

IN BOARD OF SELECTMEN  
THURSDAY, DECEMBER 10, 1998

Present: Chairman John C. Drobinski, Maryann K. Clark, and Kirsten D. Roopenian, Selectmen.

The statutory requirement for notice having been met, the meeting convened at 7:35 p.m. at the Senior Center, 40 Fairbank Road.

**Northwood at Sudbury**

Present: William F. Jeffery, Jr.

The Board acknowledged receipt of a letter, dated December 3, 1998, from Peter Conant, Conant-Welch Group, requesting the Selectmen assent to the de-registration of a portion of the Northwood at Sudbury property from the Land Court. Also received was a letter, dated December 7, 1998, from Paul L. Kenny, Town Counsel, advising the de-registration which would allow for greater ease in transferring easements and rights-of-ways, etc.

Mr. William Jeffery, Jr. stated he was representing Peter Conant of the Conant-Welch Group in the matter of de-registering the final piece of land from Land Court. He stated this was necessary to make the process of recording current and subsequent sales run smoothly, and further stated it does not affect the Town's interest or enforceability of permit provisions in any way.

It was on motion unanimously

VOTED: To assent to the de-registration from Land Court of the final portion of Northwood at Sudbury property, and to direct Town Counsel to sign the appropriate documents.

**99 Restaurant – Management Change**

The Board acknowledged receipt of a Petition for License Transaction, dated October 29, 1998, requesting Julianne Wells, 196 Great Road, Stow, MA, be designated as the new Manager for the 99 Restaurant, 694-698 Boston Post Road. The Certificate of Vote, Licensee Personal Information Sheet, and Ms. Wells' birth certificate accompanied the Petition.

It was on motion unanimously

VOTED: To accept Julianne Wells as the new manager of the 99 Restaurant, 694-698 Boston Post Road.

**Minutes**

It was on motion unanimously

VOTED: To approve the executive session minutes of November 23, 1998, as drafted, and the regular session minutes of November 23, 1998, with the following correction: Page 6, Pay Per Throw, second paragraph should read: *"Selectman Clark asked Town Manager Ledoux if a memo or list of tasks could be prepared for the members of this committee, as well as all other committees, and she expressed concern for important things often overlooked, such as accurate meeting minutes, attendance and quorum records, and file maintenance."*

**Council on Aging Donations**

It was on motion unanimously

VOTED: To accept \$105.67 in miscellaneous donations to be deposited into the Council on Aging Van Donation Account; and to authorize the Council on Aging to expend same for purpose of operating and maintaining the Council on Aging vans.

**S.A.F.E Grant – Department of Safety**

It was on motion unanimously

VOTED: To accept a S.A.F.E. grant award, in the amount of \$4,634.62, from the Department of Public Safety, to be used to educate students about fire safety, and to authorize the Fire Chief to expend these funds as designated by the grant.

**Massachusetts Community Policing Grant Program**

It was on motion unanimously

VOTED: To accept a grant in the amount of \$25,000 from the Massachusetts Community Policing Grant Program, to be used for technology improvements; and to authorize the Police Chief to expend the funds as designated by the grant.

**Federal COPS FAST Program**

It was on motion unanimously

VOTED: To accept a grant in the amount of \$75,000, received over the past three years, from the Federal COPS FAST Program; and to authorize the Police Chief to expend the funds as designated by the grant.

**Massachusetts Executive Office of Public Safety – D.A.R.E.**

It was on motion unanimously

VOTED: To accept a grant in the amount of \$13,000 from the Massachusetts Executive Office of Public Safety to be deposited into the D.A.R.E. Donation Account; and to authorize the Police Chief to expend same for the D.A.R.E. program.

**E. B. Hosmer Memorial Fund**

It was on motion unanimously

VOTED: To authorize expenditure of \$970.83 from the Edwin Barrett Hosmer Memorial Fund to pay for coverlets, cup plate holders and printing expenses.

**Mark Bobrowski – Special Employee**

It was on motion unanimously

VOTED: To classify Bylaw codification consultant Mark Bobrowski as a Special Employee of the Town of Sudbury, in accordance with Chapter 268A of the General Laws, on recommendation of Town Counsel.

**Assent of Taking Authority – Richard and Mazie Stitt, 29 Stone Root Lane**

The Board was in receipt of the Complaint for Approval of Plan filed by Richard P. Stitt and Mazie A. Stitt, 29 Stone Root Lane, dated November 6, 1998; letter, dated November 10, 1998, from Robert W. Gardner, Jr., Attorney, regarding this matter; and letter, dated December 7, 1998, from Town Counsel Paul L. Kenny, advising the Board to assent to the complaint, as it affects only the public ways.

Town Manager Ledoux stated this action will correct some errors made in the recording of the deed, and referred to it as a housekeeping matter. Selectman Clark stated Land Court Engineers are quite precise, and stated further the streets listed in the documents are now public ways, and should be reflected that way.

It was on motion unanimously

VOTED: To assent to the Complaint for Approval of Plan, dated November 6, 1998, of Richard P. Stitt and Mazie A. Stitt, 29 Stone Root Lane, Land Court Case No. 7334.

**Land Management Reports – Park and Recreation Commission**

The Board was in receipt of Land Use Reports, dated December 1, 1998, for the Haskell Recreation Area, Heritage Park and Feeley Park. Selectman Roopenian commented she had wondered about future funding for the skate park (Haskell) and since learned that users are being charged a fee.

Chairman Drobinski wanted to know if the Conservation Commission issues had been resolved. Town Manager Ledoux stated he had not heard of any updates.

It was on motion unanimously

VOTED: To accept the reports, dated December 1, 1998, from the Park & Recreation Commission, regarding Haskell Recreation Area, Heritage Park and Feeley Park.

**UP98-13 – Sunset Path**

The Board was in receipt of a petition from Richard Schifone, Boston Edison Company, and Kathryn Craig, New England Telephone & Telegraph Company, dated November 27, 1998, requesting ownership of 8 poles on Sunset Path be changed from solely owned by Boston Edison Company to jointly owned by Edison and New England Telephone & Telegraph Company. Petition was accompanied by Boston Edison Company Plan entitled “Plan of SUNSET PATH, SUDBURY, showing EXISTING POLE LOCATIONS”, dated October 13, 1998. A verbal report from the Wiring Inspector verified the pole placement, and indicated use of these poles by telephone would improve placement of telephone wires.

It was on motion unanimously

VOTED: To approve Utility Petition 98-13 of Boston Edison Company and New England Telephone & Telegraph Company, changing ownership of poles 289/1, 289/2, 289/3, 289/4, 289/5, 289/6, 289/7, and 289/8, as shown on Boston Edison Company Plan entitled “Plan of SUNSET PATH, SUDBURY, showing

EXISTING POLE LOCATIONS", dated October 13, 1998, to jointly owned by Boston Edison Company and New England Telephone & Telegraph Company.

**UP98-14 – Silver Hill Road**

The Board was in receipt of a petition from Richard Schifone, Boston Edison Company, and Kathryn Craig, New England Telephone & Telegraph Company, dated November 27, 1998, requesting ownership of 4 poles on Silver Hill Road be changed from solely owned by Boston Edison Company to jointly owned by Edison and New England Telephone & Telegraph Company. Petition was accompanied by Boston Edison Company Plan entitled "Plan of SILVER HILL ROAD, SUDBURY, showing EXISTING POLE LOCATIONS," dated October 13, 1998. A verbal report from the Wiring Inspector verified the pole placement and indicated use of these poles by telephone would improve placement of telephone wires.

It was on motion unanimously

VOTED: To approve Utility Petition 98-14 of Boston Edison Company and New England Telephone & Telegraph Company, changing ownership of poles 288/1, 288/2, 288/3, and 288/4 as shown on Boston Edison Company Plan entitled "Plan of SILVER HILL ROAD, SUDBURY, showing EXISTING POLE LOCATIONS," dated October 13, 1998, to jointly owned by Boston Edison Company and New England Telephone & Telegraph Company.

**Boston Edison Problem Pole – 109 Dakin Road**

The Board was in receipt of a letter, dated November 16, 1998, from James Halverson, 109 Dakin Road, stating a pole in front of the Halverson house is now leaning, presenting safety issues, and requesting it be moved across the street, in front of the house it services. A verbal report on December 8, 1998, from Christine Cosby, Boston Edison Company, stated the pole is not isolated, but last in a line going up Dakin Road. Ms. Cosby will continue to look into the matter with Edison engineers.

Town Manager Ledoux stated the letter was faxed to Christine Cosby of Boston Edison as soon as it was received. Ms. Cosby had first indicated moving the pole at this time would be expensive. Mr. Ledoux stated that since then low hanging wires were caught by a vehicle, pulling wires down. Ms. Cosby will continue to work on the matter and will set up a meeting with various people. Mr. Ledoux recommended tabling the matter until the parties can assess the situation.

Selectman Roopenian inquired about the wires that had been pulled down and whether they were anchored in any way. Mr. Ledoux stated the wires were put back up temporarily but could not say how low they were across the road.

Chairman Drobinski suggested the Wiring Inspector make sure there are no safety issues and advised tabling the matter until more information was presented. Selectman Roopenian wondered why the service could not be located underground as it recently was for the LEAP School. Mr. Ledoux suggested the Board might take that position if other attempts at resolution are unsuccessful. Mr. Drobinski stated it would be helpful to have a map of connecting poles in the area.

It was on motion unanimously

VOTED: To table this matter until more information is available, and to direct the Town Manager to have the Wiring Inspector look into safety issues at the site.

**Public Hearing: Dog Complaint – Joseph A. Klein and Town v. John S. Frene**

Present: Paul L. Kenny, Town Counsel; Paula Adelson, Assistant Dog Officer; Joseph A. Klein, 45 Stone Road; Kathleen A. Klein, 45 Stone Road; Cynthia C. Frene, 31 Horse Pond Road; Courtney Duncan, 31 Horse Pond Road; Joshua M. Fox, Esq., Rollins, Rollins & Fox, representing dog owners; Officer Neil E. McGilvray, Sudbury Police Department; Detective John F. Harris, Sudbury Police Department; Hermine M. Verhey, 69 Stone Road; Aruna D. Pundit, 62 Ridge Hill Road; Doug Zanzot.

The Board acknowledged receipt of the following:

1. Complaint, dated November 30, 1998, by Joseph A. Klein, 45 Stone Road, against two dogs owned by J. S. Frene, 31 Horse Pond Road, regarding an unprovoked attack on November 25, 1998.
2. Complaint, dated December 2, 1998, by Betsy DeWallace, Dog Officer, against two dogs owned by J. S. Frene, 31 Horse Pond Road, also concerning the attack on November 25, 1998.
3. Sudbury Police Department Statement, dated November 25, 1998, by D. M. [Donna] Cutler, Mail Carrier, USPS, witness, stating she was able to back the dogs away from Mr. Klein using two packages until police cruiser arrived.
4. Sudbury Police Department Statement, dated November 25, 1998, by Suzanne Foley, witness, stating she came upon the scene and assisted in taking control of the dogs.
5. Sudbury Police Department Statement, dated November 27, 1998, by Joseph A. Klein, victim, stating details of the attack on November 25, 1998.
6. Sudbury Police Department Incident Report, dated Nov. 30, 1998, by Officer Neil E. McGilvray, stating his participation in the events before and after the dog attack on November 25, 1998.
7. Sudbury Police Department Incident Report, dated Nov. 27, 1998, by Detective John F. Harris, stating the details of an investigation into the dog attack on November 25, 1998.
8. Communication, dated November 28, 1998, from Sudbury Police Officer Neil E. McGilvray to Lt. Ronald Nix, informing him of the events of Nov. 25, 1998, and requesting Donna Cutler and Suzanne Foley be recognized for their assistance in this matter.
9. Assent, dated December 4, 1998, from Cindy Frene, 31 Horse Pond Road, stating she will keep the two dogs in a kennel until after the Selectmen hearing on December 10, 1998.
10. Copies of dog licenses, Nos. 1671 and 1672, for dogs known as Cody and Reba, respectively, listing John S. Frene, 31 Horse Pond Road, as owner.

At 8:00 p.m. Chairman Drobinski convened the public hearing. He declared it to be an official hearing and swore in all persons intending to testify.

First to testify was Assistant Dog Officer Paula Adelson, representing Dog Officer Betsy DeWallace. Ms. Adelson stated she did not witness the incident and heard about it from Betsy DeWallace, Dog Officer. Ms. Adelson stated: “*Under Ms. DeWallace’s direction, I went to the Frene home and put quarantine on*

*both of the dogs for ten days. At the end of those ten days, I subsequently went to the Palmer Kennel in Acton, saw the two dogs myself, and removed the quarantine." Referring to the day of November 25, she said, "I was actually called that day by a friend who saw two dogs out and left a message on my answering machine that the police were in the vicinity. I was told that the dogs went from Horse Pond Road to Stone Road and that as Mr. Klein was walking, they came out and attacked him. The [Dog] Officer did not witness the attack but was called by the police to come down right afterward. She was asked to take the dogs and told the officer that by law we cannot take the dogs. They have to be quarantined on the property, which is what subsequently happened."*

Chairman Drobinski asked if the investigating officer was present. Detective John Harris stated it would be most beneficial to hear Officer Neil McGilvray's report first, and then follow with his.

Officer Neil E. McGilvray reported: *"On November 25<sup>th</sup>, at approximately 2:21 p.m., I was dispatched to Horse Pond Road and Route 20 to a report of dogs running in the area and barking at pedestrians. Upon my arrival, I patrolled Horse Pond Road looking for the activity with no avail. I radioed dispatch of my findings and informed that I would be out of my police cruiser at 31 Horse Pond. This is an address where I have run into two dogs at that address before, and I wanted to see if they were home and see if the dogs left the residence.*

*As I exited my cruiser and knocked on the front door, I observed that the home was quiet (no sounds of dogs inside) and no one came to the front door. I walked to the side yard of the home and called out to see whether the dogs were in the fenced rear yard, with no response. Officer Jeff Gogan of the Sudbury Police Department pulled into the driveway and I informed him of my findings at this time. Officer Gogan and I left 31 Horse Pond to continue our check of the area.*

*As I pulled out of the driveway I observed the residents across the street at 28 Horse Pond leaving their home. I stopped to inquire if they had observed any dogs running in the area. It appeared that the two dogs at 31 Horse Pond had been observed by them barking in the back yard approximately a half an hour earlier. I left there and began patrolling the neighborhood south of Bent Road and north of Route 20 and just west of Horse Pond Road.*

*At the end of Robbins Road I observed two landscapers working at the rear entrance to the Sudbury Pines Nursing Home. I stopped my cruiser and inquired if they had observed the dogs running free in the area. It appeared that approximately 15 minutes prior they had observed two dogs cross Robbins Road (one landscaper pointed to the west) and headed toward the woods of 31 Robbins Road which was across the street. I drove west on Howell Road which is a road perpendicular to Robbins, turning north on Stone Road where I observed a woman (later identified as Suzanne Foley of 45 Bent Road) was out pushing a baby stroller and she had another child on a bicycle next to her. I asked her if they had observed two dogs in the area and they answered 'no'.*

*At this point I drove down Douglas Circle which is a cul-de-sac where I met two members of the Town Surveying Crew and inquired about the dogs. They stated that the dogs in question were just in the area and headed east through the woods back over toward Stone Road. In the distance I could hear dogs barking east toward Stone Road. As I made my way back out of Douglas I could hear the barking getting louder to the north and I followed the sounds onto Stone Road traveling north. As I drove around the corner of Stone Road in the area of #45 I observed a mail truck parked on the west shoulder of Stone Road in front of house #53.*

*I observed two dogs I recognized as belonging to the owners of 31 Horse Pond Road attacking a man who was lying on his back (later made known to me as Joseph Klein of 45 Stone Road). I observed a female mail carrier (later known to me as Donna Cutler of 92 Boylston Road, Berlin) standing over the man trying to fend off the attack by swinging and making jousting movements at the dogs with packages she had in both hands. I exited my cruiser and ran toward Mr. Klein and the animals. As I approached, I began yelling at the dogs to 'get out of here', 'get back'. At this point the smaller of the two dogs turned toward me and crouched, barked, growled and bared its teeth. I placed my hand on my service weapon and commanded the dogs once again to 'get back'. As I did, the second dog (larger in size) moved away from Mr. Klein and in my direction. At this point the smaller dog began biting the larger dog to the point they both moved away and disregarded our presence. Both dogs ran south into the yard of 45 Stone Road.*

*I knelt next to Mr. Klein and observed him to be conscious, however, suffering from multiple bite wounds and lacerations. I radioed dispatch that there was a man down from a dog attack in front of 53 Stone Road. I requested back-up and A-6, which is the ambulance, to respond. I told Mr. Klein to stay down on the ground. Mrs. Cutler placed a roll of plastic bags she retrieved from her mail van under his head and attempted to make him feel more comfortable. I observed the two dogs move back out into the street where Mrs. Foley was walking toward me. Mrs. Foley walked over to the dogs, and grabbed them both by the collar. She called to me and asked me what I wanted her to do with the dogs. Seeing that the animals were responding well to Mrs. Foley, I requested her to bring them toward my cruiser. I was able to secure the two dogs in the rear caged area of my cruiser without further incident.*

*Officer Gogan arrived on the scene and I asked him to gather statements and witnesses while I treated Mr. Klein for his injuries. I treated Mr. Klein (who appeared conscious and alert) for lacerations to the scalp and puncture wounds to both legs. I did this by placing direct pressure to the wounds using gauze pads retrieved from the First Aid bag in Officer Gogan's cruiser. Sudbury Fire Department arrived on scene and took over treatment, finding Mr. Klein had puncture wounds in both arms. I asked Mrs. Cutler, the mail carrier, if she was all right and if she would stay to write a statement of the events that transpired. She agreed after requesting this officer to notify the Post Office that she was being detained from continuing her route.*

*Mr. Klein was able to give this officer a verbal statement before being transported to Emerson Hospital via ambulance. Mr. Klein stated that he had just started his daily walk from 45 Stone Road and did not notice the dogs prior to the incident. As Mr. Klein left his property heading north, the dogs approached him, jumped on him, knocking him down and began biting him. Mr. Klein stated that he had done nothing to provoke the attack and had never seen the dogs before in his life. Mr. Klein stated that he was overwhelmed by the attack and if not for Mrs. Cutler's actions, he would have been unable to defend himself from both dogs.*

*Officer Gogan moved my cruiser to the side of the road with the two dogs still inside. However, due to the aggressive barking and movements of the animals, it was determined to wait for the dog officer to approach the cruiser. Sudbury Dispatch informed us that the Dog Officer, Betsy DeWallace, was in route to our location along with one of the animals' owners.*

*While waiting for their arrival, Officer Gogan and I spoke with Ms. Verhey of 69 Stone Road who stated earlier the dogs had been in her yard and had aggressively charged at her, scaring her and making her run onto her porch. Officer Gogan and I spoke with Mrs. Barbara Wilson of 10 Wilshire Street who stated that the dogs had been in her yard earlier and her husband had tried to look at the dogs' collars for ID with no avail.*

*Betsy DeWallace arrived on scene and was briefed of the incident. She approached the cruiser only to back away when the dogs became agitated, barking, jumping, and butting heads against the side and rear windows. Once again I observed the small dog barking and opening its mouth as to bite the larger dog in the neck and face. It was determined to wait for the owners to arrive and take possession of the dogs. At 4:15 p.m. Ms. Courtney Duncan of 31 Horse Pond Road arrived and was informed of the events that transpired. Mrs. DeWallace instructed Ms. Duncan that the animals needed to be quarantined for ten days for rabies at Ms. Duncan's residence or preferably the Sudbury Animal Hospital.*

*Before releasing the animals to Ms. Duncan, I asked her if she felt comfortable about handling the dogs after this incident, to which she stated 'yes'. Ms. Duncan pulled her Ford utility vehicle next to my cruiser and transferred the animals without further incident."*

Detective John F. Harris stated: *"On 11-27-98 I was asked to do a follow-up investigation into this attack on Mr. Klein. I spoke to various people regarding this incident, a number of which Officer McGilvray already spoke to. First of all, I spoke to Mr. Klein, who is present here this evening, and he gave me a statement and a written statement, exactly similar to what Officer McGilvray has already stated. I will not go into that again, in the interests of saving some time.*

*I also spoke to Mrs. Verhey of 69 Stone Road. She stated the same thing to me, that on Wednesday she was attacked by the two dogs in question. She stated she was in the yard picking up wood when she heard the two dogs. She stated that she looked up and the dogs rushed at her. She stated that she threw the sticks she was picking up at the dogs which gave her time to escape to her porch. She stated to me, and I quote, 'The dogs acted in a very threatening and menacing manner.'*

*I also spoke to the Wilson family. They both told me the same thing that Officer McGilvray had said, that they had tried to look at the tags of the dogs to see whom they belonged to, that because of their size and their aggressive actions in the neighborhood, they should not be out running free and wanted to call the Dog Officer. They were unsuccessful in looking at the tags. The dogs would not let them do so.*

*During the course of this investigation, I became aware that this was not the first incident that these dogs had been involved in, attacking people. I spoke to a woman by the name of Amy Lee of Boston Post Road here in Sudbury. Ms. Lee stated that she was traveling down Horse Pond Road in what she believed to be the early spring of 1998 in the area of the Massachusetts State Police Crime Lab when she observed the same two dogs that had attacked Mr. Klein attacking a jogger. Ms. Lee stated to me that the dogs had the jogger pinned up against the fence where she arrived and found him. Ms. Lee was in the course of business, she's a bus driver, she was driving a bus up Horse Pond Road for the Sudbury School System when she observed the attack. Ms. Lee stated that she never actually observed the dogs bite the man, but they had him pinned against the fence, and they were acting in a very aggressive barking and lunging manner. Ms. Lee then told me that Jack from the Sudbury Animal Hospital came along and assisted her in rescuing the jogger.*

*I then went to the Sudbury Animal Hospital, located at 662 Boston Post Road, and spoke to Mr. Jack Sinnigen, veterinarian and co-owner of the Sudbury Animal Hospital. Mr. Sinnigen stated to me that he was aware of the recent incident involving Mr. Klein and when I asked him about the earlier incident in the spring of 1998, or at least that was the time frame we thought the time was, he said that he was. He said he remembered that on that day he was traveling up Horse Pond Road. He observed the two dogs attacking the jogger as well. Mr. Sinnigen said that he stopped and he assisted Ms. Lee in containing the dogs so that they would do no further harm to the jogger. I asked Mr. Sinnigen if he knew who the dogs were, and he said in fact he did. He said their names were Reba and Cody and that they were owned by the Frene family. I asked him how he knew this, and he said that he was the veterinarian that cares for these dogs so he was aware of*



*who owned the dogs and who the dogs were, because he was the one who actually took care of those dogs. I asked him if he knew what happened to the dogs after the latest incident, and he told me that the Frene family was trying to place the dogs for the weekend and he was unable to take care of them at that point in time.*

*I then went on to speak to Donna Cutler, the woman from the Post Office who was the one who came along and saved the day, so to speak, on the day in question. She told me that on that day she was doing her route, delivering mail on Hickory Road and was turning onto Stone Road. She said when she did this, she observed in the distance two dogs jumping around and on top of an object she could not identify from that distance. She then stated that when she got to approximately 63 Stone Road, she observed that it was a person on the ground, with the dogs on top of him, attacking him. Ms. Cutler then stated she immediately drove directly to the person's side, and observed Mr. Klein, who looked up and asked her for help. Donna Cutler stated to me that she observed Mr. Klein at this time to be bloody in the area of his head. Ms. Cutler then stated she exited the vehicle and yelled at the dogs to "get away". She stated that at this time both the dogs were on top of Klein, one at his feet and one at his head. Ms. Cutler stated that the dogs responded to her by growling at her. Ms. Cutler stated at this point she took some packages out of her mail vehicle and began to shove the packages at the dogs in an effort to drive them off Mr. Klein. Ms. Cutler stated she was eventually able to get the two dogs off of Mr. Klein, using the same packages which then she took and created a wall between Mr. Klein and herself and the dogs. Ms. Cutler stated at this point the police arrived and the officer was assisted by the other woman who then corralled the dogs, which you have already heard from Officer McGilvray.*

*Finally, I spoke on 12-2-98 to a Mr. Russell Ellsworth of 6 Curtis Road, Hopkinton, Mass. Mr. Ellsworth identified himself to me as the victim of the previous attack by the two dogs while he was jogging on Horse Pond Road. Mr. Ellsworth told me that he was an employee at Raytheon, and he goes out for a daily jog down Horse Pond Road. Mr. Ellsworth stated to me that the two dogs that attacked him were the two dogs that live in the first house on the left on Horse Pond Road, which we now know to be the Frene residence. Mr. Ellsworth stated to me that on the day of the attack he was jogging down Horse Pond Road as he does every day on his lunch break. He stated he observed the dogs loose up ahead of him so he left the sidewalk, crossed out into the street, and across the street to avoid the dogs, as he was previously warned about these two dogs by other Raytheon joggers. Mr. Ellsworth went on to state that the two dogs chased him on this day across the roadway, jumped on him, knocking him to the ground, and in the process, into a wire fence which cut his head. Mr. Ellsworth stated that he was able to get back up but was pinned to the fence by the aggressive nature of the dogs. Mr. Ellsworth stated that a woman stopped to help him as did the veterinarian who was able to control the dogs. Mr. Ellsworth told me he was in a great deal of fear as the dogs were very aggressive. He also then went on to tell me he did report this to the Security at Raytheon as he needed to go to Framingham Union Hospital for treatment of the wound on his head and get a tetanus shot. Mr. Ellsworth has given me a statement which I believe all of you have in your packet about that incident.*

*Just today, I was able to find the police log. That attack took place actually on 9-18-97. It was not in the spring as was previously thought by the witnesses. But I was able to locate a note in the Sudbury Police log which said that on 9-18-97 Joe, who was the dispatcher in Sudbury, took this call reporting two dogs causing problems at the State Police Crime Lab. The officer on duty happened to be Officer McGilvray as well, and the Dog Officer was notified of the incident. I did bring copies of those two forms."*

Selectman Roopenian stated she did not have a copy of the Ellsworth report. Detective Harris stated he had one copy, and if there was access to a copy machine, he would make additional copies. He asked if

the Board had copies of the statements of Mr. Klein and all the other witnesses. He stated he had those in typewritten form if those would be helpful.

Chairman Drobinski asked the Board if they wished to ask questions as the hearing went along or wait until all testimony is presented. Selectman Clark stated she wanted them to produce the facts first.

Chairman Drobinski asked Mr. Joseph Klein if he wished to make a statement, and inquired how Mr. Klein was feeling. Mr. Klein stated he was finally getting over it. He continued to state, *"This is the jacket I was wearing (holds up torn jacket). You can see that the dogs tore it. This was an attached hood that they ripped off. Let me begin by saying I have owned dogs, and I like dogs. I have never seriously been bitten before by any dog. I have been nipped by my own dogs on occasion when I try to take food out of their mouths, but I never really have been bitten. Uh, on that date I started out for my daily walk, walk about 50 yards up Stone Road and that area of my property it is heavily wooded and as I reached the property line, these two dogs came out from the woods behind me, and without any warning, without any growling or any barking, just jumped on me and knocked me down. Now, one of these dogs weighs about 115 pounds. These are not these little terriers or something. One of them is a very big dog. And I started to fight them off. Possibly one of them I could have fought off, but I couldn't do two of them. I was there on the ground, yelling for help for about three or four minutes, until the letter carrier came along. And fortunately, she was brave enough and, I might add, foolish enough to take on the dogs. And she drove them off. By then the police had arrived, the fire trucks had arrived, and I was taken to the hospital. I suffered I think twelve deep bites, some of them are still oozing, and this is over two weeks, and I had never seen the dogs before. I tried every dog command I could think of, none of which they obeyed, and subsequently, after the news got around, neighbors contacted me and said they had observed the dogs in the neighborhood, acting in a threatening manner. And I drew the conclusion that these two dogs were just not out walking, they were out 'hunting', if you understand what I mean. They were looking for somebody to bite, and as a result, I think, in my opinion, the two dogs ought to be separated. Very often, you get a case of a dog by itself being well behaved, once you put them in league with another dog, they become asocial. And I think that's probably what happened to these two dogs. By themselves they're probably all right. You put them together and they go hunting. And, as I said, I forget how many bites, either twelve or fourteen, and they're finally beginning to heal. Thank you."*

Chairman Drobinski asked if anyone else would like to speak. Mr. Doug Zanzot stated he was a friend of Russell Ellsworth's and that he had described the attack to him. He stated Mr. Ellsworth told him *the only way he was able to avoid injury was because he knew from his experience with dogs how to react. In fact, his (Mr. Ellsworth's) dog had attacked a person and was put down because it had bitten someone. He stood up by the fence and kept his arms at his sides and one dog was on either side of him, within inches of his hands. And it did take two people, Ms. Lee and Jack Sinnigen, to control the dogs. Russell couldn't do anything. He was helpless.*

Chairman Drobinski asked if anyone else wished to speak before the Frenes were allowed their opportunity to respond. Hermine M. Verhey, 69 Stone Road, stated, *"the dogs were in my yard just before they went to the Kleins. I was just out in the yard, getting sticks, and they really terrified me. I hadn't seen the dogs. I was walking in my yard and they came up. They were really beasts. I let out a loud scream and I threw the sticks so they would go after the sticks so I could get in. But when I drove down the road a few minutes later to go to the store, and saw the fire and police and I saw Joe on the ground, I knew it was the dogs right away, what had happened. It's a very scary thing. I walk also, and I think we need to be able to walk on the streets of our Town. And I also take care of a two-year-old, and if I had been out there walking a two-year-old, I would have just been terrified. I don't think they're safe dogs, and I do think it is that there are two of them. I think they are extremely menacing and scary."*

Aruna D. Pundit, owner, Aruna's Place (preschool/day care center), 8 Stone Road, stated the time of the incident is the time when the parents come into the school to walk the children back home. She stated that is the time of day when the children are coming in and out, as well as playing. She stated further there are many children in the area, and there is also a day care located at the Sudbury Pines Nursing Home on Boston Post Road.

Chairman Drobinski stated the Board would hear from both sides before answering questions. Joshua M. Fox, Esq., representing the Frene family, owners of the dogs, identified himself as belonging to the law firm of Rollins, Rollins & Fox, located at 220 Boylston Street in Chestnut Hill, Mass. He stated, *"I am here together this evening with my client, Ms. Cindy Frene, and her daughter, Courtney Duncan. They reside at 31 Horse Pond Road right here in Sudbury. We are here this evening, as you know, as an incident occurred on November 25<sup>th</sup> of this year, regarding their two dogs, Cody and Reba, and Mr. Joseph Klein. I would like to begin by apologizing on behalf of my clients, to the Town, to the police involved, to the Dog Officer involved, and, most importantly, to Mr. Klein. The incident should not have occurred. On behalf of my clients, I would also like to thank the postal worker, Donna Cutler, for assisting Mr. Klein and also Ms. Suzanne Foley, for taking the dogs by the collar and leading them to the police vehicle in that incident.*

*Just to familiarize you with the facts again, on November 25<sup>th</sup> of this year, the Frenes' two dogs, Cody and Reba, escaped underneath the fence at their home at 31 Horse Pond Road. After their escape, as you have heard, they roamed the Town for a period of time, during which they assaulted Mr. Klein. As he stated, they assaulted him for several minutes, biting him and scratching him over a dozen times, producing cuts on his body. Fortunately, though, none of these cuts were deep enough to require stitches.*

*The first person to witness the incident was Ms. Donna Cutler, a mail carrier. She witnessed the incident and pulled up and stepped out of her mail carrier vehicle. She screamed at the dogs and they immediately backed off. Next to arrive at the scene was Officer McGilvray, and as he stated this evening and in his report of November 28, 1998, 'I exited my patrol car at their location and within seconds was able to back the dogs away from Mr. Klein in order to cease the attack. At the same time, Ms. Suzanne Foley, who was walking toward my location, took physical control of the two dogs and assisted me in securing them in the rear of patrol car #6.' Suzanne Foley stated in her report this week that she took the dogs by the collar and guided them to the police car. They did not growl.*

*In the November 27, 1998 narrative report of Detective John F. Harris, as he told you this evening, he was aware of an incident that occurred with a jogger on prior occasion. However, as you heard this evening, the dogs did not bite Mr. Ellsworth, the jogger. Although the incident happened, the witnesses, Ms. Lee, said she did not see the jogger get bit by Cody and Reba, and Dr. John Sinnigen, a veterinarian here in Sudbury, said he witnessed the incident and said the jogger did not get bit by the dogs. The Frene family was never notified of this incident, and could not rectify the situation because of it.*

*Since the incident with Mr. Klein, and showing of good faith, the Frenes have agreed to keep Cody and Reba in a kennel for the past fifteen days so the Town would not have to seek a restraining order in court. I have a copy of that agreement for you. Again, the Frenes are very, very sorry for the trouble that they have caused the Town, and the people of Sudbury, and especially Mr. Klein. We understand the community must be protected from Cody and Reba. However, please note that after the assault when Mr. Klein was filling out his report for the Town and Selectmen, he underlined the word 'restrain' when referring to what should happen to the dogs, not destroy them. In addition, he was quoted as saying in The Tab, "I'm not going to advocate that the dogs be put away because I'm a dog lover, but they can't be let to run loose." The Frene Family agrees with that sentiment. The dogs should not be allowed to run loose, but they were unaware of the incident with the jogger, Mr. Ellsworth, and this incident, just occurred.*

*Several people have written letters in favor of Cody and Reba. I would like to read you excerpts of those letters." At this time, Chairman Drobinski asked if the Board could have copies of those letters. Mr. Fox agreed and continued, "The first letter is from Dr. Jack Sinnigen from Sudbury Animal Hospital. He writes, 'Cody Frene, a three-year-old neutered male Rhodesian Ridgeback, has been a patient of ours since December of 1995. Since that time he has been at our hospital a total of 28 times for various reasons. He isn't violent. He has never shown any signs of aggression towards myself, staff members, or other people. Other animals, excuse me. Reba, a two-year-old American Staffordshire Terrier, has been our patient since 11-96. She has been at our hospital 12 times during this period. In this environment, Reba has never shown any signs of aggression towards myself, staff members, or other animals. Neither one of these dogs, is by nature, an aggressive animal. Sincerely, Jack Sinnigen.'*

*The next letter is from a woman who knows Cody and Reba quite well. 'I would like my input to get stated for the record. I am a former part-time employee of Cindy's and was in frequent contact with both of these dogs. I worked on Saturday and walked Cody and Reba at the office. Additionally, I was also left alone with these dogs. I would offer to walk them so that Cindy could attend to business outside of the office. Not once, during any of these occasions, did I feel afraid of Cody and/or Reba, nor did I ever feel that either of these good-natured pets were anything less than totally obedient. Both Cody and Reba are much-loved, and extremely affectionate pets. They are also well-mannered animals that happen to be wonderful examples of their respective breeds. It would be a great error in judgment to have any harm to come to either of them. I appreciate the opportunity to submit this statement. Sincerely, Rebecca Siegal.'*

*The last letter is from another woman who knows Cody and Reba quite well. She wrote, 'During my employment with Cindy, her dogs Cody and Reba often spent time at our office. They were always friendly and well behaved. I read an article in The Middlesex News that said these dogs were vicious and trained as attack dogs. In my experience, that could not be farther from the truth. The office was often visited by people attending meetings, mail and package delivery personnel, and other service providers. Cody and Reba always reacted to visitors just as you would expect any normal, well-trained housepet to react. The dogs were often walked by myself at the office, and they were always obedient. I am deeply concerned about the dogs' well being. It would be a shame to see any harm come to such well-loved family pets. Sincerely, Michele Brooks.'*

*As you can see, Cody and Reba are well-loved family pets. The Frenes would do just about anything to save Cody and Reba from being put to death. They have a large, fenced-in property at 31 Horse Pond Road, but on the day in question, the dogs were able to escape underneath the fence. Basically, it is a chain link fence but flexible. I had to look at it myself. The dogs were able to shimmy their way underneath. Dig a little bit, but mostly just push the fence back, and they got out underneath the fence. In addition, as far as their electric fence goes, one of the dogs' collars was being replaced, and the voltage was set too low for the other dog.*

*The Frenes have a simple solution to this problem to combat these problems. The Frenes propose a galvanized, six-foot-high chain link fence around the back yard of their property. At the bottom of this chain link fence so that the fence would not be flexible and the dogs will not be able to push their way out or dig will be a metal pipe around the entire bottom of the fence. As a further precaution so that the dogs cannot dig underneath the fence, they propose to attach a four-foot apron, four-foot wide apron which is a metal buffer around the chain link fence. This will be an impenetrable metal form and if the dogs attempt to dig within four feet of the fence, their paws will be torn up. It will be impenetrable. In addition, the Frenes will insure that the electric fence will be placed in a manner so that if the dogs even go near the physical chain link fence, they will receive a shock. They will turn the voltage to the highest setting, and they will insure that every time the dogs go outside, inside the back yard, they will be wearing their collars. Furthermore,*

*they will not take the dogs outside of the back yard unless they are on a leash – one adult per each dog. You can see where the dogs previously escaped under the fence – with the new restraint system, the Frenes assure this Board that Cody and Reba will not be able to escape. Therefore, the Frenes respectfully request that you permit Cody and Reba, who are a part of this family, to move back home with them. Again, the Frenes apologize to everybody, everybody in the Town, the police officers involved, the Dog Officer involved. They just want to bring the dogs home with them, and they promise to protect the community from the dogs. Thank you for your time, and I believe Mrs. Frene would like to say a word or two.”*

*Mrs. Cynthia Frene, 31 Horse Pond Road, stated, “We’re very sorry to have this whole incident happen and apologize to the Town. We typically have tried everything to keep the dogs in and feel this brief series of events that led to the fact that the dogs -- one dog had lost the collar and the other one – we were replacing the collar and the collar that had been sent was not strong enough. And we were in the process of getting them stronger collars to avoid them ever getting out again. But we are certainly willing to do anything to keep the dogs and, uh, because they are part of the family.”*

Chairman Drobinski asked the Board if they had any questions. Selectman Clark stated, *“My first question dealt with the fence. I thought it was an electric fence, and it appears to have been both. You indicate that you didn’t know about the prior jogger having an incident with the dogs where he was pinned up against the fence by them. Your vet is the same vet that I use, Jack Sinnigen, and I’m surprised he would not have called that to your attention since that happened approximately a year plus ago. I know he is very open with me, and I think that is unusual.”*

Mrs. Frene stated, *“It was explained to us by Officer McGilvray. My daughter had picked them up and it was explained that they had barked at a jogger.”* Selectman Clark asked, *“But that was just recently.”* Mrs. Frene responded, *“No, that was at that time. And that was when I put in the electric fence.”* Ms. Courtney Duncan stated, *“It wasn’t that day, or even that week. They had gotten out and they were running around and the officer had called me one morning to say that the dogs were out. He had them. They were just sitting on the lawn at the State Police Crime Lab with him, just sitting there. I went to pick them up, and he then informed me of the incident with the jogger at that time. But, at the time that it happened, we had no idea of it, of it happening.”*

Selectman Clark asked if the dogs had received any type of training. Mrs. Frene responded the dogs had received obedience training. Ms. Clark asked Mr. Fox about Mr. Klein’s wounds, stating her belief that Mr. Klein had received stitches though Mr. Fox had stated otherwise. Mr. Fox stated he was under the impression Mr. Klein had had no stitches. Mrs. Kathleen Klein stated Mr. Klein had received no stitches because he has diabetes. Chairman Drobinski asked Mr. Klein about his wounds. Mr. Klein stated his wounds are still oozing after 15 days, and stated further that he still has bandages all over his right leg.

Selectman Clark stated the Town of Sudbury has a bylaw containing a definition of vicious dogs. She read the bylaw definition as follows: *“vicious dogs are defined as dogs who unprovoked, have attacked or bitten a human being or animal or have a known propensity, tendency or disposition to attack unprovoked, to cause injury, or to endanger the safety of human beings or animals.”* She stated these dogs qualify as vicious dogs.

Selectman Clark related a childhood incident as follows: *“I was about eight or nine years old, and we had two German Shepherds. Each of the children had jobs to do, and this one particular day it was my brother’s job to feed the dogs, to change their water, and so forth. They had a large penned-in area that was maybe half the size of this room. In any event, he went in with two different bowls of food, put them down, and was on his way out, and one of them attacked his hand, ripped his hand apart. It was at that point that*

*everyone knew, came running out to see what happened. My father came over and looked at the situation, and we all went into the house, trying to calm down my brother. He ended up having stitches. My father called us all together – there were five of us – and he said, 'Now I know you're going to cry, and I know you're going to be upset, but I can't have this happen to anyone, especially my family.' And those dogs were brought to the vet and put down that very day without any further discussion. I think the value of life, human life, is something that has to be respected. I know it's going to hurt when you have a family member, you're treating these dogs as family members. Cody is three years old; Reba is two years old. And if you've had them all that time, of course you become attached. However, I think once they've displayed a vicious tendency, of this nature, this magnitude, where it takes a person to place an obstacle, a wall, between the dogs and the victim. I don't know that you can trust these dogs again. It's too risky. It's very risky. And that's all I have to say."*

Mr. Fox stated, *"My clients and I agree that there is a certain value on human life, and some dogs should be put to sleep. But, in your example, your father, the owner of the dogs, decided the fate of the dogs. Please let the Frenes decide the fate of their dogs. They're promising, they're assuring you that the dogs will not be permitted to escape."*

Mr. Klein stated, *"I am not in favor of killing the dogs, but I am very much in favor of separating them. Dogs in a pack, maybe not these two, but other dogs have been well known to be beautifully behaved when by themselves. When they match up with another dog, they become a dog pack. The behavior that I observed on November 25<sup>th</sup> with only those two dogs, was a dog pack. They went around looking for people to attack. I mentioned two; there were two others they made a run at. They made a run at a young boy who lives two houses from me. Fortunately he was on his porch so he was able to escape. I understand when I made my statement at the police station that a police officer had been in the area on a social call, and they made a run at him. Am I right in that? None of that is in your report, and there is no doubt in my mind that those two dogs that day were hunting, not just exercising, they were hunting. As I said, perhaps if you separate them, this behavior would disappear."*

Selectman Roopenian stated she had a couple of questions in the interest of clarity. She asked Paula Adelson if there had been any prior complaints filed with the Dog Officer even if they had not been filed with the Police Department. Ms. Adelson stated that to her knowledge there had not been any. Ms. Roopenian asked the Frenes if the dogs have been out on more occasions than referred to this evening. Mrs. Frene responded they had not. Ms. Roopenian wanted to know how the dogs got out on the day they attacked the jogger, and how did they get back inside the yard. Mrs. Frene answered they just do it and that was why they didn't know they were out. Ms. Duncan stated, *"I've seen her, the little one, on the outside of the fence. I called her, and watched her wiggle under the fence."*

Selectman Roopenian continued, *"So it's fairly common that the little one goes in and out underneath the fence."* Mrs. Frene responded, *"Without the electric collar on. Without the voltage high enough to stop her, we discovered she was getting out."*

Ms. Roopenian continued, *"So, up to a year ago, these dogs were getting out underneath the fence without your knowledge and getting back in."* Mrs. Frene responded, *"We don't know if it was more than that one time. Reba is only two years old now."*

Selectman Roopenian asked, *"So when did you decide that you were going to get the dog collars?"* Mrs. Frene responded, *"We put that in as soon as we found out that they did get out."*

Ms. Roopenian continued, *"And when did you find out that they got out? I thought you just said you didn't know that they were out until the police officer told you. Am I mistaken?"* Mrs. Frene answered, *"No, in 1997 we put the electric fence in."*

Detective Harris stated the Frenes were informed that the dogs were getting out in September of 1997 when Officer McGilvray returned the dogs to their owner. Ms. Duncan stated she picked the dogs up at the State Police Crime Lab that day and stated further that was the first time they knew the dogs were getting out. She noted the dogs had been sitting on the grass with Officer McGilvray.

Selectman Roopenian asked, *"But you have no way of knowing if these dogs have been out before, and I don't know that any neighbors have seen them since they are not coming forward to say it's common knowledge these dogs are getting in and out on their own."*

Detective Harris stated he had spoken with neighbors who indicated to him they had seen the dogs out on occasion, but had not paid much attention to them as the dogs had not bothered them.

Selectman Roopenian asked the Frenes, *"So, what you know is that the dogs have only gotten out on two occasions. One was the day that they attacked the jogger, and the second was the day they attacked Mr. Klein. Is that correct? That's the only time you've observed them?"* They responded, *"Yes, and the time they were in the police officer's care."*

Selectman Roopenian stated she was now confused as the Frenes state they have seen the little one go in and out on her own. *"So, at that point in time, when you saw the little dog getting in and out, you decided to get the dog collar. Is that correct? A year ago?"* Mrs. Frene responded, *"We decided that their collars weren't strong enough, and we ordered the stronger collars, and they hadn't come in. And that was just two days before the attack."*

Ms. Roopenian asked if the dogs wear the collars when they are in the house. Mrs. Frene responded they do not. Ms. Roopenian asked if the dogs run out when someone opens the door. Mrs. Frene responded they do not. Ms. Roopenian asked if the dogs are together all the time, and whether they were obtained at the same time. Mrs. Frene stated that the Ridgeback is a year older than Reba, and Reba is two years old. Mrs. Frene stated the little dog is very often with her at work and stated further people come in and out of the office all the time. Ms. Roopenian asked if the dogs are walked or just let loose in the back yard. Mrs. Frene stated that when the dogs are walked, they are walked on a leash.

Selectman Roopenian asked Officer McGilvray, *"When you first got out of the car and you saw Mr. Klein on the ground, were the dogs at that point backing away because Ms. Cutler was scaring them away or were they just ready to pounce the minute she turned her back?"* Officer McGilvray responded, *"It appeared, when I came up, there was probably fifty to a hundred yards between where they were and where I was coming around the corner. When I first observed them, I couldn't understand what was going on. There was a man on the ground, and a woman over him, and there were two dogs that were bouncing back and forth. It looked like they were barking and charging. And I didn't know if this woman was getting in front of the dogs until I got close enough to see that she was trying to fend off these dogs by taking two packages and jousting at the dogs, and they would back off, and then they would come back again at her. That's when I exited my cruiser, realizing that both people were at stake."*

Selectman Roopenian asked Officer McGilvray about the dogs biting each other and if he could say whether it was as though they were in a dog fight. He responded, *"The dogs seemed to be in kind of a frenzy. I noticed that the whole afternoon I had them in the back of the cruiser. The first time I yelled to 'get back',*

*they both started to move away and they looked over at me. The smaller one noticeably began to growl. When I realized I could be in danger, I turned away, put my hand on my revolver, and the second dog circled around the back of the other dog and began to bark. At this point, the smaller dog slipped back and just went after the larger dog. It appeared how dogs play bite, and grab each other by the neck; it seemed a lot more tense than that. It wasn't unlike that. I've seen that happen before. But these dogs were in a frenzy at that point."*

Chairman Drobinski asked Officer McGilvray if he felt he would have to discharge his service revolver. Officer McGilvray stated that if the dogs had not backed away, he would have discharged the revolver.

Ms. Duncan stated the dogs play that way all the time and the behavior is not unusual. She stated she was not there so could not say for sure, but felt sure it was playing.

Selectman Roopenian stated that when dogs are in a group, they can get vicious, and when dogs travel in packs, they go marauding. She noted there had been an incident in her neighborhood.

Paula Adelson stated, *"When I went to remove the quarantine from the dogs at the Palmer Kennel in Acton, I was told that the owners had requested the dogs be left together, and they were initially. And the owner of the kennel told me that they were then very rowdy and she had to separate them. And once they were separated, they calmed down."*

Chairman Drobinski asked if Ms. Cutler was present, and thanked her for her actions. (Applause) Ms. Cutler stated that even though she had the packages, she felt threatened. She stated that the larger dog growled at her, and that was the reason why she stepped back to get the parcels.

Chairman Drobinski commented, *"I'm trying to understand. It sounds like the dogs are family members, and dogs you love very much. But, in my mind, I don't understand. Mr. Klein is part of the neighborhood, and he's walking down the street where the dogs attacked him. If this were a young child, I think the circumstances would have been much worse, not that Mr. Klein hasn't suffered something horrendous. I'm trying to understand, at least from your perspective, that these two dogs that seem to have such a reasonable disposition would do something like that. I'd like to hear in your own words what you think happened. I think Mr. Klein has a theory, and it would be interesting to hear your perspective."*

Mrs. Frene responded, *"I don't know – I've never seen them like that. Jack Sinnigen said that when they're in an uncontrolled environment you need different ways to deal with them. They are not normally like that. We keep them around people all the time. We specifically want them around people all the time, so they would get used to people."*

Chairman Drobinski asked, *"Does it disturb you, with that type of behavior? Does that sort of make you nervous about having two pets you own that could do something like that? I have a dog myself, and I think that if the dog I own did that, I would really question what was going on. I understand you love the dog, but I think we really have to question the safety of any people who come in contact. Maybe your own safety. It just seems very strange that would happen. You think you have such wonderful dogs, and now we're getting information that once they get beyond your influence, something goes awry."*

Mrs. Frene responded she did not know what happened that day, and that for three years they have not behaved in any manner like that. She stated she has given people (workers) the keys to her house, to go in and do carpentry work with no problems. She stated further an occasion when she had to take her daughter



Courtney to the hospital in a hurry, the door flew open and the alarm went off, and the police had to go investigate. She noted they observed the dogs, but there was no problem. She stated that if she thought the dogs were vicious, she would put the dogs to sleep, as Selectman Clark's father had done.

Chairman Drobinski asked where the dogs were now. Ms. Adelson stated they were still at the Palmer Kennel in Acton. Mrs. Frene stated the dogs would stay there until this matter is resolved.

Deborah Barnaby, 68 Bent Road, stated she has four children and stated further there is a baseball field behind the State Police Crime Lab which is near the Frene home. She stated her children ride their bikes back near the field, and commented if a child had been attacked, they may not have been so lucky. She stated she does not feel safe and stated she has not let her children ride around the block.

Bettie Kornegay, 35 Hickory Road, asked Selectman Clark to slowly read the bylaw again. Ms. Clark stated there is a State Law regarding vicious dogs, but that the State Law says each Town may adopt their own Bylaw. She repeated the bylaw: "Vicious dogs are defined as dogs who, unprovoked, have attacked or bitten a human being or animal, or have a known propensity, tendency, or disposition to attack, unprovoked, to cause injury or endanger the safety of human beings or animals." Ms. Kornegay stated she believes these two dogs fit the definition of vicious dogs as the bylaw reads. Ms. Clark concurred. Ms. Kornegay stated further that though she does not have small children herself, she expressed concern for the numerous children who walk in groups. She noted children can get frightened quickly by animals, but stated these two dogs are more than frightening.

Selectman Clark stated people of all ages should be able to walk the sidewalks of Sudbury.

Sue E. Stine, 53 Stone Road, stated she and her young daughter Marcia are concerned for the safety of the neighborhood. Ms. Stine wanted to know about Cody's numerous visits to the vet and wondered if there was some medical reason. Chairman Drobinski remarked that 28 visits to the vet did seem excessive for a three-year-old dog. He asked the Frenes to explain why the dog went so often. Ms. Duncan stated the dog has gone to the vet for any number of reasons, all medical, including an ear infection, getting nail clipped, as well as boarding.

Aline Kaplan, 17 Douglas Drive, stated if a human being had lived for 35 years without ever committing a crime or harming anyone, and then assaulted someone, the fact that he had been a law-abiding citizen for 35 years would not absolve him from the consequences of the assault. She stated her belief that the Board should consider the dogs in that way.

Suzanne Foley, 45 Bent Road, stated she was able to control the dogs and they seemed fine when they were with her. She stated she is a dog lover, but added she did not think she could live with the fact that this type of attack could happen again, perhaps to a child. She noted she could have come around the corner twenty minutes earlier, and the victim could have been her son on his bike. She noted that her own dogs have gotten out, and described it as a learned behavior, noting that the dogs like what they experience when they are out, so they attempt to do so repeatedly. She stated it is a scary thought that this could happen again, and expressed her belief that separating the dogs would be a way to curb this behavior.

Chairman Drobinski thanked Ms. Foley for her swift action in containing the dogs. He asked her if she felt as though she was in control of the dogs when she had them by the collars. Ms. Foley stated the dogs walked right with her, and got into the cruiser almost by themselves. She stated she has a large dog at home so knows how to handle one, and these dogs behaved well with her.

Selectman Roopenian expressed concern in that *“by the time you say, would have, should have, could have, it’s too late. And what’s happened, is obviously in the past. You can’t take it back. You can’t bring the dogs back to where they were before this happened. I can’t, for the life of me, fathom how you could want to have your life back with the two dogs without doing something, without some sort of compensation back. I clearly feel that the two dogs can’t go on at your house. I don’t know what options are in front of us. I clearly feel that the two dogs can’t be in the house. And it’s not an indictment on you as dog owners; it’s more of an indictment on the dogs. But if you were to allow the dogs to come back, if we allow the dogs to come back, and they got out even once and this happened, and regardless of whether it was an older man, a young child, another dog, anybody. If you took a look at the guy’s jacket, it’s enough to scare me to death. I couldn’t, under any conditions, find any way to authorize those dogs to come home, together. I don’t know what else we’re going to do. I would actually ask you what you think this Town would be able to do for those dogs. I know that you want both dogs home, and you want all of this to go away, but that’s not going to happen. So you tell us what you think we should do.”*

Mrs. Frene stated they would have no problem with separating the dogs, and acknowledged their being together may have been part of the problem. Selectman Roopenian asked Mrs. Frene what she would do if the Board decided one of the dogs had to go. Ms. Roopenian stated she would certainly not be in favor of allowing the dog to go to another town, and added that doggie jail does not exist. She pressed Mrs. Frene as to which dog she would put down, if she (Mrs. Frene) had to make that decision. Ms. Roopenian continued, *“You see the situation we’re in up here, because they got loose and they hurt somebody. And so we have to make a decision because your dogs got loose. It’s not an indictment on you as people, but it is an indictment on the dogs and the danger they represent to the Town of Sudbury.”*

Mrs. Frene stated her 81-year-old father, who lives in Burlington told her he would love to take Cody. She stated her father had said the dog would be company for him. Ms. Roopenian stressed the possibility of Cody getting out in the Town of Burlington, and wanted to know who would take the responsibility for an unfortunate incident there. While it was mentioned that the dog might not behave the same way, separated from the other dog, Selectman Roopenian stated the Board cannot take that risk. She reiterated there is no dog jail, nor is there time off for good behavior. She stated she has been in the position of having to get rid of a dog, and stated further she knows how difficult this decision could be for the Frenes.

Mr. Fox noted there have been a lot of analogies to criminal law as it applies to people, and stated people are not executed for assault. He continued, *“Much more important, we understand the sentiments of the people of this Town, and that they should feel safe walking along the sidewalks, and that everyone should have a right to walk along the sidewalks and not be in fear of these two dogs. I think that Mr. Klein put forth an alternative solution, a feasible alternate solution, to putting either one of these dogs down. Dogs are known to exhibit pack-like behavior when they are in packs, but if we separate them, having one remain in Sudbury with a full restraint system, with full restriction, and one to be moved from the Town forever, that they would be meant to live alone without other dogs. We could place that sort of restriction. That would be a solution to this situation, without having to execute these dogs, either one. It is a difficult decision to make. I don’t know if I would be capable of deciding between two dogs, family members to them, and I don’t know if they’re going to be able.”*

Joanne M. Fitzgerald, 86 Robbins Road, asked if one of the dogs is removed from the Frene home and the Town of Sudbury, whether the Frenes have the option to buy another dog, possibly producing another situation. Chairman Drobinski stated, if that were the decision, that there would be periodic review of the situation. He stated that, at this point, the Board is gathering facts. Ms. Fitzgerald stated she has her own dogs, and expressed her desire to be able to walk around her neighborhood, and to have her niece and nephew come over to play in the yard safely.

Chairman Drobinski pointed out that the Board has a responsibility to the community to be fair and just. He noted people are comparing this to a criminal system and stressed that this situation does not involve human beings as the offenders, but rather dogs with the potential for hurting human beings. Mr. Fox stated he did not mean to intimate that the Board should weigh this as though it were a criminal case for humans, noting people had made those analogies before he commented on them. Mr. Fox added that his clients would be willing to accept a restriction of having only one dog on the premises at all times.

Selectman Roopenian asked Paula Adelson about dog fines and if the fines have been levied in this case. Ms. Adelson stated the fine for the first offense is \$25 per dog per time, then going to \$50, and added the fines have been levied, but could not say if they had actually been delivered yet.

Chairman Drobinski wanted to know if restitution had been offered to Mr. Klein for his medical expenses and clothing. Mr. Klein stated he would like them to pay the medical bills, replace his torn clothing, and replace his eyeglasses which were broken. He added he would not submit any amount for pain. Mr. Drobinski asked Mr. Klein to make sure the Board gets a copy of those expenses as that would be a stipulation of the decision. Mr. Fox stated full restitution would be paid by the Frenes.

Chairman Drobinski stated that the Board has a number of options, ranging from doing nothing to putting both dogs down. He stated there is a 10-day appeal period to the District Court, for any decision made in this matter, before any action is taken.

Paul Kenny, Town Counsel, stated a complaint usually goes to a Magistrate's hearing, and then to a judge.

Selectman Roopenian wanted to know if there were any precedents in the Town of Sudbury for this type of action. Chairman Drobinski stated he did not believe there were. Selectman Clark stated she did not think there had ever been an incident of this severe gravity involving a dog attack. Mr. Kenny could not remember a dog-biting incident in the past twenty years. He noted there have been nuisance complaints regarding barking, getting into trash, nasty dispositions, and bites on other animals, and stated the incident of a person being bitten was in 1976.

Chairman Drobinski stated the Board could also continue the hearing, giving the Board time to think about it, and receive possible options to come back from responsible parties, or the Board could make the decision this evening.

Ms. Adelson stated the quarantine has been lifted, but the dogs are being held in the Palmer Kennel in Acton. Paul Kenny stated Mrs. Frene has agreed to hold the dogs until the determination was made at this hearing, and felt safe in assuming the dogs would be held if the hearing were to be continued. Mr. Drobinski asked for Mrs. Frene's assent to boarding the dogs if such a decision were rendered. Mr. Fox stated the Board had his assent and that of his client to hold the dogs until after the Selectmen hearing of December 10, and respectfully requested a prompt decision as the dogs are being held in a small kennel. He stated his belief that, emotionally, such a situation is not good for the dogs.

Seth Kaplan, 17 Douglas Drive, wanted clarification that while there have been dog incidents in the past, and dogs have been expelled from the Town, there has never been one of this gravity. Chairman Drobinski stated that was the recollection of the Board. Selectman Clark stated she has lived in the Town of Sudbury for 31 years, and could not recall this kind of serious incident. Paula Adelson stated Betsy

DeWallace, Dog Officer, had told her there had never been an incident of this gravity. Chairman Drobinski stressed the fact that in this incident a human being was bitten, not another animal.

Mr. Fox wanted to remind the Board of a Selectmen's hearing involving a dog on King Philip Road, a Chow, and noted that the records reflect that the dog had bitten a jogger and a neighbor. He did not contend this situation was of the same gravity. Chairman Drobinski opined that each situation is different, and a prior dog incident does not constitute a precedent. Mr. Fox agreed, but wanted to clarify the statements that there had been no other dog biting incidents when that was not the case. Selectman Clark stated that this case is very serious in that the person was mauled, and their clothing torn to shreds. She stated it is a clear demonstration of the dogs' capabilities, and opined that if no one had come to Mr. Klein's rescue, she expressed concern for the tragic result. Ms. Clark stated, *"My responsibility sitting here is to make tough decisions when needed, and this is a tough decision. It goes against everything, I think, an animal should be. These animals demonstrated they had no respect for that human being. They could care less. They were going to go after it and shred it. That jacket is evidence of it. I don't think any judge looking at that is going to say these animals can be redeemed, or brought back. They tasted the frenzy of this. They tasted the blood, if you will. I don't know that you can change that clock and restore them back to wholesome pets. It's a tough decision to make. My father made a decision. He obviously had some experience in the past. I have that benefit. I was bawling my eyes out because my pets were gone. But he made the right decision. He made the responsible decision. You may not think it's responsible, but when I look at that in hindsight, he had a lot of courage to take his whole family on and all the kids. But he knew that those dogs could demonstrate that personality at any time in the future, and I think that's what we have here. You're suggesting that we could build a fortress to hold these dogs in. Doesn't that tell you something about the personality, the socialization of these dogs? There is something that's askew there, that no matter how tall a fence you build, how much concrete you put to prevent them from penetrating, from digging under it, you're not going to change their personality. They have demonstrated it. You're on notice of what those dogs can do, and I don't think you can change that. As hard as it is, I don't think we can take the risk of giving those dogs a second chance, another chance, not a second chance. They've had several chances in the past, a couple of them anyway."*

Susan Koop, 9 Briant Drive, stated that she has had dogs the thirty plus years she has lived in Sudbury, and stated further that these dogs under discussion have exhibited vicious behavior and there can be no guarantee they will not do it again. She opined it is in no way reasonable for the people in this neighborhood to be subjected to the possibility of being attacked, even if there is a fortress to keep those dogs contained in Sudbury. She stated, *"You cannot compare a dog's life, and this is coming from a dog lover, to a human life. I know that nobody could possibly live with themselves if anything happened again. It's true, I believe if it were a child or a smaller person out there walking, they probably wouldn't be here now. I don't think you have a choice but one. I really hate saying that, and my heart is pounding because I feel so badly for what will happen to those dogs, but I'd feel worse if I have to pick up my paper and read what happened to another Sudbury resident. It's not appropriate that anyone should live with that kind of fear in any town. Something else that hasn't been mentioned tonight, and that is those two breeds have a degree of aggressiveness far greater than many other breeds. If a person is going to live out on a farm by themselves, it's one thing, but if you're going to live in a town, you have to be respectful of your fellow townspeople."*

Selectman Roopenian addressed Mrs. Frene and Ms. Duncan: *"I want the two of you to understand something. No matter what the motion is or what the conclusion is tonight, this has never been about you and your inability to control dogs – this has been about your animals. I said it before, and I really need you to understand this. I would not want to be you right now, for a lot of reasons. I am sorry your dogs got out. I am sorry that they attacked Mr. Klein, and I'm sorry that the both of you are sitting in front of the Town*

*having to go through this. But you have to understand that it's not just about you. So, whatever decision is made tonight and you walk out of here, it's not about the two of you. It's about your dogs."*

Mr. Fox stated that while the dogs may be deemed vicious when together, in a pack mentality, it would certainly be appropriate to separate them; banish one from the Town and one should be allowed to stay behind a complete system.

Selectman Roopenian stated that dogs in Sudbury have gotten in packs, and they do run in packs, and sometimes those dogs have been dealt with by their owners. She included herself in this category. *"I had two dogs that were put down immediately when they jumped on somebody and scratched his leg. Not by choice. I think that this Board has got to make a decision for you, to take it out of your hands. And that's where we're at right now. As I said, prior to making the decision, I hate even having to talk like this, I hate even having you before us tonight. But now we have to decide what we're going to do."*

Chairman Drobinski asked for the motion. Selectman Clark stated, *"No one enjoys this job, or this part of the job, that's for sure. But I move that these two dogs, Cody and Reba, be put down as soon as possible, period."* Chairman Drobinski seconded the motion.

Ms. Clark commented, *"I think that we have heard enough evidence here that if we don't take this action, it would be irresponsible. Derelict in what our job is. And if we can't do our job properly, then it's time to let somebody else do it. It's like if you can't stand the heat, get out of the kitchen. But I think the seriousness of this says it all. When I read it in the paper, I couldn't believe it. Joe is such a mild mannered person. He wouldn't provoke any dog. As it continued, and as I hear it tonight, there is no reason. With a child, a child can sometimes move fast, and create a problem for a dog. But as you're just walking, sauntering along, this was just a vicious attack. I think it would be irresponsible not to put them down."*

Chairman Drobinski commented, *"I think, from my perspective, something doesn't seem to be correct. I know you dearly love the dogs, but we need to be protective of the community, and something is not right here. Being a dog owner myself, as Maryann said, we don't enjoy doing this. It's one of the most distasteful parts of this job. We don't always agree on a lot of things, but this is not a very pleasant situation."* Chairman Drobinski asked if there was any objection on the motion. There being none, he asked for the vote.

It was on motion unanimously

VOTED: To order that the Rhodesian Ridgeback dog "Cody" and the American Staffordshire Terrier/Pit Bull "Reba", owned by John S. Frene, 31 Horse Pond Road, be euthanized as soon as possible, but no later than immediately following the appeal period provided under Massachusetts General Laws Chapter 140, Section 157; and it was further

VOTED: To require the Frene family to make restitution to Joseph A. Klein, 45 Stone Road, for his medical expenses, and replacement of clothing and eyeglasses.

It was on assent from Joshua Fox, Esq. for Cynthia Frene, that the dogs would remain at the Palmer Kennel until such time as the appeal is won or the court order handed down.

Chairman Drobinski thanked everyone for coming, and stated the Board was pleased Mr. Klein would recover from his injuries.

**Joint Meeting – Sudbury Housing Authority**

Present: Jo-Ann Howe, Executive Director, Housing Authority; Bettie H. Kornegay, and John C. Darcey, Members, Housing Authority.

Chairman Drobinski explained the Board's goal of meeting with boards and commissions to have general conversation and improve communication.

John Darcey stated they are missing their State Appointee who has moved out of town and asked that the Board approve a recommendation for Carol A. Hamilton, 21 Shadow Oak Drive, to fill the vacancy. Selectman Clark commented Ms. Hamilton's experience appeared to be in commercial lending. Mr. Darcey stated Ms. Hamilton's greatest asset is that she was volunteering. He noted the Housing Authority is not a group that people seek out and many times they have had to go searching for people to serve.

It was on motion unanimously

VOTED: To send a recommendation to the Department of Communities and Development that Carol A. Hamilton, 21 Shadow Oak Drive, be appointed to the Sudbury Housing Authority as the State Appointee to fill the position vacated by Kathleen Phillips.

Mr. Darcey stated the Sudbury Housing Authority (SHA) is an autonomous body, with four members elected and one appointed. He stated Jo-Ann Howe has been the Executive Director for sixteen years. The Housing Authority oversees Musketahquid Village, 64 units of elderly and handicapped housing, and 20 units of family housing. He stated the Housing Authority typically sees itself in an advocacy role in developing a wider distribution of housing options in Town. They happen to oversee housing, which is by state definition affordable and has to stay that way, but as individuals and as a board, advocate increased options. As a step toward that goal, some members serve on the Housing Task Force. He stated they did not think it would be appropriate for the SHA to go before Town Meeting, and stated the Housing Task Force seemed a better group to approach those types of initiatives.

Mr. Darcey stated the units they oversee operate quite smoothly. Chairman Drobinski asked how long the waiting lists were. Ms. Howe stated there are 42 people on the waiting list now, with an estimated wait period of 4 to 6 years for someone applying from out of town, and about a year for a Sudbury resident. She noted the family housing waiting list is 20 – 30 years, and added that particular list is closed. Selectman Roopenian asked how many people are on the family housing list. Ms. Howe stated there are different lists based on the number of bedrooms, but that each list has at least 20 names on it.

Selectman Clark wanted to know which works better: individual units staggered throughout Town so the tenants assimilate into the neighborhood or clustered units like Musketahquid Village. Bettie Kornegay stated her personal preference was for the single units scattered about, as people blend in a little better. She commented an affordable housing complex can create a stigma for "those kids" or "those people", if the complex is too large. She remarked this is sometimes heard about Longfellow Glen. She stressed the importance of integrating all people into Town.

Ms. Howe stated that of the 20 family housing units, 18 are working families, while the other two are disabled. She noted a lot of the children from these families are growing up and starting college. She expressed her belief that these people, most of whom came from Sudbury originally, are well integrated. Ms. Howe stated the Board would be proud of the families living in this housing.

Mr. Darcey stated a house was recently donated for a low income family, though it will take some money to renovate it before it can be used. Selectman Clark suggested using students from the vocational school who will be working on certificates. Ms. Howe stated they would have to approach Minuteman Tech as Sudbury is in that district, but expressed doubt that those types of occupations are taught there. Selectman Roopenian opined the school is more technology based now.

Mr. Darcey stated they were happy with the Housing Task Force efforts to address the affordable housing issue. Selectman Roopenian asked if they felt the Housing Task Force has taken over some of their authority. Ms. Howe answered no, that the Housing Task Force can explore options and make suggestions, while the Housing Authority must follow State Law in the implementation of housing options. Ms. Howe added that the Housing Authority could not be working on the condo project, but can support the effort.

Mr. Darcey stated one way to implement affordable housing is with comprehensive permits. He noted some towns will fight that, stating that a more densely populated tract of land could create problems. Chairman Drobinski stated comprehensive permits often lead people to wonder what is going on, and opined individual units or duplexes around Town is a better way to go.

Selectman Clark asked how many municipalities or towns comply with the 10% rule. Town Manager Ledoux stated very few, as it is difficult to meet the requirements. Ms. Howe opined a state subsidy or assistance from the Town is often necessary to make it work. Ms. Clark noted there are subsidized units at Longfellow Glen and asked when that subsidy expires. Ms. Howe stated the federal subsidy expires in 2004, after 25 years. Ms. Howe stated further that Town Planner Jody Kablack has expressed concern about it, and has discussed getting people together to start planning.

Ms. Kornegay commented that when Longfellow Glen was getting started with many issues, one of the voices heard a great deal was Joseph Klein. She noted it was not always positive, but he was very active and forceful in accomplishing tasks.

Chairman Drobinski asked the Housing Authority if there was anything the Board could do to make their job easier. Ms. Howe asked if there was any land to be given away. Mr. Darcey stated they would be coming to Town Meeting in a couple years with a proposal. Mr. Drobinski stated the Task Force is looking into various housing options, including the Unisys property.

The Board thanked the Housing Authority for their hard work and wished them happy holidays.

#### **Joint Meeting – Goodnow Library Trustees**

Present: Chairman Hans J. Lopater, Jill Browne and David L. Levington, Goodnow Library Trustees; William Talentino, Library Director.

Chairman Drobinski reiterated the Board's goal of meeting with committees and boards to gain knowledge and improve communication.

Hans Lopater stated that next month is the five-year anniversary of the time the Trustees came to the Selectmen for their support at Town Meeting for a \$20,000 appropriation for architect drawings for the new library. He stated that Board supported them with the money and other things, including giving up its meeting space in Town Hall while it was used as a temporary library. Mr. Lopater added the cooperation from other elected officials and Town employees has been outstanding. He stated further that Permanent Building Committee members Elaine Jones and Frank Schimmoller worked with them, as did the

Conservation Commission in working through a change in the wetlands bylaw, and others. He noted that Jan Silva helped them complete a hefty grant application for the State Historical Commission. Mr. Lopater stated they are using the handicap entrance of the Town Hall as the main entrance, and when the door is opened, a wind gusts in. After some investigation, Art Richard arranged to construct a plywood barrier for less than one-third the cost of a canvas canopy. Mr. Lopater praised everyone in Town for their cooperation.

Mr. Lopater stated the drawings were funded for \$20,000 in 1995. The Trustees filed an application with the State Board of Library Commissioners for a grant, which was lost. A score of 500 points was required to obtain funding; Sudbury's application received 485 points. He stated the reason they were unsuccessful was that they were grouped with Boston libraries. In 1996 the evaluation process was changed so that communities of similar size were compared with each other, and this time the grant was awarded. He noted that, overall, the building process has gone fairly smoothly.

Mr. Lopater stated their plan is to open the new addition to the library first, as the renovation of the historical section will not begin until January with a finish date somewhere around Memorial Day. He put forth the plan to have opening day sometime toward the end of March. He noted the delivery of all the shelving may present a minor obstacle, but they will know soon if the delivery can be moved up.

Mr. Lopater stated the Goodnow Library is 65% above average for all libraries in the Commonwealth as far as circulation is concerned. He noted that between 1987 and 1997 circulation increased by 39%, reference inquiries increased by 90%. Of 52 libraries in the population group (15,000 to 25,000) Goodnow ranked fifth in circulation on a per capita basis, with an incredibly dedicated staff small in number. He stated that in 1987 the library had the equivalent of 11.2 full-time employees, by 1993 that had decreased to 10.2, and now they are at 10.9. He noted that in order to make the budget work, sometimes the hours had to be shortened, reducing costs.

Mr. Lopater stated the Trustees will ask for 1.3 additional full-time employees in the upcoming budget. He noted the Board of Library Commissioners estimates a 25-30% increase in circulation when the new library opens. He stated there will be much more work, and the Trustees feel justified in asking for the additional staff. He stressed the fact that the square footage of the library is going from approximately 16,000 to 31,000 sq. ft., almost double in size. In 1987 the materials budget was \$58,000 per year; in 1993, it had gone down to \$34,000 per year. Mr. Lopater stated the Trustees are requesting a total of \$645,000 for fiscal year 2000, compared to \$547,000 for the current budget. This 17% increase includes a new HVAC system (\$50,500) due to the increased size, and staffing increases of 46 working hours per week as well as step raises for current employees (\$32,500). He stressed that the bulk of the budget increase was due to the increased size of the library, and noted that other items have been kept under tight control.

David Levington stated the Board will love the new library. He stated the Town is lucky they were forced to tear down the old building and start over, as the new portion is a beautiful, well-proportioned, bright, open, cheery building. He opined that it will be the nicest community building in Town. Selectman Roopenian opined people are looking forward to going in and having a library that is really a library, stating there is something inherently comfortable about a library.

Chairman Drobinski raised the question of the Dunkin Donuts site plan and the access gate between the library and the donut shop so that library employees would not have to walk all the way around. Town Manager Ledoux stated that issue would have to be revisited. Mr. Lopater reminded the Board that there is a brook behind this area, relatively hidden from the road. He expressed concern for youngsters falling into the brook or other unpleasant event. Chairman Drobinski stated the area Mr. Lopater referred to would come



under the jurisdiction of the Conservation Commission but the pathway to be constructed by Dunkin Donuts was certainly worth investigating.

Mr. Levington praised Library Director Bill Talentino for his efforts in keeping track of all library materials while in transit from place to place, and generally overseeing a small staff doing a tremendous job. Selectman Roopenian stated there is a large commitment by the Town toward this project, including the people who helped with the fundraising, and the Friends of the Goodnow Library. Mr. Levington noted that over 600 families supported the library.

Chairman Drobinski asked if there were special plans for the opening. Jill Browne stated the Opening Committee has met twice and is still considering ideas. She stated they are leaning toward a weekend affair, with a special night for the major sponsors. Town Manager Ledoux suggested plugging the opening on the Grapevine show, perhaps a videotape of the interior or something similar.

Mr. Levington stated raising money is like hitting a moving target. He stated that instead of cutting back on the plans because they were a year late in getting started, they opted to raise the additional money. He noted that the old section is not just being repaired, but restored. He stated the 1862 wing will look like we would imagine it might have looked then, and the new section will be modern. He thanked Raytheon for their contribution to the elevator for handicapped access. Mr. Levington stated the new library will add to the sense of community more than anything previously done.

The Board thanked the Trustees for all their hard work, emphasizing their efforts to be a very worthwhile legacy.

### **License Renewal**

The Board acknowledged reports from Fire Chief Michael C. Dunne and Deputy Building Inspector Earl Midgley stating that they have completed the annual license renewal inspections, finding no violations that warrant the withholding of a license renewal. Also received was a report from Robert C. Leupold, Health Director, stating all food service and retail businesses with common victualler licenses have been inspected, and that there are no deficiencies to be noted.

The Board acknowledged that the original Liquor License for Philips Pizza and Restaurant, Inc. has been surrendered as the business ceases to exist. Also, that McPet, Inc., d/b/a Sudbury Wine Co., is no longer in operation and failed to renew its licenses.

It was on motion unanimously

VOTED: To renew Alcoholic Beverages, Common Victualler, Entertainment, Automatic Amusement Device, and Second Hand Motor Vehicle Licenses, which expire December 31, 1998, for calendar 1999, as listed on the December 10, 1998, "License List Renewals for Calendar 1999", attached and incorporated herein; and to forward the appropriate renewal forms to the Alcoholic Beverages Control Commission where applicable; said licenses to be held until payment of the required license fees, compliance with the Selectmen's Alcohol Training Policy, correction of any/all outstanding health, safety or zoning violations, receipt of verification of Workers' Compensation Insurance for the licensing period, and the payment of all outstanding personal property taxes and real estate taxes; said licenses shall also be subject to all previous restrictions; and

VOTED: To renew Sunday Entertainment License of Papa Gino's Acquisition Corporation, d/b/a Papa Gino's, 104 Boston Post Road, for operation of a juke box during 1999, for the hours of 11:00 a.m. to 10:00 p.m., and

VOTED: To reinstate hours of operation for a three-member folk music combo at MoonShadow Café on Fridays to be 5 p.m. to 10:30 p.m.; and to extend Monday hours of operation by one hour (5 – 10:30 p.m.).

### **Selectmen's Report – Annual Town Report**

Chairman Drobinski suggested this item be held over as he continues to work on the report.

### **Warrant Articles – 1999 Annual Town Meeting**

Town Manager Ledoux stated most of the articles are tentative and are place-holders for the time being. He asked if the Board wanted to bring the Land Bank article back to Town Meeting this spring. He stated Representative Susan Pope felt this would be a good time. He stated further Ms. Pope had indicated the Town of Wayland was presenting a land bank article again at their Town Meeting.

Selectman Clark asked if Ms. Pope could suggest any ways to get Governor Cellucci to sign on it. Mr. Ledoux stated he did not know. Ms. Clark opined Gov. Cellucci may strike some sort of compromise, with the result being something like what happened in Cape Cod. Mr. Ledoux noted it was a local option. Chairman Drobinski stated Cape Cod went with a uniform tax rate across the base. Selectman Clark stated it was a 3% surcharge.

Selectman Roopenian wanted to know if the dog fines could be raised, noting that a \$25 fine is too low. She stated that if the fine were \$100, for example, the owners would be far more careful in their control of the dog. Selectman Clark stated there is a point of no return. She posed the example of a \$150 for a dog that cost \$100. She opined that owner might just let the dog go. Ms. Roopenian stated that if an owner were faced with a big fine, plus a big kennel fee, they might behave more responsibly. Ms. Clark stated a large fine was avoided in the beginning because the Board wanted to get the bylaw through.

Chairman Drobinski suggested the Chapter 40A issues will have to wait a while. Town Manager Ledoux stated he will be meeting with Mark Bobrowski tomorrow and can provide an update later.

### **Deadline – ATM: Citizen Petition Articles**

It was on motion unanimously

VOTED: To set February 8, 1999 as the deadline for accepting citizen petition articles for the Annual Town Meeting.

### **First Baptist Church**

Selectman Clark stated she attended the 35<sup>th</sup> Anniversary Celebration at the First Baptist Church last Sunday. She stated she gave them words of encouragement from the Board, wishing them continued success.

### **MetroWest Growth Management Committee**

Selectman Clark stated she attended the MGMC meeting last night at their new quarters at 14 Vernon Street in Framingham. She stated the offices are quite nice, and reported there to be approximately twenty people in attendance. She noted Mrs. Cindy Frene had also attended, representing a transportation interest.

### **I-495 Initiative**

Selectman Clark stated she was unable to attend an I-495 Initiative meeting, held at the Westboro Technology Center. Chairman Drobinski asked if Sudbury should be concerned about this project. Ms. Clark stated she spoke with Phil Hodge of Marlborough to discover what Marlborough's plan was. Mr. Hodge replied Marlborough has a large industrial/commercial park from which they receive a nice commercial tax base, but many of the people employed there live in surrounding towns, including Sudbury. Sudbury is supporting those families here with tax dollars and is not receiving anything from a commercial point of view. She stated a formula for sharing might be nice, to develop a more equitable system. She described Massachusetts as having "little fiefdoms" with each protecting their own, without looking at the big picture.

### **MCAS**

Selectman Roopenian stated the Town of Sudbury did fine in the MCAS test results, given the tenth graders who took it did not have the appropriate curriculum in place. She opined the test results do not tell much of a story at this time. She stated the elementary schools should not compare themselves to each other as all students end up at the Curtis Middle School, and later at Lincoln-Sudbury.

### **Land Use Priorities Committee**

Selectman Roopenian stated she attended the Land Use Priorities Committee meeting last night. The committee decided to adopt a new mission statement of their own, in addition to the charge the Board set up for them. She pointed out the item: respect all property owners by attempting to recognize their need to obtain useful bylaws about their property plan. She stated several large landowners were present at the meeting, who finally expressed concern that the Land Use Priorities Committee was a threat to landowners. The main points brought out were: (1) the implication that eminent domain was the direction this committee (the Town) was going, and (2) Armando Carbonelli spoke a great deal about regional agreements, eminent domain, regionalization, twisting and turning zoning laws, etc. Ms. Roopenian stated this frightened the landowners very much. They also wanted to know who chose him to speak. Town Planner Jody Kablack told the landowners he was selected from a list of names because he was reported to be a dynamic speaker. Selectman Roopenian stated that, on the whole, people were disappointed with Mr. Carbonelli's presentation because he did not tie it into the landowners.

Selectman Roopenian stated an article on eminent domain takings for the schools was distributed at the meeting. This article had apparently appeared in the newspaper recently.

Ms. Roopenian stated there was also some confusion and fears about what this committee was going to do. People wanted to know if the committee was going to take developable land and target it for various future needs of the Town, such as police, schools, waste treatment, etc. The committee assured the landowners they were trying to work with them, not against them. Ms. Roopenian stated she had the feeling

the landowners were still unconvinced of its purpose. She stated she has written a memo that can be sent to the landowners from the Board or be adapted for a letter to the newspaper. She stated she had been specifically questioned about eminent domain, and noted that her response had been that the Board would never be in favor of eminent domain under anything less than friendly conditions.

Selectman Clark stated one of her concerns is tied to the Constitution. She stated that the thing that goes to the heart of democracy is protection of life, liberty and property. Property rights are sacrosanct, and something this country was built on. She stated if there is any idea of a threat to those rights, it must be eliminated. She stated that even if the Town were to take land by eminent domain, the Town would be required to pay the landowner the current market value for that land. She stated further that additional problems can crop up in trying to determine what the market value is, as evidenced by the Weisblatt negotiation.

Selectman Roopenian stated the landowners specifically mentioned the Weisblatt taking, and they described it as a "done deal", a manipulated, specific Town Meeting finished product. She suggested the Board use the term eminent domain very carefully, if it must be used at all. She stated that, in her opinion, eminent domain is something one does not engage in if it is unnecessary. Selectman Clark agreed it should be used sparingly, and noted all case precedent indicates it should be used sparingly. Ms. Roopenian stated it should be made abundantly clear to the landowners that their input is important, and that the Board is willing to hear their concerns.

Selectman Clark commented much discussion has been made with reference to large landowner versus house lot owner. She pointed out that if one puts several house lots together, it creates a large parcel of land. Selectman Roopenian stated the committee must decide whether they wanted to look at properties of 5 acres, or 10 acres or more, and then figure out how those pieces will fit future needs. Ms. Clark stated the needs should be determined first, project it out for a number of years, and then seek out appropriate land. Ms. Roopenian stated that the committee decided that was the best procedure. She stated people will continue to move into Sudbury because it is very appealing, and the Land Use Priorities Committee is a mechanism to strategically plan land acquisition. She stated further that the landowners and committee agreed a planned land acquisition program is much better for the Town of Sudbury than reacting to an immediate situation.

Selectman Clark stated it will all come down to money. Ms. Roopenian stated this could be a fruitless exercise unless the Town, the committee and the landowners understand land acquisition will not happen if there is no money. Ms. Clark stated John Rhome made the same comment. Ms. Roopenian opined an organized presentation at Town Meeting would be better received. She stressed that landowners need to feel that they are a part of the process.

Chairman Drobinski suggested sending the letter to the newspaper. Selectman Clark stated she would like to look it over and discuss it at the next meeting. Selectman Roopenian stated all references to eminent domain should be removed, and reiterated that eminent domain was the major concern of the landowners in attendance last evening. Chairman Drobinski stated he did not know how they arrived at that assumption as there have been only two eminent domain takings in Sudbury. Ms. Roopenian opined the concern may center around where the land is located and its proximity to the schools in Town.

Chairman Drobinski asked if the Board was to approve the new mission statement. Selectman Roopenian opined it did not need to be approved. Selectman Clark stated she wanted to cross reference it against the original.

Selectman Roopenian asked the Board to look over the letter and forward their comments. Chairman Drobinski agreed the references to eminent domain should be eliminated.

### **Recycling**

Chairman Drobinski asked Town Manager Ledoux about recycling problems involving cardboard and newspaper. Mr. Ledoux stated the recycling dumpsters at the transfer station are full as apparently there are no markets for these materials at this time. Selectman Clark stated entrepreneurs should develop more products using recycled goods. Mr. Ledoux suggested a law requiring manufacturers to use recycled materials in their processes.

Chairman Drobinski stated the Town of Sudbury will be graded on their recycling efforts next year, and opined that the State was not helping communities recycle. He stated further the State requires recycling be done yet provides no mechanism for accomplishing the task. Mr. Ledoux stated solid waste issues were recently discussed on the Grapevine show. A representative from DEP at that time stated it was not cost effective for the State to seek out markets for recyclable materials.

### **Budget**

Town Manager Ledoux stated review of all submitted Town budgets has been completed. He stated departments were asked for two different budgets for the year 2000: level service budget and cost of new initiatives. He noted level service budgets do not always include capital or overhead. He opined there may be some kind of operations override proposed at Town Meeting.

### **Junk Complaint**

Town Manager Ledoux stated he had received a complaint expressing concern about a neighbor's property, i.e., junk in the yard. He stated the Town has no mechanism for controlling clutter unless it becomes a Board of Health problem. Jack Hepting, Building Inspector, had suggested to him that a nuisance bylaw might be of help. Mr. Ledoux asked the Board if such a bylaw would be something they wished to pursue for inclusion on the Town Meeting Warrant.

Selectman Clark stated she thought it was introduced years ago, but that it was never adopted. She noted people had different definitions of "nuisance", citing an example of letting the lawn "flourish" as opposed to keeping it neat and trimmed. Selectman Roopenian stated there should be something to prevent people from using their yards as storage areas for machinery.

Mr. Ledoux stated the individual in question apparently goes to many yard sales and then stores much of the purchases in the yard. Chairman Drobinski stated the concept of controlling this type of clutter is good, but agreed with Ms. Clark that the definition of nuisance is the crux of the issue.

The Board requested Mr. Ledoux to furnish a draft article for its review.

### **Joint Dispatch**

Town Manager Ledoux stated the study on joint dispatch for the police and fire departments is underway. He reminded the Board a contract was awarded to Burke Management, and stated a report with recommendations is expected by mid-January. He stated he would ask Burke Management to attend a

Selectmen meeting to make a presentation to the Board. He stated further a placeholder article for implementation is being written, as there will be costs associated with this project.

### **TJ Maxx Site Plan**

Town Manager Ledoux stated he recently met with Bruce Ey of Schofield Brothers, who represented TJ Maxx. Mr. Ledoux stated that when the store expanded, the site plan included some issues that have yet to be completed. These issues need to be addressed as the property owner, CGI, is seeking financing. He commented TJ Maxx would prefer not to deal with these issues.

Mr. Ledoux listed the issues: (1) a walkway that would connect Raymond road to the back of the shopping center; (2) parking improvements to the rear of the building, and (3) the coffee kiosk. He stated the issue with the coffee kiosk was apparently grandfathered as long as the owner was in business, and then that space would become parking.

Mr. Ledoux stated he encouraged Mr. Ey to come to the next Selectmen meeting to discuss these issues. He opined the Board would be interested in the first two, while the coffee kiosk could be a negotiable issue. Selectman Clark asked if the coffee kiosk was still in use. Chairman Drobinski opined that it still was. He stated further that the walkway was part of a negotiation with the neighborhood for access to the rear of the shopping center.

### **Atkinson Pool -- Heating and Ventilation**

Town Manager Ledoux stated the heating and ventilation system at Atkinson Pool is not functioning correctly and needs to be replaced. He stated there are elevated carbon dioxide levels, even though they are still in the safe levels. He stated that initially Park and Recreation had included the replacement in their capital budget for fiscal year 2000, but it needs to be done now. He will be attending the Finance Committee meeting Wednesday night and will request an advance from the Reserve Fund, approximately \$90,000, and later seek an adjustment article at Town Meeting to reimburse the Reserve Fund from retained earnings from the pool. He noted that the extra lottery money might be used here as well. He stated he will also look into securing a waiver for emergency procurement.

### **Walter "Bobby" Bent -- Retirement**

Town Manager Ledoux stated Bobby Bent is retiring from the Highway Department after 36 years of employment. He noted he is retiring on January 10th, but the Town would like to declare Wednesday, December 16, 1998, as Bobby Bent Day. Mr. Ledoux asked the Board to sign the proclamation.

It was on motion unanimously

VOTED: To declare Wednesday, December 16, 1998, as Bobby Bent Day, in honor of his retirement from the Highway Department after 36 years of service.

### **Town Christmas Party**

Town Manager Ledoux reminded the Board the Town Christmas Party is Friday, December 18, at the Hosmer House from noon to 3 p.m.

**Executive Session**

At 10:55 p.m. it was on motion by roll call unanimously

VOTED: To go into Executive Session to discuss expenditures from the Discretionary Fund. (Chairman Drobinski, aye, Selectman Clark, aye, Selectman Roopenian, aye).

Chairman Drobinski announced that public session would not reconvene following Executive Session.

There being no further business to come before the Board, the meeting was adjourned at 10:56 p.m.

Attest: \_\_\_\_\_  
Steven L. Ledoux  
Town Manager-Clerk