

IN THE BOARD OF SELECTMEN
MONDAY, FEBRUARY 9, 1998

Present: Chairman Lawrence L. Blacker and Selectmen Maryann K. Clark and John C. Drobinski.

The statutory requirements for notice having been met, the meeting convened at 7:30 p.m. at the Fairbank Senior Center.

Regulation of Dogs Bylaw

Present: Betsy DeWallace, Dog Officer/Animal Control Officer; Town Clerk Kathleen Middleton; residents Ralph Tyler and John Seltzer, and others.

At 7:30 p.m. the Board convened a public hearing on the proposed new dog regulations bylaw.

Chairman Blacker questioned whether the definition of livestock, section 3-3, should include “pets”?

Selectman Clark suggested rather than amending that provision to simply amend sections 3-20 and 3-21 to include “or other domesticated animals” and the Board concurred.

Selectman Clark suggested dogs be confined or under leach for a greater period than the suggested 7:00 a.m. through 8:00 p.m. She said this was particularly important during the summer when people are often outside past 8:00 p.m. due to the longer days. She suggested the period be lengthened to 10:00 p.m.

Chairman Blacker agreed with the concept. However, rather than changing the leash hours, he suggested section 3-12 be amended to provide that, regardless of the leash law, no dog shall be allowed to run at large on private property without the written permission of the property owner or if such dog is a “nuisance” as defined in section 3-13. If agreeable with this resolution, he noted section 3-13 should be amended by deleting the “roam free or unrestrained” provision from the nuisance definition.

The Board concurred in Chairman Blacker’s suggestion.

Ralph Tyler, 1 Deacon Lane, questioned why dogs should be allowed to roam free at night when one can not see them.

Chairman Blacker responded that the Board expected the regulation to be a contentious one at Town Meeting and was attempting to balance the competing issues in a reasonable fashion.

Chairman Blacker questioned why section 3-18C is limited to incidents occurring on public or traveled ways and suggested that this limitation be deleted. The Board concurred.

Ralph Tyler noted the Board spent considerable time on dog hearings and suggested that a “quasi judicial committee” be established to consider dog complaints.

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Chairman Blacker responded he did not believe the Board could legally do so since jurisdiction is vested with the Selectmen via state statute and the complainants have the right to appeal directly to the District Court.

Selectman Clark suggested the Board consider Dog Officer DeWallace's request for authority to restrain a dog for 24 hours per day when a reasonable suspicion exists that the dog is in violation of the bylaw. She said such a provision might well reduce the contentious aspects of the particular situation.

Chairman Blacker explained that initially he had misread the suggestion to mean a 24-hour leash law, but upon a closer reading supports the proposal.

Selectman Drobinski suggested that the provision be inserted in section 3-18 and the Board concurred.

John Seltzer, 28 Ledge Road, questioned the determination that dogs may be unconfined between 8:00 p.m. and 7:00 a.m. He said he is concerned about irresponsible neighbors who allow their dogs to ruin gardens and bark an hour straight. He said he has had problem in his neighborhood for some time now and questioned whether the proposed bylaw would affect his situation.

Chairman Blacker responded that he believed these problems *are* addressed in the proposed bylaw. He explained that regardless of the limited leash law dogs are not permitted to become a neighborhood nuisance.

Mr. Seltzer asked who was responsible for enforcement and if there were financial penalties.

Chairman Blacker responded that the Dog Officer is responsible for enforcement and that the proposed bylaw does provide for financial penalties, increasing with repeat violations.

Mr. Seltzer responded that he has complained to the Dog Officer and that financial penalties existed under the prior regulations and neither has abated the situation in his neighborhood. He said the dogs in question are never exercised and they are kept outside all year round. He said they continuously bark and it is particularly disturbing in the summer when he has his windows open. He said one of the dogs is frequently able to escape and comes onto his property.

Chairman Blacker explained that Mr. Seltzer may have to formally pursue the matter by filing a sworn complaint and having a hearing conducted. Chairman Blacker also noted that under the proposed bylaw the Dog Officer would have the authority to restrain such a dog for 24 hours and such may have a chilling affect on the nuisance.

Dog Officer DeWallace suggested that Mr. Seltzer contact her in the morning to discuss the problems.

Selectman Clark said there may be problems with the manner in which the owners are caring for the dogs and Mr. Seltzer may wish to report the situation to the Humane Society.

Chairman Blacker suggested that Mr. Seltzer attend the upcoming Annual Town Meeting when the bylaw is going to be considered by the Townspeople. He said Mr. Seltzer might wish to press for a 24-hour leash law.

Site Plan 98-341 - American Store Properties, Inc., 454/460 Boston Post Road (Osco Drug Store)

Present: Myron Fox, Esq.; Jeffrey Kevan, Site Engineer with T. F. Moran, Inc.; Todd Fourney, Environmental Consultant with Aqua-Terra; Mark Wartenberg, Architect with Cubellis Associates, Inc. and Bruce Ey, Schofield Brothers; for the Applicant; and Jody Kablack, Town Planner; and others.

At 8:18 p.m., the Board convened a public hearing on Site Pan Application 98-341 of American Store Properties, Inc., for a Site Plan Special Permit in accordance with Sudbury Zoning Bylaw Art. IX.V.A to construct a one story, 13,671 sq. ft. footprint Osco Drug Store with associated driveway, parking and drainage on property at 454/460 Boston Post Road, zoned Business District and Light Industrial District, Town Property Maps K08-065 & K08-062, owned by VHS Realty Trust and Arber Realty Trust respectively.

Notice of the public hearing was duly posted and advertised in the *Sudbury Town Crier and TAB* on January 15 and 22, 1998. Parties of interest, being abutters within 300 feet according to the Assessors, were provided written notice by first class mail. Additionally the Planning Boards of Acton, Concord, Framingham, Hudson, Lincoln, Marlborough, Maynard, Stow, and Wayland were provided written notice by first class mail.

The Board was in receipt of the following:

1. An application for a Site Plan Special Permit, dated December 18, 1997, submitted by American Store Properties, Inc., c/o T. F. Moran, for Osco Drug Store No. 18-377 at 454(1) and 460(2) Boston Post Road, Route 20.
2. A communication dated February 6, 1998, from Bruce L. Ey, P.E., Senior Vice President, Schofield Brothers, noting the enclosure of a revised site plan and elevations for the proposed Osco Drug Store. The revised plan reflects the shifting of parking spaces from the front of the site to the rear parking area. Such allows more open space in the front of the site and also the realignment of the front parking area so that it is parallel with the proposed building. There is no increase in impervious surfacing.
3. Development Plans Osco Drug Store No. 18-377, Boston Post Road (Route 20), Sudbury, Massachusetts, consisting of 18 pages including the title page, dated August 1, 1997, with engineer's and surveyor's stamps, dated December 1, 1997, revised February 5, 1998, prepared by T. F. Moran, 48 Constitution Avenue, New Bedford, New Hampshire.
4. Osco Drug, "Floor Plan", consisting of one page, issue for bid, June 10, 1997, prepared by Cubellis & Associates, Inc., 289 Devonshire Street, Boston Massachusetts.
5. Architect's revised proposed building elevations, undated, entitled "Proposed Schematic Elevations", consisting of two pages, prepared by Cubellis & Associates, Inc., 289 Devonshire Street, Boston Massachusetts.

6. Stormwater runoff and Drainage Design report, dated December 17, 1997, by Schofield Brothers of New England, Inc.
7. A communication, dated December 16, 1997, from I. William Place, P.E., Director of Public Works/Town Engineer, addressed to Deborah Dineen, Conservation Coordinator, stating that the applicant's engineer proposes to discharge storm water runoff into Boston Post Road and there is no drainage system in this section of Route 20 and another communication, dated January 7, 1998, from Director of Public Works/Town Engineer Place, informing: (1) reserved parking has been proposed in the area of the stormwater basin for the rear parking lot and it appears doubtful that these reserved spaces could be constructed once the basin is in place; (2) a curb cut from the Massachusetts Highway Department is required; (3) 25% design plans for the intersection of Nobscot Road/ Route 20 intersection have been submitted to the State, and there appears to be some deviation from those design plans with the Osco Site Plan; (4) an easement is required to allow the Massachusetts Highway Department to install mast arms and loop detector on Osco property and (5) this area of Route 20 has little or no drainage for stormwater runoff and the applicant should be required to consider constructing catch basins at the intersection of the proposed curb cut and Route 20.
8. A communication, dated February 5, 1998, from John B. Hepting, Inspector of Buildings, informing that he had reviewed the site plan and notes: (1) a special permit is required to extend an existing non-conforming use, namely, parking in front of the building; (2) a use variance is required for the rear parking lot since retail sales is not permitted use in Light Industrial Districts; and (3) a dimensional variance is required to reduce the 20 foot landscape front yard buffer to the requested ten feet; and (4) all signage must comply with the applicable bylaw.
9. A communication dated February 3, 1998, from Deborah Dineen, Conservation Coordinator, informing that the Conservation Commission has been working with the developers for the past year. She enclosed a copy of the Conservation Commission's Order of Conditions they will issue upon receipt of the Department of Environmental Protection file number and the amount needed for the maintenance endowment fund. Ms. Dineen notes the project alters just less than the maximum 5,000 square feet of wetland. She informed further the site had already been substantially disturbed and therefore the potential for improvement was great, and the applicant's final design far exceeds the state and local requirements. She explained this project is the first under the Conservation Commission's Sudbury Natural Areas Project which looks at taking degraded areas and restoring the ecological and biological diversity that has been destroyed through past uses. She reports the Commission supports the zoning waivers needed to allow this project to go forward and will remain involved, ensuring strict compliance with the approved plan.
10. A communication dated, February 6, 1998, from Jody A. Kablack, Town Planner, requesting that the Board delay its decision on the requested site plan until the Planning Board has had an opportunity to make a recommendation. She informs that the Planning Board has been working with the applicant to try to design a plan that will meet the needs of all Town Board and Commissions. She notes the Planning Board will consider this site plan during its February 17, 1998, meeting.

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11. A communication dated February 4, 1998, from Frank W. Riepe, Chairman, Design Review Board, requesting that the Board delay its decision on the site plan until the Design Review Board has had an opportunity to adequately address the issues presented. He notes the Design Review Board has been working with the applicant and intends to review the plan during its February 11, 1998, meeting.
12. A notation dated February 5, 1997, from Robert C. Leupold, Director, Board of Health, reporting that the Board of Health has no problems regarding the site plan.
13. A communication, dated January 12, 1998, from Fire Chief Michael Dunne commenting: (1) the lane width for the drive-thru window should be a minimum of 12 feet wide to accommodate a fire engine vehicle and the exit lane from the window should be a minimum of 18 feet wide, which he recommends designating as a Fire Lane with no parking allowed; (2) the plan should show a fire hydrant located near the sprinkler connection; and (3) it may be necessary to eliminate parking spaces depending on location of sprinkler connection.
14. A copy of the Minutes of the January 29, 1998, Meeting of the Water Resources Protection Committee of the Sudbury Water District, including discussion of the site plan at issue. There, the Committee (1) questions the relationship between the applicant and owner of the site; (2) suggests that the Zone II boundaries be shown on the application and questions the applicant's knowledge of the groundwater hydrogeology since the latest information was not utilized; (3) observes there are hazardous waste sites in the vicinity which raises concerns about the potential for disturbing groundwater flow patterns and excavation in contaminated groundwater; further petroleum hydrocarbons have been noted on the site itself; (4) notes concerns regarding the withdrawal and disposal of at least 38,000 gallons of water from the site during construction that is expected to be contaminated; (5) questions the removal of fill and organic layers, some as deep as eight feet, when groundwater is either as shallow as five feet or unknown to any degree of certainty; (6) recommends installing permanent perimeter drains, but is concerned about the discharge points of any perimeter drains given the possible interception of contaminated groundwater; (7) notes the possible need to construct a subfloor passive depressurization system to preclude migration of petroleum hydrocarbon vapors into the building spaces which could pose a health risk for those working in the building; (8) notes the storage of two types of hazardous waste: one is waste oil, because sellers of motor oil must have facilities to accept used oil and two is the storage of photo-developing chemicals, as much as 220 gallons on site; (9) questions the applicant's argument that the removal of the two horses and the existing septic system will improve the site because of reduced concentrations of nitrates entering the ground water given there still will be a need for a septic system for workers and potentially customers of the drug store; (10) needs to consider the increase in impervious surface which will be greater than the maximum set out in the Water Resources Protection Bylaw; and (11) recommends the applicant be required to fund the Planning Board for an independent geohydrologist to review the proposed site plan in greater detail given that (a) the site has the potential for containing hazardous materials and excavation and disposal pose decided risks to the quality of the Raymond Road Aquifer; (b) the increased impervious area may adversely impact the quality of the site and surrounding areas; and (c) the means of discharging runoff from the site after construction must not degrade groundwater quality.

Myron Fox, Esq., stated that he represented the applicant, American Store Properties, Inc, (hereinafter ASP) based in Utah. He said he had been working for some time now with the Conservation Commission regarding this proposal. He explained that the site currently contains the former Big and Tall Shop, and a house and barn behind that shop. Under the proposed design plan these structures would be removed and an Osco Drug Store and drive-thru would be constructed. He said there are wetlands on the site, but the proposed development would not disrupt them. Moreover, the proposal includes installing a pond on the rear of the property with parking to provide a local picnic spot as well as access to other walking trails. He reported the Conservation Commission not only approves the plan, but is indeed excited about the many improvements to the site, particularly the vernal pool. He explained that the planned installation of a stop light at the adjacent intersection makes the property much more accessible to traffic and that Osco is willing to spend a considerable amount of money to make the necessary improvements, including donating some of the land in perpetuity to the Town. He said under the recently revised plan there would be 25 instead of 30 parking spaces in the front and 28 in the back. This shifting of parking would allow for more landscaping along the frontage on Boston Post Road. He further explained that the applicant desired to seek a reduction in total parking from 76 to 53 spaces. He said the applicant believes such would be ample and that a planned runoff basin could be moved in order to provide the additional parking accommodations if needed in the future.

Jeffrey Kevan, site engineer with T. F. Moran, Inc., said the site was comprised of two parcels totaling 7.66 acres, zoned "Light Industrial" and "Business". He said the plans call for a 13,550 square foot Osco Drug Store with pharmacy pick-up at the back of the store and a park area and pond on the rear of the property. He said the pharmacy pick-up is a convenience feature for customers and is estimated to service about 12 customers per day. He said there would be tractor trailer deliveries to the store once or twice a week, and there would be access for such deliveries at the rear of the store. He said that the existing ditches along the western perimeter of the property would be preserved as much as possible, and because of high groundwater levels the site would be raised 12-18 inches. Landscaping was described primarily as shrubs and groundcover with no lawn areas, and exterior lights as low profile "shoebox" type.

Bruce L. Ey, P.E., Senior Vice President, Schofield Brothers of New England, Inc., said the site includes a wetland area that would be improved by the proposed development. He said he has had numerous meetings with the Conservation Commission to that effect. He contended the quality of the runoff would be improved despite the increase in impervious surface. He said there would be no increase in the rate of runoff, which is currently one and one-half inches. He explained that the plan calls for the installation of catch basins and a man-made pond to provide drainage. He said they hope to be able to eventually tie in the park area with the Raytheon and Chiswick Park trailhead. He noted that the existing retail store and house would be removed, and the old septic system replaced with a new state-of-the-art system.

Todd Fourney, Environmental Consultant with Aqua-Terra, stated he had reviewed the prior uses of the site as well as tested the soil and monitored test wells. He said these investigations indicated two areas with elevated hydrocarbons, primarily gasoline and lead. He said he suspected these contaminants came from a fuel depot and gas station in the vicinity. He said the groundwater flows to the South, Southwest. He explained that the developers would be working with the Department of Environmental Protection to safely remove and dispose of these contaminants.

Mark Wartenberg, Architect with Cubellis Associates, Inc., stated the building draws upon many regional architectural details, including cedar clapboard and shingles and a gabled entryway. He said that the use of pillars and different textures are designed to break up the "box" shape.

Selectman Clark said it seemed as if the site plan did not line up with the planned intersection re-design and asked if the developers had used the most recent intersection re-design plans in formulating their site plan.

Mr. Fox assured Selectman Clark that the most recent state plan for this intersection had been utilized in developing the site plan.

Selectman Clark noted there was no drainage along Route 20 in front of the site and asked how far the site was from Hop Brook.

Mr. Ey responded approximately 1000'.

Selectman Clark suggested it might be more appropriate to reverse the drainage to flow away from the Town's well and into Hop Brook.

Mr. Ey responded that water from the site naturally flows to the Southwest and normally that natural flow should not be disturbed.

Selectman Clark commented on the potential air problems within the building due to the presence of hydrocarbons and asked if a polymer membrane was being considered.

Mr. Kevan responded that a vapor membrane was being considered.

Selectman Drobinski asked if the store would be like CVS in that it would carry some food items, and Mr. Fox responded in the affirmative.

Selectman Drobinski asked how the developers proposed to handle the parking issue, and Mr. Fox said that either way a variance would have to be obtained. He said a variance could not be based on a self-imposed hardship generated, for example, by the placement of the building. He said it might be possible to argue that the front parking had been "grandfathered".

Selectman Drobinski suggested perhaps by making the building smaller and rotating it slightly one might be able to resolve the parking issue, but Mr. Ey responded they had experimented considerably with rotating the building and that every rotation affected other issues, including, for example, the wetland.

Selectmen Clark questioned the 10 1/2' wide drive-thru and stated she believed the Fire Chief required something wider, such as 12', to accommodate emergency vehicles.

Mr. Wartenberg responded that the NFPA required access to three sides of a building and such is provided. He also said the building would have a sprinkler system throughout. Finally, he said that any fire vehicle would have similar access as the tractor trailers making deliveries to the building.

Chairman Blacker suggested the developers speak with the Fire Chief to determine if he has any concerns.

Selectman Clark inquired about the disposal of the possibly contaminated groundwater and Mr. Fourney responded such would be done under the auspices of the Department of Environmental Protection which would monitor and test the removal and disposal.

Selectman Drobinski asked if the 120 days had been triggered and Mr. Fourney responded in the negative, indicating such would not occur until ASP purchases the property.

Selectman Drobinski questioned the need for a drive-thru if only 12 pick-ups are expected per day.

Mr. Kevan responded it is a matter of convenience and it is common feature out West.

Chairman Blacker stated it seems the store would want people to enter to make other purchases.

Mr. Kevan stated it is a convenient feature for mothers with sick children or for the elderly. He said that only prescription medication can be obtained at the drive-thru; no food or over the counter medication would be distributed through it. He said the drive-thru mechanism is the same used by banks and is accessed directly into the pharmacy section of the store.

Selectman Drobinski noted the drive-thru route was near the access to the rear parking, but Mr. Kevan stated that people parking in the rear would not be accessing the store; it was contemplated that customers desiring to enter the store would use the front parking area.

Selectman Drobinski questioned the amount of runoff discharged on the Boston Post Road and Mr. Ey responded that there would only be a small apron sloping toward the Boston Post Road and that he estimated that it would be less than a residential driveway.

Chairman Blacker asked if there was sufficient space to build the reserved parking later on and Mr. Ey responded in the affirmative explaining that the small drainage pond could be moved.

Selectman Drobinski said it appeared, from the grade, the groundwater flowed in two directions, from the Boston Post Road and from the rear of the property to the center.

Mr. Fourney stated he had conducted two different tests and such indicated a South, Southwest flow.

Selectman Drobinski asked about the vegetation to the West and Mr. Kevan stated that as much as possible of that would be left undisturbed. He said that along the western perimeter of the property there was swamp and woodland.

Jody Kablack, Town Planner, stated the Planning Board had discussed the proposal with the developers this past Tuesday and it requests this Board to postpone its decision until after the Planning Board meets again to consider the site plan on February 23. She said the Planning Board is trying to balance the various concerns. She noted the area is somewhat blighted by the existing vacant building

which was site of the Big and Tall Shop. She agreed, due to the conflicting bylaws precluding parking in the front and yet requiring a fifty-foot set back, in any event they will need a variance. She also noted that "streetscape" was also an issue and it was preferred that the building be set perpendicular to the road.

Chairman Blacker stated he did not understand such a preference given that the SPC had recently suggested guidelines opposing buildings set all in a row.

Mr. Kevan stated that Osco needs to preserve its footprint since the interior layout is relatively fixed with the same available space for similar stock and displays from one store to the next.

Chairman Blacker suggested that the developers initially meet once or twice with every applicable Committee and Board; otherwise they may find themselves whipsawed by conflicting requests.

Selectman Drobinski commented that the site was a prominent one in the Town and the plan showed a positive trend, but the Board needed to get input from the other Boards and Committees before deciding on the site plan.

Mr. Kevan agreed the site was a good location. However, he said it had many development constraints given the wetland issues. He said that, once the parking issue is resolved, the applicant desires to deed as much as possible to the Town with conservation restrictions. He said the applicant would probably only need to retain 1 3/4 acres.

Mr. Fox asked for the Board's inclination on the project, and Chairman Blacker stated he was favorably inclined.

Selectman Drobinski stated he likes the concept and is willing to work with the applicant. He said he desires to get input from both the Planning Board and the Design Review Board and make sure the project will fit within the aesthetics of the community.

Selectman Clark agreed, saying she also liked the concept. She indicated she is primarily concerned with the drainage issues and the way the groundwater flows. She indicated she was concerned that water might collect on Route 20.

Thus, with the concurrence of the Applicant, the Board continued the hearing on this site plan until 8:45 p.m. on March 9, 1998.

Utility Petition 98-1, Raymond Road

Present: Kathryn A. Craig, Right of Way Manager, Bell Atlantic - New England, and others.

The Board was in receipt of the following:

1. A communication, dated January 13, 1998, from Richard Schifone, Supervisor, Rights & Permits, Boston Edison Company, enclosing the petition and plans of Boston Edison Company, to obtain a Grant of Location to install cable switching station 14366 and approximately 44 feet of conduit on Raymond Road, for underground electric service to two new house lots (Barberry Homes, Inc.). More specifically, said plan designates the location on Raymond Road as being easterly

approximately 484 feet south of Warren Road, underground a distance of 44 feet of conduit across Raymond Road to Pole 14/30 and a cable switching station cabinet.

2. A communication, dated January 26, 1998, from Kathryn A. Craig, Right of Way Manager, Bell Atlantic - New England, enclosing the petition of New England Telephone Company, for a conduit location on Raymond Road, for telecommunications service to two house lots. Furthermore, Ms. Craig requests their petition be scheduled for the same public hearing as that of Boston Edison's since the location of the utility trench is the same.

The statutory requirements for notice having been met; the Board convened a public hearing on utility petition 98-1 of Boston Edison and Bell Atlantic - New England, regarding the installation of conduit and a switching station on Raymond Road.

At 9:33 p.m. the Board convened a public hearing on the petition application. There being no opposition to the requests, it was on motion unanimously

VOTED: To approve Utility Petition 98-1 of Boston Edison and Bell Atlantic - New England, to install switching station 14366 and underground conduit at Raymond Road, easterly approximately 484 feet south of Warren Road, a distance of approximately 44 feet across Raymond Road to Pole 14/30, as shown on Boston Edison Company "Plan of RAYMOND RD, SUDBURY Showing Proposed: CSS #13366 AND CONDUIT LOCATION" dated December 1, 1997; and Bell Atlantic - New England Plan 98-01 dated January 26, 1998.

Dog Complaint against Paul and Nancy Cefola, 59 Harness Lane

Present: Michael Precourt, Complainant, 63 Harness Lane; Betsy DeWallace, Dog Officer; Paul Cefola, 59 Harness Lane; Carmine Gentile, Esq., for the Cefolas; Paul Kenny, Town Counsel; and others.

The Board was in receipt of the following:

1. A complaint, dated January 22, 1998, and accompanying letter, dated December 7, 1997, from Kathleen and Michael Precourt, 63 Harness Lane, complaining that Nancy and Paul Cefola, 59 Harness Lane, have four dogs in their household that have run wild on numerous occasions. When loose they have terrified children, charged adults and attacked other pets, such as a rabbit in a cage. They claim that in one incident one of the dogs ripped a child's pants. They further state these incidents have been reported to the Cefolas and the dog officer to no avail. The complainants contend that the dogs are out of control, appear to be vicious and act with pack behavior. They report the dogs run wild whenever they get loose from the Cefolas' fenced-in dog pasture or home. Finally, they contend that there are four dogs in one residence, and the Town only allows three. The letter, substantiating the complaint, was joined by: Mark C. Roopenian, 45 Harness Lane, Mary Lederman, 56 Harness Lane, Linda Wallin, 72 Harness Lane, Laura Dowling 25 Harness Lane, Bridie Hilperts, 33 Harness Lane, Claire Smith, 22 Harness Lane, Robert Skloff, 55 Harness Lane, and Janet Coleman, 30 Harness Lane.
2. Copies of Town dog licenses issued on August 13, 1997, to Nancy Cefola, 59 Harness Lane, for "Reggie", a five-year-old Shepherd mix, "Monty", a six-year-old German Shepherd, and "Wendy", a two-year-old Norwegian Elkhound.

3. A communication, dated February 5, 1998, from Betsy DeWallace Dog Officer, informing that on December 3, 1997, she had received a call from Michael Precourt, 63 Harness Lane, stating that the neighborhood dog problem was becoming intolerable: four dogs belonging to Paul Cefola were running loose in the neighborhood. She additionally reported that on December 4, 1997, she had received a call from Marci Lederman, 56 Harness Lane, saying that she too could no longer ignore the situation. Ms. Lederman said on November 10, 1997, the dogs had chased her son up the steps of their home and trapped him at the front door.

At 9:00 p.m. the Board convened a public hearing on the complaint. Chairman Blacker swore in the witnesses.

Michael Precourt, 63 Harness Lane, stated that Paul and Nancy Cefola have owned four dogs for the past several years. In the past few months, the dogs have gotten loose on numerous occasions. Mr. Precourt described them as uncontrollable, particularly for children. He said there are 20-25 children in the neighborhood, ranging from age four to 16. He said many of these children have been intimidated by the Cefolas' dogs. He said he has caught the dogs attacking his bunny hut and running wild through his wife's garden. Also, he continued, recently two of the dogs chased a child to the child's home, trapping him at his front door, and one of the dogs ripped the child's pants. He contended the Cefolas have one more dog than is permitted in the Town. Mr. Precourt said that complaints have been made to the Dog Officer and, unfortunately, the situation has gone beyond negotiations.

Betsy DeWallace, Dog Officer, said there are four medium-sized dogs at the Cefola residence. She said they have a "fabulous big pen" in the back. She agreed that the dogs on occasion had gotten loose and said there was no reason for that. Responding to Selectman Clark, Ms. DeWallace said there was no evidence the dogs were digging out of the pen.

Carmine Gentile, Esq., on behalf of the Cefolas, said he had spent some time with the dogs and he did not find them to be vicious. He said "Monty" was obtained in 1990 and several months later they obtained "Reggie". Then in 1996, the Cefolas adopted two Elkhound puppies. He said that they have a five-foot cyclone fence dog pen in the back yard and the dogs can be let directly into the pen from the house. He agreed the dogs had gotten loose on occasion. He explained the Cefolas have undertaken a major renovation of their home and that this has been ongoing since last summer; these workers at the home have inadvertently let the dogs loose. To correct this problem, the Cefolas have placed signs on each side of their front door cautioning those entering not to let the dogs loose. Additionally they have installed two interior Dutch doors to confine the dogs. He said that since the Dutch doors have been installed, the dogs have not gotten loose.

Steve Murphy, 19 Old Orchard Road, testified he was the contractor hired by the Cefolas. He said he started working there in July of 1997 and had recently installed two Dutch doors. He said the dogs are not vicious; neither he nor his subcontractors had any problems with them. He did note the dogs have gotten loose, and that once they jumped through an open window, but the Cefolas immediately retrieved the dogs.

Steve Valcour, of Marlborough, one of the workers at the Cefolas' home, agreed, and conceded he had inadvertently let the dogs loose on one occasion.

Mr. Gentile explained that Paul Cefola walks the dogs in the morning and the dogs are also walked by a service. Those young women also testified that they had no problems with the dogs. Mr. Gentile stated that recently the dog service has begun using a new type collar (gentle leader head collars) to prevent the dogs from lunging at passing cars.

Selectman Drobinski stated that clearly something happened with the young boy who was chased to his front door. He said there is a need to protect the community.

Mr. Gentile noted that no one was present who had witnessed that incident. He suggested the boy may have been fearful and started to run, and a dog's natural instinct is to chase a runner. He also noted that there have never been any allegations of the Cefolas' dogs biting anyone. Mr. Gentile suggested the complaints have arisen out of an "over sensitivity to the dogs".

Chairman Blacker disagreed, saying one cannot expect a six, seven, eight or nine year old child to stand still. He said there is a dog control law so that children do not have to worry about these situations. He said he could find no evidence of the dogs being vicious, but he did believe the dogs caused a nuisance by placing the child in fear. He said the Cefolas have the facilities to confine the dogs and it seems since the last incident occurred in December, some effort is being made. However, he said he was inclined to order the dogs confined to the premises.

Paul Cefola, 59 Harness Lane, testified the dogs had not been let loose by design. He said over the past six months he has had a lot of work done on his home. He admitted the dogs had gotten out five or six times since this past July, and he or his son Michael would retrieve the dogs. He added that things would be more tranquil if others in the neighborhood also abided by the leash law.

Responding to Mr. Precourt, Chairman Blacker stated the Cefolas have the right to file for a kennel license to keep four dogs. Town Counsel Paul Kenny, citing statutory and existing bylaw provisions, agreed.

Mr. Gentile responded that the fourth dog is licensed in Cambridge.

Mr. Cefola explained that his daughter had licensed the dog in Cambridge, but she is unable to keep the dog there.

Selectman Drobinski stated that the larger issue is to make certain the dogs are restrained. He said he agreed with Chairman Blacker and suggested the hearing be continued to see if there is a change in the situation.

Selectman Clark concurred, saying that when dogs are free to roam together there are problems.

Chairman Blacker explained the kennel issue was not before the Board; he said the Board is limited to considering the incidents which have occurred and what can be done about them.

Selectman Clark suggested the Board impose an additional condition on the Cefolas during the interim continuance, that is, they apply for a kennel license with the Zoning Board of Appeals, if that is the correct body.

Responding to Mr. Precourt's earlier question, Town Counsel Kenny said that if the Zoning Board of Appeals issues kennel licenses, then the enforcement agent would be the Building Inspector.

The Board concurred in Selectman Clark's suggestion.

Thus, it was on motion unanimously

VOTED: To order that the four dogs harbored by Paul and Nancy Cefola at 59 Harness Lane, Sudbury, be restrained (tied or fenced) and confined on property at 59 Harness Lane at all times (24 hours per day), unless under leash when off the premises. Further, an application for a kennel license shall be applied for immediately and shall be required if four dogs remain on the premises. This matter is continued and will be reviewed again by the Board of Selectmen after a period of three months.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular session of January 26, 1998, and of the special meeting of January 12, 1998.

Donations - Council on Aging Vans

It was on motion unanimously

VOTED: To accept \$125.08 in miscellaneous donations for deposit into the Council on Aging Van Donation Account and to authorize the Council on Aging to expend the same for purposes of operating and maintaining the Council on Aging vans.

Central Mass. Railway Bicycle/Pedestrian Trail

Upon request, it was on motion unanimously

VOTED: To approve the issuance of a letter, supporting the creation of a multi-use trail along the Central Massachusetts railroad right-of-way, to the Honorable Patrick J. Moynihan, Secretary, Executive Office of Transportation and Construction, Commonwealth of Massachusetts.

Proclaim Red Cross Month

Upon request, the Board on motion unanimously

VOTED: To proclaim March 1998 as *Red Cross Month*.

Overhead Utility Request - Collins Development, Pinewood Avenue

Upon request, the Board on motion unanimously

VOTED: In accord with Bylaw Art. XX, sec. 3.E, to confirm and record granting emergency approval, effective February 2, 1998, to Steven McCarthy, Collins Development, to install overhead utilities to service a new home being built at 26 Pinewood Avenue.

Contract - Group Excess Loss Policy

Upon the request of Town Manager Ledoux, it was on motion unanimously

VOTED: To approve a contract with CMS Insurance Agency for a Group Excess Loss Policy, to be issued by Guarantee Life Insurance Co., in accordance with the Town's specifications and quotation, dated December 30, 1997, at monthly rates of \$11.60 per individual and \$27.10 family.

Executive Session

On motion by Chairman Blacker, by roll call vote, it was unanimously

VOTED: To enter into Executive Session for the purpose of considering litigation strategy in Meachen, et. al. v. Blacker, et. al.

Chairman Blacker announced the Board would return to open session.

(Chairman Blacker, aye; Selectman Clark, aye; Selectman Drobinski, aye.)

Annual Town Meeting

Accept Withdrawal of Articles 14, 15, 16 and 17.

Upon request, it was on motion unanimously

VOTED: To accept the withdrawal of the following Articles from the 1998 Annual Town Meeting Warrant: Article 14 - Library Minuteman Network; Article 15 - Joint Fire/Police Dispatch Study; Article 16 - Renovation of Flynn Building; and Article 17 - Renovation of Highway Facility.

Accept Petitions

It was on motion unanimously

VOTED: To accept five additional petition articles for the 1998 Annual Town Meeting; that is, Amend Zoning Bylaw relating to Research Districts/Residential Care Facilities; Release Town's Interest in Lot 27, Howell Road; Amend Zoning Bylaw regarding Intensity Regulations, Amend Zoning Bylaw regarding Cluster Development; and Take Weisblatt Property by Eminent Domain.

Warrant Order

Regarding the Warrant Order, Ralph Tyler, 1 Deacon Lane, suggested the Article on Research Districts/Residential Care Facilities be inserted to follow existing Article 35 which concerns Permitted Uses of Research Districts. He also suggested that current Article 38 regarding Water Resource Protection Districts be moved up to follow this inserted petition article.

Chairman Blacker asked for the basis for the density level expressed in the petition article and Mr. Tyler responded it is similar to the density permitted for a Senior Residential Community (SRC) in other zoning districts within the Town. He also stated the petition would impose a 35' height limitation, as is the case in other zoning districts. Mr. Tyler stated there are plans to construct six, 45' high, apartment towers at the site and that such would be visible even from Concord Road near the High School. He said the current 45' maximum had been approved only because developers had contended such was needed to make the construction of a nursing home at the site financially feasible.

Chairman Blacker responded: "So what you are saying is that it is okay if it is a nursing home, but not if it is an apartment?" He implied that such a position is untenable and opined the restrictions in the petition article were being sought merely to thwart development of the site.

Selectman Clark suggested that the Conservation Land Bond Article, currently Article 25, be moved to follow Article 6, the Resolution on the Character of Sudbury. She further suggested the Weisblatt Article and the Rollback Taxes Article follow this new placement of the Conservation Land Bond in that order. She said with the Former Unisys Property Article and Housing Task Force Article immediately following these, there would be a cohesive category of articles dealing with the conservation of land.

Chairman Blacker stated he was opposed to the Weisblatt Article; he contended it would be foolish to allow a jury to determine the value of the property. He said that an eminent domain taking was very different from exercising the Town's option in a Chapter 61A or B acquisition. He also questioned whether the supporters of petition Article 25-Conservation Land Bond Issue would wish to have their article moved and placed in proximity with the Weisblatt Article.

Selectman Clark contended that Nobscot Mountain was a regional landmark and should be preserved. She said the Townspeople should be permitted to determine this issue and that it should be placed near Article 6 which concerns the character of Sudbury and other articles relating to the preservation of land. She said she could not imagine the supporters of Article 25-Conservation Land Bond Issue objecting to moving the article.

Chairman Blacker stated he would choose to preserve an open field instead of Nobscot Mountain. He said when you drive by a field one can see it and it speaks of Sudbury's history as a farming community, but when one passes Nobscot all one can see is trees on a hillside.

Selectman Clark stated that local boy scouts have for generations camped out on the mountain. She said that many Townspeople, including her husband, have fond memories of camping there and the area should be preserved for the future.

Chairman Blacker countered that the boy scouts are still able to do so since they own land near there. Furthermore, Chairman Blacker said Sudbury is no longer "way out in the country" and undoubtedly the boy scouts of today would probably prefer a more wild setting further west.

Selectman Clark disagreed, contending that Chairman Blacker did not know the facts. She noted that the boy scout land is adjacent, but does not encompass the mountain; she said the boy scouts own

other land further west, including land in Bolton, but Nobscot Mountain remained an important asset for outdoor activities.

Chairman Blacker agreed to concede to Selectman Clark's request regarding the ordering of these articles. Furthermore, the Board agreed to insert, after current Article 35-Research District Permitted Uses, the petition article regarding Research Districts/Residential Care Facilities and follow it with the Article on Water Resource Protection Districts, as suggested by Mr. Tyler. Finally, the Board agreed to insert the petition article regarding the Release of Lot 27, Howell Road, to follow current Article 40-Delete Senior Residential Community Bylaw and to insert the petition articles regarding Cluster Development and Intensity Regulations, in that order after current Article 37-Cluster Development Common Land.

Thus, it was on motion unanimously

VOTED: To adopt the above-stated Warrant Order for the 1998 Annual Town Meeting.

Board Positions on Articles

Myron J. Fox, Esq., urged the Board to support the Article requesting the Framingham-Sudbury boundary change. He explained there are three homes on Joan Avenue, which are currently within Framingham, but more appropriately should be within the Township of Sudbury. He said that sole access to these properties is via Sudbury Roads. He said Sudbury provides police and fire protection; whereas Framingham provides sewage and water. He noted the sole reason the property owners are seeking the boundary change is so their children might attend schools in Sudbury with the other children in the neighborhood. He stated that presently there are just two children. He said Sudbury is not a school "choice" town and therefore they cannot simply pay the Town the costs of attending school here. He said the homes involved include two three-bedroom and one four-bedroom and consequently the increase in school population occasioned by the annexation will never be significant. He said the Town of Framingham would also have to approve the boundary change and then approval must be obtained from the State Legislature. He said the costs of seeking these approvals, together with the surveying costs, far outweigh any increased value to the properties if the boundary change is effected.

Chairman Blacker stated he was in favor of the requested boundary change. He said it was the "right thing to do"; it was basically a matter of fundamental fairness. He also noted there were only two or three other houses, on Brimstone Lane, that are similarly land-locked and might seek a boundary change.

Selectman Drobinski stated that he too was in favor of the requested change. Selectman Clark stated that it looked fair to her as well, but she wished to prevent an onslaught of such requests. She asked Mr. Fox about the development potential of the adjacent land on Joan Avenue.

Mr. Fox stated he was not certain, but did not believe there were any other properties than the three existing ones. Chairman Blacker stated he recalled that some of the adjacent land could not be developed because it is used for drainage.

There being no other public input, the Board concurred in determining those articles it supported, that is, Articles 9-13, 20-21, 23, 25-26, 28-30, 41-43, as Ordered on January 26, 1998, and the recently

filed petition Article regarding the Release of Lot 27, Howell Road. The Board determined to report its positions on the remaining articles at the Annual Town Meeting.

Review Proposed Capital Planning Bylaw

The Board was in receipt of a revised proposed bylaw entitled *Capital Planning*. Town Manager Ledoux explained the revisions reflected changes requested by the Long Range Planning Committee.

Chairman Blacker stated he had no problems with the added provisions.

Selectman Clark inquired of the Town Manager if the committee membership should be one-half elected and one-half appointed.

Town Manager Ledoux responded he believed the committee would be pretty well balanced as proposed; he noted that three members are to be appointed by the Town Manager, three, by the Selectmen, and one, by the Finance Committee.

Thus, it was on motion unanimously

VOTED: To approve the revised proposed bylaw, entitled *Capital Planning*, to be submitted by the Board as an Article at the 1998 Annual Town Meeting.

Designations of Speakers

The Board concurred in designating John O. Rhome, retiring Planning Board member, to speak on the first Article at the 1998 Annual Town Meeting.

The Board concurred in continuing consideration of other speaker designations until its next regularly scheduled meeting on February 23, 1998.

March 1998 Ballot Questions

It was on motion unanimously

VOTED: To approve the following ballot question for the March 30, 1998, election, assuming such proposition passes at the Special Town Meeting slated for March 2, 1998, subject to final review by Town Counsel:

Shall the Town of Sudbury be allowed to exempt from the provisions of proposition two and one-half, so called, the amounts required to pay for the bonds issued in order to construct a new middle school and demolish all or part of the existing middle school?

Town Manager Ledoux informed the Board that the School Committee has not yet decided whether to include an additional override question pertaining to the School Operational Budget. He said

they are considering an override request of approximately \$500,000 for additional staff at the Ephraim Curtis Middle School. He stated that the School Committee understands the Board has until February 20, 1998, to determine the ballot questions for the March 30, 1998, election, and the Board would have to hold a special meeting on or before February 19, 1998, to consider such. He said the School Committee further understands that if the matter is not included as a March ballot question it would have to be considered at a special May election, if they intend to pursue such.

Chairman Blacker indicated the Board would attempt to accommodate any need for a special meeting to consider such issue. He stated he would respect the School Committee's call on such a decision. However, he opined they would be taking the chance that the Townspeople might vote against both matters if included together on the same ballot.

Permission to Sell Alcoholic Beverages During the March 1998 Town Election

It was on motion unanimously

VOTED: To grant permission to the holders of alcoholic beverages restaurant and package store licenses to sell alcoholic beverages during the polling hours of the March 30, 1998 Annual Town Election, in accordance with General Laws Chapter 138, s.33.

Planning Committee - Alleged Violations of Open Meeting Law

Selectman Clark said she believed the Planning Board had violated the Open Meeting Law. She said there had been a meeting of a majority of the Planning Board - three members - and there had been no public notice of this "meeting". She said the purpose of the meeting was to allow the Planning Board members to advise the representatives of the Green Company how to answer questions regarding the proposed SRC development on the Weisblatt property. She believed it was incumbent to either present this information to the District Attorney's Office or directly confront the Planning Board. She chose to confront the Planning Board with the allegations. She said she had raised it with John O. Rhome, Chairman of the Planning Board, and Planning Board member William J. Cossart responded saying that yes they had held a "non-posted meeting", but the other members were there only as private citizens. Selectman Clark suggested that the Board issue the Planning Board a letter requesting them to abide by the Open Meeting Law. She contended this Board, as "fathers" of the Town, had a responsibility to do so. She said the public had a right to know and attend any such meetings.

Chairman Blacker stated he understood the Green Company met with one member of the Planning Board and with Town Planner, Jody Kablack, to go over items that the Planning Board wished to address regarding the proposed SRC development on the Wesiblatt property. He said it was not to discuss how to deal with questions from the public regarding the project. He said he understood during this discussion two other members of the Planning Board came in and sat down. He said he was not sure whether this could be called a "meeting" under the statute since he did not know whether or not there was any deliberation.

Selectman Clark stated that Myron Fox, Esq., and counsel for the Green Company, had actually believed it was a posted meeting. She said that John O. Rhome, Chairman, and members William J. Cossart and Lawrence W. O'Brien were in attendance.

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Chairman Blacker stated he would have to read the statute before concluding there had been a violation.

Selectman Drobinski stated he was hesitant for this Board to issue such a letter to another Board or Committee.

Adjournment

There being no further business to come before the Board, the meeting adjourned at 12:09 a.m.

Attest: _____
Steven Ledoux
Town Manager-Clerk