

IN BOARD OF SUDBURY SELECTMEN
TUESDAY, MARCH 16, 2010

Present: Chairman William J. Keller, Jr., Vice-Chairman John C. Drobinski, Selectman Lawrence W. O'Brien, and Town Manager Maureen G. Valente

The statutory requirements as to notice having been complied with, the meeting was convened at 7:36 p.m. in the Lower Town Hall, 322 Concord Road.

Opening Remarks

At 7:36 p.m., Chairman Keller opened the meeting. He reminded everyone of the upcoming Town Election on Monday March 29, 2010 and encouraged all to vote on that day or, in advance, by absentee ballot. Polls will be open from 7:00 a.m. to 7:00 p.m. Chairman Keller apologized for the uncontrollable overlap of the Town Election date with the Passover holiday.

Chairman Keller announced that the Town has reached an agreement with the Firefighters' Union, which was recently ratified by the Board. He summarized highlights of the agreement, noting the acceptance of similar changes to health plans and corresponding contribution levels as previously accepted by other Town and School unions and employees. Chairman Keller also explained that the Town was able to achieve better rate agreements than would have been possible through the State GIC program. Later in the meeting, Town Manager Valente provided additional information confirming that the financial agreement reached by the Town and School Committees was worth the efforts given by many and more competitive than other options. The Board believes these agreements will result in future cost savings and job preservation. Chairman Keller also announced that he and Sudbury Public School Committee Chair Susan Iuliano are drafting an op-ed article for the *Sudbury Town Crier*, which will address many issues featured in recent *Boston Globe* articles.

Chairman Keller also announced that the Sudbury Water District will begin work on its water main project on April 5, 2010. The project should be completed by fall. The Town will be notified of traffic detours and will post information on the Town website. Signboards will also be posted in Town to alert and inform residents.

Chairman Keller reported the death of Hans Lopater last weekend. Hans volunteered his time to the Town in many capacities throughout the years. Selectman O'Brien noted that Hans donated many personal records to the Goodnow Library and worked diligently to see the older portion of that building placed on the National Historic Register. The Board expressed condolences to Hans' family and friends.

Reports from the Board of Selectmen

Selectman O'Brien reported that he, Vice Chairman Drobinski and Town Manager Valente met with the Goodnow Library working group regarding exploring greater efficiencies. Next week, Selectman O'Brien will attend a Town Center Project meeting.

Vice-Chairman Drobinski reported he and Chairman Keller attended the "Candidates' Night," sponsored by the League of Women Voters.

Reports from Town Manager
Haskell Field Boundless Playground - Grant

Town Manager Valente announced that fundraising efforts have continued to raise monies to pay unpaid bills for the Boundless Playground. The Town has received a recent donation totaling \$26,167.50, which will be available for use, following acceptance by the Board.

It was on motion unanimously

VOTED: To accept donations in the amount of \$26,167.50 for the Haskell Field Boundless Playground project.

Chairman Keller stated that this project has been a great example of financial contributions from community volunteers, along with grants secured by Town staff, to bring projects to fruition, which would not be possible otherwise.

Annual Town Report - Gratitude

Town Manager Valente expressed the Town's thanks to Sudbury resident Paul Arsenault, who, upon learning that funding for production of the Town Report had been drastically cut as a cost-saving measure, volunteered to bind this year's Town Report.

Board of Selectmen – Meeting Schedule

Town Manager Valente announced that, to date, there are no pressing agenda items scheduled for the April 20, 2010 meeting. Since the meeting is also scheduled during the school-vacation week, she recommended that the meeting be cancelled.

It was on motion unanimously

VOTED: To cancel the April 20, 2010 Board of Selectmen's meeting, unless it is deemed necessary at a later date.

Rainstorm Damage - Update

Town Manager Valente reported that the Fire Department has responded to 40 requests for assistance regarding flooded basements and an electrical-fire incident caused by the recent storms. She further reported that homes north of Concord Road and near Nine Acre Corner have been stranded by the storms. Emergency-response vehicles and the Town's boat could be utilized in case of an emergency.

Building Inspector Jim Kelly reported that nearly all Town buildings experienced some water in basements. Art Richard and Jim are monitoring the situation and having water pumped, as needed. Two Town flags have been damaged from the storms, and they will need to be replaced. In addition, the Police Department has been busy monitoring the many traffic diversions. Town Manager thanked the Police and Fire Departments and the Department of Public Works (DPW) for their work. She also noted that the Flynn Building and the Fairbank Center phone systems may have been effected by the storms. If anyone is experiencing difficulty calling these offices, please send an email or call the DPW Office for assistance.

Later in the meeting, Town Manager Valente provided a road condition report provided by the Police Department, noting that Route 20 remains closed at Wayland Center, Route 27 remains closed at Sudbury Center, and that Lincoln Road at Concord will be closed as will Route 117 at Pantry Road.

Reverse 911 System Replacement - Update

Town Manager Valente announced that the Town has worked with both School systems and the Sudbury Water District to split the cost of purchasing a new system to replace the reverse 911 system currently in place. More information will be available on the Town website.

Herb Chambers BMW of Sudbury – Cash Performance Bond Reduction

Present: Attorney Joshua Fox representing Herb Chambers BMW of Sudbury

At 7:59 p.m., Chairman Keller welcomed Attorney Joshua Fox, representing Herb Chambers BMW of Sudbury, to the meeting. Mr. Fox explained that the applicant is requesting a reduction of the cash performance bond held by the Town from approximately \$29,000 to approximately \$10,000, since it has completed most major paving and lighting work and conditions requested by the Town. Mr. Fox stated that striping of the Boston Post Road area will occur once the weather improves, as will the landscaping certification. He anticipates all work, including additional plantings to be completed in the next 30 to 45 days.

Selectman O'Brien reported that a recent site visit confirmed the work completed as described tonight. The Board was also previously in receipt of a letter from Department of Public Works Director Bill Place, dated March 3, 2010, recommending that the performance bond be reduced to \$10,000.

It was on motion unanimously

VOTED: To reduce the Cash Performance Bond for Herb Chambers BMW of Sudbury, 68 Old County Road, to \$10,000, on the recommendation of Jody Kablack, Director of Planning and Community Development and Bill Place, DPW Director.

Chairman Keller asked Mr. Fox to relay to the applicant that the Town is appreciative of their business. Mr. Fox stated that he will also send along a traffic count report at a later date.

Public Hearing: Northwoods Development - Site Plan Modifications

Present: Petitioner Ralph Castagna, Attorneys Gary Markoff and Mark Kablack, Architect Dale Gienapp, Engineer Brian Milisci and Town Counsel Paul Kenny

At 8:03 p.m., Chairman Keller opened the Public Hearing regarding the application of Castagna Construction Corporation for a Site Plan Modification to an Approved Site Plan for Northwood at Sudbury, decision dated November 13, 1997, to revise condition 22A to allow 20% of the condominium units to be owned and/or occupied by persons under 55 years of age; to revise condition 22B to remove the requirement to provide home health services or residential care; and other changes. The property is located at Northwood Drive, Assessor's Map C11, Parcel 302, zoned Research District. He read the public notice and the list of items and correspondence received, to date, to the public file.

Vice-Chairman Drobinski recused himself from participation in the hearing, due to conflicts of interests. Town Counsel Kenny reported that Director of Planning and Community Development Jody Kablack has

also recused herself from participation in the hearing, due to a conflict of interest, since her husband represents the Condominium Trustees.

Town Counsel Kenny briefly summarized the petitioner's requests, noting that for zoning issues, Building Inspector James Kelly has been made aware that he will ultimately need to decide if the requests are in compliance. He also explained that the Board of Health would decide whether the proposed plans provide sufficient septage facilities. In addition, Mr. Kenny explained that the Condominium Master Deed and original Site Plan approval called for the Board's approval on certain matters. He noted that, although Senior Residential Care communities require 100% of residents to be over age 55, Federal and State statutes only require 80%.

Attorney for the Condominium Association Trustees Mark Kablack introduced two of the four Trustees in attendance, Elaine Wexler and Theresa Accetta, and the petitioner, developer Ralph Castagna, and members of the design and architectural team. Mr. Kablack summarized the history of the development, since 1994, when its approval as a residential care facility was written into the Town bylaws. He explained that the original Site Plan was approved for 66 units in five buildings, which was permitted in late 1997 – early 1998. Mr. Kablack stated that the original developer constructed 12 units at 10 Northwood Drive, but eventually filed for bankruptcy. The next developer constructed 12 units at 20 Northwood Drive and completed the clubhouse, before experiencing financial difficulties and requesting extensions. This developer's case was eventually converted to a Chapter 7 liquidation case, and an auction was held to sell the phasing rights to the development. Mr. Kablack stated that Ralph Castagna won those rights at the auction. He further stated that the Condominium Association has spent several years throughout the re-organization process in litigations.

Mr. Kablack reiterated that conditions of its approval were originally imposed by the Board in 1997 regarding the percentage of age-restricted occupancies and the provision of residential care services. Thus, Mr. Kablack suggested that it is now within the Board's jurisdiction to modify and/or eliminate those same conditions.

At 8:47 p.m., Chairman Keller asked for a ten-minute delay in this discussion to finalize another Public Hearing agenda item on tonight's schedule. The hearing resumed at 8:56 p.m.

Mr. Kablack described the differences in the current zoning codes regarding how residential care service and Senior Residential Care (SRC) facilities are defined. He emphasized that, unlike the requirements set forth for an SRC, the residential care service language does not specify that every unit must be occupied by someone age 55 or older, nor does it specify what services will be provided. Thus, Mr. Kablack believes the current code allows for flexibility in interpretation. He further noted that Federal Fair Housing regulations have changed over the past 20 years to accommodate more flexible options. Attorney for the petitioner Gary Markoff stated that it seems appropriate to be consistent with Federal and State guidelines, which only require that 80% of units be age-restricted. He also stated Mr. Castagna needs flexibility from a practical and financial perspective. Mr. Markoff later highlighted that present occupancy requirements are so restrictive that, currently, a live-in caretaker would be prohibited if under the age of 55. Mr. Kablack urged the Board to recognize the uniqueness of the Northwoods' history by approving the modifications.

Mr. Kablack reported that the Condominium Association voted, by appropriate percentages, to approve the modifications to the Trust documents and Master Deed, once approved by the Board. He distributed copies of the tabulation of votes, taken at meetings held on January 20 and February 8, 2010, to the Board for review.

Selectman O'Brien asked what services are currently provided and whether any future services will be available. Mr. Kablack responded that several of the originally intended services have never been instituted,

although there is a clubhouse, an indoor pool and an exercise room. He also stated that, if they are successful in modifying the mandatory language, he envisions that the Association will be able to determine what they may or may not require for services.

Although recused from the discussion, Vice-Chairman Drobinski was able to speak to the history of the original Board Site Plan approval. He stated that the residential care component was an extremely important factor in the Board's support of the development and affirmative vote. Chairman Keller opined that no one could anticipate long ago the hardships the development would encounter and that the residents might choose different options at a later date. He also noted that the Board always tried to be cognizant of making decisions, which are consistent with zoning compliance, even when it is not the determining authority.

Petitioner and developer Ralph Castagna addressed the Board. He stated that his original intent was to build what was initially approved and permitted. However, as he delved into the project, it became apparent that he could not make the original plans work for him financially. Mr. Castagna has re-worked the project to now propose that a less dense, townhouse-style project, with 19 additional units be constructed. He further stated that he plans to include LEED-certification aspects to the project, including radiant heat. In addition, Mr. Castagna noted that he has appeared before the Design Review Board, which was very helpful, and he has incorporated a recommended orientation change. Mr. Castagna emphasized that he wishes to work cooperatively with the Town, but also noted that he must work within the closing deadlines established by the bankruptcy court.

Architect Dale Gienapp exhibited plans of the evolved project, noting there will be a 1,800 square-foot, one-car garage unit (estimated purchase price \$425,000) and a 2,200 square-foot, two-car garage unit (estimated purchase price \$525,000) available, each with a basement. Mr. Castagna stated that the new plan will have more impervious area, but that he plans to use pervious asphalt pavement to mitigate the impact. Mr. Castagna also distributed copies of new drawings, which address concerns noted by DPW Director Bill Place, to the Board for review.

Council on Aging Chair Pat Mullen, 388 North Road, reported that the Council views the proposed changes as a step back for helping to keep seniors in Town. He also stated that the Council endorses the age-restriction regulations and the residential care aspect. However, the Council recommends that, if residential care services are not provided, at least one room should be designated for conducting health checks. The Council also suggested, if a townhouse-style unit is constructed, that American Disabilities Act regulations be followed for wheelchair access regarding doorway width and kitchen and bathroom counter heights. The Council further recommended that the indoor pool be retained.

Richard Oshana stated he bought a Northwoods' unit a year ago, and has been disappointed with the lack of transparency and communication. He stated that Trustees' meetings are not open to residents and many meetings are held in Executive Session. He believes the Trustees have taken the authority to plan future development without the vote of all owners. Mr. Oshana is an attorney, and he has observed a very antagonistic relationship between the Board and a minority group of owners who oppose the suggested modifications. He believes tonight's proposal, including the elimination of the clubhouse and pool, varies dramatically from the original plan. Mr. Oshana believes the original inclusion of the need for approval from the Board of Selectmen in the Master Deed was explicitly to protect the interests of dissenting residents. He has also been offended by the "scare tactics" utilized by the Trustees to convince residents that Association fees will greatly increase in 2012. Mr. Oshana supports the approach of reducing expenses first. He also does not believe that Town policy should fluctuate based upon a cyclical real estate market. He further urged the Board to not support the modifications, stating that it is not in the Town's or owners' best interests.

Northwoods' resident and Trustee Elaine Wexler believes the development is finally being well managed. She stated that the majority of owners support Mr. Castagna's plan and would like his development to proceed. Ms. Wexler explained that the indoor pool is not utilized often by residents, but rather by grandchildren, and it is prone to malfunction and costly to repair. She urged the Board to support the new design plans for townhouse-style units.

Northwoods' resident Sidney Bourne, 20 Northwood Drive, noted that the proponents of tonight's proposal are all paid. He believes the original Site Plan can work for the right person who wants to build it. Mr. Bourne questions why the petitioner believes one-bedroom units are difficult to sell, when 16 of the current 24 units were bought, as one-bedroom units. He believes the problems noted with the original plan, i.e., inadequate parking and challenges obtaining permits, are not insurmountable. In addition, Mr. Bourne is troubled by the perceived lack of fiduciary responsibility for all residents exhibited by the Trustees, when they negotiated privately for nearly six months. He questions how it is in the best interests of owners to give away assets to a developer. Mr. Bourne stated that he is aware of three individuals who moved out in search of an increased level of health care services. Additionally, he noted that the Master Deed requires that the clubhouse will be available at all times, but that the Trustees have voted to restrict hours without a vote. Mr. Bourne also stated that there is no proportional representation, and that the minority position has been denied a voice on the Board of Trustees. He provided the Board with copies of additional notes and stated that the mixed-condo concept will decrease home values. Mr. Bourne emphasized that he bought his unit based on the concept originally approved, and he urged the Board to deny this application.

Hadley Fisk is a social worker, who has lived at Northwoods since 2001. She acknowledged that there have been difficult times, not helped by the "obstructionist" actions of some. Ms. Fisk believes tonight's proposal is financially sustainable, and the plans for the future have rejuvenated community spirit. She encouraged the Board's support.

Northwoods' resident Ralph Mazza stated that, as an owner, he has felt excluded from the decision-making process. He believes everyone is entitled to vote in their own economic interests, and also believes it is unfair to deem his position as any less "precious" than that presented by more voices. Mr. Mazza believes tonight's proposal decreases home values.

Northwoods' resident Josephine Whittington stated there is a solid majority supporting the proposal to construct more units, which she hopes the Board will also support.

Council on Aging member Elizabeth David, 70 Thunder Road, supports the proposal. However, Ms. David expressed her concern as to how divided the Northwoods' community seems. She stated that, although she is considering down-sizing, she would not consider buying a unit, given the current in-fighting which exists. She urged the Northwoods' group to resolve its differences.

Rhoda Bronstein, urged her neighbors to accept that the majority opinion should rule and asked them to stop litigating issues.

Richard Presti is a developer and a Northwoods' resident. He believes the original plans have never been realized because they cannot be. Mr. Presti stated that the Association is on the verge of being "broke," and that reserves will run out in two years, since the Association runs at a constant deficit. He believes fees will need to be raised at that time, and that the opponents need to accept majority rule.

Chairman Keller stated that the Board has a responsibility to represent the entire community, and he also hopes the Northwoods' community can resolve its issues. He encouraged the Trustees to strongly consider

the incorporation of the Council on Aging's recommendations in final plans. He further noted that two developers have gone into bankruptcy and that a goal should be to have a productive property.

Due to the lateness of the hour, Selectman O'Brien stated he would forward further questions to Town Manager Valente. He asked Mr. Castagna whether it would be considered a "deal-breaker," if the Board were to deny the request to alter the percentage of age-restricted units. Mr. Castagna responded, not necessarily.

Senior Advisor David Levington suggested that the Town consider offering Mr. Castagna relief regarding the restrictive 75-bedroom regulation, which might help to keep the age-restriction condition in place.

Mr. Kablack stated that, due to the bankruptcy court process, time is of the essence for rendering a decision. Mr. Gienapp stated that permits would be needed by the second or third week of April. Selectman O'Brien encouraged the petitioner to contact the Bankruptcy Court regarding an extension.

It was on motion

VOTED: To continue the Public Hearing regarding the application of Castagna Construction Corporation for a Site Plan Modification to an Approved Site Plan for Northwoods at Sudbury, decision dated November 13, 1997, to revise condition 22A to allow 20% of the condominium units to be owned and/or occupied by persons under 55 years of age; to revise condition 22B to remove the requirement to provide home health services or residential care; and other changes to March 23, 2010 at 7:30 p.m.

Public Hearing: Clear Wireless, LLC Site Plan – 36 Hudson Road

Present: Applicant Attorney Jennifer Lewis, Prince Lobel Glovsky & Tye, LLP

At 8:48 p.m., Chairman Keller opened the Public Hearing regarding the application of Clear Wireless, LLC for Site Plan approval to install a wireless communications facility on the existing monopole by extending the height of the tower from 100 feet to 110 feet and installing three WiMax antennas and two dish antennas within the proposed extension to the tower located at 36 Hudson Road, which was continued from March 2, 2010. Copies of a "Draft 2 Site Plan Decision Sudbury Board of Selectmen, Clear Wireless, LLC 26 Hudson Road SP# 10-001, dated March 16, 2010," were circulated to the Board for review.

The Board concurred that the draft decision is straightforward and presents no additional concerns. Town Manager Valente stated that "Draft 2" has been circulated and reviewed by the applicant.

At 8:54 p.m., it was on motion unanimously

VOTED: To close the Public Hearing regarding the application of Clear Wireless, LLC for Site Plan approval to install a wireless communications facility on the existing monopole by extending the height of the tower from 100 feet to 110 feet and installing three WiMax antennas and two dish antennas within the proposed extension to the tower located at 36 Hudson Road.

It was also on motion unanimously

VOTED: To approve Site Plan Application No. 10-001 of Clear Wireless, LLC, for approval of a site plan to expand a wireless communications facility on an existing monopole by extending the height of the tower from 100' to 110' and installing three WiMax antennas and two dish antennas within the proposed tower extension. (Town Assessor Map G09, Lot 002), owned by Ti-Sales, Inc., as described in the above referenced Site Plan, subject to compliance with all governmental laws, regulations, licenses and permits,

including, but not limited to Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, zoning, building and health laws and regulations, and further subject to the following conditions insofar as they apply to the Property. (Further details available in the decision.)

Declaration of Trust of Frost Farm Village Leasehold Condominium Trust – Amendment Approval

Vice-Chairman Drobinski recused himself from the vote.

It was on motion

VOTED: To approve amendments to the Declaration of Trust of Frost Farm Village Leasehold Condominium Trust dated January 30, 2003, as follows: Section 3.1.1 to remove the Town of Sudbury Planning Board officio as Trustee; Section 5.23.6 to require the Frost Farm Village Condominium Trust to maintain the waiting list for prospective buyers; and Section 5.23.6.4 to revise the process for selling units.

Minutes

It was on motion unanimously

VOTED: To approve the regular and executive session minutes of February 17 and March 2, 2010 and the regular session minutes of March 10, 2010.

Election Officers – Resignations

It was on motion unanimously

VOTED: To accept the resignations of Linda Crisafi, 24 Grindstone Lane, and William T. Maloney, 119 Willis Road, as Election Officers, as requested in an email from the Town Clerk’s Office on March 9, 2010, and to send a letter of appreciation for their service to the Town.

Articles for 2010 Annual Town Meeting

The Board was previously in receipt of a revised list of the “2010 Annual Town Meeting Warrant Articles,” which will be reviewed prior to its next meeting.

Executive Session

At 9:10 p.m., Chairman Keller announced the close of the regular meeting and it was on roll call unanimously

VOTED: To go into Executive Session for the purpose of discussing collective bargaining, land acquisition and contract negotiations.

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

There being no further business, the meeting adjourned at 11:23 p.m.

Attest: _____
Maureen G. Valente
Town Manager-Clerk