

IN BOARD OF SUDBURY SELECTMEN  
TUESDAY, MARCH 23, 2010

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

Absent: Vice-Chairman John C. Drobinski

The statutory requirements as to notice having been complied with, the meeting was convened at 7:37 p.m. in the Lower Town Hall, 322 Concord Road.

**Opening Remarks**

At 7:37 p.m., Chairman Keller opened the meeting. Due to today's rainstorms, he announced that roads have been closed. Suggested alternative routes and updates are available on the Town website.

Chairman Keller also urged residents to complete the Federal U.S. Census forms, which were mailed last week to households.

**Public Hearing: Northwoods Development - Site Plan Modifications**

Present: Petitioner Ralph Castagna, Attorneys Gary Markoff and Mark Kablack

At 7:39 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 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, which was continued from March 16, 2010. Town Manager Valente reviewed materials added to the public file since the last meeting, including: letters from Northwoods' residents Richard Oshana, Rhoda Bronstein, Judy Gianotti, an email from Northwoods' resident Selena Evans, a response letter from Whitman & Bingham Associates to concerns noted by Sudbury's Department of Public Works Director Bill Place, and a letter from petitioner Ralph Castagna, responding to concerns expressed by the Sudbury's Council on Aging. Chairman Keller stated that, earlier today, Town Counsel provided the Board with a draft "Site Plan Modification Notice of Decision, Sudbury Board of Selectmen, Northwood at Sudbury Site Plan #SP97-337, dated March 23, 2010," for review and discussion purposes.

Attorney for the Condominium Association Trustees Mark Kablack summarized the requested modifications as regarding the age-restriction occupancy limits and care services as cited in the original Site Plan Decision and Condominium Association documents, and a proposal to decrease the original number of additional units to be built from 44 to 19 more units, constructed in a townhouse-style rather than a multi-story building.

Petitioner and developer Ralph Castagna responded to the concerns noted in Ms. Evans' letter, noting that the road area she mentioned will not be narrowed, he will further research whether two parking spaces will be eliminated with the current plan, and if needed replace them elsewhere, and he will designate handicap-parking spaces closer to the existing towers. Mr. Castagna also reported that he spoke with Council on Aging Director Kristin Kiesel today, to respond to concerns. He stated that there will be no steps to negotiate at entries to all units and entry doors will be three-foot wide. He will also try to accommodate three-foot internal doorways on the first floor in all the units possible. Mr. Kablack stated that another Council on Aging concern has been addressed by the developer and Condominium Association agreeing to designate a

room to be used for health-aide related purposes. In response to a question from Selectman O'Brien, Mr. Castagna explained that the framework to later install safety grab bars would be structurally installed.

Selectman O'Brien asked if Mr. Castagna's business model could succeed with 17 units rather than 19 units, to accommodate retention of the pool. Mr. Castagna responded that the Condominium Trustees and the majority of owners have determined the pool is not needed and financially burdensome. Mr. Kablack noted that the Trustees have considered all factors and do not believe that the clubhouse and pool functions can be sustained within its current budget without increasing Condominium Fees.

Selectman O'Brien further asked what services will be offered, if the option to get healthy exercise from the pool is removed. Mr. Kablack responded that he has suggested language to Town Counsel, which would maintain residential-care facility status by definition, but allow care services to be determined and specified by the Condominium Association members in possible areas such as, but not limited to, education, medical and recreation. Mr. Kablack acknowledged that the clubhouse is an impressive space, and he emphasized that the building will continue to provide utility even without the pool and solarium. Selectman O'Brien suggested that a letter be drafted to state that either there is no interest in additional services at this time, or to record services being provided in the future. Chairman Keller stated that providing no services is not an acceptable option, and he agreed that periodic reporting of services would be useful. He also stated that providing the room for health services to be performed would be a condition required by the Board.

Mr. Castagna announced that his budget includes the hiring, initially at his expense, of a Director of Activities to establish some programs suggested by the Condominium Association members. He hopes this will help to generate some vital programs and help with marketing the units. If the programs are successful, the Association may decide at a later time whether to subsume costs for the position.

Selectman O'Brien stated that, although it could not be recommended as a condition of a decision, he suggests that the Association and Trustees consider contacting other nearby senior housing associations to determine if others are interested in sharing services and costs for the pool and clubhouse activities. Mr. Castagna responded he will consider this idea if the Association wishes him to do so. Mr. Kablack noted that the Trustees have not analyzed any other budget scenario than the one presented - eliminating the pool.

Chairman Keller stated that it is reasonable to define the age-restricted occupancy percentage as it is stated in the zoning bylaw, and as presented in Town Counsel's draft. Mr. Kablack further explained his suggested language, which would require that the Federal Fair Housing regulations be used as the standard. The Board briefly discussed several potential scenarios, whereby the current zoning definition for age-restriction occupancy would provide no flexibility. Attorney for the Petitioner Gary Markoff stated that the Condominium Master Deed does provide for an exception for an under-age spouse to remain in the home. However, it was noted that the Special Permit language is more restrictive than the Town Bylaw. Mr. Markoff further stated that the specification for the need of the Board's approval he believes is to grant the best interests of the majority. Chairman Keller reiterated that the Board is not deciding on any zoning determinations this evening. Mr. Kablack stated that the State requires biannual reporting regarding occupancy standards. Chairman Keller requested that the Board and Sudbury's Building Inspector be provided copies of those reports. Mr. Kablack also emphasized that his draft includes language to ensure that the units are always sold and marketed as age-restricted, even if 20% of the units are allowed to be not age-restricted.

Selectman O'Brien opined that Northwood is unique as a Residential Care Facility. He believes compliance with the Federal Fair Housing regulations provides another housing option for the Sudbury community, and further stated that this concept is supported by the Board. Mr. Castagna responded that

younger couples with children are not who his marketing study indicated will be potential buyers. The Board concurred.

Chairman Keller briefly reviewed other Town approvals which will be required from the Building Inspector, the Board of Health, the Design Review Board, and issuance of a Stormwater Management Permit and a new Water Resource Protection District Special Permit, both from the Planning Board. Chairman Keller also noted that accommodation of an utility easement would be requested. Mr. Castagna responded that, if the easement can be provided, he is willing to do so.

Northwoods' resident Aina Apse, 10 Northwood Drive #201, is a nurse at Massachusetts General Hospital. She opined that the current building design is excellent for the residents, and the pool is an excellent therapy resource. Ms. Apse is concerned about the loss of open, green exterior space which will result from the town-house style construction. She stated her preference is to retain the pool and the multi-story building design.

Northwoods' Trustee Theresa Acceta has been a resident for six years and believes many options exist for in-home therapy such as she has received. She also believes retention of the pool is a waste of money.

Real estate agent Damien Musello, spoke on behalf of his mother, Elizabeth who lives at 20 Northwood Drive #401. He believes the application before the Board drastically changes the character of the Northwoods' community and does not fulfill the intentions he and his mother had at the time of purchase. He urged the Board to retain 100% age-restriction and the pool facility.

Northwoods' resident Barbara Mazza, is a retired teacher, who believes that the proposed plans are not in harmony with the existing structures. She also believes that elimination of the pool is imprudent, given the money which has already been invested in it. Ms. Mazza opined that the pool might have been used more had not so many rules been imposed regarding its use. She noted that the Association was approached years ago by Frost Farm residents to discuss sharing pool services and costs, but that the idea was denied by the Trustees. She further noted that there were activities with others, including card groups, which were also restricted by the Trustees, and, unfortunately, eventually discontinued, due to limitations set. She urged the Board and Trustees to consider more inclusive options, now and in the future.

Selectman O'Brien stated that, although it is out of the Board's jurisdiction tonight, the Petitioner and the Association might want to discuss whether there is a willingness to re-visit the decision to retain the pool and possibly reach out to Frost Farm as a collaborator. Chairman Keller concurred that this is a decision the Association needs to make for itself.

Elizabeth David, 70 Thunder Road, asked for clarification whether and if tonight's requests are approved by the Board, can the Association choose to change its decision to remove the Pool. Chairman Keller responded affirmatively.

Mr. Markoff recommended the acceptance of Mr. Kablack's draft language, since he believes it captures more of tonight's consensus for the future operations of the Association than does the draft provided by Town Counsel.

Chairman Keller encouraged the Association to provide as many services as possible to establish a vital and content community. He also stated that he supports the adoption of the Federal Fair Housing guidelines and that he believes Sudbury's Building Inspector will perform an independent and objective review for the criteria under his jurisdiction.

Chairman Keller asked for construction timeframe details. Mr. Castagna responded that he hopes to begin construction between late July and September, and that he already has secured financing for the project. He shared exhibits with the Board of his plans for construction phasing. Mr. Castagna will also, at his own expense, paint the existing structures to blend in with the new units. In addition, Mr. Castagna will repair structural basement damage, pave the road, remodel the fitness area and construct an open-air gazebo and patio.

At 9:20 p.m., it was on motion

VOTED: To close 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.

It was also on motion

VOTED: To approve the Site Plan Modification Application #SP97-337 of Castagna Construction Corp. as presented and reviewed this evening in the draft "Site Plan Modification Notice of Decision Sudbury Board of Selectmen Northwood at Sudbury Site Plan #SP97-337, dated March 23, 2010," subject to Condition #2 being re-worded to include the suggested language of Attorney Mark Kablack, by striking said section in its entirety and replacing said section with the following: "In order to comply with the term, Residential Care Facility, as currently defined in the Zoning Bylaw, all units at Northwood at Sudbury Condominium are intended and operated for occupancy by persons aged fifty-five (55) years of age or older, in accordance with the Federal Fair Housing Act 42 USC Section 3601 et.seq., as amended, together with implementing regulations, 24 CFR Part 100, subpart E, as amended, which provides that at least eighty percent (80%) of the occupied units must be occupied by at least one (1) person fifty-five (55) years of age or older ("Qualified Person"). In order to comply with this condition, all sales and marketing of units at Northwood at Sudbury Condominium shall contain a statement that the Condominium complex is intended and operated for occupancy by persons aged fifty-five (55) years of age or older, in accordance with the Federal Fair Housing act," and to require that copies of all Federal Fair Housing Compliance Reports be provided to Sudbury's Board of Selectmen and Sudbury's Building Inspector; and subject to Condition #3 being re-worded to include the suggested language of Attorney Mark Kablack to amend Condition 22B by striking said section in its entirety and replacing said section with the following: "Northwood at Sudbury Condominium Trust shall provide care services (a.k.a. "care arrangements") to unit owners in order to comply with the term, Residential Care Facility, as currently defined in the Zoning Bylaw. Such care services and/or arrangement may include but shall not be limited to, coordination of visiting nurse services, physical therapy services, transportation services, food services, recreational services, and educational services. Care services and/or arrangements shall be determined by the Condominium Trust in accordance with this permit condition and the terms of the current Zoning Bylaw, as the Condominium Trust deems appropriate and advisable. The provision of care services shall be accommodated within the Activities Building (a.k.a. Clubhouse) of the Condominium, as appropriate. The Activities Building (a.k.a. Clubhouse) shall contain one designated room that may be used by visiting nurses, therapists, and other medical personnel for exams and consultations with unit owners," and to require that an annual report of currently offered services be provided by the Condominium Trust to Sudbury's Board of Selectmen and Sudbury's Building Inspector, on or about June 15<sup>th</sup> of each year; and additionally subject to final review by the Chairman of the Board of Selectmen to ensure that all requested revisions have been appropriately incorporated.

It was further on motion

VOTED: To approve the request of the Northwood at Sudbury Condominium Trust to similarly amend Condominium Association documents relative to age-restriction occupancy, Section 6-B-4 and any other related sections of the documents, as previously voted tonight to amend Condition #2 of the draft "Site Plan Modification Notice of Decision Sudbury Board of Selectmen Northwood at Sudbury Site Plan #SP97-337, dated March 23, 2010," and to similarly amend Condominium Association documents relative to care services, Section 6-B-1 through 6-B3 and any other related sections of the documents, as previously voted tonight to amend Condition #3 of the draft "Site Plan Modification Notice of Decision Sudbury Board of Selectmen Northwood at Sudbury Site Plan #SP97-337, dated March 23, 2010."

### **Reports from the Board of Selectmen**

Chairman Keller reported that he and Selectman O'Brien have been busy this past week preparing for tonight's Public Hearing.

### **Reports from Town Manager**

#### **Annual 2010 Town Meeting - Community Preservation Fund – Town Hall Architectural Design Study**

Town Manager Valente reported that she and Director of Planning and Community Development Jody Kablack recommend indefinitely postponing the Community Preservation Fund - Town Hall Architectural Design Study until next year's Town Meeting. She explained that this would allow more time to create a Request for Proposal and to better determine project costs.

Selectman O'Brien stated that postponement of the article would also allow more time to better coordinate the project with the Town Center Redevelopment Committee efforts.

It was on motion unanimously

VOTED: To support the decision to suggest to the Community Preservation Committee that it indefinitely postpone the Town Hall Architectural Design Study article at the 2010 Town Meeting.

#### **Sudbury Town Crier - Advance Life Support Services Related Article**

Town Manager Valente urged the community to read the upcoming advertisement/notice in the *Sudbury Town Crier* regarding the transition from receiving Advanced Life Support (ALS) Services from Emerson Hospital to a regional service. She also noted that Sudbury is researching whether it should create its own ALS service. Ms. Valente emphasized this is an important public safety issue, and she believes better health outcomes can be achieved from a well-designed system.

### **Election Officers – Appointment**

It was on motion unanimously

VOTED: As requested by Town Clerk Rosemary Harvell in an email dated March 18, 2010, to appoint as an Election Officer: Andrea Terkelsen, 16 Shawmut Avenue, Marlborough, MA 01752, for a term to expire August 14, 2010.

#### **American Legion Sudbury Post #191 – Billiards Table License**

It was on motion unanimously

VOTED: As the Licensing Authority for the Town of Sudbury, to approve a billiards table license for the American Legion Sudbury Post #191, Inc., Spencer R. Goldstein, Manager, 676 Boston Post Road, said license to expire on May 1, 2011.

**Articles for 2010 Annual Town Meeting – Take Positions and Speaker Assignments**

The Board was previously in receipt of a revised list of the “2010 Annual Town Meeting Warrant Articles,” dated March 3, 2010.

It was on motion unanimously

VOTED: To report at Town Meeting the Board’s positions for Articles 43, 44 and 45 and to assign speakers for those articles as follows: Articles 43 and 45 to be presented by Chairman Keller, and Article 44 to be presented by Vice-Chairman Drobinski.

Town Manager Valente distributed copies to the Board for review of an additional Special Town Meeting article regarding Minuteman Regional Vocational Technical School – Feasibility Study to approve the sum of \$725,000 for the purpose of paying costs of a feasibility study to consider options for making improvements to the School. The Board will meet with David Manjarrez on Tuesday, April 6, 2010, prior to Town Meeting to determine its position on the article. Ms. Valente will notify the Board of the start time for the April 6, 2010 meeting as soon as possible.

**Board of Selectmen’s FY10 Goals – Progress Update**

Town Manager Valente distributed copies to the Board of a report she compiled regarding “Performance Updates on the FY10 Selectmen’s Goals.” She summarized the progress made on several Town goals and thanked Town staff and the many volunteers who help accomplish these goals throughout the year. Ms. Valente will post this information on the Town website and will update her tracking spreadsheets.

**Executive Session**

At 9:52 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 and contract negotiations.

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

There being no further business, the meeting adjourned at 9:52 p.m.

Attest: \_\_\_\_\_  
Maureen G. Valente  
Town Manager-Clerk

IN BOARD OF SUDBURY SELECTMEN  
TUESDAY, MARCH 23, 2010  
EXECUTIVE SESSION  
(9:55 p.m. - 10:40 p.m.)

Present: Chairman William J. Keller, Jr., Selectman Lawrence W. O'Brien, and Maureen Valente,  
Town Manager

**Collective Bargaining – Update**

Town Manager Valente updated the Board of Selectmen on negotiations with two groups:

**Dispatchers Union:** The Dispatchers Union is disputing that they agreed in last year's Memorandum of Understanding (M.O.U.) to adopt whatever health insurance changes that three other groups agreed to: Firefighters, Police Officers and Supervisory Association. The Town is perplexed by this position, as the M.O.U. very specifically states this. As the contract period covers FY10-FY12, if there is no settlement by June 30, 2010, the funds available for any wage adjustment would close out and might require a Special Town Meeting to appropriate the funds for a retroactive wage adjustment.

Ms. Valente noted that the Union is attempting to have the Town give back most of the contract language it achieved last year. The Town vigorously rejects this. While the Town feels it could unilaterally implement the contract provisions regarding health insurance, Labor recommends instead that the Town declare we are at an impasse and request arbitration to resolve the issue.

**Public Works:** The Town has reached a tentative agreement with the Public Works Union. For health insurance, they agreed to go to 82.5% on July 1, 2010, to match all other groups. The employees would receive a 3% across-the-board wage increase beginning July 1, 2010, and switch to the new rate saver plans. New employees would then start at the 30% contribution rate for HMO plans and 55% for PPO plans, as other groups have accepted.

She reported that one issue remains to be resolved that arose after the session adjourned. The Town proposes that the mechanic no longer have a Town vehicle for commuting on a regular basis. The Town had offered a one-time payment of \$1,000 in exchange. The Union wants the \$1,000 to be made annually to the mechanic. The Town rejects this request, and more negotiations will be scheduled.

**Engineering:** The first session for this group will begin next week. There are only two members of this group.

**Negotiations with Town Manager**

Selectman O'Brien recapped the previous votes of the Board of Selectmen.

1. To begin negotiating a new five year contract with the Town Manager, (voted October 27, 2009).
2. To re-appoint Maureen G. Valente as Sudbury Town Manager for a new five year term, to run for the same time period as the new contract (voted March 10, 2010).
3. To sign and execute a new contract covering the period March 10, 2010, through March 10, 2015 (voted March 10, 2010).

4. To approve the draft five year compensation plan, which follows these principles agreed upon between the Selectmen and Town Manager Valente:
  - a. The merit bonus portion of the total compensation will be eliminated for FY10 and going forward. The total compensation dollars for FY10 will not change, however, from what was previously agreed to for FY10.
  - b. The Board had earlier indicated their preference to enter into a five year contract and compensation plan with the Town Manager and want to remain consistent with that approach. They feel that brings stability and a long term outlook.
  - c. Growth in compensation should be looked at as an average over the five year period of the contract.
  - d. Over the first three years of the new contract (FY11-13), growth in the Town Manager's total compensation should follow but not exceed the pattern of members of Sudbury's Supervisory Association who entered FY09 on the top step.
  - e. Over the last two years of the contract (FY14-15), the compensation growth should be limited to an average of 2% per annum, which is the amount that the FinCom has used as a suggested cap on annual wage growth in town and school budgets.
  - f. In FY13, the Board will review the compensation of Town Manager positions in comparable communities (e.g. those with similar population, job description, property value, and income of residents and geographically in the West Suburban area) and attempt to keep the compensation of the Sudbury Town Manager near the average of town managers with similar levels of experience/time in service to their community.
  
5. To use the formal evaluation of the Town Manager developed by the Board of Selectmen on October 27<sup>th</sup>, 2009 to serve as the evaluation for both FY09 AND FY10, as the Board found that the Town Manager's performance continues at the same consistent high level from October through March, 2010. Thus, the next formal evaluation of the Town Manager will be conducted May - June, 2011, based on the period April 2010 through May 2011.

Mr. O'Brien noted that, even though Mr. Drobinski is not present tonight, he had previously indicated his agreement with the contract and compensation plan principles, and thus he felt comfortable voting and signing these documents tonight. He noted that Ms. Valente had agreed to wait to finalize her contract and compensation plan until the firefighter's contract was settled, so that the Board and Ms. Valente could be assured her compensation plan would not exceed that of any of the Town's major unions. The firefighter MOU was approved by the Board on March 2, 2010, thus allowing the Board to finalize the contract with the Town Manager tonight.

Moved by Selectman O'Brien and seconded by Chairman Keller to approve and sign the contract and compensation plan document for the Town Manager, as part of the employment agreement previously approved and signed by the Board of Selectmen, dated March 10, 2010.

There being no further business, the meeting adjourned at 10:40 p.m.

Attest: \_\_\_\_\_  
Maureen G. Valente  
Town Manager-Clerk