

ECONOMIC DEVELOPMENT COMMITTEE

TOWN OF ACTON

Acton, Massachusetts

April 17, 2009

Board of Selectmen
Acton, Massachusetts 01720

Members:

The Town of Acton Economic Development Committee, at its regular monthly meeting on April 16, 2009, held an "Open Mike" session after having received requests from people opposed to the Next Generation day care project to express their concerns about the project and its impact on both their businesses and the Town.

This is a summary report to the Acton Board of Selectmen.

Five members of the public attended and unanimously expressed opposition to the construction of this project. In addition, the EDC Board has received more than twenty five E-Mails, letters and telephone calls expressing opposition. These expressions of opposition resulted from word of mouth among those affected. The EDC did not solicit comments from either proponents or opponents of the project, and the EDC did not attempt to hold a public hearing on the matter. No proponents for the day care facility attended the Open Mike session, although 1 letter of support was been received from an individual who is apparently employed in early childhood education in another town.

The EDC explained to those present that its powers in this matter were extremely limited and that the progress of the Next Generation project had more to do with the application of state law governing day care development projects than it did with policy considerations at the Town level. A lively discussion was held, and the members of the public expressed deep concerns about the potential negative impact of the project.

At the invitation of the EDC, Scott Mutch (Acton's Zoning Enforcement Officer and Assistant Town Planner) was present to answer questions and to help clarify the applicability of the Town's zoning bylaws in light of the state law requirements. He also prepared some background information for the April 16th EDC meeting which showed that there are at least 11 Day Care Centers already operating in Acton with a maximum permitted enrollment of 868 children.

This, together with information furnished by a representative of a local Council representing day care services providers in our area, indicated that there are no more than 1170 permitted enrollment slots in the day care operations currently operating in Acton, although they indicated that there is a similar number of such providers in the surrounding towns as well as an uncounted number of spaces in small "mom and pop" operators in the area. Based on the size of the facility and other pertinent information it was determined that the Next Generation project would probably add an additional 230 day care slots, representing an increase in market capacity of between 20 and 25%. The day care providers present explained that enrollments were down and that the new facility would have a severe impact on their ability to operate a profitable business in Acton.

The EDC explained that competition *per se* was not a basis for the EDC to weigh in with Town staff or elected officials for or against any particular new business proposal for Acton. The discussion then centered on the process which had led to the creation of this project in that particular location. Much comment was received on the awkward traffic situation, the close proximity of a residential neighborhood, the large scale of the project, and the impact that it would have on Main Street north of Route Two. EDC explained that we were seeing the project information late in the approval process and that the real decision makers would be the BoS, the ZBA, and the courts, if necessary.

As a result of these discussions the EDC has a number of questions and concerns concerning this project, the Town's review process, the applicability of the state law known as the Dover Amendment (DA), and what steps we might be taking as a Town to proactively defend ourselves from similarly undesirable developments in the future.

In summary, our primary concerns for the project center on its location. If this project were located in a more discrete, preferably commercially zoned, area, we would have no objection to it. As it is, this parcel of land is zoned residential, is entwined with critical local roadways, is out of scale for its surroundings, and intrudes on an area (Main Street/Center district) which will suffer from the commercialization of the property. Obviously our Town would have rejected this development if it were able to do so.

Subsequently the question was raised as to what would become of this development if the day care business were to fail. Could this 24,000 square foot facility subsequently be converted to some other commercial use even though it would never have been built but for the applicability of the DA?

We understand that the developers of the Next Generation project will now make their case at a hearing with the Acton Board of Selectmen on April 27, 2009 and with the Acton Zoning Board of Appeals on May 4, 2009. It is unclear if we have any ability to influence events short of a lawsuit at this time. Nevertheless, we understand that the basis upon which the decision will ultimately be made will be the "reasonableness" of our existing zoning bylaw. We therefore urgently ask the Town to conduct an evaluation of the sufficiency of our existing bylaw, and to the extent that it can be made to be more effective or "reasonable," then we may be able to take more effective defensive action in the future.

This brings us to a concern about the appropriateness of applying the Dover Amendment, with its emphasis on religious or educational institutions, to commercial day care providers, particularly to the sort of "for profit" businesses like the present applicant. We assume that the inclusion of day care providers in this legislation was originally intended to protect small scale enterprises operating in existing residential areas so that child care for preschool age children could be available on a neighborhood level. However, whatever public policy may have been served at the time the DA was conceived seems to be overwhelmed when the day care project is, as is this one, ten times the size of the average home in our community. We must ask ourselves why we are offering these businesses such extraordinary protection under the law. If the law has not yet been challenged on the inclusion of for profit commercial day care providers under its protections, then perhaps the time has come for that to occur.

We therefore urge that the Board of Selectmen invite our legislative delegation to explain why this state law should be perpetuated in its present form. In the event that they are unable to identify a compelling public purpose for its continuance, we request that the Board instruct our representatives on Beacon Hill that Acton thinks it's time to rewrite this law to prevent such

unfortunate occurrences from taking place in Acton in the future and in other towns around the Commonwealth. We would also ask the Board to place this subject on the agenda in its relations with other towns or associations of towns so that a basis can be established for effectively lobbying the Legislature on behalf of all towns which are also likely to be victimized as we have been.

If we are unable to defend ourselves by seeing to the rewriting of a dysfunctional state law or indeed of our own bylaws, then it seems appropriate for us to ask ourselves if there is really nothing else we can do, using our arsenal of existing capabilities, to defend ourselves when a parcel of land seems about to become a detriment to the community.

For example, is it possible for the Town to acquire parcels which might become subject to inappropriate development? Does eminent domain offer us any potential in preventing harmful projects? Could we use "open space" funds to achieve such acquisitions? Whereas with traditional open space approaches we acquire land and hold the investment indefinitely, here we might acquire land for public purposes, perhaps for playgrounds or parks, and some time later re-sell it to developers who operate in sympathy with the Town's community vision. In this approach the funds preserve open spaces by holding problem lands for the short term, but, once the threat has been resolved, the funds are recycled back into our open space coffers.

Finally, our fundamental concern arises from our conception of the role of the Economic Development Committee. We conceive the mission of the committee to be the enhancement of opportunities for the Town to acquire new businesses as well as to serve as a sort of ombudsman for the existing business community. It is for this reason that the Chamber of Commerce has been granted two permanent member seats on the EDC.

Since property and business development are complex areas often involving Town staff in a variety of regulatory concerns, these developments can be lengthy and time consuming for all involved. It seems to make sense that the EDC should be among the first of the Town's agencies to be made aware of pending projects and to be a meaningful participant as the projects unfold. To the extent that the EDC is able to bring to bear the experience and skills of its constituent members, it enables the Town to identify different opportunities and creative solutions which might not otherwise materialize.

Since both the Next Generation project, and now WAVE, both reached us long after they were under way with other Town actors, we urgently request that the Board of Selectmen reemphasize to all concerned that the EDC should be an early participant with respect to both business development and the enhancement of existing business in our Town.

We thank you for taking the time to review this letter. If you have any questions or concerns, we would be happy to discuss them with you.

Sincerely,

Doug Tindal
Nicholas Francis
Co-Chairs
Economic Development Committee