

IN BOARD OF SELECTMEN
TUESDAY, JANUARY 6, 2004

Present: Chairman Kirsten D. Roopenian, Selectmen John C. Drobinski and Lawrence W. O'Brien.

The statutory requirement as to notice having been complied with, the meeting was convened at 7:30 p.m. in the Lower Town Hall, 322 Concord Road.

Sudbury Little League—Featherland Park

Present: Paul Gannon, Sudbury Little League.

Town Manager Valente asked the Board for input on a request by the Sudbury Little League to add lights and press box at the lower Featherland Park middle field. She briefly described the project and asked the Board if they would like a formal presentation at the next Selectmen meeting. Ms. Valente noted the Little League has met with the Park and Recreation Committee several times regarding this matter.

Discussion followed regarding unauthorized signs previously installed, inequity between user groups and sports groups in Town, costs of cleaning up, paying for trash removal, electricity, etc. at lower Featherland Park. Concern was also expressed at the number of other projects impacting this neighborhood, including the high school construction, potential housing site on New Bridge Road, and the new access road from the Nixon School to New Bridge Road.

Town Manager Valente stressed the importance of the groups understanding that any items installed at athletic fields must eventually belong to the Town, not the group that provided it, and thus the item must be gifted to the Town.

The Board agreed to put this matter on the agenda for February 3, 2004.

Sunday Sale of Liquor

Present: Michael MacKinnon, John MacKinnon, MacKinnon's Liquors; Gerard Cedrone, Sudbury Farms.

Town Manager Valente reminded the Board Sunday Sale of Liquor became effective on November 26, 2003, in accordance with Chapter 141 of the Acts of 2003, subject to local control. Licenses may now be issued for 6 or 7 days for package stores. She asked the Board's input on scheduling deliberation on allowing such sale in Sudbury. Ms. Valente reported requests for Sunday sale permits have been received from Sudbury Farms, Kappy's Liquors and MacKinnon's Liquors. Discussion followed.

Michael MacKinnon stated MacKinnon's is not enthused about opening on Sundays, but is willing to do it if that is the trend in retail sales.

Gerard Cedrone, Sudbury Farms, stated sales would most likely be redistributed from the rest of the week, but noted that Sunday is the second biggest shopping day of the week for their grocery store.

Town Manager Valente stated a fee may be attached to the permit, to cover costs of issuance. If such a fee was charged, she suggested a fee of \$25 would be reasonable. The Board asked that she survey surrounding towns for their fees when getting information on how area communities are handling this matter.

It was agreed to hold a Public Hearing on February 3, 2004, to allow all residents the opportunity to be heard.

Site Plan #03-372 – Verizon Wireless at the Wayside Inn

Present: Michael Giaimo, Robinson & Cole LLP.

Town Manager Valente stated the letter the Board requested at its December 16 hearing has been received, and she is satisfied it responds satisfactorily to the Board's concerns. The Board reviewed the letter and agreed. There were no other outstanding concerns or issues.

It was on motion unanimously

VOTED: To accept letter of compliance, dated December 23, 2003, from Michael Giaimo, Robinson & Cole, for Verizon Wireless, with regard to radio frequency emission compliance and issues of interference with public safety radio communications systems.

It was further on motion unanimously

VOTED: To confirm the Board's vote of December 16, 2003, to approve Site Plan Application #03-372 of Verizon Wireless for installation of a wireless communications facility at the Wayside Inn Martha Mary Chapel, 104 Wayside Inn Road.

The Board signed the Decision and the Site Plan.

Hop Brook Protection Association – Marlborough Plant Permit

Present: Frank Lyons, Ursula Lyons, Nancy Crooker, Hop Brook Protection Association; Sue Collins, Laura Meier.

Mr. Frank Lyons, President, Hop Brook Protection Association (HBPA), briefly discussed the draft permit for the Marlborough Easterly Wastewater Treatment Plant. He stated a public hearing is scheduled for January 14, 2004 in Marlborough. The hearing allows for discussion, after which the draft permit may be revised or left unchanged and a final permit issued. Mr. Lyons expressed concern about issues not addressed to their satisfaction in the permit, in particular disagreement with seasonal treatment (a relaxing of the limit during winter months), and not requiring a year-round phosphorous discharge limit of 0.1 mg/l that the HBPA seeks. The relaxation of the limit is justified by a belief that phosphorous will pass through the system, though there is no quantitative requirement as to how much must be dissolved, the rest settling to the bottom of the ponds. He asked the Board to look over the permit, and, if possible, attend the public hearing and speak on Sudbury's behalf.

Mr. Lyons briefly discussed a dredging program versus a harvesting of the algae and undergrowth choking Carding Mill Pond. He reported the DPW Director estimated the cost of dredging to be \$100,000, \$50,000 from a Town Meeting article, \$30,000 from abutters and interested residents, and \$20,000 from the Hop Brook Protection Association. Responding to a question from Selectman Drobinski, he stated his belief this estimate referenced out-of-pocket costs, which should include all necessary permits. Selectman Drobinski opined funds may also be available from the Nyanza Superfund to aid in the cleanup. Mr. Lyons stated a previous harvesting effort produced 50 tons of algae later deposited on the Wayside Inn grounds, used for fertilizer.

There was discussion on costs, citizen information and education, public hearing and appeal process, meeting with Sudbury Valley Trustees, input from Town boards and obtaining an expert opinion to agree with position of Hop Brook Protection Association.

Selectman Drobinski stated he plans to attend the hearing on January 14. Town Manager Valente stated she would request comments from Town boards in order for the Selectmen to prepare a response for the deadline for written comments. Selectman O'Brien stated his preference for waiting until a final permit is issued to take steps, if necessary.

Resident Sue Collins opined the Town has a legal burden to maintain the pond as outlined when the land was deeded to the Town, and the neighborhood is willing to participate in any way it can. She reported the DPW Director suggested a neighborhood committee be formed. She opined further the effects of a dredging operation would last for years and be far preferable to harvesting.

Nancy Crooker stated the water chestnut growth is not mentioned in the permit, and will grow regardless of the phosphorous content. She opined if they are not brought under control or totally eradicated, they will kill the pond.

Laura Meier stated the neighborhood has been patient while the Town has been "dragging its feet", and alluded to a potential lawsuit against the Town if agreeable action is not taken soon. She stated she has been waiting since 1990 for something to be done. Selectman Drobinski responded that a lawsuit will only draw out the process longer and would not alleviate any frustration. Chairman Roopenian reminded residents they are part of "the Town" and everyone should work together toward resolution. Mr. Lyons stated the Hop Brook Protection Association is not part of any proposed or threatened lawsuit by Ms. Meier.

The Board agreed to discuss submission of comments to the draft permit on January 20, 2004.

Ledgewood II Easement

Present: Jody Kablack, Town Planner.

It was on motion unanimously

VOTED: To accept a Drainage & Infiltration Basin Easement dated December 18, 2003, granted by Ledgewood II at Sudbury Development Corporation, shown as 11,425 s.f./- on Lot 29, 13,085 s.f./- on Lot 30 and 7,545 s.f./- on Lot 31 on sketch plan entitled "Ledgewood II Drainage & Infiltration Basin Easement, prepared by Medford Engineering & Survey, dated November 19, 2003.

Metrowest HOME Consortium

Present: Jody Kablack, Town Planner.

The Board reviewed the following information: (1) memo, dated December 24, 2003, from Jody Kabalck, Town Planner, requesting the Board support the Town of Sudbury joining the HOME Consortium along with Framingham; (2) email, dated December 16, 2003, from Sam Swisher to Jody Kablack, stating that Framingham will support Sudbury in an administrative way upon joining the Consortium, and (3) handout with background information on the mission and purpose of the Consortium.

Ms. Jody Kablack, Town Planner, briefly described the Consortium, and stated that the Town of Framingham approached Sudbury for membership. She stated the Consortium requires that new members be contiguous to existing members, and Sudbury provides this bridge for Framingham. In exchange, Framingham would provide the administrative support. She opined this membership means an estimated

\$15,000 for affordable housing programs (including engineering costs). Other member towns include Bedford, Belmont, Brookline, Lincoln, Needham, Newton, Waltham, and Watertown. Discussion followed.

It was on motion unanimously

VOTED: To request membership for the Town of Sudbury in the Metrowest HOME Consortium effective July 2005.

Charles Precourt & Son – Temporary Tent Structure

Present: Michael Precourt, Charles Precourt & Son, Inc.

The Board reviewed the following information: (1) letter, dated December 27, 2003, from Michael Precourt, Charles Precourt and Son, Inc., requesting permission to construct a temporary tent structure at 46 Union Avenue for the purpose of housing a cutting process for work this winter and spring, and providing tent information, sketch showing approximate location of tent, (2) report, dated January 2, 2004, from the Building Inspector, stating the proposed tent conforms to Town of Sudbury regulations for temporary use of trailers; (3) report, dated January 5, 2004, from the Town Planner, with the following comments: a) placement, use and time period are appropriate and reasonable, b) the structure should be removed prior to expiration of time period, not to exceed 12 months, c) a filing fee of \$50 is required, d) a definite date for dismantling should be established, and e) if need exceeds 12 months, Site Plan Review is required. Ms. Kablack states further a 30-foot rear yard setback is required in the Industrial District, and she recommends this setback be adhered to regarding placement of the structure, rather than the 24-foot setback as depicted on the sketch; (4) report, dated January 3, 2004, from the Fire Chief, stating the Fire Department has no objection to the temporary tent structure; and (5) report, dated January 5, 2004, from the Town Engineer/DPW Director, noting that as a majority of the site consists of stockpiled quarry stone, the slight increase in impervious area will create a minimal increase in stormwater runoff, and further, requesting additional information as to how such a product might be used to protect sand and salt operations at the DPW site.

Mr. Michael Precourt, Charles Precourt and Son, Inc. stated this structure will be used as a protective cover for the cutting process during the winter and spring, protecting the workers, a piece of stone-cutting equipment, and the stone being processed. This particular piece of equipment needs to be heated and does not fit into their existing equipment shed. The client for this project requires the work be completed during the winter and early spring. A more permanent structure may be constructed at a later date.

Mr. Precourt stated the discrepancy in the setback numbers may be a mathematical error on his part, and stated the concrete foundation is already in place.

Town Manager Valente stated that, in accordance with usual practice, abutters as well as Town boards were notified.

After discussion, it was on motion unanimously

VOTED: To grant permission to Michael Precourt, Charles Precourt and Son, Inc., 46 Union Avenue, for construction of a temporary tent structure for the purpose of housing equipment during winter processing, until May 30, 2004, and further, to waive the 30-foot rear yard setback as the structure is temporary and the concrete pad is already in place.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular and executive session of December 16, 2003 and the executive session of December 2, 2003, as drafted.

SP#03-371 Omnipoint

Present: Peter Morin, McDermott, Quilty & Miller; Paul Gascoigne, Omnipoint; Jody Kablack, Town Planner.

At 9:00 p.m. Chairman Roopenian reconvened a Public Hearing to further consider Site Plan Application #03-171 of Omnipoint Holdings Inc. to construct a wireless communications facility at 163 Boston Post Road.

Mr. Peter Morin, McDermott, Quilty & Miller, attorney for the applicant, stated he has experience in land use matters regarding wireless communications facilities. He proceeded to respond to concerns expressed by Omnipoint, after reviewing the Town's Draft Decision, specifically Conditions 1, 6, 12, and 15, as follows:

Condition 1 – Underground utilities. There are a couple of legal issues involved with this one. Underground installation would have to be placed down the center of the access road, closing the road for a period of time. NStar uses this road as access to a sizable electric power substation. Mr. Morin foresaw NStar objecting to any temporary loss of access to the substation. Mr. Morin stated further, overhead installation minimizes wetlands disturbance, and lastly, he opined NStar, the property owner, may prohibit any trenching in the road. He reiterated NStar's concern about water causing problems in submerged conduits.

Discussion – Mr. Morin expressed concern for moving a culvert presently placed under the road, and opined this would create a great deal of wetlands disturbance. He estimated a cost of \$20,000 to \$30,000 in permitting fees plus months of delay in order to install utilities underground and disturb wetlands. He stated further the reason for underground part of the way and overhead the rest was to comply with standards for Site Plan Review, not the underground utilities bylaw, and requested this condition be deleted from the Decision. Selectman Drobinski stated his belief that the Conservation Commission has no objection to the underground installation, and noted the Commission had not been consulted on this matter.

Condition 6 – Street opening permit. Mr. Morin suggested adding the words "if connection is underground". A revised Draft Decision contained this wording, and Mr. Morin withdrew his comments on this one. Condition will remain.

Condition 12 – Annual radio frequency emission reports. Mr. Morin stated this condition is typically part of most decisions on wireless communications facilities, and stated further that it is almost always never complied with. He said, once the facility is operational, this condition sort of fades away. He opined it is difficult to police, not enforceable under Federal law, and would generate a lawsuit of great expense. Recourse would most likely be a revocation of the license, should there be a violation of emission levels. He stated Omnipoint operates equipment well below required standards. It was agreed to keep the condition in the decision.

Condition 15 – Space for municipal equipment. Mr. Morin stated his understanding that a provision for municipal equipment is already available in the nearby AT&T tower. Further, due to the type of pole, there

is no room on the inside of the pole for additional cabling, and additional equipment would have to be attached externally. He expressed concern that the pole, as presently designed, might not withstand the weight of additional equipment. He opined Omnipoint, being the lessee, could not authorize use of space under the purview of NStar, the property owner. The smallest possible concrete pad is preferred as it is the least amount of impervious surface.

Discussion – Selectman O'Brien briefly described the fourth carrier accommodation at the AT&T tower, a sleeve-like external application, and noted concern had been expressed about the pole's integrity in supporting the additional equipment. He advised the integrity of such an application would have to be researched, and that the Board's concern is to maintain the option of such a use.

Mr. Morin asked about the reference to costs and whether rent/usage fee and the cost of equipment were included in the statement, "all at no cost to the Town." Town Manager Valente stated her opinion that Omnipoint would be supplying conduit and access to power, while the Town would provide the equipment, cabling, etc. This condition merely indicates the applicant will provide the capacity to support any municipal equipment at the time of construction. Mr. Morin responded capacity [concrete pad/equipment shelter] cannot extend into the wetlands resource area. Space on the pole itself would be subject to engineering feasibility [structural integrity].

Mr. Gascoigne stated the concrete pad is the smallest it can be right now and has no room for additional space. If the second and third carriers have not yet leased space, room would be available in the three equipment areas. Town Manager Valente opined the Town was not suggesting the equipment shed be increased in size. Mr. Morin stated the pole could be made available, and opined NStar would be willing to provide space on their property for any equipment shelter needs. It was suggested the footprint described in the taller pole required by the Board of Appeals may already allow for such space. Town Planner Jody Kablack opined this would be handled by NStar without difficulty. Selectman Drobinski suggested wording incorporating engineering review, which was agreed upon, subject to final review by Town Counsel and the Board of Condition #15.

The vote/Decision as finalized follows.

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

VOTED: To approve Site Plan Application No. 03-371 of Omnipoint Holdings, Inc., a wholly-owned subsidiary of T-Mobile USA, Inc., to construct a wireless communications facility consisting an interior mounted stealth pole 130 feet in height erected through the center of an existing 100'5" Boston Edison/NStar power utility tower, with equipment pad, the tower and site to accommodate the requirements of three carriers, on property located at 163 Boston Post Road, shown on Town Property Maps K10-014 and K11-402, owned by Boston Edison Company, as shown on revised site plan drawings entitled "4DE-B009-G, BECO SUDBURY, Boston Post Road (Route 20), Sudbury, MA 01776", dated May 13, 2003, revised May 22, 2003, and further revised August 4, 2003, October 8, 2003, and November 19, 2003, on three sheets entitled Z-1 Existing Conditions and Plot Plans, Z-2 Site Plan & Partial Site Plan, and Z-3 Elevation & Details, drawn by Coler & Colantonio, Inc., Norwell, subject to compliance with all governmental laws and regulations including but not limited to Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, zoning, building and health laws and regulations, and further subject to the following conditions insofar as they apply to the property:

1. Placement of all new utilities underground, subject to approval by the Conservation Commission.

If approval is denied by the Conservation Commission, utilities shall be installed in accordance with site plans dated November 19, 2003.

2. No storage or use of chemicals on site except in conformity with guidelines and requirements of the Board of Health and the Fire Chief; the owner or operator of the site shall comply with the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. Chapter 21E, as amended, and all regulations issued thereunder.
3. No use of salt or chemical de-icers on the site.
4. There shall be no lighting either on the pole or illuminating the pole. Exterior lighting in the equipment area shall be directed away from adjacent properties and have shields, and shall conform to requirements of Zoning Bylaw Section 3427.f.
5. Compliance with FCC requirements and receipt of a permit from the Massachusetts Department of Health, if required.
6. If connection is underground, receipt of a street opening permit from the Mass. Highway Department District 3 to install utilities.
7. Grant of special permit and use and dimensional variances by the Board of Appeals and compliance with any conditions related thereto.
8. There shall be a security fence to encompass the facility, and there shall be no hand holds or ladder rungs on the tower within fifteen (15) feet of the ground.
9. The Omnipoint installation shall cause no interference with public safety radio transmissions; if any conflict occurs, Omnipoint shall pay for any filtering equipment the Town may require to eliminate the interference, or otherwise immediately eliminate the interference.
10. In accordance with Sudbury Zoning Bylaw Article IX, Section 4369, Omnipoint Holdings, Inc. shall furnish a bond in the amount of the estimated cost plus 25% of dismantling the facility.
11. Any air conditioners or generators shall not produce undue noise and shall be consistent with average noise levels for residential uses, and shall conform to the Sudbury Zoning Bylaw.
12. Omnipoint Holdings, Inc. shall annually provide copies of its compliance with Federal Communications Commission (FCC) requirements for measurement of radio frequency emission levels to the Board of Health and Board of Selectmen.
13. The stealth pole with interior mounted antennas shall not exceed 130 feet in height and shall accommodate three carriers. Color of the monopole shall be light gray.
14. The ability to co-locate other wireless communication equipment attached or adjacent to this facility shall not be precluded or prohibited in the lease or other approval documents prepared for this facility.
15. If required by the Town, Omnipoint Holdings, Inc. shall provide space for public safety communications needs of the Sudbury Police, Fire and Public Works Departments on the pole externally (subject to engineering feasibility to be conducted by Omnipoint) and in the general

equipment area designated on the site plan, and the applicant shall also provide appropriate conduit and access to power as required by such departments at no cost to the Town; any additional permits necessary for such installation shall be the responsibility of the Town.

16. The Board of Selectmen waives the requirement for stormwater runoff calculations.
17. Additions to the site plan drawings, as follows:
 - a) existing and proposed building coverage calculations;
 - b) the property address of 163 Boston Post Road.
18. Submission of an "as built" site plan. Any change in the physical condition of the site, including changes in the location or design of structures or systems, following approval of the site plan, will require approval of the Board of Selectmen.
19. No Building Permit shall be issued until this Decision has been recorded in the Middlesex South Registry of Deeds, the plans are approved and signed, and certain items noted above (6, 7, 10, and 17), as specified by the Board, are complied with.
20. No Occupancy Permit shall be issued until certain items noted above (1, 2, 4, 5, 8, 11, 13, and 18), as specified by the Board, are complied with.
21. This approval shall lapse if construction and a substantial use thereof have not commenced except for good cause within two (2) years from the effective date of said approval.

Memorial Day Committee – Appointment

It was on motion unanimously

VOTED: To appoint Beverly D. Bentley to the Memorial Day Committee for a term to expire April 30, 2006, filling the position formerly held by Martha Coe, as requested by said Committee in a letter dated December 12, 2003.

Ambulance User Fee Schedule

It was on motion unanimously

VOTED: On recommendation of the Fire Chief in a letter dated December 15, 2003, to adopt ambulance user fees as specified in a document faxed from Comstar Ambulance Billing and Collection Service dated December 15, 2003, utilizing rates labeled as "Client Specified Rates" column, being 30% higher than Medicare's allowed fee schedule.

Health Care Reinsurance – 2004

It was on motion unanimously

VOTED: To authorize the Town Manager to contract with current provider and submitter of the lowest quotation, Cook & Company Insurance Co., Inc., to provide health care reinsurance coverage for calendar 2004 at a cost of \$348,578 for the specific level of \$50,000, as recommended by consultants, Group Benefits Strategies, Assistant Town Manager Wayne Walker and Town Manager Maureen Valente.

New Year's Eve Extension of Liquor License Hours

It was on motion unanimously

VOTED: To confirm the Board of Selectmen's emergency approval of allowing holders of restaurant and club alcoholic beverages licenses to remain open and serve alcohol on New Year's Eve until 2:00 a.m. on January 1, 2004.

Mass. Municipal Association Annual Meeting

Town Manager Valente asked for the Board's input on how she should vote on various resolutions that will be presented at the MMA's Annual Meeting on January 17, 2004.

After discussion, it was on motion unanimously

VOTED: To direct the Town Manager to vote in support of the following resolutions at the Annual Meeting of the Massachusetts Municipal Association:

Resolution on Local Aid for Fiscal 2005
Resolution on Proposals to Repeal the Motor Vehicle Excise
Resolution on the School Building Assistance (SBA) Program
Resolution Opposing Binding Arbitration

Annual Town Meeting Action

It was on motion unanimously

VOTED: To accept articles submitted for the 2004 Annual Town Meeting, as set forth in the attached list.

It was on motion unanimously

VOTED: To refer all zoning bylaw amendment articles to the Planning Board for its hearings and reports in accordance with M.G.L. Ch.40A, s.5.

It was on motion unanimously

VOTED: To declare the Board's intention to lay out the following streets on March 16, 2004, preliminary to their acceptance as Town ways by the 2004 Annual Town Meeting: and to refer the proposed layouts to the Planning Board for its report prior to the March 16 hearing:

Twillingate Lane, from Hudson Road to a dead end, a distance of 465 feet, more or less;
Spruce Lane, from Hudson Road to a dead end, a distance of 420 feet, more or less, and
Camperdown Lane Extension, from the end of the public way of Camperdown Lane to a dead end, a distance of 420 feet, more or less.

Regarding informational meetings on warrant articles, the Board briefly discussed several articles and whether they had adequate information already.

Chairman Roopenian

Chairman Roopenian announced that she would not seek re-election in the upcoming Town Election. She stated this was a difficult decision, and thanked Selectman O'Brien, Selectman Drobinski and Town Manager Valente for their professionalism and support during her time on the Board. Ms. Roopenian stated she would remain active in Town government, but in roles that allow her to spend more time with her family.

Affordable Housing Sites

Town Manager Valente stated an independent flyer currently circulating throughout Town contains inaccurate information regarding the potential housing site on New Bridge Road. She encouraged residents to access the appropriate information on the Town's website to become educated and informed on this matter.

PTERC Survey

Town Manager Valente reported that PTERC has asked for the Board's input on using the PTERC survey results and/or comments. She stated the surveys are confidential, but PTERC has stated they could withhold all personal information by redacting certain parts of the comments. She stated PTERC believes that many of the comments are very valuable and should not be lost. Discussion followed. The Board agreed the comments might be useful, and there may be a possibility to use comments from respondents who offered home telephone numbers for further contact. Town Manager Valente will seek guidance from Town Counsel.

Executive Session

At 10:52 p.m. it was on roll call

VOTED: To go into Executive Session for the purpose of discussing a litigation matter.

Chairman Roopenian announced regular session would not reconvene following Executive Session.

There being no further business, the meeting adjourned at 11:37 p.m.

Attest: _____
Maureen G. Valente
Town Manager-Clerk