

IN BOARD OF SELECTMEN
TUESDAY, OCTOBER 10, 1995

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

The statutory requirements as to notice having been met, the meeting was convened at 7:30 p.m. in the Lower Town Hall.

Utility Petitions 95-31 - Hudson Road and 95-32 - Peakham Road

The Board convened a public hearing to consider Utility Petitions 93-31 and 95-32 from Boston Edison Company and New England Telephone and Telegraph Company.

Interim Town Manager Thompson noted that all appropriate abutters had been notified and approval had been recommended by the Inspector of Buildings and the Wiring Inspector under date of September 28, 1995.

The Board acknowledged receipt of a letter from Boston Edison Company and New England Telephone and Telegraph Company, dated September 8, 1995, requesting a Grant of Location to install one (1) stub pole 6/99S Hudson Road, Sudbury, for the purposes of providing support to existing pole 6/99.

The Board also acknowledged receipt of a letter from Boston Edison Company and New England Telephone and Telegraph Company, dated September 14, 1995, requesting a Grant of Location to install approximately 34 feet of conduit at pole 1/135 Peakham Road, Sudbury, for the purposes of providing an underground electric service to a new home on Lot 4A Peakham Road, Sudbury.

Chairman Drobinski noted that there were no abutters present and asked if there were any comments from the Board.

There being no discussion, it was on Chairman Drobinski's motion unanimously

VOTED: To approve Utility Petition 95-31 from Boston Edison Company and New England Telephone and Telegraph Company for permission to install one (1) guy stub pole, shown on Boston Edison Company "Plan of: Hudson Road, Sudbury," dated June 13, 1995, to be owned and used in common by them, and for such other fixtures including anchors and guys as may be necessary to sustain or protect the wires of the line, upon, along and across the following public way of the Town: Hudson Road - northerly side approximately 50 feet east of Harness Lane.

And unanimously

VOTED: To approve Utility Petition 95-32 from Boston Edison Company and New England Telephone and Telegraph Company for permission to install approximately 34 feet of conduit at pole 1/135 Peakham Road, Sudbury, shown on Boston Edison Company "Plan of Peakham Road, Sudbury," dated September 8, 1995, and New England Telephone and Telegraph Company, Plan 95-16, dated September 27, 1995, under the following public way of the Town: Peakham Road - northwesterly approximately 580 feet north of Boston Post Road, a distance of about 34 feet - conduit.

Site Plan Special Permit Application 95-322 for Sudbury Lumber

The Board again opened a hearing, continued from September 26, 1995, on the application of Sudbury Lumber Company, Inc. for a Site Plan Special Permit for construction of an addition at the rear of the existing store containing a 37' x 40' office, a 10' x 16' hardware receiving and storage area, and a 5' x 10' open loading dock, on property located at 28 Union Avenue, Business District #5 and Limited Industrial District #6, owned by Robmar Realty Trust, Sudbury.

Chairman Drobinski apologized for the fact that Mr. Morgan was present at the continuation of this public hearing on September 26, 1995, but that because Mr. Drobinski was not present, the hearing again had to be continued to tonight. The Interim Town Manager informed the Board that Mr. Morgan had entered into a Gentleman's Agreement to work with Town Engineer I. William Place to address the issue of drainage as recommended by the Conservation Commission. Selectman Clark stated that since the only question with this Special Permit was drainage, Interim Town Manager Thompson has prepared a draft vote.

At the close of the discussion, it was on motion unanimously

VOTED: To grant a Site Plan Special Permit to Sudbury Lumber Co., Inc., in accordance with application #95-322, for construction of an approximate 1640 sq. ft. addition and 50 sq. ft. open loading dock at the rear of the existing store and revision of parking, for property located at 28 Union Avenue, Business District #5 and Limited Industrial District #6, owned by Robmar Realty Trust, Sudbury, as shown on a plan entitled, "Mullen Lumber Co. Sudbury, Mass. Addition to Storage Building Union Ave. Sudbury, Mass. Site Plan, date issued: Nov. 14, 1980", and additionally labeled, "Plan Modified by Colburn Engineering, Inc. on 6/22/95 to Show Proposed Office Additions and Re-located Parking Spaces. Additions and changes made 7/24/95", and also on Floor Plan and Elevations 10073 pages 1-5; subject to compliance with all governmental laws and regulations including, but not limited to, zoning, building and health laws and regulations, and further subject to the following conditions:

- 1) an Order of Conditions under the Wetlands Protection Act by the Conservation Commission, if applicable;
- 2) approval of the drainage system, including traps, catch basins, and periodic maintenance as required by the Town Engineer; and drainage improvements in an attempt to work toward Best Management Practices shall be done as mutually agreed upon by the Town Engineer and property owner;
- 3) placement of all utilities underground;
- 4) extension of Sudbury Water District lines to the site by the owner; no wells to be installed on site;
- 5) the grant of an earth removal permit by the Earth Removal Board, if applicable;
- 6) approval of signs or advertising devices as required under applicable provisions of the Zoning Bylaw;
- 7) no storage or use of chemicals on site except in conformity with guidelines and requirements of the Board of Health and the Fire Chief; the owner or operator of the site shall comply with the Massachusetts

Oil and Hazardous Material Release Prevention and Response Act, G.L.c. 21E, as amended, and all regulations issued thereunder;

8) approval of the final landscaping plan by the Board of Selectmen, to include street trees as recommended by the Planning Board in its communication of August 25, 1995;

9) no use of salt or chemical de-icers on site;

10) if applicable, the grant by the owner to the Town of a restrictive covenant to run with the land, governing, restricting or prohibiting the following which shall conform to requirements of the Board of Health, Town Engineer and/or Conservation Commission as appropriate:

- a) the disposal or removal of effluent and wastes generated on the site;
- b) the use of salt or chemical de-icers on the site;
- c) the installation by the owner of one or more monitor wells on the site including the Town's right of access for periodic testing and monitoring thereof, or another protective device as may be required by the Board of Selectmen;

11) pursuant to Zoning Bylaw Article IX (V,A,8) Reserve Parking Spaces, the Board has waived 29% (11 spaces) of the required 38 parking spaces; thus 27 parking spaces shall be delineated with the remainder shown as reserve parking areas.

12) the grant of an easement to the Town along Union Avenue for walkway purposes;

13) submission of an "as built" site plan - any change in the physical condition of the site, including changes in the location or design of structures or systems, following approval of the site plan, will require approval of the Board of Selectmen;

14) no building permit shall be issued until certain items noted above (1, 2, 8), as specified by the Board, are complied with;

15) no occupancy permit shall be issued until certain items noted above (3, 4, 5, 6, 7, 10, 12, 13), as specified by the Board, are complied with.

This Special Permit shall lapse if construction and a substantial use thereof have not commenced except for good cause within one year from the effective date of said Permit.

Site Plan Special Permit Application 95-323 for Middlesex Savings Bank

Present: Bruce Ey, of Schofield Brothers of New England, Inc.

The Board again opened the hearing, continued from September 26, 1995, to consider the application, dated August 15, 1995, and received August 16, 1995, of Middlesex Savings Bank for a Site Plan Special Permit for construction of a 262 sq. ft. addition to the front of the existing building located at 19 Concord Rd., in Business District #1, owned by MacKinnon Family Realty Trust, Sudbury.

The public hearing was advertised in the Sudbury Town Crier on September 7 and 14, 1995. Parties of interest, being abutters within 300 feet according to the Assessors, were provided with

written notice by first-class mail. Additionally, the Planning Boards of Acton, Concord, Lincoln, Maynard, Framingham, Marlboro, Stow, Wayland and Hudson were provided written notice by first-class mail.

The Board was in receipt of the following:

1. Accompanying the application:
 - a. Letter dated July 26, 1995 from Michael S. MacKinnon authorizing Schofield Brothers and/or Middlesex Savings Bank to proceed with the application for Site Plan approval.
 - b. Copy of "Site Plan of Land in Sudbury, Mass." dated August 11, 1995, No. 18530, prepared for Middlesex Savings Bank by Schofield Brothers of New England, Inc.
 - c. Architectural site plan, floor plan and existing and proposed elevations, entitled, "Study - Sudbury Branch Middlesex Savings Bank Concord Road Sudbury, MA", dated June, 1995, revised July 1995, drawn by KFP Architects, Inc., pages 1-3.
2. Communication, dated August 31, 1995, from Deborah Montemerlo of the Conservation Commission stating the Commission's desire that a requirement for any new construction should be to upgrade to "best management practices" for storm water runoff design. The Commission sees this new construction as an opportunity to improve an existing condition for the benefit of the environment and for the citizens of the Town and to satisfy an obligation to the EPA. The Commission also recommended that a condition be required that prohibits the use of sodium-based deicing chemicals on site.
3. Communication, dated August 31, 1995, from I. William Place, Town Engineer, stating that a site plan that he received on August 16, 1995, from KFP Architects, Inc., dated June 1995, revised July 1995, should be revised to conform to the site plan prepared by Schofield Brothers of New England. He also stated that the Board grant a Site Plan Special Permit conditional upon the written approval from the abutter Lefebvre, since plantings, parking and construction on the south side of the proposed bank will take place on Lefebvre land. Finally, he noted that no landscaping has been proposed between the Residential District to the north and the Village Business District to the south.
4. Communication dated September 13, 1995 from Frank W. Riepe, Chairman of the Design Review Board, stating that the Board recommends approval of the Middlesex Savings Bank Site Plan as submitted, conditional upon the Selectmen ensuring that there is adequate lighting for the brick passageway between the bank and the adjacent building and that the planter along the drive-through window has sufficient volume to sustain appropriate plant life.
5. Communication of a verbal report from Fire Chief Michael Dunne, dated September 21, 1995, stating that he has no concerns relative to the proposed plan.
6. Communication of a verbal report from J. Hepting, Zoning Enforcement Agent, dated September 22, 1995, stating that the plan satisfies all zoning requirements with the exception of need for permit from Board of Appeals for an addition to a non-conforming use. Application has been made to the Board of Appeals and hearing scheduled for September 28, 1995.

7. Communication of a verbal report from R. Leupold, Health Director, dated September 22, 1995, stating he has no concerns with the proposed plan.

8. Communication from Jody A. Kablack, Town Planner, dated September 20, 1995, stating that the Planning Board voted to recommend approval of the site plan with the following conditions: extension of the grass median strip on Concord Road to reduce the width of and better define the northernmost access point and extension of the grass island between this property and the Library approximately 15 feet to the property line to better delineate that curb cut; installation of better signage delineating the northernmost access point as one-way (in) only and installation of painted arrows around the site to define desired traffic flow patterns; re-stripping of all parking spaces affected by the construction for better definition, including spaces to the rear of the building. She further stated that the Planning Board remains concerned for traffic circulation (ingress and egress) and that the Selectmen should attempt to secure agreements, covenants and/or easements with the present owners of this property for future changes to the circulation patterns, including provisions for shared access with the Library.

9. Letter from Charles and Elizabeth Lefebvre, dated September 25, 1995, abutters, stating their agreement with any improvements to the property which in their opinion will only enhance the business area at which they will be located.

Mr. Ey reviewed the site plan with the Board. He is in receipt of a copy of the letter from Town Engineer I. William Place and the conditions listed will be reviewed and if possible will be resolved with Mr. Place.

Chairman Drobinski stated that the Board has reviewed a draft vote prepared by Interim Town Manager Thompson, which incorporates many of the recommendations from Town departments, and asked if the Board had any comments on the draft as written. There were no comments and all three Selectmen recommended approval of the application, with conditions as drafted.

It was on motion unanimously

VOTED: To grant a Site Plan Special Permit to Middlesex Savings Bank, in accordance with Application No. 95-323 for construction of a 262 square foot addition to the existing building at 19 Concord Road, located in Village Business District #1, owned by MacKinnon Family Realty Trust, as shown on a plan entitled, "Site Plan of Land in Sudbury, Mass. Prepared for: Middlesex Savings Bank," drawn by Schofield Brothers of New England, Inc., dated August 11, 1995, and Site Plan and Floor Plan and Elevations, pages 1-3, entitled "Study-Sudbury Branch Middlesex Savings Bank, 19 Concord Road, Sudbury, MA" drawn by KFP Architects, Inc., dated June, 1995, revised July, 1995; subject to compliance with all governmental laws and regulations including, but not limited to, zoning, building and health laws and regulations, and further subject to the following conditions:

1. An Order of Conditions under the Wetlands Protection Act by the Conservation Commission, if applicable;
2. Approval of the drainage system, including traps, catch basins, and periodic maintenance as required by the Town Engineer; and drainage improvements in an attempt to work toward "best management practices" shall be done as mutually agreed upon by the Town Engineer, the applicant and the property owner;

3. Placement of all utilities underground;
4. Extension of Sudbury Water District lines to the site by the owner; no wells to be installed on the site;
5. The grant of an earth removal permit by the Earth Removal Board, if applicable;
6. Approval of signs or advertising devices as required under applicable provisions of the Zoning Bylaw;
7. No storage or use of chemicals on site except in conformity with guidelines and requirements of the Board of Health and the Fire Chief; the owner or operator of the site shall comply with Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. Chapter 21E, as amended, and all regulations issued thereunder;
8. Approval of the final landscaping plan by the Board of Selectmen; said plan to 1) comply with the Design Review Board's recommendation that the planter along the drive-through window has sufficient volume to sustain appropriate plant life and 2) include landscaping to the satisfaction of the Town Engineer between the Residential District to the north and the Village Business District to the south;
9. Exterior lighting to be directed away from adjacent residences and have shields, and to provide adequate lighting for the passageway between the bank and adjacent building;
10. No use of salt or chemical de-icers on site;
11. If applicable, the grant by the owner of the Town of a restrictive covenant to run with the land, governing, restricting or prohibiting the following which shall conform to requirements of the Board of Health, Town Engineer and/or Conservation Commission as appropriate:
 - (a) the disposal or removal of effluent and wastes generated on the site;
 - (b) the use of salt or chemical de-icers on the site;
 - (c) the installation by the owner of one or more monitor wells on the site, including the Town's right of access for periodic testing and monitoring thereof, or another protective device as may be required by the Board of Selectmen;
12. Submission of an "as built" site plan. Any change in the physical condition of the site, including changes in the location or design of structures or systems, following approval of the site plan, will require approval of the Board of Selectmen;
13. Written approval from abutter (Lefebvre) of all work on that property;
14. The Site Plan as shown on Sheet 1 by K.F.P. Architects shall be revised to conform to the Site Plan prepared by Schofield Brothers of New England.
15. No building permit shall be issued until certain items noted above (1, 2, 8, 13, 14) as specified by the Board, are complied with;

16. No occupancy permit shall be issued until certain items noted above (3, 4, 5, 6, 7, 9, 11, 12) as specified by the Board, are complied with;

17. This Special Permit shall lapse if construction and a substantial use therefor, have not commenced except for good cause within one (1) year from the effective date of said Permit.

Dog Complaint - Anderson/Echouafni

Present: Complainant Pamela S. C. Anderson and her two daughters of 316 Goodman's Hill Road; Dog Owners Mr. and Mrs. J. R. Echouafni of 47 Brewster Road; Dog Officer Betsy DeWallace, and Mrs. Karen Kushner of 309 Goodman's Hill Road.

The Board again opened a public hearing, continued from September 26, 1995, for consideration of the complaint, dated August 18, 1995, of Pamela S. C. Anderson, 316 Goodman's Hill Road, against two Siberian Huskies owned by Mr. and Mrs. J. R. Echouafni, 47 Brewster Road.

The Board acknowledged receipt of a facsimile transmission from Atty. Thomas C. Grassia, of Grassia & Associates, dated September 29, 1995, attorney for the Andersons, saying that he understands that Dog Officer DeWallace has found the retaining pen built by the Echouafnis to be adequate, but that the problem of the dogs getting out is more a matter of their being kept in the house from which escape is apparently a simple matter. Mr. Grassia proposed that an emergency meeting of the Selectmen be called to deal with the matter before there is a re-occurrence or that the Selectmen stand by their proposed hearing date of October 10, 1995 but that in the interim the dogs be housed at the Town Kennel until a decision is made by the Board.

Chairman Drobinski noted for the record that this hearing had originally been continued so that Dog Officer DeWallace could inspect the holding pen on the property of Mr. & Mrs. Echouafni as to its adequacy for keeping the Huskies securely contained. Since that postponement, Atty. Grassia for the Andersons had asked for another continuation to allow the Andersons to attend a funeral due to the death of a family member. All parties to give testimony were sworn in by Chairman Drobinski.

Mr. Drobinski stated that Ms. DeWallace reported to the Board that the holding pen for the dogs was fine; she said that there is nothing wrong with its construction, and opined that, if there is a problem in the future, it will be in taking the dogs from the house to the pen, not with the pen itself.

Mrs. Anderson began her testimony by saying that she would like to make a statement and also ask some questions at the end of the hearing, depending upon what the Board's decision is. Her testimony is summarized as follows: She began by saying that she regrets having to be here again tonight; what happened is not the fault of her or her family. The issue tonight is about one thing only: the dogs getting out. Ms. DeWallace stated to her on August 14, 1995, that the Town would put a restraining order on those dogs. When Mrs. Anderson asked what this order would involve, Ms. DeWallace responded that the dogs must be on their own property without exception. Interim Town Manager Thompson told Mrs. Anderson that the dogs were indeed under a restraining order and they would go (out of Town) if they were seen out again. The owners were told this too; they knew the consequences. Despite the assurances given the Andersons on August 14, 1995, the dogs did get out again. They were seen in the neighborhood during the week of September 4, 1995; Mrs. Kushner can testify to this. The Andersons' fence was torn down that week, most likely on the same day the dogs were out. The sheep were

frightened and leaned so hard up against the back of the fence as to bend it in half. According to the owners themselves, the dogs were out for approximately three hours; yet they never bothered to call the Dog Officer. Mrs. Anderson called from California to talk to the Dog Officer that day. Mrs. Anderson disputes that it is "in the nature of all dogs" to attack other animals; she has had other dogs, mutts and other breeds around her sheep and has never had this problem before; she believes that these two particular dogs have the problem, not all dogs. In February of this year they killed a rabbit which was inside an enclosed cage. Mrs. Anderson called Dog Officer DeWallace to find out what she had concluded about the effectiveness of the kennel and was informed that the kennel was not the problem.

Mr. Drobinski stated here that the Board had wanted to be sure that the kennel was adequate. He reiterated Ms. DeWallace's statement to the Board that since the pen is not connected to the house, any future problem would likely come in the transfer of the dogs from the house to the pen. Selectman Clark asked how the dogs can escape in the future. Ms. DeWallace answered that they are taken out by their owners from the house to the pen. Ms. Clark opined that, therefore, this is a "people" problem not a "pen" problem. She asked if the dogs could dig their way out and Ms. DeWallace answered that no, there was effort put into putting up a good pen.

Mrs. Anderson continued her testimony as follows: She stated that she herself had viewed the pen at the invitation of Mrs. Echouafni; she finds no problem with the pen either; it is not a huge pen, but an adequate one. However, the dogs live in the house for the most part and it is from the house that they escape. The Anderson family's sheep belong to their children; they have raised the sheep as a 4H project for four years. They are not replaceable. If no one is nearby and the dogs escape again, they will kill the sheep. One sheep is pregnant and will be probably give birth to twin lambs. These dogs are capable of running this sheep so as to cause a heart disaster or an abortion. Mrs. Anderson's child watched helplessly as she saw her sheep ripped open and a chicken pulled in half by these two dogs. These dogs have frightened a neighbor, Mrs. Kushner. She said that she and her family and neighbors have been traumatized enough. It should not be possible for this trauma to happen again. Another resident has also seen the dogs loose off and on since last March. Since August 14, 1995, the owners were informed of the consequences of their dogs getting free again. Mrs. Anderson stated that she is asking for the Board's protection; this has been an eight-week agony for her. In California she learned that the dogs were out again in her Sudbury neighborhood. She is afraid; her children are afraid. These dogs have forced down and ripped apart one of her sheep; she is afraid of what they did and of what they can do. The owners have shown that it is not possible for them to keep the dogs in; they told her on the phone that they couldn't guarantee the dogs would never get out again. They still have not paid her for damages to the sheep.

At this point, Mrs. Anderson handed to the Selectmen a copy of the total veterinary bills incurred as a result of the dog attack. She stated that a certified letter had been sent to the Echouafnis by the Andersons and another letter on September 18, 1995, but so far the Echouafnis have not paid anything. Chairman Drobinski expressed extreme disappointment that Mr. Echouafni had not honored the gentlemen's agreement into which he entered at the public hearing of September 11, 1995, to pay for the financial burden incurred by the Andersons as a result of his dogs' attack. Mr. Echouafni responded that he had received different bills from the Andersons; the amounts kept going up; an opinion he retained said that repeated follow-up visits were questionable. Since the letter the Echouafnis received said the hearing would be continued and since he had two different amounts listed for him to pay, he decided to wait and resolve this matter before the Town at the continuance; he has a check in his hand at the moment to do so. He has several neighbors and friends, children nearby and a six-week-old baby himself all of whom are

safe from harm from these dogs, since they are gentle with humans. He admits the dogs have attacked a rabbit, a chicken and the sheep, but he has taken several steps to contain the dogs. Selectman Blacker returned to the matter of the check and asked if Mr. Echouafni had it with him. Mr. Echouafni said the higher amount was \$270.91 and he brought a check for that amount with him. He said he wants to put this matter behind him. He also noted that they had thought the neighborhood was a residential one; not being aware when they bought their home that there were farm animals nearby. Mr. Drobinski said that neither the Board nor Mrs. Anderson are saying this was deliberate; but there is a conflict of interest with these animals and the Board is trying to do what is fair.

Mrs. Karen Kushner (309 Goodman's Hill Road) stood and testified that she saw the dogs out during the week of September 4, 1995 in the yard of Mrs. Cherau which abuts the Anderson property. She was walking her two small dogs and they were very frightened by these two Huskies. Mrs. Kushner stated that she obtained a professional opinion that dogs such as these which have already attacked animals are very hard to re-train; the only options open are to re-train them, or failing that, put them to sleep. Mrs. Kushner said that her dogs are vulnerable too. Selectman Blacker asked her if she had called the Dog Officer when she saw the dogs out and she replied that she did not. Chairman Drobinski stated that it was on the date of September 11, 1995 that the Board ruled that if the dogs got out after that date, they would be ordered from the Town, and Mrs. Kushner had just testified that she saw them out the week before the Board made the statement. Mr. Drobinski queried Mrs. Anderson as to whether she has seen the dogs out any other time and she responded in the negative.

Mr. Echouafni continued that the incident was the result of a mistake, a human error, made by his wife; it was a human error and not the dogs' fault. He stated he could bring many experts on dog behavior before the Board to testify as to his dogs' gentleness. His wife was in tears over the incident in question; she was nine-months pregnant and too tired to go out with the dogs that day. He stressed that he and his wife are willing to do anything they can to correct this matter; they have apologized to the Andersons. Mr. Echouafni stated he has given his word to the Board that he will restrain the dogs; they are always on a leash; they are kept behind locked doors; no one can open the door and let the dogs out. He stated that they are aware that the Board said that if they let the dogs get out again, the dogs must be taken out of Town. He said that Ms. DeWallace has seen how many steps they have taken to keep the dogs inside; they have gone out of their way to prevent a future occurrence.

Mrs. Kushner interjected here that the very vigilance Mr. Echouafni must maintain is evidence that these dogs are dangerous. She asked if a workman could let the dogs out inadvertently. She stated that these are predatory dogs; they have killed repeatedly. She said that a dog can get away from a human holding a leash; someone can trip and fall and drop a leash. Mr. Echouafni said that if his dogs threaten her or begin to repeat their offenses, Mrs. Kushner can go ahead and shoot his dogs. Mrs. Kushner responded that she does not have a gun!

Mr. Echouafni queried as to whether Mrs. DeWallace had felt afraid of his dogs. The Dog Officer replied that she did not. Mr. Echouafni said that his dogs are not vicious dogs.

Selectman Clark stated that perhaps the dogs are not vicious to humans, but have demonstrated that they are so to other animals.

Not wanting to side with the Huskies, but as a suggestion, Ms. DeWallace stated that if she were as afraid as the Andersons are of these dogs, she would put up a new fence; other dogs can also be a problem.

Ms. Clark responded that even if the Andersons did put up a new fence, these animals have shown that they can get in, a case in point being Mrs. Bentley's rabbit. Mrs. Echouafni stated that the rabbit cage had not been a strong one. Ms. Clark said that these dogs have torn apart a chicken, maimed sheep and yet are gentle to people--this indicates a dual nature; the letter submitted to the Board by Mrs. Anderson's veterinarian stated the opinion that if presented with the opportunity, these dogs would kill again.

Mr. Echouafni replied that he is hearing "what if" from several people at the hearing and yet he has promised that there will be no more "what ifs", since he will control the dogs to avoid the consequences. He reiterated that a mistake was made and that he and his wife are very sorry. He pledged to Mrs. Anderson and her children that he and his wife will not let the dogs get loose again. He stated that Mrs. Anderson has said that if she sees the dogs loose again, she will shoot them.

Mrs. Anderson made a closing statement: On August 14, 1995, the dog owners promised her that they would not let the dogs out again. They did get out again, and now the owners are again apologizing for a second time. When it is time to apologize for a third time, will her sheep be dead? She cannot stay home to watch the sheep at all times. Her husband is the person who made the statement about shooting the dogs; it was not her statement. Her husband is not home a great deal. This is the second time the dogs have been documented to be loose. The third time, will the owners again say it is a mistake? That they are "only human?" These dogs have proven themselves to be dangerous.

At this juncture Mrs. Anderson asked if the Selectmen had viewed the photographs of the torn sheep which she had left on Mr. Thompson's desk before she went to California. She left these photographs along with the letter from Dr. Robbins, their veterinarian. (Mr. Thompson showed the photos to the Board at this point.) Mrs. Anderson agreed that the dogs are friendly to people, but the owners have not shown that the dogs will not get out without exception. She asked why the date of September 11, 1995 is repeatedly mentioned as the date of restriction when Mr. Thompson told her that the dogs would be restricted as of August 14, 1995.

Mr. Thompson said that there has been no Board decision yet; this hearing has been twice continued and the Board will make its decision tonight as to a restraining order. He mentioned again that the Board had not been notified that the dogs were seen out during the week of September 4, 1995. Mr. Thompson clarified to Mrs. Anderson as follows: He had said that if the dogs are found outside again, they will be picked up and held until a hearing is held. The dogs cannot be sent out of Town except by decision and order of the Board. When the Board learned that the dogs had been out the week of September 4, 1995, the dogs were already back home and restrained. The plan had not been to enter the home and take the dogs out to be put in a kennel, but to pick them up off the street if so notified that they were out.

Selectman Clark stated that she had called Mr. Thompson on August 14, 1995, asking him what could be done about this case; Mr. Thompson replied that if the animals were out, the Town could pick them up and keep them until a hearing is held. She reviewed the situation as follows: On September 4, 1995, they were out, but someone must tell the Board! The Dog Officer was not called. Days later, the

Board learned of the September 4, 1995 incident. It does not matter if the dogs are out one time or ten times, any time out is a violation. Mr. Thompson stated here that there was no order from the Board during the week of September 4, 1995. Selectman Clark responded that as Interim Town Manager, Mr. Thompson could use emergency powers; the Town does have a By-Law on this issue.

Chairman Drobinski reiterated that September 11, 1995, is the date that the Board told the owners that if their dogs are out again, they will be put out of Town. Mrs. Anderson asked what if between August 14 and September 11, 1995 the dogs had killed an infant. The Board answered that the dogs would have been destroyed on the spot.

Mr. Echouafni stated that he voluntarily told the Board about his landscaper opening the door and letting the dogs out the week of September 4, 1995. Five people, two children among them, brought the dogs back that day. Selectman Blacker concurred with Mr. Echouafni that he had volunteered the information to the Board. Mr. Blacker mentioned that the Board is sympathetic to all parties, but cannot correct the damage done and must reach a reasonable decision.

Mr. Echouafni said that he and his wife will do all in their power to prevent the dogs from getting loose again. Since September 11, 1995, the date of the Board's statement to the Echouafnis, the dogs have not been out.

Selectman Blacker told the Echouafnis that if they want to keep the dogs, it will be their problem as to how to prevent the dogs' escape when they are in the space between the house and the pen. Selectman Blacker said that the Board is putting a restraining order on these dogs. Mrs. Kushner interjected here that such an order is not so different from the rules by which any other dog in Town must abide. Mr. Blacker responded that indeed it is different: these dogs must be under control 24 hours per day, and while out, must be on a leash (unlike the "under voice command of owner" allowed for other dogs). Mr. Blacker stated that he will work under the premise that the dogs will not get out again; if they are not out, they will not cause a problem. On September 4, 1995, the damage mentioned by Mrs. Anderson was to a fence but not to the sheep; Mrs. Anderson responded that this is because the animals were in a night yard, enclosed.

Mr. Echouafni quoted an attorney's opinion that a Board of Selectmen cannot have a dog put to sleep. Selectman Blacker responded by reading from Massachusetts General Laws Chapter 140, which indicates that Selectmen do indeed have this right.

Selectman Clark stated that she is familiar with Huskies; they are very intelligent and if trained well and under owner's good discipline, there is not a problem. However, in this case, human error is given as a reason for the problem. But the dogs have shown vicious propensities; three animals have been killed or bitten. If the reverse situation were true, the Echouafnis would feel the same way as the Andersons. Ms. Clark stated that she has been sufficiently shown that the Board should require the dogs to be put down or be forced to leave Sudbury or the choice on either option be given to the owners.

Chairman Drobinski asked how old the dogs are. Mr. Echouafni responded that they are two and five years old. Mr. Drobinski asked if they had been to obedience school and Mr. Echouafni answered in the negative; he said that he and his wife need obedience school, not the dogs! But since September 11, 1995, the dogs are always on a leash, a choke collar is used; there is only a one in a billion chance of the dogs' getting loose again. The Board has Mr. Echouafni's word; the Board asked that they correct the

problem and they have done so. Selectman Clark asked if the owners send the dogs out together and Mr. Echouafni answered that, no, only one dog at a time goes out. Ms. Clark agreed that two should never be brought out together. Mr. Echouafni quoted Margaret Cook, a nationally-recognized authority on the behavior of Huskies, to agree that the two dogs together will act as a pack.

Mr. Drobinski mentioned to Mr. Echouafni that the Dog Officer said the weak link is the transfer of the dogs from the house to the pen. Mr. Echouafni said that the dogs are always on a leash in this situation. Selectman Clark asked the owner if he felt that someone else's animal must be sacrificed in order for him to keep the dogs he loves. Mr. Echouafni said again that he could not reverse what has happened but that he intends for it not to happen again. Ms. Clark said that she realizes the intent of the owners to prevent future problems, but we are talking about the propensity of these dogs to be vicious. Mr. Echouafni said he did not deny that the dogs will kill a rabbit, but that Mrs. Anderson had taken the dogs off her sheep and saw that they did not harm her.

Mr. Thompson suggested bringing the hearing to a close.

Mrs. Anderson then pled as follows: She said that this is the second time she has heard the owners state that they will never let the problem occur again. On August 14, 1995, Mrs. Echouafni stated that it would not happen again. The Dog Officer stated that if the dogs got out again, action would be taken. The dogs did get out again the week of September 4, 1995. Mrs. Anderson said she is not asking that the dogs be destroyed; there is a medium ground here. It seems to her that the choices include to restrain, to remove, or to destroy the dogs. Mistakes such as those the Echouafnis admit they made cannot be made twice. Twice is once too many! A third time may see her losing all her animals.

Selectman Blacker asked Mrs. DeWallace again how big the pen is. Mrs. DeWallace responded that it an odd shape and could possibly be as big as the Lower Town Hall room. Mrs. Anderson disagreed and said it was only half the size. She disagreed with the owners' statement that neighbors brought the dogs home the week of September 4, 1995 which indicated that the dogs were only as far as the neighbors; Mrs. Kushner saw the dogs on the property next door to the Andersons. And she further stated that the owners have three dogs, not two. Mrs. Anderson said that the issue is not an honest mistake; the issue is the dogs getting out.

Chairman Drobinski stated that he does not want to see the dogs destroyed; however, if the Board banishes them to another town, that just passes the problem to the other town. He prefers permanent restraint be placed on the dogs, but if they get out again, they are "history".

Mrs. Anderson mentioned that the Board has, in the past, removed dogs from Town. Mr. Drobinski responded that, yes, the Board can force dogs out of Town, but he feels that restraining is more appropriate. Mrs. Anderson said that "out" means being off a leash. Mr. Drobinski added that all three dogs are to be restrained. He told Mrs. Anderson that he feels that restraining is the best way; the Board is trying to be reasonable.

Selectman Blacker asked that the Echouafnis pay the check for veterinary bills to the Andersons immediately. Mr. Echouafni complied.

Mrs. Anderson stated that what the Board was in the process of deciding was not enough. She queried: If her sheep are killed, but the dogs have come and gone, would the Board give the Dog Officer

permission to go to the home of the owners to inspect the dogs? Will Mrs. Kushner be able to verify the dogs' being out if she sees them? Does the Dog Officer have to actually pick up the dogs for them to be considered "out?"

Mr. Blacker thought the latter probably would be true. Ms. Clark said that, no, a credible witness would be definition enough. Mr. Thompson told Mrs. Anderson that the police could be called. Ms. Clark said that if the Board decides on a Restraining Order and if the dogs are picked up anywhere off their property, then they are "history". If Mrs. Anderson finds her animals killed and there is a credible witness that the dogs were off their property, they are "history".

Mrs. Anderson asked: If her animals are killed, may she ask the Dog Officer to verify the condition of the dogs? If a child sees the dogs, would the Town take a child's word?

Mrs. Anderson stated she was told she could call the Selectmen's Office, the Dog Officer, or Mr. Thompson directly. She responded that the dogs can come and go in minutes. She then asked if the dogs had to be seen on her property? She stated that it is very unlikely that Mrs. DeWallace could get to Goodman's Hill Road before the dogs could be gone again.

Selectman Blacker stated that he believes it is highly unlikely that the dogs will be off their own property again.

Mrs. Echouafni asked: If anything happens to the Andersons' sheep, will her dogs be automatically blamed without proof? The Dog Officer responded that if these dogs are involved in any damage to the sheep, the evidence will be all over them; they would be covered in blood and there would be no mistaking their guilt.

Mrs. Anderson said she would like it in writing that if she and/or her neighbors see the dogs out again the Board will abide by its order to remove the dogs from Sudbury even if the Dog Officer has not witnessed the dogs off their property. Selectman Blacker stated that the Board cannot rule on what has not happened yet.

Interim Town Manager Thompson again asked that the hearing be closed. After Chairman Drobinski and Selectman Blacker indicated that they would vote for restraining the dogs rather than forcing the dogs out of Town, Selectman Clark stated that she disagreed with the other two Selectmen for these reasons: because the dogs have demonstrated a vicious propensity, because they have killed a rabbit, because they have torn apart a chicken, because they have maimed sheep, because they have traumatized a whole family and a neighbor--obviously these dogs have a problem, that will not be corrected. Ms. Clark asked that the other two Selectmen define what they mean by a Restraining Order and Chairman Drobinski responded by saying: the dogs must be on a leash, or in the house, or in the pen, 24 hours per day, 7 days per week. Selectman Blacker concurred.

At the close of the public hearing, it was on motion

VOTED: To place all three Siberian Husky dogs owned by Mr. and Mrs. J. R. Echouafni of 47 Brewster Road under a permanent Restraining Order (leashed or confined) at all times (24 hours per day), to take effect as of October 10, 1995; and to take action to remove the dogs from Sudbury if there is any future violation of such order.

(Chairman Drobinski: aye; Selectman Blacker: aye; Selectman Clark: opposed.)

Citizen Petition on Future Use of Fort Devens Sudbury Annex

Juliet Gibbs has requested that she be able to present a petition by citizens concerning the future use of the Fort Devens Sudbury Annex at the Board meeting on October 23, 1995 instead of as scheduled for tonight's meeting. The Board agreed to postpone this item as Ms. Gibbs has requested.

Minutes

It was on motion unanimously

VOTED: To approve the regular session minutes of September 26, 1995 and October 2, 1995, as written.

Council on Aging - Van Donation

It was on motion unanimously

VOTED: To accept \$107.44 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.

Appointment of Constable

The Board reviewed an application for appointment as Constable in the Town of Sudbury from Stephen P. LaRoche.

It was on motion unanimously

VOTED: To appoint Stephen P. LaRoche, 31 Alcott Street, Acton, MA, as a Constable, for a term to expire April 30, 1998.

Appointment of Non-Paid Raytheon Special Constables

The Board tabled consideration of a request from Police Chief Peter Lembo, for appointment of two additional guards to the current list that are authorized to direct traffic in front of the Raytheon Sudbury facility, in order to allow the Interim Town Manager to review the appointment process. Subsequently, it was determined the appointments were before the Board in error; under the new Town Manager Act, the Interim Town Manager will make these Raytheon Traffic Guard appointments.

Resignation of Cora Holland from Town Report Committee

The Board acknowledged receipt of a letter of resignation of Cora Holland from the Town Report Committee, dated September 15, 1995, for reasons of time constraints.

It was on motion unanimously

VOTED: To accept with regret the resignation dated September 15, 1995, of Cora Holland from the Town Report Committee.

Appointments to the Town Report Committee

Upon review of applications and with concurrence of the Town Report Committee, it was on motion unanimously

VOTED: To appoint Elizabeth J. Darley, 106 Thunder Road, Karen Tewhey, 120 Fairbank Road, and Linda M. Wallace, 15 Hilltop Road, to the Town Report Committee, each for a term to expire April 30, 1996, bringing the committee to five members.

Drainage Easement and Restriction Acceptance

It was on motion unanimously

VOTED: To accept on behalf of the Town a Drainage Easement & Restriction, dated September 21, 1995, granted by Steve O. Nelson and Peggy S. Nelson, shown on "Plan Showing Proposed Drain Easement & Restriction Area over land of Steve O. Nelson & Peggy S. Nelson, 11 Bridle Path, Sudbury, MA", dated June 26, 1995, drawn by the Town of Sudbury Engineering Department.

Six-Year Capital Expenditure Plan

Interim Town Manager Thompson presented to the Board a proposed Capital Expenditure Plan (CEP) for the Selectmen's office; after review and questions, the Board endorsed the CEP as prepared.

Upon questioning by Selectman Clark, Mr. Thompson made the following responses to specific projects:

1. On Voting Equipment cost: the amount requested (\$9,616) is the balance needed based on Fiscal Year '96 available funds of \$21,300, to meet total cost of \$30,916.

2. On the landfill closure cost, it was explained that this is just a preliminary guess estimate and hopefully, no funds will be required for final closure beyond the Enterprise Fund.

3. On Town Administrative Offices renovations, it was explained that the Fiscal Year '97 figure of \$30,000 did not include the current transfer of \$11,000 before the Finance Committee, but additional for items such as carpeting, new furniture, windows, and general fix-up of the Flynn Building to accommodate Town Departments for the next three to five years. Mr. Thompson continued that the \$1.4 Million for Fiscal Year '98 has to be re-thought and hopefully this amount might be sufficient to centralize Town Administrative Offices in the Flynn Building and provide funds to construct a future DPW Administrative Office. (Confirmation has not been made on the subject of the Highway Capital Expenditure Plan but Mr. Thompson will be recommending that funds be sought for a Highway Vehicle Storage Facility only and funding for same be provided in the operating budget.

Draft List of Possible Articles for 1996 Annual Town Meeting

The Board reviewed a draft list of possible articles for the 1996 Annual Town Meeting, dated October 10, 1995, and agreed to have the office prepare those articles which come under the Selectmen, with exceptions as noted:

1. Hear Reports
2. Unpaid Bills (submitted by Town Accountant)
3. Budget Adjustments FY96
4. Stabilization Fund Addition (\$77,219)
5. Personnel Class. & Salary Plan (Town Counsel to determine if required)
6. FY97 Budget (to be submitted by Finance Committee)
7. Street Acceptances (nothing definite at present)
8. Chapter 90 Bond Issue (to be submitted by Highway Surveyor)
9. Bylaw amendments relative to Town Manager Act:
 - a. Art. XI. Personnel Bylaw
 - b. Art. I. Town Meetings
 - c. Art. III.9. Town Affairs
 - d. Art. XIX. Tree Warden
 - e. Art. XXI. Highway Surveyor
 - f. Others?
(Town Counsel to review)
10. Flynn Building renovations - \$30,000
11. Landfill closure - \$250,000
12. Town Center (\$68,000) and Curtis School (\$67,700) Parking Lots (to be submitted by Town Engineer)
13. Civilian Flaggers - Special Act **(THE BOARD AGREED TO TAKE NO ACTION AND TO REFER THE MATTER TO LABOR COUNSEL.)**
14. Amend Dog Control Bylaw, Art. V.3. to increase restraint to 24 hours **(THE BOARD AGREED TO REVIEW THE MERITS OF THIS ARTICLE AT A LATER DATE.)**
15. Amend Bylaw, Art. XVII.2. Wiring Permit Fees - add re-inspection fee of \$25
16. Amend Bylaws relative to Flood Plains

17. Water District land swaps
18. Codification of Bylaws
19. Voter Information Special Act - revision

(Subjects referred to other boards or Petitioner inquiries)

1. Amend Zoning Bylaw - Assisted Living Residences (Sokoloff letter/Planning Board)
2. Walkways
 - Goodman's Hill Road (Hovsepian)
 - Powder Mill Road (Weiskopf)
 - Taking for walkway at 66 Mossman Road (Zais)
3. New Department of Public Works Vehicle Barn and Salt Shed - \$625,000 (to be submitted by Highway Surveyor)

With the exceptions noted above, all articles will be drafted for further review of the Board of Selectmen, it being clearly understood that the Selectmen take no position on the articles as presented at this time.

Voter Information Bill Meeting

Selectman Blacker reported on the meeting he attended at the State House last week regarding the Town's Voter Information Bill and expressed great displeasure at the misunderstanding and confusion of all parties involved over the wording of our proposed and past legislation. In spite of the ineptness witnessed by Mr. Blacker, he is proposing that the Town refile the bill but only on condition that the draft be pre-approved by those parties involved representing the Office of Campaign and Political Finance and the Governor's Office.

MMMA Meeting

Selectman Clark expressed an interest in attending the 1995 Annual Fall Conference entitled "Strengthening The Board/Manager Relationship" to be held on November 16, 1995 in Sturbridge, MA. Mr. Thompson will sign her up for same.

MAGIC Meeting

Selectman Blacker mentioned a scheduling conflict he has with Thursday night's scheduled MAGIC meeting and a meeting of our Fort Devens Task Force of which he is Chairman. Chairman Drobinski stated that he will try to attend the MAGIC meeting.

Library Budget Schedule

Selectman Clark mentioned that she had received a call from Hans Lopater who expressed to her his concern that the budget hearing schedule of November 1, 1995 is too short a time for its preparation.

Interim Town Manager Thompson answered that today he had a call from Mr. Talentino and they discussed the issue and they will resolve the situation.

Executive Session

At 9:45 p.m. it was on motion by roll call unanimously

VOTED: To go into Executive Session to discuss collective bargaining matters.

(Chairman Drobinski, aye; Selectman Clark, aye; Selectman Blacker, aye.)

Chairman Drobinski announced that public session would not reconvene following the Executive Session.

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

Attest: Richard E. Thompson
Richard E. Thompson
Interim Town Manager-Clerk