

ESS SUDBURY ATHLETIC ACADEMY
141 Boston Post Road
00-31, 00-32, 00-33

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, SEPTEMBER 26, 2000

The Board consisted of:

EXHIBIT A

Mark A. Kablack, Acting Chairman
Patrick J. Delaney III, Acting Clerk
Gilbert P. Wright, Jr.
Lauren S. O'Brien
Melinda M. Berman, Alternate

Notice was published in the Sudbury Town Crier on September 7 and 14, 2000, posted, mailed and read at this hearing.

Mr. Kablack, Acting Chairman, explained the requirement necessary to substantiate the granting of a variance. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

(These petitions were formerly numbered 00-25, 26, 27 and the initial public hearing was begun on July 11, 2000. However, due to a conflict with one of the ZBA members, the petitioner elected to withdraw and resubmit in order that a five-member board be present.)

The three petitions will be taken together and consist of a special permit under Section I,F to allow a recreational and educational facility, special permit under III,C,2,k to allow the same use, and III,E for work within a Flood Plain District.

Attorney Myron Fox was present to represent the petitioner, ESS Sudbury Athletic Academy (SAA). He said the property comprises 15.83 acres which is the last, large industrial commercial zone in Sudbury on Route 20. It is located diagonally across the street from Goodmans Hill Road. The abutters are the railroad tracks to the south, Buddy Dog to the west, Frank's Spoke & Wheel to the east, with Best Friends Pet Salon and the Wingate Nursing Home across the street. The site has been vacant for approximately 11 years.

Application has been made to the Selectmen for Site Plan Special Permit. That hearing has been continued to a third night. In addition, application has been made to the Conservation for an Order of Conditions. That hearing was closed last night and the Commission will be issuing an Order of Conditions. Attorney Fox said he also met with the Board of Health who unanimously approved the design concept of the septic system.

The Plan proposes a private athletic academy on the site. The facility will be unlike any of the other clubs located in the vicinity – Wayside Racquet & Swim, Marlboro, Thoreau, Concord, Longfellow, Wayland and the Natick club which is part of the Longfellow Club. Attorney Fox said each of those facilities are “public clubs” which do not have initiation fees. The initiation fee for this facility will average \$7,000 with annual dues of approximately \$6,000. Although there are tennis courts, swimming pool and a fitness area, they are state of the art. There will be a human performance lab for which there is a separate charge of \$6,000. The facility is aimed at serious players who train at a very high level. A triathlete is an example of one who might join – a recreational tennis player would not join this club.

The other four clubs are high volume, low fee facilities. In order for those clubs to operate they need the high volume and to attract people all year round. This includes many programs as well as summer memberships, a day care center, etc., which this club will not have because it is an expensive low-volume facility. Since it is geared towards a serious, high-level player, there will be no waiting to use the equipment or facilities. If more people wanted to join, their names would go on a waiting list.

Attorney Fox said the only private club in this area is Wightman in Weston which has a waiting list of 100 persons and an initiation fee of \$10,000. Some of those on the waiting list may choose to join Mr. Bosse’s facility; however, the membership will be limited by the parking spaces and septic system.

The permanent structure will comprise 56,000 s.f. on the ground floor and approximately 9,000 s.f. on the second floor. Not included in this square footage is a “shell area” upstairs which will be used exclusively for storage. There will be a fitness room, agility rooms, human performance lab, small juice bar and child’s play room. Attorney Fox emphasized that this is not a day care center but can be used only while a member is on the premises utilizing the facilities. There will also be an indoor pool, 4 tennis courts, a sports psychology room, homework tutoring area, golf instructions area, pro-shop and office. Directly to the south of the building will be 3 tennis courts as well as a golf area which will be covered in the cold weather by a “bubble”.

Attorney Fox explained that technically, under the Bylaw, the bubble will be a structure. Therefore, during those months that the bubble is up, the 29,500 s.f. would be included in the building increasing the 65,000 s.f. by that amount. The area of the bubble was pointed out on the plan.

The coverage of the permanent building, including the bubble, is 12% of the total site. It does not include the three outdoor tennis courts. This percentage counts only structures, not impermeable surfaces. To count all impermeable surfaces would bring the percentage to 23%.

Attorney Fox anticipated this number changing because of the Conservation Commission's Order of Conditions which provide for a donation of approximately 8 acres as conservation land.

Attorney Fox provided a history of the site which began approximately 45 years ago as a plant which generated packaging and distribution of gas products. This operation continued for almost 35 years. Company vehicles were maintained and repaired on the site. Diesel and other fuels were stored in underground tanks. There were 21E problems. The existing buildings were demolished by the current owner, Ted Pasquarello, less than a year ago.

During the past 11 years there have been several proposals made and withdrawn to use the site. A golf driving range was turned down because of Conservation Commission issues; a supermarket (Sudbury Farms) was turned down because there was not enough parking for retail use. Methods Machines chose to build elsewhere because of the time it would take for the permitting process.

The last proposal was a 76-80,000 s.f. office building to be built by Mr. Pasquarello. However, he decided that the athletic use would be a better use. The property is currently under a Purchase & Sale Agreement with D.J. Bosse, subject to permitting.

Attorney Fox said if the athletic facility fails in the permitting process, Mr. Pasquarello will proceed with his plans for an office building. He noted that of all the possible Bylaw by-right uses that could go on the site, this use would be the least intensive in terms of traffic and other issues. He gave examples of other as-of-right uses: manufacturing (III,C,2,e), restaurant (III,C,2,b), office building (III,C,2,f, III,C1,a), retail yard (III,C,2,a).

To confirm the intensity of these other uses, Attorney Fox said he asked Bruce Ey, Schofield Brothers, to determine how large a building could be put on the site for each of those uses and still comply with zoning. Those numbers were then given to Jennifer Conley, Traffic Engineer, Rizzo Associates, for an estimate of the traffic which would be generated.

For the PM peak, an office space of 76,500 s.f. would have a 44% higher trip count, retail lumber yard 100%, manufacturing 75%, restaurant (high turnover, example Sky) 69%, (fast food without drive through) 338%. This is compared to Ms. Conley's estimate of 80 trips for an athletic facility. Copies of this trip generation sheet were distributed to the Board and for the record.

Attorney Fox said a question of benefit to the town should this facility be developed was brought up at the Selectmen's meeting. Attorney Fox gave the benefits as follows:

- upgrade of state drainage

- addition of detention basin to capture the first inch of runoff which is not being done now
- upgrade those catch basins in Route 20, if permitted by the State
- donation of approximately 8 acres for wildlife enhancement
- upgrade upland habitat for wildlife
- install walkway along entire property frontage (616 ft.)
- eliminate current building eyesore
- develop site in accordance with Planning Board's 1997 recommendation
- \$100,000 annual tax revenue to the town
- \$35,000 contribution to be made for Route 20 traffic mitigation
- volunteered to put a conservation restriction on 32,000 s.f. of the Buddy Dog land (Buddy Dog has agreed to this)
- Agreed to move the driveway further to the east and speak to Buddy Dog as to whether they would be willing to close off their entrance and utilize the athletic facility driveway

Attorney Fox said this is an "odd-zoned" site. In the 1930s, when zoning first came into effect, this site was zoned BD #1. Sometime thereafter when the town decided to make it an industrial district, ID #4, they forgot to remove the business district designation. Unlike other areas, this site was not designated as an overlay district. Further, the Bylaw front yard setback requirement for Route 20 in a business district is a minimum of 20 feet and a maximum of 400 feet. For an industrial district the setback requirement is a minimum of 50 feet. If both district's setbacks had to be considered, nothing could be built on the site. Attorney Fox referenced his September 11, 2000 memo on this subject, including supporting case law, which was submitted and made part of the record. Additionally, he pointed out that the Assessor's records, as well as the Town Engineer's map, indicate this site to be ID #4.

Special Permits are being requested as follows:

Special Permit under Section I,F. Attorney Fox said this permit was filed and requested in case the ZBA decided it is needed. It was Attorney Fox's opinion that this section does not apply because the Bylaw addresses open fields, picnic grounds, playgrounds, recreational fields, specialty school. It also calls for a renewable permit every two years. Although it may be appropriate for the uses previously described, this facility will be a \$5.5 million building. A construction lender would not lend money for a permit which expires every two years.

Attorney Fox believed the Special Permit is more appropriately addressed under Section III,C,2,h which deals with recreational facilities such as tennis courts, ice skating rinks, etc. He referenced the Planning Board's memos dated September 1 and 14, 2000 in support of development of the site under this section.

The third Special Permit is being requested for work within a flood plain district. Attorney Fox noted Town Engineer's letter on the original driveway stated that it would not endanger the health, safety and welfare of the public. This was further restated for the modification of the driveway location to the east. Calculations were submitted with the application demonstrating that there will not be any reduction in groundwater absorption and further demonstrate that any filling will not result in an increase in the 100-year flood. More storage will be provided that currently exists.

Attorney Fox pointed out that in ZBA Case 95-6, Praxair, Inc., the Board denied Praxair a variance to fill in the flood plain noting that a special permit was required under the town's Bylaw.

Mr. Kablack requested the flood plain zone area be pointed out. From the grading plan, sheet 2, Bruce Ey pointed out the elevation. The 100-year flood elevation is at 123. Area 1 is proposed to be altered for the building, parking area and the tennis courts. Flood storage will be provided in the two areas as pointed out on the plan. He elaborated on the method used to arrive at the resulting calculations. These numbers have been provided to Town Engineer who agrees with the figures.

Mr. Ey said he has been working with a number of Boards in the permitting process. As a result, he presented a revised site plan that shows a locus map, a slight change in the septic system size and a bicycle rack. Also added was the front yard setback. He said there is a septic system permit for the site, curb cut and utility connection. He is also working very closely with Town Engineer on the relocation of the driveway. There is more than enough site distance, from east to west, for a car exiting approximately 310 feet down from Goodmans Hill Road.

Mr. Kablack asked whether an amendment to the curb cut would be required should the road be moved further east.

Mr. Ey replied that it would, adding that he has checked with the state which has indicated that it will not be a problem.

With regard to drainage, Mr. Ey noted that the entire south side of Goodmans Hill Road drains down to in front of Best Friends Pet Resort. There is a drainage swale that cuts diagonally across the corner. This goes under Route 20. Another section of Route 20, as pointed out on the plan, drains over a drainage system and all drains to a drainage swale on the site. The pipe on Route 20 is crushed and has not been functioning for a long time. The state has not maintained the drain and the drain easement runs to the Mass. Highway Dept. However, the entire Goodmans Hill watershed drains down to it, so everyone depends on that drain easement for getting water away from Route 20 and Goodmans Hill Road.

In calculating the project, Mr. Ey said the entire watershed for this area has been analyzed with calculations submitted to the town and submitted and approved by the Mass. Highway Dept. He said this project will pick up the drainage in this location offsetting it with a 30-inch reinforced concrete pipe which will be constructed and which will properly discharge the Goodmans Hill watershed and Route 20. In addition, at the request of the Conservation Commission, gas and oil traps will be placed at the front of the site, if allowed by the Mass. Highway Dept.

The drainage system for this site is a separate system. Runoff will be intercepted from the parking lot, discharging it into a storm water management basin ultimately discharging into the wetlands. The system meets all necessary requirements. Mr. Ey said the drainage analysis clearly indicates that the peak rate of runoff will be reduced to the wetland, reducing and eliminating erosion to the site, and retaining more runoff than what currently leaves that site, so that the total volume of runoff will be less due to the flood plain elevation. At the same time, more flood storage will be provided for the Hop Brook flood plain.

Mr. Ey submitted, for the record, two plans dated July 13, 2000, consisting of Sheets 1 of 4 and 2 of 4, which show the septic system as approved but not the final driveway since he is still working with the Town Engineer to finalize the exact location.

Mr. Kablack asked if this copy of the plan will be referenced in the Conservation Commission's Order of Conditions. Mr. Ey said it would.

Mr. Delaney requested that the copies of the plan reflect the entranceways across the street.

Mr. Wright asked whether, in discussions with Town Engineer, if Buddy Dog's entrance was closed, could there be a provision for a right-hand turn lane.

Attorney Fox said that was one of the reasons the petitioner agreed to donate \$35,000 towards traffic mitigation. He was not sure whether the state would approve that scenario citing an instance where Town Engineer had applied for a bypass lane by Old County Road which was denied by the state.

With regard to the permitting process, Attorney Fox said he, Bruce Ey and D.J. Bosse met with the Department Heads in February 2000, prior to filing of a formal application with the Selectmen. Suggestions were made and incorporated into the plan. This was done once again approximately two months ago at the Town Manager's request where more suggestions were made and incorporated. He said there were extensive meetings with the Conservation Commission and one each with the Planning Board and Board of Health. The Planning Board recommended approval as did the Board of Health in their approval of the septic system design.

Attorney Fox provided a synopsis of the following letters which have been received and are part of the record:

- from the Fire Chief dated September 7, 2000 to the Selectmen which prefers the plan which puts the driveway further east approximately opposite the Best Friends driveway. The fire, safety and medical response concerns of the Fire Dept. have been met by the applicant.

- from the Building Inspector dated September 8, 2000 to the Town Manager which notes the parking numbers were generated empirically from actual numbers at existing comparable facilities. They were also figured three different ways using the Sudbury Zoning Bylaw criteria. The figures satisfy all of the above.

- from the Planning Board to the ZBA dated June 30, 2000 which voted unanimously to recommend approval of the special permit. The Planning Board initiated the zoning amendment allowing recreational uses in industrial districts in 1997 with this parcel in mind. The facility as proposed will have lower impacts than other permitted uses on the site.

- from Town Planner dated September 1, 2000 to the Planning Board which notes that this site plan special permit application seeks to develop one of the few remaining commercial properties in Sudbury. The letter referenced the 1997 zoning amendment noting this site was particularly suited due to its large size and the potential for a recreational use to blend in well with the natural landscape. The impacts permitted with typical industrial uses in the zone can include environmental concerns, high water usage and large monotype buildings. The development of this health club is a relatively low impact use compared to other permitted uses in industrial districts. In addition, by-right uses allowed in the district such as wholesale storage and wholesale/retail require a special permit from the ZBA.

The memo notes a parking analysis using ITE standards comes up with 162 spaces. Attorney Fox said the analysis uses all 10 tennis courts and assigns parking as if all would be used at the same time. He said at any given time, seven courts would be used. Using the ITE manual does not count for the facility's low usage, but looks at a traditional facility. In any case, Attorney Fox felt the 95 spaces limit usage and traffic impact.

In conclusion, the Town Planner's memo recommends support of the proposal to the Selectmen.

- from the Planning Board dated September 14, 2000 which renewed its earlier vote in support of the facility and recommended approval of a special permit for work with the flood plain district.

- from the Planning Board dated September 8, 2000 to the Selectmen which indicates that the number of parking spaces proposed is the limiting factor for the density of use at this site.

The Planning Board does not believe that traffic impacts from this proposal will have a major impact on Route 20.

- from the Economic Development Committee, which restates its previous position endorsing the development of the athletic academy.

- from Town Engineer dated June 30, 2000 to the ZBA, which states that the proposed driveway (original) would not endanger the health or welfare of the public, and based on the compensatory flood storage calculations, there will not be any flood storage lost as a result of the proposed development.

- from Town Engineer dated July 21, 2000 to the ZBA, which includes a copy of a plan with a suggested driveway relocation, noting the suggested modification will provide adequate sight distance in both directions.

- from Town Engineer dated September 19, 2000 to the Town Manager, regarding a third driveway modification which states that there will be no conflict with this third location at the intersection of Goodmans Hill Road, Best Friends, Wingate Nursing Home and Old County Road.

- from Wingate Nursing Home dated July 10, 2000, Carol Stoner, abutter 121 Boston Post Road dated September 8, 2000, and McGlynn Insurance Agency, 83 Boston Post Road, dated September 26, 2000, all in support of the proposal.

Jennifer Conley, Traffic Engineer, Rizzo Associates, spoke to the issues of traffic. Her presentation included a review of the original traffic data, which is part of the record, and updates updates which are not included as part of that data.

Ms. Conley said existing conditions at Route 20 were looked at on Thursday, June 1, 2000 during the peak hours of 7-9AM and 4-6PM. At the Board's request, a Saturday was looked at on August 12, 2000 from 11AM-2PM. From this data, the supplemental data points out that the traffic entering Goodmans Hill Road was less, although not significantly less, than the weekday peak hours.

Accident history was looked at and this is included in the original study. Approximately 70% of the accidents in the vicinity of the intersection of Route 20 and Goodmans Hill Road are rear-end accidents on the eastbound approach. Discussions with the Safety Officer indicated that this location has a typical accident history of most Route 20 intersections. Calculations show the current level of operation at the intersection to be congested with lengthy delays and queues.

Looking towards the future, traffic was increased from the existing traffic counts 2 ½% per year, which is based on permanent highway count stations and count locations in Sudbury

taken from the Mass. Highway Department's publications. Ms. Conley said she also spoke with the Town Planner who indicated that there are no other proposed projects with significant traffic generation.

Trip generation for the proposed facility was based on the ITE manual using higher impact numbers and result in a 1% impact on traffic. Trip generation at this location based on other facilities is provided in the traffic supplement dated September 11, 2000.

Since the initial hearing on July 11, 2000, an independent traffic counting company was engaged to conduct a number of counts at area locations when school was in session in September. These consisted of all the vehicle trips that entered the Wightman Tennis Club in Weston and the Longfellow Club during the morning and afternoon periods. On Thursday, September 7, 2000, 12 vehicle trips exited and entered in the morning with 20 in the afternoon. For that same day, there were 80 vehicle trips in the morning and 110 in the afternoon.

Mr. Delaney referenced Board of Health Director Leupold's letter dated September 7, 2000 which notes the proposed facility is based upon 95 parking spaces, 2000 members and 500 persons per day average use. He said 500 members a day is twice as many as is projected in the traffic study. He asked about the count since Attorney Fox had stated that this use would generate less traffic than other uses.

Attorney Fox said his figures show that 32% would be single riders, 44% double, 24% 3 and up. If one takes 500, multiply it by .32, it comes out to 160. Multiplied by .44, divide by 2 comes out to 110. Multiplied by .24, divide by 3 equals 40 for a total of 310 cars per day or 620 vehicle trips.

Mr. Delaney said the 620 expected vehicle trips are being contrasted with between a 700-800 range.

Ms. Conley agreed. She said she was concentrating in the analysis on peak hours.

In conclusion, Ms. Conley said after looking at each of the different locations, the LGE facility in Orlando, and Wightman and Longfellow, she is confident that although the ITE manual states that there would be 40 vehicle trips during the peak, it is felt that 80 would be more appropriate. Therefore, she said the supplemental information will show that this facility will increase the traffic at Route 20 and Goodmans Hill Road by approximately 2% and Route 20 and Landham Road by approximately 1%.

Ms. Conley said it was also requested that a driveway modification be looked at, which Bruce Ey has done. Additionally, mitigation options were also looked at. She said a 1986 study looked at a number of mitigation options for the year 2006. The traffic volumes projected were significantly higher than what she was projecting for 2000. Ms. Conley said the critical peaks

have not grown very much since 1986 and the numbers are nowhere near the 2006 factor. The conclusion of the study was that the mitigation costs outweighed the benefits and at this location no mitigation was recommended.

Despite that, Ms. Conley said the proponent is still willing to make a cash donation towards mitigation.

Mr. Delaney asked whether the 80 peak vehicle trips were based on the LGE facility in Orlando. Attorney Fox said they were based on a combination of LGE and other private clubs; i.e., Wightman. Ms. Conley added that the 80 figure was developed at the Board's request; that the Board asked the proponent to estimate what he expected at this location. Therefore, they looked at LGE and other numbers in order to estimate the projected numbers.

Mr. Delaney said it would be helpful to see the particulars for LGE in terms of vehicle trips and size of the facility.

Mr. Wright asked whether the Buddy Dog traffic was factored in. Ms. Conley said it was factored in the traffic on Route 20.

Mr. Kablack asked what the \$35,000 mitigation amount was based on.

Attorney Fox said he matched the amount the town asked the Green Company to donate. It was not based on projected costs of what would need to be done in any given location.

Mr. Wright said there seems to be few alternatives at the Goodman Hill Road intersection. He wondered what effect there would be if the Buddy Dog entrance was closed and consolidated with the athletic facility's driveway.

Ms. Conley said it is difficult to quantify. She said if a hard number was wanted, she would tend to use a delay to measure a benefit. When justifying a roadway project to Mass. Highway, one would use the amount of vehicle delay that was being reduced.

Mr. Wright said if a car was going to go into Buddy Dog further down, although there would be a delay there, the question is how much delay was being reduced.

Ms. Conley agreed adding it would also be reducing the reduced potential conflict locations. To have additional conflicts of the driveway so close to the intersection is not ideal. In addition, she said any time Mass. Highway can consolidate driveways, it is their policy to do so.

Ms. Berman asked whether Buddy Dog saw a benefit. Attorney Fox said this just now came up. It has not been discussed; however, he thought Buddy Dog would approve. He said he will speak to them.

Mr. Kablack asked whether Buddy Dog's peak hour trips coincided with peak hour expectations at the athletic facility. Ms. Conley said she adopted a dog there and had to be there by 5PM Friday to pick it up. She would tend to think their peaks tend to be earlier on Saturday, but during the week, other than the two nights they stay open later, they would tend to be closed during the club's peak hours.

Attorney Fox added that the athletic club's AM peak begins at 6AM, before, Buddy Dog opens and it ends after it is closed.

Mr. Delaney asked whether the number of vehicle trips would be influenced if the parking spaces were some other number than 95. Ms. Conley replied that at this point, it would not. She said the proponent, based on experience, predicted the flow to be 80, and the independently and collected data at the Longfellow and Wightman clubs shows that even though it may be slightly higher if it were more like Longfellow, it would not be significantly higher.

Mr. Wright said Mr. Hammel, in his documentation, indicated ITE standards for various clubs. He asked whether Ms. Conley looked at those figures.

Ms. Conley said she did look at the ITE figures. She said when the original study was completed in early June, at that point the proposal before her was for a tennis facility. Therefore, when looking at the different ITE sources she concentrated on the tennis use as being the primary driver for trip generation for this site, which is why a trip generation for a tennis court was chosen. She said the data that has come in since then looks at a number of things; i.e., square footage, whether it includes the tennis courts, etc., but because this facility is first a tennis court facility, that is why a trip rate for a court was used as opposed to looking at it as so many square feet of court and so many square feet of something else.

Mr. Wright pointed out that it does have all the other components. Ms. Conley agreed, adding that the racquet club land does include them but again is based on a trip rate per court.

Mr. Wright expressed concern that if there is insufficient space, with the location of the proposed parking so close to the entrance, there could be a backup along Route 20 caused by people entering/exiting.

Ms. Conley said she could do a queue analysis to determine how many cars could back up before they got to Route 20 and how much trip generation would have to occur to produce that situation.

Mr. Kablack asked whether there was a breakdown in the percentage of vehicle trips that would be just drop offs. Ms. Conley did not have a breakdown. Attorney Fox noted, however, that there will be a van that picks up students at the schools, transporting them to the facility. Although some parents may come to watch their child train, others will be returned home via van.

Due to the hour, and aware of the fact that Attorney Fox had not completed his presentation, Mr. Kablack wanted to hear from those in the audience who might not be able to attend the continuance. He thanked Attorney Fox for his synopsis of the letters which have been received by the Board noting that the Board was in receipt of others which will be referenced for the record by name and date before the public hearing is closed.

Attorney Fox had no objection to deferring his presentation. However, he requested that Duncan Wood, Engineer, Sanborn, Head & Associates, be allowed to summarize his report.

Permission was granted.

Duncan Wood said as of 1980 there were four underground tanks at this facility, one holding fuel oil for heating the building, one holding waste oil, the other two holding diesel fuel and gasoline for trucks.

In 1980, the building was converted into natural gas heat; in 1981, the fuel oil tank was cleaned and closed in place.

In March 1988, there was a significant flood in the Sudbury Assabet Concord system. The flood waters came up and water reached into the waste oil tank. Oil within the tank came out and contaminated the flood waters. When the waters receded, primarily through floor drains that connected directly to a ditch which runs parallel to and under the railroad tracks, there was visible evidence of an oil spill.

DEP responded. Clean Harbors was called in. Approximately two weeks later that tank was removed. In the process of removing it, it was found to be surrounded by concrete for buoyancy. The decision was made by the Sudbury Fire Department not to remove the tank but to clean it and close it in place because it was located right up against the foundation of the building.

In December 1988, when Praxair was in the process of closing down their operation, they removed, and the Fire Department witnessed, the gasoline and diesel tanks.

In 1995, after an interaction with the Sudbury Conservation Commission, working through the MCP, a massive effort was taken to clean up the residuals in the ditch. This work was done, reviewed by Sanborn Head & Associates, and submitted to the State.

Mr. Wood said he looked at portion of the site, things that were not focused on or relating to the 1988 event. He said he found no other indication of contamination of significance. It was his opinion that nothing more needs to be done from a geo-technical obstruction point of view; that since the new building will be on top of where the waste oil tank is closed in place and where the fuel oil tank remains, they need to be pulled out as they consist of a chunk of concrete which should not be beneath the building. From a 21E, hazardous waste and MCP point of view, Mr. Wood believed there was no further work that needs to be done.

Before hearing from the audience, it was agreed to set a date for continuing this hearing to Tuesday, October 17, 2000, with the location to be announced. To continue the protocol, Mr. Kablack requested that any documentation to be discussed on that date must be submitted to the Town Clerk's office by October 11, 2000.

Attorney David Wallace said he had a lengthy presentation and would prefer to defer it to October 17, 2000.

Joan Blake, 300 Old Lancaster Road, was not in favor of the petitions. She did not believe this was the only use for this land citing the shortage of space for fields for children's athletic programs. Ms. Blake believed that this land could be better used to serve the children rather than the fewer paying customers for an athletic facility.

Since there were no further comments from the audience, Mr. Kablack allowed Attorney Fox to continue until this evening's adjournment at 10:30PM.

Attorney Fox referenced a petition signed by 216 residents in opposition to the athletic facility. He noted the petition states that the facility would be located at the intersection of Route 20 and Goodmans Hill Road adjacent to Buddy Dog and would exacerbate traffic. He would comment that none of those signing the petition realized that the entrance was subsequently moved 310 feet further east.

With regard to traffic, Attorney Fox pointed out that the owner of this property has publicly stated that he will develop this property as an office building if the athletic facility fails in the permitting process, and that the numbers indicate that traffic would be worse for an office building.

Mr. Delaney noted that Attorney Fox was commenting on material which was submitted but not yet presented by the opponents. He asked whether it was Attorney Fox's intent to address this now or after the opponents' presentation.

Attorney Fox replied that he was only commenting on material which has been submitted and which may be taken into consideration for purposes of the evening's hearing. He would also reserve the right to comment on the material after the opponents make their presentations.

Mr. Kablack said that although this material was before the Board, he stressed that the intent is to avoid redundancy.

Continuing, Attorney Fox commented that Mr. Hammel and one of his lawyers attended a Selectmen's meeting on September 11 at which traffic was discussed. Attorney Fox spoke on the athletic facility at that meeting and the Selectmen indicated that another petition for a Thai restaurant on Boston Post Road was waiting to be heard that evening. He said he remained for that hearing and commented that no one from Mr. Hammel's group stayed to talk about traffic.

Attorney Fox said he researched previous proposals along Route 20 between the proposed athletic facility and Longfellow Club. These included Best Friends, 150 Boston Post Road, directly across the street from the facility and at the corner of Goodmans Hill Road. The Selectmen granted a Site Plan Special Permit on April 1, 1998 for a 160-dog facility. There was no opposition to this project on the issue of traffic or any other issue.

The property adjacent was the Wingate Nursing Home. The ZBA granted a Special permit for that facility in 1994. The Selectmen granted a Site Plan Special Permit for a 142-bed nursing home. There was only one objection from a resident at the Selectmen's hearing.

In response to a cautionary comment from Mr. Wright relative to the direction of these comments, Attorney Fox replied that the point is that each of the commercial developments mentioned generates traffic, just as the athletic facility will generate traffic. However, each one was without opposition for the most part, and was ultimately approved by the town. This tells him two things: (1) that the Selectmen and Board of Appeals have approved uses that generate traffic in this area and (2) the neighbors did not oppose these uses.

Mr. Delaney said he believed this was a valid point because members of the Board present this evening may not have necessarily been the ones who were present for the other facilities.

Continuing, Attorney Fox referenced the Sunoco Station (Auto Diagnostic) at 100 Boston Post Road, which was approved by both the Board of Appeals and Selectmen. He noted the resident who was opposed to the nursing home supported the gas station.

Referring to a Memorandum in Opposition dated September 11, 2000, signed by Attorney David Wallace, which was submitted for consideration and suggested that the application does not meet some of the special permit guidelines, Attorney Fox would suggest that the issues raised with regard to conservation issues have been addressed and therefore are no longer valid.

With regard to the issues raised by Attorney Wallace relative to safe driveway access, Attorney Fox would differ and notes that Town Engineer in his letter agrees that the driveway access is safe.

As to a quote that the Town Planner disagrees with the Sanborn, Head & Associates traffic report, Attorney Fox notes that the statement neglects to state that the Town Planner supports the project as do the members of the Planning Board.

With regard to a statement that traffic reports were handed in for 1995-6-7, Attorney Fox said this was because Ms. Conley obtained that information from the State which only had information for those years. For the period January 1, 1994-July 7, 2000, Attorney Wallace's memorandum notes the Police Department reports 64 accidents or 9.8 accidents per year. Attorney Fox pointed out that the Police Chief, at the Department Head meeting, when asked about this project, stated no objections.

As to Attorney Wallace's comment regarding adequate parking and loading spaces; that Mr. Hammel based 300 spaces required on the Longfellow facility, Attorney Fox said Mr. Hammel is not familiar with the business plan for this facility which is very different from Longfellow which is a high-volume, low-cost operation.

With regard to septic comments as to the system's adequacy, Attorney Fox pointed out that Mr. Hammel and his attorneys presented their figures at the Board of Health meeting and that Board voted to approve the septic system design as presented by the applicant.

A second filing of documentation by Attorney Wallace on August 29, 2000 notes adequate and appropriate facilities have not been provided for the use. Attorney Fox noted that the Planning Board disagreed pointing out that although the building size is significant, it is on a very large lot. He said the Planning Board even spoke to the suitability of this lot for the proposed athletic use.

The Wallace document notes this project will cause undue traffic congestion in the area. Attorney Fox said the Traffic Consultant's report indicates this is not the case. Further, the Economic Development Committee and Planning Board say the opposite.

The Wallace document states that as-of-right uses which could be constructed would have less impact. Attorney Fox believed the data presented refutes that statement.

Attorney Fox referenced a filing dated September 11, 2000 submitted by Mr. Hammel which states that the facility is an incredibly intense use of the site, that the size of the building dictates the intensity of use, and that the facility could fail and the next owners could turn it into a Longfellow-type facility with even more people. He (Fox) said what is applicable now is that the facility is limited by the conditions imposed by the Board of Health and the zoning

requirements. It limits the applicant or its successors from expanding. Further, the purpose of the business plan is not to fill the entire building to capacity because that would defeat the plan. Members would not be willing to pay the high fees and have to wait to use the equipment and facilities.

In response to other statements in Mr. Hammel's documentation regarding size and comparability to other clubs in the area or nation, Attorney Fox reiterated his earlier statement that this club will not be the same in size or services and cannot be totally compared with other clubs.

As the hour was late, Mr. Kablack requested the following be submitted for the next continuance:

- (1) information on the Wightman Club, Weston, MA and LGE facility in Orlando, FL as to floor area, number of members, activities, etc.
- (2) feasibility of combining the Buddy Dog entrance with this facility
- (3) preliminary reading on a left-turn lane
- (4) architectural elevation drawings of the facility
- (5) limitations that the petitioner would find acceptable as additional mitigation to the site; i.e., number of people per day, total membership, limitations on tournaments, marketing toward corporate membership, day care, etc. Mr. Kablack request the petitioner be as creative as possible.

The hearing was adjourned to October 17, 2000.

Mark A. Kablack, Acting Clerk

Patrick J. Delaney III, Acting Clerk

Gilbert P. Wright, Jr.

Lauren S. O'Brien

Melinda M. Berman, Alternate