

SPECIAL TOWN COUNCIL MEETING

THURSDAY, JANUARY 3, 1991

6:30 P.M.

AGENDA

1. Roll Call & Pledge of Allegiance
2. Approval of a Lease to the Boys & Girls Club
3. Acceptance of a Deed from Masonic Charity Foundation
to Allow Execution of a Lease to the Boys & Girls Club
4. Reapproval of a Lease to the Boys & Girls Club

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SUMMARY

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SPECIAL TOWN COUNCIL MEETING

JANUARY 3, 1991

6:30 P.M.

A Special Meeting of the Wallingford Town Council was held on Thursday, January 3, 1991 at 6:30 P.M. in the Robert Earley Auditorium (Council Chambers) and called to order at 6:40 P.M. by Chairman Albert E. Killen. Answering present to the Roll called by Town Clerk Kathryn J. Wall were Council Members Bradley, Duryea, Gouveia, Holmes, Killen, Papale, Parisi, Solinsky and Zandri. Mayor William W. Dickinson Jr. arrived at 6:46 P.M., Attorney Robert K. Ciulla was present in place of Town Attorney Janis Small who was present in the audience.

The Pledge of Allegiance was given to the Flag.

ITEM #2 Approval of a Lease to the Boys & Girls Club

Motion was made by Mr. Bradley to Approve the Lease Between the Town of Wallingford and the Boys and Girls Club with the Lease being Appended to the Town Council Minutes, seconded by Mr. Parisi.

Mr. Killen explained that due to the fact that there are a lot of legal entities which must be resolved, he stated that the first part of the evening will be dedicated to the members of the Town Council asking questions of the legal counsel. The public hearing will commence immediately following.

Attorney Robert K. Ciulla and Attorney Robert Trautmann were introduced as the legal representation for the Town.

Mr. Gouveia: Have you seen, read and analyzed the warranty deed of April 24, 1947? Have you also seen an agreement between the two parties involved that also involved the 1947 deed the Council approved back in 1987?

Atty. Ciulla: If you are referring to the agreement which had to do with the settlement of the property taxes, I not only have seen it but have represented the Town in connection with that matter.

Mr. Gouveia: In the original deed there is a warranty deed and an agreement, do you feel that the deed stands on its own? In other words after April or May of 1987, Part IV of an agreement that the Town Council approved, I would like to read it to you if I may...

Atty. Ciulla: It says that the agreement is terminated and henceforth shall be of no force and effect. That language was very specific as to not undo what had been done back in 1947 except in so far as the agreement specifically stated that it was terminated. It was not a declaration that the original agreement was null and void, it said "henceforth shall be of no force in effect". It had no future application and that basically was there to take care of the problem with the Masonic Home having had waived as to it any

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future sewer use charges in connection with their property. That was part of the deal in 1947. That was what that agreement was designed to get at as part of the overall property tax settlement on the Ashlar Village property. It did not undo the deed from Masonic Home to the Town of Wallingford. By signing that in 1987 the Town did not...

Mr. Gouveia: What did you exactly undo in 1987?

Atty. Ciulla: You undid the right of the Masonic Foundation to not have to pay any further sewer use charges.

Mr. Gouveia: But the deed itself was not altered?

Atty. Ciulla: The deed itself was delivered and accepted back in 1947 and the covenants of the deed were not altered in any way. The agreement in 1947 really grew out of the dispute about whether or not Ashlar Village was taxable under State Statute. The only thing that that agreement essentially took care of, the only thing that remained in the future was the question on the sewer use charges to be paid by the Masonic Home or not to be paid by the Masonic Foundation. Because it was necessary under federal law to have everyone who put sewage into the system pay their fair charges, part of the quit pro quo for the tax settlement was that Masonic Foundation would get back and be paying their regular sewer use charges from that point on. That is the only part from the 1947 agreement that really was affected.

Mr. Gouveia: But the original 1947 deed was, the land to the Town was in exchange for that sewer fee, no charge of sewer fee that we undid back in 1987. And you still don't think that it has any bearing on it whatsoever?

Atty. Ciulla: If that were the case the Masonic Charity Foundation would now own the Community Lake Park.

Mr. Gouveia: That is my question, really.

Atty. Ciulla: I don't think that is a position that I would advise you to take and I certainly don't take it.

Mr. Gouveia: Don't you think that back then in 1987 we should have come up with a legal document and filed it with the land records requesting that the Masonic Home Foundation relinquish all the rights to the land just in case in the future we were to do something with the land? I guess what I'm saying is, back in 1987 at the same time exactly that we adopted the agreement that I talked about we were also establishing a Community Lake Committee which was to look into the feasibility of rebuilding Community Lake and possibly spending a great deal of taxpayers money in doing so. My question is, if there was any kind of question as to whether or not the land belonged to the Town at that point in time, because of the 1987 agreement, shouldn't some sort of a legal document been filed with the land records whereby the Masonic Home Foundation would relin-

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quish all the rights to the land and, indeed, recognizing that the sole owner of the land was the Town of Wallingford?

Atty. Ciulla: There was no need for that because it was not an issue. The Town owned the land subject to the provisions of the deed in 1947. There was no reason to file anything on the land records.

Mr. Gouveia: On the new deed that we asked the Attorney General's Office to review, are there any other changes in addition aside from the change that the clause that was written in to allow us to lease the land?

Atty. Ciulla: My understanding is that the only significant change in the deed is the language that would permit the Town to enter into a lease with the Boys & Girls Club without violating the language of the deed.

Mr. Gouveia: The wording that says, "for the consideration of \$1.00 and the mutual covenant set forth in the agreement between the grantor and the grantee", that has all been changed. That was all eliminated to include the only thing that they have now, "for the consideration of \$1.00 and other valuable considerations".

Atty. Ciulla: That is of no legal significance. Basically the old deed makes reference to an agreement that was being entered into at that time. There is no special agreement that is being entered into here so that is no issue at all.

Mr. Gouveia: Why was the change made then if there was no significance whatsoever?

Atty. Ciulla: The assumption that I am making is that the drafter of the deed used the typical standard language that they used and there was no reason to make reference to any other agreements being executed because there were none.

Mr. Gouveia: With all due respect, there be no more assumptions. I believe that we have been lead down the wrong path too many times due to assumptions. I think 1987 was a case in point. If there was no problem with the language as it was...

Mr. Killen: Peter, in the previous agreement, the agreement with the Town was made part and parcel of it. It was changed around in the new agreement that is not part and parcel of it. Nothing was changed when they entered into an agreement with Masonic Foundation for Ashlar Village having to do with the Town. The Town still owned the land and there was no sense in recording it all over again.

Mr. Gouveia: Why was the deed itself changed then?

Atty. Ciulla: There is no reason to reference a covenant of an agreement which in 1987 we agreed was terminated.

Mr. Gouveia: Thank you Mr. Chairman, that was the answer that I

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was looking for.

Mr. Zandri: There were a couple of legal opinions, one back in February 6, 1990 and another on February 15, 1990 that said that the Town could not enter into a long term lease as proposed. Those were two legal opinions. Can I get your opinion on that?

Atty. Ciulla: They were two opinions that I wrote. I was asked because apparently Atty. Mantzaris was concerned about potential conflict in his representation of the matter. I was asked, in light of his conflict, to render an opinion as to whether it would be in violation of the deed of 1947 if the Town entered into a lease of a portion of the land on Community Lake to the Boys Club. In a nutshell, to lease it to a private entity, even though charitable, that would violate the terms of the deed restrictions of 1947. That was the opinion that I gave. The only reason for two opinions was that apparently, the first lease that I was given related to a different piece of property which was from somebody else. The second opinion, of which was the same, had to do with the property that is at issue here.

Mr. Zandri: And your opinion still remains the same and hasn't changed?

Atty. Ciulla: It remains that same on that point it has not changed.

Mr. Zandri: Would we be in violation of any State Statutes if we leased this land?

Atty. Ciulla: My opinion is on record and that is that it would be a violation of Section 47-2 of the CT. General Statutes to enter into a lease as it is being proposed with the Boys & Girls Club. The other thing that has to be said is that the entity which is the principal enforcing arm of the State of Connecticut, namely the Attorney General's Office in the Charitable Trust Division had apparently decided that it would not have any problem with such a lease under all of the circumstances. Although I think that it is fairly clear that the Attorney General agreed with my legal analysis. Basically what the Attorney General has said, as I understand it, is that if Wallingford elects to go ahead and enter into such a lease it would then trigger off a reverter clause which is contained in the deed for the Masonic Foundation. A reverter clause meaning that if you violate the terms of the deed the property goes back to the original owner, and then if the Masonic Foundation, as it is being proposed, gives you a deed back with deed restrictions which allow for such a lease and the Town signs such a lease, then the Attorney General will take no action.

Mr. Bradley: Atty. Ciulla I believe that you have issued three opinions if I have counted them right, and I have questions on our correspondence dated April 2, 1990 to Adam Mantzaris. On the second page, the last paragraph, I believe that you state that you have talked with the Assistant Attorney General if you can elaborate on the sentence, "he has confirmed that he

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had later talked to a lawyer about the possibility of writing a letter that the Attorney General would not intervene to enforce the deed restriction if the Town went ahead with some kind of lease agreement".

Atty. Ciulla: The background with that is, after my initial opinions I received a letter from Attorney Chris Carrozella to Adam raising various issues. In that letter, Atty. Carrozella said that Assistant Attorney General Ormsted expressed the view that such a long term lease (of a 100 year lease) would not violate the deed restrictions and would issue a "formal legal opinion" about this arrangement. The reason that I called Ormsted is that I was concerned that if you enter into a lease of 100 years it is equivalent to buying or selling a piece of property so that I wanted to find out if I had missed anything in all of this and that Ormsted was aware of something other than Section 47-2 of the State Statutes. That is why I picked up the phone after receiving Carrozella's letter and before writing to Adam and this details what I am sure that the conversation was with Atty. Ormsted because I wrote it the same day that I talked to him on the telephone.

Mr. Bradley: On the last page, "finally Mr. Carrozella asked whether a Wallingford taxpayer would have standing to bring an action to challenge a lease of the property of the Town of Wallingford", I think that leads also into your answer. I did write Adam and I believe you do have a copy of where I requested a legal opinion specific to that concern.

Atty. Ciulla: Essentially the view is, it can get to be a little bit of a complicated matter in the State of Connecticut law, and quite frankly there are cases that are coming down that are maybe changing the rules in slight ways from time to time and so forth, but the general rule is that if someone wants to challenge the actions of a municipality, they don't automatically have standing to do so just because they are a resident or a taxpayer in a Town. They have to be a taxpayer of a Town and they have to allege and prove that the municipal conduct which is alleged to be improper causes him to suffer a peculiar pecuniary or irreparable injury. There must be something about the conduct that injures him in a specific and precise way, different from all the other taxpayers. If the question is, who do I think fits that category? I don't have the slightest idea. You have to have the standing and the dollars to want to bring the lawsuit. It would have to be based on the facts. In all likelihood it would have to be somebody, if anybody was out there, that could demonstrate an aggrievement and have standing. It would most likely be someone in the area of Community Lake Property. That would be my guess.

Mr. Solinsky: Does this scenario happen very often?

Atty. Ciulla: No.

Mr. Solinsky: Does it ever happen?

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Atty. Ciulla: Yes. It is very unusual in a municipal situation or a charitable situation. It is not uncommon for a deed to contain restrictions saying that a piece of property has to be used for a public or charitable use. Then what frequently happens is, because of passage of time and years, you find that you cannot comply with the deed. A law could be passed that makes it illegal to comply. I have not run into this situation before.

Mr. Solinsky: Could there be a more proper way to reform this through the court?

Atty. Ciulla: No. The people that would be part and parcel to that would be the Attorney General's Office and they seem to have already rendered an opinion here.

Ms. Papale: If the Council votes on the three matters on the Agenda tonight, if we approve the lease and the reverter goes back and all the information that we have here, if we do everything that on this Agenda and vote yes, it is a legal way of going even though we would be violating Section 47-2 of the State Statutes, if we revert it will be legal in all ways?

Atty. Ciulla: It is a hard question to answer. If you do this and the Attorney General doesn't take any steps and, in fact, agrees that it is appropriate and legal, it would be effective and you will accomplish this. If no one brings a lawsuit it will be effective

I am hesitant to say it is legal because I have issued an opinion that states that the original lease proposal was violative of the deed restrictions.

Ms. Papale: If we revert it it will be o.k.?

Atty. Ciulla: You are right, the Attorney General issued an opinion in July in which he said that it would be "legal" to follow this reverter route.

Mayor Dickinson: Perhaps using the term "legal" whether "legal" or "illegal" is not good semantics. It is not criminal, can it be challenged is probably the question. Yes, it can be challenged. Is it an acceptable thing to do? According to the Attorney General it is an acceptable thing to do. To say whether it is legal or not implies that it is illegal and no one could be arrested for doing it.

Ms. Papale: It is acceptable then?

Atty. Ciulla: It is acceptable to the Attorney General's Office and if you decided to vote yes, it will be acceptable to you.

Mr. Killen: Ms. Papale, I believe that you have in your packet of information this evening, contained in a letter from Atty. Ciulla the statement that the Attorney General does not offer opinions to anyone other than someone in State Government. So the opinion is such that it is not a legal opinion.

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Mr. Zandri: Is the original deed protected by State Statute?

Atty. Ciulla: Only in the sense that the original language of the deed provides for a restrictive use. It has to be used for public or charitable purposes. There is a Statute that says that if you

give a deed or granted a State in that way that it is supposed to forever be used in that same way.

Mr. Zandri: If we vote to lease this then we are violating that State Statute?

Atty. Ciulla: The best answer I can give you is the Attorney General who is charged with enforcing that Statute apparently doesn't think that you are. The other side of the coin is, there are times when for example, you might breach a term of a lease of a contract and if there are no consequences that flow from it then it has no real importance.

Mr. Zandri: The Statute is there to protect the wording of the deed and you are going to vote against the wording of the deed, then what is the purpose of the Statute to start with?

Atty. Ciulla: It is there to enforce a deed that provides for any other gift, that is a charitable gift. The Attorney General's Office is charged with enforcing that. It is that office that is saying that they don't find there is a problem with Section 47-2 if you go ahead with this arrangement.

Mr. Killen: The Attorney General is saying that we have a series of steps, if it all comes to fruition there is no problem. If you pas

the first one, however, and do not go through with the second one, or the party to the second one does not go through with it, then the Town itself has given something away and the State's Attorney has said that he has washed his hands of it even though it is a public trust.

Atty. Ciulla: It raises an interesting question. There would be, under the way this deal is contemplated, a point in time after you sign the lease in which the property, and this is all theoretical, would revert to the Masonic Foundation. The way we would contemplate the transaction would take place, is that as we handed the deed as it was signed and the reverter took place, we would be grabbing with the other hand the deed back from the Masonic Foundation. Meaning that we then own the properties subject to the new deed restriction. So that while there is a theoretical certainty that at least for a split second they will own the property again. I don't think it is reasonable to assume that they are, at that point, going to run out of the room and not give you the deed. I think that the decision of whether to go forward with the concept of the deal is the important one. Whether they will fulfill their part of the bargain, I don't think is in question.

Mr. Killen: On the letter from the Attorney General dated July 2, 1990 there were terms of a lease. It said "new language to be

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included in Masonic Deed". It says at the top of the page that this language is to be inserted after paragraph one that ends, "to the Southeast of the land herein described" and before paragraph two which begins "to have and to hold". Now the paragraph says that "the grantee shall be permitted the right to lease a portion of said land herein described to the Boys & Girls Club of Wallingford for the purpose of constructing and operating said club on said land. Said lease shall provide for the reversion of said land and any improvements thereon if the termination of said lease or any extension thereof." All of this has been scratched out and none of this particular language has been put into the finalized deed that was presented to us. Do you know who the author of this is?

Atty. Ciulla: I don't and I have never seen this before. I have seen the proposed deed as it stands now and what my information was is that the Attorney General in December had reviewed all of those documents including a new revised deed and I don't know who drafted that language or how it came about, but obviously at the moment you should be dealing with the December correspondence.

Mr. Killen: What bothered me is the deed that we have with the Masonic Home had the automatic reverter. The one that we have with the Boys & Girls Club now is not an automatic reverter. We have to notify them in case something goes wrong.

Atty. Ciulla: I honestly don't think that you want an automatic reverter. We were not there in 1947 but as a recipient of land, the last thing that you want to do generally is to have something in there that creates some doubt that the person who gave you or sold you the land can come back in and snap it up in the event that you want to do something with the land.

Mr. Killen: I'm talking about our lease with the Boys & Girls Club there is no automatic reverter.

Atty. Ciulla: There is a provision that at the end of the lease period it reverts. It is a contractual reverter. There is no sense in having a reverter because they are only interested in this land is going to be lease hold interest. What you got in 1947 was an interest in the land, you became the owner. Reverter means that it then goes back from you to the original owner. At no time is the Boys & Girls Club going to own this land. The only interest they will have in the land would be the lease hold interest. There is nothing to revert back.

Mr. Killen: If they don't comply with the terms of it, there are terms...

Atty. Ciulla: It is right there on page #6, paragraph 12, if they don't comply with the terms, we are immediately entitled to recover possession of the premises. You would obviously have to go to court to evict.

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Mr. Killen: That is the point. The reverter clause apparently got by it in this particular instance.

Atty. Ciulla: It didn't get by, it didn't make any sense to have one.

Mr. Killen: I'm saying that it did in this particular instance. The Masonic Home called for a reverter which called for no further action.

Atty. Ciulla: That's because it was a deed of property, you are actually getting title to the property. The Boys & Girls Club will not be getting title to the property. You are, in effect, becoming a landlord to them. A reverter has to do with the flipping back of an ownership in real estate, there is nothing to revert.

Mr. Gouveia: We have four items before us to deal with. We cannot deal with item #3 & 4 until we deal with item #2, in other words, the action at hand then is a motion to approve a lease to the Boys & Girls Club. If we do that, we will be violating State Statute.

Atty. Ciulla: You will not be violating State Statute. If you vote to approve the lease, when someone takes pen to paper, whoever is authorized....

Mr. Gouveia: There are two leases here. The first being a lease to violate and breach the deed.

Atty. Ciulla: You are not voting to violate, you are voting to approve a lease which, when signed, will trigger off a reverter. You voting to approve a lease which is going to have the effect of violating the deed restrictions, thereby triggering off the reverter.

Mayor Dickinson: I think what is getting confused is the motion by the Council authorizing execution of the lease. At that point you could raise a question about the State Statute. But the vote of the Council does not do that.

Mr. Gouveia: So the Council will not be violating the State Statute. Whoever signs it will.

Atty. Ciulla: Whoever signs it is going to be violating the deed restrictions of the 1947 deed which will then trigger off a reverter. Attorney General who is enforcing Section 47-2 doesn't seem to have any problem with that. If you vote for item #2 and someone goes ahead and signs the lease without your voting on the other items. I think that would be very foolish.

Mrs. Duryea: The Attorney General's Office. their opinion has been based on what ifs, if this passes tonight, do they render another opinion on their own or does it have to be a taxpayer who files a legal complaint? In the meantime what happens to the Boys & Girls Club if everything is starting to roll?

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Atty. Ciulla: I don't know why they should render another opinion. They already did so in the letter dated December 3, 1990. He says (Attorney General) as long as it is executed prior to the execution of the other documents, the necessary conditions subsequent will have occurred. As long as you don't change those documents in any material way and you execute the lease first before you take back the deed, he (Attorney General) has no problem with it.

Atty. Ciulla apologized, he had to leave for a North Haven Planning & Zoning Meeting. He introduced Attorney Trautmann to the Council and explained that they may direct their questions to him.

Mr. Killen: The Attorney General also sent a letter on July 2, 1990 and that is the one that has disturbed me. On page #2 of this letter, he states "while this arrangement could be interpreted by some as a ruse, this office will not raise an objection for the following reasons: first, it would be in technical compliance with the terms of the 1947 deed; second, and most importantly, the property would continue to be devoted to charitable and public purposes." Our renting a public piece of property to a private entity could be considered to be devoted to charitable and public purposes leaves a lot of questions in my mind. I realize he is entitled to his own opinion the same as I am to mine, but I do read English. Public and private are completely opposite one another. Am I saying something wrong Mr. Trautmann?

Atty. Trautmann: I don't think so, no. That seems to be his opinion which seems to be if you lease the property to the Boys & Girls Club then you would be acting consistently with Section 47-2.

Mr. Killen: He is saying that if we lease to a private entity we are consistent with what the original lease states in that the entire parcel will be used for public purposes. I want to make sure that I understood that aspect.

Atty. Trautmann: That is what he is saying.

Mr. Solinsky: Will the possibility of someone taking suit against us always be there, 10 years from now?

Atty. Trautmann: If there was a plaintiff that satisfied the two requirements that CT. courts have imposed, yes it is conceivable although there would probably be a Statute of Limitations, I'm not sure what it would be, but most likely 3 years. If they satisfied the two conditions, namely that they were a taxpayer and they have been specially aggrieved by this action and could indicate that were true at the time that this transaction occurred, yes, they would have standing under a previously rendered court decisions.

Mr. Parisi: If we act on this as presented, are we doing anything that is improper or outside of the recommendation as issued by the State's Attorney's Office or any other legal entity that could say that we are doing something wrong?

Atty. Trautmann: I could only say what the Atty. General has said

which is, as far as that office is concerned, if you enter into the lease with the Boys & Girls Club thereby triggering a reverter under the original deed, that office will not intervene under Section 47-2.

Mr. Parisi: Then we are acting properly?

Atty. Trautmann: I will not tell you that you will not violate the State Statute. I will tell you that the entity that is in charge or responsible for enforcing that section of the Statute has indicated that if you do this transaction the way that it is presented, that it will not take any steps to interfere. They are rendering their opinion, that opinion should be given some weight by you.

Mr. Parisi: Are they, in essence, at this point the judge and jury of our action? Are they the ones who could say, no, you should not do this?

Atty. Trautmann: Yes. They are saying there is no reason in their opinion to interfere in this transaction, however, that opinion is not necessarily binding upon a court who could subsequently determine

Mr. Parisi: I don't want to even get into the court aspect, I'm saying, right now, if we act upon it as presented, they have indicated that we are not acting improperly and they see no reason to cause us any problem. They are the one body who would authorize us to do it or not to do it?

Atty. Trautmann: Yes. Under Section 47-2 they could take the opposite position if it were their inclination to do so.

Dr. Andrew Wagner, President of the Board of Directors of the Boys & Girls Club was the first to speak.

Dr. Wagner: In June of 1989 we appeared before you talking about the project initially, and you advised us at that time to come back when we had a full presentation. On December 11, 1990 we voted to have a public hearing so that more people could come to comment on our project. We welcome this opportunity. In May of 1963 the Boys Club of Wallingford was established. This became the Boys & Girls Club in 1984. Since that time our services has grown to a point that we have outgrown our facilities that we currently operate on Grant Street. In recent years we have witnessed up to 1,000 children participate annually in our program. In 1986 the Board of Directors decided to undertake a major effort to build a new facility.

He gave a brief history as to how the organization has arrived at the point that they are at this evening and the support that they have solicited from citizens, businesses and industries of Wallingford. He announced that, to date, their Capital Funds stand at \$1,236,131.41, not including some in-kind services that have already been pledged to the Club.

Mike Small, President of the Boys & Girls Club explained that the main reason that they are here tonight is because they are in the business of providing services to children. He stated

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that no one individual is here tonight for self-gain. Everyone is present for one reason; to make Wallingford a better community. He explained how hard the organization has been working to devise a Boys & Girls Club program to meet the needs of the children and a building designed to be a second home to kids. He felt that it was very conceivable to project a number down the road of 2000= hours where the Recreation Department and the Boys & Girls Club work at the facility together or the Recreation Department will work unilaterally to serve the municipal needs of the general population. A Community Center for teens would also be a benefit to best serve the community of Wallingford. A Community Center will allow programs run perhaps by Masonic or Gaylord or the Senior Center or in collaboration with the Boys & Girls Department or the Rec. Department. Or perhaps counseling providing by Catholic Family Services or work with the Youth Service Bureau in the Town of Wallingford. All could work under the same roof to target the same populations. A better concept could not be devised. Restoration of Community Lake would also be a direct benefit. He pointed out that no child is ever denied membership to the Boys & Girls Club. The annual fee is a mere \$12.00. They are there for the most needy child in the Town of Wallingford. When you can provide services for children, recreation access at no capital expense for the community of Wallingford, provide a Community Center which will work with a variety of organizations to make this community better, when you can take the first step to Community Lake restoration and you can say to the taxpayers that this cost them approximately nothing, he felt that was an unbeatable package. In concluding, he pointed out that 1991 is a very dangerous place for children. With drugs, A.I.D.S. and guns, it is getting more dangerous by the day. The Boys & Girls Club hopes to give the children a better fighting chance to succeed. That is what the proposal is all about, Mr. Small stated and he urged the Council's support of this cause. He then introduced Steve Lazarus of Lazarus and Sargent, to give an overview of Community Lake as it now exists and what it can be like.

Mr. Lazarus gave an very detailed presentation with visual aids explaining that it is probably the single most under utilized resource that the Town of Wallingford has. He commended the Town for its restoration of the railroad station and the green and commented that Community Lake holds great possibility for community attraction and recreation. He felt that the first step to doing something for the lake was to get it off the taxpayer's backs and let some money from private citizens flow in to help accomplish a building which will act as a catalyst for restoration. The location of the building will not disturb any of the existing ball fields, courts, etc. The existing raised paddle tennis courts, if it is determined that they are of any value, they can be relocated. The building will be located next to the Mayor Bertini Memorial Pavilion. A floor level elevation will be approximately 20' higher than the existing water level so that there is no danger of flooding. It will be located over 50' from the nearest wetlands. There will be virtually no environmental impact. The largest single volume in the building is the gym itself. It will also include a large games room, an activity center, learning center, computer room.

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fitness center and day care facility. The building itself is meant to be a playful, children's building at a lake. It will be largely masonry. The Town needn't worry about the building we are putting on its leased property.

The Conservation Commission was the next to make a presentation. The following members were introduced by Ms. Singer.

Judith Singer, Acting Chair
William Austin
David Mandle
Robert Abbott

Ms. Singer thanked the Council for their time in allowing a formal presentation by the Commission. They shared the same concerns and acknowledged the uncertainties involved in this issue.

Ms. Singer, Mr. Austin, Mr. Mandle and Mr. Abbott each took their respective turns in reading the following into the record:



Town of Wallingford, Connecticut

WALLINGFORD CONSERVATION COMMISSION
MUNICIPAL BUILDING
WALLINGFORD, CONNECTICUT 06492

Received

1/3/91

@ 6:20 PM

Kathy J. Wall

WALLINGFORD CONSERVATION COMMISSION

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TOWN COUNCIL MEETING IN WALLINGFORD TOWN HALL, 1830 HRS.

STATEMENT PRESENTED TO WALLINGFORD TOWN COUNCIL

RE: Concerns of the Wallingford Conservation Commission regarding proposal by Boys' Club to lease publicly-owned open space/outdoor recreation area at Community Lake Park.

The Wallingford Conservation Commission is charged with and entrusted with the stewardship and supervision of town open space lands. The Wallingford Conservation Commission wishes to express and enter into the public record their concerns and objections to the current proposal; namely, to transfer a parcel of public open space/outdoor recreation park area to a private group. (Community Lake Park to Boys' Club).

For purposes of clarification, it should be noted that there are several categories of land in Wallingford that fall into the general classification of open space. Private and public, agricultural, school complexes, park and recreation areas, wetlands and watercourses and associated buffers, greenbelts or setback zones. Open space is recognized and defined by Connecticut State Statute. (Section 7-131-C).

The Community Lake Complex is about 200 acres in size. At Community Lake, there is a 75+/- acre former open water body, a 75+/- acre wetland and a 10 acre park. The area was identified as the #1 major wetland body in Wallingford during a survey conducted in 1974 for the town. It is also a significant open space/outdoor recreation area serving all the citizens of Wallingford. Restoration of Community Lake will also bring back water-based recreation, such as, boating, and fishing for all the townspeople of Wallingford.

Town of Wallingford open space lands are not available for private building construction. The Boys' Club proposal is to construct a building on our Community Lake open space/park. Any such proposal to build private facilities on public open space is not acceptable. Setting a precedent of sacrificing open space/park for a special private interest is not in the best interests of the town of Wallingford.

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Lands set aside as public open space/parkland are to be preserved for the use of all the townspeople of Wallingford. Today individuals who happen to be members of the Boys Club may already use Community Lake Park outdoor recreational facilities. To formally place restrictions on the usage of a public park on a long term basis to the Boys' Club group denies free and open access to the park for Wallingford's residents.

Community Lake Park is dedicated as an open space/public outdoor recreation area.

The Boy's Club proposal is not compatible with Community Lake Park for two fundamental reasons:

1. Boys' Club is not an outdoor recreation facility or group.
2. Boys' Club is private not a public group. Their exclusive or priority usage of the park denies open use to those people for which it was intended, all the townspeople of Wallingford.

The Wallingford Conservation Commission does not object to the Boys' Club use of the Community Lake Park. They like everyone else in town may enjoy its many fine attractions. But, we do reject the proposal for the construction of a private Boys' Club building on public open space/park belonging to Wallingford.

The current Boys' Club proposal was brought to the attention of the Wallingford Conservation Commission only a few weeks ago. Although we have requested a copy of the plan/proposal, we received nothing from the Boys' Club. In the meantime, we have heard that the Boys' Club would like to construct:

1. a community center
2. a senior center; a rehab center
3. a boys and girls club
4. a drop-in center, possibly open 24 hrs.
5. a day care and latch-key children center
6. a teen center

The near and long term effects of such a proposal have not been presented. We can only speculate as to what the eventual outcome to such a proposal would be.

Without full knowledge of the design proposal that should include an environmental impact statement since the area is a designated environmentally sensitive area; and, without adequate time for review and consideration, we believe that the Wallingford Town Council, the Wallingford Conservation Commission and other town agencies are being unfairly pressured into premature decision-making. The due process to adequately review all of the proposal materials by these decision-making bodies has been denied us.

I would like to point out that Community Lake Park as it exists today is already a fully developed public outdoor recreation facility that includes:

- lighted tennis courts
- lighted paddle racket courts
- basketball courts
- outdoor playground equipment
- open pavilion
- baseball field
- walking nature trail
- tot lot
- picnic areas

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A 1963 deed from International Silver conveying Community Lake to the town stipulated that the lake remain open to public recreation. Should Community Lake be restored or otherwise improved, water-based recreation, such as boating, fishing and ice-skating and possible swimming may be available. 1989 state Lake Water Quality Grant Program may be needed by the town eventually. Lake accessibility for the general public must be maintained. We have no way of knowing how tonight's proposal may impede such future accessibility.

It is widely known and acknowledged that the Town of Wallingford's Recreation Program is overwhelmingly successful and does so while maximizing the utilization of existing school buildings in town. We are not aware of any inadequacies in either the townwide recreation program or the school system programs. The need for the Boys' Club has not been demonstrated.

The Boys' Club proposal is not consistent with goals of Wallingford Plan of Development, 1980 that assigns the area in question to open space.

The Boys' Club proposal is not consistent with State Policies Plan, 1986, which shows area in question as existing preserved open space and an area of environmental concern. Structural development in this area is discouraged.

Favorable action on this proposal tonight would set a dangerous precedent since dozens of well-meaning private groups may similarly desire the exclusive use of town-owned open space for their special interests.

The Boys' Club proposal contradicts the town administration's efforts and commitment to actively seek funding for the acquisition of open space. The town has recently been successful in acquiring two parcels and other applications are currently in the process of review. Some of the applications are associated with the town open space/recreation plan and involve land along the Quinnipiac River designated as unique conservation/preservation areas.

HUD federal funding was used to develop Community Lake Park. Advisories from a HUD official indicates that certain agreements were made when Wallingford accepted the development monies: Primarily, that Wallingford would develop and dedicate Community Lake Park as an outdoor recreation area. It is the opinion of the HUD official that the federal funding source would require the Boys' Club to provide a land parcel of the same size dedicated to the same usage, namely open space/public outdoor recreation as a substitution for that which is lost.

I, as acting Chairperson of the Wallingford Conservation Commission, have also served for some ten years on the state of Connecticut SCORP Advisory Board. The purpose of the board is to review applications for funding from the Land and Water Conservation Trust Fund of the Department of the Interior for open space aquisition and outdoor recreation development. I searched over my past records of hundreds of applications presented to this Agency. Nowhere could I find anything similar to the Boys' Club proposal. As a matter of fact, the Boys' Club proposal would be ineligible for funding in an area designated for open space/outdoor recreation.

Over the past week, we checked with three different official town sources concerning the existence of any current or past problems associated with Community Lake Park. We found none. Similarly, we felt it important to ascertain whether the presence of a Boys' Club would enhance the possibility of restoring Community Lake. The answer was no. In fact, it seems likely that the Boys' Club may be detrimental to Community Lake Restoration since public access to the lake, (a requirement by deed and funding source) may be restricted, impeded or limited by the permanent presence of the Boys' Club with priority rights usage over a part of the Park near the Lake.

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If we were to use a checklist to rate the effect of a vote in favor of the Boys' Club proposal we would see that Wallingford would be violating the letter, intent and spirit of the the following documents:

- 1) the original Masonic deed restriction
- 2) the original HUD funding agreements
- 3) the original International Silver deed
- 4) Wallingford's Plan of Development
- 5) Connecticut's State Policies Plan

The final tally would not be something to be proud of. I believe that all of Wallingford's townspeople wish to remain proud of the community they live in. The right choice, to protect and preserve our open space/outdoor recreational resource for all of Wallingford's residents, is clear.

WEA/1-3-91

Presentation to the Town Council - by Wallingford
Conservation Commission

This presentation is in response to a proposal by the Boys Club to construct a building in a public park at the Community Lake site in the Quinnipiac River open space lands.

This is my first presentation to the council and I would like to introduce myself with a brief personal background.

My name is William E. Austin and I live at 30 Northford Road with my wife Barbara and my son Matthew. We have recently returned to Wallingford from living in the midwest. Our family project for the next 'few' years is historical restoration of our home, a center chimney colonial with related landscape and gardens.

Professional qualifications related to this presentation include more than twenty five years landscape architecture park site, open space and land development planning, design and construction. Major park plans with which I have personal professional experience include sites in New York, Delaware and Ohio. Other experience I have includes planning for the preservation and protection of the scenic, historic and natural resource values of the Hudson River landscape as a staff landscape architect for the Hudson River Valley Commission of New York.

I hold a Bachelor of Landscape Architecture degree from the New York State College of Forestry at Syracuse and Syracuse University and a Master of Business Administration from St. Ambrose College in Iowa.

As a member of the Conservation Commission my portion of this presentation is to present for your information the subject of OPEN SPACE as an important quality of the landscape. It is in fact the responsibility of the Conservation Commission to develop a plan for, acquire, and protect from degradation open space in the town of Wallingford.

OPEN SPACE has a special, legal meaning in Connecticut.

Section 7-131c of the Connecticut General Statutes

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defines open space land in terms of its use for recreational and conservation purposes:

"...agriculture, parks, natural areas, forests, camping, fishing, wetland preservation, wildlife habitat, reservoirs, hunting, golfing, boating, swimming, snow mobiling, sanitary land fill, historic and scenic preservation."

OPEN SPACE is identified as an important element of the stated Policies Plan for Conservation and Development of Connecticut. Connecticut Office of Policy and Management Comprehensive Planning Division (proposed revision for 1987-1992.

EXISTING PRESERVED OPEN SPACE Conservation
Priority 1

Support for permanent continuation as public, quasi-public open space and discouragement of sale and structural development of such areas except as may be consistent with the open space functions served.

Definition Criteria

Federal, state and municipal parks, forests and other open spaces.

THIS CONSERVATION PRIORITY SUPPORTS PERMANENT CONTINUATION OF OPEN SPACE AND DISCOURAGEMENT OF SALE AND STRUCTURAL DEVELOPMENT.

OPEN SPACE is recognized by the United States Department of Interior, National Park Service who administers planning grants for OUTDOOR RECREATION from the Federal Land and Water Conservation Fund Act of 1965 (Public Law 88-578)

THESE FUNDS PROVIDE FOR OPEN SPACE PLANNING AND LAND AQUISITION

OPEN SPACE is included within the Statewide Comprehensive Outdoor Recreation Plan (SCORP) for Connecticut 1987-1982 which says in part:

According to citizen surveys, preservation of open space in Connecticut has become the number one natural resource management concern.

PRESERVATION OF OPEN SPACE IS THE NUMBER ONE NATURAL RESOURCE MANAGEMENT CONCERN IN CONNECTICUT

OPEN SPACE is recognized by the Plan of Development,

Wallingford, Ct. 1980. This document was approved by the town council _____ (date). Regarding OPEN SPACE the plan says in part :

Perhaps the most important category of land use within a community is open space. (page 21)

Toward this end any development proposal or change in use of public properties within the river corridor should undergo careful review to insure the integrity of the rivers banks and water quality. Maintenance of publicly owned land along the river and river channel itself is a priority.

The development of buffer strips along the river through donation and aquisition should be undertaken by the Conservation Commission, Planning and Zoning Commission, private land trust and acting regulatory agents of the Inland Wetlands and Watercourses Act.

With careful management practices and administration of existing programs, open space preservation within Wallingford is possible.

If these incentives are adequately enforced then Wallingford in the year 2000 will still contain substantial acreage devoted to...recreation areas and general open space.

ACCORDING TO THE TOWN PLAN OPEN SPACE IS THE MOST IMPORTANT CATEGORY OF LAND USE.

CAREFUL REVIEW IS NEEDED FOR ANY DEVELOPMENT PROPOSAL WITHIN THE QUINNIPIAC RIVER CORRIDOR.

OPEN SPACE PRESERVATION IN WALLINGFORD WILL REQUIRE CAREFUL MANAGEMENT AND ADMINISTRATION.

In closing this portion of our presenttion regarding the proposed use of existing public open space for construction of a building dedicated to indoor recreation and programs we find that:

1. The proposal is not consisent with the official, legal definition of open space in Connecticut.

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2. The proposal is not made by a public outdoor recreation agency.
3. The proposal is not consistent with the stated Policies Plan for Conservation and Development of Connecticut:
"...discouragement of sale and structural development of open space."
4. The proposal is not consistent with the open space planning and land acquisition funded by the Federal Land and Water Conservation Fund Act (1965).
5. The proposal is not consistent with the Connecticut Statewide Comprehensive Outdoor Recreation Plan (SCORP)
preservation of open space is the number one natural resource planning concern in Connecticut
6. The proposal is not consistent with the Plan of Development for Wallingford (1980).

The most important category of land use within a community is open space.

Therefore the Wallingford Conservation Commission does not recommend approval of the proposal by a private party (Boys Club) to remove outdoor recreation facilities from service by construction of a building in this, or any other public open space.

Wallingford in the past has used Federal funding in its open space acquisition endeavors. In fact, such funding was used to develop Community Lake Park itself. From what my fellow commissioner Mr. Austin has said, it would appear that the planned diverting of this current open space to private interests may be in conflict with current state and federal regulations. This raises the issue that future attempts to acquire further federal or state funding to make additional acquisitions of open space for the town may receive short shrift.

We have recently acquired two further open space parcels through the State Grant Application process and three other applications are currently pending. It would be unfortunate indeed should the proposed divestiture of established open space result in the loss of funding for the pending applications as well as jeopardize the opportunity to acquire further open space for the enjoyment of all of Wallingford's citizens.

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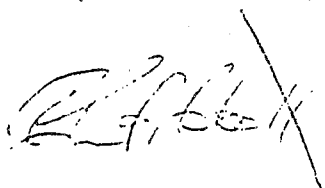
Before I begin my remarks, I would like to thank and commend the Town Council for holding this hearing and bringing this issue out from behind closed doors and in the media to where it belongs -- in a public forum where all sides of the issue can be presented.

The Wallingford Conservation Commission is composed of volunteers with no private agenda and no axe to grind against any individual or organization. This is not an anti- Boys' Club Crusade. In fact, looking at it from Mr. Small's Point of view, this proposal is brilliant and I admire his ingenuity and persistence in pursuing it. The Conservation Commission is charged with the stewardship of our town's Open Space and this is the basis of our adamant opposition to this proposal.

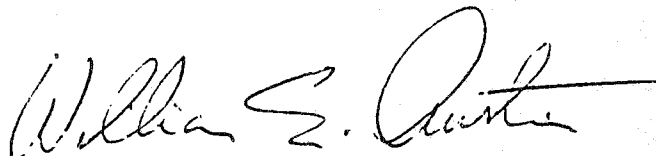
This evening, my fellow commissioners and I have presented the council with a preponderance of evidence that backs our position. The land was deeded to the town for public use. The federal money used to develop the land was given for development for public outdoor recreation. The state statutes and guidelines by which we acquire open space state that they are to be used for public outdoor recreation. And finally, our own town Plan of Development states that Open Space should remain outdoor, public, and without "intense structural development."

So why are we even here tonight? Why are we bending over backwards to violate a deed and to violate state statutes and guidelines? What benefit is to be gained by going through all these gyrations? We would be giving away public open space in return for limited use of a facility by a small percentage of our townspeople that we would have to pay for. Mr. Small is quoted in this morning's Hartford Courant as stating that the proposed center is "a wonderful gift to the community of Wallingford" and I'm sure he believes that, but we must vigorously disagree.

In conclusion, I would like to reiterate the unalterable opposition of the Wallingford Conservation Commission to the Boys' Club proposal. We feel that it is inconsistent with the responsible management of public open space and by approving this proposal we would be opening doors we may never be able to close. If necessary, Community Lake Park can always be cleaned up and can always be improved for the enjoyment of all, but if we give away our land, we may never get it back.



David R. Munnell



PLAN OF DEVELOPMENT

Wallingford, Connecticut

RED BY: THE REGIONAL PLANNING AGENCY OF SOUTH CENTRAL CONNECTICUT

1980

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parks, and projections indicate that the areas zones are adequate and related well to the major transportation routes. Future development, however, should be carefully reviewed for impact upon the environmental conditions described previously. At present, there are two vacant large, older brick manufacturing complexes in and near the Community Lake neighborhood. Consideration must be given to re-use and final disposition.

Work-residence patterns of transportation will change as the cost of private means of transportation increases. Use of mass transportation service will increase and the town should consider the relationship of residential development and transportation patterns as they relate to the location of industrial parks.

Open Space

Perhaps the most important category of land use within a community is "open space." These areas depict actual and potential levels of development and intensity of uses within a town. Open space areas can be farm, forest and water reservoir lands, golf courses, boat launching sites and school playgrounds. They vary from the picnic grounds of state parks to sanitary land fill sites and the murky marshes of inland wetlands. They include land owned and controlled by the town and land whose future depends upon the desires and whims of the registered owner. Open space areas are located in all sections of Wallingford and range in size from a little less than one acre on school property to hundreds of acres in a reservoir drainage basin. Some acreage, due to ownership, legal restrictions or soil and slope characteristics, will remain an open space. Others, due to financial pressure, lack of adequate enforcements of codes and regulations, or changing values of ownership will succumb to the desires of developers.

Wallingford has acquired a sizeable amount of land for open space and recreation use, servicing each neighborhood while taking into account the needs of the whole community; developing sites for swimming, boating, golf, hiking and picnicking. Land has also been developed more intensively for baseball, football and general playground recreation.

Statistics based on population projections to the year 2000 indicate that while Wallingford has designated sufficient acreage to meet the basic recreation needs of its residents, further studies should be undertaken to determine specific needs within each neighborhood (especially the central area as it develops) and set a timetable for development or renovation. In the meantime, there is continuous need for refurbished specific recreation areas such as Marcus Cooke Park and the West Side Field.

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The Wallingford base map prepared for this report indicates land owned by governmental bodies and other land considered as controlled open space due to restrictions based upon ownership or development rights. It is assumed that during the next 20 years, little of this acreage will be touched, and most will continue to be classified as open space or recreation.

The 1979 Present Land Use Map classifies several areas throughout Wallingford as Open Space or Undeveloped land. Some of the undeveloped land is considered "buildable." This term does not necessarily mean that the acreage is capable of intense development, but that by process of elimination, these are the areas which could be subjected to the pressures of development. Acreage has been derived by taking free open space--undeveloped land as shown on the 1979 Present Land Use Map, subtracting areas designated as inland wetlands, acreage known to be already designated for immediate development, three areas designated by the Connecticut Forest and Park Association to be reserved for open space due to unique soil and vegetative cover (the North Haven Sand Plains, Pitch Pine Sand Plains, and Muddy River Hayfields areas with significant bedrock outcroppings, and land legally controlled by the town or owned by the Wallingford Land Trust. Acreage thus designated is located in all zone classifications and in most neighborhoods. A few sites can be seen on both maps. These areas are presently owned by institutions which indicate that there are some restrictions regarding development. However, because there are no binding legal restrictions, the land could, under certain conditions, be developed.

An Open Space designation does not necessarily mean that the land is left "as nature intended," but that it is not subjected to intense structural construction. Some areas are and will continue to be used as parks and recreation areas. Examples might be a possible projected use of land along the Quinnipiac River for a "nature area" park and the use of other land at Community Lake for picnicking, boat launching or paddle tennis and other sports. Good management over the years and well-planned designs for these areas are necessary to obtain and maintain high standards for the town. Other areas should be continued in open space designation as farms or forests. These areas will remain in private ownership but may require the adoption or allocation of incentives on the part of the town to achieve this goal. Economic incentives could include assistance in filing for tax assessment designations under Public Act 490 which states that owners of farm land, forest land, and land designated as open space may apply for lower assessment value due to the designation. This classification carried certain restrictions and indicates specific steps which should be taken to obtain the designation. Land owners should be made aware of this Act and the town should note lands qualify-

ing for such classification. The town should also encourage the conveyance of land to organizations such as the Wallingford Land Trust which would assure preservation of the land as open space.

The largest river corridor in town and certainly the most diverse from a scenic, ecological, land use or historical point of view is that of the Quinnipiac River. The River runs north/south from the Meriden border to the North Haven border with a wide floodplain

straddling the slow moving river bed. There are substantial public lands along the river that serve to retain natural wooded or brush conditions along several stretches. The river corridor is used significantly by hikers, canoeists, boaters, fishermen, hunters and trappers. Its floodplain and banks should be protected from further encroachment in an effort to: minimize water pollution from degraded runoff from urbanized upland areas; mitigate aggravation of an existing flooding problem; preserve the natural amenity and serenity of the riverine environs; retain wildlife habitat; and enhance the river's attractiveness for passive and active recreational use.

Toward this end any development proposal or change in use of public properties within the river corridor should undergo careful review to insure the integrity of the river's banks and water quality. Maintenance of publicly owned land along the river and the river channel itself is a priority. The development of bufferstrips along the river through donation and acquisition should be undertaken by the Conservation Commission, Planning and Zoning Commission, private Land Trust and acting regulatory agents of the Inland Wetlands and Watercourses Act.

While it should not be directly subjected to pressures of development upon itself, acreage classified as Inland Wetlands and the contiguous along water bodies will be subjected to encroachment by subdivision development. This encroachment may result in a degradation of water supply and quality, and a destruction of ecological systems. Again, adequate and continued enforcement of zoning and subdivision regulations, especially as they affect stream and water body encroachment lines and the Inland Wetlands Program of the Connecticut Department of Environmental Protection, should be undertaken.

The quality and quantity of Wallingford's groundwater resources should be preserved to insure the availability of pure drinking water for the future. The protection of groundwater in critical recharge areas should be a major concern in all land use decisions.

In a groundwater availability inventory completed by the U.S. Geological Survey, geologic deposits capable of yielding high quantities of water were documented straddling the length of the

along the Muddy River north (primarily) of the MacKenzie Reservoir and further south of the Muddy River near the North Branford border. This area may or may not warrant the undertaking of extensive measures to protect it in its entirety and there may be other small geologic deposits within town of local significance. A long range water supply plan study encompassing surface and ground water supplies and anticipated demand and quality concerns would determine which ground water supplies are viable for future use and warrant the institution of protective measures.

A groundwater protection program would entail regulatory and non-regulatory approaches. The Planning and Zoning Commission has the authority to regulate land use over aquifer areas in the interest of protecting the public's health and welfare. Provisions from a model aquifer protection ordinance included in the Regional Planning Agency of South Central Connecticut's The Need for Ground Water Protection in South Central Connecticut report could be adopted as part of the zoning regulations. Acquisition of properties in critical recharge areas could be carried out. Continued communication should be maintained between municipal departments regarding development proposals on recharge areas, changes in land use (private or public) and applications of fertilizers, herbicides, fungicides, road salt and the handling of petroleum or chemical spills on recharge areas.

With careful management practices and administration of existing programs, open space preservation within Wallingford is possible. If these incentives are adequately enforced then Wallingford in the year 2000 will still contain substantial acreage devoted to farming, forestry, open fields, reservoir drainage basins, recreation areas, and general open space. Wallingford will continue to be a community within which one can benefit from a core of financial-governmental activity adjacent to an intensely developed residential neighborhood and also experience the open conditions of the rural countryside.

CONCLUDING STATEMENT

We, the Wallingford Conservation Commission, ask each Councilor to demonstrate your vision and courage by looking beyond the short term special interests proposal presented here tonight. The wisdom of many far-sighted individuals concerning the long range public good is shown in the many documents, deeds, and plans referenced tonight. Through their specific requirements, they all stress the benefits of open space/public access outdoor recreational opportunity. Surely, they cannot all be wrong.

As elected and appointed municipal officials, our responsibility is clear. We must consider the overall good to be achieved for the townspeople as a whole and vote to maintain the best interests of all of the people of Wallingford. Community Lake Park was designed to satisfy the outdoor recreational needs of our citizens and should freely and openly remain that way.

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John Lathrop, Life Member of the Wallingford Land Trust. Past President of the Wallingford Land Trust. Member of the Conservation Commission and long advocate of Preservation of Open Space. In many cases for Open Space only was the next to speak. In some cases, such as in use of land by the Wallingford Land Trust he does advocate the use of land for passive recreation. If the land trust acquired a parcel that was appropriate to have a small pavilion or building, then that may be the case for use as recreational area. Community Lake is a public recreation area and the building being proposed would be on already developed property he stated. He personally felt that it would be a good use of property that belongs to the Town, a leased portion with a recreational center would be a cooperative use of private organization for their programs along with the Town Recreation Department and for the use of the Townspeople. He spoke only on behalf of himself stating that, personally, he did feel that this would not jeopardize the open space and ecology of the Community Lake area. He felt it to be an appropriate use.

The public's comments were solicited at this time.

Mr. Tim Cronin, 47 S. Ridgeland Road complained that the public hearing was so far along in the process that anyone that is put in a position to go against what is obvious the Council is trying to do, it is too late to do anything. He felt that it should have been presented to the public about 1 1/2 years ago. He felt it was morally wrong for the Town to break a covenant of this nature. He was not fond of going against the Boys & Girls Club and apologized. He felt that covenants should be respected no matter how difficult they are to live with. He extended his utmost respect for Chairman Albert Killen.

Ms. Stacy Marin spoke in support of the Club. She stated that she felt that Community Lake was a dump. If she had a choice to either go to school or stay home and play at Community Lake she would rather go to school. The area had nothing to offer at this time. There was nothing for children to do after school.

Ron Gregory of Yalesville was impressed with Atty. Ciulla's objectivity and expertise. He spoke in opposition to the lease. He had a problem with the site that is being proposed for the project. It is public land. He asked, does the ends justify the means?, should such public lands be given to private organizations no matter how worthy the cause?, does ethics still have a place in a decision to give away public lands? or is politics more important? He felt this was obviously wrong. He cited the following problems with this project: first, newspaper reports indicated how certain Council members intended to vote this evening knowing that a public meeting was being conducted this evening. He hoped that the efforts of the Conservation Commission this evening were not futile and that their statements did not fall on deaf ears. He reviewed the history of this issue. He felt it was not up to the Masonic Foundation to determine how Community Lake should be carved up. He stated that under Section 33-381C of the Ct. General Statutes, a trustee of

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a private trust taking action that would jeopardize the carrying out of the exempt purposes of the trust would be violating the Statute. He asked the Council if the rule should be any different for them, as public trustees for public lands than the rule and law for private trusts? Some states make it explicitly illegal what is attempting to be done this evening. Unfortunately, Connecticut does not make this explicitly illegal, but in those states, a public trustee can only alter the purpose of a trust if that purpose is impossible, illegal or impracticable to perform. In this particular case, it is not, he went on to say. He asked, shouldn't the standard of our State Statute that deals with private trusts apply here? He thought so. He felt that the history of the project was not an exemplary one. He mentioned that State legislation was introduced by a local State Rep. to secure \$500,000 for this project even though that individual was the Director of the Boys & Girls Club at that same time. She has since resigned from that director position, in his opinion, rather than to face ethical violations in continued speaking out on the project. Mr. Gregory stated that he filed an ethics complaint and the State Ethics Commission wrote to Mary Mushinsky and that precipitated her resignation.

The audience expressed much dissatisfaction with these comments.

Mr. Killen asked the audience to withhold its comments, that Mr. Gregory is stating what he claims to be his own personal philosophy and thoughts surrounding this issue. Mr. Killen felt that Ms. Mushinsky was capable of defending herself.

Mr. Gregory continued on stating that he felt it was "pork barrel politics" in a year of huge State deficits. He reminded the Council that prior to Christmas the Council was lead to believe that they had to hurry up and approve this lease or the grant would be lost. This was exaggerated. Mr. Gregory confirmed the exaggeration with the State Bonding Commission. He felt that there certainly was going to be an impact on the taxpayers. The draft of the lease provides for \$15/hr. for Town use of the facility for maybe some 1,600 hours. Unless this clause has been deleted from the lease, it certainly will effect the taxpayer. Maybe not a lot, but it will. He felt that writing something like this into the lease will, in subsequent years, open the door to increase that payment. He thought it to be an insult to the Town if they decide to give the lease to the Boys & Girls Club to pay even \$.05 for the use of the facility. He reminded everyone of Section I of Article I of the CT. Constitution states, "no man or set of men are entitled to exclusive public emoluments or privileges from the community". He asked, what is this action tonight if not granting a special privileges to a group of individuals? He felt that the bottom line was that the Council was being asked to willfully breach a deed restriction to benefit a private organization. Yes, it is a worthy cause which made it extremely difficult for Mr. Gregory to get up publicly and oppose it, but the action violates the public trust and clearly violates the CT. Constitution, not to mention it is bad precedent.

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He concluded with Community Lake can be restored without placing a building on it. The Council only needs to make a commitment to that effect. All of the people of Wallingford will benefit from the restoration of Community Lake. He was afraid that the Town would be approached at a future date for additional improvements. He then asked, who would truly benefit then? He suggested that the Council take a closer look at the lease and the deed. He felt, in his legal opinion, that they contained a lot of flaws which are easily challenged in this project. He felt that the proposed structure was usurping a prime area of a lake in the Community Lake Park. He saw this lease as a step backwards.

He asked the Council to remember: this is a question of public trust; we have a new Attorney General; a citizen can bring a court action to challenge this perhaps; if you are going to approve leases and deeds, read them carefully because they are pretty sloppy; ask yourself this, does ethics still have a place in political decisions?

Mr. David Estes, 4 Laura Lane spoke in favor of the Club. He feels that there is nothing left for the children of Wallingford. He felt that people would come to visit Community Lake if the Boys & Girls Club were there.

Mary Mushinsky, State Representative of the 8th District was the next to speak. She clarified a statement made by Mr. Ron Gregory. She stated that it is only "pork barrel" politics if it benefits someone else's town. If it benefits your own town then it is referred to as "public services". She advised the Council to move quickly to keep the State grant. It is possible that the new Governor will curb bonding at a future date because of the growing deficit. It would be best to move on this now. She felt that there should not be a rigid policy on Town-owned land in such tough fiscal times. Instead you should be pragmatic and use your best judgement and decide on a case by case basis. Judge on the benefits to the entire Town. In this case they are substantial. There is no apparent conflict with the environmentally sound use of the lake rather the project may spur restoration. In tough times local and State legislators are looking for private organizations who can provide services to the public which the government cannot afford to do. She informed everyone that Boys & Girls Clubs have been cited as a proven tool in fighting drug related crime and they need all the help that we can give them. Eighty-five percent of prison sentences in CT. are now drug related and that means that it is a very expensive part of the State Budget. She appealed to the Council to vote in the affirmative.

David J. Doherty, 6 Reynolds Drive stated that he was glad to see Wallingford's State Rep. fighting for funds for Wallingford since it is part of her job. He commended the Conservation Commission for protecting Open Spaces in the Town. He also commended the Council and Mayor for being advocates of Open Space and hoped that the Council would continue to purchase Open Space. There comes a time when you can use the Open Spaces in a new, innovative way and he felt that the definition of public could be expanded to

include the Boys & Girls Club of Wallingford. This is a Wallingford project. Put a facility over there that is used hour after hour after hour by Wallingford people. He went on to say that Thomas Jefferson looked at the Louisiana Purchase and saw nothing in the Constitution that would allow it, but he went ahead with it and we got 13 or more states out of it. He felt that if this turns out to be an error with all of the legal entities involved, then at least make an error in favor of the children of this particular Town.

Wayne McDermott, 22 Cooper Ave. asked that the following be included in the record: Who has control on the exterior of the building, this would be on the lease, say within 10 feet of the building?

Atty. Trautmann: The lease provides a property description which describes a piece of property in this particular area that is being leased. If the lease is executed, the responsibility is upon the lessee, being the Boys & Girls Club to maintain that property. The immediate area around the building will be the responsibility of the Boys & Girls Club.

Mr. McDermott: Does the Boys & Girls Club intend to go any further than the deed? Do they have any future intentions of building any larger facility down there?

Mr. Small: It is not our intention to expand on the building as depicted in the site plan displayed this evening.

Mr. McDermott: In the future you would come before the Council to start?

Mr. Small: I can't predict the future, Wayne, fifty years from now when I am no longer involved with the Club. I have no idea what will happen fifty years from now.

Mr. McDermott: Five years from now, Mr. Small, you may not be in charge.

Mr. Killen: That is why he can only give you the answer as he knows it now, Wayne. Other than that it will be conjecture, the answer is no right now.

Mr. McDermott: Mr. Mayor, are there any negotiations taking place right now that have anything to do with this facility, any further than what has already taken place? Any Town Departments with their services involved?

Mayor Dickinson: Not to my knowledge.

Mr. McDermott: According to an article that appeared in the newspaper it states that you are going to be negotiating with Town Agencies for services down there.

Mayor Dickinson: I believe the negotiations were with regards to the time and dollar amounts for use of the property by the Town of

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Wallingford. The language developed is contained in the lease itself. There is no further negotiation with regard to that.

Mr. Small: Wayne, are you talking about other agencies or other groups? It is our intention to try to include as many people as is possible in that site. One of the ways that we can do that is by working with other agencies. Some of them may be not-for-profits, others may be the Youth Service Bureau or the Senior Center, groups along that nature. Perhaps the State Dept. of Retardation.

Mr. McDermott: All the agencies would be State approved, sanctioned?

Mr. Small: They would all be not-for-profits, we would not have a profit making institution in there.

Mr. McDermott: Your Board of Directors would have control over those agencies?

Mr. Small: Absolutely.

Mr. McDermott: I don't think that it should go through because there are other organizations in the Town that are just as deserving as this one. It seems to me from day 1 that this organization has made no other decision but to take that piece of property down there and pick it up as their own piece. Since they have over \$1 million and being in such a depressed real estate market, I am surprised that they have not looked at anything else. Maybe they have but since last January 1990 they knew at that point this was where they were going to go with no other questions.

Tim Shaw stated that there is property on Woodhouse Ave. that the Town owns outright that has not been touched. Give them that piece of land. That way they could do what they want on it.

Peter Hale, East Farms, Founder and former Member of Town Planning & Zoning Commission and the Conservation Commission stated that the Town Hall has a good record on services, Police, Fire, etc., but when it comes to property management, there are some questions. For the past 11 years that former pond acreage and surroundings have been a desert becoming a jungle and getting more and more expensive to do anything with all this time. Now you have before you this proposal at not cost to the Town. Every important barrier that the opponents could consider has now been pretty well removed. The title has been cleared, the purpose clearly defined, the adjoining neighbors are all in favor of it, the costs are under control because they don't involve any of us sitting here tonight, the majority of public opinion is obviously for it. It broke his heart to see what the Conservation Commission has degenerated into being a former member. It still is in existence, that is the important thing. The Boys & Girls Club is a worthwhile organization that has stated that no one will be refused membership. If they cannot afford to be a member, they are still welcomed. Everyone in the immediate area is looking forward to this action taking place so that they may visit the area and watch the youngsters, as well as take

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pride in the facility. He is a proposed lease to use acreage for public good after 11 years when nothing has happened down there due to confusion of interests, the Town Council will still be our landlords. You can kick us out or make us paint it a different color, you can do whatever you want if we don't live up to the contract, he went on to say. Sure, the Club could be anywhere, it could be in Cheshire or Meriden, but we need and want it in Wallingford. This is the best location for it. In 1991 lets get it done!

George L. Bozzi, Jr., 17 Bayberry Drive, Vice President New England Council Boys & Girls Club of American, and Club Alumni was the next to approach the microphone. He stated, "Just Do It!"

Audrey Dibbern, Jamestown Circle: This is serving a special interest group, the people of Wallingford since I feel that we are all special. Times are tough economically, but kids still have needs. People in the community still have needs. As responsible citizens of the community it means that we have to be more creative in our approaches to address the needs of the children. This is a super creative meeting of minds, the private sector and the municipality coming together and meeting the needs of the community without our taxes going up. It will require a bold step on the part of the Council but I know your track record and I have faith in you and I hope you will vote yes tonight.

Bev Belliveau of 104 Mapleview Drive, Executive Director of Wallingford Center, Inc.: We at Wallingford Center, Inc. support the Boys & Girls Club and their project. We are for restoration. What a better way to show another restoration project as down near Community Lake. She urged the Council to support the project and vote yes this evening.

John Schulga, 7 Old Woods Road: We want to improve the lives of the children that are involved with the Boys & Girls Club of Wallingford. We have better than 1,000 children attending there and if we can improve their lives by building this facility, then we should do so. It is imperative that the Council does vote in favor of this.

Ed Loughlin, 150 S. Main Street felt that there was a consensus this evening that everyone wants to help the Boys & Girls Club. It has made a tremendous amount of progress over the past 28 yrs. since Mr. Loughlin was President. No one has questioned for a single moment over those years its purpose, dedication and its effectiveness. He pointed out that if there was a violation of the deed and the property then became the property of Masonic Home they are in favor of the Boys & Girls Club as is the Town, the Council and the Mayor. The only party with a legitimate interest in this property other than the Town tonight, is Masonic Home and Hospital. They are in total favor of what is being proposed. Every interested party is in favor of this lease. Section 47-2 of the State Statutes talks about the use of a property. Not who owns it, but the use. The use proposed this evening is in keeping with Section 47-2, it is being used for public charitable purposes. The Attorney General has already given it her blessing. She gave a common sense answer to an inquiry of whether or not it was legi-

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timate. The Attorney General is charged with the responsibility of curing abuses of public trusts where there is a flagrant violation in termination of stated purposes of a trust. There is no such thing here. The uses are in fact preserved by the two people who have a proprietary interest in this real estate, the Town of Wallingford and Masonic Home and Hospital. He respected the concerns of the Conservation Commission to some degree, however, he felt that the reservations are presented at the wrong forum. It has been deemed appropriate by the Town Charter and laws otherwise, that certain decisions regarding land be determined by bodies other than the Council. He spoke specifically of the Planning & Zoning Commission and the Wallingford Wetlands and Watercourses Commissions. He felt it was not expected of this Council to determine whether or not we need building codes, sideline requirements, wetland regulations complied with, etc., there are all of the built in protections that will guarantee to the Town of Wallingford that this site will be developed in the best fashion so as to preserve the natural resources surrounding it. He pointed out that there was never any prohibition against a building in the lease. This building is not in a wetland or a regulated area. Anything stated to that effect here this evening is premature and presented at the wrong forum. This land was never purchased under an Open Space Purchase Program. It was a deed received by the Town of Wallingford. There is no restriction at all on this 10 acres. He acknowledged the hard work of all present at the meeting. Masonic Home and Hospital has expressed its willingness to join together with the Town to dedicate a parcel of land in which both the Town and Masonic have an interest and dedicate it to a public use in the proper charge and trusteeship of the Wallingford Boys & Girls Club that will invite every citizen of the Town to share in this asset that will be owned jointly. He felt everyone who has worked so diligently toward this cause should be congratulated.

John Bruce, Youth Officer, Town of Wallingford: Young people who get good messages about themselves generally do not go out and commit delinquencies. They are usually not the kids who resort to alcohol or drug use to alter their state of consciousness or try to retreat from reality. Wallingford has provided very well for its young people. We have a municipal Recreation Department that is second to none. The message the young people receive is that they are important and we place a high value on their developing into capable, young people. You have a serious issue before you to deal with and I'm sure that this Council, as Councils in the past, will act in doing what is in the best interest for the people of this community.

Brendon McCormick, Tuttle Avenue: I hear complaints about our society that we have lost many of the traditional values that we had. One of the traditional values I see us losing is the sense that the children are our children. In reality they are all our children. They depend upon us to represent and nurture them. The Masonic Foundation which is committed to nurturing the care of the elderly is a foundation who whole heartily supports this proposal which is dedicated to the nurturing of the young. You are the only

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voices that will determine whether all that we have said is actually carried out. I encourage you to vote in the affirmative so that we can create a facility that will nurture our children.

Frank Adams, No. Airline Road: I favor the building of this facility on the site proposed. I feel that the environment, open space, makes it far more attractive to the young people and certainly they will have the opportunity on good days to use the outside of the building as well. We currently have a committee considering the building of a public golf course which will be used by Wallingford citizens. A noble venture. Here we have the Boys & Girls Club which is a private organization that certainly will provide an opportunity for as many members of the public as a golf course will. I favor both of them. What greater natural resource than the children of Wallingford?

Tom Dooley, 128 Parker Farms Road, Member of the Recreation Department Staff: The Recreation Dept. fully supports Mr. Small's endeavor. As a private citizen I have listened with great interest over the past three hours the legal jargon that has gone back and forth over the issue of private vs. public. Can't we step back for a second and look at what the ultimate goal of this project is? For all of us we need to look at the scope of what the Boys & Girls Club is trying to do for Wallingford. And you can make an issue with it, it should be available to many other agencies in Town, there are a lot of other agencies who deserve this land, but the fact of the matter is, the Boys & Girls Club is the one that did it. They are the ones that took the initiative to go after the piece of property to provide for Wallingford something that it desperately needs. This is an opportunity for us. This is a gift and a legacy to our children. I urge you all not to pass on this opportunity for it may never come again. Mr. Small, when you build, we will come.

Mrs. Gregory, 59 Hill Ave., Yalesville: It seems like we have listened an awful lot to people saying that we need the Boys & Girls Club and I agree, everyone agrees. The only problem is where they are going to put it. It would be much easier if they had a piece of land of their own. There is a lot of open space around. There would be no problem at all. What is there to fight about, all they have to do is look around and find some people who are willing to help them out and get a piece of land and build their beautiful building.

Mr. Killen reverted the questioning back to the Council.

Mr. Bradley: Would there be additional parking down there maybe some additional parking places could be picked up to solve the Town Hall parking problem! All kidding aside, there is wisdom in these youth's minds. This has turned out to be a legal nightmare. I know that I, myself, as well as my fellow Council Members have poured through tons of legal documents trying to interpret them. I feel that you have to be pragmatic and use an open mind to arrive at a conclusion and there is a moral side to this. One thing that upsets me is that the Attorney General in one of the letters would not look to enforce the deed restriction.

When I first read that without getting fully into the other documents, it almost sounded like he was saying, "I will turn my back and close my eyes". But further on down he did render an opinion, but again, not a binding opinion. On the second page up at the top in the first thing as it states "and the lessee shall obtain from the lessor, the Town, written approval of all plans and designs for the construction of such facility or any improvements or additions to the premises before any work is commenced". Who, at the Town level, will be reviewing and approving those plans?

Unidentified Respondent: That is a frequent phrase in a lease. In this instance, no one is designated. The Town certainly has a right to designate someone. It would seem appropriate to me that as to the site approval they would consult with the Wetlands Commission, they may indeed consult with Planning & Zoning as to the appropriateness of the building itself. They discuss it with the Building Department to make sure it adheres to the Building Code. I can see various departments of the Town would have a lot of input into this entire project.

Mr. Bradley: Are you affiliated at the national level with the Boys & Girls Club?

Mr. Small: Yes, we are part of the Boys & Girls Clubs of America. We are a completely autonomous agency. We have an affiliation with but are not owned by Boys & Girls Clubs of America.

Mr. Bradley: Who would be invited guests?

Mr. Small: The intent of that language is to show that we are going to be inclusive and invite as many people as is possible.

Mr. Bradley: Someone did bring up the cost of \$15/hr. for usage...

Mr. Small: That fee is comparable if not exactly the same as what the Town Recreation Department currently pays to the Board of Education for usage of Sheehan High School, Moses Y. Beach for basketball or volleyball, etc. We are smaller than the Town. It will primarily go towards upkeep and maintenance of the facility.

Mr. Bradley: Will those lease agreements increase over time?

Mr. Small: Frankly, we anticipate that they will be reflective of what is currently paid by the Town for Sheehan High School, etc., the Recreation Dept. will have an option consistent to what they normally pay for access.

Mr. Bradley: Where does your funding come from?

Mr. Small: It will come from a variety of sources, we are primarily a United Way agency, but we certainly anticipate increased memberships and day care services will generate more funds in the new facility. We will also run fund raising events.

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Mr. Bradley: Will you be seeking any additional funding from the Town other than the \$15/hr. charge?

Mr. Small: We do receive money from the Recreation Department and the Youth Service Bureau and will continue to ask for those contributions from the Town, approximately \$3,500.00/yr.

Mr. Bradley stated that correspondence from an eight year old stating the importance of the club to her triggered past memories and thoughts in his mind regarding his experience with the Boys Club of New Haven. He grew up in the Boys Club. There was a place for recreation, chess, checkers, ping pong, basketball, volleyball, he learned how to swim, took first aid courses, participated in crafts, etc. They had youth programs then for the teenagers as well. They had a summer camp that took the city youths to the "country" for two weeks. The "country" was Wallingford, Camp Clearview. The old Y.M.C.A. Camp. He understood a lot of people's concerns from a legal point of view, they are valid questions that have to be addressed. He understood the concerns of the Conservation Commission of which he was a member for seven years. He is also a supporter of Open Space. He pointed out that this was not a purchase with Town funds to fund Open Space. This was something that was deeded to the Town. He went on to say that he went through great pain from a moral standpoint, confronting family and friends for their reaction to this. He tried to stay away from the legal side of it. But it has to be considered. The Boys & Girls Club to him means a lot to him as well as to the youth of the Town. The year 1991 is the Year of the Child and the Decade of the City according to the Congress of Cities. The Boys & Girls Club will support and give the children of this Town a place to go after school, on the weekends and in the evenings.

Mr. Parisi: I was born and bred in Wallingford and did not get a chance to experience all the wonderful programs that was offered by a Boys Club. Tonight I hope this Council will vote in favor of these proposals so that the present and future youth will have the opportunity to experience a real super active Boys & Girls Club in the Town of Wallingford.

Mr. Solinsky: I am pleased that we held this public hearing. The newspaper said that it took a poll of the Council Members, all nine and only one was against it. They didn't get a hold of me. I came to the meeting neither a yes or a no. I wanted to hear the public speak. With all the information gathered this evening, I will support this action.

Mr. Holmes: As time goes by, the demand for services always increases. We cannot, however, always afford to expand these programs. I think that this proposal tonight is a perfect marriage between public and private partnership where we can each benefit from each other's services. Ultimately, the people who will benefit the most are the children of our community. I don't believe that we are giving away anything down at Community Lake, we will not lose any land, we will be gaining a top-notch facility that the Town could not even hope to build. I don't think that the lake will be restored

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anytime soon due to monetary and fiscal problems. I think that this is a very good first step in that area to bring some life back into Community Lake. I am in favor of this proposal and I urge my fellow Council Members to vote for it.

Ms. Papale: If the new facility goes through today, how much more do you feel that the dues will be increased per year?

Mr. Small: We are under strict prohibitions by the Boys & Girls Club of America to make the dues so low that any child can afford membership. That is part of our charge. We are limited in the amount of money that we can generate from individuals children's memberships. I anticipate that they will go up a little bit, but in the last 28 years it has gone up from \$2.00./yr. to \$12.00/yr. I don't think it will be dramatically, that is consistent with the national profile of membership fees.

Ms. Papale: Chris from the Record Journal called me to ask me what my feelings were on this issue. I was honest and stated that at that time I was leaning towards going with the proposal for the reason that I thought and still think that it would be not just a Boys & Girls Club project. I really feel that it will benefit the entire Town of Wallingford. In the next breath I said, I'm going in with that thought, but, it is a public hearing and I try to go with an open mind and if anything is said that will change my mind, I will have no problem changing my mind. I sat here from 6:30 P.M. to 10:00 P.M. and nothing was said to change my mind. I realize that not everyone can agree. This club is not just a special interest group, I feel that what they will do will be for all of us to enjoy. The outdoor recreation area will remain and not be taken away. I like the idea that it will not cost us a penny, I'm hoping that it won't. It looks good to me. They are paying now to go into the gyms in the Town of Wallingford. The Recreation Department seems to be very much in favor also. We are joining together as a community. I hope the rest of the Council agrees.

Mr. Killen: The die was cast. Few people paid attention to the legal verbiage that went around here. It would be nice to sit out there and say, "long live the Boys & Girls Club". I believe in it but I also believe in my oath of office which tells me that I have to represent everyone in the Town of Wallingford, Boys & Girls Club, Y.M.C.A., Catholic, Protestant, Jew. it makes no difference. The Attorney General's Office also had the same charge. He chose to turn his back on it. Maybe the reward was a judgeship, I don't know. If that is the way the State runs then I am not the least bit surprised that we are \$2 billion in debt because people do not take their charge seriously. I happen to believe that what we are doing tonight is very incorrect. I happen to believe that if we tried to bend the law and in any way injured the Boys & Girls Club we would all get hanged. Not physically, but the legal verbiage that would flow across and tell us why we could not do it because it happens to be the Boys & Girls Club is the reverse of what is happening and flowing across the table this evening.

I have spent my entire day going over this forward and backward. It is ironic that we have to go to the Masonic Home, we are being told about a "gift". If there is a "gift" I haven't found it. The first part of it that went to the Masonic Home was the free sewage. When that thing came to an end, and that is something else that will cost us millions of dollars before we get through, turned around with the deal for Ashlar Village which is also costing us money. There's the irony of this thing. We are stuck with an Attorney General's opinion and unless someone who has standing we cannot contest that. The Ashlar Village deal that went through giving us only 50% of our taxes is the kind of stuff that flows by us and makes me look with a fine eye and jaundiced eye at times what is put in front of us. The first opportunity that this group had, as a group, for getting legal advice was this evening. This thing has been going on so long. Look at the dates on the correspondence. The Charter states that the Council has the power to take hold, lease, condemn properties. Where was the Town Council? We'll get to them in due time was the attitude. Due time is tonight. The die has been cast. The vote here tonight is not in the interest of good government. It is in the interest of people thinking that we need a Boys & Girls Club. Not on Town property. I have fought against giving away of any Town property. It paid off a little bit. We happened to save Parker Farms School. We saved Yalesville School, as well as this very building we are in, saving us more than a few dollars in all. People don't realize that when you give it away, you don't get it back again. Open Space you never get back again. Open Space around a body of water is very hard to come by. It will cost us something that we cannot replace. For that reason I cannot support it.

Mr. Gouveia: Will the public access the tennis courts northeast of the building, will it be restrictive in any way, shape or form?

Mr. Small: No.

Mr. Gouveia: What about the land outside of the building, with the exception of the building itself?

Mr. Small: There is an envelope of approximately 10' around the perimeter of the building.

Mr. Gouveia: Your operational budget will increase many times over, do you foresee any problems in meeting your future operational budget?

Mr. Small: We think that the Boys & Girls Club will have an awful lot more opportunity to raise funds having increased opportunities to get more members, programs, fund raising potential in a new facility, etc. We feel this will generate enough revenue to keep our heads above water. It will be difficult. We went through a very exhaustive and intense scrutiny from United Way as well as several meetings of Boys Club of America and they analyzed our line items with a fine toothed comb and the process of that analysis, we tracked some of our numbers, made numbers we feel to be very doable and approachable for this facility.

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Mr. Gouveia: Am I getting an assurance from you that this will not turn into a country club for rich kids?

Mr. Small: You have an absolute assurance on that. We cannot be part of Boys & Girls Clubs of America if we were to do anything of any other nature.

Mr. Gouveia: I don't want you raising your fees to the kids to the point that only rich kids could afford to go there. Because then it defeats the purpose. I just want that on the record. Ms. Singer made a remark that the International Silver Deed will be violated if we take action tonight. We are in violation of that deed for about the past 11 years. I have an opinion from the Attorney General's Office also written by Atty. David Ormsted dated May 1, 1987 telling us that the Town should do something to correct the violation of the deed with International Silver with regards to Community Lake. No one in this Town has raised a hand to try and stop the Town from violating this deed. We are violating it now and will continue to do so. I have been doing a lot of thinking as I am sure all of the Council Members have and yes, I stated from a long time ago that I was leaning towards a yes vote on this project. I have kept an open mind on it, however, and tonight as I sit here and listen to a lot of people, I have collected many thoughts. First of all, let me say to you Mr. Chairman that I can appreciate how passionately you feel about the issues you have raised. I feel just as passionately. I was there in 1987 and I remember how passionately you felt. I think that what we have to do is try to look at the issues and separate them. That is basically what I did. I think that we have three different issues before us. The need of a building, leasing of public land and breach of the deed. We must look at the bottom line and see if the balance of the proposal before us is a detriment or a benefit to the community. I do not always look at the bottom line because the end does not always justify the means. I will look at the three issues. If we were not asked to appropriate the lease of public land, if we were not asked to breach a deed entered into by honorable people in good faith for the public good, I'm sure that all of us up here will be very excited. We would think that this is a terrific and honorable goal. As long as the building meets all of the safety codes, etc., we will be very happy. The fact is that we are being asked to lease public land to a private organization. Is the Boys & Girls Club just any other private organization? They exist solely to continue to do what other traditional institutions such as the family and church have become more and more less effective in doing. That is providing support, supervision, structure which positively effects children and children's attitudes towards self and others. They do this in a safe and nurturing environment. Many will agree that the Town needs a teen center or community center. Many other towns have them. Can you imagine how much it will cost the Town to build, staff and operate such a facility? By working together, private and government sector can fill a void that now exists in Town. The Town Recreation Department can now be guaranteed the right to use the facility for its own needs even if at a small cost. Leasing public land to a private organization is a difficult decision. As it should be. Municipalities, includ-

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ing Wallingford have done it before and will do it again in the future if the situation justifies it. Does this particular situation justify it? Breaching a deed is also very serious business. Are we violating the good faith and intention of those good people? The Attorney General seems to have given its blessings to the project. I would like to read from the July 2, 1990 letter of the Attorney General's Office: "while this arrangement could be interpreted by some as a ruse, this office will not raise an objection for the following reasons: first, it would be in technical compliance with the terms of the 1947 deed, second and most importantly, the property will continue to be devoted to charitable and public purposes". I am not too comfortable with the reasons listed or cited however, the Attorney General is a much higher authority than I am. Breaching a deed troubles me immensely. I felt the pain felt by over 300 families in Wallingford when the Town breached their deeds and took their property rights without due process which includes just compensation. Their constitutional rights were spat at. Now let's look at the bottom line. The community and its citizens will be enriched by the proposed facility. The honorable goals of the Boys & Girls Club can best be achieved by the proposed facility. There is a need for a youth-oriented facility in Town. The Town cannot possibly afford to build, staff and maintain such a facility. Leasing public land to a private organization is a difficult decision. This decision, however, I believe justifies it. Breaching a deed is painful, however under the circumstances we cannot reasonably believe that those who drafted and accepted it probably would not mind. The natural beauty which Community Lake once was has already been lost for a generation of Wallingford for too long. The Town has shown little interest or will to rebuild the lake. I would love to see, perhaps more than any other project in Town, Community Lake rebuilt. This may be the necessary force to get it started. A yes vote is a very difficult one but a no vote is just a little more difficult. I will vote yes.

Mrs. Duryea: Will the Townspeople have access to the basketball facilities?

Mr. Small: We will have no impact on anything outside of our facility

Mayor Dickinson: The only thing impacted would be the paddle tennis courts which potentially have to be moved and possibly some of the playground.

Mrs. Duryea: If, down the road, the Club cannot support itself financially, everything is reverted back to the Town, does that include the building? Or will the building be sold back to the Town?

Mr. Small: According to the language of the lease, if the Boys & Girls Club in the worst case scenario were not able to sustain itself would receive a brand new Boys & Girls Club Community Center at no charge. Because of the restrictions we could never sell the lease of the building to anyone.

Mrs. Duryea: If at some point we see our way to restore Community Lake could State funding be in jeopardy if a privately owned organization is on the site?

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Atty. Trautmann: I don't know the answer to that.

Mr. Small: First of all you will have a new deed which specifically identifies the Boys & Girls Club as permitted usage. Second, the waterways is part of the International Silver Deed and it is a separate deed process.

Mayor Dickinson: Access to the water would not be restricted by the presence of this facility. In addition, restoration of the lake would benefit a great deal of other private property which surrounds that location including the Choate Boat House and some other properties. I am not aware of any grant program that is so structured today that we would be ineligible. Whether one could be proposed in the future with language that we would have difficulty with, that is possible. I am not aware of any language today. The State is in the process of providing plans for us to restore Community Lake. I do not see that this is an impediment to access any funds that I am aware of.

Mr. Killen: I would like to welcome all of you back to the land of Community Lake. I thought I was the only one who knew it was there. We have been hearing this evening that no one is doing anything, that the Town is not interested. The Town has a committee. I have been involved in this, I have been pushing it, the State D.E.P. has been holding it all back. We are definitely in violation of our deed with International Silver Company. There is nothing more we can do until D.E.P. says that we can or cannot build a dam to hold back the water. The facts sometimes get thrown around so much they no longer become facts. The thing that disturbs me is that we have to go back to the Masonic Foundation for permission to use a piece of land that we paid an exorbitant price for. In the future this Council will be ruled out of any further uses of what is done with the building per se. That will be done with the Board of Recreation and the members of the Club. It is as if we are out in left field somewhere. I am not comfortable in a position along that line. I feel that we have a duty here, if anyone can stretch their imagination, the Attorney General's Office certainly did. He equates public and private as being one in the same. That is out and out lying. If we have to buy that type of representation, we are in bad straits. I am very sorry that the Town of Wallingford seems to be lowering itself to the same bad straits as the State.

Mr. Gouveia: In reading a decision of the Attorney General's Office back in May 1, 1987 in part states, "under the law the owner of property subject to a charitable use restriction may obtain relief from the requirements to abide by the restriction if the owner can establish that it is now impossible, impracticable, or illegal to do so. Such a determination, however, may not be made unilaterally by the owner of the property. The established law of this State grants to the Superior Court the exclusive authority to release or modify a charitable use restriction". So, we know that we are in violation, yes, perhaps D.E.P. does not allow us to go ahead and restore Community Lake to its past state, but we have a means by which we could seek relief so we

would no longer be in violation. We should seek relief from the Superior Court.

Mr. Killen: What is impossible or impracticable about the lease?

Mr. Gouveia: I don't know, you said that the deed does not allow us to do this, then we should go to the Superior Court.

Mr. Killen: What will we gain?

Mr. Gouveia: We will no longer be in violation of the deed.

Mr. Killen: The court will is not going to find us so long as D.E.P. is deliberating on it. They will not find that we can get that easy an out. We have to find someone with standing. The problem is who in this community has standing to take this Town to task for what it has done? We don't have anybody.

Mr. Gouveia: If the Town believes that the present circumstances make it no longer possible, practicable or legal to adhere to those conditions, then the Town should apply to the Superior Court for appropriate, equitable relief.

Mr. Killen: If we apply and they relieve us, what will we gain? There still will be no dam and no lake. Nothing but a judgement. We are not deliberately violating the law, we have applied to the proper people and you cannot do things without the proper o.k.

Mr. Paris: With all due respect, is it possible for us to get on with the vote.

VOTE: Zandri and Killen, no; all others, aye; motion duly carried.

ITEM #3 Acceptance of a Deed from Masonic Charity Foundation to Allow Execution of a Lease to the Boys & Girls Club

Motion was made by Mr. Bradley to Accept the Deed and Append Said Documentation to the Town Council Minutes, seconded by Mr. Paris.

VOTE: Zandri and Killen, no; all others, aye; motion duly carried.

ITEM #4 Reapproval of a Lease to the Boys & Girls Club

Motion was made by Mr. Bradley, seconded by Mr. Paris.

VOTE: Zandri and Killen, no; all others, aye; motion duly carried.

Mr. Bradley asked if the Council were executing the actions in the correct order in which the Attorney General had stated?

Atty. Trautmann: Yes.

Mr. Killen felt that the new deed was not specific. It was intended to be passed in December and it is still the only copy before me.

Mr. Killen had a problem with the date on the deed.

Atty. Trautmann: Perhaps you should consider revising the motion to indicate that you are approving the lease in substantially the form attached to the minutes or specifically permit the changing of the date in the motion.

Mr. Parisi: Can't we just make a motion to accept the deed dated December? If we designate the date in the motion it will be proper.

Atty. Trautmann: I don't think that it is a problem, you are approving the terms of the lease that is attached to the minutes.

Motion was made by Mr. Bradley to Adjourn the Meeting, seconded by Mr. Parisi.

VOTE: All ayes: motion duly carried.

There being no further business, the meeting adjourned at 10:39 P.M.

Meeting recorded and transcribed by:

Kathryn F. Milano, Town Council Secretary

Approved by:

Albert E. Killen, Chairman

Date

Kathryn J. Wall, Town Clerk

Date

LEASE AGREEMENT

INDENTURE OF LEASE, made this ____ day of December, 1990, between the Town of Wallingford ("Lessor") and the Wallingford Boys and Girls Club ("Lessee").

1. DEMISED PREMISES. Lessor, in consideration of the covenants and agreements to be performed by Lessee, does hereby lease unto Lessee, and Lessee does hereby lease and take from Lessor, all that certain piece or parcel of land situated in the Town of Wallingford and bounded and described as follows:

Beginning at a point which marks the intersection of the easterly highway line of Wilbur Cross Parkway (Connecticut Route 15) and the northerly highway line of Hall Avenue (Connecticut Route 150). Said point is marked by a CHD monument.

Thence, in a northerly direction along the easterly highway line of the Wilbur Cross Parkway at a bearing of north 24° 58' 15" east, 688.29 feet to a CHD monument.

Thence, in a southerly direction at a bearing of south 51° 01' 46" 107 feet to the True Point of Beginning.

Thence, at a bearing of south 20° 58' 14" west 50 feet.

Thence, at a bearing of south 87° 58' 14" west 25 feet.

Thence, at a bearing of south 02° 01' 46" east 125 feet.

Thence, at a bearing of north 87° 58' 14" east 157 feet.

Thence, at a bearing of north 02° 01' 46" west 135 feet.

Thence, at a bearing of south 87° 58' 14" west 25 feet.

Thence, at a bearing of north 69° 38' 36" west 94.6 feet to the True Point of Beginning.

Area encompassed within the lease, 22, 775+ sq. ft. (0.52+ acres).

2. CONSTRUCTION OF FACILITY: IMPROVEMENTS. The demised premises (the "Premises") consist of an undeveloped lot containing 0.52 acres, more or less. It is agreed that the purpose of this lease is to provide a site for the construction of a new facility by the Lessee for the purposes hereinafter set forth. It is also agreed that, if sufficient funding has not become available and/or construction has not commenced within two (2) years from the commencement date of this lease, then this lease, at the option of Lessor, shall terminate and be of no force and effect.

It is agreed that the construction of such facility or other improvement(s) or additions to the Premises shall be made solely at the Lessee's expense, and that the Lessee shall obtain from the Lessor written approval of all plans and designs for the construction of such facility or any other improvement(s) or additions to the Premises before any work is commenced. Lessor's approval, as required under this section, shall not be unreasonably withheld.

It is further agreed that any such facility or other improvement(s) or additions to the Premises by the Lessee shall become the property of the Lessor at the end of the final term or other termination of this lease.

3. TERM OF LEASE. The term of this lease shall begin on _____, 1990 and shall end on _____, 2000, unless extended as hereinafter provided.

4. RIGHT TO EXTEND. The Lessee shall have the right, at the expiration of the original term hereof, to extend such original term for three (3) successive periods of five (5) years each, such extensions to be on the same terms, covenants and conditions as are herein contained. Such right to extend shall be exercised by written notice to the Lessor at least ninety (90) days prior to the expiration of the original term or any extension thereof. Lessor and Lessee may agree to additional extensions of this lease.

5. RENT. Lessor agrees that Lessee may occupy and use the Premises free of any rental charge during the original term of the lease and any extensions thereof.

6. USE OF PROPERTY. The Lessee shall use and occupy the Premises throughout the original term, and any extensions thereof, for the sole purpose of providing and operating a recreational facility for children who are members, and invited guests, of the Wallingford Boys and Girls Club. Additionally, the Lessee agrees that any facility constructed on the Premises shall be open for use

by the Department of Parks and Recreation of the Town of Wallingford (the "Recreation Department") in accordance with a specific schedule for such use to be established annually by agreement in writing between the Lessee and the Recreation Department. In no event shall such schedule restrict the Recreation Department's use of the Premises to less than forty (40) Sundays per year from 8:00 a.m. to 11:00 p.m. In addition, during the months of September through May, the Recreation Department shall have use of the gymnasium for fifteen (15) hours per week, Monday through Friday, from 8:00 p.m. to 11:00 p.m. and, during the months of June, July and August, the Recreation Department shall have use of the gymnasium for twenty (20) hours per week, to be used Monday through Saturday prior to 5:00 p.m. The Lessor shall pay a charge of Fifteen Dollars (\$15.00) per hour for such usage. Participants in the Recreation Department's programs shall not be required to pay a membership fee to the Lessee. In the event that the Recreation Department does not use dedicated hours, the Lessee may schedule other usage.

7. MAINTENANCE AND REPAIR. Throughout the term of this lease, the Lessee, at its sole expense, shall take good care of the Premises, including any improvements or additions thereto, and will make all necessary repairs thereto, including interior and exterior, structural and nonstructural, ordinary and extraordinary, and foreseen and unforeseen repairs. As used herein, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises. Lessee shall deliver the Premises at the expiration or earlier termination of this lease to the Lessor in as good condition as the Premises may be in as of the date of this lease, reasonable wear and tear excepted.

8. INSURANCE. Lessee shall, at its sole cost and expense, maintain comprehensive general public liability insurance with limits of at least \$1,000,000/\$3,000,000 for bodily injury and \$250,000 for property damage and fire, and extended coverage insurance in an amount equal to one hundred percent (100%) of the full replacement cost of any improvements or additions to the Premises. All insurance policies shall name the Lessee and the Lessor as the insureds. The Lessor, at its option, may increase the required insurance limits described above at the fifth (5th) anniversary of the date of this lease and at the end of each five-year period thereafter.

9. LESSEE'S LIABILITY AND INDEMNIFICATION OF LESSOR. The Lessee agrees that it will have sole liability for any and all claims, demands, penalties or liabilities that may arise out of or be connected with its occupation, use or enjoyment of the Premises or its non-compliance with any of the terms of this lease. Lessee agrees to release, discharge and indemnify the Lessor, and hold it harmless from and against all such claims, demands, penalties and liabilities for any damage or injury to persons, firms, corporations or property suffered, sustained or incurred as a result of, or in connection with, or arising out of, any act or omission of the Lessee or its agents, employees or contractors, in connection with the occupation, use or enjoyment of the Premises by the Lessee, including attorneys' fees and any other cost of defending against such claims or demands. If any action or proceeding on any such claim or demand is brought against the Lessor, the Lessee agrees to resist and defend such action or proceeding. The Lessor may also resist and defend such action in the event that the Lessee fails to do so; in such event, the Lessee shall reimburse the Lessor for all reasonable expenses, including attorneys' fees, which the Lessor may incur in so doing. The Lessor shall not be responsible or liable to the Lessee for loss

or damage to any of the Lessee's property or the Premises. The Lessee shall, at its own expense, take all safety precautions reasonably required in connection with its occupation, use or enjoyment of the Premises.

10. LESSEE'S COVENANTS. Lessee agrees to comply with and to conform to all applicable laws, rules and regulations of the United States, the State of Connecticut and all applicable ordinances, resolutions and regulations of the Town of Wallingford, including, without limitation, all such laws, rules and regulations relating to health, safety, fire prevention and zoning.

Lessee agrees to pay for all utilities supplied to the Premises, or any improvements thereto, including water, sewer, electric, gas and telephone.

Lessee agrees to lease the Premises as agreed herein, that it will commit no waste, nor permit waste to be committed, nor injure or misuse the Premises.

Lessee agrees that it will not sell, assign, transfer, mortgage, pledge, create a security interest in or otherwise encumber, all or any part of its rights under this lease, nor sublet a part or the whole of the Premises. Lessee will neither place nor allow any liens of any kind, including, without limitation, mechanics' and materialmen's liens, to be lodged against the Premises or its leasehold interest in the Premises, and if any such lien is so lodged, Lessee shall remove the same within sixty days. In the event that Lessee does not comply with this provision, the Lessor may, at its option, pay or otherwise secure the removal of such lien, and the amounts so paid, including legal and other expenses thus incurred, shall be immediately repaid by Lessee to Lessor.

11. CONDEMNATION. If the whole of the Premises, or such portion thereof as will make the part remaining unsuitable for the purpose and use described herein, is taken by eminent domain, this

lease shall expire on the date when the Premises shall be so taken. The award shall be apportioned between the Lessor and the Lessee with the value of the Lessee's dollar contribution to the construction of the facility being paid to the Lessee and the balance of such award being paid to the Lessor. The Lessee's dollar contribution shall not include any state or federal funding made available for the construction of the facility and other improvements or any borrowed funds made available through the credit of the Lessor.

12. OPTION TO TERMINATE; REVERTER. If at any time during the original term of this lease or any extensions thereof the Lessee dissolves its corporate existence, unless such dissolution or other reorganization was made necessary by a change in state law, or cease to use the Premises solely for the purpose of providing and operating a recreational facility, as contemplated herein, or fails to comply with any of the terms of this lease, then the Lessor shall have the option to terminate this lease, which option shall be exercised by a written notice to the Lessee, and upon the mailing of such notice, the Lessor shall immediately be entitled to recover possession of the Premises.

Notwithstanding anything to the contrary herein, the Lessor shall have the option to terminate this lease prior to commencement of any extension of the original term by giving written notice to the Lessee of its intention to so terminate at least one (1) year prior to the end of the then current original term or of any then current extension thereof.

13. GOVERNING LAW. This lease shall be governed by and construed in accordance with the laws of the State of Connecticut.

14. NOTICES. All notices and communications hereunder shall be in writing and shall be deemed to have been duly given to a party when delivered by certified or registered first class mail

• (postage and certification or registration prepaid) or by recognized express courier delivery service addressed as follows:

If to Lesser:

Mayor
Town of Wallingford
Department of Law
Municipal Building
45 South Main Street
Wallingford, Connecticut 06492

With a copy to:

Corporation Counsel
Town of Wallingford
Department of Law
Municipal Building
45 South Main Street
Wallingford, Connecticut 06492

If to Lessee:

Wallingford Boys and Girls Club
Community Center
237 Hall Avenue
Wallingford, Connecticut 06492

With a Copy to:

Christopher Carrozzella, Esquire
35 South Main Street
Wallingford, Connecticut 06492

Either party may change its address for the purpose of notice by giving notice in accordance with the provisions of this paragraph 14.

WARRANTY DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that The Masonic Charity Foundation of Connecticut, a charitable corporation organized and existing under special grant of the legislature of the State of Connecticut, for the consideration of One dollar (\$1.00) and other valuable considerations, received to its full satisfaction of the Borough of Wallingford, acting herein by the Warden and Burgesses, does give, grant, bargain, sell and confirm unto the said Borough of Wallingford, its successors and assigns, to be used by said Borough for and as a public park and pleasure ground and for the purposes of amusement and recreation, the same to be enjoyed for such purposes by the public generally, the said Borough having the right to adopt reasonable rules and regulations in regard to said property, and obligating itself by acceptance of this grant to forever preserve and use the property hereby conveyed for the purposes and objects as herein set forth, and the Borough obligates itself to keep the property in a reasonable state of repair for use and enjoyment of the public generally, as a place for amusement, pleasure and recreation, all that certain piece or parcel of land situated in the Town of Wallingford, County of New Haven and State of Connecticut, containing ten (10) acres, more or less, bounded:

Northwesterly by River Street;
Northeasterly by a flooded area, land of International Silver Co.;
Southeasterly by Community Lake or Quinnipiac River; and
Westerly by Hall Avenue as the same has been relocated,
formerly land of The Masonic Charity Foundation of Connecticut;

together with all right, title and interest of The Masonic Charity Foundation of Connecticut in and to the bed of said Community Lake or Quinnipiac River to the southeast of the land herein described.

THE GRANTEE SHALL be permitted the right to lease a portion of said land herein described to the Boys and Girls Club of Wallingford, Inc. for the purpose of constructing and operating a facility on said land, consistent with the charitable and public purposes set forth in this deed. Violation of this charitable and public purpose shall render the right to lease null and void.

WARRANTY DEED

TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto it, the said grantee, its successors and assigns forever, to its and their own proper use and behoof. And also it, the said grantor, does for itself, its successors and assigns, covenant with the said grantee, its successors and assigns, that at and until the ensealing of these presents, it is well seized of the premises, as a good indefeasible estate in FEE SIMPLE; and has good right to bargain and sell the same in manner and form as is above written; and that the same is free from all encumbrances whatsoever.

AND FURTHERMORE, it, the said grantor, does by these presents bind itself and its successors forever to Warrant and Defend the above granted and bargained premises to it, the said grantee, its successors and assigns, against all claims and demands whatsoever.

This deed is made and accepted on the following condition subsequent, viz: Said land is to be used for park purposes in perpetuity as hereinbefore dedicated.

In the event of a violation of this condition, this deed shall be null and void and the entire estate hereby conveyed shall revert to and immediately re-vest in the grantor, its successors and assigns.

IN WITNESS WHEREOF, The Masonic Charity Foundation of Connecticut, has hereunto caused to be set its corporate name and seal this day of December in the year of our Lord nineteen hundred and ninety.

Signed, sealed and delivered
in the presence of:

The Masonic Charity Foundation
of Connecticut

by _____

Donald L. Gilmore
President

(SEAL)

AFFIDAVIT

RE: RECORD OWNER - Borough of Wallingford
CLAIMANT - The Masonic Charity Foundation
of Connecticut
PROPERTY - Community Lake Park
Wallingford, Connecticut

The undersigned, being of sound mind, and understanding the obligation of an oath, hereby deposes and says as follows:

1. I am over the age of eighteen years of age;
2. I am the President of the Masonic Charity Foundation of Connecticut, and as such President have been given the authority to execute this document;
3. This affidavit is being executed in accordance with Connecticut General Statutes Section 47-12a, which provides for the use of an affidavit in the "happening of any condition or event which may terminate an estate or interest."
4. On April 24, 1947, The Masonic Charity Foundation of Connecticut conveyed to the Borough of Wallingford (hereinafter referred to as "Wallingford") by Warranty Deed (hereinafter referred to as the "Deed") a parcel of property known as Community Lake Park, Wallingford, Connecticut, a copy of which Deed is attached hereto as Schedule A and made a part hereof by reference. Said Deed was recorded on May 8, 1947 in Volume 203 at Page 423 of the Wallingford Land Records.
5. Said Deed contained within it a condition subsequent together with a reverter clause which provided that the property was to be used and maintained by Wallingford as "a public park . . . to be enjoyed for such purposes by the public generally", and "in the event of a violation of this condition, this deed shall be null and void and the entire estate hereby conveyed shall revert to and immediately re-vest in the grantor, its successors and assigns."
6. On December , 1990, Wallingford leased a portion of the property to the Boys and Girls Club of Wallingford, Inc. for the purpose of constructing and operating a facility on said property.
7. By the execution of said lease, Wallingford has breached the condition subsequent in the Deed, thereby triggering the reverter and causing the property to immediately re-vest in The Masonic Charity Foundation of Connecticut.

8. This Affidavit is being executed and will be recorded on the Wallingford Land Records by The Masonic Charity Foundation of Connecticut for the purpose of giving official notice of the termination of Wallingford's interest in the subject property and the re-vesting of title in The Masonic Charity Foundation of Connecticut, in accordance with the terms of the Deed.

Executed at Wallingford, Connecticut this _____ day of December, 1990.

The Masonic Charity Foundation of Connecticut

by _____
Donald L. Gilmore, President

STATE OF CONNECTICUT: _____
: ss. Wallingford, December , 1990
COUNTY OF NEW HAVEN :

Personally appeared Donald L. Gilmore, President of The Masonic Charity Foundation of Connecticut, signer and sealer of the foregoing instrument, who acknowledged the same to be the free act and deed of said corporation and his free act and deed as such President, before me.

Notary Public, My Commission Expires ___/___/___

RESOLUTION

The Board of Managers of The Masonic Charity Foundation of Connecticut hereby resolves to coordinate its efforts with the Town of Wallingford and the Boys and Girls Club of Wallingford Inc. to accomplish the following actions:

- 1) to interpret a lease executed by the Town to the Club as a violation of the "public park" provision of the original warranty deed;
- 2) to retake title to the Community Lake Park property by reverter from the Town; and
- 3) to re deed the property to the Town, with the inclusion of a new clause granting the Town the right to lease a portion of the property to the Club.
- 4) The Town will then ratify or re-execute its lease to the Club.

These actions shall be approved in advance by the Attorney General of the State of Connecticut, and executed simultaneously so as to protect The Foundation from liability. All documents shall be recorded in the order in which they occurred.

These actions shall occur in a duly called meeting of the Council of the Town as soon as the Attorney General has approved the transaction.

The objective of this transaction is to enable the Club to utilize and maintain a portion of the property, consistent with the charitable and public purpose of the underlying warranty deed from the Foundation to the Town.

November 17, 1990

WARRANTY DEED

STATE OF CONNECTICUT)
)ss. Wallingford December , 1990
COUNTY OF NEW HAVEN)

Personally appeared Donald L. Gilmore, President of The Masonic Charity Foundation of Connecticut, Signer and Sealer of the foregoing instrument and acknowledged the same to be his free act and deed and being duly sworn, did say that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Managers and acknowledged said instrument to be the free act and deed of said corporation, before me.

Notary Public
My Commission Expires: