

IN THE BOARD OF SELECTMEN
MONDAY, APRIL 1, 1998

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

The statutory requirements for notice having been met, Chairman Lawrence L. Blacker convened the meeting at 7:35 p.m. at the Fairbank Senior Center.

Site Plan 98-342 - Windsor Pet Care, Inc., d/b/a Best Friends Pet Resorts & Salons, 150 Boston Post Road

Present: Myron Fox, Esq. for applicant; Ellen Jane Siegars, abutter at 24 Goodman's Hill Road; Roberta C. Brennan, owner of property; Brian Costedio, Director of Architectural & Engineering Services, Highland Management Associates, the development coordinator for the project; Bruce Ey, engineer, Schofield Brothers; and others.

At 7:30 p.m., the Board reconvened a public hearing, continued from March 9, 1998, on Site Plan Application 98-342 of Best Friends Pet Care Inc., d/b/a Best Friends Pet Resorts & Salons, for a Site Plan Special Permit in accordance with Zoning Bylaws Art. IX.V.A., to partially demolish and reconstruct existing facilities to create an approximate 11,200 sq. ft. two-story building and enlarge the existing dwelling by approximately 950 sq. ft. for a kennel and veterinary clinic on property located at 150 Boston Post Road, owned by Roberta C. Brennan and Alton L. Horton, Jr., zoned Res. A-1, C-1 and BD-1.

The Board was in receipt of a tentative Decision prepared by staff.

The Board was also in receipt of a communication, dated March 30, 1998, from Willy Sclarsic, Senior Vice President, Continental Health Care, Inc., owner of Wingate at Sudbury, 136 Boston Post Road, noting its approval of the site plan and renovation at issue.

Myron Fox, Esq., introduced Ellen Jane Siegars, 24 Goodman's Hill Road, an abutter to the project and former owner of the site. Ms. Siegars stated she favored the proposal. She opined it would improve the property values of adjacent landowners. She also stated that she was pleased to see the business that she had begun in 1939 grow to the extent that it had.

Mr. Fox outlined each Sudbury bylaw establishing parking requirements for various types of commercial establishments. He contended that all were inapplicable to the needs of a kennel operation. For example, some would require as many as 62 spaces, which Mr. Fox contended was ridiculous. Furthermore, Mr. Fox presented the Board with the results of a survey he had conducted of parking bylaws in other adjacent Towns. None had a specific bylaw designating parking needs for a kennel operation. Thus, Mr. Fox urged the Board to accept the existing 13 spaces as adequate. He noted that the maximum number of dogs at the kennel would not change. Currently the maximum capacity is 160 dogs and such will not change under the site plan.

Furthermore, Brian Costedio, development coordinator for the project, informed that he had researched kennel use over the peak period of Labor Day weekend. He said he looked at two different Best Friends facilities, one had a maximum of 170 dogs and the other had a maximum of 220 dogs. He said he found no more than five transactions occurring simultaneously. He also noted that the 170-dog facility was located in Boxborough, MA, and had nine parking spaces. Mr. Costedio, thus, contended the proposed 13 parking spaces would be adequate.

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Regarding other previous concerns of the Board, Mr. Costedio stated that the applicant was agreeable to installing fencing and a hedge to screen the rear of the proposed building from the abutting residential neighborhood. He also said that he had discovered a different fan housing made of Fiberglass that directs the air being removed from the building downward and reduces the noise level of the fans. He said that the old housing resulted in a two-decibel reduction while the new one results in a five-decibel reduction. Moreover, reading from a communication from Techmark, Inc., Lansing, MI, Mr. Costedio informed that the fans generally emit 67-68 DBA, depending on size, and that at some 30 feet, there would be a reduction by 29 DBA with the new hood-type housings. He noted that the building would be sited 32 feet from the rear property line and there would be a further reduction of noise by virtue of the existing vegetation, which is quite dense, and the planned fencing and other hedge planting in this area.

Finally, Mr. Costedio said, with regard to the Design Review Board's concerns, he had revised the building by cleaning up the roofline and removing some of the faux column trim. He stated he was also willing to eliminate the shutters, but the Board indicated it preferred the shutters remain in the design.

Selectman Clark asked if Mr. Costedio had considered local snow loads when changing the roofline and Mr. Costedio responded in the affirmative.

Chairman Blacker noted that the tentative Decision included a condition requiring the extension of Sudbury Water District lines to the site by the owner when in this case the site already has such in place. He contended that such constituted unnecessary verbiage in the instant case and the Board agreed to strike such language.

Similarly, Chairman Blacker questioned the need for condition eight of the tentative Decision, but Selectman Drobinski responded that the Conservation Commission needed such.

Selectman Clark suggested that language be inserted to require the use of the Fiberglass hood-type fan housings described by Mr. Costedio and the Board agreed.

Mr. Fox, saying that the Board had already reviewed the final architectural rendering and landscape plan, asked that conditions 14 and 15a of the tentative Decision be removed. He also noted that the make-up of the Board was soon to change with Chairman Blacker's retirement and Ms. Roopenian's election.

Thus, the Board concurred in striking conditions 14 and 15a from the tentative Decision.

Based upon a determination that the foregoing evidence, together with the plans submitted, conformed to the intent and purpose of the Zoning Bylaw requirements, a motion was made and unanimously approved as follows:

VOTED: To grant a Site Plan Special Permit to Best Friends Pet Care, Inc., in accordance with Application No. 98-342, to partially demolish and reconstruct existing facilities to create an approximate 11,200 sq. ft. two-story building and enlarge the existing dwelling by approximately 950 sq. ft. for a kennel and veterinary clinic on property located at 150 Boston Post Road, owned by Roberta C. Brennan and Alton L. Horton, Jr.; as shown on plans entitled, "Best Friends Pet Resorts & Salons, 150 Boston Post Road, Sudbury, MA", comprised of Sheets SPA-1 through 12 dated November 18, 1997 with the exception of Sheets 4, 10, & 11 being dated July 18, 1997, prepared by Action Environmental,

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Inc. and Highland Management Associates, Inc., and Sheets SP-1, EQ-1 & 2, A-4, and SK-1 & 2, last dated December 9, 1997, prepared by Cramer & Levine and Co., Architects, and Highland Management Associates, Inc.; subject to compliance with all governmental laws and regulations including, but not limited to, zoning, building and health laws and regulations, and further subject to the following conditions:

1. an Order of Conditions under the Wetlands Protection Act by the Conservation Commission, and compliance with same and the Sudbury Wetlands Administration Bylaw;
2. approval of the drainage system, including traps, catch basins, and periodic maintenance as required by the Director of Public Works/Town Engineer; the 36-inch corrugated metal pipe entering the open channel, the channel itself and the twin 15-inch reinforced concrete pipe leaving the channel shall be cleared of silt and debris, subject to the approval of the Conservation Commission; and adequate separation between the bottom of the leaching galley and the seasonal high groundwater table shall be demonstrated to the satisfaction of the Director of Public Works/Town Engineer (Sheet SPA-7 shall indicate elevations based on an actual test pit in the vicinity of the leaching galley in order to demonstrate same);
3. placement of all utilities underground;
4. no wells for drinking water to be installed on the site;
5. the grant of an earth removal permit by the Earth Removal Board, if applicable;
6. approval of signs or advertising devices as required under applicable provisions of the Zoning Bylaw;
7. no storage or use of chemicals on site except in conformity with guidelines and requirements of the Board of Health and the Fire Chief; the owner or operator of the site shall comply with the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. Chapter 21E, as amended, and all regulations issued thereunder;
8. no use of salt or chemical de-icers on site;
9. if applicable, the grant by the owner to the Town of a restrictive covenant to run with the land, governing, restricting or prohibiting the following, which shall conform to requirements of the Board of Health, Director of Public Works/Town Engineer and/or Conservation Commission, as appropriate:
 - a) the disposal or removal of effluent and wastes generated on the site;
 - b) the use of salt or chemical de-icers on the site;
 - c) the installation by the owner of one or more monitor wells on the site including the Town's right of access for periodic testing and monitoring thereof, or another protective device as may be required by the Board of Selectmen;
10. the grant of a drainage easement encompassing the open channel to the Town by the owner;

11. the applicant shall construct a walkway along Goodman's Hill Road for the length of the subject property, and repair and resurface the damaged walkway along Boston Post Road in front of said property;
12. all driveways shall have a minimum width of 20 feet,
13. plans shall be updated to include calculations for building coverage, impervious surface, open space, parking, and height of structures.
14. the exterior fan housings on the rear of the building shall have Fiberglas hood to reduce noise levels and direct air downward;
15.
 - a. landscaping to include completion of a six-foot fence along the entire rear of the property and hedge-type plantings to act as a screen and buffer for the adjacent residences in the rear;
 - b. landscaping shall include street trees along Boston Post Road to the extent they may be approved by the Conservation Commission, and street trees and/or interior trees along Goodman's Hill Road to the extent possible after accommodating the septic system and walkway;
16. approval of the exterior lighting plan by the Board of Selectmen; exterior lighting shall be directed away from any adjacent residences and have shields;
17. submission of an "as built" site plan. Any change in the physical condition of the site, including changes in the location or design of structures or systems, following approval of the site plan, will require approval of the Board of Selectmen;
18. no building permit shall be issued until certain items above (1, 2, 10, 12, 13, 15, 16) as specified by the Board, are complied with;
19. no occupancy permit shall be issued until certain items noted above (3, 4, 5, 6, 7, 9, 11,17) as specified by the Board, are complied with; and
20. this Special Permit shall lapse if construction and a substantial use thereof have not commenced except for good cause within one (1) year from the effective date of said Permit.

The Board signed the Decision.

Utility Petition #98-2 of Boston Edison Co. and Bell Atlantic - New England, Hudson Road

Present: Dominga Marrero, for Boston Edison Co. and Bell Atlantic - New England and others.

The Board was in receipt of a communication, dated March 5, 1998, from Richard Schifone, Supervisor, Rights & Permits, Boston Edison Co, requesting a Grant of Location to install 110 feet of conduit on Hudson Road to provide overhead and underground electric service to a new three-lot subdivision.

Notice of the public hearing on this petition had been mailed to abutters as required by G.L.c.166.

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At 7:55 p.m., Chairman Blacker convened the public hearing on said petition and there being no opposition, it was on motion, duly seconded, unanimously

VOTED: To grant Utility Petition #98-2, of Boston Edison and Bell Atlantic – New England, allowing the installation of 110 feet of conduit on Hudson Road, more specifically, beginning on the southerly side of Hudson road, approximately 435 (+/-) feet west of Maynard Road, running in a northeasterly direction from Pole 6/21, a distance of about 110 feet across Hudson Road, as shown on Boston Edison Company “Plan of HUDSON RD, SUDBURY Showing proposed : Conduit Location” dated March 4, 1998, and “N.E.T. & T. Co. No. 98-02 “Plan for Hudson Rd” dated March 9, 1998.

Resolution Honoring Fire Captain Gerald Spiller

Present: Fire Chief Michael C. Dunne, Fire Captain Gerald R. Spiller, and many members of the Fire Department and Sudbury residents.

In recognition of Fire Captain Gerald Spiller’s 38 years of service with the Sudbury Fire Department and upon his upcoming retirement on April 3, 1998, the Board on motion unanimously

VOTED: To pass a resolution honoring Fire Captain Gerald R. Spiller, thanking him for his long and outstanding service to public safety with the Sudbury Fire Department and wishing him well in his retirement.

A presentation of the Resolution and a gift certificate for the Wayside Inn was made to Captain Spiller after which Captain Spiller received personal regards from those present on his retirement.

Donations - Council on Aging Vans

It was on motion unanimously

VOTED: To accept \$57.10 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.

Minutes

It was on motion unanimously

VOTED: To approve the regular and executive session minutes of March 9, 1998.

Compliance by Certain Alcoholic Beverages Licensees with Mandated Training

The Board was in receipt of communications from each of the alcoholic beverages licensees (American Legion Post 191, Bullfinch’s, Lotus Blossom, Papa Gino’s, Philip’s Pizza, Roche Bros., Sierras Restaurant and the Wayside Inn) who had sold to an underage minor in a recent Police Department undercover operation. The communications detailed the various licensees’ efforts to provide education and training to its employees, as well as overcoming any language barriers, to preclude further violations of state liquor laws.

The Board expressed its satisfaction with the reports provided by the various licensees and concurred in determining each licensee had complied with the Board's requirement for training. The Board directed staff to so notify each licensee.

Selectman Clark suggested the communications be filed in each respective licensee's file so the Board might consider such during license renewals and in the event of future violations. The Board agreed to this suggestion and so directed staff.

1998 Annual Town Meeting

Present: Town Moderator Thomas G. Dignan, Jr., Administrative Assistant to the Board, Janet Silva, Director of Council on Aging, Ruth A. Griesel, Sudbury School Committee member, Gregory S. Lauer, Myron J. Fox, 12 Indian Ridge Road, and others.

Speaker Assignments

The Board concurred in assigning Article 7 – *Conservation Land Bond Issue* to Selectman Drobinski and Article 8 – *Take Weisblatt Property by Eminent Domain* to Chairman Blacker.

Selectman Drobinski commented that Article 7 might provide the mechanism for purchasing the Weisblatt property. He explained that he was opposed to a taking by eminent domain, but was not opposed to the purchase of the property.

Selectman Clark stated she understood his position, but noted that in this case the taking would not be a hostile one.

Chairman Blacker stated he strongly opposed Article 8 and that was why he wished to speak on it.

Selectman Clark stated she strongly favored Article 8 and wished to speak on it as well.

Town Manager Ledoux reported that Article 17- *Powder Mill Road Walkway* would be indefinitely postponed.

Warrant Review

Notice of the Warrant Review was provided to all Annual Town Meeting Article Sponsors via a communication issued, on February 12, 1998, by the Town Manager.

Chairman Blacker turned the meeting over to Moderator Thomas G. Dignan to conduct the Warrant Review.

Myron J. Fox, Esq., 12 Indian Ridge Road, stated he would make the motion and speak on Article 21- *Framingham/Sudbury Boundary Change*. He also informed that that David S Caligaris, 122 Woodside Drive, President of the Green Company, intended to speak on Article 8.

Those present provided information on which individuals would present or speak on certain articles and other boards provided same to the Moderator in writing.

Board Positions

Chairman Blacker commented that the Board had not yet taken positions on many of the later articles. He noted, for example, there were no positions for Articles 30-40. He questioned what the Board should do with, for example, Article 40, which he and Selectman Drobinski opposed. Chairman Blacker suggested the possibility of designating the Board's position by a majority decision.

Selectman Clark responded she had not had an opportunity to fully consider Article 40 and needed more time. She agreed that the Board had not taken positions on Articles 28 – 40, but contended that those articles would not come up on the first night of the Annual Town Meeting. She said the Board had at least until Monday night to resolve this matter.

Thus, the Board agreed to determine its positions on these later articles at its next meeting on Monday, April 6, 1998.

With respect to the early articles, Chairman Blacker noted the Board had not taken a position on the Budget, but said such was always the case. On the school budget override, he said he would like to hear the pros and cons before taking a position and the Board agreed to reserve its position until it had heard the debate. Chairman Blacker noted, with respect to Article 8, the Board's position was two to one, in favor, and that Articles 17 and 18 would be indefinitely postponed. Thus, he concluded that on Monday, April 6, 1998, the Board would have to determine its positions on the remaining articles, commencing with Article 23 - *Amend Bylaws, Art. V - Underground Sprinkler Systems* and the Board agreed.

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

Present: Myron Fox, Esq., for the applicant, Bruce Ey, engineer, Schofield Brothers, and others.

At 8:30 p.m., Chairman Blacker reconvened the public hearing, continued from February 9, and March 9, 1998, on Site Plan 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. 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.

The Board was in receipt of a tentative Decision prepared by staff.

Myron Fox, Esq., for the applicant, reported that two persons from DEP had inspected the site in early March and Selectman Clark was also present. He said that the on-site inspection aided in understanding the existing topography, wetlands and drainage on the site and the proposed development plans. He said Conservation Coordinator Dineen planned to send a letter regarding the results of the on-site inspections, and he anticipated that DEP would either withdraw its appeal or impose a couple of conditions that were acceptable to the applicant.

Selectman Drobinski asked about the Fire Chief's characterization that the access was not "user friendly" and Mr. Fox responded that Jeffrey Kevan, site Engineer for the project, had spoken with Fire

Chief Dunne and that the plan was now acceptable to the Chief. Selectman Drobinski suggested that a letter issue to that effect since the negative comment is reflected via a letter referenced in the record. Mr. Fox agreed and indicated such a letter would be submitted.

Mr. Fox suggested that conditions 8 and 9a of the tentative Decision be removed since the Board has already viewed both the architectural and the landscape plans. Regarding the landscape plans, he said that the two island beds would be slightly reduced where they begin to converge to ease the traffic flow on site.

The Board concurred in removing said conditions, provided the applicant submit a letter explaining the revised landscape plan which involves simply the reduction of the two landscape beds as described.

Selectman Drobinski asked if the other conditions set out in the tentative Decision were consistent given the Board of Appeals' recent rejection of this site plan and both Chairman Blacker and Selectman Clark indicated in the affirmative. Chairman Blacker explained that this Decision and its conditions would be *subject to* the Board of Appeals' decision.

Mr. Fox agreed and in response to further inquiry from Selectman Drobinski stated that he planned to both appeal the Board of Appeals' decision denying the site plan and consider revisions that might be acceptable to the Board of Appeals.

Based upon a determination that the foregoing evidence, together with the plans submitted, conformed to the intent and purpose of the Zoning Bylaw requirements, a motion was made and unanimously approved as follows:

VOTED: To grant a Site Plan Special Permit to American Store Properties, Inc., to construct a one-story Osco Drug Store with footprint of 13,671 sq. ft. and associated driveway, parking and drainage on property at 454/460 Boston Post Road, Town Property Maps K08-065 and K08-062, owned by VHS Realty Trust and Arber Realty Trust respectively, as shown on "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; Osco Drug, "Floor Plan", consisting of one page, issue for bid, June 10, 1997, prepared by Cubellis & Associates, Inc., 289 Devonshire Street, Boston, Massachusetts; 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; subject to compliance with all governmental laws and regulations including, but not limited to, zoning, building and health laws and regulations, and further subject to the following conditions:

1. an Order of Conditions under the Wetlands Protection Act by the Conservation Commission, and compliance with same and the Sudbury Wetlands Administration Bylaw;
2. approval of the drainage system, including traps, catch basins, and periodic maintenance as required by the Director of Public Works/Town Engineer; such drainage systems to strive for compliance with the Department of Environmental Protection Stormwater Management Standards; and the applicant is required to investigate constructing catch basins at the intersection of the proposed curb cut and Route 20 to control stormwater runoff;

3. placement of all utilities underground;
4. extension of Sudbury Water District lines to the site by the owner; no wells for drinking water to be installed on the site;
5. the grant of an earth removal permit by the Earth Removal Board, if applicable;
6. approval of signs and advertising devices as required under applicable provisions of the Zoning Bylaw, with all existing signs to be brought into conformance with the Zoning Bylaw, as well;
7. no storage or use of chemicals on site except in conformity with guidelines and requirements of the Board of Health and except with written notice of the same to the Board of Health and except with written notice of the same to the Board of Health and the Fire Chief; the owner or operator of the site shall comply with the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L.c. 21E, as amended, and all regulations issued thereunder;
8. landscaping to include plantings to screen the front parking areas with inspection and final approval by the Town to insure effectiveness;
9. exterior lighting to be directed away from any adjacent residences and have shields;
10. no use of salt or chemical de-icers on site;
11. if applicable, the grant by the owner to the Town of a restrictive covenant to run with the land, governing, restricting or prohibiting the following, which shall conform to requirements of the Board of Health, Director of Public Works/Town Engineer and/or Conservation Commission, as appropriate:
 - a) the disposal or removal of effluent and wastes generated on the site;
 - b) the use of salt or chemical de-icers on the site;
 - c) the installation by the owner of one or more monitor wells on the site including the Town's right of access for periodic testing and monitoring thereof, or another protective device as may be required by the Board of Selectmen;
12. the grant of a Water Resources Protection Permit by the Planning Board;
13. the grant of special permits and/or variances as required by the Board of Appeals;
14. coordination of the Nobscot Road/Route 20 intersection and driveway layout/design with the Massachusetts Highway Department, District 3, Worcester, MA;
15. receipt of a curb cut permit from the Massachusetts Highway Department, District 3, Worcester, MA;
16. the grant by the owner of an easement to allow Massachusetts Highway Department to install mast arms and loop detector;

17. the Applicant shall improve the walkway on Route 20 along the frontage of the site;
18. pursuant to Zoning Bylaw Article IX(V.A.8) Reserve Parking Spaces, the Board of Selectmen waives 30% (23 spaces) of the required 76 parking spaces; thus 53 parking spaces shall be delineated with the remainder shown as reserve parking areas; such waiver being subject to the ability to construct the reserve parking spaces once the stormwater basin and drainage are installed;
19. approval by the Fire Chief and Director of Public Works/Town Engineer of drive-thru lane widths, canopy height, and turning radius in the front parking area;
20. left turns by traffic exiting the site shall be prohibited until a traffic light at this location is installed and operational;
21. use of the drive-thru window shall be confined to drop-off and pick-up of prescription drugs only. The hours of operation of the drive-thru window shall be restricted to the hours the store is open;
22. a Licensed Site Professional must participate in the construction phase of the project;
23. submission of an "as built" site plan - any change in the physical condition of the site, including changes in the location or design of structures or systems, following prior approval of the site plan, will require approval of the Board of Selectmen;
24. no building permit shall be issued until certain items noted above (1, 2, 12, 13, 14, 15, 16, 19), as specified by the Board, are complied with;
25. no occupancy permit shall be issued until certain items noted above (3, 4, 5, 6, 7, 8, 9, 11, 17, 20, 23), as specified by the Board, are complied with; and
26. This Special Permit shall lapse if construction and a substantial use thereof, have not commenced except for good cause within one (1) year from the effective date of said Permit.

The Decision will be revised as voted and submitted to the Board for signature.

Town Assessor

Town Manager Ledoux reported he had hired Maureen Hafner as the Town's Assessor. He said she is currently the Assessor in Boxborough and prior to that she was the Assessor in Billerica. He stated she was highly recommended, and he was very pleased to hire her.

Selectman Clark suggested Ms. Hafner be introduced to the Board, and Town Manager Ledoux agreed to make such arrangements.

MBTA Assessments

The Board was in receipt of data on the MBTA Assessments and proposals to make such assessments more equitable, which were generated by a recent meeting on the subject in Ashland. Town Manager Ledoux stated he had attended the meeting and said the aggrieved towns were considering litigation, which is both costly and time consuming, or a legislative solution through a joint lobbying effort.

Chairman Blacker noted that certain “fringe communities,” unlike Sudbury, actually have service; he cited, for example, Lincoln, Lexington, Acton and Littleton. He opined the assessments were patently capricious and could not withstand a constitutional challenge. He contended that the aggrieved towns should sue the Commonwealth. He suggested as plaintiffs, those towns with the best claims, the communities without any service, such as Sudbury, Wayland and Ashland. He contended the inclusion of, for example, Lincoln or Lynn, would only weaken the case. He concluded, saying the only way to resolve this matter is through litigation.

Hazardous Spill at DPW

Town Manager Ledoux reported that a Boston Edison utility pole had fallen over onto the Town’s diesel tank at the Town Garage. He said no one was injured, but there had been a spill of hazardous material (PCB). He said Boston Edison had agreed to clean up the spill and such efforts were ongoing.

Town Awarded Incentive Grant for Recycling Efforts

The board was in receipt of a communication, dated March 24, 1998, from Trudy Coxé, Massachusetts Executive Office of Environmental Affairs, informing that the Town had been given an “A” rating for recycling 45% of its municipal waste and a “Satisfactory” grade for “effort”. “Effort” is based on the number of key recycling programs implemented in the community. As a result of the recycling rate and effort grade, the Town will receive an incentive payment of \$1,256 for the first six months of the new Municipal Recycling Incentive Program (MRIP). The MRIP is a performance-based grant that challenges municipalities to adopt new programs and make increasing commitments to recycling and buying recycled products in exchange for a per-ton payment for recyclables collected. The more a community recycles, the more MRIP payments it earns.

The Board expressed its appreciation for the rating and award.

Site Plan 98-340, AT&T Wireless PCS, Inc., Maynard Road/Water District Property

At 8:45 p.m., Chairman Blacker reconvened the public hearing, continued from December 22, 1997, January 12, 1998, February 23, 1998, and March 9, 1998, on the application of AT&T Wireless PCS, Inc., for a Site Plan Special Permit under Sudbury Bylaws, Art. IX.V.A, to add to wireless communications facilities on Water District Property on Maynard Road, as set forth in Site Plan 98-340.

The Board was in receipt of a written Decision prepared by staff.

It was on motion, duly seconded, by a majority

VOTED: To adopt and sign the Decision as follows: According to the evidence presented at the hearing, AT&T has filed an application for a Site Plan Special Permit in accordance with the Sudbury Zoning Bylaw Section IX.V.A.1-10 for the placement of a commercial structure constituting an antenna and equipment cabinets on property owned by the Sudbury Water District. The request contemplates an antenna extending approximately 80 feet in the air and 31 feet above the top of the existing water tank.

In order to do so, AT&T has requested from the Board of Appeals a Special Permit for the erection of a tower pursuant to Section IX.IV.A.4 of the Zoning Bylaw. They have also requested a Special Permit for an extension of the non-conforming use based upon the existence of a prior antenna located on the top of a different water tower on the same property, which is substantially different from the antenna proposed by AT&T, both in magnitude, location, construction, and height. In the alternative they have requested a variance from the Zoning Bylaw to allow the erection of a commercial antenna in the residential district.

Pursuant to IX.V.A.10 of the Sudbury Bylaws, the Board of Selectmen is charged with taking the following factors into consideration when reviewing an application for a Site Plan Special Permit:

- “a. Protects adjoining premises by avoiding adverse effects on the natural environment and abutters;
- b. Provides for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site;
- c. Provides an adequate arrangement of parking and loading spaces in relations to proposed uses of the premises;
- d. Provides adequate methods of disposal of refuse or other wastes resulting from the uses permitted on the site;
- e. Complies with all applicable requirements of this bylaw.”

Particularly pertinent here are the requirements set forth under “a” and “e” of Section IX.V.A.10 and reports and recommendations of boards and committees. The radio antennas being erected are subject to the local zoning bylaw pursuant to Section 704 of the Federal Telecommunications Act which provides as follows: “Except as provided in this paragraph, nothing in the Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.”

The only limitations set forth in the Federal statute are that the local municipality does not discriminate or cause undue delay, nor shall its actions have the effect of prohibiting wireless services, and if the application is denied the denial must be in writing and substantiated by evidence contained in the record. In the instant case, the Town has denied the application based upon substantial evidence.

Non-discrimination does not mean that once an antenna is allowed on a piece of property that anyone else who wants an antenna is entitled to construct another on the same piece of property. It simply

means that essentially the same standards are to be used for all applications. In fact, a second antenna on the same property may in and of itself violate the standards set forth in the bylaw. Notwithstanding the foregoing, the antenna proposed is substantially higher and more noticeable than the prior granted antenna.

Additionally, commercial antennas are not an allowed use in a residential district. The prior antenna exists based upon a variance. One of the conditions for granting a variance is the establishment of a hardship. In the instant case, the applicant is before us without having established the right to erect the antenna.

The applicant has applied to the Board of Appeals for a Special Permit for expansion of a non-conforming use, which would allow expansion of the use if it were not "substantially more detrimental than the existing use". We need not explore that consideration, because the other existing antenna is located on the property by way of a variance which never becomes a prior non-conforming use entitled to the relief requested by AT&T.

According to Section IX.V.A.10 of the Zoning Bylaw, the Selectmen shall "ensure a use of the site consistent with the uses permitted in the district in which the site is located". Since AT&T is not entitled to a Special Permit for expansion of a non-conforming use and does not have a valid variance, they are not entitled to Site Plan approval.

The Annual Town Meeting will consider a provision to provide for establishment of certain properties to be included in a proposed bylaw creating an overlay district where these antennas would be allowed. Notably, Willis Hill is not included as a proposed location.

The proposed antenna would clearly have a significantly greater and deleterious visual impact on the surrounding area because of its size and height, particularly when compared to the existing antenna which presently rings the top of the other water tower.

Allowing this antenna would also place the Town in a position where other antennas would have a right to be erected on the premises, thereby creating an unsightly antenna farm, as the Town would be hard pressed to suggest that denial of future antennas would not be discriminatory. The Town's position in this regard is supported by the proposed bylaw which effectively negates such an offensive impact on a residential district. Accordingly, a negative impact on property values would be felt in the surrounding neighborhood because of the allowance of this commercial antenna. As stated previously, the existing antenna does not have that impact since it rings the top of the tank.

In addition to the foregoing, it is clear that the Town has made knowing and considered choices regarding the erection of antennas by virtue of the proposed bylaw. Therefore, it would be improper to suggest that a use inconsistent with the Zoning Bylaw which does not prohibit antennas from the Town and without the benefit of a variance is entitled to Site Plan Special Permit approval.

The Applicant has not met the minimum requirements for approval of its application.

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

Site Plan 98-343 – Sudbury Plaza Trust, 509 Boston Post Road (CVS Drive-Thru)

Present: Kelly Brown, Gravestar, Inc., Managers of Sudbury Plaza; Robert Landry, Esq., for the applicant; Tom Houston, CID Associates, Engineer and Planner for the project; and others.

At 9:00 p.m., Chairman Blacker reconvened a public hearing on Application SP 98-343 of Sudbury Plaza Trust, c/o Gravestar, Inc., for a Site Plan Special Permit in accordance with Zoning Bylaw Art. IX.V.A., to expand the CVS store on the north side by constructing a pharmacy drive-thru with canopy, at 509 Boston Post Road.

The Board was in receipt of the following:

1. A tentative written Decision prepared by staff.
2. A communication, faxed on March 26, 1998, from Paul Bisson, 55 Highland Avenue, memorializing his understanding with Kelly Brown of Gravestar, Inc., regarding fencing to contain litter from the proposed project, to wit: the installation of an 8' high stockade or similar fence, commencing at where the cedar growth is at its fullest/tallest and continuing the entire length, running parallel to Highland Avenue, and connecting to the existing fence in place behind Star Market Plaza and the planting of arborvitae or similar trees/shrubs along the fence to improve the aesthetics for Highland Avenue residents.
3. A communication, dated April 1, 1998, from The Planning Board, informing it had voted to recommend approval of the subject plan with certain conditions, that is, (1) eliminate the row of parking parallel to Route 20 at the northerly end of the site to allow two-way circulation to the drive-thru window. Traffic accessing the drive-thru via the easterly access would turn left, drive parallel to Route 20 and make a U-turn into the drive-thru. Such proposed traffic pattern would require the elimination of approximately 16 parking spaces and approval by the Selectmen to allow reserve parking for just over 35 of the total. Additionally, the applicant would be required to make other site plan changes, such as signage and curbing to direct traffic movement.

Selectman Drobinski noted that the proposed revision by the Planning Board would require traffic accessing the drive-thru to cut across traffic moving out of the shopping plaza.

Selectman Clark agreed, noting she had initially considered that traffic pattern, but had ultimately determined that such would not work.

Chairman Blacker concurred, saying the Planning Board's proposal failed to consider the existing Fleet Bank drive-thru and its traffic pattern.

When asked about Mr. Bisson's request for an eight-foot fence with tree/shrub planting, Tom Houston, Engineer and Planner for the project, responded that an eight-foot fence might be difficult to construct and preserve sight distances. For that reason, he suggested a six-foot fence. He further suggested that it commence about 60' from the front of the façade of main Star Market building and run to the rear of the property to connect with existing fencing there, a total distance of some 300'. The Board concurred in these suggestions.

Upon request, the Board agreed to strike conditions 7-9 and 11 of the tentative Decision. It further agree to striking condition 19 of the tentative decision, provided the minutes reflect it had received a letter from the applicant's environmental engineer reporting that water recharge in the improved area would have no adverse impact on water quality.

Based upon a determination that the foregoing evidence, together with the plans submitted, conformed to the intent and purpose of the Zoning Bylaw requirements, a motion was made and unanimously approved as follows:

VOTED: To grant a Site Plan Special Permit to Sudbury Plaza Trust, c/o Gravestar, Inc., in accordance with Application No. 98-343, to expand the CVS store on the north side by constructing a pharmacy drive-thru window with canopy, at 509 Boston Post Road, as shown on Site Plan entitled "CVS PHARMACY DRIVE THRU, SUDBURY PLAZA, SUDBURY, MASSACHUSETTS", dated October 31, 1997, revised December 8, 1997 and January 28, 1998, drawn by CID Associates Inc.; subject to compliance with all governmental laws and regulations including, but not limited to Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, Water Resource Protection Bylaw, zoning, building and health laws and regulations, and further subject to the following conditions insofar as they apply to the property:

1. approval of the drainage system, including traps, catch basins, and periodic maintenance as required by the Town Engineer; gas and oil traps shall be Labaron type L219-12 or equivalent;
2. placement of all utilities underground;
3. no wells for drinking water supply to be installed on the site;
4. the grant of an earth removal permit by the Earth Removal Board, if applicable;
5. approval of signs or advertising devices as required under applicable provisions of the Zoning Bylaw;
6. no storage or use of chemicals on site except in conformity with guidelines and requirements of the Board of Health and the Fire Chief; the owner or operator of the site shall comply with the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. Chapter 21E, as amended, and all regulations issued thereunder;
7. the final landscaping plan to include screening of the drive-thru; additionally, as requested by resident Paul Bisson, the applicant shall complete the screening along the Highland Avenue perimeter of the site as follows: (1) install fencing six feet in height beginning where the existing cedar tree growth is at its fullest/tallest (starting at a point approximately sixty feet north of the front of the building), and extending the entire length of the western plaza perimeter (parallel to Highland Avenue) and connecting to the existing stockade fencing in place behind the Star Market Plaza, and (2) plant arborvitae or similar trees and shrubs along the outside of this fence to improve aesthetics for the Highland Avenue residents;
8. no use of salt or chemical de-icers on site;

9. traffic pattern showing counter clockwise circulation around entire building to be shown on the plan;
10. inside radius by the transformer to be changed from 10 to 15 feet;
11. height of canopy to be approved by the Fire Chief;
12. distance from the northeast corner of building to parking spaces to be shown on plan and be a minimum of 18 feet;
13. removal of trash dumpsters away from building and shown on plan;
14. use of the drive-thru window shall be confined to drop-off and pick-up of prescription drugs only. The hours of operation of the drive-thru window shall be restricted to the hours the store is open;
15. payment of any outstanding taxes or fees owed to the Town, including payment of \$51.92 for damaged fire alarm cable to the Fire Department;
16. submission of an "as built" site plan. The stone berm located between the CVS parking lot and Route 20 should be shown. Any change in the physical condition of the site, including changes in the location or design of structures or systems, following approval of the site plan, will require approval of the Board of Selectmen;
17. no building permit shall be issued until certain items noted above (1, 7, 9, 10, 11, 12, 13, 15) as specified by the Board, are complied with;
18. no occupancy permit shall be issued until certain items noted above (2, 3, 4, 5, 6, 16) as specified by the Board, are complied with;
19. this Special Permit shall lapse if construction and a substantial use thereof, have not commenced except for good cause within one (1) year from the effective date of said Permit.

The Decision will be revised as voted and submitted to the Board for signature.

Site Plan 97-337 – Northwood at Sudbury (Conant-Welch Group), North Road

Present: Peter M. Conant, Principal, The Conant-Welch Group, and applicant, Site Plan 97-337 for *Northwood at Sudbury*, North Road, and others.

The Board was in receipt of the following:

1. A communication, dated March 5, 1998, from Peter M. Conant, principal, The Conant-Welch Group, and applicant, Site Plan 97-337 for *Northwood at Sudbury*, informing that the final site plan, revised to conform with all of the Board's conditions as set forth in its Decision, dated November 14, 1997, is ready for submission. He notes that the re-design and re-location of the septic system to meet Board of Health concerns has afforded the opportunity to preserve a majority of trees along the access road. Furthermore, he notes that the re-location of the residential

buildings further away from Bear Pond should help avoid any possibility of construction debris or runoff affecting this sensitive area. Enclosures included: (1) Agreement, dated March 4, 1998, between Sudbury Research Center, Inc., and Peter M. Conant, setting forth their agreement regarding the construction and maintenance of certain drainage facilities on land retained by the Sudbury Research Center, Inc.; (2) Supplemental Drainage Analysis for "Northwood Senior Housing, dated March 6, 1998, prepared by Whitman & Bingham Associates, Inc., professional Engineers, Land Surveyors, and Environmental Consultants, 510 Mechanic Street, Leominster, MA 01453, which shows the recalculation of stormwater recharge areas for the project.; (3) An Expense Estimate for *Northwood at Sudbury* and Financial Management Plan for Private Roads, Utilities and Wastewater Treatment, dated March 6, 1998, from Northwood Realty Trust, of The Conant Welch Group; (4) Revised Engineering, Landscape and Architectural drawings comprising the site plan; and (5) A watercolor rendering of the proposed *Northwood at Sudbury*.

2. The final mylars for Site Plan 97-337 for Northwood at Sudbury, dated March 6, 1998, presented in hand by Peter M. Conant, Principal, The Conant-Welch Group, for the Board's signature.
3. A communication, dated March 12, 1998, from the Director of Public Works/Town Engineer, reporting the revised plans show changes as the Board requested, including drainage system designed for a 100-year storm event, and relocation of leach pits as requested by the Conservation Commission.

Peter M. Conant, Principal, The Conant-Welch Group, stated the final landscape plans include maintaining much of existing woodlands together with installing tennis courts, a water feature, a putting green, and outdoor gazebo and tennis pavilion. He said that he was able to compress the site plan and protect the woods bordering the vernal pool and by relocating the septic system he could save most of the trees along the access road. He informed that the Board of Health's approval of the septic system was unanimous. He said he was very pleased with the final plan and the cooperative efforts of the many Town boards and officials involved. He presented the Board with the final plan for its signature.

Selectman Drobinski asked about access for emergency vehicles and Mr. Conant explained the secondary access road would have an unlocked gate and will afford access for fire trucks. Although the land will slope away from the rear of the building, Mr. Conant said trucks would be able to access all sides of the building. He also said Fire Chief Dunne was satisfied with the sprinkler system and fire proof fire access to the upper level and roof of the building.

Selectman Drobinski asked if placement of the septic system at the new location would require the removal of trees in that area and Mr. Conant responded the new location is in an open field. He said that some trees would have to be removed, but the perimeter of the area has dense vegetation and such would remain.

Selectman Clark said that she liked the concept, but was a "stickler" for following the terms of the bylaw. She also said she was concerned for the health and safety of the elderly residents. She noted that they would not have a meal service and the enhanced social aspects of a common dining. She said their medications would not be supervised and feared some might over medicate themselves.

Mr. Conant responded there would be a dining room and meals there could be catered, however the decision to take meals would be left up to the individual resident. Regarding the medication issue, he said he would speak with Parmenter Health Services to see what type of monitoring could be provided.

Thus, Chairman Blacker and Selectman Drobinski signed the final site plan, dated March 6, 1998, for Site Plan 97-337 for *Northwood at Sudbury*. Selectman Clark, who had not voted in favor of the site plan, did not sign the final plan.

Accept D.A.R.E. Donation

It was on motion unanimously

VOTED: To accept a \$1,000 donation from the Sudbury Rotary Club for deposit into the D.A.R.E. Program Account to be expended under the direction of the Police Chief, and to send a letter of appreciation and thanks on behalf of the Town.

Approval of Sign for Friends of the Library Book Sale

Upon request, it was on motion unanimously

VOTED: To approve a temporary sign on the Town Common advertising a book sale on April 5, 1998, by the Friends of the Library.

Approval of Discretionary Fund Expenditure

Upon request from Social Worker Martha E. Lynn for a \$250 scholarship for a needy minor to attend a summer program at Drumlin Farm, it was on motion, duly seconded, unanimously

VOTED: To approve the expenditure of \$250 from the Discretionary fund for the above-stated purpose.

Adjournment

There being no further business to come before the Board, the meeting adjourned at 9:35 p.m.

Attest: _____
Steven Ledoux
Town Manager-Clerk