

IN BOARD OF SUDBURY SELECTMEN  
TUESDAY, JUNE 15, 2010

Present: Chairman John C. Drobinski, Vice-Chairman Lawrence W. O'Brien, Selectman Robert C. Haarde and Assistant Town Manager Wayne R. Walker

Absent: Town Manager Maureen G. Valente

The statutory requirements as to notice having been complied with, the meeting was convened at 7:31 p.m. in the Lower Town Hall, 322 Concord Road.

**Opening Remarks**

At 7:31 p.m., Chairman Drobinski opened the meeting. He congratulated the Lincoln-Sudbury Regional High School (L-SRHS) teams, which competed in post-season tournaments. He also cautioned drivers to be careful of pedestrians and bike-riders enjoying the outdoors.

**Clerk Pro Tem**

It was on motion unanimously

VOTED: To appoint Assistant Town Manager Wayne R. Walker as Secretary and Clerk Pro Tem, in the absence of Town Manager Maureen Valente for the June 15, 2010 meeting.

**Citizen's Petition**

Resident Robert Stein, asked if he could present a citizen's petition. Chairman Drobinski informed him that citizen's petitions need to be submitted in advance to the Selectmen's Office or a citizen can contact the Chairman to discuss the petition request. Mr. Stein stated that he believed the newly-revised policy for prior submission was a suggestion rather than a requirement, and that he is unaware of this procedure in other towns. Chairman Drobinski clarified that it is a requirement, and that no time has been set aside on the agenda tonight for a petition, since none had been requested in advance of this meeting.

**Reports from the Board of Selectmen**

Selectman Haarde noted that budget information from the State indicates that Sudbury's State Aid reduction appears as if it will be relatively flat, at approximately \$53,000. He stated that the \$1.2 million tax override proposal was based on an estimated larger reduction in State Aid. Thus, Mr. Haarde suggested that there should now be funds available to be used to improve Town services.

Finance Director Andrea Terkelsen stated that the State budget information is analyzed on an ongoing basis, and that the Finance Committee will soon issue a formal statement, explaining the rationale and conclusions reached through the budget process, from the time the Town Warrant was published, through current available information. Ms. Terkelsen stated that, upon review of expected revenue from State Aid and local receipts, it does not appear as though any additional funds have become available since the time that the budget was appropriated at the Annual 2010 Town Meeting.

Selectman Haarde noted that local receipts are down this year by approximately \$400,000, and he asked why. Ms. Terkelsen responded that local receipts are primarily excise taxes and permit fees, both of which have significantly declined in the past 12-18 months as a result of a difficult economy and a challenging

housing market. Selectman Haarde asked Ms. Terkelsen for ideas to increase revenue. She noted that Town staff are continuously reviewing this issue. Ms. Terkelsen stated that pilot tax plans are being established, and a Sudbury Trust Fund, which will encourage private gifts and donations to the Town. Ms. Terkelsen further noted that municipalities are limited as to how they can raise revenue.

Selectman Haarde further stated that he has heard it may be possible that municipalities will face an additional \$500-\$800 million in cuts from the State later in the year. He suggested the Town discuss the ramifications of that probability sooner rather than later.

Chairman Drobinski noted that a Financial Summit is planned with the Schools to look at these financial issues and revenue gaps over multiple years.

Selectman Haarde made a motion to form an Economic Development Committee to study these issues and help to increase the commercial tax base. Assistant Town Manager Walker and Chairman Drobinski responded that such a committee exists and the Town has a Director of Planning and Community Development. Selectman Haarde stated that volunteers are needed to energize efforts to generate positive action on key economic issues, and he asked if his motion was seconded. No second was received.

Vice-Chairman O'Brien noted that what any committee can accomplish is limited by Sudbury's Title V situation and its need for a wastewater treatment facility on Route 20. In addition, he noted that economic growth assumes that private property owners will want to grow. He also stated that the community has many issues to resolve, including what it wants its Route 20 zoning to look like before a new committee could add value to what is already being done.

Selectman Haarde stated that he believes a new committee could address all the issues mentioned by Vice-Chairman O'Brien, and others, and begin to generate ideas. Chairman Drobinski stated that he welcomes citizen involvement, but that discussions should start with the Town Manager, Town Planner, Town staff and possibly the Highway Department to gather insight and information.

Selectman Haarde suggested that a public forum be held next week to solicit ideas from the public. He noted that property taxes were increased 2.75% this year, which was significantly higher than the current rate of inflation, yet the Town has had to eliminate services and teachers. He believes that there is a need to motivate people to think of better solutions than cutting services, cutting teachers, and raising taxes.

Chairman Drobinski stated he is not available next week, and he suggested Selectman Haarde discuss his perspective with the Town Manager. Vice-Chairman O'Brien suggested that these issues be broached at the Board's goal-setting session so that initiatives are reviewed within a broader context and approached in an organized manner. Selectman Haarde asked for confirmation, which he received, that some of these matters could be discussed at that session on June 24, 2010. Chairman Drobinski noted that Town staff will also be involved in the goal-setting session, and have been asked to provide input regarding budget-saving ideas. He further noted that 80% of the Town's budget is in salaries and that the Board's goal is to save as many jobs as possible.

Selectman Haarde stated he believes the Board's goal is not to save jobs, but rather to provide the most effective model for delivery of the best levels of services possible for the people of Sudbury. He emphasized that, in a difficult economy, the Town needs to pursue efficient models. Chairman Drobinski noted that some Town Departments have only one employee, who cannot be eliminated.

Chairman Drobinski attended Riverfest, and an Eagle Scout ceremony last week. He also attended the Community Preservation Committee (CPC) meeting, where goals for next year were discussed. The CPC will not meet this summer and will resume its meeting schedule in the fall.

#### **Reports from Assistant Town Manager**

##### **Boundless Playground Maintenance Account - Donations**

Assistant Town Manager Walker referenced an email communication dated June 14, 2010 received by the Board from Park and Recreation Director Nancy McShea. Ms. McShea explained the intention for the two gifts, as had been requested by the Board at its last meeting. Mr. Walker stated that these gifted funds, which total \$8,401.50, should be sufficient to provide the remainder of the poured rubberized surface area for the playground. In addition Mr. Walker stated that an additional \$5,000 had previously been donated for future maintenance needs.

It was on motion unanimously

VOTED: To accept two donations into the Boundless Playground Maintenance Account: one in the amount of \$8,351.50 from the S.M.I.L.E Playground Committee and Friends of Sudbury Park and Recreation, and a \$50.00 donation from Peter Domino, designated for future rubber surfacing of the handicapped-accessible Haskell Field Playground; as requested by Nancy McShea, Park & Recreation Director, in memos dated May 10 and June 14, 2010.

##### **Earth Removal Board – Interview Candidate**

Chairman Drobinski welcomed candidate Jonathan W. Patch to the meeting to explain why he is interested in serving on the Earth Removal Board. He noted that Mr. Patch has been recommended by the Zoning Board of Appeals (ZBA) Chairman.

Mr. Patch stated he has lived in Sudbury two years. He has a background as a civil engineer and works for a geotechnical firm in Cambridge. Mr. Patch believes his professional skills could be useful to the Committee, and he believes there are benefits to serving one's community. He later stated that he believes he has a good sense of the issues which will be discussed.

Selectman Haarde noted that the applicant's background seems like a good fit for the Committee, and he thanked him for volunteering.

Vice-Chairman O'Brien noted that the experience of an engineer is needed on the ZBA, which Mr. Patch's credentials would satisfy. He also noted that Mr. Patch has already attended some meetings and been exposed to the zoning bylaws. Vice-Chairman O'Brien suggested that Mr. Patch also access the Town's Master Plan and other documents on the Town website.

As a geologist, Chairman Drobinski stated he is familiar with Mr. Patch's firm, which is highly regarded.

It was on motion unanimously

VOTED: To approve the appointment of Jonathan Walker Patch, 7 Walkup Road, as a member of the Earth Removal Board, for a term to expire April 30, 2011.

Vice-Chairman O'Brien and Assistant Town Manager Walker informed Mr. Patch he would receive a letter regarding his appointment, which will direct him to be sworn-in by the Town Clerk.

**Town Auditors – FY09 Report**

Present: Andrea Terkelsen, Town Finance Director/Treasurer; Barbara Chisholm, Town Accountant; and Matt Hunt, Sullivan, Rogers & Company, LLC

At 7:57 p.m., Chairman Drobinski welcomed Town Finance Director/Treasurer Andrea Terkelsen, who introduced Matt Hunt, a partner in the Town auditing firm, Sullivan, Rogers & Company, LLC. Mr. Hunt thanked Ms. Terkelsen, Ms. Chisholm and the Town finance staff for their excellent preparation of materials for the audit process.

Mr. Hunt provided a brief review of the audit reports for the fiscal year ended June 30, 2009. He highlighted information from the financial statements, by reviewing several key accounts and provided dollar figures and/or percentage comparisons to the previous fiscal year. The General Fund balance at the close of FY09 increased \$158,791 over last year to \$9,202,147. Mr. Hunt noted that \$1,181,167 of that Fund was reserved for encumbrances, which was consistent with the previous year. In addition, \$6,661,734 has been reserved for employee benefits and trust funds. Mr. Hunt emphasized that Sudbury did an excellent job through a difficult economy to end the year with an increase in the undesignated General Fund. The resulting undesignated General Fund balance in FY09 was slightly over \$1 million, or 1.3% of total general fund expenditures and transfers out, compared to a ratio of .07% last year.

Selectman Haarde noted the abatement surplus of \$321,000. Ms. Terkelsen stated that it has been the recent philosophy of the Selectmen and the Finance Committee to protect Free Cash and build reserves, and not to use such monies to fund operating budgets. She noted that in the past the Town had utilized its Free Cash to fund the following year's budgets.

Mr. Hunt summarized the revenue and expense activity. He noted the Net Change in Fund Balance of \$158,791 over last year, which he attributed to the careful and conservative spending pattern of the Town compared to appropriations, compared to a decrease of over \$1 million last year. In response to a question from the Board, Mr. Hunt clarified that the General Fund balance of \$9.2 million does not include worker's compensation and health insurance.

Mr. Hunt also clarified for Selectman Haarde that an amount of approximately \$6.7 million is set aside for claims. Selectman Haarde also asked how the ratio of 1.3% compares with where a Town should be. Mr. Hunt responded that Sudbury is moving in the right direction, because 1.3% is well over double what the percentage was last year, however, it is on the low side compared to other towns. Mr. Hunt further stated that 5% is often used as a benchmark for the General Fund and Stabilization Fund ratio, which, when combined, was 3.6% for Sudbury in FY09.

Selectman Haarde asked if there is a municipal benchmark for employee benefits' reserves. Mr. Hunt, said it varies, but there should be enough to at least cover incurred claims. He also stated that a good indication of how well a town is doing is how it is viewed by the bond rating agencies. Selectman Haarde asked how the Town knows \$6.7 million is the proper amount to set aside for these reserves. Assistant Town Manager Walker stated that the Town works with a consultant, assessing several factors to cover potential "run out" of claims. He further stated that the Town's analysis has shown that approximately six months worth of claims should be kept in the Trust fund to cover these claims, which are designated as Incurred But Not Reported (IBNR). Ms. Chisholm and Mr. Walker estimated that six months worth of claims is approximately \$6 million.

Mr. Hunt briefly reviewed the FY09 Enterprise Fund activity. He also reviewed the change in Net Assets on a full accrual basis which totaled -\$67,683 for the Swimming Pool, and -\$92,165 for the Transfer Station.

He noted that these negative figures are partly due to the implementation this year of Government Accounting Standards Board (GASB) #45, which stipulates a new method of reporting future liabilities resulting from Other Post Employment Benefits (OPEB).

In response to a question from Vice-Chairman O'Brien, Mr. Hunt stated that the Town's Other Post Employment Benefits (OPEB) net obligation for FY09 was \$2,569,148. However, Assistant Town Manager Walker clarified that the total Town OPEB liability, which has accrued over time, is in excess of \$27,000,000. Mr. Hunt explained how the obligations are calculated as an actuarial valuation over 30 years. However, he noted that most towns are unable to fund this obligation due to financial constraints, and thus fund the obligation as needed. Assistant Town Manager Walker concurred, noting that Sudbury took action at a Town Meeting to create a Trust Fund, intended to pay off this liability, but has been unable to fund it due to insufficient funds.

In response to a question from Selectman Haarde regarding teachers' retirement plans, Assistant Town Manager Walker estimated that the approximately 125 Sudbury Public Schools' non-teaching employees are members of the Middlesex Retirement System and approximately 300 employees are members of the Massachusetts Teachers' Association.

Selectman Haarde asked about a reference of approximately \$6,700,000 for investments. Ms. Terkelsen responded that these monies are available for the General Fund, Trust Funds and Health Trust Funds.

Robert Stein asked Mr. Hunt if the auditors reviewed the Community Preservation Committee (CPC) investments and whether a list exists. Mr. Hunt responded that such a listing is outside the scope of the audit process. Ms. Terkelsen responded that a lot of relevant information is published yearly in the Town's Budget Book. She also informed Mr. Stein that the CPC investment information could be available to him, and that he should request it through the Board of Selectmen or the Finance Committee. Mr. Stein also questioned the amount of interest earned by CPC investments, as stated, in these difficult economic times. Ms. Terkelsen stated that she believes the CPC has made interest income public, but she noted that apparently, incomplete information had been gathered from various sources to draw erroneous conclusions about CPC return on investments. She reiterated that Mr. Stein could request such information through the proper Town entities.

Mr. Hunt next reviewed the Management Letter, which included eleven comments for areas which could use improvement. Mr. Hunt clarified that no material areas of weakness were found. He did note, however, that some minor control efficiency recommendations were made to the Town. He noted that six new items and one informational item have been added this year to others highlighted in previous letters. Mr. Hunt briefly reviewed the recommendations related to: the Fire Department Off-Duty Details, the Swimming Pool Enterprise Fund, Tax Exemptions and Abatements, Prepaid Tuitions, School Department Encumbrances, Estimated General Fund Revenue Budgets detail by line item, the Transfer Station, Student Activity Funds, Affordable Housing Fund, Risk Assessment and Monitoring, and a New Accounting and Financial Reporting Requirement for Fund Balances (GASB # 54).

Ms. Chisholm noted that nearly all the recommendations made regarding the Fire Department Off-Duty Details have already been implemented. Selectman Haarde asked for clarification of a Fire Department Off-Duty Detail. Assistant Town Manager Walker and Ms. Chisholm explained that these details are infrequent, and gave, as an example, providing an ambulance for a sporting event.

Ms. Terkelsen noted that the Town has made progress regarding risk assessment and monitoring. She noted that the auditors review one or two departments which handle cash each year, and an anti-fraud policy has been established. In response to a question from Vice-Chairman O'Brien, Ms. Terkelsen stated there are

not a lot of Town cash transactions, but there are some, such as library fines, pool fees, and transfer station stickers. Deposits are intended to occur daily or be properly secured. She also noted that the Town is offering more online payment options for the convenience of the community, which also diminishes risk for mishandling of funds.

Mr. Hunt further stated that the Federal Awards Programs Report only noted two findings this year: one related to the SPED Cluster Program, and the second regarding grant final reports including encumbrances, when only actual expenditures should be reported. Mr. Hunt commended the Town for Sudbury Public Schools' compliance regarding the heavily scrutinized American Recovery and Investment Act of 2009 (ARRA) Grants.

Chairman Drobinski asked Mr. Hunt for his opinion of how Sudbury is doing financially when compared to other towns. Mr. Hunt stated that, although Sudbury's reserves are on the low side, it is very positive that the Town has not had to deplete its Stabilization Fund. He noted that the Town's bond rating is excellent and that the internal controls maintained by Town staff rank very high when compared to other communities. He praised Sudbury for its fiscal conservatism and management.

At 8:46 p.m., the Board thanked Mr. Hunt for the audit reports, and the discussion was concluded.

#### **Commission on Disability – Interview Candidate**

Chairman Drobinski welcomed candidates Jacqueline S. Kilroy, 3 Dakin Road, and Dina N. Johnson, 451 Peakham Road, to the meeting to explain why they are interested in serving on the Commission on Disability.

Ms. Kilroy stated she has wanted to become more involved with the Commission and its work in Sudbury.

Ms. Johnson stated she has a child with multiple disabilities. She has attended Commission meetings in the past few months and would like to help the Commission with its mission.

Selectman Haarde thanked both applicants for their willingness to serve the community.

Vice-Chairman O'Brien asked the applicants for their opinions of how well Sudbury handles disability-related issues and what the Commission could improve. Ms. Kilroy responded that, in an ideal situation with unlimited funds, more can always be done. However, she realizes that projects need to be prioritized based on the funding and time resources available. As a group, Ms. Kilroy stated the Commission can help guide and advocate for certain topics as priorities, such as more sidewalks. Ms. Johnson agreed, stating that the Commission has been working on prioritizing issues and designating which members can best spearhead projects. She believes a lot can be done to increase education and awareness in the schools and the community.

Assistant Town Manager Walker reported that both applicants have attended Commission meetings, are familiar with the mission and goals of the Commission, and he has interviewed both candidates and recommends them for appointment.

It was on motion unanimously

VOTED: To approve two Town Manager appointments to the Commission on Disability: Jacqueline S. Kilroy, 3 Dakin Road, filling a vacancy occasioned by the term expiration of David Mortimer; and Dina N.

Johnson, 451 Peakham Road, filling Anita Simon's vacancy, both for terms to expire April 30, 2013, as requested by Kristin Kiesel, Council on Aging Director.

Assistant Town Manager Walker informed appointees that they would receive letters regarding their appointments, which will direct them to be sworn-in by the Town Clerk.

**West Metro HOME Consortium – Mutual Cooperation Agreement – Discussion**

Present: Director of Planning and Community Development Jody Kablack

Director of Planning and Community Development Jody Kablack explained that Sudbury has been a member of the WestMetro HOME Consortium since July 2005. Through the Consortium, Sudbury is able to receive Federal Housing and Urban Development (HUD) HOME funds for the purpose of creating affordable housing. Ms. Kablack further stated that Concord and Wayland will be joining the Consortium this year, which necessitates a new Mutual Cooperation Agreement be executed by all participants by June 18, 2010. She noted that when new communities join the Consortium, it increases the amount of funds received by the Consortium. Ms. Kablack also noted that Consortium participants are able to share and benefit from ideas and feedback from consultants.

It was on motion unanimously

VOTED: To execute the Mutual Cooperation Agreement to continue a Consortium under the HOME Investment Partnership Program.

**Bell Atlantic Mobile of Massachusetts Corp., Ltd., d/b/a/Verizon Wireless Site Plan – 199 Raymond Road**

Present: Director of Planning and Community Development Jody Kablack and Applicant's Attorney Daniel D. Klasnick, Duval, Klasnick & Pastel, LLC, Verizon Wireless representatives George Evsiouk and Jeffrey Barbadora, Modeling Specialties representative Doug Sheadel and Patrick Barry from Dewberry-Goodkind, Inc.

At 9:00 p.m., Chairman Drobinski opened the Public Hearing regarding the application of Bell Atlantic Mobile of Massachusetts Corp., Ltd., d/b/a Verizon Wireless for Site Plan Review under Section 6300 of the Sudbury Zoning Bylaws and a Stormwater Management Permit under Article V (F) of the Sudbury General Bylaws, for property located at 199 Raymond Road, Assessors Map L08, Lot 0001, owned by the Sudbury Water District, zoned Single Residential A. The proposal is to construct a 90-foot high stealth monopole cell tower, and a 70-foot equipment compound area to accommodate three wireless service providers.

Selectman Haarde recused himself from the discussion, since the issue could be in conflict with the interests of his employer.

Director of Planning and Community Development Jody Kablack noted that the Hearing was duly advertised in the *Sudbury Town Crier* on May 27 and June 3, 2010, and she summarized the materials received to date to the file, including: an Application for Site Plan Approval dated May 6, 2010, Application for Stormwater Management Permit dated April 29, 2010, and a Project Narrative and accompanying photographs, prepared by Daniel D. Klasnick, Duval, Klasnick & Pastel, LLC, dated April 28, 2010, and a Stormwater Management Plan dated May 5, 2010, prepared by Dewberry-Goodkind, Inc. She also reported that the Zoning Board of Appeals (ZBA) has already issued a Special Permit to accommodate up to four service providers. In addition, the ZBA reduced the height of the monopole to 90 feet from the original application for 100 feet.

The applicant's attorney Daniel D. Klasnick, Duval, Klasnick & Pastel, LLC, summarized the project for the Board, and distributed copies of a handout of highlighted information from his presentation, which included site photographs. Mr. Klasnick stated that Verizon Wireless was the successful bidder in January 2009 of a Request for Proposal issued by the Sudbury Water District (SWD). Verizon and the SWD entered into a Land Lease agreement in August 2009. Mr. Klasnick noted that the proposed location is within the Town's Wireless Services Overlay District. He noted that a balloon test was completed in December 2009 and a Special Permit and Dimensional Variance from the ZBA was obtained in April 2010. A Stormwater Management Permit will also be required, and required documentation has been submitted.

Mr. Klasnick briefly described the compound area, tower, antennas, equipment shelter, utility equipment and access road plans. He also addressed a question from Chairman Drobinski as to why the choice was made to use a diesel-powered emergency generator rather than one powered by propane. The Chairman concurred that diesel-powered was preferable to the more volatile propane. Chairman Drobinski also asked if the proposed site is outside Zone 1, and Ms. Kablack responded that it is.

Mr. Klasnick presented exhibits of the proposed site plan, noting plan modifications to the road, proposed landscaping and construction mitigation, which would include hay bales. In response to a question from Chairman Drobinski, Verizon representative Jeffrey Barbadora stated that there are no fluids involved with the electrical transformer. Mr. Klasnick emphasized that the site appears to be a good location, presents no significant impacts to the community and will address coverage gaps.

Vice-Chairman O'Brien agreed that the installation location would hardly be seen from the surrounding roads. He asked the length of the road, and how far back the compound area would be. The general consensus was that the compound would be set back approximately 250 feet.

Ms. Kablack reviewed recommendations made by Sudbury's Planning Board, which included minimizing the view from Raymond Road and minimizing vegetation removal. She noted that a site visit has occurred, which reinforced these recommendations. In addition, suggestions have been made for a non-heavy duty gravel base to be used for the road, to maintain the existing cover of trees and for the compound area to be re-situated so as to be more nestled into the wooded area.

Chairman Drobinski asked if the access road is necessary in its proposed location, and whether the area could be approached from the rear of the property. Ms. Kablack stated this issue has been discussed, and although the approach from behind could be used during construction, it is preferred that future use is not accessed through Zone 1. Ms. Kablack also reported that she and Department of Public Works Director Bill Place believe the plans present appropriate sight distances. She further stated that, regarding the Stormwater Permit application, the proposal presents little impervious surface and minimal stormwater impacts are anticipated.

Ms. Kablack referenced an email message dated June 14, 2010 from Police Chief Glavin, noting radio coverage issues in North Sudbury and asking for funding assistance to install a "repeater" on the Maynard Road cell tower or water tower. She noted that providers are usually asked for a contribution towards the Town's wireless network needs.

Vice-Chairman O'Brien noted that the Fire Chief has asked about pre-wiring and the ability for the Town to have future access if needed. He requested that Ms. Kablack contact the Fire Chief for further clarification of his needs. Mr. Klasnick stated he does not foresee a problem satisfying this request as long as the Fire Department has identified its equipment requirements by the time Verizon is ready to implement the installation. It was noted that MetroPCS has indicated a strong interest in being a co-locator.

Vice-Chairman O'Brien stated that the typical mitigation contribution requested by the Town has been \$2,500 per carrier. Since this proposal has been pre-approved for four carriers, he suggested that the applicant make a \$10,000 contribution to the Town's public communication fund. Mr. Klasnick stated he will discuss the request with the applicant, and he requested a review of the language of the subsequent decision condition requiring the payment. He was informed that a draft decision would be prepared prior to the next meeting, which he and the applicant could review.

In response to a comment by Mr. Klasnick regarding the ZBA dimensional variance which was issued, Ms. Kablack stated that the ZBA could be notified that the shape of the compound area may change slightly, but should not necessitate any modifications. Ms. Kablack also requested that the size of the compound area be documented consistently within the final documents and plans.

It was on motion

VOTED: To instruct Ms. Kablack, on behalf of the Board, to prepare an affirmative draft decision for review, which incorporates the suggested recommendations for roadway changes and mitigation comments presented tonight, regarding the application of Bell Atlantic Mobile of Massachusetts Corp., Ltd., d/b/a Verizon Wireless for Site Plan Review under section 6300 of the Sudbury Zoning Bylaws and a Stormwater Management Permit under Article V (F) of the Sudbury General Bylaws, for property located at 199 Raymond Road, Assessors Map L08, Lot 0001, owned by the Sudbury Water District, zoned Single Residential A.

It was also on motion

VOTED: To continue the Public Hearing regarding the application of Bell Atlantic Mobile of Massachusetts Corp., Ltd., d/b/a Verizon Wireless for Site Plan Review under section 6300 of the Sudbury Zoning Bylaws and a Stormwater Management Permit under Article V (F) of the Sudbury General Bylaws, for property located at 199 Raymond Road, Assessors Map L08, Lot 0001, owned by the Sudbury Water District, zoned Single Residential A to July 6, 2010 at 9:00 p.m.

**Public Hearing: Right of First Refusal Discussion - 192 Boston Post Road**

Present: Director of Planning and Community Development Jody Kablack and the Applicant's Attorney Robert Dionisi

At 9:34 p.m., Chairman Drobinski opened the Public Hearing regarding whether the Town should exercise its Right of First Refusal under Chapter 61B for the 192 Boston Post Road Esser property for a purchase price of \$600,000, which was continued from June 1, 2010.

Director of Planning and Community Development Jody Kablack reported that communications have been received from the Sudbury Public School (SPS) and the Sudbury Housing Trust (SHT), both dated June 11, 2010, and both indicating an unwillingness to commit to the obligation of purchasing the property at this time. Vice-Chairman O'Brien reported that the Sudbury Housing Trust met and recommended that the Town pass on a Right of First Refusal option. The Trust also continued discussions with abutters of the proposed Maynard Road project. The Trust will meet with the neighbors again tomorrow at 5:00 p.m.

Selectman Haarde asked what rationale the Sudbury Housing Trust had for reaching its conclusion. Vice-Chairman O'Brien responded that, if the SHT were to purchase the property for \$600,000 it would deplete nearly all of the SHT's funds. He also stated that the Trust is currently involved in the Maynard Road project, which would be consuming time and financial resources. Vice-Chairman O'Brien further stated that

the SHT believed that a purchase of the property with Community Preservation Act (CPA) funds would limit the use to housing and limit the Town's options to sell or transfer the property.

Selectman Haarde asked if the SHT could purchase the property, but use CPA funds to develop it. Vice-Chairman O'Brien responded that to develop the property as 100% affordable would be costly. He also noted that SHT future funds are subject to Town Meeting votes and not guaranteed, so using nearly all of the SHT reserves does not seem prudent.

Selectman Haarde asked approximately how much it would cost to develop the property. He noted that the SHT has \$800,000 in reserves, and he believes \$600,000 for approximately eight acres is a bargain. Ms. Kablack responded that a Special Town Meeting would be required to allocate such funds. She also estimated the cost for development at \$150,000 to \$200,000. Vice-Chairman O'Brien opined that, if the property is developed as 100% affordable, such projects will attract families with school-aged children, which works against the Town's goals, by adding more expenses and generating less revenue.

Chairman Drobinski asked what the deadline is for the Town's decision. Ms. Kablack stated the decision deadline is June 26, 2010.

Selectman Haarde opined that he believes people move to Sudbury for its schools. He suggested that the Town purchase this property to build 100% affordable rental units or home-ownership units, which are age-restricted. He further suggested that such units could be developed incrementally over a period of years, but eventually, all count towards the Town's affordable housing inventory.

Vice-Chairman O'Brien opined that the proposed development appears to be a model which does not attract families with children, but would provide property tax revenue, and thus is one of the better options available for the parcel. Ms. Kablack stated that feedback suggests that age-restricted housing is difficult to sell because that demographic has difficulty meeting affordable housing guidelines. Selectman Haarde stated he is not convinced the assumption that the proposed development would not attract families with children is correct. He believes Sudbury needs age-restricted housing options and affordable housing, and that such a project would eliminate the probability of adding children-related service expenses to the Town.

Ms. Kablack opined that, if the Town's financial resources were not so constrained, the Town would probably buy the parcel for a Chapter 40B project. She noted that the site does not comply with the zoning bylaw for an age-restricted property. Ms. Kablack further noted that applications to the State must be specific as to whether the project will be offered for rental or home-ownership opportunities, but both options are not available. She also stated that the State is not encouraging age-restricted affordable housing because most seniors do not meet the asset requirements. Ms. Kablack emphasized that it would require a lot of work to develop a Town proposal, and she reiterated there is a decision deadline.

Selectman Haarde suggested that the Town consider purchasing the property for age-restricted rental units, stating that he believes the CPA reserves of \$8.5 million could be used for development.

Ms. Kablack noted that the SHT has voted to decline the opportunity to purchase the property, and she does not believe the Board can override that decision. Thus, if the Board were to decide to ask the SHT to reconsider its position, the Trust does not meet again until June 29, after the June 26, 2010 deadline, or the Town would need to convene a Special Town Meeting.

Vice-Chairman O'Brien asked the applicant's attorney, Robert Dionisi, if a deadline extension would be possible. Mr. Dionisi responded he would need to discuss it with his client.

Lawrence Hoagland, 33 Goodman's Hill Road, asked if there still remains the issue of whether the offer qualifies as a *bona fide* offer. Chairman Drobinski stated that Town Counsel has offered an opinion on this issue, with which Mr. Dionisi disagrees. He suggested that Town Counsel's opinion be requested again, since the Town would not want to let the 120-day deadline expire.

Mr. Hoagland asked for clarification as to whether it is too late to pursue CPA funding because a Town Meeting would need to be convened. Chairman Drobinski stated that the use of CPA funds would require approval for recommendation by the Community Preservation Committee and approval by a Town Meeting vote. Mr. Hoagland also asked for clarification if the SHT were to develop the property. Ms. Kablack responded, it is unlikely the Town would be the developer, since it is not in that business, and that the property would more likely be sold to a developer. Chairman Drobinski opined that, if the Town owned the property, it is possible the property would then be exempt from taxation. Vice-Chairman O'Brien opined that another unknown is whether a developer would deem the situation profitable to bid on, even if the Town were granted an extension and could convene a Special Town Meeting. Selectman Haarde summarized that it could be an option for the Town to buy the property and not spend the funds to develop it, and just sell it to a developer.

Ms. Kablack noted that the models mentioned tonight have not been previously evaluated or considered. She stated that the SHT mission is the creation of home-ownership affordable housing opportunities, and that currently the Trust is occupied with the Maynard Road project. She and Vice-Chairman O'Brien mentioned that there is a possible Chapter 40B project across the street from this location, on the Mercuri property, for an age-restricted rental development, which would be predominantly affordable.

Selectman Haarde questioned whether the property could be purchased with Free Cash and then reimbursed from CPA funds. Assistant Town Manager Walker stated that these funds would also need to be appropriated through the Town Meeting process.

Chairman Drobinski opined that he is uncomfortable forcing a decision to be made within the time constraints of the current deadline, particularly in view of the fact that our customary due diligence has not been able to be accomplished.

Selectman Haarde opined that there is \$8.5 million in CPA reserves, but yet the Town is firing teachers. He believes the CPA funds could be used to buy affordable housing models, which would diminish other types of developments which bring more expenses to the Town's infrastructure. He emphasized that the Town does not have a Chapter 61B option on any other current Chapter 40B property proposal, and thus, Selectman Haarde believes the Town should strongly consider its purchase.

Mr. Hoagland stated he is sensitive to the time constraints of this discussion. However, he also stated that he does think an age-restricted affordable-housing development is a viable model to pursue to help the Town achieve its 10% affordable housing quota. Vice-Chairman O'Brien responded that there is no dispute that this model could be suitable, but the Town is faced with a deadline and is not even sure an extension could be obtained to pursue execution of a plan.

Selectman Haarde opined that he is uncomfortable with the deadline forcing the outcome of this decision. He believes these types of issues should have been discussed at least 90 days in advance of the deadline. He later reiterated that the decision to exercise the Right of First Refusal Option discussion should have occurred previously rather than having been delayed.

Chairman Drobinski stated that he is reluctant to support exercising the Town's right because there are too many risk factors regarding the outcome of a project. He noted that no plan has been developed by the Town

and assessed by Town staff and the public regarding its positive and negative impacts. However, Chairman Drobinski further noted that the feedback received to date from several Town entities is that it is not a viable parcel to pursue. Thus, Chairman Drobinski expressed his hesitation to support spending \$600,000 without the performance of appropriate due diligence, including PERC tests, to evaluate the proper number of units and the impacts to the community.

Selectman Haarde asked why Sudbury is in the situation of having so many school-aged children. He suggested that it is as a result of past decisions made on such matters, which, in his opinion, were not based on the best interests of the Town, and he does not want to continue that pattern.

Vice-Chairman O'Brien stated that it is because of many factors that Sudbury has so many school-aged children, including that the Town has more single-family homes than is found in most communities. He also noted that in the 1970s, there was a perception in Town that Sudbury was becoming too commercial. Vice-Chairman O'Brien stated that the Town is now bearing the brunt of the consequences of many past philosophies and votes at Town Meetings and actions by private property owners cashing out their investments.

Mr. Hoagland opined that he believes Sudbury has the most school-aged children because it has great schools. Vice-Chairman O'Brien responded that many other towns have great schools, several within close proximity to Sudbury. He noted that Wellesley, although similar in size to Sudbury, has half the number of school-aged children. Selectman Haarde opined that he believes the Town has a lot of children because of many reasons, including the quality of the schools, the lack of age-restricted housing stock and the number of single-family homes. All of these reasons are why he is recommending an age-restricted development.

Vice-Chairman O'Brien stated that the SHT vote was unanimous in its passing on the opportunity to purchase. He further stated that it is the SHT's mission to develop home-ownership affordable housing. In response to a question from Selectman Haarde, Vice-Chairman O'Brien stated that the SHT did not discuss the option of age-restricted units.

Chairman Drobinski reiterated his inclination to believe that there is too much risk at this time to pursue a purchase, and not enough time to adequately study alternative proposals. He also noted that the Board is unsure at this time of whether the applicant would even grant an extension. Chairman Drobinski clarified that, if the Town were to declare that it deems the proposal to not be a *bona fide* offer, the choices of the applicant would be to either re-submit another 120-day proposal or pursue litigation against the Town. Selectman Haarde asked if an opinion could be requested from Town Counsel regarding the validity of the offer. A few possible scenarios between now and the June 26, 2010 deadline were discussed.

Mr. Dionisi asked for clarification regarding for what purpose the Board was asking for an extension. Chairman Drobinski responded that it would be to further study alternative development options, including discussing with the applicant whether another profitable design could be proposed which is more in line with Town goals. Vice-Chairman Drobinski opined that he believes, if an extension were granted, age-restricted, affordable-housing rental units would be the focus of discussions.

Mr. Dionisi asked how long of an extension the Board would request, and he suggested that another 120 days would be too long. Ms. Kablack suggested approximately 75 days, given the summer meeting schedule. Mr. Dionisi stated he is inclined to discuss a 30-day extension with his client, and will notify Ms. Kablack of the outcome.

Selectman Haarde asked what would be the process if the applicant denies an extension. Vice-Chairman O'Brien responded that the Board would likely schedule an emergency Executive Session to discuss

potential litigation strategy. He noted that by accepting an extension to the deadline the Town would be perceived by the applicant as agreeing to surrender its right to challenge the offer or to litigate in the future, and the potential challenge of a *bona fide* offer would become moot. Mr. Dionisi concurred with this assessment.

Assistant Town Manager Walker cautioned that tonight's dialogue should be perceived as only discussion, and that no agreements have been made or suggested. Mr. Walker emphasized that he could not recommend that the Town ever relinquish its right to pursue future litigation, if that course of action were deemed in the Town's best interest.

Ms. Kablack noted that this would be new territory for the Town to explore, since it has no experience with rental affordable housing, which requires substantial subsidies. Selectman Haarde asked if the Sudbury Housing Authority (SHA) could be involved. Ms. Kablack responded that the SHA is a non-profit, and thereby a tax-exempt entity.

Ms. Kablack also highlighted that, if the Town were to assign its Chapter 61B options, she believes it could only assign 30% to a non-profit conservation entity, with the remaining 70% to be held as open space. She stated she will research this issue further, but that she believes Chapter 61B is designed for open space, and thus housing opportunities would be limited. Chairman Drobinski is inclined to believe the Town's options to sell the property may be very limited, and he suggested requesting a legal opinion from Town Counsel.

At 10:41 p.m., Chairman Drobinski closed the discussion, noting that no agreements have been made. The public hearing was continued to a future date to be determined.

### **Minutes**

It was on motion unanimously

VOTED: To approve the regular session minutes of June 1, 2010, subject to the correction made by Chairman Drobinski to the last sentence of the next to the last paragraph on page 9, so that it will read as follows: "Chairman Drobinski clarified that Mr. Dipersio submitted drawings reflecting the appropriate two stamps."

### **AAA Limousine - Livery and Limousine License Renewal**

It was on motion unanimously

VOTED: To approve the renewal of the Livery and Limousine License of AAA Limousine, Inc., 39 Union Avenue, and Sudbury Limousine and Taxi Service, Inc., 26 Shadow Oak Dr. and to approve rate schedules as provided, subject to approval of individual driver licenses and satisfactory vehicle inspections by the Police Department, said licenses to expire on June 30, 2011.

### **July 4<sup>th</sup> Road Race - Signage**

It was on motion unanimously

VOTED: To approve the placement of two signs on Concord Road to announce the July 4<sup>th</sup> Road Race, one sign facing north, and the other facing south, located at Featherland Park, from June 27<sup>th</sup>, 2010 to July 4<sup>th</sup>, 2010, as requested by Graham R. Taylor, 221 Goodman's Hill Road, in a letter dated May 28, 2010.

**Friends of the Council on Aging - Donation**

It was on motion unanimously

VOTED: To accept a check in the amount of \$3,172 from the "Friends of the Council on Aging" to solely fund 2.5 additional hours/week for FY11 for Debra Galloway, Senior Center Information and Referral Specialist, as requested by Kris Kiesel, Council on Aging Director in an email dated June 2, 2010.

**Sudbury Water District – Acceptance and Return of Donation**

Selectman Haarde asked for clarification of the referenced donations. Ms. Kablack explained that 18 months ago, when the Town was initially considering purchase of the CSX rail corridor parcel, the Sudbury Water District (SWD) committed \$25,000 to the Town for the project, subject to ratification at its Annual District Meeting. In December 2009, the SWD paid the Town the \$25,000, of which \$7,500 was used to perform surveying of the property. However, at its Annual Meeting, the SWD did not ratify the donation. Thus, the SWD is requesting return of the initial \$25,000 donation, but has decided to gift to the Town the \$7,500 which was used to pay for the survey work last December. Ms. Kablack further stated that the SWD Superintendent and a SWD Commissioner have assured her of the continued support for the CSX purchase and the commitment that a \$25,000 donation would likely be made again at the time of purchase.

It was on motion unanimously

VOTED: To accept a donation in the amount of \$7,500 from the Sudbury Water District as a gift to the Town of Sudbury for a portion of the surveying costs associated with the CSX railroad corridor and Well #7, said funds to be expended under the direction of the Town Manager; and further, to return \$25,000 previously conditionally gifted to the Town from the Sudbury Water District pursuant to a failure to ratify the gift at the Water District Annual Meeting.

**Cheri-Anne Cavanaugh Fund – Expenditures Increase**

It was on motion unanimously

VOTED: As co-trustees of Town Funds, to approve an increase in expenditures for the Cheri-Anne Cavanaugh fund from a limit of \$3,000 to \$3,500 for FY10, as requested by the Town Treasurer/Collector Andrea Terkelsen.

**U.S. Census Bureau – Signing of Verification Document**

It was on motion unanimously

VOTED: To approve signing the U.S. Census Bureau verification document by the Chief Elected Town Official that the Town boundaries have not changed, as confirmed by Town Engineer I. William Place.

**Board of Selectmen's Meeting Schedule – Proposed Revisions**

The Board briefly discussed recommended revisions to its summer meeting schedule.

It was on motion unanimously

VOTED: To revise the Board of Selectmen's Meeting Schedule by rescheduling the July 20, 2010 meeting to July 27, 2010, and rescheduling the August 3, 2010 meeting to August 24, 2010.

At 10:45 p.m., Chairman Drobinski announced the close of the regular meeting.

There being no further business, the meeting adjourned at 10:45 p.m.

Attest:\_\_\_\_\_

Wayne R. Walker

Assistant Town Manager - Clerk Pro Tem