

DOCUMENT 139 – MINUTES OF PETITION FROM ATTORNEY MARK B. JOHNSON, ON DECEMBER 29, 2015, REPRESENTING CONTINENTAL WINGATE DEVELOPMENT CORP TO MODIFY PROPOSAL PURSUANT TO REMAND ORDER OF LAND COURT, REQUESTING A SPECIAL PERMIT TO CONSTRUCT A NEW 2-STORY BUILDING FOR CONGREGATE CARE HOUSING AT UN-NUMBERED NORTH AVENUE; ASSESSOR’S MAP 630, BLOCK 2, LOT 1-1A. THE MODIFIED PROPOSAL WOULD HOUSE A TOTAL OF 64 UNITS, INCLUDING 32 ONE-BEDROOM ASSISTED LIVING UNITS, 28 STUDIO MEMORY CARE UNITS AND 4 COMPANION MEMORY CARE UNITS.

SUBJECT: Document 139 - Petition from Mark B. Johnson, representing Continental Wingate Development Corp, requesting a special permit to construct a new 2-story building for congregate care housing at un-numbered North Avenue, Assessor’s Map 630, Block 2, Lot 1-1A. The modified proposal would house a total of 64 units; including 32 one bedroom assisted living units, 28 studio memory care units and 4 companion memory care units.

Present: President John Michitson, Councillor Robert Scatamacchia, Councillor Melinda Barrett, Councillor William Macek, Councillor William Ryan, Councillor Thomas Sullivan, Councillor Mary Ellen Daly O'Brien and Councillor Michael McGonagle. Councillor Colin LePage remotely participated due to geographic distance.

City Clerk Linda Koutoulas: Document 139 – Petition from Mark B. Johnson, representing Continental Wingate Development Corp, requesting a special permit to construct a new 2-story building for congregate care housing at un-numbered North Avenue, Assessor’s Map 630, Block 2, Lot 1-1A. The modified proposal would house a total of 64 units; including 32 one bedroom assisted living units, 28 studio memory care units and 4 companion memory care units. A related communication from Attorney Robert Harb for applicant regarding Cost Breakdown of Proposed Mitigation in regards to project as well as reports from various City Departments are included.

President Michitson: Hearing opened.

Attorney Robert Harb, I have offices at 17 West Street, Haverhill, MA. I am here representing the petitioner but I have been advised that two of the City attorneys are here tonight and I understand one would like to address you before I make my presentation.

Good evening Mr. President, Councillors. My name is Adam Costa. I am with the firm of Blatman, Bobrowski, Mead and Tallerman. I am special counsel to the city and the Council in connection with the Wingate litigation. I had agreed, in consultation with City Solicitor and the applicant to provide a few brief comments before we get underway tonight just to provide some context to the Council with respect to why this matter is back before you. As you recall, back earlier this year, the Council had an opportunity to weigh in on a request for a special permit for a congregate care housing facility off North Avenue. The Council voted 9-0 to deny that special permit and as a consequence of that the applicant appealed to the Massachusetts Land Court. We’ve been litigating for the better part of 9 months. That appeal was filed in late March of this year. We have been assigned to the expedited track known as the permit session in Land Court. We have a trial that is tentatively scheduled for some time in March. We don’t have a specific date as of yet. In the interim, thru the course of discovery, as the court requires or strongly suggests to parties involved in any sort of litigation, we have had discussions with Wingate about potential compromise. Wingate has brought forth a proposal which they will present to you tonight to modify the proposal that was last before you that was denied by the Council earlier this year. We have obtained from the Land Court a joint remand for the sole purpose of the Council considering the proposal being made by Wingate this evening. I have reviewed that proposal together with your City Solicitor and the Mayor. We have had a number of meetings with Wingate, but ultimately this is a Council decision. I

understand this was brought before you at your November 17th meeting. The concept of a re-appearance by Counsel for Wingate to make this presentation. I understand the Council voted to conduct a public hearing tonight and that's why we are here. This will be a vote on the modified proposal. If the vote is in favor of the modified proposal and the revised mitigation package that is going to be proposed by Wingate this evening, that would likely moot the application. Certainly, the applicant would wait out the appeal period but thereafter the litigation would be rendered moot, would go away. There would be no trial in March and it is the revised proposed project that would be constructed. If the Council this evening elects to again deny the project and the revised proposal then Wingate has reserved the right in that remand to proceed under its original proposal. Its original room, 90 unit proposal and would proceed with the litigation. We'd proceed the trial sometime in March or so of this year and then await a decision from the court thereafter. That's where we stand and with that subject to any questions Councillors may have. I'll turn it back over.

President Michitson: I do have a question for you. Could you explain for the citizens what a joint remand is in plain terms?

Attorney Costa: Once there is action taken by municipalities such as the Council in denying a permit under the zoning act in Massachusetts and the applicant avails him or herself or itself of the right to appeal to the courts and that matter proceeds to court and a court proceeding is underway, that matter cannot again be heard by the municipal board, or in this case the Council, without the court giving permission for that to occur. Based upon discussions that were had, again, between City Solicitor, myself, your Mayor and the applicant and representatives of the applicant and with this revised proposal being brought forth, we jointly went to the court and asked for permission without taking us off track anyway with respect to the ongoing litigation for the revised application to come back before the Council.

Councillor Scatamacchia: Attorney, I just want to make sure I have this clear in my mind. If this is voted down tonight, the amended petition, and Wingate goes back to court and it goes to trial one way or the other, it would be for the original project for the 90 units, not the amended project?

Attorney Costa: That's correct.

President Michitson: That's all the questions that we have.

Attorney Harb: First of all, I have submitted a letter from a neighbor on Winona Avenue. She was here earlier and could not stay and she personally asked me make sure that she delivered that letter for you in support of the project. As I stated, I am a lawyer in Haverhill and I represent the petitioner. I have with me the petitioner's team, David Feldman, Vice President of Real Estate for the petitioner. Roger Alcott, the professional engineer of this project, Giles Hamm, the traffic study coordinator for this project and Andrew Stebbins. Also with us is Attorney Mark Johnson who is handling the appeal. As was mentioned by my brother, tonight's hearing is to consider the modified proposal that was submitted by Attorney Johnson and also to consider the modified mitigation package that I delivered earlier last week. A breakdown of that mitigation package. I want to remind you that even if this permit is allowed, it is not the end of all the processes for the applicant within the city. It must go to Planning Board for a definitive plan approval and also to Conservation for an order of conditions. Conservation has filed a recent letter saying they are not in opposition but we would require an order of conditions even though the project has been downsized. This would not be the end of the opportunity for 2 other city departments to weigh in on this. Since you last denied the petition, the petitioner believes that this modified proposal will address the number of concerns that you had all mentioned in your decision. Some of these were the need for traffic and safety improvements beyond the scope of the original proposed project. The need for increased traffic mitigation measures. The size, scope and magnitude of the original project and additional traffic caused by the original proposed project of 90 units. When you hear the modified proposal, copies of which you have been submitted and the traffic mitigation increase package, I believe you will agree that these conditions, these 4 items which concerned you greatly last time, have been addressed by this modified proposal. Mr. Feldman is going to review those specific modifications. He is going to show you plans of how it affects the property as developed or proposed to be developed. Mr. Alcott, Andrew Stebbins and

Mr. Hamm are here if you would like to ask them any questions about the actual construction, the architecture, and the traffic matters. We are not going to ask them to speak directly to you but we have them here available. I'd like to refer you in your package that I noticed was on line, of the December 24, 2015 letter from the Planning Director, which again states that none of the city departments are in opposition to this project and the Department of Planning does support this project. Lastly, for the record I need to say, the petitioner believes that this modified project meets the special permit requirements of our ordinance. The use is allowed as a special permit in this area. The Building Inspector filed a letter previously. There really are no special conditions under Article 11 of our code. If any seems to be applicable, we'll meet them. This is a modified project as was mentioned. It drops substantially, almost more than a third in the number. This, though modified, would add an assisted living facility to the town which is needed. We need another facility and it would be useful to all the town occupants. The use is abutting a nursing home and as you will see from these plans, it is still going to be set back from the street similar to the Merrimack Valley Hospice which you approved up the street on North Ave. Because of the location, these increased traffic mitigations, the reduced traffic increase or input because of this reduced project as you'll see, the reduced size and scope, the applicant firmly believes that this use will not impair the district or the neighborhood. This modification addresses that. The use does provide for safety and concerns and the traffic study and the mitigation will address those issues beyond the actual campus that you were concerned about when we were here previously. We are going to be tied into city sewer, refuse, we have no problems with that; water, surface and storm water. The use does provide, as required, off street loading, parking. We meet all the requirements. Off course, there's no historic building on this area. Those are the technical requirements of a special permit. Hardship does not need to be shown, as you may recall. The applicant would ask you to take into consideration all these modifications and approve the plan as modified. I am now going to turn it over to Mr. Feldman, who is going to go thru these modifications with you. They have plans and designs and boards to show you. I think you are going to find this is a greatly reduced project that will address all those concerns that you had all mentioned the last time we had a full hearing.

David Feldman, Continental Wingate Development, 66 Kendrick Street, Needham, MA. I just want to highlight some of the changes we made from the original proposal to the revised proposal. If you remember, the original proposal was based on 90 units. The revised proposal is now 64 units. The breakdown on the original proposal was 20 independent living units, 46 assisted living units and 24 memory care. The new proposal is 32 assisted living units and 32 memory care. We eliminated the IO which is mobile ambulatory residents. We decreased the assisted living and increased the memory care. The composition will be 32 one bedroom assisted living units, 28 studio memory care units and 4 companion suites. The gross square footage went from 78,348 s.f. down to 55,000 s.f.; a 30% reduction or we took out 23,000 s.f. The parking requirement went from 90 parking spaces to 64. We eliminated 26 parking spaces, reduction of 2600 s.f. of impervious surface. The staffing went from 50 full and part-time employees down to 35 full and part-time employees. The breakdown would be 18 employees on the first shift, 12 employees on the second shift and 5 employees of the third shift. A decrease of 15 employees. The all important traffic component, we had anticipated 248 trips a day. That is now reduce by 60, a 25% decrease down to 188 trips a day, or less than 1% of the build. Giles Hamm can talk more about that. In regard to the mitigation, all the original mitigation stays in place. We didn't touch any of that. We included the additional asked at the last meeting; 1,200 linear feet of sidewalk on the western portion of North Ave. from the property line to the access easement to our existing entrance across from Concord Street. Installation of an ADA ramp at the crosswalk of Concord Street. Pedestrian signage north bound and south bound on North Ave. approaching Concord Street intersection. Also at west bound Concord Street with pedestrian activated RRFB beacons used on North Ave. Those are pedestrian activated. They are automatic. We included 2 radar detection speed limit signs on North Ave. one north bound and one south bound and 2 on Concord Street. At the request of the Traffic & Safety Committee these will be constantly powered and solar powered for back up. The sidewalks on the site will connect on North Ave., bike racks on site, signage to restrict traffic at the existing entrance opposite Concord Street. You will only be able to go into the site for deliveries opposite Concord Street. You won't be able to exit the facility on Concord Street, you'll have to use the new access roadway. Stop signs and stop bars at all driveways, clear landscaping at the new entrance to allow for improved site lines and landscaping in front of JG Whittier School. In addition, we've offered \$200,000 towards the City of Haverhill plans to

improve traffic conditions on North Ave, as part of the Mayor's plan. If the City Council in conjunction with the Mayor feel that the combined \$400,000 could be better spent on other North Ave improvements, then what we propose, we would be open to allocating these funds at your discretion under the same disbursement schedule with the continued understanding that any additional off site mitigation required by Planning Board would come off of the cash contribution. On these boards here you can see the original proposed plan and the footprint of that building, how it takes up a good part of the buildable site. Now if you go to the proposed plan, you can see the revised footprint. You can see the reduction in the parking. You can see the reduction in the footprint. We also have on there a plan in overlay. All the red areas around the building were the proposed building. That's a reduction in footprint. All the red in the parking areas are reduction in pavement. You can see there's quite a bit of reduced space and we actually increased the open space and the green space. I think it's important to note there's a quite a significant elevation change from North Ave to where the proposed location of the site. It's almost a 25 foot drop from North Ave. If you are actually on North Ave looking down the proposed driveway, the building is set back almost 400 ft. from the entrance from North Ave, you would barely be able to see the roofline of the building on the second floor. We feel that it's far enough off of North Ave and behind the existing building down grade that you won't even see the building from North Ave and a lot of the surrounding houses. You may see it a little bit from Tenadel Ave, you'll see some filtered views particularly in the winter. But we would be willing to work with the neighbors to provide some additional screening once the building is constructed and we can verify the site lines. I have nothing else to provide as far as the changes of the mitigation. Certainly open to any questions that the Council members have.

President Michitson: None at this time. Mr. Harb is that the conclusion of the proposal?

Attorney Harb: Just for the record, I would remind the Councillors, although this is a re-hearing on the modified plan, all the original documents and evidence submitted originally, meaning especially the two traffic studies, the independent traffic study and our traffic study by Mr. Hamm, they are still part of the record. All the original letters from the department heads. I wanted on tonight's hearing to reference that. You have had that before. What we want to stress tonight is also the mitigation increase with the \$400,000 and the great reduction, about a third reduction in everything. That is what the modified plan is before you. I believe if you don't have any questions at this time. That will conclude our presentation and would ask you to vote in favor of the modified plan at this time with the mitigation as submitted.

President Michitson: Is there anyone else here that's in favor that would like to speak?

Good evening everyone, my name is Eric Karlstad. I'm a resident at 11 Lakeview which is the corner of Lakeview Ave and Northern Ave. I'm here tonight representing myself, my neighbors, my customers in the community, my friends, to recommend/advocate urge you to approve this project. There are a number of reasons I urge you to consider this project and approve it. Number 1 is that as one of the oldest cities in the Commonwealth we have a lot of senior citizens. They would like to stay in this community but they need to have the resources, the assets that will keep them here as well as their families. People will not, I think when my friends, my family has considered putting people in assisted living we don't want to go to another community. We want to stay in the community where we live. Where perhaps we have lived for decades. That's a strong reason. I know there have been concerns about traffic. Being right on the back way to Plaistow and northern Haverhill, I am very sympathetic to those issues. In fact my sense is that the reality of where we are today is the result of 20, 30, 40 years of development. Here we have a project that proposes to help the city which is tight on funds to mitigate issues that have developed over many years. They are going to help both in improving the road and giving some money for planning, that helps everyone especially those people who live in the community who want to walk in the neighborhood and those kids going to school. Jobs, there are jobs for people in the community who can walk to work or take mass transit are short. We need more. I think one of the bad things about the revised proposal is that we are going to bring fewer jobs. That's not great but I guess it's something that we can all consider and live with. We are increasing our tax base. As a growing community that needs a stronger tax base that doesn't put demands on the school system, here we have a great project that will do that. Also, we have a really great operator. I don't know if any of you have googled this company and see what they have done. See the accolades that they have received in other communities. It's tremendous. It's not like the companies

that are being written up in the Globe, about mismanagement and taking away funds. It's a very respected and acknowledged company. We should give them a break. Jobs, tax base, providing for our citizens. The bottom line is that I strongly urge you our City Council to think about the benefits for the entire community. We need this project. It's going to serve a lot of needs.

President Michitson: Thank you very much. Thank you for staying within our 3 minute time limit for citizens to speak. Is there anyone else that would like to speak in favor? Is there anyone else that would like to speak in favor? Is there anyone opposed that would like to speak?

Good evening Councillors, Ronald MacCleod, 162 North Ave. I'm sure you all remember me. First I have a question. What was this 3 minute, I haven't been informed of this?

President Michitson: For people who want to speak in favor and against. You have a longer. You have equal time to the presenters. You are the representative of the neighborhood.

Ron MacCleod: Okay, I guess my first question is going to be on the actual permit request. I have a letter from City Solicitor Cox stating that he met with the Building Inspector and that they feel that the application was correct. I also have the application from back in November from the Building Inspector. It says that this for a special permit for a congregate care housing on North Ave. He further goes on to say "I have reviewed the proposed (inaudible) plan in building elevation plan for Continental Wingate Development Company for North Ave. The proposal 2 story 90 unit assisted residential living facility appears to comply with the City of Haverhill by-laws, Chapter 255 table of dimensional requirements and density requirements. The addition is to a pre-existing use allowed by special permit". Now, on this it says that Mr. Osborne based his decision on representations given by the petitioner. How is it, what is Wingate licensed for? Are they licensed right now as a congregate care facility or a nursing home? That would be my question. I believe they are licensed as a nursing home. If they are licensed as a nursing home, how is it that they are applying for a pre-existing use for congregate care? They are 2 separate entities. It's not a pre-existing use and it's not an addition. It's an entirely separate building. Addition, is, everybody knows the definition of an addition. You add onto something that's already there. They are not adding onto it. So, I think this whole application for the permit is wrong. Mr. Osborne and Mr. Cox stated that they feel that the determination was correct. Yes, it does meet the table for the dimensions and all that. But it does not meet Chapter 255 Zoning definitions and word usages. This is from the City of Haverhill, congregate care –it's a facility people that do not require the constant supervision. Now, if memory serves me right, this memory care division or section of Wingate's proposal, is going to have 24 hour supervision. They have to because it's a locked unit. How is it considered congregate care if they are going to have 24 hour supervision. It says they cannot have 24 hour supervision. Further, it goes on to say that it defines health care services and nursing homes. I feel that under the nursing home definition, a building housing and facility or institution licensed to provide living accommodations and a combination or personal and healthcare services and a protective and/or supervised environment. This is a protected environment. It's supervised, granted half of it won't be but half of it will. That would be like me coming before this Council and asking for a permit for an office building, for telephone sales but the other half of my building I am going, I'll exaggerate, and store chemicals. But don't worry about that part. Just go with the part that I can get the easy permit for. It doesn't meet the requirements for definitions of congregate care. It's not a congregate care. It's an assisted living with memory care that requires more than what (inaudible). The Office of Executive Elder Affairs of Massachusetts defines congregate care. It does not offer 24 hour care and supervision. I'll give these to the Council so they can look at them. I don't know if you have them or not.

President Michitson: Thank you for that info.

Ron MacCleod: Next, I'd like to address something that I've addressed before. I (inaudible) the fact that this is going to affect public safety. This is going to affect fire services, ambulances services and all that. Last I spoke I cited 49 calls in 15 weeks. I was basically told by a Councillor that I was misinformed and that I didn't have the correct information and maybe I didn't know how things were dispatched or whatever. Well, I have a letter from Fire Chief John Parrow, from January 1, 2015 to December 8, the

other assisted living unit at 254 Amesbury Road, Haverhill Crossings had 204 calls that they responded to. Now if you take the 49 that I said in 15 weeks and you multiply that by 4 by a quarter, that would be just about right. So I think that the information that I had before was correct. I think 204 calls is a lot of calls and it's not a minimal effect that it will have. You build another assisted living complex in this area that is served by an engine company at 16th Ave. they are going to be responding back and forth from Haverhill Crossings to Wingate's. They are going to reduce services to the rest of the city. I don't know if you are aware, if any Councillors are aware of how many times lately this city has gone without ambulance service. Because Trinity has all their ambulances tied up because there has been so many medical calls in this city. We have fire trucks sitting there with firemen sitting at medical calls 10 to 15 minutes waiting for an out of town ambulance but yet we are ready to build another assisted living complex that's going to add 200 plus more calls possibly. Doesn't make sense. Here's a letter from the Chief for those who don't believe the numbers. Next I would like to address the letters from the city department heads. I've looked at all the letters and the only letter that I can find that seems to have as one Councillor put it, the blessing of the city departments is from the Economic Planning. That's the only department. All the other departments seems to write that they have reviewed the plans and they fall within the confines. They don't approve or disapprove of this project. That's not their job so I've been told by some departments. Their job is to look at the plans and to see whether they meet the requirements for the city. I don't know where this is coming from that they have the blessing of all departments. I don't see that as being true. It's not true. They are doing their job by reviewing the plans period. We got to the traffic. That's been an issue all thru this. Hasn't been the only issue but it has been an issue. Back in December when we were in front of this Council, letters were received from department heads. A letter was received from the engineer, engineering department Mr. Pettis. This was dated Dec 1, 2014, in was in regards to North Ave. congregate care housing special permit. In the first paragraph it says "the city has had the North Ave/Marsh Ave intersection by a traffic engineer and improvements will be undertaken in 2015 with city funds Chapter 90 funds to improve the intersection". I've lived there all year, I haven't seen any improvements. I'm wondering what happened to the money that was sitting there for these? What happened to the project and why is it that we should sit here and now believe that these extra funds are going to be used? Because we were told something was going to be happening in 2015 but it never happened and now we are being told other improvements are going to take place because Wingate is going to give us money. The \$400,000 that Wingate is promising may never exist. They could go in front of the Planning Board unless somebody knows something that the rest of us don't know, they could go in front of the Planning Board and the Planning Board could say we need these other mitigations and they will cost \$390,000 and the city will get \$10,000. I mean we are counting on this \$400,000 because it looks so great. Oh my God, we are going to get \$400,000 we can do what we want with it. You can't count on it. You don't know if you are going to get that. Unless Mr. Pillsbury is here and he can tell you right now that there's no other mitigations then how you count on \$400,000? To me this \$400,000 is nothing more than a \$200,000 what seems like buyout. They are trying to influence this City Council by giving it \$200,000 cash requested by the Mayor. How is this even, it just doesn't even seem that it would be ethical? It seems like there would be an issue where, to pay \$100,000 for a building permit and \$100,000 for an occupancy permit, that's basically saying what they are going to do. When they get their building they'll give us \$100,000; when they get their occupancy, they might give us \$100,000 if it's still there. That's buying your permit, as far as I can see and that sounds like basically a buyout. To use any other better word I'd say bribery but I don't want to accuse anybody of that. It doesn't fit. It just doesn't look right. They want to influence you Councillors by saying we are going to give you all this money. Lastly, I'd like to ask every one of you Councillors up there to stand by your words. You all gave reasons that you voted this project down back in February. Every one of you gave a reason. You had to. By law you have to give the reasons. I'll just start with you Mr. President, you voted against the special permit because major traffic and safety improvements beyond the scope of the Wingate project are needed before any further development takes place. I don't see any traffic improvements. There was supposedly a plan that was even funded for traffic improvements but it never took place. So if we use your words, I don't see how you could vote for this project. Maybe there is something else but your original thing was before any further development takes place. Every Councillor used traffic mitigation. Well right now, there has been no traffic mitigation. There's been nothing but we are going to put this project in without it. We will worry about it later. It always seems like we worry about things later and later and later. We have Councillors sitting up here that won't even drive on North Ave cause it's so bad. But, we are going to

possibly allow more traffic. Granted they say it's only 200 cards or 188 whatever it was. I don't think, I think that could be understated. They've told us over and over they are going to have functions where different groups can come in and use the facility. Does traffic take in effect those conventions or whatever they call them or meetings that could place? I don't think so, it just counts the number of traffic for the employees and people coming and going. I heard the last speaker get up and say jobs. Well Wingate has already said that they are not going to guarantee these jobs to Haverhill residents. There's 35 jobs. They are not going to guarantee any of them to a Haverhill resident. They are not even going to guarantee the work to be done in the building, construction to be Haverhill companies. It's going to be whoever they find that's more qualified and whoever fits the bill for what they want. So to use jobs for a reason for this, no, because they could come from Salem, they could come from Plaistow, they could come from anywhere. It's not going to benefit people in the city. Go onto a couple of the other Councillors, Councillor LePage, he actually cited Chapter 255, 80 section E, and he says, "I did not vote in favor for this special permit as I believe the requested use will impair the integrity and character of the district or adjoining zones". Downsizing this project is not going to change affecting the area. It won't change it. Councillor Macek also brought up the same thing that it's a quality of life issue in the neighborhood. No matter what you build, the quality of life will be affected. Abutters property values will go down. It's a given. I hear Attorney Harb say that they will do this and they will do that, well, if abutter's property value goes down, is Wingate going to compensate the abutters? Of course not because they couldn't do that. It's going to and for what? So they city can get their hands on possibly \$400,000. There needs to be other things done in this area besides building. Build build build. We hear all the time, oh my God something is going to go there if Wingate isn't there something is going to go there. Well nothing has gone there in almost 20 years now that that property hasn't been used. Nothing's gone there. There is nothing there. Could something go there? Yes. Could something go anywhere in the city? Of course. That's why we have zoning laws. There is not going to be a drug rehab facility there, it's not allowed. There's not going to be certain things there, they are not allowed. According to Councillor Daly O'Brien, she doesn't support this project because it doesn't belong there. It doesn't belong there. So if it doesn't belong there, she said "we could not put a nursing home there now if we wanted to, that's why I'm not for this project there, it doesn't belong there". Nothing about the size, nothing about anything. It doesn't belong there. Like I said, I am just asking you Councillors, stick by your word, have some faith in the judicial system. We sat here meeting after meeting because it was delayed and this and we always heard that it was due diligence because we didn't want the city to have something come back on them. Well it's come back on us. That didn't work but you gave a reason, if you didn't think the reason was good enough back then you shouldn't have given it. Because it was back then, it's good enough now. Say no, let the judge decide this. If for some reason the judge says they can have their 90 units then I guess that's what the neighborhood is going to have to live with. They are still going to have to do improvements because it's in the original plan. The only difference is the city is not going to get \$200,000. They are going to get more tax money because it's going to be a bigger building and that's guaranteed. The \$200,000 isn't guaranteed. This is just back and forth. We shouldn't be here again. This permit shouldn't have been issued. This shouldn't have even been requested. Like I said somebody needs to address the situation where this permit is wrong. It is not an existing use, it's not an addition. If you go forward with it this way, I think you are opening the city up for further legal action from other than Wingate. It's wrong. It's wrong the way it is written. Maybe the City Solicitor can get up and explain it because it was his letter that I am telling from.

President Michitson: At the appropriate time that question will be asked.

Ron MacCleod: I guess that's it for me. Don't forget, I'd just like to ask, stick by your word.

President Michitson: Is there anyone else that's opposed that would like to speak?

Good evening, my name is Patricia Barson, my husband Mark and I live at 134 North Ave. Lived there for the last 36 years so we've had 36 years of traffic studies just to let you know. Ten months ago I stood before you. I believe it was February 24, if I am wrong, please correct me. I stood before you people to attempt to persuade you to oppose Wingate's proposal to increase the number of units on North Ave. Having lived on this part of North Ave as I said for 36 years, I can tell you first hand that this street is

extremely busy at any hour of the day or night. At a minimum, it's treacherous. In addition, emergency vehicles fly by this area many times a day along with buses and now fuel tanker trucks. There are a few newly erected speed limit signs along the stretch of North Ave within the last maybe month. However, they do not alleviate the traffic problem or the speeding issues. Once again, I am here to enlighten and attempt to persuade the City Council to oppose this addition to Wingate. The number of units they are proposing, to me, is irrelevant to the issues I have addressed. Whether there are 90 or 64 or 34 this number will compromise the safety of our neighborhood and especially the children that are living here. However, in my estimation, you need to weigh the options here and decide which is more important in the long term, the safety of this neighborhood or the expansion of this facility. Try putting yourself in our shoes. Would you want this done in your neighborhood? I doubt it. Some of you have placed campaign signs on our lawn. Why not stop by for a visit and see and hear for yourself exactly what my neighbors and I witness on a daily basis. Years ago an ordinance was passed to prohibit trucks over a certain weight limit driving from Walnut Square School to the intersection of North Ave and Marsh Ave. My husband and I addressed this issue with former Councillor Mike Bresnahan who was very instrumental in this matter. We requested the signage due to the safety issues for our children as well as the children in the neighborhood. The signs are still there however the ordinance has not been enforced in close to a decade which leads me my next statement. Wingate's suggestion of installing rectangular rapid flash beacon lights in conjunction with radar speed signs seems as futile as the signage about the truck ordinance that was passed over a decade ago. These proposals will not decrease the amount of traffic in the neighborhood. However they will increase the congestion in the area. In addition, there are very few sidewalks. Furthermore, the intersection of North Ave and Concord Street where the proposed addition is to be built has no sidewalks. I realize the city and Wingate are proposing to add sidewalks, however, this still does not alleviate the amount of traffic that passes thru this neighborhood on a daily basis. During the morning and afternoon commute times, the traffic patterns are even worse since many residents in New Hampshire use North Ave to access 495. In addition, during commute times once traffic gets backed up on North Ave commuters use side streets such as Concord, Crosby, Oxford, Winona etc. as short cuts to access 495 more quickly. This already impacts the safety of all the children that either walk to school or wait for their busses in this neighborhood. Furthermore, crossing the streets in these areas is extremely treacherous regardless of the hour of the day. Moreover, the crosswalks serve no purpose when you factor in the number of vehicles and the speed at which they are travelling. Several Councillors live in close proximity to this area and they would also be impacted by Wingate's proposal and recognize the impact it would have on this neighborhood. I don't believe anyone is opposed to a nursing home or an assisted facility. As a matter of fact my parents and my in-laws resided in facilities such as these so I do understand the need. However, the problem is the location. Not what they want to build. The area is just not conducive to this facility. Unfortunately, after reviewing the minutes from December 1st, I understand that Continental Wingate and the city "have been advised to try and work a resolution prior to trial". I respectfully disagree with this advice. I realize this matter is in litigation. However, if we comply with Wingate's request now, what will they demand next? I understand you are trying to reach common ground. However, this is not the ground on which this should be built. Unfortunately, ladies and gentlemen, I cannot cast my opposing vote for this proposal. However, you are elected officials can and should vote this down. Furthermore, my husband and I are among the 232 people that signed the original petition to stop Wingate's plan. It is truly a shame that our collective signatures are not sufficient enough to bring this proposal (tape change) and I firmly believe that Wingate's proposal would make matters worse, far worse in our neighborhood. Would compromise the safety of the children and would be reflected in the resale value of our homes. Please process what has been shared with you for those of us who live and breathe what occurs and will continue to occur in this neighborhood. Wingate's proposal would only exacerbate this matter. Please let's work toward a common goal which is the safety of our children and neighborhood. Thank you for your time and understanding in this matter.

President Michitson: Thank you very much. Is there anyone else that is opposed that would like to speak?

Good evening, Adam Giviovanni, 110 Crosby St. ext., there is a whole nother set of issues that would come along with this project if it were accepted. I would like to bring to everybody's attention. Wingate and Mr. Scott Schuster, present CEO, has a pretty extensive track record of using general contractors on these projects when he expands or builds new facilities, who participate in the underground economy.

What I mean by the underground economy, is general contractors that hire subcontractors who participate in tax insurance fraud. They misclassify their workers, pay them in cash, this allows them to not pay into state and federal tax brackets, which essentially translates into Wingate and Mr. Schuster putting more money into their pockets. We talked about creating jobs, this would be a short term issue, I would say that if Wingate is serious about creating jobs in Haverhill and doing the right thing for the city I would ask that there is some kind of stipulation that says that Wingate and Mr. Schuster would hire a responsible general contractor, one that doesn't participate in the underground economy. Two contractors that Wingate typically uses is Procon and Callahan. They are notorious for these types of building practices. It really undermines the whole economy. They bring in workers from out of state that aren't skilled, they are not trained. They don't have any safety training. Those are the kind of people that you will have building this project. There's a lot of skilled tradespeople who live in the City of Haverhill that are trained and are highly skilled and would like to have an opportunity to work on a project like this. I can tell you that if this issue isn't addressed and this project is pushed forward I can pretty much assure you that the same practices that Wingate uses on other projects will just flip right over to this one. It's a problem because it allows Wingate to do these projects for a lesser dollar and the profits go right into Wingate's pockets. If I were Wingate I would be looking more at rehabbing the existing structure that's there. I don't understand why they need to add onto this building. If you look at the building from the outside it's not very aesthetically pleasing, it's getting pretty old and dingy. I'm not going to rehash the whole traffic thing. The traffic on North Ave is a nightmare. I live on Crosby St. but that is the street I use to go in and out and the traffic is always horrible. I don't see how really expanding the project would make it any better. Even with improvements to traffic to the infrastructure it would still be pretty bad. Just to reiterate, Wingate and Scott Schuster's business model really is profits over people.

Councillor Macek: Mr. President, I think the defamatory remarks have got to be stricken.

President Michitson: I was thinking the same thing.

Adam Giovanni: I will take that back. What I am telling you, this is his building practices.

President Michitson: Why don't we discontinue that train of thought completely?

Adam Giovanni: He's going to do the same thing if it is not addressed. It's happening right now over at Tenney Place apartments.

President Michitson: Well thank you very much. Is there anyone else opposed that would like to speak? Is there anyone else that is opposed that would like to speak? We now allow a 5 minute rebuttal for each side.

Atty. Harb: I am not going to take the full 5 minutes because some of my team here may have some more details to add to the rebuttal. I am going to answer the issues that I can respond to. First of all, the application is not for a pre-existing use. The application is not for an addition to the building. Mr. MacCleod is wrong, I know he is relying on that old letter from the Building Inspector. I reviewed the application with the Building Inspector and I think you can see it does not say those things. Why do you have the new February letter from the City Solicitor who is here and I assume if you need to ask him the question, you can. The requested use we believe falls under congregate care. Although there are people there, it's not the level of care of nursing home or full care, so it falls under congregate care. The Building Inspector made that decision. I believe that is hence why that new letter from Mr. Cox came about in reliance I believe upon questions brought up by Councillor Macek. Like gee, do we have the right kind of application. So I think we've answered that. I won't address the ambulances. The city department heads. I said exactly that the Planning Director was in support of the petition and no other departments had any opposition. Mr. MacCleod said the same thing, nobody had any opposition. We meet all the requirements and that's why we are suggesting that we should get this permit. The traffic, yes, many of you, as I mentioned originally said you needed more expanded use beyond traffic where we were. Some of that \$200,000 when I last met with Mr. Pettis, the City Engineer, who is here, can be used to immediately put in a turnaround or round about or rotary as we used to call it when I was younger, up at that intersection

of Marsh and North Ave. That would directly slow down the traffic according to Mr. Pettis and our traffic study people. You wouldn't have to wait for the city to get money for anything so we say we can make immediate response to that. I hesitate to say, why don't you take a chance and roll the dice and let the judge decide if you want 90 units. I think we are all looking at the best for City of Haverhill hence the applicant makes this modified proposal. We feel the modified proposal is something that you could live with the added mitigation. I believe that our traffic calming efforts has been documented efforts will slow down the traffic. It will slow it down, you might see the car a little longer but it aint going to go as fast because of all the modification. I am not sure if any of my team wishes to address anything. Thank you very much.

David Feldman: I just want to clarify what memory care and assisted living is all about. For the record, congregate care/assisted living is licensed by the Executive Office of Elder Affairs. Once you get into the higher acuity of care you move into a new oversight and that's thru the Department of Public Health which is what the nursing home is licensed under. With the memory care, yes, it's a secured unit. But, there is no nurse station. There isn't 24 hours of care. They have, like assisted living, they require so many hours of care during the course of the day whether it's queuing or assistance just like assisted living resident with bathing or getting dressed. There is not a nurse on staff 24 hours a day. All the support is done by certified nursing aides. Once they reach a point where they can no longer function in that environment or need more care than we can provide, they transition into a skilled environment where they are provided 24 hour of nursing care. One of the other things it's important to note, we don't administer medications. We give reminders for residents to take their medication but we do not administer medications. I just wanted to make that clarification. Thank you.

President Michitson: Thank you very much. Now a 5 minute rebuttal.

Ron MacCleod: I'll try to address a couple of things that I just heard. In the very beginning Atty. Harb said all the pre-existing letters from the department heads still pertain to this project. The letter from the Building Inspector specifically says the addition is to a pre-existing use allowed by special permit. I don't know how he is trying to get around this or why he's trying to get around this. That what it says, if anybody wants to see it, I'm sure you all have it in your packet. It says "the addition is to a pre-existing use". Number 1 it's not an addition, number 2 it's not pre-existing use. I don't know how we are getting away with saying no that's not what we meant. No, I met with them and we are doing something different. This is a letter he told you earlier was still in play. I don't know how we are going to address that one. I am not surprised he doesn't want to address the ambulance issue and the fire issue. Of course they don't want to address that. That doesn't look good so they are not going to address that. As far as the congregate care and that, I gave you the definitions and the word uses. Under health care services, it says "services relating to the provision of health care including any of the following" and half way down it says "assisted living services". This is a health care service, they are an assisted living complex and under the definition in Haverhill, I don't know what it says with the state, but in Haverhill the definition, 255 zoning definitions, it is considered a health care service. Memory care, I believe, maybe Councillor Daly O'Brien can verify this, cause she is in the health field, I believe the people that are going to be working, the employees that are going to be working with these memory care patients or residents, whatever you want to call them, I believe they have to have special training skilled training in order to deal with these clients the residents. If they have to, then that's a skilled environment. They are not just CNA's, they're skilled at a specialty. The specialty is memory care. If they are skilled it falls under a nursing home because they are skilled. Like I said before, they are going for the easy permit for congregate care and they are throwing in this other thing on the side that has more restrictions and they don't want anybody to look at that part. This is not a congregate care and the permit is not correct. I don't see how I'm reading this wrong. Yes, the City Solicitor, I hope he gets up here and explains this. Yes, they do meet the density requirements and the dimensional requirements. But nowhere on here and nowhere in the letter from Solicitor Cox does it say they meet the definitions for zoning. Nowhere. Thank you.

President Michitson: Thank you very much. With that, I now close the hearing. Council what is your wish?

Councillor Daly O'Brien: Well, first of all, I want to say something. I think obviously, the neighborhood is not going to accept anything else but us saying no. That's very clear. But, in the meantime, the gentleman who has been doing most of the speaking for the neighborhood clearly does not understand what assisted living is and yet he uses my name as someone who should understand, and I do understand, because we have the same thing in many many assisted livings. They have a memory care unit. And a memory care unit is staffed by CNA's and what they do is they supervise and they queue and they make sure that the people are kept safe and when someone with memory impairment is no longer able to be safe at that environment, they go to the skilled level where they need to have more nursing oversight. I haven't really appreciated the way he's interpreted what assisted living is vs. what skilled nursing is. He clearly doesn't understand what he is reading. So I just want to start out there. Secondly, I have questions for the proposal group. I'd like to know what you did to reach out to that neighborhood. Did you try to reach out to them directly? I am not sure. I haven't heard that anybody met with you. I am not sure what was done, not just because of that one person who has been speaking. I am thinking of everyone else in the neighborhood because I am hearing that they really haven't had any contact.

David Feldman: The Mayor actually had a neighborhood meeting.

Councillor Daly O'Brien: But what about you?

David Feldman: We have not gone any further with the neighborhood.

Councillor Daly O'Brien: And that was my biggest problem with what happened when you first came. That clearly, he is not the only person. He is not the whole neighborhood. But I am not sure they you got a lot of the people on board. That had to be done by you, not the Mayor. The Mayor is the City. That's like us doing it. It's not the same and I think that that was a misstep then and it's still a misstep. It doesn't mean I don't understand what you are trying to do. I certainly do. I totally support the concept and I did then. I just felt that you hadn't done what you should do for that neighborhood. That's really all I've got to say.

David Feldman: I understand.

President Michitson: Thank you very much Councillor.

Councillor Ryan: Just to put this matter before the Council, I want to move to approve the amended proposal that is before the Council.

President Michitson: Motion by Councillor Ryan seconded by Councillor Daly O'Brien. Further discussion.

Councillor Scatamacchia: I am not sure what City Attorney I should be addressing the questions. How did we get to the remand order of land court? Was it a judge that suggested that you come back before us or was there something negotiation between the developer the judge and the city? I don't really understand the process.

City Solicitor Cox: Mr. Vice President, the reason why we had to go to the land court and get their permission, if you will, to remand this back to the Council was to give you the legal authority to act. Because once that appeal is filed, the jurisdiction is with the land court. When I came before you earlier this month, with the suggestion that the Wingate group wanted to come back with a modified proposal and the Council indicated that that was something you were willing to hear, we then went back to the Land Court thru a joint motion and asked them to remand it back to you so you would have legal authority to act on this tonight.

Councillor Scatamacchia Was tonight's plan included there or was it

City Solicitor Cox: The court is not aware of what the modified proposal is. That was never provided to them. We just asked

Councillor Scatamacchia: So as far as they are concerned, it could be the original proposal? As far as the court is concerned.

City Solicitor Cox: Right, they are aware that it was a modified proposal. That there was something different about it from what was originally proposed but not with any specificity.

Councillor Scatamacchia: I have said this before. I don't know what a better process would be but it seems that we go backwards some times. I think people sometimes misunderstand what really the responsibility of the City Council is. What we are saying to a developer, go forward. And I think the conception is from the public is that all of these department, in other words, what they are going to do is what they said in the special permit submission and they don't realize that they have to go to the Planning Board, God knows how many times. Maybe even go to the Appeals Board or Conservation or any of the other boards that really are going to define what the project is going to be and what the restrictions are or lack of restrictions might be. I don't know what a better process would be. I just want to assure, no matter what happens tonight, that we don't have the final say. Secondly, being around as long as I have, I can think of a few times that a developer has brought the city to court and I can't think of one time that we've won. Nothing against you, but when you go to court you have every city department that says there isn't anything wrong with the plan, what's your defense?

City Solicitor Cox: I think sometimes, people look at it sometimes going to court as an all or nothing proposition. Often times it isn't. If you look at the situation that we had on Amesbury Road, where the person wanted to build within 500 feet of Kenoza Lake and that went to court. Although we were able to provide a lot of the safeguards and the protections that the Council had been looking for in the course of the hearing, we were not successful on that. Although nothing has happened down there, I mean I think that's an example of sometimes you have to be careful about the parameters in which you consider these things. Sometimes you get results that you don't necessarily want. They provided you with another opportunity to take another look at this tonight. I different proposal, modified proposal. But I guess I would be the first to say nothing that happens in court ever surprises me. You go in thinking that you have a pretty solid case and you find out differently. I think all of that is always something that we have to take into account. I can assure you in terms of this case and the litigation that we have moved this forward diligently and to the best of our ability to defend the actions of the Council as taken. And we always do.

Councillor Scatamacchia: I hope you didn't misunderstand

Solicitor Cox: I didn't take that

Councillor Scatamacchia: I certainly have a lot of faith in you, I really do as I have had in the other Solicitor's before you. I think you provided a better explanation what could happen in court than I did. Please don't take offense to that.

Solicitor Cox: None at all.

Councillor Scatamacchia: Thank you.

Councillor Macek: I am just going to hit on a couple of things that I'd like to bring up for maybe consideration of my colleagues and also some other things that I think for clarification should be stated. I followed this project closely. There are some things that I still think are not right about the project but also about, we are going to look like, and I live in that area, I live about half a mile down Concord Street, right across from Whittier School. I turn out of Concord onto that section of North Avenue and go right back by the proposed new entrance multiple times a day coming and going. My way to 495 is down North, go down Marsh and head to the highway. Do it all the time. That's a quiet neighborhood at night and certain times of the day. I think the level of design and signage is excessive. I think it's overkill. I

don't support it. Some of the things that Wingate is trying to get us to agree to, as they are throwing in to sweeten the pie in a way, I think are going to look ridiculous. They are going to take a residential neighborhood, especially in the evening and it's going to be like all of a sudden you drove onto Las Vegas boulevard with the signs flashing and all kinds of electronic speed signs. Where they positioned the one speed sign it's right after a stop sign, nobody is going to be going fast there anyway. And a roundabout, are you kidding me? I'm going to have to start going around a rotary to go straight that I have been doing for 36 years that I've been on Concord Street? That's ridiculous, if you want to try out the new roundabouts, go down to Merrimac Center, try that one out. Especially on a night like this when you've got snow and ice and everything to go around. There was a time when rotaries, we had one in Lafayette Square, they were the way to go, they designed them and put them in. Then all of a sudden take them all out and now we are back to them again. The expert traffic designers are once again making them self important by redesigning things. It's kind of like fashion. But I think we don't need to do some of those things. If this project is going forward, I would like to see the full \$400,000 allocated for use without city use without strings attached at any level for any new requirements from Conservation, Planning or anything else. It's a \$400,000 payment.

Councillor Ryan: I'll second that motion.

Councillor Macek: Alright, I'll make it as a motion. So that at the appropriate time we can vote that.

President Michitson: Do you want to discuss the amendment now?

Councillor Macek: No, Councillor Ryan thought it should be a motion, I'll hold off if you like

President Michitson: Why don't we go back. Very good.

Councillor Macek: I am going to go on and say the road safety improvements are excessive and overkill. I also, during the initial hearing, and some of you that were here may remember, because it is a neighborhood and especially at certain times of the day it feels like a residential neighborhood. Sure, the Wingate facility is there but I guess we've gotten used to that. Your proposing again, in your plans, and I spotted them when I reviewed them and they are here again tonight. If you go to your new plans that you passed out tonight, you have a nice big Wingate almost mini billboard that you want to put on North Avenue at the access way which is 400 plus feet away from your facility. Then when you finally get to your facility you are proposing another fairly large introductory sign. I think the Council agreed with my suggestion initially, I hope maybe tonight we can also vote that there be no additional signage at what I would suggest what might be called Wingate Drive and that you get a nice green street sign just all of us live on streets with street signs. I think that's all you need to get people into your facility. Because you'll effect the integrity of the neighborhood by once again placing a large commercial sign that you would find in a business park or someplace that is looking to bring in loads of people to find their building. It's advertising too which I don't think is necessary, you already have a large facility with lots of signage on it, in front of it and around it. That would be another motion that I would like to make.

Councillor Barrett: I'd second that.

Councillor Macek: Another point that I would just like to say, I've spoken to some of the neighbors, there's definitely, and this hasn't made it thru Conservation yet, I would like to have maybe somebody at least acknowledge this from the design team, that there is going to be zero impact of water runoff from this property onto any abutting property. I know that's the law. I am looking at your drainage, I'm looking at the outlets to probably holding pools, they are right on your borderline. If they should ever overflow they are into the neighbor's property. I'd like to have that at least considered. I am not in that department but I've been around long enough to know maybe what to worry about. I'd like to make sure that we have a guarantee that there will be zero impact of any runoff onto any abutting properties. That was also brought up during the first hearing and the project without question in my mind has the potential of diminishing the future appreciation of property values throughout the regional area. That's why I don't want it to be seen. I was happy to hear you say it is 400 plus feet down the road, you can't even see, it's

going to be dropped down, it's lower and you won't even see the rooftops from the street. That's what I am looking for. That makes me feel better about this project. I don't want it to be a giant building that everybody's going to go, oh, look at that. I'd like to have people that have a reason to go there, to be able to find it and go there and utilize the facility. I don't think you need to have anything more nor do you desire it, I'm sure. The only other thing that I want to say is that I have somewhat discussed with Solicitor Cox and some other people, the language and the definitions. An attorney that goes into court has only the tools that he or she is given by the codes by the ordinances and by the laws. On this one, we've got a battle to fight and I think that I'm not sure that we have all the weapons that we wish we had. I'd just say that my decision tonight is going to be based upon something that I say every once in a while, be careful what you wish for. Thanks. Want those motions now?

President Michitson: Why don't we wait and we'll come back to you. Why don't you wait until the amendments are made.

Councillor McGonagle: When this last came around, we downed this 9 to 0. My concern was definitely for the folks in the neighborhood. I live around the corner so I am very close by to this. I am on North Ave just about every day as well. I work in Haverhill so I am around the city quite a bit. I know there's a lot of traffic there but there are times like Councillor Macek has already pointed out where it's a quiet street and can be. I was very concerned about, I didn't think there was enough traffic mitigation. I didn't think there was enough attention paid to, I think when we were here we were going to get one side of the street with sidewalks and the other one was going to be left in our North Ave redesign we'd be able to handle that. I am pleased that if we decide to go forward with this, out of that \$400,000 for mitigation we have sidewalks. We talk about the safety of the kids, them walking down North Ave to go to Concord down to the two schools, Whittier and Pentucket Lake. So that's good stuff. I think a pedestrian activated crosswalk there is very responsible and will be helpful. Those are the things that I value. I also value that the moving from the very dangerous entrance to Wingate right now, up for better site lines is going to alleviate a lot of awkward situations right at the end of Concord Street. I think that's a safety issue, we did have a fatality there not that long ago which I think is based upon the confusion in that little area there. So I think that's a benefit to the neighborhood and really clears up a safety issue in that area. I will address Mr. MacCleod's and Chief Parow's letter of 2004 ambulance activity at the 110 facility, but, what you have to remember is the Fire Department does do dispatch for Trinity, so this is dispatches to that location. It's not emergency dispatches. This was from the Chief of Police last time. Mr. MacCleod you can shake your head, I am just using it. I am not an expert, this is what I was told last time. Maybe you are an expert, I'm not. But that's what I believe, we dispatch so we count them all. I think when the Chief of Police will tell us that he is not concerned about the additional units in this area, even when it was 90, would over tax our system, I am going to take him at his word. The other thing I believe, I think this is a good thing to have in Haverhill. I think there's not enough of these assisted living units. I have relative that are in other cities in these things and they are wonderfully put together. I don't believe this is going to be detrimental to the value of neighboring homes. We have the facility that was built right down the street a few years ago. I don't believe there's been any deterioration in the values of the homes around the facility. We can say there might be, that could happen. I can't tell you absolutely won't happen. I think the way it is tastefully done, put off to the back, I can understand about not having a big sign up there. I am okay with that. I think we have an opportunity for some compromise and I am listening. Thank you.

Councillor Barrett: Councillor Macek and Councilor McGonagle covered many of my questions. I do have just a couple that weren't covered. This plan calls for sidewalks on the west side of the street which is the Wingate side. Would it be up to the city to put sidewalks on the other side and that would be taken care of? Someone said at the last meeting the grade wasn't right for sidewalks. I just wanted to know if anybody, maybe John would know.

John Pettis, City Engineer: Yes, it certainly is. When this project was in front of you last February we were looking at it. It's certainly easier on that side of the road. There is a little bit of grading issues. When we go forward with the North Ave Transportation Improvement Project we would certainly be having sidewalks on both sides. It might require some small wall at the back of the sidewalk on the east side. It's doable. (Inaudible) there might be walls involved.

Councillor Barrett: It would be in the plan the city would produce for any improvement on North Ave?

John Pettis, City Engineer: Yes

Councillor Barrett: Thank you John, sorry to put you on the spot there. I just want to clarify if we say no to this reduced plan and the city continues to court, the court will be deciding on the 90 unit building.

Solicitor Cox: Yes, that would be correct. Essentially what happened with the litigation, is it's on hold of sorts at this point pending a decision with regards to the modified proposal. If the modified proposal is not acted on favorably, then everybody would go back to the positions they held before this came back to you.

Councillor Barrett: Thank you.

Councillor Ryan: This has been a tough issue for me, because initially, with my colleagues we opposed it because of the size at that time. Given all of the facts that have been laid out here, with the court basically looking to see if the city will compromise to get this out of the court. As Councillor Scatamacchia said, we have a pretty poor batting average with courts and it's no reflection on our legal team. Once you get outside of the political scene and you go down in Salem Mass., they look at things much different. Anyone in the court system and I appreciate that. Like Councillor McGonagle and Councillor Macek, I live right on Concord Street. I go down there 6 or 7 times a day. Come down to the end of Concord Street and I look at Wingate. I think it's a fairly attractive building. I know somebody said it didn't look that good, but I think it's a fairly attractive building even to this day. It's rare, and I want to repeat, it's rare that I see a car come out or going in. A lot of that is because the employee set up is staggered. If you've ever worked in a facility where you have constant care, nobody can leave until they've been replaced and they have a briefing in between. I used to run a prison, not exactly the same. I was the superintendent of jail and house of correction back some years ago, nobody leaves. It used to be staggered. Used to have a correction officer leave and never a group of 3 or 4 at once. It's the same with this type of facility. Again I say, it's very rare, once in a while early in the morning if I leave around 6 o'clock, somebody goes to work in there. They come down, take a left and go in the access road. I go down, I take a left or right, either way. That facility, even with the additional beds, even if you put in 300 beds, would never impact the traffic on the highway like New Hampshire commuters and Haverhill residents going up to shop and beat the sales tax and bottle tax and everything else in New Hampshire. So there's two migrations going both ways. You can't blame the New Hampshire people if you go upper Main Street, it's a total gridlock every morning. Smart drivers with take the North Avenue way and it's the same going home at night. They do the same thing. It's the same with the shoppers. If you are going up to Main Street, starting around 1 o'clock in the afternoon it's gridlock all the way up probably until 6 or 7 or 8 o'clock at night. Everybody takes North Avenue to beat it. I really don't think the number of cars coming and going from that facility should even be considered. It's going to be so minor. There are people on that street that probably get more traffic going in and out of their own yard. I think the facility, and somebody brought up the issue of whether or not they are currently engaged in the kind of dealing with people with dementia, it sounded like they were saying this is a regular nursing home. I go there on a regular basis to visit a relative who have very short term memory loss. He is in a locked unit. I look around, not that I check on everyone who is there, but it looks like most of the people there are kind of in a unit where they are locked in. You can't get out. There's a station there and everybody is watched on a regular basis. I think they are kind of doing that right now, I may be wrong, but that's my own personal experience. There are no other proposals, I know that somebody on the Council said at our initial hearing, we love this facility. I think everybody said it last time and I will say it again tonight. We know how desperate the need is for beds. Anybody in this audience, anybody viewing that's had to put a person in a nursing home, it's extremely difficult. I know situations where people go down to the Blackstone Valley, that's down towards Connecticut, below Worcester to get a family member in a facility. Then of course you get the different skill levels like people with memory loss who have to be secured in a locked unit. There aren't a lot of beds around. Sometimes you have to go a great distance to find a bed. They don't build them because they are extremely expensive. I had mentioned to the contractor, I think last time, I love your

unit, I love what you are doing. Why don't you build a separate new facility in Haverhill? Well the cost is very extreme. That's why you don't see anyone proposing this type. The reason this works for this particular group is because they are adding on more or less. It's going to be a free standing structure but the laundry and the food service and medical service, those types of services, maybe even utilities are already in place so the cost of construction is going to be a heck of a lot cheaper and more cost effective. That's why we are getting a proposal at one time 90 but even 64 more beds in Haverhill. I think that the general public, if they had a chance to vote on this, listening to it on the ballot, and with all due respect to the neighbors because I am one myself. I don't live next door, but I live in that area, they would overwhelmingly support this because they know there is a real need for people who have memory loss who are looking for a safe, clean and well run facility. I will go back to my regular visits to my relative. It's a very clean facility, well run, people are all working hard there, tough job. I get to a number of nursing homes for that reason and I have nothing but the greatest admiration for people who work in nursing homes. It's got to be one of the hardest jobs. You have to be a very special person to do that. I have nothing but the deepest respect for that and I know my colleague, Councillor Daly O'Brien is a nurse. Her and I talked about it and she agreed. Anyone doing anything with nursing or any of those types of disciplines, you have to really respect them if you have been in that situation. It isn't for us. We go in for 5 minutes and we come out. They are there 8 hours a day. It's a long, hard, very difficult position. With that, I looked at it. I know the neighbors are going to be somewhat impacted. I really don't think they will be. As Councillor Macek pointed out, the fact that the building is really not going to be seen from down on the other side, it's a real plus. You really can't see it. Now there is going to be a house that is probably going to block the view. The driveway goes next to it. I think it's a very positive thing for the city overall. I think it's a low impact and I think will continue to be a low impact on the neighborhood. It's already there. We need to make it even better than it is. I think this proposal, with the monies, and I agree with Councillor Macek. I would like to see all the money go into, under the direction of the Mayor and the City Council, sit down in a meeting and say here's what we want. Here's how we think this money can be best allocated to offset things in that North Avenue area along with the neighbors and maybe come up with, when it isn't under the lights and all that. We can have a real intelligent meeting about how to spend that money. I'll yield back and wait for the amendments and vote.

President Michitson: Thank you very much Councillor.

Councillor Sullivan: I sit and I listen to everyone's opinion and I respect everyone on the Council and I respect the audience. I thank the proponents for coming back with a revised proposal lessening the size of this proposal. I thank the residents for coming and expressing their concerns again. They may not know it, but they have already had a partial victory because they stopped a 90 unit project. We are now looking at a 64 unit project and we are faced with the proposition of whether or not we support a 64 unit project or we allow this to go back to the court and we allow a judge to decide our fate. I think you've all heard what can happen in court and as an attorney who doesn't go to court often (tape change). We have an opportunity to improve public safety traffic safety in the neighborhood. We have an opportunity to seek a major roadway improvement project, all of North Avenue. A \$5 to \$7 million project down the road. We have money now, that if we choose to support this project, that we could use towards the study to achieve that goal. We are talking about perhaps not utilizing \$200,000 of it to allow Wingate to do their traffic safety improvements and public safety improvements and now we are talking about taking that away and putting the entire \$400,000 under the jurisdiction or control of the city. I have a problem with that. The reason I have a problem with that is because we just learned that we had a project that was supposed to have been completed in 2015 that wasn't done at all. We have a proponent that is willing to do \$200,000 worth of improvements which would have to be done before they can open their door. I have more faith in Wingate doing the \$200,000 in traffic safety improvements before they open their doors than I do in the city unfortunately getting it done in that timeframe. So I won't be supporting throwing all that money to the city and taking the \$200,000 off the table to be used for specific traffic safety improvements proposed by Wingate. Specific traffic safety improvements that I might add, we asked for at our last meeting when we were here with them. We actually asked for these things and now some of us are saying perhaps it's overkill. I don't know how it's overkill when you asked for them at the last hearing. Having said that, I am generally supportive of this project. I am very sympathetic to the neighbors who are here

tonight. I don't have faith that the court is going to rule our way. I will take everyone's opinions into consideration when I make my final vote. Thank you.

President Michitson: Thank you Councillor.

Councillor Daly O'Brien: I'd like to ask the City Solicitor a question. Is it your opinion that the reasons we gave for voting against the project would not hold up in court.

Solicitor Cox: It's a difficult thing to say at this point because we are still in litigation. I am not sure that I really want to talk about that. In the chance that this modified proposal doesn't go forward tonight, then that puts us back into a litigation phase and you know, as I indicated before, our job is to defend the actions of the Council. Whatever action you take, we are there and we are prepared to defend them and will continue to do that. Our position is that the reasons that the Council gave in voting 9 to nothing were sound. That's our legal position right now and we haven't changed that.

Councillor Daly O'Brien: I don't mean to put you on the spot. I just wanted to raise the thought. I just want to add also to my fellow Councillors, there are a few new rotaries that actually are working. One of my favorites is the one on the other side of the chain bridge when you go from Amesbury to Newburyport, it took a 3 way fork in the road and made it work I don't know after I don't know how many years. That was really a set of old fashioned horse paths and cow paths that came together that finally makes sense and are more safe. I think there's every chance that this rotary could be successful and I never cared for the fact that they took the rotary out of Lafayette Square. I thought it worked, that's my opinion. Going forward, I think this is a project that could work. It's a benefit to Haverhill. It's a benefit to our community, our society and I just think it's the right thing. The right compromises have been made and I agree with my fellow Councillor that we should go ahead with the mitigation the way it has been suggested. It was what we wanted in the beginning and I want to stick with it. I don't want to mess with it. I feel the same way as he did that the other project that we hoped we could do in that area never forward this year. It probably couldn't get the right funding, whatever, but I think we should stick with what we've got and I am going to support the proposal as it is. Thank you.

President Michitson: I do have a couple of questions for the City Solicitor. I am not exactly sure of the implications. Something that Mr. MacCleod had discussed with respect to the designation of congregate care or nursing home. Could you fill me in on why that's important?

Solicitor Cox: I think he is referring to my letter, which is in with your packet for this evening, February 24, 2015. I believe I was asked by the Council because the issue had been raised as to whether or not they had listed the proper use on their application. At the request of the Council, I went back and I reviewed that matter with Mr. Osborne who told me that he reviews every application, the representations that are being made by the petitioner on that application. Then he makes an independent decision as to whether or not the use listed for the proposed permit is accurate. In this case, he and I did that. He felt that he had made the right decision. I felt that he had made the right decision as well. I think what's important here, and where some might be getting confused, is that what counts is what is on the application, not in a letter. Because what's on the application is the representation of the petitioner. It's that representation that you are acting on when you consider that in their petition. Both of us took another look at that. We are satisfied. We remain satisfied that that was accurate and frankly, I am just not even clear that the issue is really before you at this time.

President Michitson: Thank you very much. I do have a couple of questions for Mr. Pettis and then we'll go to Councillor LePage and hopefully to amendments. Question, what are we really getting for traffic improvements with this proposal vs. the previous proposal?

John Pettis: I don't really know exactly what's different from the previous proposal. Going item by item, I think most of it, I guess maybe the \$200,000, the extra \$200,000. I think what was proposed before, I think everything you have now was proposed before. The sidewalk, I had requested before, it was in it. The crosswalk at Concord Street I believe was there before. I believe that the speed signs were there

before. I think most of what you have was there before. I think it's just bringing up to a total value to \$400,000 is what the difference is.

President Michitson: The proposer is actually here to answer that. Sorry to put you on the spot.

David Feldman: In the revised proposal is inclusive of all the mitigation requests that the Council members had requested at the last meeting. That brought that initial value up to \$200,000 and then thru the settlement (inaudible) we had agreed to add \$200,000 in cash towards the initial plans for the bigger project on North Ave.

President Michitson: So that's the additional, the \$200,000 in cash.

David Feldman: The additional, that's correct.

Solicitor Cox: Can I just address that for a minute because part of the discussions that we had had to do with whether or not we wanted to have the applicant perform certain improvements, putting in sidewalks, those sorts of things or whether the money was better spent being put towards the design for the North Ave improvements and then getting the state to actually pay for those sidewalks or those specific improvements. I think that's where the discussion has been with regards to whether or not we should go ahead and condition this with the improvements that were provided for before or whether we should revise that and seek the full dollar amount of those improvements plus the \$200,000 which would allow then the city to go ahead and pay for the design portion that's necessary for us to put up first before we can then go to the state to get them to actually do the roadway improvements. I think you were also provided today with memorandum from Attorney Costa to myself. It's his work, not mine, and I appreciate it. But it provided some language for a specific condition that you can impose. The dollar amount is blank so it's up to you whether you make that \$400,000 or \$200,000. In any case, we did want to provide you with that language so that there would be conditions that you would have available to you to incorporate in any action that you take.

President Michitson: But we are still getting all of the initial mitigations from the initial proposal in addition to the \$200,000.

Solicitor Cox: Right, the question is whether or not you want them to go ahead and do those mitigations or whether the money is better spent in the design.

President Michitson: I know that's the question. The context for me was what are we actually getting. That's what I was trying to get at. I think I got my answer to that question. What I'd like to do is ask Councillor LePage, do you have any questions?

Councillor LePage: Mr. President I am still here. Unfortunately, the last time I did this I was able to watch you all on live steam but thru HC Media but I'm not, it's like radio here. It's been very informative listening to all this. At the same time my grandson is anxiously waiting for me to go back and do some more playing with him. Listening to all the opinion of folks, I had a couple of questions myself. One of the one's that's come up a couple of times as far as the land court. Solicitor Cox mentions, actually I had in my notes here, one of the first time I did a special permit on the Council was concerning Amesbury Road and going thru that I worked an awful lot on that with a few other councilors, as far as putting that in. At the time, I believe, everyone voted it down. It went to Land Court, came back to the Council, the recommendation to work things out, and I believe we put on about 26 restrictions to the permit. With that, as I said I don't know how far along they've gotten or if they actually moved forward with it. That's what we did and I wasn't really happy with that also and what the court would do. One of my questions would be, is saying that the petitioner would go back and still work with the 90, if they have already made a compromise proposal, why wouldn't the Land Court also look at both and see if there is some kind of middle ground. I heard one of the folks talk earlier of common ground, so why wouldn't they do that? Why would it be an all or nothing? I guess just speculation of what Land Court would do, in that regard,

be careful what you wish for, other councilors have mentioned, it's been thrown out there. I am not exactly certain what would be done what not would be done.

Solicitor Cox: The reason the Land Court wouldn't consider the modified proposal is because the action that is in Land Court is based on the denial of the 90 unit proposal. There's nothing else in front of them. That's why the Land Court wouldn't consider it. They've allowed the remand here for a modification for a modified proposal but the applicant has reserved their rights as they are entitled to do, to go back and to seek what they originally sought with the 90 unit proposal. The reason the Land Court can't do that is because it is not before them. What Councillor LePage might be referring to was the Amesbury Road case, there was substantial conditions that were placed on that. Some we were able to agree to with the applicant, some we were not, some which we ended up putting in front of the judge. The judge ruled in favor of the applicant with regards to his right to go forward with his proposal. As to the conditions, some he allowed and some he didn't. The basic right to go forward with the proposal to build the judge awarded to the applicant.

Councillor LePage: For clarification, in the first time, I remember 26 was the number, maybe there was more or less, but we put in conditions, we denied it. Went to Land Court, came back to us again. Remind me what happened then.

Solicitor Cox: The Council denied it again.

Councillor LePage: We denied it again.

Solicitor Cox: And then it went back to Land Court and it picked up where it left off when it went back to Land Court.

Councillor LePage: So it never came to us again, or were those restrictions that they had put in the first time were still valid.

Solicitor Cox: No, there was a stipulation that was submitted to the court as to certain conditions which the applicant and the city agreed to then some of the other conditions which we were not able to agree to, the judge dealt with in his final order allowing the applicant to build on Amesbury Road site.

Councillor LePage: Were some of those favorable to the city or were they more all favorable to the petitioner?

Solicitor Cox: Well, petitioners generally don't want conditions. I would say that all the conditions were things that the city was seeking to impose on the application.

Councillor LePage: Let's go back to Councillor Daly O'Brien asked a question concerning, and I understand that Solicitor Cox maybe can't answer because of having to defend reasons and such like that but, I just will go to mine, I'll just speak towards mine as far as that goes. One of the neighbors, Mr. MacLeod mentioned what I had written down and I have that in front of me. I didn't use the whole reason, but I said there are reasons why in zoning for us to give our reasons for and our reason against and I used one of the reason, and what I did. In 255-80 section E, as far as applying for a special permit, there are 7 different reasons we can give for not. I stated number 4, I only stated a portion of number 4. As it was read off, (inaudible) adjoining zoning also includes, nor be detrimental to health, morals or welfare and will be in conformity and with the goals and policies of the Master Plan. I am not exactly certain where we are with the Master Plan but also given another reason above that there is also reason, is the requested use is essential and desirable to the public convenience and welfare. I, myself, am not exactly certain how I will finish with this vote. I do like that Councillor Macek put a few amendments in that. I am usually in agreement with Councillor Macek. We talk about these a lot as far as what we can and can't do as far as zoning. I will wait to hear how the rest of this plays out before I cast my vote. I appreciate having a moment to speak here and you remembered that I am still here. Thank you.

Councillor McGonagle: Mr. President I was just going to ask Solicitor Cox, because we don't have any department heads that have come forth and have said that this project is, they all seem to be in favor. There's nobody that's saying this, I know Conservation still has a little work to do.

Solicitor Cox: Along with Planning Board.

Councillor McGonagle: Yes, so does that play a part in your opinion, I feel it does, does it give the Wingate folks any rights beyond, I know in some of the cases where all the department heads accept a project and we deny it, it gives them some additional rights in bringing the process back to us in a shorter period? You have any of those concerns? Does that play a role here?

Solicitor Cox: I don't know that I think it gives them any rights per se, but I think it obviously gives them a stronger case when you have department heads who have pretty much lined up and said they meet all the requirements of this particular department for whatever our specific areas of concern are. I think that's helpful to an applicant when that happens, yes. Ultimately, on an appeal, it's helpful to their appeal case. I would expect them to be submitting all of those letters in support of their case on appeal.

Councillor McGonagle: Thank you.

Councillor Sullivan: I have a question for Mr. Feldman if he could come back up, please. We seem to have a concern about the now \$400,000 that you are willing to give us. We are concerned that we may want to take that \$400,000 and use it for whatever purposes we see fit to improve traffic safety in the area. My concern is if your proposal is approved, and we don't hold that \$200,000 aside for the improvements that you've already agreed to do, many of which we asked you to do after the last hearing, my concern is if that money goes to the city, we are not going to get all those improvements that are listed here on the sheet that you gave us, in time for the grand opening. I think that would be a disaster for the neighborhood. I think that would be counterproductive to what we are all talking about here. Let's face it, our arguments against this proposal were traffic safety related and we've just been told by the City Solicitor that with all the department heads basically signing off on this project, it helps you in court and the only thing we have going for us is traffic safety. I'm just going to put you on the spot and ask you, would you be willing to increase that stipend to a total of \$600,000 to insure that \$200,000 can be used for immediate traffic safety improvements in time for you to open your doors and also give the city the \$400,000 that they seek to be able to put that money towards the traffic study portion or the planning portion of the greater \$5 to \$7 million dollar project that could down the road and which could very well take us 5 to 10 years before we actually see those major improvements done to the rest of the street?

David Feldman: At this point, with the revised scope of the project and the reduction of units, I would say no to that. We did provide and itemized list of each one of those mitigation items. If you decided collectively what items were most important and you wanted to pick and choose what you would have us do, where you would allocate those additional dollars to, we'd be open to negotiating that and working with the City Council to try and work with you to try and get something immediately for the neighborhood whether it's the sidewalks or whether it's the radar speed signs or pedestrian crossing or some combination of that. I mean we are open to doing that. As far as additional funding we are not in a position to do that at this time.

Councillor Sullivan: You are saying that you are not in a position to do that because the reduced scope of this project there will not be enough money at the end of the day to contribute an additional \$200,000 one-time fee for the City of Haverhill.

David Feldman: Yes

Councillor Sullivan: Thank you Mr. President.

President Michitson: Thank you very much Councillor. I do have another question for the City Solicitor. It seems to me that it would be much simpler if we accepted the funding from the proposer and then at

another time make a decision where to use the money as opposed to trying to do that this evening. Does that seem like a possible path?

Solicitor Cox: I think what you are asking for, is to have a decision made as to whether or not they are going to do the improvements or the city is going to do the improvements made after a period of some further consideration. I think they have already told you what they are willing to do and I think, you have the memorandum from the Mayor with regards to what he would like to have happen with the mitigation money. I think that we would have to form that into some kind of a condition that works for everybody. I do think that's possible. I don't think the Council needs to necessarily make a decision on that particular issue this evening. I will now try to come up with that if that's the Council's wish.

President Michitson: Thank you very much.

Councillor McGonagle: If I look over the Mayor's memorandum to us, I think what the Mayor's thought process is here, he is trying to leverage the money that we have so that we can get state funding. I think it would be important, the \$200,000 that is in detail of the breakdown of the mitigation, I say we go ahead. If we decide that we are going to accept this, that we have them do the mitigations that we asked for and then take the additional money and really leverage the state so maybe pay for the design and that would be our end to get the state to kick in. I think that's what the Mayor is alluding to in his memorandum because that makes sense. We could leverage that money to get more money from the state but there always is that chance that you get placed in a queue that takes longer than it should to get these things done. I would be in favor more of taking the, I'd like the sidewalks when this opens. I'd like to know there is the crossing, pedestrian light and those things because that will be done immediately or in conjunction with the project. That's what we sat here and said we wanted. That would be my concern.

President Michitson: Thank you very much. Councillor Macek are you ready for amendments?

Councillor Macek: I am. I'd just like to mention from my point of view from what I heard Solicitor Cox say that the Mayor, and in his letter to us, has been pretty clear that this is going, we are going to need \$450 to \$500,000 for the city portion of up to a \$5 million project for North Avenue and if there is anything that could make this project fail to go forward, it's if the city can't come up with the money. If we take the Wingate money and utilize it, if it isn't here or someplace else, when I was speaking with the Mayor, he said that, and I think Solicitor Cox said it tonight too, is that we can use the Wingate money rather than have them install lighting and signage and sidewalks to use it to be for development in our portion that we need to put down and then the state will then pay for those amenities rather than having the developer pay for them. Without the money in the coffer, and by the way, I fully support the language in the memorandum, I hope everybody has had a chance to review it and it says, the money can only be removed when it is consistent with the aforesaid purposes. This money isn't going to get used for something else or get pilfered away. It's only going to be used for North Avenue improvements. I just wanted to make that perfectly clear. A few of my colleagues spoke about a project that didn't go forward that we thought should or could, well, I think that by not putting all that money aside, at least initially for a period of time and then we can probably also without the state project, if we don't get it done, we can take that money out in support of the Mayor and do it ourself. There's no reason why, we are not jeopardizing this money. We still have the \$400,000 to use for North Avenue safety and traffic improvements. I think we will get a better bang for our buck and also guarantee that we will have the money earmarked and set aside to go forward should the state give us a green light for the \$5 million project. I would like to move that the modified special permit be conditioned, that the \$400,000 that Wingate is offering for North Avenue traffic and safety improvements be earmarked at \$200,000 at the initial permit for building and \$200,000 at the occupancy permit under the terms of the memorandum. That there also be no reduction available to Wingate in that amount from any future requirements from any city departments or boards.

President Michitson: Motion by Councillor Macek seconded by Councillor Barrett. No further discussion, Madame Clerk, please call the roll.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-yes, Councillor Macek-yes, Councillor Ryan-yes, Councilor Sullivan-yes, Councillor Daly O'Brien-yes, Councillor McGonagle-yes, Councillor LePage-yes, President Michitson-yes. 9 yeas, 0 nays.

President Michitson: That passes.

Councillor Macek: I would like further condition the modified special permit so that there will not be any signage on North Avenue except for a standard street sign for their access to the property, from what I heard tonight, only an easement.

President Michitson: Motion by Councillor Macek seconded by Councillor Barrett. Madame Clerk, please call the roll.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-yes, Councillor Macek-yes, Councillor Ryan-yes, Councilor Sullivan-no, Councillor Daly O'Brien-no, Councillor McGonagle-no, Councillor LePage-yes, President Michitson-yes. 6 yeas, 3 nays.

President Michitson: That passes.

Councillor Macek: Move for passage of the modified special permit as amended.

President Michitson: There's already a motion but let's do it again. Motion by Councillor Macek seconded by Councillor Ryan. Any further discussion? Madame Clerk, please call the roll.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-yes, Councillor Macek-yes, Councillor Ryan-yes, Councilor Sullivan-yes, Councillor Daly O'Brien-yes, Councillor McGonagle-yes, Councillor LePage-yes, President Michitson-yes. 9 yeas, 0 nays.

President Michitson: That passes.

Respectfully submitted,

Barbara S. Arthur
Administrative Assistant
City Council

January 12, 2016

REASON FOR VOTE - DOCUMENT #139
Modified Special Permit for Congregate Care Housing
On Remand Order of Land Court
Unnumbered North Ave, Map 630, Bl. 2, Lot 1-1A
December 29, 2015

President Michitson: I voted in favor because it was an acceptable compromise.

Councillor Scatamacchia: I voted in favor because of the plan modifications.

Councillor Barrett: The modified plan as presented with a reduction in total units and overall traffic will have a lesser impact on the surrounding traffic. The approval of the modification also includes monies to be used for an overall traffic and safety improvements on the surrounding roads. The plan also will provide needed care for a growing segment of our community.

Councillor Macek: I supported the modified Wingate Special Permit request as it offered new and substantial changes in size and scope, and was more sensitive toward neighborhood and safety.

Councillor Ryan: The improved project was good for the city.

Councillor Sullivan: I voted for the special permit for Wingate as I believe the additional traffic/pedestrian safety improvements and mitigation measures proposed by the applicant as well as the City's intention to seek a \$5million dollar North Avenue corridor improvement project are sufficient to support a 64 unit assisted living facility.

Councillor Daly O'Brien: I voted for this special permit because it will be a benefit for the community. It provided sufficiently for the traffic and public safety and adds to the city tax base.

Councillor McGonagle: I voted in favor of the special permit based upon the recommendation of the Economic Development Director and several City department heads and the positive infrastructure improvements promised by the developer.

Councillor LePage: My reason for vote, per Chapter 255-80, Section E; In granting a special permit, the Board and Council, with due regard to the nature and condition of all adjacent structures and uses, and the district within which the same is located, shall find all of the following general conditions to be fulfilled: I did not according to (4):

"I did not vote in favor of this special permit as I believe the requested use will impair the integrity or character of the district or adjoining zones."