

**Call to Order:**

The meeting was called to order at 7:31 p.m. Present were Chair Zach Bergeron, members Vincent Chiozzi, Jay Doherty, Joan Duff, Ann Knowles, and Associate Member Steven Pouliot; also present were Paul Materazzo, Director of Planning and Lisa Schwarz, Senior Planner.

**Town Meeting Warrant Articles:****Article 51 – Zoning Bylaw Amendment – Historic Mill District:**

Mr. Bergeron opened the continued public hearing on Town Meeting Warrant Article 51 Zoning Bylaw Amendment – Historic Mill District.

Charlie Kendrick of 8 Forbes Lane the proponent of the article stated that the conversation was continued because the public article is different from the private article. He noted that a red lined version of the public article has been provided to the Board. If the public article is heard at Town Meeting, the private article will be withdrawn.

Mr. Doherty stated that a lot of time has been put into the public article, and he is happy that the private article will be withdrawn. Mr. Kendrick noted that the Selectmen are supporting the public article, and agreed that the red line version shows the work that went into improving the public article. Mr. Bergeron asked if the private article is superior in any way. Mr. Kendrick stated that the public article is superior because many organizations have had input into it. The public article has more design elements clarity of format and language. Mr. Materazzo stated that staff recommended the Board take no action on the article as it will be withdrawn at Town Meeting.

On a motion by Ms. Knowles seconded by Ms. Duff the Board moved to take no action on Article 51 the Historic Mill District under the assumption that it will be withdrawn.

**Vote:** Unanimous (6-0).

**Article 47 Zoning Bylaw Amendment Rezone Land off Fleming Avenue:**

Mr. Bergeron opened the continued public hearing on Town Meeting Warrant Article 47 Zoning Bylaw Amendment – Rezone Land off Fleming Avenue.

Mr. Materazzo gave a description of the area and reviewed the article. Attorney Mark Johnson, representing New Brickstone Office, LLC gave the Board handouts of the PowerPoint presentation from the prior hearing.

Ms. Knowles asked if this article was approved, could the Board require the lots to be denser. Mr. Materazzo noted that the SRA district requires a minimum of 15,000 s.f. per dwelling unit. He stated that the Board could consider denser lots as part of a larger rezoning. Ms. Knowles asked if this doesn't preclude that, and Mr. Materazzo stated that it does not. Attorney Johnson stated that he would be happy to work with the neighbors on bringing forth a future project that is consistent with the neighborhood. Ms. Duff and Ms. Knowles stated that they could support that.

**Town Meeting Warrant Articles (cont'd):**

Mr. Bergeron asked how the Board could ensure follow through on that concept if they chose to support the article. Mr. Materazzo noted that the conversation can be continued with the Shawsheen Working Group after Town Meeting. Mr. Bergeron asked if the zoning changes, could someone immediately pull a building permit. Mr. Materazzo stated that they could pull a permit that meets the zoning requirements of the SRA district. Ms. Knowles asked Attorney Johnson if the proponent is willing to match the desires of the neighborhood. Attorney Johnson stated that his client is committed to working with the Board and neighbors if an article for reduced zoning is brought to the next Town Meeting, and to not submit a plan until after that Town Meeting. Attorney Johnson submitted a letter from his client to that effect.

Lori Cote of 6 Fleming Avenue asked for a copy of the letter for the abutters. Mr. Bergeron noted that the letter would be available in the Planning Office. He added that however the Board votes tonight, the ultimate decision will be made by the voters at Town Meeting.

Frank McNulty of 25 Fleming Avenue asked if this was an appropriate time to talk about the use of Fleming Avenue and the smaller lots. Mr. Bergeron stated that the Board is only talking about that in theory right now. Mr. Johnson stated that this article would rezone the land to SRA from ID, but it does not approve any plans. He explained again how his client will not pursue anything until after the next Town Meeting.

On a motion by Ms. Duff seconded by Ms. Knowles the Board moved to recommend Town Meeting approval of Article 47. **Vote:** Unanimous (6-0).

**Article 34 Zoning Bylaw Amendment – Congregate Living Facility:**

Mr. Bergeron opened the continued public hearing on Town Meeting Article 34 Zoning Bylaw Amendment – Congregate Living Facility.

Heather Lauten of 243 Lowell Street, the proponent of the article stated the discussion was continued due to the Board's interest in historical information of the crafting of the 1997 Bylaw, and the receipt of a letter from a former Planning Board member opining on this article. She stated that the definition needs to be clarified to make sure there is flexibility in housing opportunities for the elderly. She noted that she believes flexibility already exists with four separate categories of housing, but congregate is particular and specific and needs to be made more clear and rational for interpreters of the Bylaw. Mr. Materazzo noted that at the previous hearing, the Chair and Mr. Chiozzi were not present for the discussion. Mr. Chiozzi was on the Board in 1997, and some members of the Board were very interested in hearing from him on this.

Mr. Chiozzi stated that the description of congregate living in the Bylaw is exactly what the Board and public hearings reviewed and Town Meeting voted on. He felt that there was a possibility that based off of the various definitions of congregate living now, a different word should have been used in 1997. In regards to why it was written that way, he stated that the Board did a lot of research and visited many facilities. The facilities that they liked best were ones that offered a broad spectrum of services in the same building, such as assisted living with optional access to dining facilities, a traditional bedroom with no cooking facilities and dining

**Town Meeting Warrant Articles (cont'd):**

provided and a memory care unit with meals brought directly to the resident from the dining facility. The Board used the word “may” instead of “shall” to not restrict, and allow all of these options. He noted that it may be appropriate to update the entire Bylaw for services now offered in 2015.

Ms. Lauten stated that what Mr. Chiozzi said makes perfect logical sense, however it also makes sense to have the Town’s definition comport with other definitions provided by entities within the Commonwealth that use the word “shall”. Changing this one sentence now will be helpful and clear inconsistencies. She stated that as the definition is applied today, it is a reasonable request to ask that it comport with the definitions of other entities.

Mr. Chiozzi stated that he was not sure if there are any inconsistencies and the issue may be with what the word congregate meant in 1997 compared with definitions used today by other agencies. The intent of the Bylaw is what the Board proposed and voted on. If the word wasn’t “congregate” there would be no inconsistency because you wouldn’t compare it to other definitions of congregate. Rushing and changing one definition doesn’t make sense, instead all of the definitions should be looked at to make sure that they coordinate with one another and clarify what each one means. The Planning Board in 1997 was not trying to match definitions of other agencies and in the last 20 years definitions may have changed. He noted that the Town has a consultant that can inform the Board of what products are being offered in the market today and what is in demand.

Ms. Duff asked if this proposal redefines “shared” services. Ms. Lauten stated the definition says that congregate means shared. It is a transitional phase between an independent and a fully shared facility, not constant supervision, but some supervision living in a semi-independent way. The definition mirrors language used in other definitions that describe a transitional state with a care component. Ms. Duff asked if independent living could continue to be a component of a facility. Ms. Lauten stated that it was entirely possible and there are facilities in the area that cover a variety of these housing options. Ms. Knowles noted that Ms. Lauten’s proposal would require meal preparation.

Ms. Knowles read into the record a letter dated April 14, 2014 from Linn Anderson, a former Planning Board member, in opposition of this article as well as the articles proposed for assisted living residences and long-term care facilities.

Ms. Duff stated that she still had questions and would rather not make a decision until she had a better understanding of the shared services. Ms. Knowles asked if the Board had to make a decision tonight. Mr. Materazzo stated that he had to report the Board’s decision to the Moderator. Mr. Pouliot asked if the Board took no action, if it would be discussed at a later date. Mr. Materazzo stated that the Board has discussed taking a more comprehensive review of the Elderly Housing Bylaw after Town Meeting, and the proponents of these private articles can be brought into those discussions. Mr. Chiozzi informed the proponents of the private articles that the Board usually takes a 10 month planning process on their sponsored zoning articles. Mr. Bergeron noted that he is interested in looking at the Bylaw globally. Mr. Pouliot asked, if approved, when this would come into effect in the Bylaw. Mr. Materazzo stated that if it were

**Town Meeting Warrant Articles (cont'd):**

approved at Town Meeting, it is put on the books immediately, however documentation is also submitted to the Office of the Attorney General for final approval. Mr. Pouliot asked if approved tonight would it go to Town Meeting 2015 or 2016. Mr. Materazzo stated that all of the articles the Board is considering are for Town Meeting 2015. Mr. Bergeron noted that even if the Planning Board votes not to support the article, the Town will still vote on it at Town Meeting.

On a motion by Ms. Duff seconded by Ms. Knowles the Board moved to take no action on Article 34 with the idea in mind that the Board will study the issue and make sure any changes are consistent with what is currently published. **Vote:** Unanimous (6-0).

**Article 32 Zoning Bylaw Amendment – Assisted Living Residences and Article 33 Zoning Bylaw Amendment – Long-term Care Facilities:**

Mr. Bergeron opened the public hearings for Article 32 Zoning Bylaw Amendment – Assisted Living Residences and Article 33 Zoning Bylaw Amendment – Long-term Care Facilities.

Mr. Materazzo noted that the Board has an email from the proponent of these articles, Mark Bernardin, dated April 16, 2015 indicating his intention to withdraw the articles. Mr. Bernardin stated that it was not clear if he would withdraw the articles at Town Meeting.

On a motion by Ms. Duff seconded by Mr. Pouliot the Board moved to take no action on Town Meeting Articles 32 and 33. **Vote:** Unanimous (6-0).

It should be noted that after the discussion on the Town Meeting articles, Mr. Doherty left the room at 8:16p.m. and was not present for the discussions on the 139-143 Elm Street and 26 Pine Street Preliminary Subdivision Plan and Special Permit for Elderly Housing.

**139-143 Elm Street and 26 Pine Street Preliminary Subdivision Plan:**

Mr. Bergeron opened the continued public meeting on 139-143 Elm Street and 26 Pine Street, a preliminary subdivision plan.

John Smolak, an attorney for the applicant, stated that they are proposing a two lot subdivision with frontage off of a proposed new roadway that would be in excess of 150 ft in length. Lot 1 would contain an excess of 30,000 s.f. and Lot 2 would be 9 acres in size. Both lots meet the frontage and zoning requirements for the applicable district. He stated that all of the work and design that has been performed for the Elderly Housing complex proposed for this site will not be changed by this subdivision. Mr. Bergeron asked what the motivation is behind this subdivision. Mr. Smolak stated that this is a defensive posture to preserve the zoning rights of the property in light of the private articles submitted to change the Elderly Housing Bylaw.

Ms. Schwarz informed the Board that a preliminary plan must be voted on within a certain number of days. This is a non-binding informal plan, the first step in the proposal of a subdivision. It does not impact a definitive subdivision plan. Mr. Materazzo noted that the IDR identified deficiencies in the plan in regards to wetlands, a manhole, site distances, sewer and utilities. It is very common for a preliminary plan application to not have all of the details required, and the purpose of the Planning Board meeting is to outline the themes of the

**139-143 Elm Street and 26 Pine Street Preliminary Subdivision Plan (cont'd):**

deficiencies for the applicant to better refine their definitive plan. He noted that staff recommends that the preliminary plan be disapproved for the bulleted reasons in Ms. Schwarz's memo.

On a motion by Ms. Duff, seconded by Mr. Chiozzi, the Board moved to disapprove the preliminary subdivision plan for 139-143 Elm Street and 26 Pine Street based on the five bulleted items in Ms. Schwarz's memo including the wetlands, site distance, sewer capacity, utility service not adequately being shown on the plan and the plan fails to fully meet the design standards of the Subdivision Rules and Regulations. **Vote:** Unanimous (5-0).

**139-143 Elm Street and 26 Pine Street Special Permit for Elderly Housing:**

Mr. Bergeron opened the continued public hearing for 139-143 Elm Street and 26 Pine Street, a Special Permit for Elderly Housing. Ms. Schwarz noted that the applicant's stormwater engineer and the Town's peer reviewer were present to answer questions.

John Barrows of Marchionda Associates, the applicant's engineer stated changes made to the building's layout and driveway reduced impervious areas and required changes to be made to the drainage system. Changes were also made to the plan based on the comments received from the Town's peer reviewer. The major changes are that the detention area at Elm Street has been changed to a self-containing modular underground vault, and the recharge area on the other corner of the site on Elm Street has been eliminated. The detention areas off of Pine Street and at the rear of the site have not changed. More water quality units have been added and technical changes were made to the calculations. A half dozen minor items have also been addressed.

Mr. Pouliot asked for information on the amount of earth being removed from the site. Mr. Barrows stated that 11,000 yards will be moved on the site with 6,000 yards of excess material removed from the site. Mr. Pouliot noted that the Bylaw has a limit on the amount that can be removed from the site that is around 3,000 yards. Attorney Smolak stated the Building Inspector has determined that with the filing of the preliminary subdivision plan, the earth removal provisions of section 6.3.2 apply, and the limitations Mr. Pouliot is noting are for Section 6.3.3. The applicant will seek a Special Permit for Earth Movement from the Planning Board to construct the roadway and prepare lots in the subdivision.

Curt Busto of CEI, the Town's peer reviewer stated that he has reviewed the original drainage design and its revision. Minor comments are left to be addressed, but nothing that will change the design. The design meets the MassDEP Stormwater Standard Guidelines. In regards to peak runoff, the ponds and the subsurface systems have been designed correctly to attenuate the peaks with the current model showing a reduction of peak runoff from existing to post development. Mr. Bergeron asked what the reduction is in terms of percentage. Mr. Busto stated that one design point showed a reduction of 40%, but overall all storm events were reduced. This is being accomplished by storage at the two ponds and the subsurface system at Elm Street. Mr. Bergeron asked Mr. Busto if he is satisfied with the design and if the outstanding items are small. Mr. Busto reiterated that none of the outstanding items will change the design. Mr. Chiozzi requested that Mr. Busto submit a report to the Board stating that everything complies with the

**139-143 Elm Street and 26 Pine Street Special Permit for Elderly Housing (cont'd):**

Town Bylaw and State regulations. Mr. Busto stated that he should be able to provide that by the next meeting.

Mr. Bergeron asked about the potential sewer tie-in at the street. Mr. Busto stated that the applicant's engineer can speak to that but he believes everything has been resolved with the Town's Engineer. He noted that the detention pond at Elm Street has been changed to a subsurface system with a swale separating it from the Town system. Mr. Pouliot asked what the increase to the public system would be from spillover from the vault, and if the system could handle it. Mr. Busto stated that the runoff sheets off the site onto Elm Street and into the Town system. The pre and post model show there is a decrease at that design point, attenuating the peak. Mr. Barrows noted that at design point #1, the sheet flow falls to the low point in front of 147 Elm Street. The peak has been reduced by at least one half for every storm event through attenuation, large spaces that hold it and let it out slowly. The area has been reduced going towards Elm Street and the abutters towards the west with the driveway system.

Mr. Pouliot noted that the driveway has been tilted towards the building so that less runoff goes towards Elm Street, and the runoff in total has been reduced. He asked if the runoff from the building and pavement goes into the recharge area closest to the building and the detention basin at the rear of the property. Mr. Barrows stated that the recharge system is designed for smaller storm events, and it would overflow into the larger detention areas. The system for the building is a rain garden between the two west wings that overflows into the closed drainage system leading back to detention area #2 in the southeast portion of the property. Mr. Pouliot asked if the basin at the rear of the property near the wetlands is used for attenuation. Mr. Barrows stated that there is an outlet control structure with a small orifice that builds up volume and lets it out slowly at different stages and different rate which is a standard drainage design and structures.

Mr. Pouliot stated that he would like to discuss the sewer. Ms. Schwarz stated that as of April 21<sup>st</sup>, Brian Moore, the Town Engineer, has determined that there is adequate sewer capacity for the project with nine Merrimack College buildings coming off of the Andover system and being diverted to North Andover. Mr. Pouliot asked if the sewage from this building would enter a system that would impact Burton Farm Drive. Ms. Schwarz stated that DPW believes that the existing sewer improvements provide adequate capacity. Ms. Knowles asked if the Town is going to deal with some of the sewer issues that have been brought up during this process, independent of this project. Mr. Materazzo stated that if there was an issue with the sewer, the DPW would be very direct with their comments to the applicant about any deficiencies. Downstream there may be issues to address and those issues have been raised and conveyed to the DPW. Ms. Schwarz stated that the removal of a significant amount of usage has helped. Mr. Pouliot stated that he would like to hear from the DPW in regards to if this project will or will not make the existing condition worse. Ms. Schwarz noted that the Board has a memo regarding sewer from the Town Engineer dated April 21<sup>st</sup>.

Don Silberstein of 28 Burton Farm Drive stated that he has lived in his home for 30 years and has a sewer easement through his property. In the last year his yard has been dug up twice and there have been overflow issues and a stench. The system will be further taxed with the new Merrimack College dorms and this 109 unit facility. Mr. Chiozzi asked Mr. Silberstein if Brian

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Moore, the Town Engineer had come out to his house. Mr. Silberstein stated that he has been working with Mr. Moore, but the Town can't fix it. He stated that adding the Merrimack College dorms and these units to the system seems like an awfully big increase. Ms. Duff read the April 21<sup>st</sup> memo from Brian Moore, Town Engineer informing the Board of the Merrimack College buildings disconnecting from the Andover sewer system, including the new dormitories, and confirming adequate flow for this project. Mr. Silberstein stated that it smells outside for the first time since he has lived there, and the issues started last summer when something was done to the system. Mr. Bergeron stated that the conditions are preexisting to this project, and the Town is working on those issues, but this project will not further impact the system. Mr. Chiozzi asked Mr. Silberstein for his address again so that he could get him in contact with the Town Engineer.

Mr. Silberstein stated the other issues are traffic and changing the area from residential to commercial. Ms. Schwarz read a memo from Chuck Edgerly, the Town's Safety Officer, stating that he is satisfied with the quantity and quality of the traffic study. He noted that in regards to traffic mitigation measures, the Town is in the process of putting in a bike lane and changing fog lines on Elm Street as a narrowing visual to slow traffic. He would like the Board to consider a speed alert sign that gathers information on speeds and displays a mini message board. Ms. Knowles asked if that speed sign would be permanent and Ms. Schwarz stated that it would.

Ms. Schwarz stated that in regards to demographics and facilities within a certain mile radius of Andover, a request for proposals was sent out and two responses were received. Information should be available for the May 26<sup>th</sup> meeting. The applicant will also be filing for a Special Permit for Earth Movement with the Planning Board. Ms. Knowles asked if the AVIS situation would be further discussed. Ms. Schwarz stated that the applicant has not yet provided a definitive line of where the open space will be. Ms. Knowles asked if the discussion on landscaping will be coming back to the Board and Ms. Schwarz stated that landscaping can be discussed at the May 26<sup>th</sup> meeting.

Mark Bernardin of 140 Elm Street asked if the letter from the Inspector of Buildings was in the public file and when it was received. Ms. Schwarz stated that the letter is dated April 21<sup>st</sup>. Mr. Bernardin stated that the preliminary subdivision plan is lines on paper that is being used to thwart the voters who adopted section 6.3.3 of the Bylaw. He would like the Board to keep that in mind, and asked if it is in the best interest of the Town to allow developers to get around the Zoning Bylaw with phantom subdivisions.

Lance Fromme of 23 Burton Farm Drive stated that he appreciated the reduction of peak runoff. He asked what the reduction is for the long term average runoff for the site because his neighborhood has chronically wet areas. Mr. Barrows stated that if the stormwater management system is maintained it will operate as designed. Mr. Fromme noted that with the increase in impervious area, there will be more runoff in general. Mr. Barrows stated that there might be a little more volume, but it will be maintained and let out slowly.

Mr. Fromme asked if they would be taking up the Council on Aging's position again. Ms. Schwarz stated that an independent third party is looking at the demographics, and she has not

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yet been given anything from the Council on Aging. Mr. Fromme stated but he will see if they will reach out to the Board.

Mark Bernardin of 140 Elm Street stated that a needs survey performed by the Town recommended reviewing the zoning for smaller homes, villages, accessory units or group living. It does not recommend assisted living. He asked more detailed information on the scope of the peer review. Ms. Schwarz stated the peer review focuses on the accuracy of the applicant's submitted demographics information. She noted that the Town does not do a market study for the need of any project before them. Mr. Bergeron asked if the peer review will validate the data, and Ms. Schwarz stated that he was correct. Mr. Pouliot asked if they should do a market study for a local need. Ms. Schwarz noted that the Town went through an extensive Master Plan process with the involvement of many stakeholders from 2010-2012. Mr. Pouliot asked if the survey was performed in 2012, and Ms. Schwarz stated that the survey was performed in 2008 and 2010. She added that the Town produces a Master Plan every 15 years. Mr. Chiozzi stated it was legitimate to question what is being offered in the market and asked for the peer reviewer to look at the trends and different services offered. Ms. Schwarz noted that the responders will attend an upcoming meeting.

Joe Hanafin of 14 Cheever Circle asked if traffic data was obtained from two residential facilities, which was a request at the last meeting. Mr. Bergeron agreed that the request was asked of the developer, and it is something that the Board would be interested in having the developer provide. However, he noted that he does not see this data changing the values of what the Board is looking at because it is the additive property. If you add the projection from a like facility to whatever area you place the facility in, it will increase by the "X" value.

Nat Boughton of 7 Cheever Circle stated that folks in the community are frustrated because they have asked for something and they have not been heard. The Board has a responsibility to hear the community, and it is very difficult for them to sit and be told that they have to be quiet and respectful. He stated that it was not right that the Board speaks to, has conversations with and asks questions of the applicant during the hearing, but when members of the community have questions that have to wait to ask them. He added that he has read the Master Plan and understands the role and the mission of this group. It feels that the residents are treated like they don't live in this community or pay taxes. Ms. Knowles asked to respond to Mr. Boughton. She stated that when a proposal comes before the Board, it is important to get all of the information from the applicant on the proposal. If the Board does not do that they have not done their job. It is critically important that the Board let the applicant respond to every single question, and sometimes the applicant needs to be allowed the time necessary to get the information needed to respond.

Chuck Papaglia of 64 Summer Street read Webster's definition of a variance. Mr. Bergeron stated that a variance is not needed or before the Board. Mr. Papaglia stated that the developers feel they should get a special permit because people want it and there is a need, and then showed an advertisement from the Eagle Tribune for a facility that has vacancies.

**139-143 Elm Street and 26 Pine Street Special Permit for Elderly Housing (cont'd):**

John Smolak, an attorney for the applicant stated that he would like to be able to discuss and submit fair market value information. Mr. Bergeron stated that he could submit that information and it could be discussed at the next meeting. Mr. Smolak stated that he would also like to clarify the traffic studies. He stated that the trip count exercises were done on reasonably comparable facilities and only studied the traffic coming in and out of those facilities and compared them with the ITE trip counts. Mr. Bergeron asked if the Board wanted more information on other facilities in regards to traffic. Mr. Pouliot and Mr. Chiozzi stated that they would like more information from a facility in a surrounding area similar to this one. Attorney Smolak asked what the Board is looking for in particular. Mr. Bergeron added that he would like information from a facility that is in the north or east portion of Massachusetts so that the Board would be able to visit the facility if they so please. Mr. Pouliot stated that he would like it to be compared to an exact location to prove that a residential setting is similar to a non-residential setting in regards to the amount of traffic.

On a motion by Ms. Duff seconded by Ms. Knowles the Board moved to continue the public hearing on 139-143 Elm Street and 26 Pine Street to May 26, 2015 at 7:45 p.m. **Vote:** Unanimous (5-0).

**Other Business:****Article 59 Gas Pipeline Resolution:**

Alix Driscoll and Amy Janovsky of the Pipeline Awareness Group, representing John Hess, the proponent of the article, addressed the Board asking for support of Article 59. Ms. Driscoll noted that the Conservation Commission has recommended approval of this article unanimously. They would like the Planning Board to support this non-binding resolution against Kinder Morgan, Tennessee Gas and Northeast Direct pipeline coming through the community.

On a motion by Ms. Duff seconded by Mr. Doherty the Board moved to recommend Town Meeting approval of Article 59. **Vote:** Unanimous (6-0).

**Article 53 89-93 Main Street – Outdoor Restaurant Seating:**

Mr. Materazzo informed the Board that the article's proponent is asking to occupy and make modifications to Town space along Main Street on a temporary basis. The article would authorize the Selectmen to have that conversation with the proponent. The Selectmen would also have the authority to pull any license issued or agreement entered into.

Mr. Chiozzi noted that DPW is not in favor of this because of snow plowing. Mr. Materazzo stated that the opinion of the DPW is something that would be considered as part of any agreement contemplated for this area. Ms. Knowles asked if this article merely gives the proponent the ability to begin discussions with the Selectmen, and Mr. Materazzo stated she was correct. Mr. Bergeron asked if these types of permits currently exist in Town, and Mr. Materazzo stated that they do not. Mr. Pouliot read the text of the article for the Board. Mr. Chiozzi asked Tom Urbelis, Town Counsel, what a temporary right is. Attorney Urbelis stated that the applicant did not define the temporary right he is seeking, but it is not an easement. Attorney Urbelis pointed out that the DPW Director has submitted a memo of concerns. In terms

**Other Business (cont'd):**

of a temporary right, it is usually fashioned as a license in perpetuity which can be revoked by the Town.

Ms. Knowles asked Mr. Materazzo his opinion on this. Mr. Materazzo stated that from a planning perspective, the concept of enlivening this area would be beneficial to Main Street. He added that the logistics can be ironed out by DPW and others at another time as part of the formal agreement.

Mr. Chiozzi stated that in the past he has seen this as an RFP process to buy land. Attorney Urbelis stated that the proponent isn't asking to buy the land. Ms. Schwarz pointed out that some parking spaces in the back of that municipal lot are rented out by 12 Chestnut Street from the Town. Attorney Urbelis noted that this is not a flat area, and there are plans for a retaining wall with considerable construction and changing the topography of the area. Mr. Pouliot stated that it sounds like in the last line of the text, the proponent is only asking for consideration. Mr. Chiozzi asked why this is a Town Meeting Article, and why the Selectmen cannot just enter into talks with the proponent. Attorney Urbelis stated that he would have to look into that.

Mr. Pouliot stated that he would prefer to take no action on the article. Ms. Knowles stated that she was willing to support the article. Mr. Materazzo noted that the Board would just be voting to support the article at Town Meeting, after Town Meeting, any other legal requirements would have to be fully vetted and approved by the appropriate departments. Mr. Chiozzi stated that he felt outdoor seating for dining is generally a good idea, but he didn't have enough information on this proposal to support it. Ms. Duff noted that she felt then Board was being asked generally. Attorney Urbelis reiterated that the DPW wants that area for snow plowing. Mr. Materazzo informed the Board that the Selectmen voted unanimously to support the article. Attorney Urbelis noted that they voted to support the article before the DPW issued their memo.

On a motion by Ms. Knowles seconded by Ms. Duff the Board moved to recommend Town Meeting approval of Article 53. **Vote:** (3-2) With Ms. Duff, Ms. Knowles and Mr. Bergeron voting yes, and Mr. Chiozzi and Mr. Doherty voting no.

**Meeting Minutes:**

On a motion by Ms. Knowles seconded by Mr. Doherty the Board moved to accept the minutes of February 10, 2015, February 17, 2015, February 24, 2015, and February 26, 2015. **Vote:** Unanimous (6-0).

It should be noted that after the discussion on meeting minutes, Ms. Duff left the meeting and did not return.

**Executive Session:**

On a motion by Mr. Chiozzi seconded by Ms. Knowles the Board moved to go into executive session for consultation with Town Counsel for confidential legal advice; and to discuss litigation strategy in National Development v. Andover Planning Board and the Chair declare

that an open meeting would be detrimental to the Town's litigation strategy and to not return to open session.

**Vote:** Unanimous (5-0). Mr. Doherty yes, Mr. Pouliot yes, Ms. Knowles yes, Mr. Chiozzi yes, Mr. Bergeron yes.

The Chair so declared that an open meeting would be detrimental to the Town's litigation strategy.

**Adjournment:** The meeting was adjourned at 9:44 p.m.