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IN BOARD OF SELECTMEN & PLANNING BOARD
THURSDAY, SEPTEMBER 6, 1990

Present: Board of Selectmen Chairman Judith A. Cope, and members David A. Wallace and John C. Drobinski; Planning Board Chairman Richard A. Brooks, and members Lael M. Meixsell, Peter H. Anderson, John O. Rhome, David J. Lyons; Executive Secretary Richard E. Thompson; Town Counsel Paul L. Kenny; Town Planner Lee Newman; Julian D'Agostine, Esq., representing Unisys Corporation; and Ralph S. Tyler, Cold Brook Development Corp.; Bruce Ey of Schofield Bros. and Board of Health member Hugh Caspe were present for a portion of the meeting.

The statutory requirements as to notice having been fulfilled, the emergency special meeting was called to order by Chairman Cope at 7:10 p.m., in the Planning Board Office, Flynn Building.

STM Article 1

In a brief introduction, Chairman Cope stated that the purpose of the meeting was to see if a consensus could be reached by the Board of Selectmen and Planning Board relative to amendment of Article 1. Chairman Cope stated that, in doing so, she would like this meeting to address the concerns raised at the Planning Board hearing and the amendments suggested by Attorney D'Agostine.

Executive Secretary Richard E. Thompson commented that the amendment dated September 6, 1990, which is before the Boards this evening, had been drafted by Town Counsel's Office to address specific concerns and to correct an original drafting error by incorporation of a floor area ratio.

Noting that the amendments incorporate some of the agreed upon revisions suggested by Attorney D'Agostine, Town Counsel Paul L. Kenny clarified each of the sections amended, as follows:

- h.1) mixed use allowed in same building
- h.2) utilities and surface drainage retention/detention allowed in open space, but septic systems would not be allowed;
- h.3) now allows administrative offices and non-hazardous research, development or engineering; allows accessory uses; allows storage and use of materials classified as hazardous for medical centers and nursing homes; would also be interpreted to allow maintenance of hazardous materials normal to an allowed use; excludes cafeteria building to service complex as a whole;
- h.4) precludes accessory uses of administrative offices in d) and defines non-hazardous research, development or engineering in g);
- h.5) precludes parking areas between any building and Route 117, but does not require that all parking must be at the rear of the buildings in this district; requires screening of parking;
- h.7) - provides for a maximum floor area ratio of 7,841, including the gross floor area within any parking garage structure;
 - provides for a minimum street centerline of 75', and a 100' minimum setback from Rt. 117;
 - adds residence zone bound setback (side-rear) of 75';
- C. clarifying that certain uses, otherwise prohibited in the District, are expressly allowed in a Professional Park.

Although the permitted use section of the Town's present Bylaw precludes retail sales by its exclusion from the list of stated allowed uses, it was agreed by all that an amendment would be added specifically prohibiting sales at retail or wholesale of tangible goods in this district. Attorney Kenny stated that he would tighten the language to preclude heavy equipment operator schools under the definition of commercial or trade school.

In discussion revolving around parking, no decision was reached on the policy issue of whether building should be precluded for a certain distance from Rt. 117. However, it was agreed that parking would be screened because there was no way to prevent parking from being visible due to the site topography and layout of Rt. 117.

Relative to the dimensional requirements set forth in subparagraph 7), it was affirmed by Town Counsel that Concord land could not be used in the computation of maximum building coverage and was so stated in the amendment, and that amending the article to include a floor area ratio (FAR) does not make it more restrictive than the original article as advertised. Extensive discussion revolved around computation of the floor area ratio. The FAR proposed does not have a wetlands exclusion and was derived to allow the ability to accommodate a 550,000 sq.ft. buildout, i.e., number was backed into: 69.7 acres of the Unisys site are available for building to accommodate the targeted buildout assuming that the wetlands existed and could not be built upon, and taking into account all other dimensional requirements.

Relative to the minimum street centerline setback, after discussion, it was agreed by all that the setback from Rt. 117 should be established at 125'. Town Counsel opined that there is no need to include the minimum front yard setback since it is covered by the minimum street centerline setback, a term used throughout the Zoning Bylaw which is construed to mean minimum building setback from the street centerline.

In response to Mr. Meixsell's query as to where the minimum lot area of 15 acres originated, Mr. Tyler responded that it evolved from trying to get two lots in between the two roads as laid out in the Town Engineer's land use plan.

Mr. Rhome questioned the specificity of the bylaw to this Rt. 117 district in light of the fact that the Bylaw would apply to any Research District in Town. Atty. Kenny, noting that only one Research District currently exists, indicated that the specificity would not be a problem should other Research Districts be created.

All agreed with Mr. Rhome's suggestion that the maximum building height be stated as "3 stories or 45 feet, whichever is the lesser." As to allowing a three-story building in this District and in no others, Atty. Kenny stated that practically this would serve to lessen the density of development upon the site and takes into account the site topography and other particular features; legally, application to one district only would create no problem.

Relative to the allowed impervious surface coverage of 38% which is contrary to the 15% coverage allowed by the Water Resource Protection Bylaw, Mr. Brooks expressed his opinion that any increase of this coverage over the 15% should be allowed only in concert with specifically defined criteria stated in the Water Resource Protection Bylaw which would be applicable to all Zone II

areas. Attorney Kenny stated that would be a policy decision, and that some Zone II areas might, in fact, require different considerations, in which case it would not be illegal to establish the requirements in the District zoning.

In answer to Selectman Wallace's question as to whether establishing requirements different than the underlying Water Protection District to accommodate the specific considerations of this site without a definition of why we are doing so would be arbitrary and capricious, Attorney D'Agostine opined that it would not, but stated that the other side of that is that one could claim that the town was arbitrary for having different coverage outside of the zone. Attorney Kenny stated that it would not be arbitrary or capricious because to claim so would be to negate the rationale for zoning itself. Attorney Kenny reiterated that, although legally it is valid to do so, it is a policy decision as to whether you would want to do so.

Selectman Wallace stated he would want to do so. However, Planning Chairman Brooks stated that he would not want to do so since he perceives the fundamental issue as being "consistent with intent" and, in his mind, the intent of the Water Resource Protection Bylaw is to provide for a recharge capacity for well systems and provide for quality of the well systems. He questioned whether this new district should have a different recharge capacity than any other Zone II area, particularly since everyone is aware that there may be a connection between the recharge area that has contamination and the wellfield itself. If that is the case, in his mind, how could we suggest a policy that is inconsistent with preserving the recharge intent of that Bylaw?

Commenting on Mr. Brooks' suggestion that we should investigate what mitigating capability could be instituted to provide for recharge, Selectman Drobinski stated that in a situation where there is contamination you would not want to recharge because recharge makes the contamination move. Mr. Brooks stated that in that case there are other methods to employ, such as establishment of retention areas. Mr. Tyler represented that, although he has not investigated the subject, using other methods would be preferable than outright prohibition of anything over 15%. Discussion ensued concerning drainage patterns and various ways through which the intent of the Water Protection District zone could be achieved through requirements of this District and still allow the desired buildout.

In response to Chairman Cope's request, Town Counsel addressed the points raised in Mr. Meixsell's memorandum, affirming that Unisys will not lose liability for contamination, even though the property may be subdivided and sold. Mr. Kenny stated that the controlling agencies are the EPA and the State DEP, the Sudbury Water District, and the Town, in that order; however, the Sudbury Water District alone has standing to sue to recover damages for well contamination if the source of the contamination originates with Unisys. While the Town could sue for the cost of research performed by the Town, these costs may not be allowed by the Courts.

On the question as to what could be written into the proposed Bylaw to require the information desired by the Town relative to the site conditions, i.e. delineation of Zone II on site and contamination issues, Mr. Kenny opined that if you could require anything it would have to be through a Special Permit process and would have to reasonably relate to the development of the site.

Mr. Kenny suggested that Unisys might want to perform such a study in order to establish that its land is not within Zone II. It was determined that the Water Protection District Bylaw provides for this and, therefore, no other language is needed.

Mr. Tyler raised the question of how to modify the District requirements to allow the desired buildout if, in fact, the property is in Zone II. In response to Mr. Tyler's question of the intent of the group to allow the buildout desired, Mr. Kenny stated that the issue of the quality of the well is being considered in conjunction with that goal, and it was his belief that the entire group felt that if you can show no impact on Zone II, you can have the buildout.

Mr. Tyler suggested that the Bylaw could be adjusted to allow more building outside of Zone II to accomplish that goal and he would like that commitment from the Town. Atty. D'Agostine stated that the problems are twofold in that different density regulations, FAR, and lot coverage restrictions are applied in Zone III that are different than other areas of Town and these are coupled with the restrictions of Zone II, stating that the lawsuit is objecting to the arbitrary delineation of the Zones without any data to substantiate that delineation.

David Wallace stated that his feeling is if they can prove they are not in Zone II then they should be able to get the desired buildout without the Special Permit process in the Water Protection District Bylaw.

Town Planner Lee Newman pointed out that the Water Protection District Bylaw requires a Special Permit for Zone III as well; however, lot coverage is not restricted to the 15% of Zone II.

Mr. Brooks suggested that upon demonstration they are in Zone II, they have the option of providing additional recharge capacity.

Selectman Wallace indicated that his objection to the Special Permit process for the Water Protection Zones was not an obstacle to developing consensus on the amendment, but that he wished an indication from the Planning Board members as to whether they could support the amendment.

PLK synthesized the previous comments by suggesting that the Planning Board caucus on the intent to remove the language in the proposed amendment pertaining to the Water Resource Protection Bylaw so that if they can demonstrate they are not in Zone II they could come to Planning Board for the Special Permit under the Water Resource Protection Bylaw, and/or they could provide sufficient recharge capacity.

Chairman Cope called a recess to allow the Planning Board members to leave the room to caucus. A brief summary of the Planning Board's discussion provided by the Town Planner is attached hereto and made a part of these minutes.

The Planning Board, upon return and resumption of the meeting discussed the following motion of Planning Board Chairman Brooks:

MOVE TO: Recommend to the Selectmen modification of the proposed Article 1 [9/6/90 draft] to accommodate:

- removal of references to the Water Resource Protection area throughout Article 1 [clarified by Peter Anderson to mean only where it appears in the B.7) table];
- developing an agreement with the owners of property that they would pursue redelineation of Zone II area on the parcel, with funding to be paid for by the owners, in accordance with the Water Resource Protection District Bylaw. (Art. IX.III.G.4);
- providing a provision for a Special Permit process such that greater [over 15%] impervious surface coverage can be provided in accordance with a hydrogeological mechanism, criteria to be determined;
- change the floor area ratio such that it would limit maximum buildout on one single lot to 550,000 sq. ft. within the entire district;

subject to agreement in good faith from Unisys to hold or drop the suit based upon this action.

Mr. Tyler commented that if voted this would pertain to development of the smaller Melone property as well.

Selectman Cope made it clear that the Town Planner is concerned that the wording of this vote may not achieve what is intended; therefore, Town Counsel is free to change the wording if it appears to conflict with intent. Mr. Thompson suggested that Town Counsel could confer with the Planning Board Chairman.

Chairman Brooks clarified the intent of the FAR is not to provide 750,000 sq. ft. of buildout on the 100 acre parcel, but rather to meet their goal.

Mr. Meixsell inquired as to whether Chairman Brooks had covered the idea of a certain FAR by right, but the Board members agreed that that had been dropped since it could not be done within the framework of this Bylaw amendment.

Relative to obtaining an agreement from Unisys on the lawsuit, Attorney D'Agostine stated that dismissal without prejudice was discussed with Selectman Wallace, but criteria for that has not been addressed here. Attorney D'Agostine stated that he agrees to the one lot maximum buildout of 550,00 sq. ft., but the two things that were desired by Unisys have not been included: 1) notwithstanding the Water Resource Protection District, Unisys would be allowed as a matter of right to do all the uses as set forth in the new Bylaw; and 2) a standard which Unisys could address without going through a Special Permit process which would allow the desired method of runoff control so that Unisys could build as a matter of right to the 38% coverage.

Both Planning Board members Anderson and Meixsell and Selectman Cope indicated they had a problem with the use by right concept. Planning Board members Lyons and Rhome stated they did not.

Discussion ensued on an amendment proposed by Mr. Lyons to include the uses outlined under paragraph 3 of the proposal to be allowed by right in the Water Resource Protection District. It was Mr. Lyons' understanding that the delineation of Zone II itself would help determine what the impact would be.

Chairman Brooks stated that, while he favored the uses on the property, he would like to know what the effect of the uses would be. Town Planner Lee Newman clarified that at present the uses themselves trigger the control process by means of a Special Permit process. Atty. D'Agostine stated he would only want to file with Planning Board, or other administering agency, a proposed design for a development and be told what is to be done with surface runoff after providing any studies needed to do that, and essentially bypass the Water Resource Protection Special Permit process. The amendment failed with members Lyons and Rhome in support and Meixsell, Anderson and Brooks in opposition.

Atty. D'Agostine stated that he could not on his own authority give on the grounds of uses as a matter of right, and stated that, in his opinion, there was no objective criteria in the Special Permit process to enable one to meet the parameters of the Bylaw.

Planning Board member Anderson indicated that his intent was to allow the uses provided in the proposed Bylaw through the Special Permit process of the Water Protection Bylaw. Mr. Meixsell indicated that he would not want to alter the protection afforded by the Special Permit process of the Water Protection Bylaw without expert opinion (through MAPC) that the Bylaw should be changed.

Atty. D'Agostine stated that he could agree to language setting forth the guidelines for drainage (see section 7.b. of the Water Resource Protection section of the Zoning Bylaw) provided there was an exemption from the Special Permit process.

The discussion ended and the motion was voted with Mr. Meixsell abstaining.

The meeting was adjourned at 11:30 p.m.

Attest: _____
Richard E. Thompson
Executive Secretary-Clerk