

Present: Michael Fee (Chairman), Joe Sziabowski, Christopher Morely, Michael Hunter, Eric Poch (arrived at 7:57 p.m.), and Jody Kablack (Director of Planning and Development), Lisa Eggleston (Associate) (arrived at 8:47 p.m.)

At 7:30 p.m., Chairman Fee called the meeting to order.

Troop 60 Boy Scouts Matthew Disidoro and Connor Gilroy, who are working on obtaining their Community/Communication badges, were welcomed to the meeting. The Scouts were accompanied by Matthew's mother, Carolyn Disidoro.

Public Hearing: Scenic Road – Department of Public Works - Trees

Present: Tree Warden Scott Taylor

At 7:35 p.m., Chairman Fee opened the Public Hearing concerning the removal of certain trees along designated scenic roads, all of which have been identified as dead/dying hazards by the Tree Warden. He read the legal notice for the record, which was duly filed by the Department of Public Works, and was duly published in the *Sudbury Town Crier* on November 19 and November 26, 2009. The trees under consideration for this hearing were:

#20 Mossman Road – 15” oak
Corner of Mossman Road and Ledge Road – 10” pine and 12”pine
#99 Mossman Road – 26” oak
#114 Mossman Road – 16” pine
#157 Mossman Road – 33”oak
#160 Mossman Road – 7” birch, 10” pine, 12 “ pine
#166 Mossman Road – 28” oak

Director of Planning and Community Development Jody Kablack noted that the tree publicized as being located at 99 Mossman Road, is actually at 96 Mossman Road. However, Ms. Kablack further noted that the correct tree was flagged in the field.

Sudbury Tree Warden Scott Taylor confirmed that the trees under discussion are all unhealthy, and he recommended their removal for safety reasons. Mr. Taylor noted that there are plans to grind the tree stumps and possibly widen the road near Silver Hill and Thunder Roads, so as to accommodate new plantings that will not inhibit sight views.

Mr. Morely asked if the trees are severely damaged, or if the removal is being recommended to improve sight lines. He noted that the appearance of Mossman Road

has changed dramatically as a result of recent tree cuttings. Mr. Taylor responded the trees are not healthy.

Sudbury resident Paul Taranto, 33 Elaine Road, asked who cuts the trees and what happens to the cut wood. Mr. Taylor responded that, depending on the circumstances, either the Town or a hired contractor would remove trees. Cut wood is usually offered to the homeowner, or, if unclaimed, removed. Mr. Taranto expressed interest in receiving cut wood in the future, if no other interest has been indicated. He was advised to provide Mr. Taylor or the Department of Public Works with his contact information.

Sudbury Historical Commission Chair Lyn MacLean stated that the Commission has viewed all of the trees in question, and it recommends their removal.

On motion duly made and seconded, it was unanimously:

VOTED: To authorize the Department of Public Works to remove the following trees along designated scenic roads, all of which have been identified as dead/dying hazards by Sudbury's Tree Warden at its earliest convenience, and to make appropriate efforts to deliver cut material to requesting homeowners:

#20 Mossman Road – 15” oak
Corner of Mossman Road and Ledge Road – 10” pine and 12”pine
#96 Mossman Road – 26” oak
#114 Mossman Road – 16” pine
#157 Mossman Road – 33”oak
#160 Mossman Road – 7” birch, 10” pine, 12 “ pine
#166 Mossman Road – 28” oak.

On motion duly made and seconded, it was also unanimously:

VOTED: To close the Public Hearing concerning the removal of certain trees along designated scenic roads, all of which have been identified as dead/dying hazards by Sudbury's Tree Warden.

**Public Hearing: Scenic Road – 68 Old County Road –
Herb Chambers Boston Post Road, Inc.**

Present: Herb Chambers BMWAttorney Joshua Fox and Engineer Bruce Ey

Attorney Joshua Fox, representing Herb Chambers Boston Post Road, Inc, noted that he did not see the public notice advertised in the *Sudbury Town Crier* on November 19 and November 26, 2009. Chairman Fee asked for confirmation of the lack of proper advertising of the Public Hearing set to occur tonight at 8:00 p.m. Ms. Kablack confirmed the public notice did not appear in the newspaper as planned. Thus, Chairman Fee stated the Public Hearing concerning the removal of certain trees at the intersection

of Old County Road (a designated Scenic Road) and Boston Post Road at the request of applicant Herb Chambers Boston Post Road, Inc., will not be opened tonight at 8:00 p.m., and he requested that it be re-noticed for the Board's January meeting. Mr. Fox asked the Board to entertain an informal discussion tonight in anticipation of the Public Hearing. The Board agreed to do so.

Ms. Kablack summarized the issue involving ten trees along the corner of Old County Road and Route 20, which were removed prematurely by the applicant, prior to submitting a formal application for a Scenic Road Public Hearing. She further stated that the applicant had been fully advised of the requirement to submit the proper application to the Board prior to removal of the trees.

Mr. Fox apologized for the lack of communication, which led to the premature removal of the trees. He distributed to the Board, for informational and review purposes, copies of a site sketch prior to the removal of the trees, indicating trees within the public right-of-way which were existing prior to their removal by BMW or its contractors.

Sudbury Historical Commission Chair Lyn MacLean stated that the Commission is displeased with the applicant's actions, since it was assured by the Board of Selectmen that the trees along Old County Road would not be destroyed, and that the buffer of trees would remain. Ms. Kablack did not recall this discussion with the Selectmen, since there were no trees in question located on the BMW property to be discussed as part of the Site Plan deliberation.

Chairman Fee concluded that a Scenic Road Public Hearing should have occurred, and thus the applicant did not follow proper procedures prior to removing the trees. He asked Mr. Fox what remediation has been considered. Mr. Fox acknowledged that three to five healthy trees were erroneously removed. He stated that his applicant will likely be amenable to either providing new plantings, or making an equivalent contribution to the Town's tree planting/maintenance fund.

Engineer Bruce Ey stated that he too had expected a Public Hearing filing to occur, and he was surprised by the landscaper's error. He opined that there were only four or five trees removed that were over 4' caliper, and none were specimen trees. Mr. Ey further stated that, in the process of re-aligning Old County Road and Route 20, which was financed by the applicant, it is likely some actions regarding the trees would have been necessary.

Chairman Fee noted that this is not the first time the Board has been presented with this type of unfortunate incident, even though there is a bylaw in place to prevent such occurrences. To date, the Board has not imposed fines for these types of violations. However, Chairman Fee further stated that the Board is inclined to consider implementing fines as a deterrent.

Mr. Fox opined that, although errors were made, he believes there has been a benefit to the area, as a result of the applicant filling, loaming and seeding the area, and offering to maintain the area on an ongoing basis. Mr. Fox believes that the sight lines and safety of the area have been improved, along with the area's aesthetics.

Chairman Fee asked Mr. Fox if he had a figure in mind for a remediation contribution. Mr. Fox responded that he will discuss the matter with the applicant and provide a figure at the Public Hearing. In addition, Chairman Fee asked if there is the opportunity to replant. Mr. Ey responded that it is important to maintain sight lines around the corner, and to see the building if one is driving westbound on Route 20.

Mr. Morely stated that he believes the removal of the trees was intentional to improve visibility of the facility. He also noted that a small area of curbing on Old County Road seems to unnecessarily protrude into the line of travel. Mr. Morely further noted that the sidewalk needs attention, since it is now well below the grade of the curbing, due to the raising of the grade that was completed. Ms. Kablack noted that a topcoat of asphalt may be needed. Mr. Ey stated he will review both matters, however the area noted may be off the BMW property.

At 8:11 p.m., Ms. Kablack stated the Public Hearing will be scheduled for either January 13 or January 27, 2010. Chairman Fee closed the discussion.

2010 Annual Town Meeting - Discussion of Potential Articles

Assisted Living Potential Article - 189 Boston Post Road

Present: Hawthorne Partners representatives John Kiley, Attorney Joshua Fox

The Board was previously in receipt of a letter dated December 8, 2009 from Attorney Joshua Fox, representing Hawthorne Partners, suggesting that the definition of nursing or convalescent home in the Town's Zoning Bylaws be amended to include "assisted-living facilities, where meals and nursing care are furnished." Mr. Fox also requested the Board's sponsorship of an Annual 2010 Town Meeting warrant article to eliminate prohibitively restrictive dimensional setbacks for nursing home and assisted-living facilities.

Mr. Fox acknowledged the delicate nature of amending the bylaw, so as not to appear as if it was entertained in the interest of a particular applicant. However, in reviewing the bylaw, Mr. Fox believes that nursing homes have been erroneously identified as the most noxious use, with the most restrictive setback regulations of any use in the Bylaw. He noted that kennels and adult day-care facilities are allowable in residential zones, with no additional setback requirements.

Hawthorne Partners representative John Kiley and Mr. Fox displayed exhibits presenting a typical five-acre lot, depicting both the standard residential setbacks and the special setback requirements for a Nursing Home. Mr. Kiely stated that when the required

zoning setbacks are implemented for nursing homes, only 27% of the five-acre lot remains for construction versus 78% of the parcel, when standard residential zoning requirements are applied.

Chairman Fee asked when, and for what purpose, the current guidelines were established. Ms. Kablack will research this information. She stated the regulations may have been instituted in relation to the Orchard Hill development, which was strongly opposed by abutters. At that time, Ms. Kablack also believes, a Town Meeting vote defeated an article presented to allow the use. Mr. Fox opined that the institution of the excessive setback requirements may have been indicative of a reverse-spot-zoning action. Chairman Fee requested that the legislative history for the implementation of the current setbacks be researched and provided to the Board for review.

Mr. Fox opined that there is a need for assisted-living facilities in the immediate area. Sudbury resident Carolyn Disidoro agreed that there is a need because she had to travel long distances to find similar facilities for her father, who recently died from complications of Alzheimer's. However, Ms. Disidoro further stated that the greater setbacks may be appropriate for an Alzheimer's-designated facility, because the nature of the disease causes patients to wander. She stated that even in a highly secure environment, patients may escape and be in peril if too close to a busy Route 20. Based on her experience, Ms. Disidoro also noted that these facilities have frequent trips from ambulances, and will bring increased traffic to the area. Mr. Kiley responded that ambulance visits are not as frequent for early and mid-stage patients, and that the risk of wandering patients has been estimated to be extremely low.

Chairman Fee stated that there is no disagreement from the Board that providing this type of care is important and that there is a need for it in the area. However, he noted that the Board's responsibility is to focus on the zoning-related issues under its purview.

Mr. Fox suggested that the current setback requirements be eliminated and that this type of use be regulated by the same setbacks allowable by a Special Permit. To avoid a challenge of spot zoning, Chairman Fee questioned if the setbacks should instead be reduced rather than eliminated, noting that the Board cannot support amendments that favor a single developer.

Mr. Morely suggested that the bylaw remain as is, and that the applicant pursue a variance by the processes in place. Ms. Kablack and the Board opined that the applicant has a high likelihood for a successful variance request result.

Chairman Fee recommended that the Board bookmark a potential warrant article to allow more time to research and deliberate relevant material. He reiterated his interest in receiving the legislative history of the setback requirements for nursing homes. In addition, Chairman Fee requested an analysis of the demographic need for this use in

Sudbury and information regarding what other sites in Town would be impacted by changes to the bylaw for review by the Board at its next meeting.

Mr. Sziabowski opined that limiting the proposed amendments to particular locations near Route 20 would help garner support for a proposed article. Mr. Morely reiterated his concern as to whether there is a need to change the zoning bylaw for a situation that happens so rarely. Mr. Fox noted that, if the current setback requirements had been imposed on the existing nursing homes in Sudbury, they never would have been able to be constructed.

Chairman Fee stated the clarification of the definition suggested by Mr. Fox seems logical. Mr. Poch concurred. Mr. Poch further stated that he supports a bookmark article, which will enable the Board additional time to perform its due diligence.

Chairman Fee noted that the applicant should still proceed with the Zoning Board of Appeals (ZBA) process. Mr. Fox acknowledged that, in any event, the applicant will need to go before the ZBA for a Special Permit. However, Mr. Fox emphasized that the ZBA process is anticipated to take months, and that no outcome is likely prior to the Annual 2010 Town Meeting.

Mr. Morely noted that, if this project proceeds, there is a healthy and attractive bank of trees on Landham Road, which should be preserved as a buffer.

Illicit Discharge and Connection Bylaw – The Board was previously in receipt of a draft article for review and discussion purposes. Ms. Eggleston has reviewed the draft, and she and Ms. Kablack stated that its language adheres to State guidelines.

Chairman Fee suggested that a Public Hearing be held on this article at the time other zoning articles are publicly presented in February.

On motion duly made and seconded, it was unanimously:

VOTED: To approve and sign the draft Annual 2010 Town Meeting article regarding an Illicit Discharge and Connection Bylaw, as reviewed this evening.

Wireless Services Bylaw - The Board was previously in receipt of a draft article, for review and discussion purposes, to revise the Wireless Services Bylaw, and a “Proposed Scope of Services Wireless Infrastructure Master Planning Process for the Town of Sudbury” presented by Broadcast Signal Lab.

Ms. Kablack highlighted that the draft bylaw includes a list of potential new parcels to be included in the Overlay District. She also noted that she is working with the consultant to revise his proposed and current locations for accuracy. The consultant has developed a map, which plots coverage gaps, and copies were circulated to the Board for review.

Following a final review, Ms. Kablack stated that the eventual number of parcels added to the overlay district may be minimal. Ms. Eggleston opined that the coverage map will be useful to diffuse opposition at Town Meeting.

Ms. Kablack summarized the revisions made to Section 4345, to add the words "equipment buildings or cabinets," and to Section 4371 to add the words "and adjacent public roadways." The Board approved of these revisions.

Ms. Kablack further reviewed the suggested revision to eliminate Section 4363. Mr. Poch opined that the revenue generated by these installations is a legitimate factor to consider. As a result of discussions with Ms. Kablack, Chairman Fee stated that he is more comfortable with the concept and aesthetics of placement of a cell tower(s) on the property of Lincoln-Sudbury Regional High School (LSRHS) as long as an appropriate site review occurs. Ms. Kablack stated that the LSRHS Committee is considering installation options of light poles on the football field. However, Chairman Fee stated that he still has reservations about removing the setbacks detailed in Section 4363, since they provide some comfort to individuals who might otherwise oppose the concept completely. Ms. Eggleston is unsure if she agrees with the suggested impact of the elimination of Section 4345, but she is inclined to leave the Section as is.

Mr. Sziabowski stated that he is inclined not to endorse cell tower installations near a school, in spite of Federal regulations stating that health factors cannot be considered in zoning matters.

Ms. Kablack stated she hopes to be able to measure the proposed site locations. Chairman Fee stated that the consensus of the Board is to support the revisions made to Section 4345 and 4371, but that more time is needed to deliberate whether Section 4363 should be excised from the bylaw.

On motion duly made and seconded, it was unanimously:

VOTED: To sign a draft Annual 2010 Town Meeting bookmark warrant article regarding a Wireless Services Bylaw, as revised and reviewed this evening, and to continue discussion at the Board's next meeting.

Assisted Living - add to Use Table

On motion duly made and seconded, it was unanimously:

VOTED: To sign a draft Annual 2010 Town Meeting bookmark warrant article regarding changes to the Zoning Bylaw to allow for Assisted Living and amend the setbacks for Nursing Homes, and to continue discussion at the Board's next meeting.

In addition, **minor changes to Zoning Bylaws** were decided as follows:

On motion duly made and seconded, it was unanimously:

VOTED: To endorse the minor Zoning Bylaw change to Section 2210 – to add the word "residential" to "Not more than one principal residential structure shall be placed on a lot....

Ms. Kablack will research whether Section 2324 can be revised within the regulations to add the words "or other structures" to "The temporary use of trailers or other structures for storage or office purposes is allowed

On motion duly made and seconded, it was unanimously:

VOTED: To endorse the minor Zoning Bylaw change to Section 7000 to delete the word "fences" from the definition of "Structure."

Ms. Kablack has withdrawn the request to amend Section 2230 - Appendix A, Table of Principal Uses Regulations - add the words "Reference section 2313" under "Non-exempt Agricultural Use" in the Use Table for raising animals.

Other suggested changes to the Zoning Bylaw were passed over for consideration at the 2010 Annual Town Meeting:

- Change to Section 3259B (New). Temporary Signs: To add the sentence, "Temporary business signs while waiting for a permanent sign to be constructed shall be no greater than 24-square feet for a wall-mounted sign, or six-square feet for a freestanding sign.
- Indoor Commercial Recreation, to allow by right in Industrial District and Limited Industrial District (remove need for Special Permit), as suggested by the Building Inspector.
- Regarding setbacks for tennis courts to comply with principal structure setbacks.

Community Preservation Committee 2009 Project Submission Forms Received for Funding Consideration

The Board was previously in receipt of a listing of the thirteen project applications received this year for Community Preservation Act (CPA) funding consideration. Ms. Kablack stated the Board can decide at a later date, which articles it will support.

2009 Planning Board Annual Report

The Board was previously in receipt of a Draft 2009 Sudbury Planning Board Annual Report.

On motion duly made and seconded, it was unanimously

VOTED: To approve and sign the 2009 Planning Board Annual Report as reviewed this evening.

Maple Avenue Extension – Release of Covenant

Ms. Kablack recommended release of the covenant.

On motion duly made and seconded, it was unanimously:

VOTED: To approve and sign the Release of Covenant for Maple Avenue Extension.

Stormwater Management Bylaw Permit - Lot 19 Widow Rite's Lane

The Board was previously in receipt of a draft Stormwater Management Permit Decision on the petition of Blue Sky Construction, Inc., for property located at 19 Widow Rite's Lane. Ms. Eggleston stated she has reviewed the decision and finds it addresses all applicable matters. Chairman Fee and Mr. Sziabowski concurred.

On motion duly made and seconded, it was unanimously:

VOTED: To approve the Draft Stormwater Management Permit Decision on the petition of Blue Sky Construction, Inc., for property located at 19 Widow Rite's Lane.

Minutes

On motion duly made and seconded, it was unanimously

VOTED: To approve the regular meeting minutes of November 19, 2009, subject to incorporation of the revisions made this evening by Chairman Fee.

Miscellaneous

Application Not Required – Widow Rite's Lane

Ms. Kablack briefly reviewed with the Board the Form A Application For Endorsement of Plan Believed Not To Require Subdivision Approval plan submitted by Robert Quirk for Widow Rite's Lane. Ms. Kablack recommended approval.

On motion duly made and seconded, it was unanimously

VOTED: To approve the Form A Application Endorsement of Plan Believed Not To Require Subdivision Approval plan submitted for Widow Rite's Lane.

Grouse Hill - Bond Reduction Request

Ms. Kablack distributed to the Board copies of a letter from Town Engineer/DPW Director Bill Place, dated November 23, 2009, estimating that \$101,295.70 is required to finish the subdivision's outstanding work. Mr. Place and Ms. Kablack recommend reduction of the bond.

On motion duly made and seconded, it was unanimously:

VOTED: To approve the request for a reduction of bond to \$101,295.70 for Grouse Hill, based upon the inspection and recommendation of Town Engineer/DPW Director Bill Place.

Mahoney Farms SRC - Bond Reduction Request

Ms. Kablack distributed to the Board copies of a letter from Town Engineer/DPW Director Bill Place, dated and revised January 15, 2009, estimating that \$95,340.00 is required to finish the subdivision's outstanding work. No further work has commenced in this development since Jan. 2009, and Mr. Place recommends no further reduction of the bond.

On motion duly made and seconded, it was unanimously:

VOTED: To deny the request for further reduction of the bond for Mahoney Farms SRC.

Upcoming Planning Board Meeting Schedule

The Board's next meeting is scheduled for January 13, 2010, and is subject to change.

The meeting was adjourned by Chairman Fee at 9:50 p.m.