

**DOCUMENT 32 - MINUTES OF A HEARING HELD ON APRIL 28, 2009 FOR A PETITION FROM ATTORNEY JAMES WALDRON FOR MODIFICATION OF SPECIAL PERMIT GRANTED APRIL 25, 2000 TO MODIFY DOCUMENT 45 BY AMENDING STIPULATION A. TO PROVIDE FOR THREE AFFORDABLE UNITS.**

**SUBJECT:** Document 32 - Petition from Attorney James Waldron requesting Modification of a Special Permit granted April 25, 2000 to modify Document 45 by amending stipulation A. to provide for three affordable units.

**Present:** President Michael Hart, Councillor Robert H. Scatamacchia, Councillor William Ryan, Councillor William Macek, Councillor Mary Ellen Daly O'Brien, Councillor David Hall, Councillor Michael McGonagle, Councillor James Donahue and Councillor Kenneth Quimby.

City Clerk Margaret Toomey: A petition has been received from Attorney James Waldron requesting a modification of a Special Permit granted April 25, 2000 to modify Doc. 45 by amending stipulation a. to provide for three affordable units. A favorable recommendation has been received from the Planning Board and the Planning Director.

President Michael Hart: Opened the hearing.

Attorney James Waldron, I represent Fairway Oaks LLC before you this evening. Just a brief history on this project. It goes back to the year 2000 when the Council, with the consent of the Planning Board, issued a Special Permit for the Fairway Oaks. To refresh your memory, that's nine years ago. It is located adjacent to the Haverhill Country Club. The project was 77 single family homes over 55 located down near the country club. Then a single building up just off Gile Street that had 25 condominium units. As the project developed, it became necessary to reduce the number of single family houses by five. They had some people that wanted to buy one floor units. We came back to the Council in 2004 and modified the Special Permit. The number of units stayed the same but we took five single families and asked the City Council to give us another five in the condominium project up on Gile St. which was approved. As part of that modification, I don't recall which Councillor it was, but there was a motion to add six affordable units to the condition of the Special Permit, which representing the developers, we agreed to that evening. That was a time when the affordable housing was on the front burner of the City's projects. The City had not yet adopted the ten percent requirement and the six units for affordable was at twenty percent but we agreed to it at the time. Like all affordable projects, it came on line after that. The developers engaged the services of Community Action because under board of the law you need to have somebody be a sponsor and to monitor it so it stays affordable. Community Action did a great job. You pay them, they go out, they find the applicants, they advertise it. They qualify them for it. Community Action produced three buyers for affordable units. They were bought at an affordable price under the guidelines that are established by HUD. HUD had an affordable program. There are two thresholds that you have to meet. The first is a figure of affordability that is on the HUD website, Community Action knows which it is. These units today, that HUD figure is \$189,000. The second threshold that you have to meet, you need to have an income that qualifies you for affordability. So the bottom line was three of these units have been sold. They are occupied and they've been sold under the affordable and those units do have restrictions on them. It has been a year since Community Action has been able to secure any applicants for this program. They have put out flyers. Made it available through newspaper ads and things and the reason for that is that the affordable price, many of these units went up a short time ago at auction. Part of that was these three affordable units were included in that auction to arrive at what marketability is. Now all of those three units, the three units that are remaining which have not been sold, have not been rented because they have to hold for affordability. All of those units are under the \$189,000 figure. Just for your information the figures range from \$175,000 to \$182,000 in between there. The developer has had these on this hands holding over \$600,000 worth of mortgages, paying on them and not able to sell them because they are there for affordability. I met with the Planning Director. We met back in October November of last year. Also conferred with the City Solicitor in trying to come up with some kind of solution on this. It was agreed that the developer shouldn't have to wait another year and keep paying the taxes. I understand some taxes are due, those will be paid. The three affordables sitting there, as I say, was \$600,000 worth of mortgages on them and expenses on upkeep. It was agreed that one way to do this was

to come back to City Council and ask that you modify this Special Permit that was granted in 2004 for three affordable units. We have met that. Those units were affordable. They have deed restrictions. Council President is familiar with them. The affordability is suppose to be kept ongoing for a certain number of years. What we are asking that you recognize the fact that the market has determined the affordability. I don't think anybody thought at the time when we were discussing this affordable zoning ordinance, and I remember being a part of that, what would happen if the prices dropped. Nobody thought about it. The prices were up there and it looked like they were going to stay there. What we are asking this evening that you modify the permit to just say three units. As a matter of fact that meets the city code. At the time this project was approved, and had the six unit restriction placed on it, the city did not have a zoning ordinance in place at the time. It was being discussed, I believe it was about four months later, after we got our permits that the city came in with the ten percent. You have a very good letter from the Planning Director in you package. He shared a copy with me in which he summarizes what I am telling you this evening. He's in favor of it because he said the objective of affordable housing has been met. Also, another factor here this evening that we have no problem with, is at the Planning Board, I met some people who have units with restrictions on them. Those restrictions say that they have to have an affordable buyer and there aren't any. We have no objection if you would remove those restrictions from those as well. To remove the restrictions from the deed requires the approval of the City, Community Action, and the approval of any mortgagee on the properties. That's a separate thing. I don't represent those people but I would tell you we have no problem with straightening out their problem as well. You have the minutes of the Planning Board. The Planning Board voted unanimously to recommend to you that you pass this. You have a strong recommendation from the city planner and ask that you approve the request.

President Hart: Anyone else speaking in favor of this petition? No one. Is there anyone here in opposition?

My name is Don Basiliere, I live at 16 Westchester Drive. Up in the Fairway Oaks building. I used to live at 159 No. Avenue. You have all probably seen my house, it was the house at the corner of Marsh and North, it had the great big presents hanging up there at Christmastime. We lived there for over forty years until my wife had a devastating stroke in 2006. We she came back from her very ill period and was able to move back into the house in 2007 we found out that that poor old Victorian, although it was good for raising seven kids, it wasn't really good for handicapped persons so we started to search for a place that would be a good home for us in the future. A place that we could easily get around, it would be handicap accessible and we could spend the rest of our life and we chose Fairway Oaks. I'll start there. I oppose the elimination of the stipulation granted to Fairways Oaks to provide six units of affordable housing in the condominium building and request the return of three of those units to the developer. In return for receiving special concessions to build Fairway Oaks Condominium project, the developer agreed to provide Community Action with six housing units to be sold at a reduced price from the going rate. Originally Community Action offered six affordable units for sale. Affordable first floor units were advertised for \$209,000, second floor units were offered for \$219,000. These prices were approximately 75% of the list price of similar units within the building. One second floor unit was sold at the offered price. In early 2008 the asking price for non-affordable units, the rest of he units in the building dropped approximately 20%. As you all know the market place was having a devastating affect on a lot of real estate. For instance, the corner units, the non-affordable corner units that listed for \$315,000 were reduced to \$295,000 and then to \$260,000. Fairway Oaks dropped the affordable price at that time 5% to \$209,000 and \$199,000. Two first floor units sold at these reduced prices. These deeds had restrictions on them. While real estate prices were dropping regionally, the value at Fairway Oaks plummeted. Similar units in size and location to the affordable units offered by Community Action within the same building sold at \$174,000. Community Action continued to advertise and still today, advertising them for \$199,000 and \$209,000. The Community Action affordable housing price was described in literature as 75% of market time. Obviously, no astute buyer would pay the Community Action price and have a deed with a restrictive rider. Also mortgage companies would not provide financing for these units when open market selling prices for similar units were considerably less. It seems like the issue here is intent and value. In exchange for building concessions granted to the developer the City Council intended to provide eligible buyers with condos at a reduced price, usually 75% of list. I feel the end of the affordable unit sales and the drastic reduction in value of condominiums at Fairway Oaks was caused by the developer's actions. First, the Fairway Oaks condominiums were changed from owner only units to a residential building

where some units were owner owned and some had tenants residing in them. About a year ago a big sign appeared on the roof of Fairway Oaks visible from 495 advertising units for rent. This was a devastating blow to those who had purchased units and a warning to potential buyers. We who purchased units thought we were buying into a stable community populated by other owners. Many of the original buyers and perspective owners were single ladies who were concerned about the security of transient residents. Some single ladies purchased the three affordable units that were sold before the building had rental units. Once the for rent sign went up, affordable unit sales stopped. All sales in the building almost stopped. As you heard Attorney Waldron say, it's been a year since probably anybody has approached to try and buy one of these units. Well it's just over a year ago the for rent sign went up. The developer has already rented one of the affordable units reducing the value of that unit even more. The second reason the value and price of Fairway Oaks Condos dropped dramatically, was that extensive handicap accessible code violations were discovered in the building. These made the units less attractive to buyers over 55 years of age. When I first looked at Fairway Oaks and I visited many times before I bought, I visited other properties, I was shown the whole building. Shown the ramps, the parking area in the garage is in the basement is really great because there is no ice and snow and I was shown two supposedly handicap parking places which was great because to transfer my wife from wheelchair to car you need a place that is safe to make that transfer. We decided to buy, soon after we moved in, within in a month, within weeks or days, after we moved in, I started to use one of these spaces to transfer my wife I got a note under my door stay out of that space. That's not a handicap space, that's my space. I found out that the two spaces that were supposedly be handicap accessible spaces where I could transfer my wife, were in fact deeded to other people that lived in the house into our building. There are and there were no other accessible spaces that I could use except outside and that's not the way it was intended. I tried to contact Fairway Oaks many many times and it fell on deaf ears. They wouldn't talk with me. So I elicited some help from the Northeast Independent Living Program which is a group that helps people with accessible issues. A nice gentleman came and visited me at Fairway Oaks and he went through the whole building being much more aware of accessible problems and codes, he started to point out a whole series of code violations that he thought were in the building. Obviously, handicap accessibility was a new issue to me and I really didn't know much about it. He suggested that I contact the Architectural Access Board in Boston and have them review the property and review what was going on in the property, which I did. The Architectural Access Board came out and did their own investigation. They came here, looked through plans. They visited the site and their investigators found many handicap accessible code violations and required Fairway Oaks to attend a hearing Dec. 16, 2008, in Boston. Fairway Oaks attorney and architect testified at that hearing. It was a very interesting day. Obviously, Joan and I went there also and we had to testify about what our experiences were there. After the hearing, the Board concluded that there are a number of serious code violations in and about the building. Such as, we have a beautiful ramp, it's not too steep, it meets the code, however, it's in the back of the building. Now I didn't know what the difference that would make because this is all new to me. What the people on the Board pointed out in which I will not explain to you, let's just assume that it's you or I in our electric wheelchair. If you come up the ramp that was bringing you up the front door with the main entrance way and the code says the ramps must be made at the main entrance of a building, you come first of all under a little protective roof, you good right through an unlooked door into a very beautiful lobby. In that lobby you'll find your mailbox, your night paper, and there is only one locked door that let's you right through and immediately into the elevator which will bring you up and down to the building. Very simple. That was the intention of the code. What is it at our building? At our building now, if you come up in your electric wheelchair and you come up the ramp, or if it's me pushing Joannie, or anybody else, you first of all come up to a locked door while you are outside unprotected in the rain and the snow and you first of all have to unlock that door, open it and get yourself through. After you get through that door you immediately encounter a second fire door, which you now have to pass through. That one is not locked, it's just very heavy. Turn, you go down the corridor about fifty feet, make a left turn, you encounter another door that finally lets you into the lobby. You get your newspaper, you get your mail, you turn around, but now you have another locked door to go through. So you have four doors, two of them locked to go through before you get into the elevator to go to your apartment. That's not what the law intended. But that's the way it is at Fairway Oaks. That was a major fault that the Access Board found. Let's talk about those doorways you have to go through. We are all very busy people. You get in an elevator, you press the button and you stand there and wait and say what is going on. You hit the close door button. That door is staying open for six seconds because that's what the code says. The accessible doors in a handicapped place, where handicapped people might pass through in public buildings have to have a six second closing time. So either, you're in your electric

wheelchair you pull the door open you can now pass through and if it's those four doors you have to go through four times you can do that. Our doors slant instantly, in less than a second. So that right now anybody pushing my wife through you can't pull the door, push a wheelchair all at the same time. The fix for that should be quite simple. Fairway Oaks is just blowing it off. They totally were disinterested in doing anything about it. Right after we were in, a month or two, in February the first year we were there, Joannie required some therapy. It was winter, it was ice and snow. I called a van to pick her up. The van couldn't get into the garage. We brought her outside which was covered with ice and snow which we brought her down and put her in the wheelchair. The second time, the following week when we did the same thing, the ramp was so ice covered, we were putting that poor lady in a hazardous situation. As I pushed her down the ramp, I am trying to say to myself, if I slip and I grab this rail, the rail it coated with ice, what happens. The Access Board found out that the building garage door is made too low to allow a van to enter the building which is a major code violation. If a van could get in, the ceilings and the sprinklers are made too low so that a van can not navigate throughout the parking area which is another major code violation. There has to be accessibility. You might say to yourself, well you can use the outside. Well, that could be true. But let's just same as I get a little older and I can't push Joannie or any other person in that building doesn't have the mobility or the strength and they want to buy themselves a wheelchair van that they can keep in the garage that they can use for themselves or somebody else. Right now that wheelchair van has to stay outside, be covered with ice and snow and in order to use it we can't use our own parking place we have to go outside and fight the elements before we can use our own parking place. Right now there are no accessible parking places for anybody within the building. There are other violations that they found which I won't go into. Fairway Oaks was given until January 1<sup>st</sup> to present a plan for compliance to the Board. They never responded.

President Hart: I'm going to just interrupt. I am very sympathetic to your story but it is completely irrelevant to what. Mr. Basiliere said not at all. President Hart said well if you can get to the point where it starts to become relevant. In the very beginning you were quite relevant. You may have some civil actions against the developer, you should have an attorney be looking at this thing. Maybe you could go after the developer for a lot of the things you brought up tonight. But it's nothing we are going to be able to help you with. Can you bring it back to the affordable.

Mr. Basiliere replied we were talking about value and we are talking about price. The reason the price of the building went down, is partly because they changed it into a rental as well as owner owned building and because of all of these violations, people over 55 don't want to move into that building. They all know they are going to have some affliction some day that they are going to need accessibility. Older members of the community require few city services. We pay our taxes and require little in return. We do need police and fire protection. Clean water and a working waste system. We also rely on code enforcement and compliance. The City dropped the ball on code enforcement in the Fairway Oaks condos. We understand the principle of let the buyer beware on items not mandated by code. We expect codes and their enforcement to be implemented by the City. Somehow this over 55 building was allowed to be open with code violations that could restrict the independence and mobility of its residents. Let's face it, everyone who moves into this building will some day need a hip or knee replacement, have stroke or have a heart attack, it's all part of getting older. The developer got the concessions that helped make the project feasible. In return, affordable units were to be offered to the public at a selling price below market rate to allow those with restricted income to become homeowners. Developer's actions along with design and building code violations caused the units values to drop. But the developer refused to adjust the price of the affordable units. The remaining unsold affordable units should be restricted to the intended guideline of 75% of market rate and offered for sale for an additional six months. The City Council should not turn its back on those with mobility handicaps. The City Council should take no matter on this action until Fairway Oaks corrects the code violations found by the Architectural Access Board. Those corrections should be approved by the residents of Fairway Oaks condos also. This is not the time to grant the developer additional concessions.

President Hart: Is there anyone else wishing to speak in opposition. There was no one. Would you care to rebut.

Attorney Waldron: I am not going to get into the code violations other than to state that I just asked my client if he has any outstanding code violations from the City of Haverhill. He tells me he has none. He

does have an issue with the Architectural Access Board, I'm familiar with that. They have their own hearings and so forth. There are no code violations with the City. If I had known about this presentation this evening, I would have made a direct inquiry of the building inspector. I am just going to represent my client is telling me, they have none. If you get into this market rate and those things, this program was given to Community Action at a time when there was no affordable housing in Haverhill. Community Action did the right thing. They went to a HUD program. The HUD program had an affordable price you use when you go to sell these units as well as I said before, the income guidelines. The affordable price was set at \$189,000. The issue here is the units are worth less than that. I am not going to get into a thing on housing, why house rates drop. One further point. The special permit had a clause that I believe, it might have been Councilor Daly O'Brien, that made it condominiums. There was some talk at the time as whether they were going to be rental units or condominiums and we agreed to do condominiums. We never made an agreement, I have never done that in thirty years of doing these projects of saying you won't rent them because you can't finance them. You go to a bank for a mortgage and you can't rent the property if it doesn't sell, then you don't get your mortgage. All of these units are condos. (tape change) ...have a letter from the Planning Director, kind of summarizes what I said.

President Hart: Did you have any other comment concerning what he said? No comment. President Hart closed the public hearing. Councillors.

Councillor Ryan, for the record I will move the request.

Councillor Scatamacchia: Everybody knows that the real estate market hit the dumper a couple of years ago. What you are saying is that the affordable units, the prices can't be lowered to a point where they would be 75% of what the true market value of the other condos in the development are?

Attorney Waldron: I suppose they could be. That is not what we agreed to at the affordable clause that was put in here. As a matter of fact, I discussed that with my clients. It probably would be a default on their mortgage. Councillor Scatamacchia said I don't understand why that would be a default. Attorney Waldron said because you are selling them for less than what you owe on the mortgage. Councillor Scatamacchia said that is done everyday. If you build something and it cost you \$200,000 and you want to sell it and you can only get \$150,000 for it, I don't want to get into a debate with you about it, you are going to take \$150,000 and get out. My only question was, Attorney Waldron said if you have a mortgage of \$180,000 mortgage you have to satisfy the bank and that way you can't do that. Councillor Scatamacchia said they do that, they call them short sales. I am going to support this. My concern was I would think if you lowered the price, it would have helped you achieve your goal to selling the units. I was just asking if that was possible. Attorney Waldron said it is possible. There's a mortgage due on those that's well in excess. There are \$650,000 worth of mortgages on these three units. Councillor Scatamacchia asked are you going to sell for \$250,000 each? Attorney Waldron said no. Answer by someone else, they are on four units. Councillor Scatamacchia said that's my point, I am just asking. It may help you to sell them if you lower the price on the affordable units.

President Hart: Could you identify yourself sir.

My name is Nels Palm, I am one of the members of Fairway Oaks LLC. We held the auction in the fall. We actually weren't expecting the prices to have dropped as dramatically as they did. We wound up having to bring checks to the closings on those units. ....I couldn't satisfy the bank. The bank would probably tell me to rent them until the market turns.

Councillor McGonagle: I think some of the folks that bought there probably didn't want to be living next to rental units. It's a two way street. There was a lot of information put forward here that is disturbing to me especially to the violations. Whether there aren't violations with the City, maybe that's shame on us, I am going to find out. I am not going to support this tonight and I'll tell you why, I think Councillor Scatamacchia was going down the road. You haven't given it a chance. You were given back in 2000, in my opinion, some special conditions, and you were nice enough to say we'll put in six units or 20% at that time. And you are dropping the prices on everything else but yet you haven't allowed or maybe you are not allowed to drop the price on those units through Community Action. I say that's where we should go first. Moving those down to the same prices that you are offering your regular units and give that a try and

keeping the stipulations because you were given some special consideration by this Council. I am not going to support it and that's why.

Attorney Waldron said the special considerations, we kept the same number of units. We were not allowed to build anymore units. We gave up five units in the single family houses and we also put a garage underneath at that time which made for more open space. Councillor McGonagle said, if I understood right Mr. Waldron and I don't mean to argue, but didn't you build five units up on the hill? Attorney Waldron said no. We took five units out of the single family and as a result of that asked that those five units be put into the condominium building. We also agreed to put parking underneath which was very well received by the council. There was nothing special given in that modification. Councillor McGonagle said I am quite concerned to be honest with you about the underground parking. If you can't get some vehicles. Attorney Waldron said that is a matter he is working on. He's got an attorney. I am not their attorney on that. That's a specialty that other lawyers do.

Councillor Ryan: I think all of my colleagues feel that this is a difficult issue. We are very sympathetic to Don Basiliere and people that live up there. At the same time, we are also aware of the housing crisis that we find ourselves in. I know there are people who bought condos on Washington St. next to the Garibaldi's at Riverside Place, they have rented out most of them. They can not sell them. So what is developer do that owns 2200 units, you have to do something. You have to rent them. I don't think they want to do that. That obviously hurts the value of other units. It drives away perspective customers, this certainly isn't helping the marketing of that building. It's going to hurt everybody, including people who own units. The more we beat up on this project, the more we harass people who are in this situation, I think these folks are the ones who get hurt in the long run. The fact of the matter is banks aren't loaning money. People can't buy these things. Developers are going bankrupt right and left. I think we as a Council have to look at this. I am very upset about hearing about the architectural access issues and they are serious issues. I think we need to go beyond that. I don't want this developer to go belly up because it's going to be even worse down the road. We have to take the issue that's at hand. This whole project which was a great project when it first came in, received a lot of support from everyone. It found itself in the beginning was when the market started to crash. That's what we really have to look at. Issues to deal with handicap accessible to that building is something we as a community have done everything to support any agency. We have directed all of the department heads to be vigilant and to make sure that we are on board with any of that. .... I think we are going to have to do this more than once this year. This is going to come up again. I think the responsible vote tonight is to vote for the waiver to allow them to take these affordable units off the list and allow this project to hopefully survive.

Councillor Daly O'Brien: When was this original permit given? Attorney Waldron - 2000. Councillor O'Brien when were they built? Attorney Waldron - 2005 or 2006 this building. The single family houses started right away. There was quite a bit of planning because there was 103 units. Councillor Daly O'Brien said when I read the minutes from the Planning Board it seemed a little fishy. I didn't like that there were people that were dissatisfied by misrepresentation. I thought you have a middle man, you have realtor in between the people coming to see it. But I had to take into effect that there are not many Planning Board notes that I see like that when I am reading minutes. I thought that was rather interesting. But until Mr. Basiliere spoke tonight, I think the clarity of what's making me unhappy about this, is not that you've come to ask to reduce those units, it's the unhappiness of the people who spoke that night to the Planning Board and also Mr. Basiliere tonight. Even though you could say this is apples and this oranges, I have a feeling that something is not right. I don't know what it is. I feel that I am not in any position to okay this tonight. It's not that I want you to fail, but I want you to do the right thing by that building. I think everybody is facing tough economic times whether it's because you re-mortgaged or bought a house was something two years ago that it's not worth today. I think everybody who's sitting up here has a story to tell and probably most of the people who are out in the audience listening to us have a story to tell of tough times. We are all trying to find our way through it. With my tough times, I don't have the places to go to as you have as someone who is in business and develop-ment because we are just a family trying to educate four kids and make ends meet and get all our bills paid despite the fact that our house is not worth what it was a year and a half ago. There's something about this that just doesn't hit me right. I did not like the minutes. Those people being so unsatisfied and feeling that something had been misrepresented when they went through their realtors to buy homes there. I am not going to support this.

Councillor Hall: I respect all the comments that my colleagues made. I sit here and try to evaluate myself. I think I am a very different person. I'm a big person on quality of life issues. When I walked in these chambers I was pretty well satisfied that it was a cut and dry issue. No big deal. But I have known the Basiliere's for fifty years. I know his wife Joan. I am not chicken hearted when it comes to a story like this. But I have a lot of respect for quality of life issues. What this family has gone through in plain English is hell. I got a little sympathetic when he got up there talking. I am sure if he could have talked for another hour he would have probably had a lot of tears coming down on everybody's face. That's how serious the issue was up there. I know it's nothing to do with the vote taken tonight. I would feel remiss if I didn't let people know how I felt about this issue. I'm appalled to think in the United States of America that we can let things like this go unattended. Going to hearings. Having you people defy the disability board. I wasn't there, I am just telling you what was said to me. From what Mr. Basiliere said to me tonight how they had to go into Boston, take his wife into Boston to testify. I am here with mixed emotions. My job here is to do what's right for the City of Haverhill and for the citizens of Haverhill. ....I have to go with what the Planning Director says in his recommendation to us what we should do. I have total respect for him. He makes the recommendation that we accept this proposal and have the City eliminate the affordable housing restrictions on the three that have been sold. I am in favor of that based on these two ladies, at 13 and 15 who bought at affordable housing and their request was that if we did approve this request tonight is to approve their request for their three. I am voting based on what you presented here tonight. What the Planning Board hearing was on the recommendation of our Planning Director. I am going to have to vote that. On the other hand, you know where I stand with you.

Attorney Waldron said it's in the interest of the people who bought those units, to have that restriction eliminated. Councillor Hall said I understand that. That's one reason why I am going to vote for this because of these three people. Two of the ladies up there, 13 and 15 who made a request to us tonight that we did approve yours, to approve theirs too.

Councillor Quimby: Mr. Basiliere, great job. I liked what you had to say. I had same things some of what the Councillors said. Mixed emotions about this. I think the prices could have been a lot lower, those units. And when I heard the violations, that changed my vote pretty quick tonight. I will not be supporting this.

Councillor Macek: Have all of the units been granted occupancy permits at this time. Nels Palmer said yes. Councillor Macek replied as far as the City is concerned you have complied with all necessary code requirements. Nels Palmer said yes, we have an architect all the way going through the project. Councillor Macek said we are in very tough times. Very unique times we've never experienced anything like this current real estate market, the current economy. I guess times call for tough decisions and this certainly is one. I hear everything that Mr. Basiliere said and my heart goes out to him for the concerns that he has addressed. As has been stated by a few of my colleagues, I am not sure that really what's before us tonight if we look at our agenda item. We have been asked to review whether or not we want to continue with the restriction on twenty percent affordable for six units three of which have sold. I too also have a concern, that due to the restrictive language of the deed covenant for affordability, that the three that have also sold are also experiencing extreme hardship because they have restrictions now that have tied their hands and they are not able to sell their units. These individuals. While the developer can't sell the three that haven't sold, in a sense, the other three that are already purchased, can't sell their units if they wanted to get out because of those heavy deed restrictions. It really is a problem for everybody. I also recall that this project had, and it's also in one of our letters that came in our packet, that the restrictions were put on by Councillor DesMarais at the time, of this 75% affordability based upon the price of the units. Back in 2000, and I wasn't here, everything was going up. Nobody was even thinking about making the affordable price have any consideration for the market maybe at a downturn, cause everything was spiraling up. The language that was put in here for affordability doesn't even address the state requirements. These affordable units, if they were to remain affordable, can't even be counted as affordable units in the City of Haverhill because they don't comply for the state regulations for the means testing based on income to value. With all those things being said, I think it actually almost got off on the wrong foot way back when when nobody realized that that's what was going on. That's part of the problem that I think the developers have and that those three individuals have that purchased those units is that this particular affordable requirement is not consistent with what the state recommends, what HUD recommends and it was an effort at that time for the City to make sure that we address the affordability

and I am 100% for affordable units. However, I just think this particular situation is so out of whack for so many reasons that I think the only fair thing to do right now is to release everybody. The developer and the three owners from any affordable conditions. Hopefully, they will be able to use their housing to get the best out of it. I don't know if any of them at this point, because even the affordable units were sold at a price much higher than anybody can get today... I don't want to see the developer or any of the individuals have to file bankruptcy because of hardship conditions. I think we are much better off to let that project find its way to some level of being filled and not a problem for the banks or for the individuals. I am going to support the request for those reasons. I too would also work with you Mr. Basiliere to make sure that whatever the city can do to assist you with the problems you addressed, I will gladly work to help you on a regular basis until we find resolve for you and any other tenants in the building that are having issues.

Councillor McGonagle: These units were the last units built or the last building built in your project, right? Nels Palmer said I think some townhouses may have gone up contemporaneous to that. Councillor McGonagle said the reason why you leave affordable housing units until the end is because you make what you can make with the full price units to begin with. I think I would do the same and most people would do the same. I think if you read the letter from the two ladies that have already bought these homes their letter starts out they oppose this. They later on say if you are not going to be to oppose this, please remove our restriction which makes sense also. I wish that one thing had been done before you came before us. I wish you had gone to the state, brought Community Action, investigated what you could do to move that affordability number. If a regular unit needs to be reduced to \$175 \$180 then maybe they could have worked with you for a ratio that made sense. If you have a mortgage for \$600k over four units, if you got \$175 or so, that's \$700K. I know if might not be enough or whatever. That's what I think. Nels Palmer said the problem with that is that if there's a market unit, a non-deed restricted unit that's on the market or is going to sell for that same price, who's going to buy the affordable unit because that has a deed restriction. Councillor McGonagle said I agreed with you. Nels said what bank is going to lend on it. If something happens, I think of these poor ladies that bought, and I do feel terrible for them, because what happens if they have some kind of health problem and they have to sell and go into assisted living or something like that, they can't sell. There won't be a bank that would lend. There won't be a buyer that will want to buy....

President Hart: Basically, I think, this would have been a slam dunk for your tonight had we not heard some comments from Mr. Basiliere that doesn't paint your LLC in a good light at all in terms of how he's been treated and how possibly other people have been treated up there. That disturbs all of us and it's got you on the verge of being not successful tonight perhaps not being successful tonight. If it doesn't go through, in a way you have your own self to blame. I truly feel it probably would have been unanimous. When Mr. Basiliere got up, he was very relevant in the beginning and then we got into his issues with you they weren't really relevant to what was in front of us, but they were very effective in turning members of this Council against you and starting to think negatively about the vote that is coming before them. When you peel away all that, I hope Mr. Basiliere goes out and continues to fight and goes to these boards and bodies and gets his justice because I think he is entitled to it and I do think you have been mistreated by the developer, I really do. In this environment, and working in the business myself, I have seen developers on the verge of failure and failing. It doesn't help owners in developments when that happens. It hurts them all. It can harm values even more. This developer has basically somewhat hung on, and just barely I believe. They are at the point now, I am sure you just want to get out of this thing. You owe some responsibility to the people who you built houses to too. It makes votes in this situation much more difficult. The bottom line is, and several Councillors hit on it tonight, the three ladies that bought at very high prices who now have deed restrictions on their houses are stuck. They are stuck. They will never be able to sell with those deed restrictions. I don't think they can comply. They couldn't find buyers with those deed restrictions without basically giving the houses away and it's not fair to them to have to do that. They are victims of this economy as are anybody who bought two years ago if you bought in '06 you have lost a lot of money in terms of value in your house. If you are not selling your housing, you haven't actually lost the money yet but you certainly lost the equity that you had. That goes across the board, anybody. Single family houses, condominiums, all of them. The things that happened there probably didn't help values, the rentable of the units and the code violations, certainly didn't help values. They are not primarily responsible for the fallen values either because every condominium complexes values have fallen. Removal of the restrictions, which is the issue in front of us, would allow probably

these units to get sold. Whereas if they don't get sold, they get rented and that seems to be an issue that people don't want. It helps the three ladies tremendously by putting them on an even par with everybody else where they should be now. If we don't remove the restrictions, if we turn this down, we don't help Mr. Basiliere at all. He gets no help out of this. He could possibly even lose from that vote by his value going down even more if the developer fails. It's not going to help Mr. Basiliere if we don't remove the restrictions. It could possibly hurt him in the long run. It will hurt the ladies. It will because we won't be able to remove those restrictions and keep the restrictions on the other units, can't do that. You have to be consistent here if we are going to remove the restrictions, we remove the restrictions. I said more that I like to say and more than I usually say. The logic of it, when you peel away the emotion, is that it's in the best interest of Mr. Basiliere and the owners that are already in there, and all of their values, to remove the restrictions and those three ladies in particular.

Councillor Daly O'Brien: Mr. President you've convinced me to change my vote. You are the most rational voice. It's because of the three ladies and your last words that leaving things the way they are will not help Mr. Basiliere. All the Councillors are appalled at Mr. Basiliere's story and we are hoping that whatever we can do as a City, in our own inspectional services, and whatever support we can give to the Basiliere family to rectify those disability code violations. I am a nurse that deals with elderly people everyday. That story was appalling to me because they were obviously misrepresented when they viewed that building as were some other people as I read in the minutes of that Planning Board meeting felt that they had misrepresentation when they went there too. The only reason why I am changing my mind, is because I think the Council President has put it very neatly that we must save the three women who bought those three units with those deed restrictions and we have to be able to move forward to get that building sold the way it should be.

President Hart: Yes sir, I'll allow it if you want to come up. The hearing is over, but come on up.

Male: The issue here tonight is not the restriction, removing the restriction from the units that have already been sold that these three women are talking about. That's not the issue tonight at all.

President Hart: It's part of our issue.

Male: Let Attorney Waldron explain to you. You are not voting to remove the restriction of the women's riders that already own units.

President Hart: Sir, we are going to take that vote. Separate from this.

Male: That's not before you.

President Hart: Yes it is. It's in the recommendation from the Planning Director, includes that.

President Hart: It's okay sir. We are going to take that vote. The recommendation from the Planning Director, approve the special permit modification removing the affordability requirements of the three remaining unsold units and the City will file a release of the affordability restriction deed rider for the three previously sold units. President Hart added, I think they need our authority to do that. Mr. Pillsbury is saying the City is going to do it and we are going to make a motion saying we want you to do it. I truly believe that's what will happen.

President Hart: Please call the roll on the special permit.

Clerk Toomey: Councillor Scatamacchia-yes, Councillor Ryan-yes, Councillor Macek-yes, Councillor Daly O'Brien-yes, Councillor Hall-yes, Councillor McGonagle-yes, Councillor Donahue-yes, Councillor Quimby-yes, President Hart-yes. 9 yeas, 0 nays.

On motion of Councillor McGonagle to remove the affordable deed restrictions on the three previously sold as affordable units.

Clerk Toomey: Councillor Scatamacchia-yes, Councillor Ryan-yes, Councillor Macek-yes, Councillor Daly O'Brien-yes, Councillor Hall-yes, Councillor McGonagle-yes, Councillor Donahue-yes, Councillor Quimby-yes, President Hart-yes. 9 yeas, 0 nays.

Respectfully submitted,

Barbara S. Arthur  
Administrative Assistant

May 5, 2009

