keith Brynes, dated September 3, 2003;
- 4) Notice of Public Hearing for Zoning Board meeting of January 26, 2004;
- 5) Letter of denial to applicant regarding Zoning Board's decision;
- 6) Letter to abutters regarding Zoning Board's Decision, dated November 19, 2003;
- 7) Letter dated January 6, 2004, to Zoning Board, from Keith Brynes, City Planner;
- 8) Minutes of Zoning Board meeting of January 26, 2004.

Thank you for your attention to this matter.

Sincerely,

  
Joseph P. Carroll  
City Solicitor

JPC/abm  
Enclosures

cc: Elizabeth McDonough Noonan, Esq. (without enclosures)

SUPERIOR COURT  
FILED  
HENRY S. HITCH, JR.

FORWARD WOONSOCKET  
"A CITY ON THE MOVE"  
04 MAR 18 PM 1:20

*Loretta Peripoli*

LORETTA PERIPOLI  
ZONING CLERK  
MARCH 17, 2004

**ZONING BOARD OF REVIEW  
WOONSOCKET, RHODE ISLAND  
PUBLIC HEARING, JANUARY 12, 2004  
7:30 P.M.**

MEMBERS PRESENT: Raymond Aubin, 2<sup>nd</sup> Alternate  
Ralph Begin  
Norman Frechette  
Daniel Gendron  
Peter Vosdagalis, 1<sup>st</sup> Alternate

ALSO: Martin E. Loiselle, Jr., Zoning Officer  
Pauline Washington, Recording Secretary

ABSENT: Walter Pristawa, Chairman  
Robert Moreau, Vice Chairman

Pauline Washington took roll call that showed the above members as indicated.

Mr. Begin assumed the role of Acting Chairman in the absence of Chairman Pristawa and Vice-Chairman Moreau.

1. Application (#5128) of R & K Builders Corp., P.O. Box 3107, South Attleboro, MA, applicant, appealing the Woonsocket Planning Board decision to deny a major subdivision at Mendon Rd., Plat 53, Lots 1 and 32, lot area of 4.4536 acres and 28,018sf respectively, located in an R-2 Low Density Single-Family Residential District.

Due to incomplete records from the September 2, 2003 Planning Board meeting whereby the Planning Board denied Master Plan Approval for Major Subdivision Plan for R & K Builders—Map B7, Lots 53-1 & 53-32, Mendon Road, it was recommended that the above-name application be TABLED until the January 26, 2004 Zoning Board meeting, whereby said September 2, 2003 Planning Board minutes will have been approved by the Planning Board members and made available to Attorney Lloyd R. Gariepy, the applicant's representative, and Attorney Joseph Carroll, City Solicitor.

A MOTION was made by Mr. Frechette and seconded by Mr. Begin to TABLE application No. 5128 until the January 26, 2004 Zoning Board meeting. The MOTION carried.

2. Application (#5129) of Therese Cazeault, 95 Bernice Avenue, applicant and owner, requesting a dimensional variance to add a common entrance at the rear of the building with less than required rear setback at 95 Bernice Ave., Plat 4, Lot 148, lot area of 5,992sf, located in an R-3 Medium Density Single and Two-Family Residential District.

by the abutters.” Mr. Frechette asked if the applicant is requesting the Zoning Board to overturn the Planning Board’s decision to deny the above-reference application. Attorney Gariepy said yes. Attorney Gariepy further stated that if the two abutting properties were in non-compliance with the City’s zoning regulations the matter should have been brought before the Zoning Officer, not the Planning Board. He stated that under the subdivision regulations if there is a zoning issue said issue must be heard by the Zoning Officer or the Zoning Board of Review.

Mr. Frechette asked Attorney Gariepy to explain future plans for the 40 ft. right-of-way. Attorney Gariepy stated that the right-of-way is part of the parcel that the applicant would like to develop; the lot would provide access to the development. He stated that the abutter located to the left of the right-of-way, whose home is facing the right-of-way and would be in violation of the front setback, was given permission to use this land by virtue of an easement granted to him when the property was sold during the 1960s.

Mr. Frechette, does the right-of-way appear on the deed? Attorney Gariepy said yes, a copy of the deed was included in the information packets given to the Zoning Board members.

Attorney Carroll interjected at this time, he stated that he has not read the Planning Board minutes verbatim, but he does not believe that a copy of said deed was ever submitted to the Planning Board (*he asked Attorney Gariepy to correct him if he is wrong*); and therefore according to Section 13.3.5 of the Subdivision Regulations, the Zoning Board cannot discuss the deed, which would be considered new evidence. Attorney Carroll stated that the Zoning Board must decide if the application merits an appeal based on the evidence submitted to the Planning Board; consideration of additional information is not permitted.

Attorney Gariepy called the Board’s attention to the September 2, 2003 Planning Board minutes whereby he tried on several occasions to put forth a credible argument that supported approval of the subdivision, but his arguments were met with statements from the Board members like “we are not lawyers” and “we must rely on the City Solicitor’s opinion.” Attorney Gariepy noted that this opinion was not read into the minutes yet the Planning Board’s decision was based on that opinion. Attorney Gariepy stated that he was not made aware of the existence of Attorney Carroll’s opinion until the September 2, 2003 meeting.

Mr. Frechette stated that he and other Zoning Board members did not receive a copy of the September 2, 2003 Planning Board minutes, during the January 12, 2004 Zoning Board meeting the Board members requested a copy of said minutes. Mr. Pristawa stated that copies of the September 2, 2003 Planning Board minutes were distributed tonight.

Attorney Gariepy stated that Attorney Carroll is referencing a request for a written determination from the Zoning Officer, from which an appeal could be generated. However, he stated that the Planning Board did not send its decision to the Zoning Officer; therefore there is no written determination to go by.

For the Board’s edification, Attorney Gariepy stated that the minutes of the September 2, 2003 Planning Board were somewhat lengthy due to two extensive public hearings prior to his client’s application being heard. He stated that his application was heard about 10:30 that

evening, and the Board members were probably anxious to dispense with the remaining applications, which is why his application was quickly disposed of. Attorney Gariepy stated that prior to that meeting neither he nor the applicant was furnished with a copy of the legal opinion. He stated that the Board must make a decision using the records on hand.

Attorney Carroll suggested that under the regulations that pertain to review of a Planning Board decision, the Zoning Board, as the appellate board, must follow a set of procedures that precludes the Zoning Board from receiving new evidence. The Board must decide based on the records at hand. He stated that if the Zoning Board members cannot make a decision, based on the information that it has, the Board has remand authority whereby they can ask the Planning Board to clarify and/or explain its position, but the Zoning Board cannot utilize information that was not presented for consideration to the Planning Board during its consideration of the above-mentioned application.

Mr. Pristawa recommended adjourning the meeting in order to give the Board members time to read the September 2, 2003 Planning Board minutes.

A MOTION was made by Mr. Frechette and seconded by Mr. Moreau to TABLE the above-mentioned application in order to act on the last item on the agenda, and to also take time to read the September 2, 2003 Planning Board minutes. The MOTION carried.

A MOTION was made and seconded to reconvene the meeting. The MOTION carried.

Mr. Pristawa stated that after reading the September 2, 2003 Planning Board minutes he has concluded that the project would increase the nonconformity of one lot and would create a nonconformity of the second lot. Attorney Gariepy stated that this was also the City Solicitor's opinion.

Mr. Pristawa mentioned the deed but Attorney Carroll reminded him that the deed could not be used to meditate this case because the deed was not presented as evidence to the Planning Board and is therefore considered "new evidence." Attorney Gariepy stated that officially the deed was not submitted to the Planning Board; however, he was not given the opportunity to address the deed because he was not privy to the existence of the City Solicitor's legal opinion. Attorney Gariepy stated that if the Zoning Board deems the deed inadmissible, that is acceptable to him; however, he stated that if the Zoning Board should deny the appeal and uphold the Planning Board's decision, he would like the ability to present the deed to the Zoning Officer to argue his case; he would request that the deed be submitted to the Zoning Officer.

Mr. Pristawa asked if the Planning Board minutes make reference to the 40 ft. right-of-way. Attorney Gariepy stated that the right-of-way was mentioned several times during meetings with the Planning Board, he assumed that mention of the right-of-way was sufficient reason to discuss the deed; he does not view the deed as new evidence. Mr. Pristawa stated that in his opinion just mentioning the deed is not considered new evidence, it just reaffirms that there is a 40 ft. right-of-way.

Attorney Carroll stated that there is no question that the 40 ft. lot is mentioned in the Planning Board minutes, however, he asked Mr. Pristawa after reading the September 2, 2003 Planning Board minutes if the deed were submitted and made a part of the record. Mr. Pristawa said no.

Attorney Carroll stated that Attorney Gariepy's statement that a deed does exist is not cause for the Board to draw any conclusions, or cause for the deed to be considered evidence. Mr. Pristawa stated that it is obvious that the 40 ft. right-of-way does exist. Attorney Carroll stated that this is quite evident. Attorney Gariepy stated that the Board members could draw whatever inference they choose from the existence of the 40 ft. right-of-way, which exceeds the width of some City streets. Attorney Carroll stated that perhaps the area was a driveway; Attorney Gariepy stated that it is unlikely that this parcel's intended use was a 40 ft. driveway.

Mr. Moreau asked Attorney Carroll if his mission during tonight's meeting is to assist the Board regarding the procedure it must take regarding the abovenamed application. Attorney Carroll said yes, he is not here tonight to argue the pros and cons of this application. He stated that the Zoning Board, as the appellate board, must make a decision, and the areas of decisions are exceedingly narrow. Attorney Carroll stated that he is in attendance at tonight's meeting to make sure that the Board adhere to set procedure. He stated that the Board members are allowed to look at only the record(s) of the above-named application in making a decision to uphold or overturn the Planning Board's decision. The Zoning Board can overturn the Planning Board's decision if it find that there was "prejudicial procedure error," "clear error," or "lack of support by weight of evidence and the record." Attorney Carroll stated that the Zoning Board can overturn the Planning Board's decision, it can remand it to the Planning Board for further proceedings, or it can agree with their decision.

Mr. Pristawa asked why would the Zoning Board remand the application to the Planning Board if they have already denied its approval. Attorney Carroll stated that if the Zoning Board finds that the record of the above-named application is incomplete or in error it can remand it to the Planning Board. He also stated that if the Board feels that there is no basis for the appeal they could uphold the Planning Board's decision; if the Board feels that the application merits approval they can overturn the Planning Board's decision, these are the options that are available.

Mr. Moreau stated that it appears that the Planning Board based their decision entirely on the City Solicitor's legal opinion.

Mr. Begin asked the Zoning Officer if he had anything to offer that would help the Board in rendering a decision. Mr. Begin also stated that he was very unhappy with the delay in receiving the September 2, 2003 Planning Board minutes; how are they expected to make informed decisions without all the information. Mr. Loiselle apologized regarding the delay in delivering the minutes, but he had just received the minutes from the City Planner.

Mr. Begin asked the Zoning Officer if he feels that additional information is needed in order for the Board members to vote on the application. Mr. Loiselle stated that it is his opinion that the Board has all the evidence it needs to render a decision.

Attorney Carroll stated that the decision regarding the application was based on two countering legal opinions; two opinions were presented. Attorney Gariepy argued in favor of his client but the Planning Board advocated the City Solicitor's opinion over Attorney Gariepy's opinion.

Mr. Pristawa stated that one of the homes abutting the 40 ft. right-of-way appear to be 15 ft. away and the other house appear to be about 8 ft. from the right-of-way. Attorney Gariepy stated that with respect to the property located to the right (*which is 8 or 9 ft. from the lot line and facing Mendon Road*) this is considered a side setback. Attorney Gariepy stated that this property is already in non-conformity with the side setback requirements.

Attorney Gariepy stated that the property located to the left and facing the 40 ft. right-of-way do not front on Mendon Road, although it has a Mendon Road address. The City Administration contention's is that by making this a corner lot the property would be in non-conformance because it is not 20 ft. back. Attorney Gariepy stated that prior to the revision in the City's Subdivision Regulations 20 ft. was the accepted setback on a corner lot, which this was; the lot is in nonconformity even before it is developed.

Attorney Gariepy stated that his argument in response to Attorney Carroll's legal opinion that the subdivision would put those properties in nonconformance is that this would be impossible because the properties are in nonconformance without the development, and therefore the applicant's actions cannot make the properties nonconforming.

Mr. Pristawa asked if the driveway for the house located to the left of the right-of-way gained from Mendon Road. Attorney Gariepy said yes.

Mr. Pristawa asked if it is a fair statement that the two property owners built their homes within 8 ft. and the other 15 ft. from the 40 ft. right-of-way. Attorney Gariepy stated that this is the only explanation that he has at this time. He stated that the property located to the left of the right-of-way was granted an easement and it is clear that this is how he gained access to his property. Attorney Gariepy stated that he has no knowledge regarding the property located to the right, however it is clear that this property was constructed in violation of the side setback requirement.

Mr. Begin asked Attorney Carroll if the City gives a right-of-way the same attention that it gives a public street, i.e., maintenance, sweeping, snow plowing, etc. Attorney Carroll said no. He stated that the right-of-way in question extends into the woods; the Administration considers it just a piece of property.

Mr. Begin asked if it is a fair assessment that the parcel was never intended to be a roadway. Attorney Carroll stated that he cannot say; he advised Mr. Begin to look at the records, the evidence, the records are to be used to make a decision.

Attorney Gariepy stated that he do not believe that the City has a responsibility to maintain this land as it presently exists because it is not part of the City's roadway system. He

stated that if the subdivision is approved a road would be put in and the City would be asked to accept the road as a public street.

Mr. Begin asked what year were the two houses built. Attorney Gariepy stated that the property was conveyed in the early 60's—he would guess about 40 years ago. Mr. Begin stated that the zoning ordinance was in place at that time—the Zoning Board or the Building Inspection Division should have been aware of the setback violations.

Attorney Gariepy stated that no one can testify as to why these properties were allowed to build in violation of the zoning ordinance, we only knows what the zoning regulations were at that time.

Attorney Gariepy stated that the bigger issue before the Board is whether or not the zoning requirements in a subdivision can extend to abutting property owners when the applicant for the subdivision do not own the abutting properties. He asked if any Board could impress upon an abutting owner's property a non-conformity, which in fact affects the subdivision; he does not believe that this is the case. Attorney Gariepy stated that this is why we have nonconforming status under the zoning code; if the lot is not non-conforming then it legally exists and the use is allowed. Attorney Gariepy stated that to say to a property owner who wants to develop his property in accordance with the Zoning Ordinance that because your development may create a nonconformance with regard to abutting properties is very unfair. He stated that when the abutting property owners built their homes they could have been in conformance with the subdivision regulations at that time.

Mr. Gendron, who presently owns the 40 ft. piece of land? Attorney Gariepy, my client, the principal applying for the subdivision.

Mr. Gendron, when you talk about a "right-of way" is this right-of way extended to the abutters property? Attorney Gariepy, yes. Mr. Gendron, then this is not a right-of way to the rear property, the owner does not need a right-of way to gain access to his own property.

Attorney Gariepy, it is a right-of-way only with respect to the individuals who have been given access thru some sort of conveyance. In this case it is only the property owner located to the left whose house faces the right-of-way. The property owner to the right, based upon my review of the claim, does not have a right-or-way and does not utilize the right-of-way to gain access to his property.

Mr. Gendron, when we talk about a right-of-way my original thought is that it was a right-of-way for access to the rear property. Attorney Gariepy, no, not for that property. The person who owns the real estate can grant the right-of-way to someone else but he does not need the right-of-way to access his own property.

Mr. Gendron, at this point with that 40 ft. piece of land, is the house that is located to the left in compliance with the City's zoning ordinance. Attorney Gariepy, no, the argument is that this house is located only 15 ft. away from the right-of-way.



Mr. Gendron, what is the side setback for this house? Mr. Pristawa stated that what Mr. Gendron is calling the side of the house is actually its front. Mr. Gendron disagreed with Mr. Pristawa. Attorney Gariepy stated that this is not the front of the house. He stated that this is a good question and has been asked before. He stated that this would be a corner lot if in fact the road were built. If the subdivision is allowed and the 40 ft. lot becomes a City street that lot becomes a corner lot.

Mr. Loiselle stated that if the subdivision is allowed the lot would become a corner lot. He stated that the regulations state, "*the corner lot must comply with the setback requirements from the street.*" Mr. Gendron, I understand the regulations, my question is "at this point in time is this 40 ft. piece of land considered a street or is it just a 40 ft. piece of land, right now, as we speak tonight. Attorney Gariepy, that is correct. Mr. Gendron, then this is not a "corner lot." Attorney Gariepy, there are members of the Planning Board and the Planning Department who believe that because this is a private street or a private road right now, that this is considered a "corner lot." Attorney Gariepy, there is a difference of opinion, however, I would agree with Mr. Gendron's assessment.

Mr. Gendron asked Mr. Carroll where does the Zoning Board go from here if indeed as Attorney Gariepy has stated that some members of the Planning Board and the Planning Department recognize the area in question as a corner lot? Mr. Gendron, I realize that the City's Law Department has provided a legal opinion and the Planning Board voted to deny the application.

Attorney Carroll, I am not at tonight's meeting to advocate a position, I am advocating a "procedure," and that procedure is very simple. Attorney Carroll stated that if the Zoning Board feels that it needs additional information in order to make a decision they should request additional information, but if the Board is satisfied with the information before it tonight they should make a decision.

Attorney Gariepy again stated that he does not believe that the Planning Board was the proper authority to decide this issue; this is a zoning issue and should be decided by the Zoning Officer or the Zoning Board of Review.

Attorney Carroll, if the Zoning Board feels that the Planning Board's decision was made via an unlawful or irregular procedure it should be remanded, thereby instructing the Planning Board to ask the Zoning Officer to make a decision, whereby the applicant would have to abide by the Zoning Officer's decision. Attorney Gariepy, the Zoning Officer has testified tonight that the Board has enough information to make a decision; he stated that it would serve no useful purpose to remand the application to the Planning Board.

Mr. Gendron, as I understand it, the 40 ft. piece of land is thought of only as a piece of land, and the left hand house is in compliance. Mr. Loiselle, yes, I believe that this house is in compliance as it stands now.

Mr. Gendron, what about the house located to the right? Mr. Loiselle, this house is one foot short of being in compliance.

Mr. Gendron, if a road were put in both these houses would be in noncompliance with the zoning regulations. Mr. Loisel, the road would put one house in noncompliance and would increase the noncompliance distance of the second house.

Attorney Gariepy stated that he has tried to address this issue with the City Planner. He stated that suppose the owner maintains the 40 ft. right-of-way as a "private street" for the developer; the Zoning Officer stated that the City Administration does not advocate private streets; private streets are not allowed and therefore would not be an option.

Mr. Gendron stated that Attorney Gariepy had stated earlier that the proper procedure regarding the above-named application is that the Planning Board should have issued conditional approval and then forwarded the application to the Zoning Board for review and. Attorney Gariepy said yes, that is correct. Mr. Gendron questioned Attorney Gariepy regarding that procedure considering that the application required Zoning Board approval, not Planning Board approval. Attorney Gariepy stated that the application should have been sent to the Zoning Officer; if the Zoning Officer felt that the application was in compliance the application would then go back to the Planning Board. Attorney Gariepy stated that if in fact the Zoning Officer felt that the application was not in compliance the applicant would require zoning relief anyway, and the only difference is that there would be a stenographic record of what transpired between the Zoning Officer and himself during that meeting.

Mr. Frechette, quoting from the Planning Board minutes, stated that Mr. Del Rossi asked, "how far the two houses would be located from the proposed road,"—Mr. Peloquin stated that "one house would be about 15 ft. from the road and the other house would be located 8 ft. from the road." Mr. Del Rossi stated that "in his opinion 8 ft. is too close, where do we draw the line." Attorney Gariepy stated that the 40 ft. roadway exists now because an individual or predecessor decided to build closer to the lot line than allowed—unfortunately this is what we have to deal with now.

Mr. Frechette asked if two means of egress is required. Attorney Gariepy stated that the developer does not want to inconvenience anyone any more than is absolutely necessary—there would be limited access only for those people that would live in the new houses that are created.

Mr. Moreau asked Attorney Carroll how would this application change what presently exists on the site. Attorney Carroll stated that the City's position is that the application would create a nonconformity of the property located to the left and a further nonconformity of the property located on the right; these two property owners would be required to request zoning relief.

Mr. Moreau asked Attorney Gariepy if his client had approached the two property owners in an effort to work out an agreeable solution to this problem. Attorney Gariepy said yes, his client has communicated with the two property owners. He stated that there are a number of ways to approach the problem: 1) The applicant could abandon the subdivision, which is not likely; 2) The applicant could physically move both structures back on the lots, which is not something that anyone would recommend; and 3) The applicant could purchase both properties.

Attorney Gariepy asked what would be gained if the applicant bought both properties? He stated absolutely nothing; the reason nothing would be gained is because the properties would still be in noncompliance according to the zoning ordinance, and the applicant still could not build because the Planning Board has denied the applicant a subdivision based upon the Board's assessment that the two properties are in non-conformance.

Attorney Gariepy stated that by denying the applicant the use of his property the City Administration has in fact condemned this land.

Mr. Moreau stated that if the applicant were to buy the two properties he would then have the ability to petition the Zoning Board for a variance. Attorney Gariepy agreed with Mr. Moreau's statement, however he stated that the cost associated with the purchase of these two properties is probably unnecessary; and it would not solve the problem the next time this type of situation occurs.

Mr. Pristawa stated that in a September 11, 2002 communication from Attorney Carroll to the City Planner, Attorney Carroll states that if the road were built the two abutting property owners would need to petition the Zoning Board for a variance. Mr. Pristawa asked Attorney Carroll why would a variance be required, would not the two properties have grandfather rights, the City allowed the predecessors to build there (9 ft. from one property line to the right-of-way and the other 15 ft. from the right-of-way). Attorney Carroll reiterated that he does not want to advocate a position regarding the application. Mr. Pristawa stated that he would refer the question to Attorney Gariepy.

Mr. Pristawa stated that the property line on the left side of the 40 ft. easement is 15 ft. from the right-of-way, as indicated in the deed. He stated that during the construction of this house someone had to come before the City with plans that were approved by the City, and subsequently a house was built within 15 ft. of the 40 ft. right-of-way. Attorney Gariepy agreed with Mr. Pristawa's statement, the plans would have been reviewed and approved by the City.

Mr. Pristawa stated that in his opinion the two properties would not need a zoning variance because they have grandfather rights. Attorney Gariepy stated that he is in agreement with Mr. Pristawa, these two homes enjoy legal non-conformance status for dimension, which is allowed in the zoning ordinance.

Mr. Gendron stated that when the property owner built the house located to the left of the right-of-way, the 40 ft. right-of-way was irrelevant. The property owner applied for a building permit and the area was considered a "lot" at that time not a "street." The only guideline that the owner had to consider at that time was the "side setback," and the side setback was met. Mr. Pristawa, 8 ft. does not meet the required side setback. Mr. Gendron stated that he is referring to the house located to the left of the right-of-way; this house met the required side setback, but the house located to the right was in non-conformance of the side setback by 1 ft.; if the right-of-way were considered a road the lot would be in non-conformance by 12 ft.

Mr. Gendron stated that the question is “when the house was being built was the 40 ft. parcel considered a road or a lot?” Mr. Pristawa stated that he does not know, no one can answer that question, but 40 ft. is the legal width of a road.

Mr. Moreau disagreed with Mr. Pristawa. Mr. Moreau stated that in his opinion the 40 ft. parcel is a “lot,” whereby the owner granted a right-of-way to his neighbor in order to gain access to his property.

Mr. Loiselle stated that it is his opinion that the 40 ft. parcel is a lot. He stated that the property owner granted an abutting property owner an access easement thru that lot to access his property.

Attorney Gariepy stated that the answer to if the 40 ft. parcel is considered a “lot” or a “road” is a matter of opinion. He stated that certain members of the City’s Planning Department feel that the parcel is a “corner lot” as it exists; if this is the case we could look at prior subdivision records that show a 20 ft. setback. Attorney Gariepy that there is no question that the house was built on that roadway.

Mr. Pristawa stated that now the required street frontage is 50 ft., depending on the zone; he stated that perhaps at that time the parcel was considered a “lot.”

There were no further questions of comments; Mr. Pristawa closed testimony from the floor.

Mr. Pristawa asked Attorney Carroll to explain the voting process. Attorney Carroll stated that to “*accept*” the appeal and rule that the decision made by the Planning Board was proper, you would need three votes to “*Uphold*” the Planning Board’s decision; to “*Overturn*” the Board’s decision would require three votes.

Attorney Croll also advised the Board that they have the ability to remand the application to the Planning Board.

A MOTION was made by Mr. Pristawa and seconded by Mr. Begin to **Overturn** the Woonsocket Planning Board’s decision to DENY a Major Subdivision at the above location.

|                 |               |   |
|-----------------|---------------|---|
| Roll Call Vote: | Mr. Begin     | <b>Overturn</b> the Planning Board’s decision |
|                 | Mr. Frechette | <b>Uphold</b> the Planning Board’s decision   |
|                 | Mr. Gendron   | <b>Uphold</b> the Planning Board’s decision   |
|                 | Mr. Moreau    | <b>Uphold</b> the Planning Board’s decision   |
|                 | Mr. Pristawa  | <b>Overturn</b> the Planning Board’s decision |

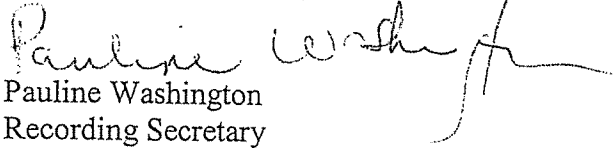
The MOTION DID NOT CARRY; the application to appeal the Planning Board’s decision was DEFEATED by a vote of 3-2.

Attorney Gariepy thanked the Chairman and the Board members.

Reason for Denial: The Board cited the Planning Board's September 2, 2003 reason for denial of the above-referenced application as follows: The plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.11 of the City's Zoning Ordinance, which states that *"The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot."*

Chairman Pristawa adjourned the meeting at 9:40 P.M.

Respectfully submitted,

  
Pauline Washington  
Recording Secretary

Advertise once:  
The Woonsocket Call  
January 11, 2004

Executive Decisions Filed:  
January 29, 2004

Woonsocket Zoning Board of Review  
c/o Woonsocket Zoning Officer  
169 Main Street  
Woonsocket, Rhode Island 02895

RECEIVED  
CITY OF WOONSOCKET

OCT 06 2003

APPEAL/COMPLAINT

1. Appellant, R&K Builders Corp., a Rhode Island corporation having a mailing address of PO Box 3107, South Attleboro, Massachusetts, had submitted an application for a Major Subdivision for real estate located on the easterly side of Mendon Road and being more particularly described as Assessor's Plat 53, Lots 1 and 32.

2. On September 2, 2003, the City of Woonsocket Planning Board (the "Board") denied Master Plan Approval of said Major Subdivision citing as the reason for such denial that the proposal would create an abutting lot to be dimensionally non-conforming with regard to Section 7.1.1 of the City of Woonsocket Zoning Ordinance.

3. Said decision of the Woonsocket Planning Board was filed in the Land Evidence Records of the City of Woonsocket on September 16, 2003, at 11:34 am in Book 1307, Page 475, a copy of said decision is attached hereto as Exhibit "A".

4. This appeal is filed pursuant to the provisions of Section 13 of the City of Woonsocket, Rhode Island Subdivision and Land Development Regulations.

5. Appellant contends that its subdivision application does not violate the purpose or intent of Section 7.1.1 of said Zoning Ordinance and in fact is in compliance with said Zoning Ordinance and the City's Comprehensive Plan.

6. That as a result of the evidence heard by the Board, the decision of the Board is:

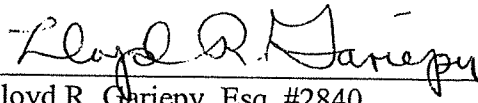
- a) In violation of constitutional, statutory, or ordinance provisions;
- b) In excess of the authority granted to the Board by statute or ordinance;
- c) Made upon unlawful procedure;
- d) Affected by other errors of law;

e) Clearly erroneous in view of the reliable, probative and substantial evidence of the whole record; and

f) Arbitrary or capricious or characterized by abuse of discretion and is clearly an unwarranted exercise of discretion.

WHEREOF, Appellant prays that the decision of the City of Woonsocket Planning Board be reversed and this Honorable Board enter an order granting Appellant's Master Plan Approval of its Major Subdivision and such other relief as shall be fair and just.

Appellant  
By its attorney,



Lloyd R. Gariepy, Esq. #2840  
68 Cumberland Street, Suite 203  
Woonsocket, Rhode Island 02895  
(401) 762-0200  
(401) 769-5222 Fax

Dated: October 6, 2003



CITY OF WOONSOCKET, RHODE ISLAND  
DEPARTMENT OF PLANNING & DEVELOPMENT

September 3, 2003

Mr. Raymond Bourque  
R&K Builders  
P.O. Box 3107  
South Attleboro, MA

Re: Master Plan for Major Subdivision for R & K Builders – Plat 53, Lots 1 & 32,  
Mendon Road

Dear Mr. Bourque:

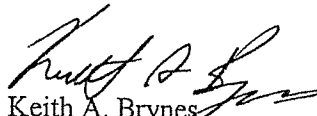
This letter is to inform you that the Woonsocket Planning Board at their September 2, 2003 meeting voted to deny the above-referenced application.

The Board's reason for denial is that the plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.1.1 of the City's Zoning Ordinance which states that "The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot." According to the enclosed communication from the City Solicitor, the project is unable to proceed without the appropriate zoning relief, which can only be obtained by the abutter.

Revised plans may be submitted to the Planning Board under a new application. An appeal from the Planning Board's decision may be requested from the Zoning Board of Appeals within twenty days as detailed in the Subdivision of Land Development Regulations.

Please call with any questions or concerns.

Sincerely,

  
Keith A. Brynes  
City Planner

Enclosure: Memo from City Solicitor to Planning Board dated 5/1/03

cc: Mayor Susan D. Menard  
Joel D. Mathews, Director of Planning and Development  
Owen T. Bebeau, Planning Board Chairman  
Michael Del Rossi, Deputy Director of Public Works / City Engineer  
Lloyd R. Gariepy, Esq.

FORWARD WOONSOCKET  
"A CITY ON THE MOVE"



**LLOYD R. GARIEPY**

ATTORNEY AT LAW

PLAZA CENTER  
68 CUMBERLAND STREET  
P.O. BOX 129

WOONSOCKET, RHODE ISLAND 02895-0780

TEL. (401) 762-0200

FAX (401) 769-5222

November 3, 2003

Mr. Michael Przbylowicz  
Woonsocket City Hall  
169 Main Street  
Woonsocket, Rhode Island 02895

Re: R&K Builders Corporation appeal of Woonsocket Planning Board decision

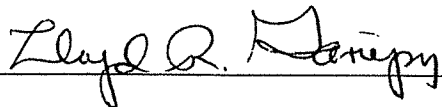
Dear Mr. Przbylowicz

On behalf of R&K Builders Corporation ("Appellant") I filed an appeal of a Woonsocket Planning Board decision recorded in the Land Evidence Records of the City of Woonsocket on September 16, 2003 in Book 1307, Page 475. Said appeal was filed on October 6, 2003 and in accordance with Section 13.3.4 of the City's Subdivision and Land Development Regulations a hearing on said appeal shall be held within forty-five (45) days of the receipt of the appeal.

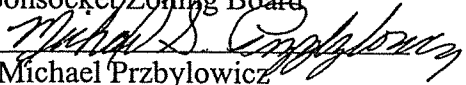
You have advised me that despite a concerted attempt on your part you have been unable to schedule a hearing on said appeal until November 24, 2003. Therefore you have requested that Appellant waive the forty-five (45) day requirement and allow the hearing to be held on said November 24, 2003 date. In the spirit of cooperation, my client has agreed to waive its right to have its appeal heard within forty-five (45) days provided that its appeal is heard on November 24, 2003 as no further extension shall be granted.

If the foregoing is acceptable to you please so indicate by signing below:

Very truly yours,

  
\_\_\_\_\_

Accepted and Agreed to  
Woonsocket Zoning Board

By   
Michael Przbylowicz

**LLOYD R. GARIEPY**

ATTORNEY AT LAW

PLAZA CENTER  
68 CUMBERLAND STREET  
P.O. BOX 129  
WOONSOCKET, RHODE ISLAND 02895-0780

TEL. (401) 762-0200

FAX (401) 769-5222

November 5, 2003

Mr. Michael Przbylowicz  
Woonsocket City Hall  
169 Main Street  
Woonsocket, Rhode Island 02895

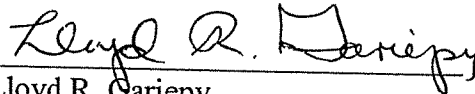
Re: R&K Builders Corporation appeal of Woonsocket Planning Board decision

Dear Mr. Przbylowicz

On behalf of R&K Builders Corporation (the "Appellant") I hereby respectfully request that the hearing on the above captioned appeals scheduled for November 24, 2003 be postponed to a date in mid-December. Please be advised that the Appellant hereby confirms that it has agreed to further extend the time period in which the appeal must be heard.

Please advise me as to possible dates for a December hearing. Please do not hesitate to contact me if you have any comments or questions.

Very truly yours,

  
Lloyd R. Gariepy

LRG/jar

**PLANNING BOARD MEETING  
WOONSOCKET, RHODE ISLAND  
TUESDAY, SEPTEMBER 2, 2003  
7:00 P.M.**

**Members Present:**  
Owen T. Bebeau, Chairman  
Michael A. Del Rossi  
John R. Monse, Jr.  
Daniel R. Peloquin  
David M. Soucy

**Also Present:**  
Keith A. Brynes, City Planner  
Pauline Washington, Recording Secretary

**1. Public Hearing for Minor Subdivision Plan Entitled "Vivian Street Multi-Family Concept" for Regional Development Corp.—Map G6, Lots 45-2, 45-5, 45-6 & 45-29, Vivian Street**

Mr. Bebeau opened the public hearing by stating that representatives of the applicant would make their presentation first, followed by questions and comments from the Board members. After the presentation is over everyone in attendance would have an opportunity to comment and ask questions. Mr. Bebeau requested that everyone give his or her name and address before speaking.

- Attorney Peter Ruggiero, Esq., Representative

Attorney Ruggiero stated that a few months ago a public hearing was held regarding the above name application and that this is a continuation of that meeting. He stated that during that public hearing a number of expert witnesses testified regarding the proposed plan and several questions were raised by the Planning Board and the general public. Attorney Ruggiero stated that since that meeting the design team has revised the plan. Originally the plan called for 27 dwelling units but has since been reduced to 20 units as a result of that input. The units will be rental as previously discussed.

Attorney Ruggiero stated that he would first review the proposed changes and then take questions from the Board and the general public.

- George Gifford, President, Gifford Design Group, Environmental Planners & Landscape Architects, Mendon Road, Cumberland, RI

Attorney Ruggiero stated that with him tonight are three expert witnesses as well as other members of the design team to answer questions. Attorney Ruggiero introduced George Gifford of Gifford Design Group to explain the proposed changes to the plan as a result of the last public hearing. Mr. Gifford stated that he is a licensed landscape architect with offices located at 1621 Mendon Road, Cumberland, RI. Mr. Gifford stated that the Planning Board may recall that the last proposal the design team presented was for 27 units with a total of seven buildings, the majority of them being four unit buildings and one building consisting of three units. The property is located at the edge of a gravel excavation with a change in topography from Lucille

Street in a downward fashion, towards the quarry. The existing topography of the subject property is formed in a terraced fashion (*a high plateau*) on the eastern side of the property that drops down eight to ten feet to a low plateau on the western side of the property.

Mr. Gifford stated that the proposal most recently submitted is a 20 unit multi-family project; the number of buildings has been reduced to 5 consisting of 4 units each; the main street would remain a public right-of way with improvements to City standards. There would be 8 units, (2 four-unit buildings) to the north of Vivian Street and twelve units (3 four unit buildings) to the south of Vivian Street.

Mr. Gifford stated that the new proposal allows them to maintain the same 65 ft. vegetated woodland buffer along the east side of the development as proposed in the old plan. It also provides for the area of undisturbed open space on the south side of the property. Mr. Gifford stated that there is one small area of note to the southwest corner where the gravel operation has encroached somewhat. The area of encroachment is the proposed site for placement of the storm water facility, which will be discussed in further detail by the civil engineer.

Mr. Gifford stated that the east side of the property will be buffered by evergreen vegetation, there will be evergreen plantings along Vivian Street to buffer Vivian Street from the most northerly multi-family structure; there will be evergreen plantings on the west side to buffer the ground excavation properties from the westerly buildings. As discussed at the last meeting the design team feels that this is an improved transitional use between the high-intensity use of the gravel excavation property and the low-intensity use of single-family homes.

Mr. Peloquin asked what is the actual size of the Lot. Mr. Gifford stated that the actual size of the Lot is 3.6 acres, a little more than 56,000 sq. ft.

Mr. Bebeau asked how many single-family homes could be built on the site. Mr. Gifford stated that Mr. Thalmann (Thalmann Engineering Co., Inc.) did a yield plan that indicated 12 Lots could be generated.

- Joseph D. Lombardo, AICP, Planning Consultant, JDL Enterprises

Attorney Ruggiero introduced Mr. Joseph D. Lombardo, AICP, JDL Enterprises. Mr. Lombardo stated that he is a land use planning consultant with offices located at Hope Valley, RI. His educational background includes a bachelor's degree in natural resources and a master's degree in planning from the University of RI. Mr. Lombardo stated that he has been involved with municipal planning for over 25 years, working with municipal planning departments and also as a planning consultant.

Mr. Lombardo stated that he was retained by the applicant to perform a fiscal impact assessment on this proposal, to compare the proposed development scheme to that of single-family homes for the site.

Fiscal Impact Study Conclusions: Mr. Lombardo presented a document entitled "*Fiscal Impact Study & Population and School Age Children Projection, Comparison: A 12 Lot Single*

*Family Home Development V.S Twenty Apartment Unit Development," City of Woonsocket, RI, prepared for: Regional Development Corporation, prepared by: JDL Enterprises. The document was accepted and marked Exhibit "A."*

Mr. Lombardo stated that he would briefly review the study in order that the Board and the public might understand the methodology. He stated that in essence a standard methodology was used whereby they look at the impact per person of the development, it can be used in any type of development in any place in the State. Mr. Lombardo stated that he would be looking specifically at the future revenues and expenses of the 20-unit development and compare that with a 12-Lot single-family home development. He stated that this comparison would give everyone an idea of the differences from a fiscal impact on the community.

Mr. Lombardo stated that the first thing they did was establish baseline information, which usually comes from two sources: the municipality itself and the US Census Bureau. Page two shows the enrollment in the public school system, the municipal budget, the school budget, the year 2000 census, the year 2000 population, and the year 2000 housing units. From that information they were able to calculate the per capita multipliers that are indicated at the bottom of page two. For example, the municipal budget per capita per person is \$959; the school budget per capita is \$8,455; the multiplier per household is 2.37; and the school age multiplier per household is .36 students per household, which is a city-wide average. Mr. Lombardo stated that these budget numbers are current fiscal year numbers from the City of Woonsocket's Finance Department.

Mr. Lombardo stated that one of the first things they did was to estimate the proposed population for the development, taking into account that there would be 20 units; 2.37 persons per unit would generate 47 persons living in the development. However, that would be a Citywide average and they would like to do a more precise calculation. Mr. Lombardo stated they are looking at two-bedroom apartments; two-bedroom apartments typically will generate far less school age children than the average home or a single-family home. Mr. Lombardo cited three housing developments as examples: Villa Del Rio in Warwick, Springfield in Cranston, and the Winsor at Brentwood. He stated that all these housing developments produced less than .10 pupils per unit. If we were to apply the .10 pupils per unit to the proposed 20 units we would have two school-aged children living in the development, which is less than .36 pupils. Mr. Lombardo stated that for the purposes of this Fiscal Impact Statement the two school age children would be projected to be residents of the proposed development.

Mr. Lombardo stated that page four of the FIS recalculates the population, which will not be 47 using the citywide average; the calculation would actually be 42 or 2.1 per capita. Located at the bottom of page 4 is the single-family home projection. He stated that typically three to four-bedroom single-family homes tend to generate far more than the city average of .36 pupils, its closer to 1 school age child per unit. Mr. Lombardo stated that when you add these numbers of 3 persons per unit you have a total of 36 persons occupying the 12 units.

Mr. Lombardo stated that the second half of the FIS is the expense estimates. He stated that they plug in the number of school age children times the number of dollars per student (\$8,455) per total expense of \$16,910. Similarly with the municipal budget with a capita of \$959

per capita, they generate expenses of \$40,278. Mr. Lombardo stated that the 20-unit apartment complex would generate an expense of \$57,188 to the City of Woonsocket.

Mr. Lombardo stated that next we would look at what happens in a 12 unit single-family home development applying the same methodology of using 12 school age children times the multiplier gives you a total expense of \$101,460. Utilizing the population at \$959 per person is a total expense of \$135,984 for both municipal and school expenses. Mr. Lombardo stated that the difference between the 20 unit apartment at \$57,188 vs. the 12 single-family homes at \$135,984.

Mr. Lombardo stated that to estimate the revenue we look at the valuation of the units as they are being constructed. He stated that the developer is estimating an apartment unit's value of \$200,000 each. Taking the current tax rate (\$23.30/1,000) times 20 units at \$4,660 per unit would generate approximately \$93,200 in revenue to the City of Woonsocket.

Mr. Lombardo stated that page 6 uses the same calculation for the 12 single-family homes. Estimating that those homes would be valued at \$300,000, however with the 45% reduction in the Homestead Act, a home would only be valued at \$165,000. Again, applying the same tax rate and number of units would generate \$46,134 in revenue to the City of Woonsocket. He stated that an apartment complex would generate \$93,200; 12 single-family homes would generate \$46,134.

Mr. Lombardo stated that page nine is projected revenue and expense comparison on an annual basis with the build out of the proposed 20 apartment units. He stated that the total cost to the City would be \$57,188; total revenue would be \$93,200, with the City of Woonsocket realizing a net tax revenue gain of \$36,012.

The final page, page ten, gives the same process for a single-family home with a cost to the City of Woonsocket of \$34,524, revenue of \$46,134, a negative of -\$89,850. Mr. Lombardo stated that the single-family development would create a loss of revenue for the City of Woonsocket.

In summary, Mr. Lombardo stated that the 20-unit apartment complex is estimated to have a positive tax revenue gain of approximately \$36,000 in the year 2003. This projected estimated is based on all the multipliers and assumptions included in the Fiscal Impact Study.

Mr. Monse asked Mr. Lombardo how did he come up with the projected numbers utilized in the FIS. Mr. Lombardo stated that having worked in municipal government for over 12 years, working at town halls and with tax assessors and he is very familiar with valuations and how they work. He stated that these calculations, which are a snap shot in time, are very close to what can be expected assuming that the values are correct. Mr. Lombardo stated that he could say with relative certainty that the numbers that he has quoted are a very close estimate to the amount of money that would be saved. Mr. Monse asked Mr. Lombardo if the methodology one that he has used over a period of years. Mr. Lombardo said yes.

Mr. Peloquin stated that the FIS is based on dollars and not on land use. The Lot is zoned R-2, Low Density Single-Family Residential District, and the developer is proposing an

apartment complex, the developer is justifying the development based on dollars not on land use. Mr. Peloquin stated that he recently drove through the neighborhood and clearly the makeup of the neighborhood is approximately 95% single-family homes. He stated that based on the makeup of the neighborhood it is very clear that the FIS is based solely on dollars. Mr. Lombardo stated that the purpose of the FIS is strictly to give the City the dollars and cents of the two housing options, one that is available by right and one that is being requested.

Mr. Bebeau asked if the plan takes into consideration the elderly population and the fact that the homes could be sold to an elderly population without children? Mr. Lombardo stated that traditionally new single-family homes tend to generate the highest number of school age children. But 15 to 20 years later those same 12 homes might have half the number of school age children that it had during the first three to four years. He stated that another cycle could occur, it really depends on what the people want and need. But he stated that clearly the newly built 12 (3-4 bedrooms) single-family homes would attract families with the highest population in that time period. Mr. Lombardo stated that it is true that if you were to visit a single-family neighborhood that is about 20, 30, 40 years old you would have an entirely different picture.

- James N. Salem, Traffic Consultant, Barrington, RI

Attorney Ruggiero introduced James N. Salem the traffic consultant for the project. Mr. Salem distributed copies of his resume that was marked *Exhibit "B"* by the Board. Mr. Salem stated that he has a Master of Science Degree in Transportation Planning and Engineering; he was the Assistant Traffic Engineer for the City of Providence (now retired); he is currently the traffic consultant to the Town of Richmond, and he also provides consultations to its Planning Board.

Attorney Ruggiero asked Mr. Salem if he was retained by the applicant to perform a traffic impact analysis on the proposed project? Mr. Salem said yes. Attorney Ruggiero asked Mr. Salem to explain the tasks he undertook and his subsequent findings and conclusions. Mr. Salem stated that when he first undertook the traffic analysis it was predicated on 27 units but was subsequently reduced to 20 units. Mr. Salem stated that in analyzing the neighborhood he determined that Lucille Street is a two-way street with about 32 ft. of width with speeds of about 25 miles per hour with high intensity ramps located on Lucille Street. Mr. Salem stated that they conducted several traffic counts on Lucille Street at the intersection of Vivian Street during peak hours as well as during school time activities. He stated that they found these streets to have the traffic characteristics consistent with a residential neighborhood. Mr. Salem stated that these two streets would be servicing a neighborhood of about 400 vehicles per day. He stated that Lucille Street is about 32 ft. wide and has the same characteristics as Vivian Street. Again, he stated that they conducted traffic counts primarily during school time and during peak hours.

Mr. Salem stated that for the second part of the study they reference the ITE Trip Generation Manual to obtain an appropriate trip generation rate for the proposal's use. Mr. Salem stated that the ITE is the "Institute of Transportation Engineers" that conducts traffic studies throughout the country: industrial, commercial, residential, etc. From these studies the Institute is able to formulate trip generation rates.

Mr. Salem stated that under the initial application of 27 units the proposed use would have generated 190 trips per day; with the reduction in units the number of trips per day was reduced from 190 trips per day to 120 trips per day. What does that do to the impact on the existing traffic? Mr. Salem stated that in the next phase of the study he conducted a "*capacity analysis*" or "*impact analysis*." He stated that a capacity analysis measures the level of service or vehicular movement. He stated that an "A" level of service indicates a little delay; level "F" indicates congestion.

Mr. Salem stated that in reviewing the proposed parking plan for the use he found that the proposed parking plan meets the good engineering standards as set forth by the Federal Highway Administration. He stated that the stall depth as well as the stall width and the aisle width exceed the minimum standards set by the Federal Highway Administration.

Mr. Salem stated that it is his conclusion based on the traffic study that the proposed condominium use would not have an adverse affect on traffic.

Mr. Bebeau asked Mr. Salem if he had a copy of the traffic study for the Board's review. Mr. Salem said no, he does not have a copy of the traffic study, just the oral presentation.

Mr. Del Rossi asked what is the number of increased trips for Vivian Street and Lucille Street based on the proposed subdivision? Mr. Salem said under 27 units would generate 190 trips; with the reduction from 27 units to 20 units the number of trips was reduced by 50, down to 140 trips. Mr. Salem stated that the trips are down to 140 as a result of the revised proposal. Mr. Del Rossi asked what street the count was conducted on. Mr. Salem said the intersection of Lucille Street and Vivian Street.

Mr. Del Rossi asked if the capacity analysis for both Vivian Street and Lucille Street both "A"? Mr. Salem said yes. Mr. Salem stated that the 27-unit proposal and the 20-unit proposal would both provide an "A" level of service.

Mr. Del Rossi asked Mr. Salem if he did an analysis for single-family homes? Mr. Salem said no, but he could answer questions on the subject. Mr. Del Rossi asked if there would be an increased number of trips with the development of single-family homes? Mr. Salem said no, that twelve single-family homes would generate 120 trips per day as opposed to 140 trips with the development of 20 condo units. He stated that the level of service would also be "A"; that 20 units, 27 units or 12 single-family units would maintain an A level of service.

Mr. Del Rossi asked what is the highest or best level of service. Mr. Salem said the best is level "A" the worst level is "F," which is congestion. Mr. Salem stated that each level of service has a range: Level A is 1 to 500 vehicles in a one-hour period; Level B is 501 to 1,000 vehicles and so on until you reach the last level, Level F, which is congestion. Mr. Salem stated that with the current traffic pattern and the current traffic volume on these roadways and the superimposed projected traffic, we were able to maintain an "A" Level of service. He stated that even though they added to the current volume of traffic it was not enough to reduce the traffic to a "B" Level.



Mr. Del Rossi asked hypothetically the number to trips (during peak hours) needed to reduce the Level to B. Mr. Salem stated that peak hour trips would need to be increased by at least 150 vehicles per hour in order to lower the level of service to "B."

Mr. Ruggiero asked Mr. Salem to explain the peak hour travel based on the proposed use. Mr. Salem stated that during the morning peak hour the volume of traffic is not high because this is a residential neighborhood. He stated that during the morning peak hour he observed one left turn movement of five, another left turn movement of zero, three left turn movements of zero, and one left turn movement of zero. Mr. Del Rossi asked what time this traffic count occurred. Mr. Salem said between 7:00 A.M. and 8:00 A.M. Mr. Salem stated that this is not the traffic pattern for the entire day, only what he has calculated to be the morning peak hour. He stated that the P.M. or afternoon peak consisted of one left turn, two left turns, two approaches that had one left turn each, and two approaches with zero left turns. Mr. Salem stated that the afternoon peak is between 4:00 P.M. and 5:00 P.M. Mr. Salem stated that these are actual numbers; they were not extracted from a study or from State sources. He stated that an individual physically sat in his car and made these counts on October 4, 2002 and October 9, 2002.

Mr. Brynes asked if this traffic study was only for the intersection of Vivian Street and Lucille Street? Mr. Salem said yes.

Mr. Bebeau opened the hearing to questions and comments from the public. He requested that everyone please give his or her name and address before speaking.

- Joyce Fox, 363 Lucille Street (corner of Vivian Street)—Ms. Fox stated that during the last public hearing (*June 3, 2003*) there were various issues raised that she has not heard addressed tonight. She stated that one item of concern is a proposed detention pond; another is water and sewer concerns and safety issues. Ms. Fox stated that traffic going by the corner of Lucille Street turning left onto Vivian Street because most people reverse their direction and Larch Street, down Talcott Street and egress onto Mendon Road. She stated that if you were going onto Rte 99 during the A.M. this is the route you would take because you would be able to turn right with the traffic. She stated that when traffic does come up Talcott Street and approach the corner of Mendon Road it is sensitized by the State of RI and will trigger a green light to allow traffic to exit the neighborhood. Ms. Fox stated that this is one of the concessions that her neighborhood was granted when Rte 99 cut the neighborhood in half. Ms. Fox stated that the study of traffic existing Lucille Street turning left onto Vivian Street is totally irrelevant to the traffic problems this development would cause.

Ms. Fox also stated that the corner of Vivian and Lucille Streets is presently a school bus stop for an elementary school. She stated that Mr. Salem testified that the study was done at 8:00 A.M.; students are not picked up before 8:00 A.M.

Ms. Fox stated that her neighborhood would be paying a very high price in order for the City of Woonsocket to get a few tax dollars. She said that the number of tax dollars this project can generate should be irrelevant; she would hope that the City of Woonsocket is concerned enough about the residents and existing taxpayers and not sell them out for a few extra tax dollars.

Ms. Fox also stated that she is concerned about the ownership of the remainder of the undeveloped land. She stated that if Regional Development Corporation also owns this land they could build more homes.

Ms. Fox stated that Mr. Bebeau alluded to the fact that single-family homes could be built targeting older persons. She said that this proposal would be much more palatable; age restricted to persons age 55 plus. Ms. Fox stated that age restricted developments is a growing trend throughout Rhode Island and Massachusetts. She stated that an age-restricted development would not be a traffic burden or a tax burden on our school system. She stated that if the proposal were changed to an age restricted, single-family development the developer would not encounter as much resistance from the neighborhood property owners.

- Steven Girard, 339 Lucille Street—Mr. Girard stated that he is in agreement with Ms. Fox regarding issues raised during the June 3, 2003 public hearing that have not been addressed tonight. He asked what changes have been made to the project since that meeting. Mr. Girard stated that one item of concern was blasting; the developer was not sure if blasting would be required. Another issue concerned only one means of ingress and egress and parking for the tenants.

Mr. Girard stated that he and Ms. Fox would be most affected by the development because their property is located at the corner of Vivian and Lucille Streets.

Mr. Girard stated that he and the other property owners received only a one-week notice regarding tonight's meeting, which is not enough time.

Mr. Brynes stated that these notices are normally mailed at least 14 days before a public hearing, but due to the fact that the meeting could not be held at City Hall and the alternative meeting site, the Harris Public Library, was being used by the City Council, the Planning Board had to re-advertise the change in venue, the Woonsocket High School Library, which allowed for only a seven day notice. Mr. Brynes apologized for any inconvenience this may have caused.

- Steven St. Jean, 102 Vivian Street—Mr. St. Jean stated that the residents are also concerned about emergency vehicles accessing the area. He stated that if access to Vivian Street were blocked for whatever reason, there would be no second means of ingress. Mr. St. Jean stated that if this were a single-family development he would not be in opposition to it.

- Theodore Brodeur, 93 Vivian Street—Mr. Brodeur asked what is being proposed regarding the 10 ft. drop at the end of Vivian Street? Attorney Ruggiero stated that Curtis Ruotolo, E.I.T., Project Engineer, Thalmann Engineering, would answer Mr. Brodeur's question. Mr. Ruotolo (using the submitted plans) pointed out the area in question that represents the existing grades and the same area displaying the proposed grades. He stated that the original plan did show the area with an approximate 10 ft. drop but the proposed plan calls for the area to be filled to a depth of 3 ft.

- Richard Rainville, 154 Talcott Street—Mr. Rainville stated that there are only two means of ingress into this neighborhood and all of this traffic would pass by his house every day. Mr.

Rainville asked what is the turnover rate for rental units. He stated that the majority of the existing neighborhood residents grew up in this neighborhood, but rental units will consist of people moving in and out on a regular basis. He stated that single-family homes would produce a much lower turnover rate.

- Steven St. Jean, 102 Vivian Street—Mr. St. Jean stated that the proposed grade of the street could prevent rescue vehicles from accessing the neighborhood. Mr. Ruotolo stated that the proposed street grade would not be a problem for any vehicle.

- Kathy Murphy, Larch Street—Ms. Murphy asked if a traffic study could be done for Larch Street and Talcott Street before the project moves forward.

- Lori Dion, 123 Burrington Street—Ms. Dion requested that the Lot's zoning designation remain R-2.

- Michael Heroux, 147 Louise Street—Mr. Heroux stated that the City Administration should realize that you cannot put a price on children being able to play in the street, or the peace they all share from living in a quiet, secluded neighborhood where everyone knows their neighbors.

- Donald Harnois—Mr. Harnois stated that he has lived in Oak Grove for nearly 40 years. He stated that the Oak Grove residents do not want this housing development in their neighborhood.

- Gerald Durand, 136 Larch Street—Mr. Durand stated that the testimony tonight from the developer's representative regarding the financial impact and the traffic study are merely assumptions or theories not facts. Mr. Salem disagreed with Mr. Durand regarding the traffic study. Mr. Salem stated that the traffic study consists of actual counts and techniques used in the industry. He stated that actual counts were conducted, not a secondary source. Mr. Salem stated that the ITE trip generation manual was used to extract approximate trip generation rates for the course of the day as well as during peak hours. He stated that the capacity analysis is the Highway Capacity Analysis 2000, which is used by the Federal government and the State of Rhode Island. He stated that the methodology used in evaluating this residential use is a process that is accepted in the industry by the RI Department of Transportation and the Federal Highway Administration. Mr. Salem stated that the methodology is a standard of the industry; its not magical, its approximate, but there is enough information to give him an idea as to what type of impact any type of use would have in any particular area. Mr. Salem said, as stated during his earlier testimony that whether the development is residential, industrial or commercial, they all have different trip generation rates, they all have different traffic characteristics, depending on the use. Ms. Salem stated that the only thing that won't change is the width of the street, the numbers that were counted on that day and the capacity analysis results. He stated that the results of the capacity analysis would be the same for 12 units, 20 units, or 27 units.

Mr. Bebeau read a letter to the Planning Board dated September 2, 2003 from Joel D. Mathews, Planning Director, stating that it is the City Administration's understanding that this *"proposal is for luxury/high-end housing units and specifically not for subsidized units. This*

*communication is not intended to clearly support or request rejection of the proposal, but to strongly suggest to the Planning Board that if for any reason that you decided to approve this proposal or any modified version that the approval should restrict the use to nonsubsidized housing units that has been previously included as part of the testimony the developers.”*

Mr. Bebeau asked if anyone else would like to speak. There were no further comments or questions. Mr. Bebeau gave Attorney Ruggiero an opportunity to respond to the questions and comments by the Oak Grove residents.

Attorney Ruggiero thanked the Board members and the residents for their questions and recommendations. He stated that he and the design team are aware that this is a very difficult and opinionated project before them tonight. He stated however that he is compelled to remind the Board that the applicant is asking for a Minor Subdivision approval with a street extension; the applicant is not asking for a zone change. Attorney Ruggiero stated that the design team has presented their proposal in a candid and frank manner, fully divulging what their intentions are. Attorney Ruggiero stated that he is asking the Planning Board to contemplate this proposal within the framework of the Board's decision standards enumerated in the City's Subdivision Regulations. Attorney Ruggiero stated that it is his opinion that the applicant and design team has presented much more than most applicants would at this level of development. He stated that the evidence presented by the design team tonight is sufficient for the Board to make a positive finding. However, Attorney Ruggiero stated that he is aware that the Board's decision will be tempered with the reality that the Oak Grove residents are not in favor of the proposed land use change. Attorney Ruggiero stated that this is not the time to make that decision that it should be made at another time and by another board. Attorney Ruggiero stated that he understand that the public maybe frustrated by this type of process and the Board members maybe equally frustrated, but he must ask the Board to remember why the applicant is here tonight and the relief the applicant is seeking.

A MOTION was made by Mr. Peloquin seconded by Mr. Del Rossi to close the public hearing. The MOTION carried and the public hearing closed.

Mr. Bebeau stated that the Board has heard testimony from representatives of the applicant and the Oak Grove residents; he asked Board members if they had any further questions or comments, there were none.

Mr. Brynes stated that he would like to know if blasting would be required and to what extent. Mr. Ruotolo stated that test pits were dug sometime near the end of June and soil evaluations were conducted in accordance with Class 4 Soil Evaluation Procedures by RI Department of Environmental Management Standards. He stated that these tests revealed no ledge to a depth of ten ft., and a ground water table greater than 7 ft. Mr. Ruotolo apologized for not have this documentation with him tonight.

Mr. Del Rossi asked if these studies were done in the area where the detention pond would be located. Mr. Ruotolo said yes, the tests were done throughout the area.

Mr. Del Ross again asked if ledge was found in any of the holes. Mr. Ruotolo said that he is aware that outcroppings of ledge does exist in the area but none was found in the test holes that were dug. Mr. Del Rossi asked Mr. Ruotolo if he has a copy of the Class 4 Soil Evaluation report. Mr. Ruotolo said no, he does not have a copy with him tonight. Mr. Del Rossi asked who did the soil evaluation. Mr. Ruotolo said Brian Gomes.

Mr. Byrnes asked Mr. Ruotolo to elaborate on the drainage plan and the proposed detention pond. Mr. Ruotolo stated that basically it is a typical detention pond; all drainage from surfaces would be captured by a series of catch basins and routed to the detention pond. He stated that the detention pond would capture the water and give the water time to infiltrate into the ground. In summary, he stated that the water would leech into the ground.

Mr. Del Rossi asked the depth of the detention pond? Mr. Ruotolo stated that at this point they have not done a complete analysis of the detention pond but he would assume that it would be approximately 4 ft. deep.

Mr. Del Rossi stated that a detention pond would be needed even if single-family homes were built. He stated that the main concern is Vivian Street, which would be a public road, but he asked who would maintain everything south of Vivian Street, the detention pond and the access road? Attorney Ruggiero stated that maintaining this property would be the responsibility of the owner of the rental units, who is presently his client and has no intention of selling the property, but if he should sell the property, the new property owner would assume this responsibility. He stated that the owner could provide easements to the City.

Mr. Del Rossi stated that he feel that it would be a lot easier if the entire road were public. Regarding ingress and egress a cul de sac could be located to the south of the property. Maintaining the road wouldn't be an issue and in addition the detention ponds must be cleaned periodically. He stated that the City Administration prefer to have public roads developed. Attorney Ruggiero stated that his client is amenable to a public road if it is a condition of approval.

Mr. Brynes stated that private roads are prohibited according to the City's Subdivision Regulations in all areas of the City other than Planned Residential Neighborhood Developments.

Mr. Brynes asked Mr. Ruotolo to elaborate somewhat on the proposed sewer system. Mr. Ruotolo stated they have taken a preliminary look at the existing grade, the sewers would be connected via a utility easement; they would be connected to an existing sewer line down at the end of Larch Street, by gravity. The sewer line would travel westward down Vivian Street into the cul de sac then northward via gravity. Mr. Del Rossi asked Mr. Ruotolo if he had considered pumping upward. Mr. Ruotolo said no.

Mr. Brynes asked Attorney Ruggiero to elaborate on the proposed landscaping, the buffer plan in particular. Mr. Gifford stated that the design team is cognizant of the fact that there is a gravel operation located adjacent to the proposed development site. He stated that the design team felt that it would be prudent to provide in the overall master plan some evergreen plantings along the western property line. Mr. Gifford stated that it is impractical to plant 30 ft. trees on

day one as mentioned earlier by an Oak Grove resident. However, he stated that it is not inappropriate to plant trees such as cypress that can grow as fast as three ft. per year to provide an evergreen buffer within a very short time.

Mr. Peloquin asked if the owner had investigated a single-family development vs. the apartment complex development, and if yes, why did the owner pursue the apartment complex development? Attorney Ruggiero, speaking on behalf of the applicant, stated that the owner had considered developing single-family homes on the site but given the proximity of the gravel quarry they believe that from a marketing standpoint that the project would be unfairly prejudiced in the value of homes. He stated that an Oak Grove resident asked why would anyone rent an apartment located adjacent a gravel pit, but a more serious question is why would someone buy a home adjacent to a quarry. Attorney Ruggiero stated that gravel excavation can be carried out at anytime, and it would be very difficult to sell single-family homes near such a site. He stated that the idea of a multi-family development came as a transitional use between the quarry and the single-family home development. Attorney Ruggiero stated that the owners believe, from a marketing standpoint, that a multi-family development of the land makes sense.

Mr. Peloquin asked Attorney Ruggiero how long his client has owned this land. Attorney Ruggiero stated that he does not know but he could find out. Mr. Peloquin asked Attorney Ruggiero if the Board could assume that his client purchased the property fully aware of the location and existence of the gravel bank. Attorney Ruggiero said yes.

Earl Marchand, President of Regional Development Corp. (840 Smithfield Avenue, Lincoln, RI) introduced himself. Mr. Marchand stated that Regional Development Corp. purchased this property from James Forte who once owned the quarry and sold it in 1992 to Todesca Bros. Mr. Marchand stated that his company is not affiliated with the quarry operation in any way.

Mr. Del Rossi stated that the detention pond would be necessary regardless of which development is pursued because the drainage in that area is difficult. He stated that based on the soil evaluation by the engineer of record, it would appear that no ledge was found. However, Mr. Del Rossi stated that he would recommend that more testing for ledge be done. He stated that due to the proximity of the gravel pit he would assume that ledge outcroppings should exist and for that reason he is recommending that additional test holes be dug, especially in the vicinity of the drainage pond.

Mr. Del Rossi stated that water and sewer would also have to be provided regardless of which development is pursued. He stated that the water issue must be discussed with the City's Water Division to make sure that correct pressure exists. He stated that the sewer issue must also be resolved. Regarding the access route, he stated that there is only one way in and one way out, but with the proposed cul de sac located at the end its possible to locate an access route near the back. He stated that this is a concern of the City Administration.

Mr. Del Rossi stated that all these issues would be addressed whether a single-family development or a multi-family development is pursued. He stated that his main concern is the area located to the south of Vivian Street; who will maintain this area? Will it be a private road?

Mr. Del Rossi stated that the City would prefer that the entire road be public due to previous problems in maintaining private roadways, and for this reason he is recommending that the entire length of Vivian Street be a public right of way.

Mr. Bebeau stated that the proposal before the Board is more than just the consideration of a street extension. He stated that he had stated during the last public hearing that the proposed development fits in with the neighborhood in regards to they type of housing that is being proposed. Mr. Bebeau stated that since the initial public hearing the developers have come back with a somewhat scaled down version of the same development. Mr. Bebeau stated that he appreciates all the expert testimony from the development team but he still feel that the project does not fit this area, this neighborhood. Mr. Bebeau stated that he reviewed the City's Subdivision and Land Development Regulations, specifically the Declaration of Purpose, which speaks of "Encouraging local design and improvements standards to reflect the intent of the City's Comprehensive Plan with regard to the physical character of the various neighborhoods and districts of the City." Mr. Bebeau stated that the plan before the Board does not do this, whether it is 27 units or 20 units. Mr. Bebeau stated that he is also dissatisfied with the traffic issue, which can be horrendous in that area. He stated that he can understand the marketing issue of multi-family apartments vs. single-family homes but the Board must look at the project from a design and planning perspective. Mr. Bebeau stated that it is his opinion that the proposed development of multi-family apartments does not belong in this neighborhood and he cannot support the plan as it is presented tonight.

A MOTION was made by Mr. Monse and seconded by Mr. Peloquin to DENY the application. The reasons for denial include the plan's failure to conform with the Declaration of Purpose under the General Provisions in the City's Subdivision of Land Development Regulations that address the following purposes: "*Promoting design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure.*" (Section 1.2.4) and "*Encouraging local design and improvement standards to reflect the intent of the City's Comprehensive Plan with regard to the physical character of the various neighborhoods and districts of the City*" (Section 1.2.5).

|                 |               |         |
|-----------------|---------------|---------|
| Roll Call Vote: | Mr. Soucy     | To Deny |
|                 | Mr. Del Rossi | To Deny |
|                 | Mr. Peloquin  | To Deny |
|                 | Mr. Monse     | To Deny |
|                 | Mr. Bebeau    | To Deny |

The application was DENIED.

A brief recess was taken at this time.

2. **Public Informational Meeting for Major Subdivision of Land Entitled “Trinity Village” for Trinity Village, LLC—Map G5, Lots 33-1, 33-2 & 31-7, Wanda and Thibeault Avenues**

Mr. Bebeau stated that the above plan has been revised; the City Planner received the revised plans today. Mr. Bebeau stated that he would read a portion of a letter dated September 2, 2003, addressed to the Planning Board from Joel D. Mathews, Director of Planning and Development. *“The City Administration approximately two years ago negotiated the number of acceptable single-family units to 39 based upon the wetlands delineation shown to us at the time and the usable acreage that remained. Based upon the recent RIDEM wetlands approval, it would appear that there should be a corresponding reduction in the number of units to approximately 32-33. In addition to this issue, the construction of additional driveways to service the individual single-family units will increase and produce additional storm water runoff. Both the City Administration and the City’s Public Works Department will need time to review the amended plan and have the ability offer corrective comments prior to a vote by the Planning Board.”*

Mr. Bebeau stated that as per Mr. Mathews’ letter, the Board would delay voting on this subdivision in order to give the City Administration and the Public Works Department time to review and comment on the revised plan.

- Kevin Morin, P.E., DiPrete Engineering Associates, Inc., Two Stafford Court, Cranston, RI, represented the applicant.

Mr. Morin stated that DiPrete Engineering Associates has been involved with this project since 2002; the last time the applicant was before the Board was for a Pre-application hearing during the spring of 2003. Since then they have proceeded with various items in order to reach the Master Plan phase. One item that received attention was detailed topography of the site; another was a wetlands edge verification, which they received one month ago and submitted to the City, and a traffic study was performed. Mr. Morin stated that the plans have been revised since the Pre-application hearing, the Master Plan drawings were submitted to the City Planner with the layout that reflected both detached single-family and attached single-family duplex units. Mr. Morin stated that he understands that there is an issue with the attached units as indicated in Mr. Mathews’ letter. Mr. Morin stated that the design team is submitting a revised plan that the City Administration and Public Works Department has not had time to review. He stated that the revised plan reflect single-family units only with a similar road layout in terms of the entrance from Wanda Avenue and Thibeault Avenue. Mr. Morin stated that the right-of-way extension utilizing existing right-of-ways from those roads that would access the site and merge at this intersection located at the southern end and continue as a loop for the remainder of the development.

Mr. Morin stated that the eastern portion of the site has not changed since the submittal of the Master Plan; detached single-family units were always shown in that area. He stated that the western portion of the site has been revised with a slightly different road layout that looks similar to the Preapplication plans that were reviewed earlier.



Mr. Morin stated that the plan calls for a total of 36 lots based on the wetlands edge verification and based on the provision of three drainage areas, one north of Lot 26, one east of Lots 19 and 20 essentially within the drainage easement, and one between Lots 17 & 18 in the northeastern portion of the loop road.

Mr. Morin stated that they have not had time to revise the drainage narrative to reflect these changes; they have run the analysis and have established that the ponds would average about 3½ ft. in depth. He stated that they would submit this revised narrative to the Public Works Department for its review.

Mr. Morin stated that he has elaborated on the major changes to the plans. He stated that a perimeter buffer would remain to the south on adjacent land that is owned by the City. There have been no changes to the proposed property line to the west or to the north that would establish 19± acres that would be deeded to the City. He stated that the area to the east would remain relatively unchanged with the exception of the eastern portion of the drainage pond near the adjacent property on Thibeault Avenue. (*Mr. Morin distributed reduced size copies of plans detailing that area.*) Mr. Morin stated that the plan calls for 36 detached single-family units with garages. Mr. Morin stated that due to a rush to present the plans during tonight's meeting the plans do not reflect driveways.

Mr. Morin stated that the plan that he just distributed basically details the eastern portion of the detention pond near Lot 26. Depicted is a 25 ft. vegetated buffer for the benefit of the adjacent property so that the pond embankment and slopes aren't directly abutting the adjacent property. He stated that details of the vegetated buffer would appear in the landscaping plans. Mr. Morin stated that as the project moves forward they plan to produce detailed designs of the topography of this area to ensure that when the final detention pond design is produced that discharge from the pond would not impact any of the adjacent properties.

Mr. Peloquin asked why the detention pond is not located on Lot 26, away from the abutters vs. locating the detention pond on the property line. Mr. Morin stated that the main reason for the location of the pond is topography; it's located in the lower area of the site allowing for control of drainage from the roadway. He stated that if the pond were relocated to Lot 26 most likely a portion of the proposed roadway extension would not discharge into the detention pond. The drainage would continue to the east towards Thibeault Avenue and the existing roads. However, he stated that the flow would be minor.

Mr. Bebeau asked if he is correct in assuming that the roadway would be a public right of way? Mr. Morin said yes, this issue was discussed during the Preapplication meeting. The proposed road would meet City standards for a public roadway: 45 ft. right-of-way, 32 ft. pavement with 6" granite curbing to both sides.

Mr. Soucy asked what house style is being proposed? Mr. Morin stated that the developer, HL George Development could answer that question.

Hebert George stated that houses proposed for this development includes small to mid-size ranch homes, farmhouses, and garrisons with garages. Mr. George stated that about seven

people have expressed an interest in purchasing one of these homes. He stated that he has not advertised the development yet, that interest has spread via word of mouth. He stated that four people interested in purchasing a home are in attendance tonight.

Mr. Bebeau asked for a ballpark price of these homes. Mr. George said \$175,000 for a house without land up to \$300,000.

Mr. Monse asked what is the approximate minimum square feet of a living area? Mr. George said about 1,500 to 2,800 sq. ft.

Mr. Del Rossi stated that whereas the detention pond has been reviewed and discussed with the City Administration, he would like the public to know that both the City and DEM would review the drainage plans; DEM must first approve the drainage plans.

Mr. George stated that the development is staying 50 ft. from the wetlands and 100 ft. from the nearest stream in the area; the development would not encroach on the wetlands.

Mr. Brynes asked if permits for the detention ponds are the only permits that would be required from DEM. Mr. George said yes. Mr. Del Rossi asked if they would be submitting a preliminary determination? Mr. Morin said yes, when they have detailed drainage plans with a preliminary determination application, which would verify that the limits of work resulted in no or negligible impact on wetlands; and the storm water management design addresses water quality requirements that the State has as well as managing storm water runoff. This is to ensure that the wetlands are not flooded. He stated that he expects DEM will ultimately issue an "Insignificant Alteration" permit.

Mr. Del Rossi asked Mr. Morin to briefly explain the reason for the detention pond and the reason for the zero impact so that the public will understand the process. Mr. Morin stated that detention ponds are required under current DEM regulations as well as federal regulations. One reason is to improve storm water quality by containing a certain amount of the water runoff from roads, it allows for sediment to remove and allows for any associate contaminants (it removes 80% of solids, as well as improves the quality of the runoff by removing nitrogen and phosphorus). He stated that the second reason and most important from most people's perspective is that the pond acts as a temporary holding area during a rainstorm; it contains the huge initial peak of runoff. The detention pond is to provide a location, a volume for that initial peak of storm water run off to be held and metered out more slowly than it would naturally flow. Mr. Morin stated that a detention pond is basically a reservoir that allows you to meter out how much water comes out of the pond vs. how much water goes in. He stated that detention ponds are heavily reviewed by DEM for performance capability.

Mr. Peloquin asked Mr. Morin to elaborate on the maintenance of the detention pond. Mr. Morin stated that there are a few different types of detention ponds: an infiltration pond that holds water for up to 72 hours, which is a significant amount of time; the extended detention pond that is designed to hold water up to 36 hours. Mr. Morin stated that they are proposing the extended detention pond for this project. He stated that the pond would fill up then slowly drain out; the pond would not hold a permanent volume of water that would attract mosquitoes, etc.

Mr. Bebeau asked who would maintain the detention ponds—this is an important question. Mr. Morin stated that initially during the Pre-application process the developer was proposing a private road with a reduced right-of-way width with private sewers, utilities, roadway and drainage, but since that time the directives they have been receiving from the City Administration is that the improvements, the roadway and drainage would be City-owned.

Mr. Bebeau stated that the City would maintain the detention ponds. He stated that the original proposal called for a private road, but the Planning Board and the City Administration felt strongly that the road should be public for the benefit of the residents living in this neighborhood.

Mr. Morin stated that the wetlands proposal and future preliminary plans to the City would spell out the maintenance requirements for the detention pond. He stated that typically the pond would require mowing of the grass annually or semi-annually, and an occasional cleaning of the trash racks.

Mr. Brynes asked Mr. Morin to explain the land swap with the City and how the land swap is affecting the project.

Mr. Morin stated that the project is proposed as a planned residential development under the City's Planned Residential Development Overlay District regulations. He stated that there has been no land swap with the City to date, but the proposal was reviewed by the City Council several years ago. Mr. Morin stated that the City owns a parcel of land to the south of the proposed development (see sheet no 3 of the plans). He stated that there are also two other properties involved: one located to the northeast and the other located to the northwest. Mr. Morin stated that various plans were created several years ago by other consultants that essentially showed different development schemes. He stated that the City would use the land that it received in the swap as open space.

Mr. Bebeau stated that the Planning Board received a letter dated September 2, 2003 from Joel Mathews, Planning Director, regarding the land swap. Mr. Bebeau read the following paragraph from Mr. Mathews' letter addressing the land swap. *"Part of the land for this proposed subdivision is 3.9 acres deeded by the City which is currently part of the Booth Pond Conservation Area. Ordinance 01-0-93 was submitted and approved by the City Council that authorizes this land swap; and, as a result, the applicants were able to proceed with the development and submission of the subdivision plan currently under your review."* Mr. Bebeau stated that the developer has entered into an agreement with the City whereby the land swap will be used to develop single-family homes on individual lots.

Mr. Brynes stated that the City Administration and City Council have agreed to grant 3.9 acres of the Booth Pond Conservation Area to the developer in exchange the developer would grant a much larger acreage back to the Booth Pond Conservation Area. He stated that as a result of the land swap the conservation area would grow in size. Mr. Brynes stated that the City Council would approve the land swap if this development were to be approved by the Planning Board and eventually the City Council. He stated that the land swap has been theoretically

approved if the development is subsequently approved although it has not happened yet. Mr. Brynes stated that the City still owns a large section of land in the vicinity of the proposed development site.

Mr. Brynes stated the hearing tonight is the first of three hearings before the Planning Board that are required in order for the proposed subdivision to move forward. He stated that a joint meeting with the City Council and the Planning Board, which is a public hearing, would also be held.

Mr. Brynes stated that the applicant is applying for the subdivision under the Planned Residential Development Overlay District as described in the City's Zoning Ordinance. Mr. Brynes stated that the regulations allows the development of land that are equal or greater than ten (10) acres in size and which are located within the R-1 and/or R-2 districts. He stated that the developer is given flexibility in regards to lot sizes and setback requirements as long as the overall density is maintained.

- Paul Bannon, Beta Group, 6 Blackstone Valley Place, Lincoln, RI.

Mr. Bannon stated that his company was retained to do conduct an impact study on the proposed residential development. Mr. Bannon stated that in order to determine the potential impacts of the development certain tasks had to be completed. They conducted a review of the site plans that were prepared by DiPrete Engineering Associates for access to the local street system that leads to Manville Road, the primary access road to the neighborhood; they conducted numerous site visits at various times of the day and various days of the week to observe traffic operations. Mr. Bannon stated that they did an inventory of the project area including land use, existing roadway conditions including horizontal and vertical geometry; site distances of main intersections including Manville Road. They conducted a traffic counting program, 24-hour, five-day count on Manville Road; they conducted peak hour turning move counts at two intersections (Gadoury Boulevard and Manville Road, and Gadoury Boulevard and Lydia Avenue); they obtained traffic accident information for the area roadways from the Woonsocket Police Department; they developed trip estimates based upon the development of the proposed project to include 39 duplex units and 9 residential units, which has since been changed.

Mr. Bannon stated that they analyzed existing conditions at the two main study intersections and then superimposed the projected volumes at those two locations to determine what impact additional traffic would have on those two roadways. He stated that Manville Road services approximately 7,300 vehicles per day; the A.M. peak occurs between 7:00 and 8:00 A.M. and the P.M. peak occurs between 4:30 and 5:30. He stated that the peak hour services approximately 600 to 665 vehicles. The local neighborhood streets: Lydia Avenue, Wanda Avenue and Gadoury Boulevard are low-volume residential streets into this neighborhood. Stopping sight distances were reviewed from main access points to ensure the minimum design criteria for safe stopping sight distances. The main intersection of Gadoury Boulevard and Manville Road sight distance is in excess of 450 ft.; 250 ft. is required for the posted speed limit.

Mr. Bannon stated that according to the Woonsocket Police Department records only two minor traffic accidents have occurred within this area during the past three year period.

Mr. Bannon stated that on completing a review of existing conditions, future traffic volumes were estimated. He stated that this report was prepared several months ago under the assumption that 30 duplex units and 9 single-family homes would be developed; previous to that there was a proposal for 39 single-family residential units. Mr. Bannon stated that the study as it stands now during the daily peak hour show 35 total trips to and from the site; P.M. peak hour show 23 vehicles entering and 12 vehicles existing; the total daily volume would be 320 vehicles. He stated that the difference in the proposal before the Board, the development of 36 single-family homes, the daily total would increase to 360 trips per day; approximately 40 people over the course of the day. He stated that during the peak hour that difference would be negligible, 1 or 2 vehicles. Mr. Bannon stated that when you look at the capacity analysis and when you analyze impacts the focus is on peak hour; the difference in peak hour volume is negligible.

Mr. Bannon stated that the results of the analysis relative to how the proposed traffic would affect the study intersections is essentially the same, there would be negligible increase in delays. Mr. Bannon stated that the Beta Group used the Highway Capacity Manual Techniques to conduct the level of services analysis that was done at the intersections of Gadoury Boulevard and Manville Road and Lydia Avenue and Gadoury Boulevard, the two major intersections. He stated that the study concluded that there was no major increase in delays.

Mr. Bannon stated that the conclusions of the report found that the proposed residential development as it was prepared in his report and as it stands before the Board tonight show a negligible effect on traffic operations in the neighborhood.

- Gary Letourneau, 327 Thibeault Avenue—Mr. Letourneau questioned the accuracy of the traffic study. He stated that he is very disturbed about the land swap between the applicant and the City of Woonsocket. He stated that if the City has already agreed to swap land with the applicant as long as the applicant builds single-family homes this is a done deal. Mr. Letourneau stated that his property directly abuts the proposed development; there are six houses located in the immediate area and these six families have lived in this neighborhood between 35 and 43 years. If you include Wade Avenue and Thibeault Street approximately 9 out of 15 families have lived in this neighborhood over 35 years. They live here because there is no traffic and no crime, and people take pride in their property.

Mr. Letourneau stated that in the Late 50s and 60s Gadoury Plat was built and at that time the Lower Bernon was developing at a fast rate, which is why this area was rezoned with very low density. At that time the residents of this area informed the City that if the development of this area did not slow down they want their own Fire Station. Since that time Hawthorne Circle, Blue Stone Drive, upper Lydia Avenue, Manville Road, Marian Lane, Miles Avenue, etc. has been developed. He stated that if this proposal moves forward and 36 additional homes are built this neighborhood would want its own Fire Station.

Mr. Letourneau stated that he has a petition that has been signed by 40 residents of Thibeault Avenue, Wade Road, Flora Avenue and Marian Lane, all strongly opposed to the proposed road connecting the Trinity Village Development and Thibeault Avenue. He requested

that the petition be accepted and made an official part of the minutes. Mr. Bebeau accepted the petition.

Mr. Letourneau stated that the residents are worried that Wanda Road would be all hills and no one will want to use this road during the winter months, which will result in all this extra vehicular traffic using Thibeault Avenue. He stated that he and the other residents do not see a need for a second means of egress; the adjacent Lydia Avenue, Hawthorne Circle and Blue Stone Drive only have one means of egress as does other neighborhoods in the City. He stated that he and his neighbors strongly oppose this road.

Mr. Letourneau stated that the proposed road makes no sense whatsoever; in addition he stated that his neighbor has lived in her home for 43 years and now she will be bothered by a road located within fifteen ft. of her backdoor!

Mr. Letourneau also stated that since he and his two neighbors' properties were built they have all had water problems. He stated that the land is slightly pitched, but the real problem is that from their back property line to approximately 100 ft. into the woods their properties are pitched. Mr. Letourneau stated that according to the plans of the proposed development only a 50 ft. buffer zone is proposed. He stated that a 50 ft. buffer zone is totally unacceptable; his land would be under water. As it stands now his neighbor, Mr. & Mrs. Ray Pepin (353 Thibeault Avenue) have spent extensive amounts of time and money this summer in trying to finally get a backyard that will actually stay in place. He stated that all their previous efforts resulted in the land being washed away. He stated that during the winter and spring months he cannot use his backyard for weeks at a time due to a water problem. Mr. Letourneau stated that another neighbor Mr. & Mrs. Detonnancourt (313 Thibeault Avenue) must use a pump to keep water out of their cellar during the winter and spring months.

Mr. Letourneau stated that he and his neighbors, the Pepins and the Detonnancourts are asking for two things: (1) that the buffer zone is moved back 100 ft., which will take it to the top of the hill; and (2) they would like to know if there are any plans to handle the current drainage problems? Mr. Letourneau stated that he and his neighbors have lived on the side of Mr. Grenier's land for 43 years, they have never misused his property, they respected his land, but they believe that 80% of their water problems come from Mr. Grenier's land. Mr. Letourneau stated that he and his neighbors understand that Mr. Grenier has a right to develop his property but not at the expense of the abutting property owners.

Mr. Letourneau stated that he is inviting members of the Planning Board, the City Administration and the Developers to visit their homes so that they can see first hand what the problem is.

Finally, Mr. Letourneau stated that he has not heard any mention of blasting, but everyone knows that the Bernon Area of the City is loaded with ledge. He stated that several years ago about eight to nine new homes were built on Miles Avenue. These homes were built on slabs without cellars because there was so much ledge, blasting would have cost a fortune. Mr. Letourneau stated that the City was not happy with the project but did not have the ability to stop it, and therefore the project was developed.

Mr. Letourneau stated that if blasting is allowed he and his neighbors are requesting that the developer post a bond to protect their properties from damage caused by blasting; it would be a miracle if not blasting is required. Mr. Letourneau stated that if this project moves forward he and his neighbors are requesting that restrictions be placed on work hours. He stated that these are just some of the issues that must be addressed.

- *Frederick Nesta, 55 Marian Lane*—Mr. Nesta raised concerns regarding drainage in the Thibeault Avenue area. Mr. Morin stated that presently there is no drainage infrastructure located in this area, the nearest drainage infrastructure is located near Flora Avenue. He stated that the developer is working with the City Administration to resolve any drainage problems. He stated that a question was raised about off-site drainage impacting some of the existing homes; this also would be looked into as the project develops.

Mr. Bebeau stated that a drainage runoff review would be undertaken by the City's Public Works Department when and if the project moves forward.

Mr. Nesta asked what type of drainage protection the developer to protect their properties from water runoff once the development is underway would provide? Mr. Morin stated that they would provide hay bales and silt fences in areas where water runoff drains onto other properties.

Mr. Nesta stated that another concern is the proposed buffer zone, the location of the buffer zone and what type of vegetation is being proposed. Mr. Morin stated that the buffer zone requirements are spelled out in the City's Planned Development Regulations, it requires a 50 ft. buffer zone for this particular project. The area is intended to be a buffer between the adjacent properties with no activity taking place within the buffer area. He stated that its possible that additional vegetation would be required within this area, but the vegetation material is usually some species of evergreen.

- *Lucille Pepin, 353 Thibeault Avenue*—Mrs. Pepin asked who would own the buffer zone one the project has been developed? Mr. Morin stated that ownership of the buffer zone would likely be associated with the lots, be it a conservation easement set up and established with markers that would delineate the property line. He stated that the buffer zone is proposed as part of the future lot owners. The buffer zone would be part of the new lot owners land with a conservation easement that would restrict any type of development. He said that for the most part this area would remain, as is now, a wooded area, unless some types of drainage improvements are required.

Mr. Letourneau requested that someone from the City Administration please come out to look at their properties to verify that they have water drainage problems. Mr. Bebeau stated that the City Engineer would visit the properties that Mr. Letourneau feels has water drainage problems.

Mr. Letourneau again requested that the buffer zone be moved back 50 ft. Mr. Bebeau stated that the City Zoning Regulations allows for a 100 ft. buffer in this particular zone. Mr. Letourneau stated that he is familiar with the City regulations but he and his neighbors are asking

Mr. Grenier to please move the buffer zone at least 50 ft. back. Mr. Grenier stated that he would take Mr. Letourneau's request regarding the buffer zone under consideration.

- Jacqueline Croteau, 387 Thibeault Avenue—Mrs. Croteau stated that she has put a deposit on one of the proposed lots; however, she stated that she also owns a home at the corner of Thibeault and Wanda Avenue. Mrs. Croteau stated that there is not doubt that the development would bring additional traffic into the neighborhood. She stated that she has concerns regarding Wanda Avenue due to its steepness and feel that extensive excavation would be needed to bring it to an acceptable grade. Mrs. Croteau said that sewers could also pose a problem on some lots due to the topography of the land. She also stated that her preference would be single-family homes; City schools are already overcrowded and an additional 40 families will definitely have an impact on the Bernon School district.

- Christine Riel, 56 Flora Avenue—Ms. Riel stated that in 1992 her family moved to Gadoury Boulevard and the year 2000 they purchased a home on Flora Avenue and therefore the proposed development will not directly affect her family due to the location of their home, however, she would like to know why the developer changed the development proposal from a “retirement living” concept with the road through Gadoury Boulevard; if the reason is paying more money in terms of taxes to the City of Woonsocket she would hope that the City Administration would take into consideration the wishes of the taxpayers who have lived in this neighborhood and paid taxes for well over 35 years.

Mr. Bebeau requested that someone from the development team answer Ms. Riel's questions.

Mr. John Robinson (*Registered Architect & Registered Design Engineer, Robinson Design, Inc.*), stated that he was involved in the early planning process of this project and he has continued to be involved with the project through the Master Plan Phase of the development. Mr. Robinson stated that initially the developers had envisioned the idea of accessing Gadoury Boulevard but as they moved further into the project and more data was developed with respect to right-of-ways in particular; they found that they had two different approaches to the buildings. The Planning Board had initially favored the idea of single-family residential homes as opposed to senior housing, attached senior housing and assisted living facilities; that is why the development was altered to what is presently zoned, single-family housing.

Mr. Robinson stated that as they gathered additional information regarding the wetlands they now viewed the development as single-family homes. One possibility was to develop the entire 40 acres, building in four to five different areas and crossing wetlands. After meeting with the City Administration, and environmental consultants they opted to do what is considered the most environmentally sound development; and that is what led to the land swap with the City of Woonsocket.

Mr. Robinson stated that the proposed development is a layout where instead of going through various wetland areas, which they have a right to do, they are swapping nine acres of buildable land for four acres of buildable land; and in addition to that the owners is providing the additional wetlands. Mr. Robinson stated that before the land swap could be considered by the



City Administration and the City Council it had to be reviewed by the State DEM and the federal government to determine if the proposal is a sound environmental approach to developing this project.

Ms. Riel stated that the proposed development would disrupt a neighborhood that has been established for over 40 years for what Mr. Robinson is calling an environmentally sound development. She stated that Mr. Robinson has stated that the owner has a right to build in the wetlands; she suggested that the homes are built closer to the wetlands as opposed to interrupting this quiet, peaceful neighborhood. Mr. Robinson clarified his statement regarding the owner's right to build in the wetlands by stating that any building in the vicinity of wetlands would require RI DEM's review. He stated that they had to base their decisions on wetland consultants that work with DEM in terms of what their recommendations were.

Mr. Bebeau stated that the Board could require the applicant to submit an application for Gadoury Boulevard to go through the DEM process.

Mr. Letourneau stated that the key point that he and his neighbors would like to make tonight is that they do not want Thibeault Avenue attached to Trinity Village. He stated that he and his neighbors all feel that it does not make any sense to connect Thibeault Avenue.

Mr. Robinson stated that as a designer he must be responsive in changes in design criteria, e.g., requirements from the City, input from the neighbors, and DEM's criteria in developing the land in a suitable manner. With respect to the two points of access, sometimes the criteria change: initially the project was developed as "assisted living" and the mindset could have changed due to different City Officials, etc. Someone could have recommended two points of access for rescue vehicles, this could have been the initial reason for the two points of access. Mr. Robinson stated that the two points of access could be reconsidered as a result of updated input. He stated that if the Traffic Engineer for this development can say that perhaps one means of access is more than reasonable they would definitely discuss the idea with the City.

Mr. Brynes stated that the Planning Department had requested comments from various City Departments regarding impact on City Services. He stated that he received a response from the Education Department stating that it supports the effort to expand the City's tax base but cautions against additional classroom space and operating costs.

Mr. Bebeau stated that he expects to receive a response from the Fire Department for a project of this size.

Mr. Brynes stated that abutters would be notified of the next two public hearings but for regular consideration of developments public hearings are not required. Mr. Brynes stated that the Planning Board meet the first Tuesday of every month, this is the first public hearing and that is why you were notified. He recommended that residents contact the Planning Department to inquire about a meeting.

Mr. Brynes stated that he is not sure when the next meeting will be scheduled with the applicant, it could be next month or the following month because there are a number of things that the City and DEM must review.

Mr. Grenier thanked the Board and the residents for their participation. He stated that he and the design team would do their best to accommodate the residents and the City.

There were no further questions of comments. A MOTION was made by Mr. Soucy and seconded by Mr. Peloquin to close the public hearing. The MOTION carried and the public hearing closed at approximately 10:30 P.M.

A brief recess was taken at this time.

4. **Consideration of Master Plan Approval for Major Subdivision Plan for R & K Builders—Map B7, Lots 53-1, & 53-32, Mendon Road**  
Attorney Lloyd R. Gariepy represented the applicant.

A MOTION was made by Mr. Bebeau and seconded by Mr. Peloquin to remove the above name application from the Table. The MOTION carried.

Mr. Bebeau stated that the last time the above application was on the Board's agenda it was tabled based on a legal opinion from Joseph P. Carroll, City Solicitor. Mr. Bebeau asked if anyone would like for him to read said letter. He received a response of "No."

Attorney Gariepy stated that it is his opinion that what Attorney Carroll states in his legal opinion does not apply here at all. Attorney Gariepy called the Board members' attention to the area off Mendon Road (the right-of-way) that is proposed to be developed. Attorney Gariepy then indicated an existing driveway and stated that this person's property is 9' from the boundary line. He stated that this person has not met the side setback requirements yet he is concerned about this driveway being turned into a road; the contention being that now he would have a 20 ft. setback. Attorney Gariepy stated that this would not happen for any number of reasons: the driveway would remain the same, access to all of the lots would come directly from the proposed 40 ft. right-of-way that already exists on Mendon Road. Attorney Gariepy stated that this issue raised by Attorney Carroll can be dispelled because no changes are being made to that lot; the lot is not being developed.

Mr. Bebeau stated that Attorney Gariepy is offering basically a different legal opinion. Attorney Gariepy stated that he is offering a legitimate opinion. He stated that he is offering the applicant's opinion, which up until this time has not been heard.

Attorney Gariepy stated that Attorney Carroll's opinion states that by allowing this subdivision we would create a corner lot thus violating the zoning setback requirements. Attorney Gariepy stated that if you look at the City's Zoning Ordinance under Front Lot Line, it is a line separating a lot from the street right-of-way, either one.

Attorney Gariepy said that in the case of a corner lot, which is what this is, or would be. The front line shall be considered that line separating the portion of the lot, which the principal building fronts from the street right-of-way.

Attorney Gariepy stated that this structure has a Mendon Road address and it is clear to him that the only front lot line is the one on Mendon Road. Mr. Bebeau stated that if you create this road it would then become the front entrance for the home. Attorney Gariepy said no, it becomes a corner lot; and a corner lot is only critical in case of an accessory building. He stated that if this property owner wants to put a building here he would have to meet the front setback requirements, that does not do any injustice to the structure that is already created there.

Mr. Brynes stated that technically the property owner would be in nonconformance because he would have to meet whatever the front setback requirements are on both sides. Attorney Gariepy said only for the front lot line and not on both sides.

Mr. Peloquin stated that the City's Zoning Ordinance Section 7.1-1 Yard Requirements for Corner Lots for Residential Districts states that "*The side yard requirements for all buildings on a corner lot shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot.*" Attorney Gariepy stated that the Board must realize that the front lot line is Mendon Road; if in fact it were something else it would have a street address. Attorney Gariepy stated that to take a subdivision ordinance and create lots that meet all the requirements of zoning, yet put another property in a setback situation is not the subject of any Subdivision Regulations. He stated that if this were the case a property owner could easily encroach on the side lot line and prevent development in an adjacent area.

Attorney Gariepy stated that as long as the proposed subdivision meets the City's Zoning Ordinance, how could you then legislate a parcel of land that is not a part of the subdivision, which may for their own reason, have created their own setbacks. Attorney Gariepy stated that this does not make sense to him.

Mr. Brynes stated that he understands Attorney Gariepy's argument but the Planning Board must use the City Solicitor's legal opinion as a basis for making their decision.

Mr. Bebeau stated that the City Administration also received a legal opinion from Attorney Jeffrey M. Gibson that was considered more or less useless. Attorney Gariepy stated that he is aware of the legal opinion from Attorney Gibson, which the City paid a lot of money for but received basically no help. However, Attorney Gariepy stated that in that entire letter from Attorney Gibson there is not one provision that deals with a subdivision court case. Everything mentioned is zoning issues, it is very clear that the Planning Board has no jurisdiction whatsoever regarding Zoning Board matters. He stated that this is why there is a Section in the Subdivision Regulations that states the Planning Board can give consent subject to...and the Board make decisions on many subdivisions subject to Zoning Board of Review approval and then come back to the Planning Board. Attorney Gariepy stated that it is inconceivable to him whereby a subdivision that is being proposed, meets all the zoning requirements and yet the Planning Board would deny the subdivision based upon nonconformance of another lot; this does

not make sense to him. Attorney Gariepy stated that the other lot is not before the Board; the applicant cannot be forced to go to the Zoning Board of Review; when the applicant file a zoning application the owner must sign or the project cannot go forward.

Mr. Peloquin stated that as he understands it Attorney Gariepy is stating that you cannot build a house closer than 20 ft. to a lot line but you can build a road within 20 ft. of a structure. Attorney Gariepy said yes because he is dealing with existing lot lines. He stated that the applicant did not create or alter these lot lines; these lines were already in existence.

Mr. Peloquin asked if the 40 ft. strip might have originally been intended for a driveway and eventually a house. Attorney Gariepy stated that he does not know but if the property owner or predecessors did this, the situation was caused by their own actions. Mr. Peloquin stated that there was a side lot line back then. Attorney Gariepy agreed. He stated that when you make this a corner lot the only thing it restricts is the ability to put an accessory structure on the lot. However, he stated that it is not likely that the Zoning Officer is going to enforce the regulation. Attorney Gariepy stated that it's the same situation when taking land for adverse possession. If the State or the City wants to widen a street and your house is within the setback because of that action does it mean that you cannot move forward, it should not.

Mr. Soucy stated that he and the other Board members are not lawyers; they must rely on the City Solicitor's legal opinion. Attorney Gariepy stated that the Planning Board members are familiar with the City's Subdivision Ordinance and he does not see anything in the Subdivision Ordinance other than the fact that the subdivision must comply with the zoning regulations, which apparently it does. He stated that you cannot take into account the abutting property owners because they are not the applicants.

Mr. Bebeau stated that he feels somewhat bound by the legal opinion presented by Attorney Carroll, to be used as a source for the Board's decision.

Attorney Gariepy stated that as soon as the Board says that any subdivision that creates a zoning variance for an abutting neighbor has to be denied then you are in essence (*remainder of Attorney Gariepy's statement was inaudible*).

Mr. Del Rossi asked how far is each house away from the proposed road. Mr. Peloquin said one house is about 15 ft. away and the other house about 8 ft. Mr. Del Rossi said that in his opinion 8 ft. is too close; where do we draw the line? Attorney Gariepy said that if you do not allow it you would violate the side setback requirement; the zone allows for 10 ft. Attorney Gariepy stated that he does not think that these two property owners complained. Mr. Brynes stated that one property owner did complain however he does not meet the setback anyway.

Mr. Peloquin asked if there are any records indicating when the 40 ft. strip was established and what was the intent. Mr. Brynes stated that 40 ft. at one time was the minimal required frontage to build a house. He stated that the intent could have been to build a driveway or to put a house on the lot.

Mr. Brynes stated that if a road is not allowed a house could still be built there theoretically. Attorney Gariepy asked how? Mr. Brynes stated that the property owner could request zoning release for frontage.

Mr. Soucy asked what is the next step. Attorney Gariepy stated that if the application were denied approval by the Planning Board he would appeal the Board's decision to the Zoning Board of Review.

Mr. Peloquin stated that if it were not for the road there would not be a real issue. Mr. Monse said the issue is the access road and the homeowners in the area do not want any more houses in their neighborhood. Attorney Gariepy agreed with Mr. Monse, the residents do not want any more houses in their backyards.

There being no further questions or comments a MOTION was made by Mr. Peloquin and seconded by Mr. Del Rossi to DENY the application.

|                 |               |         |
|-----------------|---------------|---------|
| Roll Call Vote: | Mr. Monse     | To Deny |
|                 | Mr. Peloquin  | To Deny |
|                 | Mr. Soucy     | To Deny |
|                 | Mr. Del Rossi | To Deny |
|                 | Mr. Bebeau    | To Deny |

The application was DENIED approval.

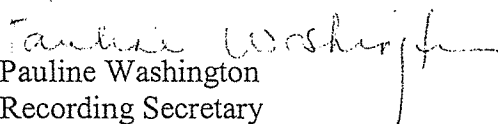
#### **Consideration of Minutes**

Minutes of the May 6, 2003 Planning Board meeting were submitted for review. A MOTION was made by Mr. Peloquin and seconded by Mr. Monse to approve the minutes as submitted. The MOTION carried.

#### **Adjournment**

A MOTION was made by Mr. Monse and seconded by Mr. Peloquin to adjourn the meeting. The MOTION carried and the Planning Board meeting adjourned at 11:05 P.M.

Respectfully submitted,

  
Pauline Washington  
Recording Secretary

APPROVED  
11/12/02

PLANNING BOARD MEETING  
WOONSOCKET, RHODE ISLAND  
TUESDAY, OCTOBER 1, 2002  
7:00 P.M.

Members Present: Owen T. Bebeau, Chairman  
Daniel R. Peloquin  
John Monse  
Michael Del Rossi

Also Present: Michael S. Przybylowicz, Deputy Director  
Pauline Washington, Recording Secretary

Absent: David M. Soucy

1. Consideration of Master Plan Approval for major Subdivision Plan for R&K Builders—Map B7, Lots 53-1 & 53-32 Mendon Road

Mr. Bebeau read a memo (9/11/02) to the City Planner from Joseph Carroll, City Solicitor, which states that...“the construction of the roadway would place two existing houses, which currently meet zoning ordinance requirements, into non-conformance, as their side yard setbacks would become their front yard setbacks.” The memo further states, “...the Planning Board cannot approve a subdivision without Zoning Board approval of any necessary variances.” It is the Law Department’s opinion that the owners of the properties that would become non-conforming would have to apply to the Zoning Board for variances for those properties. Absent that happening, or a change to the subdivision that would make Zoning Board approval unnecessary, the Planning Board cannot consider the request for the subdivision.

Mr. Bebeau recommended TABLING the above-named application until such time that action is taken enabling the Planning Board to consider the application.

A MOTION was made by Mr. Monse and seconded by Mr. Peloquin to TABLE the application indefinitely.

|                 |               |              |
|-----------------|---------------|--------------|
| Roll Call Vote: | Mr. Peloquin  | Yes to Table |
|                 | Mr. Monse     | Yes to Table |
|                 | Mr. Del Rossi | Yes to Table |
|                 | Mr. Bebeau    | Yes to Table |

The MOTION carried and the above-named application was TABLED INDEFINITELY.

2. Consideration of Approval for Administrative Subdivision Plan for Arlean Burt—Map C5, Lots 39-37, 39-40 & 39-42 Cass Avenue

Mr. Brynes stated that at the September 3, 2002 Planning Board meeting the above-named application was TABLED due to concerns regarding drainage, grading, parking spaces and the retaining wall. As a result of those concerns the Board requested that the applicant provide a special site plan (scale: 1”-10’), which would address the above concerns. After review and approval from the appropriate departments, the Planning Board could issue an Administrative Approval with a stipulation that the previous combination administered by the Zoning Officer be rescinded prior to the applicant recording the Subdivision Plan.

**Michael M. Paul**

17 Paul Drive  
Blackstone, MA 01504

Voice-facsimile 508-883-4411 / direct-401-651-4799 / e-mail-Mpaulhomes@comcast.net

January 5, 2004

City of Woonsocket  
Zoning Board of Review  
C/O Andrea Matthews  
Acting Zoning Officer  
169 Main Street  
Woonsocket, RI 02895-4379

RECEIVED  
CITY OF WOONSOCKET JAN - 6 2004

Re: R&K Builders zoning appeal January 12, 2004 AP 53 Lots 1 & 32

To Whom It May Concern:

Unfortunately I will not be able to attend the appeal by R&K Builders to your Board, as I will be out of the United States until the 15<sup>th</sup> of January.

I would like to make it known that I protest this appeal for the following reasons:

1. The issues that formed the basis of the Planning Boards denial of R&K's original application for a major subdivision still exist.
2. The applicant has undertaken illegal activities at this site that many of you will find appalling. They include among other things a destruction of a freshwater wetland as well as the moving of an historical boundary wall at the rear of the property.

I request that if your board does not wish to deny this request outright, that you would delay any decision until your next meeting, so that I may attend, and provide proof of the above activities.

Thank you in advance for your cooperation,

  
Michael M. Paul

MMP/jc

Cc: Attorney Robert M. Laren



CITY OF WOONSOCKET, RHODE ISLAND  
DEPARTMENT OF PLANNING & DEVELOPMENT

January 6, 2004

Zoning Board of Appeals  
City Hall Chambers  
169 Main Street  
Woonsocket, RI 02895

Re: Application #5128 - R & K Builders Corp., appealing decision of Woonsocket Planning Board

Dear Board Members:

This letter is intended to clarify the history of application #5128 by R & K Builders Corp., applicant, appealing the Woonsocket Planning Board's decision to deny a major subdivision at Mendon Rd., Plat 53, Lots 1 & 32, located in an R-2 District.

Description of the Proposed Development:

The applicants are proposing a nine lot single-family subdivision and new public street on two existing lots on Mendon Rd which total approximately 5.1 acres of land. The proposed lots meet the requirements of the zoning ordinance which require a minimum of 10,000 sq. ft. and 90' of street frontage in an R-2 zone.

Description of the Zoning Issue

While most cases before the Zoning Board involve siting a house in relation to a street, this application involves the siting of a proposed street in relation to existing houses. The development of this proposed road will cause an abutter (#586 Mendon Road) who is currently in compliance with all zoning requirements, to be in non-compliance with *Section 7.1-1* of the City's Zoning Ordinance. *Section 7.1-1* states that "The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot." 586 Mendon Rd. is 15' from the piece of Plat 53, Lot 1 which is proposed to be developed into a public street. Therefore, if the street is developed and accepted by the City the owners of #586 will become

FORWARD WOONSOCKET  
"A CITY ON THE MOVE"



dimensionally non-conforming as they will fail to meet the required front setback of 20' from the new street. It is this issue which has led to the plan's denial by the Planning Board.

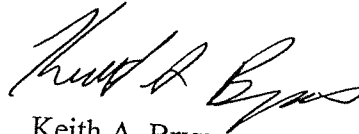
Planning Board Actions

- In March 2001, the applicant appeared before the Planning Board for a Pre-application Conference. The Board had no objections to the plan at that time. No approvals were granted at this time.
- In July of 2002 a formal subdivision application was filed with the Planning Department.
- On August 29, 2002 a memo was sent to Joseph Carroll, City Solicitor from the Planning Department requesting a legal opinion on behalf of the Planning Board for clarification of the zoning issue detailed above. (See enclosure)
- On September 2, 2002 the Planning Board tabled Master Plan approval following a public informational meeting, due to the outstanding legal issue on which the Law Department had, at that time, yet to respond to.
- On September 11, 2002, Mr. Carroll wrote in a memo to the Planning Department stating his opinion that the abutting property (#586) would become non-conforming, and that the Planning Board could not approve the application without Zoning Board approval of any necessary variances. The owner of the property that would become non-conforming would need to apply for zoning relief. Absent that happening the applicants could not gain approval. (See enclosure)
- On October 1, 2002 the Planning Board tabled the application indefinitely based upon Mr. Carroll's legal opinion. The Board ruled that the application could be reconsidered if the zoning issue should be resolved.
- On September 2, 2003, the Planning Board voted to deny the application after the applicant requested reconsideration. The Board's reason for denial was that according to the opinion of the City Solicitor the plan would create an abutting lot to be dimensionally non-conforming with regard to Section 7.1.1 of the City's

Zoning Ordinance. The project is unable to proceed without the appropriate zoning relief, which can only be obtained by the abutter (see enclosure). It is this denial by the Planning Board on September 2, 2003 that is being appealed by the applicant tonight.

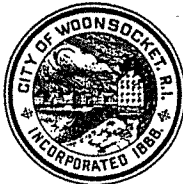
Please call with any questions or for additional information.

Sincerely,



Keith A. Brynes  
City Planner

- enc: Memorandum from Keith Brynes, City Planner dated 8/29/02  
Memorandum from Joseph Carroll, City Solicitor dated 9/11/02  
Memorandum from Joseph Carroll, City Solicitor dated 5/1/03  
Letter from Keith Brynes, City Planner dated 9/3/03
- cc: Mayor Susan D. Menard  
Joel D. Mathews, Director of Planning and Development  
Martin Loiselle, Deputy Dir. of Zoning, Building Inspection, and Construction  
Loretta Peripoli, Zoning Clerk  
Joseph Carroll, City Solicitor



CITY OF WOONSOCKET, RHODE ISLAND  
DEPARTMENT OF PLANNING & DEVELOPMENT

September 3, 2003

Mr. Raymond Bourque  
R&K Builders  
P.O. Box 3107  
South Attleboro, MA

Re: Master Plan for Major Subdivision for R & K Builders – Plat 53, Lots 1 & 32,  
Mendon Road

Dear Mr. Bourque:

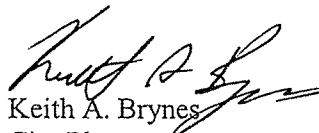
This letter is to inform you that the Woonsocket Planning Board at their September 2, 2003 meeting voted to deny the above-referenced application.

The Board's reason for denial is that the plan as proposed would create an abutting lot to be dimensionally non-conforming with regard to Section 7.1.1 of the City's Zoning Ordinance which states that "The side yard requirements for all buildings on corner lots shall be such that no principal or accessory building extends beyond the front setback line set for buildings along the street considered to be the side street of the corner lot." According to the enclosed communication from the City Solicitor, the project is unable to proceed without the appropriate zoning relief, which can only be obtained by the abutter.

Revised plans may be submitted to the Planning Board under a new application. An appeal from the Planning Board's decision may be requested from the Zoning Board of Appeals within twenty days as detailed in the Subdivision of Land Development Regulations.

Please call with any questions or concerns.

Sincerely,

  
Keith A. Brynes  
City Planner

Enclosure: Memo from City Solicitor to Planning Board dated 5/1/03

cc: Mayor Susan D. Menard  
Joel D. Mathews, Director of Planning and Development  
Owen T. Bebeau, Planning Board Chairman  
Michael Del Rossi, Deputy Director of Public Works / City Engineer  
Lloyd R. Gariepy, Esq.

FORWARD WOONSOCKET  
"A CITY ON THE MOVE"



**CITY OF WOONSOCKET, RHODE ISLAND**  
Office of the Zoning Officer

169 Main Street, Woonsocket  
Rhode Island 02895-4379

Tel. (401) 767-9230  
FAX (401) 766-9312

December 30, 2003

**Notice of Public Hearing under Zoning Ordinance**

You are hereby notified that R & K Builders Corp., P. O. Box 3107, South Attleboro, MA, applicant, has filed an application appealing the Woonsocket Planning Board decision to deny a major subdivision at Mendon Road, Plat 53, Lots 1 and 32, lot area of 4.4536 acres and 28,018sf respectively, located in an R-2 Low Density Single-Family Residential District.

A hearing will be held for all interested parties on Monday, January 12, 2004, at 7:30 p.m., in Harris Hall, third floor of City Hall.

You are invited to be present.

By Order of the Zoning Board of Review  
Andrea Mathews  
Acting Zoning Officer

AM/lp



**CITY OF WOONSOCKET, RHODE ISLAND**  
Office of the Zoning Officer

169 Main Street, Woonsocket  
Rhode Island 02895-4379

Tel. (401) 767-9230  
FAX (401) 766-9312

February 3, 2004

R & K Builders Corp.  
P. O. Box 3107  
South Attleboro, MA

**Re: Mendon Road, Plat 53, Lots 1 and 32**

Dear Applicant:

At a meeting of the Zoning Board of Review on Monday, January 26, 2004, the decision of the Woonsocket Planning Board to deny a major subdivision at Mendon Road, Plat 53, Lots 1 and 32 was upheld.

The application to appeal the Planning Board's decision was defeated by a vote of 3-2.

If you have any questions, please contact this office at 767-9243.

Sincerely,

Loretta Peripoli  
Zoning Clerk

/lp



CITY OF WOONSOCKET, RHODE ISLAND

LEGISLATIVE DEPARTMENT

FORWARD WOONSOCKET  
"A CITY ON THE MOVE"

February 3, 2004

ZONING BOARD OF REVIEW

TEL. 401-762-6400  
FAX 401-766-9312

**Re: Mendon Road, Plat 53, Lots 1 and 32**

Dear Abutter:

At a meeting of the Zoning Board of Review on Monday, January 26, 2004, the decision of the Woonsocket Planning Board to deny a major subdivision at Mendon Road, Plat 53, Lots 1 and 32 was UPHELD.

The application of R & K Builders Corporation to appeal the Planning Board's decision was defeated by a vote of 3-2.

If you have any questions, please contact this office at 767-9243.

Sincerely,

Loretta Peripoli  
Zoning Clerk

/lp



State of Rhode Island and Providence Plantations
SUPERIOR COURT

[X] PROVIDENCE/BRISTOL [ ] KENT [ ] WASHINGTON [ ] NEWPORT

CIVIL ACTION, FILE No. 2004-0803

R&K BUILDING CORP.

Plaintiff

CITY OF WOONSOCKET ZONING BOARD

.OF REVIEW, .ET AL.

Defendant

Summons

To the above-named Defendant:s :

The above-named Plaintiff has brought an action against you in said Superior Court in the county indicated above. You are hereby summoned and required to serve upon Elizabeth McDonough Noonan, Esq. Plaintiff's attorney, whose address is Adler Pollock & Sheehan P.C. 2300 Financial Plaza Providence, RI 02903-2443 an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you,exclusive of the day of service.

If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. Your answer must also be filed with the court.

As provided in Rule 13(a) unless the relief demanded in the complaint is for damage arising out of your ownership, maintenance, operation or control of a motor vehicle, or unless otherwise provided in Rule 13(a), your answer must state as a counterclaim any related claim which you may have against the Plaintiff, or you will thereafter be barred from making such claim in any other action.

Handwritten signature of Henry S. Kinch, Jr. and the word CLERK

Dated: February 16, 2004

(Seal of the Superior Court)

SUPERIOR COURT FILED HENRY S. KINCH JR. CLERK

2004 FEB 26 P 4:15

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

R & K BUILDING CORP.,  
Plaintiff

v.

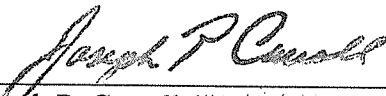
C.A. No. 2004-0803

CITY OF WOONSOCKET ZONING BOARD  
OF REVIEW and RALPH BEGIN, NORMAN  
FRECHETTE, DANIEL GENDRON, ROBERT  
MOREAU and WALTER PRISTAWA, in their  
capacity as Members of the Woonsocket Planning  
Board,

Defendants

**ENTRY OF APPEARANCE**

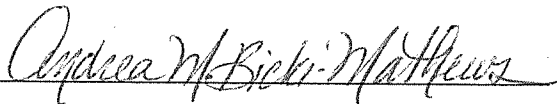
I hereby enter my appearance as counsel for the Defendants in the above matter.

  
\_\_\_\_\_

Joseph P. Carroll (#1344)  
City Solicitor  
169 Main Street  
Woonsocket, Rhode Island 02895  
(401) 767-9201  
(401) 769-0316 FAX

**CERTIFICATION**

I hereby certify that on the 25<sup>th</sup> day of February, 2004, I  
mailed a true copy of the within Entry of Appearance to Elizabeth McDonough Noonan,  
Esq., Adler Pollock & Sheehan P.C., 2300 Financial Plaza, Providence, RI 02903.

  
\_\_\_\_\_

SUPERIOR COURT  
FILED  
HENRY S. KINCH, CLERK

04 FEB 26 AM 11:40

2004 #1344



STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

R & K BUILDING CORP.,  
Plaintiff

v.

C.A. No. 2004-0803

CITY OF WOONSOCKET ZONING BOARD  
OF REVIEW and RALPH BEGIN, NORMAN  
FRECHETTE, DANIEL GENDRON, ROBERT  
MOREAU and WALTER PRISTAWA, in their  
capacity as Members of the Woonsocket Planning  
Board,

Defendants

**ANSWER OF DEFENDANTS**

**PARTIES**

1. Admitted.
2. Admitted.
3. Admitted.

**COUNT 1**

4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Denied.

SUPERIOR COURT  
FILED  
HENRY S. KINCHELL, JR.

04 FEB 26 AM 11:40

ATC  
#1344

Defendants,  
City of Woonsocket Zoning Board of  
Review, et als.,  
By their attorney,



---

Joseph P. Carroll (#1344)  
City Solicitor  
169 Main Street  
Woonsocket, RI 02895  
(401) 767-9201  
(401) 769-0316 FAX

**CERTIFICATION**

I hereby certify that on the 25<sup>th</sup> day of February, 2004, I mailed a true copy of the within Answer to Elizabeth McDonough Noonan, Esq., Adler Pollock & Sheehan P.C., 2300 Financial Plaza, Providence, RI 02903.



STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

R&K BUILDING CORP.,  
 Plaintiff,  
 v.  
 CITY OF WOONSOCKET ZONING BOARD  
 OF REVIEW and RALPH BEGIN, NORMAN  
 FRECHETTE, DANIEL GENDRON, ROBERT  
 MOREAU and WALTER PRISTAWA, in their  
 capacity as Members of the Woonsocket Planning  
 Board,  
Defendants.

C.A. No. 2004- 803

**COMPLAINT**

**PARTIES**

1. R&K Building Corp. ("R&K") is a Massachusetts corporation with a principal place of business in South Attleboro, Massachusetts.
2. The Woonsocket Zoning Board of Review is a Rhode Island municipal corporation ("Zoning Board") and is a Defendant in accordance with R.I. Gen. Laws §45-15-17.
3. Ralph Begin, Norman Frechette, Daniel Gendron, Robert Moreau and Walter Pristawa are all members of the Woonsocket Planning Board (collectively "Planning Board").

**COUNT I**

4. R&K realleges paragraphs 1 through 4 and incorporates them herein by reference.
5. R&K appeals the decision of the Zoning Board which was filed on January 26, 2004 ("Decision"), copy attached hereto as Exhibit 1.
6. R&K is an aggrieved party as it was the applicant before the Planning Board seeking approval of the 9 Lot Subdivision on Mendon Road in the City of Woonsocket.

SUPERIOR COURT  
 FILED  
 CLERK  
 2004 FEB 13 P 2:00

AGA  
 ZBD YN  
 4226

119206

7. R&K files this appeal in accordance with R.I. Gen. Laws § 45-23-71 and Section 13.4 of the Subdivision Regulations.

8. The Decision should be reversed because substantial rights of R&K have been prejudiced because of findings, inferences, conclusions or decisions which are:

- (a) in violation of constitutional, statutory, ordinance or planning board regulations provisions;
- (b) in excess of the authority granted to the Planning Board by statute and ordinance;
- (c) made upon unlawful procedures;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence of the whole record; and
- (f) arbitrary, capricious and characterized by an abuse of discretion of clearly unwarranted exercise of discretion.

WHEREFORE, Plaintiff, R&K Building Corp. prays that the Decision of the Zoning Board of Review and Planning Board be reversed and that this Honorable Court enter an order granting Plaintiff's Petition and approve the 9 Lot Subdivision, and such other relief as shall be fair and just including reasonable costs and attorneys' fees.

Plaintiff, R&K Building Corp.  
By its attorney,



---

Elizabeth McDonough Noonan, #4226  
ADLER POLLOCK & SHEEHAN P.C.  
2300 Financial Plaza  
Providence, RI 02903  
Tel: (401) 274-7200  
Fax: (401) 351-4607/751-0604  
Dated: February 13, 2004

January 26, 2004 - Executive Decision - ZBR

ZONING BOARD OF REVIEW  
WOONSOCKET, RHODE ISLAND  
PUBLIC HEARING, JANUARY 26, 2004  
7:30 P.M.

MEMBERS PRESENT: Raymond Aubin, 2<sup>nd</sup> Alternate  
Ralph Begin  
Norman Frechette  
Daniel Gendron  
Robert Moreau, Vice Chairman  
Walter Pristawa, Chairman  
Peter Vosdagalis, 1<sup>st</sup> Alternate

ALSO: Martin E. Loiselle, Jr., Zoning Officer  
Pauline Washington, Recording Secretary

Pauline Washington took roll call that showed the above members as indicated.

1. Application (#5128) of R & K Builders Corp., P.O. Box 3107, South Attleboro, MA, applicant, appealing the Woonsocket Planning Board decision to deny a major subdivision at Mendon Rd., Plat 53, Lots 1 and 32, lot area of 4.4536 acres and 28,018sf respectively, located in an R-2 Low Density Single-Family Residential District.

A MOTION was made by Mr. Pristawa and seconded by Mr. Begin to **Overt**urn the Woonsocket Planning Board's decision to DENY a Major Subdivision at the above location.

|                 |               |  |
|-----------------|---------------|--|
| Roll Call Vote: | Mr. Begin     | <b>Overt</b> urn the Planning Board's decision |
|                 | Mr. Frechette | <b>Uphold</b> the Planning Board's decision    |
|                 | Mr. Gendron   | <b>Uphold</b> the Planning Board's decision    |
|                 | Mr. Moreau    | <b>Uphold</b> the Planning Board's decision    |
|                 | Mr. Pristawa  | <b>Overt</b> urn the Planning Board's decision |

The MOTION DID NOT CARRY; the application to appeal the Planning Board's decision was DEFEATED by a vote of 3-2.

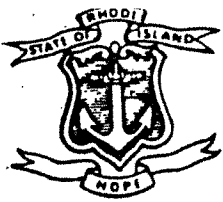
2. Application (#5129) of Therese Cazeault, 95 Bernice Avenue, applicant and owner, requesting a dimensional variance to add a common entrance at the rear of the building with less than required rear setback at 95 Bernice Ave., Plat 4, Lot 148, lot area of 5,992sf, located in an R-3 Medium Density Single and Two-Family Residential District.

Note: Mr. Pristawa and Mr. Moreau did not act on this application because the application was discussed and TABLED during the January 12, 2004 meeting that they did not attend.

The applicant addressed the concerns of the Board at the previous meeting by relocating the proposed entrance to the side of the house.

A MOTION was made by Mr. Frechette and seconded by Mr. Vosdagalis to Grant the application subject to ne stipulation.

|                 |               |                                       |
|-----------------|---------------|---------------------------------------|
| Roll Call Vote: | Mr. Aubin     | Yes to Grant with one (1) stipulation |
|                 | Mr. Frechette | Yes to Grant with one (1) stipulation |



STATE OF RHODE ISLAND SUPERIOR COURT

CIVIL CASE COVER SHEET

Case # (Filled in by Clerk's Office) 2004-

This form must be filed with each original document that commences a civil proceeding in the Clerk's Office (R.P.3.10). If the case is a District Court appeal, the form must be filed with the appeal in the District Court and will be transferred with other documents to the Superior Court.

PLAINTIFFS:

R&K BUILDNG CORP.

DEFENDANTS: CITY OF WOONSOCKET ZONING BOARD OF REVIEW and RALPH BEGIN, NORMAN FRECHETTE, DANIEL GENDRON, ROBERT MOREAU and WALTER Pristawa, in their capacity as Members of the Woonsocket Planning Board

NATURE OF PROCEEDING - Check the applicable case type under the main categories listed below. (Check One Only)

District Court Appeal [ ] yes (Check type below)

CIVIL ACTIONS

- AG A Agency appeal, ALA Alienation of affection, ANT Anti-trust, ASB Assault and battery, BKA Book account, CLA Common law assignment, CLL Common law lien, CON Contract, CNV Conversion, CRC Criminal conversation, CIC Criminal inj compensation, DOJ Debt on judgment, DTP Deceptive trade practice, DEJ Declaratory judgment, DPC Denial of probate claim, EXT Excessive tax, INR Injunctive relief, IPL Interpleader, LIB Libel/slander, MLE Malpractice/legal, MME Malpractice/medical, MOT Malpractice/other, WOM Mandamus, writ of, PRT Partition, PER Personal injury, IDV Personal inj/property dam-vehicle, PIV Personal injury-vehicle, PRL Product liability, PRN Promissory note, PDM Property damage, PDV Property damage-vehicle, RLP Real property, RIC Reinstate charter, DIN Recovery of damages/insurance, ROF Recovery of funds, WOR Replevin, writ of, SPP Specific performance, TCO Title clearing (other than tax title), TAE Trespass and ejection, TRA Trustee/accounting, TCT Trustee, appt convey title, UNM Uninsured motorist, WRD Wrongful death

[ ] Other than above (specify type):

MISCELLANEOUS PETITIONS

- ARA Arbitration award, CAR Arbitration/confirm, RTA Arbitration/referral, VAR Arbitration/vacate, AOD Assessment of damages, CND Condemnation, CFC Confirm compromise, DOC Dissolution of corp., EDP End partnership, FRR Foreclosure of right of redemption, TLF Foreclosure tax lien, FOC Forfeiture of charter, GJI Grand Jury Investigation, HAC Habeas corpus, MAW Material witness, MEL Mechanics lien, OSW Out of state witness, PFS Perform surgery, PFC Petition for constable, PTE Petition to expunge, PFI Petition for immunity, PIN Pet for inventory (wire tap), PFR Petition for review, PTD Pet to take deposition, PCR Post conviction relief, REC Receivership, R5A Rule 5A petition, TCL Title clearing (tax title), AOT Trustee/appointment of, DOT Trustee/declination of, AOS Trustee/successor

[ ] Other than above (specify type):

PROBATE APPEALS

- [ ] WIL Will, [ ] TRS Trust, [ ] GRD Guardianship, [ ] NAC Name change

[ ] Other than above (specify type):

Is this a case that may require a trial for resolution? [x] yes [ ] no If yes: [ ] jury or [x] non-jury

(attorney name) Elizabeth McDonough Noonan, #4226

Adler Pollock & Sheehan P.C.

[ ] pro se

EM Noonan

(date)

2/13/04

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