

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, JANUARY 7, 2009

Present: Ald. Johnson (Chairman), Freedman, Baker, Brandel, Hess-Mahan, Parker and Sangiolo: absent: Ald. Merrill

Others Present: Dan Funk (City Solicitor), Marie Lawlor (Associate City Solicitor), Fran Towle (Commissioner, Parks & Recreation Dept.), Carol Stapleton (Parks & Recreation Dept.), Jayne Colino (Director, Senior Services), Karyn Dean (Committee Clerk)

#476-08 ALD. BAKER re-appointing Greer Tan Swiston as Aldermanic Commission member to the NEWTON CHILD CARE COMMISSION for a term to end January 1, 2011. (60 days: 2-13-09) [12-09-08 @ 7:26 PM]

ACTION: **APPROVED 5-0 (Ald. Brandel and Parker not voting)**

#477-08 ALD. BAKER re-appointing Katey Grossman as Childcare Provider Member to the NEWTON CHILD CARE COMMISSION for a term to end January 1, 2011. (60 days: 2-13-09) [12-09-08 @ 7:26 PM]

ACTION: **APPROVED 5-0 (Ald. Brandel and Parker not voting)**

#478-08 ALD. BAKER re-appointing Melissa Hanenberger as Parent Representative Member to the NEWTON CHILD CARE COMMISSION for a term to end January 1, 2011. (60 days: 2-13-09) [12-09-08 @ 7:26 PM]

ACTION: **APPROVED 5-0 (Ald. Brandel and Parker not voting)**

#479-08 ALD. BAKER appointing Emily Shumsky as the At-Large Member to the NEWTON CHILD CARE COMMISSION for a term to end January 1, 2011. (60 days: 2-13-09) [12-09-08 @ 7:26 PM]

ACTION: **NO ACTION NECESSARY 5-0 (Ald. Brandel and Parker not voting)**

NOTE: Stuart Cleinman, Executive Director of the Child Care Commission, contacted the Committee Clerk with the information that Ms. Shumsky was unable to serve. The Committee voted no action necessary for this item.

#306-08 ALD. BAKER, DANBERG, MANSFIELD & PARKER requesting discussion of how swimming at Crystal Lake might be lawfully and safely extended beyond mid-August. [08-26-08 @ 5:03 PM]

ACTION: **HELD 7-0**

NOTE: Ald. Baker explained that the acquisition of the new property at Crystal Lake and the subsequent improvements have vastly enhanced the site. A number of residents have expressed to him that people were continuing to swim at the lake after the official closing date, and he felt it might be better to find a way to extend the season through Labor Day. Ald. Parker said he thought that the lake had been open though Labor Day in the past, with lifeguards on duty.

Dan Funk, City Solicitor, provided documents for the Committee that are attached to this report. He explained that this issue had been discussed before as he found information from 4 ½ years ago.

Staffing Concerns

Fran Towle, Commissioner of the Parks & Recreation Dept., said that staffing is a problem. There are two facilities to staff for swimming – Gath Pool and Crystal Lake. Most of the lifeguards are athletes in either college or high school and have to leave by mid-August for pre-season training. She noted that guarding Gath Pool is easier than guarding a lake, so moving staff from the lake to the pool is easier than the reverse. Guarding a lakefront takes staff with different training and skills. In general, it has been difficult finding staff for the lake and pool during the regular season, so she felt it would be even more difficult finding staff to stay longer into the season. Gath Pool is open until Labor Day and Crystal Lake closes mid-August. Carol Stapleton of Parks & Recreation said that it costs the guards about \$250 to be trained as lifeguards. This is an expense that the guards pay themselves.

Swim-At-Your-Own-Risk

Ald. Freedman asked about unguarded swimming at Crystal Lake. Ms. Towle said that Wellesley has a swim-at-your-own-risk policy but their swimming area is a little harder to get to. She pointed out that Crystal Lake is very easily accessible and would probably invite higher numbers. Mr. Funk explained that according to the regulations of the Parks & Recreation Commission, any “ticket” (tag) holder is allowed to swim at the lake during the open season. After the season is over, there is no fee. According to the Recreational Use Statute, Chapter 21, Section 17C, as long as the city is not charging a fee, the city would not be liable for personal injuries or property damage sustained by members of the public while on the land in the absence of “willful, wanton, or reckless conduct” by the City. Those terms remained undefined and a search of other cases would be necessary to sort that out. As long as the area was left in a condition that wasn’t setting anyone up for harm and proper notice was given that lifeguards were not on duty via signs, Mr. Funk felt there would be no liability. However, the City would have to be very careful to look at potential problems to best protect the public and to avoid liability. He felt it would be best to limit this to the beach area. The policy decision has to be made by the Parks & Recreation Commission as the control, use, and regulation of the lake is under their control and not the Board of Aldermen.

Carol Stapleton said that even during the summer, there were many people swimming across the lake illegally. She said she would invite them to come over to the beach for the

day, for no charge, to keep them safe but people wouldn't come. This posed problems in the neighborhood in terms of parking and trespassing.

Water Quality and Trash Monitoring

Ms. Stapleton noted that the Health Department monitors the clarity of the water and requires 4 feet of visibility for the lake to stay open. The readings are taken every day. Mr. Funk said that the Aqualator should stay on and the Health Department monitoring should continue through any time extension that might be approved. Ms. Towle said that they would also monitor and collect trash.

Follow Up

Ald. Baker said this item was meant to initiate a fact-finding discussion. He asked that Ms. Towle take this to the Parks & Recreation Commissioners for their thoughts and recommendations. The two issues are the swim at your own risk option and some extension of the term of supervised swimming and what that would involve in terms of resources and personnel. Ms. Towle asked that the docketers of this item attend the Commission meeting in February. Ald. Johnson would like to have Ms. Towle and Ms. Stapleton report back to this Committee after meeting with the Commission.

Ald. Johnson moved to hold this item and the Committee voted in favor.

REFERRED TO PUBLIC FACILITIES AND PROGRAMS & SERVICES

#7-09 ALD. HESS-MAHAN LINSKY, ALBRIGHT, FREEDMAN, MANSFIELD, JOHNSON, HARNEY & VANCE proposing a Resolution to His Honor the Mayor to ensure that the installation of synthetic in-filled turf athletic fields on city-owned property shall use sustainable, recyclable, lead-free, non-toxic products to the maximum extent feasible.
[12-30-08 @9:55 AM]

ACTION: **PUBLIC FACILITIES APPROVED 4-0-2 (Ald. Schnipper and Gentile abstaining, Ald. Lennon not voting) on 01-07-09.**
APPROVED 7-0

NOTE: The Programs and Services Committee met jointly with the Public Facilities Committee on this item. Please see the Public Facilities Committee Report of January 7, 2009, for further details of this discussion.

The Programs & Services Committee reconvened after the joint meeting. The Committee would like Ald. Freedman to represent it in meetings with Gale Associates and the Mayor on this subject and Ald. Freedman agreed. He will report back to the Committee the details of any discussions. Ald. Hess-Mahan noted that new information has come to light in the last year regarding the products that have been used on fields. The newer products do not contain any toxic materials at all. Ald. Parker said that it had always been the intention of all involved to use the least toxic products that were available. Ald. Brandel said that there should be parity in the materials used for the fields at Newton South and Newton North. He was happy that the assessment of new materials was being done and he supported this resolution. The Committee voted in favor of this resolution.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#258-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding reorganization of senior transportation services and establishment of intra-village transportation systems. [07-08-08 @ 1:29 PM]

ACTION: **HELD 7-0**

NOTE: Ald. Sangiolo explained that during the budget discussions, cuts to senior transportation services led her to look into some alternatives. She remembered that during the special permit process, former Board President Brooke Lipsitt, would frequently ask petitioners to consider contributing money to the intra-city bus service (Nexus). That service is now defunct but the contributions are still in the permits and Ald. Sangiolo wondered if they could be used for a different service in the City. She would like to try to get the money from the contributors to help restore and perhaps expand the senior transportation services to get seniors to at least the library, and to hospitals, supermarkets and houses of worship. She learned from the Law Department that a revolving account could be set up to receive the funds from the special permit awardees. Ald. Sangiolo's proposal is attached to this report.

Special Permit Amounts

Jayne Colino, Director of Senior Services, was very interested in this concept. Ald. Sangiolo said that Newton-Wellesley Hospital agreed to contribute \$25,000 for the initial phase of Nexus and Bradford Development was also asked to contribute. Newton-Wellesley had a subsequent special permit and was willing to contribute \$12,000 per year. In a recent Land Use meeting, Newton-Wellesley said they were willing to honor that commitment. Cabot, Cabot and Forbes Development have committed \$25,000 a year in a special permit as well and another business committed \$2,500 per year. Even if businesses close, the permit runs with the property, not the owner. Ald. Sangiolo felt there was probably \$35,000 - \$40,000 in special permit contributions that could be collected.

Current Service Statistics

Ms. Colino was projecting the expense of the transportation program to be \$244,000 for this year, but has \$273,000 budgeted. They are going out to bid to re-negotiate the contract for the beginning of the year. The current vendor charges \$12 per ride and the Senior Center is collecting an average of \$1.83 per ride from riders. They went from a voluntary donation of up to \$2, to a \$3 contribution and will accept no less than a dollar. There is a waiver process for those who feel that can not afford the dollar. They are experiencing a decrease in ridership of about 500 per month, mostly from the outside-the-city medical transportation service that has been cut. Ms. Colino said that the grocery store trips have dropped as well. She thinks the economy may be causing people to make fewer trips for groceries. The perceived extra expense to the riders may also be a deterrent. Also, some who may have been using the system for convenience more than need, may have stopped using the system as much. The Senior Center conducted an education process regarding the cost of the system and that may have had an impact.

Ongoing Budget Concerns

Ald. Freedman said he wouldn't want to expand the services and budget all that much because of the tight fiscal circumstances of the City. He was very pleased that Ald. Sangiolo picked up on this resource. Ald. Baker agreed and wanted to be sure that limiting the service to seniors wouldn't be problematic. Ald. Brandel thought that a pass or subscription card would be a good idea as it would require more a commitment from the riders to contribute to the service. He also felt it should be set up in a way that was most tax-deductible for the seniors. He would like to see the House of Worship trips restored to the service.

Ald. Parker wanted to look at the special permit language so they can structure something that is consistent with that language for this purpose. He said they should continue to include these kinds of contributions for special permits as new projects come into the City. He would like to see a flat required contribution of \$2 or \$3 and provide waivers for those that needed them. He would like to see more of the money in the budget for this service coming from the people who use the service. Ms. Colino said that making the contribution a higher amount would likely generate more waiver applications and that would be a burden on their staff, but they would consider all options.

Follow Up

Ald. Sangiolo said she would need a couple of months to start collecting money, create a system and have discussions with the Law Department. She would then be ready to return to the Committee for further discussion. Ald. Hess-Mahan moved to hold this item and the Committee voted in favor.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#397-07 ALD. JOHNSON AND COLETTI requesting to increase the fee for dogs being off-leash except where dogs are legally able to be off-leash.
[12-04-07 @ 12:22 AM]

ACTION: **APPROVED 5-0-1 (Ald. Hess-Mahan abstaining, Ald. Sangiolo not voting)**

NOTE: Ald. Johnson noted that there is currently one off-leash dog park operating at Cold Spring Park and others are in the process of being proposed. She felt it was a good time to look at fees for off-leash dogs at this time. She found that by state law, there is a cap on this type of fee, which is \$50. Marie Lawlor said that a number of cities and towns have graduated fees up to \$50 and a number had flat fees of \$50 for each offense. The draft ordinance (attached) changes the fees from graduated fees to a flat fee of \$50

for each offense. The intent is to make fees high enough to be more of a deterrent. Ms. Lawlor noted that the dog officers recommended raising the fees significantly and were comfortable enforcing higher fees. An excerpt from the November 7, 2007 Programs & Services report is attached which their comments on this subject.

Ald. Hess-Mahan was concerned with enforcement and wondered if a dog owner had to give their name to police. Ald. Parker said that a person would not have to provide their

name but an officer could certainly watch the person go to their car and find their name from their license plate. Ald. Parker said that most people were cooperative with police officers. Ald. Parker moved approval of this item and the Committee voted in favor.

#346-99 ALD. SANGIOLO requesting creation of an ordinance that would prohibit dogs (leashed or unleashed) from all elementary school playgrounds.

ACTION: **HELD 6-0 (Ald. Sangiolo not voting)**

NOTE: Ald. Sangiolo was not present at the time of this discussion. Marie Lawlor said that she spoke to Ald. Sangiolo and she had indicated she would like to hold this item. Ald. Sangiolo would prefer to wait until there are more established dog parks throughout the city before continuing with this item. Ald. Parker moved to hold this item and the Committee voted in favor.

The Committee voted to adjourn.

Respectfully Submitted,

Marcia Johnson, Alderman

Crystal Lake Fact Sheet

Crystal Lake is a natural body of water, approximately twenty three (23) acres in area, and, as such is a "great pond" per Chapter 131, Section 45, Crystal Lake is required to be open to the public for purposes of "hunting, fishing, and boating". Prior to 1989, boating on Crystal Lake was limited to abutters of the lake. In 1991, the Newton Parks and Recreation Commission was required by the Department of Fisheries and Wildlife (& Division of Environmental Law Enforcement)¹ to allow public access to Crystal Lake for the purposes of boating and fishing.²

Chronology:

1924 Special Act.

1929 Rules and Regulations, Newton Playground Commission

1991 Rules and Regulations for Boating and Fishing on Crystal Lake

1. The Acts of 1924, Chapter 243: An Act Relative to the Control of Crystal Lake in the City of Newton. (This is a "special act" or law passed by the state legislature in 1924.)

This special Act authorizes the City's "Playground Commission", now the Parks and Recreation Commission³, to make rules and regulations "governing fishing, boating, bathing [swimming], skating and other recreational activities in or on Crystal Lake in said City. Such rules and regulations shall be subject to the approval of the division of waterways and public lands of the commonwealth [now the division of fisheries and wildlife] and when approved by said division shall have the force of law." (Section 2). The Act provides for enforcement as follows:

Any police officer of said city may patrol any part of the waters of said lake and shall have authority to arrest any person violating any law of the commonwealth in, on or adjacent to the waters of said lake or violating any rule or regulation established under this [A]ct.

(Section 3). (Emphasis supplied). The Act also provides for a fine of "not more than twenty dollars." (Section 4).

¹ The Department of Fisheries and Wildlife and Environmental Law Enforcement is an agency of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts.

² Although the title of the 1991 Rules are entitled "Rules and Regulations for Boating on Crystal Lake" they also pertain to fishing. See Rule No. 8

³ In 1982, the Playground Commission was abolished and replaced by the Newton Parks and Recreation Commission. See Chapter 246 of the Acts of 1982.

2. City of Newton, Playground Commission, Rules and Regulations for the Government and Use of Crystal Lake. (Approved May 15, 1929).

Excerpts from the General Rules:

“Rule 1. “No person shall enter or leave Crystal Lake except at beaches where the City owns the land or at such other places as the Playground Commission may specially designate, providing, however, that all inhabitants of the Commonwealth shall have equal rights with the citizens of Newton, subject to the payment of such charges as are fixed under these rules. Exception is made with abutters (sic), their guest and servants on their own respective beaches.”

Bathing [swimming] is limited to “ticket holders” per Rule No. 8. Rule No. 12 requires all bathers to use the facilities provided by the City of Newton. Rule 13 states, “[n]o person shall bathe (sic) in this lake except in proper costume and at a place designated therefore, or bathe at any other seasons or hours than are posted at the designated bathing beach...”

Therefore, people using Crystal Lake for swimming are supposed to swim from the designated area. Rule No. 15. Boating, and Rule No. 16, Fishing have been superseded to the extent inconsistent with Rules and Regulations below.

3. Rules and Regulations for Boating [and Fishing] on Crystal Lake, Dated 5/8/91, approved by the Department of Fisheries, Wildlife & Environmental Law Enforcement on May 8, 1991.

These Rules allow access to Crystal Lake for boating and fishing. The access point for boating is Cronin Cove on Lake Avenue, except that abutters may launch boats from their own property. (See Rule No. 4) Swimming from boats is prohibited. (See Rule No. 7 f.)

Crystal Lake Questions and Answers
May, 2004

1. What access must be provided to Crystal Lake?

Crystal Lake is a "Great Pond". As such it

...shall be public for the purpose of hunting or boating thereon and shall, notwithstanding the provisions of any special law relating to fisheries in any particular place, be open to all inhabitants of the commonwealth for fishing purposes...All persons shall be allowed reasonable means of access to such ponds for the purposes aforesaid.

See, Massachusetts General Laws, Chapter 131, Section 45.

2. Can a person enter [Crystal Lake] from wherever he/she wishes?

No. For boating, access to Crystal Lake is limited to Cronin Cove on Lake Avenue:

All boats must be put in the water by hand carrying at the designated area on Cronin Cove on Lake Avenue. Boats may not be put in the lake from any other site, except for boats belonging to owners of property abutting the lake (abutters), which may be launched from the abutter's property.

See the "Rules and Regulation for Boating on Crystal Lake", Rule 4.a. (Access Point), May 8, 1991.

For swimming, the Rules and Regulations for the Government and Use of Crystal Lake, May 12, 1929 state as follows:

No person shall enter or leave Crystal Lake except at beaches where the City owns the land or at such other places as the [Parks and Recreation Commission] may specially designate...

See General Rules, Rule 1.

3. What regulations are in effect particularly in regard to swimming?

The 1929 Rules and Regulations referenced in Question No. 2 above. The Rules and Regulations adopted in 1929 (which are still in force) regulate access, season, days, and hours for swimming at Crystal Lake. (See Rule Nos. 8 through 13.) Note with respect to access, the 1929 Rules limit use of the Lake for swimming to "ticket holders". However, tickets are available to Newton residents and "all inhabitants of the Commonwealth" (See Rule 8. and Rule 1.)

4. Who regulates swimming on Crystal Lake?

The Parks and Recreation Commission has sole authority in Newton to regulate the use of Crystal Lake for swimming, boating and fishing pursuant to Chapter 243 of the Acts of 192, which state:

The [Parks and Recreation Commission] may from time to time make rules and regulations governing fishing, boating, bathing [swimming], skating and other recreational activities in or on Crystal Lake...Such rules and regulations shall be subject to the approval of the [Division of Law Enforcement of the Department of Fisheries, Wildlife and Environmental Law Enforcement] and when approved by said division shall have the force of law. Chapter 243 of the Acts of 1924; approved April 12, 1924.

5. What are the City-owned access points?

Cronin Cove and Levingston Cove on Lake Avenue.

6. Can the City prohibit all motorized access?

No. The Rules and Regulations for Boating and Fishing adopted in 1991 prohibit internal combustion engines, consistent with Chapter 131, Section 45. The Division of Law Enforcement of the Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement has ruled that cities and towns cannot prohibit all motorized access.¹

¹ See Memorandum from Craig A. MacDonnell, Legal Counsel, Division of Law Enforcement to the City of Newton in regard to Crystal Lake, dated July 19, 1990, which stated, "...prohibiting electric motors of all kinds, no matter how small, is unwarranted because it discriminates against fishermen using unobtrusive, quiet and non-polluting engines."

been revoked either permanently or abetting in any attempt to secure it for or for another, by fraud; or, in case of defrauding or attempting to defraud, may subsequently, but not earlier than the issue of any certificate formerly issued, re-issue any certificate, and register anew any physician, and whose registration was cancelled and whose registration was cancelled.

Approved April 12, 1924.

METROPOLITAN DISTRICT COMMISSION OF THE WATERS OF CHESTER RESERVOIRS BY GULLS OR TERNS.

Authority and prevent the pollution of all and Spot Pond reservoirs, the commission may authorize one or more persons permissible under federal law, to take use such appliances and weapons. Commission, will prevent the defilement of reservoirs by gulls or terns, any provision and thirty-one of the General Laws, standing. The commission shall prevent any birds killed under the authority of the department of conservation in such periods as he may prescribe.

Approved April 12, 1924.

JOINING MEMBERS OF THE FIRE DEPARTMENT OF THE CITY OF TAUNTON.

Any member of the council of the city of Taunton, who shall retire from active service, shall enroll any fireman, call fireman or fireman of the city whom the city physician permanently disabled, mentally or physically, or illness incurred through no fault of his own, performance of duty, from further performance of duty; or any permanent member who performed faithful service therein for a number of years if in the judgment of said commission such member is disabled for useful service, provided, that any permanent member who performed faithful service therein and attained the age of sixty shall be eligible for retirement. Any member retired under the provisions of this act shall be entitled to an annual pension, payable monthly,

equal to one half of the annual salary or other compensation payable to him during the last year of his service. The pension of any call or substitute call fireman retired under said section shall be the same as that of a permanent member of the first grade of the same department in which he served.

SECTION 3. The words "permanent member" as used in this act shall be construed to include the chief engineer of the fire department of said city, notwithstanding that he is subject to election at stated intervals by the municipal council.

Words "permanent member" to include chief engineer, etc.

SECTION 4. This act shall take effect upon its acceptance by a two thirds vote of the municipal council of the said city.

Submission to municipal council.

Approved April 12, 1924.

AN ACT PROVIDING FOR THE PRESERVATION OF HISTORICAL RELICS AND WORKS OF ART WITHIN THE STATE HOUSE. Chap.242

Be it enacted, etc., as follows:

Section twenty of chapter six of the General Laws, as amended by chapter two hundred and ninety-eight of the acts of nineteen hundred and twenty-two, is hereby further amended by adding at the end thereof the following new paragraph:— Said commission shall have the custody and care of all historical relics in the state house, and of all works of art, as herein defined, erected or maintained therein.

G. L. 6, § 20, etc., amended.

Art commission to have custody, etc., of historical relics, etc., in state house.

Approved April 12, 1924.

AN ACT RELATIVE TO THE CONTROL OF CRYSTAL LAKE IN THE CITY OF NEWTON. Chap.243

Be it enacted, etc., as follows:

SECTION 1. The city of Newton, through its playground commission, may from time to time make rules and regulations as to the erection, maintenance and control of all public bath houses on the shores of Crystal lake in said city.

Control of Crystal lake in city of Newton.

SECTION 2. The playground commission of said city may from time to time make rules and regulations governing fishing, boating, bathing, skating and other recreational activities in or on Crystal lake in said city. Such rules and regulations shall be subject to the approval of the division of waterways and public lands of the department of public works of the commonwealth and when approved by said division shall have the force of law.

Rules and regulations governing fishing, boating, etc.

SECTION 3. Any police officer of said city may patrol any part of the waters of said lake and shall have authority to arrest any person violating any law of the commonwealth in, on or adjacent to the waters of said lake or violating any rule or regulation established under this act.

Police protection.

SECTION 4. The violation of any rule or regulation established under this act shall be punished by a fine of not more than twenty dollars.

Penalty.

SECTION 5. Nothing in this act shall be construed to abridge the powers and duties of said division under chapter ninety-one of the General Laws.

Construction of act.

Approved April 12, 1924.

CITY OF NEWTON, MASSACHUSETTS

PLAYGROUND COMMISSION

RULES AND REGULATIONS

For The Government and Use of CRYSTAL LAKE

GENERAL RULES

Rule 1. No person shall enter or leave Crystal Lake except at beaches where the City owns the land or at such other places as the Playground Commission may specially designate, providing, however, that all inhabitants of the Commonwealth shall have equal rights with the citizens of Newton, subject to the payment of such charges as are fixed under these rules. (Exception is made with abutters, their guests and servants on their own respective beaches.)

Rule 2. No person shall in or on Crystal Lake, or upon any land bordering thereon, solicit the acquaintance of, or annoy another person; or utter any profane, threatening, abusive or indecent language, or loud outcry; or solicit any subscription or contribution; or have possession of or drink any intoxicating liquor; or play any game of chance; or have possession of any instrument of gambling, or do any obscene or indecent act; or preach aloud, or make an oration or harangue, or any political or other canvass; or move in a military or civic parade, drill or procession; or lie down upon a bench or boat or go to sleep thereon; or play any musical instrument except by written authority from said Newton Playground Commission.

Rule 3. No person shall dig up, cut, break, remove, deface, defile or ill-use, any building, structure, fence, sign, bush, plant, turf, rock, or any other thing belonging to the City of Newton, or have possession of any part thereof.

Rule 4. No person shall throw any stone or any other missile, or have possession of or discharge any destructive weapon, firearm, firecracker, torpedo or firework, or make a fire or throw or place upon the ground a lighted match, cigar, cigarette, or other burning substance; or post, paint, or affix any sign, notice, placard or advertising device; or, except with written authority from said Newton Playground Commission engage in business, sell or expose for sale, or give away any goods, wares, or circulars; or set a trap or snare or injure or have possession of any wild animal or bird; or injure or destroy any bird's nest or eggs; or drop or place and suffer to remain any piece of paper or other refuse, except in the receptacles designated therefor.

Rule 5. No person shall throw, drop or place in the water or on the beach any waste paper, rubbish or refuse.

Rule 6. No person shall ride or drive any animal or vehicle on the city reservation or the beach of the lake; or bring dogs to the lake except on leash.

Rule 7. No person shall refuse or neglect to obey any reasonable direction of a playground official or police officer.

BATHING

Rule 8. All bathing in Crystal Lake will be limited to ticket holders. These will be issued to applicants by the Playground Department at City Hall, West Newton, during the month of May. The tickets are good only for the summer of the year in which they are issued and are subject to observance of all the rules pertaining to bathing in Crystal Lake.

Rule 9. Each bather is restricted to one hour's use of the dressing room and the bathing facilities in Crystal Lake, per day. A shower bath must be taken before entering the waters of the lake.

Rule 10. Bathing during the day until six o'clock in the afternoon is restricted to children of both sexes eighteen years of age or younger, and to parents and guardians or other older people having young people in their charge.

Rule 11. After six o'clock in the afternoon until dark, older people holding season tickets may bathe, subject to the same rules governing the use of the bathhouse for dressing, showers before entering the waters of the lake and the time limit of one hour each day.

Rule 12. All persons bathing in the lake shall use the bathing facilities provided by the City of Newton. A charge of fifty cents (50c.) will be made to non-residents for the use of such bathing facilities each time they bathe in the lake. For exception read Rule 1.

Rule 13. No person shall bathe in this lake except in proper costume and at a place designated therefor, or bathe at any other seasons or hours than are posted at the designated bathing beach; or bathe on days or during hours not designated for his or her sex and no persons may loiter on or near the bathing beach. Exception is made as to loitering when parents or guardians accompany their children or when nurses or maids or other older persons come in charge of children.

SKATING

Rule 14. No person shall skate on the ice except at a place or places designated therefor by ropes and lanterns; or skate on any other days or hours than are posted at the skating reservation, or cut ice, or fish through the ice, or deposit snow on any part of the reservation for skating, or within fifty yards of this reservation; or skate in the reservation when the signs are up forbidding skating; or play hockey in any area not specially marked for this game; or refuse or neglect to obey the posted rules and regulations governing winter sports; or refuse or neglect to obey any reasonable directions of playground directors or police officers.

BOATING

Rule 15. No person shall have charge of, row a boat, paddle a canoe, run or drive a boat or canoe, propelled by steam, naphtha, gasoline, electric or other motor or engine, or by sail, unless he shall have first obtained a written permit therefor from the Newton Playground Commission; or drive the same at a speed exceeding eight miles an hour; or in such a manner as to endanger or annoy others.

FISHING

Rule 16. No fishing is allowed on Crystal Lake from December 1st to June 30th. From July 1st to November 30th, fishing is allowed but is subject to existing rules and regulations of the Commonwealth of Massachusetts pertaining to fishing.

Any person violating any of the above rules, shall for each offense, be punished by a fine of not more than twenty dollars. (Revised Laws, Chapter 243.)

CITY OF NEWTON PLAYGROUND COMMISSION

Signed, ALBERT P. CARTER, Chairman
CHARLES F. JOHNSON, Jr.
THOMAS J. LYONS
RALPH COOLIDGE HENRY
E. RAY SPEARE

COMMONWEALTH OF MASSACHUSETTS

Department of Public Works

State House, Boston.
May 15, 1929.

Voted, That the Department of Public Works approves the accompanying rules and regulations for the government and use of Crystal Lake, Newton, as formulated by the Playground Commission of the City of Newton, insofar as said rules and regulations govern fishing, boating, bathing, skating and other recreational activities in or on Crystal Lake in said City, in accordance with the provisions of Chapter 243 of the Acts of 1924.

Signed, F. E. LYMAN
Commissioner.

§ 17C. Public use of land for recreational, conservation, scientific educational and other purposes; landowner's liability limited; exception

(a) Any person having an interest in land including the structures, buildings, and equipment attached to the land, including without limitation, wetlands, rivers, streams, ponds, lakes, and other bodies of water, who lawfully permits the public to use such land for recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes without imposing a charge or fee therefor, or who leases such land for said purposes to the commonwealth or any political subdivision thereof or to any nonprofit corporation, trust or association, shall not be liable for personal injuries or property damage sustained by such members of the public, including without limitation a minor, while on said land in the absence of wilful, wanton, or reckless conduct by such person. Such permission shall not confer upon any member of the public using said land, including without limitation a minor, the status of an invitee or licensee to whom any duty would be owed by said person.

(b) The liability of any person who imposes a charge or fee for the use of his land by the public for the purposes described in subsection (a) shall not be limited by any provision of this section. The term "person" as used in this section shall be deemed to include the person having an interest in the land, his agent, manager, or licensee and shall include without limitation, any governmental body, agency or instrumentality, nonprofit corporation, trust or association, and any director, officer, trustee, member, employee or agent thereof. A contribution or other voluntary payment not required to be made to use such land shall not be considered a charge or fee within the meaning of this section. Added by St.1972, c. 575. Amended by St.1991, c. 372; St.1998, c. 268.

Senior Transportation Proposal

On July 10, 1995, the Board of Aldermen voted to approve a resolution to the Mayor to create an intra-city bus Jitney Transportation service. In the resolution, the BOA states, among other things, that the City has actively pursued private commercial funding sources to partially offset the costs of studies and start-up activities for this proposed service, and has received contributions towards these costs through its special permit process and that the transportation service would connect many villages and neighborhoods throughout the City, that it would provide new opportunities for those needing transportation to places of employment, education and training, medical facilities, city services and retail, commercial and office locations in Newton, and that a jitney service is consistent with policy of the City to provide expanded transportation for its residents and urged the Mayor to commence operation of it by July 1996.

In November 1995, the Board of Aldermen authorized the establishment of a revolving account to receive private monies to be earmarked for the start-up costs and marketing of the Jitney transportation system in accordance with MGL Ch. 44, Sec. 53E1/2. The account was to have an annual expenditure limit of \$150,000.

Then in 1997, the Board of Aldermen, pursuant to the provisions of Section 19-361 et. Seq. of the Revised Ordinances, 1995, as amended, granted a license to LOLAW TRANSIT MANAGEMENT, INC., to operate the Jitney Service and approved various routes throughout the city.

In December 1994, as part of its special permit Board order conditions, National Development of New England, Inc and ADS Senior Housing agreed to hire and pay for the services of a transportation consultant to assist the Planning Dept in developing an intra-city Jitney bus system and application to the MBTA under the Suburban Bus Program. The cost to the Petitioner was limited to \$20K.

In July, 1995, Newton – Wellesley Hospital, as part of its special permit Board order conditions, agree to contribute \$25,000 toward the initial cost of an intra-city jitney bus service.

In June 1997, as part of its special permit Board order conditions, Cabot, Cabot and Forbes agreed to make annual contribution of \$25,000 to the city's operational inter-village bus service.

In 1998, Gourmet Wok, Inc., as part of its special permit Board Order Conditions, agreed to make an annual contribution to the Nexus – no amount specified.

In 1999, the Capasso's, as part of their special permit Board Order Conditions, agreed to make an annual contribution of \$2,500 to the Newton Nexus bus system.

In June 1999, as part of its special permit Board Order Conditions, RPR Restaurant Group, agreed to make an annual contribution of \$500 to a citywide transportation

system to be paid initially upon occupancy permit and annually thereafter on the anniversary of the date of the special permit.

In July 2000, as part of its special Permit Board Order conditions, Bradford Development Corporation agreed to the following: The petitioner shall execute a Traffic Mitigation Fund Agreement with the city and contribute \$25,000 to be used toward the cost of traffic improvements which involve physical changes and improvements, studies, or transportation programs which do not involve physical changes or improvements such as the Nexus Bus or its successor. Petitioner's payment shall be made at the time of the issuance of a Building Permit and shall be refunded to the Petitioner if not used within 5 years from the date of issuance of certificate of occupancy of any building constructed pursuant to this special permit.

In July 2000, as part of its special permit board order conditions, Bradford Development Corporation agreed to the following: The Petitioner shall execute a Traffic Mitigation Fund Agreement with the city and contribute \$25,000 to be used toward the cost of traffic improvements which involve physical changes and improvements, studies, or transportation programs which do not involve physical changes or improvements such as the Nexus Bus or its successor and contains the same clause as the previous board order which refunds the money in the event that the funds are not used within 5 years from the date of issuance of occupancy certificate.

The question to the Law Department and the Administration, can the Senior Services Department, as part of a re-organization of its transportation service it provides throughout the city utilize these funds, and are these conditions to the special permits, still enforceable? This information is critical in that a number of large-scale developments are coming through the pipeline.

Italicized paragraphs indicate recurring money. I believe that Newton-Wellesley Hospital, as part of another special permit, was required to make an annual contribution of \$12,000/year because they had asked to be released from that condition. I am not sure whether a release was granted by the City or who made that decision.

This has the potential to be a wonderful opportunity for the City to help restore cuts that have been proposed in the budget to the Senior Transportation budget and possibly free up funds for other municipal programs and services.

PART I. ADMINISTRATION OF THE GOVERNMENT**TITLE VII. CITIES, TOWNS AND DISTRICTS****CHAPTER 44. MUNICIPAL FINANCE****MISCELLANEOUS PROVISIONS****Chapter 44: Section 53E1/2. Revolving funds**

Section 53E1/2. Notwithstanding the provisions of section fifty-three, a city or town may annually authorize the use of one or more revolving funds by one or more municipal agency, board, department or office which shall be accounted for separately from all other monies in such city or town and to which shall be credited only the departmental receipts received in connection with the programs supported by such revolving fund. Expenditures may be made from such revolving fund without further appropriation, subject to the provisions of this section; provided, however, that expenditures shall not be made or liabilities incurred from any such revolving fund in excess of the balance of the fund nor in excess of the total authorized expenditures from such fund, nor shall any expenditures be made unless approved in accordance with sections forty-one, forty-two, fifty-two and fifty-six of chapter forty-one.

Interest earned on any revolving fund balance shall be treated as general fund revenue of the city or town. No revolving fund may be established pursuant to this section for receipts of a municipal water or sewer department or of a municipal hospital. No such revolving fund may be established if the aggregate limit of all revolving funds authorized under this section exceeds ten percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine. No revolving fund expenditures shall be made for the purpose of paying any wages or salaries for full time employees unless such revolving fund is also charged for the costs of fringe benefits associated with the wages or salaries so paid; provided, however, that such prohibition shall not apply to wages or salaries paid to full or part-time employees who are employed as drivers providing transportation for public school students; provided further, that only that portion of a revolving fund which is attributable to transportation fees may be used to pay such wages or salaries and provided, further, that any such wages or salaries so paid shall be reported in the budget submitted for the next fiscal year.

A revolving fund established under the provisions of this section shall be by vote of the annual town meeting in a town, upon recommendation of the board of selectmen, and by vote of the city council in a city, upon recommendation of the mayor or city manager, in Plan E cities, and in any other city or town by vote of the legislative body upon the recommendation of the chief administrative or executive officer. Such authorization shall be made annually prior to each respective fiscal year; provided, however, that each authorization for a revolving fund shall specify: (1) the programs and purposes for which the revolving fund may be expended; (2) the departmental receipts which shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; (4) a limit on the total amount which may be expended from such fund in the ensuing fiscal year; and, provided, further, that no board, department or officer shall be authorized to expend in any one fiscal year from all revolving funds under its direct control more than one percent of the amount raised by taxation by the city or town

CITY OF NEWTONIN BOARD OF ALDERMEN

July 10, 1995

ORDERED:

That the Board finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and that it will not be substantially more detrimental than the existing nonconforming use to the neighborhood and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following Special Permit/Site Plan Approval and Extension of Nonconforming Use and Structure are hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor through its Chairman, Alderman Susan M. Basham:

The Board makes the following findings:

1. The Newton-Wellesley Hospital is and intends to remain an independent, autonomous community oriented facility committed to meeting the needs of the communities it serves by providing the highest quality health care possible. The Hospital believes that its ability to control its own future is of vital importance to its commitment to remain an autonomous community oriented facility.
2. As a community oriented facility, the Hospital provides a multitude of services to Newton residents which range from occupational health services to free health screenings and testing. It also provides a broad range of medical specialists practicing together in a community teaching hospital to provide comprehensive medical care in one location and to help insure that the Hospital will remain a viable high quality institution serving the needs of Newton.
3. Since 1985, the Hospital's Long Range Plan cited the need to build an ambulatory surgical care facility. Rapid technological advancements in surgical technology have changed the practice of surgery. Seventy percent of the Hospital's surgical procedures are done on an outpatient basis which requires a facility with a large number of private, efficient spaces in which to prepare patients for surgery and recovery. The Hospital's current facility was designed for inpatient surgical procedures and is unsuitable for the volume of outpatient surgical procedures being performed.

8. That the Hospital shall contribute \$25,000 to the initial cost of an intra-city transportation system and shall make a proportionally shared annual contribution toward its maintenance and continued operation, in an amount to be determined by the Director of Planning and Development.
9. That The Hospital shall monitor underground water levels as shown in the "SEA Groundwater Observation Well Readings Report", dated April 27, 1995, by SEA Consultants, in accordance with the directions of the City Engineer and shall provide the City Engineer with monitoring information and such other information relevant to the underground water levels on the Hospital site as he may reasonably request. If, in the opinion of the City Engineer, the information on underground water levels in the Hospital site identifies an on-site condition which has, or will, raise the water level to create off-site impacts, the Hospital will design and implement an appropriate mitigation plan which plan shall be subject to the review and approval of the City Engineer.
10. That a foundation drain shall be constructed along the upgradient side of the below ground foundation walls of the Ambulatory Surgical Services Building. However, the City Engineer shall inspect the area of the foundation excavation and if silty layers are not observed, the drains need not be built.
11. That all transformers, chillers, air conditioners, mechanical/ventilation systems, HVAC equipment, generators and similar devices shall be located, designed, and baffled using appropriate acoustical screening to minimize the noise produced. The Hospital shall comply with all applicable City of Newton and Massachusetts Department of Environmental Protection Noise Regulations pertaining to noise levels and shall utilize mechanical equipment which produces the lowest noise level possible which is still suitable for the hospital's purposes.

The Hospital shall provide, on or within six months after the completion of construction of this project, a written certification from an acoustical engineer to the City Clerk that the design and testing of the emergency backup generator and the other mechanical devices associated with this project comply with the above standards. Testing shall be limited to weekdays at a time of maximum background noise as determined by an acoustical engineer.

12. That the landscaping to be installed by the hospital, referenced in the plans in Condition #1 above, shall be maintained by the Hospital and dead and diseased vegetation shall be replaced at least annually to preserve the landscaping. The hospital will file annually a certification with the City Clerk and the Department of Planning and Development indicating that the existing landscaping on its campus has been maintained and/or defining all areas in need of treatment of enhancement.

CITY OF NEWTONIN BOARD OF ALDERMEN

June 2, 1997

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT/SITE PLAN APPROVAL AND EXTENSION OF NON-CONFORMING USE AND STRUCTURE is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor, through its Chairman, Alderman Susan M. Basham:

1. The Board finds that the specific site is an appropriate location for such use, structure for the following reasons:
 - a) The site has been used for commercial purposes since at least the 1930's;
 - b) The office use is allowed as-of-right in both the Manufacturing and Business 4 districts;
 - c) The site is abutted to the west by the terminus of the Riverside MBTA station;
 - d) Public transit is available.

2. The Board finds that the use as developed and operated will not adversely affect the neighborhood for the following reasons:
 - a) The proposed office building will be smaller than the existing building;
 - b) The use of a multi-level parking structure will reduce the amount of surface level parking on the site, permitting more open space and landscaping;
 - c) The provision of an accessory restaurant and coffee shop with more than 50 seats will provide additional amenities for the individuals using the proposed office building and minimize the generation of additional trips from the office building;
 - d) The petitioner proposes a transportation demand management plan to promote the use of public transportation and thereby minimize the number of vehicles coming to the site;
 - e) The petitioner proposes traffic mitigation in front of the site to permit safe turning movements and traffic flow;
 - f) The drainage on the site shall meet the Massachusetts DEP Stormwater Guidelines dated November 18, 1996, rev. March 1997 and represents an improvement over the existing site conditions;

27. That the petitioner shall implement a Transportation Demand Management program which shall encourage the use of public transportation, promote the use of bicycles by the provision of lockers and shower facilities for cyclists, and promote ridesharing
28. That the petitioner agrees to record a Covenant of Restrictions with the South Middlesex Registry of Deeds that prohibits for 99 years the primary use of the site as retail, movie or performance theater. Any change to the covenant shall require the approval of the Board of Aldermen by a 2/3 vote of the membership. Said covenant shall be reviewed and approved by the Law Department.
29. That the petitioner, its successors and assigns, shall make an annual contribution of \$25,000 to the City's operational inter-village bus service.
30. That in addition to the contribution to the City's inter-village bus service, the petitioner its successors and assigns, shall provide a bus at its own expense which shall operate from the site to Lower Falls and Auburndale from at least 11:30 AM. to 2 PM. and from the site to the Auburndale commuter rail station from at least 7-9 AM. and 4-6 PM. This bus shall be available to the public free of charge at any point along the route. The petitioner, its successors and assigns, shall not be precluded from implementing other uses of the bus Any modifications to the Auburndale commuter rail station route shall be made in accordance with the City's bus licensing process and in consultation with the Ward 4 Aldermen and the Board of the Auburndale Community Association, but will not require an amendment to this special permit.
31. That all utility lines from the street to the site shall be underground.
32. That the petitioner, its successors and assign, will make the atrium common space available on a non-exclusive basis during non-business hours to neighborhood groups for civic meetings without charge or an insurance/indemnification requirement. Scheduling will be handled by the on-site management personnel.
33. That as shown on a plan entitled "C3 Site Layout and Materials Plan", right turns into the site and left turns out of the site shall be permitted at the northern driveway. The center driveway shall be used only as an entrance. Only right turns out of the southernmost driveway shall be permitted.
34. That the petitioner, its successors and assigns, shall provide a private police detail to augment the traffic signal and to educate drivers in the morning and the evening peak hours unless the City Traffic Engineer determines that the police officer is no longer required. In making his determination the Traffic Engineer shall consider if the signal is providing sufficient guidance for motorists and if the traffic in the area of the site has normalized. The Traffic Engineer shall make his determination in consultation with the captain of the traffic bureau of the Police Department. If at a later date the Traffic Engineer, in consultation with the captain of the traffic bureau of the Police Department, determines that for public safety a police detail is needed, the private police detail shall

#194-99(2)

CITY OF NEWTON
IN BOARD OF ALDERMEN

August 9, 1999

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMITS and SITE PLAN APPROVAL are hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor, through its Chairman, Alderman Susan M. Basham:

1. The site is currently City-owned property, the sale of which was reviewed pursuant to the City of Newton's Re-Use Ordinance, Sec. 2-7. As part of the re-use process, the Joint Advisory Planning Group worked with the surrounding neighborhood to propose restrictions on the use of the site, maximum height limitations and creation of a buffer separating future uses on this site from adjoining properties. The Board finds that this Petition satisfies these restrictions which were proposed in the site's Re-Use Board Order # 83-96(3) authorizing sale of the site.
2. The Conservation Commission has reviewed and approved the Petition's site plan.
3. The Board finds that the specific site is an appropriate location for such use, structure for the following reasons:
 - a) The site has been used as an incinerator site for many years;
 - b) The office use is allowed as-of-right in a Business 2 district;
 - c) The site can accommodate a building of the size and height proposed.
4. The Board finds that the use as developed and operated will not adversely affect the neighborhood for the following reasons:
 - a) The proposed office building will be compatible with surrounding uses;
 - b) The provision of an accessory restaurant and/or coffee shop with more than 50 seats will provide additional amenities for the individuals using the proposed office building and minimize the generation of additional trips from the office building;
 - c) The petitioner will contribute towards the cost of traffic improvements at the Rumford Avenue and Lexington Street intersection to help mitigation traffic impacts arising from use of the site for an office building.
 - d) The drainage on the site shall meet the Massachusetts DEP Stormwater Guidelines dated November 18, 1996, rev. March 1997 and represents an improvement over the

combined flexible space.

Any modification or change in the terms of this Restrictive Covenant shall require the approval of Mayor and the Board of Aldermen by a 2/3rds vote of its membership. In the event that the Petitioner is required to record a Covenant of Restriction on the site pursuant to this condition, such covenant shall be reviewed and approved as to form by the Law Department prior to its recordation. The petitioner, its successors and assigns, shall re-record the Restrictive Covenant prior to the expiration of thirty (30) years from the date of the original recordation.

15. That the petitioner, its successors and assigns, shall make an annual contribution of at least \$2,500.00 to the City's Nexus bus service. The petitioner shall also make public transit information available to all tenants the building to encourage their employees to use public transportation.
16. That all utility lines from the street to the site shall be underground.
17. That the petitioner shall contribute \$4,800.00 toward the upgrade of the traffic signal at the intersection of Rumford Avenue and Lexington Street to enhance safe traffic flow.
18. That in the event the City of Newton does not retain a drain easement at the time of conveyance to the petitioner, then petitioner shall grant an easement to the City of Newton for the existing drain line at the edge of the property on Rumford Avenue at a location proved by the City Engineer.
19. That this special permit shall be deemed exercised upon the issuance of a building permit.
20. That no building permit shall be issued in pursuance of the SPECIAL PERMIT and SITE PLAN APPROVAL until:
 - a. A final landscape plan, consistent with Condition #1 of this special permit, including lighting and fixture design, indicating the location, number, size and type of landscaping and landscape materials to be installed shall be reviewed for consistency have been submitted to and approved by the Director of Planning and Development and statement of certifying such approval for consistency with the plans cited in Condition #1 shall have been filed with the City Clerk and the Department of Inspectional Services.
 - b. The City Engineer has reviewed and approved site grading and drainage, and the installation of sidewalk, if necessary and curbing improvements along the Rumford Avenue frontage and a statement by the City Engineer certifying such approval shall

#162-99

CITY OF NEWTON
IN BOARD OF ALDERMEN

(GO FISH)

June 21, 1999

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT/SITE PLAN APPROVAL is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor, through its Chairman, Alderman Susan M. Basham:

1. The Board finds that the restaurant use is an appropriate use for the site because a restaurant already exists there.
2. The Board finds that the parking requirement is satisfied.
3. The Board finds that as part of his lease the petitioner shall direct employees to park in the rear of the building.
4. The Board finds that the petitioner shall make a voluntary contribution to the City's intra-village bus system (Nexus)

PETITION NUMBER: 162-99

PETITIONER: RPR Restaurant Group, Inc./Reva Goode, et. al.

LOCATION: 200 Boylston Street, Section 82, Block 2, Lot 15, containing approximately 136,906 sq. ft. of land.

OWNER: MSK Realty Trust

ADDRESS OF OWNER: 200 Boylston Street, Suite 306
Chestnut Hill, MA

TO BE USED FOR: A restaurant with more than 50 seats (175 seats) with an all alcoholic beverage license

CONSTRUCTION: Interior only

EXPLANATORY NOTE: Section 30-11(d)(9) allows the Board of Aldermen to grant a special permit for a restaurant with more than 50 seats which holds an all alcoholic beverage license

Land referred to is in a Business 1 District.

Approved, subject to the following conditions:

1. That all buildings, parking areas, driveways, walkways, landscaping and other site features shall be located and constructed consistent with plans entitled, "Plan of Land in Newton, Mass to accompany the petition of RPR Restaurant Group, Inc. 386 Commonwealth Road, Wayland, Mass." dated April 9, 1999 by Zachary Wesper, and a schematic floor plan by United Design Group dated 1/25/99 and revised 1/28/99, submitted by the petitioner and filed herewith.
2. That the petitioner, his successors and assigns, shall make an annual contribution of \$500 to a citywide transportation system to be paid initially upon the receipt of an occupancy permit and annually thereafter on the anniversary of the date of the special permit.
3. That no building permit shall be issued in pursuance of the SPECIAL PERMIT/SITE PLAN APPROVAL and SITE PLAN APPROVAL until:
 - a. The petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a Certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL with appropriate reference to the book and page of the recording of the Petitioner's title deed or notice of lease endorsed thereon.
 - b. A certified copy of such recorded notice shall have been filed with the City Clerk the Inspectional Services Department and the Department of Planning and Development.
 - c. That no portion of subject to this SPECIAL PERMIT/SITE PLAN APPROVAL shall be occupied until Condition #2 has been satisfied.

Under Suspension of Rules
Readings Waived and Approved
24 days 0 nays

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on 6/29/99. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

CITY OF NEWTONIN BOARD OF ALDERMEN

July 18, 2000

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT and SITE PLAN APPROVAL are hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor, through its Chairman, Aldermen Susan M. Basham:

1. The Board finds that the redevelopment of this site in conjunction with the adjacent site at 358-364 Boylston Street will require that a contaminated property be remediated in accordance with State environmental standards to permit residential use.
2. The Board finds that the Project's water system and associated tie-in points have been designed to improve water flow, quality and pressure for the adjacent properties.
3. The Board finds that the Project's site design, with new sidewalks along Route 9 and a walkway through to Tanglewood Road provides for safe pedestrian access to and through the site.
4. The Board finds that the redevelopment of this site and the adjacent site together will rid the City of a blighted area.
5. The Board finds that the development of this site for the Project will result in a contribution to the affordable housing stock of the City.
6. The Board finds that the petitioner will make a number of off-site improvements, including funding an off-site sedimentation chamber which will improve off-site drainage, and that the Project's own drainage system has been designed to mitigate the Project's impact on drainage problems experienced by the surrounding area.
7. The Board finds that the petitioner has offered to provide back-flow preventers for the residents along Tanglewood Road.

gated or chained.

25. The Sites subject to Board Orders #514-99(2) and #515-99(2) may be combined into a single parcel without amendment to this special permit.
26. In the event that this Site subject to Board Order #514-99(2) is not combined with the adjacent site subject to Board Order #515-99(2), the entrance and exit driveways serving both Sites may be partially located on the adjacent site as shown on the plans cited in Condition #1 above.
27. No garage area shall be used in any manner which prevents the use of such garage for its intended purpose, *i.e.*, the parking of a car or cars.
28. The petitioner shall execute a Traffic Mitigation Fund Agreement with the city and contribute \$25,000.00 to be used toward the cost of traffic improvements which involve physical changes and improvements, studies, or transportation programs which do not involve physical changes or improvements such as the Nexus Bus or its successor. The Traffic Mitigation Fund Agreement and payment amount established pursuant to this condition shall be the same as established pursuant to condition # 30 of Board Order of #515-99(2). Such improvements, studies or programs shall be selected by the City for the purpose of mitigating potential impacts of the project or improving traffic safety and flow in the Boylston Street/Langley-Jackson Road/Florence Street area. The City shall construct each traffic improvement or safety program that is undertaken by the City with the Traffic Mitigation Fund or by a contractor engaged by the City, not the petitioner; but in no event shall said funds be used toward traffic improvements which Petitioner has agreed to undertake at Petitioner's cost in this Board Order and in Board Order # 515-99(2). Petitioner's payment shall be made at the time of the issuance of a Building Permit and shall be refunded to the Petitioner if not used within 5 years from the date of issuance of a certificate of occupancy of any building constructed pursuant to this special permit.
29. In the event of a conflict between the plans and the terms and provisions of this Board Order, the terms and provisions of the Board Order shall govern.
30. The following actions must occur in order for the special permit/site plan approval for the Site subject to Board Order #514-99(2) to be considered exercised:
 - a) The petitioner has executed the escrow Agreement, paid the full amount due to the escrow fund, and executed and recorded the required Declaration of Restriction, in accordance with Condition #2 above.
 - b) The petitioner shall have applied for and been granted approval for a building permit of the Project authorized pursuant to this Board Order #514-99(2).

CITY OF NEWTONIN BOARD OF ALDERMEN

July 18, 2000

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, hereby grants the following SPECIAL PERMIT/SITE PLAN APPROVAL and SPECIAL PERMIT TO ALTER A NONCONFORMING STRUCTURE, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor, through its Chairman, Alderman Susan M. Basham:

1. The Board finds that the redevelopment of this site in conjunction with the adjacent site at 340-342 Boylston Street will require that a contaminated property be remediated in accordance with State environmental standards to permit residential use, and that such remediation will also eliminate the source of groundwater contamination effecting the adjacent site at 340-342 Boylston Street.
2. The Board finds that the Project's water system and associated tie-in points have been designed to improve water flow, quality and pressure for the adjacent properties.
3. The Board finds that the Project's site design, with new sidewalks along Route 9 and a walkway through to Tanglewood Road provides for safe pedestrian access to and through the site.
4. The Board finds that the redevelopment of this site and the adjacent site together will rid the City of a blighted area.
5. The Board finds that the proposed redevelopment of the former gasoline service station is not substantially more detrimental to the neighborhood than the existing nonconforming structure because the structure will be substantially restored to its former appearance, and the adaptive re-use of the former gasoline service station for residential common space for the residents of the Project and local area groups will allow for preservation of a historically significant structure.

Order #514-99(2) or the Site subject to Board Order #515-99(2). The petitioner shall also submit the final design for such access to the City Engineer and City Traffic Engineer for review and to obtain approval prior to the issuance of any building permit for either the Site subject to Board Order #514-99(2) or the Site subject to Board Order #515-99(2).

- b) Construction of the entrance and exit shall be completed to the binder pavement stage on the Sites subject to Board Order #515-99(2) and Board Order #514-99(2) and the temporary construction access shall be removed prior to the issuance of any occupancy permits for the Site subject to Board Order #514-99(2).

26. Emergency/Pedestrian Access at Tanglewood Road: Final design for emergency access-only between this Site and the existing street stub at Tanglewood Road shall be submitted for review and approval to the City Traffic Engineer, Director of Planning and Development, and Fire Chief prior to the issuance of any building permits. Access from Tanglewood Road to the Site subject to Board Order #514-99(2) shall be designed to accommodate pedestrian passage, provided, however, that vehicular access shall be permitted for emergency vehicles only and such access shall be gated or chained.

27. The Sites subject to Board Orders #514-99(2) and #515-99(2) may be combined into a single parcel without amendment to this Special Permit.

28. In the event that the Site subject to Board Order #515-99(2) is not combined with the adjacent site subject to Board Order #514-99(2), the entrance and exit driveways serving both Sites may be partially located on the adjacent site as shown on the plans cited in Condition #1 above.

29. No garage area shall be used in any manner which prevents the use of such garage for its intended purpose, *i.e.*, the parking of a car or cars.

30. The petitioner shall execute a Traffic Mitigation Fund Agreement with the city and contribute \$25,000.00 to be used toward the cost of traffic improvements which involve physical changes and improvements, studies, or transportation programs which do not involve physical changes or improvements such as the ~~Nextis Bus or its successor~~. The Traffic Mitigation Fund Agreement and payment amount established pursuant to this condition shall be the same as established pursuant to condition # 28 of Board Order #514-99(2). Such improvements, studies or programs shall be selected by the City for the purpose of mitigating potential impacts of the project or improving traffic safety and flow in the Boylston Street/Langley-Jackson Road/Florence Street area. The City shall construct each traffic improvement or safety program that is undertaken by the City with the Traffic Mitigation Fund or by a contractor engaged by the City, not the petitioner; but in no event shall said funds be used toward traffic improvements which Petitioner has agreed to undertake at Petitioner's cost in this Board Order and in Board Order # 514 -99(2). Petitioner's payment shall be made at the time of the issuance of a Building Permit and shall

DRAFT FOR DISCUSSION PURPOSES:

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO.

January , 2009

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON
AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended with respect to Section 3-26 *Restraint of Dogs* as follows:

1. Delete, in subsection (b) Penalties, all language occurring after the word “punished” and insert in its place the following language

“by a fine of fifty dollars (\$50.00) for each offense.”

Approved as to legal form and character:

DANIEL M. FUNK
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON
City Clerk

(SGD) DAVID B. COHEN
Mayor

Item #397-07 Redlined Ordinance:

Sec. 3-26. Restraint of dogs.

(a) Prohibitions:

- (1) No person owning or harboring a dog shall suffer or allow it to run at large in any of the streets or public places in the city. No person owning or harboring a dog shall allow it upon the premises of anyone other than the owner or keeper of such dog without the permission of the owner or occupant of the premises. No dog shall be permitted in any street or public place within the city unless it is effectively restrained by a chain or leash not exceeding ten (10) feet in length.
- (2) Tot Lots: No person owning or harboring a dog shall suffer or allow a dog, leashed or unleashed, to enter a tot lot as hereinafter defined. For the purposes of this section, the term "tot lot" shall mean an outdoor play area located on land owned or controlled by the city intended for use by young children, the boundaries of which may be designated by a fence and/or sand, ground cover, grass or otherwise, and which may contain play equipment. Without limiting the foregoing, tot lot shall include currently designated tot lots which are listed below. Tot lots are fenced unless otherwise noted.

Albemarle Park

*Angier School (approximately 155' x 30')

*Burr Park (approximately 95' x 75')

Burr School

Carleton Street area

Cabot Park. East Side Parkway

*Crescent Street Playground (approximately 90' x 70')

Davis School Playground

Emerson Playground

Franklin School

Hawthorn Park

** Lower Falls Community Center (approximately 80' x 80')

*Memorial-Spaulding School (approximately 90' x 90')

** Newton Centre Playground, (approximately 115' x 105')

Newton Highlands Playground

Winchester Street (Centre and Needham Streets)

Newton North High School

Newton South High School

*Richardson Playground, Allen Avenue (approximately 150' x 62')

River Street Playground

Sterns Playground

Upper Falls Playground

*Ware's Cove (approximately 200' x 60')

West Newton Common, Elm and Webster Streets

*Williams School (approximately 50' x 60')

* Tot lots which are not surrounded by a fence. Area measurements of non-fenced sites are in excess of ground cover.

** Tot lots which are partially surrounded by a fence.

(b) Penalties: Any owner or keeper of a dog who shall fail to comply with the foregoing provisions of subparagraph (a) shall be punished by a fine of fifty dollars (\$50.00) for each offense.

Deleted: as follows:

Deleted: ¶

¶
(1) for the first offense in a calendar Year
. \$25.00¶

¶
(2) for the second offense in a calendar
year . \$35.00¶

¶
(3) for each subsequent offense in a
calendar year . \$50.00