

DR. GAIL W. MCNEILL
21 Union Avenue
01-12

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, JULY 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Melinda M. Berman, Alternate
Jonathan G. Gossels, Alternate

Notice was published in the Sudbury Town Crier on June 21 and 28, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a special permit. 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.

Dr. Gail McNeill and A. Elliot McNeill were present to represent a petition for renewal of Special Permit 98-21 to operate a veterinary kennel and clinic at 21 Union Avenue. The business has been in operation since 1985. No changes were being requested other than a request for a five-year renewal period.

Mr. Delaney reviewed the conditions of the previous permit asking whether the applicant had any problems with them. Dr. McNeill said she had no issues and has been able to comply with those terms. She added that there have been no complaints from abutters with regard to her operation.

Mr. Delaney noted the Board's position with regard to renewal periods which would generally be a three-year period in this situation. He said the Board established guidelines in order to better monitor special permits and if it voted a three-year rather than five-year period, the applicant should not consider it to be a reflection on the business but rather adherence to those guidelines.

The Board was familiar with the operation. There were no questions. No abutters were present. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Dr. Gail W. McNeill, applicant, A. Elliott McNeill and Phyllis E. McNeill, owners of property, renewal of Special Permit 98-21, under the provisions of Section 2313 of the Zoning Bylaws, to allow the continued operation of a veterinary kennel and clinic, property located at 21 Union Avenue, Business District #5, provided that:

1. Dogs are to be allowed in the outside run only between 7:30AM and 9AM, 5PM and 5:30PM, 7:30PM and 8:30PM Monday through Saturday, and between 10AM and 10:30AM, and 5PM and 5:30PM on Sundays.
2. The building shall use a climate control system so that all doors and windows can be kept closed year round to preclude the issuance of noise from the building.
3. Except as modified herein, the conditions of the site plan dated March 5, 1984 shall be complied with.
4. This permit is non-transferable and will expire in three (3) years on July 10, 2004, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner seeks to renew a special permit to operate a kennel which has been in existence for sixteen years. The Board finds that the location of the activity in a business district which has minimal abutter contact within 100 feet is an appropriate location and not detrimental to the neighborhood in and of itself. The use of a kennel in a business district is in harmony with the Zoning Bylaws in that a kennel is an allowed use.

The building within which the kennel operates was built for this specific use. Therefore, the Board finds that the facility is appropriate. As to the issue of whether the use is detrimental or offensive due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances, the Board finds that there is some noise which, if not controlled, could be considered detrimental. However, by limiting the hours during which dogs may be out, as well as requiring the closure of windows and doors to the times set forth in the Decision, the Board finds that the detrimental effects, if any, would be minimal to the neighboring properties.

The Board further notes that no abutters were present to voice objection to renewal of this special permit, nor do records indicate any opposition for the past several years. For this reason the Board finds a renewal term of three years to be appropriate in this case.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Melinda M. Berman, Alternate

Jonathan G. Gossels, Alternate

KEN & KARIN MANNING
112 Powers Road
01-13

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, JULY 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Melinda M. Berman, Alternate
Jonathan G. Gossels, Alternate

Notice was published in the Sudbury Town Crier on June 21 and 28, 2001. posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a special permit. 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.

Ken and Karin Manning were present to represent a petition for renewal of Special Permit 00-17 to conduct a Home Business, specifically, Psychology, at 112 Powers Road. The business has been in operation for one year. Ms. Manning said no complaints have been received with regard to the business and no changes to the permit were being requested.

Mr. Delaney reviewed the condition of the previous permit. Ms. Manning said she has complied with all of the conditions. Mr. Delaney asked whether there were any employees other than the residents. Ms. Manning replied that there were not. Mr. Delaney pointed out that should the petitioners anticipate a change, they should first check the Bylaw which has specific requirements with regard to employees.

There were no other comments from the Board. No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Ken and Karin Manning, owners of property, renewal of Special Permit 00-17 under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically Psychology, in the barn located on the property located at 112 Powers Road, Residential Zone A-1, provided that:

1. Hours of operation will be 8AM-6PM, Monday through Saturday.

KEN & KARIN MANNING
112 Powers Road
01-13 Page 2

2. All parking shall be on the premises. No street parking will be allowed.
3. No more than eight (8) car trips per day will be allowed.
4. No employees, other than the residents, will be allowed.
5. There will be no exterior indication of the Home Business. No sign will be allowed on the street.
6. No additional exterior lighting will be allowed.
7. This permit is non-transferable and will expire in two years on July 10, 2003, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 5 (unanimous) Opposed: 0

The petitioner seeks to renew a special permit for a psychology practice which has been in operation for one year. The Board finds that the use is in harmony with the general intent and purpose of the Bylaw, is in an appropriate location, and is not detrimental to the neighborhood. The conditions imposed with regard to hours of operation and vehicle trips will insure no adverse

impact on the neighborhood in terms of visibility, traffic and safety. The petitioner has complied with those conditions and there have been no complaints from abutters. Therefore, the Board finds a two-year renewal period appropriate in this case.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Melinda M. Berman, Alternate

Jonathan G. Gossels, Alternate

BRINDA GUPTA
202 Wayside Inn Road
01-14

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, JULY 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Melinda M. Berman, Alternate
Jonathan G. Gossels, Alternate

Notice was published in the Sudbury Town Crier on June 21 and 28, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a special permit. 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.

Brinda Gupta was present to represent a petition for renewal of Special Permit 99-14 to conduct a Home Business, specifically a travel agency at 202 Wayside Inn Road.

Ms. Gupta said she was operating in accordance with the conditions of the original permit. There have been no complaints and no changes were being requested.

Mr. Delaney reminded her of the Bylaw requirements with regard to number of employees associated with a Home Business operation.

There were no comments from the Board. No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Brinda Gupta, owner of property, renewal of Special Permit 99-14 under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically a wholesale/limited retail travel agency, property located at 202 Wayside Inn Road, Wayside Inn Preservation Residential Zone, provided that:

1. Hours of operation shall be Monday-Friday, 9AM-5PM.

BRINDA GUPTA
202 Wayside Inn Road
01-14 Page 2

2. No more than one additional employee, other than family members, will be employed in this business.
3. No more than five (5) deliveries a week, associated with the business, will be allowed.
4. No retail advertising will be allowed.
5. No exterior indication of the Home Business is permitted, other than a 2 s.f. sign attached to the side of the house.
6. No additional exterior lighting will be allowed.
7. All parking is to be on site. No street parking is allowed.
8. This permit is non-transferable and will expire in two (2) years on July 10, 2003, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner seeks renewal of a special permit to conduct a travel agency in her home. The Board finds the use is in harmony with the general purpose and intent of the Bylaw, is in an appropriate location not detrimental to the neighborhood, and does not by its presence

significantly alter the character of the zoning district. Adequate and appropriate facilities have been provided for proper operation. The petitioner has been operating for three years in accordance with the conditions of the permit without incident or complaint from the neighbors, and no abutters were present at this hearing to oppose renewal.

Patrick J. Delaney III, Acting Clerk

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Melinda M. Berman, Alternate

Jonathan G. Gossels, Alternate

CHENS FAMILY TRUST
394 Boston Post Road
01-15

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, JULY 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Melinda M. Berman, Alternate
Jonathan G. Gossels, Alternate

Notice was published in the Sudbury Town Crier on June 21 and 28, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a special permit. 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.

K.T. Huang, Architect, was present representing the applicant Mr. Chen, also present, in a petition for extension and enlargement of a nonconforming use. The property is the Lotus Blossom Restaurant located at 394 Boston Post Road.

Mr. Huang explained that in order to improve operation of the kitchen for the restaurant it is proposed to construct an 8X20 foot addition on the back of the existing kitchen so employees can maneuver more easily. An 8X12 roofed porch will be attached to allow the delivery of goods. In addition, there are currently three kitchen exhaust fans approximately 5 feet in diameter and 4 feet high located on the back of the building. It is proposed to add a roof screen to shield those units. The screen will be made of treated wood which will be painted. The intent is to improve the appearance in that area.

The proposed enlargement and alterations are for improvement of kitchen and delivery operations only. There will be no increase in the dining capacity. All construction will conform to current setback requirements.

The Board reviewed the plans submitted with the application. Mr. Huang described the area of improvements which are cross-hatched. He also pointed out the location of the exhaust fans.

CHENS FAMILY TRUST
394 Boston Post Road
01-15 Page 2

Mr. Gossels pointed out the narrow driveway in that area which will be made even more narrow by this construction. He felt it important for snow not to be piled in that area as it would impede traffic circulation.

Mr. Chen said while that area is narrow, two-way traffic circulation will be able to be maintained. He said he would have the area plowed so as to maintain that circulation during the winter months.

Board members emphasized the importance of keeping the flow of traffic open at all times.

There were no further comments from the Board. No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Chens Family Realty Trust (Lotus Blossom Restaurant), owner of property, a Special Permit under the provisions of Section 2400 of the Zoning Bylaws, for extension and enlargement of a nonconforming structure, specifically to construct an 8X20 foot

kitchen addition, 8X12 foot roofed porch, and a roof screen, property located at 394 Boston Post Road, Business District #5.”

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner requires a special permit due to the nonconforming nature of the property which consists of street centerline setback and parking. The Board finds that the proposed addition, which will not result in an increase of the existing nonconformity, will not be substantially more detrimental or objectionable to the neighborhood than the existing nonconformity. The proposed addition is intended to improve the operation of the business, specifically in the kitchen and delivery areas. It will not increase the dining capacity or necessitate additional parking. The Board finds that the proposed construction will be architecturally compatible with the existing structure and has received assurances from the petitioner that snow removal operations will be conducted so as not to impede traffic circulation in that area. The Board further notes that no abutters were present to oppose the petition.

VOTED: In favor: 5 (unanimous) Opposed: 0

CHENS FAMILY TRUST
394 Boston Post Road
01-15 Page 3

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Melinda M. Berman, Alternate

Jonathan G. Gossels, Alternate

BRUCE & LYDIA GARCIA
106 Old Garrison Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, JULY 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Melinda M. Berman, Alternate
Jonathan G. Gossels, Alternate

Notice was published in the Sudbury Town Crier on June 21 and 28, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a special permit. 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.

Bruce and Lydia Garcia were present to represent a petition for special permit to allow demolition of an existing residence and construction of a new residence on a nonconforming lot which will exceed the area of the original nonconforming structure. The property is located at 106 Old Garrison Road.

Lot area is 5.34 acres. Frontage is 200 and is deficient by 10 feet.

Ms. Garcia described the proposed construction from the plan which was submitted with the application. The plans depict footprints of both the existing and proposed structure. The new structure will conform to all setback requirements.

Ms. Garcia was not sure of the distance of the proposed structure to the abutting houses; however, she said all setback requirements would be met.

Mr. Phelps asked why the new house was repositioned. Mr. Garcia said the existing house is situated at an odd angle. The proposed house will be more or less parallel to the street as are the other houses on the street.

No abutters were present to oppose the petition.

Following further review and discussion of the plans, the hearing was closed.

BRUCE & LYDIA GARCIA
106 Old Garrison Road

After deliberation the following motion was placed and seconded:

MOTION: "To grant Bruce and Lydia Garcia, owners of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence on a nonconforming lot which will exceed the area of the original nonconforming structure, property located at 106 Old Garrison Road, Wayside Inn Preservation Residential Zone."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed reconstruction, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental than the existing nonconforming structure. The Board finds the large land area of 5.34 acres will adequately contain a structure of the proposed size which will conform to all setback requirements.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Melinda M. Berman, Alternate

Jonathan G. Gossels, Alternate

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, JULY 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps

Melinda M. Berman, Alternate
Jonathan G. Gossels, Alternate

Notice was published in the Sudbury Town Crier on June 21 and 28, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a special permit, variance and use 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.

John Keene, Nextel Communications, was present to represent three petitions; (1) Special Permit to install, operate and maintain a 100-foot monopole wireless communications facility, including associated equipment, (2) Use Variance to allow a monopole facility on a parcel not within the Wireless Services Overlay District, (3) Variance for setback deficiencies from the northerly, easterly and westerly property lines, Variance to locate a radiating component of the facility within 500 feet of a residential lot line and, to the extent necessary, to locate the facility within 1000 feet of a school building. The property is located at 36 Hudson Road and is the Ti-Sales property.

Mr. Keene displayed a topographical map of the area, a copy of which was included with the application. The map depicts an outline of the Town of Sudbury with black triangular dots representing existing Nextel facilities that are on air and operational, the most recent being the one on North Road at the AT&T tower. Red sites are proposed facilities that Nextel hopes to build in the near future. One is located in Sudbury in the southern part of town within the Wireless Services Overlay District and is a pole that has been approved by the town for Voice Stream. Nextel hopes to collocate on that facility. The center is where essentially Nextel has no coverage, now or proposed, without the facility that's the subject of this application. Blue represents current existing or proposed coverage from those other facilities.

By way of explanation as to why this site was chosen, Mr. Keene displayed a copy of the zoning map. Green sites are locations in the business and industrial sections of town that

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 2

wireless communications facilities are allowed, but not towers for self-supported monopoles, only for instance roof-mounted structures. In any of those areas there are only very short buildings, the tallest of which is somewhere between 40-45 feet. The red sites are all town-owned sites that, with the exception of the Cummings Property, are within the overlay district and do allow self-supporting monopoles in those areas. In addition to the existing site on North Road, Nextel is proposing a second facility on an existing tower at Feeley Park. There are no red areas in the center of town where a tower would be allowed.

Northwest of the center is the Willis Hill water tank site. Nextel did try to acquire that site and bid on a RFP that the Water District issued in January 2000. AT&T was awarded the bid for that site and has since built or is building a one-carrier pole that will service AT&T's needs for coverage in the town. Mr. Keene said he has spoken with, and has sent letters to, the Water District, requesting in writing that a RFP be issued on that site, and have been advised by the Water District that they will not issue another RFP for additional facilities at that location. That being the case, that there are virtually no available sites in the center of Sudbury within the Wireless Overlay District, and the one that is and might have been usable, is essentially not available because the Water District will not issue an RFP.

Nextel then had to look for locations outside the Wireless Services Overlay District.

There is one other site in the overlay district somewhat near the center which is the Highway Department property. This property would essentially not work for Nextel's coverage purposes because the site is too far south and close to the other section of town on Route 20 where Nextel is proposing to provide coverage. Mr. Keene said it would cause redundant coverage with the site in the south and not fill all the coverage gap in the center part of Sudbury.

Mr. Phelps asked if Mr. Keene could show the coverage Nextel claimed it would or would not get from the Highway Department site.

Mr. Keene said he did not have that information.

Mr. Phelps felt this to be important. He could understand the redundancy felt there might be redundancy in other areas too.

From the map Mr. Keene described the sites as circles and the potential effect if those circles of coverage were moved as a result of different site location.

Mr. Phelps asked Mr. Keene to show what the Willis Hill site would cover if Nextel could get it.

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 3

Mr. Keene said Nextel would have gone on Willis Hill had it been available because of the desire to try and comply with the Bylaw and be within the Wireless Services Overlay District. But from a RF coverage perspective he felt the proposed site is better. He explained that although Willis Hill would create somewhat of a bigger circle because of its elevation, it would cover closer to Maynard and would fill the military reservation area where the coverage isn't needed.

He then proceeded to go through some of the other sites that were looked at:

Sudbury Fire Dept., Hudson Road – Would work but was removed from overlay district.

Town Hall – Good location but building too short to provide adequate coverage. Not in overlay district.

Town property adjacent to proposed site. Would work. Not within overlay district. Since application, Nextel aware of Planning Board letter which seems to show some interest in adding to overlay district.

Peter Noyes School & Flynn Building – Buildings much too short. Central and visible location within a historic district.

Mount Pleasant Cemetery – Probably a good site but is historic property owned by the town. Not in overlay district.

LSRHS – Too far north. Not in coverage gap. Not in overlay district.

Water District property at end of Washbrook Road. Similar issues as Highway Department property. Not sure Water District would be willing to issue an RFP for a site not within the overlay district.

St. Elizabeth's Church/Concord Road – Further north than is desired. Facility would be in very prominent location.

Nixon School – Featherland Park – Not in overlay district.

Hudson Road area – Fairbank Senior Center & Maiuri gas station. Too far west to fill gap. Not in overlay district. Mr. Maiuri not interested in leasing.

Cavicchio greenhouses/Union Ave – Too far south. Would not work.

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 4

Goodman's Hill water tank - Could work from RF perspective. Hasn't been tested. Not in overlay district. Construction would be disruptive to neighboring parcels because access road is overgrown.

Steeple:

Our Lady of Fatima Church/Concord Road – Too far south. Steeple too short.

Methodist Church/Old Sudbury Road - May not have enough height. Church not willing to lease.

Presbyterian Church & First Parish Church/Old Sudbury Road. Both not of sufficient height.

Village Green Buildings/Hudson Road – Buildings not tall enough for type of communications facilities Nextel is proposing. Omnipoint has a stealth communications located in a chimney structure. There would not be an inconspicuous location for a second facility.

After considering all of those sites, Nextel located the site in question that is the subject of this application. It's really an excellent site. It is off of Hudson Road, very near the center of town and ideally situated for Nextel's RF purposes. It is off the road, out back, out of the historic district and is heavily wooded all around. Visibility of the proposed facility was pointed out from photo simulations which were also included as part of the application package.

Nextel is proposing to build a 100-foot monopole designed for 3 carriers. There will be a 900 s.f. compound at the back of the property with a grassy knoll in the center. The facility will be located over part of that grassy area. The location of the equipment shelter was pointed out as well as a proposed future shelter for collocation. Nextel has been advised that Sprint is interested in collocating of this facility and a representative is present this evening. A chain link fence would enclose the shelter. There is a pad in the middle, which will be for an air conditioning unit. The meter bank for telephone and electric utilities that will come in from the street.

Mr. Keene said the facility is similar to the Nextel site we at the AT&T tower on North Road. It has been designed to be a flagpole style facility so that the antennas are interior mounted and will not be visible from the outside pole.

Mr. Keene introduced J. Nathan Godfrey, Newport Appraisal Group to provide a real estate impact study. Mr. Godfrey submitted his report to the members of the Board and for the record. He summarized his report which he said concludes that the application presents a use that will not have an impact on marketability or value. density use of the town land, a former inactive railroad bed. There's a whole hose of land use criteria that this really meets and exceeds as far as developing a good site. If there were a weakness in this site it's only technical in nature as far as compliance with the Zoning Bylaw. The Bylaw sets some criteria that makes some

NEXTEL COMMUNICATIONS

HUDSON ROAD TRUST

36 Hudson Road

01-17, 01-18, 01-19 Page 5

sense but I think in some sense is too restrictive. I think you've got an opportunity here as a Board to look at a site, come up with the appropriate permit variances to permit an appropriate land use in this location. Will be happy to answer any questions.

Mr. Keene submitted the following additional information:

- Memorandum of Site candidates considered as alternatives to the proposed site
- Letter dated January 9, 2001 from Town Manager Valente regarding Nextel's request that the town issue an RFPs for some sites
- Letter from Sprint PCS dated July 6, 2001 expressing their support of this application and their interest in collocating on the proposed facility.
- Letter from the Mass. Department of Public Health dated May 10, 2001 approving this site with regard to Nextel's application to them.
- Letter from PIROD Inc., the tower manufacturer, dated July 6, 2001. The letter basically spells out information on the structural integrity of towers and how in the very unlikely event they would fall that they would essentially collapse upon themselves. This letter indicates that this particular tower will have a fall radius of approximately 30 feet. which is well over the distance from the applicable property lines with regard to the setback.

Attorney Michael Rosen said one of the troubling things about wireless communications is the valid purpose for zoning and every Zoning Board is here to protect a community and the development in that community. At the same time wireless telecommunications are here and are a part of the future of the country. It's how you balance out what the Federal Communications Commission and the Federal Government mandates for our licensed carrier versus the town's interest in protecting and preserving basically the nature of what's essential in every town.

The front portion of this property is in the business district. If Nextel had chosen to go to the front of this property it would not be seeking a use variance, only a dimensional variance because wireless is allowed in a business district. In this particular instance Nextel's goal in locating a tower is not to just pick a location and put a tower on it but to do the best it can to comply with all facets of the town's bylaw in a location that it doesn't adversely impact the community while at the same time affording them the opportunity to meet their requirements under their federal license.

Attorney Rosen said in this instance there is a parcel of land which is unique for a number of reasons. Its frontage is through a right of way. This was pointed out on the map. The entire front of the property, including the right of way, is business. The entire front half of the property where the majority of the building is situated is business. A small portion at the back of the

NEXTEL COMMUNICATIONS

HUDSON ROAD TRUST

36 Hudson Road

01-17, 01-18, 01-19 Page 6

property is zoned residential. He assumed it was probably because of subdivisions that took place years ago, and as zoning maps were updated it was probably never revised.

Attorney Rosen wanted to focus on three points: zoning under Chapter 40A, Sudbury's Zoning Bylaw and the Federal Communications Act.

Zoning under the Bylaw: Under Sudbury's Bylaw for a use variance there is additional criteria that goes above and beyond State law. There are four criteria one of which must be met in order

to qualify for a use variance. In Nextel's application for use variance, Attorney Rosen believed that the lot in question has a lawful structure or structures in good repair and of appearance compatible with its vicinity which can reasonably be maintained as an visual and taxable asset only if some nonconformity of use is permitted.

Nextel believes there is a nonconformity of use which is already being permitted and therefore Nextel is only asking for is an extension of that nonconformity of use. In both 1982 and 1989 the owners of the property came before this Board under this Bylaw and requested use variances. Both of those use variances were allowed for the reason that the Board found this property essentially to be comprised of two lots, a business lot and a residential lot; that the residential lot in and of itself was unique and could never be used for residential purposes so long as the only access was through this right of way and across this commercial property which already had a building on it.

In 1982 the ZBA allowed the addition of a loading dock and in 1989 they allowed the addition to the side of the building. He read from that Decision which notes that in 1982, the Board is granting the use variance because there exists on the lot a lawful structure in good repair and compatible with surroundings that can reasonably be maintained as a visual and taxable asset only if this variance is granted.

In 1989 the Board found there exists on a commercial property an existing structure of conforming use. The petitioner seeks to expand the structure into the residential area. The Board finds that the existence of the zone line through the property creates two lots, a commercial lot which has a lawful structure which renders unreasonable any conforming use of the residential lot without granting a use variance. The Board finds that the extent of the addition requested is no greater than the minimum necessary to relieve the applicant from statutory hardship.

Attorney Rosen said it obviously complies under M.G.L. Chapter 40A or the two prior use variances wouldn't have been granted. However, He felt this has even more validity based upon the current use or proposed use of the property. Going through the four criteria: There must be special conditions relating to the soil, shape or topography of the land or the structures especially affecting the land or structures but not affecting generally the zoning district in which

NEXTEL COMMUNICATIONS

HUDSON ROAD TRUST

36 Hudson Road

01-17, 01-18, 01-19 Page 7

the land is located. Clearly this is a unique property. It is bifurcated into two different zoning districts with structures already existing with the structures encroaching on the district lines such that this parcel is unique compared to any other parcel in the town and in this district.

Second, hardship. There are two issues: First is the hardship to the owner. The hardship to the owner is that the owner has residential property which is almost half of the parcel of land. It's taxed to the owner yet the owner cannot use it for residential purposes. There's no ability to put a residential property there and he should have the lawful right to use it and get some benefit

and enjoyment out of that land. The more important hardship here is the hardship to the applicant. Under State law the hardship doesn't just have to be with the owner of the land; it has to be with the applicant of the variance. In this particular instance the applicant is Nextel Communications. They have a hardship. They have a coverage gap and federal law requires them to fill that coverage gap. They have shown best efforts to find the least intrusive means to locate in the Town of Sudbury. They've done everything possible to locate in the Wireless Overlay District first. They've explored all the properties in that district and have been writing to the Town for upwards of a year requesting additional RFPs be issued and unfortunately have received written responses back that those RFPs wouldn't be issued. They submitted an RFP on the Willis Hill tank which unfortunately they did not win. If Nextel can't get a site in this essential area of town it's not going to be able to fill its coverage gap and its coverage needs in the town, and therefore it's a hardship to them.

The third criteria is that there must be no substantial detriment to the public good if the variance is granted. Nextel doesn't believe that there is any. The Board has been presented with an appraisal and photo-simulations, and obviously before Nextel gets to the permits and constructs the structure, it has to comply with all other applicable laws.

The granting of a variance must not nullify or substantially derogate from the intent or purpose of the Bylaw. Attorney Rosen believed this does just the exact opposite. It is not in a Wireless Overlay District, but what Nextel did was to find a site in this town that is virtually invisible from the public eye other than during the winter if you're standing right across the street and looking down the driveway. They have created a two or three carrier pole. They have looked at real estate values, made sure there is adequate screening, and they've looked very diligently at how close the nearest residences are in comparison to the property, noting that there is open space on one side, the railroad land on the other and significant tree line surrounding the site. In this particular instance they've maximized collocation opportunities. They've looked at every existing structure and where none worked what they did was to design a pole that is at or below 100-foot level created in a stealth manner to accommodate three carriers.

Attorney Rosen said in actuality there would be something better for Nextel but they are not trying to do it. The best would be to build a pole with full array with 12 antennas on it and we could get two or three other carriers on it. With a full array and full antennas there would be

NEXTEL COMMUNICATIONS

HUDSON ROAD TRUST

36 Hudson Road

01-17, 01-18, 01-19 Page 8

better coverage. He said Nextel is not asking for that. It is looking at this on a stealth monopole, recognizing that while it's not the best coverage, it will still fill a significant gap.

By concealing new equipment and to accommodate the needs of wireless communications in order to reduce the number of towers needed to serve everyone, Nextel is designing a facility that it hopes will fill the coverage gap in the town so that with one other facility on town-owned property it should be able to cover substantially all of the Town of Sudbury.

Mr. Delaney read the following correspondence into the record:

- from the Planning Board dated July 3, 2001 which voted unanimously to deny the use variance application noting this site is within a residential zoning district and not within the Wireless Services overlay district. The Board notes that it is not adverse to exploring the possibility of adding the adjacent town-owned property to the Wireless Services Bylaw at Town Meeting and having discussions with Nextel regarding installation at that site in the future.

-from Town Manager Valente dated June 28, 2001, with addendum, which conveys the Board of Selectmen's strong feeling that all wireless communication facilities should be located within the wireless overlay district.

Mr. Delaney noted that Omnipoint located in the Village Green not with a tower but with a structure, which is a faux chimney, on the roof of a building which is not very tall, certainly considerably less than 100 feet. He said there are other facilities at Feeley Park and also at the Melone property which would be similar to the plan Nextel has. He asked whether it was also Nextel's intent to locate at Feeley?

Mr. Keene replied that it was.

Mr. Delaney said Nextel has a coverage need in the middle of town as did Omnipoint and he questioned why Nextel was not able to utilize the provisions of the Wireless Communications Bylaw that permits this similar equipment to be constructed on buildings in business districts in that area it's interested in to a height of 12 feet above the top of the building. He said Nextel gave a reason that it was because it doesn't meet coverage requirements and yet somebody very similar met the coverage requirements of Omnipoint.

Mr. Keene said he couldn't speak to the coverage requirements of Omnipoint or why they felt they could use this facility. From the photographs here the height of the Village Green building is very short. It is actually a 2-story building with a good amount of additional height based on the pitched roof. His guess was that the roof is not more than 40 feet high. Even with

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 9

the 10 or 12 feet allowed under the bylaw it is still only about 50 feet which is about half the height of Nextel's proposed facility.

He explained that wireless communications, the way the radio signal radiates out from the site, is basically based on a line of sight standard so things that are in the way – other buildings, trees, hills and so forth can essentially stop the signal from traveling further. The photograph shows that the building does not really even clear the height of the surrounding trees. And I'm sure you live in town and are familiar with the site. So when Nextel's RF Engineer

viewed that site he determined that it was not of sufficient height to adequately fill that coverage gap.

Mr. Delaney said Mr. Keene mentioned two things that could interfere with the signal, the hills and trees. While agreeing that a hill will block this type of signal, he asked whether trees will merely impede it.

Cameron Syme, RF Engineer said basically a tree does impede the radio wave. What actually happens is that as the wave radiates out through the branches of the trees it scatters. Once you get into a height that is a little bit above the trees or into the trees you lose power and have less of a coverage area. He said if Nextel could go on any other structures it would.

Mr. Delaney asked which building.

Mr. Keene replied the Village Green building or any other building.

Mr. Syme said he would prefer that as opposed to a tower but in this case we can't because meet our coverage objectives.

Mr. Delaney asked what exactly was the objective. He would assume that the coverage objectives are for a particular signal strength within different areas.

Mr. Syme would agree with that assumption. He said at this point Sudbury center and Route 27 does not provide what we term as reliable coverage. From the chart he pointed out color coded areas which represent coverage and non coverage areas.

Mr. Delaney commented that one would tend to look at that chart as meaning the blue area as coverage and the green area as no coverage but actually the blue area is adequate coverage and the green area is less than what you consider adequate coverage.

Mr. Syme agreed.

Mr. Delaney asked what are the federal requirements for coverage were.

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 10

Mr. Keene replied that as a condition of Nextel's license we are required to provide adequate or reliable coverage, or something along that standard to a certain level of population. There are time frames by which we have to be able to provide coverage to certain numbers of population. If we're not able to meet those requirements we are potentially subject to losing our license.

Attorney Rosen added that the determining factor under the Federal Telecommunications Act is that we have to be allowed to fill gaps in coverage. It's not that there are state and federal

cases in Massachusetts that it's not sufficient to say whether you can fill a gap in coverage somewhere else. It's our goal and objective to fill that in every town; we look for gaps everywhere.

Mr. Delaney said he asked what the federal requirement was, not what Nextel's goal was, and the answer he heard was that the federal requirement was for coverage but wouldn't necessarily cover this particular gap.

Attorney Rosen said the federal cases have looked at what is reasonable coverage and are holding to the standard that one has to provide a service that is comparable to land lines.

Mr. Delaney asked what constitutes a gap noting that even in areas where there is coverage, there are still have gaps, little gaps. He asked how big does an area of coverage that isn't the same quality as a landline have to be before it's considered to be a gap.

Attorney Rosen said when looking at a gap for instance what is taken into account is pockets of population and traveled ways, both state and federal highways. It was indicated earlier an area where there is a reserve where there aren't going to be any people using a phone. That would be a gap but there would be no coverage need.

Mr. Delaney would surmise there is no strict definition.

Attorney Rosen agreed.

Mr. Delaney said in most of the sites Nextel were was looking for something very tall. He asked whether there is any other alternative technology is available besides an antenna on a pole.

Mr. Keene replied that all of Nextel's technology is based upon an antenna array that can be mounted to various things, a self-supporting pole as is being proposed. They can sometimes put them on church steeples, on the roof of buildings and so forth.

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 11

Mr. Delaney asked whether there are any cells in Nextel's system that have any antennas mounted on buildings as opposed to poles.

Mr. Keene said there were but most are as tall as a church steeple or taller.

Mr. Syme added that it depends upon the site. In this case the objective is to cover a large area. Microcells are basically one story high but cover a very small area. The height of the structure we need to cover an area depends upon the size of the area.

Attorney Rosen commented that one of the reasons Omnipoint may be able to do a chimney on a building is that based on where their other towers are and based upon the radio frequency that is transmitted out of the equipment, they may have a smaller gap they're trying to fill. In which case they could fill at a lower height.

Mr. Gossels said as a community Sudbury has been receptive to wireless communications and has been willing to allow tall poles and invisible devices outside of them. He questioned why the assumption is that it has to be one tall pole to fill that gap as opposed to two or three other structures that are invisible.

Attorney Rosen said there isn't anywhere else in the center of town. There are only two parcels, this one and across the street that are both in business to consider for roof mounting. It's not whether it can be done; the Bylaw has not included any parcels to allow it. Smaller installations also bring them in closer to the residential districts and the residential neighborhoods, which he thought was the intent of the bylaw to try and avoid.

Attorney Rosen there is a commercial property that has amazing screening on it, a very unique site, and Nextel would much rather take advantage of a site and minimize the need to put it in a residential neighborhood. However, he added that if the Board told Nextel to come back next month with a 45-foot pole in three residential neighborhoods he would probably be back.

Mr. Delaney said Nextel has obviously studied the expected result if the antennas were put on the tower and on a pole in this location. He asked whether Nextel had an idea of what would result if they were located on a building roof of approximately 40 feet.

Mr. Keene said he hadn't done a specific model as was done here but the circle of coverage would move slightly depending upon the location of the building and depending upon the height it's going to shrink. How much it's going to shrink is going to depend on the height.

Mr. Phelps said he would like to see is what the coverage would have been from the Highway Department building.

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 12

Mr. Delaney added that it wasn't necessarily true that the Board would want to consider substituting one single site for this. It could be possible that there are two nondescript sites like the Highway Department and the Village Green which would essentially mean similar coverage with no pole at all.

Mr. Phelps thought there may be a lot of options. I think you've (Nextel) outlined some of your problems in your memo.

Attorney Rosen said Nextel is at a disadvantage when they make the application. It can only be made for available sites. And while the Board can say what can we do, those sites are not made available and there is nothing Nextel can do, which is part of the problem. There are a few parcels that are in the district but there are no RFPs available to go on them. If there were RFPs out there to go on when Nextel came to the town to put up the tower, what the Board might have been seeing tonight could have been an entirely different presentation. It's in the application package that Nextel's has been requesting RFPs for over a year and utilizing a campaign to avoid a situation where we would need a use variance.

Mr. Phelps said Nextel has done a lot of research and the presentation was excellent as far as the sites you've looked at. He personally would like to know a little bit more about that and even possibly if Nextel could provide a bit more input on some of the other people that would be affected by it.

Attorney Rosen referred to Town Manager Valente's letter where she indicates the town would like to consider the parcel immediately adjacent. He would say maybe the area isn't that bad because there is such significant screening and the Selectmen think this is not a bad area to be in. The question is what can be done to make a site like that available because if that's their suggestion, if the abutting parcel is not a valid site, than this parcel that immediately adjoins it which has that unique characteristic of being half in the business district probably isn't the worst site in the world.

Ms. O'Brien said according to the letter from the Town Manager there is a space available on the Willis Hill water tank. She asked why this was not considered.

Mr. Keene said it was his understanding is that it is not available. The Water District issued an RFP back in January 2000. Nextel bid on that RFP but was not the winner. AT&T was the winner. They have since after subsequent litigation been awarded that site. His understanding was that AT&T was offered by the decision of the court either the option to build a one or two carrier pole. Even if they were building a two-carrier pole, the process in the industry is for each carrier to make an application for collocation. and Sprint is in front of Nextel for that location. However, the second carrier at that location is as I understand it would again require zoning relief and would require agreement from the Water District which is unwilling to

NEXTEL COMMUNICATIONS

HUDSON ROAD TRUST

36 Hudson Road

01-17, 01-18, 01-19 Page 13

issue an RFP, so for all intents and purposes it is unavailable even if it is a two-carrier pole if the ground space is not made available by the Water District.

Ms. O'Brien said the letter came out in June 2001 and according to the Town Manager there is one position left to be filled. If Sprint has won the RFP the letter isn't valid. She could not understand why the Town Manager would send the letter indicating one space being available.

Mr. Keene said Sprint is not on the pole yet because the Water District hasn't made the ground space available. So Sprint doesn't have an RFP with the Water District to be there yet. The pole is there. A site may be available on a pole; he's not 100% sure, because it wasn't constructed as of January. It was just the court's giving them permission to build a one or two carrier. Even if it's a two-carrier, Sprint can't make a zoning application to go on that pole yet until the Water District issues an RFP. So the Town Manager may be looking just physically at a pole and saying that there is room on the pole for another carrier. But you need an RFP to make that happen.

The Board agreed to look into the status of Willis Hill.

Mr. Keene said if the Willis Hill site was available Nextel would be trying to use it. It was the first site they looked at in trying to fill this coverage. He said Sudbury is very interesting because it can be broken down into three areas, the southern, northern and central. So far at least from what you've seen from carriers and from what we're looking for and what Sprint is looking for it seems to play out that way. It seems that the one flaw in the bylaw is the central part of town. It's going to lead to some create problem solving solutions to get that area of town addressed.

Mr. Delaney asked whether Nextel has spoken with the owners of the property at Village Green about the possibility of putting something on their roof.

Mr. Keene said he did initially contact them about leasing possibilities some time ago but did not pursue it very extensively because the RF Engineer determined that it would not be a feasible site and wouldn't provide adequate coverage.

Mr. Delaney said he was very uncomfortable with words like feasible and adequate because Nextel has already told the Board that what it is proposing isn't as good as something else that could be put in, so there are many shades of coverage here. What he thought he heard was that the coverage wouldn't be as good.

Mr. Syme said it wouldn't work. It wouldn't fill the hole.

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 14

Mr. Phelps said it would fill half the hole. If you the criteria was changed, it might work.

Mr. Keene said it would shrink the hole but would leave additional holes in residential areas and then we have to figure out how we're going to fill those holes.

Mr. Delaney said Nextel will still have holes in residential areas; that Nextel said they are not the more important residential areas.

Further discussion followed on what areas constituted important holes.

Mr. Delaney asked if Nextel could produce a similar map that would show what the result would be of an antenna 12 feet above the roof at located at the Village Green, and installation at the Highway Department.

Mr. Keene said he could provide a model.

Mr. Gossels mentioned the roof of Ti-Sales.

Mr. Delaney felt there are a lot of alternatives. He said Nextel should keep in mind that this application is pretty afield of the requirements of the zoning bylaws; that anything more conforming is potentially more desirable.

Mr. Keene said he understood the Board's concern. He said Nextel can do models for those areas we discussed with the Highway Department and the Village Green. However, he said if that shrinks the coverage that was being filled it will still leave Nextel with a coverage gap in an areas that we're going to want to fill further north in Sudbury between those sites and the site on North Road which are more heavily residential areas including a couple of schools. He believed the application before the Board is a better solution because it's virtually invisible, and can be done with one site. It has virtually no impact on the community.

Robert Abrams 24 Hudson Road felt a number of questions raised by the Board were not been adequately answered, specifically the status of the Willis Hill water tank and the requisite height of such installations, or the size of the gap. He felt that what he was hearing was that Nextel wants 100 feet or nothing.

Mr. Abrams said he lives at right in the center of town and his windows are about the same level as the First Parish Church steeple. He has had not less than three Nextel subscribers come to his property on a regular basis who have no problems with their phones. He said they have less trouble using the Nextel phones than he have using my Cingular wireless. He did not think the hole was as significant as the applicant makes it out to be.

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 15

Mr. Abrams felt Mr. Phelps' question about availability of sites needs to be more adequately answered. He said Nextel explained why they're going to the back side of the Ti-Sales but haven't told us that Ti-Sales has made the front side available to them which would be in the business district and which would allow them to be less invasive in the construction process.

Attorney Rosen reiterated the earlier response with regard to the status of Willis Hill. With regard to the statement about Nextel wanting 100 feet all or nothing, he said Nextel is not saying

that at all. If Nextel can build a tower for less money and get our coverage they will do it. The goal isn't to build towers; it is to come in and fill a need that we perceive in the town and a need that we have for licensing perspective. Nextel explored all wireless overlay alternatives and only looked to other sites after those alternatives were exhausted.

Attorney Rosen said Nextel will do some studies as requested by the Board if it will help in making a decision. He said the question is whether those sites are available or not. He felt Nextel has answered that to the best of our ability and making sites available isn't really an issue for Nextel. It may not even be an issue for the Board. It may be an issue for the citizens sending letters to the Town Manager requesting that these sites be made available so that people aren't looking outside the wireless district. He was not even sure that is the Zoning Board's obligation to do.

Mr. Delaney said it was not.

Burt Tighe, Ti-Sales asked whether it would be legal and not require a variance if his building was in another location and the tower would be in the business district.

Mr. Delaney replied that it would need at least a special permit to be a tower and under other circumstances it might need a variance for the location. If it's in a business district, can as a matter of right a small structure could be located on the top of the roof, something limited to maybe 10 or 12 feet. But for a free-standing pole it doesn't matter where it is, it requires a special permit.

Mr. Tighe said the distance from the business district and where Nextel is proposing to put the pole is a very small distance. To all effects that location is a business district now by virtue of Zoning Board permission granted some years ago. He said there has been a business in that area since his wife's grandfather had the coal business and he has a son who will carry on after him, so there will be a business there for a long, long time.

Mr. Delaney said if Mr. Tighe's question is if Nextel were to talk about relocating the pole into the business district would all these zoning issues go away, the short answer is no.

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19 Page 16

Lawrence O'Brien was present representing the Board of Selectmen: He said the Selectmen basically feel that the Town of Sudbury has been more than gracious, flexible and accommodating to all carriers requesting RFPs. It is also the position of the current Board in the instructions that have been issued to the Town Manager that the Selectmen see no need or desire to issue any more RFPs. We do not plan to accommodate every request of every cellular carrier that comes to the town asking for coverage on monopoles. The Selectmen feel that the Bylaw is adequate in providing areas of coverage. Mr. O'Brien noted for the benefit that the Sudbury is a corporate client of Nextel using their communications systems both as a short-wave radio type

communication and also as cellular communications. Although he would suggest the ZBA do its own research, he did his own research with the Town Manager, DPW, Park & Recreation and Fire Chief and their response is that there is more than adequate coverage in this town.

With regard to the highway barn, Mr. O'Brien pointed out that money has just been bonded to build a new facility which may give the opportunity for Nextel to locate there.

He also referenced an article in a Telecommunications newsletter on a ruling by the federal First Circuit Court of appeals on a case in Leicester, MA.

Referring to the map, Mr. O'Brien asked what the scale of the squares was in area.

Mr. Keene wasn't sure of the exact scale but noted that the outline of the town is in black. He said if town is approximately 24.6 square miles you're looking at approximately 2.5 miles in each direction in center of town.

Mr. O'Brien said his question was how many seconds does it take to drive through a square. He said based on the information I has received there doesn't seem to be a tremendous difficulty to maintain coverage. He has a different cellular system and when he reaches Route 27 it's dead for about a half mile to a mile. Mr. O'Brien said he would consider that a gap – when you have nothing for two or three minutes. In average 30 mph Route 20 traffic there is a significant dead space where you lose conversation. He wanted to point out that in the article on the Leicester case one of the things that seems to be important in the decision in that case is that is has to be established that there is a significant coverage gap and well documented.

In summary, Mr. O'Brien said the Board of Selectmen are not in favor as is written in the Town Manager's letter. The Board does not feel that it is the obligation of the Town of Sudbury to provide 100% coverage for 100% of the carriers.

Mr. Phelps asked what Nextel considers its gap.

Mr. Syme said Nextel's main objective is obviously to provide highway coverage because that's the majority of our business, especially on the major routes, 495, 128, which is

NEXTEL COMMUNICATIONS

HUDSON ROAD TRUST

36 Hudson Road

01-17, 01-18, 01-19 Page 17

where their main customers are. It happens to be that Sudbury has buildings, customers that enter buildings and in this case we also need to provide some level of ability of coverage as well. He said obviously it's not in as depth as Boston but we need to provide some level of ability of coverage. This gap represents highway coverage or lack of highway coverage that we now have. If we had customers as these two gentlemen had mentioned previously, Nextel wouldn't need a site because there wouldn't be any customer complaints.

Mr. Phelps asked whether Mr. Syme was saying that Nextel's gap is based on customer complaints.

Mr. Syme said the gap analysis is based on drive data and also a prediction tool which is matched to that drive data. Added to that are customer complaints.

Attorney Rosen added that one of the things Nextel isn't saying is that the town doesn't let anyone come in and provide coverage. There are carriers that have sites. Yes, the town has opened up some sites and we're not saying that they haven't, but there is a gap in the middle of town and Nextel is trying to fill that gap. It's important for us because it puts us at a competitive disadvantage, as other sites have been able to fill their gaps.

Mr. O'Brien said looking at the chart provided by the Selectmen and Town Manager there are eight sites that have been awarded in the last 18 months of which two of those were awarded due to the Cummings Research site, a technicality that AT&T was able to take advantage of. Nextel collocated on that site as well as Omnipoint through a variance from this Board. This leaves five sites that have been awarded by bid. It is the Selectmen's belief that it is not the obligation of the Town of Sudbury to provide superior coverage for every carrier that wishes to come to town.

Due to the lateness of the hour, Mr. Delaney suggested the hearing be continued. He said the Board will need from Nextel a map to scale showing coverage from roof of Village Green and Highway Dept. It will also need an extension of the 100-day decision date for variances.

The Public Hearing continued to Wednesday, September 5, 2001.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Melinda M. Berman, Alternate

Jonathan G. Gossels, Alternate

