

**IN BOARD OF SELECTMEN
MONDAY, DECEMBER 22, 1997**

Present: Chairman Lawrence L. Blacker and Selectmen Maryann K. Clark and John C. Drobinski.

The statutory requirements for notice having been met, the meeting convened at 7:30 p.m. at the Fairbank Senior Center.

Chairman's Opening Statement

Chairman Blacker commenced the meeting acknowledging and commending the radio station WSRO Metrowest 1470 AM for doing a series of spotlight interviews about Sudbury with Sudbury officials. He highlighted the radio segment in which he was recently involved. Town Manager Steven Ledoux and Town Planner Jody Kablack have also done a show, as well as Hugh Caspe, a member of the Board of Health. He said the segments were very informative and hoped people would be able to tune in and listen.

Strategic Planning Committee Housing Task Force -- Requested Meeting

Present: Steven Swanger, Jo-Ann Howe and Daniel Claff.

A memo of December 19, 1997, to the Board of Selectmen was received from Jo-Ann Howe, a Housing Task Force member. This meeting was requested by the Strategic Planning Committee Housing Task Force to express interest regarding the utilization of the former Unisys property of Rt. 117 for a senior housing project immediately to the east of the proposed Northwoods development.

Steven Swanger, Chairman of the Strategic Planning Committee Housing Task Force, presented the latest developments regarding meetings and site walks with Jody Kablack, Town Planner, I. W. Place, Town Engineer, Deborah Dineen, Conservation Coordinator and Peter Conant, Northwoods developer. He stated that the Housing Task Force has since determined their plan of shared infrastructure, presented to the Board earlier in September, would not be feasible because an extra emergency access road would have to be built. The Conservation Commission also pointed out certain areas they wanted to protect. Mr. Swanger appreciated the support the Board had for the Task Force's previous plans.

Mr. Swanger stated the original idea of shared infrastructure led them only to consider the site adjacent to Northwoods, but they are reconsidering and thinking of utilizing all three buildable areas in conjunction with the Conservation Commission to preserve the vast majority of the site as open space. Mr. Swanger brought a site plan to show the Selectmen the Housing Task Force proposed project in relation to Northwoods.

Therefore, considering the above updates and plan revisions, the time line for implementation of their project has become considerably longer and they will not be able to put together a detailed proposal for the next Town Meeting. However, even without specificity or siting style, the Task Force is going to Town Meeting to ask for a general endorsement of the project and to get a general sense of the Town's opinion toward the project. Mr. Swanger said that before the Task Force went to Town Meeting, they would like to know if the Board of Selectmen would be willing endorse this project.

Recognizing that the details have not been mapped out at this time, Chairman Blacker wanted to know what kind of housing the Housing Task Force was going to promote for the project. Mr. Swanger said the Task Force was thinking in terms of condominiums targeting Sudbury residents over 55 years of age who

were thinking of downsizing their living space resulting in less maintenance and that these units would be managed by a condominium association. Chairman Blacker then asked if there were going to be any income restrictions. Mr. Swanger commented that they were not completely certain, but wanted to comply with the state's definition of affordable housing which is a 10% bracket and would enable the Housing Task Force to market the housing as low as \$80,000. This, in turn, would increase the cost of other housing up to \$200,000. In prior Task Force meetings, they originally discussed housing priced in the \$150,000 to \$160,000 range. In summary, Mr. Swanger mentioned the advantage would be to meet the states 10% goal and the disadvantage would be the increased cost of other housing.

Notwithstanding the Conservation Commission's desires, Chairman Blacker recollected his previous walks on the property and while looking at the site plan wanted to know why the line that was drawn to accommodate the Conservation Commission was not drawn further away from slopes and wetlands to include more of the flat and dry land that is available. Mr. Swanger said he will need to defer the question to the Conservation Commission. Mr. Swanger then spoke of their original idea of transferring the land. The Housing Task Force hoped to have progressed far enough to present an action plan at Town Meeting, but were disappointed at the slow turn their project had taken.

Chairman Blacker enthusiastically commented that he was a strong supporter of condominium or townhouse development for people over 55 years of age. However, his main concern was how the land would be developed. Chairman Blacker presented the possibility of the land being sold to a developer with restrictions to build that which the Town would require. He asked Mr. Swanger how the Task Force was planning to build this project, assuming they were going to build market value property with no land cost. Mr. Swanger stated there was a definite cost and asked if the Town would be better off selling this land for 1 million dollars or something less to keep the housing costs down. He posed an example with a \$750,000 land cost for 30 or 35 units of housing with a possible \$250,000 return for the Town's investment on the land.

Mr. Swanger said Peter Conant volunteered to do some *pro formas* for the Task Force and he did one in which there was a modest acquisition cost. Jo-Ann Howe of the Task Force stated this proposal by Mr. Conant was \$15,000 per unit for the land acquisition based upon 35 units for a total cost of \$525,000. Chairman Blacker stated that this was not terrible and the Town would be able to recover half of its investment. Mr. Swanger said the only drawback would be the increased cost of housing if the Task Force included affordable housing. The remaining cost would have to be apportioned among the units not designated as affordable housing resulting in market values in the \$200,000 dollar range. Chairman Blacker asked what size the lot was and how big this project would be in comparison with the proposed Northwoods project. Selectman Maryann Clark mapped out the acreage in the site plan of the proposed Northwoods project in terms of visual size and then Mr. Swanger pointed out on the site plan that the Housing Task Force project would be built on approximately 10 to 15 acres.

Mr. Swanger reiterated the possibility of selling the land to a developer to build what the Town wanted and will be exploring this possibility further. However, he was concerned that once the Task Force has set this precedent, it might preclude the possibility of the Town from donating land in the future. (Having sold land once for housing development, the Town might be reluctant in the future to make a land donation.) Mr. Swanger, speaking for the Housing Authority, expressed that the only way affordable rental housing could be developed would be from land donations by the Town. Chairman Blacker acknowledged

this, but retained the perspective that this project is going to be marketed to citizens who are 55 years and older who would be able to "afford" this type of housing.

Mr. Swanger also noted that the Housing Task Force has received numerous verbal communications from Senior Citizens who are looking for housing in the \$100,000 and \$150,000 and \$170,000 range. Many are looking to invest in their new housing and also invest toward their living expenses. If the Task Force sold units for \$200,000 or more, they would be getting a portion of this segment, but at the same time missing another segment of the 55 year and older market. Chairman Blacker suggested a variety of unit prices in the \$165,000 to \$200,000 range and Mr. Swanger noted that this would be ideal if it were possible to arrange.

Chairman Blacker stated that he did not object to this project being presented to the Town, but stated that the largest obstacle the Task Force might face would be getting approved by the Board of Health. He stated that they could completely stop this project. For example, they could conclude that there are only 12 buildable units allowable on 15 acres which could result in nothing being built. Mr. Swanger said he was also acutely aware of this part of the approval process.

In conclusion of the meeting, Chairman Blacker stated that he is strongly in favor of this type of housing even though specific details have not been determined as of this time. He thought that going to Town Meeting was the best and an appropriate way for the Housing Task Force to present their project proposal and asked if Selectmen John Drobinski or Maryann Clark had anything to add or comment.

Selectman Drobinski stated his only concern was the Town spent 1 million dollars on the property and it would be beneficial for the Town to receive a reasonable return on the property. Selectman Drobinski was also concerned about the amount of open space and the intensity of use for this space and would not like to see the land over-burdened. Selectman Clark stated she would like to see the affordability incorporated seriously into the proposal. She would not like to lose sight of the fact that this is a great opportunity to offer affordable homes and to show good faith by meeting the 10% requirement of the state. Selectman Clark also stated she thought more work with the details needed to be done before Town Meeting. Selectman Drobinski commented he thought it would be necessary for the Task Force to go back to the different commissions and boards, such as Conservation and Board of Health, to get assistance with the details Selectman Clark thought the Task Force will need for Town Meeting.

Site Plan Application SP 97-340 – AT&T Wireless PCS, Inc., Maynard Road

Present:

- ⇒ Stephen D. Anderson, Esq., Anderson & Kreiger representing applicant, AT&T Wireless PCS, Inc.
- ⇒ Justin Leland, a Consultant for AT&T Wireless PCS, Inc., who was in attendance as a technical advisor.
- ⇒ Mark Berthiaume, Esq., from Goldstein and Manello, whose office represents some of the residents of the Willis Hill neighborhood.
- ⇒ Gregory Clark, Scott and Kimberly David, Charles Mainville, Deborah Gillette, Rodger Krincoff, Andrew Fox, Dennis Frochay, Susan Smith, Kathy McDermott, Jamie Nelerson, Jane Bolton, Kevin McEwan, James Wenchell, Nancy McPhee and others.

The Board was in receipt of an application dated November 3, 1997, and filed on November 4, 1997, from AT&T Wireless PCS, Inc., for a Site Plan Special Permit in accordance with Sudbury Zoning Bylaws Art. IX,V.A, to add to the wireless communications facilities on the Sudbury Water District property on Maynard Road, by attaching a 50-foot pole to an existing water tank, with antennas, cables and cable tray, and constructing a 12' x 20' equipment shelter, in Residential District C-1. This application included plans consisting of 8 sheets with a cover date of September 17, 1997, drawn by Clough, Harbour & Associates of New York.

Notice of the Public Hearing was duly posted, and advertised in the Sudbury Town Crier and Tab on December 4 and December 11, 1997. Parties of interest, being abutters within 300 feet according to the Assessors, were provided written notice by first class mail. Additionally, the Planning Boards of Acton, Concord, Lincoln, Maynard, Framingham, Marlboro, Stow, Wayland and Hudson were provided written notice by first class mail.

As listed below, the following Town Departments responded to the above-referenced site plan application:

1. The Board received a letter dated November 25, 1997, from the Fire Chief, Michael C. Dunne, expressing no objection to add an antenna to the existing water tank on Maynard Road, but would request the applicant install a Knox Padlock on the gate for access by the Fire Department.
2. The Board received a memo dated November 26, 1997, from the Building Inspector, John B. Hepting, expressing no comment or objection to the plan as submitted.
3. The Board received a letter dated December 10, 1997, from the Chairman of the Planning Board, John O. Rhome, expressing their vote to recommend denial of the application. The Planning Board made this recommendation because, in cooperation with a citizens committee, it has prepared a zoning article to be presented at the 1998 Annual Town Meeting, which specifies sites for communication towers. The present site would be excluded under the proposed bylaw which they enclosed for the Board's review.
4. The Board received a memo dated December 5, 1997, from Town Planner, Jody A. Kablack, to the Planning Board, noting that this proposal requires a use variance and special permits from the Board of Appeals and a public hearing was held on November 25, 1997, but no decision has been made. After her review of the application, the Town Planner indicated comments and recommendations concerning the height of the tower, location of the building, utilities, fencing and parking, slope stabilization, and site drainage.
5. The Board received a letter dated November 18, 1997, from the Director of Public Works, I. William Place, stating that Bell Atlantic NYNEX was to submit an as-built plan for this site prior to the issuance of an occupancy permit and this condition was not complied with. Drainage calculations were not received by the DPW for review. He commented on the overflow from the existing million gallon water tank, causing severe erosion and water damage to the Willis Hill Subdivision and recommended permanent measures be taken to protect this area and the residents of Willis Hill. He noted that the access driveway and surface treatment need to be shown on the plan.
6. The Board received a memo dated December 11, 1997, from the Conservation Commission recommending that any permit include the provision for immediate stabilization of the land at the base of the tank that will be disturbed for the construction of the support equipment. In

addition, drainage off the hill should be reviewed, especially the emergency overflow from the tank in conjunction with the new construction, to determine if these flows present any problem down slope or to the drainage detention basin at the end of Cudworth Drive.

7. The Board received a letter dated December 22, 1997, from Bruce T. Quirk, Esq. who owns land that abuts and surrounds the Water District land on Willis Hill. In his letter he advised that the owners of the land are unalterably opposed to any further encroachment of commercial use in the residential zone. He also stated that a very serious potential for disaster from the uncontrolled discharge of excess water from these towers in the amount of several million gallons per event and this has happened on several occasions causing flooding and erosion to property. He stated the drainage easement needed from them to alleviate this would be in jeopardy if the Water District pursues such commercial enterprise on this site. He recommended looking at the alternate sites available.

At 8:00 p.m., Chairman Blacker convened the public hearing on Application SP 97-340, and immediately following, the Board received a revised site plan comprised of nine sheets with a cover date of December 18, 1997, from AT&T Wireless PCS, Inc. Attorney Anderson introduced himself and Justin Leland and began his presentation of the proposal for a wireless telecommunications facility at the Willis Hill Water Tanks. He stated AT&T Wireless PCS, Inc. (hereinafter "AT&T Wireless") has gone before the Planning Board and the Board of Appeals on prior occasions and will be reconvening with the Board of Appeals on January 7, 1998, for continued deliberation and vote. Attorney Anderson was in receipt of a December 10, 1997, memorandum and copy of the Sudbury Zoning Bylaw from John O. Rhome, Chairman of the Planning Board and has therefore made modifications to the site plan and discussed these modifications throughout the meeting. During the meeting, Attorney Anderson also referred to a map made by an AT&T Wireless engineer siting different wireless service areas.

After convening the public hearing, the Board also received a letter dated December 22, 1997, submitted by Mark Berthiaume, Esq. in opposition to the application of AT&T Wireless. This letter outlines Sudbury Zoning Bylaws and the issues to be satisfied by the Board of Selectmen in their review, such as: (a) ensuring a use of the site consistent with the uses permitted in the particular district; (2) giving due consideration to the reports received from other town boards; and (3) finding that the site plan protects the adjoining property by avoiding adverse effects on the natural environment and abutters.

Stephen Anderson, Esq.

Attorney Anderson began by stating the fact that the Water District property, housing two water tanks, already contains a wireless communications provider (Bell Atlantic) that has antennas on top of one of those water tanks. He described the AT&T Wireless facility as follows:

The pole would be set on the second water tank and at the top of the pole would be a cross-polar antenna that basically "hugs" the pole that will not be triangular in shape to make the antenna appear as sleek as possible. A crane test was performed by lifting a crane up to the proposed height of the pole to be certain the wireless communications will be capable of functioning. This test determined the height of the pole is dictated by a need to be above the tree tops as the technology will not function at a lower height.

AT&T Wireless evaluated the possibility of securing the antenna on top of the tank like Bell Atlantic, but unfortunately it does not clear the tree line, nor would the tank structurally hold their proposed facility and this is why their revised proposal has the pole attached to the side of the water tank. The pole will be approximately 31 feet above the top of the tank and the total height of the pole will be 80.5 feet above the ground.

There are thick woods around this site and both the Planning Board and the Board of Appeals wanted to know if it was possible to site this proposed facility in a manner that will avoid the removal of any vegetation. With this mission in mind, AT&T Wireless walked the site with Dick Carroll, Sudbury Water District Superintendent, and identified modifications to their original plan in order to accomplish that task.

In addition to the pole there will be computer, electrical and telephone equipment installed at the proposed facility. The electrical and telephone connections will be under the ground as is required by Sudbury's bylaw. Their original plan proposed installation around the perimeter of the site, but a modification was made to install those connections in between the two water towers where there would be no vegetation to remove. AT&T Wireless also originally proposed a 12' to 24' equipment shelter on a concrete slab, but have modified the plan by downsizing to equipment cabinets, of which Attorney Anderson handed out pictures to the Board enabling them to see the size difference. They are much smaller and look like a double door file cabinet that will be able to house the necessary equipment as well as be relocated from the original proposed position. One benefit from this modification is that the equipment cabinet will no longer be positioned next to a slope on the property and, as Town Planner Jody Kablack had mentioned, will be away from any run off from the property. This enables them to site the cabinets in a way that avoids the removal of any vegetation or trees.

Attorney Anderson continued with the topic of approval for the proposed site: AT&T Wireless met with the Planning Board in the past to clarify zoning aspects. The Planning Board recommended that this plan be denied solely because of a proposed zoning bylaw that came before the last Town Meeting, which was withdrawn for certain changes and reconsideration. This has been a lengthy process which began over nine months ago and the bylaw was drafted to allow wireless facilities on a public property to bring revenue to the public authority from this particular proposal. He stressed that essentially this is a residential district that is used for non-residential purposes, i.e., the Water District and wireless telecommunications. This particular property will never have any residential use in the foreseeable future and will always have an institutional type use.

Attorney Anderson explained further as follows: One objective of AT&T Wireless was to co-locate with an existing facility in order to eliminate a variety of these facilities in different locations and to do this on a piece of property that was consistent with the (then) draft of the zoning bylaw. There is a draft of the zoning bylaw in circulation now that is different from the one that was under consideration at Town Meeting. Neither draft has been passed and the second has yet to be put out for the formal zoning public hearing process that is required by Ch. 40A, Sections 5 and 6. Attorney Anderson, along with copies of the modifications, also provided the Selectmen with a copy of the Telecommunications Act which makes it clear that it is not legally permissible to deny one of these proposals on the basis of a proposed bylaw that has not yet been formally presented. This is what the Planning Board has recommended with respect to this proposal.

Attorney Anderson continued by stating that one of the permits they requested from the Board of Appeals will either be a special permit to extend pre-existing non-conforming use that already exists on that property or, in the alternative, a variance from the use as was granted to Bell Atlantic. Even if the new zoning bylaw were to be in effect, this facility is coming before the Board of Appeals, the board that has the jurisdiction to decide the question of the use. The Board of Appeals will deliberate on this application January 7, 1998, and Attorney Anderson believed that this was the appropriate jurisdiction or location for that decision to be made and stated that this use should be allowed on this property at this time.

Attorney Anderson stated: The question before the Board of Selectmen is whether they will approve the site plan for this particular proposal. AT&T Wireless has made every effort to track all the different requirements of the bylaw and to cover all of those bases for the site plan approval. This is an unmanned facility providing the most advanced telecommunication equipment for which there will be one vehicle trip per month for maintenance purposes, or more than one vehicle in an emergency situation. This facility is necessary to fill a coverage gap that exists in town. Attorney Anderson held up a radio frequency map made by an AT&T Wireless engineer which shows the gap that this proposed facility will be able to fill. He also held up a map of the proposed sites the Town recommends for wireless telecommunication use in the future. He then compared the two maps by emphasizing the other specific Town-proposed locations will not be suitable to fill in this main coverage gap in town.

Attorney Anderson added that in the Telecommunications Act, a town cannot favor one carrier over another and all have to be treated non-discriminatorily and fairly. He mentioned the Town already has a carrier on this particular site and coverage, and the Board does not have to stretch to approve the site plan. The question of whether or not the use will be allowed is the decision of the Board of Appeals. He pointed out that AT&T Wireless took the Town Planner's recommendations and immediately put them into effect.

Attorney Anderson stated AT&T Wireless has done the following:

- downsized the equipment shelter to the equipment cabinets;
- relocated the proposed underground utilities so they would be situated as sensibly as possible with respect to the vegetation;
- moved the equipment cabinets so they would not be at a location on the slope.
- ensured avoidance of removing any vegetation;
- used an antenna that is of as low visibility as you can have for this kind of facility;
- tried to minimize the height of the facility so that it is not at a height above the tree line in any kind of visible way (plus or minus 5 feet depending upon which way you are looking at the tree line);
- tried to be as sensitive as possible, to co-locate and to get the revenue into public hands;
- identified what the parking will be for the one vehicle trip per month; and
- placed all the utilities under ground both from the electric and telephone boxes to the equipment cabinets and from the equipment cabinets to the water tank itself.

In short, Attorney Anderson concluded, AT&T Wireless believes it has met all the requirements of the site plan approval bylaw and respectfully requests that the Board approve the site plan and allow the Board of Appeals to make the ultimate decision as to whether this use of this property will be allowed.

Chairman Blacker asked Attorney Anderson if the proposed service would be similar to that which is already in place on the site by Bell Atlantic. Attorney Anderson stated that AT&T Wireless offers the PCS wireless phone which is digital technology, as opposed to the familiar analog technology, offering advanced services and more capabilities and features.

Mark Berthiaume

Attorney Berthiaume, an attorney for Goldstein and Menello in Boston, introduced himself stating he represents the Town of Franklin in connection with a current suit involving Nextel Communications; as a result of that effort he was contacted by a number of neighbors in the Willis Hill area concerning this proposed AT&T Wireless tower.

Attorney Berthiaume began by stating, with respect to Sudbury's zoning bylaws, Mr. Anderson identified what should or should not be considered by the Board in evaluating AT&T Wireless' proposal. Directing the Board to Section IX.V.A of the bylaws identifies, in fact, what the Board should consider in connection with a site plan special permit.

Attorney Berthiaume further addressed the Board as follows:

The first thing this Board should do is ensure the use of the site, and in this case, this residential district and the site proposed by AT&T Wireless, is consistent with the uses permitted in the district. This is a threshold issue. Attorney Berthiaume held up a plan which identified the tank in question and the proximity of the tank to the residential community of Willis Hill. He marked in red the water tanks, and the various residential lots in purple that are completed and in orange the lots that have not been developed or are under construction and the clear lots marked were all the undeveloped lots within 100 feet of the water tanks. He continued: The Board should consider, in viewing this site plan, whether or not the commercial use here is consistent with the uses permitted in residential zones. This is zoned residential and is the use consistent with it. The use of this facility for commercial purposes is clearly inconsistent with the uses permitted in a residential district.

The second item identified in the bylaws the Board should consider in connection with reviewing the application for a site plan special permit would be the review of reports obtained from other Town bodies, one of them being the report of the Planning Board. As Mr. Anderson noted, the Planning Board recommended denying this site plan special permit and he also noted that they recommended denying it because it was inconsistent with the proposed bylaw. Mr. Anderson is correct that there is case law authority that you can not simply deny with the only reason being a bylaw that has not yet been enacted. What the Planning Board did in their review was note that, in the proposed bylaw, the Planning Board and the Citizens Action Committee looked at a number of sites throughout the town and identified, in an overlay district, six sites that would indeed be suitable. This is not a situation as in the case Mr. Anderson is referring to, where a town prohibited wireless facilities. It proposes areas where there is more open space, perhaps industrial areas, more commercial areas, but not residential areas.

Attorney Berthiaume asked if AT&T Wireless had considered any of the other six sites identified by the Planning Board, stating that perhaps in another site, the tower might have to be higher to include

a wider coverage area, but, in fact, there has been no showing by AT&T Wireless that all six of these other sites that are available in Sudbury are not suitable for this particular carrier.

The third concern the Board should consider in approving a site plan special permit in accordance with IX.V.A. is that it must find the site plan protects adjoining premises by avoiding adverse effects on the natural environment and the abutters. AT&T Wireless has to demonstrate to this Board that its proposed plan is going to protect the natural environment and protect the abutters. Attorney Berthiaume recapped what AT&T Wireless is proposing to do. He opined there is no question when they came into this situation their idea was to co-locate with Bell Atlantic on the water tank by attaching antennas on the top of the water tank that were relatively unobtrusive and could not be seen from a great distance. If they were asking for what Bell Atlantic had obtained, he thought the Board would be hard pressed to say no and, in fact, under the Telecommunications Act, probably be prohibited from saying no. However, they could not co-locate identically to Bell Atlantic because their technology is different and it has to be higher.

More importantly, from a Planning perspective, if the Town allows AT&T Wireless to erect this 80 foot pole next to the water tank, should Sprint, Omni Point, and Nextel want to locate in this same area and want to erect poles 80 or 90 feet high, they would also have to be allowed. What AT&T Wireless is proposing is different than Bell Atlantic. The Telecommunications Act does not prevent towns from regulating where these towers should be located, but it does prevent towns from unreasonably discriminating against providers. AT&T Wireless' proposal is far different than what Bell Atlantic has established.

Attorney Berthiaume submits to the Board it should review the impact this particular tower is going to have in this residential community and to consider the impact it is going to have when other providers want to locate on these tanks. If the Board allows AT&T Wireless to attach an 80 foot tower to this tank there will be other providers who will follow and do the same thing.

Attorney Berthiaume submits to the Board that AT&T Wireless cannot possibly demonstrate that this site plan which proposes to put an 80 foot pole right in the center of this residential district can protect the natural environment or the interests of the abutters. Clearly, there will be a significant visual impact and an impact on the abutters. Sudbury needs to recognize that there are better places for these towers than 50 feet from all of these residential homes. The proposed bylaw that the Planning Board is recommending, in addition to the additional six sites, provides that towers not be higher than 60 feet and that they be no closer than 500 feet from any residential property line. If the Board were to take these recommendations into consideration now, they would realize about 20 of these lots are less than the proposed requirement of 500 feet from the residential property lines to the water tanks. He opined the Board has grounds to deny the site plan special permit and sound practice dictates that it should be denied. Attorney Berthiaume stated that he knew that a number of residents have questions and comments as well as a petition in circulation regarding this site plan and he would try to answer any questions they may have of him.

Chairman Blacker asked Attorney Anderson if Sudbury granted the site plan and if AT&T Wireless were to get approval from the Zoning Board, could Sudbury deny Sprint or anyone else who wants to come in and put up an 80 foot tower with a cabinet on the other side of the tank.

Attorney Anderson described in full detail that it depends on certain factors:

First, Sudbury has a zoning bylaw process that is unfolding and a draft of a bylaw in circulation right now that proposes certain height requirements, certain set back requirements from residential property lines, and proposes certain locations upon which to set this type of facility. It has not been on notice for a formal public hearing and has not yet been adopted, but if that were to be in place before the next applicant comes in, then the next applicant has to be in compliance with that bylaw.

AT&T Wireless is dealing with the requirements of this bylaw and this bylaw does not have the set back requirements of 500 ft. or the 60 ft. height requirement in this district. In fact, it allows by special permit, in any district including residential, a height that can be unlimited.

AT&T Wireless has not proposed an unlimited height, we have proposed a sleek pole, not a tower and a pole that will be barely visible above the tree line, shielded as much as possible by the trees. The special permit is by the Board of Appeals and we have that under advisement. Therefore, AT&T Wireless has come in relying upon the zoning that exists in the town, trying to satisfy the requirements of a proposed bylaw that was being circulated at the time this was under design. They selected this particular piece of property in consultation with public officials in this town and applied under the bylaw as it exists.

If the next person comes in when the new bylaw has been noticed for public hearing and has been voted and approved by the Attorney General, then they are either going to have to get a variance from that bylaw or they are going to have to comply with that bylaw.

Chairman Blacker asked, if the new bylaw was not approved, and the AT&T Wireless site plan was approved, could Sprint or other carriers come in and say we want to put an 80 foot pole on the other side of the water tank. And if this happened, could the Town deny another carrier from doing this under the current Telecommunications Act.

Attorney Anderson replied that the other applicants who may have an interest in this site will first have to get a lease from the Sudbury Water District and once the lease is obtained, they have to get approvals from the various town officials. The Telecommunications Act requires towns to treat all carriers nondiscriminatorily. Attorney Anderson stated that AT&T Wireless is second in line, not the first and not the last.

Attorney Anderson elaborated, as follows:

With each additional proposed application the facts are different. You are looking at the effect on this particular neighborhood and you take into account the facts as they exist for this neighborhood at the time. And here you have all these people turning out with respect to not wanting the one pole, two poles, ten poles, etc. in their neighborhood. So, you can fairly apply your zoning rudiments to what exists at that particular time and the context of changing it within your proposal and you can draw distinctions between and among the different carriers based on when they arrive and what the lay of the land is at that time. The Telecommunications Act is a reality and AT&T Wireless is simply trying to be treated fairly under both the zoning regulations as they exist now and the Telecommunications Act.

Chairman Blacker asked Attorney Berthiaume if he could tell him what the adverse impact would be on the abutters other than the visual possibility of seeing a 30' or higher extension above the tank. Attorney Berthiaume responded that the adverse impact would be seeing the additional 30' of the pole extending above the height of the water tank. There would also be the adverse effect on property value in light of the fact that, if you have this unsightly pole in your back yard, there will be fewer potential buyers for your property.

By referring to Attorney Berthiaume's chart of the Willis Hill neighborhood, Chairman Blacker stated that each lot abutting the water tower was not yet developed and opined the current adverse effect might belong with the future developer of these lots. Attorney Berthiaume answered by commenting that, yes, it would be the developer's problem, but this problem continues to affect the current Willis Hill residents with the adverse visual impact and decreasing property values. He believes in the long term, once one wireless carrier goes in, many others will follow and this will be to the detriment of the residents of the entire Willis Hill area and not solely the lots abutting the Water District property.

Resident Questions, Concerns and Comments

- Sudbury Resident Greg Clark asked what would happen when the trees grow taller than the required height the technology requires? Will the antenna need to be raised or will the trees be topped off to accommodate the antenna?
- Attorney Anderson stated this is a risk AT&T Wireless faces and they will not be able to raise the antenna or disturb the trees without first coming back to the Board for approval. However, he also stated that the trees were mature and stated that technology may advance far enough in the future to eliminate this concern.
- Kim Davis from the Willis Hill area lives across the street from the undeveloped lots abutting the water tanks. She stated she can see one tank from the second floor of her house and was concerned about the trees that will be cut down during the future development of the lots across the street. She commented it would be impossible to keep the tanks and towers within a dense area of trees. Mrs. Davis stated she fears multiple towers by different carriers and there will be continual requests for variances by these carriers in regards to the changing technology and equipment needs. She does not want the value of her property to decrease and does not think the new development will be marketable because people do not want "antenna farms" in their yard. She asked the applicant to consider the six other sites chosen by the Town and opined her neighborhood already had one tower and did not need another one and this one should go somewhere else.
- Attorney Anderson commented that a few of the six sites chosen are very similar to this site and Chairman Blacker restated the focus of continuing to determine the adverse effects on the abutters for this site.
- Chuck Mainville, an abutter of the Water Department property, asked if the new sites identified in the proposed bylaw are strictly residential sites. He stated he was a member of the Task Force that made the modifications to the bylaw and the reason the bylaw was not accepted at Town Meeting this year was because of his concerns regarding its openness to the telecommunications facilities. He continued, saying the sites identified, i.e., the landfill and Highway Dept. property, may be surrounded by residential properties, but have sufficient setbacks so that these facilities are not going to be visible from the residential properties. He opined this situation is completely different because it is directly in the

middle of a residential area. He believes that this will visually degrade the neighborhood and the water tanks.

- Attorney Berthiaume agreed with Mr. Mainville and stated that three of the six sites chosen by the Town, the Melone property, the Unisys property and a Water District parcel in North Sudbury were the only parcels that do not have residential areas near them.
- Chairman Blacker asked, assuming it is necessary for the technology to be above the tree line and have a 60 foot height restriction from the ground, if the bylaw effectively eliminated the use of any of the sites. He mentioned he has often seen a town create restrictions that sound good on paper, but in actuality, cannot be accomplished. For example, what if the town allowed a facility with a 60-foot restriction, but the trees at the site are 80 feet high.
- Mr. Mainville believed there was some flexibility to the bylaw that allows a carrier to go up to the tree line or slightly above it with a desired height of 60 feet. He continued that he stands by his original comment that the setback of 500 feet from residential property makes this a very different application.
- Debbie Gillette of 41 Wyman Drive commented she and her husband came from New York and said it took a long time to choose a great residential neighborhood for their three children. She stated she did not think it was fair that suddenly, things are changing and she does not feel the residents are being allowed an opinion in the matter. She believes the antennas are detrimental to their property values and health. She presented a petition to the Board which was signed by 75 residents who are also against this site plan.
- Rodger Krincoff of Wyman Drive recalled the last meeting about one year ago regarding the visual and the health effects of this antenna. He believed the antenna was detrimental during the last meeting and still believes this antenna is detrimental. He too believes that, once one antenna goes up, there will be many more and this will have a major impact on the visual aesthetics.
- Andy Fox, currently building on lot 44, stated that this situation is not fictitious and he believes that, in reality, there will be an "antenna farm". He believes they will not be able to stop their height, and regardless of the health effects or whether they are within government guidelines, people are concerned and they are talking about it. He relays that people will not want to move to or live in such a community and he knows people who are already thinking of moving. He and other residents are very concerned and would not like to move.
- Dennis Frochay, a non-Willis Hill resident, commented that other residents will be able to see the antenna throughout town in different spots, agreeing with Chairman Blacker that the further away from the antenna you get, you will see the antenna more than if you were standing near it. He stated he could only guess how this would affect property values and, again, in agreement with Chairman Blacker, the Town needs to find a happy medium. Based on Chairman Blacker's observation, Mr. Frochay opined the Town could possibly find lower points on which to place an antenna.
- Scott David stated his concern was not monetary or aesthetic, but is concerned for his four very young children and they live within 500 feet of this proposed site. He stated he and other residents have done research on multiple site towers and have come up with contradictory information. Regardless of the health effects studies, his main concern is still the health of his children.
- Doug Goodman, Willis Road, asked AT&T Wireless if they brought a calculation of the radiation pattern and asked how much total power is contained in such an antenna.
- Attorney Anderson said, because he was not an engineer, he would try to answer these questions as best as he could. He read to everyone an example of a certified report submitted to the Senior Radiation Scientist at the Department of Public Health by an SRS, Inc., EMC Engineer who testified during an appeal on a health related issue that had a favorable outcome. There is a standard that needs to be met according to the Dept. of Public Health and AT&T Wireless is at one/one thousandth of that standard.

Attorney Anderson also mentioned to the people who have small children, that a baby monitor, even though it is on a different frequency, it is putting out as much power as this facility per channel.

- A resident commented that you do not keep a baby monitor on all day, for 24 hours a day.
- Susan Smith, a resident of Willis Hill, stated she read that on the Bell Atlantic application, it said 100 Watts and if a person were to go up and look at the meter you would find this is putting out 250,000 Watts in a 24-hour period. Why did they put 100 Watts on their application, which is the equivalent of a light bulb, and why do they have 24 cables running up the side of the water tank and why do you need a 10" in diameter pole for just 100 Watts?
- Justin Leland, consultant from AT&T Wireless, explained that there are not any electrical signals traveling through those cables; it is all data traveling through. The data consists of 1's and 0's. Incoming calls made from the phone go to the antenna, down the cables, and into the computer; there is no electricity.
- A Sudbury resident commented, by looking at the AT&T Wireless site plan application, there will be two values listed. The first is at 1,560 Watts of effected radiated power which is different from the 100 Watts they were talking about at the Board of Appeals. The second value to find is in a table in their application and its at 2,850 Watts of effected radiated power. In agreement with Attorney Berthiaume, he stated if more carriers are allowed to have a facility in the same place, you could have upwards to 40,000 Watts of effected radiated power.
- Jamie Ellertson of Cudworth Lane was concerned with the increased visibility after the land by the water tanks has been developed and is concerned about what will happen when there are multiple carriers on the tanks. He stated he believed if AT&T Wireless wanted to be a good neighbor, they would spend just a little more money and locate their antenna on another site.
- Chairman Blacker asked Attorney Anderson about different construction designs for towers.
- Attorney Anderson replied there were certain state regulations they needed to follow in design. He also mentioned a community in Western Massachusetts which that used a design that simulated trees.
- Chairman Blacker asked the residents if they would consider simulated trees.
- The group in attendance adamantly refused. One resident shouted More Shelter, More Cabinets, More Traffic.
- Attorney Berthiaume stated that they would need to see photos of how this simulation would look and also discuss the impact and give an opinion.
- Selectman Clark would like to have the tower monitored to measure emissions. She believes there are people you can hire to come out and check each month, i.e., microwave emissions. Even though she realizes this is a radiowave and not a microwave, she would still like to have a monitoring mechanism or process in place to ensure and confirm studies stating that there are no adverse effects from these towers.
- Kevin McCandal of Michael Drive asked Attorney Anderson if AT&T Wireless had considered any other site and did they rule out any other sites as unacceptable.
- Attorney Anderson replied that the disadvantage of other sites is the fact that Willis Hill will become a barrier to transmission rather than the advantage for transmission. Attorney Anderson then held up the map made by an AT&T Wireless engineer which shows coverage areas in the Town. As he pointed out on the map, the Willis Hill area is a key area because it fills the largest gap in coverage for the Town for the type of technology and service which no other site can fill.
- Chairman Blacker questioned, on behalf of the residents, why there wouldn't be 400 antennas because every other carrier will want to fill the "Willis Hill Gap" and should this neighborhood bear this burden because this is the only site that can handle this type of technology.

- Attorney Anderson answered by using the Town of Concord as his example for a similar situation. The Town of Concord granted a special exception to the AT&T Wireless proposal for the roof of the Emerson Hospital because it was well designed and respected in this similar residential community, but other carriers did not necessarily like that particular site. He explained that another tower went up in Concord, but it was not in an area that AT&T Wireless had anticipated on locating. Therefore, he explained that it is not necessarily a foregone conclusion that all carriers will march up Willis Hill.
- Chairman Blacker responded that, unfortunately, as far as he is concerned at this time, the merits of AT&T Wireless and the merits of other carriers are exactly identical, he understood there is the possibility of other carriers applying for this location.
- Selectman Maryann Clark asked Attorney Anderson if different technologies would be compatibly functionable, without interference from each other, if they are grouped together on the water tank.
- Attorney Anderson stated that AT&T Wireless evaluated the different areas on the Willis Hill site in order to find the appropriate spot on which to place their particular equipment and technology.
- Selectman Clark clarified that it was the characteristics of the site that determined the functionality of the technology.
- Attorney Anderson explained further, what works for AT&T Wireless is the fact that the pole holding the antenna can be moved around, but for their particular technology, the height of the pole is the key factor. The height is not an issue that requires a variance under the existing bylaw.
- Selectman Clark distinguished that AT&T Wireless would be using digital technology while Bell Atlantic was using analog and asked what new technology is on the horizon in the future.
- Justin Leland responded with information he receives from trade journals and mentioned there are many different technologies always being proposed, but does not yet know if any of them will be marketable within the next ten to fifteen years. He mentioned satellite technology for which he finds future utilization inconceivable because the danger of the sheer power contained in a hand held unit people put against their head.
- Selectman Clark also inquired about the small cell units that fit on top of telephone poles and asked how they are utilized.
- Justin Leland and Attorney Anderson explained that these units were used as filler cells and still required towers or an antenna as a main site. Major carriers need to address the densely populated areas such as cities, where you have building blocking signals. In the city, many buildings have small sites that are transmitting for their one local area and they fill in gaps where needed.
- Attorney Anderson continued by explaining that it would not be appropriate to use filler cells to fill in the gap that the Willis Hill site can. He said the engineer that made the service area map he has been referring to was in the Town of Harvard talking about a site there. Attorney Anderson went on to explain the dimensions and how they are important in determining the characteristics of an appropriate site. The water tank is 49 feet, 6 inches high, and 92 feet in diameter. The pole is 10 inches in diameter and the height of the pole matches the top of the tank and goes an additional 30 feet above the tank which is only a short distance above the tree line. Attorney Anderson pointed out that residents have already mentioned the fact that the water towers are also unsightly. He suggested that if there were any effects on the property values, it had already taken place because of the tanks and will not decrease with one additional antenna. He stated that the water tanks themselves are massive and at the top of the hill and he reminded everyone how one of the tanks had a major release of water and washed out an area of the subdivision at the bottom. Attorney Anderson was trying to stress the fairness in comparison of the water tank and the antenna and the effects to the Willis Hill subdivision. He restated that AT&T Wireless would not be taking down any trees and they are not effecting the natural environment and added that there are people in attendance tonight who are clearcutting lots in order to build houses. In

terms of respecting the natural environment, Attorney Anderson stated, AT&T Wireless has a pole which is barely visible, attached to a massive water tank which everyone can see, therefore the marginal effect, if any on the property value, will be negligible to non-existent. It has been his experience with other towns, when expert witness are called in, they continually report no adverse effect of property values in relation to these sites. Houses continue to sell at Fair Market Value.

Toward the end of the matter, the Board, the residents and the attorneys had several recap discussions on the various issues brought forth including, the previous meeting one year ago, application standards, the current bylaw, the proposed bylaw, the perception of health effects, site requirements, co-location issues, aesthetic values, vegetation preservation, adverse effects of an abutter, discrimination of service providers and the Telecommunications Act. Both attorneys agreed to give copies of their information to each other for review.

Chairman Blacker stated he would like to continue this hearing because he thought it was important that the Board digest this information and invited the residents to come back to have further discussions in regards to this issue. A few residents asked the Board to make an immediate decision, but Chairman Blacker explained the importance of reviewing all of the information presented at the hearing and do the right by the residents and both counsels.

Attorney Anderson asked Chairman Blacker if it would be helpful for the next discussion if he had a RF engineering report done for each of the six sites offered by the town showing the 60 foot height requirement and showing what the service gaps would look like around these sites. Chairman Blacker and Selectman Drobinski did not determine it was necessary for this task to be done at this time.

The Board received by hand a memo dated December 22, 1997, from Paul F. and Sheila C. Palmer, 46 Bryant Drive, Sudbury, stating they are vigorously opposed to the installation of AT&T's request to erect a microwave tower on Willis Hill. They further stated they will hold the Town responsible for preserving a healthy environment for their family and the surrounding residents of Willis Hill.

The Board also received by hand a memo dated December 19, 1997, from Anthony Neil Bernstein and Henrietta H. M. Bernstein, 1 Bryant Drive, Sudbury, stating they are concerned residents of Sudbury who have relocated here from Scottsdale, Arizona. They explained the reasons they chose Sudbury as their place of residence was the tranquil setting, limited traffic congestion, safety for their young children, and the stable property values. They strongly object to AT&T's proposed intrusion and are concerned about foliage removal, increased traffic patterns, concentrations of electromagnetic radiation of multi-frequency waves and creating a precedent for added intrusion in a private area by non-private concerns with commercial aspirations.

It was on motion unanimously

VOTED: To continue this hearing on AT&T Wireless PCS, Inc. Site Plan Application 97-340 to January 12, 1998.

Minutes of December 8, 1997

It was on motion unanimously

VOTED: To approve the minutes of the regular session and the executive session of December 8, 1997, as drafted.

Donations – Council on Aging Vans

It was on motion unanimously

VOTED: To accept \$182.20 in miscellaneous donations for deposit into the Council on Aging Van Donation Account and to authorize the Council on Aging to expend the same for purposes of operating and maintaining the Council on Aging vans.

Donation - Discretionary Fund

It was on motion unanimously

VOTED: To accept with appreciation \$221.00 from the Rebecca Circle of the Sudbury United Methodist Church for deposit into the Discretionary Fund to help needy Sudbury families.

Grant – D.A.R.E.

It was on motion unanimously

VOTED: To accept with appreciation a grant in the amount of \$13,000.00 from the Executive Office of Public Safety for the D.A.R.E. Program, to be expended under the direction of the Police Chief.

Grant -- Community Policing Award Program

It was on motion unanimously

VOTED: To accept with appreciation a grant in the amount of \$23,000.00 from the Executive Office of Public Safety under its Community Policing Award program, to be used for cruiser communications systems and expended under the direction of the Police Chief.

Grant -- Crossroads Community Foundation

It was on motion unanimously

VOTED: To accept with appreciation a grant in the amount of \$5,000 from Crossroads Community Foundation to create a walking trail and canoe launch in cooperation with the Hop Brook Protection Association and expended under the direction of the Conservation Commission.

1998 Annual Town Election and Town Meeting

In accordance with a communication from Town Clerk Kathleen D. Middleton received on December 15, 1997, listing requirements for the 1998 Annual Town Election and Annual Town Meeting, it was on motion unanimously

VOTED:

1. To set the 1998 Annual Town Election for the four precincts in Sudbury for Monday, March 30, 1998, from 7 a.m. to 8 p.m., Precincts 1 and 2 at the Fairbank Facility and Precincts 3 and 4 at Peter Noyes School;
2. To establish that the Annual Lincoln-Sudbury Regional School District Committee Election shall be combined with and held as part of the Annual Town Election of Sudbury, and that the ballot for the Annual Lincoln-Sudbury Regional School District Committee Election shall be included with and prepared as part of the ballot for the Annual Town Election;
3. To establish that the listing of the offices shall be the same as set forth in the warrant for the Lincoln-Sudbury Regional School District Committee Election and shall be printed as the last office on the ballot;
4. To set the opening session of the 1998 Annual Town Meeting for Monday, April 6, 1998, at 7:30 p.m. in the auditorium of the Lincoln-Sudbury Regional High School; and
5. To approve allowing the Board of Registrars to hold a special voter registration session prior to the Annual Town Election and Town Meeting in the Town Hall, on Tuesday, March 10, 1998, until 8 p.m., according to Chapter 475 of the Acts of 1994.

Starbucks -- Common Victualler and Entertainment License

It was on motion unanimously

VOTED: To approve renewal of Common Victualler and Entertainment licenses for Starbucks Corporation, d/b/a Starbucks Coffee, 509 Boston Post Road, Star Market Plaza, for calendar 1998.

Park and Recreation -- Land Management Reports

Following review, it was on motion unanimously

VOTED: To accept annual land management reports for Heritage Park, Feeley Park (Raymond Land) and Haskell Land from the Park and Recreation Commission, dated December 12, 1997.

Conservation Commission -- Land Management Reports

Following discussion, it was on motion unanimously

VOTED: To postpone approval of the land management report from the Conservation Commission dated December 19, 1997, for Surrey Lane Parcel, Raymond Land East & West, and Parkinson Land, until such time as the Conservation Commission receives the formal United States Fish and Wildlife report on the Surrey Lane Parcel enabling a clear transfer of title for this parcel to the Conservation Commission.

Selectman Maryann Clark believes that Raymond Land East and West was already designated as conservation land and would also like this confirmed before approval.

Rubbish Bid

Pursuant to a bid opening held December 15, 1997, it was on motion unanimously

VOTED: To approve a contract with the low bidder, USA Waste of Central Massachusetts, Cobbler Drive, Fitchburg, MA, to provide rubbish pickup for town and school facilities, in accordance with Town of Sudbury specifications and the individual pickup costs, totaling \$19,290.96, stated in the bid dated December 15, 1997.

Goodnow Library -- Preservation Grant Application

In accordance with a request by the Goodnow Library Trustees, it was on motion unanimously

VOTED: To authorize Steven L. Ledoux, Town Manager, to execute a contract, and enter into contracts for project work, sign preservation restrictions, and disburse funds relative to Application to the Mass. Historical Commission for a Massachusetts Preservation Projects Fund grant for the Goodnow Library renovation project.

Articles and Reports-- 1998 Annual Town Meeting

it was on motion unanimously

VOTED: To approve the following articles and reports for submission by the Board for the 1998 Annual Town Meeting, subject to further review and possible amendment of the dog regulations bylaw, and completion and review of the Flood Plain bylaw amendment:

1. Hear Reports
2. Budget Adjustment FY98
3. Stabilization Fund Addition
4. Street Acceptances
5. Capital Spending - Flynn Building (\$125,000)
6. Capital Spending - DPW Building (\$350,000)
7. Amend Bylaws, Art. V. 15, and V. 19 - Public Safety (substituting Town of Sudbury Director of Public Works for Highway Surveyor)
8. Amend Bylaws - Capital Planning Committee
9. Accept MGLc140, s. 147A - Regulation of Dogs
10. Amend Bylaws - Regulation of Dogs
11. Amend Bylaws, Flood Plains [new FEMA maps to reference]
12. Preservation Restriction for Library

Sudbury Water District -- Proposed Bylaws

In accordance with a request of the Board of Selectmen by the Sudbury Water District, it was on motion unanimously

VOTED: Not to co-sponsor the Sudbury Water District's proposed bylaw articles of Water Pollution/Emergencies and Underground Sprinkler Systems.

The Board asked the Town Manager to schedule a joint meeting with the Water District Commissioners to discuss said articles.

Bolton Land -- Mattie C. Realty Trust

Confirming the Boards vote of October 29, 1997, it was on motion unanimously

VOTED: To direct Town Counsel to notify the Board of Assessors and appropriate parties that the Board of Selectmen will not pursue its right of first refusal to purchase the 25 acres off Willis Road, owned by the Mattie C. Realty Trust, as recorded in the Middlesex Registry of Deeds Book 4770, Pages 172, 174, 176 and 178, and shown on Town Property Map as Parcel E07-515, and to advise the Tax Collector to accept \$162,500 in conveyance taxes from said Trust.

Chairman Blacker announced the Board would not return to open session.

Executive Session

VOTED: It was on motion unanimously to go into executive session for the purpose of discussing a matter of litigation, Meachen v. Hayden, et al. (Chairman Blacker, aye; Selectman Clark, aye; Selectmen Drobinski, aye.)

There being no further business to come before the Board, the meeting was adjourned at 10:20 p.m.

Attest: _____
Steven Ledoux
Town Manager-Clerk