

IN BOARD OF SELECTMEN
TUESDAY, APRIL 9, 2002

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

The statutory requirement for notice having been met, the meeting was convened at 7:00 p.m. in the Town Hall, 322 Concord Road.

Opening Remarks

Town Manager Valente introduced Greg Lynch, a New York Firefighter, a former dispatcher with the Sudbury Fire Department. The HOPEsudbury group had exchanged emails with Greg and his company in New York, expressing appreciation for their effort on September 11 and afterward. Earlier in the day, Mr. Lynch visited some of the town's schools and now briefly described the events of the September 11 from his perspective. He currently serves the Chinatown area. Mr. Lynch expressed profound appreciation for the outpouring of support from Sudbury citizens.

Chamber of Commerce – Banner Program

Present: David Levington, Chamber of Commerce.

The Board reviewed the following information: (1) Email, dated March 11, 2002, from David Levington, stating a new banner was being designed for the banner program, and also requesting a hearing with the Selectmen; (2) Mock-up of proposed banner design, (3) "Bannergram" [marketing flyer], dated March 28, 2002, announcing new design and cost to participants; and (4) Telephone report, dated April 1, 2002, from Frank Riepe, Design Review Board, stating the new design incorporates the DRB Chairman's suggestions, but noting the Board has not met as an entire board to consider the banners and no meeting is scheduled before April 9 to do so.

Notice of this hearing was published in the Sudbury Town Crier and sent to interested resident, Sheila Davison. Mr. David Levington stated the new banner design is in honor of the new HOPEsudbury program, a blue and black design on a lighter background. He stated 36 banners will be on Boston Post Road, and the banners will remain through December of 2002. The banners start at the Wayland line with the Sky Restaurant and continue through Town, skipping the residential areas. Mr. Levington announced tentative plans to hold a telethon to support the HOPEsudbury program to be held sometime in the fall. Discussion followed.

It was on motion unanimously

VOTED: To approve the application of the Chamber of Commerce to install a new set of banners on telephone poles within the Route 20 business district for the remainder of calendar 2002, featuring the HOPEsudbury logo, as sponsored and directed by the Chamber of Commerce.

Minutes

It was on motion unanimously

VOTED: To approve the regular session minutes of March 26, 2002, as drafted.

Sudbury Cultural Council – Resignation and Appointment

It was on motion unanimously

VOTED: To accept the resignation of Pamela Skewes-Cox Anderson, dated March 25, 2002, from the Sudbury Cultural Council, and to send a letter of appreciation to her for her service to the Town.

It was further on motion unanimously

VOTED: To appoint William J. Nicholson, Jr. to the Sudbury Cultural Council to fill Ms. Anderson's vacancy, for a three-year term to expire April 30, 2005, as requested by said Council in a communication dated March 28, 2002.

Wastewater Feasibility Study – Donations for Expenses

It was on motion unanimously

VOTED: To accept, on behalf of the Town, donations totaling \$18,700, from the local businesses listed below, said donations to be deposited into a Sewer Study Technical Advisory Committee (T.A.C.) Donation Account, to be established and separately accounted for by the Town Accountant, and expended under the direction of the Town Manager for engineering studies, report preparation and related expenses with respect to the Wastewater Feasibility Study of the Route 20/Union Avenue business district being conducted by the Sewer Study Technical Advisory Committee; and further, agreeing that donors will receive a pro-rated refund of unspent donations in proportion to the original donation.

ELT Management	\$900	Quality Car Wash Corp.	\$1,000
Katz Irrevocable Trust	\$1,500	Precourt Realty Associates	\$1,000
Paris Realty Trust	\$7,500	Lotus Blossom Restaurant	\$1,800
Sudbury Water District	\$5,000		

Lincoln-Sudbury Regional School District – Site Plan #01-359

The Board met for continued consideration of Site Plan #01-359 of the Lincoln-Sudbury Regional School District for site plan review, for the construction of a new high school and demolition of the existing school at 390 Lincoln Road, owned by said School District, zone Single Residence A-1, and reviewed a draft document entitled "Review Summary" for said application. This matter had been continued from December 17, 2001. This summary incorporated comments from the Town's professional staff and boards, and Sudbury residents in the form of minutes of the public meetings.

Town Manager Valente stated all outstanding drainage issues have been resolved to the satisfaction of the Conservation Commission and other parties. She clarified this document is for advisory purposes only, and that it is not a recordable document.

Selectman O'Brien suggested expanding Item 9 to encourage application for funding to further secure environmental and physical sustainability. He noted mention of grants had been made in a recent communication from State Senator Susan Fargo. Town Manager Valente stated it was a fairly new program. It was decided to include mention of this program with regard to Item 9 in a cover letter to the School Building Committee.

Chairman Drobinski expressed appreciation that the School Building Committee submitted the high school project to site plan review, and asked that appreciation be included in the cover letter.

It was on motion unanimously

VOTED: To approve the Review Summary containing pertinent comments regarding Site Plan #01-359 of the Lincoln-Sudbury Regional School District, thereby approving Site Plan #01-359. The Board signed the Review Summary.

Site Plan #02-364 – Mead Trust – J. P. Bartlett Co. – 40 Horse Pond Road

Present: Laura B. McCarthy, President, J. P. Bartlett, Co., Inc., and Trustee, Mead Trust; Robert Abrams, Attorney for the applicant; Jody Kablack, Town Planner; Brian Fortier, 111 Horse Pond Road.

At 7:30 p.m. Chairman Drobinski reconvened a Public Hearing for the purpose of continued consideration of Site Plan application #02-364 of Mead Trust – J. P. Bartlett Co., Inc, in accordance with Zoning Bylaw Art. IX.6000, Section 6300, to construct three modular homes and associated driveways to be used for agricultural housing by J. P. Bartlett Co., Inc., a wholesale greenhouse business, on property located at 40 Horse Pond Road, owned by Mead Trust, and zoned Residential A1. This matter had been previously heard on March 26, 2002.

The Board was in receipt of the following new information:

1. Revised Site Plan entitled “PROPOSED SEWAGE DISPOSAL SYSTEM”, Sheet 1, revised on March 30, 2002, and April 2, 2002, by Sullivan, Connors & Associates, Land Surveying and Civil Engineering, 121 Boston Post Road, Sudbury, MA 01776, for Bartlett [Applicant] on Horse Pond Road, Sudbury, MA [Location]. Revised drawing shows actual size of modular units and location of alternate driveway.
2. Letter, dated March 29, 2002, from Laura B. McCarthy to Linda Cotter, 52 Horse Pond Road, Sudbury, MA 01776, requesting the parties meet to discuss outstanding issues.
3. Memo, dated March 5, 2002, from Paul L. Kenny, Town Counsel, to the Board of Selectmen, offering legal opinion on outstanding issues: (1) Mr. Kenny does not believe a bond would achieve the desired result of the modular units being removed if the agricultural use should no longer exist; (2) Mr. Kenny does not believe a deed restriction can be required without statutory authority; and (3) Mr. Kenny stated that, in the event of the agricultural use no longer existing, the Building Inspector would be required to make a determination whether or not the buildings complied with zoning. It is further his opinion that a directive from the Building Inspector to remove buildings that no longer comply with zoning does not amount to a taking.
4. Letter, dated April 7, 2002, from Linda S. and Joseph J. Cotter, 54 Horse Pond Road to Laura B. McCarthy, expressing concern for the proposed expansion of the J. P. Bartlett business and the new employee housing and its impact on the Cotter property and objecting to any modification to the Cotter driveway and land in any manner. [Copies distributed to parties at meeting]
5. [At meeting] Selected portions of Mass. General Laws Zoning Regulations outlining exempted uses, and case law, specifically, Kirker v. Board of Appeals of Raynham, 1992, and Gordon W. Kirker vs. Board of Appeals of Raynham; Chris Osburn, intervener. Said case involves construction of building and application of five-acre rule. Submitted by Brian Fortier, 111 Horse Pond Road.

Jody Kablack, Town Planner, stated outstanding issues were the driveway width, location of the driveway, and parking spaces. She stated the applicant has submitted a revised plan addressing those issues, showing correct sizes of the modular units, driveway width, and alternate location of driveway directly onto Horse Pond Road and not utilizing the Cotter driveway at all.

Mr. Robert Abrams, attorney for the applicant, opined all outstanding issues raised at the last hearing have been addressed.

Mr. Brian Fortier, 111 Horse Pond Road, distributed copies of State zoning laws, along with case law pertaining to a similar subject. Mr. Abrams stated he is familiar with said case. Mr. Fortier expressed concern for the Board approving the exempt use. Chairman Drobinski explained the Board cannot do so; the use is exempted by the State. Mr. Fortier opined this particular parcel does not meet the five-acre rule and noted the case law addresses this. In conclusion, Mr. Fortier expressed concern for the value of his property if these modular units are constructed.

Chairman Drobinski stated it is difficult for the Board to receive new material and digest it at the same time, especially something of a technical legal nature. He recommended Town Counsel review it. He thanked Mr. Fortier for his involvement in this issue and in Town government in general.

Mr. Abrams opined the decision before the Board should not address the value of surrounding property, but only the issue of agricultural use and ancillary uses of said use.

Selectman Roopenian asked how far apart the existing driveway and proposed alternate driveway were. Mr. Abrams opined the distance to be approximately 90 feet. He stated the applicant is willing to move the driveway, though the Town boards preferred to leave uninterrupted vegetative screening on Horse Pond Road.

Selectman Roopenian asked about screening from the abutting homes. Mr. Abrams stated the applicant will use whatever small trees are removed to place the housing and replant them both on Horse Pond Road and on the abutter side.

Selectman O'Brien expressed dismay the applicant and abutter could not resolve any issues. He asked if more trees would have to be removed to install the retention basin to the right of the existing driveway. Town Planner Jody Kablack stated she did not think so.

Selectman O'Brien asked if the five-acre rule does not apply to this one-acre parcel because it is adjacent to the exempted agricultural use. Ms. Kablack responded it is due to the "operating unit" concept of a farm, as reflected in an earlier opinion by Town Counsel. She pointed out that Town Counsel notes the parcels are contiguous but he does not indicate that proximity is a major factor. Selectman O'Brien suggested getting a clearer opinion from Town Counsel on this issue.

Mr. Abrams opined the prevailing thought is that the five acres can be cumulative. He mentioned a farm stand that was not adjacent to the farm, and the exemption applied.

Selectman O'Brien expressed concern for overall appearance and general upkeep. Mr. Abrams stated the applicant is spending considerable money on these improvements and expects to maintain them to keep the property looking presentable in the neighborhood.

Selectman O'Brien asked what happens when a single man living in a one-bedroom unit marries and starts a family. Mr. Abrams responded by stating the company has other agricultural housing and that many people have moved from small housing to larger quarters. He noted expansion is currently being done on a property occupied by a growing family.

Chairman Drobinski expressed concern for the neighborhood, should the agricultural use disappear. He wondered if the Town should impose a fine. Mr. Abrams stated a fine could certainly be imposed, but questioned how long the buildings could remain unoccupied or vacant before a fine could be put in place. He noted buildings often are not used all year round, or perhaps for a year or two, as the business evolves.

Mr. Abrams reiterated his belief that a new owner could request a hearing to determine whether the exempt use still applies, before removal of the buildings would be required.

Selectman O'Brien suggested a timeframe for dormant buildings be included in the wording of the Decision. He stated the Board wishes to make sure potential situations are addressed from the outset. Mr. Abrams stated he has discussed this with Town Counsel and felt sure appropriate wording could be worked out.

Chairman Drobinski emphasized the importance of making certain all parties are protected as this matter goes forward, and that nothing is done that will impact anyone later on. A dormancy timeframe of one to two years may be acceptable.

With regard to the driveway, Chairman Drobinski suggested the fewer curb cuts the better as it leaves a complete screen from Horse Pond Road. Selectman O'Brien asked about the space that is open for the alternate driveway. Mr. Abrams clarified that space had been open when J. P. Bartlett took over the parcel. That space will be filled with trees if not used as driveway.

With regard to a "shared driveway" vs. a right-of-way, Selectman O'Brien questioned making improvements until it is clarified. Town Manager Valente stated Town Counsel indicated in this situation a right-of-way is much more than a shared driveway, allowing the use, and, in addition, making it useful for said purpose. She stated Counsel informed her that a right-of-way is achieved through an easement, which can be improved in order to make it useful for the intended purpose. Mr. Abrams stated he never suggested it was a shared driveway, it was Ms. Cotter's letter that implies the driveway is "shared", when technically a right-of-way implies more than a shared driveway. A shared driveway situation would have outlined duties and obligations of all parties, while a right-of-way is clearly in the favor of the owner of the right-of-way. That owner may pave it or install utilities, or anything to make it useful for its intended purpose.

Mr. Abrams stated all utilities will be installed underground. The driveway will remain gravel. Small trees will be moved into the swale near Horse Pond Road to help control wetness.

Chairman Drobinski recommended Town Counsel prepare an affirmative determination along with a written legal response to issues raised by abutter Fortier.

Town Planner Jody Kablack stated she is researching whether these units can be considered affordable housing, even if they are not rented. She opined size of the units may be a main factor. To declare them affordable housing, they may have to be locked in with a 30-year deed restriction. Town Counsel will be consulted. Attorney Abrams expressed concern with the applicant changing the units from housing to office space within the agricultural use, and protecting the applicant's interests.

It was on motion unanimously

VOTED: To instruct the Town Manager to have Town staff prepare a Draft Decision and obtain written legal response to issues raised this evening specific to five-acre rule, and to continue this matter to Monday, May 6, 2002 at 8 p.m.

SP02-363 – Proposed DPW Building – 275 Old Lancaster Road

Present: Maury Wolfe, DiMarinisi & Wolfe, Architect and Project Manager; Elaine Jones, Michael Melnick, Frank Schimmoller, Permanent Building Committee; Jody Kablack, Town Planner; I. William Place, Town Engineer/DPW Director; Art Richard, Wiring/Plumbing Inspector.

At 8:30 p.m. Chairman Drobinski reconvened a Public Hearing to further consider Site Plan application #02-363 of the Town of Sudbury by its Permanent Building Committee, in accordance with Zoning Bylaw Art IX.6000, Section 6300, to construct a new Department of Public Works (DPW) 28,373 sq. ft. facility to be used for municipal offices and garage for DPW vehicles, including new parking areas, driveway and landscaping on property located at 275 Old Lancaster Road, owned by the Town of Sudbury, and zoned Residential A1. This matter was previously heard on March 26, 2002.

The Board reviewed a Draft Decision prepared by Town staff. Town Manager Valente stated there have been some changes to the conditions requested by the applicant and architect, and distributed copies of those changes to all parties.

Regarding Item 17, Selectman Roopenian asked why Item 14 was deleted from the Occupancy Permit requirements. Town Manager Valente responded the trailers referred to in Item 14 will be removed, just that the condition cannot be tethered to the Occupancy Permit, but instead to the Order of Conditions from the Conservation Commission which allows three years for removal. The trailers will not impede construction of the facility.

Michael Melnick, Permanent Building Committee, expressed concern for Item 5 being required for the Occupancy Permit as landscaping will be difficult to install during winter when occupancy is estimated. Town Planner Jody Kablack suggested six months from date of occupancy.

Responding to a question from an abutter, Mr. Maury Wolfe stated the cost of constructing the berm is included in the civil engineering budget. The additional landscaping is included in the landscaping budget. Selectman Roopenian opined this was included as an assurance to the abutters that screening will be included in the project.

With regard to exterior lighting, Mr. Wolfe stated they visited the Town of Wellesley to look at the Main Street lighting there, as suggested at the last hearing. He stated the lighting consists of 14 – 16' light poles with shorter versions only marking the crosswalk areas. He stated those short versions would not work for this project. He pointed out shields on the lighting proposed for the project will project downward, minimizing the glare to the abutters. He stated further that trees will be planted behind the light poles, and as those trees grow, the poles will become virtually invisible.

Mr. I. William Place, Town Engineer, stated the entrance lights are on 24 hours as is the lighting at the gas pumps. Lighting at the salt shed is controlled by a motion detector. In order to provide safety in the parking areas, the lighting there can be controlled by either a timer or motion detector, so that a person working late into the evening will have adequate lighting to reach their vehicle safely.

Selectman O'Brien asked that trash pickup not occur before 8 a.m. as dropping the dumpsters creates a loud noise. Mr. Place stated pickup is presently around 7 a.m. Mr. Frank Schimmoller, Permanent Building Committee, stated the dumpster area is well screened and opined noise will not be heard by abutters. Two abutters in attendance indicated they currently cannot hear anything when trash is picked up. Chairman Drobinski stated it is difficult to condition trash pickup as the service is contractual, but urged the abutters to contact the Town Manager if the noise is excessive.

Pat Forino, 15 Pine Ridge Road, asked if there would be another meeting to discuss plantings. Town Manager Valente stated the Permanent Building Committee had already proposed a plan for consulting abutters on location of screening plants. Mr. Wolfe stated the construction schedule is such that the building would be complete in about eight months (Jan.-Feb.), which would be a good time to determine visibility from abutter perspective, and proceed with spring plantings. He reminded everyone there are two types of landscaping, perimeter and on-site. Town Planner Jody Kablack suggested inserting a phrase into Item #5 that abutters shall be notified upon completion of the facility, so that they may walk the site with the Board or the Board's representative. Item #5 was amended to include notification to abutters.

On behalf of the Board, Chairman Drobinski thanked the Permanent Building Committee for their hard work in bringing this project forward, and further expressed appreciation to the abutters for making their views known and participating in the process.

It was on motion unanimously

VOTED: To approve Site Plan Application No. 02-363 of the Town of Sudbury by its Permanent Building Committee to construct a new Department of Public Works (DPW) 28,373 sq. ft. facility to be used for municipal offices and garage for DPW vehicles, on property located at 275 Old Lancaster Road, as shown on site plan dated February 21, 2002 with Sheets L-1, C-1, 2, 3, 4, 5, 6, 7, 8, 9, 10 & 11 dated February 2002 and Sheets A-1, 2, 3, 4, 5, 6, 7, 8 & 9 dated February 6, 2002 and Sheet 5 dated January 2002, 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 conditions, as amended this evening.

Wireless Communications Facility – Landfill

Present: Jody Kablack, Town Planner.

Town Manager Valente briefly updated the Board on the situation involving additional carriers at the Landfill wireless facility. She reminded the Board that AT&T had erroneously contracted with Cingular to be the third carrier while the Town had selected Verizon, as part of the Town's RFP. Verizon will be applying for site plan approval and their equipment features a slight "bumpout" rather than the "fin" design. A drawing of the proposed addition was circulated. Cingular may still ask the Town to allow it to be a fourth carrier on this pole. The Board indicated it did not want to allow a fourth carrier at this facility.

Chairman Drobinski asked if an additional shed will be necessary. Ms. Valente responded in the negative, stating only the addition of a generator and propane tank is being requested. She noted, however, that an additional shed would be needed if a fourth carrier is accepted.

Jody Kablack, Town Planner, stated the tower was originally built as a three-carrier pole, with shed space for three. Verizon will occupy the second section from the top, their "bumpout" extending 3" out from the pole as sort of a "sleeve" over that ten-foot section. Verizon equipment would not fit inside the remaining

space in the pole. They will add a propane tank (with 6' x 3' concrete pad) and a small generator (6' x 6' pad) and fencing will be extended to encompass these additions. Ms. Kablack opined this does not require even a minor site plan application as it involves less than 500 sq. feet.

The Board agreed the solid bumpout is an acceptable addition to this wireless facility. The Board directed the Town Manager to notify AT&T of the above.

Hearing Procedure for Site Plan Review

Present: Jody Kablack, Town Planner.

The Board reviewed a draft procedure for site plan hearings. This document would assist applicants for site plan approval in preparing for the Board of Selectmen's public hearing, and outlines information to be provided and covered by the applicant or his representatives. The Board will discuss this after the Town Planner has an opportunity to review it and provide input.

HOPEsudbury Comfort Baskets

Present: Jody Kablack, Town Planner.

Town Manager Valente reported she had received thanks from the US Air Force for the Comfort Baskets recently delivered through the HOPEsudbury program. She stated the families appreciated the kindness and participation of Sudbury residents. Ms. Valente extended appreciation to Jody Kablack, who was instrumental in coordinating Comfort basket activities. A nice article appeared in the *Town Crier* about the delivery. It was suggested the thank you letters and certificate be forwarded to the newspaper to further publicize the purpose and efforts of this outreach program, giving credit to the appropriate individuals.

Legislative Bill No. 2361

Town Manager Valente stated she had been contacted by Rick Reed, Town Administrator of the Town of Bedford, encouraging support of Legislative Bill No. 2361 which seeks to amend the Community Preservation Act. This measure includes the use of CPA funds for rehabilitation of municipal buildings to meet ADA requirements, etc., by broadening the definition for preservation of historic resources. The Board directed the Town Manager to write a letter indicating their support of said bill.

Annual Area Selectmen Dinner

Town Manager Valente reported Jeff Ritter, Executive Director for the Town of Wayland, had contacted her regarding the annual dinner between the two Boards of Selectmen. She suggested adding the Town of Lincoln, as Lincoln and Sudbury share a high school. Following discussion, the Board agreed.

Reorganization of the Board

It was on motion unanimously

VOTED: To elect Lawrence W. O'Brien as Chairman and Kirsten D. Roopenian as Vice Chairman of the Board of Selectmen, and to elect Maureen G. Valente, Town Manager, as Clerk of the Board of Selectmen.

Selectmen Liaison Assignments

Following reorganization of the Board, members reviewed their current liaison assignments, and after brief discussion, made changes for the 2002-2003 year.

It was on motion unanimously

VOTED: To accept liaison assignments for the 2002-2003 year, as amended.

Executive Session

At 9:42 p.m. it was on motion by roll call unanimously

VOTED: To go into Executive Session to discuss litigation matters. (Chairman Drobinski, aye, Selectman O'Brien, aye, Selectmen Roopanian, aye).

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

There being no further business, the meeting adjourned at 9:58 p.m.

Attest: _____