

IN BOARD OF SELECTMEN
MONDAY, FEBRUARY 8, 1993

Present: Chairman John C. Drobinski, Judith A. Cope and Lawrence L. Blacker.

The statutory requirements as to notice having been met, the meeting was convened by Chairman Drobinski at 7:30 p.m. at the Fairbank Senior Center.

Public Hearing - Dunkin Donuts - 378 Boston Post Road

Present: Attorney Myron J. Fox representing applicant Constantine Scrivanos; Attorney William M. Pezzoni representing Pauline Fantoni, owner of the property; Louis P. DeAngelis, Construction Manager, Dunkin Donuts; Kevin J. Shea, Franchise District Manager, Dunkin Donuts; Bruce Ey, Civil Engineer for Schofield Brothers, Inc.; Bruce Thomas, Senior Project Manager for Schofield Brothers, Inc.; Herb Olsen, Architect; Applicant Constantine Scrivanos, and approximately 35 concerned Sudbury residents.

The Board convened a continued public hearing from January 19, 1993, at 8:00 p.m., to consider the application of Constantine Scrivanos of Bradford, MA, for a Site Plan Special Permit in accordance with Sudbury Zoning Bylaw, Art. IX.V.A, for construction of a 26-seat Dunkin Donuts shop with drive-through window, septic system and storm water detention basin, at 378 Boston Post Road, owned by Pauline Fantoni of Framingham, MA; zoned Business Dist. 4, Industrial Dist. 2 and Residential A-1.

Executive Secretary Thompson informed that the public hearing was advertised in the Sudbury Town Crier on December 31, 1992 and January 7, 1993. The following correspondence has been received:

1. Communication dated November 16, 1992, from Bruce R. Thomas, Senior Project Manager, Schofield Brothers, Inc. which included the following: 1) Application for site plan approval, 2) Owner's consent, 3) Architectural drawings (two copies), and 4) Drainage calculations (two copies).

2. Communication dated November 5, 1992, from Attorney William M. Pezzoni, representing Pauline Fantoni, owner of the property at 378 Boston Post Road indicating her authorization to proceed with the filing and submission of any and all plans, applications or paperwork necessary to obtain permits and approvals required to construct a retail donut shop at this site.

3. Communication dated December 15, 1992, from Town Engineer I. William Place, outlining his concerns with regard to: 1) walkway along the frontage of the parcel; 2) highway easement for Rte. 20 bypass; 3) cleaning of leaching pit, catch basins, and oil and grit separators; 4) traffic study to determine the impact of the proposed development; and 5) number of curb cuts and suggestions for alternative access.

4. Communication dated December 22, 1992, from Building Inspector John B. Hepting with comments related to the following: 1) signs shown on the building elevations; 2) two lavatories too small to meet the Architectural Access Board's requirements for the disabled; 3) narrow vestibule; 4) architectural rendering omitted; 5) elaboration of site lighting; and 6) shade trees related to parking spaces.

5. Communication dated December 24, 1992, from Health Director Robert C. Leupold stating that the sewage disposal system design by Schofield Bros. Inc., dated November 12, 1992, has been submitted to the Board of Health and meets the Board of Health's regulations, and that removal of underground storage tanks and appropriate groundwater testing reviewed by the Board of Health, is recommended as a requirement to site development.

6. Communication dated December 24, 1992, to the Planning Board from Fire Chief Michael C. Dunne stating that the Fire Department does not object to the plan, but recommends the parking lot connect to the MacKinnon lot to provide two means of emergency access to the site.

7. Communication dated January 5, 1993, from Design Review Board Chairman Kaffee Kang, stating their concerns with regard to: 1) impact of high-volume drive-through/take-out facility on Rte. 20 traffic; 2) pedestrian entrance at the front of the building; 3) landscaping to block the view of the parking lot from the street; 4) width of the driveway be reduced to the minimum consistent with safety; and 5) bicycle parking provided.

8. Communication dated January 5, 1993, from Sudbury League of Women Voter's Co-Presidents Marianne D'Angelo and Linda Wallace noting their concerns being the potential traffic impact at this section of Rte. 20 and the proposed "Sudbury Village Concept."

9. Communication dated January 13, 1993, from the Planning Board indicating their concerns with regard to: 1) traffic impact, and recommending the Board of Selectmen require a traffic analysis be prepared for this site and evaluated by an expert traffic consultant prior to the decision of the Board; 2) consideration of additional access onto Concord Road through the MacKinnon site, and possible other mitigating measures such as a shared access with the Professional Building to the east of the site; elimination of the drive-through to reduce the number of vehicle trips; prohibiting left turns out of the site onto Rte. 20 eastbound; and requesting the applicant to perform minor improvements to Rte. 20 to accommodate additional traffic generation from this site; 3) pedestrian circulation; 4) proposed parking spaces are more than the bylaw requires; 5) Sudbury Village Concept concerns; and 6) Special Permit required within Zone II of the Water Resource Protection District.

10. Communication dated January 15, 1993, from Safety Officer Anthony M. Deldon recommending a second entrance and exit be considered from Concord Road, if possible, to alleviate the volume of traffic in the area.

11. Communication dated January 15, 1993, from Town Counsel Paul L. Kenny relative to the question by the Planning Board concerning the septic system being allowed in the residential portion of the lot on which Dunkin Donuts is proposed to be constructed, setting forth the interpretation of the Building Inspector that the septic system approval is a Board of Health issue.

12. Communication dated January 15, 1993, from the Conservation Commission addressing the issues of a trail easement, open space to be placed in a permanent conservation restriction, use of deicing chemicals, fertilizers and pesticides within the wetland buffer zone, and a petition to remove the site formally from Zone II.

13. Communication dated January 16, 1993, from the Traffic Management Committee/Sudbury Village Design Committee, stating their concerns as follows: 1) A "drive-in" business which attracts customers via automobile, generating a high number of vehicular trips a day--increased traffic during the morning, eastbound rush hour will have a negative impact upon both traffic flow and safety; 2) Additional traffic congestion will likely reduce the ability of neighboring businesses to draw customers; 3) The use is contrary to Sudbury Village Concept because of vehicular trade; 4) The curb cut entrance to the site will diminish the benefits of the proposed Rte. 20 bypass. The Committee proposed the following as part of any approval: 1) Hire HMM to update the Town's XNET model to incorporate the proposed site; 2) Post a bond linked to degradation of current traffic flow and safety; 3) The Town be granted an easement adjoining Rte. 20 for the proposed bypass; 4) The Town be granted another easement along Hop Brook for pedestrian linkage; and 5) Exploration of a common access to Concord Road.

14. Several petitions against the Dunkin Donuts Plan were received. The reasons for opposing this plan were many with the main concern being the traffic. The petitions noted that the project will increase traffic hazards for the following reasons: 1) it is located at the narrowest part of Rte. 20; 2) there is a curve in that part of the road; and 3) it is located on the opposite side of the road from the main, eastbound commuting traffic flow during its heaviest business hours, at breakfast. The petitions further stated that the increased traffic will add to commuter travel time and will decrease patronization of the existing businesses in the immediate vicinity. With regard to the unique zoning of the property -- residential, commercial and light industrial, the petitioners believe that the owner's intention to utilize all three zones, sets a dangerous precedent for future exploitation of the Town's zoning rules. There was a total of around 325 names listed on the petitions. In addition, Mr. Thompson reported receiving two letters from Sudbury residents--one in favor and one opposed.

Chairman Drobinski stated that the following issues need to be reviewed carefully as the hearing proceeds: 1) Sudbury Village Concept issues, 2) Traffic issues, and 3) Zoning issues.

Attorney Myron J. Fox, representing the applicant Constantine Scrivanos, began with a brief explanation of the background of the property at 378 Boston Post Road. Mr. Fox explained the property is the previous Hilco site, which was a wholesale business for construction materials. Over the years a site plan approval was obtained to store fuel in three tanks. At that time, the Board of Appeals issued a variance to store pipes in a residential zone. The variance and storage license has since expired and the tanks will need to be removed. A fire in September, 1992 destroyed the building.

The site consists of 2.68 acres and the seller has given permission for the submission of a special permit application for a 26-seat Dunkin Donut shop, permitted in a business zone under the zoning bylaws. The applicant, Constantine Scrivanos owns and operates 11 other Dunkin Donut shops in eastern Massachusetts. He has done a search for a location and his proposal was permitted as of right according to the Building Inspector in April, 1992 under the zoning bylaws, which did not necessitate going to the Board of Appeals. Mr. Fox continued that Mr. Scrivanos has spent thousands of dollars evaluating this location and has concluded the following: 1) A Dunkin Donut restaurant does not initiate traffic trips---patrons stop on their way to and from other destinations, 2) The additional taxes will be a positive revenue for the Town and 3) The Planning Board raised the legal issue of having a septic system used on residential land that serves a business use. Three zones exist on this property and the septic system will be located in the residential zone, and, according to a written statement by the Building Inspector/Zoning Enforcement Agent, this is a Board of Health issue. Mr. Fox cited the fact that MacKinnons, the Want

Advertiser and Coach House Inn all have septic systems on residential land that serves business uses. It was noted that no special permit was given to the Coach House Inn to have this type of system.

Mr. Fox stated that three factors are considered in support of the Building Inspector's view on the legality of this use as follows: 1) The septic system will be underground--not visible and not considered a structure under zoning, 2) The Building Inspector does not issue permits for a septic system--this comes from the Board of Health, and 3) Septic systems are an allowed use in the Town in any zoning district in the Town.

In reviewing the law, Mr. Fox noted that the issue to be decided is whether or not the applicant can legally do what he is proposing to do on this particular site. According to Mr. Fox the answer is yes--the bylaw clearly states a restaurant with a drive-up window can be constructed in this zone and it is within the law. He continued as follows: The Board of Selectmen cannot deny this application because this proposed use is an allowed use. The Selectmen can impose reasonable conditions on the approval of the site plan. If the Selectmen refuse the application, the courts will reverse their decision and in so doing, may eliminate the conditions. Mr. Fox cited a precedent in the courts, *Y. D. Dugout, Inc. v. Board of Appeals of Canton*, as being similar to this case, noting that the courts ruled in favor of the applicant.

Mr. Fox remarked that a site plan application could be denied if the proposed use reaches the legal level of a legal nuisance. Dunkin Donuts does not meet this criteria, he said. Another precedent was cited by Mr. Fox with regard to noise, dated June 4, 1982. A legal memo was generated in response to an inquiry about noise limitations. According to Mr. Fox, this same memo also addresses the traffic issues. It is his feeling that additional traffic generated by the site would not be sufficient to deny approval, and the reason is that it must meet legal nuisance standards.

Bruce Ey, the Civil Engineer representing this site plan, explained in detail the drawing of the site and surrounding property. He pointed out where the restaurant will be placed on the property and what the property abuts in the different directions. The site plan proposes a 2,000 sq. ft. building with a drive-thru arrangement on almost three acres of land, with the removal of existing pavement, thereby lessening the amount of runoff to Hop Brook. The zone lines were pointed out, as this property consists of three zones--residential, business and industrial. A 21E investigation on the site has been submitted to the Board of Health showing the existence of no hazardous waste. The underground storage tanks are to be removed. The proposed driveway consists of entering off of Rte. 20 in the same location as the existing driveway for the Hilco property. A 29-car parking facility will be located to the rear of the building and the drive-thru window will be located on the west side of the building. The drainage system has been designed to comply with Zone II and provides for a liner for the retention basin. Oil and grit separators are proposed. The above design significantly reduces peak water flow into Hop Brook.

An existing septic system on this site, which was rebuilt in the early 1970's, serves three buildings located in the shopping area off Concord Road. This site plan proposes yet another septic system in a different location on the parcel, large enough to serve a full service restaurant, with a 3,000 gallon tank capacity. The existing septic system will remain.

There have been discussions with the Town Engineer, Fire Chief and MacKinnons about the possibility of exiting this facility off Concord Road through MacKinnon's parking lot, thereby gaining access to Concord Road and alleviating some of the traffic problems in and out of Rte. 20. It has been

established that this would not be a viable solution because a potential future septic system plan designed in 1988 and submitted to the Board of Health lies in the way, and because of a retaining wall that would have to be constructed along the property, if a new system were to be built. This plan is a back-up plan to the existing septic system.

Another concern with routing the traffic to Concord Road, concerns traffic flow around the MacKinnon building and its counter clockwise direction, which would mean exiting at the light and thus causing backups right at the light.

In an effort to reduce curb cuts, Mr. Ey has talked with the abutter to the east to combine a Dunkin Donuts entrance with the abutter's exit. This possibility is being reviewed. The only disadvantage might be the elimination of the large Beech tree situated in front of the professional complex (east side abutter).

With regard to traffic congestion on Rte. 20, Mr. Ey noted that he drives by this location frequently during morning rush hour and has not personally experienced traffic problems. The planners have looked at the numbers that might be generated for a 2,000 sq. ft. restaurant, and determined through the ITE trip generation manual that it would generate approximately 1,264 vehicle trips per day. The number of trips would increase by 822 compared to the previous business. A large percentage of the trips would consist of those driving by the facility; however, it would increase turning movements on Rte. 20.

The majority of traffic to this facility will occur between 6 a.m. and 12 noon. Mr. Ey believes that even during rush hour, there is ample opportunity for cars to exit traveling east from this facility as well as entering the facility from the east, because of the breaks in traffic provided by the Concord Road light. Mr. Ey continued that previous studies by Dunkin Donuts showed the peak hour period as being 7:30 - 8:30 a.m. with 220 vehicle trips, and the lowest period of use is 4:30 - 5:30 p.m. with only 53 vehicle trips generated.

With regard to the Sudbury Village Project, Mr. Ey informed that the site has been laid out with the idea of fitting in with this plan, including a front entrance and a walkway to this entrance. Also noted, was the fact that the site is designed to allow for the Rte. 20 expansion to route traffic down Station Road, if this should happen.

With regard to the Water Resource Protection District, a filing has been made with the Planning Board to have this site removed from Zone II to Zone III. The study of the delineation between these two zones indicates that the dividing line is Hop Book. Mr. Ey noted that geologically it makes sense for the site to be in Zone III, but that they have designed the system to satisfy Zone II.

Upon completion of the presentation, Chairman Drobinski opened the floor to questions and comments from those present.

Dr. Daniel Buttner, 54 Old Garrison Road, who previously owned the professional building abutting this site on the east, and who still has a financial interest in it, commented on the following:

1. The professional building abuts the site property by only inches and is still connected to the old Hilco structure. Dr. Buttner is concerned that the professional building might sustain damage as the work is being done to demolish the old structure.

2. Because deteriorated wooden beams on the west side of the professional building need to be repaired, there is concern that this area will be inaccessible.

3. Because the only access for getting anything large into the professional building is on the west side, and because the site plan calls for a retaining wall along the west side of professional building, in addition to an existing steep slope, there is concern that this access will be eliminated.

Mr. Ey responded that a 10 ft. setback is provided for, and it is their intention to give access to the stairs and the opening to the professional building. Chairman Drobinski asked how this would be achieved. Mr. Ey noted that it could either be through a letter of agreement or an easement. In addition, Mr. Ey assured that any damage to the professional building, incurred during the demolition, would be repaired and that permission to restore the deteriorated wooden beams would be granted. Chairman Drobinski noted that Mr. Fox should review the bylaws with regard to allowing structures in side yards.

Mr. Ralph Tyler, 1 Deacon Lane, sympathized with Maple Avenue residences, and noted that revisions in the zoning need to be made prior to site plan applications. Changes have to be addressed with the Planning Board and voted on at Town Meeting. Most people believe that these hearings are for special permits, when in fact they are site plan reviews, and the case law establishes a right to proceed as Mr. Fox explained. Mr. Tyler explained that the important issues now are the conditions to be placed on the site plan that are reasonable. The Town is still working with 1962 strip zoning bylaws, and a solution would be to submit a petition for changes in the zoning. Mr. Tyler suggested that the Planning Board be asked at Town Meeting what they have in mind for the Sudbury Village Project, and discuss it and implement it.

Ms. Cheryl Salatino, 7 Maple Avenue, expressed concern over the possible drop in value of her property. She had researched and purchased property in Sudbury, because it was her understanding that Sudbury protects its land. She also wondered if, as a resident, her opinion really mattered at this hearing. Chairman Drobinski assured her that the input received from the residents is very important in the process of evaluating the reasons for either denying or accepting a site plan and also for the conditions.

Ms. Salatino also asked about additional trash and debris that may result from this site, and what the effect might be to the environment and surrounding property with the additional use of chemicals and added refuse. Mr. Ey responded that a revised drawing will show the location of an enclosed dumpster on the site.

Mr. Russell Kirby, Boston Post Road, pointed out that placing a septic system in a residential portion of this property has similarities to the Willis Hill subdivision in North Sudbury, which called for a central facility on two lots, to serve the residences in the subdivision. At that time, the Town said the primary use had to be residential. This situation allows a restaurant in a commercial district to use a residential portion for commercial use. The right does not carry over to allow someone to use residential property for a use which is not permitted. Residential zones can only be used for residential properties.

Mr. Kirby's other concern is the number of turns that will be generated by this site during rush hour traffic. He suggests compiling the traffic history information from the applicant and utilizing HMM studies to determine what the impact of the flow of traffic will be during the peak traffic period, and to consider site distances and reaction time. In performing this study, Mr. Kirby suggested setting up a

series of barriers to make these determinations, because history indicates that cars have found their way into Hop Brook.

The capacity of the septic system makes the site attractive for a larger facility related Mr. Kirby, who believes that the language of the bylaws and the interpretation of the bylaws, need to be reviewed very carefully.

Mr. Ey responded that the size of the septic system limits the development of this property, and that the Willis Hill development was a different situation, in that the treatment plant was located on a separate site, whereas this is one site.

Building Inspector John B. Hepting explained that a septic system has to be ancillary to the primary use of the parcel, and that the residential portion of this property is already within the same parcel as the business district. Planning Board member Mr. Mike Meixsell, questioned what would apply if a commercial owner purchases a residential lot and discovers that it is not suitable for residential. Mr. Hepting responded that the first legal use of residential zoned property is for residential use only. If the residential property is not suitable for residential use, and if it is included in the same parcel as commercial, then it may be used for purposes other than residential. In this case, according to Mr. Hepting, the residential zone of this parcel is not a legal lot or suitable for building a residential property; therefore, it can be used for use as a septic system for the commercial zone.

Mr. Ralph Tyler noted a case similar to this question in Waltham, which would indicate that if residential land is adjacent to business property, it may open up more development possibilities than anticipated.

Mr. David Ader, 7 Maple Avenue, presented to the Board, a petition with approximately 300 signatures opposing the Dunkin Donuts site plan. Mr. Ader stated that this zoning usage, if passed, sets a dangerous precedent, for several reasons--one being that the plan calls for a drive-thru restaurant. Mr. Ader continued that the curb cut for this facility occurs at the narrowest and curviest part of Rte. 20.

The following comments were made with regard to traffic concerns:

Mr. David Ader, 7 Maple Avenue, believes the number of turns at this location will increase considerably and noted that it is already a problem.

Mr. Thomas noted that the site distances indicated on the site plan are adequate, showing 288 ft. to the west and 465 ft. to the east. Mr. Ey remarked that a video tape was taken of this site during the morning rush hour, around 7:00 - 8:00 a.m., and only once did the traffic back up. The video is available to anyone that wishes to see it.

Ms. Carol Hull, 15 Maple Avenue, noted that she travels to Boston every morning and finds it difficult to egress Rte. 20 after 6:00 a.m., and believes a number of traffic backups will occur as a result of this facility. She asked if there were any estimates of how many cars will be turning left into Dunkin Donuts.

Mr. Lou DeAngelis, Construction Manager, stated that there is about a 1:1 ratio of cars turning for east and westbound traffic during the peak traffic periods.

Mr. Harry Ainsworth, 44 Maple Avenue, concurs with Ms. Hull's comments regarding traffic backups because of cars turning left into the facility. He believes traffic may back up at the facility because of the difficulty of cars wanting to egress east from the facility.

Mr. Sandy Grace, 4 Maple Avenue, works at Raytheon in Sudbury and stated that there are around 2,500 employees alone, working at Raytheon and a large number of them travel east on Rte. 20.

Mr. DeAngelis asked that the distinction be made between the number of cars and the number of trips. One car equals two trips.

Town Planner Jody Kablack commented that the data and numbers being stated tonight, with regard to the traffic problem, are very varied and non-descript. Ms. Kablack urged that the Selectmen ask the applicant to conduct a professional study and then review it in order to have a better basis for making a decision.

Mr. Meixsell commented that he would like to make the distinction between a traffic study which 1) evaluates the number of trips, and 2) a simulation which determines the impact of the actual trips. In addition, he urges the Selectmen to have an independent consultant perform a traffic simulation to determine the effect of the number of trips, and have the results evaluated to determine the level of service at different intersections, and also the duration of the level of service that is degraded.

Mr. Gary Finerty, 28 Maple Avenue, believes that a drive-in facility produces a high density traffic hazard. He is concerned about the safety factor involved, with everyone who will be driving by this facility.

Ursula Lyons, Wayside Inn Road, questioned whose responsibility it was for cleaning up the site. It was noted that the current owner is unless Dunkin Donuts purchases the property. Regardless of the tax revenues that the Town may receive from Dunkin Donuts, Ms. Lyons believes that many other businesses in Town do not feel it will benefit them, particularly Marrones, which has been in Sudbury for several years.

Planning Board member Richard Brooks remarked that the left turn onto Rte. 20 from the facility and traveling eastbound is a very significant issue. In his research, Mr. Brooks found that at other Dunkin Donut facilities there is significant pedestrian traffic. In fact, cars and trucks have pulled off the side of the road and walked to the restaurant.

Mr. Ey responded that a traffic study would be beneficial if there were a number of options. The site planners have looked at possibilities to improve the left hand turns. One of the problems is that the bridge over Hop Brook is very narrow. The curb cut that exists for this property, is a legal curb cut and documented with the State Highway Department of Public Works, explained Mr. Ey.

Another resident commented that this would be the only coffee shop open early in the morning, if traveling westbound until the Town of Marlboro.

In response to a question regarding the percentage of the turns that would be made between 6:30 and 9:00 a.m., Mr. DeAngelis responded that half of the Dunkin Donut daily business is conducted at that time.

Chairman Drobinski announced that the Board would review the correspondence received, with those present representing Dunkin Donuts, in order to obtain answers or clarification for the different concerns that have been expressed.

Conservation Commission - The Commission is asking that a bond be posted to address the drainage issue. Mr. Ey stated that they prefer not to post a bond, but rather perform what is necessary to comply with the Order of Conditions to receive a Certificate of Compliance, before a certificate of occupancy is issued.

The plan calls for a large portion to remain as an open field--more specifically the area abutting the library property. Mr. Ey remarked that they are willing to work with the Conservation Commission to construct a pedestrian access to the library, and also an access to MacKinnons. Mr. Drobinski mentioned the pedestrian access from Rte. 20, and the addition of a front entrance. It was noted that a revised drawing will be made showing these changes.

Building Inspector - Mr. Hepting has talked with the Architect, Herb Olsen, about his concerns regarding disabled violations, i.e. the vestibule, and the size of the lavatories. It was noted that these have been addressed. The size of the signs were questioned as well, and the architect is checking on it. According to Mr. Hepting the site plan did not show the height, type, and screening for the exterior lighting. It was noted that these will be submitted by Mr. Olsen.

Mr. Ey addressed the issue of shading the parking area with trees. The bylaw reads 40 parking spaces per one shade tree. He noted that trees will be planted if desired by the Town, but that their intent was to leave an open field to view the trees by the library. Mr. Drobinski asked about bicycle access and securing it, and Mr. Ey responded that there was ample space to accommodate this.

Mr. Ey explained it was their intent to maintain the oil and grease separators, and to have them cleaned at least once a year. With regard to traffic studies, the planners have investigated a number of options, but they are not sure exactly what a traffic study will provide. If the Town requires one, Mr. Ey suggests that a meeting be called with the Town Engineer to determine what area and parameters should be studied.

Chairman Drobinski asked about the highway easement, and the setbacks on the highway easement, should the Rte. 20 expansion take place. Mr. Ey stated they have discussed this with the Conservation Commission because it crosses a wetland, and assured that they would work with the Town.

Board of Health - The underground storage tanks will be removed and the area restored to an open field, remarked Mr. Ey. Mr. Drobinski asked about a detailed H₂O plan. Mr. Ey noted that their plan has been submitted to the Board of Health for this testing and the results will be provided to the Board of Selectmen.

Chairman Drobinski asked for clarification on the following technical issues:

- The application should show all three zoning districts.
- The existence of special permits or use variances needs to be documented.

- Detention basin plans submitted to the Engineering Department.

- With regard to the topography, Mr. Drobinski asked about the cutting and fill necessary, and how the topography might change. Mr. Bruce Thomas remarked that the pavement will be removed, and some fill will be needed. The maximum elevation rise will go from 145 ft. to 148 ft. and will not be noticed by residences.

- The bylaw requires a 20 ft. landscape buffer between residential and business districts. As was previously noted, an open field is proposed in the back which consists of a 20 ft. buffer. No landscaping is planned other than the open field with a view to the trees in the background. Mr. Hepting explained that landscaping does not mean plant material.

Ms. Carol Hull, 15 Maple Avenue, commented that she did not think persons at the library will want to look over at the Dunkin Donuts, and therefore, would like the fence to remain. The fence is in need of repair in some areas, according to Mr. Ey, who stated that it is the Town's decision whether to have a path from the library with an opening at the fence, or to leave the fence as is.

A question was asked as to the hours of operation. It was noted that employees would start around 5:00 a.m. and would leave around 11:00 p.m.

The subject of air quality was mentioned, and it was noted that the vents to the outside from baking, would contain filters. Mr. Fox agreed that this data will be submitted to the Building Inspector.

Mr. Tyler cautioned that the Town require stringent mosquito controls, should the creation of a marsh area evolve as a result of the site plan.

Since materials will need to be delivered to this site, the question was asked as to how often trucks might be entering and exiting. Mr. Kevin Shane, Dunkin Donuts District Manager, stated that a large delivery is usually made only once a week, and can be scheduled to accommodate both the shop owner and the people in the area. Milk and cream are delivered about three times a week.

The Design Review Board's concerns with regard to the screening of the parking were addressed by Mr. Thomas. He explained the plan and noted that the drawings will be altered somewhat, because of the input received from the various Boards and Committees.

Selectman Cope clarified two issues that were answered with a yes: 1) The applicant has not purchased the property, and 2) Two zones exist in the driveway. Ms. Cope explained that she has two overriding issues: 1) Traffic - the safety issues attached to it, and 2) Multiple zones on the property.

Selectman Blacker commented that the biggest concern is the traffic--not necessarily the increased number of cars that the facility will generate, but the ingress and egress from the facility. However, Mr. Blacker noted that a traffic study had been done on Rte. 20; it is called Marrones, whose circumstances are the same with regard to the hours. Mr. Blacker believes that there is no difference between this location and Marrones.

The traffic is a very real concern, and Mr. Blacker expressed his feelings that in no way is he belittling the concerns that have been expressed, but the fact remains that the Board of Selectmen have

very limited authority with regard to site plans; the Board can, however, address issues. Mr. Blacker stated that the real issue is that this site plan hearing is not the place to address issues--the best place is with the Planning Board and Town Meeting.

The responses to Mr. Blacker's comments were that 1) There are two means of access to Marrones--there is a rear entrance and exit, 2) There are now three lanes for traffic, and 3) Marrones is situated on a straight stretch of Rte. 20 rather than curved.

It was asked, if a "no left turn" sign were posted exiting from the Dunkin Donuts, would it really be a viable solution, because if someone wants to travel east from the facility they will have to make the turn down the road.

Mr. Myron Fox responded to Selectman Cope's comments with regard to the multiple zoning that exists on the property, explaining that by going from an industrial zone into a business zone allows for more intense uses in the industrial zone, because it is going from a less restricted zone to a more restricted zone. It may make a difference going from a residential district into a business district in what would be allowed.

Chairman Drobinski remarked that each zone has different setbacks and these will have to be reviewed with the Building Inspector. The suggestion of talking with the Town Engineer relative to the traffic issues, is one that Chairman Drobinski would like to exercise. Mr. Drobinski is not sure if this will require a traffic plan or a detailed analysis.

Secretary Thompson stated he would follow up with Town Engineer I. William Place relative to a study mentioned by Selectman Cope, regarding congestion of north-south traffic resulting from east-west congestion at Union Avenue.

Chairman Drobinski noted that some sort of analysis will be needed to explore the traffic problems and to determine what type of measures will be needed.

Executive Secretary Thompson recommended the Board continue the Public Hearing to March 1, 1993, to allow time to address all the outstanding issues that have been brought out at this hearing.

Chairman Drobinski explained that there are still several issues that need to be addressed: Impact of zoning issues, Dr. Buttner's concerns, and Selectman Cope's bylaw questions and issues.

Selectman Cope briefly highlighted her concerns with regard to the zoning bylaws as follows:
1) According to Mr. Don Schmidt, there is no case law quite like the present situation--nothing similar with regard to site development on a particular site; 2) Clarification of the general purpose of the bylaws; 3) The basic requirements of the establishment of districts; 4) Prohibited use of residential districts--Mrs. Cope believes the septic system located in the residential district supports the business on the property and is an active business use; 5) That there is a business district conflict regarding drive-in retail establishments; 6) Prohibited Zone III. In addition Mrs. Cope is not convinced that the heating oil question, and use and storage of any hazardous or toxic materials, has been completely addressed by the Planning Board.

It was decided that Mr. Myron Fox would review Selectman Cope's concerns with regard to the bylaws.

Mr. Clay Allen, 515 Concord Road, suggested to the planners that the Permanent Landscape Committee is available should they wish to consult with it as the plans progress.

On recommendation by Executive Secretary Thompson, and on motion by Chairman Drobinski, it was unanimously

VOTED: To continue with mutual consent of the applicant the public hearing (continued from January 19, 1993) to consider the application of Constantine Scrivanos of Bradford, MA, for a Site Plan Special Permit in accordance with Sudbury Zoning Bylaw, Art. IX.V.A, for construction of a 26-seat Dunkin Donuts shop with drive-through window, septic system and storm water detention basin, at 378 Boston Post Road to the Board of Selectmen's meeting scheduled for Monday, March 1, 1993 at 9:30 p.m.

Minutes

It was on motion unanimously

VOTED: To approve the regular session minutes of January 25, 1993, as amended by Selectman Cope.

Council on Aging - Van Donation

It was on motion unanimously

VOTED: To accept \$89.66 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.

Easement - Hayden Circle

In compliance with paragraph 27 of the Order of Conditions issued by the Sudbury Conservation Commission on March 5, 1990, which Order is recorded with said Deeds in Book 20495, Page 185, it was on motion unanimously

VOTED: To accept a Slope Easement dated October 19, 1992, granted by Barbara Pearlstein of 21 Hayden Circle, Sudbury, on Lot 6A, Hayden Circle, containing approximately 4200 square feet, as described therein and shown on Exhibits A and B attached.

Town Official Bonds

It was on motion unanimously

VOTED: To set the amounts for town official bonds as follows; and to authorize Chairman Drobinski to sign certification thereof:

1. For Assistant Town Treasurer Loretta A. Bigelow, effective April 1, 1993, in the amount of \$15,000.00.
2. For Town Clerk Jean M. MacKenzie, effective March 31, 1993, in the amount of \$15,000.00.

1993 Annual Town Meeting - Vote Action Required

In response to a communication dated January 27, 1993 from Town Clerk Jean M. MacKenzie, it was on motion unanimously

VOTED: Relative to the 1993 Annual Town Election and Annual Town Meeting:

- 1 - To set the 1993 Annual Town Election for the four precincts in Sudbury for Monday, March 29, 1993 from 7:00 a.m. to 8:00 p.m. at the John Nixon Elementary School;
- 2 - To establish that the Annual Regional School District Election shall be combined with, and held as part of the Annual Town Election of Sudbury, and that the ballot for the Annual Regional School District 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 1993 Annual Town Meeting on Monday, April 5, 1993 at 7:30 p.m. in the auditorium of the Lincoln-Sudbury Regional High School;
- 5 - To approve allowing the Board of Registrars to hold special voter registration sessions prior to the Annual Town Election and Town Meeting, in the Town Hall, in accordance with Chapter 51, section 30 of the General Laws.

Landfill Enterprise Fund - Budget

Present: Resource Recovery Committee Chairman, Sue W. Pettengill; Resource Recovery Committee Members Frank H. Van De Kerkhove, Elizabeth Van De Kerkhove, Craig Blake and Mark A. Kablack.

On the subject of setting the Landfill residential sticker and commercial and special permit fees, Executive Secretary Thompson explained that the Board is considering recommendations by both the Resource Recovery Committee and the Finance Committee. He noted that the Resource Recovery Committee is recommending a raise in the commercial rate to \$18.50 from \$14.00 per cubic yard, whereas the Highway Surveyor recommends the rate at \$16.50.

Mr. Thompson stated that the reasoning for Mr. Noyes' recommendation is that there seems to be a drop in revenues when the rate is raised, which may be attributed to a combination of several things, i.e. added recycling, and the economy. In any event, one of the main advantages of having an Enterprise Fund is that it allows for flexibility in adjusting and transferring funds. Mr. Thompson informed that on July 1, 1993, the issue of the Highway Department contract with regard to eliminating a position will

need to be addressed to accommodate this budget presentation incorporating the reduction of one employee.

Ms. Pettengill responded that the Committee is not at this time recommending increasing the residential rate beyond \$85 per year. Selectman Cope asked about exemptions in the payment of this fee for the elderly. Ms. Pettengill responded that the Committee has not addressed this issue, but added that as the Town switches to a transfer station, charges will be made according to the volume of waste brought to the station. Mr. Thompson noted that there are no exemptions, except for the elderly, and a reduction in the fee of 50% is given to those living in subsidized housing and a few hardship cases. Mr. Blake noted that out of the 2,000 stickers issued, only 90 were given a reduction or waiver.

Chairman Drobinski asked that the Committee express their thoughts with regard to the commercial rate. Ms. Pettengill stated that it is the Committee's feelings that the Town would not likely lose commercial haulers, if the rate were only marginally higher than the lowest rate existing in the surrounding towns. According to the chart surveying the sticker costs and commercial permits for several surrounding towns, Plainville, would be less expensive and the closest town for hauling, other than Sudbury. Many of the towns do not allow outside commercial haulers.

Selectman Blacker asked how Wayland can receive almost double what Sudbury does from commercial haulers. Ms. Pettengill responded that Wayland wants to decrease the number of haulers to ensure a longer lasting landfill. It was noted that Wayland is receiving their revenues by assessing a much higher sticker fee for residential. Ms. Pettengill noted that it is the Committee's intent to eventually increase the sticker fee to be more in line with the other towns. The comparisons shown on the chart are listed in terms of dollar amounts, assessed for tons rather than cubic yards. Sudbury measures by the cubic yard rather than tons, because there is no scale.

The reason for the drop in volume of receipts has been partly due to the loss of Raytheon, which decided to contract with Waste Management for a company-wide program. The Committee believes that the biggest reason for the drop has been the amount of recycling. Mr. Van De Kerkhove noted that the Finance Committee has recommended eliminating one full-time position, by consolidating the recycling monitor position with the gate keeper. The Committee does not favor this idea and Mr. Blake noted that the two distinct job descriptions and the distance involved with trying to perform both jobs, make it rather difficult for one person to perform both jobs effectively.

Mr. Kablack noted that the Committee has considered charging for the recyclable items that are not as profitable, but do not really want to do this for fear of discouraging people's recycling efforts.

Selectman Blacker asked if the amount of receipts varied at any particular time of the year. It was noted that this is not the case. Since this new rate will take effect on July 1, 1993, Mr. Blacker suggested reviewing receipts around October 1, 1993, to determine if the higher rate is significantly affecting receipts.

Mr. Thompson noted that there is already around a \$52,000 deficit in this Enterprise Fund, but that the budget shows how this deficit will be accommodated.

On the recommendation of the Resource Recovery Committee and on motion by Chairman Drobinski, it was unanimously

VOTED: To set the FY94 landfill rates, effective July 1, 1993, as follows:

- | | |
|--|----------------------|
| - Commercial Sticker Rate | \$18.50 per cu. yard |
| - Residential Sticker Rate | 85.00 per year |
| - Second Sticker Rate | 10.00 per year |
| - Senior Sticker (hardship application only) | 40.00 per year |

and it was further

VOTED: To approve the FY94 Landfill Enterprise Fund Revised Budget, dated February 5, 1993, as follows:

Total Enterprise Fund Request FY94	\$369,893
Indirect Costs	74,507
Estimated Receipts	444,400

Atkinson Pool Enterprise Fund - Budget

It was on motion unanimously

VOTED: To approve the Atkinson Pool Enterprise Fund FY94 budget, showing a FY94 request of \$331,107 and estimated receipts totaling \$333,900.

MGL Ch. 61A, S. 14, Pelham Island Road - Kathleen Cook, Owner

In accordance with the verbal recommendation dated February 8, 1993, from the Conservation Commission, and on the recommendation of Executive Secretary Thompson, it was on motion unanimously

VOTED: To table further discussion, rescheduled for Monday, March 1, 1993, at 8:30 p.m. at the Fairbank Senior Center, on the subject of exercising the Town's first refusal purchase option with respect to a notice, postmarked January 13, 1993, in accordance with the provisions of Mass. Gen. Laws Ch. 61A, Section 14, from owner Kathleen Cook, of the intent to sell for residential use approximately 32.49 acres of land on Pelham Island Road, currently assessed on the basis of agricultural or horticultural use; to allow time for the Sudbury Valley Trustees and Sudbury Water District to determine their interest in said property.

Attorney Robert D. Abrams, representing Colburn Development Corporation, prospective buyer, noted that they are here to cooperate with procedure involved with 61A, but requested the Board expedite the proceedings.

Selectman Blacker expressed his concern that Sudbury Valley Trustees (SVT) be able to show evidence of their ability to perform, should the Town assign them the property. It would not be fair to the buyer and seller to hold up a purchase and sale agreement, unless the SVT makes known their ability to purchase this property.

M.G.L. Ch. 61A, S. 14 - Cutler's Garden Center

In accordance with the verbal recommendation dated February 8, 1993, from the Conservation Commission and on the recommendation of Executive Secretary Thompson, it was on motion unanimously

VOTED: To table further discussion, rescheduled for Monday, March 1, 1993, at 9:00 p.m., at the Fairbank Senior Center, on the subject of exercising the Town's first refusal purchase option with respect to a notice, postmarked January 30, 1993, in accordance with the provisions of Mass. Gen. Laws Ch. 61A, Section 14, from owners Janet H. and Roger E. Cutler, of the intent to sell for use as a garden center approximately 1.19 acres of land including the buildings and fixtures thereon, currently assessed on the basis of agricultural or horticultural use; to allow the Conservation Commission to work with the Cutler family to be sure adequate emergency access will remain to their property in the rear being developed off Woodside Road.

Highway Department - Emergency Deficit Spending - Overtime Account

In response to a communication dated February 2, 1993, from Highway Surveyor Robert A. Noyes, it was on motion unanimously

VOTED: To authorize further emergency deficit spending, as allowed by G.L. c.44, sec. 31D, in the amount of \$10,000 for Snow and Ice Overtime Account 420-120.

Initiatives for Change Subcommittee - "Opportunities in Centralized/Regionalized Purchasing" Report

The Board acknowledged receipt of a report entitled, "Opportunities in Centralized/Regionalized Purchasing", dated January 27, 1992, received from the Centralized/Regionalized Purchasing Programs Initiatives for Change Committee. The Board agreed that it is an excellent report and offered their support for the Committee's work.

Long Range Planning Committee - Unisys and Melone Properties - Uses

The Board acknowledged receipt of a communication from Long Range Planning Committee Chairman Robert J. Cusack, dated January 26, 1993, requesting advice on 1) whether the Town can sell for profit "Cover (sand, soil, gravel, etc.)" from the Melone Property to help fund the "Transfer Station", and 2) if the Town has access to the area behind the building at "UNISYS", to test the topsoil to see if it could be used to restore athletic fields at the Curtis School.

At this time, there has been no opinion given by Town Counsel, according to Secretary Thompson, who stated he would talk with Town Counsel. The Board agreed to have Town Counsel prepare a response.

It was on motion unanimously

VOTED: To acknowledge the LRPC's requests and to support the LRPC's second request to test for the use of the topsoil behind the building at the "Unisys" site.

1993 Annual Town Meeting - Consideration of Offsets

The Board acknowledged a communication dated February 15, 1993 from Administrative Assistant to the Board, Janet Silva, regarding offsets to reduce the FY94 Tax Levy - 1993 ATM. Selectman Cope questioned if the Dog Licenses offset amount is correct in offsetting the #350 Dog Officer Account, rather than the Library Book Account, as has been the case in the past. Executive Secretary Thompson noted he would check with Ms. Silva.

On the recommendation of Secretary Thompson, it was on motion unanimously

VOTED: To approve the use of available funds from the following sources under the Board of Selectmen's jurisdiction to offset the following accounts:

SOURCE	AMOUNT	TO OFFSET
Wetlands Protection Fund	\$4,125	360 Conservation
Cemetery Funds Revenue	14,000	410 Highway

Town Meeting Action

Article 26 - Special Act - Voter Information

The Board acknowledged receipt of a communication dated January 6, 1993, from the Board of Registrars of Sudbury with regard to the Warrant Article, Special Act - Voter Information, stating that the Board of Registrars could not support the proposed Article as written, and requested its name be removed from the Article, wherever it is mentioned. Secretary Thompson noted that the Finance Committee supports this Article.

On motion by Chairman Drobinski, it was unanimously

VOTED: To approve Article 26, revised to substitute the Board of Selectmen for the Board of Registrars throughout.

Article 6 - Early Retirement Incentive (ERI)

The Board acknowledged a communication dated February 3, 1993 from Executive Secretary Richard E. Thompson relative to Article 6 - Early Retirement Incentive (ERI), reporting that the consensus of several Town officials is that the Board of Selectmen not proceed to offer a local ERI, as allowed by Section 48 of Chapter 133 of the Acts of 1992. Mr. Thompson explained that a local ERI would be an additional expense to the Town.

Upon her review, Selectman Cope noted that she needed to review the information further, and had some questions that needed to be answered. It was noted by Mr. Thompson that if this Article were passed at Town Meeting, no recourse would be taken if the Selectmen decided not to implement it. Because of further discussion being needed, the Board decided to table any further discussion.

Annual Town Meeting Warrant - Additional Articles

On the recommendation of the Executive Secretary, it was on motion unanimously

VOTED: To accept and order thirteen (13) additional new petition articles received for the 1993 Annual Town Meeting Warrant, and to request the Executive Secretary to accept the petition articles in accordance with the time they were received in the Selectmen's office.

1993 Annual Town Meeting Articles - Speakers and Positions

With regard to speaker assignments for the Selectmen's Articles, Secretary Thompson stated that the Board would be assigned Articles, for which they are a liaison to the subject presented, with the exception of Selectman Blacker's offer to speak on Article 26 Special Act - Voter Information.

Since positions have not been declared for the Articles, Secretary Thompson stated that a special meeting may need to be called, or that he would be contacting the Selectmen individually.

Planning Board Meeting

Present: Town Planner Jody Kablack, Planning Board Members: Ursula Lyons, Richard A. Brooks, and Lael M. Meixsell.

The Planning Board met with the Board of Selectmen to discuss the following two issues:

Pratts Mill Area - 1993 ATM, Article 31 - Amend Zoning Bylaw, IX.I.I

Mr. Meixsell explained that the public hearing scheduled for February 9, 1993, by the Planning Board does not incorporate any language to include the Pratts Mill aquifer delineation, and questioned if a new public hearing will need to be scheduled to address this issue. Selectman Blacker commented that delineation needs to become more scientific with regard to determining accuracy. It is not fair for a single plot developer to have to deal with, and go to the expense of, determining what zone they are in.

Mrs. Kablack asked if the Water Resource Protection Article submitted by the Planning Board could be revised to determine the Water Resource Protection District map boundaries and include the Pratts Mill area. Mr. Thompson noted that it could avoid a new article, but that another public hearing should be held and new notices published and mailed.

Cluster Bylaw Revision

The Planning Board asked the Board's opinion on revising the Cluster Bylaw to make it more flexible. They cited their experience with the Howe Property and felt that they had no flexibility with regard to reducing the size of the buffer zone. Their feeling is they would like to have more flexibility and not have to go to the Board of Appeals for all changes.

Selectman Blacker commented that bylaws should be constructed so that they can be complied with and not subject to variances. He does not believe the Planning Board should be changing the bylaws

for each situation, but rather determine what parameters need to be adhered to in the first place for subdivisions, etc.

Mr. Meixsell stated that all that is being suggested at this time, is to amend what was needed for the Howe Property. After further discussion, it was the Board's recommendation to the Planning Board to postpone any action on the Cluster Bylaw. Chairman Drobinski said that if structural changes need to be made in the bylaws, then the Planning Board should research and plan what needs to be accomplished, and back it up technically.

Talisman Study

Selectman Cope asked if the Selectmen's office has heard from the Talisman Company with regard to an organizational study of the Town and estimated costs for the same. Mr. Thompson responded that they have not. Mrs. Cope informed that the Finance Committee has budgeted \$10,000 for this study and that the Sudbury Foundation said they would be willing to help finance it.

Reserve Fund Transfer #93-13 - Dog Officer General Expense

It was on motion unanimously

VOTED: To approve Reserve Fund Transfer Request #93-13 dated February 8, 1993, for the Dog Officer General Expense Account #350-210, in the amount of \$480.00, to pay for emergency rabies shots to protect the Dog Officer and Assistant Dog Officer.

First Parish of Sudbury - Town Hall Use

In response to a communication dated January 29, 1993, from Ellen J. Cormier, Director of Religious Education at The First Parish of Sudbury, and on the recommendation of Executive Secretary Thompson, it was on motion unanimously

VOTED: To approve the use of the Town Hall by The First Parish of Sudbury for Sunday morning educational programs, during September through December 1993.

Contaminated Properties

Selectman Cope requested an update from the Health Director with regard to the cleanup of the two recent contaminated sites--Interstate and Cumberland Farms, and recommended that the other Interstate tanks that are underground be examined.

Personnel Board - Performance Evaluations

Selectman Cope requested the Executive Secretary to send a letter to all department heads reinforcing the requirement to conduct annual performance evaluations with all employees. The Board concurred.

MAPC - TIP (so-called ice-tea)

Selectman Cope questioned the status of Sudbury with regard to receiving additional T.I.P. funds under a new Federal program. Mr. Thompson reported that he, and Town Engineer I. William Place met with District 4 Engineer Peter Donohue on February 8, 1993, today, to discuss this issue. According to Mr. Donohue, Sudbury is a candidate for these funds, but there is a requirement to be part of the TIP program. Mr. Donohue gave the Town some direction, and Mr. Thompson considered it a productive meeting.

Dog Officer

Selectman Cope reported that she is helping to investigate a new arrangement for the Dog Officer and placement of the dogs.

Disability Commission - Funds

Executive Secretary Thompson asked the Board if they were willing to add a statement on the Warrant report for Article 11, that it is their intent to vote, if the establishment of the Commission passes, to have all receipts from handicapped parking violations be given to the Disability Commission. The Board agreed.

Unclassified Acct. Retirement Appropriation

The Board acknowledged receipt of a communication dated February 3, 1993, from Executive Secretary Thompson reporting on the outcome of a meeting held relative to the Unclassified Account Retirement Appropriation.

There being no further business, the meeting was adjourned at 12 midnight.

Attest: _____
Richard E. Thompson
Executive Secretary-Clerk