

**MINUTES OF THE PROCEEDINGS OF THE
ZONING BOARD OF APPEALS OF THE CITY OF WORCESTER**

March 14, 2011

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present:

Lawrence Abramoff, Chair
Andrew Freilich, Vice-Chair
William Bilotta
Vadim Michajlow
Kola A. Akindele, Alternate Member
Timothy Loew, Alternate Member

Staff Present:

Joel Fontane, Division of Planning & Regulatory Services
Edgar Luna, Division of Planning & Regulatory Services
Edward R. Thomas, Fire Department
John Kelly, Department of Inspectional Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

Chair Abramoff called the meeting to order at 5:30 PM.

**REQUESTS FOR CONTINUANCES, EXTENSIONS OF TIME, POSTPONEMENTS,
WITHDRAWALS**

UNFINISHED BUSINESS

- 1. 1119 and 1121 Grafton Street (ZB-2011-003):** Kevin Quinn of Quinn Engineering, representative for LGN, LLC, the petitioner, stated that the petitioner is seeking a Special Permit to allow for relief of 10% of the off-street parking requirement for a total relief of 2 off-street parking spaces, a Special Permit to allow food service with a drive-through, and a Special Permit to modify parking and landscaping requirements with respect to 1) reduced drive-through length, 2) relief from escape lane requirement, 3) drive-through lane to interfere with internal parking spaces and 4) relief from 5 foot landscaping buffer requirement along front and side lot lines. He stated that at the February 28th meeting, the Board asked the petitioner to submit revised plans clarifying issues that had arisen at that meeting, which the petitioner has done. Mr. Quinn stated that his client was not successful at securing off-site valet parking, however, it remains his intention to do so within 1,000 ft of the site in the future. If off-site parking is secured, he will seek to increase the seating on-site and will come back for an amendment.

Chair Abramoff asked if Mr. Quinn is aware of the DPW&P comment regarding the proposed and existing signs location within the public street's right-of-way. Mr. Quinn stated yes and stated that the sign will be moved so that it is no closer than 5-ft of the property line. Mr. Quinn stated that the revised plans show that the building was moved 5-ft forward. With respect to the landscaping in the public right-of-way, Mr. Fontane reminded the Board that based on the discussion at the last hearing, DPW&P was not opposed to the landscaping in the public right-of-way, as long as the petitioner was going to maintain it; however – structures and signs, existing and proposed, are not be allowed to be located in the public right-of-way.

Chair Abramoff clarified that parking is provided for the restaurant seating. Mr. Quinn stated that the petitioner is no longer providing seating for the coffee shop as there is not enough parking available on-site.

Mr. Bilotta, referring to his comments at the previous meeting, confirmed that the coffee shop's store hours will be until 5pm and that there is still no escape lane provided. Mr. Quinn stated that the hours of operation of the proposed uses on site are indicated on the revised plans and that it is 6pm for the coffee shop, based on the discussion at the previous meeting. Mr. Loew clarified the difference between the drive-through use and the take-out use. Mr. Quinn stated that the coffee-shop will be take-out only for now.

Mr. Abramoff stated that the parking area and the dumpster pad were constructed within the 15-ft buffer of the wetland area. Mr. Fontane stated that it is Conservation Commission issue that will need to be resolved and that if there is a change to the site plan, an amendment to this filing would be needed. Mr. Quinn stated that on January 3rd, there was an informal meeting with the Conservation Commission and that an informal agreement was made for the petitioner to make improvements to the wetlands and the site and that work will be done in the spring when snow melts. Mr. Abramoff suggested that the approval be subject to the Conservation Commission approval. Mr. Quinn stated that when weather conditions are more suitable for doing wetland-related work, such as plantings, the petitioner will come in front of the Conservation Commission.

Mr. Freilich asked whether the petitioner had a conversation with the neighboring business. Mr. Quinn stated that Mr. Shea spoke with the applicant, and that his business fences off its area at night, and that he "seems in sync with us."

Mr. Bilotta asked if the dumpster will be relocated. Mr. Quinn stated no.

Mr. Fontane recommended that the maintenance of the landscaping on the public right of way be made a condition of approval.

Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board voted 5-0 to close the public hearing.

Mr. Bilotta, in addition to staff's recommended conditions of approval, suggested that the landscaping in the right of way is to be maintained on a 4-month basis; that the fencing is to be maintained on a 6-month basis; and that no snow should plowed to the rear of the building into the wetlands.

Mr. Bilotta indicated that he was not comfortable approving the Special Permit due to the lack of escape lane. Mr. Quinn stated that there are many drive-through lanes in central Massachusetts and they do not seem to pose any safety threat. Mr. Fontane stated that his understanding of the escape lane regulations is for efficiency and to mitigate the queue length so that the cars do not queue off-site. He stated that the recommended signage placement

should help with directing the traffic on site. Mr. Kelly stated that Inspectional Service will make sure that the site, as constructed, has a good traffic flow.

Mr. Freilich stated that while the site is 'tight', with proper management, the operation might be successful. He was "reluctantly in favor of the petition". Mr. Akindele stated that he does not have concern now with the site as there no seating is proposed for the coffee shop.

The Board briefly opened and then closed the public hearing to allow Mr. Quinn to comment on the escape lane issue.

Mr. Quinn requested Leave to Withdraw of the Special Permit to allow for relief of 10% of the off-street parking requirement for a total relief of 2 off-street parking spaces.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 4-1 by Board members Lawrence Abramoff, Andrew Freilich, William Bilotta, Timothy Loew, and Kola A. Akindele (with Mr. Bilotta voting no) to approve the following Special Permits:

- 1) Special Permit: To allow food service with a drive through.
- 2) Special Permit: To modify parking and landscaping requirements with respect to:
 - Relief from the escape lane requirement.
 - To allow the drive-through lane to interfere with internal parking spaces.
 - Relief from the 5 ft landscaping buffer requirement along front and side lot lines.

with the following conditions:

Landscaping:

1. The petitioner shall maintain on a 4-month basis landscaping planted in the Grafton Street right of way along the property as a mitigation measure for lack of five (5) foot landscape buffer along the front portion of the site.
2. The petitioner shall add more landscaping to the plan, in addition to what is shown. Add more shrubs and trees in the area by the transformer. The tree species shall be Asian Longhorned Beetle resistant species. This landscaping must be on site only.
3. The petitioner shall provide a note on the plan that the landscaping shall be maintained quarterly and plantings shall be replaced as needed.

Signs

4. All signs shall comply with the most current sign ordinance.
5. The petitioner shall provide a sign along the drive-through on the eastern side of the property to caution oncoming traffic of drivers backing out of the employee spaces.
6. The petitioner shall add sign stating "employee parking only" for spaces located at the rear of the property.
7. The petitioner shall relocate signage onto the site and provide dimensions of all signs shown.

Snow

8. No snow shall be plowed from the rear of the site into the wetland.

9. All snow that interferes with parking shall be taken off site.

Fencing

10. All fencing shall be inspected and maintained bi-annually.

11. The petitioner shall show all fencing on site – along both sides of the property and any other locations.

Other

12. Hours of operation of the drive-thru food service shall be 5:00 am – 6:00 pm, 7 days a week.

13. The dumpster shall be serviced during the hours of 1pm-4 pm.

14. The location of a squawk box, if any, shall be only along the rear of the structure and be operated so as not to disturb abutting residents.

Final Revised Plan

15. Six (6) copies of final revised plan shall be submitted to the Division of Planning & Regulatory Services prior to issuance of a Building Permit showing the above-mentioned conditions of approval and the following annotations:

- A landscaping table including number and type of proposed species.
- Revised parking summary as follows:

Category	Unit of Measure	Number of parking spaces required	Number of parking Spaces provided
Personal Service	1,140 SF* (1 per 300SF)	4	
Drive-through	1 per 60SF	1	
Drive-through – retail	1,490 SF* (1 per 300SF)	5	
Restaurant with alcohol – (22 seats)	3,600 SF* 1 space per 2 seats	11	
Internal circulation	600 SF	-2	
TOTAL		19*	27**

*Information received from Inspectional Services from the permits obtained by the businesses in the building. **Parking spaces include the designated employee spaces in the rear of the building.

16. The site is constructed in accordance with the final amended Definitive Site Plan approved by the Planning Board and the amended order of Conditions of the Conservation Commission. If the Conservation Commission changes what is shown in the plan before the ZBA, the applicant must apply for an Amendment to Definitive Site Plan.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to approve the requested Leave To Withdraw Without Prejudice the following Special Permit: To allow for relief of 10% of the off-street parking requirement for a total relief of 2 off-street parking spaces.

- Exhibit A: 1119 & 1121 Grafton Street Application; received January 25, 2011; prepared by Nancy Bianco on behalf of LGN, LLC.
- Exhibit B: 1119 & 1121 Grafton Street Plan; dated December 6, 2010, updated on 1/19/11 and received January 25, 2011; updated on March 4, 2011 and received on March 7, 2011 prepared by Quinn Engineering.
- Exhibit C: DPRS staff memo to Zoning Board of Appeals, dated February 27, 2011 and updated on March 7, 2011.
- Exhibit D: Traffic Study Report, dated November 29, 2010, received January 25, 2011; prepared by Ron Miller and Associates.
- Exhibit E: Memorandum, Joseph Borbone to Zoning Board of Appeals dated 2/11/2011.
- Exhibit F: Memorandum from Ruth Gentile, Division of Planning & Regulatory Services, to Kevin Quinn, re: Revised Plans – 1119-1121 Grafton Street; dated 3/1/2011.
- Exhibit G: E-mail from Christopher Gagne, Department of Public Works & Parking to Joel Fontane, Division of Planning & Regulatory Services; re: 1119-1121 Grafton Street; March 14, 2011.

NEW BUSINESS

2. 557 West Boylston Street (ZB-2011-005): Special Permit for Non-residential Use allowed only by Special Permit (Article IV, Section 2, Table 4.1, Business Use #12 – Kennel): Joy Chamber, petitioner, stated that she is seeking to operate a kennel for animals coming into Massachusetts from out of state for the purpose of being temporarily isolated as required by state law prior to going to foster care or a shelter. She stated that she operates a State-approved rescue organization for out-of-state dogs. Mr. Bilotta asked if dogs will be “retrieved from the animal control offices of Worcester or surrounding towns”. Ms. Chambers stated that while the facility has a focus on out-of-state dogs, it will occasionally help out local animal rescue organizations. She stated that the dogs that cross state border, have to be quarantined for at least 48 hours in a state-approved facility. Mr. Bilotta asked if the building will be alarmed for burglaries. Ms. Chamber stated no. Mr. Loew stated that state regulations were not included in the application, and that it would be helpful to him to understand how these align with the local regulations. Ms. Chambers stated that the state requires that dogs do not go outside during the first 48-hours, and that they have to be vet-checked, the floors and windows have to be of certain material as to not be penetrated by liquids, exhaust system has to be of a certain type, and each room needs to have a sink. She stated that she is planning to use wire-crates for the dogs.

Ms. Chambers stated that she is a president of the Broken Tail Rescue, a network of foster homes, whose purpose is to bring the animals in from out-of-state. She stated that the out-of-state animal care regulations were put in the effect after Hurricane Katrina when many animals in disaster areas needed to find new homes. Ms. Chambers stated that the focus will be on puppies and that the dogs will be taken out occasionally “to relieve themselves and to stretch their legs.” She stated that she will be the only staff person, possibly with some volunteers.

Mr. Freilich asked how many animals at any one time will be there. Ms. Chambers stated that she is planning to have 2 isolation rooms, with about 40 dogs at any one time at maximum

capacity. Mr. Freilich asked if the petitioner has owned a facility like that before. Ms. Chamber stated no, but that the Broken Tail Rescue had used a facility in Worcester and Whitinsville. Mr. Freilich asked if any of the dogs might pose threat to people. Ms. Chambers stated that the dogs will be mostly puppies, and not pit bulls, as there is already overpopulation of pit bulls in the state.

Mr. Michajlow asked who sends the dogs to Massachusetts. Ms. Chambers responded that her organization's partner is an animal rescue organization in North Carolina who sends the dogs, which are also vetted prior to being shipped to Massachusetts. Mr. Michajlow asked about the frequency of the new shipments. Ms. Chambers stated that she expected one a week or once every two weeks. She stated that the dogs will not be taken outside.

Mr. Freilich asked who would cover for her if she is sick. Ms. Chambers stated that the Broken Tail Rescue has many volunteers.

Mr. Kelly asked if the petitioner might come back for an amendment to make it a permanent kennel. Ms. Chambers stated no, saying that she did not believe it was a suitable place for an animal shelter.

Mr. Akindele asked if someone would need to be at the location 24 hours a day. Ms. Chambers stated no, but that someone would have to come over 2-3 times a day to check on the dogs.

Ms. Chambers stated that the state's Bureau of Animal Health has approved her facility and might have random checks of the facility, though she did not believe there was a regular recertification required.

Chair Abramoff asked what happens to dogs that don't get a clean bill of health after 48 hours. Ms. Chambers stated that they will stay until they get better and are free of infectious diseases. She stated that usually the dogs will be out of her facility within 3 days and that her organization asks that no knowingly sick dogs are sent to her.

Mr. Bilotta suggested that no outside dog runs are located on site. Chair Abramoff suggested that the site complies with all state and local requirements. Mr. Kelly suggested that a cap is set for the number of dogs at the facility. Ms. Chamber asked for 50 dogs, given that she could be getting litters of puppies. She stated that she does not sell dogs afterwards, but provides isolation facility services, which is the source of her income. Mr. Bilotta suggested that the facility holds no more than 45 dogs at one time. Ms. Chambers was amenable to that. Mr. Kelly suggested a condition that periodically animal control would do an inspection of the facility, such as twice a year. Mr. Freilich asked if this was the only such facility in the City. Mr. Kelly stated yes to his knowledge.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to close the public hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 by Board members Lawrence Abramoff, Andrew Freilich, William Bilotta, Vadim Michajlow, and Timothy Loew to approve the requested Special Permit for Non-residential Use allowed only by Special Permit (Article IV, Section 2, Table 4.1, Business Use #12 – Kennel) with the following conditions of approval:

1. That there are no outside dog runs;
2. That the applicant meets all state and local laws and regulations;

3. That the maximum number of dogs at the facility at any one time is limited to forty five (45);
4. That the City's Animal Control inspects the property bi-annually.

Exhibit A: Special Permit Application; received February 8, 2011; prepared by Joy Chambers.

Exhibit B: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 557 West Boylston Street; dated March 11, 2011.

Exhibit C: Letter from Joy Chambers to Chairman of the Board; re: Waiver for plan requirement; dated February 21, 2011.

The Board took a recess.

Mr. Loew recused himself.

3. **15-17 Putnam Lane (ZB-2011-006):** Mr. Longden of Bowditch & Dewey, representative for CSX Transportation and CSX Intermodal Terminals, Inc., stated that the petitioner is seeking to construct a 10,027 gallon above-ground diesel storage tank and appurtenant structure which will be used for fueling hostlers and cranes. The project is part of the expansion of CSX's Intermodal Facility in Worcester. Also present for the hearing were Maurice O'Connell of CSX; Russ Helliston, David Irving and Keith Goldberg – engineers; and Carl Ziegler with Ragnar Benson Construction, the general contractor for the project. Mr. Longden stated that the overall project includes a new expanded terminal, expansion of the working tracks within that terminal, construction of travel lanes within the rail yard, four new buildings, associated off-street parking for both passenger vehicles and trucks, upgrade to the drainage systems within the terminal, additional landscapings surrounding the rail yard and enhanced security measures throughout the freight yard. For the project, CSX acquired seventeen additional properties to add to existing terminal, none by eminent domain, at a cost of over \$31 million dollars. Total project cost is estimated to be \$100 million dollars all of which is being invested in the City of Worcester. Mr. Longden stated that the proposed 10,000 gallon diesel fuel storage fuel tank would be located at the eastern end of the site, next to the maintenance building with a small employee parking lot next to it. It will be used to refuel equipment – hostlers and cranes - used within the terminal, and not for fueling trains or trucks. The cranes' function is to load containers onto trains that are brought to the terminal by trucks and to off-load those containers that come in on trains onto trucks. The hostlers' main function is to bring chassis to the trains, which are the truck beds on which the containers are loaded. Mr. Longden stated that the cranes are hybrids with a diesel engine, each with a 150 gallon tank, capable of running up to 80 hours on the tank. The cranes are usually refilled every second day. He stated that one of the crane maintenance stalls will also be used as a crane refueling station. Mr. Longden stated that the hostlers hold a 50 gallon diesel tank. They are usually filled after every 8-hour shift. They will be filled at a separate fueling station from the hostlers.

Mr. Longden stated that the proposed 10,027 gallon tank is approximately 9 feet high, about 27 ft long, is approximately 79 feet from the nearest abutting property on Franklin Street, and approximately 308 feet from the Princeton Place Apartments. However, there is a significant

elevation gradient – at least 50 feet - between where this tank is being proposed and the apartments' location. Therefore, the tank itself will not be visible from the apartments. The nearest distance to this tank near the property on the other side of the track is 276 feet - from the former Coca Cola Building on Shrewsbury Street.

Mr. Longden stated that the 15-17 Putnam Lane parcel is presently vacant. It was rezoned by the City Council from RL-7 to MG-2 zoning district which allows a freight railroad use in a manufacturing zone by-right. Previously, the zone was changed from manufacturing to residential RL-7 site to allow permitting of residential apartments which were not built due to the downturn in the economy. Additionally, the City Council has voted to discontinue a portion of Putnam Lane which abuts the 15-17 Putnam Lane property in order to allow the expansion of the rail terminal. Lastly, the property was reviewed by the Secretary of Environmental Affairs of the Commonwealth of Massachusetts under the MEPA program. As a result, the Secretary issued a certificate on December 22, 2010 saying that he was satisfied with measures that were being implemented as part of the terminal expansion and no further review under MEPA was required for this particular project.

Mr. Longden stated that the applicant was not yet sure how often refueling of the fuel tank would be needed as it will depend upon the level of activity in the terminal. It will be refilled by a tanker truck entering the terminal at the main entrance off of Grafton Street, and not via the maintenance building entrance which is to be used exclusively for employees. The schedule calls for it to be filled during daylight hours. The tank has several safety features, such as double walled construction with leak detectors within the space between the two walls in the tank and a containment area that will have the capacity to hold 110% capacity of the tank in the event of a catastrophic rupture of the tank. In that case, procedures would be followed in order to remove discharged liquid.

David Irving of Trans Systems stated that Trans Systems had been hired by CSX and Ragnar Benson Construction to do the final engineering of the new terminal. He described some of the proposed safety features such as the unloading and filling of the tank that is done with a dry disconnect to decrease a chance of spilling; a fuel nosel in a self-contained containment housing; a concrete pad with a water separator; a double-walled steel tank with sensors between the walls; the containment dike; level sensors in the tank and automatic shutoff valves that prevent from filling over 90% of the tank. He stated that the reason for the 110% containment is in case of a catastrophic event.

Mr. Helliston stated MH&T was the original engineering firm that worked on the project up to the 50%. He stated that the drains are connected to the pad on which all fueling would be taking place. The drains are set up to go through the oil/water interceptor in case of any minor spills. He stated that there is a Spill Controlment Plan for the site which will be updated based upon the site renovations and that will be on file with the Fire Department.

Mr. Longden stated that the Planning Division's recommended conditions of approval are acceptable to the applicant. He stated that the tank is an integral part of this project and that the project provides a number of economic benefits to the City of Worcester, such as jobs created and retained a CSX donation to the City's open space fund.

Mr. Michajlow asked how often the applicant estimates the refueling of the tank would take place. Mr. Longden stated that the estimate is that at full capacity of the terminal the tank would have to be refilled every ten days. Mr. Michajlow asked how many tanker trucks would it take to fill up the fuel tank. Mr. Longden stated that CSX would not let the tank run down before it's refilled, therefore, 10,000 gallons of fuel would not be brought to the site at

once. Mr. Irving stated that usually the tankers can carry around 7,000 gallons and, therefore, the tanker trips would be infrequent.

Mr. Bilotta was concerned with rain and snow damming up the dikes connected to the fuel tank. Mr. Longden stated that there is a shutoff valve that can be manually opened to allow the containment structure to drain into the combined sewer/storm drain. He stated that the water would first have to go through an oil/water separator before it can get into the municipal system. Mr. Bilotta asked if fire extinguishers will be necessary. Chief Thomas stated that this particular type of tank would not require 40BC hand held extinguishers and that just cabinets would be adequate.

Mr. Bilotta asked if it would be practical to have two smaller tanks instead of the one proposed. Mr. Longden stated that he didn't think it was necessary because of the "state-of-the-art construction of a storage tank" and the "adequate fail-safes".

Mr. Bilotta had a concern with diesel fumes rising up from the site to the residential dwellings up the hill. Mr. Helliston stated that typically fuel fumes go down to the ground because they are heavier than air and that the tank has double vents. Chief Thomas stated that the tank would not be hazardous in that sense, and that a typical gas station would be a lot worse in terms of fumes. He stated that the proposed fuel is a combustible product, and not explosive.

Mr. Freilich asked why the applicant is not proposing an underground tank. Mr. Helliston stated that above-ground tanks are safer as any leaks can be detected easier, thus protecting the groundwater.

Mr. Freilich asked if triple-walled containers are common. Mr. Helliston stated that double-walled tanks are a standard and that a provision of the containment system serves, in effect, as a third-wall.

Mr. Freilich asked what hours of operation and refueling hours will be. Mr. Helliston stated that typically, the refueling for the cranes will be handled during the day; and refueling for the hostlers will be at the end of every shift. Mr. Freilich asked if the operation will be around the clock. Mr. Helliston stated no on most days, but it depends on future train schedules. Mr. Longden stated that there may be some times when there are going to be an off-loading or fueling taking place after normal business hours. He stated that there will be 4 cranes and as many as 12 hostlers in the terminal, although usually only 5 of them will be operating at one time. They will need to be refueled every eight hours.

Chair Abramoff asked what the alternative is to the proposed tank. Mr. Longden stated that he is not sure there is a viable alternative to operating the terminal without the fuel tank, as one cannot have cranes and hostlers driving down the street. He stated that possibly bringing the fuel to the site daily might be an alternative, which would increase a number of smaller trucks coming into the terminal thus defeating the purpose of minimizing the traffic.

Chair Abramoff asked if there has ever been a problem with Peterson Oil tanks adjacent to the site. Mr. Kelly and Chief Thomas were not aware of any problems.

Chairman Abramoff asked to describe the nature of leak detection device. Mr. Helliston stated that if there is a leak, the fuel would go into the containment system until someone arrives and manually turns the shut-off valve. He stated that there is a spill prevention plan listing the steps to follow, and that at some point the Fire Department would be brought out as well. Mr. Longden stated that there is a written spill containment plan already in place for the existing terminal and that one of the conditions that the Planning Department has

recommended is a condition that that spill containment plan be updated and amended to include this particular tank. Mr. Bilotta asked if the City's Fire Department is equipped to handle a spill of this size. Chief Thomas stated yes.

William Palmer asked how much money was spent on the project. He stated that he thought diesel fumes rose and not fallen in the air. Mr. Helliston stated that typically gasoline vapors are heavier than air. Maurice O'Connell with CSX Government Relations stated that CSX does not intend to be running at full capacity all the time. He stated that CSX is "cognizant that the city wants additional commuter trains", and that the terminal need to have sufficient capacity to accommodate additional commuter trains.

Leonard Ciuffredo, president of the Brown Square Crime Watch Group and for the record a past member of the Zoning Board of Appeals, thanked the Board for its work. He stated that large projects often have winners and losers, and he sees himself and his neighbors as "the losers". He stated that he had a petition signed by 96 neighbors in opposition to the placement of the tank as proposed. He also described a drawing of the tank with a 1,000-ft radius circle around it showing properties included in this circle (Exhibit O). He stated that if the tank would be located on the other side of the terminal, less people would be affected by it. Mr. Ciuffredo commented on the petitioner's finding of fact. He disagreed, with respect to "Social and Economic Community Needs" that the freight yard is "the center point of economic growth in the area" as stated by the petitioner. With respect to job creation, Mr. Ciuffredo asked if the job creation will benefit Worcester residents or if its employees will be moving from Allston to Worcester. Mr. O'Connell stated that CSX has a heavily unionized workforce, so some of those employees will have the opportunity to bid on some of these jobs, but that CSX anticipates hiring local people as well as CSX made a commitment early on in the process to hire as many local Worcester residents as possible.

Mr. Ciuffredo expressed concern with a level of service D in the Franklin Plantation Street area even after the improvements are proposed (with regards to "Traffic Flow and Safety" findings of fact).

Mr. Ciuffredo disagreed with the petitioner's statement in the "Neighborhood Character and Social Structure" that the proposed use is "the best use of the property". He stated that he believed that market rate housing, as proposed by the previous owner, would have been the highest and best use of the property.

Mr. Ciuffredo stated with regards to "Potential Fiscal Impacts, Tax Base and Employment" findings of fact, that he does not like the vague nature of negotiation between the City and CSX that will determine the taxes charged of the facility. He asked for "facts and figures" to back up statements that the project would be a good deal for the City.

Mr. Longden stated that many of the Mr. Ciuffredo's concerns will be addressed at the Definitive Site Plan Approval meeting. He stated that with regard to the impact of the tank on the surrounding neighborhood and housing, one would not be able to see the tank from Franklin Street, Plantation Street or the abutting properties unless one made an effort to walk over to the edge of a steep slope and look down. He stated that he did not believe the tank was going to negatively affect any residential property in the immediate area. With respect to the highest and best use of the property, Mr. Longden stated that the prior owner made every effort to develop the property for residential use, and had permits and approvals for the project, but the economy was not favorable and prevented the project from going forward. He stated that he believed it was the best use of the property given the fact that it is going to assist with the expansion of the terminal and confer upon the City the benefits of the

expansion. Mr. Longden stated that the cost of the project is \$100M. The taxes to be charged have not been determined yet because the Assessor needs to assess the property once it's developed. He stated that the project will allow for commuter rail traffic to increase between Boston and Worcester which is a benefit to the City in a long-term.

Philip P. Palmieri, City Councilor, stated that the City Council has overwhelmingly supported the plan after countless months of debate and discussion. He stated that it was probably one of the fastest track of any major piece of economic development in the history of the City's municipal government. He expressed support for Mr. Ciuffredo's suggestion to relocate the proposed tank to the other side of the terminal. He expressed concern with how a 24-hour operation would affect surrounding "churches, civics clubs, housing." Mr. Palmieri asked if there would be any problems to the neighborhood if the tank was to rupture, and he reminded of a case where a neighborhood had to evacuate when an issue happened at Universal Metal Company. Chief Thomas stated that he is not familiar with the contents of Universal Metal at this time and whether or not it is open or closed for business. He stated that based on the site visit and picturing a most catastrophic event, the abutters would not be affected by the fire, and the most toxic part would be the smoke.

Councilor Palmieri asked if Chief Thomas would think that moving the tank further away from the residences would create a safer situation. Chief Thomas stated that he did not see a problem from a fire safety point of view with the proposed location of the tank. Councilor Palmieri asked if it would make a difference if the tank was further away from Universal Metals. Chief Thomas was not sure because he did not know the distance from Universal Metal to the tank. Mr. Palmieri suggested that a site visit is conducted to make the neighborhood feel safer about the decision made. Chairman Abramoff stated that the Board has already did a site visit. Mr. Palmieri provided a suggestion that the Board look into whether Universal Metal is still active, what is located at the site, and to look into alternative to the location of the proposed tank

Councilor Lukes stated that she believed "the entire project is an assault on the neighborhood and the area bounded by Shrewsbury Street and the Canal District and Union Station" and that it is not well-located. She stated that she believed "the environmental and traffic estimates are grossly underestimated and the location of this tank presents some real questions". She stated that Worcester is located on the fault line and asked if seismic design was considered in the construction of the tank and its location. Councilor Lukes expressed impatience with the fact that the City still does not know what the tax revenue from this project will be.

Jo Hart stated that she is not an abutter to the project, but that she has been following the development of the project "from the beginning." She stated that she believed CSX has misrepresented the numbers and was mistrustful of information provided by it. She expressed concern with the fact that there was no contract in place showing that the commuter rail service will increase. She asked that a date is provided as to when the project was conceived. She asked who will be utilizing approximately 800 parking space provided on site. Ms. Hart expressed concern with the proximity of the tank to the tracks in such rare events as derailments.

Alan Jolicoeur of Biscuit Lofts Condominiums expressed concern with how the proximity of the fuel storage container might affect the 43 families at Biscuit Lofts with respect to certification of condominiums by Fannie Mae, HUD and FHA prior to lending to individuals who want to purchase a unit. He stated that there is a rule stating that any fuel tank within 2,000 feet could be grounds for a condominium losing its ability to become certified which

would cause it to lose ability to sell to 70-80% of the market. He stated that his association is working with a consultant, who stated that current approved certification exists because the City of Worcester has given certificate of occupancy to the condominium though Noar and Radio had their fuel tanks in proximity at a time. However, this is a new fuel tank post-construction of the condominium units, and there is a high probability that certification will not happen in the future. He asked that the Board consider moving the tank to the western end of the property instead.

Bob Murdock of Biscuit Lofts Condominiums requested information regarding safety of the fuel tankers that will enter the site to re-fuel the fuel tank.

Jo Hart suggested that a pipe from one of the existing surrounding fuel stations is extended to the site, instead of having a fuel tank on site.

Mr. Ciuffredo pointed out that there were 96 names on the petition.

Mr. Longden stated that the tank would be in a “cradle” in order to provide protection from any spillage due to a disturbance, which is a safer construction in comparison to a gas station. Mr. Helliston stated that the “steel cradle” of the containment is welded to the exterior tank, with leak detection between the walls of the interior and exterior tank, and automatic valves in the piping, which is safer than an underground tank.

Mr. Longden stated that CSX has “a very strong code of safety” with respect to how trucks should operate on site. He stated that the concerns with respect to safety of truck movement on the site are not realistic. Trucks entering the site have to go through an extensive security check to be allowed in, the speed at the terminal is reduced (10-15 mph), the terminal’s design separates truck activity from train activity, there are new paved areas to provide truck access to the maintenance facility through the southern portion of the project, separating them from the train activity in the northern portion of the site. He stated that in case of an incident on site, CSX has safety and response procedures for every type of incident that could occur within the terminal. Its personnel are well-trained in safety measures. Mr. O’Connell stated that with respect to security on site, every truck entering the site needs to have “proper paperwork or it will be turned away.” He stated that there will be security cameras on site and that CSX police force has good relationship with the Worcester Police Department. Mr. O’Connell stated that CSX is proud of being part of the public and transparent process that the project has underwent and that it accommodated many comments of the public officials and abutters. He added that the only way to improve the commuter service between Boston and Worcester is to relocate the current freight terminal from Allston/Brighton to Central Massachusetts, a decision based on numerous analyses and commuter modeling exploring other alternatives.

Mr. Bilotta asked how many officers patrol the CSX lines currently. Mr. O’Connell stated that there are 1-3 officers currently. The new system will include security cameras and monitors and will be more secure. He stated that the new fencing should address the current trespassing issue. Mr. Bilotta asked what training the security personnel have had or will have. Mr. O’Connell stated that CSX has worked the City’s Police Department and Department of Homeland Security. Mr. Bilotta asked how many officers per track length are in central Massachusetts. Mr. O’Connell stated that there will 1 or 2 officers dedicated for this terminal, but that he has no numbers on other sites right now.

Mr. Bilotta asked if the insurance rate of the condominium association living within 1,000 ft radius of the tank would go up. Mr. Longden did not know the answer to Mr. Billota’s

question and stated that he has no record or knowledge of any condominium association's certification being impacted due to proximity to a CSX installation or terminal.

Alan Jolicoeur of Biscuit Lofts Condominiums stated that he believed the master policy of the condominium would go up if a tank is approved. He stated that the issue is not proximity to a CSX, but a proximity, closer than 2,000 ft, to a combustible or flammable tank.

Mr. Freilich asked where the trains will fill up. Mr. Longden stated that the proposed tank is solely dedicated to fueling hostlers and cranes, and not trains or trucks. Mr. Freilich asked where these vehicles are being fueled currently. Mr. O'Connell stated that the fuel gets trucked in onto the site, multiple times a day. Mr. Freilich asked how many trucks are currently on site. Mr. O'Connell stated that there are approximately 10 hostler-trucks currently. Mr. Freilich asked if the tank was such an important part of the operations on site, why was it not brought to the fore-front of the discussion sooner. He also asked how the decision was made to place the tank in the western portion of the site. Mr. O'Connell stated that as a result of negotiations with the City, an attempt was made to limit to the extent possible the size of the terminal in this location. He stated that CSX did the best it could given the number of properties and acquisitions needed for freight and commuter operation. There is not a lot of additional capacity at the terminal. Mr. Freilich stated that the tank is held down by 4 bolts – and was not sure if it would stand an earthquake. He asked if it would be possible to build a concrete housing around it to alleviate concerns of neighbors if there is data showing it would provide additional layer of safety. Mr. Helliston stated that there would be a 25-ft concrete and steel wall behind the tank to put in the driveway leading to the maintenance building. Mr. Freilich stated that it would provide protection in one direction. He asked if it is more economical to put the tank above the ground as opposed to underground. Mr. Helliston stated that he believed many tanks were put underground because of the real-estate value of the land, and that most gas stations have 35,000 gallon tanks. The above-ground location would allow the tanks to be checked and inspected. Leakage of underground tanks could be detected by sampling ground water, and by that time “it might be too late.”

Mr. Freilich asked if it is possible and if CSX would be willing to put the tank underground. Mr. Longden stated that the applicant is not willing to put the tank underground, that CSX thinks it is a safer way to operate, and that Chief Thomas indicated that he did not see fire hazards due to this installation. He stated that putting the tanks underground would be “unwise and reactionary” and not in line with what professionals studying this installations have recommended. He stated that the tank was part of the project since the beginning, and that the tank was included in the Environmental Certification Form filed with the State by the applicant last summer and was reviewed and commented on by the Secretary of the Environmental Affairs.

The Board indicated that it was amenable to the staff's suggested findings of fact.

Mr. Freilich asked what would happen to the tank if it were to catch on fire. Chief Thomas stated that if the tank is built to the manufacturer's specifications, it would not explode, but it would burn, and “probably the most dangerous aspect of it would be from the smoke.”

Mr. Akindele asked what makes location of the tank in the western portion of the site less favorable. Mr. Longden stated that the main activity of the terminal, with trucks coming to the site, unloading, and leaving the site, take place in the western end of the site, as well as storage of trucks and containers. He stated that fueling in the area where loading and unloading takes place would create safety problems and traffic conflicts.

Mr. Akindele asked if staff is aware of FHA regulations or if representative of Biscuit Lofts Condominium Association has evidence of the previous statement regarding certification. Mr. Fontane stated he is not aware of the certification process and that it was not part of staff's review.

Mr. Bilotta stated that he agrees that the tank is safe, per Chief Thomas's statement that it would not explode. He asked if the tank can be placed in the eastern-most corner of the site, further away from the residences. Mr. Helliston stated that the portion of the site Mr. Bilotta is referring to is too small and the cranes would not be able to turn around. He stated that the tank cannot be located in the south-western portion of the site due to topography. Mr. O'Connell stated the CSX has a good safety record and believes that the terminal would be safe for everyone.

Jo Hart asked if the tank is bullet-proof and how close it would be to the closest rail track. Mr. Helliston responded - 75-100 ft away from the nearest new rail track.

Mr. Fontane stated that staff's recommends approval of the Special Permit subject to the following conditions:

- That a dike or an impervious storage area with containment volumes equal to 110% of the capacity of the storage tank be constructed.
- That an updated Spill Prevention, Control, and Countermeasures Plan for the CSX facility be submitted.
- Submit final revised plan showing the above condition of approval and updating tank elevation provided.
- That the fuel storage tank and containment structures be constructed in accordance with the Final Revised Definitive Site Plan approved by the Planning Board.

Bill Guilfoil of 1 Envelope Terrace was concerned that he might not be able to sell his unit in the future, and asked what his recourse would be if certification will be denied in the future.

Mr. Ciuffredo stated that the problems many neighbors have are "with history of CSX", such as issues that CSX did not respond to or address in the past.

Bill Murdock of 1 Envelope Terrace asked what the percentage difference was between the grade in the western end of the site and the eastern end of the site. He additionally asked, since cranes have to be fueled once every 2 days, how much of inconvenience it would be to move the tank to the western end of the site. Mr. Helliston stated that typically no more 1% grade is done for train terminals, however, given the site conditions and Franklin Street bridge, the site had to be lowered (because the bridge could only be so high) and a large area of the parking lot is now 3-4%, which cannot handle a maintenance pad. He stated that hustlers had refueled at the end of every shift' cranes – every 2 days. Mr. O'Connell restated the CSX community involvement and the fact that it intends to pay its taxes when the property is assessed.

Mr. Akindele stated that he believed an FHA certification is an important consideration, and asked if the abutter can provide this document. Chair Abramoff stated that based on the site visit, he saw several above-ground fuel storage tanks located closer to the residences than the proposed fuel tank. Mr. Akindele stated that these tanks probably have been grandfathered in.

Mr. Jolicoeur stated that it is a federal program and said that he can send the links to HUD, FHA and FannieMae websites to the Board.

Mr. Bilotta proposed that the tank area is well lit during the night time; that the tank area has a close-circuit monitoring that is recorded; and that the tank's alarm sensors are connected directly to the City's Fire Department. He also asked that the leak monitoring system is inspected on a quarterly basis. Mr. Kelly stated that his department has not done such an inspection before, but that it might be possible, possibly in conjunction with the Fire Prevention inspections. Mr. Thomas stated that the tank would require an annual inspection by the State Fire Marshall. Therefore, the last condition proposed by Mr. Bilotta was not taken up by the Board.

The applicant has agreed to the 1st three conditions proposed by Mr. Bilotta stating that a video recording will be kept on the 7-day cycle.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to close the public hearing.

Upon a motion by Mr. Freilich and seconded by Michajlow, the Board voted 5-0 by Board members Lawrence Abramoff, Andrew Freilich, William Bilotta, Vadim Michajlow, and Kola A. Akindele to approve the requested Special Permit for Non-residential Use (Article IV, Section 2, Table 4.1) – fuel storage with the following conditions of approval:

- That the tank area is well-lit at night;
- That the tank area is monitored via a closed-circuit surveillance and recordings kept for minimum of a seven (7) day cycle;
- That leak sensors be coordinated with the Fire Department's response system;
- That a dike or an impervious storage area with containment volumes equal to 110% of the capacity of the storage tank be constructed;
- That six copies of an updated Spill Prevention, Control, and Countermeasures Plan for the CSX facility be submitted to the Division of Planning and Regulatory Services prior to release of the Building Permit;
- That six copies (6) of final revised plans be submitted to the Division of Planning and Regulatory Services prior to release of the Building Permit showing the above condition of approval and updating tank elevation provided;
- That the fuel storage tank and containment structures be constructed in accordance with the Final Revised Definitive Site Plan approved by the Planning Board and in compliance with all governmental codes.

Exhibit A: Special Permit Application; received February 10, 2011, prepared by Attorney Robert Longden.

Exhibit B: Special Permit Plan; dated February 9, 2011; prepared by TransSystems & Ragnar Benson Construction.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 15-17 Putnam Lane – Special Permit; dated March 11, 2011.

- Exhibit D: Memorandum from the City of Worcester Fire Department to the Zoning Board of Appeals; re: ZB-2011-006; dated March 10, 2011; revised March 14, 2011.
- Exhibit E: Proposed CSX Transportation & CSX Intermodal Project – Concept Plan; dated November 10, 2010; prepared by EMHT.
- Exhibit F: Executive Summary of Agreement Between the Commonwealth of Massachusetts and CSX Transportation. 2010.
- Exhibit G: Letter from Attorney Robert Longden to Joel Fontane, Division of Planning & Regulatory Services; re: CSX Transportation, Inc. and CSX Intermodal Terminals, Inc. Application for Special Permit -15-17 Putnam Lane, Worcester, Massachusetts; dated March 11, 2011 (via e-mail).
- Exhibit H: Letter from Attorney Robert Longden to the abutters of 15-17 Putnam Lane, Worcester MA. Dated March 7, 2011.
- Exhibit I: Quitclaim Deed demonstrating ownership of 15-17 Putnam Lane, Worcester, MA parcel by CSX Transportation, Inc. Book 46751, Page 141.
- Exhibit J: Specifications for Fireguard (UL-2085) above ground fuel tank.
- Exhibit K: Letter from Mark S. Hoffman of CSX Transportation Joel Fontane, Division of Planning & Regulatory Services; re: CSX Transportation, Inc. and CSX Intermodal Terminals, Inc. Application for Special Permit -15-17 Putnam Lane, Worcester, Massachusetts; dated March 11, 2011.
- Exhibit L: Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form; re: CSX Worcester Expansion Project (EEA # 14673); dated December 22, 2010.
- Exhibit M: Crane photographs.
- Exhibit N: Fueling Supply Plan – Worcester Terminal Expansion. Plan drawn by TranSystems, dated March 11, 2011
- Exhibit O: Comments submitted by Leonard Ciuffredo to the Zoning Board of Appeals; titled “CSX Environmental Review Meeting”; dated 12-2-10; received March 14, 2011.
- Exhibit P: Worcester Terminal Expansion Definitive Site Plan (Drawing Number EX-CS100); prepared by Ragnar Benson Construction; dated 02-09-2011; received March 14, 2011; marked up at the meeting.

Adjournment

Upon a motion by Mr. Bilotta and seconded by Mr. Michajlow, the Board voted 5-0 to adjourn at 8:43 pm.