

IN BOARD OF SELECTMEN
MONDAY, MARCH 1, 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 - Utility Petition #93-6 Marlboro Road

Present: Christine Cosby, Boston Edison Company.

The Board convened a public hearing to consider the petition of Boston Edison Company and New England Telephone and Telegraph Company for permission to lay and maintain, and a location for, a line of conduits and manholes with the necessary wires and cables therein, on Lot 2, Marlboro Road.

Secretary Thompson explained that emergency approval to proceed was granted to Boston Edison Company and New England Telephone and Telegraph Company by a vote of the Board of Selectmen on February 22, 1993. Mr. Thompson informed that all abutters have been properly notified and a letter recommending approval has been received from Building Inspector John B. Hepting and Wiring Inspector Warren E. Boyce dated February 19, 1993.

The Board acknowledged receipt of a communication dated February 17, 1993 from Denis J. Deagle, Supervisor, Rights, Permits & Survey - Western District, Boston Edison Company, and a communication dated February 23, 1993 from Patrick J. Lovett, Manager, Rights of Way NET requesting permission to install approximately 8 feet of conduit, Marlboro Road, to service a new home.

On motion by Chairman Drobinski, it was unanimously

VOTED: To approve Utility Petition 93-6 of Boston Edison Company and New England Telephone Company for permission to lay and maintain, and a location for, a line of conduits and manholes with the necessary wires and cables therein, indicated on Boston Edison Company Plan of Marlboro Rd. Sudbury, dated February 17, 1993, and New England Telephone and Telegraph Company Plan for Conduit, Marlboro Road, dated February 23, 1993, under the following public way of the Town:

Marlboro Road - northerly approximately 235 feet southwest of
(Lot 2) Haynes Road.
A distance of about 8 feet - conduit.

American Red Cross Month - Proclamation

In response to a communication dated February 12, 1993, from American Red Cross West Area Coordinator Sandra J. Capriulo, requesting that the Board of Selectmen uphold the annual tradition of proclaiming the month of March as Red Cross month, it was on motion unanimously

VOTED: To proclaim the month of March, 1993, as AMERICAN RED CROSS MONTH.

Amendment to G.L.c. 138, s. 33 - Sale of Alcoholic Beverages

It was on motion unanimously

VOTED: To allow the sale of alcoholic beverages by common victuallers and retail package stores during the polling hours of the Annual Town Election on March 29, 1993, in accordance with G.L.c.138, s. 33, as amended.

Emergency Deficit Spending - Highway Department

In response to a communication dated February 23, 1993 from Highway Surveyor Robert A. Noyes, again requesting authorization to deficit spend because of the frequency of storms being experienced, it was on motion unanimously

VOTED: To authorize additional emergency deficit expenditures, as allowed by G.L.c.44, sec. 31D, in the amount of \$30,000 (\$15,000 for Snow and Ice Overtime 420-120 and \$15,000 for Snow and Ice Materials 420-301).

Minutes

It was on motion unanimously

VOTED: To approve the regular session minutes of February 8, 1993 (partial section on Dunkin Donuts site plan special permit), as amended by Attorney for applicant Myron J. Fox, and verified on tape, and the regular session minutes of February 22, 1993.

Interfaith Fuel Assistance Program - Deposit

In response to a communication dated February 23, 1993 from Town Social Worker Martha E. Lynn, it was on motion unanimously

VOTED: To accept a donation totaling \$483.04, received by Our Lady of Fatima Parish and submitted for deposit into the previously established Interfaith Fuel Assistance Account, to be expended in the manner designated.

CGI Companies - Scale Variation - Site Plan for Sudbury Crossing/T.J. Maxx

The Board reviewed a communication dated February 24, 1993 from Bruce R. Thomas, Senior Project Manager of Schofield Brothers, requesting permission to submit a site plan at a scale other than 1" = 20' for Sudbury Crossing and T.J. Maxx. Selectman Cope stated that she wanted to have clarified, before any monies are spent on this site plan, that any changes to it or any promises or stipulations made on the original site plan be carefully scrutinized.

Mr. Thompson noted all necessary Town officials review and sign site plans, and that a careful review of the original site plan is done before signing any revised plans, and that the Building Inspector has approved the submission of this site plan at the requested scale.

It was on motion unanimously

VOTED: To grant permission to CGI Companies to submit a site plan at a scale of 1" = 40' for Sudbury Crossing/T.J. Maxx.

1993 Annual Town Meeting - Signing of the Warrant

Secretary Thompson displayed the cover of the Warrant and explained the decision regarding the placement of the handicapped accessible logo. It is the Board's hope that this will clearly indicate to the public that the facility for Town Meeting is handicapped accessible.

On motion by Chairman Drobinski, it was unanimously

VOTED: To approve and sign the Warrant for the 1993 Annual Town Meeting, subject to a few minor corrections made by Selectman Cope.

Factor Management, Inc. Talisman - Receipt of Proposal

Secretary Thompson explained that Selectman Blacker had asked for additional time to review the proposal and to send it to the Sudbury Foundation for its review. Mr. Blacker commented that he believes the study as proposed will be very worthwhile for the Town, providing the Town can obtain the funds to pay for it.

Selectman Cope noted that Mr. Factor, the President, seems very receptive to receiving phone calls. The proposal is just an example of what the study might include, and Mrs. Cope commented that it would be a good idea to incorporate the ideas of several people and she suggested Roy Sanford as one who may be excellent to help to develop a scope of services for this study.

It had been decided that the schools would not be included in this study, unless any findings might be compatible with the schools to help them with savings.

Special Speed Regulation #7558 - Morse Road and Mossman Road

The Board acknowledged receipt of a communication dated February 19, 1993, from Massachusetts Highway Department Traffic Engineer, Charles F. Sterling III, responding to the Board's decision not to adopt this State-prepared special speed regulation #7558. The Board's previous discussion and decision was based on the short distances between and the number of speed zones proposed for Morse Road and Mossman Road, and concluding that the posting of "Thickly Settled" signs would automatically enforce a 30 MPH speed limit. According to Mr. Sterling III, this conclusion is not completely true.

In response to Secretary Thompson's recommendation to now adopt the State's Special Speed Regulation #7558, Selectman Cope commented that she believes that adopting the special speed regulation would include too many signs and create havoc. Mr. Thompson's concern is that he would like to minimize any conflicts with the State Highway Department, to ensure their continued support for the Town of Sudbury.

Selectman Blacker asked, if the Board adopts the regulation, could they at some point rescind it. Mr. Thompson stated he believes that may be possible if it is rescinded in the same manner that it was approved. Mr. Blacker's original concerns were for safety, but he also did not want this situation to become a speed trap and have motorists be an easy mark for getting a speeding ticket because of the change in speeds for short distances.

Chairman Drobinski expressed concern that by not adopting the special speed regulation, the Town is left with no mechanism for enforcing the speed, and safety issues take precedent over aesthetics. He believes that the Board should agree with Mass. Highway Department, but send a letter to them stating why they are setting speed limits on these streets now and explaining the Town's reasoning behind their original dilemma.

On motion by Chairman Drobinski, it was unanimously

VOTED: To adopt, in accordance with the provisions of Chapter 90, Section 18, of the General Laws as amended, Special Speed Regulation #7558 as follows:

"That the following speed limits are established at which motor vehicles may be operated in the areas described:

Morse Road - Eastbound

Beginning at Marlboro Road, thence easterly on Morse Road;

0.18 miles at 25 miles per hour
0.41 miles at 20 miles per hour
0.16 miles at 25 miles per hour
0.23 miles at 20 miles per hour
0.37 miles at 30 miles per hour

Ending at Concord Road, the total distance being 1.35 miles.

Morse Road - Westbound

Beginning at Concord Road thence westerly on Morse Road;

0.37 miles at 30 miles per hour
0.23 miles at 20 miles per hour
0.16 miles at 25 miles per hour
0.41 miles at 20 miles per hour
0.18 miles at 25 miles per hour

Ending at Marlboro Road, the total distance being 1.35 miles.

Mossman Road - Eastbound

Beginning at Powers Road, thence easterly on Mossman Road;

0.84 miles at 25 miles per hour
0.32 miles at 20 miles per hour
0.30 miles at 25 miles per hour

Ending at Marlboro Road, the total distance being 1.46 miles.

Mossman Road - Westbound

Beginning at a point 160' from Marlboro Road, thence westerly on Mossman Road;

0.27 miles at 25 miles per hour
0.32 miles at 20 miles per hour
0.84 miles at 25 miles per hour

Ending at Powers Road, the total distance being 1.43 miles.

Operation of a motor vehicle at a rate of speed in excess of these limits shall be prima facie evidence that such speed is greater than is reasonable and proper."

1993 Annual Town Meeting - Articles and Speakers

No further discussion on articles or speakers took place but Selectman Cope stated she would like to know what Selectman Blacker would be saying with regard to all of the articles he will be reporting on. It was noted that the format is to write a brief summary of each one and have a review with other Board members.

Planning Board Meeting - Town Articles

At 8:00 p.m. the Board met jointly with the Planning Board to discuss Annual Town Meeting articles #30-32, and walkway planning.

Present: Robert Sheldon, Water District; Planning Board Chairman Lael M. Meixsell, and members Ursula Lyons and Richard Brooks.

Secretary Thompson reported that the purpose of this joint meeting with the Planning Board is to have a preliminary discussion on the three articles 30-32 and an update by Rick Brooks on walkways. He mentioned that one of the walkways located in North Sudbury along Rt. 117 has received a lot of internal support; it has been listed as a top priority and it is being supported by the Finance Committee for funding.

Walkways - Petition Articles #39 and #51

Mr. Richard Brooks showed two slides from previous Town Meetings noting that what the slides represent is the strategic plan for implementing walkways on a priority basis throughout the Town. He noted that the thrust for implementing the walkways decreased. What exists now are portions of walkways which are part of the original plan, including the walkways on Old Lancaster and Peakham Roads -- two different sections. The only one not on the list is the Walkway on Rt. 117 from Willard Grant Rd. to

Haynes Rd. This has been added because of the concerns of the schools. There is a \$5,000 request for the Rt. 117 walkway, a \$9,180 request for the Peakham Rd. walkway extension and \$91,200 for completion of the Old Lancaster walkway to Hudson Rd.

There has been a staff meeting of many of the previous members of the walkway committee, which included School Administrator John Wilson, Town Engineer I. William Place, the Safety Officer, and representatives from Highway, Chamber of Commerce and the Long Range Planning Committee. Mr. Brooks explained that their objective was to determine what their priorities and criteria are in order to strategize for a longer term approach. The critical concerns with regard to completion of the walkways are clearly the schools, but also the elderly who are using the walkways more and more. With regard to the goals for the Town as a whole, it was decided to continue the Committee and build upon the framework that was laid by the original plan.

Specifically, Mr. Brooks stated that the Finance Committee was aware of the \$91,000 request for walkway construction on Old Lancaster Rd., but could not support it. The Safety Officer identified the walkway with the highest priority as Rt. 117 (Willard Grant to Haynes), then Old Lancaster. Not only is Old Lancaster high priority for the schools, but it has been identified as part of a loop walk by the elderly.

In order to cut costs up front, and to obtain Finance Committee support, the Town Planner and Town Engineer suggested that base construction only be done on the walkways and not pave them right away, which would save about 50% of the total cost. According to Mr. Brooks, the Finance Committee stated they felt they could not support this concept either this year. The feeling of the Committee was that to continue the approach of beginning with a base construction and paving later, might be a more receptive way to receiving funds and accomplish getting people off the road at the same time.

Selectman Blacker commented that this plan appears to be well thought out and he likes the idea of beginning construction on the walkways and paving at a later time. Mr. Brooks asked if the Selectmen would be supportive of a phased approach for construction of the walkways and if they would support it at Town Meeting. Selectman Drobinski stated that monies for the walkways have been lost to other budget items in the past, and thinks the Selectmen can be supportive at this time.

Mr. Ralph Tyler noted that there are a number of sections of walkways that could be completed to form complete loops, and he suggested while interest rates are low and construction costs down, putting out a bond for a package to complete these.

Chairman Drobinski explained that because the walkways are not sidewalks, bonding is not a possibility. Mr. Brooks asked if there was any chance that the ruling might have changed. Mr. Drobinski stated it would be worth checking into. Mr. Tyler suggested going to a general court with representatives to obtain a special dispensation. Mr. Thompson stated he believes it may be possible to change.

Chairman Drobinski reviewed the history of the walkway program, which died in the mid 80's. Mr. Brooks explained that the Finance Committee wants to go back to the School Committee and do an overall assessment of the walkways, to determine if the repercussion of the two-mile limit for busing will cost the Town more money to complete the walkways. This analysis will need to be done.

Secretary Thompson reiterated what was said about connecting walkways to form loops and the priorities of the schools for the students and the need to complete the walkways for the elderly, suggesting that the walkway committee make some recommendations. Rather than bond the project, Mr. Thompson believes it can be accomplished a section at a time. Mr. Thompson's suggestion was to obtain a capital exemption for one year.

The question was asked if all the easements along Old Lancaster Road have been resolved and if the Town is taking the necessary first steps to secure all the easements. Mr. Drobinski concurred that this is a good point and a necessary part of the program and sometimes takes a long time to negotiate easements. Mr. Brooks commented that the Safety Officer suggested a program that would incorporate a walkway down Dutton Road to Rt. 20 to bring people to the historic Wayside area. The Committee will establish some criteria for this plan and will ask the Selectmen for their input.

Articles - #30 -32

Article 30 - Water Resource Protection Districts

Mr. Meixsell explained this article had been referred back to the Planning Board and Water District for further planning and study. The joint committee consulted with the DEP since last Town Meeting. The revised draft was received from Town Counsel, and there is one defect in the eyes of the committee that still exists. The committee reviewed the report in an effort to respond to the issues that have been raised by the DEP and last Town Meeting. One of the issues was the special concessions given to the Research District. One concession of concern is the increase in the impermeable surface from 15% to 38%. The joint committee's intention was either to remove the special consideration or enable Town Meeting to do so. According to Town Counsel, Town Meeting would not be allowed to consider such changes. The difficulty stems from the public hearing that was conducted on the article. Town Counsel felt that the scope of the article needs to be widened in order for Town Meeting to consider such changes. It is possible that another public hearing could be held to widen the scope before Town Meeting, concluded Mr. Meixsell.

Mr. Meixsell noted that the drafts they have now are the ones that are on the Warrant. Mr. Robert Sheldon stated he is in favor of going ahead with the article even with the so-called defect in order to determine if there should be special consideration to the research district. The bulk of the article is clear and the technical changes can always occur at a future date.

With regard to Town Counsel's concerns, Mr. Meixsell explained that it related to the percentage of impermeable surface remaining after removal of certain acreage. If the Town revises the bylaw so that the Unisys area becomes pre-existing, non-conforming, the Town may be giving rights to the owner which the owner would not otherwise have. Selectman Blacker asked how does having a non-conforming situation give the owner greater rights than they have if it was conforming. Mr. Meixsell responded that he is unsure of the details, but knows that if it is pre-existing, non-conforming, it can be altered. He said it is now still conforming, so if any work is done the owner will still have to go through the permitting process and the Town might be able to impose conditions on the area which would even decrease the amount of impermeable surface.

Chairman Drobinski suggested asking Town Counsel for a technical interpretation. Mr. Tyler asked about the zoning issues for the research district, and if a deal was made during the Unisys settlement for rezoning, for possible other uses than research. Mr. Drobinski stated there is no specific use for the property outlined right now. Mr. Tyler stated that he has not heard anything about changing the zoning in the research district, and he attended the public hearing. Mr. Meixsell stated that what was seen at the public hearing is on the warrant. Mr. Tyler exclaimed that it cannot be changed at Town Meeting because it would be more restrictive for the owners. Mr. Meixsell responded that to change the scope, would require another public hearing. Mr. Tyler stated that Town Meeting can only change something that is less restrictive for the owners rather than more restrictive, and the Warrant would have to be changed.

Mr. Sheldon explained that the major thrust to this bylaw change is the consideration by the Water District for a new well in northeast Sudbury, and the State will not permit it unless there are certain restrictions. There is a difference in wastewater disposal for the research district, and the State is saying this has to be more consistent unless there is some very strong technical justification for it. Mr. Sheldon continued that this is the reasoning behind being more consistent, in order to have the bylaw blessed by the State to move forward if need be.

Chairman Drobinski stated that the Water District would probably have difficulty in obtaining approval for a well in this area at Town Meeting. Mr. Sheldon noted that it is not just that well, but all wells in the Town, that the State wants to see aquifer protection. Chairman Drobinski noted that the provisions of the research district are the problem and suggested that if this jeopardizes Town Meeting's acceptance of the bylaw and makes the bylaw not acceptable at Town Meeting, maybe careful consideration should be given to going ahead with the bylaw not being in conformance with State standards.

Selectman Blacker questioned why the State would not allow a new well in an area that may be miles from an area with a different flow. Mr. Sheldon stated that it was his understanding that the State's overall concern is how the Town is protecting its water supply. Mr. Blacker stated he would like to see the regulations that state that the flow has to be limited to 440 regardless of the distance to a well. Mr. Sheldon stated it is his understanding that the State wants all of Zone II in a Town protected in the same manner. Mr. Blacker would like to know if this is what the State would like or if this is the rule.

Mr. Tyler noted that it is true the State regulations make a very large difference between the restrictions for Zone II and Zone III, particularly after delineation of Zone II. Current bylaws being proposed by the Planning Board say that there is no difference after the delineation of Zone II and Zone III. Sudbury's regulations appear to be more stringent than those of the State, remarked Mr. Tyler.

Another concern of Mr. Tyler's is the number of planning issues in the Town that need to be addressed, and he believes the Planning Board should be addressing these kinds of issues rather than being involved in issuing special permits relative to the water resources. Mr. Tyler believes this should be another board. Mr. Drobinski responded that Town Meeting gave the Planning Board this authority.

Mr. Meixsell believes that the Planning Board should be doing more planning, and has not, in part, due to budget cuts. There were comments made that implied that Zone III is less important than Zone II, where in fact, it is easy to show that there are often portions of Zone II that are less important.

Zone II and Zone III does not necessarily indicate a difference in importance but rather how the areas are identified.

Article 31 - Enlarge and Revise Water Resource Protection Districts

Because of the budget and resources, the Planning Board was not able to include the areas which one would have to include to bring about a reciprocal arrangement with neighboring communities to protect each other's aquifers. What is being proposed at this time, are the redelineations by the Water District of the Raymond Road Aquifer and Pratt's Mill Road Aquifer and the inclusion of the well on Powder Mill Road.

Mr. Sheldon responded that the thinking behind mutual aquifer protection is that the Town would help protect neighboring Town's aquifers contingent upon them also adopting respect for Sudbury's water supplies.

Mr. Meixsell reported that the Town Planner did not have the time to work all of the necessary coordination with the neighboring communities. Some neighbors had this in place, and Sudbury was not aware of this; and as a consequence when Sudbury learned that they may be reciprocal in certain areas and not in other areas, and how this would be uniformly implemented, the Planning Board took the steps to draft this Article.

Selectman Blacker asked how delineation of Zone II is determined. Mr. Meixsell responded that for the Raymond Road and Pratt's Mill Road areas, it is determined by the Water District consultant, and Powder Mill is a default. Mr. Sheldon explained that determination of delineations is very costly and where there are active wells in place, this cost is part of the development of the well. Mr. Blacker's concern is that the delineation will determine what can be developed on the property, and if it is not scientifically done, may result in unforeseen costs. Mr. Tyler responded by saying that in the proposed bylaw, it does not matter if it is in Zone II or Zone III because the restrictions are essentially the same. Mr. Tyler further said that State regulations suggest there are significant variations in the amount of protection required for the two zones, but that Sudbury is not adopting these guidelines.

Chairman Drobinski noted that this could be debated at Town Meeting, and on the other side, the Town has the ability to be less restrictive, but he is not sure this is appropriate.

To further respond to Mr. Blacker's concerns over delineation, Mr. Sheldon stated that two relatively new wells exist at the Raymond Road and Pratt's Mill Road Aquifers, and one of the requirements was that the State witness a new actual pumping delineation of Zone II. The State has accepted both of the Zone II delineations, he said, and allowed there is no reason why the Town could not go forward with a similar study of the Powder Mill area without the State's blessing. Unless the Town is serious about a well in the Powder Mill area, the Town will not be in the same position as in Pratt's Mill, he stated.

Article 32 - Establish Water Resources Protection Committee

Mr. Meixsell explained that this Article is a response from various parties including the Finance Committee to address the Planning Board's concerns to accomplish more of its work with less expense to the taxpayer. Chairman Drobinski asked if a vote of Town Meeting was needed to establish this

committee. Mr. Meixsell replied the article tells the committee what its responsibilities are and informs everyone of the same.

Mr. Drobinski opined that he does not believe it is necessary to bring it to Town Meeting mainly because other water issues not germane may be brought up, and it is something the Selectmen and the Planning Board have the power to establish. Mr. Meixsell said the Planning Board feels very strongly about responding not only to others' concerns, but their own as well, and is concerned that such an appointed committee will dissolve as the walkway committee did. Chairman Drobinski noted that Town Meeting took away the funding for the walkway. Mr. Brooks stated that part of the meeting is to obtain the Selectmen's input on a direction.

It was decided by a consensus of all present that the Article for establishing a Water Resources Protection Committee not go before Town Meeting, but a committee be established as soon as possible with appointees from each board and committee, following the outline of the proposed article. As long as a commitment exists, there is no need to go before Town Meeting, remarked Mr. Sheldon.

Selectman Cope asked that the Water District submit their recommendations and the Planning Board do the same and then go from there.

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

Present: Attorney Robert D. Abrams, representing Colburn Development Corporation; Sudbury Valley Trustees Steven Johnson.

The Board acknowledged receipt of the following:

1. Purchase and Sale agreement dated January 13, 1993 between parties Kathleen Cook and Colburn Development Corporation.
2. Communication dated January 13, 1993 from William J. Dailey Jr., attorney representing Kathleen Cook with regard to the notice of intent to sell agricultural land.
3. Communication dated February 2, 1993 from Assistant Assessor Mary H. Walsh informing that the Board of Assessors voted to recommend that the Board of Selectmen exercise the Town's first refusal option.
4. Communication dated February 5, 1993 from Sudbury Valley Trustees Associate Director Whitney Beals, informing that the SVT is interested in accepting assignment of the Town's first refusal option under Ch.61A, s.14.
5. Verbal comment dated February 8, 1993 from the Conservation Coordinator recommending holding a position to see what develops with the SVT and Water District.
6. Communication dated February 9, 1993 from Town Planner Jody Kablack recommending the Board of Selectmen assign the right of first refusal to the SVT, the Great Meadows Wildlife Refuge, or other interested party which would primarily use the property for conservation or preservation of natural resources.

7. Communication dated March 1, 1993 from Great Meadows National Wildlife Refuge Manager Edward S. Moses, accompanying its payment in lieu of taxes for Fiscal Year 1991, in accordance with the Refuge Revenue Sharing Act.

Attorney Robert D. Abrams, representing Colburn Development Corporation, the prospective buyer, stated that at the meeting on February 8, 1993, the opinion was expressed that the Town could not afford to purchase this property, but the subject was continued to this evening to allow time for the Sudbury Valley Trustees and Sudbury Water District to determine their interest in said property, and to determine if the SVT would be in a position to exercise the Town's rights under assignment. Also expressed was concern that the owner's rights be protected, noted Mr. Abrams, and he continued that on behalf of the buyer, the hope is that the Board will exercise its rights responsibly, and let the buyer proceed unless there is a bonafide offer from a party who is able to exercise this right. If this is not the case, Mr. Abrams requested that the Board proceed with notifications of refusal.

Mr. Johnson, SVT, explained where this property is located on a plan, and commented that SVT has spoken to U.S. Fish & Wildlife Service who expressed an interest in acquiring this property, as part of this property is within the refuge boundary. The Refuge Manager, Mr. Moses, had hoped to be at the hearing tonight, but was unable to come, stated Mr. Johnson. U. S. Fish & Wildlife has asked the SVT to pursue this for them. SVT is able to do this because they are a non-profit conservation organization. Mr. Johnson is asking that the Board consider assignment to Sudbury Valley Trustees, whose intention then is to close simultaneously with U.S. Fish & Wildlife Services to bring this important resource into refuge ownership.

Mr. Johnson proceeded to say how this would happen explaining that the total purchase and sale agreement is for \$450,000, \$250,000 to be paid at the closing on November 1, 1993, with a note to be held for the remainder by the seller. SVT is seeking assignment contingent on receiving a contract to purchase this property from U.S. Fish & Wildlife Service prior to the expiration of the option on May 13, 1993. The closing would be deferred until the time mentioned in the purchase and sale agreement or until such time as U.S. Fish & Wildlife is ready to simultaneously close with SVT. U.S. Fish and Wildlife has authorized SVT to do an appraisal, and a 21E assessment. Mr. Johnson stated that SVT anticipates knowing well before May 13, 1993 that the property is free and clear of hazardous waste, and will come to the Board as early as possible before May 13, 1993 with a contract.

Mr. Johnson continued this situation is analogous to a situation in Wayland, and would close no later than the closing date shown in the purchase and sale agreement of November 11, 1993. If U.S. Fish & Wildlife does not have a check at that time, SVT will assume carrying costs. SVT is financially able to do this without the support of U.S. Fish & Wildlife.

Relative to the question as to whether SVT is financially able, Mr. Johnson explained that there is a difference between their financial capability to conclude a transaction and their need to internalize to a specific project in terms of fund raising and purchase. The SVT has to come out of each transaction essentially whole. They do fund raising for each of their transactions.

Chairman Drobinski confirmed what Mr. Johnson stated, that if the Board were to assign this property to SVT, by May 13, 1993, SVT would need to have a commitment from U.S. Fish and Wildlife.

Mr. Johnson explained that to be fair with everyone, if the Board should assign the right to SVT, they would continue to proceed to obtain a contract from U.S. Fish & Wildlife, and the minute they receive this contract, SVT would ask the Board to assign the option.

Selectman Cope asked about the Water District's interest in this property. Secretary Thompson stated that he has talked with the Water District and they have been informed, but to his knowledge they have made no commitment for this property now or intend to in the future. Mr. Johnson commented that one of the first things he did was to determine any interest by other Town boards.

Selectman Cope expressed that she would like to concur with the Conservation Commission's recommendation to hold on this assignment for now.

Selectman Blacker confirmed the outside closing date of the purchase and sale agreement with Mr. Abrams as being November 1, but that this date was the result of the buyer's need to obtain permits. He asked Mr. Johnson if it would be possible to close sooner if a contract were obtained from U.S. Fish & Wildlife. Since an agreement would not be held up by permits and approvals in this case, it would make sense from the buyer's point of view to close as soon as possible and not leave them hanging. Mr. Blacker asked if a commitment could be obtained by November 1, 1993. Mr. Johnson stated he could do better than November 1, 1993. Mr. Blacker suggested the Board allow the process to continue, and in the event that an assignment takes place, predicate it on a closing date of August 1, 1993.

Mr. Johnson stated that the SVT is working to expedite obtaining a commitment from U.S. Fish & Wildlife, and that the process is well under way.

After further discussion, it was on motion by Chairman Drobinski unanimously

VOTED: To continue further discussion, rescheduled for the Board of Selectmen's first meeting in May, of assignment to Sudbury Valley Trustees of 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.

It was further decided to keep all parties informed as to proceedings, and that SVT will keep the Board of Selectmen up-to-date on a decision from U.S. Fish & Wildlife Services.

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

For the record, the Board acknowledged receipt of the following communications:

- 1) A communication received by the Board of Selectmen on January 29, 1993, from Janet H. Cutler informing of Janet H. Cutler and Roger E. Cutler's notice of intent to sell 1.19 acres plus or minus land located at 155 Landham Road.
- 2) A purchase and sale agreement dated January, 1993 between sellers Roger E. Cutler and Janet H. Cutler and buyers Farid Khalil and Sophia Khalil of West Roxbury.

3) A communication dated February 2, 1993 from the Mary H. Walsh, Assistant Assessor, Board of Assessors, stating their recommended vote to the Board of Selectmen to not exercise the first refusal option of the Town.

4) Verbal communication, dated February 8, 1993, from the Conservation Commission recommending the Cutlers resolve a question of access before the property is sold.

5) Communication dated February 9, 1993 from Town Planner, Jody Kablack, stating that the Planning Board voted to make no recommendation regarding the purchase of this property by the Town.

The Board of Selectmen, at their meeting on February 8, 1993, had voted to table further discussion of exercising the Town's first refusal purchase option. In view of recent developments relative to the purchase and sale agreement for the property, and receipt of a communication dated today, March 1, 1993, from Janet and Roger Cutler, requesting withdrawal of their request to convert the property located at 155 Landham Road from Agricultural use to Commercial, it was on motion unanimously

VOTED: To accept the withdrawal dated March 1, 1993, of the notice from Janet H. and Roger E. Cutler of the intent in accordance with G.L. C.61A, s.14, 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; said property located on Landham Road, shown on Town Property Maps as Parcel L10-030 and as Lot 3 on "Plot Plan of Land in SUDBURY, MASS.", dated December 7, 1992, drawn by Guerriere & Halnon, Inc.

Site Plan Special Permit Application No. 92-316 - 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; Applicant Constantine Scrivanos; Bruce Ey, Civil Engineer for Schofield Brothers, Inc., and approximately 25 concerned Sudbury residents.

The Board convened a continued public hearing (from January 19, 1993 and February 8, 1993), at 9:30 p.m. to consider the application No. 92-316 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-thru window, septic system and storm water detention basin, at 378 Boston Post Road, owned by Pauline Fantoni of Framingham, MA; zoned Business District 4, Industrial District 2 and Residential District A-1.

Chairman Drobinski stated the Board would address new issues, and that it is not clear whether the Selectmen will vote on this application tonight: In any case, continued Mr. Drobinski, depending on how the Board votes, Town Counsel will draft specific conditions or reasons for approval or denial, and will keep the public hearing process open until the Selectmen vote on approval or denial.

Secretary Thompson reported that since February 8, 1993, the Board has received the following additional communications:

1. A revised site plan prepared by Schofield Brothers, which includes the following:

- 1) Moving the two (2) oil and grit separators out of the driveway and raising the "tees" above the 100 year flood elevation.
- 2) Adding a dumpster with a screen fence.
- 3) Adding a sidewalk from Rte. 20 to the side entrance. This sidewalk will be moved to the new front entrance if required.
- 4) Grading altered to direct runoff from MacKinnon's parking area into the leaching pit at the northeast corner of the proposed parking area.
- 5) The size of the rip rap at the proposed 10 inch pipe has been increased to 9"-12" broken stone.

2. A communication dated February 25, 1993 from the Planning Board recommending disapproval of the proposed site plan, in particular, because the Planning Board concludes that the site plan proposal is incompatible with Sudbury's efforts to remedy the traffic and safety problems in this area, and also because they object to the use of residential land for the construction of a commercial septic system.

3. An Order of Conditions outlined by the Conservation Commission and dated February 2, 1993.

4. A communication dated February 22, 1993 from the Permanent Landscape Committee suggesting that the Board impose on the Dunkin Donuts site plan a permanent right-of-way across the Hilco property to connect the Route 20 walkway with Town-owned land along Hop Brook behind the library, for the establishment of a small park.

5. Several letters from concerned Sudbury residents expressing their views both in favor of and against the possible presence of a Dunkin Donuts at this location.

Marylyn Benson, of Goodman's Hill Road and Permanent Landscape Committee, suggested that the Committee would like to add a condition to the vote, if the Selectmen should vote in the affirmative, that a permanent right-of-way be established across the site from Rt. 20 connecting to an existing path to Town-owned property behind the library. The establishment of this walkway along Hop Brook might, in the future, connect to a park in the town-owned property behind the library. This area was pointed out on the site plan. Mr. Ey agreed that a footpath was a possibility and it has been discussed with the Conservation Commission. It is the applicant's intent to keep the area as open as possible to pedestrian traffic to the downtown area, which they feel may also help reduce the traffic in the area.

Mr. Lael M. Meixsell, Chairman of the Planning Board, reported that he has learned of a similar situation that the Selectmen in Lexington had to address, and that the Sudbury Selectmen should know about. In 1992, the town of Lexington denied Dunkin Donut site plan #4/225, with the reason being traffic problems. At this hearing, according to Mr. Meixsell, there was greater support for the proposal than opposition, but the hearing cited traffic safety as an issue and the Town denied the proposal on that

basis. Mr. Meixsell suggested if the Board desired, it could request this information from the Board of Selectmen in Lexington.

Mr. Ralph Tyler, 1 Deacon Lane, asked if the Lexington example was for site plan approval or a true special permit approval. He asked for this differentiation because it would make a difference if it was a site plan review versus a special permit review, denied because of traffic issues, because Sudbury bylaws only call for a site plan review in this instance, according to Mr. Tyler. Mr. Tyler explained that the letter received by the Town Clerk from the Attorney General's office regarding approval of Sudbury's Bylaw cautioned about the bylaw being applied as a true special permit, instead of a site plan review, which is what Sudbury can do. He gave the example of allowing a drive-through at a restaurant as being a special permit, but as Mr. Tyler understands the law, Sudbury has very limited review powers. Sudbury's site plan reviews require that everyone in the business district go through this process, whereas, a special permit is required only if something special is being requested. With regard to the difference between site plan reviews and special permits, Mr. Tyler stated that he believes that special permits are more easily denied, as compared to site plans, which are more limited as far as meeting certain standards for imposing reasonable conditions on the applicant.

Mr. Tyler explained that the Sudbury Zoning Bylaw states that a drive-in restaurant is allowed in the business district, and that this was the decision of the Planning Board and the Town because no action has been taken to prevent it. Chairman Drobinski pointed out that zoning bylaws are not made by the Planning Board, but rather Town Meeting.

Ms. Wilhelmina O'Brien Dole, Longfellow Glen, commented that she has worked in the Mill Village area for several years and knows it well. She said she has had first hand experience at seeing the traffic congestion in the area. She stated her disappointment with how the area has changed from its natural beauty, to being all built up without regard for the natural limitations which once occurred there. Ms. Dole further commented that a fast food restaurant such as Dunkin Donuts would mean a constant flow of traffic in and out of the restaurant, because people do not stay at fast food restaurants. This would create backups and she is very much against approval. She thinks because it is a hidden area off the road that it may be an attraction for certain people and possibly trucks to loiter.

Mr. Steve Wilcox, Canterbury Drive, a lawyer in Boston, questioned the legality of allowing a drive-thru restaurant on this piece of property which includes three zones, two of which (the residential and the industrial) expressly prohibit such a structure. He believes this should not be a site plan hearing, but a zoning variance hearing. In connection with what Mr. Tyler commented on with regard to site plan approvals, Mr. Wilcox recognizes the difficulty in connection with a site plan proceeding where there is a use that is permitted as of right, and the difficulty inherent in prohibiting that use.

Mr. Wilcox does not believe the Selectmen to be powerless, but has the sense that they regard their legal position as very fragile--that somehow they have no choice.

Mr. Wilcox's second concern is that, under the site plan rules, the Selectmen have to make an affirmative finding that the site plan in question provides for convenient or safe movement of traffic on or adjoining the site. He stated his opinion as follows: Because of all the concerns expressed with regard to traffic, there is a very significant question as to whether the movement of the traffic is safe. The Selectmen have a duty to make this finding on this point and also that the plan comply with all provisions of the bylaw which relates to the question of allowing the structure to be built on property that is

supported by a residential and industrial zone that prohibits this use. Without the inclusion of the residential and industrial portion of this property, this structure could not survive, continued Mr. Wilcox. There is much case law that specifically states that a district cannot be actively used that prohibits affirmatively the use in question.

In conclusion, Mr. Wilcox believes the Board should have very strong and compelling legal grounds to reject this proposal, based both on traffic concerns and safety and on the grounds that this should be the subject of a zoning variance and not a site plan proceeding. In addition, because of the perceived zoning variance problem in this site plan proceeding, Mr. Wilcox believes the Selectmen should not vote in the affirmative.

Selectman Blacker concurred with Mr. Wilcox on many points except the zoning issue. Mr. Blacker stated that the zoning issue in and of itself is not the purview of the Board of Selectmen. In Mr. Blacker's years of experience on the Board of Appeals, where several commercial plans were presented, the issue was always where to go first--obtain a variance or obtain approval of a site plan. Granting of a site plan does not sanction zoning. Mr. Blacker stated he interprets the bylaws differently from Mr. Wilcox with regard to the traffic issue and the different zones involved. Mr. Blacker questioned if Mr. Wilcox would have the same concerns if the property were all zoned for business.

Mr. Wilcox read Footnote #9 from a Prudential Case, which in essence, states that the Courts have recognized that boards are not completely devoid of regulatory power. Mr. Wilcox again stated his feeling that he does not understand why everyone's time is being wasted during a site plan approval, when in fact, what is needed is a zoning variance. Mr. Blacker replied an applicant would have wasted a lot of money if they come before the Selectmen for a site plan approval and then to the Board of Appeals for a variance only to have it be denied. Mr. Wilcox asked, if Mr. Blacker believes the Selectmen have no power to deny a site plan approval, why would an applicant then go to a variance zoning proceeding, where in most cases, a denial of a variance is almost always upheld by the courts. Selectman Blacker noted that this is Mr. Wilcox's opinion and that he does not believe the applicant in question needs a variance.

Chairman Drobinski interjected by saying that this hearing is not the place to argue a legal case. He added that he does not believe the Selectmen are feeling powerless, as Mr. Wilcox suggests, but rather are proceeding to ensure sound legal standing and to protect the Town regardless of what decision is reached. He thanked Mr. Wilcox for his opinions saying they are very valuable.

Mr. Myron Fox, representing the applicant, responded to the Lexington matter mentioned, saying that Sudbury does not have Lexington's zoning map, nor do they have Sudbury's zoning bylaws. Mr. Fox outlined the three ways that the Town of Sudbury addresses a piece of land for development:

- 1) Obtain a variance from the Board of Appeals because the bylaw states you cannot do whatever on the land.
- 2) Obtain a special permit from the Board of Appeals which happens when the bylaw says you can do whatever on this piece of land if you go to the Board of Appeals and obtain a special permit and meet certain conditions.
- 3) When the zoning bylaw does not prohibit you nor does it require a special permit, but allows you to do whatever on the piece of land as of right, the direction is to obtain a building permit from the

Building Inspector, which does not exclude the Town regulations, i.e. site plan approval, Conservation Commission conditions, etc.

In answer to Mr. Wilcox's question, Mr. Fox stated that the petitioner does not need a variance in this situation. He noted that, a year ago, the petitioner approached the Building Inspector, the only zoning enforcement agent in Sudbury, and told him of his plans in detail. He stated that because of the Building Inspector's careful analysis, and relying on precedent in Sudbury with regard to septic systems on residential property for business uses, and after the Building Inspector reviewed the Town zoning bylaw and case laws of the Mass. General Laws, the Building Inspector responded in April of 1992 affirmatively. Because of this decision by the Building Inspector, Mr. Fox noted, the applicant proceeded to spend more than \$30,000 on plans to accommodate the various concerns of Town officials. Mr. Fox believes the Building Inspector acted properly under the law despite what his personal feelings might have been.

Mr. Fox mentioned the *Y. D. Dugout, Inc. v. Board of Appeals in Canton* as being the lead case on the issue, and included more current cases such as the Prudential case. He feels that all cases reach the same conclusion: The Selectmen cannot use a special permit site plan process or any other regulation to prohibit an applicant from carrying on a use that is permitted as of right by the zoning bylaw as voted by Town Meeting. With regard to the Prudential Case and Footnote #9, previously mentioned by Mr. Wilcox, Mr. Fox explained that the reference relates to nuisances, which Mr. Fox explained on February 8, 1993. He noted that the courts have been very strict in defining what a legal nuisance is.

Mr. Fox cautioned that if the site plan is denied by the Selectmen, the Town is giving up what will probably be its only opportunity to impose reasonable conditions on the approval, because Mr. Fox believes that the courts will overturn any denial on the current law and may impose no conditions. He said Mr. Blacker was correct in stating that the Selectmen do not have the power, when the zoning bylaw states something can be done as of right, to prohibit it through a site plan process.

With regard to an article in one of the local papers relative to a conversation with zoning expert Donald Schmidt, Mr. Fox stated that Mr. Schmidt had stated a septic system can be placed on residential land to serve a business because it would be a passive use. Mr. Fox commented that this action has been upheld in the courts, and the Building Inspector has stated that this is a passive use.

Mr. Fox submitted the following written documentation relative to this decision:

1. Communication dated March 6, 1984, from previous Building Inspector, Joseph E. Scammon, regarding the septic system at the Coach House Inn and stating no that no permit was necessary from the Board of Appeals.
2. Communication dated April 19, 1992, from Bruce Ey citing all the issues that have been discussed and asking for the Building Inspector's response.
3. Communication dated December 22, 1992 from Bruce Ey asking for confirmation of the Building Inspector's response to Mr. Ey's letter dated April 19, 1992.
4. Communication dated January 8, 1993 from Building Inspector to Mr. Ey confirming Mr. Ey's understanding of their April 19, 1992 conversation to be correct.

5. Communication dated February 16, 1993 from David Ader to the Building Inspector requesting the Building Inspector's ruling on the legality of a septic system to be used by a business located in both a commercial and limited industrial zone, when that septic system is located in a residential zone.

6. Communication dated February 24, 1993 from Building Inspector to David Ader responding to Mr. Ader's request for the ruling in his February 16, 1993 communication.

7. In addition, Mr. Fox noted that the Board asked what the use variances Hilco had on the property. Mr. Fox submitted a copy of a decision of the Board of Appeals, dated November 29, 1983, and to his knowledge it was the first use variance granted for storage of pipes and materials in the residential zone. It was renewed several times and Mr. Fox is also submitting a copy of the last renewal dated March 7, 1989.

8. In addition, a legal memorandum dated June 4, 1982 from Town Counsel Paul Kenny to the Board of Selectmen is being submitted. This memorandum is a request from the Board of Selectmen to see what latitude they have in granting or denying site plan applications.

On the question of the use of a septic system located on a residential piece of property to support a business use, Mr. Steve Wilcox stated that this issue would be a case of first impression in a court, and that it is not a settled matter of the law to put a septic system in a residential zone to support a business use.

Mr. Wilcox stated that he questions the validity of what Mr. Fox believes--that the project is permitted as a matter of right. In addition, Mr. Wilcox questioned if a proper zoning review is one that is exercised by one person, and if anyone has looked at whether a zoning variance should be obtained by going to the Board of Appeals.

Mr. Richard Brooks asked if all architectural renditions and signs have been presented. Chairman Drobinski noted that site plan approval would include all of these things.

Mr. Kirby suggested the Board take advantage of the HMM traffic model, and wondered if the Town had any intention of doing so. Chairman Drobinski reported that the equipment is inoperable at this time. Mr. Kirby commented that traffic studies on Rt. 20 have indicated that it is not the width of the road, but the restriction of the flow of traffic that may cause problems. Mr. Kirby continued that this section of the road is the same width as the business district used to be and that the highest volume of traffic is during peak time. This being the case, it is very important that there be breaks in the traffic, but Mr. Kirby believes that people will try to break into the traffic thus disrupting any breaks that may exist because of the lights. He believes the traffic in and out of this site will interfere with the flow of traffic in the morning when people are trying to get to work. The curviness of the road and site distances also present a major safety issue, he said.

Mr. Eric Elfman, Willis Road, stated he supports a Dunkin Donuts, but not a drive-through, because a drive-thru is really not in keeping with the Sudbury Village Concept. He suggested that the zoning bylaw is an issue here. To the extent that the Board of Selectmen feels it is necessary to encourage business in Town to expand the tax base, Mr. Elfman believes that it will cost the Town more in the long run both in terms of additional mitigation costs as well as costs to maintain the aesthetics of the area.

Because this is such a big policy issue with the Town, Mr. Elfman believes the Board of Selectmen should reconsider the whole variance issue and litigate it.

Ms. Winifred Grinnell stated she had counted all the curb cuts on both sides of Rt. 20 in the same vicinity as the proposed Dunkin Donuts site which totaled 7. She believes that there are already enough curb cuts on the north side of Rt. 20, and to add another one, particularly a fast food exit and entrance, is not a good idea. Her concern is that a gridlock could easily occur on this particular stretch of Rt. 20 and if a fire should break out at any location along this stretch, it could be a very dangerous situation.

Ms. Grinnell also mentioned that a marked pedestrian walkway along Rt. 20 would be in the best interests of everyone. She has a very difficult time making a left turn going east on Rt. 20 from her street and believes that it would only get worse if a Dunkin Donuts is allowed at this particular location.

Mr. Tyler suggested that the Planning Board could have changed the bylaws a few years ago to prevent what is being proposed tonight, and that this is a good reminder for the Town to work out a plan for zoning to include what the Town really wants to have happen with the different parcels along Rt. 20. Chairman Drobinski reminded that the Planning Board is not responsible for changing the bylaws, but that it is Town Meeting.

Ms. Dole reiterated once again her concerns for the area, citing the fact that there is a liquor store nearby and the fact that the Dunkin Donut facility will sit back off the road possibly attracting a crowd or a situation that is not healthy. She believes the power to change the laws are in the people's hands, and it is up to the people to ask for these changes for the benefit of the community.

Chairman Drobinski responded that he does not believe the existence of a Dunkin Donuts Restaurant would change the social fabric of the Town.

With regard to previous conversation relative to a different entrance and exit for the proposed facility, Mr. Drobinski asked Mr. Ey what the status was. Mr. Ey responded that he has met with Town Engineer I. William Place along with their traffic consultant to examine the potential areas to reduce traffic at the entrance. The possibility of entering at MacKinnon's is not a workable solution, because of the septic system situation. They also discussed creation of a third lane with the State, but the width requirements are not what they need to be to strike a third lane. The one potential improvement was a shared entrance on Dr. Sorin R. Marinescu's property. Dr. Marinescu's has not agreed to do this at this time. If this possibility should be agreed upon, it would require a sharper curb cut for which they have received an "OK" from the State Highway Department. Also discussed with Mr. Place was the possibility of completing a traffic study and a scope for this. Mr. Ey believes that, even though there are no mitigating measures, a study should be done to determine what the change in the level of service might be to this area. Mr. Place agrees that a study should be completed, according to Mr. Ey.

A scope of service is available, but the study will not be available for about two weeks. The study would include peak hour counts, and address these issues, noted Mr. Ey, but will not be compatible with the Town's XNet model as asked by Chairman Drobinski. Mr. Ey contends that there are no mitigating measures, and questions what the study will prove. Chairman Drobinski stated that in considering approval, the Board has receipt of much information, but does not have sufficient data with regard to what the impact of the level of service would be on Rt. 20. The State has been questioning the

Town up and down Rt. 20 to look at the level of service--the Town has had to convince the State that it would take care of traffic mitigating issues on its own.

Chairman Drobinski expressed his own opinion that he would like to know what, if any impact on the level of service there might be before he could approve the site plan. Mr. Ey stated that if it is the decision of the Board to request this study, then they will proceed with it. The scope of service has been discussed with Mr. Place, and according to Mr. Ey, Mr. Place is satisfied with it.

Selectman Blacker asked what the scope of work would include. Mr. Ey stated that peak traffic hour volume will be studied on Rt. 20 in the vicinity of this site, presentation of trip generation estimates at Dunkin Donut sites based on other Dunkin Donut sites, and the ITE Trip Generation Data Manual. A comparison will be made with other similar Dunkin Donut sites with a drive-thru, comparing volume of traffic that goes by that site and the turning movements in and out of a site.

Mr. Blacker questioned that this study would tell them what they already know, and does not believe the money should be spent if the study does not add additional information. Chairman Drobinski noted it would change his opinion as to whether he would require a no left hand turn exiting the site, in addition to what the impact may be and what potential mitigation measures might be advisable.

In addition to the above, Mr. Ey explained that additional evaluations will be made relative to available gaps in the traffic, service expected at the driveway intersection, site distances of the driveway, and an assessment of possible alternatives of mitigating measures, which would be done by an independent consultant.

Selectman Cope asked if a traffic study would measure the safety issues involved, and commented that she does not see how it could. Mr. Ey offered the video that was taken of this site during a peak traffic hour for Mrs. Cope's review saying that every car stopped at the light went through on one change.

Ms. Grinnell asked when the last traffic study was done of Rt. 20. Selectman Cope noted that it was about 8 years ago in August. Mr. Drobinski stated that the State also has done periodic traffic counts. Mr. Dick Brooks responded he did not believe the traffic in this area is as congested as it was two years ago.

Ms. Grinnell commented that she thinks she read in the paper where people are not shopping on Rt. 20 because of the traffic congestion. She noted that if people encounter traffic congestion on Rt. 20, they find alternate roads off of Rt. 20. She stated she likes to shop in Sudbury, but knows many people who will not shop in Sudbury because they do not want to travel on Rt. 20.

Chairman Drobinski asked about the legal issue of the side yard setback relative to the stairway access to the professional building located to the east. Mr. Ey stated it has not been resolved as yet, but it is something like a "good neighbor policy" act on the part of Dunkin Donuts, and he will check with the Building Inspector.

Mr. Myron Fox remarked that the question came up as to how one person can be responsible for the zoning issues, and he explained that the Town has allowed it and it is written in the bylaws.

Selectman Cope stated, with regard to Mr. Fox's claim that the petitioner has spent a lot of money based on the reading from the Building Inspector, the fact is that the petitioner knew that the zoning reading was not black or white and in the beginning there were a lot of discussions, including with Town Counsel, that Mr. Hepting was a long time making his opinion known. She said the Board has received several letters requesting the Board deny this application for traffic and safety reasons and these comments have also come from many boards and committees. There have been only a couple in support. She stated that the Planning Board's additional comments received tonight closely reflect her recommendations for this application.

With regard to the zoning issues, Selectman Cope stated that she, too, has spoken with the State zoning consultant, Donald Schmidt, relative to an allowed use of a septic system in a residential zone for business use if it is considered a "passive" use. The consideration of it being a "passive" use still has not been determined by the courts, noted Mrs. Cope, as stated by Mr. Schmidt. He could only guess as to what a ruling might be.

In discussion with other Towns through different organizations, Mrs. Cope discovered people are very familiar with this particular site and believe that it is not a good location for such a proposal. She believes that the vehicular and pedestrian circulation requirements have not been met and that the proposal is unsafe; truck use could be a hazard with regard to the circulation at the site and the single access as well as the location of the access are serious concerns. Mrs. Cope noted that the Police and Fire Departments have concerns with regard to traffic safety at this location; turning movements in particular are a concern.

Mrs. Cope stated she cannot accept Mr. Ey's personal observation of the traffic at this location, and does not agree that a Dunkin Donut shop does not initiate traffic trips. She was a volunteer counter during the HMM traffic study and knows the situation is bad. The Town's bylaw requires minimum impact of the use of the property on the land, and Mrs. Cope believes there would be a maximum impact, particularly relative to a general degradation of traffic flow, quality of life, and safety in this area.

As a Board member, Mrs. Cope believes her duty is to uphold the purpose of the bylaw; paraphrased, she believes it is her responsibility to protect, among other things, the safety, convenience, and welfare of the townspeople, to improve and beautify the Town, and to stabilize the value of real estate.

In analyzing the bylaw, Mrs. Cope stated that the basic requirement reads that no parcel of land in any district shall be used for any purpose other than that for which the district is established by this bylaw, which would disclaim the applicant's interpretation that a drive-thru restaurant is an allowed use in an industrial zone. Mrs. Cope interprets the requirement to mean that no drive-thru restaurant is permitted in a full industrial district and in fact, would require a variance. Mrs. Cope further pointed out that prohibition of drive-thrus is also cited under "Enclosure of Uses" p. 130 and it is obvious that all three (3) zones will be needed to conduct a drive-thru donut shop business. Mrs. Cope concluded that the business zone, though it permits drive-thru restaurants, cannot be utilized for this purpose without the use of the other two (2) supporting zones on the parcel.

Basic Requirements states that no parcel of land in any district shall be used for any purpose other than that for which the district is established by this bylaw. Further bylaw analysis states that no drive-thru is permitted in a full industrial district. Mrs. Cope believes it would require a variance. Prohibition

of drive-thrus is also cited under "Enclosure of Uses" p. 130 and it is obvious that all 3 zones will be needed to conduct a drive-thru donut shop business. The Business Zone, though it permits drive-thru restaurants, cannot be utilized for this purpose without the use of the other 2 supporting zones on the parcel, concluded Selectman Cope.

Selectman Cope stated she disagrees with Building Inspector John Hepting with regard to what is allowed on the property. She interprets a septic system to be an active rather than a passive use because of constant degradation from constant flushings, and even pumping in this case, (active process) into virgin land. She offers her opinion or interpretation in the absence of any case law.

Since two out of the three separate zones prohibit the proposed use, and it will require multiple zone use to fully utilize a drive-thru, high-traffic business as proposed, Selectman Cope feels that in the absence of sufficient evidence that the proposed use will not adversely affect the traffic congestion, she cannot grant special consideration. Selectman Cope opined that the application is not consistent with uses permitted in the district. Mrs. Cope stated she sees failure to provide sufficient evidence that the proposed use will not adversely affect traffic congestion, and resultant significant safety issues and degradation of quality of life for surrounding residential and business neighborhoods, as reasons not to grant special consideration.

Selectman Blacker informed that he disagrees with Selectman Cope's analysis. He agrees with her concerns about traffic and other issues that she raised, but he agrees with Mr. Fox in that the Board needs to deal within the four corners of the Town's Bylaws. In reading the site plan special permit issue, Mr. Blacker stated that nowhere has the applicant failed to meet his obligation. With regard to the issue of zoning, it is to be heard by the Building Inspector/ZEA, the Board of Appeals, or the Courts, but it is not for this Board to judge the decisions made by the Building Inspector/ZEA.

Mr. Blacker believes that the site provides for convenient and safe vehicular movement, and that the locations of the driveways are appropriate. With regard to the septic system being on residential land, Mr. Blacker does not know what the answer is because, as has been stated, there is no definitive answer on it, but it is not a site plan issue, it is a zoning issue and not under the Board's jurisdiction. Selectman Blacker noted that all the statements made by Selectmen Cope really do not belong before the Board, because the Board does not have the authority to deny this. Mr. Blacker challenged Mrs. Cope to find an area where the applicant has not complied. Mrs. Cope began to demonstrate her conclusions.

Chairman Drobinski stated he is not sure it is appropriate for Selectmen Cope and Blacker to continue with this discussion. The vote required is unanimous and Mr. Drobinski commented he could tell by Mrs. Cope's comments that her vote will probably not be in the affirmative. He asked if Selectman Cope and Selectman Blacker wished to continue their discussion. Mr. Blacker asked if Mrs. Cope would change her mind if how she interpreted the bylaw turned out to be incorrect. Mrs. Cope did not answer and Mr. Blacker suggested that if a decision has already been made with no chance of changing it, it would be better to do a motion now, than have the applicant go to further expense for the traffic study.

Chairman Drobinski stated that whatever decision is reached, the Board wants it to withstand whatever challenge that will come forth. Mr. Blacker stated he does not believe the Board has a strong case if it denies approval. Mr. Drobinski stated he did not wish to cut off any debate between Selectman Cope and Selectman Blacker, and asked if the Board was ready to make a motion.

Selectman Cope stated she could put the burden of proof on the applicant, but she is not sure this would change her impressions of her interpretations of the bylaw. Chairman Drobinski noted that whatever motion is made, will require Town Counsel to prepare a vote, and the vote will be based on the decision.

On motion by Selectman Cope, it was

VOTED: To deny approval of Site Plan No. 92-316, application received November 20, 1992, 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-thru 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.

(Chairman Drobinski, in favor; Selectman Cope, in favor; Selectman Blacker, opposed.)

Special Ballot - Override

Selectman Blacker noted that, in conversation with a member of the school committee, the question was asked what the Board would recommend regarding the possible school override--should it be included on the Town Annual Election ballot or be on a separate election ballot. Selectman Blacker stated he suggested that, since it mainly deals with the schools, that the schools should make the decision. It was noted that the general consensus by the School Committee was to have a special ballot for the possible override after Town Meeting.

Dog Officer

Selectman Cope suggested a package be put together with regard to the handling of itinerant Town dogs. This may work on a temporary basis, noted Mrs. Cope, and she suggested raising the fees to fund it. Mr. Thompson noted he believes the fees are as high as they can go under the statutes. Mrs. Cope explained that both Ms. Adelson and Ms. DeWallace will have to be appointed "Emergency Animal Inspectors" by March 1, 1993, because of the rabies animal scare. Ms. Adelson does not want to deal with rabid raccoons. Also requested, was that Ms. Adelson wear an official "patch" to show her status as a dog officer.

Loring School

Selectman Cope asked when the Board will know what the value of the property is and what the timetable is with regard to the repairs that need to be done at Loring School. Mr. Thompson stated he would try and work on it.

Interstate Spill, Nobscot Road

Selectman Cope asked that the Board consider what, if any action to take because of the leakage that has occurred, and the fact they are denying responsibility for the leaked gasoline. Chairman Drobinski stated that to know the various components is important in determining responsibility and that they should be documented in the report. Mr. Drobinski further believes that the State will be in touch with this situation.

Veterans Agent

Selectman Cope asked what the Town's legal responsibility is for a veterans agent. The Board concurred that Ms. Hillery is doing a good job as veterans agent. With regard to her salary request, Mr. Thompson stated that he believes Ms. Hillery is going to Town Meeting.

Design Review Board - Parameters

The Board acknowledged receipt of a copy of the bylaw which lists the parameters of the Design Review Board, dated 1991. Selectman Cope requested an expansion of the duties and responsibilities of the members serving on the Design Review Board be placed on the Warrant for the next Town Meeting, since it is too late for inclusion on the 1993 Warrant. Mr. Thompson responded he would do so.

Chapter 33, Acts of 1991 - Mass. Highway Department

In response to a communication dated February 17, 1993, from District Highway Director Peter J. Donohue relative to reimbursement of funds for road improvements, it was on motion unanimously

VOTED: To sign the "Memorandum of Agreement", from the Mass. Highway Office of the Commissioner, for the second apportionment of Chapter 33 of the Acts of 1991, as outlined in a communication dated February 17, 1993.

Landfill Budget - Revote

It was on motion unanimously

VOTED: To approve the Landfill Enterprise Fund Revised Budget, dated February 25, 1993 as follows:

Total Enterprise Fund Request FY94	\$370,893
Indirect Costs	73,507
Estimated Receipts	444,400

An adjustment of \$1000 has been made with regard to indirect costs.

Atkinson Pool Enterprise Fund - Budget

It was on motion unanimously

VOTED: To approve the adjusted Atkinson Pool Enterprise Fund Budget, dated March 1, 1993, showing a FY94 request of \$333,900 from \$331,107.

Maynard Rod and Gun Club - Agreement

With regard to a written agreement, dated February 23, 1993 relative to Hepting, et. al. v. Maynard Rod and Gun Club, Middlesex Land Court No. 128640, Secretary Thompson suggested that

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Selectman Blacker and Town Counsel Paul Kenny meet with Mr. David Berry, President of the Rod and Gun Club to review the agreement.

Selectman Blacker stated he would rather meet first with Mr. Berry, to set the tone and express his positive feelings about the agreement.

There being no further business, the meeting was adjourned at 11:30 p.m.

Attest: _____

Richard E. Thompson
Executive Secretary-Clerk