

IN BOARD OF SELECTMEN
TUESDAY, SEPTEMBER 7, 2004

Present: Chairman John C. Drobinski, Selectmen Lawrence W. O'Brien and William J. Keller, Jr.

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

Opening Remarks

Chairman Drobinski urged residents to be mindful of children walking, bicycling or waiting for school busses now that school is in session.

Chairman Drobinski announced upcoming Town events as follows:

- 1) Open House at the new Lincoln-Sudbury Regional High School is September 19 from 2-4 p.m.
- 2) Sudbury Day Festival will be held on September 18.
- 3) September 11th Memorial Service will be held at 8:30 a.m.
- 4) September 14 will be the State Primary Election.

St. Anselm's Task Force

Present: Jody Kablack, Town Planner.

Town Manager Valente stated the Town would like to explore housing uses for St. Anselm's Parish property, which could potentially be sold by the Roman Catholic Archdiocese of Boston (RCAB). Applicants are solicited to serve on a Task Force. Ms. Valente stated an opinion from Town Counsel stated Board members could serve as long as they publicly announced they would do so with the Town's best interests in mind. She submitted a list of individuals and suggested representatives from Town entities. Ms. Valente pointed out the first meeting is next week, and meetings would take place in a fairly compacted schedule.

Selectman O'Brien expressed concern that both a husband and wife indicated interest, and suggested they decide between them which one should serve. The Board concurred.

There was brief discussion regarding makeup of the group. As Chairman Drobinski and Selectman O'Brien were members of that church, it was agreed they should not serve as official members, but could attend to offer pertinent historical information regarding the building and grounds as well as guidance regarding State statutes and procedures.

Jody Kablack, Town Planner, stated she and a housing consultant would chair the meetings, thus maintaining focus of the members for this limited service.

It was on motion unanimously

VOTED: To appoint the following individuals to the St. Anselm's Task Force as follows: Peter H. Anderson, Judith Deutsch, Kaffee Kang, Amy E. Lepak, Sohrab Mansouri, Ann S. Rossini, Lynn D. Sand, Kirsten C. VanDijk, Marjorie D. Wallace, and Ara K. Yacoubian OR Mary G. Yacoubian, as well as Kelley A. Cronin (Sudbury Housing Authority), Susan N. Iuliano (Sudbury School Committee), and as yet undesignated representatives from the Finance Committee and Planning Board.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular and executive sessions of August 10, 2003, and the Special Meeting of August 26, 2004.

United Nations Day – Proclamation

It was on motion unanimously

VOTED: To proclaim the day of October 24, 2004, as United Nations Day in the Town of Sudbury, thereby urging all citizens to participate in related activities.

Community Housing Committee – Resignation

It was on motion unanimously

VOTED: To accept the resignation of Roger Van Duinen, dated August 22, 2004, from the Community Housing Committee, and to send a letter of appreciation for his service.

Bullfinch's – Sunday Entertainment License

It was on motion unanimously

VOTED: To renew the Sunday Entertainment License held by Bullfinch's, 730 Boston Post Road, for a jazz trio performing Sundays during the hours of 11:00 a.m. to 2:30 p.m. for the period of September 12, 2004 through September 4, 2005.

First Annual Fun Run & Walk – Eric J. Drobinski Memorial Foundation

It was on motion

VOTED: To grant permission for the First Annual Fun Run & Walk, to take place on Sunday, September 19, 2004, commencing at 4:00 p.m. from Lincoln-Sudbury Regional High School, Lincoln Road, to raise funds for the Eric J. Drobinski Memorial Foundation. (Selectmen O'Brien and Keller, aye, Chairman Drobinski, abstain).

Democratic Election Officers

It was on motion unanimously

VOTED: To appoint David L. Levington, 155 Nobscot Road, and William T. Maloney, 119 Willis Road, Democratic Election Officers as Tellers, in accordance with the recommendation of Democratic Town Committee Chair Beverly Guild and Town Clerk Barbara Siira.

Ti-Sales, Hudson Road – Right of First Refusal

Town Manager Valente explained that some issues arose following the construction of a fence in conjunction with Site Plan work. She stated part of the fence was inadvertently placed on Town property and correction of same would be cost prohibitive. She stated a solution was to offer a License to the property owner to maintain the fence and land within it, and in exchange, the property owner executed a Right of First Refusal to the Town, when property at 40 Hudson Road should be sold in the future.

Ms. Valente stated appropriate documents were prepared by Town Counsel and executed by Lawrence W. Tighe, Trustee of Hudson Road Trust #1.

After discussion, it was on motion unanimously

VOTED: To approve and sign documents relative to a License with conditions granted by the Town to Lawrence W. Tighe for the purpose of his maintaining an existing fence and the land within it, which are located on Town property on the former Parkinson land, as shown on a plan entitled “Proposed Site Plan for Building Addition, 36 Hudson Road, Sudbury MA” prepared by Zanca Land Surveyors, Inc., dated April 12, 2004, latest revision dated May 25, 2004.

It was further on motion unanimously

VOTED: To approve and sign documents relative to An Agreement of Right of First Refusal, granted by Lawrence W. Tighe, Trustee of Hudson Road Trust #2, to the Town on Parcel G09-001 (40 Hudson Road), with conditions.

Site Plan 04-373 – Ti-Sales, Inc., 36 Hudson Road

It was on motion unanimously

VOTED: To approve and sign plans in connection with Site Plan 04-373 for Ti-Sales, Inc., 36 Hudson Road.
NOTE: The Board signed the plans after the meeting.

Appointment of Constable – William E. Pickett, Jr.

Present. William E. Pickett, Jr.

Town Manager Valente stated Mr. William E. Pickett, Jr. of Framingham has applied for appointment as a Constable for Sudbury. His resume and letter of interest were forwarded from the Police Department.

Mr. William Pickett introduced himself and briefly stated some of his qualifications for the position. The Board thanked him for his interest and willingness to serve.

It was on motion unanimously

VOTED: To appoint William E. Pickett, Jr., 9 Willow Brook Drive, Framingham, MA 01702, as a Constable for the Town of Sudbury for a term to expire April 30, 2007.

Colonial Fair and Muster of Fyfes and Drums – Wayside Inn

It was on motion unanimously

VOTED: To grant a special permit for the Companys of Militia and Minute of Sudbury to hold a Colonial Fair and Muster of Fyfes and Drums on the grounds of the Wayside Inn from 10:00 a.m. to 5:00 p.m. on Saturday, September 25, 2004 (rain date September 26), subject to meeting the requirements of the Police, Fire and Health Departments and obtaining permits for any tents from the Building Inspector.

Site Plan #04-376-- Omnipoint Holdings, Inc., subsidiary of T-Mobile USA, Inc., 16 North Road

Present: Michael Almada, Project Manager, T-Mobile; Jody Kablack, Town Planner; Ralph Tyler, One Deacon Lane.

At 8:00 p.m. Chairman Drobinski convened a Public Hearing to consider site plan application #SP04-376 of Omnipoint Holdings, Inc., a wholly-owned subsidiary of T-Mobile USA, Inc., in accordance with Sudbury Zoning Bylaw Article IX.6000, Section 6300, Site Plan Review, to expand the existing SpectraSite facility for wireless communications on property located in the Research District, 16 North Road, on Parcel C12-004, owned by the Sudbury Water District, by adding a nine-panel antennae attached to a platform at a height of 130 feet plus an E911 antenna at an approximate height of 100 feet to the existing tower, with co-axial cables and base transceiver station (BTS) units mounted on a 6' x 8' concrete pad comprised of three equipment cabinets and power/telephone pedestal, in collocation with CellularOne and Cellco Partnership (Bell Atlantic Mobile).

Notice of the Public Hearing was duly posted and advertised in the *Sudbury Town Crier* on August 19 and 26, 2004. Primary abutters according to the Assessors were provided written notice by first class mail. The Sudbury Planning Board and other boards and officials were notified and requested to report to the Selectmen.

The Board is in receipt of the following:

1. Site Plan application dated June 15, 2004 and received June 17, 2004, enclosing site plans entitled "4DE-0485-B SPECTRASITE NORTH ROAD, North Road, Sudbury, Massachusetts", dated July 9, 2002, revised July 17, 2002 and September 25, 2002 (one sheet).
2. Report from the Town Engineer/Director of Public Works dated July 12, 2004, commenting on 1) the need for signature block, 2) the amount of impervious area added to the site is insignificant to the total project and he recommended the runoff from the concrete slab be infiltrated into the ground by placing 1½" stone around the perimeter of the cabinets, and 3) although not a subject of this application, the existing propane tank installed by Bell Atlantic should be relocated to the southerly side of the equipment shelter, as there is currently a safety consideration with the proximity of the tank and truck traffic exiting at the Borrow Pit.
3. Report dated July 15, 2004, from the Town Planner to the Planning Board describing the proposed expansion, noting that the Planning Board has extended its Water Resource Protection Special Permit until July 2005, concurring with the Town Engineer's concerns about location of the existing above ground propane tank serving Bell Atlantic's operation at this site and recommending relocation, noting the drainage shall be in accordance with the above WRPSP, and informing that for power back-up in emergencies a generator will be brought onto the site if needed.

4. Report from the Planning Board dated July 29, 2004 recommending approval of the site plan with the recommendation that the existing propane tank installed by a previous applicant be relocated for safety reasons and that it be determined who would be responsible for the relocation. The Board also suggested the possibility of putting up jersey barriers to protect the tank from possible collision.
5. Report dated July 29, 2004, from the Building Inspector commenting that the site address of 16 North Road and signature block should be added to the plan.
6. Report dated July 8, 2004, from the Conservation Coordinator stating it appears that the computer equipment cabinet will be located within a 200' riverfront area requiring a Notice of Intent to be filed for confirmation of the riverfront delineation and for review of the project to determine if the performance standards for riverfront redevelopment activities have been met.
7. Report from the Sudbury Fire Department dated August 6, 2004, recommending that the propane tank located at the bottom of the hill, around which the roadway must now bend, should be moved to the rear of the buildings away from the travel lane.
8. The Health Department has responded it has nothing to report relative to this application.
9. A letter dated July 8, 2004, stating only that the Water District gives its consent to the application.

Jody Kablack, Town Planner, reviewed reports and information received to date.

Mr. Michael Almada, Project Manager, T-Mobile, stated Paul Gascoigne, the originating project manager for this application, is no longer with T-Mobile, and that he [Almada] would be taking over the project.

Utilizing coverage maps, Mr. Almada pointed out where existing coverage ends and where the proposed facility will fill in a coverage gap, in conjunction with other wireless communications facilities nearby. He stated they are pursuing a facility in Lincoln at the DPW barn to expand coverage more. He stated it can take several years to find appropriate locations and obtain necessary approvals. Mr. Almada stated a site in central Wayland may be accessible, and opined possibly approaching the Sudbury Water District for a site. Changes in pole ownership due to mergers sometimes provide increased coverage opportunities.

Selectman O'Brien stated he had never heard of SpectraSite in all the wireless communications hearings he has attended. Mr. Almada responded that SpectraSite has entered into an agreement with Cingular in which SpectraSite serves as the manager of the facility. In some cases, such a company will then solicit vendors for space at the facility.

Mr. Almada stated they have approached owners of several sites in Town about construction of a pole, with no success. Given the Town's wireless overlay district bylaw, they have settled on expanding an existing facility on land owned by the Sudbury Water District. He noted that a Special Permit is not required if they expand an existing facility, but acknowledged Site Plan Review must come before the Board.

Utilizing a design of the proposed expansion, Mr. Almada pointed out various elements of the equipment. The equipment is not in a shelter, but in equipment cabinets on a concrete pad, and will not require any vegetation removal. He provided a drawing of the equipment cabinets. Forested areas bordering

the Borrow Pit and Route 117 provide significant screening of the facility. No changes are proposed for existing grading and other conditions. One service maintenance visit per month is anticipated at the facility.

Mr. Almada stated some changes have been considered in response to comments from Town boards and departments. One example is relocation of the existing propane tank installed by Bell Atlantic to the southerly side of the equipment shelter, as the DPW Director expressed concern with the proximity of the tank and truck traffic exiting at the Borrow Pit. He has forwarded that request to the pertinent parties, but noted the addition of T-Mobile equipment has little to do with the propane tank. Town Manager Valente offered to contact the Water District to ask them to address this relocation effort.

Regarding the Conservation Coordinator's report, Mr. Almada opined T-Mobile's impact on an already disturbed area was so minimal that it could not possibly impact a resource area. He opined the Conservation Coordinator has been unwilling to work with them toward reasonable outcome, even after numerous conversations in 2002 regarding this site. Responding to a question from Selectman O'Brien, Mr. Almada stated the Department of Environmental Protection (DEP) has apparently amended its ruling on the location of certain "knee high" waters, and opined the composition of the Conservation Commission might also be a factor. He contended the findings for T-Mobile's activity would not affect said waters.

Chairman Drobinski stated the Rivers Act is a statutory requirement and that this particular location was instrumental in the changing of the statute regarding knee high water. Selectman O'Brien opined this DEP determination was made after the original site plan application at this location. Mr. Almada noted that being 99' away from the wetlands area requires an applicant to file a Notice of Intent, whether or not their project has any impact on the area. The Board noted this is in the jurisdiction of the Conservation Commission.

Selectman O'Brien asked if a triangular shaped panel would be used. Mr. Almada responded in the affirmative, explaining that an interior cable system will be used, with an exterior array. Mr. O'Brien asked if the exterior mounted antenna could be placed inside the pole. Mr. Almada responded no, that it would require a complete rebuild of the pole, as the wiring for other carriers is inside the pole. The top of the pole would have to be removed [cut off], two carriers' wiring reconfigured, and a sheath placed on the pole. He opined the other carriers would not be happy to lose their existing array.

Selectman O'Brien commented on the wireless facility at the Landfill, noting the most recent carrier added a "sleeve" that hugs the pole and disguises the wiring. He asked if something similar could be possible here. Mr. Almada responded it has been done before, but not without difficulty or repercussion. Effective coverage would be impacted, and the horizontal/vertical diversity would be affected, thereby lessening the quality of the coverage and signal. He suggested the Town look at other examples of mix/match solution to see if one proves appealing. A full array is always superior to other options.

Selectman O'Brien noted this pole at 150' is taller than the maximum pole height specified in the bylaw, but noted further this site predates the bylaw's inception. He expressed concern that, at that height, additional carriers might wish to expand service by adding the triangular panels, which would eventually impact the visual harmony presently existing. He opined the sleeve notion to be worthy of research.

Chairman Drobinski suggested the applicant bring back some samples of what particular options might look, to better assess the visual impact on the neighborhood. Mr. Almada stated the important difference is not of visual impact, but of quality of signal. He stated the visual differences may not show well in photographs.

It was noted that the Pantry Road/Deacon Lane/Water Row area is not heavily populated and coverage appears to be sparse. Mr. Almada stated the primary purpose of a facility such as this is not to add households or residential customers with cell phones, but to service the commuter traffic as it passes through the area.

Selectman O'Brien noted no photographs were submitted as part of the application and asked if the applicant could provide photos of existing equipment and proposed addition, so that the Board can assess the differences. Mr. Almada responded the facility is relatively unobtrusive at this time and did not expect it to change significantly.

Mr. Almada agreed T-Mobile would conduct a Radio Frequency analysis to show changes in coverage area by use of a sleeve, as suggested by Mr. O'Brien. T-Mobile will also produce photo simulations of the tower, showing the visual impact difference between the proposed and sleeve-mounted antennae.

Chairman Drobinski asked about a backup generator, in the event the propane tank ran out of fuel or sprang a leak. Mr. Almada responded a rented commercial generator would most likely be used. Mr. Drobinski suggested the fuel tank on the generator be double lined as the property is very close to water resource areas, noting Sudbury is not part of the MWRA, is self-sufficient regarding water supply and must be very careful in areas where contamination could potentially occur. Mr. Almada stated a backup battery within the equipment cabinet provides approximately eight hours of support, and opined use of a generator would be very short term. He stated he would investigate Selectman O'Brien's suggestion of including a generator within the equipment cabinet, as well investigate other approaches to avoid bringing in a backup generator.

Mr. Ralph Tyler, One Deacon Lane, submitted a photograph of the existing pole, taken from Concord Road. He opined a single monopole with antennae inside the pole would be unobtrusive in this location, and suggested the existing antenna does not conform to the current bylaw. He suggested the applicant conform to the bylaw in the installation of the expansion. Mr. Tyler opined that any additions to a pre-existing structure should be subject to the bylaw, and not become more non-conforming. He noted the equipment cabinet is within 500' of the nearest property line, as an example. He contended the current site has never been subjected to the wireless communications bylaw, and should therefore not have the right to expand further without conforming to the bylaw.

Chairman Drobinski advised Mr. Tyler to put his thoughts in writing and submit it to the Board for review. He stated interpretation of bylaws and statutes is sometimes difficult, and that interpretation is best left to legal counsel.

Mr. Almada stated T-Mobile consulted with Town Counsel and Zoning Board on this issue, and a determination indicated the proposed project did not need to be reviewed as a non-conforming use.

Selectman O'Brien suggested procuring copies of leases held by other carriers at this facility, in case they should soon be up for renewal, presenting opportunity for all tenants to be under similar leases and conditions.

It was on motion unanimously

VOTED: To continue this matter until September 21, 2004, at 8 p.m.

NStar Tree Cutting – Stock Farm Road and Pelham Island Road

Present: Annemarie Walsh, Community Relations and Economic Development Specialist for NStar; Stock Farm Road/Pelham Island Road/Victoria Road residents.

At 9:00 p.m. Chairman Drobinski convened an open meeting with Mr. Stan Kaplan and other Stock Farm Road/Victoria Road neighbors concerning their request for the Town to assist in their efforts to obtain commitment by NStar to replant recently cut down trees, for the purpose of screening transmission power lines on Stock Farm Road and Pelham Island Road pursuant to earlier agreement by Boston Edison Company to maintain such screening.

Mr. Stan Kaplan, 98 Victoria Road, spokesman for the neighborhood group, thanked Ms. Janet Silva, Administrative Assistant, for her assistance in researching the necessary documents. He spoke about the previous agreement [1971] of Boston Edison Company and the Town of Sudbury, for Boston Edison Company to plant trees to screen transmission lines constructed in 1970. He reiterated various conditions of the agreement, and reviewed subsequent events, legal interpretations, and judicial rulings regarding utilities and the screening of public power lines [appearances].

Mr. Kaplan summarized by stating there is conclusive proof that an agreement does indeed exist to provide for the planting of screening trees and maintaining said screening. He stated a total of 55 mature trees were destroyed on Stock Farm Road and Pelham Island Road, nearly 50% of trees in that area. Mr. Kaplan stated the destruction of these trees seriously impairs the market value of the homes. He respectfully requested the Board enforce the existing agreement and insist on replanting of trees during the current planting season. He opined the absence of trees in the neighborhood will significantly impact any real estate sales.

Annemarie Walsh, Community Relations and Economic Development Specialist for NStar, stated that, due to vacation schedules, the arborist and other parties were unavailable to adequately discuss this issue or attend this meeting. She anticipated having some answers the following week. She expressed her understanding of the seriousness of the situation, and opined the planting could be done up until mid-November.

Chairman Drobinski stated NStar has something of a fiasco on its hands. The record is very clear that agreements and promises were made, yet not complied with. He stated that not acting to resolve the matter immediately is like a slap in the face to the residents of Sudbury.

Selectman Keller suggested Town Counsel explore the state tree cutting statute. Town Manager Valente stated these trees were not in the public way, but set back from the road. Mr. Keller stated the statute states fees and penalties that would be charged to the tree cutter, as replacement trees should equal the value of the mature trees destroyed.

Ms. Walsh stated NStar does have the authority to trim trees in the right-of-way, and opined this time the tree trimming constituted an emergency situation, so discussion with the Town did not take place. The Board was skeptical that more than regular trimming was necessary.

Selectman O'Brien described the situation as "customer abuse", not customer service. He opined the replacement trees need to be more than 2" diameter trees, and a species that does not grow quickly and require regular trimming. If the situation can be explained away by citing safety concerns, problems with the trees, etc., it would be a different story.

Mr. Martin Wiadro, 131 Victoria Road, concurred with Mr. O'Brien's suggestion that the replacements need to be a decent size, and perhaps a complete redo of the area. He stated when he first moved to his home 31 years ago, the trees were small. He opined it will never look the same, and it now looks like a tornado came through the area. Selectman O'Brien suggested further NStar should develop a planting plan to submit to the Town before doing any planting.

Ms. Deborah Howell, 123 Victoria Road, stated NStar comes very often to trim the trees, and suggested replanting a species that does not require so much maintenance and especially no tree topping. Ms. Walsh acknowledged the original trees planted in close proximity to the power lines were not the appropriate variety, and opined the tree species will be taken into consideration before replanting.

Mr. Carol Otis, 55 Victoria Road, stated she is a retired employee from a utility company and stated further that knowledgeable staff is always on hand to handle such situations when people are away on vacation. She opined vacation schedules to be an excuse, as people are available via cell phone and email, even on vacation. She suggested clearing the area of all unnecessary brush and scruffy shrubbery before replanting, as well as stump removal.

Mr. Kaplan stated the cut tree trunks remain on Pelham Island Road, but were removed from Stock Farm Road. All 55 tree stumps remain in the ground.

Town Manager Valente asked Ms. Walsh for a phone call from her by noon on Tuesday, September 14, with an action plan for a meeting to resolve this situation. Ms. Valente expressed her disappointment that communication with NStar officials often breaks down, crews do not appear on jobs, etc.

Chairman Drobinski described the situation as a "black eye" for NStar and suggested the utility company make a concerted effort to live up to its promises and commitments.

The Board thanked Ms. Walsh for attending and encouraged her to take back all pertinent comments for resolution, and also thanked the residents for their attendance.

Rail Trail Conversion Advisory Committee

Town Manager Valente stated she distributed two versions of a mission statement for a Rail Trail committee and asked for the Board's input. One includes both segments of the north/south line, while the other focuses on the Lowell-Sudbury line. She pointed out the differences in each one, timelines, concepts, member composition, etc. She recommended leaving the east/west line out of discussion for the time being.

Selectman Keller opted for the north/south line, while Selectman O'Brien suggested an overall look, then dividing it into phases. The Board agreed to focus on the entire north/south line (both segments) at this time.

There was brief discussion on member composition, centering on a more broad-based group rather than predominantly cycling/recreational enthusiasts. Staff members would be included for their technical expertise.

It was on motion unanimously

VOTED: To create a Rail Trail Conversion Advisory Committee, to investigate conversion of both segments of the north/south railroad line (the Lowell-Sudbury portion north of Route 20 and the CXS line from Route

20 to Framingham) for a recreational trail, to be comprised of a total of thirteen members (six staff members and seven at-large members) as presented in the draft mission statement.

2005 Annual Town Meeting Articles

Town Manager Valente distributed a list of potential articles to be submitted by the Board for the 2005 Annual Town Meeting. She asked the Board to begin thinking about various articles and forward thoughts to her, so that staff can begin pulling together any pertinent research documents at this early stage. Ms. Valente asked the Board to also forward ideas on articles not included on this list, as well.

Land Rover MetroWest – Landscaping Issues

Town Manager Valente distributed copies of a letter her office received from Joshua Fox, Rollins, Rollins & Fox, attorney for Land Rover MetroWest, 83 & 103 Boston Post Road. The letter updates the Board on the applicant's efforts to resolve landscape planting issues, noting the Conservation Coordinator still has questions regarding the viability of suggested plantings. Mr. Fox noted the matter has been scheduled for review before the Conservation Commission on September 13, 2004, and asked for the Board's patience while the applicant works with the ConCom in satisfying those concerns.

The Board asked the Town Manager to convey to the applicant its confidence in Land Rover MetroWest following through with any requirements put before it.

Executive Session

At 9:55 p.m. it was on roll call

VOTED: To go into Executive Session for the purpose of discussing employee contract negotiation and potential litigation matters.

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

There being no further business, the meeting adjourned at 10:20 p.m.

Attest: _____
Maureen G. Valente
Town Manager-Clerk