

(SPECIAL)

TOWN COUNCIL MEETING

March 6, 1985

6:30 p.m.

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A special meeting of the Wallingford Town Council was held in Council Chambers to review the PUC decision on the approval for S. Broad St. condominium project, as discussed by the PUC at their meeting of February 26, 1985.

Chairman Gessert called the meeting to order at 6:30 p.m. In attendance were Council members Bergamini, Diana, Gessert, Holmes, Killen, Krupp, Papale, Polanski and Rys. Mayor Dickinson and Town Attorney McManus arrived later.

PUC Commissioner Richard A. Nunn was present.

Chairman Gessert asked Mr. Nunn why Mr. DeMaio and Mr. Kovacs were not present. Mr. Nunn said that they were invited and some of the staff people had other commitments and they just discussed it and Mr. Nunn felt that he would be able to answer the Council's questions. He stated that they had gone through some of it in their question and answer period the night before and he was prepared to answer any questions and give the Council the benefit of the supporting information that had them arrive at the decision that they arrived at. He asked Chairman Gessert how they wanted to handle this and did they want to do it with questions.

Chairman Gessert stated that Mrs. Bergamini had requested the meeting and imagined that she may have one or two comments.

Mr. Krupp asked if they had a motion and Mr. Gessert said no. Mr. Killen felt that they should have a motion to get action started. Mr. Krupp stated that, if they were to abide by the rules of order, some type of communication or motion is in order for discussion.

Mrs. Bergamini moved that they review the PUC decision that was made on Tuesday evening, February 26, with the intent of possibly using Council's legislative power to veto this decision, if they so desire. Mr. Killen seconded the motion.

Mrs. Bergamini stated that she would like to present her side of it and why she was upset with the PUC decision. She quoted an article that appeared in the media in November 1980, "A zone change was granted by the P&Z Commission on September 8 on South Broad Street." She said it then went on to describe the area, with which they are familiar with. "A zone change granted by the Commission on September 8 will lead to problems in the distribution system, according to Water & Sewer manager, Al Bruno. The increased tenancy associated with the zone change will put a strain on the distribution system and the low water pressure in the area would minimize fire protection. In a letter to the Commission, Bruno stated that the Sewer Division's facility plan was based on a density of 15 people an acre, but a zone change from industrial and commercial to multi-family residential could triple, or certainly double, the expected sewer load. Sewer and water facilities on South Broad Street are very limited and a booster station would probably have to be provided." Mrs. Bergamini stated that in the same year another application had been put in, and she mentioned this only to show that it is not just this application that she is zeroing in on, by Mr. Dunkavich and was rejected by Mr. Bruno even though it was withdrawn with the same objections that he had to this one. She quoted Mr. Bruno as saying that, "As we have stated many times in the past, sewers and the new proposed sewage treatment plant are designed based on present zoning. Any down-zoning will ultimately result in overloading the sewer and the plant." Mrs. Bergamini said the article ran two whole columns and she would not go through all of it but that it was in the paper on November 19, 1980. She quoted a 1983 article regarding changing any zone or adding on to a sewage treatment plant as it was designed, "Bruno has repeatedly objected to residential zone change applications that would increase demand on the sewage treatment plant. The position of the PUC has always been the capacity of the new sewage

treatment plant based on a 1977 facilities plan which used the present plan of development approved in 1971, with population projection and zoning, according to Public Utilities Director, Ray Smith. The present and proposed sewage treatment plants were not designed to meet additional demands caused by zone changes subsequently made by the PZC. When the updated plan is accepted by the Town, the PUC will use the plan of development as a planning tool in considering future changes." Mrs. Bergamini pointed these out to show that, in four years (almost five years), Al Bruno, who is a PUC man, and whose expertise they have quoted many times, and who is paid a good salary for the job he does, has never, never waived.

Mrs. Bergamini quoted from the PUC minutes of February 26 meeting. "When Mr. Bruno was questioned whether or not he had ever agreed to 150 units, he said absolutely not." Mrs. Bergamini said that these minutes are public record and anyone can read from them at any time. "He said that possibly it could go to 95 or 96, but he feels that 80 would be considered, 120 would be a possibility, but actually 95 is a final total." Mrs. Bergamini quoted Mr. Kovacs as stating that "probably the sewage treatment plant would be on line by then" and that Mr. Bruno agreed that was probably so. "His objection, he stated, is based on the fact that the project did not comply with the overall plan for the Town which determines the plant capacity. Admittedly, this is only one, but theoretically, if all the industrial area in Town were to be rezoned as high density, then we no longer have the 20 and 25-year sewage treatment plant. Mrs. Bergamini said that she could go on and rebut everything, but, to her it seemed they had established a precedent of changing by ignoring Mr. Bruno. She did not know why they did it and that unfortunately she was not at that meeting since, as they know, this was the same night as the Council meeting or she would have been there. She felt that how or why they did this she had no idea. Mrs. Bergamini added that if they wanted to compromise between 80 and 151, she could see that there might have been a compromise. She felt that Mr. Bruno seemed to stick to 100 or under and that he has never waived from that position in 4½ years.

She said that if he is PUC's expert on the staff, then she would like an explanation on why the PUC chose to ignore him.

Mr. Nunn said that before he gave them the reasons as to why they reached their decision, he wanted to comment on some of the things Mrs. Bergamini had stated. He said that since his tenure with the Public Utilities Commission - somewhat in excess of seven years - they have received many requests for "down-zoning" (he was not sure this was the proper term, but it is one they are all familiar with). He said "Let's use the example: if something is allowed to have 100 units in a particular area and that's what it is zoned for and that's what's allowed, then if you go to 200, you've got a 100% additional, and so forth." He said that they had requests anywhere from two, three and as high as seven times the density that was requested in the past. The position of the PUC has been one of being assertive; they felt they want to try to maintain the policy of sticking with the facilities plan as closely as they can. However, he added that they have been flexible in the past and they have not always set with exactly the exact amount of zoning and that they have rarely gone 2:1. He said that this particular instance is 1½:1 - or 96:151. He said they have set precedence such as that, if that is the word the Council wants to use; they have made decisions that have allowed that in other situations - one that they are all very familiar with is Bristol-Myers. He said that Bristol-Myers has the acreage and the density that would allow 205 units (and he refers to them as units rather than acreage vs. people). He said they were allowed 300 because of special circumstances - attractive business, good for the base of the Town; he said they measured all the inputs that they felt they had and with a lot of research (they had come to this decision).

Mr. Nunn stated that the units refer to gallons, in this case 205,000 vs. what Bristol-Myers was actually allowed - 300,000 gallons. He said that if they were condominiums, apartments, or private dwellings, they could have talked about the number of units - which are arrived at by the acreage, by the estimated population on that acreage, and that different numbers are used depending on what's there - whether it be an industrial complex, a residential home, a condominium, senior citizens, etc. He said that different numbers are being used based on history, on what they feel the amount of water, and in turn, the amount of sewer, that would be developed on that piece of land. He said that in the case of Bristol-Myers, they went from 205 to 300,

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Mr. Nunn reminded the Council that although Mr. Bruno is a staff member and is an employee of the Town of Wallingford, and specifically of the Water & Sewer Division, the responsibility of making decisions on allowing usage rests with the PUC. They have to take the responsibility - he would not blame him or give Mr. Bruno credit because he is there in an advisory capacity and they do try to take his input. He said that the track record has shown that they follow his advice quite closely; they certainly give him his opportunity as they did in this meeting and as they have done in the past.

He proceeded to talk about this specific case. Mr. Nunn said that the motion that was made in the past clearly indicated, and there were words in the motion, that this was not to be considered a precedent to be set, that it had special circumstances to it, and Mr. Nunn said that he would outline some of those special circumstances to the Council, which made this item one the PUC felt they could pass. He said that (1) they are not talking about the year 1981 when they were at best six or seven years away from a completed plant. He said that they are now three years away from a completed plant and that, just the fact that they are that much closer to completion of the sewer plant, makes them feel a little bit more comfortable than they were in 1981. He said that the original plan called for 238 units and they felt that a compromise was struck. He said that if you want to talk about a compromise, you can't start at 151 and compromise between 151 and 96. He said that "you have to start where they started from and where we started from. It's the old game - you can start with a car for \$1,000 and they'll ask for \$10,000 and come somewhere in between." Mr. Gessert asked if they had asked for 1,000, would the PUC compromise at 500, if it's halfway in between. Mr. Nunn said they might not compromise at all. Mr. Gessert said that it was an arbitrary figure in cutting it in half. Mr. Nunn said that he did not cut it in half. He said they did not come up with 151, and that this was a follow-up that the developer had made that they felt was economically feasible for them (the developer). He said that he had pointed out to the developer that it was not the responsibility of the Public Utility Commission to make it economically feasible for the developer. He said that if it was - fine, but that they felt that they had to have what they could live with. He said that there are certain fringes that are offered to the Town in this case and that, in order to put in that development, something in excess of 2,000 ft. of sewer lines have to be put in and the expense is borne completely by the developer, not by the Town. He said the Town would gain other advantages - revenue... Mr. Gessert asked who the sewers were going to serve and Mr. Nunn replied that it would serve that development and any of the abutting property owners alongside that. Mr. Gessert asked if, without the sewer line, could the developer open that subdivision. Mr. Nunn replied that he could not. Mr. Gessert said that it was rather self-serving to put that 2,000 feet. Mr. Nunn said it was more than self-serving, and that it would serve anyone else that abuts. Mr. Gessert stated that the developer did not donate 2,000 ft. to East Main Street. Mr. Nunn stated that the developer needed that 2,000 ft. but that the Town (the utilities) is the recipient of that sewer line being there, just like it is when they put any sewer line in. He said that the Town gains by having any abutting property owners hook into that line.

Chairman Gessert said that it was obviously a nebulent gain. Mr. Nunn replied that he did not have the figures to tell the Council how many units can be built, how many property owners are served there. Mr. Gessert added to this that Mr. Nunn could not say how much more overflow they will get if everybody adjacent to that line decides to put 10,000 units on that property.

Mr. Nunn said that the PUC's concern was with the flow that comes into the plant. He said that the time table on this property, again making comparison to Bristol-Myers, is to be phased in. He said they were advised by the developer that it would be four years before the final phase and that he felt they would have the plant in operation certainly for at least one year.

Mr. Gessert asked if he approved the 150 based on a contract that it would be phased in over four years. Mr. Nunn said no. Mr. Gessert said that it was a "could be-maybe" and Mr. Nunn agreed. Mr. Nunn said this is the way they approve any of these - they do not get contracts. Mr. Gessert commented that, on the other hand, if they approve it, and they were all up in six months (there would be nothing the PUC could do.)

Mr. Diana commented to Mr. Gessert that he should let Mr. Nunn talk and then the Council would criticize.

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Mr. Nunn said that they have a responsibility in that they (the PUC) has been issued a monopoly from the State. He said that if these people want sewer lines, there is only one place they can come, and if they want electricity and water they can only come to the PUC. He said that with that monopoly there is a responsibility that they have the position that will listen to various aspects of this and that the biggest plus to this is that they have the timing that they have - that they are only 2½ to 3 years away from the plant. He said that, with this in mind, they feel that they could handle this type of sewage coverage. He said they do not want to treat residential or commercial establishments any different than they do industrial. He said it is not equitable to favor the industrial sector because of the revenues they can produce to the Town versus that of residential or commercial. He said that he felt, in that sense, that they have to have an overall equitable system. He said that the engineering consultants that the developer had attend the PUC meeting presented background information on densities in neighboring communities and condominium and apartment complexes similar to the one to be built here and the numbers indicated that it was well within the range of the capacity of the amount of sewer that would be produced within that unit. Mr. Nunn stated that they questioned Mr. Bruno as to whether he felt that the numbers were based on an accurate data and he said that Mr. Bruno felt that he could live with those figures and that he had no exact numbers and that he admitted that his own numbers were on the conservative side and that those numbers were reasonable and that the PUC should consider them in that vein.

Mr. Nunn said that they then asked Mr. Bruno if he had any violent opposition to this program and would he make a statement that, if they voted on this, it would be over his opposition and that Mr. Bruno said no, that he could live with the situation.

Mr. Nunn said "Al, are you certain this is your feeling?" Mr. Killen interrupted to ask if this was the same meeting that they took the vote on and Mr. Nunn replied that it was. Mr. Killen commented that it did not appear in the minutes. Mr. Nunn said that he could listen to the tape. Mr. Killen replied that they get the minutes as being the official minutes and he should not have to listen to the tape. Mr. Killen said that he read the minutes and that they were not even close to what Mr. Nunn was discussing now.

Mrs. Bergamini was asked where Mr. Bruno was and she replied that he could not make it and that she had told him that she did not need him because she had a lot of testimony and knew his overall feelings. She said that he had a personal commitment and she realized that this meeting was very inconvenient and she apologized. She said that, in lieu of the time element, she had absolutely no choice. She said that she felt she did not need Mr. Bruno to be present since Mr. Bruno had been quoted up, down and sideways on how he feels. She said that she had the P&Z minutes here and that she could go back to three or four other meetings and Mr. Bruno is quoted exactly the same way - he has never waived, to her knowledge.

Mr. Diana said it would have been nice to have an "opposing" view from the department here.

Mr. Nunn said that he did not know about tonight's meeting until last night at the PUC meeting and that he had about a 24-hour notice and checked his calendar to see if he could make it and found that he could, although he had a conflict and rearranged that. He said that he asked Mr. Bruno if he could make the meeting and he said he could not and Mrs. Bergamini had accepted the fact that he could not make the meeting.

Mr. Nunn said that this is the best, to his recollection, of what happened in this case, and there are other people in the room tonight that were there and they could also check the tapes again, as to whether the minutes are accurate. He said that the secretary transcribes from the tapes, and that whether she puts every comma, period, and every phrase in there, she probably does not.

Mr. Killen said that the Council could live with that also but that what Mr. Nunn has been stating tonight is an important part of the testimony and that to leave something like that out of the minutes is radically wrong. Mr. Nunn said that Mr. Bruno's statement was that he could handle it, and he was quoting him now.

Mr. Gessert said that he had heard Mr. Bruno put on the spot before and that he had said whatever you flush is going to go to the plant and that if there is no room in the plant, it's going to go to the river; and if they want to add another 80,000 gallons...

Mr. Nunn stated that Mr. Bruno has never been accused of being shy when he is opposed to something. He said that they, in turn, never muzzle Mr. Bruno.

Mrs. Papale stated to Mr. Nunn that things have been brought up before the PUC that they have, for some reason, voted down and asked why did the PUC make an exception with this development. She asked why the PUC commissioners decided, even though Mr. Bruno, whether hard or soft about it, came out and say that he was not entirely pleased with this, that it would be all right for the Town. Mr. Nunn replied that it was because the amount of variance from the plan, the terrain of the land and what else can be built surrounding it, the benefit of the sewer lines that will be put in by the developer, the fact that they are 2½ years from the plant--they felt, factoring these into place, that the Commission could handle that type of development with type of a variance on the plan.

Mrs. Papale commented that she wished Mr. Bruno had been at the meeting because it was difficult to ask Mr. Nunn questions on things that Mr. Bruno might have said. She asked if it was asked of Mr. Bruno if these plans were okayed, and other ones that came in front of them, if the sewer plant after ten years would be in the same position that they are in now and did the PUC feel that way (that they would have a problem).

Mr. Nunn responded no and said that if they are figuring this plant will be planned for the year 2000, there is an awful lot of extrapolation that goes into saying the sewer capacity for the year 2000. Mrs. Papale said she was not familiar with the word, "extrapolation" and Mr. Nunn explained that it meant to estimate what the usage would be for the year 2000. He said it might go to the year 2004 and it might be the year 1996. He said that he could not tell the Council when they would be at the same stage 15 to 25 years from now. At that point, the life of the sewer plant is generally considered 20 years before additional work has to be done to it. He said that they are looking at the water plant now and that people are saying to spend less money and to project out 10 or 15 years. He felt that this was generally not a wise judgment to make, because they should generally plan for a 20-year plant. He pointed out that the growth of this town is unpredictable; he said that the growth in the town in the last five years has not been as great as it had been the five years previous to that - who would have predicted that? Could you have told which five-year period had a greater growth for the town?

Mr. Killen said he had the impression that because they are so close to building a new plant, it makes a difference. He asked if he was missing the understanding that the plans were made with the new plant in mind - not the old plant. If this is so, then it does not make a difference how close we are to a new plant because then it was with the new plant in mind that the plans were limited to "x" number per gallon.

Mr. Nunn stated that if the service is to be placed on the system before the new plant is in place, then they would have a very difficult problem. Mr. Killen said that they would definitely have to say no in that case but the point is that they have a plan and according to the plan, from the way Mr. Killen understands it, certain areas can handle so many gallons and that is going to carry them through, and every time the PUC makes a change, that game plan goes out the window.

Mr. Nunn said that the game plan is not static and if Mr. Killen was asking him if the PUC was aware that they allowed the issuance of permits, or setting the wheels in motion for the issuance of those permits, for something that would have normally--based on conservative figures--been 96 and that they went with 151, the answer is yes. He said they were aware that was what they were doing.

Mr. Killen asked if they had a reason for that because so far they had not heard a reason. Mr. Nunn said that he would give them the reasons. Mr. Killen said that the economics was "not your cup of tea." Mr. Nunn replied that economics was not a consideration, except for the economics of a piece of sewer line which would be of use to the Town. Mr. Killen said that this should be secondary. 138

Mr. Killen said the Town just went for a \$38 million bond issue and all of a sudden they are finding out that maybe the \$38 million is going down the tubes because the PUC wants to play "footloose and fancy-free" and that's not good. Mr. Nunn said that he did not consider the action that they took to be "footloose and fancy-free." He asked himself if they were varying from the plan and that the answer was yes but that that was always the intent. He said that the intent was not that it was this static and that they never waiver off it and that there would be times, if they felt the reason was right, that they would vary.

Mr. Killen said that he was looking for the reason and that he was only talking off the top of his head because he was not there but from the background he got, Planning & Zoning was not particularly happy with this, and that they were very grateful that the PUC was the stumbling block.

Mr. Nunn said that this was not quite true. He said that the developer and his attorney appeared before P&Z and Mr. Bruno was at that meeting. The suggestion was made that P&Z really could not take any action until it got the word from the PUC, so the developer's attorney asked if P&Z would be willing to have them appear before the PUC before they came back to P&Z. The question was asked of Mr. Bruno if that would be satisfactory to him and he said it would. Mr. Nunn said Mr. Bruno put it on their agenda which he does half the items on their agenda.

Mr. Killen said that Mr. Nunn was talking about pretty recently and that Mr. Killen was talking about from way back that P&Z was not particularly happy with it and were glad that the PUC was the stumbling block. Mr. Nunn responded that if they were unhappy with it, why did P&Z approve 238 units and why did they change the zoning. Mr. Killen said that he had a good question there and that it was probably for the same reason that the PUC changed it to 150, and that is what the Council is trying to find out--why people change things when they shouldn't be changing things if they are not happy with it and if it does not fit into the game plan. Mr. Killen asked what is the hard and fast reason. He said he did not go for big or for small, one way or the other. He said that there was a little bit in the deal that Mr. Nunn talked about on Bristol-Myers, but he does not put this in the same ballpark as Bristol-Myers, although he is not saying that one should get the advantage over the other. However, he said that that made more sense that this particular development.

Mr. Nunn stated that he did not think that one should get the advantage and that was his point. Mr. Killen said that if the advantage was given to the developer, it was given by the same "crew." He said that the rules were changing and that the final line comes down to the fact that when the next \$38 million has to go out, the Council is the "crew" that has to say "where did you fall short down the line? Why didn't you follow the guidelines that were given to you? What happened to your guidelines?" He said that the PUC were the people that recommended to the Council that they spent \$38 million on a sewer plant and now they are telling the Council that really they can't guarantee that that will be sufficient because the PUC is liable to change it at any given time.

Mrs. Bergamini said, with reference to everyone wanting to know what Mr. Bruno said, that at the February 11 P&Z meeting, Mr. Shortelle said to Mr. Bruno "And there is still a discussion on-going with the PUC people now to determine whether or not even this 151 may or may not be acceptable at this time?" Mr. Bruno's response was, "The last time it was discussed, it was my understanding that 151 was still an unacceptable amount." Mrs. Bergamini stated that, as she has said, Mr. Bruno has never waived.

Ms. Diana commented that Mrs. Bergamini, in her opening statement, claimed that back in 1980 there was a news article about there being a problem with fire protection, or a potential of one.

Mr. Nunn said that this was not discussed and that the 151 dealt expressly with the sewer usage and that he really could not answer that and that he had the same wish that others have--that Mr. Bruno could be heard to answer these questions himself.

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Mr. Diana asked if they were looking at 55 additional units. Mr. Nunn said it was not that cut and dry and that it depends. He said that if you have 20 acres of land, how many people do you allow to put on an acre and where do you use that number. He said that this is a multiplier and if you say that there are 15 people or 20 people per acre, and these are just numbers that are taken from past experience. He said that they can make that number fit by saying, to disguise it, that they will allow 20 people per acre instead of 15 people per acre which will give them a 33% increase in the density on that piece of property.

Mrs. Bergamini said that Mr. Bruno wanted to use the figure of 12 people per acre and that he had said that 15 was inaccurate and a complete error. She quoted Mr. Bruno from the P&Z minutes that "12 people an acre over 20 acres, assuming they develop it all, would be 240 people. Assuming that you have three people per unit, that would be somewhere in the neighborhood of 180 units." Mr. Nunn said that it should be 108 units. Mrs. Bergamini said they were even dealing with inaccurate minutes from the P&Z. Mrs. Bergamini went on to quote from the minutes that Mr. Bruno had also said, "I admit that 3 people is probably on the high side with a condominium projects, with somewhere between 2 or 3 people. At the very most it could have been 120; at the very least, it could have been 80. However, the number this developer was asking for was 238."

Mr. Nunn said that he could not comment on this decision and the input that P&Z put into this.

Mr. Diana asked Mr. Nunn what were the figures for taxing the existing sewer lines, and what is the gripe between the additional units as far as gallon per day--what are the capacities.

Mr. Nunn said that in order to come up with the bottom line as far as what the density is, they take in various aspects--the acreage that they are using: the fact that they could have a cluster development, or the entire 20 acres built on 2 or 3 acres (if they were to put a hi-rise); the number of people per acre and it could be different depending on aspects of it: for instance, if you build a condominium unit for younger families there will be children. Mr. Diana thought that the minutes said 2.2 per unit. Mr. Nunn said anywhere from 2 to 3, and if you use 2 people vs. 3 people, that changes it by 50%. Mr. Nunn said that it is these numbers that people look at and say that they are cast in stone. He said that they are not cast in stone and said how are they going to determine that there are going to be 2 or 3 people and that it could be 4 or 5 and there could be many individual units--if it was a development that had retired people, they could have single dwellers in there. He said that they were using a figure between 2 and 3 but that this was a big variation, because it makes a multiplier between 2 and 3, which is a 50% difference. He said that what the PUC did was to study the numbers that Mr. Bruno used to come up with his conclusions and they came up with the decision that they were on the conservative side, which Mr. Bruno himself admitted and he plans for sewer and water usage on the conservative side. The PUC likes to have Mr. Bruno plan that way.

Mr. Diana asked if this was going to be done in stages because Mr. Nunn keeps saying that the new plant (will be up by the time they finish). Mr. Nunn said that the developer was at the meeting tonight and that they might better ask him, although this was what they were told.

Mr. Nunn said that the Council was running the meeting and they could ask whoever they want.

Mr. Krupp referred to the subject that Mr. Diana touched on regarding the water pressure in that area. He said he was advised (Councilman Rys brought it to his attention) that there was a problem with the water pressure as the Testers' fire proved. He asked if they dump 150 units in that area, do they have the water pressure to be able to handle that kind of residential development. Mr. Nunn said he did not know the answer.

Mr. Gessert quoted from the 1980 article that Mrs. Bergamini had mentioned, "Sewer and water facilities in the area of S. Broad Street are very limited", Bruno said. "A booster station would probably be needed to provide adequate water pressure" Bruno added." 140

Mr. Nunn said that he did not believe there would be a change from that if that is the answer they are looking for.

Mr. Krupp said that unfortunately that is not the answer because he knows that since 1980 they have put a couple of standpipes around town and he does not think they put them up in that area. Mr. Krupp said his question was - has anyone addressed the question of whether there is sufficient water pressure up there especially in light of what happened in the Testers fire which would lead one to wonder what kind of a problem the Town is letting itself in for, or are they talking about investing in a standpipe or booster station.

Mrs. Papale asked if this was brought up at the last meeting when they voted. Mr. Nunn said no. Mrs. Papale said that she could not imagine why Mr. Bruno did not bring this up. Mr. Nunn said he was at a loss as to why someone else didn't bring something up.

Mr. Kowalski, the developer for the S. Broad St. condominium project, said that there were all kinds of questions being asked which had been addressed and that he had the engineer here and that the water pressure problem is another thing that the Town is going to get and that has been taken care of. He said that maybe Mr. Nunn does not have the specifics but that they do and that he would be happy to supply the Council with that information when the Council gives them the opportunity.

Mr. Gessert said that they would be happy to give Mr. Kowalski the opportunity, but that if Mr. Nunn's commission voted on it, if they voted to approve the project, that information that Mr. Kowalski has in his briefcase the PUC is not aware of.

Mr. Kowalski said that Mr. Bruno had this information.

Mr. Krupp said that they understand that it was not included in the minutes, but that they know from their own Council minutes that what they have is just minutes and not transcript, and that the issue was raised and he was wondering what was discussed at the meeting since they have already seen that some portion of the discussion may not have been quoted verbatim.

Mr. Polanski asked if the 2,000 feet of sewer line is going into the existing sewer lines. He was answered yes. Mr. Polanski said that those existing sewer lines were not in the best of shape and are they going to hold it or are they going to redig those streets up and put in larger sewer lines to take care of extra amount of sewage coming from that area plus whatever else is going to be built in there. Mr. Polanski asked if Mr. Bruno had said that those sewer lines, what's in the ground now, can hold what's going to come in or is it going to blow up in our faces and have sewage all over.

Mr. Nunn said that he is sure that if the latter were true, Mr. Bruno would have stressed that point. He added that Mr. Bruno did not say that the water lines were not large enough or the sewer lines were not long enough and that he was sure that if it was Mr. Bruno's impression that 150 units in that area, approximately 55 above what was in the plan for, would cause a problem, Mr. Bruno would have brought that to the PUC's attention. He said that they did not ask him that question.

Mr. Polanski said that on page 5 of the minutes, it worked out to 95 total units and then Mr. Nunn had asked Mr. Bruno about the averages and it seemed to Mr. Polanski that Mr. Bruno was quite insistent of below 100, even at that meeting.

Mr. Holmes thanked everyone for meeting here on short notice and said that whenever they have a plan of attack, very rarely does it come down on the chalk line; there is always flexibility built in and he does not feel that there has been any gross capitulation by the PUC decision. He said that as far as setting precedence, there is never any "squawk" when they give industry extra gallon out in to entice them, but that



when it comes to the homeowner and someone wants to locate in Wallingford and live in Wallingford, they "wring them by the neck." 14  
Mr. Holmes said that he was confident that the PUC addresses sufficiently and he thought that they continue to act in a responsible fashion. He said that he would like to hear the comments of the engineers concerning the water pressure because if 85 units was the number that was going to be approved, the Council would want to hear anything about the water pressure.

Mr. Killen said that he knows Mr. Nunn must feel like he is at an inquisition but that the questions that were being thrown at Mr. Nunn were the type of questions that the Council would have hoped that the PUC would have thrown out at Mr. Bruno. Mr. Killen said that Mr. Nunn kept saying that Mr. Bruno could live with it and the other gentleman had said that Mr. Bruno had these particular things, but that just from his reading of the minutes, Mr. Killen said that he felt Mr. Bruno just reached the point where he stopped fighting. He said that it did not seem to him that he said "fine, we can live with it, etc." He felt that the PUC were his bosses and that for some reason they kept going at it until Mr. Bruno had no defense left, but that he did have all the answers. Mr. Nunn said that he was making an assumption and Mr. Killen said he knew that and he apologized for that.

Mr. Nunn said that if it was his meeting and he chaired the meeting, he would mandate Mr. Bruno to be here - he works for the PUC, and if he had a graduation or a birthday, he would say he was sorry but that they could not change the meeting date. He said that they have tried to change meeting dates and they have changed their meetings from a third Tuesday to a fourth Tuesday to accommodate certain commissioners and then they hear the complaints that it got on top of the Council meeting. He said that the PUC has had their regular meetings and the Council has called a meeting that coincided. He stated that they had a meeting yesterday where they had two very high-priced consultants that were coming down at no cost to the Town to give them a lot of information; at their request, they held the meeting at 4:00 knowing it would run to 6 or 7 p.m. He said they were from Boston and they thought this would get them back at a reasonable time and yet they received criticism for having a meeting at 4:00 in the afternoon. He said, with that in mind, it's easy to develop a "thick skin" to criticism. He said that as far as Mr. Bruno is concerned, if it was his meeting, he would be here. He said that it would have been the key ingredient - to question Mr. Bruno. He said that he thought the meeting should have been held when Mr. Bruno would have been available or ask that he make himself available.

Mr. Killen said that the Council did not have oversight over Mr. Bruno, but that they did have oversight over the PUC, and the Council was questioning Mr. Nunn as to why the PUC chose to override the man in whom they put their trust. Mr. Killen recalled that constantly when P&Z is before the Council and the Council asks has this been okayed, they say yes: John Costello okayed it and Al Bruno okayed it - they do not say that Mr. Nunn or the members of the Commission - they say the men who really okayed it because these are the men who went out and did it and they are the ones with the expertise. He added that you don't always have to agree with a man with expertise but that once you "hang your hat" on him, then you're stuck with him.

Mr. Nunn said that the question was asked of Mr. Bruno whether he could live with the situation and he felt he could - whether it was because he was exhausted from rebutting it, he cannot say and they would have to ask Mr. Bruno that.

Mr. Killen said that to live with a situation is one thing; what the PUC is charged with is what is best for the Town of Wallingford, not whether they could live with it. Mr. Nunn said that that was the manner in which they felt they acted.

Mrs. Papale said that she felt that what Mr. Nunn had said was right - that they should have worked their meeting around Mr. Bruno because she wanted to hear from him. Mr. Nunn said that they could have asked the PUC to ask Mr. Bruno. Mr. Killen said that they had Mr. Nunn before them now and they have the minutes, and nothing in there shows that there was a desire on the part of anyone but the Commission to change this particular thing and Mr. Bruno finally went along with it. He said that this was the same as when you want a zoning changed, if it is zoned industrial and you want it changed, you go in and you tell what has transpired,

why it should be - there has to be a reason for it. He said that so far all he could see was that the PUC had a request to change it and based on that request they decided to change it.

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Mrs. Papale asked Mr. Killen if he wouldn't want to ask Mr. Bruno why he ended up going along with it. She said that she did not believe that Mr. Bruno just said all right. Mrs. Bergamini stated that Mr. Bruno does not have a vote on the Commission.

Chairman Gessert said that he has a boss and when his boss is insistent on something, he said the bottom line is he has two choices: he can resign in protest or he can go along.

Mrs. Papale said that she respects Mr. Bruno maybe more than many department heads and she knows him and she cannot imagine him saying "all right, do what you want."

Mr. Nunn said that the PUC does not run their meetings that way - if Mr. Bruno said no and the PUC still felt yes, then that was their decision.

Mrs. Papale asked what made the PUC go differently than Mr. Bruno. Mr. Nunn replied that they measured the entire picture and the situation that they were currently in and they felt that this situation was acceptable. Mrs. Papale asked if it was good for the Town of Wallingford and Mr. Nunn said yes. She asked him why.

Chairman Gessert asked how Mr. Nunn was going to defend this one and the 151 stands and the next guy comes in and wants 500 units on a place that is supposed to be only 200 and then he wants to compromise at 375, and he says it is the same as this case. How is the PUC going to say that he is different from this case?

Mr. Nunn replied that he would look at the situation and if he was not different, then they might go with that too, with the idea that the plant may possibly be at capacity instead of the year 2005, 20 years from now, it might be at its capacity in the year 2000. Mr. Gessert said it might be at capacity by 1989, the day they open the door, if they do this often enough. Mr. Nunn said he did not think so and that they have a plant now at 4 million gallons and they are going on an 8 million gallon plant and there is no way that 1989 will find them at 8 million gallons.

Mrs. Bergamini asked Mr. Nunn what is the point of having these studies and that last night they had a meeting and almost agreed to a study that is going to cost the PUC \$44,000 on a water treatment plant. She said that if five years down the line, they are going to ignore that study and change their minds, then what is the point of the study. She said that, to her mind, the sewage treatment plant is still a figment of somebody's imagination. She said that there was not a shovel in the ground, she had not seen a plan and she had not seen any motion on it. Mr. Nunn asked her if she had seen the bills they paid on the design phase. Mr. Nunn said that you start with a feasibility plan and you go a design plan and they are past those two stages now. Mrs. Bergamini asked how they can deviate from a plan that doesn't have a shovel in the ground and how do they justify paying \$44,000 for a survey or a feasibility study on a water treatment plant when down the line, the Commissioners are going to do this.

Chairman Gessert said that the questions that the Council members had that Mr. Nunn could not answer would then be addressed to whoever could answer the questions - the developer, engineer and the attorney.

Mr. Dennis Garvey, attorney for the developer, with offices at 1 Whitney Avenue in New Haven, prefaced with the comment that this particular development is right up at the top of the list of the top ten - one of those things that has been going on since 1980, five years, since it was proposed to develop this land. He said that as background, the P&Z Commission has approved 238 units for construction on this site. He said that the Council was not unaware that they have had other meetings with the PUC and that they are not unaware of the problems that face the Town by virtue of the present capacity of the sewage disposal system. He said that the developers were asked to attempt to reach some kind of a compromise number, someplace between 238 units and zero. He said that the developers designed and redesigned this project with good engineering and architectural advice. It is proposed that 151 townhouses be constructed and obviously those are not all going to be built at one time. He said it was the plan of the

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developer to phase them in and to build models and to develop the project in accordance with his ability to not only do the site plan, develop the sewer connection, which Mr. Tim Brown will tell the Council about, to extend the water line, to put a boot on that water line to ensure that there will be adequate water pressure and then to begin construction of the units.

Mr. Garvey stated that they told the Commission that it was unlikely that any of these units would be ready for occupancy in less than a year, perhaps more. He said that thereafter it would be built in phases, probably in three phases of approximately 50 each as sales were developed.

Mr. Gessert asked Mr. Garvey, as an attorney, when he goes into court and a client of his has a verbal agreement, how well does that verbal agreement hold. Mr. Garvey replied that it depended on what the verbal agreement was and that one could have an oral contract. Mr. Gessert asked which is better and Mr. Garvey said that he did not think that one is better than the other as a matter of law and that he could enforce either one. Mr. Garvey said that there is no developer in this economic climate who is ever going to place himself in the position that developers did in 1973 and again in 1981 where interest rates changed, unless he has assured sales. He is not going to build on speculation 151 units, and then perhaps be sitting there unable to sell them. He said it was very unlikely that this project could be built out in less than three years, but nobody could guarantee that. He said they gave their best estimate and Mr. Nunn alluded to that. He said that it seemed to him that the most important factor in the presentation of their case to the PUC was the technical information which was developed by Tim Brown and his company in connection with the development of this project. He added that there is a disagreement among experts, not substantial but it is very material as to what the construction of these units is going to add to the sewage disposal plant load. He said that Mr. Brown would cover that with the Council but that it was his feeling, based upon the information which Mr. Brown will present, and Mr. Garvey would give a copy of the report, with the development of 151 units on this particular piece of land will be less than that which was contemplated in the facility plan. He said if that is so, they are well within the guideline that had been established. Mr. Garvey said that if the Council accepts the expert opinion of Mr. Brown and balance it against what Mr. Bruno said was admittedly very conservative, he does not think the decision was unreasonable at all and that, as a matter of fact, he thought the PUC might have been rather hard-pressed not to grant this request.

Mr. Tim Brown, President of The Center for Engineering, Inc., 15 South Elm Street, Wallingford, said that at the last meeting when the P&Z submitted this question back to the PUC, the engineers developed some figures for Mr. Bruno and for the Commission. Mr. Brown said that he had quite a bit of experience with this since he has been doing water work for about 22 years and that members of his staff have designed water and sewage treatment plants in Connecticut, New York, Florida and New Jersey. He said that they have a good understanding of how this information is developed. He said they obtained some numbers here in Connecticut that are typical of this type of project. Farmington Village Condominiums is 92 gallons per capita per day; Bristol, City-wide is 84 gallons per capita per day; Middletown, City-wide is 85 gallons per capita per day; Southington, Town-wide is 60 gallons per capita per day; South Central Connecticut Regional Water Authority for condominiums is 60 gallons per capita per day. He said that, as they look at those numbers, they will see that the more residential communities and the condominiums have significantly lower numbers than the more developed industrialized towns, and that is because thrown into their per capita per day are their industrial uses, etc. Based on that survey, they used the number of 65 gallons per capita per day for the South Broad Condominiums. As everyone knows, all the water that is used does not reach the sewer system; some is used for car washing, watering the lawn, etc. One of the most widely accepted engineering text in this field is Metcalf & Eddy, 2nd Edition, and they cite that 60 to 80 percent is the range of the portion of water that normally reaches the sewer. Using that as background, they developed a water use of 65 gallons per capita per day.

Mr. Brown said that one of the discussions that took place earlier this evening was that this type of development normally has a range of 2 to 3 people per unit and they used 2½ people per unit for the 151 units; the amount of water consumption that is is 24,537 gallons. They used a conservative number (he has worked with Al Bruno for some ten years and he knows that Mr. Bruno is conservative and knows what he expects) of 90% of the water consumption to reach the water plant and they can see that this is probably conservative by 10 or 11%. He said that using that, 22,083 gallons per day would come off of this site for a total of 151 units. 144

Mr. Gessert commented regarding the various typical gallons per day for surrounding areas, Mr. Gessert asked why didn't Mr. Brown choose a number halfway between 60 and 92, instead of a number near the lowest end. Mr. Brown said that 92 is at the high end and in a survey, you look at all the numbers and look at them; he said if you look at the other numbers, like Bristol, Middletown, and Southington, they also include the other uses of water throughout the town, so they can see that the actual consumption on a per unit basis would be substantially lower.

Mr. Gessert asked what did those numbers measure - water or sewer. Mr. Brown said that they measure water. He said that he then took that number (65) and used 90% as reaching the sewer system here in Wallingford.

Mr. Gessert asked if they arrived at this by taking the total amount of gallons that leaves the reservoir every day and divide it by the total population. Mr. Brown said that these numbers are arrived at through many other things, such as leaky water systems. These are consumption numbers which are widely published.

Mr. Gessert asked, if these are actual consumption numbers, then why do they go and talk about the industrial stuff which has no bearing on residential use. He said that how much water and how many showers his family takes has no bearing on Bristol-Myers and why Bristol-Myers should be fudged into the consumption at his home has no bearing. Mr. Brown said they do not do that.

Mr. Holmes said that Mr. Brown said that other towns factor that in for their residential use. Mr. Brown said that they have attempted to use real numbers and that they certainly would not want to include industrial use.

Mr. Gessert asked how much water does a household use per day per person. Mr. Brown said that this is exactly what they have in the 60 gallons per capita per day. Mr. Gessert asked where did Farmington get 92. Mr. Brown said that they were on the high side. Mr. Gessert asked if this was measured by a household or by FIP's industrial park. Mr. Brown said that this was for Farmington Village Condominiums. Mr. Gessert asked if this was an actual measurement of a housing unit. Mr. Brown replied that it was an average of the housing units in Farmington Village Condominiums. Mr. Gessert asked if this was the actual figure for the Condominiums and not based on some industrial park in Bristol. Mr. Brown said that was correct and that so were the South Central Regional Water Authority figures for Condominiums. He said that one of the advantages of using the latter's numbers is because the Authority meters a whole single Condominium complex on a single meter and therefore you get a very good reading of what those numbers are - they are more accurate, and since they are dealing with condominiums, they want to deal with condominium numbers.

Mr. Krupp asked if the 65 gallons per day is after they apply the 90% factor. Mr. Brown said no that this was before the 90%. Mr. Brown said that they were at least 10% conservative in using the 90%. Mr. Gessert commented that they were not too conservative when they used the 65. Mr. Brown responded that there is another factor here that he had not come to yet. Mr. Gessert said that if one gets realistic figures at 92 and the other one comes up with a low of 62, it seems that they targeted a lot more toward the lower end than toward the middle.

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Mr. Brown said that the last fact in relation to this particular project is that this project is almost all two-bedroom condos. He said that Farmington Village has a high number of 3-bedroom condos which naturally have more people. The fact is that their estimate is 22,083 which is 5% less than would be allowed in that particular development had it been an industrial development. He said that this was to say that their facility plan allowed 1200 gallons per acre and that times the 19.33 acres of this site gives you 23,196, and that, in fact, they are 5% to the good in relation to the flow that is reaching the sewage treatment plant.

Mr. Brown said that the question of the capacity of existing sewer lines between this location and the sewage treatment plant was also raised to Mr. Bruno. There are places in Wallingford, such as the sewers up around Interchange district below the new hotel, that do have capacity problems between the sewage treatment plant. He said that in this location there is not a capacity problem. In fact, earlier on in this study, when they thought there might be concern as to how the sewage would reach the plant, they had offered to put in a holding tank and put into the sewage during the off-peak hours.

Mr. Killen asked if this was presented at a meeting of the PUC. Mr. Brown said that it was presented at the meeting of February 26 of the PUC. Mr. Killen said that it did not appear in the minutes. Mr. Garvey said that this report was made part of the minutes, and he said he would like to make it part of this meeting.

Mr. Polanski said that on page 6, they do have comments in the minutes about the same figures that Mr. Brown was referring to, this 5% lower. Mr. Garvey said that he did not know if it was in the minutes but he would make a copy of the report and make it available to the PUC now, even though he had made them a copy at the meeting.

Mr. Krupp asked if the 22,083 was the number of consumption. Mr. Brown said that the actual number of flow from the site was 22,083; the actual flow allowed from the same site from the facility plan was 23,196. Mr. Krupp asked if he used somewhat more conservative numbers than Mr. Brown used of, say, 75 gallons per capita x .9, he comes up with a range of 25,500, because Mr. Brown is at the low end. Mr. Brown said that they are at the high end with the 90%.

Mr. Gessert said that with a condominium there would not be too much lawn watering, not like with a ½-acre home. Mr. Brown said that he lives in a condominium and they have a closed circuit t.v. that, as soon as the weather gets warm, sends a message to water the grass everyday and that the condo owners do. He said again that the 60-80% is a widely accepted number and they have gone to 90%, to err on the side of being conservative. He said that these numbers were given to Mr. Bruno and, knowing Mr. Bruno for 10 years, he accepted them. He said that as the Council all pointed out, Mr. Bruno would not accept something that was not reasonable.

Mrs. Papale said that maybe it was never brought up and maybe he didn't think there was a water problem.

Mr. Garvey said no and that what he thought what happened was that in order to prepare for the zoning hearing, you have to get through the various departments and the issue of water pressure (they are also going to extend the water line 1800 ft.) Mr. Brown pointed out that this is a separate issue, that the water line does not quite come to the project today. He said that earlier on in the design, they were bringing the water line up and they sat down with Mr. Bruno and asked about the water and how he wanted to handle it. He said that there were two alternatives given to them - to take care of low pressure and the availability of water to flow in fire protection. One was a booster station which was mentioned tonight and the other was to go to the expense of extending the line up S. Broad St. through the project down jacking it with the railroad and tying into Old Colony behind, essentially creating a loop and taking care of the water pressure problem. He said that this was accepted by Mr. Bruno and he imagined this was why it did not come up at the meeting the other night.

Mr. Krupp asked if they believed that there was no problem with the water pressure. Mr. Brown said that this was correct because they are not tying into the same line. He said that one of the problems with going up there was that they had to see the line going up S. Broad. He said that when you are out at the end of a long line, you always have the possibility of a large fire and pulling on one line. He said the best way to handle that is to strengthen the grid, by putting other water lines across from one line to the other. 146

Mr. Holmes referred to the fact that they were using 2.5 people per unit and that Mr. Krupp had reminded him of the fact that the Board of Education paid for a population study for the school system and that Dr. Yulo's report concluded that an average of 2.2 persons per unit was the average for Wallingford, so that they have a real safety factor built in there.

Mr. Kowalski said that they have been conservative and that they did address the capacity problem of other sewer lines with Mr. Bruno. He said that one question not brought up tonight in extending the sewer line was if there was any cost to the Town and was there a problem in the capacity of the plant in doing that. Mr. Kowalski said that the Town's facility plan includes all the acreage up there and anyone could develop any piece at any time and tie into the line. He said that what they are providing to the Town under this plan is a sewer line at no cost to the Town and he was sure the PUC was aware of this and no longer are funds available for extension of sewer lines for undeveloped lands. So he felt there was a net gain for the Town--an additional 2000 ft. of sewer that could be tied into by the businesses that are along that particular road, new developments that come in could be tied into that line and there is a strengthening of the water grid and all of these costs are being borne by the developer.

Mr. Gessert commented that normally, if a sewer runs by someone's property, there is a hook-up charge or a sewer assessment fee per each unit going in, for each piece of property attached. Mr. Gessert asked if this is being done.

Mr. Nunn said yes, that if it is a sewer that can be used by a homeowner, then they are mandated to tie in unless they are able to get exceptions for some reason. Mr. Gessert asked what these 151 homeowners are going to pay per unit to hook up with the sewer. Mr. Nunn said that this would be another question for Mr. Bruno to answer.

Mr. Gessert said that he did not mean a hook-up charge but rather an access charge and that if you live on it and all of a sudden they extend it, then you pay for that too.

Mr. Nunn said that it does not even have to go by your house anymore; they changed that law and now, much to the chagrin of the developers, if you use it, if the developer runs a sewer line from the Town's line to his development and that if the property it services is not abutting the sewer, they still pay a sewer use charge. He said that the old law said they had to abut the sewer line to have the charge, and they do not do this anymore. Now everybody uses a sewer line and it gave them a return on their investment from 8-9-10-11% of return by the user, to now 50-60% being returned, and the Town's money is being refunded through the charge.

Mr. Nunn said he did not know, off hand, what the charge was per unit, in answer to Mr. Gessert's question. He said it was like having a reference material - when he wants to know that number, he asks Mr. Bruno and therefore he does not commit it to memory.

Mr. Killen asked if they had any figure for what Pilgrim Harbor wanted for using the condominium. Mr. Brown said he did not. Mr. Killen asked if he had any figures for the Town of Wallingford and Mr. Brown said he did not. He asked Mr. Brown if these wouldn't be more pertinent than the Middletown and Bristol figures. Mr. Brown said that they might be useful also but he felt that these numbers were typical for Connecticut and they are published numbers and that is why they use these.

Mr. Killen said that they did not decide to build a plant based on typical; they decided to build a plant based on Wallingford's use and it seemed to him that that would be one of the overriding things. Mr. Killen asked Mr. Brown if he knew what the water and sewer charges were in Farmington as opposed to the South Central Connecticut region.- are they the same, or is one higher or lower. Mr. Brown said that he was not sure what the rates were but that one thing that is common to both of them is that they are metered on a full project basis - they have one meter that they buy water for the condominium from the water company. He said that this was something that Mr. Bruno avoided wisely in this case. Every unit in this project has individual sewer and water hook-up and a meter. He said that, generally speaking, when you are metered you use less water. He said it is less likely that you are going to open up the valve and water the grass. 147

Mr. Killen said this was why he asked this question. He said that there is one instance where the elderly were paying off one meter and they had the doors wide open and the heat going full blast until the Town put in the meters. He said that this was why he felt they should have something more typical of what Wallingford is going to use. He said that these figures in the report he could care less about, because these communities did not go for the \$38 million and Wallingford did.

Mr. Brown said that the position that Mr. Bruno has taken in requiring individual meters and individual hook-ups is to the good.

Mrs. Bergamini quoted from the minutes, "Mr. Nunn asked if 100 gallons per day was a reasonable amount. Mr. Bruno said it was on the high side. The average for this town is about 80 gallons a persons; 100 gallons is used because the peaking factor has to be considered."

Mr. Brown stated that the peaking factor of 100 gallons per day is really independent of what they are doing here. He said it is used to size the sewer. He said that at 5:00 in the afternoon, which is your peak use, when everybody is turning on their dishwasher or washing or taking a shower, the water consumption is higher and therefore the amount of water reaching the sewer is higher. So, you have to size your sewers for that increased instantaneous capacity and that is where the 100 gallons comes from.

Mrs. Bergamini quoted Mr. Bruno from the minutes regarding the study done by the engineering firm, "He had no particular comments except that they had not provided a peaking factor." Mr. Brown said that this factor is used for the capacity of the sewer and is not for the number of gallons per day used. He said that they use the peaking factor in sizing their sewers but this is a separate part of the engineering study. What they are talking about here is the total gallons used per day. That peaking factor is used to reach that peak load at 5:00 in the afternoon.

Mr. Nunn said that he asked that Council to consider the fact that they are using a number of multipliers, the acres, the number of gallons per acre, the number of people per unit, the number of units per acre - there are a lot of multipliers involved here. They are talking about allowing 96 versus 151 units; he said that sounds like they are allowing 50% more when they talk units. Yet, if they use the numbers using the various multipliers whether they be at 65 gallons or 80 gallons and they use 80 or 90%, the multiplier would come out (at the worst conditions), it might be 25-26,000 gallons versus an allowable figure of 23-23,500.

Mr. Nunn said that if they used the more liberal figures and came up with 26,000, against a plan of 23,000 - if you divide 26,000 by 23,000, you get maybe 112%.

Mr. Gessert said he did not know what the 23,000 and 26,000 represented. Mr. Nunn said that 23,100 is the amount of sewage that would be allowably produced in that 19.1 acres. He said if they used the heavier multipliers of 80 gallons and 80% of the water going into the sewer, the number might come out to 21,000. Mr. Diana said that if you were to take 80 gallons per day and multiply it by 2.2, which is what has been the established residency here in town per unit, multiplied by 151, what would it come to - 21,000.

Mr. Krupp said that he took the ultimate conservative route and used 80 gallons per day x 80% x 2.5 x 151 which comes out to 24,160, which is about 5%.

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Mr. Nunn said that this is why they have to make the numbers realistic and if they are saying that the PUC is allowing 151 units where they should only have 96 units, that sounds like it is a mass giveaway program, but what they are actually dealing with is - instead of delivering 23,100 gallons, you are giving 24,000 gallons, which is 5% more. Mr. Nunn said that this was using the Council's numbers not the developer's. He said that it was a variation and a departing from the plan, but it is by 5%. He said that there are acres up there that are impossible to build on and if they have blinders on and only go by the straight line, he felt they were being unfairly critical. He said that he would like to take those numbers in the judgment that was made by the PUC - why they took a unit like this using those calculations. He said it was not 96 versus 151, but rather 25,000 vs. 23,100, etc. He said to him that was more realistic because that is really what they are measuring.

Mr. Garvey said that he did not want anything to get on the record that was inaccurate. He said that those numbers were done by one of the Councilmen which was taking the figure of 2.5, where Wallingford uses 2.2, which used an 80% pressure and it is using the outside limits of the very worst case up and down the line and if you use that, 5% more is what you get over the facility plan numbers. He said that if you use 2.2, which the Board of Ed has done, then they are well underneath. Mr. Garvey said that the developer has approval from the P&Z for 238 units and the PUC has a constitutional obligation to all its citizens, which is what Mr. Nunn has been alluding to-- he is conscious and the PUC is conscious that the PUC could be more than severely criticized should it not treat all the citizens of this Town alike. He said that it could be mandated by a court order to so treat all of its citizens and having that in mind, it seemed to him that this PUC has been not just reasonable but extremely careful. He said that his firm, representing the developers, have not insisted, as they might have, that with that zoning approval they could come to the Town and say that the Town has a problem. He said that this issue is yet to be litigated in our courts. He said our Supreme Court has allowed moratorium for a temporary basis, Mr. Garvey said that our Supreme Court is very likely to follow New Jersey and say to the municipalities that they cannot shut out residents and they have to build the facility.

Mr. Garvey said that the charges that have been laid out tonight are totally unsupported and the PUC has done its job and done it properly and the numbers are here--worst case: they have allowed a 5% in excess of the facility plan. Using Wallingford's own numbers, they are well under that facility plan.

Atty. McManus stated that Mr. Garvey's legal point was not well taken (with reference to the constitutional obligations of the Town).

Mr. Brown said that there is no magic in what they have come up with and the facts are that, when they took on this job and they were told to try and lay it out for 238 units, it was apparent early on that that was going to be a problem. They had discussions with Mr. Bruno and asked what was acceptable to him and he said the facility plan is acceptable; it is a published document and they went to that published document and they took numbers and backed in and essentially they met the requirements of the facility plan. He said, had it come out to 204, they would probably have headed for that number instead; and if it would have come out to 121, they would have gone for that. He said there is no magic here; it is just good engineering and reaching a number that they know should be accepted.

Mr. Killen said that he agreed with Atty. Garvey that the PUC has an obligation to treat everyone alike but the problem that they run into is that in establishing criteria, which they did, and then deviating from them, they are not treating everyone alike. He said that if a person is a developer that has the type of money that can bring in gentlemen like the engineer and the attorney here tonight, he may get his deviation. He said however that John Jones does not do so. He said they see this day in and day out and if you read the P&Z minutes, every



time that someone takes them to court, you'll see nine times out of ten, the landowner will win, if they have the money. He said that it should not be that everyone should have to hire a lawyer to get their way. If the Town has a set of rules, a person should be able to pick it up and the figures are very easily readable. And if they set those criteria, it shouldn't be because these gentlemen and nine other people come in, that they should change things. 149

Mr. Killen felt that if they had met possibly earlier with Mr. Bruno, maybe they would not build a \$38 million plant; they might have built a \$30 million plant and been well within the guidelines because nobody is apparently going to hit the peak that they were talking about. He said that there is a term called average--if he uses 5 and somebody else uses 10, in between is  $7\frac{1}{2}$ . He said he can claim that he is going to use 5, but you can bet someone is going to use 10. The problem is how do they know everybody isn't going to use a 10; then their average goes down the drain and so does the \$38 million. Mr. Killen said that they relied on the PUC when they said they needed a \$38 million plant and now they are saying they have a lot of leeway with that, and he wished that they had told the Council that at the time and he would have questioned the figures a little closer.

Mr. Garvey stated that, as far as they were concerned, the PUC held them to pretty strict accounting.

Mr. Gessert said that from his standpoint, the PUC looks very flexible.

Mr. Nunn disagreed heartily with Mr. Gessert's statement that the PUC is very flexible. He wanted to be on record to give the Council his opinion that they have not been very flexible. He did not think that they had a giveaway program as far as the PUC is concerned and he resented that implication that it has been that. He felt that one of the reasons it was being brought up tonight was because Mrs. Bergamini said that this was a departure from what the PUC normally does and that is why she was questioning it. If it is a departure, how can the PUC be considered as being flexible with what they have done over the past.

Mr. Gessert said that Mr. Bruno said Monday that he still believed the project should be limited to 80-100 units. He said that in going from 80-100 to 151, in his opinion, was being flexible.

Mrs. Papale asked, when Mr. Kowalski went to buy this land, and before he purchased it, was he told by anyone that he would be able to put 238 units. Mrs. Papale said that he must have gotten approval from someplace.

Mr. Kowalski said that when P&Z approved the zoning for 238, he had an option on the property and Mr. Bruno had some opposing comments at the meeting, but P&Z approved it. He had an option on the property and when they approved it, he went and bought it. She asked if he would not have bought that property otherwise. Mr. Kowalski said that he would have never bought it if he knew they were going to zone by utilities which they never did.

Mr. Gessert pointed out that going from 100 to 150 units, with a difference of an additional 50 units at today's prices of \$60,000 as a low, is an additional \$3 million for that project. He said that this is a benefit to the developer. He said that when the Town Council looks at it, they have to see what benefit it is to the Town of Wallingford and what impact is it going to have.

Mrs. Bergamini asked if Mr. Kowalski had his option before he came for the zone change. He replied that he did. Mrs. Bergamini said that they did not technically approve the 238 units per se, they had approved only the zone change, and that Mr. Kowalski assumed, through calculations, that he could put in 238 provided HUD okayed it. Mr. Kowalski stated that if they read the zone change, they would understand that they get 238 units.

Mr. Garvey stated that under the zoning regulations in each category, they are allowed a certain number of units per acre so if you change your classification on a piece of land from "A" to "B", and go from industrial to residential, you can then build 14 units per acre.

Mrs. Bergamini pointed out that Mr. Kowalski had the zone changed originally by saying he was going to build housing for the elderly. She quoted "The multi-unit project, if approved by HUD, would allow 238 units in at least three low-rise buildings. In addition, the developers would have to get the backing of Town officials, the Committee on Aging, the Planning Board, and the Engineering Department." Mrs. Bergamini said that this was why the zone change was granted--for the elderly--and now all of a sudden they are going to private townhouses. Mr. Kowalski responded that this was because of the Sewer Department not issuing the permits and they lost that; that money was in the pipeline and when they went down to talk to the Sewer Dept., Mr. Bruno said he would not give them any sewer permits. Mrs. Bergamini said that this was when the Town neglected and they should have reverted that zoning back because it went under P&Z for elderly housing and that zoning should not have been allowed to stay once the developer was not allowed to build elderly housing.

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Mr. Killen said that they are being brought back to the fact that they have no oversight over P&Z. Mrs. Bergamini said they had no oversight over P&Z unless they have oversight over PUC.

Mr. Gessert asked Council secretary to read the original motion. Mrs. Bergamini agreed to withdraw her motion and Mr. Killen withdrew his second.

Mrs. Bergamini moved to use legislative veto and overturn the decision made by the PUC on February 26 to allow 151 units. Mr. Killen seconded the motion.

Mr. Polanski said that he felt that they had proven their case that they were within the guidelines and he did not think that they were overextending by putting in 151 units.

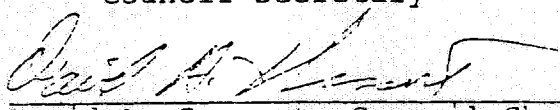
VOTE: Council members Bergamini, Gessert, Killen and Rys voted aye; Council members Diana, Holmes, Krupp, Papale and Polanski voted no. Motion did not carry.

A motion to adjourn was duly made, seconded and carried and the meeting adjourned at 8:30 p.m.

Respectfully submitted,

Carmen L. Gonzalez  
Council Secretary

APPROVED:

  
David A. Gessert, Council Chairman

March 26, 1985  
Date

  
Rosemary A. Rascetti, Town Clerk

3-27-85  
Date